

**EXPLANATORY MEMORANDUM TO**  
**THE DRIVERS' HOURS AND TACHOGRAPHS (TEMPORARY EXCEPTIONS)**  
**(NO. 3) REGULATIONS 2021**

**2021 No. 1106**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Transport (“DfT”) and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 This Statutory Instrument provides for temporary exceptions to certain provisions of Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 (“the Drivers’ Hours Regulation”) which establishes standard rules for permitted driving times and work patterns for heavy goods vehicle (“HGV”) drivers. These temporary exceptions are necessitated by the exceptional circumstances arising from the cumulative impacts of the COVID-19 pandemic across Great Britain, an acute shortage of HGV drivers and disruption to the availability of fuel for road transport, which adversely affect the carriage of goods by road.
- 2.2 The temporary exceptions are modifications to certain provisions of the Drivers’ Hours Regulation, taking the form of permitted increases to some of the standard time limits for drivers’ hours and permitted changes to some break and rest requirements. The exceptions can be relied upon by HGV drivers undertaking journeys within Great Britain.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 The Department regrets that this instrument breaches the rule that statutory instruments subject to the negative procedure should normally be laid, and copies provided to the Committee, 21 days before the instrument comes into force. Having reviewed the current risks to supply chains related to acute lorry driver shortages and to the COVID-19 pandemic, the Government is acting promptly to ensure that HGV drivers can, between 4 October 2021 and 31 October 2021, and where necessitated by these exceptional circumstances, continue to amend their permitted driving patterns. This will ensure the continuation (with one modification) of the temporary exceptions to the enforcement of the Drivers’ Hours Regulation, which began on 12 July 2021 and ends on 3 October 2021, without a gap.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is England and Wales and Scotland.
- 4.2 The territorial application of this instrument is England and Wales and Scotland. Application of the rules is a devolved matter in Northern Ireland.

## **5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **6. Legislative Context**

- 6.1 The instrument will, for the temporary period, make exceptions to the Drivers' Hours Regulation, that can be relied on by drivers and transport undertakings in the circumstances set out in the instrument.
- 6.2 The Drivers' Hours Regulation outlines the maximum amount of driving time and minimum periods of rest for most HGV drivers and some bus and coach drivers.
- 6.3 The Drivers' Hours Regulation forms part of retained EU law under Section 3 of the European Union (Withdrawal) Act 2018. It applies both to journeys within the UK and to journeys within the combined geography of the UK and the EU. Articles 14(1) and 25A of the Drivers' Hours Regulation, as amended by S.I. 2019/453, enable exceptions from the usual requirements to be made by statutory instrument for transport operations carried out in exceptional circumstances.
- 6.4 Prior to the end of the transition period, Regulation (EC) No 561/2006 required that an Article 14(1) temporary exemption in exceptional circumstances be made after authorisation from the European Commission. The temporary exemption must now be made by statutory instrument.
- 6.5 This instrument is made under powers provided for in Articles 14(1) and 25A of the Drivers' Hours Regulation. The instrument will provide for temporary exceptions to drivers' hours, similar to those that were made by the Drivers' Hours and Tachographs (Temporary Exceptions) (No. 2) Regulations 2021 (S.I. 2021/921)<sup>1</sup> under Articles 14(1) and 25A of the Drivers' Hours Regulation and which have been in force during the period 9 August 2021 to 3 October 2021.

## **7. Policy background**

### *What is being done and why?*

- 7.1 Temporary exceptions to the Drivers' Hours Regulation for HGV drivers were introduced for the period 12 July 2021 to 3 October 2021 to ensure critical supply chains were maintained. This was in the light of the effects of the COVID-19 pandemic, coupled with the acute shortage of HGV drivers. These effects have been putting acute pressure on local and national supply chains, particularly in the fuel and food sectors.
- 7.2 The purpose of the temporary exceptions is to increase the flexibility of driving and work patterns in the current exceptional circumstances. Normally, a driver is limited to 9 hours of driving in a single day, but this can be increased to 10 hours no more than twice in a week. Regulation 3 allows drivers to have a daily driving limit of 10 hours no more than four times a week. A benefit of the extra hour is to avoid lost deliveries due to delays. Drivers remain restricted to a maximum of 56 hours driving in a week and 90 hours in a fortnight.

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<sup>1</sup> Statutory instrument 921/2021 "The Drivers' Hours and Tachographs (Temporary Exceptions) (No.2) Regulations 2021

- 7.3 The additional permissible extra hours had been applied via an extension to eleven hours of the two days a week during which ten hours driving is usually allowed. This was consistent with part of a more far-reaching European framework for drivers' hours extensions used during the early part of the COVID-19 pandemic. With this series of extensions' total duration becoming longer than the duration of use of the European framework, this has been converted to a tenth permitted hour for two further days a week. This is more consistent with UK practice applied in the normal domestic drivers' hours rules for goods vehicles which allow up to ten hours driving during any day on duty.
- 7.4 Regulation 4 provides, as an alternative to Regulation 3, an amended weekly rest pattern as a temporary exception to the rules on weekly rests that allows the possibility of an additional day of driving in a fortnight. Normally, drivers are required to at least take one regular weekly rest period of at least 45 hours and one reduced weekly rest period of at least 24 hours in a two-week period. Regulation 4 allows two consecutive reduced weekly rest periods of at least 24 hours in a two-week period. However, Regulation 4 also stipulates that the reduction in rest must be compensated for by an equivalent period of rest taken before the end of the third week following the week in question. The rest taken as compensation must be taken as an extension to a regular weekly rest period of at least 45 hours but may be divided over two consecutive regular weekly rest periods. Drivers may not combine the two exceptions allowed under Regulation 3 and Regulation 4, and they apply to road transport of goods within Great Britain only.
- 7.5 The amended weekly rest pattern is similar to a pattern permissible for international road transports by the normal rules. In the case of this exception (but not in the normal international road transport rules), there is an increase in the maximum permitted driving time in a fortnight to 99 hours from the standard 90 hours. Following the initial outbreak of COVID-19 last year, some EU member states increased the permitted fortnightly driving limit by similar or longer durations.
- 7.6 To protect driver welfare and road safety, these temporary exceptions made to the Drivers' Hours Regulation are limited in scope. For example, they allow drivers to drive an extra hour a day, four times a week (instead of the extra one hour allowed twice a week), if necessary, but not increasing the maximum weekly driving limit of 56 hours.
- 7.7 In addition, the use of the temporary exceptions is constrained by the requirements of the sector specific Road Transport (Working Time) Regulations 2005, which limit drivers' working hours (which includes driving and any other work) to an average of 48 hours a week over a 17 to 26 week reference period. These regulations also limit drivers to a maximum of 60 hours in any given week, provided the average is still 48 hours. This ensures drivers are not working continuously long hours, even if working under temporary exceptions to the Drivers' Hours Regulation.
- 7.8 Furthermore, the DfT has issued guidance in the published notification on the use of the temporary exceptions which makes it clear drivers should not be expected to drive while tired and that employers remain responsible for the health and safety of their employees and other road users.
- 7.9 Additionally, an administrative reporting requirement is currently in place to check the use of the temporary exceptions. This is designed to increase accountability and transparency and ensure that that the temporary changes are only to be used where

necessary. This will continue to be in place when the temporary exceptions are extended to 31 October 2021.

- 7.10 The Driver and Vehicle Standards Agency (DVSA) is responsible for enforcing the drivers' hours and working time rules. DVSA will use the information provided by operators, as part of the administrative reporting requirement, to assist with its roadside enforcement encounters, undertaking targeted checks and follow-up action at operator premises where necessary, to ensure compliance with the requirements of the temporary exceptions. DVSA will continue to undertake targeted checks at the roadside and at operator premises.
- 7.11 The Department has not been made aware of any increases in accidents involving HGV's since the exceptions to the drivers' hours rules were first introduced in July 2021. However, as we do not have accident figures covering this period yet, we will continue to monitor the situation.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

## **9. Consolidation**

- 9.1 This SI does not amend existing legislation and so no consolidation is needed.

## **10. Consultation outcome**

- 10.1 A targeted stakeholder Consultation was conducted from 15 September 2021 to 22 September 2021 to gather up-to-date views and evidence. Stakeholders included haulage operators and their trade bodies, trade unions representing lorry drivers, food wholesalers and distributors, supermarkets, and fuel/oil suppliers. The devolved administrations (Wales and Scotland) were also notified of the Consultation. In total, there were 18 responses.
- 10.2 The responses overall did not support extending the temporary exceptions, with 12 out of 18 of all respondents stating that the extensions should not continue until 23 January. Unions and road freight transport associations did not agree with extending the extensions. 6 respondents supported the continuation of the extensions, 5 for through to January.
- 10.3 The consultation completed before fuel disruption began. In the light of both the information provided in consultation responses and subsequent events, the Department will seek further information about the extensions during October after fuel deliveries stabilises. Extensions are being retained for up to four weeks via this S.I. given the exceptional situation, associated with the acute lorry driver shortage and fuel supply.
- 10.4 Drivers' Hours is a devolved matter in Northern Ireland. The Department for Transport engaged with relevant policy colleagues at the Department for Infrastructure in Northern Ireland to keep them informed of its policy position and decision to conduct a Call for Evidence.

## **11. Guidance**

- 11.1 Guidance relating to the temporary exceptions running from 12 July 2021 to 3 October 2021 has been published on the gov.uk website. This outlines the process for

using the exceptions and emphasises that they are only to be used where necessary and that driver safety must not be compromised. The guidance is available at the link provided in 11.2 below.

- 11.2 <https://www.gov.uk/government/publications/temporary-relaxation-of-the-enforcement-of-the-retained-eu-drivers-hours-rules-all-road-haulage-sectors-within-great-britain/temporary-relaxation-of-the-enforcement-of-the-retained-eu-drivers-hours-rules-all-road-haulage-sectors-within-great-britain>
- 11.3 Amended guidance in the light of this instrument, about the extent of the temporary exceptions and the conditions related to them, will also be published on the gov.uk website and additionally circulated to key stakeholders, including haulage operators and their trade bodies. Under the EU-UK Trade and Cooperation Agreement, the UK is required to notify the European Commission of the temporary exceptions so that the Commission can disseminate this information to EU member states. The publication and circulation of the notifications follows an established and recognised process.

## **12. Impact**

- 12.1 There is no, or no significant, impact on charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because the measure is temporary and is designed to assist the maintenance of supply chains in exceptional circumstances. It will avoid some disruption. There will be no substantive changes to the requirements of the Drivers' Hours Regulation as a consequence of this instrument.

## **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses. Small transport operators can use the temporary exceptions if necessary.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses. This instrument relaxes certain aspects of regulation temporarily for all haulage businesses regardless of their size. Business can choose to continue to operate using the normal rules.
- 13.3 The basis for the final decision to take no specific action to assist small businesses is because this instrument does not modify the permanent requirements for those subject to the drivers' hours rules.

## **14. Monitoring & review**

- 14.1 The approach to monitoring of this legislation is that it will be monitored via roadside enforcement by the Driver and Vehicle Standards Agency who are responsible for enforcement of the Drivers' Hours Regulation in Great Britain. DfT will also monitor the use of the temporary exceptions within Great Britain by requiring operators to inform DfT of their intention to use the exceptions, and to later inform DfT how they were used.

## **15. Contact**

- 15.1 Aran Sritharan at the Department for Transport Telephone: 07747 695 541 or email: [aran.sritharan@dft.gov.uk](mailto:aran.sritharan@dft.gov.uk) can be contacted with any queries regarding the instrument.

- 15.2 Duncan Price, Divisional Manager for the Freight, Operator Licensing, and Roadworthiness Division, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Baroness Vere, Parliamentary Under Secretary of State at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.