

Time, gentlemen,

Staying within the law on drivers' hours is fundamental to keeping both drivers' and operators' licences. John Kendall looks into the detail

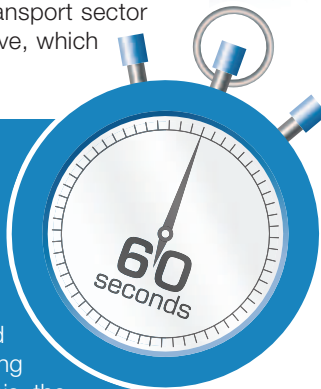
If there is one area of transport law that can readily reduce a transport manager to a gibbering wreck, it must be that surrounding working time, drivers' hours and tachographs. On one hand, there is a need to regulate the hours that drivers of freight and passenger vehicles are allowed to work, on safety grounds alone. However, complications arise when looking at how rules apply to drivers in the UK who are travelling to or through other EU member states and beyond.

The regulations have been concocted to satisfy the demands of European legislation, such as the horizontal amending directive (HAD) introduced in 2003 and also the road transport directive (RTD), in 2005. These two directives specifically cover workers in the transport sector in place of the working time directive, which covers most other sectors.

One-minute rule

One example of this is what has become known as the 'one-minute rule'. Under the current regulations governing how a tachograph records activity, the system rounds up to the nearest minute. Hence, over a working week, that means that the tachograph could potentially have recorded a number of minutes as driving time that were not actually spent driving. To address this, the tachograph rules have been amended and, from 1 October, tachographs must be re-calibrated to attribute that minute in question to the predominant activity – 'driving', 'rest', 'work' or 'available', for example. So, if a driver completes a journey in three hours 24 minutes and 20 seconds, and then selects 'rest' to take a break, the driving time would be recorded as three hours 24 minutes, not three hours 25 minutes, as currently.

That said, time recorded would not change in one particular circumstance – where an activity takes place between minutes. As an example, when a driver stops the vehicle to drop off a crew member, the whole process takes less than a minute, so would record it as part of driving.



Then there are our own domestic rules for driving on UK roads and a further set of regulations covering the European agreement concerning crews of vehicles engaged in international road transport (AETR). This set of legislation is aimed at vehicles driven beyond EU borders.

The fact is, drivers, and hence fleet managers, can find themselves required to comply with the tachograph regulations, as well as UK domestic rules, or European Union rules, AETR rules, or possibly a combination of the lot.

So let's go back to basics, and take a look at forthcoming changes and areas that still present

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the most difficulties. First, vehicles that need to be fitted with a tachograph are generally those used for the carriage of passengers or goods for hire or reward. This means all goods vehicles exceeding 3,500kg gvw and buses or minibuses. EU member states are allowed to implement some derogations and exemptions for vehicles operating within their own countries, with the list typically including emergency services vehicles and those used by the armed forces.

Notable UK derogations include: minibuses and buses with between 10 and 17 seats used exclusively to carry passengers on operations that are not commercial; ambulances used by the NHS and other vehicles also used by the NHS for transporting medical supplies, equipment, organs or blood; and other emergency service vehicles, including those used by HM Coastguard.

Other UK derogations have been granted for some vehicles used in the agricultural, forestry and fishing sectors, operating within a 100km radius of their base. Play buses and mobile libraries are also exempt, as are some Royal Mail vehicles, electrically powered and gas-fuelled vehicles up to 7,500kg gvw used within 50km of their operating base, vehicles used by showmen, and those used inside ports, airports and railway depots.

Weight watchers

So it is perhaps inevitable that confusion arises for vehicles operating around the 3,500kg gvw range and those used for dual purposes, such as double-cab pickup trucks. Problems are also likely to arise when they are used with a trailer, which takes the gross combination weight (gcw) above 3,500kg.

Is a tachograph required in these circumstances? Even if the vehicle is used for business purposes, much depends on the specifics of that use. A UK derogation has been granted for: 'Vehicles or combinations of vehicles with a maximum permissible mass not exceeding 7.5 tonnes that are used for carrying materials, equipment or machinery for the driver's use, in the course of his work'.

There are further conditions, namely: 'These vehicles shall be used only within a 50km radius of the base of the undertaking and on the condition that driving the vehicle does not constitute the driver's main activity'.

So, on that basis, a 3,500kg gvw tipper that is

towing a trailer that was carrying a mini-digger would not need a tachograph, if it was used within 50km of the operating base, or if it was being used in the course of the driver's regular work and driving the vehicle was not his or her main occupation. But if the same vehicle combination were being used to deliver the mini-digger to a customer of a tool hire company, it would need a tachograph, because the mini-digger would not be used by the driver of this vehicle.

The same rules would apply, if the towing vehicle was a pickup or a car and the gcw exceeded 3,500kg – calculated by adding together the maximum gross weight of the pickup or car and the maximum gross weight of the trailer. However, if the same vehicle were used to tow a caravan or a boat for leisure purposes, a tachograph would not be required.

While some vans and pickups have been designed for tachograph fitment, those that have not and are simply used for towing where the gcw exceeds 3,500kg would need one to be fitted. The same reasoning would apply to a car. Continental Automotive could fit the equipment, but points out that the cost would be around £1,500.

The digital revolution

From May 2006, newly registered vehicles requiring a tachograph have had to be fitted with a digital instrument, in place of the previous paper chart instrument. However, inevitably, some compromises had to be made in producing a device that would be relatively straightforward to use and could exploit the possibilities made available from recording data electronically.

As mentioned earlier, the Road Transport Directive was introduced following the HAD directive, to cover working hours in the transport sector. When the RTD was introduced, a temporary exemption was granted for owner-drivers. Under this directive, average weekly working hours must not exceed 48 hours, normally calculated over a 17-week period, although it can be extended to 26 weeks. Even though EU drivers' hours rules permit a maximum of 56 hours' work in a week and a maximum of 90 hours in any two-week period, the 48-hour average is the overriding consideration.

In April 2010, this temporary exemption for the self-employed was overturned when MEPs on the Employment Committee of the European Parliament voted to end it. This means that the DfT (Department for Transport) might be obliged to implement the rule here.

We asked the DfT for a comment and received the following statement: "We are considering the outcome of the vote and working with other member states to limit the impact of the decision on the road haulage industry. At the moment, the UK is not implementing these regulations." 