

Legal interpretation or regulatory requirement?

Legal matters are rarely simple. We all understand why: on the one hand, the devil is in the detail, so precision is key; but, on the other, a primary object is to limit interpretation, as far as possible, to that intended. In short, lawmakers tread a troublesome tightrope and those governed by the results sometimes scratch their heads.

So it should come as no surprise that the new regulations over digital tachographs – designed to address the problem of ‘rounding-up’ that forces full minutes to be recorded as driving, even though they weren’t – are causing confusion.

In the February issue, we reported that the legislation is changing, in line with EC Regulation 3821/85, and that, from 1 October this year, tachographs must be recalibrated to attribute each minute to the predominant activity – ‘driving’, ‘rest’, ‘work’ or ‘available’, for example. However, VOSA (the Vehicle and Operator Services Agency) now confirms that, while it is correct that from 1 October, whichever activity takes the greater part of each minute will indeed be taken as the driver’s activity (with equal splits of 30 seconds that involve driving, recorded as driving), existing tachographs do not need to be recalibrated.

As Gordon Humphreys, managing director of Foster Tachographs, explains: “The legislation applies solely to the vehicle tachographs, not vehicles manufactured after 1 October. Since it is probable that some new vehicles will have old-style tachographs fitted, because they will have been manufactured in advance of the deadline these do not have to be recalibrated.”

He concedes that operators may retrospectively change their tachograph heads from old to new, using models manufactured after 1 October, if they believe there are commercial benefits in doing so, but makes the point that this is not required in law or by VOSA.

And while we’re on legal detail, most operators believe the Road Transport Directive permits up to 56 driving hours in a week, with a maximum of 90 hours in any two, as long as the average (calculated over 17 weeks or 26, if extended) remains at 48 hours. In fact, while the 48 hours is correct, maximum driving time in any one week, under the Working Time Directive, is 60 hours.

Further, that week is formally defined as from 0000 hours on Monday to 2400 hours on the following Sunday, which may not coincide with the operators’ real-world requirements. So 11-hour driving days from Monday to Friday (55 hours) would be legal, but, if your driver is asked to do another six, starting on Sunday, you’re in breach.

It’s a complicated business, mired in well-intended, but tricky detail. Hence the huge tome that is the FTA’s (Freight Transport Association) International Road Transport Guide. And hence also the flourishing legal practices in this country, specialising in the haulage industry.

Best advice for transport managers visiting the upcoming CV Show 2011 (NEC, Birmingham, 12–14 April) is to spend at least some of your time visiting the IRTE and FTA stands, taking soundings from the experts on matters that may concern you. You can also avail yourselves of the latest essential information: IRTE, for example, is launching its truck rollovers guide at the event. And then it’s time for the vehicles, workshop equipment and services. You’ll be busy.



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Published by: The Society of Operations Engineers

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The Society of Operations Engineers is a licensed member of the Engineering Council

Registered in England:

Company No. 3667147

Registered Charity: No. 1081753

A Company Limited by Guarantee

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Publisher: Peter Knutton

Transport Engineer is the official journal of IRTE.

Produced on behalf of IRTE and The

Society of Operations Engineers by

Findlay Media Ltd, Hawley Mill, Hawley

Road, Dartford, Kent DA2 7TJ

Tel: 01322 221144

Fax: 01322 221188

www.transportengineer.org.uk

Transport Engineer is distributed free

of charge to SOE members, dependent

on membership sector. For non-

members, the annual subscription rate

(12 issues) is £68 UK and EU, or £70

airmail outside EU. For other SOE

members, the discounted rate is £27.

Printed by: Holbrooks Printers Ltd,

Portsmouth ISSN: 0020-3122

Views expressed in Transport Engineer

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Society of Operations Engineers or of

Findlay Media Ltd.

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