



FTA Briefing note: Scope of EU drivers' hours

The Department for Transport has notified FTA that it has adopted a new interpretation that removes drivers that never carry goods in the course of their employment from the scope of EU drivers' hours Regulation 561/2006.

Background

For many years FTA members argued that mechanics/fitters taking vehicles to annual test should not be subject to EU drivers' hours regulations. Whilst derogation existed for road testing vehicles following repair this did not extend to taking vehicles to annual test. Whilst DfT and VOSA appeared sympathetic they could offer no solution to the problem.

Last year FTA was involved in a European Commission working group where Government and enforcement representatives from most Member States were invited to present and discuss issues related to interpretation of drivers' hours and tachograph regulations. The Commission emphasised the intention of the group was to establish a common interpretation only and that there would be no further change to legislation.

FTA argued that the spirit of the legislation did not apply to mechanics/fitters and asked the Commission to provide advice on interpretation of the scope of the legislation that applied to 'drivers engaged in the carriage of goods'. Subsequently in October 2007 the Commission issued advice based on drivers employed by truck rental companies stating that the nature of their functions did not include the activity of carrying goods therefore they were not in scope of EU drivers' hours rules. All Member States including DfT opposed this interpretation and for the last eight months FTA has been pressing the Department to provide clear guidance on this issue.

On 19 June 2008 DfT issued the following advice:

"Ministers have now agreed that we should adopt the following interpretation for enforcement purposes:

Drivers will be considered to be outside the scope of the EU drivers hours rules if they never carry goods or passengers in the course of their employment.

We will be keeping the operation of this interpretation under review and reserve the right to amend it if abuses come to light. At the end of the day only the courts can give an authoritative interpretation and we will also review our position in the light of the relevant case law."

Drivers not in scope of EU drivers' hours rules will not be subject to the Road Transport Working Time Directive. however it is important to remember that such drivers will be subject to UK domestic drivers' hours rules and the provisions of the Horizontal Working Time Directive for mobile workers that have been incorporated into the main working time directive.

This initial DfT advice left some questions unanswered and FTA received further clarification on a couple of points in July 2008. With the usual caveat that it is for the Courts to give a definitive view DfT has offered the following advice but also emphasised that it reserves the right to alter this position on enforcement if there is evidence of abuse. It should be remembered that to take advantage of this interpretation the driver/fitter must never be engaged in the carriage of goods in the course of their employment.

1. A journey involving a vehicle laden with a "dummy" load (for example, test ballast, concrete blocks, water in the case of tankers, etc) which is being taken to an annual test by a fitter will fall outside the scope of the EU rules. For all other categories of load - for example, goods which would normally be carried on a day to day basis, including those of a commercial nature - the journey will fall in-scope of the EU rules.

2. Most agency drivers are considered to be employed by the company they are contracted to drive for on a particular day, not the agency in question. In these cases, each period of employment should be viewed separately. So for example, we would still consider an agency driver to be out of scope of the EU rules when the driver is employed by a vehicle rental company to drive empty hire vehicles - irrespective of the fact that the driver might be contracted to drive for another company the very next day to transport commercial goods.

Prepared by Joan Williams, Head of Road Freight and Enforcement Policy – 29 July 2008