

CHAPTER 13

Goods vehicles

Certificates of professional competence

The Vehicle Drivers (Certificates of Professional Competence) Regulations 2007 apply to a person who drives a relevant vehicle (C or C+E) on a road and is (a) a national of a member State, or (b) a national of a third country employed or used by an undertaking established in a member State. 'Member State' means a EU State or a EEA State. Exemptions exist in respect of vehicles which can broadly be described as emergency vehicles, vehicles used by the police or armed services, and vehicles used for training or testing purposes.

The Regulations apply to a person who drives a relevant vehicle (C, or C+E) on a road on or after 10 September 2009 and is a national of a member State, or a national of a third country employed or used by an undertaking established in a member State. Exemptions exist in respect of vehicles which can broadly be described as emergency vehicles, vehicles used by the police or armed services, and vehicles used for training or testing purposes.

Regulation 4(1) prohibits any new driver from driving a lorry on a road on or after 10 September 2009, unless that driver has passed a theory and practical driving test which is referred to in the Regulations as an 'initial CPC' test. The test is more extensive than the current driving test in respect of lorries and may be taken at the same time as the ordinary driving test. Drivers undergoing a vocational training course (one leading to a professional qualification relevant to the carriage by road of passengers or goods or both, which is approved by the Secretary of State and lasts at least six months are exempted for up to 12 months from taking that test if they have been issued by the Secretary of State with an authorisation to drive while undertaking a course. The period of the exemption will be that specified in the authorisation. Drivers who already held a lorry driver's licence before 10 September 2009 are exempt from taking the initial CPC test.

The Secretary of State will arrange for the provision of initial CPC tests and will approve persons who will provide periodic training courses (a course of at least seven hours of periodic training). Such providers are required to notify the Secretary of State of the results of tests so that a record may be maintained.

Regulation 8 provides that a person who has passed the initial CPC test or has completed 35 hours of periodic training entitling him to a periodic CPC (i.e. a CPC certifying periodic training) may apply to the Secretary of State for a 'driver qualification card'. Such a card is issued in addition to the CPC and is marked with the relevant Community code; it resembles a photocard driving licence).

Regulation 9(1) prohibits anyone from driving a lorry unless he has passed the initial CPC test or has completed 35 hours of periodic training within the preceding five years. Drivers who do not have to take an initial CPC (because they already hold a current licence for such a vehicle, or that of a member State, or a similarly recognised driving licence, or a test pass certificate in respect of such a vehicle) must complete 35 hours of periodic training by 10 September 2014.

Regulation 10(1) provides that a person who does not comply with regs. 4(1) or 9(1) is guilty of an offence. A person who causes or permits another person to drive a relevant vehicle in contravention of those regulations also commits an offence against reg. 10(2).

Drivers who are required to have a CPC or who are exempt because they are undergoing an approved national vocational training course are required by reg. 11 to carry evidence of entitlement (a driver qualification card, a Community licence with a Community code, a driver's certificate granted by a member State other than the UK or any other document issued by a member State other than the UK certifying an initial CPC, or a periodic CPC, and to produce it on demand by a constable or vehicle examiner. Failure to do so is an offence.

It is an offence contrary to reg. 13 for a person, with intent to deceive:

- (a) to forge, alter or use any document which evidences CPC entitlement or training exemption;
- (b) to lend to, or allow to be used by any other person, any such specified document; or
- (c) to make or have in possession any document so closely resembling such a document as to be calculated to deceive..

Regulation 15 prospectively amends the Motor Vehicles (Driving Licences) Regulations 1999, reg. 9 (minimum age for holding or obtaining licences) to provide that the new minimum age requirements included in the Directive apply to lorry drivers who have passed the Certificate of Professional Competence (CPC) test. So far as young lorry drivers (i.e. drivers of vehicles of categories C and C+E) are concerned, the provisions will not take effect until 10 September 2009 when the minimum age requirement will be changed to 18 (currently 21), in the case of a person who has the relevant qualification under these Regulations.

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Revised requirements of Regulation (EC) 561/2006 and the amended Regulation (EEC) 3821/86

With effect from 11 April 2007 Regulation (EEC) 3820/85 (the Community Drivers' Hours Regulation referred to in the text) was repealed and replaced by Regulation (EC) 561/2006 which makes considerable changes to the rules relating to drivers' hours of work etc and amends the Community Recording Equipment Regulation, Regulation 3821/85.

In relation to drivers' hours the main provisions are:

Continuous driving and breaks, Art 7

An uninterrupted 45 minute break must be taken after four-and-a-half hours driving (Art 7(1). However this break may be replaced by an initial 15-minute break followed by a break of 30 minutes each distributed over the period in such a way as to comply with Art 7(1), (Art 7(2).

Daily driving time, Art 6(1)

Daily driving time must not exceed 9 hours but may be extended to 10 hours not more than twice a week. There is no requirement to take compensatory rest.

Weekly driving time, Art 6(2)

Must not exceed 56 hours and must not lead to the maximum *working time* prescribed for mobile workers being exceeded.

Driving time within two consecutive weeks, Art 6(3) and (4)

The maximum is 90 hours in any two consecutive weeks.

Daily rest period, Art 8

Normally 11 hours but this may be reduced to 9 hours not more than 3 times a week. There is no requirement to take compensatory rest. A daily rest period may be taken in two periods the first being an uninterrupted period of at least 3 hours and the second an uninterrupted period of at least 9 hours. A daily rest period may be extended to make a regular weekly rest period or a reduced weekly rest period.

Weekly rest period, Art 8

Reducible from 45 hours to 24 hours in alternate weeks but compensation must be made by the end of the third week which follows and be added to a rest of at least 9 hours.

Where vehicle is transported by ferry or train, Art 9

A rest period of 11 hours may be interrupted but not more than twice by other activities not exceeding one hour in total.

Multi-manning, Art 8

Within 30 hours of the end of a daily or weekly rest period, a driver engaged in multi-manning must have taken a new daily rest period of at least 9 hours. For a vehicle to be 'multi-manned' there must be two or more drivers present in the vehicle. For the first hour the presence of another driver is optional but compulsory for the rest of the journey.

Amendment of breaks, periods and driving times

However, Article 11 authorises Member States to provide for longer minimum breaks and rest periods or shorter maximum driving times than those specified in the Regulation in the case of carriage by road undertaken wholly within its territory.

Records and 'other work'

A driver is required to record as 'other work' all work of a 'mobile worker' included within any period of driving during which he is at his workstation at the disposal of his employer and exercising his functions or activities.. He must also record 'periods of availability' (periods during which a driver must remain at his post only for the purpose of answering any calls to start or resume driving or carry out other work and time spent beside the driver while the vehicle is in motion, Art 6(5).

Production of records

With effect from 1 January 2008 all drivers, regardless of the type of tachograph equipment with which their vehicles are fitted must make available, on request by an authorised inspecting officer, records covering the current day and those which cover the preceding 28 days.

Vehicles to which Regulation 561/2006 applies

By Art 2 the Regulation applies to the carriage by road:

- (a) of goods where the maximum permissible mass of the vehicle, including any trailer, or semi-trailer, exceeds 3.5 tonnes, or
- (b) of passengers by vehicles which are constructed or permanently adapted for carrying more than nine persons including the driver, and are intended for that purpose.

It also applies, irrespective of the country of registration of the vehicle, to carriage by road undertaken:

- (a) exclusively within the Community;
- (b) between the Community, Switzerland and the countries party to the Agreement on the EEA.

The AETR (the European agreement concerning the work of crews of vehicles engaged in international road transport) applies, instead of the Regulation, to international road transport operations undertaken in part outside the areas described above to:

- (a) vehicles registered within the Community or in countries which are contracting parties to the AETR, for the whole journey;
- (b) vehicles registered in a third country which is not a contracting party to the AETR, only for the part of the journey on the territory of the Community or of countries which are contracting parties to the AETR.

Vehicles to which Regulation 561/2006 does not apply

By Art 3, the Regulation does not apply to carriage by road by:

- (a) vehicles used for the carriage of passengers on regular services where the route covered by the service in question does not exceed 50 kilometres;
- (b) vehicles with a maximum authorised speed not exceeding 40 kph;
- (c) vehicles owned or hired without a driver by the armed services, civil defence services, fire services, and forces responsible for maintaining public order when the carriage is undertaken as a consequence of the tasks assigned to these services and is under their control;
- (d) vehicles, including vehicles used in the non-commercial transport of humanitarian aid, used in emergencies or rescue operations;
- (e) specialised vehicles used for medical purposes;
- (f) specialised breakdown vehicles operating within a 100 km radius of their base;
- (g) vehicles undergoing road tests for technical development, repair or maintenance purposes, and new or rebuilt vehicles which have not yet been put into service;
- (h) vehicles or combinations of vehicles with a maximum permissible mass not exceeding 7.5 tonnes used for the non-commercial carriage of goods;
- (i) commercial vehicles which have a historic status according to the legislation of the Member State in which they are being driven and are used for the non-commercial carriage of passengers or goods.

Exemptions

Provided that the objectives of the Regulation (harmonisation of the conditions of competition and improving working conditions and road safety) are not prejudiced, Member States may grant exemption from the rules relating to driving times, breaks and rest periods subject to individual conditions on its own territory or, with the agreement of the States concerned, on the territory of another Member State which apply to carriage by:

- (a) vehicles owned or hired, without a driver, by public authorities to undertake carriage by road which do not compete with private transport undertakings;
- (b) vehicles used or hired, without a driver, by agricultural, horticultural, forestry, farming or fishery undertakings for carrying goods as part of their own entrepreneurial activity within a radius of up to a 100 km from the base of the undertaking;
- (c) agricultural tractors and forestry tractors used for agricultural or forestry activities, within a radius of 100 km from the base of the undertaking which owns, hires or leases the vehicle;
- (d) vehicles or combinations of vehicles with a maximum permissible mass not exceeding 7.5 tonnes used –
 - (i) by universal service providers (the public entity providing a postal service) used within a 50 km radius from base; or
 - (ii) for carrying materials, equipment or machinery for the driver's use in the course of his work within a 50 km radius from base,

provided that in both cases the driving of the vehicle does not constitute the driver's main activity.

- (e) vehicles operating exclusively on islands not exceeding 2300 square kilometres in area which are not linked to the rest of the national territory by a bridge, ford or tunnel open for use by motor vehicles;
- (f) vehicles used for the carriage of goods within a 50 km radius from the base of the undertaking and propelled by means of natural or liquefied gas or electricity, the maximum permissible mass of which, including the mass of a trailer or semi-trailer, does not exceed 7.5 tonnes;
- (g) vehicles used for driving instruction and examination with a view to obtaining a driving licence or a certificate of professional competence, provided that they are not being used for the commercial carriage of goods or passengers;
- (h) vehicles used in connection with sewerage, flood protection, water, gas and electricity maintenance services, road maintenance and control, door-to-door household refuse collection and disposal, telegraph and telephone services, radio and television broadcasting, and the detection of radio or television transmitters or receivers;
- (i) vehicles with between 10 and 17 seats used exclusively for the non-commercial carriage of passengers;
- (j) specialised vehicles transporting circus and funfair equipment;
- (k) specially fitted mobile project vehicles, the primary purpose of which is the use as an educational facility when stationary;
- (l) vehicles used for milk collection from farms and the return to farms of milk containers, or milk products intended for animal feed;
- (m) specialised vehicles for transporting money and/or valuables;
- (n) vehicles used for carrying animal waste or carcasses which are not intended for human consumption;
- (o) vehicles used exclusively on roads inside hub facilities such as ports, interports and railway terminals;
- (p) vehicles used for the carriage of live animals from farms to local markets and vice versa or from markets to local slaughterhouses within a radius of up to 50 km;

In addition, Member States may grant minor exemptions on their own territory for vehicles used in predefined areas with a population density of less than five persons per square kilometre in respect of (a) regular approved domestic passenger services (in which case exemptions are permitted) only in relation to breaks; and (b) domestic road haulage operations for own account or for hire or reward, which have no impact on the single market and are needed to maintain certain sectors of industry in the territory concerned and where the exempting provisions of the Regulation impose a limiting radius of up to 100 km.

Article 14 provides that exemptions from the rules relating to driving times, breaks and rest periods may be granted to transport operations carried out in exceptional circumstances, operational for a period not exceeding 30 days.

Article 15 requires that Member States ensure that drivers used for the carriage of passengers on regular services where the route covered does not exceed 50 km are

governed by national rules which provide adequate protection in terms of permitted driving times and mandatory breaks and rest periods.

The modifications currently provided by the Community Drivers' Hours and Recording Equipment (Exemptions and Supplementary Provisions) Regulations 1986 may be modified in consequence of Regulation 561/2006 as not all of the exemptions included in the 1986 Regulations parallel those permitted exemptions under Art 13 above.

The Community Drivers' Hours and Recording Equipment Regulations 2007, SI 2007/1819

The new Regulations came into force on 2 July 2007. They revoke –

- (a) the Community Drivers' Hours and Recording Equipment (Exemptions and Supplementary Provisions) Regulations 1986;
- (b) the Community Drivers' Hours and Recording Equipment (Exemption and Supplementary Provisions) (Amendment) Regulations 1986;
- (c) the Community Drivers' Hours and Recording Equipment (Exemptions and Supplementary Provisions) 1987;
- (d) the Community Drivers' Hours and Recording Equipment (Exemption and Supplementary Provisions (Amendment) Regulations 1988;
- (e) the Community Drivers' Hours and Recording Equipment (Amendment) Regulations 1998; and
- (f) paragraph 7 of the Schedule to the Railways Act 1993 (Consequential Modifications) Order 1994.

These Regulations are intended to facilitate compliance with the new Community Drivers' Hours Regulation (EC) No 561/2006). Details of the requirements of Regulation (EC) No 561/2006 are included in Bulletin No 166 at pages 5-12. Regulation (EC) 561/2006 replaced the former Community Drivers' Hours Regulation (Council Regulation (EEC) No 3820/85).

Regulation 2(1), pursuant to Article 13(1) of Regulation (EC) 561/2006, grants exemption from Articles 6, 7, 8 and 9 of that Regulation (respectively, daily driving time, rest period after continuous driving, daily and weekly rest periods and derogation from article 8 concerned with travel on ferries) to any vehicle which has a maximum permissible mass not exceeding 7.5 tonnes, which is being used to deliver items as part of a universal service provider as defined in Article 2(13) of Directive 97/67/EC, which is concerned with Community postal services, that vehicle being used within a 50 kilometre radius of the base of the service provider, and driving does not constitute the main activity of the driver.

Regulation 2(2) grants exemption from those provisions in respect of a vehicle described in Part 2 of the Schedule to the 2007 Regulations –

- (a) vehicle used by RNIB for hauling lifeboats;
- (b) vehicle manufactured before 1 January 1947;
- (c) vehicle which is propelled by steam.

Article 3(i) of Regulation (EC) 561/2006 provides exemption for commercial vehicles which have a 'historic status'. That term is defined by reg 3 of these 2007 Regulations as 'a vehicle which is by virtue of its construction and equipment suitable for carrying passengers or goods and which was manufactured more than 25 years before the date on which it is driven'.

Regulation 4(1) provides for exemption from the provisions of the (EC) Regulation in respect of the following vehicles –

- (a) vehicle which is owned or hired without a driver by a public authority to undertake carriage by road otherwise than in competition with private transport undertakings;
- (b) vehicle being used for the provision of ambulance services by a relevant NHS body, or in pursuance of arrangements made by or at the request of a relevant NHS body, or made with the Secretary of State or with the Welsh or Scottish Ministers;
- (c) vehicle being used for the transport of organs, blood, equipment, medical supplies or personnel by a relevant NHS body, or in pursuance of arrangements as at (b) above;
- (d) vehicle being used by a local authority in the exercise of social services functions for services for old persons, or services for persons to whom s 29 of the National Assistance Act 1948 (welfare arrangements for the mentally and physically handicapped) applies;
- (e) vehicle being used by HM Coastguard, a general lighthouse authority or a local lighthouse authority;
- (f) vehicle being used for the purpose of maintaining railways by the British Railways Board, any holder of a network licence (within the meaning of Part 1 of the Railways Act 1993) which is a company wholly owned by the Crown (within the meaning of the Act), Transport for London, a Passenger Transport Executive or a local authority; and
- (g) vehicle being used by the British Waterways Board for the purpose of maintaining navigable waterways;
- (h) vehicle used or hired without a driver by an agricultural, horticultural, forestry, farming or fishery (to carry live fish or a catch of fish) for carrying goods as part of its own activity within 100 km radius of its base;
- (i) tractor used for agricultural or forestry within 100 km radius of base of the undertaking which owns hires or leases the tractor;
- (j) vehicle of maximum permissible mass n.e. 7.5 tonnes for carrying materials, equipment or machinery for the driver's use in the course of his work within 50 km radius of base provided that driving does not constitute the driver's main activity;
- (k) vehicle which operates exclusively on an island which does not exceed 2300 square km in an area which is not linked to the rest of Great Britain by bridge, ford or tunnel open for use by motor vehicles;
- (l) vehicle used within a 50 km radius of base which is propelled by natural or liquefied gas or electricity and has a maximum permissible mass (including trailer), n.e. 7.5 tonnes;

- (m) vehicle being used for driving instruction and examination with a view to obtaining a driving licence or certificate of professional competence (other than vehicle being used for the commercial carriage of goods or passengers);
- (n) vehicle used in connection with sewerage, flood protection, water, gas or electricity maintenance services, or road maintenance or control; door-to-door household refuse collection or disposal, telegraph or telephone services, radio or television broadcasting, or the detection of radio or television transmitters or receivers;
- (o) vehicle with not more than 17 seats including the driver's seat used exclusively for the non-commercial carriage of passengers;
- (p) specialised vehicle used for transporting circus or funfair equipment;
- (q) a mobile project vehicle the primary purpose of which is use as an educational facility when stationary and which is specially fitted for that purpose;
- (r) vehicle being used for the collection of milk from farms or for the return to farms of milk containers or milk products intended for animal feed;
- (s) vehicle being used to carry animal waste or carcasses which are not intended for human consumption;
- (t) vehicle which is used exclusively on roads inside hub facilities (ports, interports and railway facilities); and
- (u) vehicle which is being used to carry live animals from a farm to a market, or from a market to a slaughterhouse, where the distance involved does not exceed 50 km.

Regulation 4(2) grants exemption from the provisions of the (EC) Regulation to vehicles described in Part 2 of the Schedule to the Regulations and any vehicle being used for collecting sea coal. The vehicles included in Part 2 are described above.

To take account of these changes, reg 5 makes appropriate textual changes to the TA 1968, Part 6

The Regulations alter the definition of the term 'the Community Drivers' Hours Regulation' as follows:

'the Community Drivers' Hours Regulation' means Regulation (EC) 561/2006 of the European Parliament and of the Council as amended from time to time' and at the end of the definition of 'the applicable Community Rules' add 'and includes the European Agreement concerning the work of Crews of Vehicles engaged in International Road Transport of 1 July 1970, as amended, as applied by Article 2(3) of the Community Drivers' Hours Regulation'.

Control over 'working time' of persons performing mobile road transport services

In view of the inter-relationship between 'drivers' hours of work' dealt with by Regulation (EC) 561/2006 and the control of the hours of work of 'mobile workers' generally it is helpful to be aware of the aims of the Road Transport (Working Time) Regulations 2005 (RT(WT)R 2005). They implement Council Directive 2002/15/EC concerning the organisation of the working time of persons performing mobile road

transport activities. Their main effect is to restrict mobile workers (any worker forming part of the travelling staff, including trainees and apprentices, who is in the service of an undertaking which operates transport services for passengers or goods by road, for hire or reward or on its own account) to an average working week of 48 hours and an absolute average of 60 hours. The RT(WT)R 2005 impose additional responsibilities upon employers to ensure that working times are not exceeded and extend restraints upon working hours to all 'mobile workers'. The RT(WT)R 2005 apply to mobile workers who are subject to the EU rules on driver's hours as set out in Regulation 561/2006, or, alternatively, to the AETR (the European agreement concerning the work of crews of vehicles engaged in international road transport. The RT(WT)R 2005 additionally apply to agency workers and those employed for the purpose of a trade or business carried on by them, but not to self-employed drivers.

Offences under the RT(WT)R 2005 are supplementary to, and do not replace those under legislation concerning drivers' hours of work. The offences under RT(WT)R 2005 are related to the working conditions of mobile workers as opposed to the safety factors involved where drivers commit offences against the provisions of the Community Recording Equipment Regulation.

Enforcement

RT(WT)R 2005 reg 16 places the duty of enforcement upon the Secretary of State and Sch 2 empowers the Secretary of State to appoint inspectors for that purpose. These inspectors have special powers of entry to carry out their functions and in respect of the gathering of evidence. In carrying out their duties, they may be accompanied by a constable if obstruction is anticipated. The 2005 Regulations are not therefore of direct concern to police officers as enforcement lies elsewhere.