

Emergency Exemption & Temporary Relaxation of Drivers' Hours and Working Time Rules

Guidance

December 2011

Background

1. The EU drivers' hours (Regulation (EC) 561/2006) and the sector-specific EU working time rules for mobile workers (Road Transport (Working Time) Regulations 2005) limit the amount of driving and working time that can be carried out by most Heavy Goods Vehicle (HGV) drivers and around 30% of bus and coach drivers in the UK. The Great Britain (GB) domestic drivers' hours rules apply to most goods and passenger vehicles that are exempt from the EU drivers' hours rules. Further details on these rules can be found at [Annex A](#).

2. The EU drivers' hours rules do not apply to vehicles used in emergencies or rescue operations. In addition to this, the rules also allow relaxations to be made in exceptional circumstances for up to 30 days, provided the European Commission ("the Commission") is immediately notified. Any relaxation of the EU drivers' hours rules for longer than 30 days requires prior authorisation from the Commission. Any relaxation of the GB domestic drivers' hours rules is the responsibility of the DfT and the Commission does not have to be notified. A summary of the legislation which provides the powers to relax the rules is attached at [Annex B](#).

3. The sector-specific EU working time rules for mobile transport workers do not contain any specific provisions to enable relaxations to be made but indicate that the EU drivers' hours rules take precedence. As a result, the DfT considers that relaxations to the weekly working limit of these rules can be made in the event that the rules prevent any relaxation of the drivers' hours rules taking full effect.

4. The EU drivers' hours and sector specific EU working time rules are applicable in Northern Ireland, although the Devolved Administration is responsible for implementation, enforcement and handling any relaxation requests for this region. Northern Ireland also has its own domestic drivers' hours rules - the Transport Act 1968 does not apply and any requests for a relaxation of the domestic rules in Northern Ireland should also be directed to them.

Emergency exemption

5. Under the domestic rules an emergency is considered to be an event which needs immediate preventative action to avoid:

- Danger to life or health of people or animals;
- Serious interruption to the maintenance of public services (e.g. water, gas, electricity, drainage) or in the use of roads;
- Serious interruption in private or public transport; or
- Serious damage to property.

There are slight differences in the definition of "emergency" for goods and passenger vehicles. See [Annex B](#) for details.

6. The EU rules do not apply to vehicles used in emergencies or rescue operations. Although the EU rules do not define an emergency, we consider that this would include any of the events considered under the domestic rules (as set out in paragraph 5 above).

7. The DfT's view is that vehicles engaged on work closely associated with the immediate response to a specific emergency will benefit from this exemption where they are working on alleviating either the immediate impact or effects of that emergency. One example of such work would be where vehicles are being used to transport sand or other materials urgently needed to shore up flood defences or to grit roads in extreme weather events (e.g. 1 in 20 year events).

8. Where drivers are engaged in an emergency, the EU and domestic rules are temporarily disapplied without prior referral to the DfT. For example, if adverse weather conditions make it unsafe to stop, a driver engaged in responding to the emergency may extend their driving time in order to reach a place of safety for their passengers or load and themselves. In such circumstances, the emergency exemption from the rules can only be relied on to the extent and only for so long as is absolutely necessary to deal with the urgent requirements of the emergency and cannot be accommodated within the normal flexibilities. If drivers/operators are uncertain as to whether their drivers are engaged in work closely connected enough with the emergency they will need to seek guidance from the DfT or their local VOSA office.

Temporary relaxation in exceptional circumstances

9. In exceptional circumstances a temporary relaxation (for the domestic and/or EU drivers' hours rules) can be considered. This is usually in response to a specific incident and limited to specific transport operations. In such exceptional circumstances, a relaxation of the enforcement of the rules can be considered¹. DfT's prior agreement is required before any relaxation can take effect.

10. A relaxation will not be considered in cases where an avoidable situation has arisen due to a lack of contingency planning on the part of drivers and/or operators. Any agreed relaxation will be limited in duration and scope to minimise the potential impacts on road safety.

11. The lead Government Department and/or Devolved Administration is responsible for collecting evidence and formulating a case for any request for relaxation (see [Annex C](#) for further details). This requires in-depth liaison with the relevant industry sectors to ensure any requests are proportionate and as specific as possible. It is the responsibility of industry to provide sufficient evidence that an exemption can be justified. Insufficient evidence, or a delay in submitting it, will result in the process being delayed. Whilst the lead

¹ For prolonged and/or extreme events, a formal relaxation of the rules by way of a statutory instrument (SI) may be required.

Government Department / Devolved Administration must provide the case for relaxation, it is important that DfT officials are kept informed of developments.

12. Although the ultimate decision to relax the enforcement of the drivers' hours rules is for DfT Ministers, the decision is taken in close consultation and collaboration with the lead Government Department and/or Devolved Administration. Ministers of the lead Government Department and/or Devolved Administration are expected to approve the request for relaxation prior to the formal request being submitted to the DfT. Once received, the formal request will then be considered by DfT Ministers.

Working time

13. As outlined in paragraph 3, the DfT considers that relaxations to the weekly working limit² of the working time rules can be made in the event that the rules prevent any relaxation of the drivers' hours rules taking full effect. Any agreed relaxation will be limited in duration and scope to minimise the potential impacts on road safety.

Recording

14. Drivers must continue, where usually required, to record their work (either manually or by using a tachograph), noting the reasons why limits have been exceeded (on the back of record sheets or tachograph printouts). This is essential for enforcement purposes.

General principles

15. The general principles and evidence the DfT looks for when granting a temporary relaxation include:

- **Evidence of detriment to a wider community:** Because the DfT are considering relaxing a key road safety measure (and in some cases potentially involving the movement of high consequence dangerous goods) there must be evidence of a significant threat to human and/or animal welfare.
- **There are no other means of mitigating the detriment or other means have proved insufficient:** All other means must have been investigated and proved to be impracticable (e.g. the use of driver agencies / hire vehicles / back-office staff / alternative rostering arrangements). Relaxations can not be agreed just because they are cheaper than other solutions or because sufficient contingency planning has not taken place.
- **There must be evidence that a relaxation would lead to a significant improvement in the situation:** Clear evidence must be

² Workers will, however, remain subject to all other requirements of the working time rules in an emergency event (e.g. average weekly working time, break requirements).

provided that there is insufficient haulage capacity which is causing the problem or preventing speedy resolution, and that a relaxation will provide essential additional haulage capacity that will help to alleviate the problem.

- **The problem is not likely to be resolved quickly without a relaxation.**
- **Operators must demonstrate that they will take steps to ensure safety if a relaxation is made:** This is particularly important where the relaxation is being sought for high consequence dangerous goods (such as fuel). A risk assessment, including measures taken to mitigate risk from fatigue, should be undertaken.

Other information required

16. The DfT also needs to know:

- Who the relaxation should apply to and for what purposes; i.e. a few named operators or to a whole sector; across the UK or a specific region?
- Detailed information about incidence of shortages (if any) being caused: who is affected, numbers and geographical spread?
- How the position may change over time - for better or worse?
- Other mitigating measures which have been considered or taken; what has been their effect and / or why they have been rejected and / or found to be ineffective?
- Information on the limitations on haulage capacity and their effects on dealing with the problem. A key issue is whether the problem is just at a certain time (e.g. weekends) or whether rotas are spread so that it is a problem throughout a week. In either case, it must be clear how a relaxation of the enforcement of the rules would help.
- Anticipated duration required for relaxation.

Timescales

17. Once sufficient evidence has been provided, and DfT Ministers are content that a relaxation is justified, the decision to make an informal administrative relaxation of enforcement of the rules should take no more than **24 hours³**.

DfT Contacts

³ Assumes a statutory instrument is not required.

18. During normal office hours the lead Government Department should contact the Operator Licensing and Roadworthiness Division at DfT on **020 7944 5813** or **020 7944 2123**. Out of hours please contact the DfT Duty Office on **020 7944 5999**.

Department for Transport
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Annex A

EU and domestic drivers' hours and EU working time rules

The EU drivers' hours rules (Regulation (EC) 561/2006)

The rules apply to goods vehicles over 3.5 tonnes and passenger carrying vehicles with 10 or more seats unless covered by a range of specific EU-wide exemptions and national derogations relating to the type of vehicle and/or its use. Drivers in scope of the EU rules are required to use a tachograph.

There are many exceptions but in simplified terms the main EU limits are:

- 9 hours maximum daily driving;
- 56 hours maximum weekly driving;
- 90 hours maximum fortnightly driving;
- 11 hours minimum daily rest;
- 45 hours minimum weekly rest;
- 45 minute breaks for every 4½ hours driving.

GB domestic drivers' hours rules

Drivers of vehicles which are outside the scope of the EU rules are, with a limited range of exceptions, covered by the GB domestic rules. The following sectors are **likely** to work under the domestic rules:

- Vans not exceeding 3.5 tonnes
- Tradesmen (e.g. building / construction);
- Passenger transport (operating on regular routes up to 31 miles (50km)).
- NHS & publicly owned medical vehicles;
- Refuse collection;
- Local authority services for the elderly & disabled;
- Milk (not including bulk milk tankers);
- Utilities & road maintenance (e.g. gas / water);
- Breakdown;
- Agricultural, fishing and forestry (used within a 62 mile (100km) radius from the base of operations);
- Charity work (where employed drivers are used);
- Special vehicles (e.g. vehicles that operate on natural gas, electric or are not capable of speeds over 24mph (40km/h));
- "Gritters" – vehicles designed for the spreading of rock salt directly onto roads/pavements.

The main limits and requirements for goods vehicle drivers are:

- 10 hours maximum daily driving;
- 11 hours maximum daily duty.

In simplified terms the main limits and requirements for passenger vehicle drivers are:

- 10 hours maximum daily driving;
- 16 hours maximum daily duty;
- 10 hours daily rest;
- No weekly rest requirement;
- At least one period of 24 hours off duty in any two consecutive weeks.

Road Transport (Working Time) Regulations 2005 (SI 2005/639)

These Regulations implement Directive 2002/15/EC and apply to mobile workers (i.e. drivers & crew) who work on vehicles subject to the EU drivers' hours rules. The Regulations stipulate a maximum 48 hour average week and no more than 60 hours in any single week (there is no opt out). If working at night then mobile workers must not work over 10 hours in any 24 hours period unless a collective or workforce agreement is in place (night-time is the period between 00:00 and 04:00 for goods vehicles and between 01:00 and 05:00 for passenger vehicles). The Regulations also provide minimum levels of breaks as follows:

- 30 minutes if daily working totals 6 to 9 hours;
- 45 minutes of breaks (which one must be of at least 15 minutes long) if working over 9 hours;
- The same rest requirements as the EU rules (see above).

Working Time Regulations 1998 (SI 1998/1833)

These Regulations implement Directive 2003/88/EC and apply to mobile workers (i.e. drivers & crew) who work on vehicles subject to the domestic drivers' hours rules. However, as mobile workers, only certain requirements apply, namely:

- Average weekly working time of 48 hours (with the possibility to opt out);
- Health checks for night workers;
- Requirement for "adequate" rest⁴ (the length of which is not defined).

⁴ "Adequate" rest is defined in the Department's guidance on drivers' hours and working time as meaning that "workers should have regular rest periods. These rest periods should be sufficiently long and continuous to ensure that workers do not harm themselves, fellow workers or others and that they do not damage their health in the short or long term".

Relevant legislation

European

The EU drivers' hours rules do not apply to "vehicles used in emergencies or rescue operations" (article 3(d) Regulation (EC) 561/2006). These rules do not define an "emergency" but DfT considers this would include any of the situations which would be considered an emergency for the purposes of the GB domestic drivers' hours' legislation (below).

Article 14(2) of Regulation (EC) No 561/2006 also provides the Secretary of State for Transport with the power to grant a temporary relaxation of drivers' hours rules for a period not exceeding 30 days, provided the European Commission is immediately informed. For a relaxation period longer than 30 days, prior authorisation from the European Commission is required.

Domestic (GB)

Domestic drivers' hours regulations do not apply during an emergency situation. The definition of "emergency" differs slightly between goods and passenger vehicles.

Goods

The definition of an emergency for goods vehicles is set out in regulation 2 of the Drivers' Hours (Goods Vehicles) (Exemptions) Regulations 1986 (SI 1986/1492). It is defined as:

Events which cause or are likely to cause danger to life / health of humans or animals; serious interruption to infrastructure (such as water, gas, etc); serious interruption to roads, railways, ports or airport **AND** the event necessitates the taking of immediate action to prevent / continuance of the danger or interruption **OR** events likely to cause serious damage to property.

Passenger

The definition of an emergency for passenger vehicles is set out in regulation 2 of the Drivers' Hours (Passenger Vehicles) (Exemptions) Regulations 1970 (SI 1970/145). It is defined as:

Events which cause or are likely to cause danger to life / health of one or more individuals; serious interruption to infrastructure (such as water, gas, etc); serious interruption to roads, or to private or public transport; serious damage to property **AND** the event necessitates the taking of immediate action to prevent / continuance of the danger or interruption.

Under section 96(10) of the 1968 Transport Act, a Minister, by regulation, for the purpose of enabling drivers to deal with cases of emergency or otherwise to meet a special need, may create exemptions on the limits of drivers hours, dispense with the requirement to observe the enforcement of the regulations or grant certificates which confirms that any particular case fell within an exemption created by the regulation. The powers also provide that Traffic Commissioners can grant exemptions on an individual basis, and that such exemptions can be provided retrospectively.

Annex C

Lead Government Department / Devolved Administration – examples

Government Department / Devolved Administration	Sector
BIS	Industry / commercial issues.
DECC	Energy supplies (e.g. transport of heating oil, fuel oil, gas oil, LPG).
DEFRA	Agriculture / farming / general environmental issues e.g. flooding, transportation of animal feed, milk.
Department for Health	Sectors involved with movement of medical supplies / hospital food. Pandemics (e.g. transport of vaccines, medicine).
Department for Transport	Sectors directly involved with transport (e.g. transport of road salt).
Home Office	Civil unrest / terrorism / police / criminal activities.
Ministry of Defence	Terrorism / war.
Scottish Executive	Where responsibilities are devolved.
Welsh Assembly Government	Where responsibilities are devolved.
Department for Environment (Northern Ireland)	Where responsibilities are devolved.