

Vehicles used in connection with public services

Briefing note

This briefing note aims to highlight the key decision areas for managers deciding whether vehicles used for utility and public body/public Interest operations are in or out of scope of the EU drivers' hours rules, and in particular the Issuing of Interpreting the term 'vehicles used in connection with' in relation to one specific concession.

Scope of EU rules for goods vehicles

The EU drivers' hours rules (Regulation (EC) No. 561/2006 (561/2006)) applies to the carriage by road of goods where the maximum authorised mass (MAM) of the vehicle, including any trailer drawn, exceeds 3.5t.

EU exemptions are contained in Article 3 of 561/2006, whereas national derogations from the EU rules are contained in Schedule 1 of the Community Drivers' Hours and Recording Equipment Regulations 2007 (the 2007 regulations).

Schedule 1(8) of the 2007 regulations contains an exemption for: "Any vehicle which is being used in connection with –

- (a) sewerage, flood protection, water, gas or electricity maintenance services
- (b) road maintenance or control
- (c) door-to-door household refuse collection or disposal
- (d) telegraph or telephone services
- (e) radio or television broadcasting or
- (f) the detection of radio or television transmitters or receivers."

Sewerage, flood protection, water, gas and electricity maintenance services

It is the Driver and Vehicle Standards Agency (DVSA) view that vehicles used in connection with sewerage, flood protection, water, gas and electricity services must be involved in the maintenance of an existing service (rather than the construction of a new service) to claim the concession.

For vehicles used in connection with sewerage maintenance services the term "maintenance" also applies to the removal of waste from a system but only where the waste is removed directly onto the vehicle and immediately taken away for treatment. This would also include transporting partially treated sewage from satellite sites to main sites.

The derogation doesn't apply to the movement of sewage sludge which has been treated to make a product which is then used for another purpose such as, for example, fertiliser.

Road maintenance or control

Vehicles used in connection with road maintenance services which:

- Are engaged on a journey directly relating to the maintenance services, for example, removing rubble or other materials.

And/or

- Are being used directly on the maintenance activity, for example, laying tarmac.

Such vehicles will fall within this derogation however journeys to a site for the purpose of positioning the vehicle in readiness for engaging in the maintenance activity or for returning to base after the maintenance activity has ended will not fall within this derogation.

Vehicles which are to be used or have been used that same day in connection with highway maintenance and control and don't travel far from the site where the work of highway maintenance is being carried out will fall within the derogation.

Door-to-door household refuse collection and disposal

It is the Department for Transport's (DfT) view is that, in order to be considered as exempt from the EU rules on drivers' hours and tachographs, a door-to-door household refuse collection and disposal operation should have the following characteristics:

- It should be carried out either by a public authority or by a private undertaking under contract to a public authority.
- It should involve the primary collection of waste from household or commercial premises, including the collection of street cleansing waste (eg litter from public street bins), whereby the transport activity remains subsidiary to the collection. The waste collected from commercial premises must be similar to or of the same kind as that collected from households, it must be collected in the same way (ie door-to-door), it must not be subject to any special collection regime or special rules, and must be collected using the same vehicles².

² Type of vehicle is indicative only. In certain rural areas, for example, conventional goods vehicles may well be used for door-to-door collections of household waste.

- Such operations might involve longer aggregate journeys where there are a number of stops, particularly in rural areas, but such journeys should not normally exceed a radius of 50 kilometres from the place where a vehicle is normally based³.

The types of refuse collection and disposal operations likely to be exempt are:

- The door-to-door collection or from communal waste points of domestic waste such as black bin bags, green waste, garden waste, newspapers or glass from households.
- The collection of sofas and household appliances from households within a local area.
- The clearing of a home following a bereavement, provided refuse collection and disposal is the core purpose.
- The collection of the domestic type of waste from commercial premises but would not extend to collecting commercial waste, for example, waste generated by a manufacturing process. Such collections do not have to form part of a mixed load (ie with household waste).

Radio or television broadcasting

Vehicles must be used for the actual activity of broadcasting (including streaming). Vehicles used for filming for later broadcast, or for support services such as catering, make up, wardrobe, showers/toilets etc will not be eligible for this derogation.

Interpretation of ‘vehicle used in connection with’

What constitutes a ‘vehicle used in connection with’ the relevant service has been subject to a number of significant court rulings from the European Court of Justice and British courts. Common themes have included:

- The principle of a general service in the public interest.
- A direct and close involvement in the exempt activity.

Or/and

- The limited and secondary nature of the transport activity.

Managers should consider the three conditions in turn and apply them to the operation in question. In terms of the first public interest test, this is often clearly met or not. If you have doubts about this, members should contact the Member Advice Centre on 0370 605 0000 for more information. Generally however, it is the question of the vehicle’s direct involvement and in particular the nature of the transport activity that can cause difficulty.

One significant court ruling on this issue was the House of Lords appeal in the case of *Vehicle Inspectorate v Bruce Cook Road Planing Ltd and Another* on 21 October 1999. This dealt with an organisation claiming involvement with highway maintenance. The judgement contains some consideration of what may be deemed to be a vehicle ‘used in connection with’ in relation to the transport activity. A key extract from the opinion of Lord Hope of Craighead is as follows:

‘It is plain that some limit must be set to the width of the expression “in connection with” in the context of highway maintenance if the derogation is not to defeat the purpose of the regulation. Highway maintenance and control is an activity which can be defined with reasonable precision by reference to the

³ The 50 kilometres is indicative only. Where a journey exceeds this, for example, in certain rural areas, DVSA will consider the case for exemption based on its merits. In addition, it makes no difference whether, having collected the waste, the vehicle takes its load to a nearby transfer station only, or continues to a final disposal site, the only determining factor being one of proximity.

works which are taking place on site. While the works are going on vehicles which are being used for the purpose of highway maintenance may travel some distance away from the site, for example when they are removing rubble or other material from the highway to a place of disposal and returning empty from that place to the site. Their journeys to and from the site in the course of that work will be “in connection with” highway maintenance. Other examples that may be envisaged, such as where vehicles are being driven from a highway maintenance yard or depot in the locality so that they may be put to work, used or operated that same day in highway maintenance. Their transportation from the local yard or depot to the site of the works, and their return there at the end of the working day, will involve travel over short distances and for short periods. As in the example provided for by the movement over short distances of empty refuse collection vehicles, the movement of such vehicles within these limits will be ancillary to, and thus “in connection with”, their use in highway maintenance.

But there is a clear and obvious difference between the movement of such vehicles to and from the site in the course of a day’s work there by that vehicle and the use of vehicles for transporting highway maintenance equipment from one site to another prior to the commencement of the works. On the whole, vehicles which are to be or have been used that same day in connection with highway maintenance and control do not travel far from the site where the work of highway maintenance is being carried out. But the transportation of equipment to or from the site may be over long distances. It may take place before the works have begun or after they have been completed there. The purpose of using the vehicle which is being used to move the equipment is simply that of transportation. Such use is indistinguishable from the business of transporting equipment by road hauliers who are in business as such and not as the providers of highway maintenance services. It would be contrary to the principle that conditions of competition should be harmonised to permit the providers of highway maintenance services to dispense with the tachograph when transporting equipment to or from the site while road hauliers who are providing the same services were obliged to make use of a tachograph.’

In summary, for the vehicle to be deemed to be used in connection with the activity, the three key considerations in Lord Hope’s opinion are:

- The journey should occur while works are going on, or vehicles should be driven to be put to work, used or operated that same day or to return to a depot or site on that same day.
- The vehicles should travel short distances. The distance is not specified, but key terms used are ‘in the locality’, ‘local’, ‘over short distances and for short periods’ and ‘not far’.

Or/and

- The purpose of using the vehicle which is being used to move equipment is not simply that of transportation.

If the derogation is important to your operations in terms of flexibility, consider whether there may be changes you could make to the operation to help ensure the considerations above are met, such as ensuring the distances are as short as possible and increasing the involvement of the driver and vehicle in the activity at the time of the vehicle’s use.

Ultimately, the test of whether you should derogate from the EU rules for the purposes of the proposed operation, and therefore operate under GB domestic rules, is whether you would be happy to argue your case in a court of law if challenged.