



## Background

A new European regulation (Regulation 561/2006) replaced Council Regulation 3820/85 on drivers' hours from 11 April 2007. Many areas of the rules, including the scope, definitions, liabilities, responsibilities as well as the hours rules themselves changed. Full details of all the changes can be found in the FTA *EU drivers' hours changes* compliance guide. This note aims to summarise the events in relation to the derogation for vehicles used in connection with refuse collection and disposal.

## The change to the legislation on 11 April 2007

Article 4(6) of Council regulation 3820/85 contained an exemption from the EU drivers' hours rules for 'vehicles used in connection with...refuse collection and disposal...' Over the years there have been a number of significant court rulings dealing with this exemption. Common themes have included a direct and close involvement with the exempted activity, the principle of a general service in the public interest and the limited and secondary nature of the transport activity.

In the new Regulation 561/2006, the wording of the concession was amended to introduce the words 'door-to-door household'. The implementation of the legislation in the UK is the responsibility of the Department for Transport (DfT). The DfT adopted the derogation without further conditions into the UK legislation via The Community Drivers' Hours and Recording Equipment Regulations 2007, which came into force on 2 July 2007. The new wording of the derogation is contained in paragraph 8 of the schedule to the regulations, as follows: 'Any vehicle which is being used in connection with – ..... (c) door-to-door household refuse collection or disposal...'

## Original opinion from the DfT

The change of the wording of the concession to include the words 'door-to-door household' created difficulties for those in the sector when attempting to determine the effect on certain refuse collection operations. This was particularly true for those rounds which included the collection of waste from commercial or non-residential properties, such as schools or local shops.

Ultimately, interpretation of the law is solely a matter for the courts. However, an opinion from the relevant government department may help operators to understand the intention of the legislation more clearly. FTA had over many months presented legal and environmental arguments to DfT that the exemption from drivers' hours regulations for commercial waste collections should not be lost in the event that the same vehicles also collected similar waste from households, from the same streets, in the same vehicles. Following these representations, FTA wrote to the Department on 27 January 2007 requesting formal clarification of the derogation in relation to mixed commercial and residential waste.

The DfT took legal advice and responded to the above request in a letter dated 30 April 2007. It stated: '**Refuse collection and disposal.**

The national derogation is explicit in this regard as it talks about household refuse only. So no mixed loads are permissible, no matter the percentage of commercial waste involved.'

## Reconsideration

In July 2007 FTA was advised by the DfT that its solicitors were revisiting the Department's interpretation of the EU drivers' hours derogation for door-to-door household refuse collection to assess any correlation with the EC Landfill Directive that defines 'municipal' waste as "waste from households, as well as waste which, because of its nature or composition, is similar to waste from households". DfT also advised that in the meantime, their previous advice on door-to-door household refuse collection continued to be valid.

## Revised DfT opinion

On 7 December 2007, DfT advised FTA that it had concluded that there is scope for interpreting the derogation more widely than first thought, and issued a note, as follows:

## **‘INTERPRETATION OF REGULATION (EC) 561/2006**

### **ARTICLE 13.1.(H) : VEHICLES USED IN CONNECTION WITH DOOR-TO-DOOR HOUSEHOLD REFUSE COLLECTION AND DISPOSAL**

It is the Department for Transport’s view 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<sup>1</sup> or commercial premises, including the collection of street cleansing waste (e.g. 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 (i.e. door-to-door), it must not be subject to any special collection regime or special rules, and must be collected using the same vehicles<sup>2</sup>.
- 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 based<sup>3</sup>.

The views of the Department for Transport are intended for guidance only. The Department has no statutory authority to interpret the law, that being a matter for the Courts.

<sup>1</sup> Door-to-door collections of household waste would include collections from communal waste points and large communal bins on housing estates, and the collection of bulky items such as old furniture and household appliances. But the exemption would not extend to the collection and delivery of skips hired to the public.

<sup>2</sup> 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. In addition, provided that the waste collected from commercial premises is similar to or of the same kind as household waste, it does not have to form part of a mixed load (i.e. with household waste) for the exemption to apply.

<sup>3</sup> The 50 kilometres is indicative only. Where a journey exceeds this (for example, in certain rural areas), VOSA 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.