

POSSIBLE CHANGES TO THE SCOPE OF EXEMPTIONS TO DRIVER CERTIFICATE OF PROFESSIONAL COMPETENCE

A RESPONSE TO CONSULTATION REPORT

Executive Summary

This paper reports the outcome of the Driving Standards Agency's (DSA's) short, targeted consultation about possible changes to the scope of exemptions to Driver Certificate of Professional Competence (DCPC). The consultation was held between 7 and 28 June 2013.

Introduction

The *Vehicle Drivers (Certificates of Professional Competence) Regulations 2007*¹ implemented *Directive 2003/59/EC*² which is about the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers. The Directive introduced a Driver Certificate of Professional Competence (DCPC) across the European Union for all drivers of Large Goods Vehicles (LGVs) and Passenger Carrying Vehicles (PCVs) unless one of the exemptions applies to them.

The requirements for DCPC applied from 10th September 2008 in respect of PCV drivers and from 10th September 2009 in respect of LGV drivers.

Implementation of DCPC in the UK has resulted in a number of people who drive lorries or buses and coaches as part of their work, but who never carry passengers or goods for hire or reward, requiring a DCPC. Representations made by trade bodies have highlighted situations such as vehicle engineers taking vehicles to a VOSA testing station, valets delivering or collecting leased or rental vehicles, engineers delivering changeover buses, and employees moving vehicles in the environs of depots, where the requirement to hold a DCPC is perceived to be a disproportionate burden.

Stephen Hammond, Parliamentary Secretary of State, asked the Department for Transport and the Driving Standards Agency to explore whether the implementation of DCPC in UK for these types of driver was consistent with implementation in other member states and whether there was scope for extending the exemptions in legislation to cover their driving activities.

¹ The Vehicle Drivers (Certificates of Professional Competence) Regulations 2007 (original, as made) <http://www.legislation.gov.uk/ukSI/2007/605/made> These regulations have been amended several times, but none of the amending instruments are relevant to the exemptions. The amending instruments are SI 2008/1965, SI 2010/865, SI 2010/1111, SI 2011/996 and SI 2011/2324 and can be found on www.legislation.gov.uk

² Directive 2003/59/EC
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2003L0059:20081211:EN:PDF>

Consultation

On 7 June 2013, DSA issued a consultation letter seeking views from key stakeholders about the following two proposals:

- **Proposal 1:** exempt drivers of a vehicle that is being driven with the permission of the vehicle operator or lessor (as appropriate) and where the following additional conditions are also met:
 - within 50 kilometres of the driver's base;
 - the vehicle is not being used for hire or reward;
 - no goods or passengers are carried; and
 - driving such vehicles is not the driver's principal activity.

- **Proposal 2:** exempt vehicles attending a VOSA test centre (including VOSA authorised testing facilities).

The consultation was conducted online. The closing date for responses was 28 June 2013.

Responses to the consultation

There were **141** responses to the online consultation. Those responding included the Traffic Commissioners, driver trainers, vehicle dealers and representatives of the vehicle hire, road haulage and passenger carrying industries.

The overwhelming majority of respondents supported the proposals in full while **five** respondents were totally opposed.

Ministers would like to thank everyone who contributed to this consultation.

Summary of views

Issues raised by respondents *supporting* the proposals fall under the following five key headings:

- **Costs incurred:** recovering the cost of training and uploads already undertaken.
- **Definition of terms:** clarifying what is meant by 'hire or reward'.
- **Extending the scope of the exemptions to cover:**
 - delivery of new vehicles
 - 'shunter' drivers moving laden vehicles between sites
 - the carriage of tools and a second engineer in the interests of safety
 - the carriage of a load where required as part of the vehicle test.
- **Conditions:** limiting Proposal 1 to journeys within no more than 50km is too restrictive.
- **Enforcement during the transitional period:** no enforcement action should be taken in the period between the DCPC implementation date of 10 September 2013, and the coming into force of the amended legislation.

Issues raised by the five respondents *objecting* to the proposals fall under the following four key headings:

- **Exemptions should not be widened further:** there is already sufficient provision to exempt those who don't need a DCPC because of the nature of their job. Increasing exemptions defeats the purpose of DCPC
- **Training needs:** those who drive large vehicles only occasionally have a greater need for refresher training than full-time drivers
- **Unforeseen consequences:** exempting these drivers could restrict their access to future job opportunities where a DCPC is required because they will be unqualified. ALL drivers with PCV or LGV licences should be encouraged to get a Driver Qualification Card irrespective of their present circumstances.
- **Fairness:** extending the scope of exemptions for a few occasional drivers is unfair to the rest of the transport industry that have to comply. Unfair treatment could result in a judicial review of decisions taken.

Acquired rights in respect of DCPC for drivers holding D(NFHR) and D1(NFHR) driving licence entitlements

Representations were received during the consultation from some stakeholders requesting that those drivers holding restricted D and D1 driving licence entitlements obtained after 1991 and pre 1997 (driving not for hire or reward – NFHR) should be considered to have acquired rights in respect of DCPC.

Situations have been highlighted, such as farmers driving casual workers around the farm in a minibus during harvest season, where it has been suggested DCPC would place an unnecessary burden on such drivers.

We have carefully considered the implications of changing current policy to take the view that drivers holding restricted D and D1 driving licence entitlements have acquired rights in respect of DCPC. This does not require amendment to the existing regulations.

Considering these drivers to have acquired rights will reduce the burden of requiring them to undertake the initial DCPC qualification. They will, however, be required to undertake 35 hours periodic training every five years, unless otherwise covered by an exemption, and will be required to complete the first tranche of training before 10 September 2013.

This measure also has road safety benefits as these drivers, who were not obliged to undergo a driving test in a minibus will be required to undertake regular training.

Drivers who obtained their category B (car) driving licence post 1997 do not automatically acquire D1 (NFHR) entitlement and will not be able to benefit from this policy change.

We have considered whether or not situations such as farmers driving casual workers around the farm in a minibus during harvest season are covered by an exemption such as regulation 3(2)(f) , which exempts the driver of a vehicle which is “being used for the non-commercial carriage of passengers for personal use”. However, we do not think that it can be properly argued that farmers driving casual workers around a farm fall within this exemption. In our view, these drivers will be required to obtain DCPC.

Responses to points raised during consultation

Costs incurred. There is no case for the repayment of any costs incurred. The proposal to amend the legislation was not a result of an error in the implementation of the EU Directive. The proposal emerged following representations made by the various industry stakeholders. Drivers who completed their DCPC benefit from the training received and from having a transferable qualification and their employers benefit from having better trained employees.

Definition of terms. We appreciate consultees’ concerns. On further consideration, we intend to remove the condition in Proposal 1 that vehicles must not be used for ‘hire or reward’. This is because a vehicle will not be used for ‘hire or reward’ if it is carrying neither goods nor passengers.

Extending the scope of the exemptions. Regulation 3 (2)(c) exempts those driving new or rebuilt vehicles which have not yet been put into service. A vehicle is ‘put into service’ when it is licensed for use on the road. However, we have been told by industry representatives that some bodybuilders, paint shops etc. register and licence the vehicle before it is delivered to the customer, often using specialist delivery agents. As the proposals to extend the scope of the exemptions are designed to strike a balance between operational necessity and maintaining the integrity of DCPC we are not persuaded that this business practice warrants a further extension to the proposed exemptions and we therefore do not plan to adopt it.

We are not persuaded that ‘shunter drivers’ moving laden vehicles or trailers should be exempted. Activities carried out on private land are not subject to DCPC. If shunter vehicles are driven on the public highway we do not see that there is any difference between that activity and that of a normal haulier carrying loads on the public road. As such, those involved will need to comply with DCPC.

We consider that engineers or mechanics delivering a changeover bus or lorry to attend a broken-down vehicle benefit from the existing exemption at Article 2 (g) of the Directive³, which provides that the requirements of the Directive do not apply to drivers of:

vehicles carrying material or equipment to be used by the driver in the course of his or her work, provided that driving the vehicle is not the drivers' principle activity.

Conditions. The proposals on which views were sought are designed to strike a balance between operational necessity and maintaining the integrity of DCPC. We appreciate that extending the scope of the exemptions as proposed will not satisfy all business models. However, we understand that the majority of mechanics, fitters and valets will benefit. The policy intention behind extending the exemptions was to reduce the burden on the limited group of drivers who drive for short distances and in limited circumstances only.

Enforcement during the transitional period. We will publicise any changes to be made to the legislation and implementation date as soon as possible. Guidance will also be issued about DCPC enforcement on affected drivers during the 'transitional period'. However, driving without a CPC may invalidate a driver's insurance policy. Whilst DSA hopes that the insurance industry will take a pragmatic approach in these circumstances, concerned drivers are encouraged to discuss this with their insurance providers.

Exemptions should not be widened further. While we would encourage all vocational drivers to acquire a DCPC, we have sympathy with the representations made that for many of those employed as mechanics, fitters and valets and for whom driving is not their principal activity DCPC places a significant burden on them and their employers.

We consider that the proposed limited extensions to the scope of the exemptions for these drivers are justified, proportionate and fair.

Training needs. It is in the interests of all employers to facilitate the development of their staff. In our view all lorry and bus/coach drivers – even those operating under one of the exemptions – should continue their professional development throughout their working life. To that end DSA has published the National Standard for driving lorries (category C)⁴ and the National standard for driving buses and coaches (category D)⁵. These documents set out what DSA believes is needed to be a safe and responsible lorry or bus/coach driver.

³ Implemented by Regulation 3(g) of the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007

⁴ <https://www.gov.uk/national-standard-for-driving-lorries-category-c>

⁵ <https://www.gov.uk/national-standard-for-driving-buses-and-coaches-category-d>

Unforeseen consequences. We agree with the concerns expressed about limiting career opportunities to drivers who, while driving under an exemption now might at some point in the future need to hold a DCPC. For that reason it is open to those drivers to acquire a DCPC either by completing 35 hours periodic training (if they have acquired rights) or by passing the qualifying tests. Once they have a Driver Qualification Card they will have a portable qualification that will be accepted throughout Europe.

Fairness. We believe that our proposals are reasonable and accord with the overall aims of the DCPC Directive. We consider that because the drivers, and journeys, that we are proposing to exempt are very limited they would not present an increase in the road safety risk. Representations received have shown that imposing the DCPC requirements on this limited group of drivers could place a disproportionate financial burden on business. We are also satisfied that extending the scope of the exemptions as proposed is in line with the way other European member states have implemented the requirement.

Decisions taken

Ministers have carefully considered the views expressed. For legal reasons, the wording of the conditions of the first exemption is slightly different from those proposed at consultation – although the effect is the same. They have decided to remove the condition in Proposal 1 that vehicles must not be used for ‘hire or reward’, given that a vehicle will not be used for ‘hire or reward’ if it is not carrying passengers. The condition that ‘no goods are carried’ now makes provision that equipment incidental to the [movement or] carriage of a load may be carried.

Ministers have otherwise decided to implement the additional exemptions as proposed.

We will bring forward amending legislation as soon as we can.

Driving Standards Agency
8 August 2013