

# Stakeholder Working Group: EU drivers' hours and working time rules – Final Report

## Aims/objectives

1. This Group was brought together by the Department for Transport (DfT) to assist with the implementation of the following commitments covering legislation on the EU drivers' hours rules (Regulation (EC) 561/2006) and the sector specific working time rules (Directive 2002/15/EC- Road Transport (Working Time) Regulations 2005):

- The **Logistics Growth Review paper**, published in November 2011, had the following commitment:
  - *The Government intends to work to influence the EU to adopt a simplified regime for drivers' hours and working time.*
- The **Red Tape Challenge – Road Transportation paper**, published in December 2011, had the following commitments:
  - *Although we cannot ignore our European obligations we will:*
    - a) *Develop with industry ideas for a simplified regime that we can then discuss with the European Commission and other countries for a longer term solution; and*
    - b) *Look for ways to improve and broaden the way we raise awareness of the rules, including to work with industry representative organisations.*

## Organisations represented on the Group

- A. Department for Transport; (DfT)
- B. Vehicle & Operator Services Agency (VOSA)<sup>1</sup>
- C. Road Haulage Association (RHA)
- D. Freight Transport Association (FTA)
- E. Confederation of Passenger Transport (CPT)
- F. Society of Motor Manufacturers & Traders (SMMT)
- G. British Vehicle Rental & Leasing Association (BVRLA)
- H. United Road Transport Union (URTU)
- I. UNITE the union

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<sup>1</sup> VOSA and DSA merged in July 2013 to form the Driver and Vehicle Standards Agency (DVSA).

## **The Government's general stance towards EU legislation.**

2. When transposing EU law, the Government will:
  - ensure that (save in exceptional circumstances) the UK does not go beyond the minimum requirements of the measure which is being transposed;
  - wherever possible, seek to implement EU policy and legal obligations through the use of alternatives to regulation;
  - endeavour to ensure that UK businesses are not put at a competitive disadvantage compared with their European counterparts;
  - always use copy out for transposition where it is available, except where doing so would adversely affect UK interests e.g. by putting UK businesses at a competitive disadvantage compared with their European counterparts. If departments do not use copy out, they will need to explain to Ministers the reasons for their choice.

## **EU Legislation on drivers' hours and working time**

3. There are several pieces of legislation set by the EU which regulate drivers' hours and working time. The EU drivers' hours rules (Regulation (EC) 561/2006) apply to goods vehicles over 3.5 tonnes and passenger vehicles with 10 or more seats; unless covered by a range of specific EU-wide exemptions and national derogations. These Regulations require the use of tachographs and prescribe maximum limits on driving time and minimum requirements for breaks and rest periods. The rules on using the tachograph are contained in Regulation (EC) 3821/85 (as amended).

4. Drivers of vehicles subject to the EU drivers' hours rules are also subject to the Road Transport (Working Time) Regulations 2005, which implement in Great Britain the European Road Transport Working Time Directive 2002/15/EC. These limit the overall working time (which includes driving and any other work) for drivers and crew.

## **Summary of discussions**

5. During the first meeting of the Group members did discuss the possibility of looking at this from a fresh perspective (i.e. blank page) and drafting a new set of combined rules for both drivers' hours and working time. However they decided that they did not want to pursue this, as they decided that proposing a completely new regime would open the whole debate at European level, which

could result in a new regime the UK would still not be happy with and would take a very long time to complete.

6. During discussions the Group also considered the Australian risk based model of drivers' hours, but concluded that they did not want to pursue this, as the Australian model was very hard to compare with the European model. Australia has a low population density and there are huge distances between cities. In addition their model seems to be more complex and does not differentiate between driving and other work. It also allows drivers to drive for longer with much shorter breaks.

7. The Group identified the following four issues as the main areas for further focus:

- A. Identify where there is room for interpretation/renegotiation of working time rules**
- B. Consider what could be done to reduce confusion about the interaction between working time breaks and breaks from driving;**
- C. Consider if the interaction between Period of Availability (POA)/rest/breaks could be addressed**
- D. Consider more practical interpretation of nearest/safest place to stop**

8. Any suggested changes to EU legislation (both directly applicable regulations and directives) could potentially open up negotiations at European level and would require the agreement of other Member States; the European Commission and European Parliament. For example, Regulation (EC) 561/2006 came into force after five years of difficult negotiations between EU Member States and necessarily represents something of a compromise; the Group considered that there was a risk that in opening the debate we could end up with a regime which still did not reflect the UK's wishes.

- A. Identify where there is room for interpretation/renegotiation of working time rules**

9. On issue A; The Group agreed that Article 10 of the Mobile Workers' Directive gives the most flexibility, as it allows Member States to introduce working time provisions more favourable than the Directive.

10. However, the Group acknowledged that doing so would not be in line with the Government's copy-out principle [see last bullet point of paragraph 2 above]. For this reason, and because it would involve imposing stricter rules on businesses, the Group did not consider this an idea worth pursuing.

## **B. Consider what could be done to reduce confusion about the interaction between working time breaks and breaks from driving;**

11. On issue B, the Group agreed that the interaction between working time breaks and breaks from driving caused the most confusion. Particularly as the rules appear similar, but are actually quite different. The Group believed it was difficult to look at both sets of rules simultaneously - so some people inadvertently fell foul of the rules. See **Annex A** for a table showing the different break requirements.

12. The Group considered a number of options that could help alleviate the above mentioned issue, but two (not mutually exclusive) options interested some of the Group:

- **Option 1. Provide better guidance to drivers on the break requirements** - This would help alleviate confusion and would be relatively quick to do; without the need to go through the European Commission.
- **Option 2. Align break requirements in working time rules (for mobile workers') to the drivers' hours rules** - The EU Mobile Workers' Directive 2002/15 allows for Member States to introduce more favourable provisions (i.e. longer breaks or shorter maximum permitted times) than those in the Directive. Therefore, we could create alignment between the working time rules and drivers' hours rules without going back to the European Commission or changing the Mobile Workers' Directive, but by amending our domestic Legislation. This would mean that drivers/crew would need to take a break of 45 minutes after 4.5 hours of either driving or non-driving work. This would mean that for non-driving work, the frequency and duration of breaks would increase.

13. Industry representatives supported Option 1, as it would make it clearer to drivers how they should be recording their working time if they drive and do other work and when they should be taking a break.

14. The Group agreed that there was an issue of lack of understanding of the rules and that drivers were not complying with the rules out of genuine ignorance. They also thought that there was conflict between drivers and managers on the interpretation of the break requirements.

15. There was a general consensus that the current guidance although comprehensive was complicated and having a simplified guide on different topics, such as break requirements, would help, particularly if developed jointly

and endorsed by the organisations on the Stakeholder Working Group. This would indicate to drivers a consistent approach on how the rules should be interpreted.

16. Although Members representing the Unions were not opposed to Option 1, it was pointed out that there would still be drivers and crew that would still have difficulties understanding the rules.

17. On principle members representing the Unions were in favour of Option 2, as it would simplify the rules and eliminate confusion of when a break is due, as the same breaks would be required, no matter what type of work a driver is doing. It would also improve the health and safety of drivers/crews as it would require more frequent breaks.

18. Industry representatives were not in favour of Option 2, as they thought this would be disproportionate, as it was recognised in UK and Europe that driving was more difficult and carried more risk than other work. This is an underlying reason why rest requirements in drivers' hours are tighter than working time requirements.

19. Industry representatives thought the working time rules gave industry extra flexibility for drivers doing mixed work. They thought if UK picked up Option 2, it would put the UK at a disadvantage with its European Counterparts and there was a real risk of losing work to foreign operators.

20. In addition, industry representatives thought adopting Option 2 would adversely affect coach operators running long distance services, as it would put extra pressure on drivers, as clock starts ticking for them before they start to drive. They would lose flexibility and lose out competitively with other forms of transport, particularly trains. They thought there was a real risk of losing coach services run on timings close to those that would require additional breaks, such as the Nottingham to London service.

21. The Group concluded that it would be beneficial to draft simplified guidance, particularly covering breaks, endorsed by the organisations on this Group. It was agreed that a sub-group would look at drafting this simplified guidance (lead by the FTA) and also consider how it will be disseminated; perhaps via CPC training modules.

### **C. Consider if the interaction between POA/rest/breaks could be addressed**

22. The Group agreed that the application of POA was open to interpretation as it is not defined in the working time Directive and that this could lead to inconsistencies. Both operators and drivers have an incentive to consider certain

activities as POA, when it could be argued that they were work (for example drivers delayed due to congestion or drivers unloading his vehicle). See **Annex B** for details on POA; rest and breaks.

23. The Group acknowledged that there was pressure on operators and drivers to deliver to schedule and that they could mis-use POA to ensure deliveries are made on time.

24. Although the Group agreed that there was generally a good understanding of how POA should be used in the UK, concern was raised about how this was being interpreted by other Member States particularly when it came to ferry crossings. Examples were given of coach drivers being issued with fixed penalties in France and made to serve breaks upon disembarking a ferry because they had recorded the ferry crossing as a break and the French enforcement authorities believed the crossing should be a POA.

25. The Transport Regulators Align Control Enforcement (TRACE) document (developed by the TRACE working group and takes into account the consultations carried out with trade bodies such as the IRU (International Road Transport Union), UETR (Union Europeenne des Transporteurs Routiers) and enforcement agencies represented within ECR (Euro Control Route) and CORTE (Confederation of Organisations in Road Transport Enforcement) with opportunity for input given to enforcement agencies of all 27 Member States) attempts to provide a uniform approach across Member States to the enforcement of Regulation (EC) 561/2006. This document clearly states that a journey on a ferry/train could be recorded as either a break or rest (assuming the driver has access to a couchette etc.). The Group agreed that VOSA should see if there was any way of ensuring the advice in the TRACE document was followed by all Member States; through the next ECR meeting or at the next CORTE enforcement working group meeting.

26. The Trade Unions stated that the working time rules have not significantly decreased the working hours of HGV drivers and they largely attribute this to the misuse of POA and the fact that POA is not counted as work. Industry representatives pointed out that POA was allowed so services could continue, otherwise it would bring productivity down, for example, where drivers must wait for their passengers to return, or for a ferry boarding, without POA the operator might need to employ another driver to complete a journey.

27. There was a detailed discussion about the requirement that to count as POA the period needed to be known about in advance. It was agreed that 'in advance' could be either a written or verbal notification, which could be given to the driver by anyone (more commonly operator or customer) and that this notification could be given any time before the POA starts. It was agreed that this made it difficult for VOSA to enforce as documentation may not always be available.

28. In addition, it was pointed out that some drivers are being forced to record a period of work as POA, when they don't agree that it should be. The VOSA representative said drivers should be encouraged to report such cases to VOSA through the confidential helpline. However, the Union representatives were concerned that this could create repercussions for drivers, as they could be fired if they were suspected of for making a report.

29. There was a general consensus of opinion that understanding POA was not the major issue and that lack of compliance was generally deliberate. It was also agreed that POA was difficult for VOSA to enforce (as no documented evidence is required and the emphasis is on enforcement agencies to prove misuse of POA which can prove difficult). However, Members did not arrive at a solution to this problem.

#### **D. Consider more practical interpretation of nearest/safest place to stop**

30. During the first meeting of the Group, members decided that it would be good to consider a more practical interpretation of Article 12 of Regulation 561/2006 which states:

*“Provided that road safety is not thereby jeopardised and to enable the vehicle to reach a suitable stopping place, the driver may depart from Articles 6 to 9 to the extent necessary to ensure the safety of persons, of the vehicle or its load. The driver shall indicate the reason for such departure manually on the record sheet of the recording equipment or on a printout from the recording equipment or in the duty roster, at the latest on arrival at the suitable stopping place.”*

31. Although a ‘Suitable stopping place’ is not defined in the Regulations, the Regulations are quite specific about when a driver can deviate from the rules i.e. to ensure safety of person, of vehicle or its load.

32. After discussion the Group agreed that this was not really a significant problem in the UK, as generally VOSA had a pragmatic approach to enforcement and for example would be aware of unexpected weather related incidents on the roads and would make allowances for drivers deviating from the rules. Although this was in the top four issues, it should be noted that it is not about harmonising drivers’ hours and working time rules. However, it could be addressed in revised guidance.

33. The Group decided that the problem was abroad, as historic situations found on tachograph records by enforcers were being used against drivers, who

were being issued with fixed penalties of around 1000 Euros. Although these could be challenged in court, it would cost more than 1000 Euros to do so. The Group again asked VOSA to pursue this through ECR or CORTE

## Recommended way forward

34. The Group has concluded that it would not be advisable to reopen negotiations at European level on the legislation covering drivers' hours and working time, because:

- there is a risk that re-opening the negotiations could take years to complete (last negotiations of the drivers' hours regulations took five years); and
- there is a risk that re-opening negotiations could result in a regime that would be more onerous and complex than the current regime.

35. In addition, the Group has concluded that the current problems with the regime relate to a lack of clarity and understanding of the existing rules, rather than the rules themselves. They decided that above all, there was a lack of understanding of when a driver needs to take a break, as the requirements in the driver's hours rules are different to those in the working time rules. Therefore, although the Group agreed that the current guidance was comprehensive (but understandably long and complex), they recommend the drafting of additional simplified guides; to supplement the current guidance (particularly covering breaks), aimed specifically at the driver/transport manager.

36. If this way forward is agreed the Group recommend that these simplified guides are drafted and endorsed by the organisations on this Group. A sub-group would be set up specifically to draft these simplified guides (lead by the FTA) and to also consider how these will be disseminated; perhaps via Certificate of Professional Competence training modules.

37. The Group would also recommend VOSA continue to pursue through the ECR or CORTE the issues identified as an issue at European level i.e.:

- To see if there was any way of ensuring the advice in the TRACE document that a journey on a ferry/train could be recorded as either a break or rest, instead of a POA, was followed by all Member States; and
- To try and ensure that historic situations (i.e. of drivers deviating from the rules to find a safe place to stop in emergency situations) found on tachograph records by enforcers abroad were not being used against UK drivers.

**January 2014**

## Annex A

### A summary of the EU drivers' hours rules and sector specific working time rules

<b>Drivers' hours rules</b>	<b>Working time rules</b>
Regulation (EC)561/2006	Directive 2002/15/EC
<p><b><i>Driving</i></b></p> <ul style="list-style-type: none"> <li>▪ 9 hour daily driving limit (can be increased to 10 hours twice a week)</li> <li>▪ Maximum 56 hour weekly driving limit</li> <li>▪ Maximum 90 hour fortnightly driving limit</li> </ul> <p><b><i>Breaks</i></b></p> <ul style="list-style-type: none"> <li>▪ 45 minutes break after 4.5 hours driving</li> </ul> <p><b><i>Rest</i></b></p> <ul style="list-style-type: none"> <li>▪ 11 hour daily rest (can be split into 3 hours + 9 hours or reduced to 9 hours no more than three times a week)</li> <li>▪ 45 hour weekly rest (can be reduced to 24 hours but not on consecutive weeks), must be started no later than the end of six</li> </ul>	<p><b><i>Working time (including driving)</i></b></p> <ul style="list-style-type: none"> <li>▪ Working time must not exceed average of 48 hours a week (no opt out)<sup>2</sup></li> <li>▪ Maximum working time of 60 hours in one week (provided average not exceeded)</li> <li>▪ Maximum working time of 10 hours if night work performed<sup>3</sup></li> </ul> <p><b><i>Breaks<sup>4</sup></i></b></p> <ul style="list-style-type: none"> <li>▪ 30 minute break after 6 hours working</li> <li>▪ 45 minute break after 9 hours working</li> </ul> <p><b><i>Rest</i></b></p> <ul style="list-style-type: none"> <li>▪ Same rest requirements as EU drivers' hours rules</li> </ul>

<sup>2</sup> Normally calculated over a rolling 17 week period, but can be extended to 26 weeks under a collective or workforce agreement.

<sup>3</sup> Can be extended under a collective or workforce agreement

<sup>4</sup> EC Regulation 561/2006 is directly effective and takes precedence over EC Directive 2002/15 - Article 2.4 Directive 2002/15. Therefore, EU drivers' hours break requirements take precedence when driving

consecutive days.	
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## Annex B

### Periods of availability (POA) in working time rules and break and rest requirements in drivers' hours rules

#### Legislation

'Periods of availability' is defined in Directive 2002/15 in Article 3(b) as:

*— periods other than those relating to break times and rest times during which the mobile worker is not required to remain at his workstation, but must be available to answer any calls to start or resume driving or to carry out other work. In particular such periods of availability shall include periods during which the mobile worker is accompanying a vehicle being transported by ferryboat or by train as well as periods of waiting at frontiers and those due to traffic prohibitions.*

*These periods and their foreseeable duration shall be known in advance by the mobile worker, that is to say either before departure or just before the actual start of the period in question, or under the general conditions negotiated between the social partners and/or under the terms of the legislation of the Member States,*

*— for mobile workers driving in a team, the time spent sitting next to the driver or on the couchette while the vehicle is in motion*

'Break' is defined in Regulation (EC) 561/2006, in Article 4(d) as:

*'break' means any period during which a driver may not carry out any driving or any other work and which is used exclusively for recuperation;*

'Rest' is defined in Regulation (EC) 561/2006, in Article 4(f) as:

*'rest' means any uninterrupted period during which a driver may freely dispose of his time;*

#### Current guidance on POA

30. The definition of POA in the Directive is open to interpretation, so gives Member States some flexibility. DfT's current guidance gives examples of what can be recorded as a POA and what should not.

Examples of a POA:

***Situations when a period of time could be recorded as a POA (provided the "known in advance" pre-condition is met)***

- Time when accompanying a vehicle being transported by boat or train.
- Time spent waiting at frontiers.
- Periods of waiting due to traffic prohibitions. Traffic prohibitions would include where the police have delayed the movement of an abnormal load for a set period of time, or where vehicles are banned from city centres during specified hours, and the driver has to park the vehicle and wait.
- When driving or travelling as part of a team, time spent sitting next to the driver while the vehicle is in motion, unless the mobile worker is taking a break or performing any other work (e.g. navigation). This time (or a part of it) could also be counted as a break - but would need to be recorded as such. Other travelling staff may also count travelling time as a POA, provided they are not performing any other work.
- When a mobile worker experiences a delay at a regional distribution centre or depot, waiting for someone to load or unload their vehicle, if they know about the length of the delay at the start of the period (because someone has told them; because they have arrived too early for their slot; or because they always experience a delay at one of their regular customers).
- If a mobile worker typically experiences a 1 hour delay at one of their regular customers, then this would count as a POA. However, if they were to unexpectedly experience a 2 hour delay, then the second hour would count as working time. Unless the mobile worker was notified, before the end of the first hour, that a further hours delay was expected, in which case the second hour would also count as a POA.
- Where a mobile worker reports for work, is informed that they are not required to undertake any duties for a specified period (albeit, they need to remain on site to answer calls and be ready to take up work), but is free to wait in the canteen or rest facility.
- If the vehicle breaks down and the mobile worker is told how long it will take to be rescued.

***Situations when a period of time should not be recorded as a POA***

- Where a driver is diverted due to a road closure, he/she would still be driving so the period could not be counted as a POA.
- Delays due to congestion (i.e. stuck in a traffic jam) would not count as a POA because the driver would be stopping and starting the vehicle.

- If a mobile worker is monitoring activity by others, (e.g. petrol at filling station, or the unloading of the lorry), this time would count as working time rather than a POA.
- Frequently moving up within a queue (e.g. waiting within a queue to load or unload) every other minute would not qualify as a POA.
- When the duration of the POA is not known in advance, for example if a mobile worker was told to arrive at 9am and then leave at any time up to 1pm this would not be a POA as the duration is not known.