



Smart Tachographs – what you need to know



The transport industry has been aware since 2016 that Smart Tachographs (i.e. the new generation of on-board mandatory digital recorders to enforce the EU legislation on professional drivers driving and resting times) will be introduced in June 2019. The deadline day of 15 June 2019 is now looming and whilst it might not be the EU deadline that UK hauliers have been focused on this year, there are important changes that operators, transport managers and drivers should be aware of to ensure ongoing compliance.

What is new?

The obligation to comply with Drivers' Hours legislation and the Working Time Directive, as well as downloading, storing and analysing digital tachograph data will remain unchanged. There will, however, be additional data that is required to be captured and Smart Tachographs will contain:

- An ITS interface (Intelligent Transport Systems) – this allows sharing vehicle data or other data with other systems.
- A GNSS (Global Navigation Satellite System) – this module automatically records the vehicle location at the start and the end of the journey, as well as at every three hour interval, and also records additional speed data.
- A DSRC interface (Dedicated Short Range Communication) – this module makes it possible for the

Smart Tachographs to remotely communicate with road side inspection officers and to avoid unnecessary roadside inspections where no issues are identified.

How will enforcement work?

Enforcement vehicles will be fitted with a Remote Early Detection Communication Reader ("REDCR") which will be able to read data remotely from a passing digital tachograph using the DSRC interface.

The REDCR will allow enforcement authorities such as the police and DVSA to capture information such as security breaches, the absence of a valid card and the speed recorded by the tachograph, as well as many other things. The smart tachograph itself will be able to tell if the driver card inserted is the most recent card issued to that driver but no personal driver information can be obtained. It should be borne in mind that the EU Regulation does not require enforcement agencies to have the equipment required to read the signal until 2034, so we will have to wait and see how quickly the DVSA can ready themselves for these changes. However, this system should in theory reduce wasted time as the data can be reviewed whilst the vehicle is in motion and will avoid unnecessary inspections.

Importantly, the REDCR system cannot be used for issuing automated fines and data must be deleted by the relevant agency within three hours of its capture if no issues are detected.



**Nathan Taylor- Allkins
Solicitor**

What can you do to prepare?

- Review your policies and driver handbook (if applicable) to ensure your processes and policies are sufficiently clear and robust regarding the recording, downloading and analysis of your data.
- Ensure all relevant people within your business are aware of the changes and notify them of any policy changes (e.g. driver toolbox talks, etc).
- Ensure your download software tool or your tachograph analysis provider can receive the new data set and comply with the new regulations (tip: file any correspondence with your providers in your compliance folder).
- Ensure your staff are sufficiently trained – provide or undertake any refresher training necessary.

For further advice or assistance, please contact **Nathan Taylor-Allkins** in our Road Transport team on transport@woodfines.co.uk



Historic Driver's Hours Offences

From 5th March 2018, the Driver and Vehicle Standards Agency's enforcement officers were able to issue fines up to £300 for up to five driver's hours offences committed in the previous 28 days. This is known as historic driver's hours offences. The DVSA announced that this could mean a fine of up to £1,500 in one stop for some offenders.

Prior to that date, the DVSA's enforcement officers could only issue roadside fines for driver's hours offences that were happening at the time of the check. If they identified any offences prior to that date, they would need to take the driver to Court to prosecute them, which would lead them to financial orders. The purpose of driver's hours offences is to ensure that drivers are taking their necessary breaks, as driver fatigue remains a big problem in the industry, and not taking breaks may also be seen in some cases as anti-competitive.

On 20th March 2019, Mark Horton of the DVSA's Enforcement Division wrote about the impact of historical driver's hours one year on. The DVSA stated that in the year prior to bringing in the changes, from March 2018 to March 2019, 80,418 roadside enforcement encounters involved a driver's hours check. 4,236 fixed penalties for driver's hours offences were issued, totalling £478,400. However, in the year since the changes in March 2018, the DVSA performed 73,147 roadside enforcement encounters involving a driver's hours check and issued 19,723 fixed penalties for driver's hours offences, totalling £3,653,450. The DVSA describe those as massive increases, with the number of Fixed Penalties being issued increasing by 465% and the total amount of fines going up by 763%. The DVSA state that this is not about generating revenue, but about sending a clear message to drivers of the need to take their required breaks.

The offences and fines highlight the essential nature of Operators ensuring their drivers are working within regulations and taking the necessary break(s) required. If an allegation is made that is disputed by a driver, this should be pointed out at the roadside and challenged accordingly.

However, the figures recorded in enforcement encounters and the resulting fines issued over the course of 2018-19 demonstrate the extent of the alleged offending when it comes to driver's hours, and how widespread it is. Operators need to ensure that drivers are aware of what is expected of them with regards to taking breaks, as it is them who will ultimately find their businesses out of pocket when fines are received.



Mike Hayward,
Partner

For further information, or for advice regarding any criminal investigation and/or Public Inquiry, please contact Mike Hayward in our Road Transport team at transport@woodfines.co.uk



Workplace Accidents and an Employer's Obligations

The Health and Safety Executive (HSE) publish their data on workplace accidents every year, and being struck by a vehicle remains one of the highest causes of fatal accidents at work.

Effective control measures are essential to minimise the risks from moving vehicles in the workplace, and also to avoid prosecution for breach of the Health and Safety at Work Act 1974.

It should always be remembered that Health and Safety offences are concerned with failures to **manage risks** to health and safety. A successful prosecution does not require proof that the offence caused any **actual harm**. The offence is in creating a risk of harm. What that means is there doesn't need to be any evidence of a worker being injured or harmed in order to secure a successful prosecution against a company or individual.

Individuals who are considered to be responsible for the risk and best placed to control that risk are as liable for prosecution as a company. Those individuals may be employees, directors or managers.

Breach of the Health and Safety at Work Act 1974 is a criminal offence and could



Jane Anderson
Solicitor

lead to the individual receiving not only a criminal conviction, but an unlimited fine and/or 2 years imprisonment. Importantly, a duty holder may be prosecuted for more than one offence within the same case. Recent health and safety statistics show that of the 517 cases where a verdict was reached in 2017/18, the HSE secured a conviction in 493 of them (95%), and duty holders found guilty of health and safety offences in 2017/18 received fines totalling £72.6 million; an average penalty of around £147,000 per case resulting in conviction.

So, think:

- Safe site?
- Safe vehicle?
- Safe driver?
- Do you have sufficient control of your workplace transport?



If you or your company would benefit from advice in relation to the measures needed to effectively control risks from moving vehicles, or if you or company currently face a HSE investigation or prosecution, please contact Jane Anderson in our Road Transport team on transport@woodfines.co.uk



How Woodfines can keep you on the road in four steps

If you need your Operator Licence to run your business, it is important you ensure you are complying with the Regulations and Undertakings of the Operator Licencing Regime. To assist operators, Woodfines' specialist Road Transport team have simplified how your business can best be protected in four simple steps to help keep you on the road.

1. Operator Licence: Whether the core of your business is transport or otherwise, your Operator Licence is an integral asset which you should work to protect. Where would your business be without it? It is important that all the information held by the Central Licensing Office is up to date and correct. Generally, any changes must be notified to the Traffic Commissioner within 28 days and action can be taken against your licence if this is not done. We can review all aspects of your licence and advise you accordingly of any changes that need to be made or notified.



Michelle O'Garro
Senior Associate
Solicitor

2. Financial Standing: Did you know that you have to show three continuous months Financial Standing on request once your Operator Licence has been granted? Financial Standing must be shown in order to be awarded and continue to hold an Operator's Licence. It is a continuous requirement which could lead to you losing your repute and/or Operator Licence if it is not satisfied. This can be a complex area but our team can help to simplify it for you.

3. Maintenance: The cost of getting compliance wrong can be unlimited, it is a common theme that Operators are complying with the Operator Regime but there is no paper trail to show this. We can provide an objective analysis of your systems to ensure you are getting it right, and by reviewing your systems and current maintenance regime we can help ensure that you stay compliant. This is a common pitfall, even for the most diligent and responsible businesses.



Charlotte Hunt
Solicitor

4. Driver Handbook: It is imperative to protect your business' reputation by ensuring your drivers are provided with up to date and relevant information when they are out on the road. We can provide you with a bespoke driver handbook tailored to the specific needs of your business and drivers. We cannot prevent all misfortunes, but showing you have educated your driver(s) of what is expected of them will go towards protecting both you and your business.

Reviewing these four steps together can protect you and your business, keeping your Operator Licence in place and your business on the road. For more information on any of these services, please contact Michelle O'Garro or Charlotte Hunt from our Road Transport team on transport@woodfines.co.uk



Save the Date

Our 2019 Road Transport Conferences:

- Thursday 2nd May 2019, IWM Duxford
- Thursday 28th November 2019, Cranfield Management Development Centre

For further information and booking, please see our website: www.woodfines.co.uk/events

Contact Us

For further information regarding any of the topics covered in this issue of Wheels, or any other issue regarding your transport business, please get in touch:

Bedford
01234 270600

Cambridge
01223 411421

Milton Keynes
01908 202150

Or email us at: transport@woodfines.co.uk

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