

# Department for **Transport**

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Dear Mr Maloney

In response to your letters of 26 October and 2 November 2007, you will wish to be aware of the Department's considerations as to whether an AA breakdown vehicle towing a broken-down car using a VRS 'dolly' would be bound by the EU drivers' hours and tachograph rules contained in Regulations 561/2006/EC and 3821/1985/EEC.

Ultimately, of course, it remains for the Courts to interpret the law. However, we are of the view that an AA breakdown vehicle towing a broken-down car using a VRS 'dolly' would be bound by the EU drivers' hours and tachograph rules when operating more than a 100 km from its base. We have formed this view for two main reasons.

First, you will be aware that European legislation should be interpreted purposively, not literally. The Department takes the view that a purposive reading of the legislation indicates that the weight of the broken-down car must be included when calculating the maximum permissible weight of the vehicle combination – not just the notional weight of the VRS unit. Indeed, as the car is being towed by the breakdown vehicle as a matter of fact, it would lead to a manifest absurdity if its mass was not included.

Second, a broken-down car is designed to be coupled to a motor vehicle when it breaks down (it is fitted with a towing eye for this purpose) and, as such, would fall within the literal definition of a 'trailer' in Article 4(b) of Regulation 561/2006/EC.

On this basis, it would appear to make little difference whether you take the combined gross weight of the towing vehicle, VRS 'dolly' (which would be a notional figure) and that of the broken down car (as per the principles in *DPP v Small*) or the actual train weight of the towing vehicle itself (as per the principles in *Laverick v Wilmot*) as the maximum permissible mass of the vehicle combination. Either calculation will result in a figure in excess of 3.5 tonnes, meaning that the vehicle will be subject to the rules contained in Regulations 561/2006/EC and 3821/1985/EEC.

I will be writing in similar terms to the AA, RAC, Green Flag, AVRO, FTA and the RHA.

Yours sincerely,

**Steve Oliver**