

C.M.R. Liabilities

C.M.R. is short for the Convention on the Contract for the International Carriage of Goods by Road. It is a statute which was ratified in the United Kingdom by the Carriage of Goods by Road Act 1965 and came into force in 1967.

The convention applies to every contract for the carriage of goods by road in vehicles for reward from one country to another provided that one of the countries has acceded to the convention. The convention applies by law and the carrier may not change the provisions by contract. It applies to the entire carriage of the goods so that hauliers involved in any stage of an international journey by road vehicle involving goods coming into or leaving the U.K. will be subject to the convention even if they do not go beyond the British Isles. The majority of mainland European countries are signatories to C.M.R. and therefore it is safe to say that if a U.K. haulier is involved in international carriage of goods on a vehicle then the C.M.R. convention will apply. The convention applies to all goods with the exception of funeral consignments, furniture removals and postal carryings. By protocol to the Carriage of Goods by Road Act it was agreed that transit purely between the U.K. and the Republic of Ireland would not be subject to C.M.R. even though both countries are signatories. This is a domestic arrangement and does not affect through carriage to or from another country.

A haulier therefore need not cross a frontier for C.M.R. to apply and this is particularly relevant for hauliers who do dock traffic involving trailers entering or leaving the country. These trailers will be carried on roll-on roll-off ferries or through the Channel Tunnel. Whilst C.M.R. is applicable by statute it can be adopted by agreement. Hauliers carrying containers from ports will often be asked to accept a C.M.R. liability even though the containers themselves may not be subject to C.M.R. If this is acceptable to both parties then, provided the transit underwriter agrees, C.M.R. liability insurance can be arranged. There is special consideration necessary for container traffic as the convention was drafted before containerisation was introduced and there is no reference to convention applying to containers. There are different schools of thought about whether container traffic is subject to C.M.R. but the facts are that goods must remain on a vehicle and a vehicle is defined in the convention as a motor vehicle, articulated vehicle, trailer or semi-trailer.

A container is just a form of packaging. There is therefore another aspect to C.M.R. – C.M.R. by contract.

The C.M.R. convention is a very complex set of rules and in the context it is only possible to give an overview of the main issues. Basically, carriers are liable for the total or partial loss of the goods and for any damage occurring between the time when they take over the goods and the time of delivery as well as for any delay in delivery. They are allowed a number of specific defences which divide into two categories. The first category of defences places the onus of proof on the haulier.

These defences include losses caused by the wrongful act, neglect or instructions of the claimant, inherent vice or through circumstances which the carrier could not avoid and the consequences of which they were unable to prevent. The latter defence has caused the most debate and it is used far more often when it is upheld in a court of law. The onus of proof to show that hauliers could not avoid a loss and were unable to prevent the consequences is a heavy one and does not offer any comfort apart from in the most extreme cases. These are decided upon the circumstances and for example there are many more cases of armed hijacks where carriers have used this defence and failed than those which have succeeded.

The second category of defences involves special risks where if the carrier can establish that in the circumstances of the case, loss or damage could be attributed to these special risks then it shall be presumed that it was so caused.

The onus of proof therefore is on the claimant. Examples of these special causes are lack of or defective condition of packing, faulty stowage, the nature of certain goods which exposes them particularly to rust, decay or leakage. Interestingly the carriage of livestock is included as a special cause.

There is a financial limit to the haulier's liability which is expressed in terms of "special drawing rights" (S.D.R.s). The liability is 8.33 S.D.R's per kilogram of weight and the value of and S.D.R. changes on a daily basis. In recent times the limit has varied between £6,000 and £8,000 per tonne. This marks a substantial increase from domestic conditions of carriage – compare R.H.A liability at £1,300 per tonne. In addition, a haulier is liable for delay, but this is limited to the carriage charges. There is further liability for refund of the carriage charges, customs duties and other charges incurred.