



ROAD TRANSPORT FORUM

Environmental aspects affecting road transport operation

At a time of heightened environmental concern, it is worth taking a look at how environmental considerations are impacting on road transport operations and how operators can avoid falling foul of the various legislation relating to environmental protection. Good environmental practice requires commitment throughout a firm, from the directors and line management, down to the drivers and the fitters in the workshop, and an acknowledgement that the business is part of the local community.

Road transport is regarded as a major source of noise and air pollution, resulting in growing public concern. The increasing requirement for "just in time" deliveries means that many transport depots now have to operate 24 hours a day, seven days a week. As a consequence, depots located close to residential properties give rise to numerous complaints and often action by the local Traffic Commissioner, or the planning and environmental health departments of the local authority. The disposal of old vehicles, batteries and tyres, oil, diesel fuel and chemical spillages can result in air pollution and land and water contamination.

Operators now have to comply with a wide range of legislative requirements in relation to the environment and the overlapping health and safety legislation. The prevention or reduction of environmental pollution is in the long run cheaper than curing the damage after the event. An environmental incident can be a costly one. There are the costs to the operator, which can be substantial, of cleaning up after such an incident, for example an oil spillage or diesel fuel or chemicals leaking into a water course. There is the likelihood of higher insurance premiums and the possibility of civil damages claims. In addition, hefty fines normally result from any criminal prosecution brought by either the Environment Agency, the Scottish Environment Protection Agency or the Health & Safety Executive, together with the associated legal costs. There is also the possibility of a prison sentence in extreme cases. A less quantifiable cost is the damage done to the operator's reputation by the adverse publicity that such incidents attract.

Such convictions are taken into account by the Traffic Commissioners in assessing whether or not an operator still meets the requirement to be of good repute. It is not unknown for operators to have their O-licences revoked solely as a result of convictions for environmental offences, particularly where heavy fines have been imposed.

Operators who maintain their own vehicles in their own workshops generate varying amounts of hazardous waste and need to be cognisant with the List of Waste Regulations 2005, which lists those wastes that are classified as hazardous. They are required to register their premises with the Environment Agency or the Scottish Environment Protection Agency unless they are likely to produce less than 200kg of hazardous waste a year.

Hazardous waste generally is waste that is explosive, flammable, oxidising, corrosive, toxic, carcinogenic, mutagenic, tetragenic, harmful or irritant. Included in the list of hazardous waste are waste oils, fluorescent tubes, interceptor sludges, aqueous washing liquids and degreasing wastes. In addition, any non-hazardous waste that comes into contact with hazardous waste is regarded as hazardous waste as well.

Operators need to comply with the requirements of the Duty of Care Code of Practice for the movement and disposal of waste.

Jared Dunbar of Dyne Solicitors comments that in terms of repute, operators with standard licences need to be extra concerned with environmental convictions, as they tend to incur higher fines than transport convictions. This means they are more likely to fall into the 'serious offence' category i.e. a fine exceeding level 4 on the standard scale, currently £2500. A traffic commissioner must conclude that an individual is not of good repute if it has more than one conviction of a serious offence. This highlights the importance of seeking good legal representation to mitigate down a sentence, even when you are pleading guilty to an offence.



Clandestine entrants



The carriage of illegal immigrants into the UK, whether knowingly or unknowingly, can be an expensive business for both hauliers and drivers, with penalties of up to £2,000 per illegal immigrant carried. The attitude of the Border Agency is hardening. The independent chief inspector of borders and immigration has expressed concern about the level of penalties being imposed. He warns that setting penalties significantly lower than the maximum dilutes the deterrent effects.

To avoid such penalties operators undertaking international journeys need to comply with a code of practice that sets out the preventative measures required. In setting the level of any penalty imposed for the carriage of clandestine entrants the immigration authorities will look to see to what extent the code of practice has been complied with. Copies of the code can be obtained from TSO.

The general principles are that vehicles should be checked regularly en route to the United Kingdom to ensure that they have not been entered, particularly after stops when left unattended.

A document detailing the system operated to prevent unauthorised entry must be carried with the vehicle, so that it may be produced immediately to an immigration officer on demand in the event of possible liability to a penalty.

A report detailing the checks that were carried out must be carried with the vehicle. If possible to arrange, the report should be endorsed by a third party, who has either witnessed or carried out the checks himself by arrangement with the owner, hirer or driver, as the report will then be of greater evidential value.

Whilst owners, hirers or drivers may contract with other persons to carry out the required checks on their behalf, they will nevertheless remain liable to any penalty incurred in the event of failure to have an effective system in place or to operate it properly on the occasion in question.

Where the checks conducted suggest that the security of the vehicle may have been breached, or the owner, hirer or driver otherwise has grounds to suspect that unauthorised persons have gained entry to the vehicle, it must not be taken onto the ship, aircraft or train embarking for the United Kingdom, or to the UK immigration control at Coquelles. Any such circumstances must be reported to the police in the country concerned at the earliest opportunity, or at the latest, to the passport control authorities at the port of embarkation. In the event of difficulties arising, owners, hirers or drivers should contact the United Kingdom Border Agency for advice at the proposed port of arrival.

Jared Dunbar of Dyne Solicitors comments with French authorities regularly disbursing illegal immigrants in Calais, operators need to be wary as clandestine entrants have been known to enter vehicles whilst drivers have been taking their daily breaks up to 50 or 70 miles from Calais. As traffickers get more sophisticated, drivers and operators need to look out for things such as locks or cords which have been cut and then glued back together to appear undamaged.

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