

Legislation and Risk Management

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Introduction

For fleet operators, every week seems to bring a new piece of legislation that affects their role.

From the Corporate Manslaughter Act to the latest tax changes and from the updated Highway Code to new laws from the European Union, it is an almost constant challenge to keep up to date.

And while the amount of legislation fleets face grows, the penalties for failing to act on it seem to increase at the same time, with the threat of fines and even court appearances backing up many laws.

This puts pressure on employers to ensure that employees who are responsible for their company cars are properly trained to cope with the extra demands they face, and also have the right resources to help them carry out their roles effectively.

The Audi Guide to Legislation 2010 provides a briefing on some of the most important issues facing fleet operators. It examines the increased focus on health and safety that is designed to ensure fleets take action to keep accident rates to a minimum.

The guide also provides a springboard that can help fleet operators to prepare for future legislative challenges and create a positive and effective risk management policy.

We hope you find it useful.



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Duty of care: a call to action for fleet operators

Fleet operators have been encouraged by Road Safety Minister, Mike Penning, to take action to meet their duty of care responsibilities.

He said: “The yearly cost to industry of at-work road accidents has been estimated at between £2.7 and £3.7 billion. There is no fleet size limit below which driver safety is not good business. Employers have a legal responsibility for the safety of their staff, including employees on the move.”

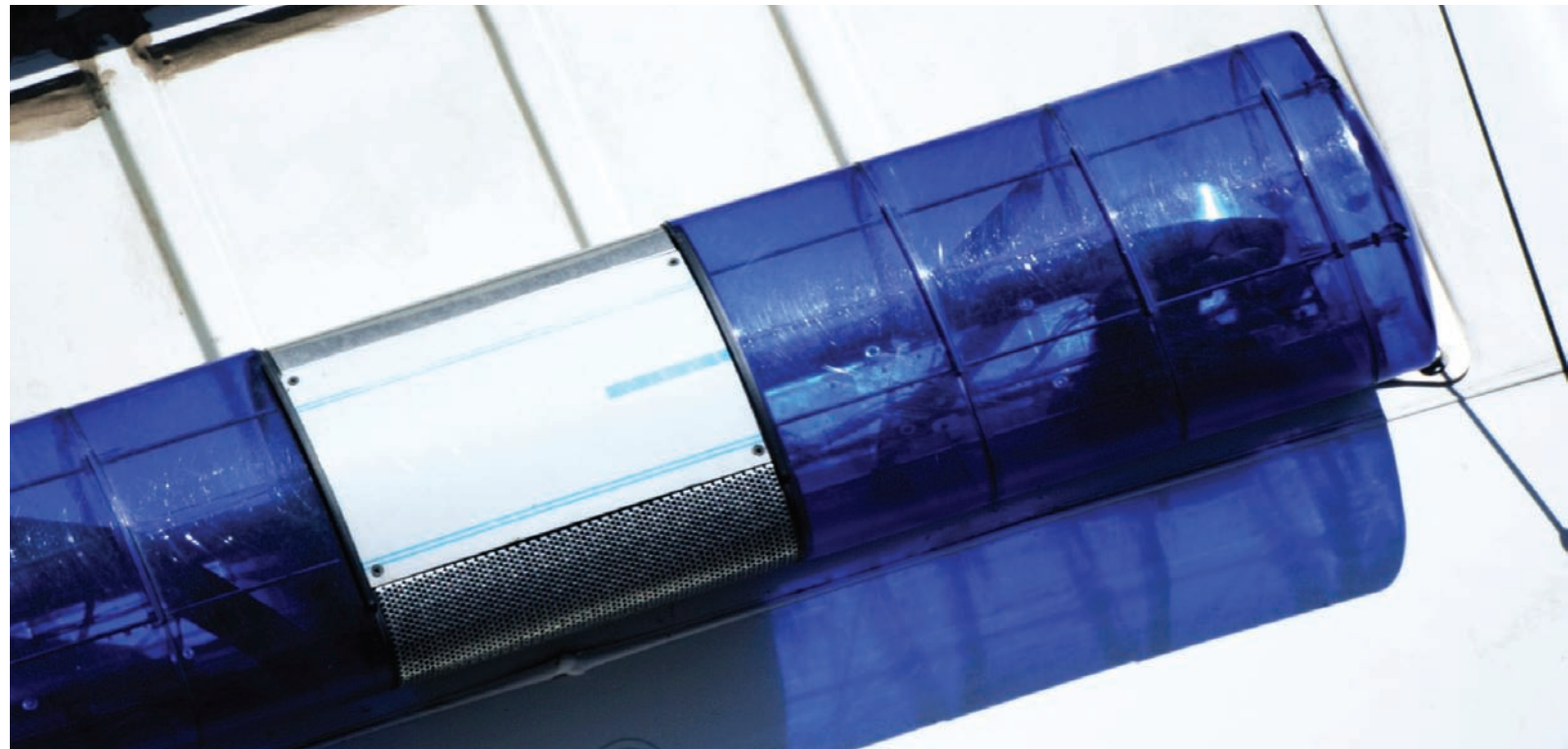
His comments uncover the hidden costs behind most fleet accidents. While many companies look simply at the cost of repairing the bent metal, the hidden costs can be much higher.

Lost working time, replacement vehicles and lost business all need to be considered in a fleet’s safety record. This cost is also one of the reasons why the Government is trying to use legislation to encourage change in the industry. It is also concerned that so many road deaths and injuries involve people at work, with official estimates suggesting at least 1,000 people die each year on the road while driving for business.

Recent research conducted by APD Fleet Research revealed that, despite the threat of action from the recently passed Corporate Manslaughter and Homicide Act, only two-thirds of fleets had introduced initiatives to prevent accidents.

“Employers have a legal responsibility for the safety of their staff, including employees on the move.”

Road Safety Minister,
Mike Penning MP



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Corporate manslaughter: legislation now in place

The Corporate Manslaughter and Corporate Homicide Act 2007 came into force on 6 April 2008. It has been the focus of attention in the fleet industry for years as the Government has worked towards its introduction.

The Act sets out a new offence for convicting an organisation where a gross failure in the way activities were managed or organised results in a person's death.

A Government spokesman said: "This is an opportunity for employers to think again about how risks are managed.

"The Act does not require organisations to comply with new regulatory standards, but they should ensure they are taking proper steps to meet current legal obligations.

The Act will mean those who disregard the safety of others at work, with fatal consequences, are more vulnerable to serious criminal charges."The offence applies to all companies and other corporate bodies operating in the UK, with some minor exceptions.

It also applies to partnerships, trade unions and employers'



associations if they are employers, as well as to Government departments and police forces.

An organisation will be guilty of the new offence if the way in which its activities are managed or organised causes death and amounts to a gross breach of a duty of care to the person or people killed. A jury will consider how the fatal activity was managed or organised throughout the organisation, including any systems and processes for managing safety and how these were operated in practice.

A substantial part of the failure within the organisation must have been at a senior level, where 'senior level' means those who make significant decisions about the organisation or substantial parts of it.

The organisation's conduct must have fallen below what could reasonably have been expected. Juries will take into account any health and safety breaches by the organisation in question, and how serious or dangerous those failures were.

The Act is aimed at cases where management failure lies across an organisation: in these cases it is the organisation itself that will face prosecution. Under established laws, individuals can be prosecuted for gross negligence, manslaughter or culpable homicide, and for health and safety offences. The Act does not change this and prosecutions against individuals will continue to be made where there is sufficient evidence and it is in the public interest to do so. An organisation guilty of an offence will be liable to an unlimited fine, although 10% of turnover can be expected as a benchmark.

The Act also permits the courts to impose a publicity order, requiring the organisation to publicise details of its conviction and fine. Courts may also require an organisation to take steps to address the failures behind the death – known as a remedial order.

Failures by senior managers to handle health and safety adequately, including through inappropriate delegation of health and safety issues, will also leave organisations vulnerable to corporate manslaughter or homicide charges.

The Government expects that cases of corporate manslaughter or homicide following a death at work will be rare, as the new offence is intended to cover only the worst instances of failure.

Further information

Further guidance, including background information, is available on the websites of the Ministry of Justice at

www.justice.gov.uk

and Northern Ireland Office

www.nio.gov.uk

Guidance on health and safety at work is available from the Health and Safety Executive

www.hse.gov.uk

and the Health and Safety Executive for Northern Ireland

www.hseni.gov.uk

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Workplace law: wider implications

Even before the Corporate Manslaughter Act became law, fleets were at risk of prosecution if they failed in their duty of care to employees.

The legislation affecting a modern fleet includes:

- ▶ Health and Safety at Work Act 1974
- ▶ Management of Health and Safety at Work Regulations 1999
- ▶ The Workplace (Health, Safety and Welfare) Regulations 1992
- ▶ Provision and Use of Work Equipment Regulations 1998
- ▶ The Road Vehicles (Construction and Use) Regulations 1986
- ▶ Road Traffic Acts, supported by the Highway Code and EC Drivers Hours Rules.

Most of these laws demand that an employer uses an acceptable level of care in all areas of business, including transport, so that accidents are avoided where possible and other road users are protected. Keeping vehicles in good condition, training drivers and ensuring vehicles and staff are fit for purpose is essential.

Some of the statements within these laws clearly identify the responsibilities of the employer.

The Health and Safety at Work Act states: “It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all employees. That duty extends, so far as is reasonably practicable to any place of work under the employer’s control, the maintenance of it in a condition that is safe and without risk to health. It shall be the duty of every employer to prepare and, as often as may be appropriate, revise a written statement of his general policy with respect to the health and safety at work of his employees and the organisation and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision of it to the notice of all his employees.”

It couldn’t be clearer. Managers are responsible for employees wherever they are and if they fail in that duty of care, it could lead to an investigation.

It is essential to have a copy of the Association of Chief Police Officers’ Road Death Investigation Manual to hand, available as a download in pdf format at www.acpo.police.uk/policies.asp.

The manual outlines a comprehensive procedure for assessing the causes of a fatal road accident. It states that police officers investigating fatal accidents must assume a death is an unlawful killing until it is proven otherwise.

Vehicles can be seized and held for up to two years, while employer liability evidence collected by police could include items such as delivery notes that show evidence of overwork or stretched timetables. Even bonus scheme information could be found to encourage dangerous practices on the road if it imposes constraints on employees engaged on business journeys.

Key legislation

The following acts relate directly to the fleet operator’s duty of care responsibilities

1. Health and Safety at Work Act 1974

Employers have a ‘duty of care’ for the safety of employees at work, regardless of the type or size of business. There is also a duty of care to others who may be affected by their business activities which, in the case of driving, means all other road users.

2. Management of Health and Safety at Work Regulations 1999

Employers are required to carry out risk assessments, make arrangements to implement necessary measures, appoint competent people and arrange appropriate information and training.

3. The Provision and Use of Work Equipment Regulations 1998

The Regulations ensure work equipment is suitable for its intended use – safe, inspected and properly maintained. They also require those using the equipment to be properly trained.

4. The Road Vehicles (Construction and Use) Regulations 1986

These set out the standards for vehicle construction and permitted use on UK roads.

5. The Workplace (Health, Safety and Welfare) Regulations 1992

These cover a wide range of basic health, safety and welfare issues including traffic routes for vehicles within the workplace.

Further information

You can access the acts detailed left via the following links:

1. Health and Safety at Work Act 1974

www.hse.gov.uk/pubns/law.pdf

2. Management of Health and Safety at Work 1999

www.hse.gov.uk/pubns/hsc13.pdf

3. Provision and Use of Work Equipment Regulations 1998

www.hse.gov.uk/pubns/indg291.pdf

4. Road Vehicles (Construction and Use) Regulations 1986

www.hse.gov.uk/workplacetransport/legislation.htm

5. Workplace (Health, Safety and Welfare) Regulations 1992

www.hse.gov.uk/pubns/indg244.pdf



“Keeping vehicles in good condition, training drivers and ensuring they are fit for purpose is essential.”

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The Road Safety Act

In 2006, the new Road Safety Act launched a number of laws that fundamentally affect fleet operators and their drivers.

Areas covered by the Act range from new laws such as causing death by careless or inconsiderate driving and 'furious driving' to a major review of the penalty point system.

This included the introduction of a three-point penalty for using a hand-held mobile phone while driving, but further changes are being discussed that have major ramifications for fleet operators.

Proposals that are still being discussed, which are linked to the act, include a plan to double penalty points for speeding in some areas.

The Department for Transport is considering graduating the



fixed points system so motorists who drive at speeds seriously above the speed limit face tougher punishments. Those caught at 45mph or above in a 30mph limit are likely to receive six penalty points and a £100 fine instead of the present three points and a £60 fine.

The Highway Code: renew your acquaintance

The Highway Code has undergone its biggest rewrite for nearly a decade. Many drivers will be unaware of the changes because most haven't read the Code since passing their driving test.

Recent research carried out for the Institute of Advanced Motorists found that, in a test, only 29 out of 1,000 motorists recognised all of the 10 road signs they were shown, while leading insurer Churchill revealed in its research nearly two-fifths of drivers weren't aware of the latest updates.

But it pays to renew acquaintance with the Code as it highlights changes that have a significant impact on drivers. In turn, these factors all form part of a duty of care obligation and should be incorporated into any Company Car Driver handbook. Potentially, failure to highlight key points to drivers could be seen as a failure in a duty of care responsibility.

Advice in the Code warns about the effect of distractions while driving, including loud music that may mask other sounds, reading maps or directions, programming sat-nav systems, inserting a cassette or CD or tuning a radio, and eating or drinking at the wheel.

It also warns that while hand-held phones are illegal to use when driving, hands-free phones are also a distraction. There is also new advice to carry and wear reflective clothing if your vehicle breaks down to ensure other drivers are aware of you.

For the first time, the Code also covers 'merging in turn' in Rule 134 as part of a section on lane discipline. It says: "In congested road conditions do not change lanes unnecessarily. Merging in turn is recommended but only if safe and appropriate when vehicles are travelling at a very low speed, eg when approaching roadworks or a road traffic incident. It is not recommended at high speed."

Further information

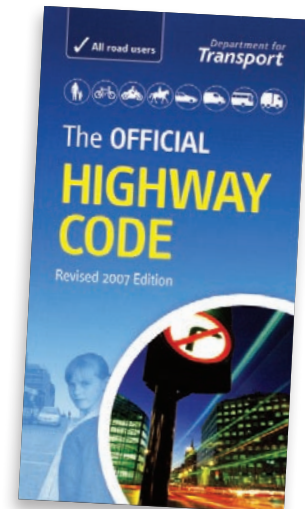
You can view an online version of the Highway Code by logging on to:

www.direct.gov.uk/en/TravelAndTransport/Highwaycode

The Highway Code is also available to order as a printed booklet, priced at £2.50 plus VAT, or in interactive CD-ROM form at £8.50 plus VAT.

To order, log on to:

www.tsoshop.co.uk/bookstore.asp



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Adopting a responsible approach

The Government has produced a guide for fleet managers to help meet duty of care obligations.

'Driving at Work: Managing Work-Related Road Safety' is a free guide produced by the Department for Transport and the Health and Safety Executive.

It states: "Work-related road safety can effectively be managed only if it is integrated into arrangements for managing health and safety at work. You should look at your health and safety systems and consider whether they adequately cover this area of work."

It points out that the main areas companies need to address are: policy, responsibility, organisation, systems and monitoring.

Consider whether your health and safety policy statement covers work-related road safety. It needs to be a written policy if you employ five or more people. If there is a top-level commitment to work-related road safety in your organisation, is responsibility clearly defined?

The guide urges companies to question if they have adequate systems in place for effective management and monitoring of work-related road safety. Overall, there are more than 50 areas the guide urges fleets to consider.

The Government website, Driving For Better Business, at www.DrivingForBetterBusiness.com, works in partnership with the Transport Research Laboratory to provide advisory information online, along with detailed case studies.

Further information

You can download 'Driving at Work: Managing Work-Related Road Safety' by logging on to: www.hse.gov.uk/pubns/indg382.pdf

For detailed advice on fleet operation and duty of care, including case studies, log on to: www.DrivingForBetterBusiness.com



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Summary: creating a comprehensive risk strategy

The Government's Driving for Work guidelines provide essential information for creating the definitive risk management policy for your company fleet operation. By following and implementing the guidelines, you can set a comprehensive strategy for employees to adhere to. These are some of the key areas you need to consider.

Management

Under the Health and Safety Act 1974, the person appointed to manage work-related road risk has a duty of care to employees and the company. Some of the key areas of responsibility are listed below:

- ▶ **Accountability:** understand duty of care responsibilities and obligations
- ▶ **Authority:** possess authority and support at Board level to carry out the job
- ▶ **Supervision:** possess clear definition of who is responsible for work-related road risk
- ▶ **Planning and implementation:** adopting an effective policy based on risk assessment
- ▶ **Risk assessment:** understand the principles behind risk assessment
- ▶ **Provision of information and instruction:** ensure effective policy communication
- ▶ **Performance monitoring:** ensure lessons are learned and implemented
- ▶ **Incident data:** record the number and severity of incidents
- ▶ **Audit and review:** plan regular reviews to audit effectiveness of policies

The driver

You should be satisfied that drivers using their own or company cars on business are competent and capable behind the wheel, and are aware of, and observe, the following standards:

- ▶ **Driver standards:** are drivers fit to drive and do they possess the appropriate licence?
- ▶ **Driver handbook:** the handbook should be read and understood by all drivers
- ▶ **Induction and training:** ensure training is in place to educate drivers on your policies
- ▶ **Safer driver award schemes:** develop these so they don't undermine safety policies
- ▶ **Stress and other distractions:** devise schedules to minimise stress and distraction
- ▶ **Speed:** do you have scheduling in place that does not require drivers to speed?
- ▶ **Mobile phones:** are drivers aware of your policy on the use of

mobile phones in cars?

- ▶ **Licence penalty points:** do you carry out regular driver's licence checks?
- ▶ **Vehicle insurance:** check privately owned vehicles are adequately insured for business

The vehicle

Your vehicle choice list should reflect typical usage and enable drivers to select vehicles that are fit for purpose. Remember, the employer is responsible for drivers at the wheel on company business, regardless of whether or not the car is company or privately owned.

- ▶ **Selection of appropriate vehicles:** ensure your selected vehicles are 'fit for purpose'
- ▶ **Private vehicles:** employers are liable for business driving in private or company cars
- ▶ **Maintenance of vehicles:** adopt a planned approach to service, maintenance and repair
- ▶ **Reporting vehicle defects:** establish a clear path for drivers to report vehicle faults
- ▶ **Carriage of passengers and goods:** ensure driver and passenger licensing is correct

The journey

Journey planning is essential to ensure safety at work and compliance with legislation. Proper route planning will also help save costs, both in fuel and time, while ensuring schedules are realistic will not expose drivers to undue stress and a temptation to drive irresponsibly.

- ▶ **Journey planning:** devising your routes can help cut down driving time and delays
- ▶ **Reduce journeys and mileage:** ask yourself if your journeys are absolutely necessary
- ▶ **Choose transport mode:** would it be more appropriate to take alternative transport?
- ▶ **Safe schedules and routes:** help to reduce driver stress by monitoring schedules
- ▶ **Journey breaks:** the driver handbook should carry guidance on the minimum number of breaks drivers should take
- ▶ **Guidance on night and adverse weather driving:** is training required for out of the ordinary situations?
- ▶ **Emergency procedures:** the driver handbook should contain details of what to do in an accident or breakdown

Further information:

These tips and advice are taken from the Government's Driving for Work guidelines.

To view the Guide, log on to:

www.dft.gov.uk/drivingforwork

