Butterworths Road Traffic Service

Bulletin Editor
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NEW LEGISLATION

The HGV Road User Levy Act 2013

This Act has been on the statute books since 28 February 2013, and came fully into force on April 1. Accordingly, we now review it in detail.

Its purpose is to bring about parity between UK heavy goods vehicle operators and those from abroad. Operators of UK-registered HGVs pay charges or tolls in most European countries for use of the road network in those areas. However, the converse has not (until this Act) been the case. This created an imbalance. Consequently, the Act introduces a levy for all HGVs that weigh 12 tonnes and over for using the UK road network. The requirement to pay the levy will apply to all categories of public road in the UK and to both UK and foreign-registered HGVs.

The levy is time based and varies according to the vehicle type, weight and number of axles.

UK-registered HGVs will pay the levy for the same period and in the same transaction as they pay for vehicle excise duty. Foreign-registered vehicles can pay the levy either daily, weekly, monthly or annually.

There are associated reductions for UK-registered HGVs in the amount of vehicle excise duty that is payable. The intention is that the vast majority of UK-based hauliers will pay no more than previously.

The Act creates an offence (s 11) to fail to pay the levy. The Secretary of State can refuse to issue a vehicle licence if he is not satisfied that the appropriate levy has been paid.

The scheme is administered by the Driver and Vehicle Licensing Agency in Great Britain. A contractor will be appointed by the Department for Transport to administer the payment scheme for foreign-registered HGVs. The contractor will be required to maintain an electronic database of

foreign-registered HGVs for which a levy has been paid. UK enforcement agencies will have access to the database.

The scheme is enforced by Vehicle and Operator Services Agency (VOSA) (now merged with the Driving Standards Agency (DSA) to create Driver and Vehicle Standards Agency (DVSA) – see below) in Great Britain. The police also have enforcement powers. The Act enables the enforcement agencies to issue a fixed penalty notice for the offence of not paying the levy at the appropriate rate, or to prosecute offenders in a magistrates' court. The Secretary of State has used powers under Pt IIIA of the Road Traffic Offenders Act 1988 to enable enforcement agencies to require payment of a financial penalty deposit. (As to the amending regulations which achieve the fixed penalty/deposit changes, see below.)

Sections 17–22 came into force immediately (see s 21). The HGV Road User Levy Act 2013 (Commencement No 1) Order 2014, SI 2014/175 brought into force ss 11 and 13 for the exercise of certain powers under the Road Traffic Offenders Act 1988, and in consequence the following statutory instruments have been made: The Fixed Penalty (Amendment) Order 2014, SI 2014/259; The Road Traffic Offenders (Additional Offences) Order 2014, SI 2014/260; and The Road Safety (Financial Penalty Deposit) (Amendment) Order 2014, SI 2014/267.

SI 2014/259 amends the Fixed Penalty Order 2000 by adding a monetary amount for the fixed penalty prescribed for the offence under s 11. SI 2014/260 amends s 20 of the Road Traffic Offenders Act 1988, which allows records from prescribed devices, such as Automatic Number Plate Recognition cameras, to be used as evidence in proceedings for certain offences. This Order adds the offence of using or keeping a heavy goods vehicle on a public road in the UK without paying the levy to the offences for which evidence from prescribed devices is admissible in Great Britain. SI 2014/267 amends the Road Safety (Financial Penalty Deposit) Order 2009 by adding to the list of offences for which a financial penalty deposit may be required the offence under s 11.

The HGV Road User Levy (Exemption of Vehicles) Regulations 2014, SI 2014/326, have also been made. Section 8 of the 2013 Act exempts certain rigid goods vehicles charged vehicle excise duty at the basic goods vehicle rate in para 9(2) of Sch 1 to the Vehicle Excise and Registration Act 1994 from being charged the levy. These Regulations extend this exemption to certain articulated HGVs charged vehicle excise duty at the basic goods vehicle rate in para 11(2) of Sch 1 to the 1994 Act.

A further related development has been the making of The Road Vehicles (Construction and Use) (Amendment) Regulations 2014, SI 2014/264. This amends reg 80 of the Construction and Use Regulations 1986 as to the way in which weight band limits are expressed. The purpose is to remove a historic difference in terminology between Directive 1999/62/EC and the Regulations, which affects vehicles on those limits. Finally, the HGV Road User Levy (Exemption of Specified Roads) Order 2014, SI 2014/800, exempts the M6 Toll road from the levy.

London Local Authorities and Transport for London Act 2013

Most of this Act (the most notable exception is Pt 3) came into force on 18 February 2014. Part 4 concerns gated roads. It provides that any person who opens, closes or otherwise operates or interferes with a relevant barrier without lawful excuse shall be guilty of an offence carrying a maximum penalty of a fine not exceeding level 3 on the standard scale. A 'relevant' barrier means any barrier lawfully placed in, on or over a highway by or on behalf of a traffic authority in London for the purpose of preventing or restricting the passage of vehicles or any class of vehicles into, out of or along a highway.

Part 5 is concerned with charging points for electric vehicles. Section 19 creates an offence of unlawful use of charging point, again with a maximum penalty of a fine not exceeding level 3.

Part 3 is concerned with builders' skips and includes provision for their immobilisation. This Part remains prospective.

The Driving Standards Agency and the Vehicle and Operator Services Agency (Merger) (Consequential Amendments) Regulations 2014, SI 2014/480 and The Driving Standards Agency and the Vehicle and Operator Services Agency (Merger) (Consequential Amendments) Order 2014, SI 2014/467

The above agencies have been merged to establish the DVSA. The regulations and order make amendments in consequence of this.

The Criminal Justice Act 2003 (Commencement No 32) Order 2014, SI 2014/633

This brought into force on 1 April 2014 s 29(1)–(3), (5) and (6) (new method of instituting proceedings) and s 30 (further provision about the new method), so as to allow the DVSA to institute criminal proceedings by issuing a written charge and requisition. (The old DSA and VOSA were so authorised by SI 2010/3005.)

The Road User Charging Schemes (Penalty Charges, Adjudication and Enforcement) (England) (Amendment) Regulations 2014, SI 2014/81

These Regulations, which came into force on February 14, make two amendments to the Road User Charging Schemes (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2013 (see **J [0.41C]** of the main work). The changes are: a) to replace in reg 6 the definition of vehicles that are on hire taken from s 66 of the Road Traffic Offenders Act 1988 with the one taken from para 13 of Sch 4 to the Protection of Freedoms Act 2012; and b) to amend reg 9 to provide for the refund of not only the penalty charge but

also (if applicable) any road user charge paid in circumstances where the charging authority accepts that a ground in regulation (8)(3) of the Enforcement Regulations has been established and cancels a penalty charge notice.

Other criminal justice legislation

We mention in passing (since they contain no provisions of direct relevance to road traffic law and practice) the Anti-social Behaviour, Crime and Policing Act 2014 and the Offender Rehabilitation Act 2014, both of which received the Royal Assent on March 13. The former is a very long Act covering a wide range of topics. Of most note to road traffic practitioners will be the replacement of civil and criminal anti-social behaviour orders (along with many other behaviour orders and anti-social behaviour powers). Nearly all the Act's provisions are prospective. The latter statute makes provision about the release and post-release supervision of offenders, about the extension period for extended sentences and about community sentences and suspended sentences.

CASES OF NOTE

Variable speed limits during road works

In *Castle v Wakefield and Pontefract Magistrates' Court* [2014] All ER 169 (Jan), the appellant challenged the *vires* of an order made under s 14 of the Road Traffic Regulation A 1984. The order provided for speed limits of 60 or 50 mph on certain designated stretches of road, during such times and to such extent as would from time to time be indicated by traffic signs. It was contended that this fell outside the scope of the enabling legislation. There were further *vires* arguments as to the legality of the order being signed by a team leader in the Highways Agency and as to the ability to delegate to the Agency whether the limit should be 60 or 50 mph.

The Divisional court (Pitchford LJ and Cranston J) rejected all the challenges. Section 14 conferred wide powers and enabled the imposition of variable speed limits. The Secretary of State was accountable to Parliament for the Agency. Therefore, the signing of the order and setting of speed restrictions were acts lawfully performed by the Agency acting on behalf of the Secretary of State.

Meaning of 'U' turn

R (*on the application of Alexander*) *v The Parking Adjudicator* [2014] EWHC 560 (Admin), [2014] All ER (D) 84 (Mar) the claimant performed a three-point turn on road where a 'no U turn' sign was present. A penalty charge notice was issued and upheld. The claimant sought judicial review, contending the sign did not prohibit three-point turns, only 'U' turns completed in one sweeping movement without using reverse gear. The provisions under consideration were the Road Traffic Regulation Act 1984, para 4, Sch 1 and the Hammersmith and Fulham (Gliddon Road) (Banned U Turn) Order 2011, art 3.

Judge Keyser QC (sitting as a Judge of the High Court) dismissed the claim. On the facts, the no 'U' turn sign was a perfectly adequate schematic representation of the manoeuvre or group of manoeuvres to which para 4 of Sch 1 to the Road Traffic Regulations Act 1984 applied. A motorist interpreting the sign reasonable and in good faith would not consider that it prohibited only the paradigmatic U turn but left the three-point turn untouched.

Meaning of 'ambulance purposes'

In *Director Of Public Prosecution v Issler* [2014] EWHC 669 (Admin), [2014] All ER (D) 133 (Mar) the respondents were both members of Hatzola, a voluntary organisation which provided emergency first aid cover in defined areas. In October 2012, the respondents attended a road traffic accident. Each was driving a vehicle fitted with two-tone sirens and blue flashing lights. Both respondents utilised their vehicle's blues and twos to attend the scene. On arrival, they identified themselves to a police officer as Hatzola fast response personnel. They were allowed to offer medical assistance until the arrival of the National Health Service (NHS) ambulance a few minutes later. Once the ambulance had arrived, they were told that they would be reported in relation to the use of blues and twos. Subsequently, the respondents were prosecuted for offences contrary to reg 37(4) of the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, s 42 of the Road Traffic Act 1988 (RTA 1988), s 42 and Sch 2 to the Road Traffic Offenders Act 1988 and reg 16 of the Road Vehicles Lighting Regulations 1989, SI 1989/1796. In October 2013, the district judge dismissed the charges as the respondents were entitled to rely on the relevant statutory exemption, namely the vehicles were being used for ambulance purposes. The Director of Public Prosecutions appealed by way of case stated.

The Administrative Court (Queen's Bench Division, Divisional Court (Rafferty LJ and Jay J) allowed the appeal.

(1) Each case was fact-sensitive and had to turn on the available evidence. The focus in the 1986 and 1989 Regulations was on the attributes of the vehicle and not on its use on any particular occasion. The court should be slow to adopt an overly purposive construction of those Regulations. Any broadening of the scope of the exemptions should be undertaken by Parliament.

(2) The focus had to be on the core activity or *raison d'être* of the vehicle in question. Even if it might not be an ambulance which met the separate regulatory definition of that term, the vehicle had, at the very least, to be capable of conveying sick, injured or disabled persons and do so with such a frequency that that core activity might fairly and properly be designated as its primary use. If the core activity of the vehicle was not the conveying of persons then the exemption could not apply. Equally, if the core activity was the carrying of medical personnel, even trained paramedics, to the scene, then the exemption did not apply notwithstanding there being some exceptional instances of conveying injured persons to hospital. As the judge had held that the core activity

> of the vehicles was the transport of medically trained personnel to an emergency scene and not the conveying of injured persons, it was impossible to uphold his decision.

The Court added: 'That is not to say that the outcome of this appeal is desirable. Mention has already been made of NHS "first responder" vehicles. These probably did not exist when the relevant secondary legislation was made in the 1980s, and some of the terminology of the 1986 Regulations in particular harks back to an earlier age. The world has moved on, and a strong case has been made out for widening the exemption. The facts of the present case also highlight the need for reform. Hatzola is a responsible and public-spirited organisation. It uses fully-equipped vehicles. Its drivers are trained paramedics working within the bounds and responsibilities of an established system whose qualities are open to verification. Its policy is to allow conservative, restrained use of "blues and twos". Its purpose is to provide at scene paramedical assistance, in advance of the arrival of NHS paramedics, thereby potentially ameliorating the task of the ambulance crew and improving the prospects for and the prognosis of injured persons. To be clear: widening the exemption to reflect the modern context is a task for the Secretary of State and for Parliament, if so advised, and not for this Court. Updating these Regulations would require not merely the overruling of Lord-Castle but the application of an overly broad, purposive construction which could not properly be achieved in view of the existing regulatory language: see para 36 above. Subject always to the better view of those responsible for these Regulations, at the same time as the exemption is widened by amendment to cover the NHS "first responder" vehicles currently out of scope, close consideration should be given to the position of these respondents and those like them. In short, it should not prove difficult to alight on a form of words which includes Hatzola personnel but excludes those whose purposes are not altruistic.' (per Jay J (see [38]–[40] of the judgment)).

Meaning of 'interference with motor vehicle'

In *R v Maxwell* [2014] WLR (D) 95, a passenger grabbed the driver of a vehicle by the neck and from behind. The prosecution contended that it ought to be inferred that the driver had his hands on the steering wheel at the time, which meant that there had been interference with the motor vehicle within the meaning of s 22A(1)(b) of the RTA 1988. The judge was not referred to *R v Meeking* (where the defendant passenger applied the hand-brake while the vehicle was in motion and this was held to come within the offence). The judge left it to the jury that they were entitled to convict if they were sure the defendant interfered with the driving as opposed to the vehicle. This was held on appeal (by David LJ, King J and Judge Kramer QC) to be a misdirection. The interference had to be with the vehicle. Further, it was doubtful whether the prosecution's contention was right as a matter of approach to the provisions of the section.

Causing death by careless driving – custody threshold

In *R v Zhao* [2013] EWCA Crim 1060, [2014] 1 Cr App R (S) 17 the Court of Appeal (Criminal Division) (Treacy LJ, Edwards-Stuart, HH and Judge Melbourne Inman QC) quashed a sentence of nine months' imprisonment and substituted a community order with 50 hours' unpaid work requirement substituted, for a case of causing death by careless driving that was a result of momentary inattention.

The appellant pleaded guilty to causing death by careless driving. At 7.15 pm the deceased was riding a motorcycle along a carriageway. The appellant was ahead of the deceased in a side road at a junction, waiting to cross the carriageway. A car ahead of the deceased turned left into the road where the appellant was waiting. Another motorcyclist then passed in front of the appellant. At that point, the appellant emerged into the carriageway, into the path of deceased who was travelling at a proper speed and was unable to stop before colliding with the appellant's car. The deceased was killed. The expert evidence was that the appellant's line of sight was 138 metres and the deceased would have been 44–48 metres away from the junction when the appellant emerged. Having accepted that it was a case of momentary inattention, the judge considered that there were three features that took the case beyond the lowest level in the Sentencing Guidelines Council's guideline on causing death by driving, namely, the long sight line, that the appellant never glanced back to the right before or as he set off, and that the junction was a busy one.

The Court of Appeal held that, while the line of sight may at some point have become clear, it was at least at some stage impeded as part of the manoeuvre that the appellant was performing. The fact that he did not see the oncoming motorcyclist was the nature of the offence to which he pleaded guilty; and the nature of the junction was not an aggravating feature. In those circumstances, there were no aggravating features to take the case beyond the lowest category. The correct sentence would have been one of a medium community order in accordance with the guideline. However, to reflect the fact that the appellant had already served four months in prison, a community order with a requirement to perform 50 hours' unpaid work would be substituted. (The disqualification of two years and the extended driving test were left to stand.)

Buses – general damages for loss of use

In *West Midlands Travel Ltd v Aviva Insurance UK Ltd* [2013] EWCA Civ 887, [2014] RTR 10 the claimant operated a fleet of 228 buses from its Wolverhampton depot. At peak times, 205 buses had to be in service; the minimum spare capacity was, therefore, 23 buses. All the vehicles were run in rotation rather than retaining a dedicated fleet of buses in reserve. One of the buses was damaged by the negligent driving of a person insured by the respondent. The bus was consequently off the road for 31 days while being repaired. Its place was taken by vehicles from the reserve pool. Therefore, there was no question of claiming special damages to cover the cost of a replacement. It was accepted, however, that the claimant was entitled to general damages for loss of use. The issue in the appeal was the correct

method of assessment. The claimant's argument, which was successful at first instance, was for a 'standing charge' approach. This was calculated by reference to the overheads incurred across the whole of the company's fleet, rather than just the Wolverhampton deport. It thus reflected the average unit cost per bus incurred by the company in running its business. The respondent's counter submission was that general damages for loss of use should be assessed by reference to interest on capital together with an allowance for depreciation and other fixed charges referable to the damaged vehicle. On this approach, the recoverable sum fell from £3,310 to about £1,000.

The Court of Appeal (Moore-Bick, Rimer and Underhill LJJ) upheld the respondent's appeal. Lord Justice Moore-Bick gave the only judgment. His Lordships reviewed a number of admiralty and motor vehicle cases and concluded that there was no all-embracing principle governing the assessment of general damages for loss of use other than that 'an award must be of such amount as will fairly compensate the claimant for his loss. Circumstances may differ and each case has to be approached on its own facts, but it is necessary to bear in mind that the fundamental purpose of an award is to compensate the claimant for the loss of the chattel in question … as a matter of principle that is the point from which the exercise must proceed. However, as the cases demonstrate, there may be more than one way of assessing the loss caused to the owner. In a case where the owner keeps no permanent stand-by but is unable to show that he suffered any specific loss in financial terms an award calculated by reference to interest on capital, expenses thrown away and allowance for depreciation will normally provide a fair reflection of his loss because it represents the value to him of the money tied up in the chattel. It has been approved and applied in many cases and has the advantage of bring relatively easy to calculate. Despite that, it appears to be have accepted that where the owner has in fact substituted for the damaged chattel another kept as a stand-by for that purpose the court is entitled to have regard to the cost of providing the stand-by … The underlying principle appears to be that, since the owner was required to employ the stand-by in place of the damaged chattel, he has been obliged to bear the cost of making it available, If, on the other hand, the owner can make do with his existing resources, this principle does not apply … ' (para 23).

When the standing charge approach is adopted, however, there remains the question of what elements of cost are brought into the calculation. 'There is nothing (in earlier case law) to support the suggestion that in a case such as the present the claimant is entitled to damages based on a proportionate share of its business overheads generally, most of which will be unaffected by the fact that one of its buses has been taken off the road for a few weeks … The claimant's loss in this case is not represented by the average cost per bus of running its business, but by the loss it has suffered as a result of having one bus out of action.' (para 27).

The loss caused by the unavailability of the damaged vehicle in the present case was best assessed by reference to the capital tied up it, wasted expenses and depreciation. There should be no difficulty in ascertaining the current net book value of the vehicle and this can fairly be taken to be the value of the

vehicle for the purpose of this exercise. 'Wasted expenses directly attributable to the damaged vehicle may include a proportion of the cost of mandatory testing, vehicle excise licence, insurance and certain other costs … but not the cost of an "O" licence, no part of which is attributable to the damaged vehicle. Since the need for routine maintenance is mainly generated by wear and tear and degeneration over time, the wasted costs are likely to be minimal … Likewise, most of the costs of insurance is related to liabilities and losses incurred in the course of operations and is really an element of running cost. The daily cost of insuring the bus while it is in the depot should be included, but in the nature of things it is likely to represent a very small part of the total daily insurance cost for the year. Depreciation is a function of both age and wear and tear in the course of service … It is for the claimant to establish the daily rate of age-related depreciation, if it can … It is conceivable that something should be allowed in respect of the marginal cost of providing parking space, but some satisfactory basis for assessing the amount would have to be provided … (In a spare capacity, rather than a dedicated stand-by case) an award could properly be made by reference to the marginal cost of providing a replacement bus. However, that would involve a similar calculation by reference to the loss of productive use of capital tied up in the replacement and the additional expenditure incurred in making it available. Since there is no identifiable replacement, it would be necessary to use an average figure …' (para 30).

The vehicle in the present case was leased. The loss to the claimant as a result of being deprived of the bus was, therefore, to be assessed by reference to the amount of the lease, together with expenses thrown away, rather than by reference to interest on capital value.

The error of the claimant's argument was that it failed to distinguish between the cost of having a bus available and the cost of running its business. The Court of Appeal would not have interfered with the judge's award 'if he had assessed damages by reference to the interest on the average capital value of the buses employed by the claimant, together with expenses thrown away, as representing the marginal cost of being forced to use another from the fleet in place of the one that had been damaged.' (para 33).

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