

# THE RULES OF THE ROAD

## Transport law for the chemical sector

**Over the last five years, there have been significant changes in road transport law affecting the chemical sector. New offences, such as causing death by careless driving, have been introduced.**

This new legislation now forms part of an already comprehensive legislative framework which also includes The Goods Vehicle (Licensing of Operators) Act 1995 (and its attendant Regulations); The Corporate Manslaughter Act 2007; and the Health & Safety at Work etc. Act 1974. This legislative framework creates specific road transport offences many of which impact on an Operator's Licence in the event of a breach.

In 2008, causing death by careless driving became an offence. It was considered necessary to plug the gap between the charge of causing death by dangerous driving, with a maximum penalty of 14 years imprisonment, and the relatively minor offence of driving without due care and attention which, in practice, was usually dealt with by way of a fine and penalty points. The offence of causing a death by careless driving attracts a prison sentence of up to 5 years.

Authorities believed that drivers involved in fatal collisions were being charged with driving without due care and attention because it would have been difficult to secure a successful prosecution under the more serious offence of causing death by dangerous driving. The new offence reduced the burden on the prosecution in situations where a fatality was caused by the actions of the driver.

For transport operators in the chemical sector, The Goods Vehicle (Licensing of Operators) Act 1995 (the '1995 Act') and The Goods Vehicle (Licensing of Operators) Regulations 1995 (the '1995 Regulations') are possibly the two most important pieces of legislation.

Both the 1995 Act and the 1995 Regulations effectively provide a framework within which transport operators are required to conduct their business.



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Operators must ensure that they have the appropriate maintenance agreements in place, conduct regular servicing of vehicles, have sufficient financial resources in place to ensure the maintenance of vehicles etc. The regulations need to be adhered to by operators to ensure compliance.

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During the course of 2007, The Corporate Manslaughter and Corporate Homicide Act was introduced. It was designed to make organisations accountable for their actions whereby a fatality had resulted. There has been a number of high profile, but unsuccessful, prosecutions for corporate manslaughter in the past including, for example, the Herald of Free Enterprise disaster.

The new corporate manslaughter legislation is designed to make it easier for the authorities to bring a prosecution. The first prosecution under the Act has come in

the transport sector. It is important that operators in all transport sectors, but specifically in the chemical sector, are aware of their responsibilities under the Corporate Manslaughter Act to ensure that they are following their obligations to reduce risk to their employees and members of the public. Conviction under the Act can lead to unlimited fines and publicity orders which would have severe impact on operations.

It is worth noting that the Health & Safety at Work Etc. Act 1974 has been in place for a considerable period of time and provides a framework under which an organisation can be prosecuted for a breach of its health and safety duties either to one of its employees or a member of the public. Again, as is the case with the Corporate Manslaughter Act, a conviction in the Crown Court allows an unlimited fine to be imposed.

Should a transport operator be prosecuted for one or more of the offences discussed above this would have a significant impact on their Operator's Licence.

It is essential for the company to inform the Traffic Commissioner of any such conviction and it would then be for the Commissioners to decide what action to take. Should there be a serious breach, an investigation and subsequent Public Inquiry could be called with the possibility of curtailment or indeed suspension or revocation of the Operator's Licence. Any impact on the Operators Licence would have a detrimental affect on any operation.

Operators who wish to discuss these matters further can contact Andrew Sanderson at [andrew.sanderson@hammonds.com](mailto:andrew.sanderson@hammonds.com) or **0207 655 1060**.