



Welcome to the latest edition of our newsletter!

We hope you find the articles as interesting to read as we do to write.

Government feed in tariffs for solar energy have been in the news recently and, in this edition, Clare Simmons explains some of the changes. She also explores some of the wider issues affecting the renewables industry.

For our transport clients, Jared Dunbar neatly summarises the changes affecting the operators' licence regime, particularly with regard to the role of Transport Manager. We also include some pragmatic solutions for loads security from our Consultant Jonathan Lawton.



The practice goes from strength to strength, and we were honoured to be recognised for our work by our solicitor peers through the award of Liverpool Law Society's Niche Law Firm Award. Needless to say, we are already looking forward to defending our title in 2013!

We are pleased to announce the arrival of our newest member of the team, Alex Sandland. Alex's role is to head up our Litigation and Commercial Services Department, and his appointment reflects the increasing amount of commercial work we are handling on behalf of our clients; from commercial litigation, to insolvency, to commercial agreements. For those looking forward to getting to know Alex, we include a profile of him on page 4.

Other people in the news... We are proud to announce the promotion of Lucienne Sutton to the position of Director. Lucienne's appointment reflects her long-standing contribution to the practice, including the fostering of international wind-energy clients. Meanwhile, James Mannouch has been appointed as a Director of the Liverpool Law Society, and has also accepted an invitation to Chair the Society's Environmental Law Committee. James' appointment reinforces the practice's specialism in environmental law.

We are always interested in your feedback on our newsletters, and would welcome your views or comments.

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Safety of Loads

A continuing high number of prosecutions in the Republic of Ireland for insecure loads would suggest the issue remains a prominent one for transport firms. In this article, Consultant, Jonathan Lawton explains practical steps businesses can take to avoid problems. These practical measures are equally relevant for operators in the UK.

It is clear from recent reports by the RSA that load security is a continuing problem and, unfortunately, many of these incidents result in serious injury or, on occasions, fatalities.

Currently each such event is likely to be the subject of an investigation by officers of the Health and Safety Executive (HSE) and an employer might find that he is facing not only a general criminal prosecution but also a prosecution under the health & safety legislation; a situation which could result in substantial penalties if not imprisonment.



The traditional assumption in the transport industry is that a driver will have acquired sufficient knowledge about the ways to secure a load in the course of his work as a driver. In general terms this might be a fair assumption, but the fact remains that loads are lost because they were not properly secured, an error which, on the face of it, would seem to be 'driver error'.

The Safety, Health and Welfare at Work Act 2005 however has dramatically changed the chain of responsibility with the result that, in the case of an insecure load for instance, it is the employer who will have to show that the driver had all the necessary equipment and training to enable the accident to be avoided.

The employer will have to be able to show that such equipment as ropes, straps, tensioners, chains and Stilsons, are routinely checked at appropriate intervals.

The rope that is commonly used in the industry is 10mm split-film polypropylene rope. This rope will resist water, oil, and dirt with the result that it may be useable even if it looks to be in a desperate state. It does, however, deteriorate, and, of course, it has a maximum safe loading. A driver must be sufficiently aware of the strengths and weaknesses of the rope that he is given to use to secure a load so that he can reject a rope that might appear to be unsafe.

Nylon straps, which are normally used with a tensioner, should have the maximum safe load displayed on them. A driver must know what the maximum safe loading is and an employer must ensure that that information is available. Straps can be very susceptible to cutting and it is important to ensure that they are not being passed over a sharp edge. An employer must be able to show that drivers are aware of this and, where necessary, that they are provided with edge protectors.

Tensioners, of course, rely on ratchets and once they get worn they can slip and release the tension. Many load losses are the result of a loss of tension in the securing ropes or straps. Drivers must be encouraged to look for signs of wear, and, perhaps more importantly, not to use defective straps.

Chains are only suitable for certain types of load, as, when tension is applied they can easily cause damage. Chains should always have a safe load rating and drivers must know where to look for this information. 'Stilsons' will slowly wear in use and they should not be used if there is any indication that a ratchet may not hold.

It is also important to remember that loads inside 'curtainloaders' may not be secure. In the first instance, the operator should ascertain what weight the curtain will withstand in the event that the load is thrown against the side. Light cartons may present no problem, but heavier items will normally need to be secured to the vehicle.

It may well be difficult to persuade an experienced driver that he has anything to learn about load security but, as with many health and safety issues, it is the employer who will have to explain how the insecure load could have occurred, and it will never be sufficient for the employer to say that he relied on the skill of the driver unless he can show that he had reason to be satisfied that the skill was sufficient.

Yet again, therefore, it is a question of training. Training of this sort need not take any great length of time but the trainer must be competent, that is to say sufficiently experienced, and above all else there must be a written record of the fact that training was given. There should also be purchase records for the ropes, straps and chains and there should be a system of routine checks, these checks being recorded.

To discuss load security in more detail, contact the Transport Team at Dyne Solicitors on 01829 773 100.



Renewables – confusion reigns

DSL's Head of Property and Renewables, Clare Simmons, takes a measured look at some of the current changes affecting the renewable industry.

Few will have escaped the recent headlines announcing the halving of the Feed In Tariff rate for small scale solar PV generation. By reducing the payments from 43p per kWh to 21p, the effective rate of return for most domestic or agricultural scale installations has extended payback times to nigh on 20 years – not far off the average lifespan of the equipment. Predictably, the companies which install the equipment are outraged. There has also been a degree of schadenfreude in the press that the middle classes with money to burn are no longer able to enjoy a guaranteed return on investment of circa 8% per annum, at a time when the average savings investment rate is less than half that figure. And certainly there is the legitimate point that all consumers, including those who are least well off, are paying for these subsidies in a levy on the electricity bills they pay.

But it is more interesting to ponder what this government decision means for the renewables industry as a whole. For while nearly everyone expected the FIT levels to drop in April, the amount of the decrease and the speed did take the industry by surprise. Indeed the “consultation period” for the change ends on 21st December, 9 days after the changes come into effect! “Foregone conclusion” screams the industry. With the timescales involved in designing installations, ordering equipment, shipping, installing, connecting and processing the paperwork taking months, the period of 6 weeks from announcement to cut-off date has left would be customers having entered into contracts which will produce far lower rates of return than they feel were promised to them at the date of signing. It is not surprising therefore that this short period is one of the grounds for a judicial review being brought by a consortium of solar providers.

Another perspective is that of employment. The solar sector has been booming. Yes, a proportion of that is artificial given the high levels of subsidy, but the effect on jobs is non-negligible. The industry currently employs 25,000 people and that in turn generates tax revenues and a decrease in state dependency. Many of these installers have re-trained in this sector following the slump in the construction industry and spent considerable time and money showing the sort of resourcefulness praised by governments of all colours. What now for them? And who, in the future, will be willing to invest in emerging sectors when policy shifts so abruptly?

The question as to the effect of the change in policy on those less well off in society is also not as clear as the Government has at times made out. Certainly the levy on the energy costs weighs proportionately more on those who are the most vulnerable; the elderly, the young and the sick. But the high levels of subsidy have enabled the expansion of so-called “rent a roof” schemes. Under such schemes, for no capital outlay, housing associations or householders have been able to use the free electricity

generated PV panels, with the installer taking purely the subsidy as its return. The drop in the subsidy will mean that such opportunities are lost as installers withdraw from the market. While as a lawyer I have my concerns about the form of many such leases, they do offer those who are less well off a means of reducing their electricity bills.



Lest it be said that this article conflates what is happening in the solar industry with the whole of the renewables sector, I should also mention a recent decision in Norfolk in which the Environment Minister, Caroline Spelman, has withdrawn £16 million of PFI funding to a proposed Energy from Waste plan, in direct opposition to the current aims of her department which remain “to support the role of energy recovery from waste within the waste hierarchy and aim to improve understanding of this role.” Add to that the resistance of other local Conservative MPs, and those companies who took the risk of tendering for the project and taking it through the tortuous planning and permitting process are likely to be thinking twice before tendering for similar schemes.

Then again, EU requirements forced the government to reduce its proposed large-scale Renewable Heat Incentive rates from 2.7p/kWh to 1.0p/kWh, and delayed implementing the scheme, again denting consumer and business confidence. Many are hoping this that the scheme is only delayed and not effectively killed off. Chris Huhne, at the recent Renewables UK Conference held in Manchester said he wanted to look at what the Government can do to encourage the growth and jobs created by renewable energy. Well, let's see.

For more information on how the changes might affect your home or business, please telephone Clare on 01829 773 103 or e-mail her at cls@dynesolicitors.co.uk

New Operator's Licence Regulation: in force 4 December 2011

EC Regulation 1071/2009 came into force on the 4th December 2011 thereby changing the rules on operator licensing for goods vehicles. The main areas of change are as follows:

Nominated Transport Manager

The need for the holder of a Standard Licence to have a Transport Manager is unchanged. All Transport Managers must still be of good repute and be professionally competent. However, they now have to fit within one of two categories:

- (i) An 'internal' Transport Manager, or
- (ii) An 'external' Transport Manager.

Under the new Regulation, the 'internal' Transport Manager must meet three requirements:

- (i) Effectively and continuously manage the transport activities of the Operator.
- (ii) Have a genuine link to the Operator (such as being an employee, director, owner or shareholder).
- (iii) Be resident in a European Union country.

Under the new Regulation, it is possible for the same person to act as an 'internal' Transport Manager for more than one Operator, and therefore be named on more than one Operator's Licence. However, in each case, the Traffic Commissioner would need to be satisfied that the person had a genuine link to the Operator and satisfied the requirement of effective and continuous management.

Under the new Regulation, the 'external' Transport Manager must have effective and continuous management responsibility for the transport activities of the operator and:

- (i) Be resident in a European Union country.
- (ii) Have a contract with the operator that specifies the tasks they perform as Transport Manager.
- (iii) Only work for a maximum of 4 operators with a combined maximum total fleet of 50 vehicles. (This means that across all four operators, they cannot have responsibility for more than 50 vehicles. The Department of Transport states that it may allow Traffic Commissioners to set lower limits in individual cases.)
- (iv) Each Transport Manager must be responsible only to the Operator and not anyone else.

For 'external' Transport Managers, the new Regulation requires a copy of the Transport Manager's contract to be provided with the licence application. Also, the Transport Manager needs to sign a formal declaration of core responsibilities.

Disciplinary action against Transport Managers

Previously Traffic Commissioners did not have the power to disqualify a Transport Manager as such. However, the new Regulation allows Traffic Commissioners to take direct regulatory action against a Transport Manager, by declaring them 'unfit' at, for example, a Public Inquiry. That declaration could remain in place until the Traffic Commissioner deemed the professional competence or good repute requirements had been restored.

If declared 'unfit', a Transport Manager would also be disqualified from holding that role for an operator in any other Member State. A Transport Manager would, in effect, be subject to an EU-wide ban until their repute is restored.

Financial standing

The main rules concerning financial standing remain the same. However, changes have been introduced concerning how to prove this 'financial standing' requirement.

The financial standing for Restricted Licence holders is not covered by the Regulations and remain a matter for the Traffic Commissioners.

Under the new Regulation, financial standing for new Standard Licence applicants have to be satisfied by either:

- (i) A set of certified annual accounts or
- (ii) A certified opening bank balance or
- (iii) A financial guarantee (e.g. an overdraft facility or an invoice finance agreement).

Existing operators continue to have five yearly checks, as before, but any checks after the 4th December 2011 will adopt the new rules.

The Senior Traffic Commissioner issued Guidance and Directions in December 2011 indicating that, with effect from the 1st January 2012, operators of Standard Licences require lower amounts of £7,700 for the first vehicle and £4,200 for each subsequent vehicle. Revaluation of these amounts will take place annually. The amounts required for Restricted Licences remain unchanged at £3,100 and £1,700 respectively.



Certificates of Professional Competence

From the 4th December 2011, the national CPC was abolished. The new Regulation requires all new CPC examinations to test knowledge in both national and international operations.

Current National CPC holders wishing to carry out International work in the future are able to convert to the International CPC qualification by an additional qualification. They are not required to re-sit subjects they have already qualified in.

Under the new Regulation, holders of Standard National operator's licences have to have a Transport Manager with either:

- (i) An International CPC, or
- (ii) A National CPC obtained before 4 December 2011, or
- (iii) An exemption through the continuous management of a transport undertaking for the period of ten years before 4 December 2009, or
- (iv) An existing recognised third party qualification.

The Department of Transport proposes not to allow any new claims of grandfather rights after 4 December 2013 as, after this date, the DoT considers the required knowledge will not be up to date. So, in practice, after that date a Transport Manager would not be able to enter the industry and claim the '10 year exemption': they would need to pass a CPC exam.

Existing Operator's Licences remain valid and Standard National licences will continue to be issued.

Conclusion

The above provides a summary of the main affects of the new Regulation but is not exhaustive. It is always worth taking formal legal advice on issues you have.

To discuss the changes in more detail, please telephone Jared on 01829 773 105 or e-mail him at jid@dynesolicitors.co.uk



Solicitor Profile - Alex Sandland

1. Hi Alex! So you've decided to join the award winning team at join Dyne Solicitors (DSL)! What prompted your decision?

The proximity and variety of lunch options in Tattenhall was very compelling! I had also heard many excellent reports about the work undertaken at DSL. I was persuaded by the opportunity to apply my experience and skills to a growing practice with an exceptional reputation. After early discussions it was clear that we were a good fit!



2. What role will you be taking up at DSL?

I shall be heading the Litigation and Commercial Services Department as Director and senior solicitor. I am excited to be joining the other Directors in steering the firm through its development and expansion.

3. It seems all lawyers need to specialise these days; how do you spend your time?

I am principally a litigator specialising in civil and commercial disputes. I spend my time winning cases!

4. And what sort of cases do you most enjoy handling?

I particularly enjoy complex and unusual cases - and especially where the odds are stacked against the client. I have experience in contractual, property and commercial disputes and I am also able to advise in matters relating to insolvency, negligence and contested estates.

5. How would you describe your client ethos?

I am committed to the expectations of the client and I always conduct my cases with the ultimate objectives in mind. I prefer a direct and proportionate approach to litigation and I believe that the clarity of the advice is paramount. There is no room for blagging clients - any case must be dealt with in a cost-effective and efficient manner. In today's world - confidence is a luxury that clients expect.

6. What tips can you provide to a business thinking of using a lawyer?

It is unfortunate, but inevitable, that businesses will often become distracted by the nuisance of the law. If you are thinking of using a lawyer then you will definitely need one. We are here to help and we are committed to the long-term. It is in our interests to look after you - whether you require pro-active, preventative measures, re-assurance or even a sledgehammer for the nut. Talk to us. Early, effective and specialist advice will ultimately save you time, money and headaches.

7. Is there anything businesses can do to prevent commercial disputes arising in these uncertain times?

Seeking advice at an early stage will increase the prospects of achieving a prompt and less-expensive outcome. DSL are positive in encouraging mediation and negotiation. Businesses should not forget that favourable Terms and Conditions and ongoing compliance are essential. Also, the effect of a simple, well-considered and carefully drafted letter, on headed paper, should not be underestimated.

8. Finally, when you're not spending your days as a lawyer, what else do you like to do?

The midnight oil burns bright at DSL. There is no time for play! In the minimal spare time available I enjoy racking up runs and taking wickets at Tattenhall Cricket Club. I also share the pain of many other Aston Villa fans through every season which is always littered with promise but eventually disappoints. Aside from my legal and sporting chores, I sometimes get time to see my wife and children for some dinner and TV!

