

**Lucy Radley offers a guide to avoiding the most damaging kind of penalty from DVSA officers:**

**S-marked prohibitions**

**N**o operator wants to find their vehicle the subject of a prohibition (PG9), but perhaps the most feared variety - and rightly so - is the 'S' marked roadworthiness prohibition. DVSA states that an 'S' marking is given "when the examiner believes a severe defect is due to significant breakdown in the vehicle's maintenance procedures", and that doesn't just mean at the workshop end - a great deal of responsibility falls on the driver as well. But how much, and what happens if an operator's trust in its staff turns out to be misplaced?

While full and detailed guidance can, as ever, be found in that road transport bible known as the Guide to Maintaining Roadworthiness ([www.is.gd/nofine](http://www.is.gd/nofine)), DVSA has produced another, available via [www.is.gd/safice](http://www.is.gd/safice), entitled 'Roadside vehicle checks for commercial drivers.' This outlines, in far simpler terms, which parts of the vehicle drivers are responsible for as part of daily walk-around checks, what they must do about any discovered defects, and where the operators' responsibility lies in exerting overall control over the roadworthiness of the fleet.

So what kind of defect is likely to pick up an 'S' marked prohibition? According to John Heaton, solicitor with Backhouse Jones, there are five basic rules of thumb.

- Long-standing defects that should have been detected and repaired at the last safety inspection
- Defects or issues which should have been detected at the first use or daily walk-around check
- Defects where the performance or handling of the vehicle, or the



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vehicle's warning systems, would have made the defect apparent to the driver

- The number and nature of defects indicates a significant failure in maintenance
- Or, in the case of a prohibition issued at annual test, the nature of the defect(s) observed were such they should have been found before the vehicle was presented.

However, DVSA does accept that some defects should not be 'S' marked. Comments Heaton: "This is where defects may be of a random nature, such as light bulb failure or a new fracture in a road spring - those which have arisen by random failure of a component, and where it is also apparent that it would not have been noticed by the driver.

"In cases where DVSA is not able to say whether the operator, driver or maintenance contractor is culpable, then the defect should also not be 'S'

marked," he adds. In practice, examples include defects to the underside of a vehicle, or out of the driver's view in other ways during daily checks, for example damage to the sidewall of an inner drive tyre. These may still attract a prohibition, but not an 'S' marking.

If a vehicle does receive an 'S' marked prohibition, the driver will be given a copy of the PG9, and should give it to the transport manager or operator. If it is an immediate prohibition, obviously roadside repair or recovery will be necessary. "Further investigation is likely, and inevitable by DVSA policy," John Heaton warns.

A full public inquiry is not, however, inevitable, although a report will be sent to the traffic commissioner, which may lead to a PI and/or a driver conduct hearing. DVSA is likely to visit the operator to examine vehicles and audit compliance systems - a visit which may be unannounced. "In a really serious case, it may wish to interview the driver



## DVSA'S VIEW

Dave Wood, enforcement policy manager at DVSA, adds one more issue to the list of 'S' marked prohibitions: "Poor workmanship which should have been apparent to the repairer".

He elaborates: "Last year we reported 676 'S' marked prohibition encounters." The top three defects triggering these were: condition of tyres, road wheel insecurity and insecure load.

"The majority will be the drivers' fault, either not carrying out an adequate walk-around check, or using a vehicle with a safety defect they should be aware of," he says. "However, there will be many occasions where the operator is clearly responsible, where poor maintenance systems or standards were found."

When asked what improvements he would like to see from fleet engineers to reduce the number of 'S' marked prohibitions, he replies: "Improve walk-around checks. On many occasions drivers do not carry out a proper check, and so they miss obvious safety defects." Next on Wood's list is: "Improve defect reporting and rectification. We see drivers continue to use a dangerous vehicle even though the defect has been identified," he tells us. "This may also be encouraged by the operator to get the load delivered and the vehicle back to base." Finally, operators simply need to do things by the book provided. "Ensure that there is a robust preventative maintenance system in place; that is, follow the Guide to Maintaining Roadworthiness."



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and a company spokesman - a director or transport manager - under caution," Heaton points out. "This will happen if they are minded to prosecute because the defect is really serious, or there has been an incident."

If there is a PI, however, there are definitely things an operator should do in preparation. Top of the list comes a detailed root cause investigation for any incident, and a careful look at maintenance and record-keeping.

"Levels of responsibility between operator and driver for the use of the vehicle in a defective condition are important," he adds. "Both operator and driver are responsible, but the reason for the use of the vehicle on that day in a defective condition is a key question to be answered." The traffic commissioner will expect the operator to take prompt action to avoid repetition of the situation.

Traffic commissioners may, if the operator has a good record, give written warnings about failures that have led to

PG9s. They may also hold a preliminary hearing if they believe the operator can deal with the matter by giving fresh assurances about compliance and training - for example, offering to undergo an audit in future, so the operation submits to outside scrutiny, may be helpful. Most commonly, though, the operator will be called to a full PI, which could lead to a suspension or revocation of its O-licence.

An 'S' marking on a prohibition will also have particularly adverse effects on an operator's OCRS score. "The OCRS scheme scores an operator's compliance risk in the two areas of roadworthiness and traffic over a three-year period," Heaton explains. "Different types of breaches have weighted scores, and S-marked prohibitions carry double points. The scores are banded by a traffic light system and weighted, reducing annually by age."

The ultimate solution to all this is to avoid picking up a prohibition in the

first place, never mind an 'S' marked one. "Operators with really good maintenance systems, and records of that maintenance, are most likely to avoid prohibitions and 'S' marking," John Heaton points out. "Drivers are regarded by the scheme of compliance as part of that maintenance system when they perform and record their daily walk-around checks and, when driving, they are expected to be alert and stop if they believe the vehicle has become defective in use; not just press on."

Remember, however, that the 'S' marking of a prohibition is only permitted in certain circumstances. "If the drivers fail to see something which they could not reasonably be expected to see, while the vehicle may still receive a prohibition, DVSA should accept it should not be 'S' marked," Heaton concludes. "Nor should the driver be prosecuted, reflecting long-standing principles of moral blamelessness for a driver in this situation." **TE**