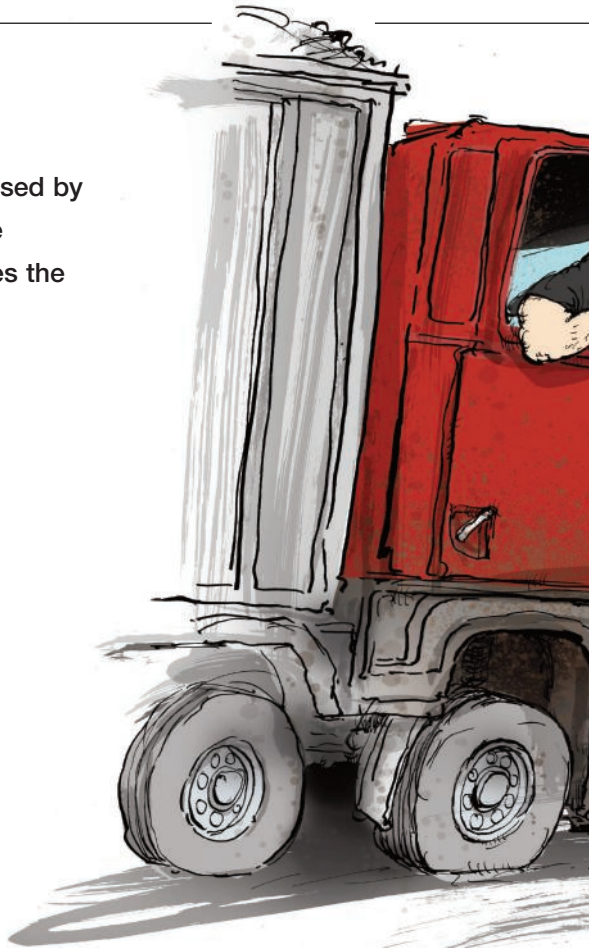

SAFE or

Additional compliance burdens – such as those imposed by London's low emission zone, FORS and CLOCS – are already affecting operators. Andrew Woolfall examines the new reality and the implications for justice

For years, compliance has been something that affected all operators equally. Legislation covered all vehicles and operators regardless of their location and the contracts they worked on, with 'best practice' being the benchmark. However, additional requirements are increasingly being imposed on some operators that depend on where vehicles are working and who for.

Breaches of these schemes may lead to financial penalties (by way of civil enforcement) or a denial of the opportunity to tender for work. Worse still, they may result in loss of existing contracts. This represents a new genre of compliance enforcement, adding to an already highly regulated picture.

Commercial vehicle operations – goods or passenger – are among the most tightly regulated of businesses. In the 21st century, UK legislation invariably starts at a European level, with regulations and directives that govern everything from how vehicles must be constructed and tested, to how they are used, in terms of operator licensing.

Below European legislation sit domestic rules for each member country. These incorporate European requirements into national laws, also adding national requirements. Within Great Britain, these primarily include the Construction and Use regulations, rules on plating and testing, and operator licensing under the traffic commissioners. There is also a raft of other legislation affecting commercial vehicle operators, such as health and safety, and environmental.

Throughout, however, this legislation affects all vehicles and operators equally, with few exceptions. The law is enforced through the courts – via the DVSA (Driver and Vehicle Standards Agency), police, HSE (Health and Safety Executive), etc – and the O licensing regime via the traffic commissioners who regulate to best practice. Organisations such as the DfT (Department for Transport) and DVSA assist in this regard, with publications such as 'The Guide to Maintaining Roadworthiness'.

Granted, there has always been additional local regulation through, for example, weight restriction orders that prevent certain sizes of vehicle travelling along designated roads or over bridges. But these orders have been based on protecting the environment and, again, have applied equally to all vehicles above a certain size. They certainly have not required vehicles to be modified.

Change started with the introduction of the low emission zone (LEZ) in London, which further regulated the use of vehicles, not just on specific roads but across a whole region. The scheme was designed to encourage a clean-up of the most heavily polluting vehicles in London. Although perfectly lawful, in terms of their design, construction, roadworthiness, MOT, etc, they would attract financial penalties if they ventured unmodified into the area.

Lawful vehicles?

While the London LEZ is the only scheme of its kind currently in operation, many other major cities have indicated their interest in setting up similar schemes. So operators may find that their lawful vehicles are effectively prevented from working, due to the economic impact of 'fines' every time their vehicles move within the zone.

Arguably even more intrusive, Transport for London (TfL) has also recently announced its intention to introduce a Safer Lorries Scheme. Currently, when first registered, many commercial vehicles are required to have specified mirrors and sideguards. However, there are numerous exemptions, such as construction vehicles and plant. Further, retrofitting to older vehicles is not required. But the new TFL scheme, due for introduction in

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2015, will (subject to very few exemptions) require all vehicles operating within London to be fitted with this safety equipment. So vehicles that are perfectly lawful and could pass an MOT will be required to have additional items (mirrors and side guards) fitted. Again, financial penalties will hit the non-compliant.

And there's more. Where the Safer Lorries Scheme and LEZ look to impose penalties on non-compliant vehicle operators, another trend has developed concerning best practice and accreditation schemes. These are voluntary, with operators able to choose (or not) membership and no direct financial penalty associated with any lack of accreditation. However, many large infrastructure contracts expect operators to have accreditations in place – and failure to hold the charter mark renders operators ineligible to tender for work and subject to loss of existing contracts if accreditation is withdrawn.

These schemes bring with them new auditing regimes covering both an operator's vehicles and its systems and procedures. Perhaps the best known is FORS, the Fleet Operator Recognition Scheme. Again, this was originally introduced in London, driven by TfL. It quickly became mandatory if an operator wanted to undertake work on large projects such as Crossrail. However, given that many construction companies work on such infrastructure projects, it is no surprise that they, too, have adopted FORS and now require operators to hold accreditation for any of their projects. Accordingly, vehicles destined for construction sites across the UK are now required to hold this qualification, with 'non-compliant' operators being turned away, and deliveries refused.

FORS has three levels of recognition – bronze, silver and gold. These include requiring the operator to have 'proper' systems and procedures for checking driver licensing and training. Performance measures also cover fuel usage and CO_2 output, and vehicles must be fitted with warning equipment. There are annual audits and if an operator fail, recognition can be withdrawn.

FORS, CLOCS and EFRS

Meanwhile, the construction industry also has its CLOCS (Construction Logistics and Cyclist Safety) scheme, aimed at protecting vulnerable road users. Many local authorities are also now backing the Ecostars Fleet Recognition Scheme – aimed at promoting efficient and cleaner operations for HGVs, buses, coaches and vans. This rules on fleet composition, fuel management, driver skills, vehicle specifications and preventive maintenance, as well as support systems and performance management.

All such schemes are driven by a laudable desire to improve road safety, the environment and transport's reputation. However, they all add an extra level of compliance burden – including vehicle adaptation – for operators. While their existing systems, procedures and vehicles may be satisfactory for DVSA and the traffic commissioners, they may not be for the schemes.

This raises several issues, the foremost being the extent to which there should be consistency across schemes and geographies. Many operators might take the view that one consistent set of rules would be better than a plethora of schemes.

There is also the question of whether these new requirements might usurp the courts and the traffic commissioners. If local and regional authorities determine what vehicles they allow, non-compliant operators might have to cease trading. Similarly, if accreditation schemes impose higher standards than those of DVSA, operators may well find 'justice' far more draconian and summary than that currently meted out by the traffic commissioners.

While we might yet be some way from such a compliance regime, if these trends continue – and more areas and contracts require continued accreditation – then many perfectly legal operators may struggle to find work.

Andrew Woolfall is with transport law firm Backhouse Jones