

Legal Torque

DISTANCE LICENCE OFFENCES

- Offences Under the Road User Charges Act 1977 -

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- Michael Jamieson-

The distance licence offences contained in the Road User Charges Act 1977 ("the Act") are offences which never cease to catch out truck operators and owner drivers. This is not necessarily because operators are neglecting their responsibilities or duties under the legislation, but rather, it is because of the strict requirements of the legislation together with the reality of operating a busy transport business. Add to this the human element and unavoidable breaches occur. Sometimes operators (or even drivers for that matter) are not even aware that they have committed a breach under the Act, until they receive an infringement in the mail.

The charges that I am talking about include things like, exceeding the weight and/or distance on the distance licence, operating with an inaccurate distance recorder, not displaying a distance licence and having a faulty hubodometer.

The maximum fine for these offences is \$3,000 to \$15,000.

The penalty for these offences is generally a maximum fine of \$3,000 or \$15,000 fine where

the offence was committed by the owner of the vehicle.

The Act does not distinguish between the many particular circumstances of each breach.

Take for example a situation where a driver is given a consignment note for a container to be transported. The consignment note records the weight of the container but the container as it turns out is heavier than what was specified on the consignment note. A fine is issued for being over the weight stated on the distance licence. There is no absence of fault defence under the Act, and so the infringement ticket cannot be disputed on the basis that the consignment note was relied on.

In the past, the attitude of the Courts was to ensure that any fine reflected the responsibility that operators of heavy motor vehicles had in their use of the road and damage that heavy motor vehicles caused. The practice adopted by the Courts was a fine of approximately three times the amount of revenue avoided.



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This formula was criticised in **Binning Concrete Pumping Services v Ministry of Transport**.

The Judge in that case said in respect of the formula, that if such a straightforward approach was intended, the legislation would have made some provision for it and it would have been written into the Act itself. The Judge continued that whilst the three to one formula may be a good guide for Judges when arriving at an appropriate penalty, it was nevertheless important to have regard to the particular circumstances of each particular case and take those circumstances into account.

The Courts now do take into account the particular circumstances of each case. I am frequently seeing fines under section 23 of the Act range from nominal to substantial, depending on a variety of factors. Because these offences are absolute (in other words there is no absence of fault defence), the Act catches people across a whole spectrum of guilt. It will for example, catch people who deliberately set out to evade their obligations under the Act. Ordinarily, when these matters proceed to Court, it is difficult to persuade the Court that the fine should be nominal. Equally, the Act catches operators who are otherwise conscientious and effective operators, and where the breach was unintentional.

Although there is no absence of fault defence, many operators are able to point to a total absence of fault, and this is extremely useful when putting forward submissions in consideration for a low fine.

Some mitigating factors which will often result in a nominal fine include:

1. That there was no suggestion that the failure to obtain a distance licence was an intentional act designed to avoid paying the road user charges;
2. The relevant road user charge was paid immediately thus resulting in no loss of revenue to the Government;
3. The operator or driver has very few or no previous convictions;
4. There is an absence of fault by the operator or driver.

We strongly suggest that, in the event you receive any infringements, you contact either National Road Carriers or Fortune Manning.

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