


Legal notes

Tail wagging the dog

As Geoff Ashcroft and Graham Black find out, staying within the law when towing a trailer for business use is a complex subject, second only to trying to understand the inner workings of the female mind.

If you believe manufacturers' marketing hype – and we at **EARTHMOVERS** often do not – a 2.7-tonne mini-excavator on a trailer or a 3.5-tonne compressor can be towed by a standard vehicle, by someone holding a regular car driving licence. There are even some claims made by PR people that such machinery is 'easily transportable'. Well, that was enough to make us scratch our collective heads and take a closer look at the regulations governing this common practice within the industry.

Our conclusion is that such manufacturers are wrong. There is even a whiff of suspicion that they know that they are wrong, but they continue to provide misleading information that contributes to an increasing number of their customers ending up in court. This is going to come as a shock to many, but it is very difficult to legally tow a decent-sized mini-excavator in the UK for business purposes with a standard vehicle and with a standard licence.

Our advice is to take a good look at your business's towing requirements and either fully comply with drivers' hours regulations, or re-arrange your affairs to take best advantage of the loopholes that exist. That's right folks; the Authorities will be looking to see if you have a tachograph fitted to your double-cab pick-up or Transit van when towing a trailer for commercial purposes.

But let's start at the beginning. The ability to tow a trailer using a 4x4, car, van or pick-up depends on several factors. Perhaps the most critical element is the type of driving licence the individual holds. As the entitlement to tow varies according to when the driving test was taken, the key point is that younger drivers operate under a different set of guidelines to us oldies.

The second element in the equation is the towing capacity of the vehicle, which can be found by doing some simple mental arithmetic.

Above: Most Land Rovers offer the maximum 3.5-tonne towing capacity available to some car drivers, but that doesn't mean that it is safe and legal to tow such a weight.

The third, and much cloudier, aspect is what you're doing with the trailer. If you're towing commercial goods for hire and reward the chances are that you'll need to record drivers' hours, which nowadays means an electronic tachograph system. But there are a few exemptions, which will be explained later.

Before we look at these factors in more detail, European and British bureaucracy comes with its own language.

Maximum Authorised Mass (MAM) is the term used to describe the maximum gross weight of a vehicle or a trailer including the load being carried. This is also known as gross vehicle weight or



Left: The weight and dimensions of construction plant are very different to cars. Specialised plant trailers designed for the application offer the best way forward.

A category O2 trailer is the most common found on UK and European roads behind anything but a lorry. An O2 is a braked trailer with auto-reverse and over-run brakes that can operate at an MAM up to 3500kg. The O2-type trailer comes in all shapes, formats and sizes – some have up to three axles. Though it stands to reason that if you want to maximise your carrying capability, the trailer you pull needs to be manufactured light enough, yet strong enough to withstand being operated at an all-up weight of 3.5 tonnes.

Beyond this type of trailer the category switches to an O3-type and gains large goods vehicle status, which is outside the scope of this feature and of standard driving licences.

But of course you cannot simply load the trailer up to its maximum permissible weight and drive off; you need to consider the towing vehicle. A simple rule of thumb is to subtract the towing vehicle's MAM from its GTW, the remainder being a permissible MAM for the trailer. These figures can be found in the vehicle's handbook and also on the vehicle identification number (VIN) plate.

The Vehicle and Operator Services Agency (VOSA) tells us it is permissible to tow a trailer with

permissible maximum weight. It will be shown on a metal plate or sticker fitted to the vehicle, usually under the bonnet.

The plate should also show a gross train weight (GTW), or gross combination weight (GCW), which is the all-up total of the laden vehicle and laden trailer (the MAM of the combination). Plates on commercial vehicles – and that includes double-cab pick-ups – will also show maximum permissible axle weights.

TRAILER TYPES

Trailers fall into three basic categories: a category O1 trailer is a straightforward unbraked unit up to 750kg MAM. It could be made of balsa wood, sticky-backed plastic or the remnants of a polystyrene container, and it will have the smallest, most inadequate looking wheels and tyres you ever did see. Of course, it will lack the one key ingredient needed to exceed the 750kg MAM threshold – brakes.



Above: With a decent sized mini on board, the gross weight of this trailer is approaching 3.5 tonnes. Towing it with a vehicle lighter than this will require a careful risk assessment.

a plated gross weight that is higher than the towing capacity of the vehicle, as long as the combined weight of the vehicle, trailer and load does not exceed the gross train weight. This applies even if adding the two gross weights together exceeds the train weight figure, says VOSA, because this relates to the actual 'in use' weight of the vehicle and trailer combination including any load.

This point illustrates how difficult it has been to get straightforward answers to our questions on this subject. VOSA is technically correct in what it says, but remember that in this case the agency is only talking about permissible towing weights. Towing an empty plant trailer behind a chunky vehicle is likely to get you pulled by VOSA, not to check weights, but to check that you are recording drivers' hours correctly. The key point regarding tachograph regulations (see below) is that they are not based on actual weights, but theoretical maximum weights.

The regulations also demand that all trailers, including unbraked ones, must be clearly marked with their MAM. And of course, with a plate in situ, the actual weight can be checked at any time by the police or other authorised person at a weighbridge. There is no requirement for any of these trailers to display their unladen weight, so the emphasis is on the driver to check the empty trailer on a weighbridge. Guesswork and ignorance are no substitutes for knowing the law and having accurate information available.

LICENSED TO TOW

Drivers who passed a car test before 1 January 1997 keep their existing entitlement, although their original type A pass will have been reclassified into a category B and B+E, along with category C1 and C1E on their new EU-style licence. This allows a GTW of 7.5 tonnes, including a category O2 trailer.

These older drivers can also tow a type O1 trailer behind a 7.5-tonne truck, for example to carry a roller or small compressor.

However, things are a lot trickier for drivers who passed their car test after 1 Jan 1997 – now mostly in their 20s and 30s – earning just the basic category B entitlement. This allows a GTW of just 3.5 tonnes with an O2 trailer, limiting these individuals to towing the likes of a micro or one-tonne mini-excavator. These drivers can also tow a type O1 trailer behind vehicles up to 3.5 tonnes, providing a maximum GTW of 4.25 tonnes.

If the 3.5-tonne GTW with an O2 type trailer is going to be exceeded, then the driver will need to pass an additional category E driving test, to give them a B+E entitlement on their licence.

TOWING VEHICLES

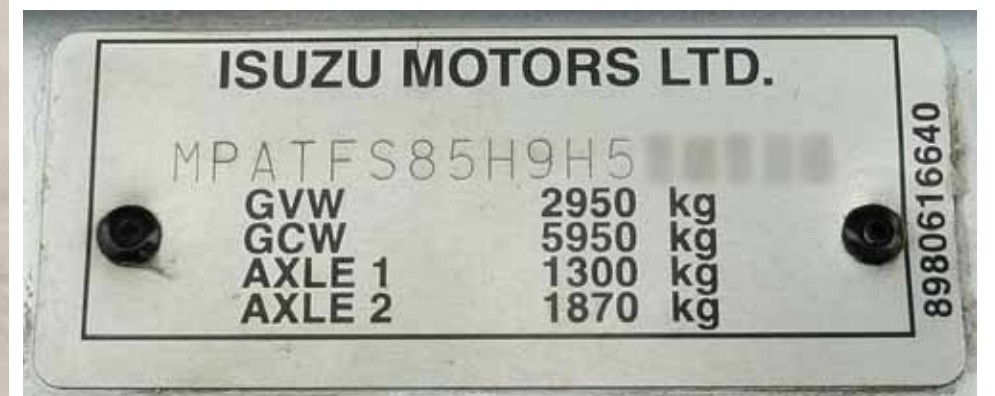
Towing vehicles come in all shapes and sizes, but the recent surge in interest in double-cab pick-up trucks – partly through their commercial vehicle tax status combined with four-door practicality – has resulted in them being commonplace throughout the industry. But their towing capacities fall some way short of the urban myth of 3.5 tonnes.

Nissan's latest 2.5dCi Navara, for example, can tow a trailer with a MAM of 2600kg, while Mitsubishi's L200 Long Bed can handle 2700kg. But those with Toyota Hilux models can only tow 2250kg. Perhaps one of the best of the bunch is



Main Picture: This combination has a theoretical gross weight of more than 3.5 tonnes and is being used for business purposes; the chances are the vehicle will need a tachograph.

Right: To calculate the maximum gross trailer weight, take the maximum weight of the vehicle (2950kg) from the gross combination weight (5950kg); answer three tonnes in this case.





Left: This trailer weighs nearly 3.5 tonnes, which probably means that an O-licence is required to be held by the enterprise that tows it on the road.

the muscle and the capacity to cope with such tasks. Land Rover's Range Rover, Discovery and Defender models comfortably handle a 3.5-tonne theoretical maximum towing limit. Others include Mercedes' M-Class, VW's Touareg and Mitsubishi's latest long-wheelbase Shogun – this is not a definitive list, but highlights some of the options available where all-out towing capacity is the key criterion.

Drivers with a standard licence, who passed their test after 1 Jan 97, are specifically banned from towing anything heavier than the unladen kerbside weight of the towing vehicle. On the subject of safe towing weights, there is no specified relationship in UK law between the weight of the towing vehicle and the weight of the trailer. However, a ratio of 85% is often given as a guideline to ensure the towing vehicle remains heavier than the trailer and its load.

This is a commonsense measure in the vast majority of circumstances. Although a Land Rover, for example, can tow a maximum of 3.5 tonnes – which could be heavier than the vehicle itself – if involved in an accident it would be difficult to see how the driver might convince the police and courts that this is an inherently safe working practice.

It would be the equivalent of defending a speeding fine by stating that the manufacturer of your car confirms that it is capable of doing over 100mph.

Isuzu's Rodeo, which is rated for a 3000kg towing capacity and is matched by Ford's Ranger and Mazda's BT50 double-cab pick-up. Nissan's 3.0-litre V6 diesel Navara has also joined the three-tonne class, but with a seven-speed auto box and 230hp, you'll need that towing capacity just to pull its own fuel bowser.

Another popular vehicle for towing, particularly for utility companies, is the ubiquitous Transit van. There are so many different models available, including panel vans, drop-sides and tippers, that the gross train weight for the range extends from

3.5 to 6.5 tonnes, with towing capacities up to a maximum of 3.0 tonnes.

It is up to the driver to inspect the VIN plate and establish a maximum towing figure, but the only real way is to visit a weighbridge when laden to check weights. Remember that such vans are likely to carry significant weight in the back too, therefore reducing the towing capacity.

It stands to reason that good towing practice should always take into account the inevitable effects on vehicle handling, braking and general stability while towing a trailer. Many large 4x4s have

A well-matched combination of towing vehicle, trailer and mini-excavator. However, more effort is required on the positioning of the tie-down straps.



Above: Transit-type vans are commonly used to tow compact construction equipment, but there is such a variety of models available in the range that maximum towing capacities vary considerably.

TACHOGRAPHS

If the vehicle and trailer combination has the theoretical capacity to exceed 3.5 tonnes MAM and the outfit is used for commercial purposes – and that covers just about anything other than strictly private use with no payment involved – then it falls within the scope of the EU Regulation EC561, covering the recording of drivers' hours and the use of tachographs.

There are a number of exemptions, called derogations in Euro-speak, to avoid the use of tachos. The main one is a combination with a theoretical MAM of less than 7.5 tonnes that is used for carrying materials, equipment or machinery for the driver's use in the course of his work and within a 50km radius of the base of the undertaking.

This loophole to avoid tachographs is granted on the condition that driving the road vehicle does not constitute the individual's main activity. To be caught 55km from your base without a tacho, or to suggest to your delivery driver that, if stopped, he tells VOSA that he is a machine demonstrator, is asking for trouble.

The other main exception used by the construction industry to legitimately avoid having to use tachographs in vehicles with a MAM of less than 7.5t is a direct involvement in public utilities. However, the EU rules were written with universal service providers in mind, which the UK has none. Again, it is very difficult to get a definitive answer on what the rules actually are, but VOSA state: 'It is our view that vehicles used in connection with sewerage, flood protection, water, gas and electricity services must be involved in the maintenance of an existing service (rather than the construction of a new service) to claim the concession.'

To fall within the scope of this loophole the driver must have a direct and close involvement in the activity, but with the transport element of the job being of an incidental nature. Our reading of this part of the rules is that a major contractor with a long-term maintenance contract with a utility provider probably falls within the scope of this exemption, but a plant hire company delivering a mini-excavator to site does not.

Those that fall within the scope of the EU drivers' hours regulations will need a digital tachograph fitted to vehicles used for towing. These are not simple electronic speedos, but devices that are operated from the driveline of the vehicle. The smart way is to specify a tacho compatible vehicle

when ordering it new from a dealer, which should cost a few hundred pounds more.

Trying to convert some vehicles to take a tachograph can prove to be a nightmare, requiring axles or gearboxes to be taken out, stripped and modified. Instrument manufacturer VDO has recently introduced a new scheme where one of their tachographs can be supplied, installed and calibrated for £1400 + VAT, which sounds a bit horrendous but is actually a good deal in the circumstances.

One of the best investments a small business can make is to seek specialist advice to find a way to avoid the use of tachographs. Not because of the cost of the actual units itself, but of the significant administrative burden of managing a tacho-equipped fleet.

Each driver will need their own digital smartcard, with someone in the office equipped with the necessary software to extract, store and analyse drivers' hours data.

But this is just the start of the nightmare, as there is a significant training and management challenge to record the activities undertaken by the employee, even if they only used the tacho for an hour in the week.

Then there are detailed records to be kept of the driver's activity, to prove to VOSA that driver's hours and tacho regulations have been followed. A classic example of the British disease of gold-plating EU regulations – gone are the days of presumed innocent until proved guilty.

If this isn't depressing enough, there is a further twist: any entity, for example a sole proprietor, partnership or company, that wishes to carry goods

in connection with a trade or business, or for hire or reward, needs to have an operator's licence (O-licence) where the vehicle or vehicle and trailer combination exceeds a MAM of 3.5 tonnes. However, any trailer that has an unladen weight of less than 1020kg is excluded from the O-licence calculations, which could come as a huge sigh of relief for many.

CONCLUSION

Over the past few years parts of the construction equipment and plant hire industries have – generally speaking – simply ignored the legal requirements for tachographs on non-HGV vehicles, been unaware of just how little modern drivers can tow and hasn't worried about minor details, such as the official towing capacity of their vehicles.

However, VOSA are becoming increasingly aware that they can obtain easy pickings – that count towards their monthly targets – by stopping a man in a van with a mini-digger on a trailer. Because the law is so complex, with no joined-up thinking between licensing, towing capacity and tachographs, the chances are that they will find something wrong.

The purpose of this feature is to highlight the areas of concern, not to provide the definitive guide to British motor vehicle regulations. However, as the men in blue will say when they nick you, "Ignorance of the law is no excuse".

Be careful out there people. 🚧

Editor's comments: Know your subject

If all this legal mumbo-jumbo is making your head hurt, Geoff and I share your pain. The horrible fact of the matter is that we've just scratched the surface of the subject of towing a trailer for business use. Dual-use vehicles, dimensions and speeds, loopholes for LPG-powered vehicles, towing hitch and ball capacities, and lane restrictions on motorways are just some of the topics that we have not covered, in the interests of focusing on the main issues that plant people are currently falling foul of.

If the truth be known, the rules are so complex that the police and VOSA have difficulty interpreting the meaning of the various bits of legislation. Recent court cases have overturned many of the arbitrary decisions made at the side of the road.

If it was me, I would try and avoid problems by seeking specialised legal advice, keeping an information pack in every vehicle on the fleet equipped with a towbar and brief every driver on what to do and say if they are stopped by VOSA. VOSA staff have wide ranging powers including the authority to stop you, to issue fines and to issue prohibition notices. More often than not they will have police back-up.