LOGISTICS UK

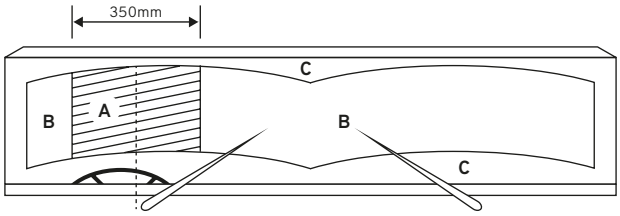
MAC Fact Sheet

Cameras and data protection

In recent years there has been a growing trend to fit dash cams in vehicles, whether they be cars, vans or heavy goods vehicles. In a lot of the cases, certainly for cars, the cameras have belonged to the driver, but companies are now installing cameras in their vehicles for various reasons. This Fact Sheet explains the legal considerations when installing and using these devices.

Camera or driver monitor?

When it comes to recording visual and/or audio data there are two styles of device that may be used; the in-cab camera (or dash cam) and the driver monitor. The difference between the two is that a camera will usually record in one direction, either forward facing or inward facing, whereas a driver monitor will record in both directions and store both sets of data as a single source. Another difference between the two devices is how they can be installed within a vehicle. The Driver and Vehicle Standards Agency (DVSA) view driver monitoring systems as an acceptable feature which may intrude into the swept area of the wipers, provided they do not seriously restrict the drivers view to front or sides of a vehicle, whereas dash mount monitors may intrude the swept area of the wipers provided they do not materially affect the view to the front or sides of a vehicle.



Zone A: 350mm wide, in the swept area of the screen, centred on the centre of the steering wheel.

Zone B: remainder of swept area.

Zone C: remainder of the screen, outside swept area of the wipers.

Handling the data

It is important to understand the legal requirements when collecting, storing or processing data gathered by these devices. In the case of data being collected by a driver's personal camera then the data belongs to the driver and is classed as private and does not come into scope of any legal requirements. However, data collected by the organisation

from company vehicles comes into scope of the Data Protection Act 2018, which is the UK's implementation of the General Data Protection Regulations (GDPR).

General Data Protection Regulations (GDPR)

Overview

Following the UK's departure from the European Union, the GDPR were retained in domestic law as the 'UK GDPR'. The UK GDPR sits alongside an amended version of the Data Protection Act 2018. These regulations govern the way in which organisations are able to collect, store and process data.

The UK GDPR and Data Protection Act 2018 sets out key principles, which should lie at the heart of your approach to processing personal data, which are that personal data is:

- Processed lawfully, fairly and transparently.
- Collected for specified legitimate purposes.
- Relevant to what is necessary.
- Accurate and kept up-to-date.
- Not kept longer than necessary.
- Processed and stored with appropriate security.

Under the GDPR, there are obligations on organisations to have measures to ensure that the GDPR are being complied with, including documented privacy impact assessments, the possible appointment of a Data Protection Officer, or additional record keeping obligations for organisations with more than 250 employees.

Failure to adhere to the requirements of the GDPR may result in organisations receiving fines, with the maximum amount being £17.5m or 4% of an organisation's global turnover, whichever is higher.

Data Controllers and Data Processors

Common terms that are used within the Act are 'Data Controller' and 'Data Processor'. The meaning of these terms are as follows:

- A data controller means a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed.
- A data processor, in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller.

To get a better understanding of the above terms it may also be useful to understand the meaning of 'processing' in relation to the Data Protection Act. Processing means obtaining, recording or holding the information or data, or carrying out any operation or set of operations on the information or data, including:

- Organisation, adaptation or alteration of the information or data.
- Retrieval, consultation or use of the information or data.
- Disclosure of the information or data by transmission, dissemination or otherwise making available.
- Alignment, combination, blocking, erasure or destruction of the information or data.

It is essential for any organisation who is involved in the processing of personal data to be able to determine whether it is acting as a data controller or as a data processor. This is important in the situation of a data breach where there will be a need to determine who has data protection responsibility.

Lawful processing of personal data

The processing of data and ensuring the lawful standing of the processing of data, is important under the GDPR. The conditions to the lawful processing to adhere to are:

- The consent of the data subject.
- Its necessity for the performance of the terms of a contract.
- It is required for compliance with a legal obligation.
- Its necessity to protect the interests of a data subject or other person.
- It is required for the legitimate purposes and interests of the data controller.

Individuals' rights under GDPR

The GDPR created new rights for data subjects or individuals, which include:

- The right to be informed.
- The right of access.
- The right of rectification.
- The right to erasure.
- The right to restrict processing.
- The right to data portability.
- The right to object.

Registering with the Information Commissioner

Under the Data Protection (Charges and Information) Regulations 2018, individuals and organisations that process personal data need to pay a data protection fee to the Information Commissioner's Office (ICO), unless they are exempt. The ICO have a series of questions online to help determine whether you need to register, although generally if you use dashcams in work vehicles, you will likely need to register and pay the data protection fee to the ICO. These details are used by the ICO to make an entry in a register of data controllers, which is available to the public. Failure to notify the ICO when required to do, is a criminal offence, with fines ranging from £400 to £4,000.

Operator's responsibilities

Letting people know

ICO guidance states that operators must let people know when they are in an area where a surveillance system is in operation. The most effective way to do this is by using prominently placed signs, particularly when surveillance systems are discreet, or in locations people might not expect to be under surveillance. Signs should:

- Be clearly visible and legible.
- Contain details of the organisation operating the system and the purpose for using the surveillance system.
- Include basic contact details of the operator.
- Be an appropriate size, depending on context eg whether they are viewed by pedestrians or drivers.

Signs do not need to say who is operating the system if this is obvious.

When implementing in cab-monitors, it must be made clear to the drivers what they will be used for. Are they to catch drivers smoking or using a handheld device, or simply for footage in the event of an incident? By clarifying their purpose, operators will comply with the GDPR principles mentioned earlier.

Drivers must…

- Ensure the placement of any dashcam or monitoring system does not materially affect/seriously restrict their view of the road.
- Check any equipment fitted is secure and operating as intended.

References

- DVSA's Heavy Goods Vehicle Inspection Manual.
- Data Protection Act 2018.
- Data Protection (Charges and Information) Regulations 2018.
- https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/

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