EXPLANATORY MEMORANDUM TO

THE ROAD SAFETY (FINANCIAL PENALTY DEPOSIT) (APPROPRIATE AMOUNT) ORDER 2009

2009 No.

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of the Road Safety (Financial Penalty Deposit) (Appropriate Amount) Order ("the Order") is to prescribe the appropriate amount of financial penalty deposit which can be required by a police constable or VOSA enforcement officer at the roadside. The deposit requirement can be imposed on an alleged road traffic offender who does not have a satisfactory address in the UK. The purpose of the deposit is to provide a guarantee of payment in respect of a fixed penalty notice or conditional offer which has been given in respect of an alleged offence, or as a form of a surety in respect of any court-imposed fine following subsequent prosecution of the alleged offence in court.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 This Order is one of a package of eight Statutory Instruments to implement what is called the Graduated Fixed Penalty, Financial Penalty Deposit and Immobilisation Schemes ("GFP/DS"). This is the only Statutory Instrument to implement GFP/DS which is subject to the affirmative procedure, and is accordingly is being laid with a separate Explanatory Memorandum.

4.2 The purpose of this instrument (which exercises powers conferred by the Road Safety Act 2006 for the first time) is to set out the amount of financial penalty deposit that can be imposed on alleged road traffic offenders. This is to provide a means of enforcement against offenders who can otherwise avoid payment of fixed penalties and court-imposed fines because they do not have a satisfactory address in the UK. A "satisfactory address" is defined in new section 90A(4) of the Road Traffic Offenders Act 1988 as an address in the United Kingdom at which a police constable or vehicle examiner considers it likely that it would be possible to find the person whenever necessary to do so in connection with the proceedings, fixed penalty notice or conditional offer.

5. Territorial Extent and Application

5.1 This Order applies to Great Britain.

6. European Convention on Human Rights

6.1 Jim Fitzpatrick, the Parliamentary under Secretary of State for Transport, has made the following statement regarding Human Rights: in my view the provisions of the Road Safety (Financial Penalty Deposit) (Appropriate Amount) Order 2008 are compatible with Convention Rights.

7. Policy background

- ***What is being done and why***

7.1 This Order - and the related package of SIs - implements provisions of the Road Safety Act 2006 that fill a significant gap in the enforcement of UK road traffic law.

7.2 The problem is that, as things stand, the road traffic enforcement authorities have only limited sanctions available against offenders who are not resident in the UK, or who do not have a permanent address in the UK. In most road traffic cases (for instance, where the defendant has not been arrested or cannot be extradited to the UK), although it is possible for a court to deal with a case in the absence of the offender, it is very difficult for fines to be enforced successfully. In practice, this means that such offences are not routinely pursued - though the authorities can prohibit drivers of unroadworthy vehicles from continuing their journey; and, in the case of commercial vehicles, they can prohibit drivers from continuing their journey where they are in breach of drivers' hours rules.

7.3 The main effect of the relevant provisions in the Road Traffic Offenders Act (as amended by the Road Safety Act 2006) and in the implementing Statutory Instruments is to correct this limitation. This is achieved through the following main mechanisms - by enabling:

- Examiners from the Department's Vehicle and Operator Services Agency ("VOSA") to issue fixed penalties to offenders;
- Police constables and VOSA examiners to issue fixed penalties to non-UK-resident offenders - in respect of both non-endorsable and endorsable offences;
- Police constables and VOSA examiners to request immediate financial deposits from those without a satisfactory UK address; and,
- Police constables and VOSA examiners to immobilise vehicles in any case where a driver or vehicle has been prohibited from continuing a journey, or in any case where a driver declines to pay a requested deposit.

7.4 The provisions are therefore important both politically and legally. There is a great deal of support for the provisions because they address the concern that, as things stand, a very large group of road traffic offenders are effectively beyond the reach of the law - and simply 'get away with it'. The provisions are important legally, because, amongst other things, they provide a practical mechanism to enforce road traffic law effectively against all offenders, wherever they may reside.

7.5 There are seven other Statutory Instruments which make up the package of measures to implement the graduated fixed penalty, financial penalty deposit and immobilisation schemes. They are all subject to negative resolution, and are anticipated to be made after this Order has passed through the necessary Parliamentary stages. Preliminary drafts of the other Statutory Instruments were also appended to a consultation document, available at www.dft.gov.uk under 'closed consultation', to which final changes may be made.

7.6 The purpose of this Order is to prescribe the amount of financial penalty deposit that an offender will be requested to pay.

7.7 The required financial penalty deposit amount will be the same as the level of the fixed penalty or graduated fixed penalty (£30, £60, £120 and £200) in the case of an offence for which the offender has been given a fixed penalty as set out in Schedules 1 and 2 to the Order. The required financial penalty deposit amount in the case of an offence that is to be prosecuted in court will be £300. The Order also provides a ceiling of £900 on the cumulative amount of financial penalty deposit requirements that can be imposed on a person on any single occasion.

- ***Consolidation***

7.9 Not relevant

8. Consultation Outcome

8.1 The GFP/DS schemes were developed from the outset in close consultation with external stakeholders and Government stakeholders. Their views helped to shape the broad structure of the scheme - which very largely seeks to follow existing practice for offering fixed penalties to UK-resident offenders.

8.2 There was, subsequently (during summer 2007), a preliminary round of consultation on the broad shape of how the scheme would operate in practice. 40 responses were received to that consultation exercise. 22 of those who submitted comments agreed with the proposed deposit levels. 8 did not fully agree with the proposed deposit levels; and, 10 of those who responded did not offer any substantive comments. More detailed analysis of the preliminary consultation can be found in Annex E of the Department's July 2008 Consultation Document, available at www.dft.gov.uk under 'closed consultations.'

8.3 The main concern was that the levels of deposit may not be enough to deter offending. However, most of those who responded positively recognised that the proposals inevitably needed to be compatible with the existing fixed penalty system, and, that the main benefit of the deposit scheme will be in ensuring that non-UK offenders and others without a satisfactory UK address do not continue to enjoy effective immunity from any form of financial penalty. Deposit levels were not changed following the preliminary round of consultation because they were found to be broadly comparable with the average level of court fines for the aggregate of all in-scope offences.

8.4 A further detailed round of consultation ran between July and October 2008. The purpose of this consultation exercise was to seek comments on the draft Statutory Instruments necessary to bring the scheme into force. The consultation document was circulated widely to stakeholders including vehicle operator trade associations and EU counterparts.

8.5 As well as formal consultation, the Department has also undertaken informal consultation with key stakeholders throughout the period of development of the scheme - both to keep them advised of progress, and to seek their views and ideas.

8.6 The result of the 2008 consultation indicates that there is general support for the financial penalty deposit amounts as proposed in the consultation. In total there were 24 responses received to the consultation. In 12 cases respondents specifically said that they agreed with the proposed maximum £300 financial penalty deposit. 10 did not express a view and 2 respondents disagreed with the amount, suggesting that it is too low.

8.7 The 2 respondents who disagreed with the proposed maximum £300 financial penalty deposit did so because they consider that the level is too low. One of the two respondents who disagreed with amount suggested that the deposit amount should be set at £1000 specifically in relation to tachograph. The other respondent did not provide a suggested amount but instead gave an example that in the EU on-the-spot fines of 1500 Euros are more likely to be norm.

8.8 The Department has given careful consideration to the responses on this particular matter, but does not propose to make any modification to the proposals in the consultation. The principal reason for not doing so is because, whilst we recognise the fact that some current court cases do result in higher penalties than the £300 maximum we are proposing, we are trying to devise a system which will cater for the vast majority of cases rather than the extremes. Necessarily this means that we have to take into account average fine levels for the sort of offences the scheme is designed to deal with – and this is what we have done. If we were to suggest a higher deposit level it seems to us very likely that refunds would have to be made to offenders in a large majority of cases and this would be unfair to the majority of offenders and it would also substantially increase the administrative costs of running the deposit scheme. However, we will keep this particular

point under close scrutiny after implementation and propose an appropriate modification to the deposit amount if in practice we find that average court fines exceed £300.

9 Guidance

9.1 VOSA and the Police will produce and update operational guidance for constables and examiners on how to apply the powers in practice. This will very much follow the long-established and tried-and-tested mechanism for fixed penalties issued by the police under the Road Traffic Offenders Act 1988. It will also encompass the new deposits system and immobilisation.

9.2 The publicity strategy for implementation of the schemes is expected to include:

- a press release to stimulate media interest when the SIs enter into force;
- articles in the main trade magazines - hopefully in the EU as well as in the UK;
- a poster and leaflet campaign - and advertising on the main international haulage routes at ports and truck stops; and,
- leaflets in the main EU languages on the cross-Channel routes.

10. Impact

10.1 There will not be any impact on business, charities and voluntary bodies which are compliant with the law.

10.2 There will not be any impact on the public sector.

10.3 An Impact Assessment is attached to this Memorandum (see Annex).

10.4 The Impact Assessment covers the wider package of measures known as the graduated fixed penalties, financial penalty deposits and immobilisation scheme (GFP/DS).

10.5 Our assessment is that overall the scheme will deliver overall net benefits.

10.6 In relation to this particular Order, there will be a cost both to the police and VOSA in adapting their systems for issuing and recording fixed penalties so that they can record the fact that a deposit payment has been made. There will be some annual administrative cost involved in the collection of deposits - but we expect that this cost will be largely notional since both the police and VOSA may stop and warn non-UK resident offenders currently anyway. We estimate the net annual running costs of this aspect of the scheme to be of the order of £0.5M.

10.7 The main benefit will be VOSA and the police effectively being able to collect on-the-spot-fines from offenders without a satisfactory UK address - who currently run little risk of facing any punitive action for offending. We estimate a quantifiable benefit for being able to collect financial penalty deposits will be £3.6M annually in terms of expected new income for the Exchequer. More significantly, we estimate that there will also be considerable non-quantifiable benefits arising from the fact that - once implemented - the new provisions will encourage greater levels of compliance by non-UK drivers, which in turn we believe will translate into a reduced number of accidents - and consequential road casualty and accident-damage savings.

11. Regulating small business

11.1 The legislation does apply to small business.

11.2 There will not be any impact on businesses (including small businesses) which are compliant with the law.

12. Monitoring & Review

12.1 The success criteria is to see the rate of compliance with GB road traffic law increase especially in relation to foreign drivers.

12.2 The Department for Transport will carry out a post implementation review of the schemes one year after implementation of the schemes.

13. Contact

13.1 The official within the Department for Transport who can be contacted with queries on this draft Order is Joanne Wake, in LRI Division, Department for Transport, Zone 2/09, 76 Marsham Street, Westminster, London, SW1P 4DR; e-mail Joanne.wake@dft.gsi.gov.uk

ANNEX **Summary: Intervention & Options**

Department /Agency:	Title:	
Department for Transport	**Impact Assessment of the Graduated Fixed Penalty and Deposit Schemes including Immobilsation.**	
Stage: Post-consultation	**Version: Final**	**Date: January 2009**
Related Publications:		

Available to view or download at:
http://www.dft.gsi.gov.uk

Contact for enquiries: Joanne Wake **Telephone:** 020 7944 6566

This intervention aims to improve enforcement of existing laws regarding safe use of vehicles
- Unlike police officers at present VOSA enforcement officers are unable to issue fixed penalties;
- Under current arrangements fixed penalties are not related to the severity of an offence;
- In practice it is currently very difficult to prosecute offenders who are non-UK residents; and,
- There were growing incidences of drivers driving off whilst under prohibition for roadworthiness and traffic offences.

To commence and implement the relevant provisions in the Road Safety Act 2006 (RSA) which are intended to address the current problems. The new provisions will enable:
- VOSA enforcement officers to issue fixed penalties (FPs);
- the graduation of FPs so that they can be made proportionate to the severity of offending;
- the police and VOSA to collect FP payments from offenders without a satisfactory UK address; and,
- the immobilisation of vehicles in certain cases.

Four options have been considered - all of which are being recommended as a package - enabling:-
1) VOSA examiners issuing fixed penalty notices - as provided for by section 5 and Schedule 1 of the RSA;
2) graduation of certain FPs - as provided for by section 3 RSA 2006;
3) financial penalty deposits - as provided for in section 11 of the RSA 2006; and,
4) immobilisation of prohibited vehicles - as provided for in section 12 and Schedule 4 of the RSA 2006.

A post-implementation review of the schemes will take place one year after implementation.

Jim Fitzpatrick

22nd January 2009

Summary: Analysis & Evidence

Policy Option: 1	Description: Issuing of Fixed Penalties by VOSA Examiners

COSTS

ANNUAL COSTS

One-off (Transition)	Yrs
£ 2,600,000	

Average Annual Cost (excluding one-off)
£ 550,000

Description and scale of **key monetised costs** by 'main affected groups' There would be some set-up costs associated with new IT systems for recording the issue of FPs etc. There would be some additional administrative cost associated with the issuing of fixed penalties by VOSA examiners (estimated £550K - 50:50 staff/IT)

Total Cost (PV) **£ 4.981M**

Other **key non-monetised costs** by 'main affected groups'

BENEFITS

ANNUAL BENEFITS

One-off	Yrs
£ None	

Average Annual Benefit (excluding one-off)
£ 15,500,000

Description and scale of **key monetised benefits** by 'main affected groups' A reduction of court time - worth £15.5M annually - due to the reduced number of prosecutions taken by VOSA, based on an estimated 13,500 cases annually at an average cost of £1,150 per prosecution in court.

Total Benefit (PV) **£ 128.9M**

Other **key non-monetised benefits** by 'main affected groups' Additional deterrent benefits are likely to arise due to fact that offenders will realise that there may be an increased likelihood of receiving a fixed penalty from VOSA - which will improve road safety. Additionally, for the first time FPs can be issued to alleged offenders without a satisfactory UK address.

That most offenders will elect to pay a FP in preference to facing court proceedings - but this is strongly indicated by comparison with the percentage of offenders who choose to pay FPs currently issued by the police (88%).

Price Base Year 2007	Time Period Years 10	**Net Benefit Range** (NPV) **£ 123.9M**	**NET BENEFIT** (NPV Best estimate) **£ 123.9M**

				GB
				Spring 2009
				VOSA
What is the total annual cost of enforcement for these organisations?				£0.5M
				Yes
				No
What is the value of the proposed offsetting measure per year?				£ none
What is the value of changes in greenhouse gas emissions?				£ none
				No
Annual cost (£-£) per organisation (excluding one-off)	Micro **N/A**	Small **N/A**	Medium **N/A**	Large **N/A**
	No	No		

negligible	negligible	none

Key: **Annual costs and benefits:** **(Net) Present**

Summary: Analysis & Evidence

Policy Option: 2	Description: Graduation of Fixed Penalties

COSTS

ANNUAL COSTS

One-off (Transition)	Yrs
£ 40K	

Average Annual Cost (excluding one-off)
£ negligible

Description and scale of **key monetised costs** by 'main affected groups' There will also be a small one-off cost (around £40K) in making essential modifications to the current police computerised system for fixed penalties (the VP/FPO system) to enable it to take account of graduated fixed penalty offences in future.

Total Cost (PV) **£ negligible**

Other **key non-monetised costs** by 'main affected groups' There will be a small cost to the government - in determining which offences should be graduated and at what levels - and in arranging for the necessary enabling legislation.

BENEFITS

ANNUAL BENEFITS

One-off	Yrs
£ nil	

Average Annual Benefit (excluding one-off)
£ not quantifiable

Description and scale of **key monetised benefits** by 'main affected groups' None

Total Benefit (PV) **£ not quantifiable**

Other **key non-monetised benefits** by 'main affected groups' The change will apply to drivers' hours offences, overloading offences and some 'construction and use' offences. The main benefit will be in providing an additional deterrent to offending - so that the greater the severity of offending, the higher the level of FP that will be faced by the offender. This will benefit road safety.

There will be no additional social costs or administrative burdens for those who comply with the law. The road haulage industry as a whole will benefit from a more effective deterrent against unfair competition from law-breakers.

Price Base Year 2007	Time Period Years 10	**Net Benefit Range** (NPV) **£ not quantifiable**	**NET BENEFIT** (NPV Best estimate) **£ not quantifiable**

	GB
	Spring 2009
	VOSA and Police
What is the total annual cost of enforcement for these organisations?	£ Negligible
	Yes
	No
What is the value of the proposed offsetting measure per year?	£ none
What is the value of changes in greenhouse gas emissions?	£ none
	No

Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
	No	No		

negligible	negligible	none

Key: **Annual costs and benefits: Constant Prices**

Summary: Analysis & Evidence

Policy Option: 3	Description: Financial Penalty Deposits (or

COSTS

ANNUAL COSTS

One-off (Transition)	Yrs
£ 830,000	
Average Annual Cost (excluding one-off)	
£ 550,000	

Description and scale of **key monetised costs** by 'main affected groups' There will be a cost both for the police and VOSA in adapting their systems for issuing and recording fixed penalties - so that they can record the payment of a deposit where one is required. There would be some annual administrative cost. (We estimate the cost to foreign operators at some £2.7M but this is not included in the total as it is not a cost to the UK).

Total Cost (PV) £ 4.98M

Other **key non-monetised costs** by 'main affected groups'

BENEFITS

ANNUAL BENEFITS

One-off	Yrs
£ nil	
Average Annual Benefit (excluding one-off)	
£ 3.6M	

Description and scale of **key monetised benefits** by 'main affected groups' There will be a benefit to the UK for issuing FPs to non-UK resident offenders as this will bring the same sanction as applied to UK offenders (VOSA FP's estimated at £2.7M). We estimate that there will be an additional £0.9M income benefit from the police issuing FP's.

Total Benefit (PV) £29.94M

Other **key non-monetised benefits** by 'main affected groups' The main benefit arises from VOSA and the police effectively being able to collect on-the-spot deposits from non-GB offenders - who currently run little risk of facing any punitive action for offending. This will deliver benefits for road safety, congestion (caused by accidents), and reduced road damage (reduced overloading).

The main risk is that non-UK offenders will decline to pay a deposit in respect of a FP (an on-the-spot deposits). However, in that event their vehicle will be prohibited and immobilised (under Policy Option 4). We estimate that 90% of offenders will pay a financial penalty deposit.

Price Base Year 2007	Time Period Years 10	**Net Benefit Range** (NPV) £ 24.96M	**NET BENEFIT** (NPV Best estimate) £ 24.96M

			GB	
			Spring 2009	
			Police and VOSA	
What is the total annual cost of enforcement for these organisations?			£ 550,000	
			Yes	
			No	
What is the value of the proposed offsetting measure per year?			£ none	
What is the value of changes in greenhouse gas emissions?			£ none	
			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
	No	No		

negligible	negligible	none

Key: **Annual costs and benefits: Constant Prices**

Summary: Analysis & Evidence

Policy Option: 4	Description: Immobilisation of prohibited V

COSTS

ANNUAL COSTS

One-off (Transition)	Yrs
£ 70,000	

Average Annual Cost (excluding one-off)

£ 1M

Description and scale of **key monetised costs** by 'main affected groups' It is estimated that 2000 devices will be needed nationally (as a one-off cost) . Annual costs will be associated with immobilising those vehicles which have been prohibited and where there is perceived to be a serious risk to road safety unless the vehicle is immobilised.

Total Cost (PV) £ 8.32M

Other **key non-monetised costs** by 'main affected groups' It is possible that some immobilised vehicles will need to be removed to temporary storage facilities. It is likely that the number will be small, but we do not have an estimate of that number. Any storage costs and associated would be recoverable from the vehicle owner.

BENEFITS

ANNUAL BENEFITS

One-off	Yrs
£ nil	

Average Annual Benefit (excluding one-off)

£ 1.1M

Description and scale of **key monetised benefits** by 'main affected groups' We estimate a total average deposit income resulting from immobilisation of £1.1M per annum.

Total Benefit (PV) £ 9.15M

Other **key non-monetised benefits** by 'main affected groups' The main benefit is being able to hold to account offenders who either: currently abscond whilst a prohibition notice is in force; or, where, in future, a non-UK driver elects not to pay an on-the-spot fine (deposit payment). These will translate into benefits to road safety (reduction in injury accidents) and fair competition.

We anticipate that immobilisation devices will generally be used by VOSA and the Police whenever a vehicle has been prohibited and there is judged to be a significant risk to road safety unless a vehicle is also immobilised. From our research to date we believe that contractors are only likely to be used in remote locations or during 'unsocial' hours.

Price Base Year 2007	Time Period Years 10	**Net Benefit Range** (NPV) £ 0.83M	**NET BENEFIT** (NPV Best estimate) £ 0.83M

				GB
				Spring 2009
				Police and VOSA
What is the total annual cost of enforcement for these organisations?				£ 100,000
				Yes
				No
What is the value of the proposed offsetting measure per year?				£ none
What is the value of changes in greenhouse gas emissions?				£ none
				No
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
	No	No		

negligible	negligible	none

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

Introduction

1. This Impact Assessment presents a detailed cost-benefit analysis of four elements of a new strategic enforcement scheme which is intended to help improve compliance with the requirements of road traffic law. This scheme has been provided under provisions in the Road Safety Act 2006 and it is therefore already 'law' in GB. It is being implemented in a practical sense through secondary legislation, and it is the impact of this secondary legislation that is being considered in this Assessment.

2. Although the assessment presents four options for consideration, these options are, in fact, all integral to the operation of the scheme and the scheme would not function as intended unless all elements were to be implemented as intended under the primary legislation. In that sense the Options are not really separate options – but they are presented as such here in order that the reader is able to obtain a better understanding of how the individual elements are likely to contribute to the effective operation of the whole scheme.

3. The four options considered are
- Option 1: issuing of fixed penalties by VOSA's vehicle examiners;
- Option 2: graduation of fixed penalties;
- Option 3: financial penalty deposits; and
- Option 4: immobilisation of prohibited vehicles.

4. The justification for each can be summarised briefly as follows:
- Option 1: will enable VOSA's vehicle examiners to issue fixed penalties in respect of offences they currently either deal with by way of prohibiting a vehicle from continuing its journey; and/or by prosecuting the offence in court. This will save time and effort for everyone – including the courts – and therefore cost.
- Option 2: will enable the Secretary of State to 'graduate' the level of fixed penalty offences so that they can more easily be related to the seriousness of the offence. In practice this means that the penalty level for some fixed penalty offences can be increased for commercial vehicles since the offence is likely to represent a more serious risk to road safety when committed in respect of a commercial vehicle. It also means that the penalty level for some fixed penalties (commercial vehicle drivers' hours and overloading offences) can be graduated according to the level of offending.
- Option 3: will enable both the police and VOSA's vehicle examiners to take financial penalty deposits from offenders who do not have a 'satisfactory address in the UK'. Most notably this means that – for the first time – fixed penalties can be issued to foreign offenders and enforced on-the-spot.
- Option 4: will enable the police and VOSA's vehicle examiners to immobilise prohibited vehicles. Most notably this means that – for the first time – it will be possible to ensure that drivers of vehicles which have been prohibited from continuing their journey comply with the terms of that prohibition.

OPTION 1 - Issuing of fixed penalties by VOSA Examiners.

Background

5. Under current arrangements only the police can issue a fixed penalty notice. This is an unhelpful arrangement - and limiting - because, whereas the police carry out most compliance enforcement activity in respect of private and light goods vehicles, vehicle examiners in VOSA carry out the majority of enforcement activity in relation to heavy goods vehicles (HGVs) and public services vehicles

(PSVs). In addition there are certain offences such as drivers' hours and overloading that are not currently fixed penalty offences that we intend to make fixed penalty offences.

Costs

6. There would be some set-up costs for VOSA associated with establishing new IT systems for the issue of fixed penalties and training staff (the total VOSA-estimated one-off cost of which is £2.6M).

7. There would be some additional administrative cost associated with the issuing of fixed penalties by VOSA examiners (net estimated by VOSA at £550K annually).

8. There would be additional costs to offenders - these would be the costs of paying the FPs.

Strategic Benefits of implementing the Option

9. The current system places an additional burden on the Court service and VOSA in having to deal with the prosecution of offences, which, under these proposals, would very largely be dealt with by way of fixed penalties.

10. The current system is also inequitable, in that it prevents offenders from having the opportunity to pay a fixed penalty instead of going to court, when, if they had been dealt with by the police, such an opportunity would have been available to them.

11. Implementing the proposal under Option 1 would address both of these problems.

Quantified Benefits of implementing the Option

12. *The Home Office Motoring Offences and Breath Test Statistics, England and Wales 2004* indicate that the level of non-payment of Fixed Penalty Notices issued by the police for motoring offences is relatively small. In 2004, for example:

- 98% of endorsable fixed penalties were paid,
- 74%of non-endorsable, driver present fixed penalties were paid;
- 71% of non-endorsable driver absent were paid;

The overall payment rate was 88% - and so we would expect to see a similar level of payment of fixed penalties offered by VOSA, and a corresponding reduction in the number of cases that have to be taken to court (say 90% reduction)..

13. Given that VOSA currently prosecute around 15,000 offenders in court annually, the expected 90% reduction in the number of court cases as a result of the introduction of these powers to allow VOSA to issue fixed penalties instead would mean a saving in the prosecution of around 13,500 cases annually. According to information from the Home Office Research, Development and Statistics Directorate (97/98 Research Findings No.103), we have estimated the average cost of a court prosecution for a offence relating to a motor vehicle is £1,150. Therefore, we estimate that the total annual saving to courts would be 13,500 x £1,150 = £15.5M.

14. So far as equity is concerned, implementing the proposal will mean that vehicle operators will be able to save the direct and indirect costs of having to attend court. It is difficult to put a precise figure on what the total saving might be, but on the basis of an 90% saving in the number of cases prosecuted; and, on the assumption that the direct costs to an operator of attending a court hearing is, say, £250 (based on the estimated value of an average day of lost business), the total value of benefits could be up to £3.0M, calculated as follows:

- 13,500 cases prosecuted each year x £250 per operator = £3.4M.

However, these savings are not included as 'benefits' in the IA since they are the result of breaking the law and accrue to offenders.

15. Given the fact that VOSA will be able to issue fixed penalties for the first time we believe this fact is likely to encourage greater compliance by UK operators and drivers. Although we are unable to quantify the effect of this additional deterrent it can only serve to benefit road safety.

OPTION 2 - Graduation of Fixed Penalties

Background

16. Currently a fixed penalty notice (issued by the police) can only be for the prescribed monetary amount - irrespective of whether the offence was committed in a relatively minor or more significant manner.

17. Furthermore, where multiple offences are detected only the most serious endorseable offence (and up to two non-endorseable offences) will be taken into account this is the current policy of the police and VOSA will follow this best practice. This means that more serious offending and multiple offences continue to be treated as per now and are prosecuted in court.

18. Under this policy option it would, in future, be possible to solve both of these problems. The level of penalty for offences could be graduated according to the level of offending - and some of the more serious offences and multiple offences could be dealt with by way of fixed penalties. (Very serious offences would still continue to be prosecuted in court).

19. Introducing a more broadly-based system of graduated fixed penalties will, in particular, provide a greater incentive to comply with road safety legislation - given that more serious offences will attract higher penalties - and therefore help to reduce road casualties.

20. These provisions do not cover the graduated structure for speeding penalties in respect of which the Department has consulted separately.

Costs

21. There is some initial cost to the government - in determining which offences should be graduated and at what levels - and in arranging for the necessary enabling legislation. This will be a relatively insignificant 'one-off' cost of administration - which we cannot easily quantify. There will also be a small one-off cost in making essential modifications to the current police computerised system for fixed penalties (the VP/FPO system) to enable it to take account of graduated fixed penalty offences in future. The cost involved will be in the region of £40K.

22. Offenders may see some additional cost since more serious offences will face higher fixed penalty levels in future. We are unable to quantify this because the costs are dependent both on the level and extent of offending, and both are unknown quantities in the future.

Strategic Benefits of implementing the Option

23. Drivers' hours and overloading offences will be made fixed penalty offences under the provisions of the Fixed Penalty (Amendment) Order, along with some other offences. At the present time only fixed penalties relating to drivers' hours and overloading offences – and also some offences under the Road Vehicles (Construction and Use) Regulations 1986 – will be graduated to reflect the nature and severity of the offence. These offences are, for the most part, dealt with by VOSA, rather than by the police because they relate to the operation of commercial vehicles.

24. In 2007/8, the number of such offences dealt with by VOSA were:

Offence type	UK HGV	Non-UK HGV	UK PSV	Non-UK PSV
Drivers' hours	7,339	7,329	1,349	113
Overloading	4,377	3,383	257	19

25. The main benefit will be in providing an additional deterrent to offending - so that the greater the level of offending, the higher the level of FP that will be faced by the offender. This will, in turn, bring benefits in the following main areas:

- Road safety - mainly because of the additional deterrent to drivers considering breaching maximum driving time rules; and,
- Competition - because additional deterrent to would-be offenders should translate into fewer offences - which will in turn be better for the majority of law-abiding vehicle operators.

Quantified Benefits of implementing the Option

26. We have not attempted to make any monetised analysis of benefits - because the parameters on which any assessment was based would be highly speculative and subjective.

Summary of costs and benefits

27. However, it appears that there would there would be net benefits to society. The reason for saying so is because the set-up and running costs would be negligible, but the benefits of introducing higher levels of penalty for more serious offences would be inevitable.

OPTION 3 - Financial Penalty Deposits (on-the-spot deposits)

Background

28. Currently fixed penalties are only issued to offenders who are based in the UK. The reason for this is because, in the event that a fixed penalty is not accepted; or, in the event that an offender ignores a fixed penalty notice, the subsequent follow-up action involves court action. Whilst it is possible to serve a court summons outside the UK (only in certain countries), the process involved is complicated and costly; and, except where offenders can be extradited for very serious offences, there is no requirement for non-UK offenders to attend a UK court or for any legal remedy to be pursued if they fail to do so. Additionally, in respect of endorseable offences (those offences for which the offender is required to surrender the driving licence for endorsement at the roadside or at a police station within 7 days), it is currently not possible to issue a fixed penalty to non-GB licence holders unless they hold a counterpart licence with a record of their penalty points.

29. The consequence is that non-UK offenders are rarely pursued - either by the police or by VOSA - for road traffic and vehicle roadworthiness offences. This results in an inequality of treatment as between UK and non-UK offenders, and it also provides an almost total lack of deterrent against non-compliance by non-UK drivers and vehicle operators. (The same inequality and lack of deterrent also applies in the case of UK residents who have no fixed abode in the UK).

30. The purpose of this Policy option is to ensure that any driver who does not have a 'satisfactory' UK address cannot evade the law and also expect to escape any punitive action. Under this Option an offender who did not have a satisfactory UK address would have to pay a deposit on-the-spot that would be equal to the relevant (graduated) fixed penalty notice issued in respect of the offence or offences. The same requirement would apply in respect of cases where the offence was too serious to be dealt with by way of a fixed penalty - so that, in these cases, a deposit payment would be required as a 'surety' pending court prosecution.

Costs

31. The cost to an offender will be the payment of a deposit - which will be dependent on the severity and number of offences committed by the driver; or the number of defects found on their vehicle, but

these costs will be offset by an equivalent new income for the Treasury (which would be classified as an equivalent benefit to society).There will be no costs to compliant drivers and operators.

32. There will be set-up and running costs, both for the police and for VOSA. VOSA estimate that there would be some set-up costs associated with establishing new IT systems for the issue of fixed penalties and training staff (the total VOSA-estimated one-off cost of which is £0.6M). There will be a cost associated with modifying the current police computerised systems for recording and processing the issue of fixed penalties so as to enable them to take account of financial penalty deposits in future. The relevant estimated cost for adapting the common system used in England and Wales will be in the region of £100K (part of the modification cost is attributed to Option 2 costs). We do not, as yet, have a figure of the cost of adapting the existing system in Scotland, but we do not believe there is any reason why the cost would be significantly different from the England and Wales system. There will also be mainly one-off training costs for the police so that appropriately authorised officers may issue financial deposit requirements.

33. The Court Services both in England and Wales and in Scotland will incur some one-off set up costs because they will have to make a minor modification to their accounting system in order to process and account for deposit payments. The estimated total cost is small – around £30K.

34. There would be some additional administrative cost associated with the issuing of fixed penalties by VOSA examiners (net estimated by VOSA at £550K annually). The police will also incur some extra costs in issuing fixed penalties to non-UK offenders for the first time, and in collecting financial penalty deposits from them. However, these costs will be largely notional because, even though the police only prosecute a small number of offenders, they nevertheless do stop and warn offenders.

35. There would be additional costs to foreign offenders, although since they are not part of UK society we have not included the monetary value of these costs in the analysis in this evidence-base.

Strategic Benefits of implementing the Option

36. The main benefit arises from VOSA and the police effectively being able to collect on-the-spot deposits from non-GB offenders - who currently run little risk of facing any punitive action for offending. This will deliver benefits for road safety, congestion (caused by accidents), and reduced road damage (reduced overloading).

37. The introduction of deposits will create a more level playing field in competition - through the application of more consistent and equal enforcement, irrespective of the driver's nationality or residency status.The GB industry will benefit from a more effective deterrent against unfair competition from law-breakers.

38. We have made the initial assumption in this analysis that 88% (say 90%) of non-UK offenders will pay a financial penalty deposit on-the -spot - whether it is a deposit in respect of a fixed penalty offer or a deposit in respect of a prospective court prosecution. We consider that this is a realistic assessment based on the overall payment rate of fixed penalties by UK drivers.

39. However, if Option 4 were also to be implemented we would expect that percentage to increase to 100%, bearing in mind that offenders who declined to make such a payment are liable to find that their vehicles were immobilised unless or until they do agree to make a payment. In that event, the financial benefits identified under this option would increase by a further 10% (and the estimated financial benefits under Option 4 would correspondingly decrease).

Quantified Benefits of implementing the Option

40. The total number of prohibitions issued to non-GB offenders at present by VOSA is in the region of 25,000 (covering driver's hours, overloading and roadworthiness offences). We are assuming, for the purposes of this broad estimate, that, in future, a fixed penalty and deposit requirement would be made in all of these cases. We consider that an average level of deposit payment in these cases would be around £120 - bearing in mind that - according to recent 'fleet compliance surveys' and the results of enforcement action taken against vehicles involved in international transport - non-UK vehicles and drivers are far more likely to be involved in traffic offences than UK counterparts - and these are at the upper level of deposit payment requirements. The total net benefit to the UK would be some £3M per year, but bearing in mind that only 90% of offenders are thought likely to pay a financial penalty deposit requirement, the estimated income from VOSA-issued requirements would be £2.7M.

41. Whilst the police cannot currently issue fixed penalties to non-UK offenders they will be able to do so once these new deposit provisions are commenced and implemented. This means that there will be a significant increase in the number of fixed penalties issued. Using best estimates from the police - based on recorded motoring offences committed by non-UK offenders - the minimum number of additional fixed penalties is around 10,000 annually. Bearing in mind that this number also includes cars, we think it is reasonable to suggest that the additional annual income from deposit requirements issued by the police will be in the region of 10,000 x £100 = £1M. So, again, if 90% pay, the total net income would be £900,000.

Non-quantifiable benefits

42. Calculating the potential road safety benefit in respect of being able to deter would-be foreign offenders is challenging. However, we do have some background information on which to make some, at least, qualitative estimates:

- We know from random surveys of the condition of 'heavy vehicles' visiting the UK from the Continent that some 22% of the fleet have roadworthiness defects, and an equal number of road traffic offences result in the issue of prohibition notices by VOSA examiners.
- VOSA examiners find roadworthiness defects in up to 45% of non-UK registered commercial vehicles they stop for inspection (which is a higher percentage than what is found in random surveys because VOSA are able to 'target' their action against the most likely offenders).
- In 2006, there were some 1.5 million journeys to GB by non UK-registered HGV motor vehicles (Road Goods Vehicles Travelling to Mainland Europe 2006).
- In 2007, there were 159 killed and serious casualties attributed to accidents involving foreign-registered HGVs, as compared to 1850 killed and serious casualties attributed to accidents involving UK-registered HGVs (so foreign-registered HGVs account for around 8% of the total of KSI casualties)(Road Casualties Great Britain: 2007).
- Although we do not know how many foreign-registered HGVs are on the road at any one time, the DfT survey of foreign vehicle activity in GB (http://www.dft.gov.uk/results?view=Filter&t=2003+ro+ro+survey&pg=1) suggested that foreign HGVs travelled an estimated 924 million vehicle Km in 2003. We think that figure is likely to have increased by some 30% by 2007 (based on comparisons of increased foreign HGV ferry traffic over the same period), to around 1200 million vehicle Km. So, bearing in mind that total HGV traffic in 2007 was 29.4 bn Km, foreign vehicles only account for around 4% of the total HGV traffic.
- Foreign-registered HGVs are around two times more likely to be involved in a KSI accident than a UK-registered vehicle - which is perhaps not surprising bearing in mind that foreign-registered HGVs are three times more likely to be unroadworthy than UK-registered HGVs, and their drivers three times more likely to be in breach of drivers' hours rules.
- Nevertheless, we do not know how many visiting vehicles would be liable to be involved in accidents were it not for VOSA's intervention.
- Nor do we know what the impact of issuing fixed penalties by VOSA might be in terms of encouraging greater compliance.
- However, we do know that each road death is currently valued at £1,645,110; each serious injury at £188,960; and, each slight injury at £19,260.

Overall, it would seem likely that significant road safety benefits can reasonably be expected as a result of providing this additional deterrent enforcement power that VOSA can use both to deter would-be GB offenders and also, for the first time, non GB-offenders (this is part of options 3 and 4). If these new measures saved just one life a year - out of the 3,000 killed each year in road accidents - the benefit to society would be over £1M annually.

43. However, we have not included any estimate of casualty reductions as monetised benefits because there is no way of making any firm estimates of what the number of reduced casualties is likely to be. However, we do think that it will be inevitable that these measures will result in a substantial overall benefit to society in terms of a reduction in road casualties and damage-only accidents.

Option 4 - Immobilisation of prohibited vehicles

Background

44. Over recent years both VOSA and the police have become aware of incidences where offenders were driving off whilst their vehicles were the subject of an immediate prohibition. A "prohibition" is issued where the driver or vehicle is deemed unsafe to continue with its journey. This could be because the vehicle is overloaded, unroadworthy or because the driver has driven for too long a period without the required break or rest. The prohibition applies at the discretion of the enforcement officer but normally until the infringement has been rectified

45. In the case of prohibitions for roadworthiness defects, a prohibition can only be cleared after the relevant mechanical defect (or defects) has been rectified and the vehicle has subsequently been re-inspected to confirm compliance. In the case of drivers' hours offences, prohibitions simply expire after a set time has passed. In the case of overloading offences, the prohibition is generally removed once relevant gross weight (or weights) have been reduced to below the maximum permitted for the vehicle.

46. The problem in all cases is ensuring that the terms of the prohibition are complied with. Generally speaking this can be assured where VOSA or the police are still present at the enforcement site, but clearly the risk of non-compliance with the terms of the prohibition increases once they have left. Immobilisation powers were obtained to help manage this risk, and also to help ensure that offenders from whom a financial penalty deposit has been requested complies with the requirement to pay a deposit. The ability to immobilise a vehicle will, simply and effectively, help to secure compliance with prohibition notices and deposit requirements.

47. Based on historic data from VOSA about prohibitions and level of severity of offence, we have estimated that they are likely to need to purchase 1000 immobilisation devices. In the main the devices will be stored within VOSA vehicles which are always present at VOSA's roadside checks.

48. Based on figures from the police we expect that each police force will purchase approximately 1,000 immobilisation devices.

Costs

49. The initial set-up costs only relate to the purchasing of immobilisation devices - the cost of which is unlikely to exceed £35 per device. However, given that it is unlikely - generally speaking - that an offender will decline to co-operate with the enforcement agencies, we believe that immobilisation devices will only be used on rarer occasions. Consequently there will be no need - either for the police or for VOSA - to purchase a significant number of devices. Our estimate of set-up costs is based on the following simple calculation:
- VOSA will purchase 1000 devices;
- The police are likely to purchase a similar number of devices, nationally = 1000 devices;
- Therefore the total number of devices is thought unlikely to exceed 2000; and
- the total set-up cost will be 2000 x £35 = £70,000.

50. It is difficult to know what the running costs of the immobilisation proposals will be. We anticipate that immobilisation devices will generally be used by VOSA whenever a vehicle has been prohibited and there is judged to be a significant risk to road safety unless a vehicle is also immobilised. This is likely to be where an immediate prohibition has been issued and which cannot be cleared prior to VOSA leaving the enforcement site. It is a matter for Chief Officer of the police to decide how best to make use of immobilisation powers. However, we understand it is unlikely that their general policy would be significantly different from that which VOSA intend to apply. From our research to date we believe that contractors are only likely to be used in remote locations or during 'unsocial' hours.

51. We estimate that the total cost in time in fitting and removing an immobilsation device would be £100 per vehicle. However it is unfortunately very difficult to estimate with any certainty what proportion of VOSA-prohibited vehicles will be immobilised – it will be a proportion of the 25,000 non-GB vehicles prohibited and around 30,000 GB vehicles prohibited annually (though the overall total will be lower because some vehicles are prohibited for more than one offence). Our best estimate is that VOSA will be likely to immobilise around 10% of the total of all vehicles prohibited – so perhaps some 5,000 vehicles annually. This means that the estimated annual running costs to VOSA of fitting immobilisation devices will be £500,000K annually. From what the police service has indicated to us to-date we think it is very unlikely that police costs would be any more than this – to produce a total of up to 10,000 vehicles immobilised each year. Consequently the total estimated annual running costs will be of the order of £1M.

Strategic Benefits of implementing the Option

52. The benefit of implementing this option is that there is an additional sanction for offenders to comply with a prohibition notice. Immobilising the vehicle simply prevents the vehicle from being driven before the prohibition has expired it could be said that the benefit of this is in cases where the vehicle has been prohibited because of a serious roadworthiness defect the vehicle will be prevented from using the road network until the defect has been rectified.

Quantified Benefits of implementing the Option

53. We consider that there will be an additional benefit as a result of immobilising the estimated 10% of VOSA-detected and police-detected offenders - who would otherwise be unlikely to pay a financial penalty deposit requirement. The benefit would be that these offenders will pay a deposit which they would otherwise not pay in the absence of fitting of an immobilisation device. Our estimate of the additional consequential deposit income is calculated as follows:
- (VOSA-detected commercial vehicle offenders) = 5000 offences x £120 per average deposit requirement = £600,000; and,
- (police-detected offenders) = 5000 offences x £100 per average deposit requirement = £500,000.
The total gross annual benefit could therefore be £1.1M.

Non-quantifiable benefits

54. It is not easy to attribute a monetary value to the benefit of this option. However we have estimated that up to 10,000 vehicles or drivers are likely to be at significant risk of being involved in an accident - either because the vehicle has defects or the driver is tired, or both. Consequently, if only 3 serious injuries accident and 21 slight injury accidents could be prevented through immobilising prohibited vehicles and drivers, the annual casualty saving alone would equate to £1M annually – which – by itself – would be enough to offset the annual operational cost, both to VOSA and to the police.

55. However, we have not included any estimate of casualty reductions as monetised benefits because there is no precise way of making any firm estimates of what the likely number of reduced casualties is likely to be. However, we do think that it will be inevitable that these measures will result in an overall benefit to society in terms of a reduction in road casualties and damage-only accidents.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

	Yes	No
	Yes	Yes
	No	No
	No	No
	No	No
	No	No
	No	No
	Yes	Yes
	Yes	Yes
	Yes	Yes
	Yes	Yes
	No	No

Annexes

Race Equality Impact/Human Rights Impact

The underlying principle of the deposit scheme is to achieve a consistent and fairer playing – field in terms of enforcement practice and penalties for all nationalities of drivers on our roads. Most EU Member States have similar schemes and the Department does not consider the scheme would be in anyway in conflict with EU Law or the European Convention on Human Rights.

The nationality of the driver to whom a Graduated Fixed Penalty or Deposit Notice is issued will be recorded for statistical purposes only. The fixed penalty notice will be printed off in English only. However, all of the official wording and explanatory notes will be available in different languages in a pre-printed format. It is also envisaged that the call centre VOSA will be using will include a multilingual voice activated service.

Environmental

Benefits are likely to arise as a result of the new schemes encouraging operators to ensure that their vehicles remain compliant with environmental protection requirements.

Consultation with small business: the small firms' impact test

In developing the schemes both formal and informal consultation has taken place with the Road Haulage Association (RHA), Freight Transport Association (FTA) and the Confederation of Passenger Transport (CPT). In July 2004, a formal consultation exercise took place on the principle of the graduated fixed penalty and deposit schemes. Although none of the respondents to the consultation exercise indicated if they were small businesses, the response of the main commercial vehicle trade associations (RHA, FTA and CPT), whose membership consists of all sizes, was supportive of the proposals and the impact it would have on its members.

Gender Equality

These provisions will be applied equally to any offender, irrespective of gender.

Disability Equality

These provisions will be applied equally to any offender, irrespective of whether or not they have any disability. However the immobilisation provisions exclude VOSA and the Police from applying an immobilisation device to a vehicle if the person is a holder of a valid blue badge.