EXPLANATORY MEMORANDUM TO

THE ROAD TRAFFIC OFFENDERS ACT 1988 (PENALTY POINTS) (AMENDMENT) ORDER 2016

2016 No. [XXXX]

1. Introduction

1.1 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 This instrument increases from three to six, the number of penalty points to be issued to persons committing the offence of using a hand-held mobile telephone or other hand-held interactive communication device, while driving.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland.

4. Legislative Context

4.1 Section 41D(b) of the Road Traffic Act 1988 makes it an offence to use a hand-held mobile telephone while driving in contravention of any of the construction and use requirements. Regulation 110 of the Road Vehicles (Construction and Use) Regulations 1986 provides that except in very limited emergency circumstances, a person may not use a hand-held mobile telephone or other hand-held interactive communication device, while driving.

4.2 Schedule 2, Part 1 to the Road Traffic Offenders Act 1988 currently provides that three penalty points will be issued to persons committing this offence. This instrument amends the Road Traffic Offenders Act 1988 so that six penalty points will be issued for this offence.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales and Scotland.

5.2 The territorial application of this instrument is set out in Section 3 under "Other matters of interest to the House of Commons".

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State for Transport Andrew Jones MP has made the following statement regarding Human Rights:

6.2 In my view the provisions of the Road Traffic Offenders Act 1988 (Penalty Points) (Amendment) Order 2016 are compatible with the Convention rights.

7. Policy background

What is being done and why

7.1 The Government has a Manifesto commitment to '…reduce the number of cyclists and other road users killed and injured on our roads every year'. In support of that commitment, the Government published its road safety statement "Working Together to Build a Safer Road System" in December 2015. That statement sets out the context of road safety in Britain today and the overarching scope of road safety activity for the government.

7.2 A number of proposals were announced in the Statement, including "increasing the penalty levels and Fixed Penalty Notice (FPN) for the offence of using a hand-held mobile phone whilst driving".

7.3 Hand-held mobile phone use whilst driving is a dangerous activity which increases the risk of a collision and the proposals ultimately aim to reduce the number of deaths and injuries on the roads.

7.4 A consultation[1] was issued to the general public and ran from January to March 2016. See point 8.1 below.

Consolidation

7.5 This order makes a small amendment to the Road Traffic Offenders Act 1988 and so it is not suitable or legally possible to use this order as a vehicle to consolidate that act.

8. Consultation outcome

8.1 The consultation on increasing the penalties for the use of hand-held mobile phones while driving closed on the 15th of March 2016 with over 4,000 responses. On the basis of the consultation response, there is clear support for change for an increase in penalties, although for a significant number of the respondents the changes proposed in the consultation document did not extend far enough.

In view of the strength of feedback to the consultation, the number of points attributable to the offence will increase from 3 to 6 for all drivers. There will not, as had been proposed in the consultation, be any difference between the number of points to be attributed to drivers of cars and HGVs committing the offence. This is to ensure that all drivers using a hand-held mobile phone are treated equally seriously, and to avoid any confusion in the message we are trying to convey which is that hand-held mobile telephone use while driving is dangerous and unacceptable, ultimately with the objective of changing behaviour.

8.2 The proposal to increase the fine level for fixed penalties is being taken forward in a separate SI – the Fixed Penalty (Amendment) Order 2016.

[1] https://www.gov.uk/government/consultations/hand-held-mobile-phones-changes-to-penalties-for-use-whilst-driving

9. Guidance

9.1 The Government is not issuing specific Guidance in relation to this order. It intends, however, to raise public awareness of the changes to penalties through advertising campaigns and will amend information on Government websites[2].

10. Impact

10.1 There is no specific impact on business, charities, voluntary bodies or the public sector. This legislation is applicable to all members of the public who drive on GB roads or who supervise a holder of a provisional licence at a time when the provisional licence holder is driving a motor vehicle on a road.

10.2 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses but it will not adversely impact upon them as the regulatory burden will not increase for any size of firm.

12. Monitoring & review

12.1 This legislation will be monitored within three years of implementation to assess its effectiveness with a specific focus on number of offenders caught.

13. Contact

13.1 Steve Townsend at the Department for Transport can answer any queries regarding the instrument. Telephone: 020 7944 3885 or email: Steve.Townsend@dft.gsi.gov.uk .

[2] https://www.gov.uk/using-mobile-phones-when-driving-the-law