EXPLANATORY MEMORANDUM TO

THE FIXED PENALTY OFFENCES ORDER 2025

2025 No. 68

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Dame Diana Johnson, Minister of State for Policing, Fire and Crime Prevention at the Home Office, confirms that this Explanatory Memorandum meets the required standard.

2.2 Andy Johnson, Deputy Director for the Police Powers Unit at the Home Office, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Tracy Catling at the Home Office (telephone: 07557 311770 or email: tracy.catling1@homeoffice.gov.uk) can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This order will add nine minor road traffic offences to Schedule 3 to the Road Traffic Offenders Act (RTOA) 1988[1]. Schedule 3 lists all traffic offences for which a fixed penalty may be paid as an alternative to a court hearing, or a fee can be charged for enrolment on an approved course.

4.2 Adding the nine additional offences to Schedule 3 to the RTOA 1988 will allow them to be subsequently included in the National Driver Offender Retraining Scheme (NDORS) regulations which will set out the fixed penalty offences for which a course may be offered. The NDORS regulations, when introduced in March 2025, will formalise current arrangements for educational courses offered as an alternative to prosecution under the NDORS.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales only.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales only.

[1] Schedule 3 to the Road Traffic Offenders Act lists all of the traffic offences for which a fixed penalty may be paid as an alternative to a court hearing.

5. Policy Context

What is being done and why?

5.1 Persons who commit certain low-level road traffic offences may, under existing powers, be offered educational courses under the NDORS. Such courses are offered as an alternative to a fixed penalty fee, and therefore a driver who successfully completes a course is not required to pay a fixed penalty amount in relation to the offence, or to have points endorsed on their driving record.

5.2 The NDORS provisions at section 89 of the Police, Crime, Sentencing and Courts Act 2022 (PCSCA) put the existing charging regime for the educational courses offered as an alternative to prosecution on a specific statutory basis and inserted new regulation-making powers into the RTOA 1988. The provisions of section 89 of the PCSCA, which inserted new sections 90H to 90I into the RTOA 1988, have not changed the way in which courses are offered or administered, although regulations made under the powers will provide greater transparency over how the fees are calculated and used.

5.3 Sections 90H to 90I of the RTOA 1988 allow for regulations to be made specifying the fixed penalty offences for which a fee may be charged for enrolment on an approved course; a body to approve courses; the amount of a fee; how fees are calculated; the level of fees; the use of fee income and power to prevent courses being offered for repeat offences.

5.4 The NDORS regulations will formalise the current arrangements for the courses offered as an alternative to prosecution for specified fixed penalty motoring offences.

5.5 One of the elements which the regulations will prescribe is the road traffic offences for which an educational course may be offered, if it is considered appropriate to do so.

Schedule 3 to the RTOA 1988

5.6 The fixed penalty road traffic offences for which a fee can be charged for enrolment on an approved course will be specified in the NDORS regulations made under new sections 90G to 90I of the RTOA 1988. Those sections define "fixed penalty offences" as those listed under Schedule 3 to the RTOA 1988. Therefore, only those offences listed under Schedule 3 to the RTOA 1988 can be specified by the NDORS regulations.

5.7 The National Police Chiefs' Council (NPCC), in consultation with UK Road Offender Education (UKROEd), decide which Schedule 3 fixed penalty offences are appropriate to be dealt with by way of a diversionary course as an alternative to a fixed penalty.

5.8 During the development of the NDORS regulations, the Government identified 13 minor road traffic offences – which are mostly related to cycling – for which NDORS courses are offered but which are not currently listed under schedule 3 to the RTOA 1988.

5.9 This Order will therefore add nine additional fixed penalty offences to schedule 3 to the RTOA 1988. The nine offences to be added capture all 13 of the minor offences previously identified, because in some cases the relevant provisions cover more than one offence. This will enable those offences to subsequently be included in the NDORS regulations specifying the fixed penalty offences for which a fee can be charged where an NDORS course is offered, if it is appropriate to do so.

5.10 The nine offences are:

i. Failure to comply with any direction given by a constable or by a notice exhibited by order of the Secretary of State regarding the use of a pedal cycle in a Royal Park or other specified land.

ii. Using a pedal cycle in manner that endangers or is likely to endanger any person in a Royal Park or other specified land.

iii. Using a vehicle or pedal cycle between sunset and sunrise, or in seriously reduced visibility between sunrise and sunset, with no lights in a Royal Park or other specified land.

iv. Failure to stop at a school crossing patrol.

v. Cyclist holding on to a vehicle while in motion on a road for the purpose of being drawn along.

vi. Cycling on a road dangerously.

vii. Cycling on a road without due care and attention or without reasonable consideration for other persons using the road.

viii. Using a pedal cycle without lights between sunset and sunrise.

ix. Using a non-motor vehicle with any lamp so as to cause undue dazzle or discomfort.

What was the previous policy, how is this different?

5.11 The NDORS educational courses are well established and have been in place since 2010. The fixed penalty system for motoring offences is established by Part 3 of the RTOA 1988. It provides a quick, simple, and direct way of dealing with a wide range of relatively minor road traffic offences while preserving the right of individuals to challenge an alleged offence in court. Fixed penalties make enforcement easier and less time consuming for the police, and substantially reduce the number of cases brought before the courts.

5.12 The order will not create new offences but will add nine fixed penalty offences to Schedule 3 to the RTOA 1988.

6. Legislative and Legal Context

How has the law changed?

6.1 There is no previous legislation setting out how the offender re-education courses are to be run or administered.

6.2 The PCSCA measures included the following provisions:

a) A charging power under which a road traffic offender may be charged a fee in relation to their attendance at a diversionary course, when the course is offered for a fixed penalty offence as an alternative to a fixed penalty fee or prosecution.

b) A power to charge fees which exceed cost recovery for the courses, and which enable an element of the fee to be charged in relation to the costs of promoting road safety.

c) A power to set the maximum amounts which may be charged in relation to a fee or different components of a fee.

6.3 The NDORS regulations will formalise the current arrangements for the courses offered as an alternative to prosecution for specified fixed penalty road traffic offences.

6.4 The provisions inserted by section 89 of the PCSCA allow regulations to be made prescribing the fixed penalty offences for which a fee may be charged for enrolment on an approved course (new sections 90G(1) and 90G(6)(a) of the RTOA 1988); a body to approve courses (new sections 90G(5) and 90G(6)(b)) of the RTOA 1988; the amount of a fee (new section 90G(4) of the RTOA 1988); how fees are calculated (new section 90G(3(a) of the RTOA 1988); the level of fees (new section 90G(3(b) of the RTOA 1988); the use of fee income (new section 90G(3)(c) of the RTOA 1988) and the power to prevent courses being offered for repeat offences (new section 90H of the RTOA 1988).

6.5 The fixed penalty road traffic offences for which a fee can be charged for enrolment on an approved course are listed within Schedule 3 to the RTOA 1988. The amendments made to the RTOA 1988 by the PCSCA defined "fixed penalty offences" as those listed under Schedule 3 to the RTOA 1988.

6.6 Section 51(3) of the RTOA 1988 allows the Secretary of State to add further fixed penalty offences to Schedule 3 of the RTOA 1998 through secondary legislation.

6.7 This Order will add nine additional fixed penalty offences to Schedule 3 to the RTOA 1988.

Why was this approach taken to change the law?

6.8 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Home Office held a targeted stakeholder consultation from 1 December 2023 to 11 January 2024 to seek views on the proposal to add 13 fixed penalty offences to Schedule 3 to the RTOA 1988 prior to including them in the NDORS regulations. The consultation was sent to stakeholders with an interest in roads policing and roads safety in England and Wales including the National Police Chiefs Council (NPCC), the Association of Police and Crime Commissioners, UKROEd and to road safety organisations and victim charities. The consultation asked for respondents to raise any concerns on the proposal, including to flag any risks or unintended consequences of adding the 13 offences to Schedule 3 to the RTOA 1988.

7.2 A total of 14 responses were received to the consultation. Of these responses, approximately half were from road safety organisations or cycling charities. The remainder were from the NPCC, Metropolitan Police Service (MPS)/Transport for London (TFL), UKROED, Parliamentary Advisory Council for Transport Safety (PACTS), two County Councils and a Police and Crime Commissioner's Office.

7.3 The NPCC, Powys Council, Flintshire Council, PACTS, RAC, UKROEd, Royal Society for the Prevention of Accidents (RoSPA), Road Safety Great Britain (over half of respondents) supported the proposal to add the 13 offences to Schedule 3 to the RTOA 1988.

7.4 Of the remaining respondents, some raised concerns about the inclusion of more serious offences which present a road safety risk as fixed penalties. The Durham PCC raised concerns about the inclusion of the offences of failing to stop at a school

crossing and failing to wait at a school crossing. The joint TFL/MPS submission and Action Vision Zero raised concerns about the inclusion of dangerous cycling.

7.5 Following careful consideration, we have decided to go ahead with the proposal to add the relevant offences to Schedule 3 of the RTOA, by adding nine new offences to that Schedule. The relevant offences cover a range of behaviours which may present different safety risks depending on the relevant facts presented (e.g. the dangerous cycling could have taken place on an empty road or in a busy area with lots of other vehicles and pedestrians). It is therefore right that the police officer should decide on the appropriate penalty, taking into account the circumstances of each case. Although an NDORS referral will be available for the relevant offences it won't be the only option which the police officer could choose for a penalty. This approach is consistent with the range of other offences which are already included in Schedule 3 to the RTOA 1988. Fixed penalties make enforcement easier and less time consuming for the police, and substantially reduce the number of cases brought before the courts. Re-education is evidenced to reduce re-offending and decisions on what offences are suitable for NDORS courses are ultimately for NPCC and UKROEd, who were content with the proposal.

7.6 The list has been shortened to nine offences because following further consideration, we concluded that we could cover the relevant offences and avoid any duplication in Schedule 3 RTOA with a list of nine rather than 13 offences.

7.7 The remainder of concerns raised referred to road safety matters which were unrelated to the proposed order.

7.8 The Government's response to this consultation will be shared with relevant stakeholders and will be published alongside the NDORS Order.[2]

8. Applicable Guidance

8.1 This Order does not implement or require guidance.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because this instrument relates to the maintenance of existing/established course provision and no impact on business is foreseen. There are no impacts greater than ± £10 million Equivalent Annual Net Direct Cost to Business (EANDCB).

9.2 The current NDORS course fee is approximately £100 and can vary according to local course arrangements. A road traffic offender who decides to accept a course is required to pay a fee that covers the cost of administering and providing the course.

9.3 NDORS is non-profit generating as any surplus fees must be used to promote road safety as defined in the PCSCA as the prevention, detection or enforcement of offences relating to vehicles. The surplus may therefore be used with road safety partnerships or for funding speed cameras. There are 120 fixed penalty offences for which an NDORS course may be offered and the majority of these relate to speeding offences. Hence the nine additional offences are not assessed to make a significant difference to the costs or income from administering NDORS. This measure is not

[2] https://www.gov.uk/government/publications/secondary-legislation-for-driver-offender-retraining-courses

expected to result in a change in the volume of courses held, and thus costs are negligible. Even if there were to be an increase in the volume of courses held, these courses charge a cost-recovery fee meaning Net Present Social Value (NPSV) would not be affected.

Impact on businesses, charities and voluntary bodies

9.4 There is no, or no significant, impact on business, charities or voluntary bodies because this instrument relates to the maintenance of existing/established course provision and no impact on businesses, charities or voluntary bodies is foreseen.

9.5 The legislation does not impact small or micro businesses.

9.6 There is no, or no significant, impact on the public sector because this instrument relates to the maintenance of existing/established course provision and no impact to the public sector is foreseen.

9.7 There are 120 fixed penalty offences for which an NDORS course may be offered and the majority of these relate to speeding offences. Hence the nine additional offences are not assessed to make a significant difference to the costs to, or income for, policing and small businesses from administering NDORS.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The Home Office will work closely with stakeholders including the NPCC, Association of Police and Crime Commissioners, UKROEd, Ministry of Justice and Department for Transport to monitor the implementation of this legislation and the continuing effectiveness of NDORS.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Dame Diana Johnson MP, Minister of State for Policing, Fire and Crime Prevention at the Home Office has made the following statement: The instrument does not include a statutory review clause because it will not introduce impacts of more than +/- £10 million (net annualised) on business. Therefore, a statutory review provision is not the appropriate way of keeping the regulations under review. This is in line with the principle that statutory review provisions should be focused on measures with significant impacts on business. The potential burdens of a Post-Implementation Review (PIR) are likely to outweigh the potential benefits.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Minister of State for Policing, Fire and Crime Prevention at the Home Office has made the following statement regarding Human Rights:

"In our view the provisions of 'The Fixed Penalty Offences Order 2025' are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).