EXPLANATORY MEMORANDUM TO

THE ROAD TRAFFIC FIXED PENALTY (PROCEDURE) (VEHICLE EXAMINERS) REGULATIONS (NORTHERN IRELAND) 2010

2010 No. 372

THE ROAD TRAFFIC FIXED PENALTY (PROCEDURE) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2010

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1. Introduction

1.1. This explanatory memorandum has been prepared by the Department of the Environment to accompany the Statutory Rules listed above which are laid before the Northern Ireland Assembly.

1.2. The Statutory Rules are made under Articles 62(3)(a) and 88(1) of the Road Traffic Offenders (Northern Ireland) Order 1996 and are subject to the negative resolution procedure.

2. Purpose

2.1. The purpose of the Statutory Rules (SRs) covered by this Memorandum is to implement the first phase of the Graduated Fixed Penalty, Financial Penalty Deposit and Immobilisation Scheme ("GFP/DS"), which is a major strand of the Road Traffic (Northern Ireland) Order 2007 ("the 2007 Order").

2.2. A Commencement Order, made at the same time as these SRs, brings into effect the necessary provisions of the 2007 Order.

2.3. The introduction of this phase of the GFP/DS will enable:

- the Department's Driver and Vehicle Agency ("DVA") vehicle examiners to issue fixed penalty notices for fixed penalty offences in respect of a vehicle; and

- the police and the DVA vehicle examiners to issue such fixed penalties to non-UK resident offenders and to issue endorseable fixed penalties to drivers who do not hold a driving licence issued in Northern Ireland by enabling the driving record to be checked and subsequently endorsed with penalty points.

3. Background

3.1. These SRs are part of a group of Statutory Rules the principal purpose of which is to effect the changes made by the 2007 Order to the fixed penalty regime under Part IV of the Road Traffic Offenders Order (Northern Ireland) 1996. When fully

implemented the GFP/DS will provide a better framework for the enforcement of road traffic offences.

3.2. The current limitations that exist in the enforcement of these offences will be addressed by-

- enabling Driver and Vehicle Agency ("DVA") vehicle examiners to issue fixed penalties to offenders instead of having to prosecute them through the court;

- enabling the police and DVA vehicle examiners to issue fixed penalties to non-UK resident and UK resident offenders, regardless of whether the offence is endorsable;

- enabling the police and DVA vehicle examiners to request a financial penalty deposit from any offender who does not have a satisfactory address where they can be found in the UK;

- graduating fixed penalties to reflect the type of or the seriousness of the offence; and

- enabling the police and DVA vehicle 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 financial penalty deposit.

3.3. The introduction of this phase of the GFP/DS will address the first of the two issues outlined above.

3.4. The Commencement Order will bring into effect:

- Article 16 and Schedule 2 of the 2007 Order which will enable vehicle examiners to issue fixed penalty notices for fixed penalty offences in relation to a vehicle;

- Article 38 of the 2007 Order which will introduce the definition of the driving record into the Road Traffic Offenders Order (Northern Ireland) 1996 as being, in relation to a person, a record maintained by the Department and designed to be endorsed with particulars relating to road traffic offences committed by that person; and

- Article 39 and Schedule 4 of the 2007 Order which will provide for endorsable fixed penalties to be issued to drivers who do not hold a driving licence issued in Northern Ireland by enabling their driving record to be checked and subsequently endorsed with penalty points.

3.5. The Road Traffic Fixed Penalty (Procedure) (Vehicle Examiners) Regulations (Northern Ireland) 2010 create stand-alone procedures relating to fixed penalty notices given on-the-spot by vehicle examiners. They mirror certain procedural requirements in respect of fixed penalty notices issued by the police under the Road Traffic Fixed Penalty (Procedure) Regulations (Northern Ireland) 1997.

3.6. The Road Traffic Fixed Penalty (Procedure) (Amendment) Regulations (Northern Ireland) 2010 amend the Road Traffic Fixed Penalty (Procedure) Regulations (Northern Ireland) 1997 to exclude from their scope fixed penalties issued by DVA examiners and also to update those Regulations in respect of the driving record.

4. Consultation Outcome

4.1. A UK-wide consultation exercise was carried out by the Department for Transport in 2004 on the general principle of introducing the GFP/DS. There was broad support for the proposals and the primary powers necessary to implement and support the scheme were introduced in Great Britain in the Road Safety Act 2006. Those same powers were introduced in Northern Ireland in the 2007 Order which was itself subject to a separate consultation exercise in 2005/6.

4.2. In 2009 the Department carried out a further consultation exercise on the detail of the secondary provisions required to fully implement the GFP/DS, including these draft Regulations. There were twelve responses received and, overall, there was broad support for the general approach set out in the consultation document.

5. Equality Impact

5.1. In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department conducted a screening exercise on the proposals and concluded that they do not have significant implications for equality of opportunity. The measures will not affect any group disproportionately. In light of this the Department considers that an equality impact assessment is not necessary.

6. Regulatory Impact

6.1. While the Regulations covered by this memorandum will have no significant impact on the costs of business and the voluntary sector, a Regulatory Impact Assessment has been prepared for the GFP/DS as a whole and is attached to this memorandum**.**

6.2. The main areas affected are the road haulage, freight transport and passenger transport industries. However there will be no additional costs or administrative burden for businesses (including small businesses) which are compliant with the law.

7. Financial Implications

7.1. There will be set-up and administrative costs for the GFP/DS although these will be offset by a reduced workload for the courts and receipts from fixed penalties. There will be some set-up costs for DVA associated with establishing new IT systems for the issue of fixed penalties and training staff. Any additional administratives costs associated with the issuing of fixed penalties by DVA vehicle examiners will, to

some degree, be offset by the reduction in costs of having to prepare for and attend court.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Department has considered the matter of Convention Rights and Community Law and is satisfied that there are no matters of concern.

9. EU Implications

9.1. None

10. Parity or replicatory measure

10.1. The legislation replicates provisions already in place in Great Britain and will ensure that a consistent approach is taken across the whole of the UK. This is in line with the Department's current practice of mirroring GB road traffic legislation where possible/appropriate.

11. Additional information

11.1. None

Regulatory Impact Assessment

1. Title of Proposal

Graduated Fixed Penalty, Financial Penalty Deposit and Immobilisation Schemes

2. Purpose and intended effect of measure

(i) Objectives

To commence and implement the relevant provisions in the Road Traffic (Northern Ireland) Order 2007 to enable:

- Driver and Vehicle Agency (DVA) vehicle examiners to issue fixed penalties (FPs);
- the graduation of FPs so that they can be made proportionate to the severity of offending;
- the police and DVA to collect financial penalty deposits from offenders without a satisfactory UK address; and
- the immobilisation of vehicles in certain cases.

(ii) Background

Under current arrangements for road traffic and roadworthiness offences, penalties are not related to the severity of the offence; DVA enforcement officers, unlike police, are unable to issue FPs to offenders; and in practice it is difficult at present to prosecute offenders who are non-UK residents.

The proposed schemes are intended to address these problems.

(iii) Risk Assessment

The risks and road safety issues the proposals address are:

- insufficient deterrent provided by the current framework of penalties; and
- foreign drivers, who do not have a UK address, can only be prosecuted via the police.

3. Options

Option 1: Do nothing

The enabling provisions of the Road Traffic (Northern Ireland) Order 2007 would not be enacted with the result that the current disparities in the enforcement regime would remain and potentially avoidable court time would continue to be incurred.

Options 2 to 5 are all integral to the operation of the schemes which would not function as intended unless all elements were to be implemented as provided for under the primary legislation. In that sense they are not really separate options but are presented as such here in order to facilitate a better understanding of how the individual elements are likely to contribute to the effective operation of the schemes as a whole.

Option 2: Issuing of FPs by DVA Examiners

Under current arrangements only the police can issue a FP notice. This is an unhelpful and limiting arrangement because, whereas the police carry out most compliance enforcement activity in respect of private and light goods vehicles, vehicle examiners in DVA carry out the majority of enforcement activity in relation to commercial vehicles and public service vehicles. In addition, there are certain offences such as drivers' hours and overloading that are not currently FP offences that we intend to make such offences.

Option 3: Graduation of FPs

Currently a FP 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. 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 DVA 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.

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 FPs.

Option 4: Collection of Financial Penalty Deposits (on-the-spot fines)

FPs are, at present, only issued to offenders who are based in the UK because, in the event that either a FP is not accepted or an offender ignores a FP 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, it is currently not possible to issue a FP to non-NI licence holders unless they hold a counterpart licence with a record of their penalty points. The consequence is that both non-UK and non-NI offenders are rarely pursued, either by DVA or the police, for road traffic and vehicle roadworthiness offences. Under this policy 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 FP 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 FP so that, in these cases, a deposit payment would be required as a “surety” pending court prosecution.

Option 5: Immobilisation of prohibited vehicles

A prohibition notice can be issued for a variety of offences including roadworthiness and overloading. The prohibition applies at the discretion of the enforcement officer but normally until the infringement has been rectified.

In the case of prohibitions for roadworthiness defects, a prohibition can only be cleared after the relevant mechanical defect (or defects) has been rectified. In the case of overloading offences, the prohibition is generally removed once the relevant weight (or weights) have been reduced to the maximum permitted for the vehicle and the vehicle may have to be re-weighed to verify it complies with the relevant weight restriction.

The problem in all cases is ensuring that the terms of the prohibition are complied with. Generally speaking, this can be assured where DVA 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 offenders from whom a financial penalty deposit has been requested comply with the requirement to pay a deposit. Under this policy option, the ability to immobilise a vehicle will, simply and effectively, help to secure compliance with prohibition notices and deposit requirements.

4. Benefits

Option 1

No benefits other than no financial cost.

Option 2

Strategic Benefits

The current system places an additional burden on the Court Service and DVA in having to deal with the prosecution of offences which under these proposals would very largely be dealt with by way of FPs.

The current system is also inequitable in that it prevents offenders from having the opportunity to pay a FP instead of going to court, when, if they had been dealt with by the police, such an opportunity would have been available to them. Implementing the proposal under this option would address both of these problems.

Quantified Benefits

GB figures indicate that in 2004 the overall payment rate of FP notices issued by the police for motoring offences was 88%. On the basis of this, we could assume that there would be a similar level of payment of FPs offered by DVA and a

corresponding reduction, say 90%, in the number of cases that have to be taken to court in NI.

Given that DVA currently prosecutes some 900 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 DVA to issue FPs instead would mean a saving in the prosecution of around 810 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 an offence relating to a motor vehicle as £1,150. Therefore, we estimate that the total annual saving would be 810 x £1,150 = £931,500.

As 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 a 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 £202,500 calculated as follows:

810 cases prosecuted each year x £250 per operator = £202,500.

Given the fact that DVA will be able to issue FPs for the first time it is believed this fact is likely to encourage greater compliance by UK operators and drivers. Although it is not possible to quantify the effect of this additional deterrent it can only serve to benefit road safety.

Option 3

Strategic Benefits

At the present time, only FPs relating to drivers' hours and overloading offences – and also some offences under the Motor Vehicles (Construction and Use) Regulations (Northern Ireland) 1999 – will be graduated to reflect the nature and severity of the offence. These offences are, for the most part, dealt with by DVA rather than by the police because they relate to the operation of commercial vehicles.

In 2007/08, the following number of such offences were dealt with by DVA :

Offence Type	UK HGV	NON-UK HGV	UK PSV	NON-UK PSV
Drivers' Hours	609	32	19	1
Overloading	224	50	NIL	NIL

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 the 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

There has been no attempt to make any monetised analysis of benefits because the parameters on which any assessment was based would be highly speculative and subjective.

However, it appears that 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 4

Strategic Benefits

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

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. NI industry will benefit from a more effective deterrent against unfair competition from law breakers.

It has been assumed 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 FP offer or a deposit in respect of a prospective court prosecution. It is considered that this is a realistic assessment based on the overall payment rate of FPs by GB drivers.

However, if option 5 were also to be implemented it is expected that the percentage would increase to 100% bearing in mind that offenders who declined to make such a payment are liable to find their vehicles immobilised unless or until they 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 5 would correspondingly decrease).

Quantified Benefits

The total number of prohibitions issued to non-NI offenders at present by DVA is in the region of 50. We are assuming, for the purposes of this broad estimate, that, in future, a FP and deposit requirement would be made in all 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 GB '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 NI would be some £6,000 per year, but bearing in mind that only 90% of the offenders are thought likely to pay a financial penalty deposit requirement, the estimated income from DVA-issued requirements would be £5,400.

Whilst the police cannot currently issue FPs 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 an increase in the number of FPs 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 12,000 annually. Bearing in mind that this number will be mainly 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 12,000 x £60 = £720,000. So, again, if 90% pay, the total net income would be £648,000.

Non-quantifiable Benefits

Calculating the potential road safety benefit in respect of being able to deter would-be foreign offenders is challenging. We do not know how many visiting vehicles would be liable to be involved in collisions were it not for DVA's intervention, nor do we know what the impact of issuing FPs by DVA might be in terms of encouraging greater compliance.

However, we do know that each road death is currently valued at £1,683,810; each serious injury at £189,200; and each slight injury at £14,950. If these new measures saved for example just one life a year the benefit to society would be over £1m annually.

There is no 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 a substantial overall benefit to society in terms of a reduction in road casualties and damage-only collisions.

Option 5

Strategic Benefits

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 it 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, that the vehicle will be prevented from using the road network until the defect has been rectified.

Quantified Benefits

It is considered that there will be an additional benefit as a result of immobilising the estimated 10% of DVA-detected and police-detected offenders who would otherwise be unlikely to pay a financial penalty deposit requirement. The monetary value of these deposits is calculated as follows:

- (DVA-detected offenders) = 5 offenders x £120 per average deposit requirement = £600; and

- (police-detected offenders) = 1,200 offenders x £100 per average deposit requirement = £120,000.

- The total gross annual benefit could, therefore, be £120,600.

Non-quantifiable benefits

It is not easy to attribute a monetary value to the benefit of this option.
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.

Business sectors affected

The main business sectors affected are the road haulage, freight transport and passenger transport industries. However, there will be no additional costs or administrative burden for those who comply with the law.

Other Impact Assessments

There are no equality, human rights, environmental, rural or health issues involved.

In addition, the proposed measure will have no impact on development, sustainable or otherwise.

5. Costs

(i) Compliance costs

Option 1

None.

Options 2-5

There will be no costs for those who comply with the law.

(ii) Other costs

Option 1

None.

Option 2

There would be some set-up costs for DVA, estimated at approximately £30,500, associated with establishing new IT systems for the issue of FPs and training staff. Any additional administrative costs associated with the issuing of FPs by DVA vehicle examiners will, to some degree, be offset by the reduction in costs of having to prepare for and attend court.

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

Option 3

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 cannot easily be quantified. There will also be a small one-off cost, in the region of £40K, in making essential modifications to the current police computerised system for FPs (the VP/FPO system) to enable it to take account of graduated FPs in future.

There will be a one-off cost, in the region of £20K, for modification to the NICTS ICOS application to automatically receive fine registration details in those cases where the offender fails to pay.

Offenders may see some additional cost since more serious offences will face higher fixed penalty levels in future. It is not possible to quantify this because the costs are dependent on the level and extent of offending and both are unknown quantities in the future.

Option 4

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. However, these costs will be offset by an equivalent new income for the Consolidated Fund which would be classified as an equivalent benefit to society. There will be no costs to compliant drivers and operators.

There will be set-up and running costs both for DVA and for the police. There would be some set-up costs for DVA, estimated at approximately £30,500, associated with establishing new IT systems for the issue of FPs and training staff. There will be an estimated cost of approximately £20,000 associated with modifying the current police computerised systems for recording and processing the issue of FPs so as to enable them to take account of financial penalty deposits in future. There will also be mainly one-off training costs for the police, estimated at approximately £10,000, so that appropriately authorised officers may issue financial penalty deposit requirements.

The running costs and any additional administrative costs for DVA associated with the issuing of FPs by DVA examiners will, to some degree, be offset by the reduction in costs of having to prepare for and attend court. The police will also incur some extra costs in issuing FPs 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.

There would be additional costs to foreign offenders although, since they are not part of UK society, the monetary value of these costs has not been included.

Option 5

The initial set-up costs only relate to the purchase of immobilisation devices, the cost of which is unlikely to exceed £60 per device. However, given that it is unlikely, generally speaking, that an offender will decline to co-operate with the enforcement agencies, it is believed that immobilisation devices will only be used on rare occasions. Consequently, there will be no need either for DVA or the police to purchase a significant number of these devices. The estimated set-up costs is based on the following simple calculation:

- DVA will purchase 20 devices;
- The police will purchase 20 devices;
- Therefore the total set-up cost will be 40 x £60 = £2,400.

It is difficult to estimate with any certainty what proportion of DVA-prohibited vehicles will be immobilised. While detailed procedures have yet to be finalised, it is anticipated that immobilisation devices will generally be used by DVA 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 DVA leaving the enforcement site. It is a matter for the Chief Constable of the police to decide how best to make use of immobilisation powers. However, it is understood that it is unlikely that their general policy would be significantly different from that which DVA intends to apply.

6. Consultation with small business: the Small Business Impact Test

In developing the schemes both formal and informal consultation has taken place with the industry, including the Road Haulage Association (RHA), the Freight Transport Association (FTA) and the Confederation of Passenger Transport (CPT). In July 2004, a formal UK-wide consultation exercise took place on the principle of the 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.

7. Enforcement and Sanctions

The primary legislation – the Road Traffic (Northern Ireland) Order 2007 – allows for DVA and the police to enforce the schemes. Very serious cases, such as fraud, will continue to be prosecuted through the courts as they are now.

Non-payment of a FP would result in the case being fine-registered with the courts for the original offence.

An offender who has reached the threshold of penalty points on their driving licence would also be dealt with by the courts.

Non-payment of a deposit may result in DVA or the police immobilising/detaining the vehicle by prohibition until the deposit is paid or is discharged by the courts, whichever occurs first.

There will be no discretion over the amount of the FP.

Penalties incurred will have an impact on the repute of an operator and may result in sanctions through suspension, revocation or curtailment of vehicle licences or, ultimately, of an operator's licence.

8. Monitoring and Review

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

9. Consultation

As indicated in Section 6 above, there was a UK-wide public consultation on the principle of the schemes and, overall, there was broad support from those who responded. The vast majority felt that the proposed new schemes would be a positive and effective means of tackling inconsistencies in the way traffic and roadworthiness regulations are generally enforced.

More recently, between 17 June and 30 September 2009, public consultation on the implementing detail of the schemes was carried out in Northern Ireland. Twelve consultees responded and, overall, there was general support for the approach set out in the consultation document.

10. Summary and Recommendation

The Department is committed to proceeding with options 2-5 at the earliest opportunity and recommends that regulations should be made to commence and implement the relevant provisions of the Road Traffic (Northern Ireland) Order 2007.

11. Declaration

"I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs."

Signed ***Deirdre Kenny***

Date ***9th November 2010***

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