

Consultation on the detail of the Graduated Fixed Penalty and Deposit Schemes

June 2007

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Chapter 1

Introduction and Background

Scope and Purpose of Consultation

- 1.1** This document explains how the current fixed penalty notice regime works, and why a graduated fixed penalty scheme and a deposit scheme are being introduced.
- 1.2** The powers to introduce the schemes are included in the Road Safety Act which received Royal Assent on the 8th November 2006. The purpose of this document is to seek views on the details to be incorporated in secondary legislation. The Department intends to consult separately on the implementation of proposals for a graduated structure for speeding penalties – also contained in the Road Safety Act – in due course. However, the provisions envisaged in this consultation document in respect of financial deposits will extend to any type of road traffic offence for which the police are empowered to issue a fixed penalty notice.

Background

- 1.3** Under current arrangements, fixed penalties are not related to the severity of an offence and fixed penalty notices may be issued by police officers only. By contrast, under the new powers it will be possible to graduate penalties so that they reflect the level of offending and vehicle examiners from the Vehicle and Operator Services Agency's (VOSA) will be able to issue fixed penalty notices in respect of many of the offences they are responsible for enforcing.
- 1.4** In addition the Act will empower VOSA vehicle examiners and the police to collect deposits in respect of fixed penalties or prospective court fines from those offenders who do not have a satisfactory GB address. The new system will be consistent with the over arching Home Office fixed penalty framework.
- 1.5** There was broad support from all those who responded to the preliminary round of consultation in July 2004 about the new powers. The vast majority felt that the new schemes would be a positive and effective means of tackling inconsistencies in the way traffic and roadworthiness regulations are generally enforced.
- 1.6** In England and Wales there are three types of fixed penalty notices:
 - *Endorsable*; this is issued personally to the offender by the police officer at the time of the alleged offence. The offender is expected to surrender their driving

licence for endorsement either at the roadside or at a police station within 7 days. The current penalty is £60 plus a driving licence endorsement of 3 points.

- *Non-endorsable*; this is also issued at the time of the offence and carries a penalty of £30.
- *Conditional offer*; Recipients of a conditional offer can either accept it or request a hearing at court. These notices usually relate to offences detected by cameras and are primarily in respect of speeding. Recipients have 28 days to pay the fixed penalty proposed in the conditional offer or request a hearing; otherwise the penalty increases by 50%.

1.7 For all concerned, the police, the offender and the courts, the current fixed penalty scheme administered by the Police has resulted in considerable savings in time. The new fixed penalty arrangements for VOSA vehicle examiners will result in similar new savings for VOSA, offenders found by VOSA and the Courts.

1.8 The new arrangements will not replace existing enforcement procedures open to VOSA such as the prohibition of vehicles and the impounding of illegally operated lorries. These sanctions will continue to be used whenever it is appropriate to do so. Prosecutions will also continue to be taken for the more serious offences, and when drivers choose not to accept a fixed penalty notice. Both the police and VOSA will have the power to immobilise vehicles. However, it is proposed that the power should be exercised only where it is considered that there is a risk of absconding.

1.9 In addition, as it is difficult in practice to enforce against offenders who have no settled address in GB, the financial penalty deposit is being introduced. In such cases in future, the offender will have to pay a deposit on the spot equal to the level of a fixed penalty. He or she will then have 28 days in which to decide whether to contest the matter in Court or to allow the deposit to be taken to pay off the fixed penalty. In the event of proceedings, the deposit would either be put towards any fine imposed by the Court, or, be returned to the alleged offender in the event that the court finds in his/her favour.

The Devolved Administrations.

1.10 Wales and England will have the same system. The new system in Scotland will be much the same, except that, whereas in England and Wales officers can give a fixed penalty notice to a driver they stop, conditional offers being used for offences detected by cameras when they are sent in the post, in Scotland the conditional offer is always used. In England and Wales the unpaid fixed penalties (both conditional and penalties given at the time) will be registered with the offender's local court for payment, but in Scotland when Conditional Offers go unpaid, the original offence will be reported to the Procurator Fiscal for prosecution and any non-payment will normally be referred to the District Court. For simplicity, the text of this consultation paper refers to "fixed penalty notices" throughout to include conditional offers.

- 1.11** The authorities in Northern Ireland are progressing introduction of the scheme with their own legislation and with the Driver Vehicle Testing Agency fulfilling the same functions as VOSA. Northern Ireland will be undertaking a separate consultation on the detail of their scheme in due course.

Chapter 2

VOSA officers to issue Fixed Penalty Notices

- 2.1** The Road Safety Act will amend the Road Traffic Offenders Act 1988 (RTOA) to give VOSA vehicle examiners equivalent powers to those already vested in the police to issue fixed penalty notices. The offences, for which we intend VOSA to issue fixed penalties, are listed in general terms under paragraph 2.5. Offences such as speeding will remain a matter for the police.
- 2.2** The decision on whether to issue a fixed penalty notice, or to prosecute, for an offence will be one for the VOSA officer, just as it is a decision for a police officer, taking all relevant factors into consideration. As a general rule, it is proposed that fixed penalty notices should be issued in the main in respect of minor or medium level offences. High level or serious offences would continue to be prosecuted through the court system as they are at present.
- 2.3** VOSA estimate that of the 13,500 offences prosecuted by VOSA during 2005, some 12,150 cases (90%) could have been dealt with by fixed penalty notices had this scheme already been in place.
- 2.4** Acceptance of a fixed penalty notice results in no criminal record, offers the offender a set penalty; and will save the need to attend court. The opportunity for offenders to opt to go to court instead of accepting a fixed penalty notice will remain unchanged. As now, penalty points will be endorsed on the licence and registered on the DVLA database. They will continue to be noted if further endorsable offences are committed while they remain in force.
- 2.5** We propose that enforcement officers will be able to issue fixed penalty notices in respect of the following categories of offences:
- Overloading
 - Drivers' hours, tachograph records
 - Roadworthiness and statutory testing
 - Driver Licensing
 - European Community Authorisations and Licences
 - Vehicle excise duty

It should be noted that the offences themselves remain criminal offences and that we have no plans decriminalise them in the future.

Chapter 3

Graduated Fixed Penalties

- 3.1** The RTOA, as amended by the Road Safety Act, enables fixed penalties for different offences to be set at different amounts and different levels of fixed penalty to be set for the same offence in different circumstances, so that fixed penalties can reflect the level of offending. These can apply to all drivers and all vehicles, regardless of origin. The Act does not specify particular offences, but provides that the particular offences for which penalties will be graduated will be specified by order. The Department's priority is to introduce graduation of offences in relation to offences for which VOSA examiners carry out checks. In due course the Government will consult separately on the secondary legislation to graduate the fixed penalties associated with speeding and possibly other non-VOSA offences.
- 3.2** We propose that the level of graduated fixed penalties will be consistent with the Home Office fixed penalty framework and the existing fixed penalty system for similar offences. Offences and their respective fine bands will be fixed by Order applying to England, Wales and Scotland. There will be 4 bands of offences which will attract fixed penalties of £30.00, £60.00, £120.00 and £200.00. Annex A illustrates the bandings for offences that will be covered by fixed penalty notices other than those offences that the police can already issue fixed penalty notices for (e.g. construction and use offences in the Road Traffic Offenders Act).
- 3.3** Graduation for drivers' hours and overloading are attached at Annex B. This illustrates the graduation of offences based on their severity; and, how they fall into a specific band or fine level.
- 3.4** Full details of the graduation and banding levels will, in addition to being specified in the relevant order, be made publicly available by such easily accessible means as the VOSA website, so that people will be able to check the penalty and offence levels when they wish. Where the penalty for an offence has been graduated, the police as well as VOSA officers will be able to apply the graduated penalties.
- 3.5** In developing the proposals for banding and graduating offences, we have sought to strike an appropriate balance. Clearly the level of penalty needs to reflect the seriousness of the offences committed and the likely level of penalty that would be issued by a Court.
- 3.6** Where VOSA officers are enforcing, and detect multiple offences they will take a consistent approach when deciding whether the offences detected warrant the offer of a fixed penalty notice or prosecution action.

- 3.7** In the first instance, we propose that graduated fixed penalty notices will only be issued in respect of offences detected at the roadside. However, the present police use of conditional offers – such as for speeding offences – will continue.
- 3.8** The enabling legislation also allows for offences captured remotely – such as by Automatic Number Plate Recognition (ANPR) cameras – to be the subject of a conditional offer. This would work in a similar way to the existing conditional fixed penalty system used by the police for dealing with traffic offences. We will be seeking views on this aspect by issuing a further consultation document in due course.
- Q1 Do you think the list of offences at paragraph 2.5 is appropriate for VOSA officials to deal with by way of fixed penalties?**
- Q2 Do you think that the bandings proposed at Annex A are appropriate?**
- Q3 Do you think that the graduations proposed at Annex B are appropriate?**

Issuing of fixed penalty notices by VOSA vehicle examiners

- 3.9** Fixed penalty notices will be issued by the VOSA examiner to the driver committing the offence. There is no option to make them out to anyone else. If the offence is one that falls within the Fixed Penalty scheme, the examiner, who will interview the driver, will decide whether to issue the appropriate fixed penalty notice. The Notice will detail the offence(s) found; (if appropriate) the band it falls in, the corresponding penalty; and, instructions on how to pay.

Endorsable Offences

- 3.10** The issuing of fixed penalty notices for endorsable offences by VOSA officers will mirror the present system set out in the RTOA and operated by the police. As now, a fixed penalty notice for an endorsable offence will be issued at the roadside only if:
- (a) the driver produces his licence for inspection by the enforcers
 - (b) the enforcer is satisfied, on inspecting the licence, that the driver would not be liable to be disqualified under section 35 of the Road Traffic Offenders Act 1988 if he were convicted of that offence, and
 - (c) the driver surrenders his licence to the enforcer to be retained and dealt with.
- 3.11** If the person concerned does not produce their licence for inspection, the VOSA enforcer may require instead that the licence be delivered to the VOSA Fixed Penalty Office, the address of which will be specified. Provided VOSA was then subsequently satisfied on inspecting the licence that, the licence holder would not be liable to be disqualified under section 35 of the RTOA, if convicted of the offence, the licence holder would be given a Fixed Penalty Notice at that stage.
- 3.12** If a driver is stopped by a VOSA enforcement official they will be allowed 14 days in which to produce or send their licence for endorsement to VOSA's Fixed Penalty

Office, at the address specified on the Notice. This is twice as long as the 7 days allowed for production of a licence at a police station because VOSA will have only one Fixed Penalty Office, to which the licence would need to be posted or delivered in person if the driver so chooses. VOSA will then endorse the driving licences (and counterpart) and return the licence as soon as the obligatory endorsements had been added.

- 3.13** If the licence holder would be liable to be disqualified under section 35, the case would go to court, just as at present.

Payment and notification of fixed penalties

- 3.14** There will be no change to the current system for how non – payment of fixed penalties is dealt with. A fixed penalty must be paid within 28 days. If the offence is committed in England and Wales and neither payment nor a request for a court hearing is received within the time limit specified on the Notice, a fine will be registered in court against the recipient. The sum due will automatically be increased by 50% and treated as if it were a fine imposed by the Court. Non-payment of a Fixed Penalty for an endorsable offence will automatically result in a case being referred to the courts. In Scotland, if a conditional offer is not paid the original offence will be reported to the Procurator Fiscal and will normally be prosecuted in the District Court.
- 3.15** The primary means of payment for VOSA-issued Fixed Penalty Notices will be via VOSA's Fixed Penalty Office, which will include a call-centre for receiving payments by credit or debit card. The office will also be open to the public during normal business hours so that payments, including cash or cheque, can be made in person. Cheques may be posted. Receipts would be sent out when requested. Payment may be made at any time during the 28 day period.
- 3.16** Acceptance and payment of a fixed penalty will mean that liability for that offence is automatically discharged. As at present, recipients of fixed penalty notices may instead of payment request a Court hearing. Details on how to do this within the 28 day specified period will be given on the Notice. VOSA will then arrange for the issue of a Summons to the defendant to attend Court.
- 3.17** As with a prohibition notice at present, drivers will be advised to tell the operator for whom they are working at the time that a Fixed Penalty Notice has been issued. Under the terms of the Operator Licensing system, operators and nominated transport managers will then be required to notify the Traffic Commissioners of any relevant fixed penalty offences. Drivers are also bound by their vocational driving licence to notify convictions to the Traffic Commissioners. Traffic Commissioners have the authority to take these into account when looking at the repute of an operator, driver or transport manager. It is an offence not to notify the Traffic Commissioners of convictions within the requisite period. Non-notification of issued fixed penalty notices can also be looked at when dealing with issues of the repute of an Operator or driver in connection with his licence.

- 3.18** The Road Safety Act amends the Public Passenger Vehicle Licensing Act 1981 and the Goods Vehicle (Licensing of Operators) Act 1995 to enable Traffic Commissioners to take Fixed Penalty Notices into account when considering driver or operator repute. This will provide an effective sanction process for dealing with the operators who employ drivers who continuously offend because such operators could face disciplinary action against their operators' licence.

Chapter 4

The Deposit Scheme

Application

- 4.1** In any case where a driver of a vehicle of any type (commercial or private) does not have a satisfactory address in GB, there will be a requirement on him to pay a financial deposit immediately at the roadside. What constitutes a satisfactory address would be a matter within the discretion of the enforcement officer at the time, but it would have to be an address at which the officer considered it likely that it would be possible to find the person subsequently. Normally, in the case of commercial drivers, the usual documentation carried in the vehicle which a commercial vehicle driver has in his possession when driving, such as a driving licence, should be sufficient to establish whether the driver has a satisfactory fixed address at which he resides in this country. Deposits may be taken in respect of both the payment of a fixed penalty notice and appearance in Court for a prosecution.

Levels of deposit

- 4.2** It is proposed that the amount payable as a deposit will be the same as the level of the relevant fixed penalty, which, if graduated, will be as set out in annexes A and B.
- 4.3** In cases where the offending is considered too serious to be dealt with by means of a Fixed Penalty, a deposit will be required until the case has been heard by a court. Should the driver fail to appear, the deposit would be forfeited against any fine imposed. We propose that the amount of deposit required against a court appearance should be higher than that of the maximum level of a Fixed Penalty (which is £200). This is because court fines are generally likely to be some what higher than the level of Fixed Penalties. We therefore, propose an amount of £300 per offence be required with a ceiling of £900 (i.e. 3 or more offences would always be £900).

Payment of deposits

- 4.4** A person who is required to pay a deposit must pay the required sum on the spot whether the requirement is imposed by a VOSA officer or the police, payment by credit or debit card would be the preferred payment method. This is a common and simple method of payment which avoids difficulties associated with cash. For VOSA transactions, the credit card details would be phoned through to VOSA's call centre. Other centres will be set up by the Police. The driver would not be allowed to continue

with their journey until the payment had been confirmed as cleared. Another person would also be able to pay the deposit on behalf of the driver (e.g. passenger or operator).

- 4.5** VOSA examiners would take cash deposits, including Euros, at the roadside if that were to be the only payment method available. If they do so a receipt will be issued. Strict handling controls on cash will be in place, including the use of tamper – proof evidence bags. Foreign cheques, other than credit card cheques, will not be acceptable. The police would also accept cash for deposit payments if the driver could not pay by card.
- 4.6** If a deposit is not paid immediately, the police or VOSA will prohibit the vehicle from being driven. However, they may give a written direction notice requiring the vehicle to be driven to a specified place, such as a parking area and imposing restrictions on speed and route. The prohibition will continue in force until the driver pays the deposit or the offence is discharged by the court – whichever occurs first. A prohibited vehicle may be immobilised, as explained later.
- 4.7** All deposit payments made to the police will immediately be transferred to the Court Service. In the case of VOSA any payments will initially be held in a holding account in VOSA's name until the deadline for requesting a court hearing has expired. If a hearing is requested, and the Court finds in the driver's favour, their deposit payment would be refunded in full from the holding account together with interest. If the court finds against the driver, the deposit will be retained as all, or part of the penalty depending on the Court's ruling. This will include Court costs.
- 4.8** If a fixed penalty notice has been issued and no court hearing is requested within the 28 days, the deposit will be treated as a payment of the fixed penalty. Failure to attend in respect of a court hearing would automatically mean that the deposit is forfeited.
- 4.9** VOSA's arrangements for the collection of deposits will be in place from the start of the scheme. However, the arrangements for the police to collect deposits will be more complex and will require new systems to be established by the Court Service. Once developed, these arrangements could be piloted in one or more criminal justice areas ahead of a national roll-out of the arrangements.
- 4.10** Any payments collected through the Graduated Fixed Penalty and Deposit Scheme will not be kept by VOSA, the police or the courts as income. There will be no incentive based schemes to raise money by issuing fixed penalties.

Q4 Do you agree that the deposit levels proposed at Annex A and Annex B are appropriate?

Q5 If not, what changes would you suggest?

Chapter 5

Other issues common to both schemes

Administrative and operational arrangements

- 5.1** VOSA's roadside IT system will automatically capture all Graduated Fixed Penalty and Deposit Schemes information, and provide a complete audit trail of all notices issued and deposits paid. All systems and processes will be subject to routine audit inspections and reviews.
- 5.2** There will be no quota systems where officials are given a target to issue a certain amount of fixed penalty notices or deposits. To ensure transparency VOSA will publish in their effectiveness report the annual number of notices and deposits issued as they do now for prohibitions.
- 5.3** The police will use a similar system to VOSA but are expected at least initially to do this manually, as they do now, rather than with an IT system at the roadside.
- 5.4** Draft guidance to drivers and operators on the operation of the scheme is attached at Annex C.
- Q6** **Are there any comments you want to make about the draft guidance at Annex C? If so, please explain your views.**

Immobilisation

- 5.5** An existing common enforcement tool on detection of a driver or a vehicle offence is to issue a "prohibition" notice where the driver or vehicle is deemed unfit to continue with a journey. The notice prohibits the driving of the vehicle for a specified time or until a specified event. This could be because the vehicle is overloaded or unroadworthy, or, because the driver has driven for too long a period without the required break or rest.
- 5.6** However, both the Police and VOSA have become aware of a growing tendency for drivers, mostly non-GB registered drivers but also some GB registered drivers, to fail to comply with the conditions set out in the prohibition notices. Most prohibitions, in particular those issued for drivers' hours offences, simply expire after a set time has passed. Neither the police nor VOSA have the resources to supervise offending drivers and their vehicles to ensure they comply with the conditions of all prohibition notices. Immobilisation of vehicles provides a simple and effective means of ensuring compliance with the prohibition.

- 5.7** The Road Safety Act enables the Secretary of State to make regulations empowering VOSA and the police to immobilise vehicles which are under prohibition. This includes prohibitions issued for roadworthiness defects, overloading and drivers' hours as well as for non-payment of a deposit. It is anticipated that this power will generally only be exercised where the Police or VOSA consider that there is a reasonable risk of the driver contravening a prohibition.
- 5.8** VOSA is considering whether to use contractors to fit immobilisation devices. If it is decided to use contractors it is envisaged that a VOSA enforcement officer will notify the contractor to apply the device and after a set time to remove the device. It will be up to the driver to notify the operator/owner of the vehicle that it has been immobilised.
- 5.9** VOSA officials are currently evaluating different types of immobilisation devices. In doing so, they are seeking an appropriate balance between avoiding excessive costs of purchasing and applying the devices and ensuring that it is difficult for the devices (e.g. Wheel clamps) to be removed illegally.

Q7 Do you have any views on whether VOSA and the police should be empowered to immobilise prohibited vehicles, on how the immobilisation powers should be applied or on the types of immobilisation devices to be used? If so, please explain your suggestions.

Chapter 6

How to Respond

- 6.1** The consultation period began on 07 June 2007 and will run until 30 August 2007
- 6.2** The Government would welcome comments on the specific questions on these proposals. Your responses will be used to help develop our proposals and a summary of responses will be published on the Department's website www.dft.gov.uk within three months of the consultation closing date.
- 6.3** If you would like further copies of this consultation document it can be found at www.dft.gov.uk or you can contact Joanne Wake by ringing 020 7944 6566.
- 6.4** Please send consultation responses to:
- Joanne Wake
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Or e-mail them to: commercialvehicle.enforcement@dft.gov.uk
- 6.5** When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation please make it clear who the organisation represents, and, where applicable, how the views of members were assembled.
- 6.6** A list of those consulted is attached at Annex F. If you have any suggestions of others who may wish to be involved in process please contact us.
- 6.7** This consultation has been produced in accordance with the principles of the Government's "Code of Practice on Consultation" which are included at annex
- 6.8** A summary of responses to this consultation will be published on our website: www.dft.gov.uk after the consultation period has closed
- 6.9** According to the requirements of the Freedom of Information Act (2000), all information contained in your response to this consultation may be subject to publication or disclosure. This may include personal information such as your name and address. If you want your response or your name and address to remain confidential, you

should explain why confidentiality is necessary. Your request will be granted only if it is consistent with Freedom of Information obligations. An automatic confidentiality disclaimer generated by your e-mail system will not be regarded as binding on the Department.

Chapter 7

Summary of consultation questions

- Q1** Do you think the list of offences at paragraph 2.5 is appropriate for VOSA officials to deal with by way of fixed penalties?
- Q2** Do you think that the bandings proposed at Annex A are appropriate?
- Q3** Do you think that the graduations proposed at Annex B are appropriate?
- Q4** Do you agree that the deposit levels proposed at Annex A and Annex B are appropriate?
- Q5** If not, what changes would you suggest?
- Q6** Are there any comments you want to make about the draft guidance at Annex C? If so, please explain your views.
- Q7** Do you have any views on whether VOSA and the police should be empowered to immobilise prohibited vehicles, on how the immobilisation powers should be applied or on the types of immobilisation devices to be used? If so, please explain your suggestions.

Annex A

Table of offences including levels and bandings

BAND O (Verbal Warning)	
<i>Offence Description</i>	<i>Legislation</i>
Driver fails to return tachograph to operator within 21 days	Section 97A(1)(a) of the Transport Act 1968
Fail to ensure that the time recorded on the chart agrees with the official time	Article 15(3) of Council Regulation (EEC) 3821/85 and Section 97 (1)(a)(iii) of the Transport Act 1968
Driver smoking on PSV (without passengers permission where relevant)	Regulation 5(3)(b) & (4) of The Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) Regulations 1990 and section 24(2) of the Public Passenger Vehicles Act 1981
Fail to display trade licence	Regulation 33 of the Road Vehicle (Registration and Licensing) Regulations 1971 and Section 59(1) of the Vehicle Excise and Registration Act 1994

BAND 1 (Penalty: £30)	
<i>Offence Description</i>	<i>Legislation</i>
Incorrect use of mode switch	Article 15 (3) EC reg 3821/85 and Section 97(1)(a) (iii) of the Transport Act 1968
Use dirty or damaged or defaced charts or driver card	Article 15(1) EC reg 3821/85 and Section 97(1)(a) (iii) of the Transport Act 1968
Use trade plates for unauthorised purpose	Section 34(1) of the Vehicle Excise and Registration Act 1994
Use a vehicle for the Carriage of Passengers on an EC Regular Service without being the holder of a Regular Service Authorisation	Article 2(1)&(4) of Council Regulation (EEC) 684/92. Regulation 19(1) & 19(3) of The Road Transport (International Passenger Services) Regulations 1984 and the European Communities Act 1972
Use a vehicle for International Carriage of Passengers without being the holder of a community licence	Article 3a(1) of Council Regulation (EEC) 684/92. Regulation 3, The Public Service Vehicles (Community Licences) Regulations 1999.
Fail to comply with conditions governing the use of a Community Licence	Article 3a of Council Regulation (EEC) 684/92. Regulation 7, The Public Service Vehicles (Community Licences) Regulations 1999.
Use a vehicle for carriage of passengers on an occasional service without a correctly completed control document being carried	Articles 6 & 10 of Agreement on International Occasional Carriage of Passengers by coach and bus (Interbus) agreement EC917/02 and Regulation 19 (2) and (3) Road Transport International Transport Regulations 1984
Use a goods vehicle for <i>hire and reward</i> on an intl. journey without a Community Authorisation	Article 3(1), Council Regulation EEC 881/92. Regulation 3, Goods Vehicles (Community Authorisations) Regulations 1992. European Communities Act 1972.

BAND 1 (Penalty: £30)	
Offence Description	Legislation
Misuse of a Community Authorisation	Article 5(3) and Annex 1 of Council Regulation (EEC) 881/92. Regulation 7, Goods Vehicles (Community Authorisations) Regulations 1992. European Communities Act 1972.
Fail to enter details on tachograph record sheet centrefield (driver)	Article 15(5) of Council Regulation (EEC) 3821/85 and Section 97(1)(a)(iii) of the Transport Act 1968
Fail to enter in the recording equipment the symbols of the countries in which driver begins and ends his journey	Article 15(5a) of Council Regulation (EEC) 3821/85 and Section 97(1)(a) (iii) of the Transport Act 1968
Oil leak from engine/assemblies	Regulation 61(5)(a) of the Road Vehicles (Construction & Use) Regulations 1986 and Section 42 of the Road Traffic Act 1988
Load or lateral projection of load exceeding permissible width	Regulation 82(2) of the Road Vehicles (Construction & Use) Regulations 1986 Section 42 of the Road Traffic Act 1988
Marker boards not illuminated between sunset and sunrise	Regulation 82(2)(b)(ii) and Schedule 12(5)(c) of the Road Vehicles (Construction & Use) Regulations 1986 and Section 42 of the Road Traffic Act 1988
Vehicle carrying a load that projects to the front or to the rear	Regulation 82(7) and item 2 in the table of the Road Vehicles (Construction & Use) Regulations 1986 and Section 42 of the Road Traffic Act 1988
Rear view mirror missing	Regulation 33(1) of the Road Vehicles (Construction & Use) Regulations 1986 and Section 42 of the Road Traffic Act 1988
PSV, driver or conductor fail to ensure safety of passengers on the vehicle (includes Emergency door locked from outside when passengers on board).	Regulation (5)(1) Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) Regulations 1990 and Section 24(2) of Public Passenger Vehicles Act 1981

BAND 1 (Penalty: £30)	
<i>Offence Description</i>	<i>Legislation</i>
Glass Windows condition (percentages of view)	Regulation 30(3) of the Road Vehicles (Construction & Use) Regulations 1986 and Section 42 of the Road Traffic Act 1988
Glass Windows – tinted	Regulation 30(3) of the Road Vehicles (Construction & Use) Regulations 1986 and Section 42 of the Road Traffic Act 1988

BAND 2: (Penalty £60)	
Offence Description	Legislation
Cause any unnecessary obstruction to any entrance, exit or gangway of the vehicle	Regulation 37 The Public Service Vehicles(Conditions of Fitness, Equipment, Use and Certification) Regs. 1981 and Section 67 of Public Passenger Vehicles Act 1981
PSV driver using handheld microphone	Regulation 4(1) The Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) Regulations 1990, section 24(1)(2) PSV Act 1981
Doors (PSV) Driver – function	Regulation 23 of The Public Service Vehicles(Conditions of Fitness, Equipment, Use and Certification) Regs. 1981 and Section 67 of Public Passenger Vehicles Act 1981
Use a defective driver card	Article 14(4)(a) of Council Regulation (EEC) 3821/85 and Section 97 (1)(a)(iii) of the Transport Act 1968
Use a vehicle with a defective tachograph (driver)	Article 13 of Council Regulation (EEC) 3821/85 and Section 97 (1)(a)(iii) of the Transport Act 1968
Defective brakes vehicles – parking brakes	Regulation 18(1) & (6) of the Road Vehicles (Construction & Use) Regulations 1986 and Section 41A Road Traffic Act 1988
Brakes – Vacuum and Pressure Rate Warning Devices – function(missing)	Regulation 17(1) of the Road Vehicles (Construction & Use) Regulations 1986 and Section 41A Road Traffic Act 1988
Tyres (Agricultural Vehicles) – condition	Regulation 27(1)(h) of the Road Vehicles (Construction & Use) Regulations 1986 and Section 41A Road Traffic Act 1988

BAND 3 (Penalty: £120)	
<i>Offence Description</i>	<i>Legislation</i>
No speed limiter fitted (coach)	Regulation 36A of the Road Vehicles (Construction & Use) Regulations 1986 and Section 42 Road Traffic Act 1988
Speed limiter defective (coach)	Regulation 36A (4) of the Road Vehicles (Construction & Use) Regulations 1986 and Section 42 Road Traffic Act 1988
Speed limiter not restricting the vehicle to its legal maximum (Coach/Bus)	Regulation 36A (4) of the Road Vehicles (Construction & Use) Regulations 1986 and Section 42 Road Traffic Act 1988
No speed limiter fitted (goods)	Regulation 36B of the Road Vehicles (Construction & Use) Regulations 1986 and Section 42 Road Traffic Act 1988
Speed limiter defective (goods)	Regulation 36B(6) of the Road Vehicles (Construction & Use) Regulations 1986 and Section 42 Road Traffic Act 1988
Speed limiter not restricting the vehicle to its legal maximum (goods)	Regulation 36B(6) of the Road Vehicles (Construction & Use) Regulations 1986 and Section 42 Road Traffic Act 1988
Exceeding the maximum seating capacity	Regulation 5(1) of PSV (carrying capacity) 1984 and section 26 of PPV Act 1981
Exceeding the maximum standing capacity	Regulation 7(1) of PSV (carrying capacity) 1984 and section 26 of PPV Act 1981
Passenger standing forward of driver	Regulation 7(2)(b) of The Public Service Vehicles (Conduct of Drivers, Inspectors, Conductors and Passengers) Regulations 1990 and section 24(2) Public Passenger Vehicles Act 1981
Fail to produce record book (Domestic Rules)	Section 99(1) & (4) of the Transport 1968

BAND 3 (Penalty: £120)	
Offence Description	Legislation
Fail to produce extract from duty roster and copy of the timetable – EEC Regular Service	Section 99ZA(1)(c) & 99ZD(1)(a) of the Transport Act 1968 and Article 14(2) of Council Regulation (EEC) 3820/85
Fail to produce and permit to inspect, remove, retain and copy any tachograph records when requested at the roadside	Section 99ZA(1)(b) & 99ZD(1)(a) & (2) of the Transport Act 1968 and Article 15(7) of Council Regulation (EEC) 3821/85.
Fail to produce and permit to inspect driver card when requested by authorised officer (roadside)	Section 99ZA(2)(a) & 99ZD(1)(a) & (2) of the Transport Act 1968 and Article 15(7) of Council Regulation (EEC) 3821/85.
Fail to permit the copying of data stored on driver card and to remove and retain the copy (roadside)	Section 99ZA(2)(b) & 99ZD(1)(a) & (2) of the Transport Act 1968 and Article 15(7) of Council Regulation (EEC) 3821/85.
Fail to produce and permit to inspect, remove, retain and copy any document when requested at the roadside	Section 99ZA(1)(c) & 99ZD(1)(a) & (2) of the Transport Act 1968 and Article 15(7) of Council Regulation (EEC) 3821/85.
Fail to produce and permit to inspect, remove, retain and copy any hard copy of electronically stored data when requested at the roadside	Section 99ZA(1)(b) & 99ZD(1)(a) & (2) of the Transport Act 1968 and Article 15(7) of Council Regulation (EEC) 3821/85.
Fail to use tachograph chart or driver card(driver) EC Regs & Domestic	Article 15(2) of Council Regulation (EEC) 3821/85 and Section 97(1)(a)(iii) of the Transport Act 1968
Fail to keep a current record (Record book re. Domestic Rules)	Section 98(1)&(4) of the Transport 1968

BAND 3 (Penalty: £120)	
<i>Offence Description</i>	<i>Legislation</i>
Unauthorised withdrawal of tachograph chart or driver card i.e. – removed during working day	Article 15(2) of Council Regulation (EEC) 3821/85 and Section 97 (1)(a)(iii) of the Transport Act 1968
Driver holds more than one valid driver card	Article 14(4)(a) of Council Regulation (EEC) 3821/85 and Section 97(1)(a)(iii) of the Transport Act 1968
Driver used a driver card for which he was not authorized	Article 14(4)(a) of Council Regulation (EEC) 3821/85 and Section 97(1)(a)(iii) of the Transport Act 1968
Fail, at the start of the journey, to print out the information required, mark on it details that enable driver to be identified, including signature, and periods of duty, availability and rest (only applies where driver card is damaged/malfunctions or not in possession of driver).	Article 15(1)(i)(a) of Council Regulation (EEC) 3821/85 and Section 97(1)(a)(iii) of the Transport Act 1968
Fail, at the end of the journey, to print out the information required and mark on the printout details that enable the driver to be identified, including signature (where driver card is damaged/malfunctions or not in possession of driver).	Article 15(1)(ii) of Council Regulation (EEC) 3821/85 and Section 97(1)(a)(iii) of the Transport Act 1968

BAND 3 (Penalty: £120)	
<i>Offence Description</i>	<i>Legislation</i>
Fail to enter legibly on the record sheet, when away from the vehicle, periods of time, manually or by other means. (analogue)	Article 15(2)(a) of Council Regulation (EEC) 3821/85 and Section 97(1)(a)(iii) of the Transport Act 1968
Fail to enter on the driver card, when away from the vehicle, periods of time using the manual entry facility provided in the recording equipment. (digital)	Article 15(2)(b) of Council Regulation (EEC) 3821/85. and Section 97(1)(a)(iii) of the Transport Act 1968
Driver fail to ensure that the recording equipment and driver card are functioning correctly	Article 13 of Council Regulation (EEC) 3821/85 and Section 97(1)(a)(iii) of the Transport Act 1968
Driver failed to ensure that printing can be carried out correctly	Article 14(1) of Council Regulation (EEC) 3821/85 and Section 97(1)(a)(iii) of the Transport Act 1968
Fail to amend record sheet or driver card (swap over) as necessary when more than one driver on vehicle (double-manned)	Article 15(2) of Council Regulation (EEC) 3821/85 and Section 97(1)(a)(iii) of the Transport Act 1968

BAND 4 (Penalty: £200)	
<i>Offence Description</i>	<i>Legislation</i>
Tachograph not fitted in accordance with regulations (driver)	Article 3 (1) of Council Regulation (EEC) 3821/85 and Section 97(1)(a)(i) of the Transport Act 1968

Annex B

Graduation Levels

SCALEABLE OFFENCES						
Offence Description	Legislation	Band 0	Bd 1	Band 2	Band 3	Band 4
Exceed 4.5 hours driving without a break	Article 7 of Regulation (EC) 561/2006 of the European Parliament and the Council and Section 96(11A) of the Transport Act 1968	Excess up to 15 mins	–	Excess over 15 mins up to 1 hr	Excess over 1 hr up to 2 hrs	Excess over 2 hrs
Exceed 10 hours daily driving	Article 6(1) of Regulation (EC) 561/2006 of the European Parliament and the Council and Section 96(11A) of the Transport Act 1968	Excess up to 15 mins	–	Excess over 15 mins up to 1 hr	Excess over 1 hr up to 2 hrs	Excess over 2 hrs
Exceed 9 hours daily driving	Article 6(1) of Regulation (EC) 561/2006 of the European Parliament and the Council, and Section 96(11A) of the Transport Act 1968	Excess up to 15 mins	–	Excess over 15 mins up to 1 hr	Excess over 1 hr up to 2 hrs	Excess over 2 hrs

SCALEABLE OFFENCES

Offence Description	Legislation	Band 0	Bd 1	Band 2	Band 3	Band 4
Exceed the weekly driving time of 56 hours	Article 6(2) of Regulation (EC) 561/2006 of the European Parliament and the Council and Section 96(11A) of the Transport Act 1968	Excess up to 1hr	–	Excess over 1 hr up to 2 hrs	Excess over 2 hrs up to 3 hrs	Excess over 3 hrs
Exceed 90 hours driving in two consecutive weeks	Article 6(3) of Regulation (EC) 561/2006 of the European Parliament and the Council and Section 96(11A) of the Transport Act 1968	Excess up to 1hr	–	Excess over 1 hr up to 3 hrs	Excess over 3 hrs up to 4 hrs	Excess over 4 hrs
Insufficient Daily rest in 24 hours	Article 8(2) of Regulation (EC) 561/2006 of the European Parliament and the Council and Section 96(11A) of the Transport Act 1968	Excess up to 15 mins	–	Excess over 15 mins up to 1 hr	Excess over 1 hr up to 2 hrs	Excess over 2 hrs
Insufficient rest in 30 hours (multi-manned)	Article 8(5) of Regulation (EC) 561/2006 of the European Parliament and the Council and Section 96(11A) of the Transport Act 1968	Excess up to 15 mins	–	Excess over 15 mins up to 1 hr	Excess over 1 hr up to 2 hrs	Excess over 2 hrs

SCALEABLE OFFENCES						
Offence Description	Legislation	Band 0	Bd 1	Band 2	Band 3	Band 4
Insufficient weekly rest	Articles 8(1) & (6)) of Regulation (EC) 561/2006 of the European Parliament and the Council and Section 96(11A) of the Transport Act 1968	Excess up to 1hr	–	Excess over 1 hr up to 2 hrs	Excess over 2 hrs up to 3 hrs	Excess over 3 hrs
Exceed daily driving (PSV) Domestic Rules	Section 96(1) & (11)Transport Act 1968.	Excess up to 15 mins	–	Excess over 15 mins up to 1 hr	Excess over 1 hr up to 2 hrs	Excess over 2 hrs
Exceed daily duty (Goods) Domestic Rules	Section 96(3) & (11) Transport Act 1968 as modified by The Drivers' Hours (Goods Vehicles) (Modifications) Order SI No 1459/86.	Excess up to 15 mins	–	Excess over 15 mins up to 1 hr	Excess over 1 hr up to 2 hrs	Excess over 2 hrs
Fail to take required break in cumulative driving (PSV only) Domestic Rules	Section 96(2) & (11) Transport Act 1968 as modified by Article 4(2) of The Drivers' Hours (Passenger and Goods Vehicles) (Modifications) Order SI No 818/71.	Excess up to 15 mins	–	Excess over 15 mins up to 1 hr	Excess over 1 hr up to 2 hrs	Excess over 2 hrs

SCALEABLE OFFENCES						
Offence Description	Legislation	Band 0	Bd 1	Band 2	Band 3	Band 4
Fail to take sufficient rest between two successive working days (PSV only) Domestic Rules	Section 96(4) & (11) Transport Act 1968 as modified by Article 4(4) of The Drivers' Hours (Passenger and Goods Vehicles) (Modifications) Order SI No 818/71.	Excess up to 15 mins	–	Excess over 15 mins up to 1 hr	Excess over 1 hr up to 2 hrs	Excess over 2 hrs
Fail to take fortnightly rest (PSV only) Domestic Rules	Section 96(6) & (11) Transport Act 1968 as modified by Article 4(6) of The Drivers' Hours (Passenger and Goods Vehicles) (Modifications) Order SI No 818/71	Excess up to 1hr	–	Excess over 1 hr up to 2 hrs	Excess over 2 hrs up to 3 hrs	Excess over 3 hrs
Axle, gross or train overload (man)	Regulation 80(1)(a) of The Road Vehicles (Construction & Use) Regulations 1986 and Section 41B of the Road Traffic Act 1981	Excess up to 5% (and under 5 tonnes)	–	Excess over 5% up to 10% (and under 5 tonnes)	Excess over 10% up to 15% (and under 5 tonnes)	Excess over 15% but under 30% or 5 Tonnes
Compensating Axle overload (man)	Regulation 80(1)(a) & (2) of The Road Vehicles (Construction & Use) Regulations 1986 and Section 41B of the Road Traffic Act 1981	Excess up to 5% (and under 5 tonnes)	–	Excess over 5% up to 10% (and under 5 tonnes)	Excess over 10% up to 15% (and under 5 tonnes)	Excess over 15% but under 30% or 5 Tonnes

SCALEABLE OFFENCES						
Offence Description	Legislation	Band 0	Bd 1	Band 2	Band 3	Band 4
Axle, gross or train overload (MOT)	Regulation 80 (1)(b) of The Road Vehicles (Construction & Use) Regulations 1986 and Section 41B of the Road Traffic Act 1981	Excess up to 5% (and under 5 tonnes)	–	Excess over 5% up to 10% (and under 5 tonnes)	Excess over 10% up to 15% (and under 5 tonnes)	Excess over 15% but under 30% or 5 Tonnes
Compensating Axle overload (MOT)	Regulation 80(1)(b) & (2) of The Road Vehicles (Construction & Use) Regulations 1986 and Section 41B of the Road Traffic Act 1981	Excess up to 5% (and under 5 tonnes)	–	Excess over 5% up to 10% (and under 5 tonnes)	Excess over 10% up to 15% (and under 5 tonnes)	Excess over 15% but under 30% or 5 Tonnes
Maximum laden weight (artic) (space of axles)	Regulation 4(1)(b) and Schedule 2, table 4 of The Road Vehicles (Authorised Weight) Regulations 1988 & Section 41B of the Road Traffic Act 1988	Excess up to 5% (and under 5 tonnes)	–	Excess over 5% up to 10% (and under 5 tonnes)	Excess over 10% up to 15% (and under 5 tonnes)	Excess over 15% but under 30% or 5 Tonnes
Exceed maximum permitted weight of vehicle	Regulation 4(1)(b) and Schedule. 2, Table 4 of The Road Vehicles (Authorised Weight) Regulations 1988 and Section 41B of the Road Traffic Act 1988	Excess up to 5% (and under 5 tonnes)	–	Excess over 5% up to 10% (and under 5 tonnes)	Excess over 10% up to 15% (and under 5 tonnes)	Excess over 15% but under 30% or 5 Tonnes

SCALEABLE OFFENCES						
Offence Description	Legislation	Band 0	Bd 1	Band 2	Band 3	Band 4
Maximum laden weight (artic (number of axles))	Regulation 4(1)(b) and Schedule 2, Table 3 of The Road Vehicles (Authorised Weight) Regulations 1988 and 4Section 1B of the Road Traffic Act 1988	Excess up to 5% (and under 5 tonnes)	–	Excess over 5% up to 10% (and under 5 tonnes)	Excess over 10% up to 15% (and under 5 tonnes)	Excess over 15% but under 30% or 5 Tonnes
Overload (no plates)	Regulation 75 and Part 1, 1A & II of Schedule 11 of The Road Vehicles (Construction & Use) Regulations 1986 and Section 41B of the Road Traffic Act 1988	Excess up to 5% (and under 5 tonnes)	–	Excess over 5% up to 10% (and under 5 tonnes)	Excess over 10% up to 15% (and under 5 tonnes)	Excess over 15% but under 30% or 5 Tonnes
Exceed maximum permitted wheel & axle weights	Regulation 4(1)(a) and Schedule 1, table 1 of The Road Vehicles (Authorised Weight) Regulations 1988 and Section 41B of the Road Traffic Act 1988	Excess up to 5% (and under 5 tonnes)	–	Excess over 5% up to 10% (and under 5 tonnes)	Excess over 10% up to 15% (and under 5 tonnes)	Excess over 15% but under 30% or 5 Tonnes
Exceed maximum permitted weight for closely spaced axles	Regulation 4(1)(c) and Schedule 3, table 6 of The Road Vehicles (Authorised Weight) Regulations 1988 & Section 41B Road Traffic Act 1988	Excess up to 5% (and under 5 tonnes)	–	Excess over 5% up to 10% (and under 5 tonnes)	Excess over 10% up to 15% (and under 5 tonnes)	Excess over 15% but under 30% or 5 Tonnes

SCALEABLE OFFENCES						
Offence Description	Legislation	Band 0	Bd 1	Band 2	Band 3	Band 4
Exceed maximum permitted weight (Vehicle & Trailer Not Artic)	Regulation 4(1)(b) and table 3 Schedule. 2, table 3 of The Road Vehicles (Authorised Weight) Regulations 1988 & Section 41B Road Traffic Act 1988	Excess up to 5% (and under 5 tonnes)	–	Excess over 5% up to 10% (and under 5 tonnes)	Excess over 10% up to 15% (and under 5 tonnes)	Excess over 15% but under 30% or 5 Tonnes
Maximum permitted weight (agricultural vehicles)	Regulation 76(1) of The Road Vehicles (Construction & Use) Regulations 1986 and Section 41B Road Traffic Act 1981	Excess up to 5% (and under 5 tonnes)	–	Excess over 5% up to 10% (and under 5 tonnes)	Excess over 10% up to 15% (and under 5 tonnes)	Excess over 15% but under 30% or 5 Tonnes

Annex C

Draft guidance for drivers and operators

Graduated Fines & Penalty Deposits (GFP/DS)

How It Will Work

At present, VOSA routinely prosecute through the court system offences identified at roadside checks. When GFP/DS is implemented this will change. The majority of offences identified at the roadside will then be dealt with by way of Fixed Penalty. Generally only the more serious offences will continue to be prosecuted in the way they are now. If the driver provides a suitable GB address where they can be found in connection with any proceedings, they will have 28 days to pay the Fixed Penalty but, if not, an immediate payment, as a deposit, will be required.

From The Driver's Perspective:

Can I refuse to accept the Fixed Penalty?

Yes, a Fixed Penalty will be offered as an alternative to prosecution. You may choose a court hearing.

Can I pay in instalments?

No

What if I don't accept that I have committed an offence?

You will need to make it known that you want to have your case heard in Court. The case will be reported for prosecution, you will have the opportunity to plead "Not Guilty" and the Court will consider your case.

What if I accept the Fixed Penalty Notice at the time, but then later change my mind?

If you change your mind, you must notify the address on the back of the Notice that you no longer accept the offer of a fixed penalty and wish to have a Court hearing.

I drive a commercial vehicle, will the Operator Licence holder be informed if one of their drivers has been issued with a Fixed Penalty?

Yes, Operators will receive a copy of any Fixed Penalty Notice issued against their drivers.

Can I be arrested for non-payment of a Fixed Penalty?

No. If you have a suitable GB address you will have 28 days to pay, if you do not pay the Fixed Penalty, and reside in England or Wales, it will be registered with a Court and 50% will be added to the penalty. It will be the Court's responsibility to collect the payment. Drivers from Scotland will be referred to the Procurator Fiscal for consideration of prosecution.

Will all instances of offending be treated the same?

No, the Fixed Penalty level will be determined by the severity of the offence. Penalties will be graduated according to the impact on road safety and fair competition.

Will VOSA keep the money paid in Fixed Penalties?

No, VOSA will not keep the revenue from payment of Fixed Penalty Notices. All monies will be paid into HM Treasury's Consolidated Fund in the same way that court fines are.

Can VOSA issue a Fixed Penalty for speeding?

No.

What if I don't have a suitable GB address?

You will be required to make an immediate payment as a deposit against a Fixed Penalty Notice or, if you have committed a more serious offence, a payment will be taken as a 'deposit' against any fine you might receive if you are convicted when your case goes to court. The payment will be returned should the court find in your favour. If the court finds you guilty of the offence, the deposit will be retained as all, or part, of the fine.

What happens if I refuse to pay the deposit?

The vehicle will be prohibited from further use until payment is made.

If the vehicle is prohibited because I've refused to pay – what happens to the vehicle if I walk away?

The vehicle may be immobilised until the deposit payment is received.

What's going to stop me from driving off?

If the examiner has reason to believe that you may drive off while the vehicle is prohibited they can use their discretion to immobilise it.

If I pay a deposit on the spot pending an appearance in Court, and I attend the court at the appropriate time, will I get my deposit back?

If you are found 'Not Guilty' you will get a full refund. However, if you are found 'Guilty' the amount of the fine will be taken from the deposit that was paid and only any residue will be refunded.

What if I don't accept that I have committed an offence and I don't have a GB address?

You will be required to pay a deposit and appear in court.

What happens if I don't have any money or any credit cards with me?

The vehicle will be prohibited from further use until you are able to make payment. It is envisaged that you will be able to pay using several means, possibly including fuel cards.

Annex D

Impact assessment

Title of Proposal

Graduated Fixed Penalty and Deposit Schemes.

Purpose and Intended Effect of Measure

Objective

1. The objective is to review the impact of the operation of the Graduated Fixed Penalty and Deposit Schemes provided for in sections 3, 5, 11 and 12 of the Road Safety Act 2006.
2. These provisions do not cover the graduated structure for speeding penalties in respect of which the Department intends to consult separately at a later date. However, it is envisaged that the provisions in respect to financial deposits will extend to any type of road traffic offence for which the police are empowered to issue a fixed penalty notice.
3. The operating detail will be specified in secondary legislation as prescribed by the relevant provisions in the Act. The provisions will provide both the police and the Department's Vehicle Operator Services Agency (VOSA) powers regarding:
 - the offences in respect of which the scheme will apply and the circumstances in which they are committed;
 - different levels of penalty to be banded according to the type of offence, the number committed and their severity;
 - the circumstances and procedures by which a deposit will be required, either in lieu of a fixed penalty notice or court imposed fine, becoming due, and;
 - The circumstances and procedures for immobilisation of a vehicle subject to an immediate prohibition, or where a deposit is due but has not been paid.
4. The graduated scale of fixed penalties for traffic and roadworthiness offences will consist of four banding levels for offences which will attract penalties of £30.00, £60.00, £120.00 and £200.00 respectively. The enabling Order will also allow for the graduation of offences, such as drivers' hours and overloading offences. The penalty for these will be determined by the degree to which limits had been exceeded. The proposed penalty levels at annex A will be approved by the Home Secretary and

are consistent with the current fixed penalty regime and its provisions. A list of the proposed levels of graduation for drivers' hours and overloading are attached at annex B.

Background

5. Under current arrangements only the police can issue a fixed penalty notice – for most routine traffic or roadworthiness offences. Where a fixed penalty notice is issued it can only be issued for the same monetary amount irrespective of whether the offence is relatively minor or more significant. Furthermore, where multiple offences are detected only the most serious endorsable offence (and up to two non-endorsables) can be taken into account. This means that more serious offending and multiple offences currently have to be prosecuted in court.
6. The current system places a significant burden on the Court service and commits both the police and VOSA with time-consuming Court attendances and paperwork. It also places offenders before a court unnecessarily where they accept that they have committed an offence and would prefer to pay fines as quickly and as easily as possible.
7. Introducing a more broadly based system of graduated fixed penalties which can be consistently applied, will make it possible to deal more fairly and effectively with cases of single or multiple offences. It will also provide a greater incentive to comply with road safety related regulations and thereby help to reduce road casualties.
8. The general levels of non-compliance as between GB – registered and non-GB registered HGVs are not significantly different in practice. Random surveys undertaken by VOSA in 2004 showed that non-UK motor vehicles have a prohibition rate of 8.6% compared to 11.3% for GB – registered vehicles. Conversely, non-UK registered trailers had a slightly higher prohibition rate – 15% as compared to 12.9% for UK trailers. The random surveys did highlight, however, that non-UK drivers were far less compliant with drivers' hours or working time requirements than our own UK drivers. In fact, random surveys undertaken in 2004 showed that 14% of non-UK drivers were committing drivers' hours offences compared to just 3.4% of UK drivers.
9. The purpose of the Deposit Scheme is to ensure that any driver who does not have a GB address cannot abscond without paying any penalty that would otherwise be due. Under the Scheme a driver who does not have a GB address would have to pay a deposit on the spot that would be equal to the relevant graduated fixed penalty notice. Alternatively, in the cases where the offence was too serious to be dealt with by fixed penalty, a deposit would be required until the driver was summonsed to court and the case disposed of.

Risk Assessment

- 10.** Four main risks have been identified:
- Collection of money at the roadside from non- GB offenders; and the risk of corruption and bribery/theft;
 - Verifying GB residency;
 - Dealing with refusal, inability, to pay; and
 - Offenders driving off in breach of prohibitions.

Collection of money at the roadside

- 11.** A Deposit Scheme (similar to on-the-spot fines) would be a fair and effective means of tackling non-GB resident offenders before they leave the country and escape the punishment GB residents cannot avoid. Similar arrangements exist in most other EU Member States.
- 12.** VOSA does not expect to receive many cash payments as deposits from commercial vehicle offenders; Enforcement agents would discourage cash payments but would accept a payment in cash should that be the only option available. However, enforcement agencies in other Member States do not see collection of money at the roadside as a problem.
- 13.** There would be strict safeguards in place to minimise the risks associated with collecting money at the roadside:
- Graduated fixed penalty notices, together with a demand for an immediate deposit payment, would in many cases for VOSA officers be computer generated, and for both VOSA and Police they would be serially numbered and automatically accounted for at the time of issue.
 - It would be made clear that credit/debit card payments would be the preferred means of payment.
 - There would always be more than one enforcement official present at the point of issuing the fixed penalty notice and taking the deposit so all transactions would be witnessed.
- 14.** There will be robust rules in place which enforcement officials must adhere to at all times when issuing graduated fixed penalty notices and collecting deposits. Rigorous training will also be given to enforcement officials to sufficiently prepare them to adequately deal with all potential difficulties.
- 15.** It is considered that the benefits of the schemes far outweigh the potential risks associated with the handling of money at the roadside. Enforcement agencies in this country pride themselves on anti-corruption and enforcement for road safety benefit.

Verifying GB residency

16. The Deposit Scheme would apply to anyone who could not provide satisfactory evidence of a GB address – at which a penalty or fine could be enforced against them. The primary legislation has been drafted broadly so as to allow the enforcement officer discretion on what proof of address he or she would find acceptable.
17. A valid driving licence, particularly the new photo-card variety, or checks against the Police National Computer and DVLA driver and vehicle records are likely to produce adequate proof. Large commercial vehicles are already linked to operator licence records, and this will give enforcement officials confidence in being able to follow up on a fixed penalty notice if it remains unpaid.

Dealing with refusal, or inability, to pay and preventing offenders from driving off

18. Under these provisions if a driver either refuses or claims that he cannot pay a fixed penalty deposit, the vehicle would be prohibited, and could then be immobilised. The driver may also be required to attend a Magistrates Court. Should that driver refuse to attend the Court he may be arrested and brought before the Court. Once the Court has made its judgement, and the matter is disposed of, the prohibition can be lifted and the immobilisation device removed.
19. Both the police and VOSA will have the power to immobilise vehicles. However, this power will only be exercised where it is considered that there is a risk of absconding. The options of what form of immobilisation device will be used including wheel clamping, are still being considered. It is anticipated that the device will be sufficiently robust that it cannot be easily removed by those whom are not authorised to do so. It will be an offence to illegally tamper with or remove an immobilisation device.
20. It is estimated that 200 drivers annually currently abscond whilst their vehicle is subject to a prohibition notice. The costs of immobilisation are estimated at approximately £150 per vehicle if an outside contractor is used to attend the vehicle and physically apply and later remove the device. Although, all options of how the immobilisation scheme will work in practical terms are being considered.
21. The costs of removal and storage of vehicles in such cases will be borne by enforcement agencies until a Court judgement is made; an appropriate amount could then be included in the costs awarded by the Court. This is similar to the action already taken in cases whereby vehicles are impounded by VOSA for being operated illegally without a valid operators' licence.

Options

- 22.** Option 1 – Do nothing. The enabling provisions of the scheme under the Road Safety Act 2006 will not be enacted. The consequences would be that:
- The current disparities in the enforcement regime will remain;
 - Potentially avoidable Court time will continue to be incurred;
- 23.** Option 2 – Introduce a Graduated Fixed Penalty Scheme and a Deposit Scheme as set out in the accompanying consultation paper.

Benefits

Economic

- 24.** Enforcement of traffic and roadworthiness regulations currently ultimately involves prosecution of offences in the Courts. Penalties applied for the same offence can vary across the country and also involve considerable costs in time and expense, both for enforcement officials and offenders.
- 25.** Enabling VOSA officers to offer fixed penalties as the police are able to do already will take many cases out of the Court process, and provide a more cost-effective process for dealing with offences. At the same time it will free-up enforcement officials so that they can spend more time out on the road to help ensure higher levels of compliance.
- 26.** 90% of the offences VOSA currently prosecuted would in future be dealt with by fixed penalty notices. VOSA would expect to reduce by 12,150 annually the number of cases prosecuted through the courts. This will result in a saving of approximately 4000 man hours for VOSA, who will be able to redeploy this resource to front – line activities.
- 27.** It is not possible to relate the introduction of these measures directly to a ‘hard cash’ benefit. But what can be said is that each road death is currently valued at £1,384,463, and each serious injury at £155,563. Hence, for example given VOSA enforcers find roadworthiness defects in up to 45% of non-UK registered commercial vehicles they stop for inspection, road safety and economic benefits can reasonably be expected through the introduction of these measures.
- 28.** Introduction of the schemes will also contribute towards safeguarding the road structures and surfaces from excessive wear and tear; cutting down congestion and journey times; and reducing avoidable atmospheric pollution.

Environmental

- 29.** 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.

Social

- 30.** The proposals are intended to make enforcement of the existing regulations more equitable, efficient and effective. Those who comply with the law should benefit from a more effective deterrent against unfair competition from law-breakers.
- 31.** Additionally, the scheme will not affect the ability of enforcement officials to fulfil their current duties. On the contrary, it will release the time they currently spend in preparing prosecution cases.

Costs

Economic

- 32.** The cost to an offender of a graduated fixed penalty or, where appropriate, the payment of a deposit, will be dependent on the severity and number of offences committed by the driver, or the number of defects found on their vehicle. There will be no associated costs for non-compliance for such drivers beyond the penalty and correcting non-compliance with maintenance requirements, unless they decide to dispute the offence through the courts, in which case normal costs of the legal process will apply. An individual who has paid a deposit but is subsequently found to be not guilty in court may incur administrative and bank costs prior to the recovery of their deposit. It is expected that associated costs in these instances will be minimal and that appeals and successful appeals will be rare. However, in the event of a successful court hearing interest will be paid on the sum deposited which will naturally be returned to the person whom paid the deposit.
- 33.** The administration costs of the scheme so far as VOSA is concerned are estimated at £600k per annum.

Environmental

- 34.** None

Social

- 35.** There will be no additional social costs or administrative burden for those who comply with the law. Indeed everyone should benefit from safer roads. The GB industry will benefit from a more effective deterrent against unfair competition from law-breakers.

Health

- 36.** None

Equity and Fairness

Race Equality Impact

- 37.** 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 anyway and the Department does not consider the scheme would be in anyway in conflict with EU Law or the European Convention on Human Rights.
- 38.** 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.

Consultation with small business: the Small firms' impact Test

- 39.** 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) and eight individual companies. 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 (FTA, RHA and CPT), whose membership consists of companies of all sizes, was supportive of the proposals and the impact it would have on its members.

The Small Business Service has been consulted. We encourage small firms to participate in this consultation.

Competition Assessment

- 40.** The competition assessment filter test has been carried out and it is not envisaged that the scheme would have any adverse impact on competition. On the contrary, the scheme should create more of a level playing-field in competition with the application of more consistent and equal enforcement penalties, irrespective of the driver's nationality or residency status.

Enforcement and Sanctions

- 41.** Primary legislation, under the Road Safety Act 2006, allows for VOSA 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.
- 42.** Non-payment of a fixed penalty notice would result in the case being registered with the Courts for the offence of non-compliance (i.e. non-payment) or referral to the Procurator Fiscal where conditional offer notices have been issued in Scotland.

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

- 43.** The Home Office *Motoring Offences and Breath Test Statistics, England and Wales 2004* indicate that non-payment of Fixed Penalty Notices issued by the police for motoring offences are relatively small in numbers compared to the payment of them. In 2004;
- 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%.
 - The total number of fixed penalties issued was 3.4 million, of which 2.1 million were endorsable and 1.3 million non-endorsable.
- 44.** Non-payment of a deposit may result in VOSA or the Police immobilising the vehicle/ detaining the vehicle by prohibition until the deposit is paid or is discharged by the Court – which ever occurs first.
- 45.** At Present, VOSA examiners work to operating instructions and prosecution guidelines that set out the tolerances after which prosecution action is appropriate. These are being supplemented to give guidance about the circumstances in which it may be appropriate to issue a Fixed Penalty. Examiners will not have any discretion over the amount of the penalty.

Monitoring and Review

- 46.** There will be a full post implementation review once the secondary legislation has been introduced and the scheme has been running for a year.
- 47.** All systems and processes will be safeguarded against risks and will be subject to routine audit inspection and review.

Consultation

Within Government

- 48.** The proposed detail of the scheme has been developed in conjunction with other key Government Departments, ACPO, ACPOS and the Devolved Administrations. Trade bodies have been consulted at all stages of drawing up the detail and are content with the proposals as set out in the consultation.

Public Consultation

- 49.** A public consultation exercise will begin on 07 June 2007 and will run until 30 August 2007

Summary and Recommendation

- 50. The Government remains committed to introducing the scheme at the earliest opportunity. We therefore recommend Option 2 which provides for the detail to be made by Order following consultation.**

Contact Point

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Annex E

Consultation code of practice criteria

The Government has adopted a code of practice on consultations. The criteria below apply to all UK national public consultations on the basis of a document in electronic or printed form. They will often be relevant to other sorts of consultation.

Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. under European Community Law), they should otherwise generally be regarded as binding on UK departments and their agencies, unless Ministers conclude that exceptional circumstances require a departure.

- 1.** Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
- 2.** Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
- 3.** Ensure that your consultation is clear, concise and widely accessible.
- 4.** Give feedback regarding the responses received and how the consultation process influenced the policy.
- 5.** Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
- 6.** Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The full consultation code may be viewed at:

www.cabinetoffice.gov.uk/regulation/Consultation/Introduction.htm

Are you satisfied that this consultation has followed these criteria? If not, or you have any other observations about ways of improving the consultation process, please contact:

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105 Victoria Street
LONDON SW1E 6 DT

Email: consultation@dft.gsi.gov.uk

Annex F

List of those Consulted

Association of Chief Police Officers
Association of Chief Police Officers Scotland
Alliance of Independent Retailers Ltd
Alliance of Small Firms and Self Employed People
Arriva Passenger Services Plc
Association for Road Traffic Safety Management
Association Industrial Road Safety Officers
Association of British Insurers
Association of Car Fleet Operators
Association of Independent Businesses
Association of Industrial Road Safety Officers
Association of International Couriers and Express Services
Association of Justices Chief Executive
Association of Local Bus Managers
Association of Magistrates' Officers
Association of Vehicle Recovery Operators
Automobile Association (AA)
BRAKE
British Aggregates Association
British Association of Removers
British European Transport
British Independent Motor Trade Association
British Industrial Truck Association
British Institution of Traffic Education Research

British International Freight Association
British Parking Association
British Safety Council
British Vehicle Rental and Leasing Association
Chemical Industries Association
Coach Operators Federation
Community Alternative Transport Association
Confederation of British Industry
Confederation of Passenger Transport UK
Confederation of Passenger Transport Wales
Consumers Association
Convention of Scottish Local Authorities
County Road Safety Officers Association
Department of Environment for Northern Ireland (DOENI)
District Courts Association
Environmental Transport Association
Federation of Environmental Trade Associations
Federation of Petroleum Suppliers
Federation of Small Businesses
First Group Plc
Freight Transport Association
General Executive Council of the TGWU
Guild of British Coach Operators
Historic Commercial Vehicle Society
Institute of Advanced Motorists
Institute of HGV Driving Instructors
Institute of Highway Incorporated Engineers
Institute of Logistics and Transport
Institute of Road Safety Officers
Institute of Transport Administration

Law Society of Scotland
Magistrates' Association
Merseyside Passenger Transport Authority
Motor Insurers Bureau
Motorist Forum
Movers Institute c/o British Association of Removers
National Assembly for Wales
National Association of Agricultural Contractors
National Express Group
National Farmers Union
National Joint Committee Young HGV Drivers
National Society for Clean Air and Environment Protection
North West Regional Assembly
Parliamentary Advisory Council for Transport Safety
Passenger Transport Executive Group
The Pedestrian Association
Police Federation for England and Wales
Public Transport Consortium
Quarry Products Association
RAC
Road Haulage and Distribution Training Council
Road Haulage Association
Road Operators Safety Council
Road Rescue Recovery Association (RRRA)
Road Safety Advisory Panel
Road Safety Council of Wales
Royal Society for the Prevention of Accidents
Scottish Environment Protection Agency
Scottish Executive
Small Business Service

Society of Operations Engineers
Society of Motor Manufacturers and Traders
South Yorkshire Passenger Transport Executive
The Chartered Institute of Logistics and Transport (UK)
The Forum of Private Business
The National Union of Rail, Maritime and Transport Workers (RMT)
The Traffic Commissioners
The Union of Shop, Distributive and Allied Workers
The United Road Transport Union
Trades Union Congress (TUC)
TNT Logistics
Transport 2000
Transport and General Workers Union
Transport for London (TFL)
Transport Law Services
Transport Tribunal
Tyne and Wear Passenger Transport Authority
UK Petroleum Industry Association Ltd
Wales TUC
Welsh Assembly Government
Welsh Consumer Council
Welsh Local Government Association
West Midlands Passenger Transport Authority