

ROAD SAFETY ACT 2006

COMMENCEMENT ORDER No 5 2008

COMMENCEMENT DATES
and
BRIEF DESCRIPTIONS

5 JANUARY 2009

Section 3 – Graduated Fixed Penalties:

Amends S 53 of the Road Traffic Offender’s Act (RTOA) and allows graduated amounts dependent on the offence(s) and take into account the nature and severity of the offence together with where the offence took place and whether the offender has committed other offences in a prescribed period.

Section 11 - Penalty Deposits

and Schedule 4 – Prohibition of driving; immobilisation, removal and disposal of vehicles.

S 90A to 90F are new sections in the RTOA.

S 90A Police and VE appointed under S66 Road Traffic Act (RTA) able to require payment of a deposit from a person they believe has committed an offence who does not provide a satisfactory address in the UK where that person is likely to be found. The police and VE **MUST** also believe that the person, offence and circumstances are of a description specified in an order made by the Secretary of State.

The section enables the deposit to be applied to any driver who cannot satisfy the police or VE that he could be found in the UK when necessary in connection with a FPN or court proceedings. The deposit to be used to pay any uncontested FPN.

It is open to drivers to contest in court any offence including FPNs.

If successful or the case does not go to court within a year or if shorter, any period after which no prosecution could be commenced the deposit to be refunded with interest.

If unsuccessful, the deposit to be retained to be offset against all or part fines.

S 90D Enables police or VE to prohibit the moving of the vehicle if the deposit is not paid immediately but the vehicle may be moved to a specific location by way of direction notice. The prohibition remains in force until the driver:

Pays the deposit or

If FPN or conditional offer is charged or informed that no prosecution will follow or

Payment is made or

The prosecution period ends; Whichever comes first.

Failure to comply with the prohibition set by non-payment of a FPN deposit recorded as Level 5 offence (RTOA)

Section 12 - Prohibition of driving; immobilisation, removal and disposal of vehicles.

Reinforces current powers and inserts a **new S11** which applies where a deposit is not paid under the requirements.

Allows vehicles issued with an immediate prohibition to be immobilised until such time as the prohibition requirements are satisfied or;

Where offender does not have a **reliable** UK address, until such time as a deposit is paid or the case settled in court.

Immobilisation will prevent prohibition being disregarded or allow drivers to refuse to pay and abscond with their vehicle.

Section 59 (repeals and revocations) insofar as it relates to Para 1 Schedule 7 And accordingly para 1 of Schedule 7

31 MARCH 2009

Section 4 – Graduated fixed penalty points

Amends S 28 RTOA as amended by RTA 91 which provided for penalty points for offences when driving licences are to be endorsed.

Three new subsections to S3 (3)(3A)(3B) which allows the S of S to vary number of points dependent on circumstances which will include;

Nature of offence;

Severity;

Where it took place and

Whether offender appears to have committed other prescribed offences in a prescribed period.

Also allows S of S to provide for penalty points for a fixed penalty offence to be appropriate number of points.

Current penalty points where not subject to any order will remain the unchanged.

Section 5 and Schedule 1 – Fixed penalty points by VEs

Amends S5 to allow VE to issue FPN for offences they have powers to enforce predominantly Roadworthiness and Tachograph offences.

VEs will also issue conditional offers under S75 for offences detected remotely such as ANPR and weighing in motion equipment.

HOWEVER, whilst similar to police system, any FPN issued by a VE will be administered by the S of S who is responsible (through VOSA offices) for inspection and endorsement of licences. The offender's rights to ask for or to be heard in court will not be affected.

Section 6 – LGV Operator Licensing

Amends GVLA 1995 provides for FPNs to be notified in the same way as a conviction by the applicant or holder of an Operator Licence to the Traffic Commissioners.

FPNs issued to operators, their agents (drivers) or transport manager will be taken into account when granting, revoking, suspending or curtailing a licence. **All FPNs in the previous 5 years will be taken into account.**

Failure to notify being issued with a FPN or conviction is an offence.

In effect, the issuing of a FPN will be the same as receiving a conviction.

Section 7 – PCV Operator Licensing

Amends PPLA 1981 provides for FPNs to be notified in the same way as a conviction by the applicant or holder of an Operator Licence to the Traffic Commissioners.

FPNs issued to operators, their agents (drivers) or transport manager will be taken into account when granting, revoking, suspending or curtailing a licence. **All FPNs in the previous 5 years will be taken into account.**

Failure to notify being issued with a FPN or conviction is an offence.

In effect, the issuing of a FPN will be the same as receiving a conviction.

Section 59 (repeals and revocations) insofar as it relates to Para 2 Schedule 7 And accordingly para 1 of Schedule 7

1 APRIL 2009

Section 8 – Driving Record (New system)

Currently it is only possible to issue a FPN for an endorsable RT offence to a person who holds both a driving licence and a counterpart issued in the UK. As such, the police cannot issue a FPN to non-GB licence holders such as Northern Ireland and non-UK licence holders unless they hold a counterpart licence on which a record of penalty points can be kept. Therefore **S8** allows FPNs to be issued to drivers who do not have counterpart licences and will be in two stages:

S8 RTOA has new **section 97A** with the introduction of the ‘concept of a licence held by the S of S and designed for the endorsement of particulars of offences committed by a person under the Traffic Acts.

Section 9 Unlicensed and foreign drivers (New system)

Schedule 2 – Endorsement unlicensed and foreign drivers

Provides for the first stage where they introduce endorsements of records for Unlicensed and foreign drivers (other than EC and NI licence holders who have been issued with a counterpart licence).

S9 enable the police or a VE to issue FPN for offences where drivers would not be liable to disqualification for ‘totting’ if convicted. In these cases court attendance is required as with GB licence holders whose licence counterpart must be inspected to ascertain if penalty points will take them up to or over 12 points.

Driver records to be checked before a FPN is issued through the police or VE having access to driving records and also enables the S of S to endorse driving records rather than a FP Clerk endorsing the counterpart licence where the driver accepts the FPN and a court appearance is not requested or required.

In the first stage no change in EC or NI licences where a counterpart has been issued. The UK is obliged to make this change following a complaint to the EC when a Dutch motorist was required to attend court and the fine was higher than the FPN so was declared discriminatory.

Section 10 (all drivers) and **Schd 3 (endorsement: all drivers)** commencing at a later date (Stage 2) will introduce a new system of endorsements for all records and the counterpart will cease to have any function.

Stage 2 with regard to FPNs will create two categories of driver:

1. Those who hold GB licences issued under Part 3 RTA:
2. Those who do not.

GB licence holders will still have to produce their licences in order to be issued with a FPN.

EC and NI who held counterpart licences under the RTA will no longer be dealt with as a GB licence holder but will be dealt with in the same way as an unlicensed and other foreign drivers.

Section 59(repeals and revocations) insofar as it relates to Para 3 Schedule 7 And accordingly para 3 of Schedule 7