

EXPLANATORY MEMORANDUM TO
THE FIXED PENALTY (AMENDMENT) (No. 3) ORDER

2009 No. 1487

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

2. Purpose of the instrument

2.1 For certain road traffic offences, the police are able to offer the suspected perpetrator a fixed penalty, the level of which is prescribed by the Secretary of State. Payment of the penalty discharges any liability to conviction for the offence. This order raises from £30 to £60 the level for certain existing fixed penalty offences, namely failure to fix a prescribed registration mark to a vehicle in accordance with certain regulations made under the Vehicle Excise and Registration Act 1994 and failure to comply with seat belt legislation.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This order is being laid less than 21 days before it comes into effect. This is necessary because the order, in addition to raising the fixed penalty level for certain offences, also revokes the Fixed Penalty (Amendment) (No. 2) Order (S.I. 2009/1363) which was originally named the Fixed Penalty (Amendment) Order. Its name was changed following an authorised correction because it had the same name as S.I. 2009/488. It was due to come into effect on 30th June. Revocation is necessary because S.I. 2009/1363 does not take account of other recent changes to the principal order (S.I. 2000/2792) that it is intended to amend. These changes were introduced by the Fixed Penalty (Amendment) Order 2009 (S.I. 2009/488), made by the Secretary of State for Transport.

3.2 This order does not state that it is being provided free of charge because it has been certified that the printing and sale of the order it is correcting (S.I. 2009/1363) is unnecessary in light of the fact that S.I. 2009/1363 will be replaced before it comes into force under regulation 6 of the Statutory Instruments Regulations 1947.

4. Legislative Context

4.1 Provisions as to fixed penalties for offences in respect of a vehicle are contained in Part III of the Road Traffic Offenders Act 1988 ('RTOA'). Under section 53 of that Act, the fixed penalty for an offence is such amount as the Secretary of State may by order prescribe. The amount cannot be more than half the maximum fine available for the offence on summary conviction. Before prescribing the amount of any penalty, the Secretary of State has, under section 88(2) of the RTOA, to consult with such representative organisations as she thinks fit.

4.2 Against this background, the penalty levels associated with all fixed penalty offences are kept under regular review. Following the consultation required by section 88(2), the Secretary of State has decided to increase from £30 to £60 the

penalty for certain offences. The offences are failure to fix a prescribed registration mark to a vehicle in accordance with regulations made under section 23(4)(a) of the Vehicle Excise and Registration Act 1994, contrary to section 59 of that Act, and failure to comply with seat belt legislation, contrary to sections 14 and 15 of the Road Traffic Act 1988.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 Current fixed penalty levels are in general £60 and 3 penalty points for an endorsable offence and £30 for non-endorsable offences. This is not, however, an absolute rule. Ministers have set other figures when they have thought it necessary. Currently, for example, the non-endorsable offence of having no MoT certificate has a fixed penalty of £60. Due to concerns that had been raised, Ministers decided to consider whether a non-standard penalty should apply to offences relating to using an illegal number plate and failing to comply with seat belt legislation.

7.2 The police have advised that there has been a steady increase in the numbers using illegal number plates. Breaches of the legislation include altering the layout of letters and numerals, illegal fonts and the use of tape to change the appearance of the plate. This has significant implications for criminal investigations and crime detection e.g. by Automatic Number Plate Recognition (ANPR) systems and automatic speed detection devices. (ANPR enables the police to scan vehicle number plates and check them against relevant databases to identify those of interest so that officers can stop them or take whatever action is appropriate.) The current fixed penalty does not appear to be an adequate deterrent and Ministers do not believe it appropriately reflects the seriousness of the offence. Without prejudice to possible other changes in future, such as making the offence endorsable, Ministers have therefore decided to raise the fixed penalty to £60.

7.3 As regards failure to comply with seat belt legislation, despite extensive educational campaigns and publicity a hard core of drivers and passengers are still not using a belt when driving or being carried in a vehicle. This has obvious implications for the Government's Road Safety Strategy, since failure to wear a seat belt is one of the three main factors in avoidable deaths and injuries. Ministers have therefore decided that the penalty for this offence should also rise to £60.

7.4 In setting the new levels, Ministers, in addition to considering the seriousness of the individual offences, have also kept in mind the need for penalty levels to cater for low income offenders and the need to encourage offenders to pay the fixed penalty rather than opt for trial.

- **Consolidation**

7.5 There are no plans for consolidation.

8. Consultation outcome

8.1 The Government's consultation document proposing the increases was sent to such representative organisations as the Home Secretary thought fit. The organisations are listed in the document. The document was also placed on the HO website, at <http://www.homeoffice.gov.uk/documents/cons-2008-increase-fixed-penalty> in order to be generally accessible. Those who responded over a 12 week period (11 organisations, 15 individuals) were overwhelmingly supportive in general terms.

9. Guidance

9.1 The instrument changes certain fixed penalty levels only. It imposes no new obligations and does not change the primary legislation or the way in which the fixed penalty system operates. The police and other interested parties are aware the change is forthcoming and its date of implementation will be formally advised to them. The government does not consider further guidance necessary.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is not cost related. Costs will fall on offenders. The Government expects a benefit to the public at large through a greater deterrence of criminal behaviour.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The level of fixed penalties is kept under continuous review by the official-level Fixed Penalty Procedures Working Group.

13. Contact

Geoffrey Biddulph at the Home Office, Public Order Unit, Tel: 020 7035 1801, e-mail: geoffreycharles.Biddulph@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.