

2009 No. 491

ROAD TRAFFIC

The Road Safety (Financial Penalty Deposit) Order 2009

Made - - - - *5th March 2009*

Laid before Parliament *9th March 2009*

Coming into force - - *31st March 2009*

This Order is made in exercise of the powers conferred by sections 90A(2)(b), 90B(1)(a), 90C(11) and 90E(3) of the Road Traffic Offenders Act 1988(a).

The Secretary of State has consulted with such representative organisations as appear appropriate in accordance with section 90E(2) of that Act.

Accordingly, the Secretary of State makes the following Order:

Citation and commencement

1. This Order may be cited as the Road Safety (Financial Penalty Deposit) Order 2009 and shall come into force on 31st March 2009.

Interpretation

2. In this Order—

“the Act” means the Road Traffic Offenders Act 1988;

“credit card” means a card or similar thing issued by any person, use of which enables the holder to defer the payment by the holder of the charge for the appropriate amount; and

“debit card” means a card or similar thing issued by any person, use of which by the holder causes the charge for the appropriate amount to be paid by the electronic transfer of funds from any current account of the holder at a bank or other institution providing banking services.

The specified person

3. The specified person for the purposes of section 90A(2)(b) of the Act is the person in charge of the motor vehicle at the time at which the constable or vehicle examiner has reason to believe that a person is committing, or has on that occasion committed an offence specified in this Order relating to that vehicle.

(a) 1988 c.53. Part 3A (which includes sections 90A to 90E) was inserted by section 11 of the Road Safety Act 2006 (c.49).

The specified offences

4. The specified offences for the purposes of section 90A(2)(b) of the Act are set out in column one of the tables in the Schedule (the general nature of the offence is also indicated in column two).

The specified circumstances

5.—(1) The specified circumstances for the purposes of section 90A(2)(b) of the Act are that the offence is being committed, or has on that occasion been committed, on a road or other public place.

(2) In this article, “road” has the meaning given in section 192(1) of the Road Traffic Act 1988(a).

Manner of payment

6. Payment of the appropriate amount shall be made—

- (a) in person to the vehicle examiner or the constable, by cash or credit or debit card, if the vehicle examiner or constable has the necessary means to accept payment in that manner;
- (b) by telephone by credit or debit card, to the number given on the document referred to in section 90A(3) of the Act, if a number is so given; or
- (c) by any other means specified on the document referred to in section 90A(3) of the Act.

Appropriate steps to make an appropriate refund

7.—(1) The appropriate steps to trace the person and to make an appropriate refund, for the purposes of section 90C(11) of the Act are set out in paragraphs (2) and (3).

(2) The Secretary of State shall—

- (a) attempt to contact the person (on whom the financial penalty requirement was imposed) at any address given in any response or in any document provided to a vehicle examiner or constable;

but if the attempt to contact that person is unsuccessful, and if a person other than that person made the payment,

- (b) attempt to contact that other person, at any address or contact details given when the person made the payment.

(3) The means by which an appropriate refund can be made by the Secretary of State are—

- (a) by cheque;
- (b) by refund to any credit or debit card used to make the financial penalty payment; or
- (c) by any other means agreed with the person to whom the appropriate refund is to be made.

Signed by authority of the Secretary of State for Transport

5th March 2009

Jim Fitzpatrick
Parliamentary Under Secretary of State
Department for Transport

(a) 1988 c.52. Section 192(1) was amended by paragraph 78 of Schedule 4 to the Road Traffic Act 1991 (c.40). There are other amendments to section 192(1) but none are relevant.

PART 1

Acts of Parliament

Table 1

Transport Act 1968(a)

| <i>Provision creating offence</i> | <i>General nature of offence</i> |
|-----------------------------------|---|
| Section 96(11)(b) | Contravention of any requirement of the domestic drivers' hours code |
| Section 96(11A)(c) | Contravention of any requirement of applicable Community rules as to periods of driving, etc. |
| Section 97(1)(d) | Using vehicle in contravention of any requirement of applicable Community rules as to periods of driving, etc. |
| Section 97AA(1)(e) | Forgery, etc., of seals on recording equipment |
| Section 98(4)(f) | Contravention of regulations made under section 98 or any requirement as to books, records or documents of applicable Community rules |
| Section 99(4)(g) | Failing to comply with requirements relating to inspection of records or obstructing an officer |
| Section 99(5)(h) | Making false entry in book, register or document, etc. |
| Section 99ZD(1)(i) | Failing to comply with requirements relating to inspection of recording equipment or records (whether electronic or hard copy) made by or stored on recording equipment |
| Section 99ZE(1)(j) | Making or permitting, false record or entry, etc. |
| Section 99ZE(3) | Recording or causing or permitting to be recorded false data on recording equipment or driver card, etc. |

(a) 1968 c.73.

(b) Subsection (11) was first amended by section 2(1)(e) and (f) of the Road Traffic (Drivers' Ages and Hours of Work) Act 1976 (c.3). It was subsequently amended by sections 38 and 46 of the Criminal Justice Act 1982 (c.48), in respect of England and Wales, and by sections 289F and 289G of the Criminal Procedure (Scotland) Act 1975 (c.21) (as inserted by section 54 of the Criminal Justice Act 1982) in respect of Scotland.

(c) Section 96(11A) was inserted by paragraph 9(2)(a) of Schedule 4 to the European Communities Act 1972 (c.68). It was subsequently amended by section 2(1)(c) of the Road Traffic (Drivers' Ages and Hours of Work) Act 1976, and by sections 38 and 46 of the Criminal Justice Act 1982 in respect of England and Wales, and by sections 289F and 289G of the Criminal Procedure (Scotland) Act 1975 (as inserted by section 54 of the Criminal Justice Act 1982) in respect of Scotland. It was further amended by S.I. 1986/1457 and 2007/1819.

(d) Section 97 was substituted by S.I. 1979/1746 and subsection (1) was subsequently substituted by S.I. 1984/144; it was amended by S.I. 1986/1457, 1989/2121 and 2005/1904.

(e) Section 97AA was inserted by S.I. 1989/2121.

(f) Section 98(4) was first amended by paragraph 9(2) of Schedule 4 to the European Communities Act 1972. It was subsequently amended by section 2(1) of the Road Traffic (Drivers' Ages and Hours of Work) Act 1976 and sections 38 and 46 of the Criminal Justice Act 1982 in respect of England and Wales, and by sections 289F and 289G of the Criminal Procedure (Scotland) Act 1975 (as inserted by section 54 of the Criminal Justice Act 1982) in respect of Scotland.

(g) Section 99(4) was amended by sections 38 and 46 of the Criminal Justice Act 1982 in respect of England and Wales, and by sections 289F and 289G of the Criminal Procedure (Scotland) Act 1975 (as inserted by section 54 of the Criminal Justice Act 1982 in respect of Scotland).

(h) Section 99(5) was first amended by paragraph 9(2) of Schedule 4 to the European Communities Act 1972. It was subsequently amended by section 2(1) of the Road Traffic (Drivers' Ages and Hours of Work) Act 1976, by section 32(2) of the Magistrates' Court Act 1980 (c.43) and by S.I. 1979/1746.

(i) Section 99ZD(1) was inserted by S.I. 2005/1904.

(j) Section 99ZE was inserted by S.I. 2005/1904.

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| Section 99ZE(6) | Producing, supplying or installing device to interfere with recording equipment or falsify, etc., data |
| Section 99C(a) | Failure to comply with prohibition or direction in relation to driving vehicle. |

Table 2

Road Traffic (Foreign Vehicles) Act 1972(b)

| <i>Provision creating offence</i> | <i>General nature of offence</i> |
|-----------------------------------|---|
| Section 3(1) | Driving a foreign goods or foreign public service vehicle in contravention of a prohibition, etc. |

Table 3

Public Passenger Vehicles Act 1981(c)

| <i>Provision creating offence</i> | <i>General nature of offence</i> |
|-----------------------------------|--|
| Section 6(2)(d) | Using a vehicle without certificate of initial fitness (or equivalent) |
| Section 12(5)(e) | Using public service vehicle except under PSV operators' licence |
| Section 18(4) | Using a vehicle without displaying operator's disc |
| Section 65(2) | Forgery and misuse of documents, etc. |

Table 4

Road Traffic Regulation Act 1984(f)

| <i>Provision creating offence</i> | <i>General nature of offence</i> |
|-----------------------------------|---|
| Section 5(1) | Using a vehicle in contravention of a traffic regulation order outside Greater London |
| Section 8(1) | Breach of traffic regulation order in Greater London |
| Section 11(1) | Breach of experimental traffic order |
| Section 16(1) | Using a vehicle in contravention of temporary prohibition or restriction of traffic in case of execution of works, etc. |
| Section 17(4) | Wrongful use of special road |
| Section 18(3) | Using a vehicle in contravention of provision for one-way traffic on trunk road |
| Section 20(5) | Driving a vehicle in contravention of order prohibiting or restricting driving vehicles on |

(a) Section 99C was inserted by section 266 of the Transport Act 2000 (c.38).

(b) 1972 c.27. Section 3(1) was amended by sections 39(2) and 46 of, and Schedule 2 to, the Criminal Justice Act 1982 in respect of England and Wales, and by section 3 of and paragraph 10 of Schedule 1 and Part III of Schedule 2 to, the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40) in respect of Scotland.

(c) 1981 c.14.

(d) Section 6(1) was amended by paragraph 14 of Schedule 4 to the Road Traffic Act 1991, and by paragraph 22 of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c.54).

(e) Section 12(1) was amended by sections 38 and 46 of the Criminal Justice Act 1982 in respect of England and Wales, and by sections 289F and 289G of the Criminal Procedure (Scotland) Act 1975 (as inserted by section 54 of the Criminal Justice Act 1982) in respect of Scotland.

(f) 1984 c.27. Section 11(1) was numbered as such by section 65(3) of the Road Traffic Act 1991.

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| | certain classes of roads |
| Section 25(5) | Breach of pedestrian crossing regulations |
| Section 88(7) | Contravention of minimum speed limit |
| Section 89(1) | Exceeding speed limit |

Table 5

Road Traffic Act 1988(a)

| <i>Provision creating offence</i> | <i>General nature of offence</i> |
|-----------------------------------|---|
| Section 3(b) | Careless, and inconsiderate, driving |
| Section 4(1)(c) | Driving or attempting to drive when unfit to drive through drink or drugs |
| Section 4(2)(d) | Being in charge of a mechanically propelled vehicle when unfit to drive through drink or drugs |
| Section 5(1)(a) | Driving or attempting to drive with excess alcohol in breath, blood or urine |
| Section 5(1)(b) | Being in charge of a motor vehicle with excess alcohol in breath, blood or urine |
| Section 12(1) | Motor racing and speed trials on public ways |
| Section 13(1) | Other unauthorised or irregular competitions or trials on public ways |
| Section 14(3) | Breach of regulations requiring wearing of seat belts |
| Section 15(2)(e) | Driving motor vehicle with child not wearing seat belt or with child in a rear-facing child restraint front seat with an active air bag |
| Section 15(4)(f) | Driving motor vehicle with child in rear not wearing seat belt |
| Section 16(4) | Driving or riding motor cycles in contravention of regulations requiring wearing of protective headgear |
| Section 18(3) | Contravention of regulations with respect to use of head-worn appliances (eye protectors) on motor cycles |
| Section 19(1) | Prohibition of parking of heavy commercial vehicles on verges, etc. |
| Section 22(g) | Leaving vehicle in dangerous position |
| Section 33(3) | Unauthorised motor vehicle trial on footpaths or bridleways, etc. |
| Section 34(1)(h) | Driving mechanically propelled vehicles elsewhere than on roads |
| Section 35(1)(i) | Failing to comply with traffic directions given by constable or traffic officer engaged in the regulation of traffic in a road |

(a) 1988 c.52.

(b) Section 3 was substituted by section 2 of the Road Traffic Act 1991.

(c) Section 4(1) was amended by section 4 of the Road Traffic Act 1991.

(d) Section 4(2) was amended by section 4 of the Road Traffic Act 1991.

(e) Section 15(2) was amended by S.I. 2006/1892.

(f) Section 15(4) was amended by S.I. 1992/3105.

(g) Section 22 was amended by paragraph 48 of Schedule 4 to the Road Traffic Act 1991.

(h) Section 34(1) was substituted by paragraph 5 of Schedule 7 to the Countryside and Rights of Way Act 2000 (c.37).

(i) Section 35(1) was amended by section 6(2)(a) of the Traffic Management Act 2004 (c.18).

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| Section 35(2)(a) | Failing to comply with traffic directions given by constable or traffic officer where a traffic survey is being carried out |
| Section 36(1) | Failing to comply with traffic signs |
| Section 40A(b) | Using a vehicle in dangerous condition etc. |
| Section 41A(c) | Breach of requirement as to brakes, steering-gear or tyres |
| Section 41B | Breach of requirement as to weight: goods and passenger vehicles |
| Section 41D(d) | Breach of requirements as to control of vehicle, mobile telephone, etc. |
| Section 42(e) | Breach of other construction and use requirements |
| Section 47(1) | Using etc., vehicle without required test certificate being in force |
| Section 53(1) | Using, etc., goods vehicle without required plating certificate being in force |
| Section 53(2) | Using, etc., goods vehicle without required goods vehicle test certificate being in force |
| Section 53(3) | Using, etc., goods vehicle where Secretary of State is required by regulations under section 49 to be notified of an alteration to the vehicle or its equipment but has not been notified |
| Section 63(1) | Using, etc., goods vehicle without required certificate being in force showing that the vehicle, etc., complies with type approval requirements applicable to it |
| Section 63(2) | Using, etc., certain goods vehicles for drawing trailer when plating certificate does not specify maximum laden weight for vehicle and trailer |
| Section 63(3) | Using, etc., goods vehicle where Secretary of State is required to be notified under section 59 of alteration to it or its equipment but has not been notified |
| Section 64(2) | Using goods vehicle with unauthorised weights as well as unauthorised weights marked on it |
| Section 67(9) | Obstructing testing of vehicle by examiner on road or failing to comply with requirements of Road Traffic Act 1988 section 67 or Schedule 2 |
| Section 68(3)(f) | Obstructing inspection, etc., of vehicle by examiner |
| Section 68(5) | Failing to comply with requirement to take vehicle for inspection |

(a) Section 35(2) was amended by section 6(2)(b) of the Traffic Management Act 2004.

(b) Section 40A was inserted by section 8(1) of the Road Traffic Act 1991.

(c) Section 41A was substituted, together with sections 41B and 42, for section 42 as originally enacted, by section 8(2) of the Road Traffic Act 1991.

(d) Section 41D was inserted by section 26(1) of the Road Safety Act 2006.

(e) Section 42 was substituted by section 8(2) of the Road Traffic Act 1991, and was subsequently amended by section 26(2) of the Road Safety Act 2006.

(f) Section 68 was substituted by section 11 of the Road Traffic Act 1991.

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| Section 71(1)(a) | Driving, etc., vehicle in contravention of prohibition on driving it as being unfit for service, or failing to comply with direction to remove a vehicle found overloaded |
| Section 76(1)(b) | Fitting of defective or unsuitable vehicle parts |
| Section 78(3) | Failing to comply with requirement about weighing motor vehicle or obstructing authorised person |
| Section 87(1)(c) | Driving otherwise than in accordance with a licence |
| Section 94A(1)(d) | Driving after refusal or revocation of licence etc. |
| Section 96(1) | Driving with uncorrected defective eyesight |
| Section 103(1)(b) | Driving while disqualified |
| Section 114(1)(e) | Failing to comply with conditions of LGV or PCV driver's licence |
| Section 114(2) | Causing or permitting a person under 21 to drive LGV or PCV in contravention of conditions of licence |
| Section 143(2) | Using, etc., motor vehicle while uninsured or unsecured against third party risks |
| Section 163(3)(f), insofar as it relates to section 163(1) | Failing to stop mechanically propelled vehicle when required |
| Section 164(6)(g) | Failing to produce driving licence or counterpart, etc., or to state date of birth, etc. |
| Section 165(3) | Failing to give certain names and addresses or produce certain documents on request when driving a motor vehicle, etc. |
| Section 165(6) | Failing to give certain names and addresses while supervising a provisional licence-holder, etc. |
| Section 168 (insofar as it relates to the case referred to in paragraph (a) of that section) | Refusing to give, or giving false, name and address in case of reckless, careless or inconsiderate driving of a mechanically propelled vehicle |
| Section 170(4) | Failing to stop after accident and give particulars or report accident |
| Section 181(3) | Obstructing inspection of vehicles after accident |

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- (a) Section 71 was substituted by section 14 of the Road Traffic Act 1991.
- (b) Section 76(1) was amended by paragraph 58 of Schedule 4 to the Road Traffic Act 1991.
- (c) Section 87(1) was amended by section 17(1) of the Road Traffic Act 1991.
- (d) Section 94A was inserted by section 18(3) of the Road Traffic Act 1991. It was subsequently amended by S.I. 1996/1974 and by paragraphs 17 and 20 of Schedule 5 to the Crime (International Co-operation) Act 2003 (c.32).
- (e) Sections 110 to 122 were repealed and re-enacted by sections 1 and 2 of, and Schedules 2 and 6 to, the Road Traffic (Driver Licensing and Information Systems) Act 1989 (c.22).
- (f) Section 163(1) was amended by paragraph 67 of Schedule 4 to the Road Traffic Act 1991. It was further amended by section 6(4) of the Traffic Management Act 2004.
- (g) Section 164(6) was amended by paragraph 18(c) of Schedule 3 to the Road Traffic (Driver Licensing and Information Systems) Act 1989. It was further amended by paragraph 68(6) of Schedule 4, and Schedule 8, to the Road Traffic Act 1991 and by S.I. 1990/144.

Table 6**Road Traffic Offenders Act 1988(a)**

| <i>Provision creating offence</i> | <i>General nature of offence</i> |
|-----------------------------------|--|
| Section 62(2) | Removing or interfering with fixed penalty notice fixed to vehicle |
| Section 90D(6)(b) | Driving a vehicle in contravention of a prohibition on driving, etc., on failure to make a financial penalty deposit payment |

Table 7**Vehicles Excise and Registration Act 1994(c)**

| <i>Provision creating offence</i> | <i>General nature of offence</i> |
|-----------------------------------|---|
| Section 42(1) | Driving or keeping a vehicle without required registration mark |
| Section 43(1) | Driving or keeping a vehicle with registration mark obscured etc. |
| Section 44(1) | Forgery and fraudulent use, etc., of a registration mark etc. |

Table 8**Goods Vehicles (Licensing of Operators) Act 1995(d)**

| <i>Provision creating offence</i> | <i>General nature of offence</i> |
|-----------------------------------|---|
| Section 2(5) | Using goods vehicle on road for carriage of goods except under operator's licence |
| Section 3(6) | Using a vehicle on a restricted operator's licence whilst carrying goods for hire or reward |
| Section 3(7) | Using a vehicle on an international journey carrying goods for hire or reward whilst holding a licence for national transport operations only |
| Section 38(1) | Forgery of documents, etc. |

Table 9**Disability Discrimination Act 1995(e)**

| <i>Provision creating offence</i> | <i>General nature of offence</i> |
|-----------------------------------|---|
| Section 40(3) | Failure to comply with PSV accessibility regulations made under section 40(1) etc. |
| Section 41(3) | Using a regulated public service vehicle on the road where no accessibility certificate or approval certificate has been issued |

(a) 1988 c.53.

(b) Section 90D was inserted by section 11 of the Road Safety Act 2006.

(c) 1994 c.22.

(d) 1995 c.23. Section 2(5) was amended by section 261 of the Transport Act 2000.

(e) 1995 c.50.

PART 2
Secondary Legislation

Table 1

The Road Transport (International Passenger Services) Regulations 1984(a)

| <i>Provision creating offence</i> | <i>General nature of offence</i> |
|-----------------------------------|---|
| Regulation 19(1) | Using vehicle for Community regulated carriage of passengers otherwise than in accordance with the Council Regulations or the Commission Regulation |
| Regulation 19(2) | Using vehicle for ASOR regulated or Community regulated carriage by road without passenger waybill |

Table 2

The Goods Vehicles (Community Authorisations) Regulations 1992(b)

| <i>Provision creating offence</i> | <i>General nature of offence</i> |
|-----------------------------------|--|
| Regulation 3 | Use of goods vehicle without Community authorisation |
| Regulation 7 | Failure to comply with conditions governing use of Community authorisation |

Table 3

The Public Service Vehicles (Community Licences) Regulations 1999(c)

| <i>Provision creating offence</i> | <i>General nature of offence</i> |
|-----------------------------------|--|
| Regulation 3 | Use of public service vehicles without Community licence |
| Regulation 7 | Failure to comply with conditions governing use of Community licence |

Table 4

The Road Transport (Passenger Vehicles Cabotage) Regulations 1999(d)

| <i>Provision creating offence</i> | <i>General nature of offence</i> |
|-----------------------------------|---|
| Regulation 3(1) | Use of vehicle for UK cabotage operations without Community licence |
| Regulation 4(1) | Use of vehicle for UK cabotage operations without control document |
| Regulation 7(1) | Failure to produce Community licence when requested |
| Regulation 7(3) | Failure to produce control document when requested |

(a) S.I. 1984/748.
 (b) S.I. 1992/3077.
 (c) S.I. 1999/1322.
 (d) S.I. 1999/3413, to which there are amendments not relevant to this Order.

Table 6**The Vehicle Drivers (Certificate of Professional Competence) Regulations 2007(a)**

| <i>Provision creating offence</i> | <i>General nature of offence</i> |
|-----------------------------------|--|
| Regulation 10(1) | Driving on road without completing appropriate initial Certificate of Professional Competence (CPC) test, or driving on road if more than five years have elapsed since obtaining relevant CPC |
| Regulation 10(2) | Causing or permitting another person to drive in breach of regulation 10(1) |
| Regulation 11(1) | Failing to carry evidence of initial CPC |
| Regulation 11(3) | Failing to carry evidence of periodic CPC |
| Regulation 11(5) | Failing to carry National Vocational Training Certificate in the vehicle in which the person is driving |
| Regulation 11(7) | Failing to produce evidence of CPC or National Vocational Training Certificate when required |
| Regulation 13(1) | Forgery, alteration, etc. of certain documents |

(a) S.I. 2007/605, as amended by S.I. 2008/1965; there are other amendments but none is relevant to this Order.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order specifies certain matters for the purposes of Part 3A of the Road Traffic Offenders Act 1988. That Part, which is inserted by section 11 of the Road Safety Act 2006, provides that constables or vehicle examiners may impose a financial penalty deposit requirement on a person if the constable or vehicle examiner has reason to believe that the person is committing or has on that occasion committed an offence relating to a motor vehicle and the person, offence and circumstances in which the offence is committed are of a description specified in an order made by the Secretary of State (new section 90A).

Articles 3 to 5, with the *Schedule* to the Order, specify the person, offences and circumstances in which a financial penalty deposit requirement can be imposed. *Article 6* specifies the manner of payment. *Article 7* sets out the steps to be followed by the Secretary of State where making an appropriate refund in accordance with Part 3A of the Act.

A full Impact Assessment of the effect this instrument will have on costs for the business and voluntary sectors has been produced and is available from the Licensing, Roadworthiness and Insurance Division, Department for Transport, Zone 2/09 Great Minister House, 76 Marsham Street, London SW1P 4DR and may be accessed on the Department's website at www.dft.gov.uk. A copy has been placed in the library of each House of Parliament.

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STATUTORY INSTRUMENTS

2009 No. 491

ROAD TRAFFIC

The Road Safety (Financial Penalty Deposit) Order 2009

£5.00