

EXPLANATORY MEMORANDUM TO
THE FINANCIAL PENALTY DEPOSIT AND FIXED PENALTY OFFENCES
(MISCELLANEOUS PROVISIONS) ORDER 2018

2018 No. 1236

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument designates specified offences relating to the use of goods vehicles and trailers without the appropriate authorisation or registration as offences that may be enforced through the Financial Penalty Deposit (“FPD”) and Fixed Penalty Notice (“FPN”) regimes. It also provides for certain related matters.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is Great Britain.
4.2 The territorial application of this instrument is Great Britain.

5. European Convention on Human Rights

- 5.1 The Minister of State has made the following statement regarding Human Rights:
“In my view the provisions of the Financial Penalty Deposit and Fixed Penalty Offences (Miscellaneous Provisions) Order 2018 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Part 3 of the Road Traffic Offenders Act 1988 (“the 1988 Act”) governs the FPN regime, which allows for specified road traffic offences to be dealt with at the roadside through a fine that is payable within a set period. Part 3A of the 1988 Act allows a FPD to be taken immediately from a person without a UK address who is believed to have committed a specified offence.
6.2 Offences are designated as fixed penalty offences by amending, by order, Schedule 3 to the 1988 Act. The following secondary legislation is also relevant:

- The Fixed Penalty Order 2000 (No. 2792), which specifies the amount of the penalty;
- The Road Safety (Financial Penalty Deposit) Order 2009 (No. 491), which specifies the offences for which a requirement to pay a FPD may be imposed; and
- The Road Safety (Financial Penalty Deposit) (Appropriate Amount) Order 2009 (No. 492), which specifies the amount of the FPD.
- The offences specified as FPN or FPD offences by this Order were created by:
 - The Haulage Permits and Trailer Registration Act 2018;
 - The Goods Vehicles (Community Licences) Regulations 2011 (No. 2633); and
 - The Trailer Registration Regulations 2018 (No. 1203).

7. Policy background

What is being done and why?

- 7.1 FPDs and FPNs, which allow for effective and rapid enforcement at the roadside, are widely used for certain road traffic offences relating to goods vehicles. This Order designates specified offences as FPD and FPN offences and sets the monetary amount of the fixed penalty. A related order, the Road Safety (Financial Penalty Deposit) (Appropriate Amount) (Amendment) Order 2018, sets the FPD amount.
- 7.2 The specified offences under the Haulage Permits and Trailer Registration Act 2018 relate to using a goods vehicle without a required permit, failing to produce a permit when required to do so by an examiner, obstructing an examiner or breaching a prohibition on the use of a goods vehicle on an international journey.
- 7.3 The Trailer Registration Regulations 2018 created various offences relating to the trailer registration scheme, including using an unregistered trailer in specified circumstances and failing to display a registration mark.
- 7.4 Comparable offences, such as those under the Vehicle Excise and Registration Act 1994, are also designated as FPD and FPN offences.
- 7.5 Separate amendments relate to an offence under the Goods Vehicles (Community Licences) Regulations 2011. The legislation relating to FPDs and FPNs was not amended at the time those Regulations were made to include this offence.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 No consolidation is planned by the Department.

10. Consultation outcome

- 10.1 The Department undertook a public consultation from 16th May to 25th June 2018 on the haulage permit and trailer registration regimes, which asked if the related offences should be enforced using FPNs. A further consultation was conducted on the use of FPDs with relevant industry bodies and respondents to the broader consultation. The

responses to these questions favoured using FPNs and FPDs. A summary of the responses is available at: <https://www.gov.uk/government/consultations/haulage-permits-and-trailer-registration>.

11. Guidance

- 11.1 The Driver and Vehicle Standards Agency Enforcement Sanctions Policy will be updated to reflect the permitted enforcement practices. This is available at <https://www.gov.uk/government/publications/enforcement-sanctions-policy>.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A formal Impact Assessment is not required because these measures are low cost and will not have any significant impact on business. A De Minimis Assessment has been completed and the appropriate internal regulatory clearances have been received.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 The basis for the final decision on what action to take to assist small businesses is that none would be appropriate as these provisions must apply in relation to all drivers and vehicles to ensure effective enforcement.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that none is required as the use of FPDs and FPNs will be needed for effective enforcement of the substantive provisions in other legislation for as long as those provisions are in force.
- 14.2 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Jesse Norman, Minister of State, has made the following statement:

“Having had regard to the Statutory Review Guidance for Departments published under section 31(3) of the Small Business, Enterprise and Employment Act 2015, in my view, it is not appropriate to provide for a review of these provisions. The impact of this measure will not be significant as fines or penalties incurred for non-compliance with regulations are not considered within the cost to business.”

15. Contact

- 15.1 Robert Leiper at the Department for Transport Telephone: 07773 073551 or email: Robert.Leiper@dft.gov.uk can be contacted regarding this instrument.
- 15.2 Paul O’Sullivan, Deputy Director for Roads EU Exit, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Jesse Norman, Minister of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.