



Department
for Transport

Proposals to make historical drivers' hours and HGV Levy offences subject to Fixed Penalty Notices and Financial Penalty Deposit requirements

June 2014

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1. Who should read this document?

1.1 This document will be of interest to:

- Drivers and operators of commercial goods vehicles and passenger carrying vehicles;
- Trade Unions representing drivers;
- Trade Associations representing drivers and operators;

2. Introduction

This consultation proposes changes to legislation, in particular to the Road Traffic Offenders Act 1988 (RTOA), to allow roadside enforcement officers to take effective enforcement action against drivers who commit historical drivers' hours and HGV levy offences.

By 'historical' offences we mean offences committed in the past, but detected at a later date during an enforcement check. The changes would apply to offences committed up to 28 days prior to the enforcement check.

These proposed changes will enable greater use to be made of Fixed Penalty Notices (FPNs) (here taken to include similar Conditional Offers) and Financial Penalty Deposits (FPDs), as opposed to court proceedings, when dealing with historical offences.

In addition, with respect to historical EU drivers' hours' offences, these proposed changes would bring the UK in line with some other Member States, which already issue on-the-spot penalties for historical EU drivers' hours offences. Therefore, UK drivers driving through the European Union can currently face penalties for historical offences in other Member States, whilst their European counterparts, driving in the UK, do not. We want to level the playing field whilst improving enforcement and compliance.

Effective enforcement of the drivers' hours rules is important, as the majority of road accidents are due to driver error (about 65%) and tired drivers are more prone to making mistakes than alert drivers. In addition the larger the vehicle the more likely any accident would result in drivers/passengers being killed or seriously injured.

Also worth noting, is the Transport Select Committee's (TSC's) support for any legislative changes to enable FPNs to be issued to drivers who have committed a drivers' hours offence in the past (i.e. a historical offence). This support is contained in the TSC's Final Report, published on 8 July 2013 (link given below - see para. 34) into their recent inquiry into the work of the Vehicle and Operator Services Agency (VOSA - now part of the Driver and Vehicle Standards Agency - DVSA):

<http://www.publications.parliament.uk/pa/cm201314/cmselect/cmtran/583/58302.htm>

3. Background

Drivers' Hours Rules

The EU drivers' hours rules (Regulation (EC) 561/2006) apply to goods vehicles weighing over 3.5 tonnes and passenger vehicles with 10 or more seats unless covered by a range of specific EU-wide exemptions and national derogations. These rules require the use of tachographs and prescribe maximum limits on driving time and minimum requirements for breaks and rest periods.

The GB domestic drivers' hours rules (contained in the Transport Act 1968) apply to goods vehicles weighing 3.5 tonnes or less and passenger vehicles not in scope of the EU drivers' hours rules (such as local bus services). These rules prescribe maximum daily driving limits and duty limits. Drivers of these vehicles are not required to keep a record of their driving or duty limits, unless they require an operator's licence and would normally come under scope of the EU drivers' hours rules (but qualify for an exemption or national derogation). These drivers are required to keep a written record. These rules are in place not only to protect road safety and to improve the working conditions of drivers, but to ensure fair competition in the industry by setting a common standard of rules under which all are required to operate.

EU requirement on enforcement of the drivers' hours rules

EC Regulation 561/2006 (which is a directly applicable EU regulation) states in the 14th Recital that:

“To guarantee effective enforcement, it is essential that the competent authorities, when carrying out roadside checks, and after a transitional period, should be able to ascertain that driving times and rest periods have been properly observed on the day of the check and over the preceding 28 days”

In addition, Article 19 of EC Regulation 561/2006 requires Member States to impose a penalty in respect of offences irrespective of where that offence was committed.

The Driver and Vehicle Standards Agency (DVSA) and the police have no easy means of taking effective enforcement action in respect of drivers' hours offences committed during the 28 day period preceding a compliance check. Enforcement currently necessitates prosecution of alleged offences in court - which is administratively costly and cumbersome, particularly when dealing with offenders who are unable to provide a satisfactory UK address for enforcement, and for what is often a relatively minor offence.

Current enforcement of the drivers' hours rules

Fixed penalty notices (FPNs) have been used extensively for driving offences during the last two decades. A person issued with an FPN can elect not to accept it. However, if they do not respond to the FPN, they face the prospect of proceedings at a Magistrates' Court and if they consider they are innocent can contest the proceedings against them.

Graduated FPNs were introduced in 2009 and cover amongst other matters commercial vehicle drivers' hours. For drivers hours the penalties are graduated to reflect the length of time spent driving, working over the legal limit or being below the prescribed period of rest.

Drivers without a satisfactory UK address who are suspected of committing many of the FPN offences can be required to give an immediate financial penalty deposit (FPD) either for an amount equivalent to the FPN or as an amount set as a surety where the offence is more serious and to be prosecuted in court.

The levels of the FPDs generally match the fines associated with FPNs. Graduated FPN and FPD range from £50 to £300.

FPDs have enabled enforcement against drivers (including drivers of commercial goods vehicles) who do not have satisfactory addresses in the UK and who would be difficult to pursue effectively at a later date, more cost effectively, in greater volumes and with a greater probability of penalties being imposed and fines collected.

As the law relating to FPNs and FPDs stands at present (section 54 of the Road Traffic Offenders Act 1988) a FPN and FPD can only be offered by an enforcement officer who believes that an offence is being or has been committed 'on that occasion' (i.e. the offence is being committed at the time the compliance check takes place). Therefore, it is not possible for enforcement officers to deal with offences committed prior to the date of inspection by the issue of FPN or FPD. Any cases involving numerous previous offences will be followed up and reported to the Traffic Commissioner. The most serious offences will be prosecuted.

DVSA have issued guidance on FPNs and FPDs, which is available at:

<https://www.gov.uk/government/publications/guide-to-graduated-fixed-penalties-financial-deposits>

HGV Road User Levy

The objective of the HGV Road User levy is to strengthen the competitiveness of the UK haulage industry by ensuring that foreign HGVs make a contribution to their road wear costs whilst operating in the UK.

The HGV Road User Levy Act 2013 already contains some power for retrospective enforcement of the HGV Levy by creating an offence of using or keeping an HGV on a day when the levy has not been paid and by enabling a FPN to be issued for an offence of using or keeping that vehicle on the day on which the enforcement action is taken, since the offence is continuing when the vehicle is stopped.

Enforcement officers also have the ability to prosecute through the Magistrates Court for extended periods of non-payment of the Levy or where there is evidence that the vehicle has been persistently operated in the UK without paying the Levy. Upon conviction, a level fine of up to £5,000 may be imposed.

4. Proposals

Historical drivers' hours offences

Our proposal is to amend the RTOA and the related procedural regulations so that on-the-spot FPNs (in England & Wales); Conditional Offer FPNs (in Scotland) and FPDs (in GB, requiring payment on-the-spot) may be imposed for both historical EU and domestic drivers' hours' offences that have taken place on the day of detection or in the previous 28 days.

In the case of FPDs the changes would also cover people given notification of court proceedings, as well as those given FPNs (or conditional offers in Scotland).

We propose at this stage to include domestic drivers' hours' offences (to help enforcement related to those drivers required to keep a written record) so as to allow offenders of less serious offences the opportunity to accept a fixed penalty rather than face prosecution in court.

Penalties would be imposed only if an offender cannot produce evidence that the offence has already been penalised (by a previous on-the-spot offence) or is already subject to court proceedings.

The 28 day limit is the maximum required under the EU Regulation 561/2006 and coincides with the requirement for drivers to download data from their driver card every 28 days. For consistency we would propose that the same time limit is used for domestic drivers' hours' offences.

Our proposal is that extending the fixed penalty and financial deposit legislation in this way should only apply to cover offences that are currently subject to FPN (or conditional offers in Scotland) or FPD, such as: failure to take the required breaks or rests; failure to comply with the driving limits or in the case of domestic rules, the duty limits. In respect of FPDs this would include offences where drivers not providing a satisfactory UK address are being given written notification that proceedings will be brought against them. The essential difference to the current fixed penalty and financial penalty

deposit legislation would be that these offences would have been committed up to 28 days before the enforcement check.

It is worth noting that many offences concerned with drivers hours are constituted as offences in the Great Britain even if relevant driving or rest has taken place abroad, such being the case, for example where work activity wherever it has occurred may give rise to a failure to take sufficient weekly rest when detected in GB. It is also worth noting that further consequences may flow for drivers (or the undertakings for which they drive) beyond FPNs, FPDs and court proceedings. These continue to be relevant – including the referral of some drivers and operators to traffic commissioners within Great Britain and notifications to authorities elsewhere in the European Union.

Attached at Annex A is a draft Impact Assessment (IA). We would welcome any evidence to strengthen the IA. See Questions 6 and 7.

Historical HGV road user levy offences

Whilst enforcement officers have the option to pursue non-payment of the HGV levy for offences of non-payment for other days in the past through the Courts, the use of FPNs and FPDs are considered a preferable sanction.

Therefore, we propose to amend the RTOA and the related procedural regulations so that multiple FPNs or FPDs can be issued for concurrent days of levy non-compliance (for example where a levy is purchased for a day and the vehicle drives in the UK for a week) or non-payment of the levy on several trips, reinforcing the message that the enforcement authorities have sanctions at their disposal to be able to enforce effectively.

Way forward

The Department still has significant legal work to do on the details of the above proposed legislative change. If after this consultation the Department was to consult further on the details of these proposals; please say in your response to Question 5, if you would wish to be consulted.

5. Consultation Questions

Question 1

Do you agree that legislation should be altered to ensure EU drivers' hours offences committed up to 28 days prior to the enforcement encounter are within the graduated fixed penalty and deposit scheme? Please explain your reasons.

Question 2

Do you believe this should also be extended to include domestic drivers' hours offences committed up to 28 days prior to enforcement encounter? Please explain your reasons.

Question 3

Do you have any comments about the effectiveness of the current legislative framework in relation to drivers' hours offences detected in Great Britain (whether or not they have been committed elsewhere) and committed by drivers (whether or not they have satisfactory UK addresses at which they may be found for prosecution in the UK courts)?

Question 4

Do you agree that DVSA should also be able to enforce retrospectively for up to 28 days for HGV road user levy offences using fixed penalties and deposits? Please explain your reasons.

Question 5

If the Department was to consult further on the details of these proposals, do you want to be consulted?

Question 6

Do you have any comments on the draft IA at Annex A?

Question 7

Can you provide any further relevant evidence for the IA, such as the costs associated with processing offences, on potential court costs, or on potential road safety benefits?

6. How to respond

Please ensure that your response reaches us before the closing date of **Monday 11 August 2014**. If you would like further copies of this document, it can be found on the DfT website.

Please send responses to:

Historical Offences consultation responses
Freight, Operator Licensing and Roadworthiness Division
Roads Directorate
Department for Transport
Great Minster House
3 Horseferry Road
LONDON SW1P 4DR

Email: Historicaloffences.Consultation@Dft.Gsi.Gov.Uk

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.

If you have any suggestions of others who may wish to be involved in this process please contact us or pass on the link to this document to them direct.

Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Next steps

The comments/information received from this document will help to formulate Government policy decisions and inform any final impact assessments made on any proposed changes to legislation.

7. Consultation Principles

The consultation is being conducted in line with the Government's key consultation principles which are listed below. Further information is available at:

<https://www.gov.uk/government/publications/consultation-principles-guidance>

If you have any comments about the consultation process please contact:

Consultation Co-ordinator
Department for Transport
Zone 1/29 Great Minster House
London SW1P 4DR
Email consultation@dft.gsi.gov.uk

Consultation Principles:

- departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before;
- departments will need to give more thought to how they engage with and consult with those who are affected;
- consultation should be 'digital by default', but other forms should be used where these are needed to reach the groups affected by a policy; and
- the principles of the Compact between government and the voluntary and community sector will continue to be respected

Annex A: Draft Impact Assessment

Title: Making 'historical' drivers' hours offences subject to fixed penalty notices and financial penalty deposit requirements IA No: DfT00083 Lead department or agency: Department for Transport Other departments or agencies: Driver and Vehicle Standards Agency (formally the Vehicle and Operator Services Agency)	Impact Assessment (IA)			
	Date: 30/09/2013			
	Stage: Consultation			
	Source of intervention: EU			
	Type of measure: Secondary legislation			
Contact for enquiries: Helen Grech, Tel: 202 7944 2123				

Summary: Intervention and Options	RPC Opinion: Not Applicable
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Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
-£4.83m	-£0.45m	£0.04	No	NA

What is the problem under consideration? Why is government intervention necessary?

The Driver and Vehicle Standards Agency (DVSA) and the police have no easy means of taking effective enforcement action in respect of drivers' hours offences committed during the 28 day period preceding a compliance check. Enforcement currently necessitates prosecution of alleged offences in court - which is administratively cumbersome particularly when dealing with non-UK offenders, and for what is often a relatively minor offence. This means that the UK is failing to enforce rules relating to historical drivers' hours in an efficient way and in some cases failing to implement it at all (particularly in relation to non-UK-resident offenders).

What are the policy objectives and the intended effects?

To streamline enforcement by enabling DVSA and the police to issue fixed penalties for the more minor infringements of EU and domestic drivers' hours rules committed in the 28 days preceding a compliance check. Also, to treat non-UK offenders in the same way as UK resident-offenders by enabling enforcement authorities to impose a financial penalty deposit requirement in respect of a fixed penalty for an historical drivers' hours offence (i.e. infringement committed in the 28 preceding days). The intended effect is to deter offending; increase compliance with drivers' hours rules; and, to ensure proportionate penalties are applied.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

There are two viable options (but we have completed only one sheet evidence and analysis sheet as costs and benefits to business are effectively the same):

- 1) Amend primary legislation to enable DVSA and the police to issue fixed penalties to historical EU drivers' hours rules offences ONLY; and, amend the corresponding financial penalty deposit provisions to enable the police and DVSA to request a financial penalty deposit in respect of such offences from drivers who do not have a satisfactory address in the UK (i.e. primarily non-UK-resident offenders).
- 2) (Preferred) Amend primary legislation to enable DVSA and the police to issue fixed penalties to historical EU drivers' hours rules AND domestic drivers' hours rules offences; and, amend the corresponding financial penalty deposit provisions to enable the police and DVSA to request a financial penalty deposit in respect of such offences from drivers who do not have a satisfactory address in the UK.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 07/2019

Does implementation go beyond minimum EU requirements?			Yes		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: 0	Non-traded: 0	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: -4.83

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0		
High			
Best Estimate		0.0	0.6

Description and scale of key monetised costs by 'main affected groups'

Driver time as roadside checks take longer to complete.
DVSA Traffic examiner time as roadside checks take longer to complete.

Other key non-monetised costs by 'main affected groups'

DVSA time spent processing historical drivers' hours offences.
Court time in cases where offences are disputed.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0		
High			
Best Estimate		0.0	0.0

Description and scale of key monetised benefits by 'main affected groups'

None.

Other key non-monetised benefits by 'main affected groups'

Deterrent effects are likely to arise, leading to an increase in the level of compliance with drivers' hours rules and so to a benefit to road safety.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
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The number of drivers' hour checks per year remains constant through time.

The ratio of UK business to non-UK business checks remains constant through time.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0.0	Benefits: 0.0	Net: 0.0	No	NA

Evidence Base (for summary sheets)

Background

The purpose of these proposals is to provide a simple and effective mechanism for implementing the necessary arrangements to enforce provisions in the directly applicable EU Regulation 561/2006 in relation to the enforcement of drivers' hours offences. In particular, to enable the police and DVSA examiners to issue fixed penalty notices - and financial penalty deposit - in respect of offences committed in the 28 day period preceding a roadside compliance check. (Such offences are referred to for convenience as 'historical drivers' hours offences').

Historical drivers' hours offences are detectable by enforcement officers either by checking paper records of driving time recorded on analogue 'tachographs', or by checking the record of driving time on the modern electronic equivalent (digital 'tachographs' or 'digitacs'). Both devices provide a record of driving time; and, consequentially, of whether or not a driver has taken prescribed periods of rest, away from driving. Member States are required to deal in an appropriate manner with breaches of the Regulation, including breaches that are recorded in the 28 days preceding an enforcement check, and irrespective of which Member State the driver may have been travelling at the time any 'historical' offence occurred.

Drivers' hours offences detected on-the-spot have been dealt with for many years by prohibiting a driver from continuing his journey until he has taken adequate rest. UK-based drivers and non-UK-based drivers are subject to such prohibitions. In addition, it has been possible to report offending UK-based drivers to the Traffic Commissioners with a view to disciplinary action; and to prosecute UK-based drivers in court.

As things stand, both DVSA and the police have the ability to prosecute historical drivers' hours offences committed by UK offenders, and also to refer cases to the Traffic Commissioner for further consideration. However, this is a cumbersome procedure, for what in the main are relatively minor offences. Furthermore, non-UK-resident offenders could not be prosecuted effectively for historical offences since they are not obliged to respond to a summons issued in the UK (nor can they be extradited to answer for such offences).

The policy issue and rationale for Government intervention

The Driver and Vehicle Standards Agency (DVSA) and the police have no easy means of taking effective enforcement action in respect of drivers' hours offences committed during the 28 day period preceding a compliance check. Enforcement currently necessitates prosecution of alleged offences in court - which is administratively cumbersome particularly when dealing with non-UK offenders, and for what is often a relatively minor offence. This means that the UK is failing to implement the EU Regulation 561/2006 in an efficient way and in some cases failing to implement it at all (particularly in relation to non-UK-resident offenders). Government intervention is necessary to improve enforcement of this Regulation and to do so in more cost-effective and least-burdensome way.

It would be much more effective and efficient to issue fixed penalties in respect of historical drivers' hours offences in the same way as for drivers' hours offences detected on-the-spot at a compliance check - in other words to penalise historical drivers' hours offences in the same way as any offence(s) being committed at the time of a compliance check. It would also be better if it were possible to issue a financial penalty deposit requirement in respect of a drivers' hours offence where an alleged offender did not have a satisfactory address in the UK (i.e. generally in the case of non-UK resident offenders).

As the law relating to fixed penalties stands at present - in Section 54 of the Road Traffic Offenders Act 1988 - a fixed penalty can only be offered in respect of an offence which is being committed 'on that occasion' (i.e. the offence is being committed at the time the compliance check takes place). We are proposing to amend this provision of primary legislation so as to enable DVSA and the police to issue fixed penalties and financial penalty deposit requirements for 'historical drivers' hours offences (only) in future.

Policy objectives and intended effects

To streamline enforcement by enabling DVSA and the police to issue fixed penalties for the more minor infringements of EU and domestic drivers' hours rules committed in the 28 days preceding a compliance check. Drivers' hours offences detected on-the-spot are already within the fixed penalty and financial penalty deposit regimes, but not where they have been committed in the past. Also, to treat non-UK offenders in the same way as UK resident-offenders by enabling enforcement authorities to impose a financial penalty deposit requirement in respect of a fixed penalty for an historical drivers' hours offence (i.e. infringement committed in the 28 preceding days). The intended effect is to deter offending; increase compliance with drivers' hours rules; and, to ensure proportionate penalties are applied. This will also ensure equality for UK drivers driving abroad.

Policy options considered, including alternatives to regulation

Two options are considered here:

1) Amend primary legislation to enable DVSA and the police to issue fixed penalties to UK drivers for historical EU drivers' hours rules offences; and, amend the corresponding financial penalty deposit provisions to enable the police and DVSA to request a financial penalty deposit in respect of such offences from drivers who do not have a satisfactory address in the UK (i.e. primarily non-UK-resident offenders) (preferred option).

2) Amend primary legislation to enable DVSA and the police to issue fixed penalties to UK drivers for historical EU drivers' hours rules AND domestic drivers' hours rules offences; and, amend the corresponding financial penalty deposit provisions to enable the police and DVSA to request a

financial penalty deposit in respect of such offences from drivers who do not have a satisfactory address in the UK (i.e. primarily non-UK-resident offenders) (preferred option).

Monetised and non-monetised costs and benefits of option 1;

Assumptions used in the Analysis:

The assumptions used in the analysis that follows are listed below:

- Driver and Traffic Examiner Values of Time grow in line with percentage changes in forecast real GDP per capita.
- The number of drivers' hours checks per year remains constant through time.
- The ratio of UK business to non-UK business checks remains constant through time.

Monetised Costs

Driver time costs

In 2010/11 there were a total of 171,000 roadside checks: 80,000 of which were for UK registered vehicles. DVSA have indicated that the extra time taken to conduct the checks for historical drivers' hours is around 3 minutes. Accordingly – using WebTAG's figure of £10.92 for the hourly value of time of LGV drivers (in 2010 Price and Value, WebTAG 3.5.6) – the costs to drivers from extending the checks are as follows:

Driver Costs	
2014	£47,933
2015	£49,035
2016	£50,178
2017	£51,246
2018	£52,082
2019	£52,936
2020	£53,804
2021	£54,799
2022	£55,764
2023	£56,751

All figures in the table above are in 2013 prices. The values increase through time due to change in income.

Traffic Examiner costs

The time costs arising to Traffic Examiners from extending the existing checks by 3 minutes are calculated in the same way as for drivers, with only two differences: first, we consider all 171,000 checks per year in the calculations. Second, the traffic examiner value of time is £51 (2011 Price and Value) and – accordingly – we use this value instead. The results are shown below:

Traffic Examiner Costs	
2014	£467,979.64
2015	£478,743.17
2016	£489,897.89
2017	£500,332.71
2018	£508,488.14
2019	£516,827.34
2020	£525,303.31

2021	£535,021.42
2022	£544,437.80
2023	£554,074.35

All figures in the table above are in 2013 prices. Again, the values increase through time due to change in income.

Non-Monetised Costs

Time spent processing offences

There would be a cost to DVSA enforcement officials of having to process more offences than they do at present. However, it has not been possible to quantify these costs as we have no estimates of:

- How many offenders there are at present (and – accordingly – how many would be caught).
- How many would continue to offend after these changes are introduced.

Consultation question: Have you any evidence on the costs associated with processing offences?

Court Costs

In a minor number of cases, offenders issued with a fixed penalty for an historical drivers' hours offence may choose to dispute the matter in court. Where this is the case, court costs would be incurred. However, as we have no estimate of how many fixed penalty notices would be issued, nor any idea of which fraction of those might be contested, it has not been possible to quantify these costs.

Consultation question: Have you any evidence on potential court costs?

Non-Monetised Benefits

Road Safety

It is reasonable to assume that – if these proposals generate the deterrent effects we intend them to – then Road Safety benefits would result, as less tired drivers are less likely to cause and be involved in accidents. Unfortunately however, we have no way of estimating the magnitude of this impact.

Consultation question: Have you any evidence on these potential road safety benefits?

Monetised and non-monetised costs and benefits of option 2;

The monetised costs of option 2 are exactly the same as with option 1, with the following exceptions.

Non-Monetised Costs

Time spent processing offences

As with option 1, if option 2 were implemented there would be a cost to DVSA enforcement officials of having to process more offences than they do at present. However, this cost would be larger than in the case of option 1 as there would now be an additional punishable offence (domestic drivers' hours). Again, it has not been possible to quantify these costs as we have no estimates of:

- How many offenders there are at present (and – accordingly – how many would be caught).
- How many would continue to offend after these changes are introduced.

Consultation question: Have you any evidence on the costs associated with processing offences?

Court Costs

In a minor number of cases, offenders issued with a fixed penalty for an historical drivers' hours offence may choose to dispute the matter in court. Where this is the case, court costs would be incurred. As with the costs associated to processing offences, court costs would be higher in option 2 than in option 1 because of the extra punishable offence (historical domestic drivers' hours). However, as we have no estimate of how many fixed penalty notices would be issued, nor any idea of which fraction of those might be contested, it has not been possible to quantify these costs.

Consultation question: Have you any evidence on potential court costs?

Non-Monetised Benefits

Road Safety

It is reasonable to assume that – if these proposals generate the deterrent effects we intend them to – then Road Safety benefits would result, as less tired drivers are less likely to cause and be involved in accidents. In contrast with option 1 however, the road safety benefits for option 2 are probably greater as the deterrent effect would apply to the extra offence of domestic drivers' hours. Unfortunately we have no way of estimating the magnitude of this impact.

Consultation question: Have you any evidence on these potential road safety benefits?

Direct costs and benefits to business calculations (following OITO methodology);

These proposals covered here are both regulatory and impose a minor burden on UK business. However, as the proposals are European in nature and there is no intention to go beyond the minimum required, they are both out of scope of 'One-in, Two-out'.

The monetised time costs arising to UK business through these proposals are quite small. Using the Impact Assessment calculator (available on gov.uk), the measures have an Equivalent Annual Net Cost to business of £0.04m (i.e. i.e. an annual net cost to UK business of £0.04 million).

Specific Impact Tests

Equalities Impact Test

Any possible negative impacts on equalities have been considered. These include possible negative impacts on race, sexual orientation, religious belief, transgender/transsexual persons, disability, pregnancy and maternity, gender, age, etc. Any new offences would apply to all drivers regardless of these factors, and we therefore believe that there are no impacts on equalities arising from these proposals.

Carbon Impact Test

As this proposal aims to influence the composition of hours driven, (as opposed to the total number of hours on the road), we do not expect this proposal to impact on CO2 emissions.

Introduction and review of new regulations

We would anticipate that any new regulations required to deliver option one or option two would come in to force by July 2014. This is because the regulations are complex, we therefore wish to consult with interested parties subsequent to the initial consultation on the actual draft regulations. Most of the draft regulations will also be subject to the parliamentary affirmative resolution procedure which required debates in both House of Parliaments. A review of the success or otherwise of the regulations would be made five years after their introduction to allow at least 3 full years of statistics to be compiled and there may have also been further developments in EU enforcement policy by that time.

Title: Making 'historical' drivers' hours offences subject to fixed penalty notices and financial penalty deposit requirements IA No: DfT00083 Lead department or agency: Department for Transport Other departments or agencies: Driver and Vehicle Standards Agency (formally the Vehicle and Operator Services Agency)	Impact Assessment (IA)			
	Date: 30/09/2013			
	Stage: Consultation			
	Source of intervention: EU			
	Type of measure: Secondary legislation			
Contact for enquiries: Helen Grech, Tel: 202 7944 2123				

Summary: Intervention and Options	RPC Opinion: Not Applicable
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out? Measure qualifies as
-£4.83m	-£0.45m	£0.04	No NA

What is the problem under consideration? Why is government intervention necessary?

The Driver and Vehicle Standards Agency (DVSA) and the police have no easy means of taking effective enforcement action in respect of drivers' hours offences committed during the 28 day period preceding a compliance check. Enforcement currently necessitates prosecution of alleged offences in court - which is administratively cumbersome particularly when dealing with non-UK offenders, and for what is often a relatively minor offence. This means that the UK is failing to enforce rules relating to historical drivers' hours in an efficient way and in some cases failing to implement it at all (particularly in relation to non-UK-resident offenders).

What are the policy objectives and the intended effects?

To streamline enforcement by enabling DVSA and the police to issue fixed penalties for the more minor infringements of EU and domestic drivers' hours rules committed in the 28 days preceding a compliance check. Also, to treat non-UK offenders in the same way as UK resident-offenders by enabling enforcement authorities to impose a financial penalty deposit requirement in respect of a fixed penalty for an historical drivers' hours offence (i.e. infringement committed in the 28 preceding days). The intended effect is to deter offending; increase compliance with drivers' hours rules; and, to ensure proportionate penalties are applied.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

There are two viable options (but we have completed only one sheet evidence and analysis sheet as costs and benefits to business are effectively the same):

- 1) Amend primary legislation to enable DVSA and the police to issue fixed penalties to historical EU drivers' hours rules offences ONLY; and, amend the corresponding financial penalty deposit provisions to enable the police and DVSA to request a financial penalty deposit in respect of such offences from drivers who do not have a satisfactory address in the UK (i.e. primarily non-UK-resident offenders).
- 2) (Preferred) Amend primary legislation to enable DVSA and the police to issue fixed penalties to historical EU drivers' hours rules AND domestic drivers' hours rules offences; and, amend the corresponding financial penalty deposit provisions to enable the police and DVSA to request a financial penalty deposit in respect of such offences from drivers who do not have a satisfactory address in the UK.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 07/2019

Does implementation go beyond minimum EU requirements?		Yes			
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: 0		Non-traded: 0	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: -4.83

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0		
High			
Best Estimate		0.0	0.6

Description and scale of key monetised costs by 'main affected groups'

Driver time as roadside checks take longer to complete.
DVSA Traffic examiner time as roadside checks take longer to complete.

Other key non-monetised costs by 'main affected groups'

DVSA time spent processing historical drivers' hours offences.
Court time in cases where offences are disputed.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0		
High			
Best Estimate		0.0	0.0

Description and scale of key monetised benefits by 'main affected groups'

None.

Other key non-monetised benefits by 'main affected groups'

Deterrent effects are likely to arise, leading to an increase in the level of compliance with drivers' hours rules and so to a benefit to road safety.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
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The number of drivers' hour checks per year remains constant through time.

The ratio of UK business to non-UK business checks remains constant through time.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0.0	Benefits: 0.0	Net: 0.0	No	NA

Evidence Base (for summary sheets)

Background

The purpose of these proposals is to provide a simple and effective mechanism for implementing the necessary arrangements to enforce provisions in the directly applicable EU Regulation 561/2006 in relation to the enforcement of drivers' hours offences. In particular, to enable the police and DVSA examiners to issue fixed penalty notices - and financial penalty deposit - in respect of offences committed in the 28 day period preceding a roadside compliance check. (Such offences are referred to for convenience as 'historical drivers' hours offences').

Historical drivers' hours offences are detectable by enforcement officers either by checking paper records of driving time recorded on analogue 'tachographs', or by checking the record of driving time on the modern electronic equivalent (digital 'tachographs' or 'digitacs'). Both devices provide a record of driving time; and, consequentially, of whether or not a driver has taken prescribed periods of rest, away from driving. Member States are required to deal in an appropriate manner with breaches of the Regulation, including breaches that are recorded in the 28 days preceding an enforcement check, and irrespective of which Member State the driver may have been travelling at the time any 'historical' offence occurred.

Drivers' hours offences detected on-the-spot have been dealt with for many years by prohibiting a driver from continuing his journey until he has taken adequate rest. UK-based drivers and non-UK-based drivers are subject to such prohibitions. In addition, it has been possible to report offending UK-based drivers to the Traffic Commissioners with a view to disciplinary action; and to prosecute UK-based drivers in court.

As things stand, both DVSA and the police have the ability to prosecute historical drivers' hours offences committed by UK offenders, and also to refer cases to the Traffic Commissioner for further consideration. However, this is a cumbersome procedure, for what in the main are relatively minor offences. Furthermore, non-UK-resident offenders could not be prosecuted effectively for historical offences since they are not obliged to respond to a summons issued in the UK (nor can they be extradited to answer for such offences).

The policy issue and rationale for Government intervention

The Driver and Vehicle Standards Agency (DVSA) and the police have no easy means of taking effective enforcement action in respect of drivers' hours offences committed during the 28 day period preceding a compliance check. Enforcement currently necessitates prosecution of alleged offences in court - which is administratively cumbersome particularly when dealing with non-UK offenders, and for what is often a relatively minor offence. This means that the UK is failing to implement the EU Regulation 561/2006 in an efficient way and in some cases failing to implement it at all (particularly in relation to non-UK-resident offenders). Government intervention is necessary to improve enforcement of this Regulation and to do so in more cost-effective and least-burdensome way.

It would be much more effective and efficient to issue fixed penalties in respect of historical drivers' hours offences in the same way as for drivers' hours offences detected on-the-spot at a compliance check - in other words to penalise historical drivers' hours offences in the same way as any offence(s) being committed at the time of a compliance check. It would also be better if it were possible to issue a financial penalty deposit requirement in respect of a drivers' hours offence where an alleged offender did not have a satisfactory address in the UK (i.e. generally in the case of non-UK resident offenders).

As the law relating to fixed penalties stands at present - in Section 54 of the Road Traffic Offenders Act 1988 - a fixed penalty can only be offered in respect of an offence which is being committed 'on that occasion' (i.e. the offence is being committed at the time the compliance check takes place). We are proposing to amend this provision of primary legislation so as to enable DVSA and the police to issue fixed penalties and financial penalty deposit requirements for 'historical drivers' hours offences (only) in future.

Policy objectives and intended effects

To streamline enforcement by enabling DVSA and the police to issue fixed penalties for the more minor infringements of EU and domestic drivers' hours rules committed in the 28 days preceding a compliance check. Drivers' hours offences detected on-the-spot are already within the fixed penalty and financial penalty deposit regimes, but not where they have been committed in the past. Also, to treat non-UK offenders in the same way as UK resident-offenders by enabling enforcement authorities to impose a financial penalty deposit requirement in respect of a fixed penalty for an historical drivers' hours offence (i.e. infringement committed in the 28 preceding days). The intended effect is to deter offending; increase compliance with drivers' hours rules; and, to ensure proportionate penalties are applied. This will also ensure equality for UK drivers driving abroad.

Policy options considered, including alternatives to regulation

Two options are considered here:

1) Amend primary legislation to enable DVSA and the police to issue fixed penalties to UK drivers for historical EU drivers' hours rules offences; and, amend the corresponding financial penalty deposit provisions to enable the police and DVSA to request a financial penalty deposit in respect of such offences from drivers who do not have a satisfactory address in the UK (i.e. primarily non-UK-resident offenders) (preferred option).

2) Amend primary legislation to enable DVSA and the police to issue fixed penalties to UK drivers for historical EU drivers' hours rules AND domestic drivers' hours rules offences; and, amend the corresponding financial penalty deposit provisions to enable the police and DVSA to request a

financial penalty deposit in respect of such offences from drivers who do not have a satisfactory address in the UK (i.e. primarily non-UK-resident offenders) (preferred option).

Monetised and non-monetised costs and benefits of option 1;

Assumptions used in the Analysis:

The assumptions used in the analysis that follows are listed below:

- Driver and Traffic Examiner Values of Time grow in line with percentage changes in forecast real GDP per capita.
- The number of drivers' hours checks per year remains constant through time.
- The ratio of UK business to non-UK business checks remains constant through time.

Monetised Costs

Driver time costs

In 2010/11 there were a total of 171,000 roadside checks: 80,000 of which were for UK registered vehicles. DVSA have indicated that the extra time taken to conduct the checks for historical drivers' hours is around 3 minutes. Accordingly – using WebTAG's figure of £10.92 for the hourly value of time of LGV drivers (in 2010 Price and Value, WebTAG 3.5.6) – the costs to drivers from extending the checks are as follows:

Driver Costs	
2014	£47,933
2015	£49,035
2016	£50,178
2017	£51,246
2018	£52,082
2019	£52,936
2020	£53,804
2021	£54,799
2022	£55,764
2023	£56,751

All figures in the table above are in 2013 prices. The values increase through time due to change in income.

Traffic Examiner costs

The time costs arising to Traffic Examiners from extending the existing checks by 3 minutes are calculated in the same way as for drivers, with only two differences: first, we consider all 171,000 checks per year in the calculations. Second, the traffic examiner value of time is £51 (2011 Price and Value) and – accordingly – we use this value instead. The results are shown below:

Traffic Examiner Costs	
2014	£467,979.64
2015	£478,743.17
2016	£489,897.89
2017	£500,332.71
2018	£508,488.14
2019	£516,827.34
2020	£525,303.31

2021	£535,021.42
2022	£544,437.80
2023	£554,074.35

All figures in the table above are in 2013 prices. Again, the values increase through time due to change in income.

Non-Monetised Costs

Time spent processing offences

There would be a cost to DVSA enforcement officials of having to process more offences than they do at present. However, it has not been possible to quantify these costs as we have no estimates of:

- How many offenders there are at present (and – accordingly – how many would be caught).
- How many would continue to offend after these changes are introduced.

Consultation question: Have you any evidence on the costs associated with processing offences?

Court Costs

In a minor number of cases, offenders issued with a fixed penalty for an historical drivers' hours offence may choose to dispute the matter in court. Where this is the case, court costs would be incurred. However, as we have no estimate of how many fixed penalty notices would be issued, nor any idea of which fraction of those might be contested, it has not been possible to quantify these costs.

Consultation question: Have you any evidence on potential court costs?

Non-Monetised Benefits

Road Safety

It is reasonable to assume that – if these proposals generate the deterrent effects we intend them to – then Road Safety benefits would result, as less tired drivers are less likely to cause and be involved in accidents. Unfortunately however, we have no way of estimating the magnitude of this impact.

Consultation question: Have you any evidence on these potential road safety benefits?

Monetised and non-monetised costs and benefits of option 2;

The monetised costs of option 2 are exactly the same as with option 1, with the following exceptions.

Non-Monetised Costs

Time spent processing offences

As with option 1, if option 2 were implemented there would be a cost to DVSA enforcement officials of having to process more offences than they do at present. However, this cost would be larger than in the case of option 1 as there would now be an additional punishable offence (domestic drivers' hours). Again, it has not been possible to quantify these costs as we have no estimates of:

- How many offenders there are at present (and – accordingly – how many would be caught).
- How many would continue to offend after these changes are introduced.

Consultation question: Have you any evidence on the costs associated with processing offences?

Court Costs

In a minor number of cases, offenders issued with a fixed penalty for an historical drivers' hours offence may choose to dispute the matter in court. Where this is the case, court costs would be incurred. As with the costs associated to processing offences, court costs would be higher in option 2 than in option 1 because of the extra punishable offence (historical domestic drivers' hours). However, as we have no estimate of how many fixed penalty notices would be issued, nor any idea of which fraction of those might be contested, it has not been possible to quantify these costs.

Consultation question: Have you any evidence on potential court costs?

Non-Monetised Benefits

Road Safety

It is reasonable to assume that – if these proposals generate the deterrent effects we intend them to – then Road Safety benefits would result, as less tired drivers are less likely to cause and be involved in accidents. In contrast with option 1 however, the road safety benefits for option 2 are probably greater as the deterrent effect would apply to the extra offence of domestic drivers' hours. Unfortunately we have no way of estimating the magnitude of this impact.

Consultation question: Have you any evidence on these potential road safety benefits?

Direct costs and benefits to business calculations (following OITO methodology);

These proposals covered here are both regulatory and impose a minor burden on UK business. However, as the proposals are European in nature and there is no intention to go beyond the minimum required, they are both out of scope of 'One-in, Two-out'.

The monetised time costs arising to UK business through these proposals are quite small. Using the Impact Assessment calculator (available on gov.uk), the measures have an Equivalent Annual Net Cost to business of £0.04m (i.e. i.e. an annual net cost to UK business of £0.04 million).

Specific Impact Tests

Equalities Impact Test

Any possible negative impacts on equalities have been considered. These include possible negative impacts on race, sexual orientation, religious belief, transgender/transsexual persons, disability, pregnancy and maternity, gender, age, etc. Any new offences would apply to all drivers regardless of these factors, and we therefore believe that there are no impacts on equalities arising from these proposals.

Carbon Impact Test

As this proposal aims to influence the composition of hours driven, (as opposed to the total number of hours on the road), we do not expect this proposal to impact on CO2 emissions.

Introduction and review of new regulations

We would anticipate that any new regulations required to deliver option one or option two would come in to force by early 2015. This is because the regulations are complex, we therefore wish to consult with interested parties subsequent to the initial consultation on the actual draft regulations. Most of the draft regulations will also be subject to the parliamentary affirmative resolution procedure which required debates in both House of Parliaments. A review of the success or otherwise of the regulations would be made five years after their introduction to allow at least 3 full years of statistics to be compiled and there may have also been further developments in EU enforcement policy by that time.