

# Summary of Responses to Informal targeted consultation

## Request for views on proposals to make historical drivers' hours and HGV Levy offences subject to Fixed Penalty Notices and Financial Penalty Deposit requirements

### Issue

On **16 June 2014**, DfT issued a targeted 8 week consultation with industry stakeholders, seeking views on the implementation of a proposal to make historical drivers' hours and HGV Levy offences subject to Fixed Penalty Notices (FPN) and Financial Penalty Deposit (FPD) requirements.

In addition, the consultation sought views on the draft impact assessment (IA) of the proposal published in the DfT document.

The consultation was published on our website and a copy of the consultation can be viewed and downloaded at: <https://www.gov.uk/government/consultations/drivers-hours-and-hgv-levy-historical-offences>

The closing date for comments was **11 August 2014**.

### Responses received

DfT received 18 responses from:

1. Road Haulage Association (RHA)
2. Freight Transport Association (FTA)
3. Confederation of Passenger Transport (CPT)
4. UNITE the union
5. Office of the Senior Traffic Commissioner
6. RAC Motoring Services
7. Tachodisc
8. The Royal Society for the Prevention of Accidents (ROSPA)
9. National Bench Chairmen's Forum (NBCF - Her Majesty's Courts and Tribunal Service is Secretariat)
10. Road Policing Department, Police Scotland
11. Police, Scotland
12. Chambers & Cook Freight Ltd.
13. D. Perfect & Sons Ltd.
14. Traffic Law Solutions
15. PCV Operator/Driver
16. Driver
17. Driver
18. Driver

## Summary of responses by consultation question

### 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?

17 of the respondents commented on Question 1. Of these, 14 (82%) were in favour of the proposals and only 3 (18%) were not in favour.

The majority of respondents were in favour of the proposal. The main reasons given for this view was that it would:

- give enforcement officers the mechanism for enforcing against non-UK drivers/operators for historical offences;
- level the playing field between UK and non-UK hauliers;
- improve fairness of competition;
- act as a deterrent and therefore is likely to lead to improved compliance with the rules;
- free up Court time for more serious offences;
- reduce time Police officers/DVSA spend preparing and presenting cases at Court;
- benefit drivers as given option to pay fine rather than attend Court.

Although two trade associations were supportive; it was conditional. One on assurances that the proposals would not unfairly affect the Operator Compliance Risk Score (i.e. that an operator would not be penalised for offences committed while a driver was working for a different company) and that industry would be consulted on any future changes to the Driver and Vehicle Standards Agency (DVSA) Sanctions Policy. The other that enforcers should focus on serious offences and not penalise all minor offences, as they felt it would 'generate an intolerable climate of fear' – making it harder to retain drivers and attract new ones.

In addition, one respondent, who was supportive of proposal was concerned that drivers would be penalised with no consideration given to the responsibility of the operator – they said they knew:

*..first-hand of the pressure that drivers are being placed under by their employers to break the law. There is a culture of long hours and unreasonable routing which is unsafe and some cases illegal.*

Another said:

*It is important that the approach from the police and other enforcement agencies is consistent. In addition, any action must be fair, consistent and proportionate and must also require the same standard of evidence before issuing a fixed penalty as is required to issue a court summons. It must be made clear to the alleged offender that he/she can challenge the alleged offences in court.*

Only one trade association was not in favour of the proposals, believing that the rules within Regulation 561/2006 were not fair and proportionate, and that the UK should not try to replicate the 'unfair' sanctions placed on British drivers within the EU. However, it went on to say:

*If the Government does decide to press on with its plans, new powers for enforcement officials need to be balanced by accurate and consistent interpretations of the legislation, following, for example, the manual drawn up under the EU TUNER project. There will need to be guidance on proportionality, rather than a presumption that every infringement, no matter how trivial or technical, should be penalised. There may be scope for a self-financing awareness and education option.*

Of the other two respondents not in favour; one did not give any reasons why and the other believed it could lead to abuse of power by the Police; saying:

*The policeman acts as judge and jury and the driver and operator are hog tied and unable to dispute the police officer without being prepared to pay 10-15 times the cost of the PCN in solicitors' fees.*

## **Question 2: Do you believe this should be extended to include domestic drivers' hours offences committed up to 28 days prior to enforcement encounter?**

13 of the respondents commented on Question 2. Of these, 12 (92%) were in favour of the proposal. Only one (18%) was not in favour.

The majority of those that commented on this question were in favour of the proposal being extended to domestic drivers' hours rules. The main reasons given for this view were that it would maintain consistency, particularly for those operating under mixed rules, and that it would improve enforcement. One said:

*It would be considered appropriate to include domestic drivers' hours offences in the proposal as it would encourage an appropriate, proportionate and consistent approach to dealing with drivers' hours offences, whether EU or Domestic.*

However, although one respondent was supportive they thought:

*The difficulty will arise where there are no records being carried (which depending in the operation could be legal) so it would have to be made clear how that particular obstacle would be overcome. There would have to be a clear format set out as to what records would have to be carried to encompass a totally domestic operation as well as a mixed domestic/EU operation. Clear records for the 28 days would have to be carried so that they can be checked at the roadside.*

The one respondent who was not in favour gave the reason as:

*We do not support the proposal in relation to EU hours rules. We would apply the same logic to drivers working under domestic hours rules; deal with safety-critical infringements at the roadside but act on the basis of comprehensive checks, carried out at the operator's premises, for other matters*

## **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)?

8 respondents commented on Question 3. Only one thought the current system was adequately dissuasive and proportionate. The other 7 thought the current system did not enable effective enforcement of historical offences, particularly against non-UK drivers/operators, and was not cost effective. One said that they wanted to see:

*cost-efficient and cost-effective means of enforcement and the absence of these for offences committed in the previous 28 days is a clear weakness in the current situation. Our members wish to see effective enforcement of the law and an even-handed approach applied to all drivers, whether of UK origin or from overseas. The use of fixed penalties, combined with financial penalty deposits (FPD) where appropriate, appears to achieve this objective.*

Another said:

*The current legislative framework for dealing with these types of offences is cumbersome and time consuming and has the potential for minor offences being ignored especially when dealing with non-UK residents. The only options available to officer are:-*

- *For driver with a UK address – warn the driver or complete a prosecution report and submit to the Procurator Fiscal.*
- *For drivers without a UK address – warn the driver or arrest the driver, prepare a prosecution report and hold the driver for court on the next lawful day (A driver would only be arrested for more serious offences).*

*This may mean that drivers are not being dealt with in an appropriate and fair manner, proportionate to the offence being committed.*

## 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.

9 of the respondents commented on Question 4. All were supportive of the proposal. The main reasons given for that view were that: it would provide a more efficient and practical means of enforcing the HGV levy; that it was unlikely that any operator would have failed to pay through oversight; and that it would ensure all HGVs (particularly non-UK vehicles) using UK roads paid towards maintaining the road network.

One respondent thought:

*Should be greater than 28 days.*

## Question 5: If the Department was to consult further on the details of these proposals, do you want to be consulted?

9 respondents expressed an interest in being consulted further.

## Question 6: Do you have any comments on the draft IA at Annex A?

6 respondents commented on Question 6. Although there was a consensus of opinion that the proposals would improve enforcement/compliance and thus road safety and that the information in IA seemed reasonable, the following suggestions were made:

- *However, we find no mention of fair competition in the IA. Identifying a net value would be difficult; however, it is to be expected that improved enforcement would have a positive impact in stabilising the industry. It should also reduce the need for enforcement checks overall, leading to cost savings on the part of DVSA.*
- *We are unclear as to the extent to which the IA includes the court costs of the police. We have been told that many more cases are sent to the CPS in England than are accepted by the CPS should go to court.*
- *However there is no real detailed analysis of what this would really mean for drivers. More time must be given into looking at the pressures that drivers are being put under by their employers and what alternatives there are to eradicate this going forward if true progress is going to be made.*
- *We think it would have been relatively easy to estimate the burden of extra fines imposed on drivers as a result of the easier procedures, but this does not appear to have been done. We note (from VOSA Effectiveness Reports) that around 300 fixed penalties are issued each year, with a value of around £40,000. We think the proposal would increase the potential for penalties approximately fifteen fold, giving a total of £0.6m. Only a small number of penalties that would be dealt with at the roadside under the Government's proposal currently end up in court, so it is reasonable to quantify a net disbenefit to drivers of around £0.5m per year.*

## 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?

3 respondents commented on Question 7. The following information was provided by respondents:

- *believe that employer costs are going to have to rise not just to pay for drivers who are incurring fixed penalty fines on their behalf due to the duress they have put their drivers under. Employers must accept that they can no longer expect their drivers to break the law on their behalf. So they will have to employ more drivers and increase wages to reduce the incentive to drive more in the pursuit of a decent living.*
- *the number of working hours lost to the police service having officers attend court is significant. It is not unusual to have officers attend at court on more than one occasion for the same trial. The opportunity to deal with these offences by way of*

*fixed penalty frees up police officers to deal with their day to day duties thereby enhancing potential road safety benefits.*

- *In the cost benefit analysis it does not seem that you have included the following:*
  - *Increased revenue income from fines*
  - *reduced costs to NHS and emergency services of fewer accidents, and*
  - *reduced cost to the economy of fewer accidents causing delays, blocked motorways etc.*

*Whilst data is difficult to come by, the press often have figures from the CBI or some research institute of cost of lost day due to extra bank holiday, or impact of a tube strike. If one thinks that accidents in total will cause many lost hours of work then these may provide a guide.*

## **Way forward**

As a large majority of respondents supported the proposed changes to legislation, the Department intends to proceed with making the changes. However, the Department will continue to work closely with industry stakeholders on the details of the legislative changes needed and address the concerns raised during the consultation process, with the aim of introducing legislation by the end of October 2015.

## **November 2014**