



Department
for Transport



Scottish Government
Riaghaltas na h-Alba
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Prosecuting road traffic offences in Scotland Fixed Penalty Notice reform

Moving Britain Ahead

March 2018

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Executive summary

Introduction

- 1 The Road Traffic Offenders Act 1988 ("the Act") provides the framework for the prosecution and punishment of road traffic offences throughout Great Britain.
- 2 It sets out the different ways in which fixed penalties can be issued for certain low-level road traffic offences. A fixed penalty can be issued by way of a fixed penalty notice (which can be issued to a suspected offender on-the-spot or fixed to an offending stationary vehicle) or a conditional offer of fixed penalty can be issued. The difference between a fixed penalty notice and a conditional offer of fixed penalty is that the former takes effect when imposed (that is, the effect of failing to respond by paying the fixed penalty or requesting a hearing within the specified time limit is that the penalty is enforceable as a fine). In that case, the conviction and any associated penalty points are registered without further intervention by the police or prosecution, and without any need to accommodate the case in court. However, the recipient must accept a conditional offer by paying the fixed penalty to avoid further action (that is, the effect of failure to respond by paying the fixed penalty within the specified time limit is that proceedings for the offence will be started).
- 3 This difference is important because when a conditional offer of fixed penalty is not paid in respect of an offence, the offence must be reported to the prosecutor, by the relevant issuing authority, if any further action is to be taken. If a fixed penalty notice is not paid, however, it automatically becomes a registered fine (unless the recipient has requested a court hearing within the specified time limit). In the case of a fixed penalty notice therefore, the conviction and any associated penalty points are registered without further intervention by the police or prosecution, and without any need to accommodate the case in court.
- 4 In Scotland, it is possible to issue a conditional offer of fixed penalty to a suspected offender or to fix a fixed penalty notice to an offending stationary vehicle. However, there is not the option to issue a fixed penalty notice on-the-spot to a suspected offender in Scotland as the power to do so, in s54 of the Act, applies only in England and Wales.
- 5 The Scottish Government is of the view, and the UK Government agrees, that the law in Scotland should be changed to allow fixed penalty notices to be issued to suspected offenders, in addition to the existing powers to use fixed penalty notices for stationary vehicles and to issue conditional offers of fixed penalty.

How to respond

The consultation period began on 27 March 2018 and will run until 8 May 2018. Please ensure that your response reaches us before the closing date. If you would like further copies of this consultation document, it can be found at <https://www.gov.uk/dft#consultations> or you can contact Pippa Brown if you need alternative formats (Braille, audio CD, etc).

Please send e-mail responses to:

PippaA.brown@dft.gsi.gov.uk

If you prefer to respond by post please send consultation responses to:

Pippa Brown
Road User Licensing, Insurance and Safety
Department for Transport
Great Minster House Zone 3/29
Horseferry Road
London SW1P 4DR

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.

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.

Prosecuting traffic offences

Introduction

- 1 Much of the law on the prosecution and punishment of road traffic offences is contained in the Road Traffic Offenders Act 1988 ("the Act"), which extends to Scotland, England, and Wales.¹ However, that does not mean that road traffic law is the same across the whole of the United Kingdom. This consultation is about one part of road traffic law where there is a difference between the law in Scotland, and the law in England and Wales.
- 2 In terms of the Scotland Act 1998, the Road Traffic Offenders Act 1988 is a reserved matter:² This means that, in general, the Scottish Parliament cannot legislate on it or amend it, and any such amendments will require to be enacted by the United Kingdom Parliament.

Why we are consulting

- 3 This proposed change to road traffic law will require legislation to amend section 54 of the Act, which allows fixed penalty notices to be issued on-the-spot to suspected offenders of minor road traffic offences, so that it also applies to Scotland. Having considered the Scottish Government's request, the Department for Transport is inviting you to comment on whether you agree with the proposal.

Background

Conditional offers of fixed penalty

- 4 In Scotland, England, and Wales, where a person is suspected of having committed certain low-level road traffic offences,³ such as speeding, or going through a red light, sections 75 to 77A of the Act allow the issue of a conditional offer of fixed penalty notice ("conditional offer"). This scheme was introduced as an alternative to prosecution in court.
- 5 When a conditional offer is issued, the person receiving it has 28 days to decide whether to accept the offer and make payment. If the offer is not accepted, or if the recipient fails to take any action in respect of the offer, the authority in Scotland that issued the conditional offer (normally the police) must submit a report (known as a Standard Prosecution Report, or SPR) to the procurator fiscal to consider further action in respect of the offence.

¹ The Act extends to Northern Ireland only in respect of a single issue, not germane to this consultation.

² Scotland Act 1998 section 29; and schedule 5, Part II, head E, para E1(d).

³ Listed in Road Traffic Offenders Act 1988, schedule 3. There are some minor differences between the list of offences in schedule 3 as it applies in Scotland, and in England and Wales.

Fixed penalty notices

- 6 As well as the option to issue a conditional offer of fixed penalty, it is also possible to fix a fixed penalty notice to a stationary vehicle where a fixed penalty offence is being, or has been, committed in respect of that vehicle. This is the case for Scotland as well as England and Wales.
- 7 In England and Wales, there is a third option however, as a fixed penalty notice can be issued to a suspected offender on-the-spot under section 54 of the Act in respect of certain road traffic offences. Such notices may be issued by a police officer, a traffic warden or an authorised vehicle examiner of the Driver and Vehicle Standards Agency ("DVSA").
- 8 Under these provisions, a person who receives a fixed penalty notice (or the owner of a vehicle, where the penalty notice is fixed to a stationary vehicle) has 21 days to request a hearing in respect of the offence which has been alleged in the notice. Where this differs from the conditional offer system is that, if no such request is made and the fixed penalty remains unpaid, a sum equal to one and a half times the fixed penalty amount becomes a registered fine, and is collected and enforced in line with the normal procedures in place for collecting and enforcing court fines. There is therefore no need, in those circumstances, for the police to report the matter, nor for a prosecution to take place.
- 9 Where a fixed penalty offence involves obligatory endorsement on the driver's licence, before a fixed penalty notice can be issued, the driver must surrender his licence and the police officer, traffic warden or vehicle examiner must be satisfied, on accessing the suspected offender's driving record, that the driver would not be liable to disqualification. If the issuing officer or vehicle examiner is unable to access the relevant driving record, certain additional steps must be taken before a fixed penalty notice may be issued.
- 10 Section 54 does not apply in Scotland.

Why we think the law should be changed

- 11 The procedure in England and Wales provides the police, traffic wardens and vehicle examiners with greater flexibility in dealing with low-level road traffic offences. The ability to issue fixed penalty notices as well as conditional offers means that they have the option of deploying whichever system they regard as appropriate in the circumstances. A significant benefit of imposing a fixed penalty notice is that it results in swifter justice as, when a fixed penalty notice is not challenged, it automatically becomes a registered fine, and any associated penalty points are also recorded without requiring further intervention by police, prosecutors, or courts.
- 12 By way of contrast, the Scottish Government takes the view that the present procedure in Scotland is an inefficient use of resources, and that not having the option to issue fixed penalty notices to suspected offenders unnecessarily increases the burden on the Scottish criminal justice system. It is therefore the Scottish Government's view that the Act should be amended to extend the powers to issue fixed penalty notices to suspected offenders so that they apply to offences committed in Scotland. The Scottish Government also propose that the power to issue fixed penalty notices to suspected offenders should apply in Scotland, as it does in England and Wales, to police officers, traffic wardens and vehicle examiners.
- 13 Criminal justice organisations have assessed the possible impact of any such

change. It is estimated that, in the year 2015/16 (April 2015 – March 2016) there was the potential for a reduction of around 19,000 SPRs submitted by Police Scotland to the Crown Office and Procurator Fiscal Service (COPFS). As well as the work done by the police when reporting each case to COPFS, every one of these reports needs to be considered by a prosecutor for a decision on further action in respect of the offence.

- 14 Not every SPR will result in prosecutorial action. But the figures published by COPFS⁴ suggest that the vast majority of SPRs are marked for further action, including court proceedings. For example, in the year 2015/16 88% of SPRs were marked by prosecutors for further action. A reduction in the number of SPRs is, therefore, highly likely to lead to a fall in the number of cases for which time in the courts needs to be allocated, preserving court time for business which cannot appropriately be dealt with by other means. It is also expected that there would be, in consequence, a drop in the number of witnesses, particularly police officers, cited to attend at court, thus freeing those officers up to perform other duties.
- 15 This proposal would also give the system greater resilience. The volume of road traffic offences dealt with by police can vary from time to time, influenced by seasonal factors or police initiatives. Swift handling of some of these offences, using fixed penalty notices, means in turn that those cases which require court enforcement can be dealt with more quickly, and thus allows the system to cope better with fluctuating demand.
- 16 This proposed change would, therefore, reduce the burden on Scotland's police, prosecutors and courts. And it would fit with the Scottish Government's long-standing commitment to enhance the efficiency of the criminal justice system, as set out in *Justice in Scotland – Vision and Priorities*,⁵ while continuing to ensure that someone accused of a crime should be treated fairly. The principle of non-court alternatives to prosecution, used appropriately, is already well-established in Scotland as a part of a fair and efficient system.

Proposed change to the legislation

- 17 At the Scottish Government's request, the UK Government proposes that section 54 of the Act, which presently covers alleged offences in England and Wales, should be extended so that it also covers alleged offences committed in Scotland. This would require amendment of the Act.
- 18 Once we have concluded this consultation both Governments will carefully consider the responses we have received. In the event that we decide to take this forward, we will then work together to identify an opportunity to make the necessary alteration to the law.

Q. Do you agree that section 54 of the Road Traffic Offenders Act 1988 should be amended to allow the police, traffic wardens and DVSA vehicle examiners to issue fixed penalty notices to suspected offenders of road traffic offences committed in Scotland? Please explain your answer.

⁴

<http://www.crownoffice.gov.uk/images/Documents/Statistics/Statistics%20on%20Case%20Processing%20Last%205%20Years%202011-16.pdf>

⁵ <http://www.gov.scot/Publications/2017/07/9526/0>

What will happen next

A summary of responses, including the next steps, will be published within three months of the consultation closing on 8 May 2018. Paper copies will be available on request.

If you have questions about this consultation please contact:

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Annex A: 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:

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