

<b>Title:</b> Making 'historical' drivers' hours offences subject to fixed penalty notices and financial penalty deposit requirements <b>IA No:</b> DfT00083  <b>Lead department or agency:</b> Department for Transport  <b>Other departments or agencies:</b> Driver and Vehicle Standards Agency (formally the Vehicle and Operator Services Agency)	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 30/09/2013		
	<b>Stage:</b> Consultation		
	<b>Source of intervention:</b> EU		
	<b>Type of measure:</b> Secondary legislation		
<b>Contact for enquiries:</b>  Helen Grech, Tel: 202 7944 2123			
<b>Summary: Intervention and Options</b>			<b>RPC Opinion:</b> Not Applicable

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.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> 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.	<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> 0	<b>Non-traded:</b> 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: Stephen Hammond Date: 23 Mar 2014

# Summary: Analysis & Evidence

# Policy Option 2

**Description:** 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.

## FULL ECONOMIC ASSESSMENT

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

<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>	<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Cost (Present Value)</b>
<b>Low</b>	0		
<b>High</b>			
<b>Best Estimate</b>		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.

<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>	<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Benefit (Present Value)</b>
<b>Low</b>	0		
<b>High</b>			
<b>Best Estimate</b>		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	<b>Discount rate (%)</b>	3.5
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)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of OITO?</b>	<b>Measure qualifies as</b>
<b>Costs:</b> 0.0	<b>Benefits:</b> 0.0	<b>Net:</b> 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.