

ROAD SAFETY ACT 2006

EXPLANATORY NOTES

NEW SYSTEM OF ENDORSEMENT

Sections 8, 9 and 10 and Schedules 2 and 3: New system of endorsement

27. These together provide for a new system of endorsement of driving licences.
28. Under current legislation, it is only possible to issue a fixed penalty notice in respect of an endorsable road traffic offence to a person holding a driving licence and a counterpart issued in Great Britain.
29. For the purposes of Parts 3 and 4 of the RTA (driving licences generally and licences to drive large goods and passenger-carrying vehicles) and the fixed penalty provisions in the RTOA:
 - a "licence" is a licence issued by the Secretary of State under powers in the RTA, i.e. it is a GB licence, and
 - a "counterpart" is a document designed for recording such information as the Secretary of State may determine, including and in particular "the endorsement of particulars relating to the licence".

(See section 108(1) of the RTA and section 98(1) of the RTOA.)

30. It is therefore not possible for a police officer to issue a fixed penalty notice to non-GB licence holders, i.e. unlicensed drivers, Northern Ireland licence holders and non-UK licence holders) unless they hold a counterpart licence on which a record of their penalty points is kept (under sections 91ZA and 91A, in relation to a Northern Ireland licence holder or Community licence holder to whom a counterpart has been issued, reference to a licence in Part 3 of the RTOA includes references to a Northern Ireland licence or a Community licence). Northern Ireland licence holders and holders of licences issued in the European Economic Area ("Community licences") may apply for counterparts but take-up is low. These provisions therefore establish a new system which will enable fixed penalty notices to be given to drivers who do not have counterpart licences. It is intended to introduce this alternative system in two stages.
31. **Section 8** (driving record) inserts a new section 97A (meaning of "driving record") into the RTOA, which introduces the concept of a record held by the Secretary of State (a "driving record") designed for endorsement of particulars of offences committed by a person under the Traffic Acts (the "Traffic Acts" are defined under section 98(1) of the RTOA to mean the RTA, the Road Traffic (Consequential Provisions) Act 1988 (so far as it reproduces the effect of provisions repealed by that Act), the RTOA and the RTRA).
32. **Section 9** (unlicensed and foreign drivers) and Schedule 2 (endorsement: unlicensed and foreign drivers) provide for the first stage of the new system. They introduce a system of endorsement of driving records for unlicensed and foreign drivers (other than those Community and Northern Ireland licence holders who have been issued counterparts under Part 3 of the RTA).

*These notes refer to the Road Safety Act 2006 (c.49)
which received Royal Assent on 8 November 2006*

33. They enable a constable or vehicle examiner to give these drivers fixed penalty notices in respect of offences in cases where they would not be liable to disqualification under the "totting up" system if they were convicted of the offence. In those cases a court attendance would be required (as is currently the case for GB licence holders whose counterpart must be inspected to ascertain whether the imposition of penalty points would take the driver up to 12 or more penalty points). They achieve this by providing for the driving record to be checked, before a fixed penalty notice is issued, through the constable or vehicle examiner having access to the driver's driving record and by enabling the Secretary of State to endorse the driving record (rather than the fixed penalty clerk endorsing the counterpart licence) where the driver accepts the notice and does not elect for a court appearance. (Section 9 contains the principal provisions and Schedule 2 contains the legislative amendments necessary to enable the endorsement of driving records in the case of unlicensed and non-GB licence holders.)
34. At this first stage, there is no change for Community and Northern Ireland licence holders who have counterparts under Part 3 of the RTA. They will continue to be dealt with in the same way as GB licence holders.
35. The United Kingdom is obliged in any case to make this change following a complaint made to the European Commission in 2000 by a Dutch licence holder who was resident in the UK but did not possess a counterpart to her Community licence. Having committed a driving offence, she was obliged to be prosecuted in court, which led to her receiving a fine higher than the fixed penalty would have been and the imposition of court costs. She argued that the fixed penalty system was discriminatory against European Community licence holders in general. The Commission upheld the complaint and the Government undertook to make the necessary legislative changes to put an end to the discrimination.
36. [Section 10](#) (all drivers) and [Schedule 3](#) (endorsement: all drivers) introduce the second stage which will be commenced at a later date (see [section 61\(8\)](#) as regards timing). The second stage introduces the new system of endorsement of driving records for all drivers with the result that counterparts will no longer have any function. At this stage, for the purposes of the fixed penalty provisions, there will be two categories of drivers - those who hold GB licences granted under Part 3 of the RTA and those who do not. GB licence holders will still have to produce their licences in order to be given a fixed penalty notice. Community and Northern Ireland drivers who held counterparts issued under the RTA will shift from being dealt with in the same way as GB licence holders to being dealt with in the same way as unlicensed and other foreign drivers.
37. [Schedule 3](#) contains further legislative amendments in order to enable the endorsement of driving records in the case of all drivers. Much of this is concerned with removing all references to the "counterpart".