

**EXPLANATORY MEMORANDUM TO**  
**THE FIXED PENALTY (AMENDMENT) ORDER 2013**

**2013 No. 1569**

- 1.** This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 The purpose of the Statutory Instrument (SI) covered by this Memorandum is to amend the Fixed Penalty Order 2000 to include an amount for the new fixed penalty offence under section 3 (careless, and inconsiderate, driving) of the Road Traffic Act 1988.

2.2 In addition, this SI amends the penalty levels currently prescribed in the Fixed Penalty Order 2000, except for parking offences.

2.3 This SI increases the penalty levels for all such offences listed in the Order, except for parking offences as follows:

- £30 to £50
- £60 to £100
- £120 to 200
- £200 to £300

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 The real value of fixed penalty notices for motoring offences has declined. For example, the current value of the £60 FPN would be £80 if this penalty level had kept pace with inflation. The increases made by this SI will help ensure that the fixed penalty levels remain broadly consistent with penalty levels for similar offences; are set at an appropriate level to help deter offending; and, are in proportion to court fine levels. The Department does not currently have any plans for further increases but penalty levels will be kept under review.

3.2 The additional revenue raised from increasing fixed penalty levels is to be used to fund victim support services. This measure is estimated to contribute up to an additional £30m for victims' services. As mentioned in paragraph 4.1 below, this is one of a package of three SIs, another of which is subject to the affirmative procedure. In the interests of legal clarity and efficient administration it is important that all three SIs come into force together. Accordingly, this SI has been drafted so as to come into force on the same day as the affirmative SI forming part of the package, that is the Road Safety (Financial Penalty Deposit) (Appropriate Amount) (Amendment) Order 2013 which was laid before Parliament in draft on 5th June 2013. Any delays in bringing all three SIs into force could have a detrimental impact on the services available to victims of crime. In

order to respect the “21-day rule”, this SI will be laid at least 21 days before the draft affirmative Order is brought into force.

#### **4. Legislative Context**

4.1 This SI is one of a package of three SIs, the others being the Fixed Penalty Offences Order 2013 and the Road Safety (Financial Penalty Deposit) (Appropriate Amount) (Amendment) Order 2013. The Fixed Penalty Offences Order 2013 makes careless driving a fixed penalty offence and the Road Safety (Financial Penalty Deposit) (Appropriate Amount) (Amendment) Order 2013 increases the level of financial penalty deposits in line with the changes made by this SI.

#### **5. Territorial Extent and Application**

5.1 This Order applies to Great Britain.

#### **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

#### **7. Policy background**

- *What is being done and why*

7.1 All fixed penalty levels and financial penalty deposit amounts are kept under review in order to help ensure that they are broadly consistent with penalty levels for similar offences; are set at an appropriate level to help deter offending; and, are in proportion to court fine levels.

7.2 In May 2011, the Department for Transport announced its intention to make careless driving a fixed penalty notice offence and to increase motoring £60 fixed penalty notice offences to somewhere in the £80 to £100 range in its Strategic Framework for Road Safety.

7.3 The principal aim of introducing the option of a fixed penalty notice for careless driving is to improve the efficiency of the current enforcement regime in order to tackle low level offending. This would enable the greater use of educational courses to address less serious instances of careless driving behaviour.

7.4 The levels for most motoring fixed penalty notices were last increased in 2000 and therefore their real value has fallen substantially. They are also disproportionately low when compared to other penalty notices for offences of a similar severity, which risks some of these offences (used in relation to serious behaviours such as speeding, mobile phone use whilst driving and not wearing a seat belt) being perceived as minor infringements. For example, higher and lower tier Penalty Notices such as Disorder (PNDs) are set at £50 (e.g. leaving litter) and £80 (drunk and disorderly, criminal damage) respectively. The Ministry of Justice have already announced plans to increase these levels. Increasing motoring penalty levels would ensure consistency with other penalty notices.

7.5 The decision has been taken to increase the penalty levels for all road transport offences, except parking offences. The reason for doing so is to provide incentives for improved levels of compliance with the relevant regulatory motoring and road transport requirements.

## **Consolidation**

7.6 The Department is not on this occasion consolidating the principal Regulations amended by this Order in the light of the importance of bringing the whole package of statutory instruments into force at the same time but will keep that possibility under review as and when those Regulations are further amended.

## **8. Consultation outcome**

8.1 The Department held a public consultation on making careless driving a fixed penalty notice offence and raising most of the penalty levels for motoring offences by 50% or by a similar proportion from June to September 2012. Responses to the consultation were received from the following groups: members of the public, road safety interest groups, police, courts, business, local authorities and other interested groups.

8.2 Views were invited on whether the careless driving offence should be made into a fixed penalty offence, on the associated penalty level for the FPN and on the operational guidance criteria surrounding its use. A majority (63%) of respondents were in favour of making careless driving a fixed penalty offence and associating it with an offer of remedial training, provided it was used for low level offending. They also welcomed the use of educational courses to address such driving behaviours. 57% of respondents disagreed with the proposed penalty of £90 and 3 penalty points for the careless driving FPN. These were mainly from members of the public, many of whom felt the proposed penalty level was indicative of a desire to raise revenue and would be unfair when the cost of motoring was already expensive. A majority (53%) of respondents supported the proposed operational guidance criteria for the use of the fixed penalty.

8.3 There were mixed reactions to increasing penalty levels. 45% of respondents agreed with increasing the £60 FPNs to £90 and 50% agreed with increasing the £30 FPNs to £45. The main reasons why respondents disagreed, mainly members of the public, were because the increases were perceived as unfair in the present economic climate. However, the majority of organisations were in favour of the proposed increases, with many agreeing with the arguments presented in the consultation that the increases were overdue and that these FPN levels should be kept in line with other similar penalties. A majority (57%) of respondents supported increasing the driving with no insurance FPN from £200 to £300, with many suggesting the increase should be higher to account for high insurance costs. In the case of increasing graduated fixed penalties and financial deposits, more than half of the organisations that responded thought the penalties should be increased by a similar proportion. A majority of organisations thought that, because the continuous insurance enforcement scheme was relatively new, the associated fixed penalty should not be increased.

8.4 Following responses to the consultation, the Department has decided to increase some of the penalty levels by two thirds (i.e. £30 to £50, £60 to £100, £120 to £200). The increases made by this SI are within the range of amounts stated in the Strategic

Framework for Road Safety and will provide a degree of stability for penalty levels in the longer term.

8.5 The Department has decided to proceed with increasing the driving with no insurance FPN from £200 to £300, and the £200 level of graduated fixed penalties and financial deposits to £300, as consulted.

8.6 The Department has decided not to proceed with increases to penalty levels for the Continuous Enforcement Insurance Scheme. This is because the majority of organisations who responded felt that because the scheme was relatively new it is too soon to increase penalty levels

8.7 The Department has also decided to make careless driving a fixed penalty notice offence, setting the penalty level at £100 with three penalty points. This penalty amount is in line with the decision taken on raising the penalty levels for most motoring FPNs. In view of the broad consensus, the Association of Chief Police Officers intend to proceed with the operational guidance criteria but will make clear that only the lowest levels of careless driving behaviours are to be dealt with by a fixed penalty.

8.8 A summary of responses, including the Government response, can be found on the GOV.UK website.

## **9. Guidance**

9.1 The Department does not consider that additional guidance is necessary in respect of the changes made by this Order as it merely changes the level of fixed penalties for various offences.

## **10 Impact**

10.1 A full impact assessment of the effect this instrument will have is available on the GOV.UK website. The preferred option was to make careless driving a fixed penalty notice offence with the penalty level set at £100. This penalty level is consistent with the option considered to increase most motoring FPN amounts, which was considered in this impact assessment. The preferred option was to increase some of the FPNs levels by a slightly higher amount, i.e. 66.6%, for (a) endorsable FPNs, plus seat belt offences, from £60 to £100; (b) other non-endorsable FPNs (excluding parking offences) from £30 to £50; (c) continue with the 50% increase for driving without insurance; and (d) Graduated Fixed Penalty/Deposits from £30 to £50, £60 to £100 and £120 to £200, but continue with the 50% increase for the £200 level to £300.

10.2 There will not be any impact on businesses (including small businesses) which are compliant with the law.

## **11. Regulating small business**

11.1 The legislation applies to all users of motor vehicles, irrespective of whether they are private individuals, large businesses or small businesses. However, the legislation will only affect road traffic offenders who are not compliant with relevant legal requirements relating to the use of motor vehicles.

## **12. Monitoring and review**

12.1 The Department for Transport will continue to keep the subject of fixed penalty levels under review in conjunction with colleagues in the Home Office and the Ministry of Justice who have a wider responsibility for penalty levels generally.

## **13. Contact**

13.1 Priti Khatri at the Department for Transport, Great Minster House, 33 Horseferry Road, London SW1P 4DR (telephone 020 7944 4715) can answer any queries regarding the instrument.