

EXPLANATORY MEMORANDUM TO

THE ROAD TRAFFIC OFFENDERS (ADDITIONAL OFFENCES) ORDER 2017

2017 No. 294

1. Introduction

- 1.1 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 This Order amends section 20 of the Road Traffic Offenders Act 1988 which allows records from prescribed devices, such as automatic number plate recognition cameras, to be used as evidence in proceedings for listed offences. This Order adds two offences to the list; namely, those of driving a vehicle on a motorway hard shoulder and failing to comply with an indication given by a light signal (a “red X signal”) of the closure of a traffic lane.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Driving on the hard shoulder contravenes regulation 9 of the Motorways Traffic (England and Wales) Regulations 1982 (driving etc. a vehicle on the hard shoulder) which is an offence under section 17(4) of the Road Traffic Regulation Act 1984. The failure to comply with an indication given by a traffic sign is an offence under section 36(1) of the Road Traffic Act 1988 where the sign is prescribed for that purpose and red X signals indicating the closure of a traffic lane are so prescribed.
- 4.2 This instrument amends section 20(2) of the Road Traffic Offenders Act 1988 by adding the two offences mentioned in paragraph 2.1 to the list of offences which may be enforced by using evidence obtained from prescribed devices.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is Great Britain.
- 5.2 The territorial application of this instrument is England and Wales. Article 2(a), allowing the use of evidence from prescribed devices in proceedings for the offence of driving on the motorway hard shoulder, applies only in England and Wales.

6. European Convention on Human Rights

- 6.1 The Parliamentary Under Secretary of State for Transport has made the following statement regarding Human Rights:

“In my view the provisions of the Road Traffic Offenders (Additional Offences) Order 2017 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 The introduction of Smart Motorways Dynamic Hard Shoulder Running and Smart Motorways All Lanes Running has dramatically increased the number of red X signals in use. When a length of the hard shoulder is used as a traffic lane the indication given by the red X signal (not to enter or proceed in that lane) also marks the end of the use of that length of hard shoulder as a traffic lane and its reversion back to being the normal hard shoulder. Monitoring has highlighted an issue of motorists failing to comply with red X signals particularly where hard shoulder running comes to an end. This creates potential dangers for the travelling public, Traffic Officers, Emergency Services, and others that work on the roads such as vehicle recovery, which the restricted use of the hard shoulder is designed to protect, when responding to breakdowns or incidents occurring on the network. The use of camera evidence to enforce against drivers who fail to comply with red X signals is intended to reduce such dangers. This instrument would also allow the use of camera evidence where red X signals used on non-smart motorways are ignored.
- 7.2 In addition, with hard shoulders becoming running lanes at certain times, when indicated by signalling, it is especially necessary to stop drivers using them when not open as a live running lane by the use of camera evidence for enforcing the offence of driving on the hard shoulder. Camera evidence may also be used in relation to hard shoulder driving on standard (non-smart) motorways but since such misuse of the hard shoulder remains extremely low it is unlikely to be targeted unless safety concerns are raised.
- 7.3 In order to encourage drivers not to drive on the hard shoulder and to comply with red X signals this Order enables a record from prescribed devices such as traffic cameras to be used as evidence in enforcement proceedings. The resultant disposal of such offences may include the offer of attendance at an appropriate course but needs to be supported by the prospect of court proceedings based on highly persuasive evidence such as that provided by traffic cameras.

8. Consultation outcome

- 8.1 A formal consultation exercise was not required as no new offences are being created. However, for the purposes of openness, the proposal has been shared with the Welsh Government, the Scottish Government and the Northern Ireland Office and no objections were raised.

9. Guidance

- 9.1 No new offences are being created. To date each new smart motorway scheme has had its own consultation pack and these have been published on the GOV.UK website. Local and national marketing and advertising has already taken place to warn drivers of the dangers of not complying with lane signalling.
- 9.2 A communications strategy for smart motorways has been developed to increase driver understanding and so improve compliance and this was launched in spring 2016.

10. Impact

- 10.1 An impact assessment has not been prepared for this instrument but any impact on businesses, charities, voluntary bodies and the public sector will benefit motorists by helping to protect them in the event of a breakdown or incident on the motorway network.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 This Order will not have an adverse effect on small businesses. The Order does not impose any new or increased burden. It is anticipated that Highway Authorities will continue to provide information on schemes to the public and organisations within the surrounding area, including small businesses.

12. Monitoring & review

- 12.1 Highways England has developed a monitoring tool to enable the historical and current levels of compliance on smart motorways to be reviewed. This will help inform the success of the communications strategy and the effectiveness of any future enforcement on compliance.

13. Contact

Gary Crockford (Department for Transport, Senior Programme Sponsor, Capital & Resource Delivery, 3/22-27, Great Minster House, 33 Horseferry Road, London, SW1P 4DR, telephone 020 7944 2326) can answer any queries.