

ROAD SAFETY ACT 2006

EXPLANATORY NOTES

DEPOSITS AND PROHIBITION ON DRIVING

Section 11: Financial penalty deposits

38. This section inserts a new Part 3A (sections 90A to 90F) into the RTOA.
39. Under new section 90A the police and vehicle examiners, appointed under section 66A of the RTA, will be able to require the payment of a deposit by a person they believe to have committed an offence in relation to a motor vehicle who does not provide a satisfactory address in the United Kingdom at which it is likely the person can be found. The police or vehicle examiner must also believe that the person, the offence and the circumstances in which the offence is committed are of a description specified in an order made by the Secretary of State.
40. The section enables the deposit scheme to be applied to any driver who cannot satisfy enforcement officers that he could be found in the UK, when necessary in connection with a fixed penalty or court proceedings. The deposit would be used to pay any uncontested fixed penalty notice. However, it would be open for drivers to contest in court the charge of committing an offence (including contesting a fixed penalty notice). Should the court decide in their favour or if the case did not go to court within a year (or, if shorter, any period after which no prosecution could be commenced in respect of the offence), the deposit would be refunded with the relevant interest. If the court decided against them, the deposit would be retained to be offset against all, or part, of the fine imposed.
41. New section 90D will enable the police or vehicle examiners to prohibit the moving of the vehicle if the deposit is not paid immediately, though the vehicle may be moved to another, specified place by a written direction. The prohibition would continue in force until the driver: pays the deposit or (if he received a fixed penalty notice or conditional offer) fixed penalty, is charged with the offence or informed he will not be prosecuted or payment is made, or the prosecution period comes to an end, whichever occurs first. Failure to comply with the prohibition set by non-payment of a fixed penalty notice deposit will be recorded as a level 5 offence under Part 1 Schedule 2 of the RTOA.
42. The effect of these provisions is to provide a means of enforcement against offenders who avoid payment of fixed penalties and prosecution by not having a satisfactory address in the United Kingdom.

Section 12 (and Schedule 4): Prohibition on driving: immobilisation, removal and disposal of vehicles

43. *Section 12* and Schedule 4 will reinforce both current powers for issuing prohibition notices and the new prohibition power in section 11, which will apply where a driver does not make a payment under the Deposit Scheme requirements. They will allow vehicles issued with an immediate prohibition to be immobilised either by the enforcement officer or authorised person until such time as the prohibition requirements

are satisfied or, in cases of offenders who do not have a reliable UK address, until such time as a deposit is paid or the case is settled in Court.

44. These provisions will strengthen the prohibition sanction generally, as immobilisation will physically prevent a prohibition being disregarded. Prohibitions under current powers are usually imposed for breaches of drivers' hours or of roadworthiness requirements. These provisions will thus also ensure that the Deposit Scheme is not open to abuse by drivers who might otherwise refuse to pay and then abscond in their vehicle, albeit under prohibition, if they thought that they would in practice incur no punishment or penalty as a result of quickly leaving the country.

DRINK-DRIVING etc.

Section 13: High risk offenders: medical enquiries following disqualification

45. High Risk Offenders, as defined by Regulation 74 of the [Motor Vehicles \(Driving Licences\) Regulations 1999 \(SI 1999/2864\)](#) (the "1999 Regulations") for the purposes of section 94(4) of the RTA, are:
- a) those disqualified for driving whilst two and half times or more over the prescribed limit;
 - b) those disqualified for failure, without reasonable excuse, to supply a specimen for analysis pursuant to section 7 of the RTA; and
 - c) those disqualified on two or more occasions within ten years for either exceeding the legal limit of alcohol in their breath, blood, or urine, or being unfit to drive through drink.
46. Section 88 of the RTA sets out exceptions to the general requirement for anyone wishing to drive a motor vehicle on a road to have the appropriate licence authorising him to do so. These include, under subsection (1)(a)(i) of section 88, where the driver has held a licence to drive that class of vehicle and, under subsection (1)(b)(i), where the Secretary of State has received a qualifying application by the driver for a licence to drive that class of vehicle.
47. This section prevents High Risk Offenders from having entitlement to drive by virtue of section 88 of the RTA, whilst awaiting the outcome of medical enquiries relevant to an application for the return of a licence following a period of disqualification. This will ensure that those who, by the nature of their offending, have been identified as presenting a greater risk of being medically unfit to drive are prevented from driving until the Secretary of State is satisfied that they are fit to do so.

Section 14: Period of endorsement for failure to allow specimen to be tested

48. Once an endorsement ceases to be effective, the licence-holder may apply to the DVLA for a new licence free from the endorsement. Under subsections (5) and (6) of section 45 (effect of endorsement) of the RTOA, endorsement for most driving offences remains effective for a period of four years from the conviction, or four years from the date of the offence if no order for disqualification was made.
49. Section 45(7) of the RTOA provides that the period of effectiveness of an endorsement in respect of specified driving offences connected with drink or drugs or failing to provide a specimen is eleven years from the conviction.
50. This section amends section 45(7) by adding the offence of failing to allow a specimen to be subjected to a laboratory test (section 7A(6) of the RTA), so that where a person is guilty of an offence under section 7A(6) of the RTA, the endorsement will remain effective for a period of eleven years from the conviction.

51. This corrects a consequential amendment missed in the Police Reform Act 2002 which inserted section 7A (specimens of blood taken from persons incapable of consenting).

Section 15: Alcohol ignition interlocks

52. This section inserts into the RTOA new sections 34D, 34E, 34F, 34G and 41B.
53. Its effect is to give courts the power in certain circumstances to offer offenders the opportunity to participate, at their own expense, in an "alcohol ignition interlock programme". Where an offender agrees to this, his overall period of disqualification may be reduced. The provision applies to a person who is convicted of a relevant drink driving offence on a second occasion in a period of ten years and is to be disqualified for no less than two years. The period on the programme must be at least twelve months but must not exceed a half of the original unreduced disqualification period. This programme may not be offered to someone for whom an order is made under section 34A (drink drive offenders rehabilitation order).
54. The alcohol ignition interlock programme requires the offender to comply with certain conditions. These include elements of education and counselling, but a central feature is that the offender may drive only a motor vehicle that is fitted with an alcohol interlock device that is designed to prevent the vehicle being driven until a specimen of breath has been given in which the proportion of alcohol does not exceed a specified amount. If a person interferes with the device to try to prevent it working he commits a new offence, as does someone other than the offender who gives, or attempts to give, a specimen of breath to enable the offender to drive the vehicle.
55. Any failure on the part of the offender to comply with the conditions of the programme will result in restoration of the full original disqualification period. The interlock device will be type approved by the Secretary of State and will be set at 9 microgrammes of alcohol in 100 millilitres of breath, but that may be changed by regulations.
56. Provision is made for a "certificate of failing fully to participate" in a programme. In the event of such a certificate being issued the offender must be notified and given an opportunity to appeal to the supervising court. If he makes an appeal the court may allow him to continue on the programme until the outcome of the appeal is known.
57. Provision is made for approval of programmes by the Secretary of State, or, as respects Wales, the National Assembly for Wales, and, as with courses for drink drive rehabilitation this covers guidance and arrangements for appeal to the Transport Tribunal for an applicant whose approval is denied or withdrawn.
58. The Secretary of State may vary by regulations the period of ten years that determines whether a previous offence is relevant, the minimum disqualification period before an offender becomes eligible for the programme, the minimum period of the programme and the maximum proportion of the original disqualification period that may be served on a programme.

Section 16: Experimental period for section 15

59. This section provides for an experimental period for the alcohol ignition interlock programme described in section 15. The experiment may continue until the end of 2010 but the Secretary of State may specify a later date by order. He may also terminate the restrictions specified for the experimental period. The section provides for the Secretary of State to designate certain court areas for the purpose of the experiment. During the experimental period the programme would not be offered to persons convicted under Section 3A of the RTA (causing death by careless driving when under influence of drink or drugs).