

ROAD TRAFFIC OFFENDERS (SURRENDER OF DRIVING LICENCES ETC) (NO. 2) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Road Traffic Offenders (Surrender of Driving Licences Etc) (No. 2) Bill as introduced in the House of Commons on 1 May 2018 (Bill 201).

- These Explanatory Notes have been provided by the Department for Transport, with the consent of Mr Alister Jack, the member in charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

Table of Contents

Subject	Page of these Notes
Overview of the Bill	2
Policy background	2
Legal background	2
Territorial extent and application	4
Commentary on provisions of Bill	5
Clause 1: Production of Licence to the court	5
Clause 2: Surrender of licence to Secretary of State where disqualified	6
Clause 3: Removal of requirement to surrender licence where fixed penalty notice	6
Clause 4: Removal of requirement to deliver up licence where conditional offer	7
Clause 5: Surrender of licence and test certificate where new driver	7
Clause 6: Minor and consequential amendments	7
Clause 7: Extent, commencement and short title	7
Schedule 1: Surrender of licence and test certificate where new driver	7
Schedule 2: Minor and consequential amendments	9
Commencement	10
Financial implications of the Bill	10
Parliamentary approval for financial costs or for charges imposed	10
Compatibility with the European Convention on Human Rights	10
Related documents	10
Annex A - Territorial extent and application in the United Kingdom	11

These Explanatory Notes relate to the Road Traffic Offenders (Surrender of Driving Licences Etc) (No. 2) Bill as introduced in the House of Commons on 1 May 2018 (Bill 201)

Overview of the Bill

- 1 The Bill relates to the requirements for a person to produce a driving licence in relation to the enforcement of road traffic law.
- 2 The Bill's objectives are twofold:-
 - a. to streamline the processes for the electronic endorsement of driving licences by removing the need for the physical licence to be produced, and
 - b. to strengthen the rules for the surrender of driving licences where a driver faces disqualification.

Policy background

- 3 The proposals are to update the law in relation to the production and surrender of driving licences, making changes principally to the Road Traffic Offenders Act 1988 ("RTOA") and to the Road Traffic (New Drivers) Act 1995 ("NDA"), with consequential adjustment of other statutes affected.
- 4 Now that the paper driving licence counterpart has been abolished, and the physical driving licence consists of the photocard licence, there is no further need for a driving licence to be produced for an endorsement to be recorded against a driver's driving record (either to be produced to the court where proceedings are commenced, or to a constable, vehicle examiner or fixed penalty clerk in relation to fixed penalties or conditional offers).
- 5 Since the abolition of the paper counterpart (in June 2015) no physical documents are endorsed when a person receives penalty points. Instead the courts and fixed penalty offices electronically update the details on the person's driver record which is held by the DVLA.
- 6 The only need for a licence to be produced or surrendered is therefore where the driver may be sentenced to disqualification, or is actually disqualified.
- 7 The proposals are to adjust the RTOA accordingly and to empower the Secretary of State (in practice his executive agency, the Driver and Vehicle Licensing Agency) to be able to demand surrender of revoked licences where a driver has been disqualified.
- 8 Corresponding changes are proposed to the NDA, including to empower the Secretary of State to be able to demand the surrender of revoked licences and driving test pass certificates in the scenarios where a new driver with a full licence is disqualified, or is disqualified before actually receiving their full driving licence (i.e. where they have a provisional licence plus a test pass certificate) or is disqualified where they have a test pass certificate for a class of vehicle for which their full licence operates as a provisional licence.
- 9 The paper counterpart to the driving licence was abolished by commencement of section 10 and Schedule 3 of the Road Safety Act 2006. These provisions removed references to the driving licence counterpart. They did not however remove the requirement for licences to be surrendered as part of the process of accepting conditional offers or fixed penalty notices or prior to a court hearing.

Legal background

- 10 The Road Traffic Offenders Act 1988 ("the Act") made provision for fixed penalty procedures,

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and various court procedures, to be followed in relation to road traffic offences. The Act provides for two different fixed penalty procedures – fixed penalty notices and conditional offers.

- 11 Fixed penalty notices are issued under section 54 of the Act by police constables, or Driver and Vehicle Standards Agency (DVSA) vehicle examiners. For offences which involve obligatory endorsement, fixed penalty notices may be handed out “on-the-spot” where the constable, or vehicle examiner, has stopped a vehicle having reason to believe that the driver has committed a fixed penalty offence, and after checking that the driver would not be liable for disqualification for totting up 12 or more penalty points, and where the driver surrenders their licence. If the driver accepts the notice and pays the fixed penalty to the fixed penalty clerk, or the Secretary of State, their driving record will be endorsed with the appropriate penalty points for the offence and they will not be prosecuted.
- 12 Currently where a fixed penalty notice is issued the driver must surrender their licence to the police constable, or vehicle examiner, issuing the notice. Where the driver does not have their licence with them when they are stopped they cannot be issued with a fixed penalty notice. Instead the driver can be given an interim notice under section 54(5) of the Act which provides that if the driver attends a specified police station and hands over their driving licence and the interim notice (or sends them to a specified office of the Secretary of State where the interim notice is given by a vehicle examiner) they will be given a fixed penalty notice in exchange.
- 13 Conditional offers of fixed penalties can be issued under section 75 of the Act by delivery to, or being sent in the post to, alleged traffic offenders. For offences which involve obligatory endorsement, and where the offender would not be liable for disqualification for totting up 12 or more penalty points, the offender will not be prosecuted if they pay the fixed penalty offered, and surrender their driving licence for endorsement.
- 14 Where a person is prosecuted in court for a driving offence involving obligatory or discretionary disqualification they are currently required to deliver, or post, their licence to court prior to the hearing, or bring it with them to the hearing.

Territorial extent and application

- 15 Clause 7(1) sets out the territorial extent of the Bill. If a provision of a Bill extends to a jurisdiction within the United Kingdom, this means that the provision will form part of the law of that jurisdiction. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect.
- 16 The provisions of this Bill extend and apply to England and Wales, and Scotland. Road traffic offences and procedures relating to endorsement of driving records are matters that are reserved to Westminster for Scotland and Wales, but are devolved to Northern Ireland.
- 17 As the Bill is a Private Member's Bill, the new English votes provisions in the House of Commons Standing Orders do not apply.
- 18 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

Commentary on provisions of Bill

Clause 1: Production of Licence to the court

- 19 This clause adjusts the requirements for the production of a driving licence to a court.
- 20 *Subsection (2)* amends section 7 of the Road Traffic Offenders Act 1988 (c. 53) (“RTOA”) to change the current duty on a person who is prosecuted for an offence involving obligatory or discretionary disqualification, and who is the holder of a licence, to produce their licence to the court.
- 21 Currently, under section 7, the person must produce their licence to the court, but has the options of delivering it or posting it in advance of the hearing, or having it with them at the hearing.
- 22 Also currently, under section 7, where the case is tried by a single justice on the papers without a hearing (under section 16A of the Magistrates Courts Act 1980 (c. 43)), and there is a conviction, the person must produce their licence to the court. But the person is also given the option of delivering it or posting it in advance of sentencing or, where they indicate a wish to make representations about their possible disqualification, having it with them at the hearing fixed to consider those representations.
- 23 *Subsection (2)* removes the options of delivering or posting the licence to the court in advance in all these cases. As for taking it to the hearing, the clause imposes a duty on the accused to bring the licence to the hearing only where there is a hearing and where the accused attends. These adjustments are intended to minimise the extent to which a court needs to handle the physical licence administratively.
- 24 *Subsection (3)* changes the powers of a court to order production of a licence.
- 25 Currently, under section 27(1) RTOA, where a person who is the holder of a licence is convicted of an offence involving obligatory or discretionary disqualification, and a court proposes to disqualify that person, or to make an order for the endorsement of their licence, the court must, unless they have already received it, require the licence to be produced to it. It is a summary offence not to comply with a maximum fine of level 3 on the standard scale (currently £1000).
- 26 *Subsection (3)* amends section 27(1) to provide that:-
 - a. the court, rather than being obliged to order licence production, will have a power to require production, which they may exercise at their discretion,
 - b. the power will apply both where the court proposes to disqualify (e.g. where it adjourns for sentencing) and where it disqualifies, and
 - c. the power will not apply where the court neither disqualifies, nor proposes to disqualify, a driver.
- 27 These changes will prevent a court having to handle the physical licence administratively where a driver faces endorsement but not disqualification. In disqualification cases it is envisaged that where the convicted driver is present in court with their licence the court will collect it there and then, but otherwise can pass the issue of collection of the licence over to the DVLA under their new enforcement power in clause 2 of the Bill. The changes also clarify that the court’s power to require licence production not only applies where a court proposes to disqualify but also where it orders disqualification (and the same sanction would apply i.e.

non-compliance would be a summary offence with a maximum fine of level 3 on the standard scale (currently £1000)).

Clause 2: Surrender of licence to Secretary of State where disqualified

- 28 This clause gives the Secretary of State the power to require the surrender of a driving licence to the Secretary of State where a court has ordered disqualification.
- 29 *Subsection (1)* inserts a new section 37A into the RTOA which empowers the Secretary of State by notice in writing to require a person, who is the holder of a licence and who has been disqualified by court order, to surrender their licence to the Secretary of State within 28 days. It makes it an offence not to comply with the notice without reasonable excuse.
- 30 *Subsection (2)* provides that the offence is a summary offence with a maximum fine of level 3 on the standard scale (currently £1000).

Clause 3: Removal of requirement to surrender licence where fixed penalty notice

- 31 This clause relates to fixed penalties for traffic offences as provided for in Part III (fixed penalties) of the RTOA. It removes from the fixed penalty process the need to produce a driving licence.
- 32 Currently, under section 54 RTOA (notices on the spot etc.), a person (who is the holder of a licence) who has been stopped by a constable or a vehicle examiner for a fixed penalty offence which appears to involve obligatory endorsement (without triggering disqualification for totting up 12 or more penalty points) may only be given a fixed penalty notice if they have produced for inspection and surrendered their licence. Where the person does not do so the person may be given an interim notice indicating that if they produce the interim notice and surrender their licence to a specified police station, or send them to a specified office of the Secretary of State where the interim notice is given by a vehicle examiner, they would be given a fixed penalty notice.
- 33 *Subsection (2)* adds to the information to the driver that must be included in a fixed penalty notice where the notice relates to an offence involving obligatory endorsement. The notice must indicate that if the driver is to validly pay the fixed penalty the driver must include with the payment certain information as to the driver's identity (see notes below on *subsection (4)*).
- 34 *Subsection (3)* amends section 54 RTOA to omit all references to the need for the production, inspection and surrender of the licence, and to omit the process of giving interim notices. So a fixed penalty notice may now be given in all cases without the need for licence production.
- 35 *Subsection (4)* amends section 69 RTOA (payment of penalty) to require that in order to validly pay a fixed penalty in respect of an offence involving obligatory endorsement the payee must provide adequate information as to their identity to ensure that the endorsement is recorded against the correct person's driving record.
- 36 *Subsection (4) (b)* inserts a new subsection (2A) into section 69 to provide that, where payment is made by post, payment is only effectively made if the letter contains the payee's name and date of birth and, where they are the holder of a licence, the licence number.
- 37 *Subsection (4) (c)* inserts new subsections (3A) to (3D) into section 69 to provide that, where payment is made otherwise than by post, payment may only effectively be made if the payee provides the fixed penalty clerk, or the Secretary of State, with the payee's name and date of birth and, where they are the holder of a licence, the licence number, or otherwise satisfies them as to the payee's identity.

Clause 4: Removal of requirement to deliver up licence where conditional offer

- 38 This clause relates to the procedures for conditional offers of fixed penalties set out in sections 75 to 77A RTOA. The clause omits the requirements for delivery and dealing with driving licences.
- 39 Subsection (2)(a) adds to the information to the driver that must be included in a conditional offer where the offer relates to an offence involving obligatory endorsement. The offer must indicate that if the driver is to validly pay the fixed penalty the driver must include with the payment certain information as to the driver's identity (see notes below on *subsection (2)(b) and (c)*).
- 40 *Subsection (2)(b) and (c)* removes, as one of the conditions which must be fulfilled for the acceptance of a conditional offer to be effective, the requirement for the licence to be delivered to the fixed penalty clerk or the Secretary of State (in cases where the alleged offence involves obligatory endorsement, and the alleged offender is the holder of a licence). It substitutes a condition that the payee provides the fixed penalty clerk, or the Secretary of State, with the payee's name, date of birth and licence number, or otherwise satisfies them as to the payee's identity.
- 41 *Subsection (3)* amends section 76 RTOA (effect of offer and payment of penalty) as follows:-
- a. Firstly it amends the wording of section 76(2) so that it provides, in effect, that no proceedings shall be brought against an alleged offender for the offence to which a conditional offer applies where that person not only pays the fixed penalty but also fulfils the identification requirements.
 - b. Secondly it removes from section 76(3) the reference to a licence being returned to an alleged offender, with any payment made, where it transpires that the person is not eligible for a conditional offer due to their being liable to disqualification for totting up 12 or more penalty points.
 - c. Thirdly it adjusts the wording in section 76(4), for consistency of language with the amendment referred to in a. above.
- 42 *Subsection (4)* amends section 77A (endorsement of driving records where penalty paid) to omit any reference to licences having to be delivered, sent or returned to any party.

Clause 5: Surrender of licence and test certificate where new driver

- 43 Clause 5 introduces Schedule 1.

Clause 6: Minor and consequential amendments

- 44 Clause 6 introduces Schedule 2.

Clause 7: Extent, commencement and short title

- 45 Clause 7 (1) and (5) are self-explanatory.
- 46 Clause 7 (2) to (4) provide for the commencement of the Bill for which separate commentary is provided later in these notes.

Schedule 1: Surrender of licence and test certificate where new driver

- 47 This Schedule amends the Road Traffic (New Drivers) Act 1995 (c. 13) ("NDA"). The NDA provides that persons who pass their driving test are subject to a probationary period of two years, from the date of their test, during which they are subject to being disqualified, and having to retake their test, if they are allocated 6 or more penalty points for road traffic

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offences within that period.

- 48 *Paragraphs 2 and 3* amend sections 2 and 3 of the NDA, which relate to the revocation of new drivers' licences. Currently, under those sections, the Secretary of State is required by notice to revoke a new driver's licence upon receipt of an official notice indicating that the new driver has been allocated penalty points by a court, or through the fixed penalty or conditional offer process, which bring the total allocated to the driver to 6 or more, together with the driver's licence, and where the court, or the fixed penalty clerk or the Secretary of State, consider the offence was committed during the driver's probationary period.
- 49 Sections 2 and 3 of the NDA are amended to remove any references to the production and handling of the new driver's licence as part of the process, and to provide that, where the relevant notices of endorsement are received, it is for the Secretary of State to check if the offence was committed during the new driver's probationary period. In addition various minor drafting amendments are made.
- 50 *Paragraph 4* inserts a new section 3A into the NDA which provides that where the Secretary of State serves a notice on a new driver revoking their licence the notice may also require surrender of the licence to the Secretary of State within 28 days. It makes it an offence not to do so without reasonable excuse. Where the licence received is a Northern Ireland one the Secretary of State must send it to the Northern Ireland licensing authority. The offence is a summary offence with a maximum fine of level 3 on the standard scale (currently £1000).
- 51 *Paragraph 5* substitutes for section 9(5) NDA slightly revised provision in relation to the address of the Secretary of State to which notices, or revoked licences or test certificates, must be sent for consistency in language with the other amendment made to the NDA.
- 52 *Paragraph 6* makes amendments to Schedule 1 (newly qualified drivers holding test certificates) to the NDA. Schedule 1 of the NDA currently makes analogous provision for driving test pass certificates as apply to full driving licences (e.g. requirements to produce, surrender and revoke test certificates, and any associated full licences where applicable) to cover the scenarios where a new driver has to be disqualified for being allocated 6 or more penalty points within their probationary period before actually receiving their full driving licence (i.e. where they have a provisional licence plus a test pass certificate) or where they have a test pass certificate for a class of vehicle for which their full licence is either treated as, or is, a provisional licence for that class.
- 53 *Paragraph 6 (2)* omits the current duties to produce test certificates to the court, or for their production and handling in relation to the giving of fixed penalty notices and the making of conditional offers, or for courts or fixed penalty clerks to send confiscated test certificates to the Secretary of State. These adjustments are intended to minimise the extent to which test certificates need to be handled administratively by the courts and fixed penalty clerks.
- 54 *Paragraph 6 (3)* provides for the Secretary of State by notice to revoke a new driver's test certificate upon receipt of an official notice indicating that the new driver has been allocated penalty points by a court, or through the fixed penalty or conditional offer process, which bring the total allocated to the driver to 6 or more within the driver's probationary period. These changes are to make the language of the existing test certificate revocation power match the other NDA amendments, and to dispense with any reference to the Secretary of State being supplied with the new driver's test certificate in advance of serving a revocation notice.
- 55 *Paragraph 6(4)* inserts a new paragraph 5A into Schedule 1 of the NDA which provides that where the Secretary of State serves a notice on a new driver revoking their test certificate the notice may also require surrender of the test certificate to the Secretary of State within 28 days.

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It makes it an offence not to comply with the notice without reasonable excuse. Where the test certificate received is a Northern Ireland one the Secretary of State must send it to the Northern Ireland licensing authority. The offence is a summary offence with a maximum fine of level 3 on the standard scale (currently £1000).

- 56 *Paragraph 6 (6)* omits the current duties to produce test certificates and associated full licences to the court, or for their production and handling in relation to the giving of fixed penalty notices and the making of conditional offers, or for courts or fixed penalty clerks to send confiscated test certificates and associated full licences to the Secretary of State. These adjustments are intended to minimise the extent to which test certificates, and their associated full licences, need to be handled administratively by the courts and fixed penalty clerks.
- 57 *Paragraph 6 (7)* provides for the Secretary of State by notice to revoke a new driver's test certificate and associated full licence upon receipt of an official notice, indicating that the new driver has been allocated penalty points by a court, or through the fixed penalty or conditional offer process, which bring the total allocated to the driver to 6 or more within the driver's probationary period. These changes are to make the language of the existing test certificate, and associated full licence, revocation power match the other NDA amendments, and to dispense with any reference to the Secretary of State being supplied with the new driver's test certificate and full licence in advance of serving a revocation notice.
- 58 Paragraph 6(8) inserts a new paragraph 8A into Schedule 1 of the NDA which provides that where the Secretary of State serves a notice on a new driver revoking their test certificate and associated full licence the notice may also require surrender of the licence, or test certificate, or both to the Secretary of State within 28 days. It makes it an offence not to comply with the notice without reasonable excuse. Where the test certificate, or associated licence, received is a Northern Ireland one the Secretary of State must send it to the Northern Ireland licensing authority. The offence is a summary offence with a maximum fine of level 3 on the standard scale (currently £1000).

Schedule 2: Minor and consequential amendments

- 59 *Part 1* makes minor and consequential amendments to the Road Traffic Offenders Act 1988.
- 60 *Part 2* makes minor and consequential amendments to the Road Traffic Act 1988 and the Crime (International Co-operation) Act 2003.
- 61 *Paragraph 23 of Part 2* the Bill would adjust the existing power of constables, and vehicle examiners, in section 164 of the Road Traffic Act 1988, to require the surrender of driving licences in certain circumstances. The Bill would empower them to require surrender of a driving licence, or test certificate, by a person where that person has already been required by the DVLA under the powers provided in the Bill to surrender their licence, or test certificate, and has failed to do so. Failure to surrender the licence, or test certificate, to the constable or vehicle examiner, would be a summary offence having a maximum fine of level 3 on the standard scale (currently £1000).
- 62 *Part 3* makes consequential repeals of amending enactments.

Commencement

- 63 Clause 7 of the Bill (extent, commencement and short title) provides that clause 7 will come into force on Royal Assent.
- 64 Clause 7 (3) provides that the remaining provisions of the Bill come into force on such day as the Secretary of State may by regulations made by statutory instrument appoint.
- 65 It is anticipated that these provisions would be brought into force within 12 months of Royal Assent.

Financial implications of the Bill

- 66 The DVLA's impact assessment indicates that any additional costs are expected to be met from existing budgets.

Parliamentary approval for financial costs or for charges imposed

- 67 We do not expect the Bill to require a money resolution or a ways and means resolution.

Compatibility with the European Convention on Human Rights

- 68 As the Bill is a Private Members Bill a statement under section 19(1) (a) of the Human Rights Act 1998 is not required.

Related documents

- 69 The following documents are relevant to the Bill and can be read at the stated locations:

- The Road Traffic Offenders Act 1988 - <http://www.legislation.gov.uk/ukpga/1988/53/contents>
- The Road Traffic (New Drivers) Act 1995 - <http://www.legislation.gov.uk/ukpga/1995/13/contents>

Annex A - Territorial extent and application in the United Kingdom

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Legislative Consent Motion needed?
Clause 1 to 7	Yes	Yes	Yes	No	No
Schedule 1	Yes	Yes	Yes	No	No
Schedule 2	Yes	Yes	Yes	No	No

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