

Road Safety – Cross Border Enforcement – DG TREN E3 Consultation Document

Comments from Road Safety & Traffic Division, Department of Transport – Ireland

Irish Situation:

1. The Fixed Charge system, which was introduced through the Road Traffic Act 2002 (RTA 2002) provides any person accused of the commission of an offence to which the system applies with an alternative to having to go to court.
2. The system applies to the vast majority of offences created under the Road Traffic Acts including most of the penalty point offences.
3. All offences created by the Road Traffic Acts are regarded as being criminal and in that context every person accused of the commission of any one of those offences must be taken before the District Court to answer the charge or accusation made by the Gardaí or, in the case of parking offences, a Local Authority Traffic Warden.
4. The fixed charge system offers each person accused of an offence the alternative of paying a fixed charge thereby avoiding the prospect of a court hearing. In the case of penalty point offences, the payment of a fixed charge means that a lower number of points are endorsed.
5. The detection of a fixed charge offence can be through an ‘intercept’ by the Garda Síochána (i.e. Garda stops the offending vehicle) or non-intercept (by fixed/mobile camera in the case of speeding). Local Authority Traffic Wardens are confined to the detection of certain non-penalty point offences, such as parking, non-display of tax discs etc.
6. Where a fixed charge offence is detected, a fixed charge notice (FCN) is issued by the Gardaí (or traffic warden where appropriate). The Gardaí are responsible for the service of the fixed charge notice in the first instance. The RTA 2002 specifically provides that the notice can be served personally or by post directly to the accused or to the registered owner (this service has been outsourced to an Post in the case of offences detected by the Gardaí) or it can be affixed to the vehicle.
7. The notice sets out the amount of the fixed charge that may be payable within 28 days of the date of the notice and that if that period passes, that the accused has a further 28 days in which he or she can pay the original amount plus 50% before Court proceedings are initiated. Non-payment is accepted as an indication that the alleged offender has opted to go to Court.
8. Where a fixed charge payment is made in respect of a penalty point offence, the appropriate number of penalty points is recorded on the person’s driving

licence record in the National Driver Licence File (NDF) - held by the Department of the Environment, Heritage and Local Government (DEH&LG).

9. Where a person does not pay a fixed charge, it is then a matter for the Gardaí to apply for the issue of a summons by the District Court to require the accused to appear in court.
10. However if a case is to be prosecuted it is necessary for the Court to be satisfied that a fixed charge payment has not been made and that the FCN has been served. Section 18 (1) (h) of the Road Traffic Act 2004 contains presumptions to cover these two issues and it is open to the accused to present evidence that may contradict them.
11. Where the registered owner receives the FCN and was not the driver at the time the offence was committed, they are accorded a period of 28 days from the date of issue of the notice to declare who was driving their vehicle at the time of the alleged offence and a FCN is then issued to that 'nominated' driver.
12. If a penalty point offence is committed by the holder of a non-Irish driving licence, who pays the fixed charge amount within the prescribed period, a record is opened in the NDF and the number of points is recorded but held in abeyance. Those points are activated when that driver obtains an Irish driving licence.
13. Detections of certain other road traffic offences, including drink/drug driving, driving a dangerously defective vehicle and dangerous driving, results in the alleged offender being arrested and subsequently appearing in Court. Those found guilty of such offences are subject to a consequential disqualification from driving.

Mutual Recognition of Driving Licence Disqualifications

In relation to driver disqualification a framework for the mutual recognition of disqualifications is contained in the European Union Convention on Driving Disqualifications (98/C 216/01). The Convention relates to disqualifications arising from a range of specified traffic offences including drink-driving, speeding and dangerous driving. Irish legislation to support the application of the Convention is contained in the Road Traffic Act, 2002.

In advance of the Convention fully coming into force and following a Ministerial meeting of the Transport Sectoral Group of the British-Irish Council (BIC) on 9 February 2006, the Irish Minister for Transport formally agreed with the UK Minister of State for Transport to enter into bilateral arrangements on the mutual recognition of driving disqualifications as envisaged in the EU Convention.

The UK Minister for State for Transport recently advised the Irish Minister for Transport that the UK and NI authorities are working to have the necessary legislative and consultative processes complete to enable mutual recognition to be in place by April 2007. Officials continue to work to ensure that the necessary

administrative arrangements are in place to enable relevant administrations to recognise and take action on driving disqualifications occurring in the other jurisdiction.

Mutual Recognition of Penalty Point Offences

In relation to lesser offences, the North South Work Programme, as agreed by the North South Ministerial Council, included a commitment to examine the mutual recognition of penalty points between the Republic of Ireland and Northern Ireland. However, in addition to the fact that separate penalty point systems operate in the two jurisdictions on this island, the system that operates in Northern Ireland differs from that applying in Great Britain. For that reason, it was agreed that it would be more appropriate to pursue the question of mutual recognition of penalty points on the basis of the operation of the three systems and that it would also be more appropriate that it would be dealt with under the auspices of the BIC.

As Northern Ireland has the lead role for transport matters in the BIC, the authorities in that jurisdiction are taking the lead in considering this issue. It was agreed at the BIC meeting on 9 February 2006 that officials should examine the prospects for greater co-operation in the treatment of road traffic infringements where the penalty falls short of disqualification. Arising from work in this area the Irish Minister for Transport has agreed with the UK Minister for State for Transport the terms of reference proposed for a study of the feasibility of greater cooperation between us in relation to lesser road traffic infringements with a view to our officials undertaking a study on this basis and reporting back in 2007.

Call for Comments on Consultation Document (see P.19 of the Document) - Responses:-

- (1) Yes
- (2) All EU roads
- (3) Initially, speeding, seat-belt wearing and drink driving offences
- (4) A number of issues emerge when considering the Cross-Border enforcement of Road Traffic offences, particularly in relation to foreign drivers/registered vehicles:-
 - i) ***Intercept*** – when a non-State licence holder is detected by the Gardaí committing an offence, their foreign driving licence details are usually unavailable to the Garda at that time and the FCN will most likely be sent to a non-State address as supplied by the offender. In the event of non-payment of the fixed charge amount, a summons cannot be served at this non-State address and the case cannot proceed to Court.
 - ii) ***Non-Intercept*** – where an offence is detected by camera, the FCN is sent to the registered owner of the vehicle, but where a foreign registered vehicle is involved, the registration details will not be available. Even if the details were to be made available through some form of agreement, the same problems arise as at (a) above.

- iii) *Accuracy of data* - If vehicle registration data are to be made available to other jurisdictions, the accuracy of the data will be of paramount importance. This Department is aware that there are accuracy problems with the data currently held on the NDF by the DEH&LG, which will have to be addressed before any data exchange agreement is put in place.
- iv) *Non-payment of Fixed Charge Amounts* – It must be borne in mind at all times that the right of a driver accused of a road traffic offence to have their case heard in Court is indicated by the non-payment of the FCN. If a non-resident is accused of having committed a road traffic offence in this country they have the same legal entitlement and cannot be pursued for the non-payment of the fixed charge amount (as operates in other jurisdictions) in lieu of this entitlement.
- v) *Other Issues* – a number of other issues emerge in considering these proposals, which will have to be addressed;
- (a) such a cross-border system will have legal implications for Ireland particularly if a Directive is issued – who will have responsibility for transposing it and what are the Constitutional implications for the implementation of such a proposal?
 - (b) how will the required information be shared and who will be responsible for the ‘management’ of the information, including the accuracy of the information to be shared?
 - (c) are there Data Protection issues involved?
 - (d) who will be responsible for the costs associated with the administration of the system and will it having staffing implications?
 - (e) as the proposals are developed it will be particularly desirable for Departmental (both from the Department of Justice, Equality & Law Reform and the Department of Transport) policy officials to be represented at all meetings to monitor and advise.

- (5) No
- (6) No
- (7) No

Road Safety and Traffic Division
15th January 2007