

Briefing for Press Office – Mutual Recognition of Financial Penalties

No escape – Home or Abroad

End of the road for foreign lorry drivers

Brits abroad? Fined at home!

Top Lines

- The Government is closing a loophole in its fines enforcement powers by allowing fines imposed in the UK to be enforced in Europe.
- The mutual recognition of financial penalties will also allow fines imposed on UK nationals in Europe to be enforced in the UK.
- The framework will target foreign motorists, British holidaymakers, football hooligans as well as fines imposed on companies.

Background

- The implementation of MRPF will allow European Member States to enforce fines imposed by the courts in England and Wales, Scotland and Northern Ireland for offences committed by their nationals in the UK
- It will also allow those offences committed by United Kingdom nationals in other European countries (where a fine is imposed) to be enforced over here
- This will allow victims of crime who presently do not receive compensation in cases where the offender is a resident of a European country to be paid the compensation ordered to them
- Enforcement can be carried out against any offender with residence, property or sources of income in the enforcing state. EU nationals will no longer be able to act with impunity when away from their country of residence. Their fines will now follow them back home.

Additional Information

- Until this legislation fines which are imposed on foreign nationals by the English courts are currently unenforceable due to a lack of any mutual agreements between the UK and other countries
- The FD will allow fines that are imposed in one EU Member State to be transferred and enforced in another. It applies to fines, fixed penalty notices, compensation and court costs. The FD will apply to all these categories of financial penalties over seventy Euros.

- The FD only applies to ‘final’ decisions no longer subject to appeal; it includes important safeguards that allow the enforcement of a financial penalty to be refused in certain circumstances (for example, where it is apparent that the offender has not had an adequate opportunity to defend him or herself.)
- Any fines receipts collected (except compensation) will be kept by the enforcing state.
- Fines revenue in the UK is deposited into the Government’s Consolidated Fund (managed by HMRC).
- Compensation will be paid by the enforcing state directly to the victim when collected from the offender
- EU nationals will no longer be able to escape their fines simply because they do not live in the country in which they committed the offence.
- The MRFP impositions from Europe and England & Wales will all be channelled through a Central Authority which has been especially set up for this purpose and situated at London Central Accounts Office. Scotland and Northern Ireland have their own Central Authorities too.
- It is not known how many MRFP transfers for Enforcement we can expect as this is a completely new system
- Approximately 13 out of the 27 EU Member States have already implemented MRFP. These Member States are: Austria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Hungary, Latvia, Lithuania, Netherlands, Romania and Slovenia.
- Although fines imposed in the UK and transferred to the EU will not be sent back this will not be a loss of revenue as those fines are currently unenforceable and the UK will receive the revenue from fines imposed abroad and successfully enforced over here.
- Lord Bach (as Minister responsible for European matters) has written to the Chairs of the House of Commons European Select Committee and House of Lords Select Committee on the EU notifying them of the 1 October implementation date
- The EU Framework Decision allows for a financial penalty imposed in one EU Member State to be transferred and enforced in another. It was given legal effect in England and Wales and Northern Ireland by way of provisions in the Criminal Justice and Immigration Act 2008 (ss 80-92 & Schedules 18,19 & 27)
- The mutual recognition of financial penalties was initially a joint UK/Franco/Swedish proposal that was championed by Jack Straw whilst

Home Secretary. The European Council meeting at Tampere, in Finland, endorsed the principle of mutual recognition in October 1999. This particular FD was adopted on 24 Feb 2005 and EU Member States were asked to implement it by 22 March 2007. Implementation of the FD was delayed due to absence of a suitable legislative vehicle.

- In relation to EU nationals driving unsafe vehicles on UK roads or incurring traffic penalties over here, HMCS, in conjunction with DfT, has also recently implemented the roadside deposits scheme whereby, foreign drivers effectively pay a deposit if they wish to contest a fixed penalty issued at the roadside (announced April 2009 by DfT).
- The FD follows on from other EU mutual recognition initiatives, such as the European Arrest Warrant. It addresses a significant gap in EU judicial co-operation by applying the principle of mutual recognition to the enforcement of financial penalties across Member States. This shortcoming was highlighted when a Swedish company allegedly failed to pay a large fine imposed in England for serious health and safety offences relating to the collapse of a Ramsgate ferry walkway in 1994. Similarly, an Austrian firm was fined and again allegedly failed to pay over a tunnel collapse at Heathrow Airport the same year.
- Funding: Home Office has agreed to fund HMCS's start-up and running costs of the London Central Authority, estimated at £60k and £200k respectively until the end of this CSR. The funding of the UK courts and the Central Authority from the next CSR (2011) will fall to HMCS within the Ministry of Justice. (The EU did not provide any assistance with the funding of its Directive)

Q&As

Q: Will the fine be enforced effectively?

A: The courts in England & Wales, Scotland and Northern Ireland will collect and enforce the fine as if it were a fine arising from an English/ Welsh, Scottish or Northern Irish court. There will be no separate enforcement process for European fines.

Q: Why does the enforcing state keep the fine?

A: Although the framework does not state why fines should be treated in this way, allowing enforcing states to retain the fine will ensure that they are suitably compensated for the cost of enforcement and reduce what would be a huge amount of costly remittances between member states.

Q: What will happen to the compensation ordered to be paid by the offender to victims?

A: Any compensation awarded will not be retained by the enforcing state and will be remitted by the EU central authority directly to the victim issuing state.

Q: Why has this taken so long?

A: Her Majesty's Government was awaiting a suitable criminal justice legislative vehicle to implement the 2005 framework document. The 2008 Criminal Justice and Immigration Act provided such an opportunity. At present we understand that only 13 member states have implemented the framework. Upon receiving Royal Assent in May 2008 the UK 4 nation states have been working together to resolve legal, financial and operational issues involved in establishing this new initiative.

Q: If you are caught by a speed camera abroad, will this fine follow you?

A: It is unlikely that drivers of speeding vehicles detected by speed cameras alone in other countries will be punished for their offence, as they will not recognise a UK vehicle registration mark or be able to identify the keeper of the vehicle or the driver who committed the offence.

If that information was available, it would be possible, only providing

- the EU member State concerned has actually implemented MRFP
- the fine is €70 or above
- the natural or legal person is resident and/or has property and/or income in the UK
- no grounds for refusal apply

However, the decision on whether to request that a fine be enforced through MRFP is one for the EU member State alone. Note that MRFP applies to all criminal financial penalties, not just speeding offences.

Q: What about the appeal mechanism?

A: The EU Framework Decision states that, before a penalty can be transferred to another EU member State under MRFP, it must be 'final' and must have exhausted all routes, or no longer subject to appeal. The UK courts cannot reopen the case.

Q: How will the notice reach you and which court will you appeal to?

A: Fines from an EU member State will be sent to a new central authority in London, operated by HM Courts Service. Scotland and Northern Ireland have separate central authorities in Edinburgh and Belfast. The central authority will process the paperwork and forward the request to enforce to the magistrates' court in which the natural or legal person resides or has property or income. The central authority will advise the court on whether any of the grounds for refusal might apply. The decision on whether to accept or reject the request is a decision for the court.

The court will invite the natural or legal person to a court hearing to determine if any of the grounds for refusal apply. If accepted, the fine will be enforced in the same way as any other financial penalty imposed in England and Wales.

Q: Does it only apply to fines imposed by a court?

A: Yes. It also applies to fines arising as a result of unpaid Fixed Penalty Notices.

Q: Secondly, parking. It's a criminal offence in some countries in the EU, but a civil offence in the UK. Will this be covered?

A: No. MRFP in the UK only applies to criminal fines. IF it is a criminal offence in a EU Member State country and is over €70 it may be transferred to Great Britain to be enforced.

Q: What about those fines which are a result of speed cameras and depend on number plate identification?

A: We understand that in countries such as France, a large proportion of fines are 'on-the-spot' and when the driver is stopped proof of ID must be provided. If the offender cannot pay on the spot or provide proof of ID, they can be taken to the nearest cash point to pay the fine or detained until ID is provided.

For offences detected by speeding cameras which depend on number plate recognition alone, there is no formal mechanism for enforcing and tracing the offender back to the UK.

At the moment, non resident speeding (and red light) offenders cannot be identified from the vehicle registration mark. The proposed 2008 Cross-Border Enforcement Directive which is currently suspended, is an information exchange rather than an enforcement mechanism. It provides for identification of such offenders by exchange of data between vehicle / keeper licensing authorities (i.e. DVLA). The Directive did not make progress during the French Presidency during 2008 and has not been on the agenda during the Czech or Swedish presidencies in 2009. The Commission has indicated that it may bring forward a revised proposal once the Lisbon Treaty is in force, but that would need proper consideration in due course.

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