

Up to speed?

Driving in the UK on a foreign licence—dare you take the risk, ask **Robert Brown & Charles Elton**

Kamikaze cyclists, the congestion charge and the parking enforcement brigade—it's a wonder foreign nationals driving in the UK manage to get from A to B without their journey resulting in either corporal or financial ruin. But rules are rules. And though the rule book that keeps the traffic flowing is more than 1,200 pages, there is the reassurance that the rules are applied fairly and equally to all. Unfortunately, they are not.

The problem started with a misinterpretation of the law attributed, wrongly, by police to previous editions of *Wilkinson*, the hallowed authority on road traffic. This error has led, and continues to lead, to the police wrongfully issuing significant numbers of foreign drivers with fixed penalty notices (FPNs) for allegedly driving otherwise than in accordance with a valid licence, an offence under s 87(1) of the Road Traffic Act 1988 (RTA 1988).

An FPN for a UK licence-holder is certainly irritating. An FPN for driving without a valid licence, if the licence is alleged to be invalid on account of being foreign, brings far more immediate and onerous consequences. Police officers regularly impound vehicles in a mistaken belief that a "foreign" driver's licence (and therefore insurance policy) is not valid.

The driver's predicament is exacerbated when the operators of the pound do not allow him to drive his vehicle away because they refuse to accept that he is capable of obtaining valid insurance to drive anywhere in the UK.

The validity of a foreign licence depends primarily on the country of origin. Licences issued by an EC or EEA state (Community licences) are automatically valid. A licence obtained in almost any other jurisdiction will be valid for up to one year post-arrival in the UK. During that year, the holder of a non-European licence will first need to obtain a UK provisional licence and thereafter pass the multi-part competency test. The law is clearly expressed at reg 80 of the Motor Vehicles (Driving Licences) Regulations 1999 (SI 1999/2864): "A person

who becomes resident in Great Britain [...] shall, during the period of one year after he becomes so resident, be treated for the purposes of section 87 of the Traffic Act as the holder of a licence authorising him to drive all classes of small vehicle, motor bicycle or moped which he is authorised to drive by that permit."

Previous editions of *Wilkinson* have been read as interpreting this to mean that UK and foreign licences cannot be valid concurrently. The controversy stems from the section which reads: "On a purely practical basis, there is nothing to prevent a driver from abroad obtaining a provisional licence within the first year after becoming resident, *although it will supersede his foreign driving permit* [emphasis added]" (see *Wilkinson* 2005, 11-53). Although senior members of the Metropolitan Police Service Traffic Criminal Justice Operational Command Unit may have regarded the controversial clause as a "misprint", it would appear that the news

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never filtered down to the front line.

The phrase has, thankfully, been removed from more recent editions of *Wilkinson* to guard against this misinterpretation (*Wilkinson* 2009, 11-58). And, now that the clause has been removed, so must any suggestion that the grace period is curtailed by the grant of a provisional licence. Problem solved? Unfortunately not.

The evidence is that, even in June 2011, traffic police in London and elsewhere still operate in accordance with the erroneous interpretation of the law outlined above. As a consequence, drivers who have been UK-resident for less than one year and hold both a non-European full licence and a UK provisional licence are still being issued, wrongly, with FPNs citing a s 87 offence.

The FPN will state that the matter will



be dropped if, within 28 days, the "offender" accepts three penalty points and a £60 fine. In cases where the police do not offer an FPN (or do make an offer which is rejected by the recipient) the driver finds himself summonsed for the offence of driving otherwise than in accordance with a licence and driving without insurance. The latter offence is punishable by an endorsement to the tune of six to eight penalty points which, together with the likely battles with the car pound, explains why so many drivers take the three points on the chin.

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More strikingly still, even Community licence holders who, despite the lack of necessity, have obtained a UK provisional licence are being charged with having committed an offence under s 87, even though Community licences became part of English law in 1996 (see the Driving Licences (Community Driving Licence) Regulations 1996 (SI 1996/1974), which in 1998 were incorporated into the RTA 1988 at s 99A).

The so-called "misprint" was buried in the legal tomb approximately two years ago. Is anybody going to bring the various divisions of traffic police up to speed? **NLJ**

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