EXPLANATORY MEMORANDUM TO

THE COMMUNITY DRIVERS' HOURS OFFENCES (ENFORCEMENT) REGULATIONS 2017

2017 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport (DfT) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to broaden the methods of enforcement available for certain Community drivers' hours offences ("CDHOs") (as defined in the instrument) committed within 28 days prior to detection ("historical CDHOs") by enabling roadside enforcement officers to issue 'on-the-spot' penalties as an alternative to court proceedings. This instrument also ensures that these enforcement methods are available to enforcement officers when taking action in respect of both UK and non-UK drivers when they detect an infringement of certain Community drivers' hours rules outside of GB.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland.

4. Legislative Context

4.1 Regulation (EC) No 561/2006 ("the EU Regulation") lays down rules on driving times, breaks and rest periods, and the keeping of records, for drivers engaged in the carriage of goods and passengers by road and requires Member States to enable competent authorities to impose a penalty on drivers for infringements of the Regulation wherever they are committed. The European Agreement concerning the Work of Crews of Vehicles engaged in International Transport of 1st July 1970, as amended, ("the AETR"), also lays down rules in relation to maximum periods of driving and minimum breaks and rests. The rules in the AETR are aligned with those in the EU Regulation and this explanatory memorandum refers to those two sets of rules as "the Community drivers' hours rules". Amendments made by previous legislation to Part VI of the Transport Act 1968 made provision for offences and penalties for infringements of the Community drivers' hours rules.

4.2 The Road Traffic Offenders Act 1988 ("the RTOA") provides that when a constable or vehicle examiner has reason to believe a fixed penalty offence (as specified in column 1 of Schedule 3 to that Act) is being committed or has been committed on that occasion, a fixed penalty notice ("FPN")(section 54) or a conditional offer ("CO")(section 75 as it applies to Scotland) may be given. A FPN and a CO once

issued, enables a person to make a payment discharging the liability to conviction of the offence to which the FPN relates. A FPN may only be issued in England and Wales.

4.3 A fixed penalty deposit ("FPD") requirement issued under section 90A of the RTOA places a requirement on a person to make a payment of an appropriate amount, as specified in the Road Safety (Financial Penalty Deposit) (Appropriate Amount) Order 2009, which can then be used to pay any uncontested fixed penalty or be used to offset against any fine imposed in subsequent court proceedings. Section 90A provides, inter alia, that a FPD requirement may only be imposed by enforcement officers when a person has failed to provide a satisfactory UK address and 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 (section 90A(2)). The Road Safety (Financial Penalty Deposit) Order 2009 ("the FPDO"), made under section 90A, makes such specification.

4.4 Sections 54, 75 (as it applies to Scotland) and 90A of the RTOA all limit when an FPN, a CO, or a FPD, may be issued: a constable or vehicle examiner (enforcement officers) may issue a FPN, a CO or a FPD requirement when the officer has reason to believe that a person is committing or has on that occasion committed a fixed penalty offence. Those sections of the RTOA currently make no provision for offences which have been committed prior to that occasion. Sections 54, 75 (as it applies to Scotland) and 90A are amended by regulations 3, 4 and 7 of this instrument to enable FPNs, COs or FPD requirements to be issued as appropriate by enforcement officers, for CDHOs which they have reason to believe have been committed up to 28 days before the day of the occasion on which the CDHO is detected. Regulations 9 and 10 of this instrument make consequential amendments to the FPDO to ensure that the circumstances in which an FPD requirement may be imposed are aligned with the amendments made to section 90A of the RTOA.

4.5 Regulation 2 amends the Transport Act 1968 ensuring that in relation to sections 96(11A) and 98(4) of the Transport Act 1968, enforcement action can be taken for the infringement of the Community drivers' hours rules which constitute these two offences, whether those infringements occurred in Great Britain, in another Member State or in a country that is a contracting party to the Agreement on the European Economic Area or the AETR.

4.6 To prevent this instrument from having a retrospective effect, regulation 11 provides that this instrument does not apply to any CDHO which was committed before the day on which it comes into force.

5. Extent and Territorial Application

5.1 The extent of this instrument is Great Britain.

5.2 The territorial application of this instrument is Great Britain.

6. European Convention on Human Rights

6.1 Jesse Norman MP has made the following statement regarding Human Rights:

"In my view the provisions of the Community Drivers' Hours Offences (Enforcement) Regulations 2017 are compatible with the European Convention on Human Rights."

7. Policy background

What is being done and why

7.1 This instrument is made in connection with the enforcement of Community drivers' hours rules. The Community drivers' hours rules are in place not only to improve road safety and the working conditions of drivers, but to ensure fair competition in the industry, by setting a common standard of rules under which all drivers are required to operate.

7.2 CDHOs are detectable by enforcement officers either by checking a driver's paper record sheet recorded on an analogue tachograph or by checking a driver's tachograph card which is inserted into a digital tachograph. Roadside checks of a driver's tachograph card or tachograph record sheet, enable enforcement officers to establish whether the Community drivers' hours rules have been properly observed by a driver within the previous 28 days, wherever they have been driving. Any infringement of the drivers' hours rules on that day or within the previous 28 days detected by an enforcement officer may then be prosecuted in the Magistrates' Courts. For offences that are committed on the occasion of the compliance check, 'on-the-spot' enforcement is provided for under the RTOA but not in relation to offences committed on another occasion.

7.3 Enforcement of historical CDHOs currently necessitates prosecution of alleged offences in court. Court prosecutions are costly and relatively cumbersome. In addition, the court sanctions imposed are often comparable to fixed penalties. The changes made in this instrument are for the purpose of ensuring that enforcement officers have a broader choice of methods to deal with historical CDHOs and to confirm the applicability of those rules even when the journey involves the carriage of goods or passengers outside of the UK in other Member States and certain third countries. This will benefit UK and non-UK drivers who fall within the scope of the rules as it will provide them with the opportunity of paying an 'on-the-spot' penalty instead of going to court for a historical CDHO.

7.4 This instrument makes amendments to the RTOA and the FPDO for the purpose of enabling enforcement officers to issue FPD requirements to those without a satisfactory UK address in respect of any historical CDHO detected. This instrument amends the definition of road in the FPDO ensuring that the circumstances in which a FPD requirement can be imposed includes when an infringement of the Community drivers' hours rules, which constitutes an offence under sections 96(11A) and 98(4) of the Transport Act 1968, takes place on roads in specified countries outside of Great Britain.

7.5 The changes will also bring the UK in line with some other Member States, who already issue 'on-the-spot' penalties for historical infringements of the rules rather than bringing court proceedings.

7.6 On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

Consolidation

7.7 None.

8. Consultation outcome

8.1 On 16th June 2014, DfT issued a targeted 8 week consultation with industry stakeholders. DfT received 18 responses from a wide range of industry stakeholders, including the main trade associations. 82% of those who responded agreed that the legislation should be altered to ensure that historical drivers' hours offences are within the graduated fixed penalty and deposit scheme. One of the respondents said that they wanted to see 'cost-efficient and cost-effective means of enforcement and the absence of these for offences committed in the previous 28 days is a clear weakness in the current situation.". A summary of the responses to the consultation and the government's way forward was published on 28th November 2014. A copy of the summary and the original consultation (including the draft IA) are available to view on the gov.uk website at:

https://www.gov.uk/government/consultations/drivers-hours-and-hgv-levy-historical-offences

8.2 Although two trade associations were supportive, they wanted assurances that: the proposals would not unfairly affect the Operator Compliance Risk Score (i.e. that an operator would not be penalised for offences committed while a driver was working for a different company); industry would be consulted on any future changes to the Driver and Vehicle Standards Agency (DVSA) Sanctions Policy; and that enforcement officers would focus on serious offences and not penalise all minor offences. These concerns were addressed and a way forward agreed in follow-up meetings with DfT, DVSA, Police representatives and the trade associations.

9. Guidance

9.1 DVSA's guidance on drivers' hours and graduated fixed penalties will be amended to reflect the changes to legislation brought about by this instrument.

10. Impact

10.1 The impact on businesses, charities and voluntary bodies is minimal.

10.2 The impact on the public sector is minimal.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 This instrument amends primary legislation and makes consequential amendments to secondary legislation. It is outside the scope of the policy objectives, as set out in the statutory guidance, to include a statutory review provision where there are amendments to primary legislation. Also in respect of this measure, a statutory review would be disproportionate taking into account the economic impact of the regulatory provision on the qualifying activity. For these reasons, it is considered that the inclusion of a review provision in this instrument is not appropriate. An

administrative review will be conducted after five years to ensure this instrument continues to meet policy objectives.

13. Contact

13.1 Helen Grech at the Department for Transport, Telephone: 0207 944 2123 or email: helen.grech@dft.gsi.gov.uk can answer any queries regarding the instrument.