EXPLANATORY MEMORANDUM TO

THE ROAD SAFETY (FINANCIAL PENALTY DEPOSIT) (APPROPRIATE AMOUNT) AMENDMENT ORDER 2010

2010 No XXX

1. This Explanatory Memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instruments

2.1 The purpose of the Statutory Instrument (SI) covered by this Memorandum is to:

- Amend six financial penalty deposit levels currently prescribed in the Road Safety (Financial Penalty Deposit) (Appropriate Amount) Order 2009; and
- further amend that Order by specifying a financial penalty deposit level of £60 for the offence of failing to fix a prescribed registration mark to a vehicle in accordance with regulations contrary to section 59(1) of the Vehicle Excise and Registration Act 1994 ("VERA").

2.2 This SI increases the deposit level from £30 to £60 for the following offences:

- driving or keeping a vehicle without the required registration mark contrary to Section 42(1) of VERA;
- driving or keeping a vehicle with registration mark obscured contrary to section 43(1), VERA; and,
- breach of regulations relating to the wearing of seat belts/use of child restraint seats in contravention of sections 14 (3), 15 (2) and 15 (4) of the Road Traffic Act 1988.

2.3 This SI also reduces the financial penalty deposit level from £120 to £60 for the following offence:

- having insufficient tyre tread depth on a motorcycle, contrary to section 41A of the Road Traffic Act 1988.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The Road Safety (Financial Penalty Deposit) (Appropriate Amount) Order 2009 (SI 2009/492) prescribes the amount of financial penalty deposit which may be required by a police constable or a VOSA enforcement officer at the roadside. The deposit requirement may be imposed on an alleged road traffic offender who does not have a satisfactory address in the UK. The purpose of

the deposit is to provide a guarantee of payment of a fixed penalty notice or conditional offer in respect of an alleged offence.

4.2 The deposit penalty levels prescribed in the Road Safety (Financial Penalty Deposit) (Appropriate Amount) Order 2009 were intended to mirror the fixed penalty levels that prescribed at that time in the Fixed Penalty Order 2000 as amended in particular by the Fixed Penalty (Amendment) Order 2009 (S.I. 2009/488).

4.3 The Road Safety (Financial Penalty Deposit) Order 2009 specifies the offences for which a financial penalty deposit payment may be required from an alleged offender who does not have a satisfactory UK address (as defined in section 90A(4) of the Road Traffic Offenders Act 1988).

4.4 The Secretary of State has power – under the provisions of section 90B(2) of the Road Traffic Offenders Act 1988 – to make an Order to specify 'appropriate amounts' in relation to an offence. However, before doing so he must consult with such representative organisations as he thinks fit, in accordance with section 90E(4).

4.5 Sections 90A to 90E of the Road Traffic Offenders Act 1988 were inserted by section 11 of the Road Safety Act 2006.

4.6 This SI is one of a package of three SIs, the others being the Fixed Penalty (Amendment) Order 2010 and the Road Safety (Financial Penalty Deposit) (Amendment) Order 2010. This SI is the only one of the three which is subject to the affirmative resolution procedure and so is laid with a separate Explanatory Memorandum.

4.7 The changes to the levels of financial penalty deposit levels and the specification, for the first time, of a financial penalty deposit level for the section 59 VERA offence (see 2.1 above) are intended to reflect the levels of fixed penalty set for each of these offences. In the case of the section 59(1) VERA offence (failure to fix a registration mark in accordance with regulations) and the seat belt /child restraint seat offences under sections 14 and 15 of the Road Traffic Act 1988, the corresponding fixed penalty levels were raised from £30 to £60 by the Fixed Penalty (Amendment) (No.3) Order 2009. The fixed penalty levels for the offences, under sections 42(1) and 43(1) VERA for driving or keeping a vehicle without a registration mark or with that mark obscured are raised from £30 to £60 by the Fixed Penalty (Amendment) Order 2010.

5. Territorial Extent and Application

5.1 This Order applies to Great Britain.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State, Mr Mike Penning M.P. has made the following statement regarding Human Rights:

In my view, the provisions of the Road Safety (Financial Penalty Deposit) (Appropriate Amount) (Amendment) Order 2010 are compatible with the Convention rights.

7. Policy background

What is being done and why?

7.1 All fixed penalty levels and financial penalty deposit amounts are kept under regular review in order to help ensure that they are broadly consistent with penalty levels for similar offences; are set at an appropriate level to help deter offending; and, are in proportion to court fine levels. The policy is for Financial Penalty deposit levels to reflect the amount of the corresponding Fixed Penalty.

7.2 The decision has been taken to increase the penalty levels (both fixed penalty and corresponding financial penalty deposit) for the following offences:

- driving or keeping a vehicle without required registration mark;
- driving or keeping a vehicle with an obscured registration mark; and,
- breach of regulations in relation to seat belts/child restraints (contrary to section 14 (3), 15 (2) and 15 (4) of the Road Traffic Act 1988).

The reason for doing so is to try to increase the levels of compliance with the regulatory requirements about 'number-plates' and seat belts/child restraints.

7.3 The decision to set a fixed penalty level of £60 for a failure to fix a prescribed registration mark to a vehicle in accordance with regulations and, in this SI, to increase the financial penalty deposit amount to the same level was made for the same reasons.

7.4 The reduction in the penalty for insufficient tyre tread depth on a motorcycle reflects a corresponding reduction in the amount of the fixed penalty level for that offence as provided for in the Fixed Penalty (Amendment) Order 2010. The change is intended to reverse a previous increase from £60 to £120 put in place under the Fixed Penalty (Amendment) Order 2009 (S.I. 2009/488) and the Road Safety (Financial Penalty Deposit) (Appropriate Amount) Order 2009 (S.I. 2009/492). The increase was intended to affect commercial vehicles but also applied to motor cycles (although not to cars for which the relevant fixed penalty level and financial penalty amount has remained at £60). The Fixed Penalty (Amendment) Order 2010 and this Statutory Instrument therefore respectively restore the fixed penalty level and financial penalty deposit amounts to £60 for tyre tread depth infringements in the case of motor cycles.

Consolidation

7.5 There are no plans currently for consolidation.

8. Consultation Outcome

8.1 The Home Office consulted representative organisations in September 2009 on the proposal to raise the fixed penalty levels in respect of breaches of sections 42 and 43 of VERA, with an increase in the financial penalty deposit at a corresponding level. The consultation asked whether the offence under section 59(1) of VERA:

failure to fix a prescribed registration mark to a vehicle in accordance with the regulations under Section 23 (4), should be specified as a financial penalty deposit offence with a deposit at a corresponding level to the fixed penalty level. Comments were also sought on increasing the financial penalty deposit level for seatbelt offences under sections 14 and 15 of the 1988 Act, to correspond with the previously elevated fixed penalty level, amended by SI 2009/1487. There were eleven responses to the consultation, nine of which were supportive of the proposals and two of which considered the proposals to be too lenient.

8.2 The Department for Transport subsequently consulted on the proposal to reinstate the fixed penalty level for insufficient tyre tread depth on motorcycles to its former level. Eight responses were received, all of which were supportive. The amount being prescribed by way of deposit for this offence is the same as the fixed penalty level.

9 Guidance

9.1 The Government does not consider that additional guidance is necessary. This amending Order merely changes the level of certain financial penalty deposits so as to align them with the penalty level for the corresponding offence. The Vehicle Operator Services Agency (an Executive Agency of the Department for Transport) has published guidance on the enforcement of fixed penalties (graduated and standard) and financial penalty deposits.
http://online.businesslink.gov.uk/Transport_files/8001_VOSA_fixed_penalties_and_financial_deposits_2.pdf

10. Impact

10.1 We have not attached an Impact Assessment because there will not be any impact on businesses (including small businesses) which are compliant with the law.

11. Regulating small business

11.1 The legislation applies to all users of motor vehicles, irrespective of whether they are private individuals, large businesses or small businesses. However, the subject of the legislation would only affect road traffic offenders who were not compliant with relevant legal requirements relating to the use of motor vehicles.

12. Monitoring & Review

12.1 The Department for Transport will continue to keep the subject of fixed penalty and financial penalty deposit levels under review in conjunction with colleagues in the Home Office who have a wider responsibility for the determination of penalty levels generally.

13 . Contact

13.1 The official within the Department for Transport who can be contacted with queries on this instrument is Joanne Wake, in LRI Division, Department for Transport, Zone 2/09, 76 Marsham Street, Westminster, London, SW1P 4DR; e-mail Joanne.wake@dft.gsi.gov.uk