EXPLANATORY MEMORANDUM TO

THE ROAD SAFETY (FINANCIAL PENALTY DEPOSIT) (APPROPRIATE AMOUNT) (AMENDMENT) ORDER 2013

2013 No. [XXXX]

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 instrument

2.1 The purpose of the Statutory Instrument (SI) covered by this Memorandum is to amend all financial penalty deposit levels currently prescribed in the Road Safety (Financial Penalty Deposit) (Appropriate Amount) Order 2009, as amended by the Road Safety (Financial Penalty Deposit) (Appropriate Amount) Amendment Order 2010, except those relating to parking offences.

2.2 This SI increases the deposit levels for all such offences listed in the Order as follows:

- £30 to £50
- £60 to £100
- £120 to £200
- £200 to £300

2.3 This SI also increases the court penalty deposit amount from £300 to £500 in circumstances where a person is notified that it is likely that proceedings will be brought against him. It also increases the maximum appropriate amount in respect of any single occasion on which more than one financial penalty deposit requirement has been imposed from £900 to £1500.

2.4 The SI also specifies the amount of £100 for the deposit for the fixed penalty offence of careless driving.

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

3.1 The real value of financial penalty deposits for motoring offences, alongside fixed penalty notice (FPN) levels for those same offences, has declined. For example, the current value of the £60 FPN would be £80 if this penalty level had kept pace with inflation. The increases made by this SI will help ensure that the financial penalty deposit levels remain 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 Department does not currently have any plans for further increases but penalty levels will be kept under review.

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 officer or a Vehicle and Operator Services Agency (VOSA, an executive

agency of the Department for Transport) 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 levels prescribed in the Road Safety (Financial Penalty Deposit) (Appropriate Amount) Order 2009 were intended to mirror the fixed penalty levels that were prescribed at that time in the Fixed Penalty Order 2000 as amended in particular by the Fixed Penalty (Amendment) Order 2009 (SI 2009/488).

4.3 The Road Safety (Financial Penalty Deposit) Order 2009 (SI 2009/491) 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 This SI is one of a package of three SIs, the others being the proposed Fixed Penalty Offences Order 2013 and the proposed Fixed Penalty (Amendment) Order 2013. 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.

5. Territorial Extent and Application

5.1 This Order applies to Great Britain.

6. European Convention on Human Rights

6.1 Stephen Hammond MP, Parliamentary Under Secretary of State for Transport, has made the following statement regarding Human Rights:

> "In my view, the provisions of the Road Safety (Financial Penalty Deposit) (Appropriate Amount) (Amendment) Order 2013 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 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 equate to the amount of the corresponding Fixed Penalty.

7.2 In May 2011, the Department for Transport announced its intention to increase £60 motoring fixed penalty notice offences to somewhere in the £80 to £100 range in its Strategic Framework for Road Safety. The levels for most motoring fixed penalty notices were last increased in 2000 and therefore their real value has fallen substantially. They are also disproportionately low when compared to other penalty notices for offences of a similar severity, which risks some of these offences (used in relation to serious behaviours such as speeding, mobile phone use whilst driving and not wearing a seat belt) being perceived as minor infringements. For example, higher and lower tier Penalty

Notices such as Disorder (PNDs) are set at £50 (e.g. leaving litter) and £80 (drunk and disorderly, criminal damage) respectively. The Ministry of Justice have already announced plans to increase these levels. Increasing motoring penalty levels would ensure consistency with other penalty notices.

7.3 The decision has since been taken to increase the penalty levels (both fixed penalty and corresponding financial penalty deposit levels) for all road transport offences, except parking offences. The reason for doing so is to try to increase the levels of compliance with regulatory motoring and road transport requirements.

- ***Consolidation***

7.4 The Department has no current plans to consolidate the instrument amended by this Order and does not consider it would be proportionate to do so at this point in time.

8. Consultation outcome

8.1 The Department held a public consultation on raising most of the penalty levels for motoring offences by 50% or by a similar proportion from June to September 2012. The public consultation highlighted that any changes in penalty levels would be reflected in the financial deposit levels to ensure consistency. Responses to the consultation were received from the following groups: members of the public, road safety interest groups, police, courts, business, local authorities and other interested groups.

8.2 There were mixed reactions to increasing penalty levels. 45% of respondents agreed with increasing the £60 FPNs to £90 and 50% agreed with increasing the £30 FPNs to £45. The main reasons why respondents disagreed, mainly members of the public, were because the increases were perceived as unfair in the present economic climate. However, the majority of organisations were in favour of the proposed increases, with many agreeing with the arguments presented in the consultation that the increases were overdue and should be kept in line with other similar penalties. A majority (57%) of respondents supported increasing the driving with no insurance FPN from £200 to £300, with many suggesting the increase should be higher to account for high insurance costs. In the case of increasing graduated fixed penalties and financial deposits, more than half of the organisations that responded thought the penalties should be increased by a similar proportion. A majority of organisations thought that, because the continuous insurance enforcement scheme was relatively new, the associated fixed penalty should not be increased.

8.3 Following responses to the consultation, the Department has decided to increase some of the penalty levels by two thirds (i.e. £30 to £50, £60 to £100, £120 to £200). The increases made by this SI are within the range of amounts stated in the Strategic Framework for Road Safety and will provide a degree of stability for penalty levels in the longer term.

8.4 The Department has decided to proceed with increasing the driving with no insurance FPN from £200 to £300, and the £200 level of graduated fixed penalties and financial deposits to £300, as consulted.

8.5 The Department has decided not to proceed with increases to penalty levels for the Continuous Enforcement Insurance Scheme. This is because the majority of

organisations who responded felt that because the scheme was relatively new it is too soon to increase penalty levels.

8.6 A summary of responses, including the Government response, can be found on the GOV.UK website.

9. Guidance

9.1 VOSA has published guidance on the enforcement of fixed penalties (graduated and standard) and financial penalty deposits. This will be updated to reflect the new penalty levels and the revised version will be available on GOV.UK from the day the new levels come in to force. 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 changes to the penalty level for the corresponding offence.

10 Impact

10.1 A full impact assessment of the effect this instrument will have is available on the GOV.UK website.

10.2 There will be no impact on businesses (including small businesses). The legislation will only affect road traffic offenders who are not compliant with relevant legal requirements relating to the use of motor vehicles.

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 legislation will only affect road traffic offenders who are not compliant with relevant legal requirements relating to the use of motor vehicles.

12. Monitoring and 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 and the Ministry of Justice who have a wider responsibility for the determination of penalty levels generally.

13. Contact

13.1 Matthew Hammond at the Department for Transport Tel: 020 7944 2492 or e-mail: matthew.hammond@dft.gsi.gov.uk can answer any queries regarding the instrument.