EXPLANATORY MEMORANDUM TO

THE FIXED PENALTY (AMENDMENT) ORDER 2014

2014 No. 259

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 this instrument is to amend the Fixed Penalty Order 2000 by adding a monetary amount for the fixed penalty prescribed for the offence under section 11 of the HGV Road User Levy Act 2013 ("the 2013 Act").

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

3.1 None

4. Legislative Context

4.1 Part III of the Road Traffic Offenders Act 1988 ("the 1988 Act") enables the use of fixed penalty notices ("FPNs") by police officers and DVSA[1] officers for offences listed in Schedule 3 to the 1988 Act. An FPN allows an offender to pay a fixed sum within a specified period to avoid prosecution for the offence. Fixed penalties are currently used for offences committed in respect of vehicle roadworthiness, overloading, and drivers' hours. The amount of the penalty for each offence for which an FPN can be given is set out in the Fixed Penalty Order 2000[2].

4.2 Section 13 of the 2013 Act inserts the offence in section 11 of that Act into Schedule 3 to the Road Traffic Offenders Act 1988 creating a new fixed penalty offence for using or keeping a heavy goods vehicle ("HGV") on a public road without paying the appropriate HGV Road User Levy ("the Levy"). The monetary amount of the fixed penalty notice is set by this Order at £300.

4.3 During the passage of the 2013 Act, the Minister informed Parliament that FPNs would be used to enforce the Levy. At the time, the Minister told Parliament that the monetary amount of the FPN for failing to pay the Levy would be £200[3]. However, since then, the Minister has conducted a general review of the levels of FPNs, which has resulted in a general increase. The increases in FPNs were made by the Fixed Penalty (Amendment) Order 2013[4]. As a result, the Minister has decided on a monetary amount of

[1] Drivers and Vehicle Standards Agency, an executive agency of the Department for Transport.
[2] SI 2000/2792 as amended by SIs 2003/1254, 2009/488, 2009/1487, 2010/2720, 2013/1569 and 2013/1840.
[3] Public Bill Committee, *HGV Road User Levy Bill* (HC 2012-13) cols 117 to 118.
[4] SI 2013/1569.

£300 for an FPN for failure to pay the Levy in order to ensure that the penalty is broadly consistent with penalty levels for similar offences.

4.4 This instrument is one of a package of three instruments that amend existing legislation to ensure that FPNs and financial penalty deposits may be used to enforce the offence in section 11(1) of the 2013 Act. The other instruments being the Road Safety (Financial Penalty Deposit) (Amendment) Order 2014, which allows financial penalty deposits to be required where an offender does not have a satisfactory UK address; and the Road Safety (Financial Penalty Deposit) (Appropriate Amount) Order 2014, which sets the monetary amount of the deposit in line with this instrument.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 The 2013 Act introduces a levy for using or keeping an HGV of 12 tonnes (12,000 kg) or more on public roads in the UK. The amount of the levy is determined in accordance with the weight and number of axles of the vehicle, and applies equally to UK and non-UK registered vehicles.

7.2 A person using or keeping an HGV registered in the UK will pay the levy on an annual or six-monthly basis at the same time as their vehicle excise duty. A person using or keeping an HGV registered outside the UK will pay the levy for the amount of time he or she intends to use or keep their vehicle on a public road in the UK (i.e. they may pay on a daily, weekly, monthly or annual basis).

7.3 It is an offence to use or keep an HGV on a public road in the UK without paying the Levy, and on summary conviction, a fine of up to level 5 on the standard scale may be imposed. This Order enables police and DVSA officers to impose FPNs, which avoid adding to the burden on the courts.

- 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 now.

8. Consultation outcome

8.1 The Department for Transport conducted a 6-week consultation from the 26th September 2013 to 7th November 2013. The consultation sought the views of interested parties including individuals, trade associations, and other motoring and freight organisations on the instruments relating to the 2013 Act.

8.2 We received comments that the monetary amount for FPNs issued for failure to pay the Levy should be higher. We have decided not to increase the monetary amount of FPNs for this offence in order to keep it in line with the amount for other offences.

9. Guidance

9.1 VOSA has published guidance on the enforcement of FPNs. This will be updated to reflect the inclusion of the offence in section 11(1) of the 2013 Act and a revised version will be available on GOV.UK from the day that this instrument comes into force. The Government does not consider that additional guidance is necessary.

10. Impact

10.1 An impact assessment has not been produced for this instrument. There will be no impact on businesses (including small businesses). The legislation will only affect operators and users of HGVs who do not comply with their legal obligations.

11. Regulating small business

11.1 This instrument applies to any person who keeps or uses an HGV of 12 tonnes or more on a public road, irrespective of whether they are large or small businesses. However, the legislation will only affect those persons who do not comply with their legal obligations.

12. Monitoring & review

12.1 The Department for Transport will keep FPNs under review for this new offence and more generally along with colleagues in the Home Office and the Ministry of Justice who have a wider responsibility for determining the monetary amount of penalties.

13. Contact

13.1 Peter Steele at the Department for Transport, Great Minster House, 33 Horseferry Road, London, SW1P 4DR Tel: 020 7944 8177 or email: HGVCharging@dft.gsi.gov.uk can answer queries regarding this instrument or the policy area.