EXPLANATORY MEMORANDUM TO

THE FIXED PENALTY (AMENDMENT) ORDER 2010

2010 No. 2720

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

2010 No. 2721

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 Instruments covered by this Memorandum is to:

- amend three penalty levels currently prescribed in the Fixed Penalty Order 2000 (SI 2000/2792); and
- specify (by amending the Road Safety (Financial Penalty Deposit) Order 2009 (SI 2009/491)) a further offence for which a financial penalty deposit may be required.

2.2 The amendment to the Fixed Penalty Order 2000 also provides clarity on the interaction between Schedules 1 and 2 of that Order, making fully clear that the levels for fixed penalty offences in Schedule 1 are subject to the graduated levels set out in Schedule 2 for cases where those offences are committed in the particular circumstances specified in that Schedule.

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

3.1 None.

4. Legislative Context

Fixed Penalty Order 2000

4.1 The Fixed Penalty Order 2000 ("the 2000 Order") prescribes the amount of the fixed penalty for particular road traffic offences. The 2000 Order was made under section 53 of the Road Traffic Offenders Act 1988 ("the 1988 Act") and that section was amended by section 3 of the Road Safety Act 2006 so as to allow for the amounts of fixed penalties to be graduated in specified cases according to the seriousness of an offence and other circumstances in which it was committed. The Fixed Penalty

(Amendment) Order 2009 (S.I. 2009/488) accordingly made provision for the graduation of fixed penalties in a number of specified cases. The Fixed Penalty (Amendment) Order 2010 further amends the 2000 Order (a) to increase the level of fixed penalty (from £30 to £60) for the offences of driving or keeping a vehicle without the required registration mark or with the registration mark obscured; and (b) to reduce the amount of the fixed penalty level (from £120 to £60) for the offence (under section 41A of the Road Traffic Act 1988) of breaching requirements as to tyre tread, under the Road Vehicles (Construction and Use) Regulations 1986(S.I. 1986/1078) where this offence is committed in the case of a motor cycle.

4.2 The Secretary of State has power – under the provisions of section 88(1) of the 1988 Act – to make orders under section 53 of that Act. However, before doing so he must consult with such representative organisations as he thinks fit, in accordance with section 88(2).

The Road Safety (Financial Penalty Deposit) Order 2009

4.3 The Road Safety (Financial Penalty Deposit) Order 2009 ("the 2009 Order") specifies offences for which a financial penalty deposit payment can be taken from an alleged offender who does not have a satisfactory UK address (as defined in section 90A(4) of the 1988 Act). The Road Safety (Financial Penalty Deposit) (Amendment) Order 2010 amends the 2009 Order by specifying a further offence (that of failing to fit a registration mark in accordance with regulations under the Vehicle Excise and Registration Act 1994) in respect of which a financial penalty deposit can be taken.

4.4 The Secretary of State has power – under the provisions of section 90E(1) of the 1988 Act – to make such an order under section 90A(2)(b) of the Act. However, before doing so he must consult with such representative organisations as he thinks fit, in accordance with section 90E(2). Sections 90A to 90E of the 1988 Act were inserted by section 11 of the Road Safety Act 2006.

5. Territorial Extent and Application

5.1 These Orders apply to Great Britain.

6. European Convention on Human Rights

6.1 As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

What is being done and why?

7.1 All fixed penalty levels 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.

7.2 The decision has been taken to increase the penalty level for the following two offences:

- driving or keeping a vehicle without the required registration mark; and,
- driving or keeping a vehicle with an obscured registration mark;

The reason for doing so is to increase the levels of compliance with the regulatory requirements about 'number-plates'.

7.3 Failing to comply with the requirements about registration marks can have significant implications for criminal investigations and also crime detection. It also has implications for enforcement by Automatic Number Plate Recognition (ANPR) systems – since an obscured or non-existent number-plate will inevitably frustrate ANPR enforcement techniques.

7.4 The reduction in the penalty for insufficient tyre tread depth on a motorcycle is intended to reverse an earlier increase when graduated fixed penalties were introduced under the Fixed Penalty (Amendment) Order 2009. The intention at the time had been to increase the fixed penalty (from £60 to £120) for cases where the tyre tread depth was inadequate for commercial vehicles. The reference to relevant provisions of the Road Vehicles (Construction and Use) Regulations 1986, however, meant that the increase also applied in cases where the tyre tread depth was inadequate on a motor cycle (a separate rule specifying different tyre tread requirements applies for cars for which the penalty has remained unchanged at £60). The Fixed Penalty (Amendment) Order 2010 decreases the level of the penalty in relation to inadequate tyre tread depth on a motorcycle from £120 to £60.

7.5 As the fixed penalty provisions now stand, there are graduated levels of £60, £120 and £200 for certain offences when committed in specified circumstances, as set out in Schedule 2 to the 2000 Order. However, there are also default levels of £30 for non-endorseable and £60 for endorseable fixed penalty offences which apply in cases where no other penalty level is specified generally for that offence in Schedule 1 or where the offence in question has been committed otherwise than in particular circumstances for which a graduated fixed penalty is specified in Schedule 2. A minor drafting amendment to the 2000 Order is included in the Fixed Penalty (Amendment) Order 2010 to make this position entirely clear.

7.6 The 2009 Order is being amended to specify the offence of failing to fix a prescribed registration mark to a vehicle, in accordance with regulations made under the Vehicle Excise and Registration Act 1994, as an offence in respect of which a financial penalty deposit can be requested.

Consolidation

7.7 There are no plans currently for consolidation of the 2000 Order or the 2009 Order.

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 representative organisations 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.

8.3 With regard to the minor drafting amendment made to the 2000 Order (see paragraph 7.5 above), the Department for Transport consulted 'the Fixed Penalty Procedure Working Group' – which is the management committee assigned to keep the fixed penalty scheme under review, and includes both governmental and non-governmental representation – about the change, and all of the representatives agreed that it was appropriate to amend the Fixed Penalty Order 2000 as proposed.

9 Guidance

9.1 The Government does not consider that additional guidance is necessary. The Fixed Penalty (Amendment) Order 2010 simply changes the level of certain fixed penalties and provides clarification about the interaction of Schedules 1 and 2 of the 2000 Order. The Road Safety (Financial Penalty Deposit) (Amendment) Order 2010 simply specifies an additional offence as one in respect of which a financial penalty deposit can be imposed. 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 fixed penalty 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