EXPLANATORY MEMORANDUM TO

THE ROAD SAFETY (FINANCIAL PENALTY DEPOSIT) (AMENDMENT) ORDER 2014

2014 No. 267

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 This instrument amends the Road Safety (Financial Penalty Deposit) Order 2009 by adding the offence of using or keep a heavy goods vehicle ("HGV") on a public road in the UK without paying the levy in accordance with section 11(1) of the HGV Road User Levy Act 2013 ("the 2013 Act") to the list of offences for which a financial penalty deposit may be required by enforcement authorities in Great Britain.

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 police officers and DVSA[1] officers in Great Britain to issue fixed penalty notices for offences listed in Schedule 3 to the 1988 Act. A fixed penalty notice ("FPN") allows an offender to pay a fixed sum within a specified period to avoid prosecution for the offence. FPNs are currently used for offences committed in respect of vehicle roadworthiness, overloading, and drivers' hours. The monetary amount of the fixed penalty for each offence for which an FPN can be given is set out in the Fixed Penalty Order 2000[2].

4.2 Part IIIA of the 1988 Act enables a police officer or DVSA officer in Great Britain to require the payment of a deposit where the alleged offender does not have a satisfactory UK address for those offences set out in the Road Safety (Financial Penalty Deposit) Order 2009[3]. The monetary amount of such deposits is set out in the Road Safety (Financial Penalty Deposit) (Appropriate Amount) Order 2009[4] and those amounts are intended to mirror the monetary amounts of FPNs. The purpose of the deposit is to provide a guarantee of payment of an FPN, or a conditional offer in Scotland, in respect of an alleged offence.

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[1] Driver 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] SI 2009/495 as amended by SI 2010/2721.
[4] SI 2009/492 as amended by SIs 2010/3016 and 2013/2025.

4.3 Section 13 of the 2013 Act inserts the offence in section 11 of that Act into Schedule 3 of the Road Traffic Offenders Act 1988, creating a new fixed penalty offence of using or keeping an HGV on a public road without paying the appropriate HGV Road User Levy. The monetary amount of the fixed penalty notice will be set at £300 by the Fixed Penalty (Amendment) Order 2014. This instrument adds the offence in section 11(1) of the 2013 Act to the list of offences for which a financial penalty deposit may be required by enforcement authorities in Great Britain. The monetary amount of the financial penalty deposit that may be required for the offence in section 11(1) of the 2013 Act will be set at £300 by the Road Safety (Financial Penalty Deposit) (Appropriate Amount) Order 2014.

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 appropriate 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 require financial penalty deposits from alleged offenders without a satisfactory UK address, enabling enforcement against persons using vehicles registered outside the UK who are difficult to pursue effectively once they have returned to their country of origin.

- Consolidation

7.2 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 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 HGV Road User Levy Act 2013.

8.2 The Department also received comments on our plans to enforce the charge against the driver at the roadside rather than operator. The Department responded that financial penalty deposits for other vehicle-related offences are currently required from the drivers without a satisfactory UK address, and the use of such penalties is a key part of our enforcement strategy. However, the enforcement officers will also be able to take payment of the penalty deposit over the telephone from another party, for example, the vehicle owner or operator.

9. Guidance

9.1 DVSA has published guidance on the enforcement of FPNs and financial penalty deposits. 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 any 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 The legislation applies to any person who keeps or uses an HGV of 12 tonnes or more on a public road in the UK, irrespective of whether they are large or small businesses. However, this legislation will only affect those persons who fail to comply with their legal obligations.

12. Monitoring & review

12.1 The Department for Transport will keep FPNs and financial penalty deposits 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 level 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.