EXPLANATORY MEMORANDUM TO

THE ROAD USER CHARGING SCHEMES (PENALTY CHARGES, ADJUDICATION AND ENFORCEMENT) (ENGLAND) (AMENDMENT) REGULATIONS 2014

2014 No. 81

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument amends the Road User Charging Schemes (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2013 (SI 2013/1783) (the "2013 Regulations") in two ways.

2.2 First, it alters the definition of the type of vehicle hire agreement caught by regulation 6(5) of the 2013 Regulations by including such agreements under which vehicles are hired for six months or more. The significance of a hire agreement being subject to regulation 6(5) is that the vehicle-hire firm (being the registered keeper of the vehicle) is able to transfer liability for road user charges and penalty charges incurred by the vehicle to it to its hirer.

2.3 Second, it requires a charging authority to consider refunding not just the penalty charge but also the road user charge where it accepts that one of the grounds for making representations against the issue of a penalty charge notice in regulation 8(3) of the 2013 Regulations has been established and cancels the penalty charge notice.

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

3.1 Regulation 4 of these regulations addresses the concern raised by the JCSI in Item 5 of their Twelfth Report of Session 2013 – 14 published on 13 November 2013.

4. Legislative Context

4.1 Section 163(2) of TA 2000 provides that charges imposed in respect of any motor vehicle by a charging scheme under Part 3 of the Transport Act 2000 (TA 2000) shall be paid by the registered keeper of the motor vehicle or, in circumstances specified in regulations made by the appropriate national authority, by such person as is so specified.

4.2 Section 198(1) of TA 2000 provides that in relation to charging schemes relating only to England the Secretary of State is the appropriate national authority and accordingly the Secretary of State made the 2013 Regulations which entered force on 2nd September 2013.

4.3 Section 173(1) of TA 2000 provides that the appropriate national authority may by regulations make provision for or in connection with the imposition and payment of charges ("charging scheme penalty charges") in respect of acts, omissions, events or circumstances relating to or connected with charging schemes made under Part 3 of that Act.

4.4 Section 173(3) of TA 2000 provides that charging scheme penalty charges in respect of any vehicle shall be paid by the registered keeper of the motor vehicle or, in circumstances specified in regulations made by the appropriate national authority, [i.e. the 2013 Regulations] by such person as is so specified.

4.5. These regulations amend the 2013 Regulations in two ways:

(a) as was the case under the original version of the 2013 Regulations responsibility for road user charges and penalty charges can be transferred by a vehicle-hire firm (being the registered keeper of the vehicle) to the hirer of the vehicle. These amending regulations remove the restriction on this only being possible where the vehicle concerned is let to the hirer for a fixed period of less than six months. This is achieved by using definitions in paragraph 13 of Schedule 4 to the Protection of Freedoms Act 2012 in place of those in section 66 of the Road Traffic Offenders Act 1988;

(b) to require a charging authority that accepts that one of the grounds for making representations against the issue of a penalty charge notice in regulation 8(3) of the 2013 Regulations is satisfied to consider refunding not only the penalty charge paid but also (if applicable) the road user charge paid too.

4.6 Because the 2013 Regulations contained provisions about the notification, adjudication and enforcement of charging scheme penalty charges the Lord Chancellor was required to join with the Secretary of State for Transport in making them, exercising the powers in s.173(4), 195(1)(b) to (d) and (2) and 197(1) of TA 2000. Because the amendments which are the subject matter of these regulations do not concern the parts of the 2013 Regulations which deal with the notification, adjudication and enforcement of penalty charges the Secretary of State has sufficient vires to make them alone.

5. Territorial Extent and Application

5.1 This instrument applies to England.

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***

(a) Change regarding hire vehicles

7.1 Article 6(5) of the 2013 Regulations explains the circumstances in which the registered keeper of a vehicle, being a vehicle-hire firm, may transfer liability for road user charges and penalty charges incurred by that vehicle to its hirer, he or she having hired the vehicle from the vehicle-hire firm pursuant to a hiring agreement.

7.2 Article 6(7)(c) of the 2013 regulations defines the expressions "hiring agreement" and "vehicle-hire firm" with reference to s.66 of the Road Traffic Offenders Act 1988. The definitions in that section are:

> "hiring agreement" refers only to an agreement which contains such particulars as may be prescribed and does not include a hire-purchase agreement within the meaning of the Consumer Credit Act 1974.
>
> "vehicle-hire firm" means any person engaged in hiring vehicles in the course of a business.

Crucially for present purposes s.66(7) of the Road Traffic Offenders Act 1988 applies section 66 to:

"a hiring agreement under the terms of which the vehicle concerned is let to the hirer for a fixed period of less than six months … ".

7.3 The Department for Transport consulted on the 2013 Regulations before they were made. Whilst the original intention was to use the definitions from s.66 of the Road Traffic Offenders Act 1988 in the 2103 Regulations, as a result of a response received the Department agreed to use the definitions of "hire agreement" and "vehicle-hire firm" in paragraph 13(6) of Schedule 4 to the Protection of Freedoms Act 2012 instead. The definitions in that paragraph are:

> "hire agreement" means an agreement which-
>
> (i) provides for a vehicle to be let to a person ("the hirer") for a period of any duration (whether or not the period is capable of extension by agreement between the parties); and

(ii) is not a hire-purchase agreement within the meaning of the Consumer Credit Act 1974

"vehicle-hire firm" means any person engaged in the hiring of vehicles in the course of a business.

7.4 The definition of "hire agreement" in the Protection of Freedoms Act 2012 removes the six month duration cap imposed by s. 66(7) of the Road Traffic Offenders Act 1988.

7.5 The purpose of article 3 of these amending regulations is to amend article 6 of the 2013 Regulations and replace the definitions from s.66 of the Road Traffic Offenders Act 1988 with those from paragraph 13(6) of Schedule 4 to the Protection of Freedoms Act 2012.

(b) Change regarding consideration of refund of road user charge in addition to penalty charge

7.6 Regulation 9(1) of the 2013 Regulations provides for a penalty charge notice to be cancelled where a charging authority accepts that a ground for making representations against the issue of such a notice in regulation 8(3) has been established. Regulation 9(1)(c) provides that where a penalty charge notice is cancelled the charging authority must refund any sum paid in respect of the penalty charge notice.

7.7 To correct an inconsistency in the 2013 Regulations article 4 of these amending regulations requires that the consideration by the charging authority of the refund of the penalty charge under regulation 9(3) must also include a consideration of whether the road user charge paid in addition to the penalty charge should be refunded as well.

8. Consultation outcome

8.1 The Order being amended was the subject of a consultation, but none is required for this Instrument.

9. Guidance

9.1 The Department does not consider that any guidance is needed for these regulations as they have no direct effect on business or individuals. It will be for individual charging authorities to explain the effect of these regulations when they choose to make a charging scheme that draws on the provisions of the 2013 Regulations as amended by them.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply directly to small business.

12. Monitoring & review

12.1 As these regulations do not themselves impose a regulatory burden on business no provisions for monitoring or review have been included. Any road user charging scheme that draws on the 2103 Regulations as amended by these regulations should contain a review and sunset clause.

13. Contact

Mark Fletcher at the Department for Transport (telephone 0207 944 2284 : email mark.fletcher@dft.gsi.gov.uk) can answer any queries regarding the instrument.