
STATUTORY INSTRUMENTS

2009 No. 1914

HIGHWAYS

**The Heavy Goods Vehicles (Charging for the
Use of Certain Infrastructure on the Trans-
European Road Network) Regulations 2009**

<i>Made</i>	- - - -	<i>15th July 2009</i>
<i>Laid before Parliament</i>		<i>21st July 2009</i>
<i>Coming into force</i>	- -	<i>15th August 2009</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(1).

The Secretary of State has been designated for the purposes of section 2(2) in relation to charges (including taxes and tolls) on vehicles(2).

PART 1

GENERAL

Citation and commencement

1.—(1) These Regulations may be cited as the Heavy Goods Vehicles (Charging for the Use of Certain Infrastructure on the Trans-European Road Network) Regulations 2009.

(2) They come into force on 15th August 2009.

Interpretation

2.—(1) In these Regulations—

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- (1) [1972 c.68](#); section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act [2006 \(c.51\)](#). Under section 57(1) of the Scotland Act [1998 \(c.46\)](#), despite the transfer to Scottish Ministers of functions in relation to implementing obligations under Community law in relation to devolved matters, the function of the Secretary of State in relation to those obligations continues to be exercisable by the Secretary of State as regards Scotland. As regards Northern Ireland and Wales, the Secretary of State continues to have power to make regulations under section 2(2) of the European Communities Act 1972, and is designated for the purposes of that section, in relation to the whole of the United Kingdom.
- (2) [S.I. 2009/707](#).

“the 1999 Directive” means Directive No. [1999/62/EC](#) of the European Parliament and of the Council of 17th June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures⁽³⁾;

“appropriate national authority” means, in relation to a toll or user charge which is levied in respect of the use of a section of infrastructure in—

- (a) England, the Secretary of State,
- (b) Wales, the Welsh Ministers,
- (c) Scotland, the Scottish Ministers,
- (d) Northern Ireland, the Department for Regional Development in Northern Ireland,

except that in relation to a toll levied in respect of the use of either of the Severn Bridges, the “appropriate national authority” means the Secretary of State;

“enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;

“EURO 0”, “EURO I”, “EURO II”, “EURO III”, “EURO IV”, “EURO V” or “EEV” mean, in relation to a category of HGV, the category of HGV which complies with the emission limits referred to in Annex 0;

“HGV” means a heavy goods vehicle, namely a motor vehicle or articulated vehicle combination intended or used exclusively for the carriage by road of goods, and having a maximum permissible laden weight of over 3.5 tonnes;

“operator” means, in relation to a section of infrastructure, the person who or body which is authorised under an enactment to levy the tolls or user charges in respect of the use of that section of infrastructure;

“responsible person” means, in relation to a section of infrastructure, the person who or body which is authorised under an enactment to determine the rates of a toll or user charge to be levied in respect of the use of that section of infrastructure;

“Severn Bridges” means the new bridge and the existing bridge as defined in section 39(1) of the Severn Bridges Act 1992⁽⁴⁾;

“the TERN” means the trans-European road network, which is the road network defined in Section 2 of Annex I to Decision No [1692/96/EC](#) of the European Parliament and of the Council of 23rd July 1996 on Community guidelines for the development of the trans-European transport network as illustrated by maps⁽⁵⁾;

“toll” means a specified amount payable for an HGV travelling a given distance on a section of infrastructure, the amount being based on the distance travelled and the type of HGV;

“type of HGV” has the meaning given in Article 2 of the 1999 Directive to “type of vehicle”; and

(3) O.J. L 187, 20.7.1999, p. 42; the Directive has been amended by Directive [2006/38/EC](#) of the European Parliament and of the Council of 17th May 2006 (O.J. L 157, 9.6.2006, p.8.), Council Directive [2006/103/EC](#) of 20th November 2006 (O.J. L 363, 20.12.2006, p.344), and by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (O.J. L 236, 23.9.2003, p.33). The 1999 Directive was incorporated into Annex XIII (Transport) to the EEA Agreement by the Decision of the EEA Joint Committee No 5/2002 of 1st February 2002 (O.J. L 88, 4.4.2002, p.9 and EEA Supplement No 18, 4.4.2002, p.6). Some of the amendments to the 1999 Directive have also been incorporated: the amendments made by Council Directive [2006/103/EC](#) were incorporated by Decision No 132/2007 (O.J. L 100, 10.4.2008, p.1 and EEA Supplement No 19, 10.4.2008, p.1); and the amendments made by the Act concerning the conditions of accession were incorporated by the 2004 Enlargement Agreement (O.J. L 130, 29.4.2004, p.3 and EEA Supplement No 23, 29.4.2004, p.1).

(4) [1992 c.3](#).

(5) O.J. L 228, 9.9.1996, p. 1. This Decision was last amended by Decision No [884/2004/EC](#) (O.J. L 167, 30.4.2004, p 1).

“user charge” means a specified amount payment of which confers the right for an HGV to use for a given period a section of infrastructure.

- (2) In these Regulations, unless the context otherwise requires—
- (a) a reference to a numbered Annex is a reference to the Annex to the 1999 Directive which is so numbered;
 - (b) the following expressions have the meanings given in Article 2 of the 1999 Directive—
 - “concession contract”
 - “concession toll”
 - “construction costs”
 - “weighted average toll”;
 - (c) other expressions which are also used in the 1999 Directive have the meaning which they bear in the 1999 Directive.

Application

3.—(1) Subject to paragraph (2), these Regulations apply in relation to any toll or user charge which is authorised under an enactment to be levied in respect of the use by an HGV of a section of the infrastructure in the United Kingdom forming part of the TERN.

(2) These Regulations do not apply in relation to tolls or user charges which do not discriminate on any of the grounds referred to in regulation 12(1) and are—

- (a) specifically levied on HGVs of abnormal weights or dimensions, or
- (b) specifically designed to combat time and place related traffic congestion, or environmental impacts (including poor air quality).

PART 2

REQUIREMENTS RELATING TO THE DETERMINATION OF THE RATES OF A TOLL OR USER CHARGE

Calculation of weighted average tolls

4.—(1) Subject to the following paragraphs, in relation to the process of determining the rates of a toll to be levied, the responsible person must take into account the following when calculating the weighted average toll—

- (a) the construction costs of the section of the infrastructure in relation to which the toll is to be levied, and
- (b) the cost of operating, maintaining and developing that section of the infrastructure.

(2) When calculating the weighted average toll, the responsible person may also take into account a return on capital or a profit margin based on market conditions.

(3) The responsible person may decide that all the costs referred to in paragraph (1) are to be recovered through revenue from tolls, or that these costs are not to be recovered through revenue from tolls, or that only a percentage of these costs is to be recovered through revenue from tolls.

- (4) Where a tolling arrangement—
- (a) does not involve a concession toll, and
 - (b) comes into effect after the date these Regulations come into force, or came into effect on or before that date and is being substantially modified after that date,

the responsible person must calculate the costs referred to in paragraph (1) using a methodology based on the core calculation principles set out in Annex III.

- (5) Paragraph (6) applies where a tolling arrangement—
 - (a) does involve a concession toll, and
 - (b) comes into effect after the date these Regulations come into force, or came into effect on or before that date and is being substantially modified after that date.
- (6) Where this paragraph applies, the responsible person must—
 - (a) calculate the costs referred to in paragraph (1) using a methodology based on the core calculation principles set out in Annex III,
 - (b) calculate the weighted average toll which results from using that methodology, and
 - (c) on the basis of a reference period appropriate to the nature of the concession contract concerned, determine the maximum level of toll which is equivalent to, or less than, that weighted average toll.

Variation of rates of tolls for combating environmental damage and tackling congestion etc

5.—(1) Subject to paragraph (3), the responsible person may vary the rates of a toll as set out in paragraph (5) for any of the purposes referred to in paragraph (2).

- (2) The purposes referred to are—
 - (a) combating environmental damage,
 - (b) tackling congestion,
 - (c) minimising infrastructure damage,
 - (d) optimising the use of the infrastructure concerned, and
 - (e) promoting road safety.
- (3) Any variation of the rates of a toll pursuant to paragraph (1) must—
 - (a) be proportionate,
 - (b) be transparent and non-discriminatory,
 - (c) not be designed to generate additional revenue from tolls, and
 - (d) be in accordance with the maximum flexibility thresholds set out in paragraphs (6) and (7).

(4) If, despite paragraph (3)(c), a variation of the rates of a toll results in additional revenue and a weighted average toll which is not in accordance with regulation 4, the responsible person must counterbalance this by varying the rates of a toll within two years of the end of the accounting year in which the additional revenue is generated.

(5) Subject to paragraphs (6) and (7) and regulation 6, the rates of a toll may be varied according to either or both of the following—

- (a) whether the HGV is of a ‘Euro 0’, ‘Euro I’, ‘Euro II’, ‘Euro III’, ‘Euro IV’, Euro V’, or ‘EEV’ category,
- (b) the time of day, the type of day, or the season.

(6) Where the rates of a toll are varied under paragraph (5)(a), the resulting toll must not be more than 100% above the toll charged for an equivalent HGV which meets the strictest emission standards referred to in Annex 0.

- (7) Where the rates of a toll are varied under paragraph (5)(b)—
 - (a) the toll must not be more than 100% above the toll charged during the cheapest period of the day, type of day, or season, and

- (b) where the cheapest period is zero-rated, the toll for the most expensive time of day, type of day or season is no more than 50% of the level of toll that would otherwise be applicable to the HGV in question.

Obligation to vary rates of tolls according to the emission standards of HGVs

6.—(1) Subject to regulation 7, where a toll is imposed under a concession contract, the responsible person must vary the rates of the toll in accordance with regulation 5(5)(a) when that concession contract is renewed.

(2) Subject to regulation 7, in relation to a toll which is not imposed under a concession contract—

- (a) if the toll has effect on the date these Regulations come into force, or comes into effect after these Regulations come into force and on or before 31st December 2010, the responsible person must vary the rates of the toll in accordance with regulation 5(5)(a) before the end of 31st December 2010;
- (b) if the toll comes into effect on or after 1st January 2011, the responsible person must vary the rates of the toll in accordance with regulation 5(5)(a) when the toll comes into effect.

Derogation from obligation to vary rates of tolls

7.—(1) The responsible person may derogate from a requirement in regulation 6 where—

- (a) to vary the rates in accordance with regulation 5(5)(a) would—
 - (i) seriously undermine the coherence of the tolling system in the United Kingdom, or
 - (ii) lead to diversion of the most polluting HGVs away from the TERN with consequential impacts on road safety and public health, or
- (b) for the tolling system concerned it would not be technically practicable to introduce such differentiation as indicated in regulation 5(5)(a).

(2) The following paragraphs apply where a requirement in regulation 6 is derogated from.

(3) If the responsible person is not an appropriate national authority, the responsible person must notify the appropriate national authority of the derogation by the end of the period or by the date, as the case may be, referred to in paragraph (5).

(4) If the responsible person notifies the appropriate national authority under paragraph (3), or if the responsible person is an appropriate national authority, the appropriate national authority must notify the European Commission of the derogation.

(5) The periods or date referred to are—

- (a) in the case of a toll referred to in regulation 6(1), the period of 14 days beginning with the date the concession contract is renewed;
- (b) in the case of a toll referred to in regulation 6(2)(a), 14th January 2011;
- (c) in the case of a toll referred to in regulation 6(2)(b), the period of 14 days beginning with the date on which the toll comes into effect.

Power to vary rates of tolls for projects of high European interest

8.—(1) Subject to paragraphs (2) and (3), in relation to a section of infrastructure comprising a specific project of high European interest, the responsible person may vary the rates of the toll for the purpose of securing the commercial viability of the project.

(2) The rates may only be varied in accordance with paragraph (1) if the variation is in accordance with paragraphs (3) to (7) of regulation 5 and the resulting charging structure for the toll complies with the following conditions—

- (a) it is linear,
- (b) it is proportionate,
- (c) it is openly published,
- (d) it is available to all users on equal terms, and
- (e) it does not lead to additional costs being passed to other users of the infrastructure in question in the form of higher tolls.

(3) If the responsible person is not an appropriate national authority, the responsible person must notify the appropriate national authority of the intention to vary in accordance with this regulation.

(4) If the responsible person notifies the appropriate national authority under paragraph (3), or if the responsible person is an appropriate national authority, the appropriate national authority must notify the European Commission of the intention to vary in accordance with this regulation.

(5) The operator must not implement the variation before the operator has been notified by the responsible person that the European Commission has confirmed that the variation complies with the conditions referred to in paragraph (2).

(6) The power to vary the rates of a toll for the purpose set out in paragraph (1) is in addition to the power to vary the rates for a purpose set out in regulation 5(2).

Rates of user charges

9.—(1) This regulation applies where it is intended to levy a user charge.

(2) The responsible person in relation to that user charge may not determine the rate of that charge (including administrative costs) for an HGV of the ‘Euro 0’, ‘Euro I’, ‘Euro II’, ‘Euro III’, ‘Euro IV’, ‘Euro V’ or ‘EEV’ category, for a year, month, week or day, to be higher than the maximum rate indicated in Annex II for an HGV of that category and for the period in question.

(3) The responsible person must determine rates for a user charge which are in proportion to the duration of the use to be made of the section of infrastructure referred to in regulation 3(1).

(4) The responsible person may determine an annual rate which is only applicable in relation to an HGV registered in the United Kingdom.

PART 3

REQUIREMENTS RELATING TO THE LEVYING AND COLLECTION OF A TOLL OR USER CHARGE

Levying a toll or user charge in relation to all HGVs

10.—(1) Subject to paragraph (2), if an operator is authorised under an enactment to levy a toll or user charge in respect of an HGV having a maximum permissible laden weight of at least 12 tonnes, then on and after 1 January 2012 the operator must levy the toll or user charge in respect of all HGVs.

(2) Paragraph (1) does not apply where—

- (a) the operator is an appropriate national authority, and the operator is satisfied that the levying of the toll or user charge in respect of HGVs of less than 12 tonnes would create the effects referred to in paragraph (3) or involve the costs referred to in paragraph (4), or
- (b) the operator is not an appropriate national authority, and the operator satisfies the appropriate national authority that the levying of the toll or user charge in respect of HGVs of less than 12 tonnes would create the effects referred to in paragraph (3) or involve the costs referred to in paragraph (4).

(3) The effects referred to are significant adverse effects on the free flow of traffic, the environment, noise levels, congestion or health.

(4) The costs referred to are administrative costs which would be more than 30% of the additional revenue generated.

Tolls and user charges not to be levied simultaneously

11.—(1) Subject to paragraph (2), an operator may not levy both a toll and a user charge at the same time in respect of a category of HGV for the use of a section of the infrastructure referred to in regulation 3(1).

(2) An operator may levy a toll for the use of a section of that infrastructure where user charges are authorised under an enactment to be levied for the use of a bridge, tunnel or mountain pass.

Requirement not to discriminate

12.—(1) Subject to paragraph (2), in the levying of a toll or user charge, an operator must not discriminate, directly or indirectly, on the grounds of nationality of the haulier, the country or place of establishment of the haulier or of registration of the HGV, or the origin or destination of the transport operation.

(2) Paragraph (1) does not apply in relation to discrimination which is rendered unlawful by section 20 (which concerns discrimination in the provision of goods, facilities or services) of the Race Relations Act 1976(6).

Reductions and exemptions

13.—(1) Subject to paragraphs (3) and (4), if an operator is authorised under an enactment to make a reduction in a toll or user charge to be levied in respect of an HGV, or to make an exemption from the obligation to pay a toll or user charge in respect of an HGV, the operator may only make a reduction or grant an exemption if the HGV is within paragraph (2).

(2) An HGV is within this paragraph if it—

- (a) is exempt from the requirement to install and use recording equipment under Council Regulation (EEC) No 3821/85 of 20th December 1985 on recording equipment in road transport(7),
- (b) is used for national or civil defence purposes, by fire or other emergency services or the police, or is used for road maintenance, or
- (c) travels only occasionally on public roads in the Member State where it is registered and is used by persons whose main occupation is not the carriage of goods.

(3) In respect of an HGV within paragraph (2)(c), a reduction may only be made or an exemption granted where—

- (a) the transport operations carried out by the HGV do not cause distortions of competition, and
- (b) the European Commission's agreement to the reduction or exemption has been obtained.

(4) This regulation does not apply in relation to a reduction in a toll to be levied in respect of an HGV used by a frequent user.

(6) 1976 c.74; section 20 was amended by S.I. 2003/1626.

(7) O.J. L 370, 31.12.1985, p. 8; as amended by Commission Regulation (EC) No 432/2004 (O.J. L 71, 10.3.2004, p. 3)

Discounts and reductions for frequent users

14.—(1) If an operator is authorised under an enactment to give a discount or to make a reduction in a toll to be levied in respect of an HGV used by a frequent user, the operator may only give the discount or make the reduction if the conditions referred to in paragraph (2) are satisfied.

(2) The conditions referred to are that—

(a) the discount or reduction—

(i) satisfies the requirements referred to in regulation 5(3),

(ii) complies with the Treaty establishing the European Community, in particular Articles 12, 49, 86 and 87,

(iii) does not distort competition in the internal market, and

(iv) does not in any case exceed 13% of the toll paid in respect of equivalent HGVs not eligible for the discount or reduction, and

(b) the resulting charging structure is linear, proportionate, available to all users on equal terms and does not lead to additional costs being passed on to other users in the form of higher tolls.

Arrangements for the collection of tolls and user charges

15.—(1) The operator in relation to a toll or user charge must ensure that such tolls or user charges are collected in such a way as to cause as little hindrance as possible to the free flow of traffic and avoid any mandatory controls or checks at the European Union's internal borders.

(2) The appropriate national authority in relation to each user charge to which these Regulations apply must co-operate with the authorities in other EEA States to establish methods for enabling hauliers to pay those user charges 24 hours a day, at least at the major sales outlets, using all common means of payment.

(3) Where an operator has facilities at the point of payment for a toll or user charge, the operator must ensure that those facilities are adequate to maintain normal road safety standards.

(4) An operator must ensure that its arrangements for collecting tolls or user charges do not, financially or otherwise, place non-regular users of the section of infrastructure, in relation to which the toll or user charge is levied, at an unjustified disadvantage.

(5) Without prejudice to the generality of paragraph (4), where an operator collects tolls or user charges exclusively by means of a vehicle on-board unit, it must make such units available to those who require them under reasonable administrative and economic arrangements.

Levying tolls where vehicle documents unavailable

16. Where the rate of a toll to be levied in respect of an HGV varies according to its category as referred to in regulation 5(5)(a), and the driver of the HGV is unable to produce the vehicle documents necessary to ascertain that category and the type of HGV in the event of a check, the operator may levy a toll at the highest rate that the operator has authority to levy.

PART 4

INFORMATION REQUIREMENTS

Information requirements where a concession toll is not involved

17.—(1) Paragraphs (2) to (5) apply where the responsible person in relation to a tolling arrangement is not an appropriate national authority, and the tolling arrangement—

- (a) comes into effect after the date these Regulations come into force, and
- (b) does not involve a concession toll.

(2) Where this paragraph applies, the responsible person must communicate to the appropriate national authority the following information—

- (a) the unit values and other parameters the responsible person uses in calculating the various cost elements, and
- (b) clear information on the HGVs covered by the tolling regime and the geographic extent of the network, or part of the network, used for each cost calculation and the percentage of costs that the responsible person is seeking to recover.

(3) Subject to paragraph (5), the information referred to in paragraph (2) must be communicated to the appropriate national authority at least five months before the tolling arrangement is due to come into effect.

(4) Where the appropriate national authority has received the information in accordance with paragraph (3), it must communicate the information to the European Commission at least four months before the tolling arrangement is due to come into effect.

(5) Where the tolling arrangement is due to come into effect less than five months after the date these Regulations come into force—

- (a) the information referred to in paragraph (2) must be communicated to the appropriate national authority as soon as reasonably practicable and in any event before the tolling arrangement is due to come into effect, and
- (b) upon receiving the information, the appropriate national authority must communicate the information to the European Commission as soon as reasonably practicable.

(6) Paragraphs (7) and (8) apply where the responsible person in relation to a tolling arrangement is an appropriate national authority, and the tolling arrangement—

- (a) comes into effect after the date these Regulations come into force, and
- (b) does not involve a concession toll.

(7) Subject to paragraph (8), where this paragraph applies, the responsible person must communicate to the European Commission the information referred to in paragraph (2)(a) and (b) at least four months before the tolling arrangement is due to come into effect.

(8) Where the tolling arrangement is due to come into effect less than four months after the date these Regulations come into force, the responsible person must communicate to the European Commission the information referred to in paragraph (2)(a) and (b) as soon as reasonably practicable.

Information requirements where a concession toll is involved

18.—(1) Paragraphs (2) and (3) apply where the responsible person in relation to a tolling arrangement is not an appropriate national authority, and the tolling arrangement—

- (a) comes into effect after the date these Regulations come into force, and
- (b) does involve a concession toll.

(2) Where this paragraph applies, the responsible person must communicate to the appropriate national authority the following information—

- (a) details of the concession contract under which the concession toll is levied, or significant changes to such contracts, and
- (b) the base case on which the grantor under the concession contract has founded the notice of concession, as referred to in Annex VII B to Directive 2004/18/EC of the European Parliament and of the Council of 31st March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts(8).

(3) The base case referred to in paragraph (2)(b) must include—

- (a) an estimate of the costs referred to in regulation 4(1) in relation to the concession,
- (b) a forecast of the traffic divided into types of HGV,
- (c) the levels of tolls envisaged, and
- (d) the geographic extent of the network covered by the concession contract.

(4) Paragraphs (5) and (6) apply where the responsible person in relation to a tolling arrangement is an appropriate national authority, and the tolling arrangement—

- (a) comes into effect after the date these Regulations come into force, and
- (b) does involve a concession toll.

(5) Subject to paragraph (6), where this paragraph applies, the responsible person must communicate to the European Commission the information referred to in paragraph (2)(a) and (b) at least four months before the tolling arrangement is due to come into effect.

(6) Where the tolling arrangement is due to come into effect less than four months after the date these Regulations come into force, the responsible person must communicate to the European Commission the information referred to in paragraph (2)(a) and (b) as soon as reasonably practicable.

Tolls on parallel roads

19.—(1) Paragraph (2) applies where—

- (a) there is a road running parallel to the infrastructure forming part of the TERN,
- (b) traffic may be diverted from a section of the infrastructure referred to in regulation 3(1) onto that parallel road, or the infrastructure and the parallel road are in direct competition, and
- (c) a new tolling arrangement is due to come into effect in respect of the use by HGVs of the parallel road.

(2) Where this paragraph applies, the appropriate national authority in relation to that section of infrastructure must communicate to the European Commission at least four months before the new tolling arrangement in respect of the use by HGVs of the parallel road is due to come into effect—

- (a) an explanation of the geographic extent of the network covered by the new toll,
- (b) the HGVs in respect of which the toll is to be levied,
- (c) the levels of toll envisaged, and
- (d) an explanation of how the level of tolls was determined.

(8) O.J. L 134, 30.4.2004, p.114.

Communication of discount and reduction schemes to the European Commission

20.—(1) This regulation applies where an operator has a scheme for giving discounts or making reductions in the rates of a toll or a user charge, and the scheme has not been notified to the European Commission on or before the date of these Regulations coming into force.

(2) If the operator is not an appropriate national authority, the operator must notify the appropriate national authority of that scheme.

(3) In the case of a scheme which has effect at the date of these Regulations coming into force, the notification to the appropriate national authority must be made as soon as reasonably practicable after the date of these Regulations coming into force.

(4) In the case of a scheme which is to come into effect after the date of these Regulations coming into force, the notification to the appropriate national authority must be made before the scheme comes into effect.

(5) If an appropriate national authority receives notification of a scheme, or if the operator is an appropriate national authority, the appropriate national authority must notify the European Commission of the scheme.

PART 5

COMMON SYSTEMS WITH OTHER EEA STATES

Common systems for user charges

21.—(1) Paragraph (2) applies where—

- (a) there are one or more schemes for user charges in effect which relate to sections of the infrastructure referred to in regulation 3(1) (“the UK schemes”),
- (b) there are one or more schemes for user charges in effect which relate to sections of the infrastructure in the territory of one or more other EEA States, and that infrastructure forms part of the TERN (“the EEA schemes”),
- (c) the appropriate national authorities in relation to the UK schemes propose to co-operate with the authorities in relation to the EEA schemes to introduce a common system of user charges, and
- (d) it is intended that the common system will be applicable to the whole of the territories of the United Kingdom and of the one or more other EEA States.

(2) Where this paragraph applies, the common system may not come into effect in relation to the United Kingdom unless the appropriate national authorities in relation to the UK schemes are satisfied that the conditions referred to in paragraph (3) will be met when the common system is in effect.

(3) The conditions referred to are—

- (a) the rates of the user charges will be no higher than the maximum rates referred to in regulation 9(2),
- (b) payment of the user charge will entitle the payer to access, without further payment, to those parts of the TERN which are in the territories of the participating States and are subject to a user charge,
- (c) the system will be open to other EEA States to join, and
- (d) each of the participating States will receive a fair share of the revenues accruing from the user charge.

(4) The appropriate national authorities in relation to the UK schemes must ensure that the Commission is notified of the common system before it comes into effect in relation to the United Kingdom.

PART 6

ENFORCEMENT

Monitoring

22. The appropriate national authority in relation to each toll or user charge in relation to which these Regulations apply must monitor the system of determining their rates and the system of levying the toll or user charge, so as to ensure that the systems function in a transparent and non-discriminatory manner.

Notices of non-compliance and stop notices

23.—(1) This regulation applies in relation to any requirement imposed by these Regulations on an operator or a responsible person, except where that operator, or responsible person as the case may be, is an appropriate national authority.

(2) Where an appropriate national authority considers that an operator or a responsible person has not complied with a requirement imposed by these Regulations, the authority may give that operator, or responsible person as the case may be, a notice to that effect.

(3) A notice given under paragraph (2) must—

- (a) state the reasons why the authority considers that the requirement has not been complied with,
- (b) provide details of any remedial steps which the authority considers to be necessary,
- (c) specify the period before the end of which those remedial steps are to be taken, and
- (d) inform the recipient of the right to make representations to the authority within such period as is specified in the notice.

(4) The authority may extend each of the periods allowed under the notice for—

- (a) taking any remedial steps, or
- (b) making representations.

(5) When both of these periods have expired, the authority must then decide within a reasonable period whether to issue a stop notice to the operator, or to the responsible person as the case may be.

(6) A stop notice is a notice requiring the recipient to take an action, or to cease an activity, as specified in the notice.

(7) If, having considered any representations made by the operator or the responsible person, the authority decides not to issue a stop notice, it must give the operator, or the responsible person as the case may be, written notice.

(8) If, having considered any representations made by the operator or the responsible person, the authority decides to issue a stop notice, that notice must—

- (a) be in writing,
- (b) be given to the operator, or to the responsible person as the case may be,
- (c) give details of the action which the recipient must take, or of the activity which the recipient must cease, and

- (d) state the date on or before the end of which the action is to be taken, or on or before the end of which the activity is to cease.
- (9) It is the duty of an operator, or of a responsible person as the case may be, to whom a stop notice is issued to comply with it.
- (10) That duty is enforceable in civil proceedings by the appropriate national authority—
 - (a) for an injunction,
 - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988⁽⁹⁾, or
 - (c) for any other appropriate remedy or relief.

Signed by authority of the Secretary of State for Transport

15th July 2009

Sadiq Khan
Minister of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive No. [1999/62/EC](#) of the European Parliament and of the Council of 17th June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures, as amended by two further Directives and the Act of Accession to the European Union (“the 1999 Directive”). The two amending Directives are Directive [2006/38/EC](#) of the European Parliament and of the Council of 17th May 2006, and Council Directive [2006/103/EC](#) of 20th November 2006.

The Regulations apply in relation to any toll or user charge which is authorised under an enactment to be levied for the use of infrastructure forming part of the Trans-European Road Network in the United Kingdom. The Regulations only apply in relation to tolls or user charges levied on heavy goods vehicles.

Part 2 of the Regulations sets out requirements about the calculation of the tolls and user charges, and how the rates may be varied. *Part 3* sets out requirements about the levying and collection of tolls and user charges. *Part 4* sets out requirements provisions about communicating information, in particular to the European Commission.

Part 5 sets out a restriction on the introduction of a common system of user charges for the whole of the United Kingdom and one or more other EEA States.

Part 6 sets out a requirement about the monitoring of the systems of tolls and user charges, and provides for enforcement of the requirements.

An Impact Assessment has been prepared and copies may be obtained from the Department for Transport, Great Minster House, 76 Marsham Street, London SW1P 4DR. A copy has been placed in the Library of each House of Parliament.

A copy of the Transposition Note is also available from the Department for Transport.

The Impact Assessment and the Transposition Note are also annexed to the Explanatory Memorandum which is available alongside these Regulations on the OPSI website www.opsi.gov.uk.