

EXPLANATORY MEMORANDUM TO
THE HEAVY GOODS VEHICLES (CHARGING FOR THE USE OF CERTAIN
INFRASTRUCTURE ON THE TRANS-EUROPEAN ROAD NETWORK)
(AMENDMENT) REGULATIONS 2014

2014 No. 2437

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

This instrument implements a 2011 European Directive relating to tolls and charges for lorries using motorways or the Trans-European Road Network in the UK (which consists mainly of motorways but includes some trunk roads). The Directive does not require member states to levy tolls or charges for lorries, but requires such tolls or charges, when they exist on roads covered by the Directive, to comply with certain requirements. The Directive amends an earlier substantive 1999 Directive, and is intended to prevent distortion of competition in the road haulage sector by a partial harmonisation of rules for charging for road use.

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

None.

4. Legislative Context

4.1 This instrument implements Directive 2011/76/EU (“the 2011 Directive”) which amends Directive 1999/62/EC.

4.2 This instrument amends the Heavy Goods Vehicles (Charging for the Use of Certain Infrastructure on the Trans-European Road Network) Regulations 2009 (S.I. 2009/1914) which implemented Directive 1999/62/EC, as previously amended by Directives 2006/38/EC and 2006/103/EC.

4.3 A Transposition Note is attached in the Annex.

4.4 The Regulations include ambulatory references to some technical annexes in the amended 1999 Directive. This means if there are future changes to those technical annexes, the Regulations continue to refer to the amended annexes.

4.5 The UK voted for the 2011 Directive at the European Council on 12 September 2011. The proposal that resulted in Directive 2011/76/EU was the subject of **EM 11857/08**. The House of Commons European Scrutiny Committee considered the EM on 8 October 2008. The Committee recommended that the document was

politically important and did not clear it (Report 34, Session 2007-2008, 29851). The House of Lords Select Committee on the European Union referred the EM to Sub-Committee B at their 1333rd sif on 30 September 2008. The Sub-Committee took evidence from officials on 27 October 2008 and the Chairman wrote to the Minister on 5 November 2008 holding the document under scrutiny.

4.6 On 21 November 2008 the Minister wrote to both Committee Chairmen. The House of Commons European Scrutiny Committee considered the letter on 26 November 2008. The Committee maintained its recommendation that the document was politically important and did not clear it, (Report 40, Session 2007-2008). A further Ministerial letter was sent to both Committees on 4 December 2008. The Chairman of the House of Lords Select Committee on the European Union replied to the Minister on 10 December 2008, clearing the document from scrutiny.

4.7 A Ministerial letter was sent to both Committees on 27 January 2009. The House of Commons European Scrutiny Committee considered the letter on 11 February 2009. The Committee maintained its recommendation that the document was politically important, and cleared it (Report 8, Session 2008-2009). Further Ministerial letters were sent to both Committees on 28 April 2009, 6 October 2010, 23 November 2010, and 13 September 2011.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

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

7.1 The amended 1999 Directive prescribes rules that must be followed for tolls or user charges paid in respect of HGVs used on motorways or the Trans-European Road Network where such tolls or charges apply. The inclusion of motorways is new in the amended 1999 Directive. Tolls and user charges are permitted on other roads, that is roads that are neither on the Trans-European Road Network or motorways, and they do not have to follow the specific rules in the amended 1999 Directive. The amended 1999 Directive defines a “user charge” as being a charge related to a period of time, whereas a “toll” is related to distance travelled or to the use of a specific piece of infrastructure such as a bridge. The amended 1999 Directive does not mandate the imposition of tolls or user charges but, where they are in place, they must follow the rules in the amended 1999 Directive.

7.2 The amended 1999 Directive applies only to heavy goods vehicles (“HGVs”). These are vehicles intended or used for carrying goods by road, with a total loaded

weight of over 3.5 tonnes. This means that if a toll or user charge is applied to HGVs, then it must apply to all HGVs over 3.5 tonnes. However the amended 1999 Directive also allows this weight limit to be changed to 12 tonnes or more. In this case, if a toll or user charge is applied to HGVs, then it must apply to all HGVs of 12 tonnes or more. HGVs of over 3.5 tonnes but less than 12 tonnes can be excluded from having to pay tolls or user charges, provided the Member State can justify this exclusion, and the reasons for it are communicated to the European Commission.

7.3 The amended 1999 Directive also provides that:

- i. a toll may now include an “infrastructure charge” element and an “external cost charge” element. A toll can be either or both of these. An infrastructure charge is intended to reflect the costs of building and maintaining infrastructure (which was the previous definition of “toll”). An external cost charge is intended to reflect costs due to air and noise pollution, such that they are paid by the user of the road.
- ii. to adjust the rules for the setting of tolls, for example allowance for varying tolls by congestion. There are maximum levels of variation allowed, and a maximum of five hours a day that a peak congestion variation can be applied, and variations must not result in additional revenue.
- iii. to make provision for multi-country tolling arrangements, in addition to the allowance previously in the unamended 1999 Directive for multi-country user charges. Such a system would be a common system for tolls applicable in their combined territories. The common system must allow other countries to join it.
- iv. to provide greater clarity that charges and tolls can be applied only to vehicles of 12 tonnes or over, rather than vehicles over 3.5 tonnes, provided certain conditions are met.
- v. to introduce new rules for user charges, based on time rather than distance travelled, such that short-term charges (eg daily) cannot be more than a specified percentage of the annual charge.

7.4 The un-amended 1999 Directive’s original objective was to ensure that countries did not introduce road charging schemes for HGVs that impacted unfairly on international trade. The amended 1999 Directive introduced elements for allowing charges for “external” costs such as pollution and congestion. This is following the “user pays” and “polluter pays” principles.

7.5 The enforcement regime contained in the 2009 Regulations is light touch, does not include criminal sanctions, and is wholly unchanged by the instrument.

7.6 There are currently only three tolls or charges in the UK to which the amended 1999 Directive applies. They are already compliant with the terms of it so no changes will be needed to ensure compliance with the instrument. They are the toll required to use the M6 Toll road, the toll required to cross the Severn Crossings, and the HGV

levy, which is time-based user charge that any HGV over 12 tonnes need to pay before using the UK road network.

7.7 The Department considers that legislation is required, since tolls may be operated by private sector companies. Amending legislation is required to change the 2009 Regulations, since without amendments the 2009 Regulations are no longer consistent with the amended 1999 Directive.

7.8 The Department does not intend to produce a formal consolidated instrument. However the Department will consider consolidation if the Regulations need further amendment in future, due to further amending Directives.

8. Consultation outcome

8.1 Before making the 2009 Regulations, which previously transposed the 2006 amendments to the 1999 Directive, the Department undertook a 12 week formal written consultation. There were three responses to that consultation; none of these opposed the approach taken with the Regulations.

8.2 These Regulations make limited, technical amendments to the 2009 Regulations. For this reason an informal, targeted consultation was considered to be appropriate. The draft Regulations were sent to the two main road haulage representative groups (the Road Haulage Association and the Freight Transport Association (“FTA”) and the two companies operating tolls covered by the amended 1999 Directive. They were also sent to the Devolved Administrations. This informal consultation included all the organisations that responded to the consultation in 2009.

8.3 Two consultation responses were received, from the FTA and the Department of the Environment in Northern Ireland. Neither raised any objections. The FTA agreed that the amendments are minor and that existing tolls and the HGV levy will not need to change as a result of the amendments. No concerns were raised by consultees on the nature of the consultation.

9. Guidance

No formal guidance is to be produced, as the Regulations do not require any changes to existing tolls or charges.

10. Impact

10.1 The impact on business, charities or voluntary bodies is zero. Neither of the existing tolls covered by the Regulations need to change as a result of it. Nor does the HGV Levy, which is a user charge for the purposes of the amended 1999 Directive.

10.2 The impact on the public sector is zero.

10.3 An Impact Assessment has not been prepared for this instrument because no impact on the private, voluntary or public sector is foreseen.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

No specific review is planned as the impacts are expected to be negligible. This was borne out in evidence obtained from consultation.

13. Contact

Peter Steele at the Department for Transport Tel: 020 7944 8177 or email: peter.steele@dft.gsi.gov.uk can answer any queries regarding the instrument.

Annex: Transposition note for Regulations transposing Directive 2011/76/EU

The table below has a row for each article of the 2011/76/EU Directive, which amends the 1999/62/EC Directive. For each row, the “explanation” column sets out what the article does, and the “implementation” column shows which regulation of the draft 2014 Regulations implements the provision. That column also explains how the 2014 Regulations amend the 2009 Regulations.

Article	Explanation	Implementation
Article 1 para (1)	Amends article 2 of the previously amended 1999 Directive to add new definitions, including amending the definition of toll to comprise an infrastructure charge (covering the costs of building infrastructure, which was the previous meaning of toll) and/or an external cost charge (reflecting pollution).	Regulation 2(2)-2(4), amend Regulation 2 of 2009 Regulations.
Article 1 para (2)	Replaces article 7, 7a and 7b of the previously amended 1999 Directive with new articles as set out below:	See below.
	Article 7: extends rules of Directive to include all motorways (whereas previously only Trans-European Road Network roads were covered by the Directive rules); allows Member States to choose to limit tolls/user charges to vehicles of 12 tonnes and over.	Roads covered: Regulation 2(5), amends Regulation 3 of the 2009 Regulations. Limiting coverage to 12 tonnes and over: Regulation 2(12), amends Regulation 10 of the 2009 Regulations.
	Article 7a: adds rules for daily, weekly and monthly user charges, such that they cannot exceed certain percentages of the annual charge	Regulation 2(11), amends Regulation 9 of the 2009 Regulations.
	Article 7b: defines infrastructure charge in the same way as the definition previously used for “toll”, that is, covering the costs of building and maintaining infrastructure such as roads or bridges.	Regulation 2(6), amends Regulation 4 of the 2009 Regulations.

Article	Explanation	Implementation
	<p>Article 7c: new rules for external cost charges. This is an optional charge, reflecting the noise and air pollution produced by HGVs.</p>	<p>Regulation 2(8), amends Regulation 5 of the 2009 Regulations. The Directive says that vehicles meeting the strictest emission standard must be exempted from the external cost charge until four years after the date of application of the emission standard. Regulation 5 references the current strictest emission standard (EURO VI) and includes a date four years after that standard became compulsory for all new vehicles. If stricter emissions standards are defined, new regulations will be needed to update regulation 5.</p>
	<p>Article 7d: when new EURO emission standards are introduced, requires the Commission to incorporate them into the rules for determining external cost charges.</p>	<p>Not applicable, as this is a requirement on the European Commission, not Member States.</p>
	<p>Article 7e: defines “infrastructure charge” to be calculated according to the rules in Annex III of the Directive (previously it was “tolls” calculated using Annex III), and adds allowance for concession tolls to be equivalent to the maximum values over a “reasonably long” reference period.</p>	<p>Regulation 2(6), amends Regulation 4 of the 2009 Regulations. The Directive’s new requirement that concessions tolls be calculated over a “reasonably long” reference period has not been transposed. This is already captured by regulation 4(6)(c), which refers to “a reference period appropriate to the nature of the concession contract”.</p>
	<p>Article 7f: extra rules giving greater freedom for higher infrastructure charges in mountainous regions.</p>	<p>Not applicable. Not transposed due to the UK not having motorways or Trans-European Road Network roads in mountainous regions.</p>

Article	Explanation	Implementation
	<p>Article 7g: new rules on how the infrastructure charge can be varied by the EURO emission standard of the vehicle, and new rules on how it can be varied by congestion.</p>	<p>Regulation 2(7), inserts new Regulation 4A into the 2009 Regulations, on varying the infrastructure charge.</p> <p>Regulation 2(9) removes Regulations 6 and 7 of the 2009 Regulations, which contained the previous rules.</p> <p>Regulation 2(18) amends Regulation 16 of the 2009 Regulations, on levying maximum tolls when vehicle documents are unavailable.</p>
	<p>Article 7h: revised requirements for notifying the Commission about infrastructures charges and new requirements for notification of external cost charges.</p>	<p>Regulations 2(19) to 2(22) amend Regulations 17 to 20 of the 2009 Regulations.</p>
	<p>Article 7i: changed rules for discounts and exemptions for infrastructure charges, including that discounts or reductions must lead to administrative savings, and small changes for rules on variation of tolls for projects of high European interest. Forbids discounts for external cost charges.</p>	<p>General rules on discounts/exemptions: Regulation 2(15) and 2(16), amend Regulations 13 and 14 of the 2009 Regulations.</p> <p>Variation in cases of high European interest: Regulation 2(10) amends Regulation 8 of the 2009 Regulations.</p> <p>External cost charge discounts: Regulation 2(14) inserts new Regulation 12A into 2009 Regulations.</p>
	<p>Article 7j: changes requirement to allow tolls/charges to be paid by “all common means of payment” to “common means of payment”, requires toll receipts be include a breakdown of infrastructure charge and external cost charge (where applicable), and requires where economically feasible external cost charges to be collected electronically.</p>	<p>Regulation 2(17), amends Regulation 15 of 2009 Regulations.</p>
	<p>Article 7k: unchanged allowance for Member States to provide appropriate compensation when tolls or user charges are introduced.</p>	<p>Since the rules are not changed, there is no need for transposition.</p>

Article	Explanation	Implementation
Article 1 para (3)	Inserts new article 8b, which provides for two or more Member States to have a common tolling system. Previously the Directive only allowed for two or more Member States to have a common user charge.	Regulation 2(24), amends Regulation 21 of 2009 Regulations.
Article 1 para (4)	Amends article 9 of the previously amended 1999 Directive, about the use of revenues from tolls and charges. The amendments add further information on preferred uses for revenue resulting from road tolls and charges.	The overarching principle remains, at article 9 para 2, that “Member States shall determine the use of revenues generated by this Directive”. This principle does not need transposing into UK law.
Article 1 para (5)	Replaces articles 9b and 9c of the previously amended 1999 Directive with new articles 9b to 9g. These relate to the Commission’s obligations and powers with respect to the Directive, to facilitate dialogue on technical matters and make technical changes to parameters in the Directive.	Not transposed, since they relate to the Commission’s obligations and powers.
Article 1 para (6)	Amends article 10 of the previously amended 1999 Directive to change the words “European Communities” to “European Union”.	Not transposed, as this is a simple change in terminology.
Article 1 para (7)	Adds new article 10a, which provides for the Commission to automatically increase, by the rate of inflation, maximum user charge rates and maximum external cost charges.	Transposed indirectly. The requirements are on the Commission, to increase by inflation parameters in technical annexes of the Directive. The Regulations refer directly to those Annexes, Annex II and IIIb.
Article 1 para (8)	Amends article 11 of the previously amended 1999 Directive, about arrangements for reporting on aspects of the Directive. The amendments reflect the fact that the Directive now allows for external cost charges.	Regulation 2(23), inserts Regulation 20A into the 2009 Regulations.
Article 1 para (9)	Amends Annex III of the previously amended 1999 Directive on the principles for calculating tolls.	Transposed indirectly, as the 2014 Regulations refer to Annex III of the Directive.
Article 1 para (10)	Inserts new annexes IIIa and IIIb into the previously amended 1999 Directive. These specify the minimum requirements for levying an external cost charge, and calculations for the maximum weighted average external cost charge.	Transposed indirectly, as the 2014 Regulations refer to Annexes IIIa and IIIb of the Directive.

Article	Explanation	Implementation
Article 2	Requirements to transpose the Directive and communicate to the Commission the main provisions of national law doing so.	Not transposed, as this relates to the process of the transposition itself.
Article 3	States that the Directive enters into force on the day following its publication (October 2011).	Not transposed, as this relates to the applicability of the Directive, not to the regulations implementing the Directive.
Article 4	Addresses the Directive to Member States, that is, all Member States including the UK.	No need to be transposed. The 2014 Regulations implement the Directive in UK law, meaning that the UK has put in place the legal instruments necessary to ensure the UK complies with the Directive.