

EXPLANATORY MEMORANDUM TO
THE ROAD SAFETY (FINANCIAL PENALTY DEPOSIT) (APPROPRIATE AMOUNT)
(AMENDMENT) ORDER 2014

2014 No. XXXX

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 The purpose of the Statutory Instrument (SI) covered by this Memorandum is to add a new financial penalty deposit amount to the Road Safety (Financial Penalty Deposit) (Appropriate Amount) Order 2009¹. The new deposit amount is £300 for the offence in section 11(1) of the HGV Road User Levy Act 2013² (“the 2013 Act”) of using or keeping a heavy goods vehicle (“HGV”) on a public road in the UK without paying the appropriate HGV Road User Levy (“the Levy”).

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 the use of fixed penalty notices (“FPNs”) by police officers and DVSA³ officers for offences listed in Schedule 3 of the 1988 Act. The monetary amount of the penalty for each offence for which an FPN may be given is set out in the Fixed Penalty Order 2000⁴. Part IIIA of the 1988 Act enables a police officer or DVSA officer to require the payment of a financial penalty deposit (“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 2009⁵. The monetary amount of such deposits is set out in the Road Safety (Financial Penalty Deposit) (Appropriate Amount) Order 2009 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 a FPN, or a conditional offer in Scotland, in respect of an alleged offence.

4.2 This SI is one of a package of three SIs that are amending existing legislation to ensure that FPNs and deposits may be used to enforce the offence in section 11 of the 2013 Act. The other SIs are the proposed Fixed Penalty (Amendment) Order 2014 and the

¹ SI 2009/492 as amended by SI 2013/2025.

² 2013 c.7.

³ Driver and Vehicle Services Agency, an executive agency of the Department for Transport.

⁴ SI 2000/2792 as amended by SIs 2003/1254, 2009/488, 2009/1487, 2010/2720, 2013/1569 and 2013/1840.

⁵ SI 2009/495 as amended by SI 2010/2721.

proposed Road Safety (Financial Penalty Deposit) (Amendment) Order 2014, which are both subject to the negative resolution procedure.

4.3 During the passage of the 2013 Act, the Minister informed Parliament that FPNs and deposits would be used to enforce the Levy. At the time, the Minister told Parliament that the amount of the FPNs and the deposits would be £200⁶. However, since then, the Department has conducted a general review of the levels of FPNs and deposits, which resulted in a general increase. The increases in deposits were made by the Road Safety (Financial Penalty Deposit) (Appropriate Amount) (Amendment) Order 2013⁷. As a result of these increases, we have decided on a amount for an FPN and its associated deposit of £300 for the offence in section 11(1) of the 2013 Act in order to ensure that the penalty is broadly consistent with penalty levels for similar offences.

4.4 Prior to making this Order, the Minister will commence sections 11 and 13 of the 2013 Act for the purposes of making this Order and other legislation that he is making for which those sections need to be in force. It is the current intention to commence the 2013 Act in full on 1st April 2014.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 Robert Goodwill, Parliamentary Under Secretary of State for Transport, has made the following statement regarding Human Rights:

“In my view the provisions of the Road Safety (Financial Penalty Deposit) (Appropriate Amount) (Amendment) Order 2014 are compatible with the Human Rights Convention.”

7. Policy background

- What is being done and why

7.1 The 2013 Act introduces a levy for using or keeping a 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 a 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 a 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).

⁶ Public Bill Committee, *HGV Road User Levy Bill* (HC 2012-13) cols 117 to 118.

⁷ SI 2013/2025.

7.3 It is an offence to use or keep a 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. The proposed legislative package, including this Order, enables police and DVSA officers to impose FPNs, which avoids adding to the burden on the courts; and require deposits from alleged offenders without a satisfactory UK address. The requirement of deposits enables 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

7.4 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 for Transport 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 regulations relating to the HGV Road User Levy Act 2013.

8.2 We received comments that the level of the fixed penalty should be higher. We have decided not to raise the level of the fixed penalty in order to keep it in line with the amount for other offences. We also received comments on our plans to enforce the charge against the driver at the roadside rather than operator. We 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 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 the SIs amending the existing legislation come into force. The Government does not consider that 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 a HGV of 12 tonnes or more on a public road in the UK, irrespective of whether they are large or small businesses. However, the legislation will only affect those persons who do not comply with their legal obligations.

12. Monitoring & review

12.1 The Department for Transport will keep FPNs and deposits under review for this new offence and more generally along with colleagues in the Home Office and the Ministry of Justice who have 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.