

HGV ROAD USER LEVY BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the HGV Road User Levy Bill as brought from the House of Commons on 30th January 2013. They have been prepared by the Department for Transport in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. Currently, operators of UK-registered heavy goods vehicles (HGVs) pay charges or tolls in most European countries for use of the road network in those areas. However, foreign-registered HGVs do not pay to use the UK's road network. Over time, the different ways in which countries across Europe charge for use of their road network has created an imbalance that many regard as unfair to UK operators.
4. The Bill seeks to address this by introducing a levy for all HGVs that weigh 12 tonnes and over for using the UK road network. The requirement to pay the levy will apply to all categories of public road in the UK and to both UK and foreign-registered HGVs.
5. The levy will be time based and will vary according to the vehicle type, weight and number of axles. It will range from £85 a year for the smallest HGV up to £1,000 for the largest. This seeks to ensure that the charging scale is linked to the amount of wear an HGV causes to a road.
6. UK-registered HGVs will pay the levy for the same period and in the same transaction as they pay for vehicle excise duty (VED). This means that they will pay for either six months or a year. Foreign-registered vehicles can pay the levy either daily, weekly, monthly or annually. In the situation where purchasing a combination of daily, weekly and monthly passes is appropriate (for example, if a vehicle is in the UK for 1 month, 2 weeks and 1 day),

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these can be purchased in a single transaction. Refunds will be available under certain circumstances. Revenues will be paid into the Consolidated Fund.

7. There will be associated reductions for UK-registered HGVs in the amount of VED that is payable. This is intended to mean that the vast majority of UK-based hauliers will pay no more than at present. Changes to VED will be included in the Finance Bill 2014.

8. The Bill makes it an offence to fail to pay the levy and, on summary conviction, a fine of up to level 5 on the standard scale (currently £5,000) will be payable. The Bill allows the Secretary of State to refuse to issue a vehicle licence (tax disc) if he is not satisfied that the appropriate levy has been paid.

9. The Government consulted on the proposals in January 2012¹.

10. The scheme will be administered by the Driver Vehicle and Licensing Agency (DVLA) or the Driver and Vehicle Agency (DVA) in Northern Ireland. A contractor will be appointed by the Department for Transport to administer the payment scheme for foreign-registered HGVs. The contractor will be required to maintain an electronic database of foreign-registered HGVs for which a levy has been paid. UK enforcement agencies will have access to the database.

11. The scheme will be enforced by the Vehicle and Operator Services Agency (VOSA) in Great Britain and the Driver and Vehicle Agency (DVA) in Northern Ireland. These agencies currently enforce UK and foreign hauliers' compliance with regulations on vehicle roadworthiness, drivers' hours and other road safety regulations. The police also have enforcement powers. The Bill will enable the enforcement agencies to issue a fixed penalty notice for the offence of not paying the levy at the appropriate rate, or to prosecute offenders in a magistrates' court. The Secretary of State will use powers under Part IIIA of the Road Traffic Offenders Act 1988 to enable enforcement agencies to require payment of a financial penalty deposit, which will aid enforcement against those without a satisfactory UK address. Part IVA of the Road Traffic Offenders (Northern Ireland) Order 1996 is the equivalent for Northern Ireland of Part IIIA of the Road Traffic Offenders Act 1988.

12. Any charging scheme must comply with the relevant European legislation, the Eurovignette Directive (Directive 1999/62/EC as amended by Directive 2011/76/EU). This Directive ensures that Member States do not discriminate against foreign hauliers in the way they set levies, in order to safeguard fair competition within the European Union. It sets limits on the type of charges that can be introduced and limits on the levels of charges. The Bill is compliant with the terms of the Directive.

¹ The consultation document, 'Charging Heavy Goods Vehicles', was published in January 2012 and can be accessed at: <https://www.gov.uk/government/consultations/charging-heavy-goods-vehicles-consultation>

TERRITORIAL EXTENT

13. The Bill extends to England and Wales, Scotland and Northern Ireland. The subject matter of the Bill is reserved. This Bill does not contain any provisions falling within the terms of the Sewel Convention. Because the Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament, if there are amendments relating to such matters that trigger the Convention, the consent of the Scottish Parliament will be sought for them.

COMMENTARY ON CLAUSES

Clause 1: Charge to HGV road user levy

14. The clause introduces the requirement to pay the HGV road user levy for each HGV that is kept or used on a UK road.

Clause 2: Meaning of “heavy goods vehicle”

15. This clause provides a definition of an HGV, which determines which vehicles are required to pay the levy. For the purposes of the levy, an HGV includes any goods vehicle of 12,000 kg or more, or any heavy motor car as defined by section 185 of the Road Traffic Act 1988, that is liable for VED in accordance with Part 6 (vehicles used for exceptional loads) or Part 8 (goods vehicles) of Schedule 1 to the Vehicle Excise and Registration Act 1994. In order to cover non-UK registered HGVs, the definition also includes those vehicles that would be charged VED but for an exemption based on those vehicles being only temporarily in the UK.

16. Vehicles that are exempt from VED are also exempt from paying the levy.

17. The levy only applies to vehicles carrying goods. Vehicles not carrying goods, for example Passenger Service Vehicles (PSVs), are not within the scope of the Bill and are not liable for the levy even though they may weigh more than 12,000kg.

18. The use of 12,000kg as the minimum weight is determined in part by EU law, which allows the UK to select either 3,500kg or 12,000kg. In the case of the HGV levy, 12,000kg was selected as it is the minimum weight at which most foreign companies would choose to send vehicles over to the UK. However, most foreign vehicles that come in are closer to the upper limit of 40,000kg.

19. The clause provides a power for the Secretary of State to amend by order the weight at which the levy will apply. The order must be made by way of a statutory instrument that must be agreed by the House of Commons through affirmative resolution.

Clause 3: Roads to which this Act applies

20. This clause states that the Bill will apply to all public roads in the UK.
21. The clause provides a power for the Secretary of State, by order, to exclude particular roads. The order must be made by way of a statutory instrument that must be agreed by the House of Commons through affirmative resolution.
22. The Bill is drafted to allow flexibility in the future application of the levy, in that it allows for the exclusion of specific named roads, or for the exclusion of particular road classifications.
23. Under EU law, member States are prohibited from double charging on any given road, so the UK cannot have both the levy and a toll on the same stretch of road. For example, if the Welsh government wanted to introduce a toll on the part of the M4 that lies within Wales, this section of the M4 would need to be excluded from the levy.
24. In the example above, the power to exclude specified roads may be used to enable devolved administrations, if they should wish to introduce charging schemes on their roads. It may also be used to exclude a small number of roads that criss-cross the land border in Northern Ireland.

Clause 4: Liability for levy

25. The clause sets out who is liable to pay the levy in respect of UK and non-UK HGVs.
26. For UK HGVs, this clause makes both the person in whose name the vehicle is registered and the person keeping the vehicle liable to pay the levy. This applies the same principle that is used for VED in section 1 of the Vehicle Excise and Registration Act 1994, which is important because the levy is to be paid in conjunction with VED.
27. In the case of non-UK HGVs, the person who holds a Community licence for the vehicle and the person who keeps the vehicle are both liable to pay the levy. A definition of a Community licence is included in the clause. If two or more people are liable to pay the levy, they are jointly and severally liable.
28. The clause also sets out that a person is not liable for the levy if their vehicle is stolen, sold or disposed of. If a vehicle is stolen from the registered keeper and subsequently used on a UK road, the keeper would be exempt from paying the levy after the day of the theft. If the vehicle is recovered, the liability of the keeper re-commences. Similarly, a keeper is no longer liable to pay the levy from the date of sale or disposal, so if that vehicle is used on a UK road after that date the keeper will not be liable to pay the levy. If the levy has already

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been paid, the exemption in this clause does not apply, although a rebate under clause 7 may be available.

Clause 5: Payment of levy for UK heavy goods vehicles

29. This clause sets out the payment requirements for UK registered HGVs in respect of the levy, including when the levy must be paid and how much must be paid for each vehicle. It is an offence under clause 11 of the Bill to use or keep a vehicle on the road without paying the levy.

30. This clause states that, for UK-registered HGVs, the levy must be paid for the same time period that VED is also paid, which means that UK hauliers must pay the levy for either one year or for six months.

31. The levy must be paid at the appropriate rate for the type of vehicle as set out in Schedule 1, which states the rates payable at each weight band. For example the levy for one year is shown in the column headed “yearly rate” with the stated rates varying between £85.00 for band A vehicles, up to £1,000.00 for band G vehicles.

32. The band a vehicle is in depends on the vehicle weight and the number of axles. Table 2 in Schedule 1 relates to rigid goods vehicles, Table 3 relates to rigid vehicles with a trailer of more than 4,000kgs, Table 4 relates to a tractive unit with 2 axles and Table 5, a tractive unit with 3 or more axles.

Clause 6: Payment of levy for non-UK heavy goods vehicles

33. The clause sets out the payment requirements for non-UK registered HGVs in respect of the levy. These include that the levy must be paid for each day the vehicle is used or kept on a UK road; the levy can be paid daily, weekly, monthly or annually; and the levy must be paid at the appropriate rate for the type of vehicle as set out in Schedule 1.

34. The levy must be paid at the appropriate rate for the type of vehicle as set out in Schedule 1, which states the rates payable at each weight band, as with UK HGVs.

35. The appropriate band for a vehicle is dependent on the vehicle weight and the number of axles, as with UK vehicles. Tables 2, 3 and 4 in Schedule 1 set out the rates for the different vehicle types.

36. Wherever possible non-UK vehicles should pay the levy prior to their arrival into the UK; however, drivers will also be allowed to pay online or over the telephone either on the ferry or Eurostar service across, or in the area of the port when they arrive, and before they drive on the road network.

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37. A system to allow non-UK drivers to pay the charge will be available. This system will take payments either via a website, or over the telephone.

38. The Eurovignette directive states that the daily rate can be no more than 2% of the annual rate and no more than €11 (which is expected to rise to €12 by April 2014). The weekly rate can be no more than 5% of the annual rate and the monthly rate no more than 10% of the annual rate.

39. Payment of the levy will be recorded on a database linked to Automatic Number Plate Record (ANPR) equipped cameras. To reduce the administrative burden for both operators and UK government, there will not be a disc or similar physical sign of having paid the levy.

Clause 7: Rebate of levy

40. The clause sets out the conditions for providing rebates. The entitlement will apply in cases where the levy has been paid for more than one month and where at least one month of the levy period remains. Rebates will only be available in cases where the vehicle has been stolen, destroyed, is no longer kept or used on a UK road or has been sold.

41. The clause sets out how the rebate will be calculated. It also provides the Secretary of State with a power to specify conditions with which a person must comply before making an application. This may include the requirement that information should be sent electronically, and stolen vehicles need to have been reported to the police. The clause also enables the Secretary of State to charge an administration fee for the rebate, and provides for the Secretary of State to make regulations to allow for rebates in other circumstances.

42. For UK operators, the rebate requirements will be exactly the same as the requirements for VED rebates. For non-UK operators the conditions for obtaining a rebate will be reasonable, and as similar as possible to those that UK hauliers must comply with.

Clause 8: Exemptions and reductions

43. This clause exempts from payment of the levy certain rigid goods vehicles that currently pay vehicle excise duty at the basic goods vehicle rate.

44. Excluded vehicles are those which do not pay VED and include Military HGVs, showmen's goods vehicles, vehicles which only operate on islands, as well as vehicles used for training purposes. Vehicles using a trade licence are also exempted under section 11 of the Vehicle Excise and Registration Act 1994. This exemption would be used in the circumstance of transferring a vehicle from one owner to another owner.

45. This clause also provides a power for the Secretary of State to make regulations that may exempt certain categories of HGVs from paying the levy, or provide that they may pay the levy at a reduced rate.

Clause 9: Collection of levy

46. This clause gives the Secretary of State and his or her officers powers to collect the levy. These are the same powers as those given to officers of Her Majesty's Revenue and Customs. Revenues raised by the levy will be paid into the Consolidated Fund.

Clause 10: Power to stop

47. This clause gives officers appointed under section 66B of the Road Traffic Act 1988 the power to stop HGVs in order to help enforce payment of the charge.

48. Stopping powers are used at present by enforcement agencies to enforce other requirements relating to issues like vehicle roadworthiness and drivers' hours. The clause deals with the stopping of vehicles in England and Wales and Scotland. In Northern Ireland, vehicle examiners appointed under Article 74 of the Road Traffic (Northern Ireland) Order 1995 will have a power to stop by virtue of Article 180A of the Road Traffic (Northern Ireland) Order 1981.

Clause 11: Offence of using or keeping heavy goods vehicle if levy not paid

49. The clause makes it an offence for a person to use or keep an HGV on the road where the levy has not been paid at the appropriate rate. This means that both the driver and any person liable to pay the levy in accordance with clause 4 of the Bill commit an offence where the vehicle is used or kept on the road when the levy has not been paid.

50. The maximum penalty for non-payment on summary conviction is a level 5 fine, currently £5,000. Fine revenues relating to the non payment of the levy will be paid into the Consolidated Fund.

51. For UK-registered vehicles, the enforcement authorities will deal with the registered keeper rather than the driver, because the Driver and Vehicle Licensing Agency will have their address.

52. For foreign vehicles, enforcement will mostly be carried out against the driver, since non-compliant vehicles will be stopped at the roadside. In the event that a foreign driver can provide a satisfactory UK address, it is likely that the VOSA enforcement officer or a constable in uniform will issue a fixed penalty notice (a conditional offer in Scotland) of £200 to the driver.

53. For vehicles without a satisfactory UK address, enforcement will mostly be carried out against the driver. Where a non-compliant vehicle is identified and stopped at the roadside, a

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financial penalty deposit of £200 will be required. Vehicles will be immobilised until the deposit and the outstanding levy are paid².

Clause 12: Legal proceedings

54. This clause gives effect to Schedule 2 which sets out the arrangements for legal proceedings in England and Wales, Northern Ireland and Scotland to reflect the different arrangements in those countries.

Clause 13: Fixed penalties

55. This clause inserts the offence in clause 11 into Schedule 3 to the Road Traffic Offenders Act 1988, which lists the offences for which fixed penalties can be imposed under Part III of that Act.

56. The clause enables enforcement officers to give a fixed penalty notice (“FPN”) to an offender. A FPN allows an offender to pay a fixed sum within a specified period to avoid prosecution for the offence. Fixed penalties are currently used for offences committed in respect of vehicle roadworthiness and drivers’ hours.

57. The amount of the fixed penalty will be set using powers under section 53 of the Road Traffic Offenders Act 1988 to amend the Fixed Penalty Order 2000. The Road Traffic Offenders Act 1988 extends to England and Wales and Scotland only. In Northern Ireland, provision about the issuing of FPNs is made by Part IV of the Road Traffic Offenders (Northern Ireland) Order 1996. Fixed penalty offences in Northern Ireland are specified by an order made by the Department of the Environment in Northern Ireland under Article 57(2) of that Order.

58. The Secretary of State intends to use powers under Part IIIA of the Road Traffic Offenders Act 1988 to amend the Road Safety (Financial Penalty Deposit) Order 2009 so that an enforcement officer may require a financial penalty deposit (“FPD”) to be paid by a person who has committed the offence in clause 11 where the offender cannot provide a satisfactory UK address, with the amount of deposit being set by amending the Road Safety (Financial Penalty Deposit) (Appropriate Amount) Order 2009.

59. If the FPD is not paid, a notice prohibiting the HGV from being driven on the road may be issued. The HGV may then be immobilised, removed or disposed of in accordance with the Road Safety (Immobilisation, Removal and Disposal of Vehicles) Regulations 2009.

² Further information on the application of fixed penalties can be found in *A Guide to Fixed Penalty Notices and Financial Deposit Notices* which is issued by VOSA and can be found at:
http://www.businesslink.gov.uk/Transport_files/8001_VOSA_fixed_penalties_and_financial_deposits_0.pdf

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In Northern Ireland, provision about FPDs is made by Part IVA of the Road Traffic Offenders (Northern Ireland) Order 1996 and non-payment of a FPD can trigger immobilisation, removal and disposal of a vehicle by virtue of Schedule 1 to the Road Traffic (Northern Ireland) Order 2007.

Clause 14: Register of levy paid or due to be paid

60. This clause requires a register to be established which will keep a record of payments made in respect of each HGV. The register must show the registration number, the country or territory where the vehicle is registered and the period for which the levy has been paid, or for UK HGVs, the date from which the levy is next payable.

61. The register must be available and free to view on a website to aid enforcement of the levy, and to enable a driver of an HGV to check whether the levy has been paid for that vehicle before using it on UK roads.

62. For UK vehicles, the register currently provided by the DVLA for those who have paid VED will be used to show those who have paid the levy. The DVLA's register is accessible by way of a website that enables someone to enter a vehicle's number plate and see when Vehicle Excise Duty is next due to be paid. Since VED and the levy must be paid at the same time for UK vehicles, this can be used to confirm that both VED and levy have been paid.

Clause 15: HGV road user levy and vehicle licences

63. This clause inserts a new subsection into section 7 of the Vehicle Excise and Registration Act 1994 which allows the Secretary of State to refuse to issue a vehicle licence (tax disc) for an HGV if the appropriate levy has not been paid. Failure to pay the levy will therefore result in an unlicensed vehicle. Using or keeping an unlicensed vehicle is an offence under section 29 of the Vehicle Excise and Registration Act 1994 and such a vehicle may be immobilised, removed and disposed of in accordance with the Vehicle Excise Duty (Immobilisation, Removal and Disposal of Vehicles) Regulations 1997.

Clause 16: Power to install equipment for the detection of offences under section 11

64. This clause amends the Highways Act 1980 which provides powers for the highway authority to install equipment for the detection of traffic offences and adds detecting non-payment of the HGV road user levy to the reasons for which such equipment can be installed. It also makes a corresponding amendment to the Roads (Scotland) Act 1984 and the Roads (Northern Ireland) Order 1993.

Clauses 17 and 18

These clauses relate to regulations (clause 17) and orders (clause 18).

Clause 19: Interpretation

65. This clause clarifies when the levy is considered to have been paid for a particular day. Where a rebate is paid under clause 7, a person is treated as not having paid the levy from the date of their application for a rebate to the end of the levy period for which the person had paid.

Clauses 20 to 22

66. These clauses relate to territorial extent (clause 20), commencement (clause 21) and the short title (clause 22).

FINANCIAL EFFECTS OF THE BILL

67. A Tax Information and Impact Note has been published alongside the Bill and is available on the Department for Transport's website at www.dft.gov.uk. It shows that the impact on the Exchequer is estimated to be:

2013-14	-£5 million to -£2.5 million
2014-15	+£18.7 million to +£23.2 million
2015-16	+£18.7 million to +£23.2 million
2016-17	+£18.7 million to +£23.2 million
2017-18	+£18.7 million to +£23.2 million

68. The estimates are based on planned start dates of April 2014 for UK hauliers and the same for foreign hauliers. If procurement for the system for charging foreign hauliers cannot be completed in time, the start date will be pushed back, with a consequent reduction in revenue in 2014-15. This compares with a March 2015 start date for foreign hauliers assumed at the time of the consultation. The net revenue has been calculated on the basis of the gross revenue raised by the levy, minus the costs of administration, enforcement and the forecast costs of corresponding changes to vehicle excise duty. It includes estimated revenues from enforcement activity. It is anticipated that initial set-up costs would occur mainly in the year 2013-14.

69. The Bill is not expected to have an impact on public sector manpower. It is estimated that set-up costs for the public sector would be between £3 million and £6.7 million, and annual administration and enforcement costs would be between £3 million and £4.8 million.

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These will be offset by the estimated gross revenue of around £27.6 million per year from foreign hauliers.

70. The introduction of the HGV road user levy and the associated reductions in vehicle excise duty are expected to be broadly revenue neutral for UK hauliers. It is expected that the around 98% of the current UK HGV fleet of 12 tonnes or over will pay no more than around £50 extra a year and 94% will pay nothing extra at all. UK hauliers will pay the HGV road user levy at the same time as they pay vehicle excise duty in one payment using the same form. The introduction of the levy should not therefore place any extra administrative burden on small firms.

EUROPEAN CONVENTION ON HUMAN RIGHTS

71. The Government considers that the HGV Road User Levy Bill is compatible with the European Convention on Human Rights (“ECHR”). Accordingly, Earl Attlee has made a statement under section 19(1)(a) of the Human Rights Act 1998 to this effect.

72. Further explanation of the key human rights issues is provided below. Reference to Articles are to Articles of the ECHR.

Article 1 Protocol 1 of the ECHR (“A1P1”)

73. In some instances, some of the interferences from the imposition of the levy (clauses 5 and 6) and its enforcement (clauses 13 and 15) may engage A1P1.

74. Where an HGV is seized the vehicle may be disposed of if not claimed within a specified time period. Where an HGV is immobilised or impounded, the release of the vehicle will only happen when certain requirements have been fulfilled.

75. Where A1P1 is engaged in relation to imposition of the levy, it is the Government’s view that such interference is necessary to ensure that HGVs pay a fair contribution towards the maintenance of the UK road network and is prescribed by law. The amount of the levy payable for a particular vehicle is determined by the weight of the vehicle and the number of axles over which that weight is spread, which will ensure that the amount paid for each vehicle is proportionate to the damage that vehicle does to the road network.

76. Where A1P1 is engaged in relation to the enforcement of the levy, it is the Government’s view that such interference is necessary to secure the payment of a tax and is prescribed by law. The aim of these provisions is to ensure that the levy can be adequately enforced, so that all HGV operators pay for their use of UK roads. The legislation under which the levy is to be enforced includes procedural safeguards and compensation measures, which will ensure that the levy and its enforcement is both justified and proportionate.

Article 14 (Prohibition of Discrimination)

77. On the face of the Bill, a distinction is made between UK and non-UK HGVs. Operators with HGVs registered in the UK are required to pay the levy on an annual or six-monthly basis at the same time as they pay their vehicle excise duty. This has been designed to keep the administrative burden on operators and the Government to a minimum and reflect the regular road usage of UK hauliers. Where a UK haulier no longer wishes to use a vehicle on the road, he or she can complete a Statutory Off-Road Notification and will be entitled to a rebate of the outstanding levy. Operators with HGVs registered outside the UK may pay the levy daily, weekly, monthly or annually. The wider choice available for foreign hauliers enables payment to reflect their actual use of UK roads, and is a requirement of EU legislation³. Any difference in treatment faced by UK hauliers on the basis of their restricted choice of payment period is justified on the basis that it reduces administrative burdens and better reflects their road usage.

78. The rates of the levy for a vehicle vary depending on the period for which it is paid. The monthly and weekly rates are 10% and 5% of the annual rate respectively, and the daily rate is either 2% of the annual rate or £10, whichever is lower. Operators with HGVs registered outside the UK that choose to pay on a monthly basis, for example, will therefore pay more for that month than a UK operator will pay on an equivalent month at the annual rate. For example, if a UK haulier pays an annual levy of £1,000, he or she is paying a monthly equivalent of £83.33, while a foreign operator will pay £100 (10% of the annual levy). Although a foreign operator may choose to pay annually, it is more likely that foreign operators will choose to pay monthly, weekly or daily because of the limited period for which they will use UK roads. A higher rate of the levy for these periods is imposed because of the significant administrative costs of establishing and maintaining a system of payment, collection and enforcement of the levy for vehicles registered outside the UK and for periods of time shorter than one year. The payment, collection and enforcement of an annual or six-monthly levy for UK registered HGVs are linked to an existing administrative system used for vehicle excise duty and therefore impose a smaller relative cost. Any difference in treatment faced by foreign hauliers is therefore justified on the basis of the greater costs of administering the levy for shorter periods of time and for vehicles not registered in the UK.

COMMENCEMENT

79. The Act will come into force on the date specified by the Secretary of State in an order made by statutory instrument.

³ Article 7a of Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructure (OJ L 187, 20.7.1999, p.42)

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