EXPLANATORY MEMORANDUM TO

THE CONTRACTING OUT (VEHICLE CERTIFICATION AND RELATED FUNCTIONS) ORDER 2014

2014 No. xxx

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 Order permits the Secretary of State to delegate to persons other than civil servants the performance of statutory functions relating to road vehicle engineering and safety standards, which are required to be performed by EU and domestic legislation, These functions relate mainly to the type approval of road vehicles (and vehicle components) and non-road mobile machinery. At present, they are performed in the United Kingdom by the Vehicle Certification Agency (VCA), an executive agency of the Department for Transport.

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

3.1 None.

4. Legislative Context

4.1 The UK vehicle type approval regime is now based largely on EU law. EU Directive 2007/46/EC (which establishes a framework for the approval of motor vehicles and their trailers and of systems, components and separate technical units intended for such vehicles) requires (in article 4.4) Member States to establish or appoint a type approval Authority for these purposes and Directives 2002/24 and 2003/37 confer type approval functions in respect of certain specialist types of vehicle on the competent authority of the Member State. These Directives are transposed into UK law through a number of different instruments, including ones listed in the Schedule to this Order.

4.2 Currently, in the UK these functions are vested in the Secretary of State.

4.3 Section 69 of the Deregulation and Contracting Out Act 1994 c.40 ("the 1994 Act") permits a contracting out order to be made, to provide for statutory functions of a Minister or office-holder to be exercised by, or by employees of, such person (if any) as may be authorised to do so by the Minister or office-holder.

4.4 This Order allows the Secretary of State to authorise a third party to exercise on his behalf the statutory functions specified in the Schedule to the Order which the Secretary of State proposes to do by entering into a contract with a third party body for the provision of certain services related to the functions concerned. The functions in question will remain in law those of the Secretary of State as will obligations arising under the European legislation referred to in paragraph 4.1.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

5.2 However, many of the instruments conferring functions which are listed in the Schedule to the Order only apply to Great Britain.

6. European Convention on Human Rights

The Parliamentary Under Secretary of State for Transport, Claire Perry, has made the following statement regarding Human Rights:

> In my view, the provisions of the Contracting Out (Vehicle Certification and Related Functions) Order 2014 (2014 No. xxx) are compatible with the Convention Rights.

7. Policy background

- What is being done and why

7.1 The promotion of road safety is a key Government policy. Ensuring that the vehicles approved for use on the UK's roads meet international engineering and safety standards is an important component of that policy.

7.2 In addition to discharging the Secretary of State for Transport's type approval obligations, the VCA currently provides a range of related engineering services where it effectively operates in a commercial environment. The Secretary of State considers that, taken as a whole, the work of the VCA could be more effectively carried out if the greater part of it were provided by a commercial organisation. Consequently, he is minded to create a private company and seek a joint venture partner to invest in it. The Order will ensure that the requisite powers can be conferred on the company to enable it to provide type approval services.

8 Consultation outcome

8.1 The desirability of moving some of the Vehicle Certification Agency's business to a private sector body was explored in the consultation undertaken by the Department for Transport between December 2012 and March 2013 on the Government's Motoring Services Strategy (https://www.gov.uk/government/consultations/motoring-services-strategy).

8.2 Overall, a considerable majority of respondents were in support of change (albeit with a very considerable number indicating "don't know"). No obstacles to the project of finding a commercial model for the VCA's future operations were flagged.

9. Guidance

This Order only affects the operations of the Vehicle Certification Agency and the organisation (if any) to which the Secretary of State decides to delegate the functions in question. Consequently, no guidance has been prepared on the operation of the Order.

10. Impact

10.1 The impact on business, charities or voluntary bodies is none.

10.2 The impact on the public sector is none.

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

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

12.1 The Secretary of State intends to delegate the functions listed in the Order to a commercial partner through the terms of a contract. As explained in paragraph 12.6 there will be appropriate contract monitoring and quality assurance procedures set out in the contract to ensure that the delegated functions are discharged to an appropriate standard.

12.2 Authorisations under a contracting out order may be for a maximum period of ten years. The contract between the Secretary of State and the body to which the functions are designated will not exceed this period.

12.3 A review clause has not been inserted in this instrument for the following reasons.

12.4 Section 1.7.4 of the Better Regulation Framework Manual (July 2013 edition) issued by the Department for Business Innovation & Skills states that a review clause is mandatory for all measures that "regulate business". The Order does not regulate business in that it has no direct effect on the way that businesses other than the one to which functions are conferred under the Order operate. Rather, it permits certain statutory functions currently performed within Government to be performed by one or more non-Government bodies (referred to below as "the Company").

12.5 However, paragraph 1.7.5 of the Manual advises Departments to consider whether to use a review clause in cases falling outside the scope of the guidance. The Department has done so but concluded that the inclusion of a requirement to carry out a review at the end of a particular prescribed period is not necessary.

12.6 This is because, as stated above, the operation of the arrangements for contracted out functions performed by the Company will be subject to ongoing monitoring and control by the Department. In particular:

a) the relationship between the Department and the Company will be enshrined in a services contract which will prescribe standards of performance required of the Company. The contract itself contains provisions for ongoing review;
b) the Department will maintain a close working relationship with the Company, in particular through a joint technical committee which will provide a formal forum for exchanges of information regarding policy decisions;
c) the Department will monitor the Company's performance in issuing vehicle type approval certificates by examining documents selected on a sample basis;
d) the Company will provide periodic reports of its activities to the Department.

12.7 The authorisation given under the Order will expire after ten years (at which point the services agreement will also expire, if it has not already been terminated) and renewal will be considered in the light of the company's performance.

13. Contact

Edward Bunting at the Department for Transport, Motoring Services Division. Tel: 020 7944 2467 or e-mail: edward.bunting@dft.gsi.gov.uk can answer any queries regarding the instrument.