EXPLANATORY MEMORANDUM TO

THE CRIME AND COURTS ACT 2013 (CONSEQUENTIAL AMENDMENTS) (No.2) ORDER 2015

[2015] 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 instrument makes four amendments to the Road Traffic Offenders Act 1988 ("RTOA") in consequence of the introduction of new drug related road traffic offences. These amendments extend the penalties already available in relation to similar driving offences connected with drink and drugs to the new drug related road traffic offences and provide for the endorsement of an offender's counterpart and driving record in relation to the new offences.

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

3.1 None

4. Legislative Context

4.1 In December 2009, Sir Peter North CBE QC was appointed by the then Secretary of State for Transport, to conduct an independent review of the law on drink driving and drug driving. Sir Peter North's Report of the Review of Drink and Drug Driving Law was published in June 2010 (http://webarchive.nationalarchives.gov.uk/20100921035225/http:/northreview.independent.gov.uk/docs/NorthReview-Report.pdf) and made a variety of recommendations with regard to drink and drug driving, including that further consideration should be given to introducing new specific offences of driving or being in charge of a motor vehicle with a concentration of a controlled drug above a specified limit. Following Sir Peter North's report the Transport Select Committee published, in December 2010, a report on drink and drug driving law (http://www.publications.parliament.uk/pa/cm201011/cmselect/cmtran/460/460.pdf). The Committee favoured, for the new offences, the adoption of a "zero-tolerance" approach for illegal drugs which are known to impair driving.

4.2 The Secretary of State for Transport made a written ministerial statement on the 21st March 2011 (http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110321/wmstext/110321m0001.htm#1103211000010), which announced the publication of the Government's response to the reports by Sir Peter North and the Transport Select Committee on Drink and Drug Driving. The response (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/4429/report.pdf) endorsed Sir Peter North's recommendation that the case for a new offence relating to drug driving should be examined further.

4.4 In 2013, the Crime and Courts Act 2013 ('CCA') inserted a new provision (section 5A) into the Road Traffic Act 1988 ("RTA") making it a criminal offence to drive, attempt to drive or be in charge of a motor vehicle with a concentration of a specified controlled drug above a specified limit. This Order amends the Road Traffic Offenders Act 1988 in consequence of the introduction by the CCA of this new section 5A into the RTA. The Crime and Courts Act 2013 (Commencement No.1)(England and Wales) Order 2014 brings into force the new section 5A, in so far as it extends to England and Wales, on the 2nd March 2015.

4.5 Regulations were made by Parliament on the 24th October 2014 in which the controlled drugs and their limits were specified for England and Wales. The regulation making power in the new provision of the Road Traffic Act 1988 for specifying the drugs and their limits is exercisable by Scottish Ministers in relation to Scotland. Article 3 of this Order (which amends provisions relating to penalties for when a person fails to provide a specimen or fails to permit a specimen to be subjected to laboratory test), will come into force in relation to Scotland when the new section 5A RTA comes into force in Scotland.

5. Territorial Extent and Application

5.1 This Instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 The Parliamentary under Secretary of State, Robert Goodwill MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Crime and Courts Act 2013 (Consequential Amendments)(No.2) Order 2015 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 Fewer than 1,200 proceedings were brought in 2013 under the existing section 4 RTA 'impairment offence' (driving or attempting to drive a mechanically propelled vehicle on a road or other public place, whilst unfit to drive through drink or drugs), with the proportion of guilty findings from the proceedings from unfit through drugs only around 72%. This is compared to the nearly 47,000 proceedings in relation to the section 5 RTA offence (driving or being in charge of a motor vehicle with alcohol concentrations above a prescribed limit) and the 96% proportion of guilty findings. European evidence from the Driving under the Influence of Drugs, Alcohol and Medicines (DRUID) project suggests drug driving is about half as prevalent as drink driving, so enforcement related to drug driving is disproportionately low.

7.2 When the new section 5A was inserted into the RTA, it created new drug driving offences which are similar to the section 5 RTA drink driving offences. This Order makes four amendments to the RTOA in consequence of the introduction of the new drug driving offences, ensuring that the penalties are on a par with those for similar driving offences connected with drink and drugs.

7.3 Section 45 of the RTOA provides for the period during which an endorsement remains effective on the counterpart of a driving licence following conviction where endorsement of any particulars of the offence or penalty points has been ordered. This Order amends the RTOA so an endorsement ordered upon a person's conviction for the new offences of driving or attempting to drive with a concentration of a specified controlled drug in the body above a specified limit ("section 5A(1)(a) offences"), remains effective until eleven years have elapsed since the conviction.

7.4 Section 10(12) and paragraphs 30, 41 and 42 of Schedule 3 to the Road Safety Act 2006 ("RSA") repeal section 45 (effect of endorsement of counterparts) and amend section 45A (effect of endorsement of driving records) of the RTOA but these RSA amendments have yet to be brought into force. The amendments are part of the legislative changes which abolish the paper driving licence counterpart so that all endorsements will only need to be recorded electronically on a person's driving record. When these RSA amendments are commenced, the amendments made by this Order to section 45A will enable the endorsement of a person's driving record for section 5A(1)(a) offences to remain effective until eleven years have elapsed since the conviction. In relation to offences under section 5A(1)(b) and (2) RTA (being in charge of a motor vehicle on a road or public place with a concentration of specified controlled drug above a specified limit), the period of endorsement is as provided for by the RTOA and is on a par with similar drink driving offences.

7.5 Also, this Order amends the RTOA to provide for the penalties applicable to the offences of failing to provide a specimen for analysis and failing to permit a specimen to be subjected to a laboratory test, without reasonable excuse, in the course of an investigation into whether a person has committed a section 5A(1)(a) offence.

- **Consolidation**

The instrument is amending only four provisions in the RTOA and therefore a consolidation is not required.

8. Consultation outcome

8.1 No formal consultation for these amendments has been undertaken as these are consequential amendments upon the creation of new drug driving offences following the report of the review by Sir Peter North CBE QC of drink and drug driving law published in June 2010 and the report of Transport Select Committee on drink and drug driving law published in December 2010. The Government's response to those reports was published in March 2011.

9. Guidance

9.1 The Department for Transport has taken steps to ensure that the new drug driving offences have been fully explained to the police, the Crown Prosecution Service and the HM Courts and Tribunal Service to enable them to provide appropriate guidance to enforcement officers, prosecutors and the courts.

10. Impact

10.1 The impact on business, charities or voluntary bodies of this Order is nil.

10.2 An Impact Assessment in relation to the secondary legislation specifying the controlled drugs and corresponding limits in blood for the new drug driving offences will be published alongside this Explanatory Memorandum on the UK legislation website at http://www.legislation.gov.uk/uksi/2014/2868/impacts.

11. Regulating small business

11.1 This legislation does not apply to small business. The businesses impacted by the introduction of the new drug driving offences are the large pharmaceutical companies who are amending the product information for the medicines containing specified controlled drugs included in the new offences.

12. Monitoring and review

12.1 The Department will monitor and evaluate the effect of the new drug driving offences. A specification for evaluating the new offences was issued to tenderers in 2013 and a supplier selected who is currently collecting baseline data.

13. Contact

13.1 Martin Ellis at the Department for Transport, Tel: 020 7944 6945 or e-mail: martin.ellis@dft.gsi.gov.uk can answer any queries regarding the Order.