EXPLANATORY MEMORANDUM TO

THE DEPARTMENT FOR TRANSPORT (DRIVER LICENSING AND VEHICLE REGISTRATION FEES) (AMENDMENT) ORDER 2008

2008 No. DRAFT

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. Description

The Department for Transport (Driver Licensing and Vehicle Registration Fees) (Order) 2003 (S.I. 2003/2994) ("the Principal Order") specifies functions, the costs of which the Secretary of State may recover when setting the fees relating to driver licensing and vehicle registration. This instrument extends the scope of the Principal Order to cover additional fee charging powers relating to driving licence applications.

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

The Committee's attention is drawn to the matter described in paragraphs 4.4 to 4.8 below.

4. Legislative Background

4.1 This instrument amends the Principal Order.

4.2 Firstly, this instrument adds a reference to section 99(7ZA) of the Road Traffic Act 1988 ("the 1988 Act"), which permits the Secretary of State to prescribe a fee for the ten yearly renewal of a photocard driving licence. Section 99(7ZA) was inserted by the Road Safety Act 2006 and came into force on 27th February 2007. The effect of this amendment is that, when fixing the fee for such renewals, the Secretary of State is to take account of the functions and matters specified in the Principal Order in addition to other matters which are to be taken into account. The fee itself is required to be prescribed by Regulations.

4.3 Driving licence fees are prescribed by the Motor Vehicles (Driving Licences) Regulations 1999 (S.I.1999/2864), as amended ("the 1999 Regulations"). If this instrument is approved by a resolution of the House of

Commons, the Department intends to further amend the 1999 Regulations in order to introduce a fee of £17.50 for the ten yearly renewal of a photocard driving licence with effect from May 2008.

4.4 Secondly, this instrument adds a reference to section 105(2)(e) of the 1988 Act. Section 105(2) provides (without prejudice to the generality of section 105(1)) that regulations made under provisions of Part III of the 1988 Act may include (see paragraph (e)) provision for the payment of a fee for the issue of driving licences in place of licences which are lost or defaced.

4.5 A fee is currently charged for replacing lost or defaced licences under the 1999 Regulations. The fee is currently £22 (proposed to be reduced to £17.50 with effect from1st April 2008).

4.6 Section 97(1)(a) is the key charging power for driving licences. Section 105 particularises and clarifies what can be done under regulations made under Part III of the Act, which includes section 97. The Department considers that the power to prescribe a fee for replacing a lost or defaced licence derives principally from section 97(1)(a), which section has to be read with section 105 (in accordance with section 20(2) of the Interpretation Act 1978).

4.7 The Department therefore considers that the omission of a reference to section 105(2)(e) in the Principal Order has not prejudiced its ability to apply that Order to the setting of fees for lost and defaced licences. The Department however considers it appropriate to take this opportunity to include a reference to section 105(2)(e) in the Principal Order in the interests of clarity and to remove any scope for doubt.

4.8 If, contrary to the department's position, the lack of a reference to section 105(2)(e) has to any extent invalidated the setting of any fee prior to the making of this instrument, any such invalidity will be remedied by section 102(6) of the Finance (No 2) Act 1987 (which provides that an order made under section 102(3) or (4) of the 1987 Act has retrospective effect).

5. Territorial Extent and Application

This instrument applies to Great Britain.

6. European Convention on Human Rights

The Minister, Jim Fitzpatrick MP, has made the following statement regarding Human Rights:

In my view the provisions of the Department for Transport (Driver Licensing and Vehicle Registration Fees) (Amendment) Order 2008 are compatible with the Convention rights.

7. Policy background

7.1 Section 99 (2A) of the Road Traffic Act 1988 requires a photocard driving licence which remains in force for more than ten years to be surrendered to the Secretary of State with a new photograph that is a current likeness of the licence holder. That surrender must occur within 10 years of the issue date on the licence (or the issue date of any earlier licence bearing the same photograph). The first photocard licences are required to be surrendered from July 2008. Licence holders may surrender their photocard licence at any time during the ten year period. This allows a so-called "vanity exchange", where the licence holder simply wants to change the photograph on their licence.

7.2 The Driver and Licensing Agency ("DVLA") is the executive agency of the Department for Transport responsible for driver licensing. DVLA operates as a Trading Fund under the Driver and Vehicle Licensing Agency Trading Order 2004 (SI 2004/1037). Fees and charges are set by DVLA in line with its Trading Fund status and the fee pooling arrangements authorised by the Principal Order.

7.3 The Principal Order specifies the functions, the costs of which the Secretary of State may recover when setting the fees relating to driver licensing and vehicle registration. In particular it provides that she may recover costs relating to vehicle licensing when setting driver licensing fees and vice versa. It also extends the range of matters which may be taken into account in determining the costs of the specified functions.

7.4 The Department has not conducted a full or targeted public consultation on this proposal as it has no significant impact on individuals or business. The instrument is of a technical nature and the addition of section 105(2) (e) is in the nature of a tidying up exercise. DVLA has already consulted on the fee it intends to prescribe for the renewal of a photocard licence. The fee pooling arrangements set out in the Principal Order were the subject of public consultation in 2003 and the Department considers it unnecessary to consult on the same principles again.

7.5 DVLA consulted on proposed changes to driving licence fees between August and November 2007. The consultation paper was sent directly to 317 organisations and was made available on the Direct.gov and DVLA websites. There was a low response to the consultation with only 12 replies received. The low response level to the consultation is indicative of a low level of public interest in the policy.

7.6 From the limited feedback received from the fees consultation, DVLA obtained support to introduce a simplified fee regime for three of the main driving licence transactions, both from the point of view of simplicity and clarity for the customer and for simpler and more efficient processing by DVLA. In a very small sample there was a third as much more support for the proposed fee changes as there was for maintaining the status quo and

additionally it should be noted that the largest constituency of replies were from those who had no particular preference. An analysis of the consultation responses can be obtained on DVLA's website – www.dvla.gov.uk.

7.7 The common fee level of £17.50 is proposed to be introduced by the Motor Vehicles (Driving Licences) (Amendment) Regulations 2008 (SI 2008/[ ]) from 1 April 2008 in respect of the following three transactions:

- Provision of a duplicate when a driving licence has been lost, stolen or destroyed;
- Exchange of a driving licence for removal of endorsements;
- Exchanging a paper licence for a photocard licence.

It is intended that the fee for photocard renewal will also be set at £17.50 to fall in line with the simplified fee regime.

7.8 The amendments in this instrument are not considered politically or legally important.

7.9 In view of the nature of these amendments, the Department is not intending to issue a press release or provide any other form of publicity.

8. Impact

An impact assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies. There are no public sector impacts. An impact assessment has, however, been prepared in relation to the proposed driving licence fee changes referred to in paragraph 7.10 above. A copy is available from the Driver and Vehicle Licensing Agency, Policy and External Communications Directorate, Longview Road, Swansea, SA7 OEP and on the DVLA's website at www.dvla.gov.uk.

9. Contact

The official at the Department for Transport who can answer queries regarding this instrument is: David J Morgan, Driver and Vehicle Licensing Agency, Financial Management and Reporting, D7, Longview Road, Swansea, SA6 7JL (email: david.j.morgan@dvla.gsi.gov.uk).