EXPLANATORY MEMORANDUM TO

THE DEPARTMENT FOR TRANSPORT (FEES) (AMENDMENT) (EU EXIT) REGULATIONS 2018

2018 No. [XXXX]

1. Introduction

1.1 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 Regulations make amendments to three Department for Transport Fees Orders, namely the Department of Transport (Fees) Order 1988 (SI 1988/643), the Department for Transport (Driver Licensing and Vehicle Registration Fees) Order 2003 (S.I. 2003/2994) and the Department for Transport (Fees) Order 2009 (SI 2009/711).

2.2 The amendments are made to correct deficiencies in the Orders arising from the withdrawal of the United Kingdom from the EU by removing references to the Secretary of State having functions to carry out to comply with EU obligations or requirements. In practice those functions will continue, but under domestic law rather than EU law.

2.3 The Fees Orders do not set fees but specify functions and their costs which may be taken into account in setting fees. The Fees Orders are therefore ancillary to existing powers the Secretary of State has in other legislation to charge for services or facilities provided, or documents issued, where the actual charges payable are set out.

2.4 Explanations

What did any relevant EU law do before exit day?

The purpose of the Fees Orders amended by this instrument is to list certain associated costs the Secretary of State may take into account in setting fees for carrying out certain functions. Some of those functions are carried out by the Secretary of State pursuant to EU legislation i.e. the relevant ones being those in relation to international road haulage permits, type approval certification, tachograph calibration centres, international road passenger transport authorisations, driver licensing, vehicle registration, licences to operate public service vehicles and licences to operate goods vehicles.

Why is it being changed?

The relevant EU related functions specified by the Fees Orders will, after EU exit, no longer be carried out in pursuance of EU legislation. They will be carried out in pursuance of domestic law as provided for by the European Union (Withdrawal) Act 2018. So the Fees Orders are being amended to reflect this.

What will it now do?

The Secretary of State will continue to carry out the functions in question, but under domestic legislation rather than EU law, and so the instrument amends the Fees Orders so that the associated costs listed in them of carrying out those functions and

providing those services may continue to be taken into account in setting the fees for them.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument varies between provisions.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 In all cases the territorial application is either the United Kingdom, or Great Britain, depending on the particular function in relation to which the fee raising powers apply.

5. European Convention on Human Rights

5.1 Jesse Norman, Parliamentary Under Secretary of State for Transport, has made the following statement regarding Human Rights:

"In my view the provisions of the Department for Transport (Fees) (Amendment) (EU Exit) Regulations 2018 are compatible with the Convention rights."

6. Legislative Context

6.1 The instrument corrects deficiencies in three Fees Orders that would arise following the exit of the United Kingdom from the EU.

6.2 The three Fees Orders amended by this instrument were made under section 102 of the Finance (No. 2) Act 1987 (government fees and charges). This conferred a power to specify functions the costs of which (and matters to be taking into account in determining those costs which) may be taken into account in determining fees where a Minster has an existing power to fix a fee.

6.3 The European Union (Withdrawal) Act 2018 repeals the European Communities Act 1972, but section 2 saves EU-derived domestic legislation so that it continues to have effect in domestic law on and after exit day. The Fees Orders contain EU-derived domestic legislation which will be preserved.

6.4 However they contain anomalous language which this instrument corrects pursuant to the power in section 8 of the 2018 Act.

6.5 The amendment made in regulation 2(2)(a) of this instrument takes account of the amendment made to Section 56(1) of the Finance Act 1973 by the European Union (Withdrawal) Act 2018, Schedule 8, Part 2, paragraph 17, whereby the reference to "any EU obligation" in section 56 is repealed.

7. Policy background

What is being done and why?

7.1 The instrument amends the Fees Orders to correct deficiencies arising from the withdrawal of the United Kingdom from the EU by removing references to the Secretary of State having functions to carry out to comply with EU obligations or requirements.

7.2 The Fees Orders support and are ancillary to existing powers the Secretary of State has in other legislation to charge for services or facilities provided, or documents issued, where the actual charges payable are set out.

7.3 The existing powers to charge fees which relate to this instrument are those deriving from:

a) s.56 Finance Act 1973 (power to charge fees for services etc. provided by Government Departments in pursuance of international agreements or arrangements);

b) the Road Traffic Act 1988 (power to charge fees in relation to driving licences);

c) the Vehicle Excise and Registration Act 1994 (power to charge fees in relation to vehicle registration);

d) the Public Passenger Vehicles Act 1981 (powers to fix fees in relation to licences to operate public service vehicles); and

e) the Goods Vehicles (Licensing of Operators) Act 1995 (power to fix fees in respect of licences to operate goods vehicles etc.).

7.4 The Fees Orders support these existing fee fixing powers by indicating functions the costs of which may be taken into account in determining those fees, and specifying matters which can be taken into account in determining those costs of those functions.

7.5 The specified functions in the Fees Orders, which are relevant to this instrument, concern international road haulage permits, type approval certificates, tachograph calibration centres, international road passenger transport authorisations, driver licensing, vehicle registration, licences to operate public service vehicles, and licences to operate goods vehicles etc. These functions are carried out in compliance with EU obligations.

7.6 The Secretary of State will continue to carry out these functions, albeit under retained domestic law in place of EU obligations, and so will need to continue to set and collect fees and charges to cover their costs.

7.7 The instrument adjusts the Fees Orders by removing or replacing references to the Secretary of State carrying out these functions in pursuance of EU law, which will no longer be correct.

7.8 This will facilitate the collection of fees from users of the services and thus help avoid the general taxpayer subsidising the relevant road and vehicle services.

7.9 The legislation is operated by the Department for Transport. The changes are minor and technical in nature to ensure the Fees Orders recognise EU exit but otherwise have effect as they currently do. Stakeholders will not be impacted by the amendments.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 There are no plans to consolidate the Fees Orders at this time.

10. Consultation outcome

10.1 This instrument corrects deficiencies that occur as a result of the UK exiting the EU. A consultation is not considered necessary as the amendments are minor and technical in nature and do not impact upon either business or the individual.

11. Guidance

11.1 The Fees Orders indicate certain functions and their costs which the Secretary of State can take into consideration in setting related fees. The instrument relates to the existing fee raising powers of the Secretary of State and its effect is in essence to maintain the current regime, so it is not intended to publish guidance.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because of this low level of impact and because the instrument relates to the maintenance of the existing regime.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Mandy Lynch at the Driver and Vehicle Standards Agency (DVSA), Telephone: 0115 936 6097 or email: mandy.lynch@dvsa.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Paul O'Sullivan at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Jesse Norman, Parliamentary Under Secretary of State for Transport, can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/ESIC
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 77	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s.2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) Act 2018

1. Appropriateness statement

1.1 The Parliamentary Under Secretary of State for Transport, Jesse Norman, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

1.2 "In my view the Department for Transport (Fees) (Amendment) (EU Exit) Regulations 2018 do no more than is appropriate". This is the case because: the changes are minor and technical in nature to ensure the Fees Orders recognise EU exit but otherwise have effect as they currently do. Stakeholders will not be impacted by the amendments.

2. Good reasons

2.1 The Parliamentary Under Secretary of State for Transport, Jesse Norman, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

2.2 "In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action". These are given in the policy background section of this explanatory memorandum (paragraphs 7.1 to 7.9).

3. Equalities

3.1 The Parliamentary Under Secretary of State for Transport, Jesse Norman, has made the following statement "The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.".

3.2 The Parliamentary Under Secretary of State for Transport, Jesse Norman, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

3.3 "In relation to the draft instrument, I, Jesse Norman, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

4. Explanations

4.1 The explanations statement has been made in paragraph 2.4 of the main body of this explanatory memorandum.