EXPLANATORY MEMORANDUM TO THE STANDING COMMITTEE ON STATUTORY INSTRUMENTS

THE DEPARTMENT FOR TRANSPORT (FEES) ORDER 2009

2009 No. [XXXX]

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. Purpose of the instrument

2.1 The instrument enables additional functions and matters (i.e. elements of cost) to be taken into account when a fee is set in respect of certain functions relating to road vehicles, road transport, goods vehicle operators, public service vehicle operators and bus services.

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

3.1 The Order consolidates and partially amends the Department of Transport (Fees) Order 1988 (SI 1988/643) ("the 1988 Order"). The parts of the 1988 Order which have been consolidated relate mainly to fees charged by two Department for Transport agencies, being the Vehicle Operator Services Agency (VOSA) and the Vehicle Certification Agency (VCA). Those parts of the 1988 Order which have not been consolidated relate to other agencies of the Department for Transport or will require consolidation in the near future since further Community obligations are anticipated but cannot be implemented until the relevant Community instruments come into force.

4. Legislative Context

4.1 This instrument is made under the powers contained in section 102 of the Finance (No 2) Act 1987. That section applies where there is a power to require payment of a charge or a fee and sums received are required to be paid into the Consolidated Fund or a trading fund (the latter by virtue of the Government Trading Funds Act 1973, section 3(4)).

4.2 The instrument affects fee raising powers in 7 Acts of Parliament. These are:
The Finance Act 1973 ("the 1973 Act");
The International Carriage of Perishable Foodstuffs Act 1976 ("the 1976 Act");
The Public Passengers Vehicles Act 1981 ("the 1981 Act");
The Road Traffic Act 1988 ("the 1988 Act");
The Vehicle Excise and Registration Act 1994 ("the 1994 Act");
The Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act");
The Disability Discrimination Act 1995.

4.3 Most of these powers had already been extended to cover additional functions or matters, by virtue of the 1988 Order. The Acts not listed in the 1988 Order are:

- The 1995 Act – this repealed and re-enacted provisions relating to the licensing of operators of goods vehicles, formerly contained in the Transport Act 1968. The 1988 Order refers to the Transport Act 1968 and needs to be updated.
- The Disability Discrimination Act 1995 - the 1988 Order had not been updated to include this.

4.4 In relation to those Acts which were previously covered by the 1988 Order, there has also been updating to reflect new powers and functions, as well as clarification of existing powers and functions.

4.5 The need to extend and clarify the scope of the fee raising powers in the Order arises because:

- The description of a fee power and related function in primary legislation is sometimes very brief. For instance, the provisions creating powers to charge a fee for an operator's licence referred to articles 4(2) and 7 do not elaborate on the activities that need to be undertaken to ensure the licence can be granted and properly remain in force.

- All the activities within scope of this Order give rise to enforcement work, which is not normally included as an element of cost, when setting fees.

- The Secretary of State needs to take past deficits into account when setting fees charged mainly by VCA and VOSA. Recovery of past deficits is a matter not normally taken into account when determining the level of a fee. VOSA, in particular, is a trading fund and section 4(1)(a) the Government Trading Funds Act 1973 requires it *"to manage the funded operations so that the revenue of the fund ... ... (ii) is not less than sufficient, taking one year with another, to meet outgoings which are properly chargeable to the revenue account"*.

- A policy was announced by Ministers in December 2006 aimed at reducing costs to business by reducing the number of separate fees payable to VOSA. This Order facilitates this fee simplification policy by enabling certain costs previously recovered through a multiplicity of fees relating to operator licensing to be recovered instead through vehicle test fees charged under the 1988 Act. Although this ostensibly amounts to cross subsidy of operator licensing functions from vehicle test functions this will enable the costs to be distributed across the vehicle fleet in a fairer, more proportionate manner; and the ultimate pool of fee payers is essentially the same. Therefore Heavy Goods Vehicle ("HGV") operator licensing functions are specified against HGV vehicle testing powers and Public Service Vehicle ("PSV") operator licensing functions are specified against PSV vehicle testing powers.

5. Territorial Extent and Application

5.1 This instrument extends to all of the United Kingdom. Its application varies in relation to particular fee raising powers in accordance with the extent or application of those powers.

6. European Convention on Human Rights

The 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) Order 2009 are compatible with the Convention.

7. Policy background

7.1 This instrument consolidates and amends provisions currently contained in the Department of Transport (Fees) Order 1988. The provisions set out the functions, the cost of which may be taken into account by the Secretary of State in setting fees for various services provided largely by the Department for Transport's Vehicle Certification Agency (VCA) and Vehicle and Operator Services Agency (VOSA).

7.2 The provisions also set out matters and costs which may be taken into account in setting those fees, where these differ from those set out in Chapter 6 and Annex 6 of the Treasury publication "Managing Public Money",[1] which is approved by the Public Accounts Committee. In accordance with Managing Public Money the Treasury have approved the making of the Order.

7.3 The amendments being incorporated fall into 3 categories:

- Enabling functions which have previously been considered only in setting fees for the licensing of operators of HGVs and PSVs (Public Service Vehicles) to be considered also in setting HGV and PSV test fees. This is to merge some operator licensing and vehicle test fees to reduce the administrative burden on businesses by decreasing the number of times they have to make payments to VOSA and to spread the costs of promoting and enforcing the safe and legal operation of commercial vehicles more fairly across the vehicle fleet.
- Enabling past deficits within a particular fee area to be taken into account in setting future fees for those fee areas where this is not enabled in the current Order. This is necessary because it is not always possible to change statutory fees quickly enough to react to unpredicted changes in cost or demand; it is undesirable to set fees at levels high enough to ensure cost recovery in the most adverse of circumstances; and it is sometimes desirable to smooth the rate of change of fees over several years rather than have more dramatic changes.
- To define the functions which may be considered in setting fees under 2 powers where these had not been added to the present Order, both to clarify the scope of these fees and to enable costs to be taken into account on the same basis as they are for other fees. In particular, full cover needs to be given for enforcement functions.

7.4 The consolidation also updates references to legislation which has been amended since they were inserted into the existing Order

7.5 This instrument consolidates much of the 1988 Order. The Department hopes to be able to consolidate and amend the provisions relating to activities of the Driving Standards Agency (DSA) within the next 2 years. In article 10, the Department has amended provisions in the 1988 Order relating to powers under the 1973 Act, rather than consolidate them. The amendments are necessary because some of the existing language in the 1988

[1] Managing Public Money is published on the HM Treasury website at http://www.hm-treasury.gov.uk/psr_mpm_index.htm

Order was out of date or too narrow. However, the Department does not propose a fuller consolidation of 1973 Act powers until it is sure whether certain proposals contained in a Road Transport Package currently before the European Parliament, are to be enacted.

8. Consultation outcome

8.1 A public consultation was carried out between 18 August and 13 October 2008[2]. The consultation period was reduced to 8 weeks to enable the responses to be considered in time for a draft Order to be considered by the House of Commons earlier in the 2008/9 session than has proved possible and to minimise the overlap with the consultation on the actual fee levels planned for early autumn[3]. As well as posting on the internet, the consultation was sent to 36 bodies representing a broad spectrum of vehicle builders and users; and small businesses; as well as the devolved administrations. Responses were received from 4 representative bodies.

- None were opposed to proposals to add the fee powers not previously included.
- 3 of the 4 respondents opposed the recovery of past deficits; however none offered alternative solutions which could ensure that deficits were never incurred. The Department also pointed out that actual use of the power sought would be subject to further consultation as part of the process to change the regulations in which the actual fee levels were set.
- One respondent was also concerned that the breadth of the functions which the Department proposed to allow be taken into account against HGV test fees could lead to duplication of fees. The Department explained that this was necessary to prevent excessive bureaucracy in recording staff activity where staff were carrying out activities which covered both fee areas to improve service delivery efficiency and that the same total income would still be generated across the 2 fee areas. It is also necessary to enable the change in fees to be phased over 2 years to minimise the impact on businesses.
- Another respondent continued to be opposed to the fee simplification proposals. This view had been expressed in response a 2005/6 consultation on the principles of the fee simplification and considered before announcing the intent to proceed with the simplification.

8.2 A summary of the consultation response, together with the Department's consideration thereof is on the DfT website at:
www.dft.gov.uk/consultations/closed/vcavosas102order

9. Guidance

9.1 No guidance on this instrument has been produced since it has no direct effect on stakeholders. However, where the provisions are used to set future fees, the financial case for the fee levels proposed will be explained in the consultation on the fee proposals.

10. Impact

10.1 The impact on business, charities or voluntary bodies is indirect – i.e. it will only occur when the provisions of the instrument are used to set fees. When the provisions of the measure are used in setting fees, they will enable reductions in administrative burdens. Fee proposals will be subject to consultation and, if appropriate, impact assessment in the normal way

[2] Consultation on "Updating the Functions and Costs to be Considered in Setting Fees for Services Provided by VOSA and VCA"
[3] Consultation on "Delivering Better Services and Fairer Fees" was published on 6 November 2008

10.2 The impact on the public sector is also indirect but will enable greater flexibility for more effective financial management.

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

11. Regulating small business

11.1 The legislation applies only indirectly to small business since it only indirectly affects business costs.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is that the fees set using the provisions of this order are the same per use of the service regardless of business size.

12. Monitoring & review

12.1 The continuing appropriateness of the Order is reviewed as part of the annual review of fee levels.

13. Contact

John MacLellan at the Department for Transport's Vehicle and Operator Services Agency Tel: 0117 954 2531 or email: John.MacLellan@vosa.gsi.gov.uk can answer any queries regarding the instrument.