EXPLANATORY MEMORANDUM TO

THE LORD CHANCELLOR (MODIFICATIONS OF FUNCTIONS) ORDER 2007

2007 No. [XXX]

1. This Explanatory Memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This order provides that regulations made by the Lord Chancellor under section 101B of the Road Traffic Regulation Act 1984 should be made by statutory instrument subject to the affirmative Parliamentary procedure. Section 101B falls within a group of provisions in the Road Traffic Regulation Act 1984 (Sections 99 to 103) where regulations made under these sections, make provision for the removal and disposal of vehicles found on roads.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1 The Joint Committee may be aware of the current omission in section 134 of the Road Traffic Regulations Act 1984 to provide for a procedure for Parliamentary scrutiny of regulations made under section 101B of the Road Traffic Regulation Act 1984 as inserted by paragraph 3(2) of Schedule 11 to the Traffic Management Act 2004. This instrument corrects that omission.

4. Legislative Background

4.1 Section 80 of the Traffic Management Act 2004 enables the Lord Chancellor to make regulations providing for the making of representations and appeals by persons who are required to pay penalty charges for traffic contraventions or to secure the release of their vehicles from immobilisation devices. Regulations under section 80 are subject to the affirmative procedure by virtue of the section 89(5) of the 2004 Act.

4.2 Sections 101A and 101B were inserted into the Road Traffic Regulations Act 1984 by paragraph 3(2) of Schedule 11 to the Traffic Management Act 2004. Section 101B, which closely resembles section 80 of the 2004 Act, confers power on the Lord Chancellor to make regulations about representations and appeals against charges for the removal, storage and disposal of vehicles. No amendment was made to the 1984 Act for regulations under section 101B to be subject to the affirmative procedure. Closer inspection of the Road Traffic Regulation Act 1984 revealed that it does not provide for regulations to be made by the Lord Chancellor under section 101B to be subject to any parliamentary procedure or to be made by statutory instrument.

4.3 Whilst section 134(1) of the Road Traffic Regulation Act 1984 provides for parliamentary procedure in relation to powers conferred by the Act, they only do so for powers conferred on the Secretary of State or on "the Ministers acting jointly". The omission to amend section 134 to provide a procedure for regulations made by the Lord Chancellor has meant that regulations made under section 101B of the 1984 Act are without procedure when they should be made by affirmative resolution procedure.

4.4 This error has come to the Department's attention because the Department of Transport is currently drafting regulations under section 101B of the 1984 Act, which will be made by the Lord Chancellor.

4.5 An order under section 19 of the Constitutional Reform Act 2005 will enable the correct procedure to be inserted into section 134 of the 1984 Act which will ensure that regulations made under section 101B of the 1984 Act are made by affirmative procedure.

5. Extent

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 Not applicable.

7. Policy Background

7.1 That regulations under section 101B are not subject to any parliamentary procedure and are not prescribed to be made by statutory instrument is an oversight by the Department for Transport in the amendments made to the Road Traffic Regulation Act 1984 by the Traffic Management Act 2004.

7.2 The Delegated Powers and Regulatory Reform Committee (Thirteenth Report of Session 2003-4) considered the Department for Transport's initial proposal to provide that the powers under section 80 of the 2004 Act should be subject to negative parliamentary procedure and rejected it. The Committee recommended that in view of the extension of civil enforcement under Part 6 of the Traffic Management Bill, representations, appeals and adjudication would become even more important than they are at present, so the regulations should be subject to affirmative procedure.

7.3 The Department for Transport's memorandum to the Committee also proposed that the powers under the new section 101B should be subject to negative procedure. The views of the Committee in respect of section 80 of the 2004 Act are equally applicable to section 101B of the 1984 Act, and it must have been the intention of the Committee that the section 101B should also be subject to affirmative procedure.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

9.1 Claire Troughton at the Department for Constitutional Affairs, telephone: 020 7340 6568, email claire.troughton@tribunals.gsi.gov.uk can answer any queries about this matter.