EXPLANATORY MEMORANDUM TO

THE ROAD VEHICLES (POWERS TO STOP) REGULATIONS 2011

2011 No.

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 These Regulations provide the Secretary of State with a power to appoint 'stopping officers' in Great Britain. They also provide appointed stopping officers with individual powers to stop commercial vehicles on the road so that specific compliance inspections can be carried out. In Northern Ireland, these Regulations also add to existing powers of vehicle examiners from the Driver and Vehicle Agency (DVA) to stop commercial vehicles on the road where no comparable powers already exist.

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

3.1 None.

4. Legislative Context

4.1 Particular pieces of EU legislation set out a number of requirements for commercial vehicles and their drivers circulating within the territory of the Member States. In particular, EU legislation in this field sets out the rules relating to: the requirement for roadworthiness testing of commercial vehicles on roads; the maximum permissible weight limits for commercial vehicles of various classes; drivers' hours' rules and the recording equipment and records required; the conditions and requirements applicable to commercial operators of road haulage vehicles and passenger transport vehicles; the licences and documentation required for international passenger transportation services, international road haulage services and cabotage operations; and, the qualifications and documentary evidence required for commercial vehicle drivers. That legislation places obligations on Member States to, in some cases, actively undertake specific compliance testing of vehicles, or in others, ensure the legislation is adequately enforced. One of the reasons for stopping commercial vehicles on roads to inspect either the vehicle itself or documentation relating to the vehicle or its driver, is to ensure that the UK complies with its EU law obligations in this area.

4.2 Since the Police Reform Act 2002 (the PRA) came into force, there has been a mechanism whereby vehicle examiners appointed under section 66A of the Road Traffic Act 1988 can be accredited by chief officers of police to stop vehicles on the road. These provisions – contained in section 41 of, and schedule 5 paragraph 8 to, the PRA – deal with the exercise of police powers

by civilians under 'community safety accreditation schemes'. These powers only apply in England and Wales and only relate to roadside 'roadworthiness' inspections of vehicles under section 67 of the Road Traffic Act 1988. In order to be accredited with the power to stop under the PRA, individual vehicle examiners must apply to the chief officer of police for every area in which they wish to exercise the power.

4.3 The assistance of the police is required to stop moving vehicles on roads in all other cases (the police have a general power to stop vehicles in section 163 of the Road Traffic Act 1988). In Scotland, it is only possible to stop moving vehicles for compliance inspections with the assistance of the police as the relevant provisions of the PRA do not extend to Scotland.

4.4 These Regulations amend the Road Traffic Act 1988 to provide the Secretary of State with a power to appoint stopping officers in Great Britain. The amendments to the Road Traffic Act 1988 and the other legislation listed below also provide appointed stopping officers with powers to stop commercial vehicles for the purposes of specific compliance inspections. In Northern Ireland, the Regulations extend powers of vehicle examiners from the DVA (who, in certain circumstances, can already stop vehicles for inspection) to enable them to stop commercial vehicles for all of the required inspections where they do not already have existing powers.

4.5 These Regulations make amendments to the following legislation for the following purposes:

- The Road Traffic Act 1988 – to provide the Secretary of State with a power to appoint stopping officers in Great Britain. To create criminal offences of impersonating a stopping officer and resisting or obstructing a stopping officer. To provide stopping officers with a power to stop commercial vehicles for the purposes of a 'roadworthiness' inspection and for the purposes of weight checking the vehicle;
- The Road Traffic Offenders Act 1988 – to set the maximum penalty for the offence of impersonating a stopping officer at a level 5 fine and the maximum penalty for resisting or obstructing a stopping officer at one month in prison or a level 3 fine;
- The Transport Act 1968 – to provide stopping officers with a power to stop commercial vehicles for the purposes of inspecting documents, records and recording equipment relating to the rules on drivers' hours;
- The Public Passenger Vehicles Act 1981 – to provide stopping officers with a power to stop passenger carrying commercial vehicles for the purposes of carrying out checks in relation to the requirement to hold a public service vehicle operator's licence and display an operator's disc;
- The Goods Vehicles (Licensing of Operators) Act 1995 – to provide stopping officers with a power to stop commercial goods vehicles for the purposes of carrying out checks in relation to the requirement to hold a goods vehicle operator's licence;

- The Road Traffic (Northern Ireland) Order 1995 – to create a criminal offence in Northern Ireland of impersonating a vehicle examiner;
- The Road Traffic Offenders (Northern Ireland) Order 1996 – to set the maximum penalty in Northern Ireland for the offence of impersonating a vehicle examiner at a level 5 fine;
- The Goods Vehicles (Community Authorisations) Regulations 1992 – to provide stopping officers and, in Northern Ireland, vehicle examiners, with a power to stop commercial goods vehicles for the purposes of carrying out checks in relation to the requirement to hold Community authorisation and comply with any conditions attached to the authorisation;
- The Public Service Vehicles (Community Licences) Regulations 1999 – to provide stopping officers with a power to stop commercial passenger carrying vehicles for the purposes of carrying out checks in relation to the requirement to hold a Community licence and comply with any conditions attached to the licence;
- The Road Transport (Passenger Vehicles Cabotage) Regulations 1999 – to provide stopping officers with a power to stop commercial passenger carrying vehicles for the purposes of carrying out checks in relation to the requirement to hold a Community licence and control documents;
- The Vehicle Drivers (Certificates of Professional Competence) Regulations 2007 – to provide stopping officers and, in Northern Ireland, vehicle examiners, with a power to stop commercial vehicles for the purposes of carrying out checks in relation to the requirement to carry evidence of a certificate of professional competence or a training exemption.

4.6 The amendments to the Transport Act 1968 are being made under powers contained in section 95(1) of that Act. Otherwise, these Regulations are being made under section 2(2) of the European Communities Act 1972 as they make amendments to enforcement provisions in UK legislation relating to EU obligations and, in turn, ensure the UK complies with those EU obligations.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State, Mike Penning has made the following statement regarding Human Rights:

In my view the provisions of the Road Vehicles (Powers to Stop) Regulations 2011 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

7.1 The policy objective is to enable duly trained and appointed officers in both the Department for Transport's Vehicle and Operator Services Agency (VOSA) and Northern Ireland's DVA to stop commercial vehicles and their drivers for the roadside inspections and enforcement required under various EU legislation. Currently, in order to meet with EU obligations, significant police resources are taken up assisting vehicle examiners with the stopping of vehicles for compliance checks. Prior to 2002, in England and Wales, all vehicles had to be stopped by police constables, but this was judged not to be the most efficient use of valuable police resource and new provisions were made under the PRA to enable chief officers of police to accredit appropriately trained VOSA personnel to undertake this task. These provisions have worked well and the objective is to create new provisions which build on the improvements made and extend these throughout the UK (rather than limiting the application to England and Wales).

7.2 As things currently stand, VOSA's vehicle examiners in England and Wales have to be accredited individually with a power to stop by each of the chief officers of police in whose area they operate. This is administratively cumbersome both for VOSA and for the police. Consequently, now that the PRA provisions have been shown to be effective, the policy objective is also to enable the Secretary of State (although in practice most probably the Chief Executive of VOSA acting on his behalf) to accredit stopping officers himself. The accreditation process which VOSA will adopt will have the same safeguards as the accreditation process under the PRA.

7.3 Furthermore, as things currently stand, VOSA vehicle examiners accredited with the power to stop are strictly only able to stop vehicles for the purposes of carrying out 'roadworthiness' inspections under section 67 of the Road Traffic Act 1988 (as required by Article 3 of Directive 2000/30/EC). The policy objective is to extend the circumstances in which stopping officers may stop vehicles to encompass of all of the compliance inspection requirements for which the UK has a responsibility. Those requirements will be extended by the Regulations throughout the UK, since this is the requirement of the relevant EU legislation.

7.4 There is no proposal to revoke the related PRA provisions. This will help to ensure that VOSA retains the ability – in England and Wales – to stop vehicles (such as light goods vehicles) which are not covered by the EU legislative requirements for compliance inspections.

- ***Consolidation***

7.5 There are no plans to consolidate the legislation in this area at this time.

8. Consultation Outcome

8.1 A public consultation exercise was launched on 29 June 2010, which ran until 13 August 2010. The purpose of the consultation was to seek views on the proposals to supplement the existing powers available to VOSA examiners to enable them to stop commercial vehicles at the roadside for inspection. The consultation was UK-wide since the proposals included provisions that were intended to supplement the powers of DVA examiners in Northern Ireland - as well as to provide VOSA with direct powers to enable appointed officials (stopping officers) to stop commercial vehicles for inspection throughout GB.

8.2 In total there were 23 responses to the consultation. Overall, there is broad support for the proposals as detailed in the consultation document. We have provided in the remaining text of this section of the Memorandum a brief summary of the main points raised in the consultation, including points raised in relation to the Impact Assessment. A more detailed analysis of the consultation responses can be found at www.dft.gov.uk.

8.3 Of the total 23 responses received, 19 agreed that the Secretary of State should be able to appoint stopping officers to stop commercial vehicles in England, Wales and Scotland. 3 did not offer any comments and 1 disagreed with the proposal because he believed there would be a conflict of interest in, effectively, delegating the power to accredit to the Chief Executive of VOSA.

8.4 On the proposal to make equivalent provisions for Northern Ireland of the 23 responses received 15 of the respondents agreed with the proposal and 8 offered no comment.

8.5 In relation to the proposal to extend the scope of stopping powers to include more than just roadworthiness inspections, 17 responses agreed with this proposal, 2 respondents did not agree - but without elaborating their reasons - and 4 respondents offered no comment.

8.6 Of the 23 responses received, 21 respondents agreed that we should make it an offence to impersonate a stopping officer and 2 offered no comments on the proposal.

8.7 Of the 23 responses received, 18 respondents agreed that it should be an offence to obstruct a VOSA stopping officer; 3 offered no comment; 1 had concerns about how easy it would be to identify a bona fide stopping officer; and, 1 wanted to know if the new power would cover local authority officers.

8.8 Full details of costs and benefits are given in the attached post-consultation Impact Assessment (see Annex).

9. Guidance

9.1 VOSA will produce and update operational guidance for examiners on how to apply the powers in practice.

9.2 The publicity strategy for implementing the powers to stop for VOSA is expected to include the following:

- a press release to stimulate media interest when the Regulations come into force; and,
- articles in the main trade magazines.

10. Impact

10.1 There will not be any impact on business, charities and voluntary bodies.

10.2 There will not be any impact on the public sector.

10.3 An Impact Assessment is attached to this Memorandum (see Annex) and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation does apply to small business.

11.2 There will not be any impact on businesses (including small businesses).

12. Monitoring & Review

12.1 The success criterion is to see the rate of compliance with road traffic law increase.

12.2 The Department for Transport and Department of the Environment in Northern Ireland will keep the new provisions under review.

13. Contact

13.1 The official within the Department for Transport who can be contacted with queries on these Regulations is Joanne Wake, in Operator Licensing and Roadworthiness Division Department for Transport, Zone 2/14, 76 Marsham Street, Westminster, London, SW1P 4DR; e-mail Joanne.wake@dft.gsi.gov.uk.