EXPLANATORY MEMORANDUM TO

THE TRANSPORT FOR LONDON (BEST VALUE) (CONTRACTING OUT OF INVESTMENT AND HIGHWAY FUNCTIONS) ORDER 2005

2005 No.

1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This instrument enables Transport for London to contract out certain investment and highways functions on the same basis as local authorities are currently able to do.

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

3.1 None.

4. Legislative Background

4.1 Section 70(2) of the Deregulation and Contracting Out Act 1994 enables the Secretary of State to make an order which, in effect, permits local authorities to "contract out" the functions which are specified in the order. "Local authority" is defined in section 79 of the 1994 Act and Transport for London is not included in the definition. However, section 18 of the Local Government Act 1999 provides that an order under section 70 of the 1994 Act may be made in respect of a "best value authority" if the Secretary of State considers it is necessary or expedient for the purpose of permitting or facilitating compliance by them with the requirements of Part 1 of the 1999 Act. By virtue of section 1(1)(i) of that Act, Transport for London is a best value authority.

4.2 This instrument is made under section 70 of the 1994 Act as applied by section 18 of the 1999 Act. It confers on Transport for London the power to contract out functions which may be contracted out by local authorities under the Local Authorities (Contracting Out of Investment Functions) Order 1996 ("the 1996 Order"), the Local Authorities (Contracting Out of Highway Functions) Order 1999 ("the 1999 Order") and the Local Authorities (Contracting Out of Highway Functions) (England) Order 2001 ("the 2001 Order"). This is the first use of the power in section 70 as applied by section 18. The Secretary of State's powers in section 70, whether as applied by section 18 or not, are not devolved to the National Assembly for Wales as respects Wales.

4.3 Article 2(1) and (2) enables Transport for London to contract out the same investment function as local authorities. These provisions are equivalent to article 3 and 4(2) and (2A) of the 1996 Order (Article 4(3), (4) and (4A) are not relevant to Transport for London). Article 2(3) places restrictions and conditions on the exercise of these functions by any person to whom an authorisation is given. This provision

applies, with modifications, the provisions set out in articles 5, 7 to 13 of the 1996 Order.

4.4 Article 3 enables Transport for London to contract out the same highway functions as local authorities. The functions are those set out in Schedules 1, 2 and 3 to the 1999 Order and the Schedule to the 2001 Order and include, in particular, the authority's functions under the Highways Act 1980 and the New Roads and Street Works Act 1991.

5. Extent

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

Jim Fitzpatrick, Parliamentary Under Secretary of State, has made the following statement regarding Human Rights:

In my view the provisions of the Transport for London (Best Value) (Contracting Out of Investment and Highway Functions) Order [2005] are compatible with the Convention rights.

7. Policy background

7.1 The best value regime is a framework to improve local services. Under best value, local authorities and other authorities ("best value authorities") are required to assess their own performance, and put in place measures to ensure continual improvements in their services. Part 1 of the Local Government Act 1999 places requirements on best value authorities relating to economy, efficiency and effectiveness in the exercise of their functions. As a means of meeting these requirements, government guidance encourages best value authorities to challenge why, how and by whom a function is discharged.

7.2 Transport for London is a best value authority. Although Transport for London is currently able to invest its funds as it sees fit, it cannot engage investment fund managers to carry out this function on its behalf, in the same way that local authorities are able to. Local authorities have been granted these powers so that they can call on the expertise of specialists with the experience, systems, and understanding of the market that are better suited to ensuring optimum return for investment. Transport for London's enquiries with brokers indicate that it could achieve higher returns than it is currently able to through outsourcing parts of its investment functions, while keeping risks at a similar level to investment managed internally.

7.4 Transport for London is responsible for maintaining the 580 kilometre Transport for London Road Network and traffic control equipment within the GLA boundary. As Transport for London is currently unable to contract out its highway functions in the same way that local highway authorities are able to, it cannot contract out highway functions which it considers contractors are better placed to manage at greater value for money. It is also unable to compare in-house operations with external arrangements, as encouraged by government best value guidance.

7.5 Following consultation with Transport for London and across Whitehall, Ministers agreed that the absence of these powers hinder Transport for London's

ability to meet its obligations as a best value authority. A 12 week consultation exercise was carried on these proposals. The consultees were the Greater London Authority group, all local authorities within London, the Association of London Government, the Local Government Association, Trade Unions with members working for Transport for London, the Audit Commission, and the Chartered Institute of Public Finance and Accountancy.

7.6 There were three consultation responses. The draft order received the backing of the Greater London Authority and Transport for London. One consultee was concerned that those who live or do business on Transport for London roads would have to deal with contractors answerable to the terms of a contract, rather than directly with a publicly accountable body. Concerns were also raised that the details of any contract may limit the contractor's ability to respond appropriately should, for example, Transport for London wish to carry out works at short notice. However the fact that Transport for London contracts out a function to a contractor does not absolve the authority from responsibility for the discharge of that function. Further other local highway authorities have used powers to contract out highway functions effectively for many years, including provisions within contracts to manage both quality and response time standards to satisfactory levels. No reasons have been identified to suggest Transport for London should be treated differently from other local highway authorities in this respect.

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

Matthew Collins at the Government Office for London Tel: 020 7217 3649 or e-mail: matthew.collins@gol.gsi.gov.uk can answer any queries regarding the instrument.