EXPLANATORY MEMORANDUM TO

THE MOTOR CYCLES ETC. (REPLACEMENT OF CATALYTIC CONVERTERS) AND MOTOR VEHICLES (REPLACEMENT OF CATALYTIC CONVERTERS AND POLLUTION CONTROL DEVICES) (AMENDMENT) REGULATIONS 2011

2011 No. 1854

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These Regulations amend the Motor Cycles Etc. (Replacement of Catalytic Converters) Regulations 2009 (S.I. 2009/1896) and the Motor Vehicles (Replacement of Catalytic Converters and Pollution Control Devices) Regulations 2009 (S.I. 2009/1899). The purpose of the amendments is to make clear that a prosecution can be brought in Scotland for offences under those Regulations.

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

3.1 The Joint Committee on Statutory Instruments reported regulation 6(4) and (5) of S.I. 2009/1896 and regulation 9(4) and (5) of S.I. 2009/1899 for defective drafting (25th Report of the 2008-2009 session) on the basis that they were expressed to preclude proceedings in Scotland for an offence and that this restriction was not intended. These amending Regulations are intended to make the position clear. They are being issued free of charge to all known recipients of S.I. 2009/1896 and S.I. 2009/1899 (together "the 2009 Regulations").

4. Legislative Context

4.1 The 2009 Regulations make provision in respect of the supply and fitting of catalytic converters (and also, in the case of S.I. 2009/1899, pollution control devices) intended to be replacement parts. Regulation 6 of S.I. 2009/1896 and regulation 9 of S.I. 2009/1899 make provision about enforcement.

The 2009 Regulations empower the enforcement authority (the Secretary of State) in England and Wales and Northern Ireland to bring prosecutions for offences under the Regulations. In relation to prosecutions in Scotland, it was intended that the general principle that responsibility for prosecuting in Scotland rests with the Lord Advocate should apply to offences under the 2009 Regulations. These Regulations amend the 2009 Regulations to make this intention clear.

5. Territorial Extent and Application

5.1 This instrument extends to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 These Regulations are being made to ensure that it is clear that a prosecution for an offence under the 2009 Regulations can be brought in Scotland.

- Consolidation

7.2 The Department does not consider it necessary to consolidate the 2009 Regulations. The amendments being made by these amending Regulations are not considered sufficiently voluminous or complex to warrant such a consolidation.

8. Consultation outcome

8.1 The Scottish Government, Welsh Government and Northern Ireland Executive were consulted about these amending Regulations because they extend to the whole of the United Kingdom (although their practical application is to Scotland). They raised no objections to the making of the amending Regulations. It was not considered necessary to consult industry because the purpose of these amending Regulations is merely to make clear what the 2009 Regulations were always intended to mean.

9. Guidance

9.1 No guidance is being issued in respect of these amending Regulations. Guidance for industry on the original sets of Regulations may be found at;

http://www.vca.gov.uk/additional/files/enforcement-and-research-activities/replacement-cat/replacement-cat-regulations.pdf

10. Impact

10.1 These amending Regulations clarify the meaning of the 2009 Regulations. As such, they are not expected to have any impact on business, charities, voluntary bodies or the public sector over and above that of the 2009 Regulations.

11. Regulating small business

11.1 The legislation applies to small business but, as noted at 10.1, only provide clarification of the meaning of the 2009 Regulations.

12. Monitoring & review

12.1 The Department does not have any specific plans to monitor or review these amending Regulations.

13. Contact

Chris Parkin at the Department for Transport (tel: 020 7944 2958, email: chris.parkin@dft.gsi.gov.uk) can answer queries regarding the instrument.