EXPLANATORY MEMORANDUM TO

THE MOTOR VEHICLES (DRIVING LICENCES) (AMENDMENT) (NO.2) REGULATIONS 2013

2013 No. 1013

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

The purpose of this instrument is to amend the Motor Vehicles (Driving Licences) Regulations 1999 by extending the scope of the definition of High Risk Offender ("HRO") to include a new category of offender – drivers who refuse to give their permission for a sample of blood to be analysed in a laboratory.

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

None.

4. Legislative Context

The Motor Vehicles (Driving Licences) (Amendment) (No.2) Regulations are made under Part 3 of the Road Traffic Act 1988 (the Act) which provides for the licensing of drivers of vehicles. Section 105 of the Act allows the Secretary of State to make regulations generally in respect of driving licences. The power to make regulations in relation to the HRO scheme comes from section 94(4) of the Act. The Secretary of State is required to consult under section 195 with representative organisations before making any regulations.

5. Territorial Extent and Application

This instrument applies to Great Britain.

6. European Convention on Human Rights

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 Disqualified drink drivers categorised as HROs can be required by the Secretary of State to evidence their fitness to drive through a medical examination before their licence can be renewed. The legislation distinguishes this group of licence applicants from those with other medical conditions by making them responsible for the cost of medical examinations to prove their fitness to drive.

7.2 Regulation 74 of the Motor Vehicles (Driving Licences) Regulations 1999 defines HROs as those drink drive offenders disqualified from driving because they:

a) are 2½ times or more over the legally permissible level for alcohol in breath, blood or urine;
b) fail to provide a specimen for testing; or
c) are repeat offenders (two or more disqualifications within 10 years for either exceeding the legal alcohol limit or being unfit to drive through drink).

7.3 The HRO scheme is being extended to include drivers who are banned for refusing to consent to a sample of their blood being analysed in a laboratory. The Police Reform Act 2002 amended the Road Traffic Act 1988 to include section 7A which allows a police officer to request that a doctor takes a sample of blood for analysis without the driver's consent due to incapacity. However, the driver must subsequently give consent to the sample being analysed in a laboratory. Failure to do so is an offence but being banned in consequence does not at present make an individual into a HRO. The change in the Regulations will mean that those persons in this group are treated equally with those banned following conviction for refusing to provide a specimen for analysis.

- ***Consolidation***

There is no proposal to consolidate the Regulations.

8. Consultation outcome

8.1 The proposed legislative change was consulted on for a period of seven weeks beginning on 30th January 2013. The consultation took the form of a letter sent to a select group of 27 organisations that we identified as having a particular interest in the matter. A short targeted consultation was considered sufficient because the proposed change had no impact on the private sector, civil society organisations or public services. This was agreed with the Home Affairs Committee and Reducing Regulation Committee.

8.2 Amongst the organisations contacted were the Police Federation of England and Wales, the Royal Society for the Prevention of Accidents (RoSPA), Brake and the Road Haulage Association.

8.3 There was a reasonable level of response to the consultation with eight replies received. The organisations that responded gave complete support to the proposals. Brake's view was that they strongly welcomed the legislative change, on the basis that it would help to ensure more high risk drink drive offenders were included in the scheme and were subject to rigorous testing before regaining their licence. The Police Federation's view was that it was only fair that those banned for refusing to consent to a sample of their blood being analysed in a laboratory be treated the same as those refusing to provide a specimen for analysis.

8.4 The number of responses reflects the fact that the consultation was only sent to a limited number of stakeholders. The comments received indicate that the intended legislative amendment is perceived to have considerable road safety benefits.

9. Guidance

Existing leaflets and forms and guidance on the DVLA website have been updated to reflect the new rules.

10. Impact

10.1 There is no impact on business, charity or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment was not prepared for this instrument.

11. Regulating small business

The legislation does not apply to small businesses.

12. Monitoring & review
DVLA will monitor and assess the impact of the legislation through analysis of driving endorsement statistics.

13. Contact
Jan Chandaman at the Driver and Vehicle Licensing Agency [Tel: 01792 384593 or email: jan.chandaman@dvla.gsi.gov.uk] can answer any queries regarding the instrument.