EXPLANATORY MEMORANDUM TO

THE PROTECTION OF FREEDOMS ACT 2012 (CONSEQUENTIAL AMENDMENTS) ORDER 2012

2012 No. 2278

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

2. Purpose of the instrument

2.1 This instrument is being made to achieve consistency with the newly modified section 99 of the Road Traffic Regulation Act 1984 ("the 1984 Act") by amending the words "*land in the open air*" to "*other land*" in the Functions of Traffic Wardens Order 1970 and the Removal and Disposal of Vehicles (Traffic Officers) (England) Regulations 2008.

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

3.1 None.

4. Legislative Context

4.1 The Protection of Freedoms Act 2012 (Consequential Amendments) Order 2012 amends the Functions of Traffic Wardens Order 1970 ("the 1970 Order") and the Removal and Disposal of Vehicles (Traffic Officers) (England) Regulations 2008 ("the 2008 Regulations") to make consequential amendments to the definition of land from which traffic wardens and traffic officers may remove vehicles. These amendments are consequential upon amendments made by section 55 of the Protection of Freedoms Act 2012 ("the 2012 Act") to the 1984 Act to the definition of land from which vehicles may be removed.

4.2 Section 115 of the 2012 Act allows the Secretary of State to make such provision by order, as the Secretary of State considers appropriate in consequence of the Act.

5. Territorial Extent and Application

5.1 This instrument applies to England.

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 As a consequence of the ban on clamping and towing without lawful authority resulting from section 54 of the 2012 Act an appropriate mechanism, which is not vulnerable to abuse by clamping companies, is needed for the removal of vehicles obstructing or preventing a landowner's use of their land.

7.2 Section 99 of the 1984 Act enables the Secretary of State to provide in regulations for the removal of vehicles that are illegally, obstructively or dangerously parked or broken down on a road (defined in section 142 of that Act as '*any length of highway or of any other road to which the public has access',).* It also gives the same powers for vehicles that have been abandoned on a road or "*on any land in the open air*", which covers private land. Section 55 of the 2012 Act extends the power to remove abandoned vehicles so that it is no longer restricted to vehicles "on any land in the open air", but instead to "other land".

7.3 As the 1970 Order and the 2008 Regulations both contain provisions relating to section 99 of the 1984 Act these consequential amendments are required to achieve consistency and alignment of the wording in these instruments with the amended text in section 99 of the 1984 Act, namely from "*land in the open air*" to "*other land*".

7.4 The amendments extend the power to remove abandoned vehicles so that it is no longer restricted to vehicles "on any land in the open air", but instead to "other land", so ensuring that the power could include places that are covered, such as underground or multi-storey car parks.

- Consolidation

7.5 No consolidation is planned.

8. Consultation outcome

8.1 No formal 12 week consultation has been undertaken. This is because these Regulations only make a technical change. There is therefore no change in policy. We have consulted with the Department for Transport ("DfT") and the Welsh Office.

9. Guidance

9.1 As these are minor consequential amendments, DfT guidance will be provided at the next available opportunity.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies. This is because there is no change in policy.

10.2 There is no impact on the public sector as costs arising from the change are recoverable.

10.3 An Impact Assessment has not been prepared for this instrument because no impact on the private, voluntary or public sector is foreseen.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 DfT will inform the Home Office if there are any future changes to allied legislation which require further amendments to this instrument.

13. Contact

Kate Mosley at the Home Office Tel: 0207 035 8303 or email: kate.mosley@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.