

EXPLANATORY MEMORANDUM TO
THE MOTOR VEHICLES (DRIVING LICENCES) (AMENDMENT NO. 3)
REGULATIONS 2008

2008 No. 1312

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. **Description**

This instrument revokes and replaces the Motor Vehicles (Driving Licences) (Amendment No. 2) Regulations 2008 (S.I. 2008/1038) solely to correct drafting errors in that instrument. It introduces a fee of £17.50 in respect of the renewal of a photocard driving licence with effect from 16th May 2008.

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

3.1 The Department regrets to inform the Joint Committee that this instrument breaches the convention that an instrument should be laid before Parliament for a minimum of 21 days before it comes into force (the 21 day rule).

3.2 This instrument revokes and replaces the Motor Vehicles (Driving Licences) (Amendment No. 2) Regulations 2008 (S.I. 2008/1038) (the “No. 2 Regulations”). The No. 2 Regulations were made on 1 April 2008, laid before Parliament on 8th April 2008 and had a coming into force date of 16th May 2008. On or around 10 May, Departmental officials became aware that the No. 2 Regulations were defectively drafted. A key enabling power (section 99(7ZA) of the Road Traffic Act 1988) had been omitted from the preamble in error. It was thus necessary to revoke and replace the No. 2 Regulations in order to correct that error as a matter of urgency (at the same time it was decided, for the avoidance of doubt, to add a reference in the preamble to section 105(2) of the 1988 Act). There is a pressing policy need for this replacement instrument to have the same coming into force date as the No. 2 Regulations in order that the new driving licence fee may be charged from 16th May. As well as creating uncertainty, the consequence of delaying this instrument in order to comply with the 21 day rule would be to prevent the Department from charging the new fee until early June. As this instrument and the No. 2 Regulations both amend the principal driving licences regulations (SI 1999/2864), the provision in this instrument that revokes the No. 2 Regulations comes into force at 11.59 p.m. on 15th May in order to avoid any possible textual confusion.

3.3 The remaining sections of this Memorandum replicate the corresponding sections of the explanatory memorandum that was produced for the No. 2 Regulations.

4. Legislative Background

4.1 Section 99 (2A) of the Road Traffic Act 1988 requires a photocard driving licence which remains in force for more than ten years to be surrendered to the Secretary of State with a new photograph that is a current likeness of the licence holder. That surrender must occur within 10 years of the issue date on the licence (or the issue date of any earlier licence bearing the same photograph). The first photocard licences are required to be surrendered from July 2008. However, licence holders may surrender their photocard licence at any time during the ten year period. This allows a so-called “vanity exchange”, where the licence holder simply wants to change the photograph on their licence.

4.2 On the surrender of such a licence the Secretary of State is required to grant a new licence, provided that the applicant has paid the fee (if any) which is prescribed by regulations (see sections 99(7) and 99 (7ZA)). The ten year period starts afresh on the grant of the new licence.

4.3 Driving licence fees are prescribed by the Motor Vehicles (Driving Licences) Regulations 1999 (S.I. 1999/2864), as amended (“the 1999 Regulations”). This instrument further amends the 1999 Regulations by adding a new fee in respect of the renewal of a photocard driving licence with effect from 16 May 2008. The relevant charging power is section 99(7ZA) of the Road Traffic Act 1988 (as inserted by the Road Safety Act 2006), which came into force on 27 February 2007.

4.4 The Department for Transport (Driver Licensing and Vehicle Registration Fees) (Order) 2003 (S.I. 2003/2994) (“the 2003 Order”) specifies functions, the costs of which the Secretary of State may recover when setting the fees relating to driver licensing and vehicle registration. In particular it provides that she may recover costs relating to vehicle licensing when setting driver licensing fees and vice versa. It also extends the range of matters which may be taken into account in determining the costs of the specified functions.

4.5 The Department for Transport (Driver Licensing and Vehicle Registration Fees) (Amendment) Order 2008 (S.I. 2008/908) inserted a reference in the 2003 Order to section 99(7ZA) of the Road Traffic Act 1988 with effect from 28 March 2008. The effect of that amendment is that, when fixing the fee for such renewals, the Secretary of State is to take account of the functions and matters specified in the 2003 Order in addition to other matters which are to be taken into account.

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

7.1 The Driver and Licensing Agency (“DVLA”) is the executive agency of the Department for Transport responsible for driver licensing. DVLA operates as a Trading Fund under the Driver and Vehicle Licensing Agency Trading Order 2004 (SI 2004/1037). Fees and charges are set by DVLA in line with its Trading Fund status and the fee pooling arrangements authorised by the 2003 Order.

7.2 DVLA consulted on proposed changes to driving licence fees between August and November 2007. The consultation paper was sent directly to 317 organisations and was made available on the Direct.gov and DVLA websites. There was a low response to the consultation with only 12 replies received. The low response level to the consultation is indicative of a low level of public concern with the policy, which is regarded as relatively uncontroversial.

7.3 From the limited feedback received from the fees consultation, DVLA obtained support to introduce a simplified fee regime for the three driving licence transactions referred to in paragraph 7.4 below (and to introduce a new fee at the same level in respect of the renewal of a photocard licence). The aim is to simplify and clarify the process for the customer and to move to a simpler and more efficient process for DVLA. In a very small sample there was a third as much more support for the proposed fee changes as there was for maintaining the status quo and additionally it should be noted that the largest constituency of replies were from those who had no particular preference. An analysis of the consultation responses can be obtained on DVLA’s website – www.dvla.gov.uk.

7.4 The common fee level of £17.50 was introduced by the Motor Vehicles (Driving Licences) (Amendment) Regulations 2008 (SI 2008/508) with effect from 1 April 2008 in respect of the following three transactions:

- provision of a duplicate when a driving licence has been lost, stolen or destroyed;
- exchange of a driving licence for removal of endorsements;
- exchanging a paper licence for a photocard licence.

It was necessary to amend the 2003 Order for the purpose described in

paragraph 4.4 above before introducing the fee for the renewal of a photocard licence, which is why that fee is being introduced by this later instrument.

7.5 The amendments in this instrument are not considered politically or legally important.

7.6 The Department is not intending to issue a press release or provide any other form of publicity regarding these regulations.

7.7 This instrument further amends the 1999 Regulations. The Department has no current plans to undertake a consolidation, which in the case of the 1999 Regulations would be a very significant exercise.

8. Impact

8.1 A full impact assessment has not been produced for this instrument. However, a full impact assessment of the effect that this amendment and other related amendments will have on the costs of business and the voluntary sector was produced for the Motor Vehicles (Driving Licences) (Amendment) Regulations 2008 (S.I.2008/508) and is available from the DVLA (see address below) and on the DVLA's website at www.dvla.gov.uk. That impact assessment is annexed to the explanatory memorandum relating to S.I. 2008/508, which is available alongside that instrument on the Office of Public Sector Information website at www.opsi.gov.uk.

8.2 The fees introduced are in respect of driving licences and, since very few areas of the public sector reimburse costs of driving licences for individual employees, the impact is expected to be minimal. The one area we have identified as impacted would be the Ministry of Defence, but the additional costs are not significant and anyway outweighed by the benefits gained through the previous abolition of fees for vocational licence changes.

9. Contact

The official at the Department for Transport who can answer queries regarding this instrument is: David J Morgan, Driver and Vehicle Licensing Agency, Financial Management and Reporting, D7, Longview Road, Swansea, SA6 7JL (email: david.j.morgan@dvla.gsi.gov.uk).