

## EXPLANATORY MEMORANDUM

### THE HIGHWAY LITTER CLEARANCE AND CLEANING (TRANSFER OF RESPONSIBILITY) (ENGLAND) ORDER 2009

2009 No. 2677

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**

2.1 This instrument, made under section 86(11) of the Environmental Protection Act 1990, transfers from certain local authorities to the Secretary of State for Transport (as the highway authority) responsibility for the discharge of the duty to keep highways clear of litter, as specified in the instrument.

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

3.1 None

4. **Legislative Context**

4.1 S86(11) of the Environmental Protection Act 1990 enables the Secretary of State, to transfer the responsibility for the discharge of the duties imposed by s89 of that Act from a local authority to the highway or roads authority. S89 imposes a duty to ensure that land and highways are so far as is practicable kept clean.

4.2 This order is subject to negative resolution procedure.

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**

7.1 What is Being Done and Why?

Under the Environmental Protection Act 1990 local authorities are responsible for removing litter from highway land (except motorways) within their area. They therefore currently carry out this function on most of the Highways Agency's Trunk Roads. In May 2009 the M25 Design Build Finance and Operate (DFBO) contract

for the future development, operation and maintenance of the M25 Motorway and associated stretches of trunk roads was awarded to Connect Plus, (a consortium of Skanska, Balfour Beatty, Atkins and Egis) for a thirty year period.

7.2 Following completion of the recent widening of the M1 motorway (Junctions 6a to 10), the M10 Motorway in Hertfordshire was ‘despecialised’ (its status as a motorway removed) and redesignated as the A414. Responsibility for litter clearance and cleaning was therefore transferred to the local authority although in practice and for health and safety reasons this responsibility continues to be undertaken by the Highways Agency contractor

### 7.3 Consolidation

The DFBO Operators and the Highways Agency Contractors (for the A414) will therefore undertake the responsibility of ensuring the land and highways as specified in the instrument are so far as is practicable kept clean under the terms of the DFBO contract. This will allow for a more efficient, higher quality and safer litter picking operation.

## **8. Consultation outcome**

8.1 There is no statutory requirement to formally consult local authorities and therefore consultation was carried out on a non-statutory basis. Lord Adonis as Minister of State authorised the Highways Agency to consult with relevant local authorities and a consultation took place between 5 June and 8 July 2009.

8.2 A period of just over four weeks was deemed an appropriate amount of time for the authorities to respond to the consultation. Discussions with the local authorities regarding these functions have been ongoing in excess of that period and it has been established with the Government Office for the South East that the implementation of this statutory instrument will not have a detrimental effect on the local authorities in terms of financial grants paid to them.

8.3 Ten responses to consultation were received from local authorities. South Buckinghamshire District Council, Spelthorne Borough Council, Elmbridge Borough Council and the London Borough of Havering asked for confirmation of the extent of the new responsibilities in their area. Thurrock Borough Council asked what levels of cleanliness the new operator will be expected to maintain. The Highways Agency has responded accordingly to these local authorities confirming the extent of the new responsibilities in their area and the levels of cleanliness expected by the new operator.

8.4 St. Albans District Council wished to make no comment, Runnymede Borough Council agreed it would be more efficient for one organisation to have overall responsibility. Swale Borough Council and Dartford Borough Council supported the proposal. The London Borough of Hillingdon had no objection to the proposal. No other responses were received.

## **9. Guidance**

9.1 None is to be issued by the Department.

## **10. Impact**

10.1 This instrument has no impact on business, charities or voluntary bodies.

10.2 This instrument has no impact upon the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 The monitoring of cleanliness will be conducted by the Highways Agency and is subject to the graded standards of cleanliness expected as part of the DBFO Operator contract and as defined in the 'Code of Practice on Litter and Refuse' issued in January 1991 and updated in November 2006 by the Secretary of State for the Department for the Environment, Food and Rural Affairs under section 89(7) of the Environmental Protection Act 1990.

12.2 The DFBO Operator is as far as reasonably practicable required to ensure roads are kept at a Grade A standard for paved areas and a Grade B (or higher) standard for verges and other soft areas. If this target is not met operators are obliged to meet the above standards within 28 days from Grade C and within 7 days from Grade D.

12.3 A copy of the Code of Practice is available from the DEFRA website.  
[www.defra.gov.uk/ENVIRONMENT/localenv/litter.code](http://www.defra.gov.uk/ENVIRONMENT/localenv/litter.code)

## **13. Contact**

Clive Cooper at the Highways Agency Tel: 01306 878410 or email:  
Clive.cooper@highways.gsi.gov.uk can answer any queries regarding the instrument.