EXPLANATORY MEMORANDUM TO

THE MOTOR VEHICLES (DRIVING LICENCES) (AMENDMENT) REGULATIONS 2024

2024 No. 381

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport ("the Department") and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Guy Opperman MP, Parliamentary Under Secretary of State at the Department for Transport, confirms that this Explanatory Memorandum meets the required standard.

2.2 Katherine Macdivitt, Deputy Director for Road Freight Strategy at the Department for Transport, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Clare Boam at the Department for Transport Telephone: 07773 073012 or email: clare.boam@dft.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument amends the Motor Vehicles (Driving Licences) Regulations 1999 (S.I. 1999/2864) ("the 1999 Regulations") to insert a new regulation 80B.

4.2 The new instrument applies to certain individuals who were issued with driving licences in the UK on or after the date of EU Exit before exchanging them for licences issued by a European Economic Area ("EEA") country (such individuals are referred to subsequently as "returning drivers"). It provides that returning drivers may continue to use their EEA licence for the purposes of driving in Great Britain ("GB") and also applies existing references to "Community licences" in GB legislation to those returning drivers.

4.3 The instrument corrects an unintended anomaly resulting from EU Exit whereby returning drivers were excluded from the general rule that EEA licences are recognised as valid under GB legislation.

Where does the legislation extend to, and apply?

4.4 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales and Scotland.

4.5 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales and Scotland.

5. Policy Context

What is being done and why?

5.1 This instrument is being made to remedy an unintended gap in GB legislation which, following EU Exit, does not reflect Government policy. Former holders of GB or NI driving licences that were issued after the UK ceased to be an EEA country who exchange their licence for an EEA one (as required by many EEA countries), do not have the same rights as other EEA licence holders if they return to become resident in GB.

5.2 The treatment of EEA licences in GB is set out in the Road Traffic Act 1988 ("the 1988 Act c. 52") and is based on the definition of Community licence at section 108(1) of the 1988 Act. The definition of Community licence excludes licences previously exchanged from a non-EEA country which, since EU Exit, also excludes licences exchanged from a GB or NI licence issued on or after the date of EU Exit – 1 January 2021.

5.3 The purpose of excluding non-EEA countries from the definition was to ensure that the Government would not be obliged to recognise or exchange licences which were first issued in such countries. Separate provision exists for the recognition and exchange of licences issued by non-EEA countries.

5.4 This means that returning drivers cannot rely on the provision in section 99A of the 1988 Act which authorises the use of EEA licences in GB. The exclusion of EEA licences held by those returning drivers was an unintentional consequence of the UK no longer being an EEA country.

5.5 Those returning drivers could potentially exchange their EEA licence for a GB licence or rely on the 1999 Regulations which make provision at Regulation 80 for persons who become resident in GB to drive as the holder of a 'relevant permit', which includes EEA licences.

5.6 That said, however, regulation 80 of the 1999 Regulations only allows the use in GB of an EEA licence held by a returning driver for 12 months after that returning driver becomes resident and to drive small vehicles, motor bicycles and mopeds. Regulation 80 does not provide for recognition of any other vehicles authorised by an EEA licence held by a returning driver.

What was the previous policy, how is this different?

5.7 The Government's policy was to recognise EEA licences held by returning drivers for as long as they were valid. This policy did not change following EU Exit.

5.8 The legislation is being amended to correct the unintended effect of EU Exit whereby returning drivers are excluded from the definition of Community licence which in turn limits their ability to drive lawfully in GB.

5.9 The amended legislation will reflect Government's intended policy towards returning drivers, whereby they should (i) benefit from the same rights as other EEA licence holders and (ii) not be subject to different rules on the basis of the date they were issued with a GB or NI licence.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument inserts a new regulation which will allow returning drivers to drive vehicles of any category recognised by their EEA licence, for as long as that authorisation remains valid. This provides consistency in relation to the rules that apply to returning drivers and other EEA licence holders.

6.2 Section 99A of the 1988 Act allows Community licence holders to drive in GB any class of vehicle as authorised by that Community licence. Under section 108 of the 1988 Act an EEA licence which was granted in exchange for a licence issued in GB or NI after the UK ceased to be an EEA country is not a Community licence. That is because the GB or NI licence was not issued by an EEA country. The returning driver holding such a licence is therefore not entitled to exercise the right conferred by section 99A.

6.3 This instrument will authorise returning drivers to drive in GB using an EEA licence provided the following conditions are met:

(a) they hold a licence issued by an EEA country, and

(b) the EEA licence was granted in exchange for a GB or NI licence issued on or after 1 January 2021.

6.4 The instrument also clarifies that EEA licences granted in exchange for a GB or NI licence issued on or after 1 January 2021 as a renewal, replacement or exchange of a licence that was issued before 1 January 2021 are not captured by the instrument. Such licences are already recognised under GB law as they meet the definition of Community licence. The instrument applies to those who obtained their first licence following passing a test in GB or NI.

6.5 When the administrative validity of the EEA licence expires the driver will no longer be authorised to drive in GB and will need to exchange their EEA licence for a GB licence if they wish to continue to drive. If the validity of the entitlement to drive a particular category of vehicle expires before the administrative validity of the licence expires, the licence holder will not be authorised to drive that category of vehicle; they will need to exchange their EEA licence for a GB licence and comply with any conditions in GB law which apply to the renewal of the relevant vehicle categories.

6.6 The amendments will also apply the provisions relating to Community licences, appearing in a range of enactments, to returning drivers. This will ensure that whilst benefitting from the recognition available to Community licence holders, returning drivers will also be subject to all associated legal requirements.

Why was this approach taken to change the law?

6.7 Consideration was given to amending the definition of Community licence within the 1988 Act. This could have been achieved by an Act of Parliament or a Legislative Reform Order made under the Legislative and Regulatory Reform Act 2006 (c. 51). However, amending the 1999 Regulations is considered to be both a more proportionate and swifter means of achieving the policy outcome.

7. Consultation

Summary of consultation outcome and methodology

7.1 In accordance with section 195(2) of the 1988 Act the Secretary of State is required, before making any regulations under that Act, to consult with such representative organisations as he thinks fit. The Department identified the following organisations as being most likely to have an interest in the regulation: Confederation of Passenger Transport, Office of the Traffic Commissioner, National Police Chiefs' Council, Association of British Insurers, British Insurance Brokers Association, Motor Insurers' Bureau, Financial Conduct Authority, Logistics UK and the Road Haulage Association. This is because the regulation relates to the validity of returning drivers' driving licences, which is a matter of particular interest to the police and insurance bodies. In relation to the impact on returning drivers' ability to drive larger vehicles such as HGVs and coaches, the Department considered representative bodies of operators in those sectors would also likely have views. The Department wrote to these organisations in a targeted consultation which ran for four weeks from 4 September 2023. Responses were received from eight organisations, all of which agreed with the Government's proposals to correct the unintended position in legislation, with one noting that the current position could cause unintended hardship to those who unknowingly drive on a licence which is not valid for the purposes of driving.

7.2 The Devolved Administrations of Wales and Scotland have been informed of the Government's proposed amendment; no comments were received by the Department for Transport. The subject matter is devolved to Northern Ireland.

8. Applicable Guidance

8.1 Guidance on using non-GB licences in GB is provided through an online tool at GOV.UK[1] and will be updated when the law changes.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because it is not expected to have significant impact on the private, public or voluntary sectors.

9.2 The instrument closes a gap in GB law. Very few people are expected to be affected at present although numbers would increase in future if legislation were not amended. Closing the gap will remove the burden of needing to exchange a licence ahead of its expiry and ensure that returning drivers with vocational entitlements such as lorries and buses experience no gap in recognition of their valid licence on returning to live in GB.

Impact on businesses, charities and voluntary bodies

9.3 There is no, or no significant, impact on business, charities or voluntary bodies because the instrument removes the burden of a returning driver needing to exchange their licence before using it to drive vehicles such as lorries or buses immediately on their return to GB.

[1] https://www.gov.uk/driving-nongb-licence

9.4 The legislation does not impact small or micro businesses other than to remove the burden of a returning driver needing to exchange their licence before using it to drive vehicles such as lorries or buses immediately on their return to GB.

9.5 There is no, or no significant, impact on the public sector because the instrument closes a gap in GB law which will mean that the Driver and Vehicle Licensing Agency will not be required to exchange EEA licences held by returning drivers in advance of their expiry date.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that formal monitoring and review is not considered necessary because there has been no change in Government policy.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 (c. 26) Guy Opperman MP, Parliamentary Under Secretary of State, has made the following statement:

"As required by section 31(4) of the 2015 Act, regard has been had to the guidance[2] published under section 31(3): 'Statutory Guidance under s.31 of the Small Business, Enterprise and Employment Act – Determining whether it is appropriate to make provision for review (Post-Implementation Review Guidance)'. Paragraph 8 of that guidance provides: "Statutory review provisions should generally not be included in statutory instruments where the potential burdens of PIRs are likely to outweigh the potential benefits." Having regard to this instrument which reinstates the position which was in place until 1 January 2021, and was not intended to be changed, it is considered that the potential burdens of a post-implementation review would be likely to outweigh the potential benefits."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018 (c. 16), the European Union (Future Relationship) Act 2020 (c. 29) or the Retained EU Law (Revocation and Reform) Act 2023 (c. 28) ("relevant European Union Acts"). It does however relate to the withdrawal of the United Kingdom from the European Union because of the unforeseen and unintended impact on returning drivers. This is because following EU Exit, returning drivers inadvertently became treated as holders of EEA licences exchanged by a third country, rather than recognising the fact that their first full licences were issued following a driving test in GB or NI.

[2] https://assets.publishing.service.gov.uk/media/65083a4022a783000d43e78a/Updated_statutory_Post-Implementation_Review_guidance.pdf