EXPLANATORY MEMORANDUM TO

THE ROAD TRAFFIC ACT 1988 AND MOTOR VEHICLES (DRIVING LICENCES) (AMENDMENT) REGULATIONS 2014

2014 No. 3190

1. This explanatory memorandum has been prepared by The Department for Transport and is laid before Parliament by Command of Her Majesty.

It contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These regulations are made to further transpose Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences ("the Directive"). The Directive entered into force on 19 January 2013 and sets out the requirements that Member States must have in place for drivers to obtain driving licences, including the security arrangements for production and issue of the driving licence.

2.2 Amendments are made to legislation to put into regulation certain procedures in relation to the delivery of the driving test to acquire a driving licence that have previously been carried out administratively within Great Britain ("GB") such as: the minimum standards a Driving Examiner must meet before they are appointed to conduct practical tests; the requirements for training and quality assurance; and recording the country of origin on a GB licence when it is exchanged in GB. Amendments are also made to clarify other arrangements that are already in domestic regulation such as: the residency requirements that drivers must meet prior to the grant of a licence; aligning UK driving licence equivalences with those allowed in the Directive as regards lorry and bus entitlements; and the exemptions for bus and lorry trailer entitlements.

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

3.1 We are making a number of minor typographical amendments to pick up on the points made by the JCSI in their letter to the Department dated 30 May 2014 in relation to The Motor Vehicles (Driver Testing and Vehicle Load) Regulations 2013 (S.I. 2013/1753).

4. Legislative Context

4.1 The issue of driving licences and the conditions that must be met to obtain and retain a driving licence are covered in Part III of the Road Traffic Act 1988 ("the RTA"). Regulations made under that part of the Act are the Motor Vehicles (Driving Licences) Regulations 1999 ("the 1999 Regulations").

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain only. Northern Ireland will be making its own legislation to further implement the requirements of the Directive.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State for Transport, Robert Goodwill MP, has made the following statement regarding Human Rights:

In my view the provisions of The Road Traffic Act 1988 and Motor Vehicles (Driving Licences) (Amendment) Regulations 2014, are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 Driver licensing and driving tests are regulated activities covered by European legislation. The Directive provides for mutual recognition of driving licences between EU states, the harmonisation of the driving licence categories and harmonisation of driving test standards. The requirements of the Directive were implemented across the EU from 19 January 2013. The Directive was originally transposed by the Motor Vehicles (Driving Licences) (Amendment) Regulations 2012. It has been identified that there were some areas where we had not clearly transposed the requirements of the Directive, and these Regulations remedy this.

7.2 Persons who apply for a driving licence, the renewal of an administrative validity period for their driving licence or attend a driving test are required to satisfy certain residency requirements. In particular, they must be normally resident in GB or, if they are applying to exchange their Community driving licence, the UK. Amendments are made to the RTA using powers under the European Communities Act 1972 to give effect to the requirements of the Directive in respect of normal residence which, although referred to, is not currently defined in the RTA. These amendments, while providing clarification on the application of the normal residence requirement, do not affect substantial change on the RTA. In particular, amendments are made to section 108 of the RTA to give effect to the requirements of Article 12 of the Directive (normal residence) which defines the conditions for meeting the normal residence test. Further amendments are made to section 97A(1)(d) of the RTA to provide that attending a course of study is a permitted alternative to meeting the conditions of normal residence, as required in Article 7. The normal residence requirement is further inserted into section 99 to give effect to Article 7(3) in respect of the renewal of licences on the expiry of an administrative validity period (and in two further instances). Regulation 38 (further requirements at test) of the 1999 Regulations is amended to ensure that the requirement for normal residence is properly met when attending a test.

7.3 Amendments are also being made to domestic regulation to align UK driving licence equivalences with those allowed in the Directive as regards lorry and bus entitlements (driving licence categories C and D). For some years GB has had an automatic entitlement for those with the entitlement to drive both a category D1 (minibus) and a category C+E (lorry + trailer) or C1+E (medium sized vehicle with trailer) vehicle; or an entitlement to drive both a category D (bus) and a category C1+E (medium sized vehicle with trailer) to drive a category D1+E (minibus + trailer) vehicle without taking a further test. This is not in line with the Directive and so we are amending the 1999 Regulations to bring them in line with the Directive.

7.4 Amendments are also being made to the 1999 Regulations to remove the exemption for category C (lorry) licence holders to drive category D vehicles (buses) where the category D vehicle is damaged or defective and being driven for repair or is being road tested after repair if the licence holder does not have a category D entitlement .

7.5 Further we are setting out in the 1999 Regulations the requirement to record the country of origin on a GB licence when it is exchanged in GB. To date this requirement had been met administratively.

7.6 Arrangements for the delivery of driving tests within GB, the quality assurance of such tests and of those who deliver them has always been carried out administratively, and these arrangements were the basis for the Driving Examiner qualification and training scheme set out in Annex IV of the Directive. These arrangements will now be set out in the 1999 Regulations.

- Consolidation

7.7 There are no plans to consolidate the legislation amended by these Regulations.

8. Consultation outcome

8.1 A full public consultation accompanied by a full Impact Assessment, took place on the implementation of the Directive in November 2009. The consultation included arrangements for the "Initial Qualification and Periodic Training" of Driving Examiners and the new Quality Assurance arrangements. Of the 489 responses received to the consultation, 158 responded on Driving Examiners of which 123 (77.8%) supported the proposal. Of those who objected, one commented "*More paperwork*". Others who objected did not expand on their reasons for disagreement. Ministers agreed to implement the proposal as set out in the consultation paper, the only real difference from the system in place before the Directive was introduced were the requirements regarding more stringent quality assurance arrangements. As these have been in operation administratively for over 18 months, further consultation in not required as the legislative change will have no material impact.

8.2 A short UK-wide consultation was run jointly by the Driver and Vehicle Licensing Agency (DVLA) and the Department of the Environment (DOE) Northern Ireland on the removal of the exemption for category C (lorry) licence holders to drive category D (bus) vehicles where the category D vehicle is damaged or defective and being driven for repair or is being road tested after repair if the licence holder does not have a category D entitlement and the removal of the automatic entitlement for those with the entitlement to drive both a category D1 (minibus) and a category C+E (lorry and trailer) or C1+E (medium goods vehicle and trailer) or an entitlement to drive both a category D (bus) and a category C1+E (medium sized vehicle with trailer) to drive a category D1+E (minibus and trailer) vehicle without taking a further test. The consultation ran during September and October 2014. There were 11 responses with 7 (63%) supporting the proposals, one response provided no view and three disagreed but provided no substantive comments to support their view.

9. Guidance

9.1 Guidance has been issued on the changes and is available at www.gov.uk .

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil regarding the changes made to regulate the minimum standards for Driving Examiners, the residency requirements that drivers must meet prior to the grant of a licence and recording the country of origin on a GB licence when it is exchanged in GB. Aligning UK driving licence equivalences with those allowed in the Directive as regards lorry and bus entitlements and the exemptions for bus and lorry trailer entitlements will have a small impact on businesses of less than £1 million per annum.

10.2 The impact on the public sector will be nil.

10.3 A formal Impact Assessment is not required because these measures are low cost or have no impact on business and the appropriate internal regulatory clearances have been received.

11. Regulating small business

11.1 As the legislation is European in origin it is required to be applied equally to all sizes of business and the Directive does not provide for any exemption or derogations for small businesses.

11.2 The changes regarding residency and making the requirements for driving examiners statutory will not have an impact on small business.

12. Monitoring & review

12.1 These Regulations do not require a review.

13. Contact

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