

EXPLANATORY MEMORANDUM TO

THE MUTUAL RECOGNITION OF DRIVING DISQUALIFICATIONS (GREAT BRITAIN AND IRELAND) REGULATIONS 2008 2008 No. 3010

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. Purpose of the instrument

2.1 These Mutual Recognition of Driving Disqualifications (Great Britain and Ireland) Regulations 2008 (“the Regulations”) concern working arrangements under Part 3 of the Crime and International Co-operation Act 2003 (“CICA”). Part 3 of CICA will be commenced at the same time as the Regulations and the Crime (International Co-operation) Act 2003 (Commencement No 4) Order 2008 (“the Commencement Order”) is attached for scrutiny.

2.2 Part 3 of CICA and the Regulations will together complete the constitutional arrangements in Great Britain to allow driving disqualifications imposed on Great Britain residents for serious driving offences in Ireland to be recognised in Great Britain (and vice versa).

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

3.1 None

4. Legislative Background

4.1. The 1998 European Convention on driving disqualifications (“the Convention”) provides the international framework under which arrangements with Ireland on disqualifications are being taken forward. The text of the Convention was laid before Parliament under the Ponsonby procedure in May 1999 as Command Paper number Cm 4327.

The Convention was incorporated into UK law by Part 3 of CICA.

4.2. The Convention will enter into force once all the original signatories make a declaration to the Secretary-General of the Council of the European Union under Article 15.2 to confirm they have completed the constitutional arrangements for adopting the Convention. The Convention can also apply earlier between Member States who make a declaration under Article 15.4, as UK and Ireland propose to do – 90 days after the Article 15.4 declaration is made.

4.3 Once the 40 day annulment period for the Regulations made in GB has passed and annulment period for similar regulations made in Northern Ireland has also passed in accordance with law in Northern Ireland, in the constitutional arrangements to implement the Convention in the UK can be considered complete and UK can make its declaration under Article 15.2 of the Convention. Ireland and UK propose to also liaise on making an Article 15.4 declaration around the same time, with the purpose of applying the Convention early on a bilateral basis.

4.4 90 days after the later of the declarations made by UK or Ireland, Part 3 of CICA and the regulations will enter into force.

5. Territorial Extent and Application

5.1 Part 3 of CICA applies to all of the United Kingdom. However, the Regulations apply to working arrangements for Great Britain only. Driver licensing is a devolved matter, so Northern Ireland is laying its own regulations concerning working arrangements, based on those of Great Britain.

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 Although the Convention was agreed in 1998 and CICA received Royal Assent in 2003, no Member States have yet adopted the Convention. Since 2006, UK and Irish ministers have affirmed a commitment that the UK and Ireland should work to recognise one another's driving disqualifications with the current target for full implementation being planned for spring 2009.

7.2 As this is being done under the auspices of the Convention, disqualifications will only be recognised if arising from conduct falling within scope of the Convention and where the disqualification arises for a specific offence (medical disqualifications and "totting up" or points disqualifications are excluded). The Convention covers five main types of behaviour. These are: reckless or dangerous driving (whether or not resulting in death, injury or serious risk); hit and run driving; driving a vehicle while under influence of alcohol or other substances which affect or diminish the mental and physical abilities of a driver, refusal to submit to alcohol and drug tests; speeding; driving whilst disqualified. In addition, there is a sixth category - driving disqualifications of 6 months or more arising from a road traffic offence are recognised, as well as disqualifications of less than 6 months if determined bilaterally between Member States. (Ireland and UK do not propose to recognise any sixth category offences of less than 6 months).

7.3 Part 3 of CICA has already implemented in domestic legislation most of the mechanisms required by the Convention, including the procedures for notification and recognition and appeal rights for UK drivers disqualified in another Member State.

7.4 The Regulations deal with two issues not determined by Part 3 CICA. The first is the period to be treated as served in the Member State of offence (Ireland) when a foreign disqualification is recognised in UK. The formula chosen in regulation 2 means that the disqualification period in Great Britain should end on the same date as the disqualification period in Ireland. The second issue relates to corresponding conditions. If the Irish court imposes a condition that a driver is disqualified until the passing of a further driving test, a Great Britain resident driver could pass a test of competence to drive in Great Britain to satisfy the condition for the purpose of ending the disqualification period in Great Britain.

7.5 The proposed arrangements should improve road safety by tackling the most serious offenders because drivers will know that if they are disqualified in one jurisdiction, their disqualification will also apply in their state of residence. This reflects strong political concern on both sides of the Irish border. It is expected that several hundred drivers will have a driving disqualification recognised in their state of residence as a result of this measure, the majority being between Great Britain and Ireland.

8. Consultation outcome

8.1 Department for Transport consulted on these arrangements in February 2007. The consultation applied to Great Britain only. Northern Ireland undertook their own consultation. The consultation document was issued to a range of 108 interested parties, including motoring organisations, trade, freight and lawyers' and court officials' associations, road safety and enforcement organisations, and other government Departments. 20 responses were received and the consultation closed on 8 May 2007.

8.2 All respondents agreed that the move towards cooperation over disqualifications with Ireland was desirable and that, in principle, similar cooperation with other Member States should be encouraged. We

noted the concerns expressed by respondents and we have addressed these concerns wherever practicable. Many felt it was important that further consultation should take place if, in the future, Member States other than Ireland should seek to come on board. We are not aware of any such intentions from other Member States to date. The response to the Northern Ireland consultation was also positive.

8.3 The main concerns were: the need for arrangements to be well publicised to ensure drivers are aware of the consequences of committing a serious offence whilst visiting Ireland; the need for prompt administrative action in applying a disqualification in the UK; the actual period of disqualification served in the UK being shortened by the method of calculation of the due period; the need for accurate and timely recording of details to allow for effective police enforcement. We have sought to deliver such arrangements in a balanced and coherent way so as to safeguard drivers' rights to fairness but without offenders escaping the consequences of their actions.

8.4 Drivers who continue to drive after their Irish disqualification is recognised in the UK will be committing the offence of *Driving whilst disqualified* and Police will have up to date records to ensure effective enforcement action.

9. Guidance

9.1 The main stakeholders such as the DVLA and Ministry of Justice have been engaged in this policy since its formulation. They continue to be kept involved by regular meetings, presentations and briefing sessions to ensure that they have processes in place when the regime goes 'live'. We will also undertake extensive publicity to ensure that drivers and the main trade associations are fully informed of the policy and how it will work in practice.

10. Impact

10.1 The impact described as follows primarily results from the commencement of CICA, in relation to Ireland. The regulations, of themselves, have a less significant impact but form part of the overall package to implement mutual recognition with Ireland. The impact of the measures will be on drivers who commit serious driving offences in Ireland and can now expect their disqualification to be recognised here (and vice versa). It may also deter illegal driving behaviour by drivers outside their country of residence. Vocational drivers who are disqualified will also be affected and therefore the impact will be on small business in the same way as large ones.

10.2 The estimated cost to Government (DfT and the Ministry of Justice) is in the region of £260,000 per annum based on the attached Impact Assessment. The DfT share of this has been included in the Single Enforcement Bid for funding. The decision about allocation of funding is expected to be made in the next two months. There may also be an initial IT set up cost for the DVLA in the order of £100,000.

10.3 An Impact Assessment is attached to this Explanatory Memorandum

11. Regulating Small Business

11.1 There is no impact on small business. The aim of the policy is to enhance road safety by the recognition of driving disqualifications imposed on GB residents for offences committed in Ireland. All businesses that employ drivers who are disqualified will be subject to the same rules,

12. Monitoring and Review

12.1 DfT and DVLA officials, along with their Irish counterparts will monitor the effectiveness of mutual recognition of driving disqualifications between the countries and will meet regularly for discussions.

13. Contact

13.1 Geoff Finch at the Department for Transport Tel: 0207 944 2204 or e-mail: Geoff.Finch@dft.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: Department for Transport	Title: Impact Assessment of `Mutual recognition of driving disqualifications between UK and Ireland	
Stage: Final	Version: Final	Date: 18 September 2008
Related Publications:		

Available to view or download at:

<http://www>.

Contact for enquiries: G. Finch

Telephone: 0207 944 2204

A motorist resident abroad and disqualified in the UK from driving for a serious motoring offence committed here may escape the consequences of that disqualification on their return home. The UK is one of the fifteen signatories to the 1998 EU Convention on driving disqualifications which enables international cooperation with other EU Member States to remove this anomaly. There is a particular concern in the UK and Ireland to remove this anomaly on a bilateral basis. By doing so within the framework of the 1998 Convention we aim also to show the way forward to other EU Member States.

To ensure that a UK-resident driver disqualified in Ireland for a motoring offence committed there will also be subject for a similar period to disqualification when he returns to the UK, and vice versa for a driver resident in Ireland disqualified in the UK.

To deter unsafe driving by irresponsible motorists who are presently aware that they may escape effective penalisation.

To build on Part 3 of the Crime (International Cooperation) Act 2003 which provided enabling legislation for the EU 1998 Convention and introduced mutual recognition between GB and Northern Ireland in October 2004. More in Evidence Base section.

What policy options have been considered? Please justify any preferred option.

There is acute political concern for action against unsafe motorists. This is one of a number of complementary measures under consideration and development to help tackle irresponsible driving. In particular, complementary powers have recently been taken to tighten the regime against uninsured motorists, and the graduated fixed penalty and deposit scheme is aimed to enable an on-the-spot financial imposition to be made on an offending non UK motorist. The 1998 Convention is one of the few established frameworks for international action. More in the Evidence Base section.

A continuous record of instances notified to and by Ireland can readily be maintained by the DVLA, and can form the basis of review on e.g. an annual basis.

19th November 2008

Jim Fitzpatrick

Summary: Analysis & Evidence

Policy Option: 2.4	Description: Commence already-existing legal frameworks
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' The main affected groups are the Court services, including Scottish Courts Service with a minimal set up cost and an estimated annual running cost of £0.1M. There will be an imprisonment cost of about £0.12M to Government for imprisonment of offenders convicted of <i>Driving While Disqualified</i> . There will also be a cost of £0.04M to DVLA in administering the system. There will also be £1000 of fines imposed on disqualified drivers. There will be also be one off IT cost to the DVLA in the order of £0.1m.				
	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%; padding: 5px;">One-off (Transition)</td> <td style="width: 30%; text-align: center; padding: 5px;">Yrs</td> </tr> <tr> <td style="padding: 5px;">£ 0.1M</td> <td></td> </tr> </table>		One-off (Transition)	Yrs	£ 0.1M	
	One-off (Transition)		Yrs			
	£ 0.1M					
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%; padding: 5px;">Average Annual Cost (excluding one-off)</td> <td></td> </tr> <tr> <td style="padding: 5px;">£ 0.27M</td> <td></td> </tr> </table>	Average Annual Cost (excluding one-off)		£ 0.27M			
Average Annual Cost (excluding one-off)						
£ 0.27M						
Total Cost (PV)		£ 2.31M				

Other **key non-monetised costs** by 'main affected groups'

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' £1000 of fine income from some additional drivers convicted of <i>Driving While Disqualified</i> .				
	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%; padding: 5px;">One-off</td> <td style="width: 30%; text-align: center; padding: 5px;">Yrs</td> </tr> <tr> <td style="padding: 5px;">£ see below</td> <td></td> </tr> </table>		One-off	Yrs	£ see below	
	One-off		Yrs			
	£ see below					
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%; padding: 5px;">Average Annual Benefit</td> <td></td> </tr> <tr> <td style="padding: 5px;">£ 1000</td> <td></td> </tr> </table>	Average Annual Benefit		£ 1000			
Average Annual Benefit						
£ 1000						
Total Benefit (PV)		£ 0.01M				

Other **key non-monetised benefits** by 'main affected groups' There will be benefits in terms of road safety improvements. The net benefit of the scheme becomes positive if 2 fatal accidents or 11 serious accidents were saved in the 10 years of the appraisal period.

We believe it unlikely that any other Member State will join in practice in the short term, although long-term, the implication of the Convention is that some will do so. There is a risk that increased involvement in the practice will increase costs disproportionately compared with road safety benefits. There is a need to manage expectations of key stakeholders in all 3 administrations.

Price Base Year 2008	Time Period Years 10	Net Benefit Range (NPV) £ N.A.	NET BENEFIT (NPV Best estimate) £ -2.30M
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	United Kingdom
	Spring 2009
	DVLA, Courts, MoJ
What is the total annual cost of enforcement for these organisations?	£ 0.27
	Yes
	No
What is the value of the proposed offsetting measure per year?	£ unquantifiable
What is the value of changes in greenhouse gas emissions?	£ nil

			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro minimal	Small minimal	Medium minimal	Large minimal
	Yes	Yes		

nil		nil		nil

Key: Annual costs and benefits: Constant Prices (Net) Present Value

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

1. Background and Justification

1.1 There has for a number of years been acute political concern, particularly in Northern Ireland and Ireland, about the ease with which unsafe drivers may escape penalisation for motoring offences committed in another country. Tackling this road safety concern in terms of international cooperation is currently particularly apposite in relation to the UK and Ireland. Not only is there a real cross-border problem to address, but also the re-institution of the Northern Ireland Assembly strengthens desire in all three administrations to undertake visible cooperative working and to make it effective.

1.2 The 1998 EU Convention on driving disqualifications, Council Act 98/C 216/01 of 17 June 1998 (“the Convention”) provides an existing international framework for bilateral action. Measures to implement the Convention formed Part 3 of the Crime (International Cooperation) Act 2003 [“CICA”]. The Convention has not yet been applied between any EU Member States and Part 3 of CICA has not to date been commenced. UK and Ireland propose to be the first two Member States to make declarations applying the Convention.

1.3 The Crime (International Co-operation) Act 2003 (Commencement No. 4) Order 2008 (“the Commencement order”) provides for the initial commencement of Part 3 of CICA and limits that commencement to Ireland.

1.4 The Mutual Recognition of Driving Disqualifications (Great Britain and Ireland) Regulations (2008) (“the 2008 Regulations”) provide a specific framework for implementing Part 3 of CICA in respect of Ireland.

1.5 Although commencement orders do not strictly require an impact assessment, an impact assessment having already been provided prior to the relevant Act obtaining Royal Assent, this particular impact assessment covers the impact of commencing part 3 of CICA, as well as the more limited impact of the 2008 Regulations. The reason for providing a joint assessment of the impact of both, is that this is the first practical opportunity to evaluate impact in relation to a specific Member State. The previous partial impact assessment relating to part 3 CICA (see section 3.1 below) was necessarily limited by the fact that, at the time it was produced, nobody could predict which Member States would implement the Convention and when.

1.6 Matters prescribed in the 2008 Regulations involve the following:

- the Regulations are limited to Ireland in the first instance.
- Period of disqualification to be served. We are using the powers in CICA to prescribe in the Regulations what period of disqualification will be treated as having already been served in Ireland. This consequently determines the unexpired period to be served in the UK.
- The Regulations do not correspond offences in Ireland with those in Great Britain. This is because of the close similarities between systems in the UK and Ireland.
- The Regulations will correspond any re-test condition associated with a disqualification imposed by an Irish court on a UK resident driver to a test of competence to drive in UK, meaning the driver could take the test at home in the UK.

1.7 Part 3 of CICA provided a comprehensive framework to implement the Convention. The 2008 Regulations only address matters which Part 3 CICA deliberately left to be prescribed by regulations, in anticipation of some flexibility being needed when working with different Member States. Part 3 of CICA is therefore the principal vehicle for achieving mutual recognition with Ireland and the following comments in this Impact Assessment relate, for the most part, to the

commencement of part 3 of CICA (although paragraph 1.6 identifies where the 2008 regulations have a specific impact of themselves).

2. Options

2.1 “Do nothing” is an option, but not a good one. It would mean not commencing Part 3 of CICA and not making any declaration under the Convention. There would be no cost. There would equally be no benefit in terms of UK and Irish road safety, of political action seen to be taken to address a known problem, or of practical experience gained to encourage wider action in Europe to make effective use of the 1998 Convention.

2.2 The underlying desire on the part of key stakeholders is to implement mutual recognition between the UK and Ireland of the penalty points imposed for the less serious infringements of motoring law, that is “penalty point” recognition. There is a degree of unreality about what would be involved in doing so. It would be a much larger step than dealing only with disqualifications. Amongst other things, it would require a formal bilateral international instrument of some kind together with further primary legislation in all three jurisdictions: Great Britain, Northern Ireland and Ireland. There is no existing international framework governing the lesser infringements. And dealing with disqualifications addresses the most serious cases.

2.3 In relation to the wider European picture, tackling UK/Ireland cooperation is a sensible and relatively small first step, and an opportunity to tackle some of the knotty legal and procedural problems in a context where much of the legal framework and much practice follows similar principles in both countries.

2.4 The selected option is to commence the legal frameworks which already exist, which are the Convention and CICA. This will provide for mutual recognition of disqualifications arising from the most serious driving offences, but it will not cover disqualifications arising from totting up, nor mutual recognition of penalty points. However, such a commencement is the quickest route to achieve progress. It will also provide experience to inform decisions about more ambitious plans to formulate primary legislation and a bilateral agreement to recognise penalty points, in the future.

2.5 Meanwhile, not only will practical experience be gained, but we have undertaken in parallel a study on the *Feasibility of cooperation on the lesser infringements* (in effect, on penalty points) which is available on the DfT website. Ministers in Great Britain, Ireland and Northern Ireland are agreed that they should work together towards the ultimate goal of penalty point recognition. So what is proposed is a controlled and incremental approach, maximising the use to be made of existing legal instruments, and leaving open options for further cooperation if a good case can be made.

3. Costs and benefits

3.1.1 A partial Regulatory Impact Assessment was conducted on CICA and accompanied consultations on Part 3 of the Bill. At that time very little detailed information was available. The Partial Regulatory Impact Assessment gave the following indications.

- It stated that figures available from 7 of the 14 other EU Member States showed that the average number of Great Britain licence holders disqualified per year was 85. It was assumed that the real total of GB licence holders disqualified in all other member states would be at least 170 each year. In 1997, 165 drivers using licences from other EU member states were disqualified by courts in Great Britain.
- It assumed that if there were mechanisms in place to allow disqualifications to be honoured in the state of residence, the number of disqualifications would be higher.
- It was expected that ratification of the Convention would have minimal impact on industry, charities or voluntary organisations. It was recognised that the impact on the workforce of the disqualification of a single driver would be proportionately larger on a small haulage firm than on a large haulage firm.

- It stated that the financial effect of ratifying the Convention on driving disqualifications would be on the DVLA. The estimated one-off cost, mainly for ensuring IT systems are compatible with the new requirements was estimated at £50,000. The on-going cost to the DVLA of full implementation of the Convention was estimated at £66,000 per annum. These costs would be met from existing resources. These costs would be met from existing resources.
- There would be additional cost to the courts arising from the appeals procedure provided for in clause 59 but this was thought to be negligible in the context of the courts existing workload. [Source: House of Commons Research Paper 03/03, 28 March 2003 on The Crime (International Cooperation) Bill]

3.2. Costs.

3.2.1 In the light of more detailed work done we can now make firmer estimates of the impact of commencing Part 3 of CICA in relation to Ireland (including the impact of the 2008 Regulations, taken together with the corresponding Northern Ireland Regulations) as follows. The basis of our cost estimates is an estimate of the volumes of cases likely to be involved: Irish (ROI) licence-holders disqualified for offences committed in Northern Ireland (NI); ROI licence-holders disqualified for offences committed in Great Britain (GB); United Kingdom (GB or NI) licence-holders disqualified in ROI.

3.2.2 Volume estimates

Mutual recognition of driving disqualifications between UK and Ireland
Estimated numbers of driving disqualification notifications

State of offence to state of residence	No. of notifications*** per year	X 3 increase**
NI notifications to ROI (ROI licence holders disqualified in NI)	12*	36
GB notifications to ROI (ROI licence holders disqualified in GB)	52*	156
ROI notifications to NI/GB (GB/NI licence holders disqualified in ROI)	135#	405
Total	199	597

* Estimate based on known overall volume of foreign drivers convicted in NI/GB, according to figures provided by DVLA and DVA (Northern Ireland).

Estimate provided by Irish authorities. Estimated split between between NI and GB is 19%/81% respectively. This is based on the percentage split for GB/NI notifications to Ireland at * in the table above.

** We assume a three-fold increase in reality, compared with estimates, by analogy with experience since 2004 in initiating mutual recognition between GB and NI.

*** Each "notification" will be made by the authorities of the state of offence to the authorities of the state of residence.

3.2.3 On the basis of these volume estimates, we believe that the total annual volume of such cases is unlikely to exceed 600 (597) per year. Based on the GB and NI notifications to Ireland in the table above, this gives a GB percentage of the UK total as 81% (Northern Ireland at 19%) which is 484 cases.

3.2.4 Consequently:

- There is a very small annual running cost to DVLA. Taking the crude overall figure for notifications at 484 per year this is about 2 to 3 cases per day for an AO. This will take about 1 AO hour per day giving an annual cost of £2,398 [see Footnote 1]. These volumes can be accommodated within present resources, which are already handling annually over 200,000 domestic cases of disqualification and approaching 3 million

cases of penalty points. Initially a straightforward manual process will be developed to handle the notifications.

- Another small administrative cost to the DVLA is if an offender appeals against an Irish disqualification being recognised in GB then there would be an administrative cost. An Irish disqualification would be recognised provided the following four conditions are met:
 - a) The offender is normally resident in the UK and convicted of a relevant offence in Ireland;
 - b) no appeal against the offence is outstanding;
 - c) the offence is within the scope of the convention;
 - d) the offender was notified of the proceedings.

3.2.5. The grounds for a successful appeal are very restricted. In any case it would be an administrative matter between the Irish courts and DVLA to ensure that the necessary information is received to enable DVLA to decide whether the conditions are satisfied.

The majority of offenders considering an appeal would obtain legal advice and would contact DVLA to check whether the conditions had been satisfied. If that happened we expect most appellants to be satisfied before the case goes to Court. However, if we assume a relatively high case scenario and 22% of offenders appeal [See footnote 2 for evidence base] then there could be 72 appeals against recognition of the Irish disqualifications in GB per annum. We estimate the DVLA costs of £546.36 per case giving a total of £39,337.92 per annum of defending cases [see footnote 3 for DVLA cost calculation]. In practice, because of the limited conditions of an appeal being successful and the driver would have had an opportunity to appeal in Ireland we expect successful appeals to be lower than this estimate, especially after the initial year, and the DVLA might be awarded costs in some cases, especially if appeals are deemed frivolous.

- There will be a cost to DVLA for changes to IT systems to enable the recording and processing of mutually recognised disqualifications. This should be in the order of £100,000. If the cost significantly exceeds this then we will look at the benefits of a manual system. At the time this impact assessment was produced, DVLA had not received a formal quotation from its IT provider for this work.

3.2.6 A main cost is to the HM Courts' Service (including the Scottish Courts Service) and to the Government. It is estimated on the basis of these volume figures the cost to the Courts Service will be just over £0.1 million per year. This is a rounding of an estimate totalling £102,538, made up of total court costs at £88,538 and legal aid at @ £14,000. There will be costs to the Government for imprisonment for drivers convicted of *Driving While Disqualified* of £120,000 per year.

3.2.7 The basis of the "total court costs" estimate is as follows.

- The effects on the courts of the new measures will not be in terms of trying the original offences: this already has been done.
- However, we believe that drivers, e.g. Irish residents, may be more likely to appeal against a UK disqualification if they know it will be recognised in Ireland also.
- The new measures will introduce a new right of appeal in the UK courts against recognition in the UK of a disqualification imposed in Ireland.
- Drivers who continue to drive after their Irish disqualification is recognised in Great Britain will be charged with 'Driving while Disqualified' so subject to a Court appearance.

3.2.8 In more detail, our reckoning about the courts' service is as follows.

- Crown Court. There are no figures available on number of foreign drivers prosecuted in GB courts. Some offences committed by Irish drivers will be indictable and heard in Crown Court. We estimate that 0.6% (1 per year) would be heard in Crown Court (0.6% of 156 = 1 case). (See Footnote 4 for evidence base.)
- Appeals against GB disqualification. Drivers already have the right of appeal against the GB court's conviction/sentence and about 20% do so [Footnote 2 again]. When mutual recognition is introduced, it is

reasonable to assume that there will be a small increase over and above any current figure if RoI drivers (particularly vocational drivers) believe that disqualification will affect them when they return home. We estimate that up to 22% in total may appeal, giving GB courts 34 appeals (See footnote 2 again for evidence base). A proportion of these, of course, already appeal under existing arrangements. If we assume that 1/3 [footnote 5] of these presently appeal then there would be an increase @ 23 cases per year, made up of England/Wales (21 cases) and Scottish courts (2 cases).

- Appeals against recognition. For magistrates courts (Sheriff courts in Scotland), there will be a new appeal procedure to hear appeals against the imposition of a foreign driving disqualification in the UK. The appeal process cannot consider the disqualification or decision of the Irish courts (the appeal for which must have already been exhausted in the Irish courts). There are only limited grounds for appeal, namely that the notice of disqualification as served is not applicable. We have sought to simplify the notification process and safeguard rights; if anything, the process errs in favour of the offender to ensure that they are not inadvertently given a longer sentence than was originally intended. The new arrangements introduce a new right of appeal to UK resident drivers in the Magistrates Court/Sheriff Courts against the disqualification being imposed in the state of residence (but only on limited grounds). If we use the same estimate of 22% of offenders who may exercise this new right of appeal, there could be around 72 cases of this kind in total, made up of England and Wales (66 cases) and Scotland (6 cases).
- The Courts service will also have costs concerning cases brought against GB residents who have their Irish disqualification recognised here but continue to drive and are caught. These will be charged with 'Driving while Disqualified' [(s.87 Road Traffic Act 1988), because under CICA the effect of recognition is they are disqualified in UK]. We can estimate that out of 405 notifications from Ireland to the UK, 81% or 328 will be Irish notifications to Great Britain, based on UK to Ireland notification (GB and NI split is 81%/19%). In 2006, the latest year for which MOJ statistics are available about 21% or 69 of this total will be caught and convicted of *Driving whilst disqualified*. These charges will be heard in Magistrates Court, with 20% pleading guilty at first hearing and 80% giving a not guilty plea and subsequent trial [Footnote 6 for evidence base].
- Further assumptions on process.
 - There will be no change in the way judges/magistrates currently convict and sentence drivers.
 - The changes in administration for the courts will be:
 - Notifying DVLA via manual channels.
 - supplying DVLA an extract of the court register recording the courts decision.
 - notifying DVLA if an appeal is made after the day the driver is convicted but before the 21 day appeal period has elapsed (14 days in Scotland). The courts already automatically notify DVLA (on form D20) if a driver appeals on the same day which we believe is most likely to be the case for foreign drivers.

3.2.9 On the basis of this information and these assumptions, the quantifiable cost to GB courts service is potentially slightly more than £0.1 million.

3.2.10. There will be a cost to the Government because an estimated 69 GB resident drivers might be convicted of *Driving while disqualified* and 30% of these or 21 offenders will be imprisoned [Footnote 7]. The average prison sentence for this offence is 3.5 months and on average prisoners are released halfway through. This is the equivalent of one prisoner having 3 years of imprisonment. The cost of imprisonment is £40,000 per annum so the estimated additional cost of imprisonment for driving whilst disqualified as a result of mutual recognition is £120,000. [See footnote 8 as evidence base].

3.2.11. There will be a small cost of £956 as a result of fines imposed on drivers who are convicted of *Driving whilst Disqualified* as a result of an Irish disqualification recognised in the UK [Footnote 9]. These fines are received by government and therefore are also included as a benefit.

3.3 **Benefits.**

3.3.1 There will be a benefit of £956 as a result of fines received for drivers who are convicted of *Driving while Disqualified* as a result of an Irish disqualification recognised in the UK [Footnote 9].

3.3.2 There will be benefits in terms of the road safety improvements due to: 1) Driving disqualifications imposed in Ireland being recognised here. 2) Some drivers being imprisoned as a result of being caught driving whilst disqualified as a result of an Irish disqualification being recognised in the UK. 3) It might deter poor driving by Irish resident drivers in the UK because they will know that their UK disqualification will apply in Ireland. Although

there is no evidence to quantify how many accidents this proposal might save, the net benefit of the scheme becomes positive if the equivalent of 2 fatal accidents or 11 serious accidents were saved.

4. Broader context

4.1 The 1998 Convention does not come into force until all the 15 original signatory States have made an appropriate Declaration to the Secretary General of the EU Council. We understand that no Member State has yet made such a Declaration. In order to bring bilateral arrangements into effect with Ireland before the Convention comes into force generally, the UK and Ireland must make declarations to the EU Council, to the effect that they will be applying the Convention before it comes into force. The Convention provides the possibility of such an “early application” of its provisions. The UK proposes to limit its “early application” declaration to Member States with whom it has agreed working arrangements.

4.2 An assessment of the likely pattern of roll-out with other Member States and the risk of impact on resources has been made. So far as we are aware, no other Member State has yet made the relevant Declaration. Following a written request asking Member States of their intentions, there is no indication that any other Member State is planning to declare to bring arrangements into effect in the near future. We conclude that there is, at most, only a very small likelihood that there will be a rush of other Member States to make the necessary Declaration. If another Member State did seek to apply the Convention, working arrangements with UK would need to be agreed, an additional commencement order would be necessary for part 3 of CICA and further regulations would have to be drafted. Any immediate risk of having to fund greater potential costs to the Courts and DVLA is therefore unlikely to be realised.

4.3 In the long term, however, it is implicit in the Convention that some further Member states will join in. At some point, this could involve some one-off costs to set up a system for handling a larger volume of notifications at DVLA, and thereafter some further increase in running costs to the Courts Service. Experience with Ireland will in due course enable estimates of such volumes and costs to be relatively reliable.

5. Risks

5.1 There is a risk that a larger number of Member States will join the practice. This may lead to a further improvement in road safety. This may or may not be proportionate to any increase in costs.

5.2 There is a history of unrealistic expectations, particularly by some politicians in Ireland and in Northern Ireland, about the ease and speed with which measures can be introduced and about how effective they will be in practice. Those expectations will have to be managed carefully across the full range of stakeholders in all three jurisdictions. However, that is a problem in relation to the “do nothing” option as well as if action is to be taken. Our view is that a controlled incremental process, supported by review and evaluation, is the best management strategy. Ministers are now publically committed to implementation by the Spring 2009 and to working together towards mutual recognition of penalty points between the UK and Ireland.

6. Competition. The proposed measure will have no effect on competition.

7. Small firms impact. The proposed measure will have no impact on small firms, unless these depend upon drivers disqualified for a serious motoring offence committed in Ireland.

8. Legal aid. The estimated £0.1 million annual running cost to the GB Courts Service includes an estimated provision for legal aid.

9. Sustainable development. The proposed measures will have no impact on development, sustainable or otherwise.

10. Carbon assessment. The proposed measures are carbon neutral.

11. Other environment. There is no environmental impact, except to encourage the removal from the roads of proven dangerous motorists.

- 12. Health impact assessment.** The intended health impact is to effect a reduction in those killed and seriously injured on the roads both by deterring behaviour leading to a driving disqualification and by prohibiting driving by those disqualified in Ireland.
- 13. Race equality.** We intend the measures to be applicable to individuals irrespective of race, nationality, creed, or any consideration other than a proclivity for committing serious motoring offences.
- 14. Disability equality.** See item 13 above.
- 15. Gender equality.** See item 13 above.
- 16. Human Rights.** The appropriate Regulations will be drafted so as to avoid clashes with human rights. Both the 1998 Convention and the 2003 Act were drafted in compliance with principles of fundamental rights and human rights and the Regulations will derive from powers in these instruments.
- 17. Rural proofing.** The deterrent effect on unsafe driving will apply equally in urban and in rural areas.

Footnotes

1. DVLA cost of maximum AO rate of £8.84 per hour giving cost of £8.84 per day. This is multiplied by 223 days, i.e. 365 days minus weekends, bank holidays and annual leave to give £1,971.32. Finally, this is adjusted upward to account for non-wage costs, such as pensions, by 21.2% to £2,398.
- ² Based on number of appeals in 2007/08 to Crown Court in which the appellant had been disqualified from driving (20%) and the number of appeals by HGV operators in 2004/05 against revocation of their operator's licence (22%). We use the higher figure.
- ³ DVLA cost valuation per case: Instruction of junior counsel - £500 (£75 per hour + expenses)
DVLA preparation of case - 4 executive officer hours (£46.36). Total cost per case is £546.36.
- 4 Based on number of court proceedings taken through Crown Court in 2006 for motor related offences in England/Wales. Ministry of Justice Statistics. Offences relating to Motor Vehicles in England and Wales 2006 Tables 2 and 7.
- 5 The 1/3 is 22% of 156 expected notifications to Ireland, i.e. 34, minus 22% of 52 notifications to Ireland at present, i.e. 11. This is an increase of 23 appeals.
6. Ministry of Justice Statistics 2006 given in email exchange on 4 August 2008 with DfT official.
7. MoJ Statistics. Offences relating to motor vehicles in England and Wales 2006. A 30% imprisonment of disqualified drivers is a percentage of the pool of disqualified drivers (est. 225,000) imprisoned annually extrapolated from Table 13.
8. Ministry of Justice email exchange on 25 July 2008 with DfT official.
9. Ministry of Justice (Office for Criminal Justice Reform) statistics 2006. There could be 69 convictions for *Driving While Disqualified*, of these just under 4 might be fined. The average fine is £239 which if multiplied by 4 is £956.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

	Yes	No
	Yes	No
	Yes	No
	Yes	No
	Yes	No
	Yes	No
	Yes	No
	Yes	No
	Yes	No
	Yes	No
	Yes	No
	Yes	No
	Yes	No
	Yes	No
	Yes	No
	Yes	No

Annexes

