

EXPLANATORY MEMORANDUM TO
THE ROAD VEHICLES (REGISTRATION AND LICENSING) (AMENDMENT)
REGULATIONS 2017
2017 No. 554

1. Introduction

- 1.1 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 The purpose of the instrument is to require the Secretary of State (acting through the Secretary of State's executive agency, the Driver and Vehicle Licensing Agency, referred to below as the "DVLA") to provide to another Member State the identity of the registered keeper of a vehicle registered in the UK (and certain other information) from the statutory register of vehicles and their keepers maintained by the DVLA, if requested by the Member State to facilitate their being able to investigate the commission in their country of an alleged road safety related traffic offence with that vehicle which took place after the instrument comes into force. It designates the Secretary of State as the national contact point to process requests for such information and to request corresponding information in relation to such offences committed in the UK using vehicles registered in other Member States.
- 2.2 The road safety related traffic offences to which the instrument applies are drink driving, driving while under the influence of drugs, failing to stop at a red traffic light, failing to use a seat belt (or child restraint), failing to wear a safety helmet, using a mobile telephone or any other communication device while driving, speeding, and the use of a forbidden lane.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The instrument transposes EU Directive 2015/413 of the European Parliament and of the Council of 11th March 2015 facilitating cross-border exchange of information on road safety related traffic offences ("the Directive").
- 4.2 A Transposition Note is submitted with the instrument. The instrument transposes the key requirement of the Directive, namely to require the provision of information in connection with a vehicle registered in the UK, from the statutory register of vehicles and their keepers, to another Member State to facilitate their investigation of specified

traffic offences. Provision of corresponding information by other Member States in relation to traffic offences committed in the UK is a matter for their respective transposition measures.

- 4.3 The balance of the Directive has not been transposed as it relates to the detailed interface between Member States on data transfer, recognises Member States would decide whether to take follow up action upon receiving vehicle related data and that national legal procedures would apply, provides an optional template letter to inform a vehicle keeper of an alleged offence, requires data protection rules to be applied (as already provided for in the UK by the Data Protection Act 1998) requires dissemination of information about the instrument, which will be done administratively, and provides for review and amendment of the Directive.
- 4.4 The Directive replaces, and replicates, Directive 2011/82/EU which was made with a Justice and Home Affairs (“JHA”) legal base under Article 87(2) of Title V of the Treaty on the Functioning of the European Union (“TFEU”). Being a JHA measure the UK had the right to decide whether to opt in to the measure and decided not to do so. Both Ireland and Denmark were not subject to it either. The Commission, and some Member States, considered that the measure should have been made with a transport legal base and successfully petitioned the European Court of Justice (“ECJ”) to this effect (decision C-43/12 of 6th May 2014). The ECJ annulled the 2011 Directive and required its replacement to be made under the transport legal base of Article 91(1)(c) of the TFEU. The replacement Directive was made accordingly on 11th March 2015 under this legal base and sets for the UK, Ireland and Denmark a transportation deadline of 6th May 2017, a year later than other Member States.
- 4.5 A brief scrutiny history of the Directive is set out as follows.
- 4.6 The House of Commons European Scrutiny Committee considered an Explanatory Memorandum relating to the draft of the original Directive on 4 June 2008. The Committee decided that the draft was legally and politically important and did not clear it.
- 4.7 A Supplementary Explanatory Memorandum relating to the draft of the original Directive was submitted in December 2010. The House of Commons European Scrutiny Committee recommended that the draft was legally and politically important and should be debated in Standing Committee. The debate took place on 25 January 2011. The House of Lords Select Committee referred the Supplementary Explanatory Memorandum to Sub-Committee E on 11 January 2011.
- 4.8 Ministerial letters were sent to both Committees on 10 March 2011 and 8 August 2011 and to the House of Commons European Scrutiny Committee on 21 December 2012. The House of Lords Select Committee on the European Union cleared the proposal from scrutiny in a letter dated 17 March 2011.
- 4.9 A draft of the new Directive was sent for scrutiny in September 2014 and did not clear Scrutiny. The Committee decided that the draft was legally and politically important and did not clear it.
- 4.10 Further Ministerial letters were sent to both Committees on 14 January 2015. The House of Commons European Scrutiny Committee considered the letter on 20 January 2015. The Committee recommended that the document was legally and politically important and cleared it (Report 30, Session 2014-15). The Chairman of the House of Lords Select Committee on the European Union wrote to the Minister on 24 February 2015 clearing the document from scrutiny.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.

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

What is being done and why

- 7.1 Improving road safety is a prime objective of both the UK and EU transport policy. The objective of the Directive is to improve the effectiveness of the investigation and enforcement by Member States of eight road safety related traffic offences committed with a vehicle registered in another Member State. The Directive does this by providing a mechanism for enabling an investigating Member State to find out the identity of a registered keeper, or owner, of a vehicle from the Member State where the vehicle is registered. These eight offences accounted for about 1/3 of road deaths in Great Britain in 2015¹.
- 7.2 The instrument makes provision for the handling of incoming requests for information received from other Member States in relation to offences committed abroad with vehicles registered in the UK. Reciprocal treatment by other Member States of requests received from the UK in relation to offences committed in the UK with foreign registered vehicles is a matter for other Member States equivalent transposition measures. All Member States, except the UK, Ireland and Denmark have already transposed the Directive.
- 7.3 The Directive provides a mechanism for Member States to exchange the identity of the registered keeper or owner of a vehicle, as opposed to the identity of the driver, at the time of the offence. This information is sufficient for Member States with keeper liability to take enforcement action. But for countries with driver liability, such as the UK, Ireland, Germany, Italy, Spain, Austria etc., further information would be needed to commence enforcement proceedings. So in practice only half of all states are likely to be able to make full use of the Directive.
- 7.4 Ultimately, it is up to individual Member States what they might do with keeper details when received. Where a country has keeper liability for road traffic offences they will be more likely to pursue offenders. However other Member States can write to a keeper about an offence requesting the identity of a driver at the time an offence is committed. It would be up to police forces to determine whether to request the information from foreign keepers, or to otherwise seek Member State assistance in finding the offender. This is a topic of concern for many other Member States who are forming an EU sub-group to scrutinise these “secondary enforcement activities” and recommend practical solutions for implementation.
- 7.5 The Directive does not have any impact on existing enforcement activity in the UK where an offending driver is stopped on the roadside e.g. apprehending a drink/drug driving offender (where detection relies on the physical presence of the driver) or

¹ Source: DLeq115, Department for Transport, March 2017

where roadside fixed penalty and deposit demanding powers can be used, such as for speeding, where enforcement agencies can demand proof of identity and immediate payment of a deposit to protect against a driver subsequently failing to appear in court. This enforcement will occur regardless of whether the offender holds a UK driving licence or a foreign licence.

- 7.6 The Directive will be of principle assistance with the enforcement of offences detected by camera (e.g. speeding, jumping red lights). In terms of the impact, the amount of foreign-plated traffic on UK roads is just 0.4% of the total, according to police roadside surveys with many of those vehicles being HGVs. With foreign-plated HGVs, we are able enforce against them as they are routinely stopped for a number of checks against the driver and the vehicle. The number of foreign drivers (as tourists) who use their own cars in the UK is very small, as we drive on the left and operate right-hand drive cars. It is understood that many elect to hire a UK-registered vehicle and any fines accrued will be passed on by the hire car company to the driver. More widely, we are working with other Member States who also have driver rather than vehicle keeper liability to recommend practical solutions to this issue.
- 7.7 It is difficult to accurately estimate the scope of the problem within the UK as statistics do not routinely include data on the number of foreign registered drivers involved in motoring offences. Whilst there is data on the more serious offences such as causing serious injury or death, offences such as speeding and driving through a red light are not disaggregated in this fashion.
- 7.8 Our best estimates come from police roadside survey figures which estimate foreign registered vehicles account for about 1% of all offences. But this doesn't differentiate between those who are visitors and those who are permanently resident in the UK but have not re-registered their vehicle here for whatever reason. These figures are much higher in other EU countries, particularly those which see a lot of transitory traffic (i.e. countries passed through going from one destination to another) such as France and Germany.
- 7.9 Grimaldi Studio Legale were employed by the Commission to prepare an evaluation into the effectiveness of the 2011 Directive and 2015 Directive as required by Article 11. This is dated 16th March 2016 and can be downloaded from the Commission's website². The Commission used this as the basis for their final report dated 29 November 2016³. The Commission's final report concludes that the Directive is an effective tool with a significant potential to improve road safety, although it has not been used to its full potential, and that there is a clear need for Member States to better exploit the potential of the system by more active investigation of road traffic offences committed by non-residents and by improved mutual assistance and co-operation. It is extremely unlikely there will be any change to the Directive any time soon. An Explanatory Memorandum to Parliament on the report was presented by the Department on 15 December 2016⁴.
- 7.10 Other countries face similar issues to the UK as it is very hard to ascertain how many UK registered vehicles are caught breaking road traffic laws. France have given a range of figures for the number of estimated UK vehicles breaking French laws,

² https://ec.europa.eu/transport/modes/road/news/2016-06-17-evaluation-study-cross-border-enforcement_en

³ <http://europeanmemoranda.cabinetoffice.gov.uk/files/2016/12/ST-15047-2016-INIT.pdf>

⁴ [http://europeanmemoranda.cabinetoffice.gov.uk/files/2016/12/161215 - Cross Border Enforcement \(2\).pdf](http://europeanmemoranda.cabinetoffice.gov.uk/files/2016/12/161215 - Cross Border Enforcement (2).pdf)

between 300,000 and 500,000 per year. Though importantly it is unclear which laws broken fall in scope of the Directive and which do not.

- 7.11 The EU's own Impact Assessment⁵ for the original 2011 proposal stated there was evidence to suggest that although drivers on the whole tended to be law abiding when driving in their own countries, when motoring abroad bad habits tended to form, exacerbated by the inability of enforcement authorities to pursue offenders after they have returned home.
- 7.12 The Directive, according to the Impact Assessment, could save as many as 350-400 lives per year. It is believed that the threat of enforcement action able to follow offenders across borders is enough to make drivers comply with the rules of the road wherever they are motoring in Europe. France has evidence that since the introduction of the Directive, the overall numbers of foreign offenders breaking their traffic rules has fallen markedly. There was no external consultation associated with the Directive, or the publication of these Regulations, as the Directive mandates that keeper data be made available upon request, there is no impact upon business and no new offences are created.

Consolidation

- 7.13 No consolidation is currently planned by the Department.

8. Consultation outcome

- 8.1 The Department and the DVLA have consulted the Home Office and the Ministry of Justice in connection with the implementation of the Directive. Wider consultation has not been carried out as the instrument gives effect to the requirements of the Directive, and there is no scope for the development of alternative policy options which might be informed by such consultation.

9. Guidance

- 9.1 The Directive makes no change to the fact that motorists should always obey the laws where ever they drive. Information will be made available to the press, and the GOV.UK website will be updated with relevant information for motorists who wish to drive abroad. The Department will also provide updates for the European Commission website & mobile app *Goingabroad*⁶ which details basic traffic rules across all EU Member States. The Department will liaise with motoring organisations, road safety bodies and others with a view to giving this further publicity.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 Supplying information about UK registered keepers of vehicles used in the commission of traffic offences in other European Member States requires a technical solution for DVLA to complete. It is estimated that responding to requests for this information will cost £399,000 in IT development with running costs of £54,000 per year.
- 10.3 An Impact Assessment has not been prepared for this instrument.

⁵ http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2008/sec_2008_0351_2_en.pdf

⁶ http://ec.europa.eu/transport/road_safety/going_abroad/index_en.htm

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 Under Article 6 of the Directive each Member State is required to send a comprehensive report to the Commission every two years to indicate their experience of operating the Directive and how effective it has been in facilitating the enforcement of traffic offences committed in their territory with vehicles registered in other Member States. The next report is due by 6th May 2018.
- 12.2 On 23 June 2016 the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

13. Contact

- 13.1 Joe Straw at the Department for Transport, Telephone: 020 7944 3983, or email: joe.straw@dft.gsi.gov.uk can answer any queries regarding the instrument.