

EXPLANATORY MEMORANDUM TO
THE DRIVING LICENCES (AMENDMENT) (NORTHERN IRELAND) (EU EXIT)
REGULATIONS 2019

2019 No. 194

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Infrastructure, Northern Ireland, and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 These Regulations are made to address failures of existing driving licence legislation in Northern Ireland to operate effectively, and other deficiencies, which would otherwise result from the withdrawal of the United Kingdom from the European Union.

Explanations

What did any relevant EU law do before exit day?

- 2.2 Directive 2006/126/EC (as amended) on driving licences amended and consolidated EU law on driving licences. It provides for an EU model licence, mutual recognition of licences, minimum ages for driving, the issue, validity and renewal of licences, licence exchange, minimum requirements for tests, medical standards etc. It is given effect in Northern Ireland principally through the Road Traffic (Northern Ireland) Order 1981 and the Motor Vehicles (Driving Licences) Regulations (Northern Ireland) 1996.

Why is it being changed?

- 2.3 The provisions of the Road Traffic (Northern Ireland) Order 1981 and the Motor Vehicles (Driving Licences) Regulations (Northern Ireland) 1996, which give effect to Directive 2006/126/EC (as amended), are written from the perspective of the UK being an EU member State, and some of the language used or referred to acknowledges this. This is not consistent with the UK no longer being a member State and would result in ambiguity. Certain provisions of the Road Traffic Offenders (Northern Ireland) Order 1996, Road Traffic (New Drivers) (Northern Ireland) Order 1998, Road Traffic (Northern Ireland) Order 2007 and the Motor Vehicles (Exchangeable Licences) Order (Northern Ireland) 2009, which relate to driving licensing, are also being adjusted for the same reason.

What will it now do?

- 2.4 The changes are to adjust such language and references to recognise the UK is no longer a member State, to so eliminate any ambiguity, but otherwise to maintain the current driving licensing regime intact in Northern Ireland.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The instrument was laid for sifting under paragraph 3 of Schedule 7 to the European Union (Withdrawal) Act 2018, on 19th December 2018, by the Minister of State for Transport, Jesse Norman. He considered that the appropriate Parliamentary procedure for the instrument was that it should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the “negative procedure”), and made a statement to that effect as detailed in Part 2 of the Annex to this Explanatory Memorandum.
- 3.2 The Secondary Legislation Scrutiny Committee of the House of Lords, at its meeting on 14th January 2019, scrutinised the instrument and agreed that the negative procedure should apply to the instrument.
- 3.3 The European Statutory Instruments Committee of the House of Commons, at its meeting on 15th January 2019, scrutinised the instrument and agreed that the negative procedure should apply to the instrument.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.4 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is Northern Ireland.
- 4.2 The territorial application of this instrument is Northern Ireland.

5. European Convention on Human Rights

- 5.1 The Minister of State for Transport, Jesse Norman, has made the following statement regarding Human Rights:

“In my view the provisions of the Driving Licences (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument is made in exercise of powers in section 8 of the European Union (Withdrawal) Act 2018 (the “Withdrawal Act”). The Withdrawal Act makes provision for repealing the European Communities Act 1972 and will preserve EU law, as it stands at the moment of exit, in UK law. It enables the creation of a new body of domestic legislation by bringing the texts of directly applicable EU legislation into domestic legislation, as well as saving EU-derived domestic legislation which was made to implement the UK’s obligations as a member of the EU. Together they are referred to as “retained EU law”. The Withdrawal Act also contains temporary power to make secondary legislation to enable Ministers and the devolved administrations to deal with deficiencies in retained EU law, to ensure that the UK’s legal system continues to function properly outside the EU. The Withdrawal Act does not preserve EU directives. Changes made under section 8 of the Withdrawal Act are therefore

made to the relevant legislation which implements an EU directive in Northern Ireland.

- 6.2 Directive 2006/126/EC (as amended) on driving licences amended and consolidated EU law on driving licences and is given effect in Northern Ireland principally through the Road Traffic (Northern Ireland) Order 1981 and the Motor Vehicles (Driving Licences) Regulations (Northern Ireland) 1996. This EU-derived domestic legislation will be preserved by the European Union (Withdrawal) Act 2018 Act. However it contains anomalous language which this instrument corrects pursuant to the power in section 8 of the 2018 Act. Certain driving licence related provisions of the Road Traffic Offenders (Northern Ireland) Order 1996, Road Traffic (New Drivers) (Northern Ireland) Order 1998, Road Traffic (Northern Ireland) Order 2007 and the Motor Vehicles (Exchangeable Licences) Order (Northern Ireland) 2009, are also being corrected for the same reason.
- 6.3 The changes are to adjust the language to recognise the UK is no longer a member State, and so eliminate any ambiguity, but otherwise to maintain the current driving licensing regime intact in Northern Ireland.
- 6.4 This instrument comes into force on exit day.

7. Policy background

What is being done and why?

- 7.1 This instrument applies to driver licensing which is a transferred matter for Northern Ireland under section 4(1) of the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU Exit where the UK Government want devolved Ministers to take the necessary actions to prepare Northern Ireland for exit. The UK Government have been considering how to ensure a functioning statute book across the UK, including in Northern Ireland, for exit day in the absence of a Northern Ireland Executive. With exit day imminent, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. It has been decided, therefore, that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.
- 7.2 Where the rules on driving licensing set out in the Road Traffic (Northern Ireland) Order 1981 use language which indicates or implies the UK is part of the European Union, the language is adjusted (under the Withdrawal Act) to remove that indication or implication, so that the wording is correct and avoids any ambiguity.
- 7.3 The same approach has been applied (under the Withdrawal Act) to other legislation which relates to driver licensing in order to remove language indicating the UK is part of the EU, i.e. to the Road Traffic Offenders (Northern Ireland) Order 1996 (which concerns the enforcement of traffic law), to the Motor Vehicles (Driving Licences) Regulations (Northern Ireland) 1996 (which contain detailed rules relating to licensing and driving tests), to the Road Traffic (New Drivers) (Northern Ireland) Order 1998 (which provides for disqualification upon being allocated 6 or more penalty points within 2 years of passing the driving test), to the Road Traffic (Northern Ireland) Order 2007 (which provides a provisional amendment to the Road Traffic Offenders (NI) Order 1996) and to the Motor Vehicles (Exchangeable

Licences) Order (Northern Ireland) 2009 (which enables a person holding a licence issued by a designated State to exchange it for a NI one).

- 7.4 Regulation 6(11)(c) of the Motor Vehicles (Driving Licences) Regulations (Northern Ireland) 1996 is amended to remove reference to Council Directive 2003/59/EC and substitute reference to the domestic Regulations which transposed it (i.e. the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007) in order to replace a European law reference with a domestic one.
- 7.5 Otherwise this instrument makes no change to the existing driving licence regime for driving in Northern Ireland.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The instrument is also made under the complementary powers in paragraph 21(a)(i) and (b) of Schedule 7 to that Act. In accordance with the requirements of the Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

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

10. Consultation outcome

- 10.1 A public consultation was not considered necessary because the instrument makes the necessary technical amendments to an existing regime to maintain the status quo as far as possible after the United Kingdom leaves the European Union.

11. Guidance

- 11.1 The Department for Infrastructure, Northern Ireland, is not producing any specific guidance on the amendments provided for in this instrument. The changes will have no effect on current licensing arrangements in Northern Ireland, or the position for visiting foreign licence holders. Existing forms and leaflets will, however, be amended to reflect the changes e.g. removing references to the UK being an EU member State.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because of this low level of impact and because the instrument relates to the maintenance of the existing regime.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is that the impact is assessed as zero or nominal.

14. Monitoring & review

14.1 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Donald Starritt at the Department for Infrastructure (telephone 028 9054 1152 or email donald.starritt@infrastructure-ni.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Elizabeth Loughran at the Department for Infrastructure can confirm that this Explanatory Memorandum meets the required standard.

15.3 Jesse Norman, Minister of State for Transport, can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister’s opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument’s effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority’s response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement

1.1 The Minister of State for Transport, Jesse Norman, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Driving Licences (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

1.2 This is the case because:

(a) the instrument does not contain provisions falling within paragraph 1(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 requiring it to be made under the affirmative procedure;

(b) the effect of the instrument is primarily to maintain domestically in Northern Ireland the existing driver licensing regime, but adjusting the language which would otherwise indicate the United Kingdom was a member State of the European Union.

2. Appropriateness statement

2.1 The Minister of State for Transport, Jesse Norman, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Driving Licences (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 do no more than is appropriate”.

2.2 This is the case because the instrument is limited in effect to simply correcting deficiencies in the legislation it relates to resulting from the UK leaving the EU.

3. Good reasons

3.1 The Minister of State for Transport, Jesse Norman, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

3.2 These are primarily to correct the language in key Northern Ireland legislation relating to driving licences to recognise that the UK is no longer an EU member State, and to so eliminate any ambiguity, but otherwise maintain the current driving licensing regime intact in Northern Ireland.

4. Equalities

4.1 The Minister of State for Transport, Jesse Norman, has made the following statement:

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

4.2 The Minister of State for Transport, Jesse Norman, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Jesse Norman, Minister of State for Transport, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010. This Act does not extend to Northern Ireland but as the Driving Licences (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 extend only to Northern Ireland, I have given equivalent due regard to the need to eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by or under the Equality Act 2010, in relation to Northern Ireland.”

5. Explanations

5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.