

EXPLANATORY MEMORANDUM TO

THE DRIVING LICENCES (AMENDMENT) (EU EXIT) REGULATIONS 2018

2018 No. 1251

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport 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:-
 - (a) address failures of existing driving licence legislation to operate effectively, and other deficiencies, which would otherwise result from the withdrawal of the United Kingdom from the European Union,
 - (b) update certain out of date references to European legislation (regulations 6(6), (8) and (10)), and
 - (c) revoke provisions relating to the “Young Large Goods Vehicle Driver Training Scheme” for drivers under 21 years old (known as the “Young Drivers Scheme” or “YDS”) which has been replaced by the “Certificate of Professional Competence” system given effect by the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007 (S.I. 2007/605) (regulation 6(2), (4), (5) and (9)).

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 Great Britain principally through the Road Traffic Act 1988 and the Motor Vehicles (Driving Licences) Regulations 1999.

Why is it being changed?

- 2.3 The provisions of the Road Traffic Act 1988 and the Motor Vehicles (Driving Licences) Regulations 1999, 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 Act 1988, Road Traffic (New Drivers) Act 1995 and various Exchangeable Licences Orders which relate to driving licensing, are also being adjusted for the same reason. In addition some provisions of the 1999 Regulations contain out of date cross references to EU legislation (on drivers hours, tachographs and head restraints in cars) and to the abandoned Young Drivers Scheme.

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, and so eliminate any ambiguity, but otherwise to maintain the current driving licensing regime intact in Great Britain. They will also update the out of date cross references and remove reference to the abandoned Young Drivers Scheme.

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 9th October 2018, by the Parliamentary Under Secretary of State for Transport, Nusrat Ghani. She 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 22nd October 2018, 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 23rd October 2018, 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 Great Britain.
- 4.2 The territorial application of this instrument is Great Britain.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for Transport, Nusrat Ghani, has made the following statement regarding Human Rights:
- “In my view the provisions of the Driving Licences (Amendment) (EU Exit) Regulations 2018 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The European Union (Withdrawal) Act 2018 repeals the European Communities Act 1972, but section 2 saves EU-derived domestic legislation so that it continues to have effect in domestic law on and after exit day.
- 6.2 Directive 2006/126/EC (as amended) on driving licences amended and consolidated EU law on driving licences and is given effect in Great Britain principally through the

Road Traffic Act 1988 and the Motor Vehicles (Driving Licences) Regulations 1999. 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 Act 1988, Road Traffic (New Drivers) Act 1995 and various Exchangeable Licences Orders, 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 Great Britain.
- 6.4 For the most part the instrument comes into force on exit day. But some provisions come into force earlier (as indicated in regulation 1(3)). This is firstly to update some out of date cross references to European law prior to exit day. The European Regulations to which the updated cross references relate will become adopted into domestic law on exit day under section 3 of the 2018 Act. Secondly this is to revoke redundant references to the abandoned Young Drivers Scheme.

7. Policy background

What is being done and why?

- 7.1 Where the rules on driving licensing set out in the Road Traffic Act 1988 use language which indicates or implies the UK is part of the European Union, the language is adjusted (under the European Union (Withdrawal) Act 2018) to remove that indication or implication, so that the wording is correct and avoids any ambiguity.
- 7.2 The same approach has been applied (under the European Union (Withdrawal) Act 2018) 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 Act 1988 (which concerns the enforcement of traffic law), to the Road Traffic (New Drivers) Act 1995 (which provides for disqualification upon being allocated 6 or more penalty points within 2 years of passing the driving test), to the various Exchangeable Licences Orders (which enable a person holding a licence issued by a designated State to exchange it for a GB one) and to the Motor Vehicles (Driving Licences) Regulations 1999 (which contain detailed rules relating to licensing and driving tests).
- 7.3 Regulation 9(13)(d) of the 1999 Regulations is amended (under the European Union (Withdrawal) Act 2018) 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.
- 7.4 Regulations 22, 37(5)(c) and Schedule 7 of the 1999 Regulations currently cross refer to European legislation on drivers hours, tachographs and head restraints in cars. All this legislation has been repealed and replaced by European Regulations which will automatically become adopted into domestic law on exit day under section 3 of the 2018 Act. The instrument updates these references accordingly in advance of exit day, using powers in the Road Traffic Act 1988 (regulation 6(6), (8) and (10)).
- 7.5 The 1999 Regulations are also amended to revoke references to the “Young Large Goods Vehicle Driver Training Scheme” for drivers under 21 years old (known as the “Young Drivers Scheme” or “YDS”) which was abandoned in 2009. This instrument

revokes these redundant references in advance of exit day, using powers in the Road Traffic Act 1988, for expediency and because they refer to a European Directive which has been repealed (regulation 6(2), (4), (5) and (9)).

- 7.6 The Department no longer administers the YDS. Drivers under 21 have to obtain a full licence covering large goods vehicles but cannot use it unless they also hold a driver “certificate of professional competence” under the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007, which superseded the YDS scheme. But drivers under 21 in the armed forces are exempt from having to have a certificate of professional competence.
- 7.7 The instrument does not change the current rule that a driver under 21 cannot apply for a large goods vehicles licence if they have more than three penalty points on their driving record, or have at any time been disqualified. But whereas this rule was set out separately in regulation 12(3) for civilian drivers and in regulation 12(4) for military drivers, in the 1999 Regulations, this instrument has consolidated the rule together for both drivers in regulation 12(4).
- 7.8 Both military and civilian drivers under 21 can have large goods vehicle driver licence entitlement revoked up until their 21st birthday if they accrue more than three penalty points on their licence, and this instrument does not change this.
- 7.9 Otherwise this instrument makes no change to the existing driving licence regime for driving in Great Britain.

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.
- 8.2 Alongside the European Union (Withdrawal) Act 2018 powers, the instrument is also being made under sections 89, 97, 101, 105, 114 and 120 of the Road Traffic Act 1988 to update certain out of date references to European legislation (regulations 6(6), (8) and (10)), and to revoke provisions relating to the abandoned Young Drivers Scheme (regulation 6(2), (4), (5) and (9)).

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, and to update some cross references and delete some redundant provisions.
- 10.2 However a limited stakeholder consultation was made under section 195(2) of the Road Traffic Act 1988 in relation to the amendments being made under the powers of that Act. Those consulted were the Automobile Association, the Confederation of

Passenger Transport, the Freight Transport Association, the National Caravan Council, the Royal Automobile Association, the Road Haulage Association and the Devolved Administrations. Consultees were informed of these amendments in writing and given the opportunity to provide any views on them. No responses were received.

11. Guidance

- 11.1 As the changes will have no effect on current licensing arrangements in Great Britain, or the position for visiting foreign licence holders, there are no plans to issue new guidance. Existing forms and leaflets will 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 There are no plans to monitor or review this instrument for the reasons indicated below.
- 14.2 In relation to those provisions of this instrument which are made under the Road Traffic Act 1988 this instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Parliamentary Under Secretary of State for Transport, Nusrat Ghani, has made the following statement:

“Having had regard to sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015, and the statutory guidance under section 31 of that Act, I have decided that it is not appropriate to make provision for review of those provisions of this instrument which are made under the Road Traffic Act 1988 because it would be disproportionate to do so taking into account the economic impact of those provisions. Those provisions simply revoke redundant legislation (namely that relating to the “Young Large Goods Vehicle Driver Training Scheme” for drivers under 21 years old, known as the “Young Drivers Scheme” or “YDS”) which has been abandoned, and update some cross references to European Union legislation. The provisions do not introduce any duties or burdens on business, and businesses will not need to change their current practices.”

- 14.3 In so far as this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 Tim Ford at the Driver and Vehicle Licensing Agency (telephone: 01792 384 591 or email: tim.ford@dvla.gsi.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Lynette Rose at the Driver and Vehicle Licensing Agency can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Parliamentary Under Secretary of State for Transport, Nusrat Ghani, 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 Parliamentary Under Secretary of State for Transport, Nusrat Ghani, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Driving Licences (Amendment) (EU Exit) Regulations 2018 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 GB the existing driver licensing regime, but adjusting the language which would otherwise indicate the United Kingdom was a member State of the European Union;

(c) its other provisions merely update a few cross references to EU law and remove some redundant legislation.

2. Appropriateness statement

- 2.1 The Parliamentary Under Secretary of State for Transport, Nusrat Ghani, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Driving Licences (Amendment) (EU Exit) Regulations 2018 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, updating some cross references and removing some redundant legislation.

3. Good reasons

- 3.1 The Parliamentary Under Secretary of State for Transport, Nusrat Ghani, 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 GB 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 GB. It also updates some out of date cross references and removes some redundant provisions.

4. Equalities

- 4.1 The Parliamentary Under Secretary of State for Transport, Nusrat Ghani, 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 Parliamentary Under Secretary of State for Transport, Nusrat Ghani, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Nusrat Ghani, Parliamentary Under Secretary 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.”

5. Explanations

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