

EXPLANATORY MEMORANDUM TO
THE ROAD VEHICLES (REGISTRATION AND LICENSING) (AMENDMENT) (EU
EXIT) REGULATIONS 2020

2020 No. 1361

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.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to: -
 - (a) revoke regulation 27B of the Road Vehicles (Registration and Licensing) Regulations 2002 (“the 2002 Regulations”), and the instrument which inserted it; regulation 27B gave effect to Directive (EU) 2015/413 of the European Parliament and of the Council (OJ No L 68, 13.3.15, p.9) (“the Directive”) by requiring the Secretary of State to provide to European Union Member States the identity of the registered keepers of vehicles, and related information, alleged to have been used in those States in the commission of traffic offences to which the Directive applies, such as speeding;
 - (b) substitute “IP completion day” for “exit day” in amendments made to the 2002 Regulations by the Road Vehicles (Registration, Registration Plates and Excise Exemption) (Amendment) (EU Exit) Regulations 2018, as the amendments are due to come into force on IP completion day rather than exit day following the end of the transition period provided for in the EU Withdrawal Agreement.

Explanations

What did any relevant EU law do before IP completion day?

- 2.2 Regulation 27B of the 2002 Regulations transposes the Directive for the UK. The Directive requires a Member State to provide to an enquiring Member State the identity of the registered keepers of vehicles, and related information, alleged to have been used in the enquiring Member State in the commission of certain traffic offences to which the Directive applies. Information is exchanged via an automated electronic data exchange mechanism established for the operation of the Directive.
- 2.3 The traffic offences are speeding, not using a seatbelt, not stopping at a red traffic light, drink-driving, driving under the influence of drugs, not wearing a safety helmet, using a forbidden lane, and illegally using a mobile or another communication device while driving.

Why is it being changed?

- 2.4 The UK only uses the outbound mechanism of the Directive i.e. we respond to enquiries from Member States but do not seek to obtain equivalent information from them about their nationals driving in the UK. This is because UK law makes the

driver liable for the offences whereas the Directive provides for the exchange of information regarding the vehicle keeper. This one-way data exchange does not benefit the UK.

- 2.5 At the end of the implementation period the Secretary of State will no longer have access to the EU automated electronic data exchange mechanism established for the operation of the Directive. The Secretary of State will therefore be unable to provide vehicle keeper details to EU Member States under the mechanism and indeed EU Member States will not be able to submit any requests to the Secretary of State through it.

What will it now do?

- 2.6 The instrument will revoke the Secretary of State's obligation under regulation 27B of the 2002 Regulations to provide vehicle keeper data to Member States after the end of the implementation period.
- 2.7 It will also substitute "IP completion day" for "exit day" in amendments made to the 2002 Regulations by the Road Vehicles (Registration, Registration Plates and Excise Exemption) (Amendment) (EU Exit) Regulations 2018. Those amendments specify what vehicle registration documents must contain and provide for their form, in place of compliance with the EU vehicle registration Directive, and were originally intended to come into effect on exit day but due to the transition period provided for in the Withdrawal Agreement their coming into force has been put back until IP completion day.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument was laid for sifting under paragraph 3 of Schedule 7 to the European Union (Withdrawal) Act 2018 on the 9th November 2020 by the Parliamentary Under Secretary of State for Transport, Rachel Maclean MP, who considered 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 17th November 2020, 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 24th November 2020, 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 the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The European Union (Withdrawal) Act 2018, as amended by the European Union (Withdrawal Agreement) Act 2020, repealed the European Communities Act 1972, but section 2 saves EU-derived domestic legislation so that it continues to have effect in domestic law after the implementation period.

6.2 Regulation 27B was inserted into the 2002 Regulations by way of transposition of the Directive under the power of section 2(2) of the European Communities Act 1972. Thus, it is EU-derived domestic legislation and, unless revoked by this instrument, would continue in force after the implementation period.

6.3 The revocation made by this instrument will take effect at the end of the implementation period which is provided for under the European Union (Withdrawal Agreement) Act 2020.

6.4 The updates to references to “exit day” contained in the Road Vehicles (Registration, Registration Plates and Excise Exemption) (Amendment) (EU Exit) Regulations 2018 are necessary given the revised coming into force date following the end of the transition period. This update is made under section 8 of the European Union (Withdrawal) Act 2018 and complementary powers in the Vehicle Excise and Registration Act 1994.

7. Policy background

What is being done and why?

7.1 This instrument will revoke the UK’s obligation under the Directive to provide vehicle keeper data to EU Member States after the end of the implementation period provided for under the European Union (Withdrawal Agreement) Act 2020. The UK will not process requests for vehicle keeper data from enquiring EU Member States associated with the following eight traffic offences: speeding; not using a seatbelt; not stopping at a red traffic light; drink-driving; driving under the influence of drugs; not wearing a safety helmet; using a forbidden lane; and illegally using a mobile or another communication device while driving.

7.2 The UK only uses the outbound mechanism of the Directive i.e. we respond to enquiries from Member States but do not seek to obtain equivalent information from them about their nationals driving in the UK. This is because UK law makes the *driver* liable for the offences whereas the Directive provides for the exchange of information regarding the vehicle *keeper*. This one-way data exchange, which does not benefit the UK, will be revoked by this instrument.

7.3 At the end of the implementation period the UK will no longer have access to the EU automated electronic data exchange mechanism established for the operation of the Directive. The UK will therefore be unable to provide vehicle keeper details to EU Member States under the mechanism and indeed EU Member States will not be able to submit any requests to the UK through it.

- 7.4 The UK will however continue to follow its obligations under the “European Convention on Mutual Assistance in Criminal Matters” of 1959 (a Council of Europe Convention) (“MLA”). Under this Convention, the UK agrees to provide assistance in criminal matters to enquiring countries, which include non EU Member States. The UK Central Authority (UKCA) (who process all MLA requests to the UK) and the Driver and Vehicle Licensing Agency (DVLA) will continue to deal with such requests, according to existing processes already in place. However, unlike the automated electronic data exchange mechanism established for the operation of the Directive, requesting assistance under the Convention and responding is manual and thus more resource intensive.
- 7.5 The instrument will correct references to “exit day” contained in the Road Vehicles (Registration, Registration Plates and Excise Exemption) (Amendment) (EU Exit) Regulations 2018 as is necessary given the revised coming into force date following the end of the transition period.

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 deficiencies in retained EU law arising from the withdrawal of the United Kingdom from the European Union. 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 No consolidation is planned to result from the amendment made to the 2002 Regulations by this instrument.

10. Consultation outcome

- 10.1 The Department has consulted the Home Office. As the instrument removes an obligation on the Secretary of State, and as the United Kingdom will cease to be party to the mechanism established for the operation of the Directive, no further consultation was considered necessary.

11. Guidance

- 11.1 Guidance is not required.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 The impact for the public sector is that there may be more requests made for vehicle keeper details under the European Convention on Mutual Assistance in Criminal Matters of 1959. The Department for Transport will continue to work with the UK Central Authority and the Driver and Vehicle Licensing Agency to monitor the volumes of requests and put in place mitigating actions to manage any impact.
- 12.3 An Impact Assessment has not been prepared for this instrument because it is unclear at this stage to what extent Member States may seek to obtain vehicle registration data via the 1959 Convention given the manual nature of the process.

13. Regulating small business

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

14. Monitoring & review

14.1 There are no plans to monitor or review this instrument.

15. Contact

15.1 Melvin Babu at the Department for Transport, email: Melvin.Babu@dft.gov.uk can be contacted with any queries regarding the instrument.

15.2 Samantha Collins-Hill, Deputy Director for Future EU Roads Relationship Policy and Negotiations, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rachel Maclean MP, Parliamentary Under Secretary 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 14, 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 15, 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) Act 2018

1. Sifting statement(s)

- 1.1 Rachel Maclean MP, Parliamentary Under Secretary of State for Transport, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Road Vehicles (Registration and Licensing) (Amendment) (EU Exit) Regulations 2020 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: 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, the provisions revoked will be redundant upon IP completion (given the United Kingdom will no longer have access to the EU automated electronic data exchange mechanism established for the operation of the Directive) and the other provisions made are simply drafting updates.

2. Appropriateness statement

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

“In my view the Road Vehicles (Registration and Licensing) (Amendment) (EU Exit) Regulations 2020 do no more than is appropriate”.

- 2.2 This is the case because: the instrument is limited to revoking secondary legislation which is no longer required, and making drafting updates.

3. Good reasons

- 3.1 Rachel Maclean MP, Parliamentary Under Secretary of State for Transport, 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: because continuation of the provisions revoked would not benefit the UK, the Secretary of State will no longer have access to the EU automated electronic data exchange mechanism established for the operation of the Directive (as explained in paragraphs 7.2 and 7.3 (policy background) of this Explanatory Memorandum) and the other provisions simply make drafting updates.

4. Equalities

- 4.1 Rachel Maclean MP, Parliamentary Under Secretary of State for Transport, has made the following statement(s):

“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 Rachel Maclean MP, Parliamentary Under Secretary of State for Transport, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Rachel Maclean MP 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.