

EXPLANATORY MEMORANDUM TO
THE SPECIFIED AGREEMENT ON DRIVING DISQUALIFICATIONS
REGULATIONS 2017

2017 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport (the “Department”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of this instrument

- 2.1 The purpose of this instrument is to specify a bilateral agreement dated 30th October 2015 between the UK and Ireland on the mutual recognition of driving disqualifications imposed by either State for certain specified road traffic offences (the “Agreement”).
- 2.2 The specification identifies the Agreement as the one which is relevant to, and to be given effect in the UK by Chapter 1 of Part 3 of the Crime (International Co-operation) Act 2003 (“the 2003 Act”).
- 2.3 This Chapter of the 2003 Act provides a mechanism by which a driving disqualification imposed in Ireland on a UK resident, or a holder of a UK driving licence, for such an offence will be recognised and given effect in the UK. It also makes provision for a driving disqualification imposed by the UK on an Irish resident, or a holder of an Irish driving licence, for such offences to be notified to the appropriate Irish authority so that the disqualification may be recognised and given effect in Ireland.

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

- 3.3 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

- 4.1 Mutual recognition of driving disqualification between the UK and Ireland was previously in operation from 28th January 2010 to 1st December 2014 pursuant to the European Convention on Driving Disqualifications of 17th June 1998 (Convention 98/C 216/01, “the Convention”). This was given legal effect in the UK by Chapter 1 of Part 3 of the 2003 Act.

- 4.2 Following the Lisbon Treaty the UK opted out of the Convention, with effect from 1st December 2014, as part of a block opt-out under the Treaty on the Functioning of the European Union¹.
- 4.3 The UK / Irish mutual recognition provided for in the 2003 Act was retrospectively disapplied from 1st December 2014 by the Criminal Justice and Courts Act 2015 (the “2015 Act”). However the 2015 Act anticipated a new agreement would be entered into between the UK and Ireland to re-instate mutual recognition and it amended Chapter 1 of Part 3 of the 2003 Act to provide for the operation and enforcement of such an agreement. The UK and Ireland made the agreement on 30th October 2015.
- 4.4 The Criminal Justice and Courts Act 2015 (Commencement No.6) Order 2017 (the “Commencement Order”) brought into force on 22nd February 2017 the regulation making powers in section 31(5) and (6)(a) and paragraph 17 of Schedule 7 to the Act. Section 71A of the 2003 Act, which is inserted by section 31(5) of the 2015 Act, provides that the Secretary of State may specify by Regulations an agreement for mutual recognition of driving disqualifications so as to identify it as the agreement to be given effect in the UK by the 2003 Act. These Regulations specify the Agreement as being the relevant one for the purposes of Chapter 1 of Part 3 of the 2003 Act.
- 4.5 The Commencement Order also brings into force the rest of section 31 and Schedule 7 to the Act (in so far as they are not already in force) on the date when the Agreement comes into force in accordance with article 14 of the Agreement. Article 14 states that:
- “The parties shall notify each other in writing when their necessary internal procedures for entry into force have been completed. The Agreement shall enter into force on the date of the later of such notifications, and shall continue in force until terminated.*
- That will be when the UK and Ireland notify each other that they have completed their respective internal procedures to bring the Agreement into force.”*
- 4.6 Notice will be given in the London, Edinburgh and Belfast Gazettes of the date when the Agreement comes into effect and the new arrangements will only apply in relation to offences committed after such date.

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 The Parliamentary under Secretary of State for Transport, Andrew Jones MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Specified Agreement on Driving Disqualifications Regulations 2017 are compatible with the Convention rights.”

¹ This enabled the UK to decide whether it should continue to be bound by some of the pre-Lisbon EU rules in the field of police and judicial cooperation in criminal matters (“ex-third pillar measures”), or whether it should exercise its right to opt out *en masse*. On 24 July 2013, following debates in both Houses of Parliament, the Prime Minister formally notified the European Council that the UK had decided to exercise its opt-out.

7. Policy background

What is being done and why

- 7.1 This instrument identifies the Agreement as the one which is relevant to, and to be given effect in the UK by Chapter 1 of Part 3 of the 2003 Act, as amended by the 2015 Act. It is the final step in the UK internal procedures to enable the relevant amendments to the 2003 Act to come into force to give effect to the Agreement.
- 7.2 The Agreement, once it is given legal effect in both countries, re-instates a framework for the mutual recognition by the UK and Ireland of driving disqualifications imposed for certain road traffic offences, the previous legal basis for mutual recognition having ceased to apply from 1st December 2014. This is important to the UK for reasons of road safety to ensure that drivers so disqualified in Ireland cannot drive on UK roads. This is of particular importance to Northern Ireland due to the land border it shares with Ireland.
- 7.3 When mutual recognition applied under the Convention between 2010 and 2014 there were over two hundred Irish disqualifications recognised in Northern Ireland and about fifty in Great Britain. It is anticipated that numbers will be similar under the Agreement.
- 7.4 Under the Agreement, and the amendments to the 2003 Act, arrangements will be very similar to those under the Convention. However, the opportunity is being taken to improve the mutual recognition process.
- 7.5 Under the Convention, a driving ban for a relevant offence imposed in Ireland, on a person who normally resided in the UK would be recognised in the UK. But enforcement problems could occur if the driver claimed they were normally resident in Ireland such that their disqualification should not trigger mutual recognition in the UK. This difficulty is addressed in the Agreement by providing for mutual recognition where the disqualified driver is either normally resident in the other State, or is the holder of a driving licence issued by the other state.
- 7.6 Also the amendments to the 2003 Act update the list of road traffic offences under Northern Irish legislation disqualification for the commission of which would be notified to the appropriate Irish Authority.

Consolidation

- 7.7 Consolidation is not relevant to this instrument.

8. Consultation outcome

- 8.1 Consultation took place prior to implementing mutual recognition of driving disqualifications with Ireland under the framework of the Convention. Consultation was not undertaken prior to signing the Agreement as there have not been any significant changes from the previous framework. Accordingly, no specific consultation was undertaken with respect to these Regulations.
- 8.2 The Regulations are the final step in the UK internal procedures to enable the Agreement to be given legal effect. Giving the Agreement legal effect will restore the mutual recognition which previously applied from 2010 to 2014 under the Convention. Parliament anticipated mutual recognition would be restored through a bi-lateral agreement with Ireland by the enactment of the relevant amendments to the 2003 Act. The Agreement itself has been laid before Parliament under section 20 of

the Constitutional Reform and Governance Act 2010 without either House having resolved that it should not be ratified.

9. Guidance

- 9.1 New guidance will be issued on mutual recognition in advance of the Agreement coming into force to ensure that those affected, such as the courts and police, are sufficiently informed.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is not significant. The arrangements under the Agreement will be almost identical to the arrangement under the Convention. Any changes are minor and are unlikely to add any extra costs.
- 10.3 An Impact Assessment has not been prepared for this instrument.

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 11 of the Agreement the UK and Ireland commit to review its implementation two years after it enters into force. The Driver and Vehicle Licensing Agency (for Great Britain) and the Driver and Vehicle Agency (for Northern Ireland) will continually monitor the number of disqualifications recognised and any issues which may arise concerning its effectiveness.

13. Contact

- 13.1 Joe Straw at the Department for Transport (tel. 020 7944 3983 or email: Joe.Straw@dft.gsi.gov.uk) can answer any questions regarding this instrument.