

1 CONSULTATION ARRANGEMENTS

Purpose of Consultation

1.1 This consultation document concerns a proposal relating to the legislation which relates to the exchange of Driving Licences.

1.2 It should be stressed that this consultation document contains only a proposal. You are therefore invited to give your views, comments and ideas in respect of any aspect of this document, to enable an informed decision to be taken before the relevant legislation is drafted. In particular, the Department would welcome comments as to whether -

- (a) the proposal is considered reasonable and effective with regards to its purpose;
- (b) it is relevant to Northern Ireland; and
- (c) there are potential problems associated with the proposal.

Consultees

1.3 The consultation document has been issued to a wide range of interests and a full list of consultees can be found at Annex A.

Responses

1.4 If you wish to respond to this consultation, please forward your written comments in either of the following ways:

E-mail: Stephen.Monaghan.@doeni.gov.uk

Write to: Stephen Monaghan
Driver Licensing Division
Driver & Vehicle Licensing Northern Ireland
County Hall
Castlerock Road
Coleraine
BT51 3TB

Textphone: 028 9054 0642

Help with Queries

1.5 If you have any queries or require further information about this consultation, please do not hesitate to contact Stephen Monaghan on telephone number 028 7034 1364 or at the above address. This document may be freely reproduced and further copies are available on request. It may be viewed on the Department's website at www.dvlni.gov.uk and on the Central Consultation Register for NI Departments' Website www.consultationni.gov.uk.

Alternative Formats

1.6 If the consultation is not in a format that meets your needs, please contact Stephen Monaghan who will be pleased to provide copies in large print, Braille or on audio tape.

Closing Date for Responses

1.7 The closing date for responses is 30 December 2005.

Freedom of Information Act 2000 – Confidentiality of Consultations

1.8 The Department will publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be discussed on request. The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response, please read the paragraphs below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this consultation.

1.9 The Freedom of Information Act gives the public a right of access to any information held by a public authority, namely, the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or treated as confidential.

1.10 This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:

- The Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided.
- The Department should not agree to hold information received from third parties 'in confidence' which is not confidential in nature.

- Acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

1.11 For further information about confidentiality of responses please contact the Information Commissioner's Office at,

Information Commissioner's Office – Northern Ireland
Room 101
Regus House
33 Clarendon Dock
Laganside
Belfast
BT1 3BG

Tel. (028) 90511270

Email to ni@ico.gsi.gov.uk

or see their website at:

www.informationcommissioner.gov.uk

2 INTRODUCTION

2.1 This consultation document sets out the background to current legislative provisions concerning Driving Licence exchange. It also outlines the reasons for and implications of the proposed amendment to the current legislative provision.

3 AMENDMENT TO THE ROAD TRAFFIC (NORTHERN IRELAND) ORDER 1981 REGARDING EXCHANGEABLE LICENCES

Background

3.1 The United Kingdom's implementation of the second EC directive on driving licences (91/439/EEC) on 1 January 1997 brought into domestic legislation the mutual recognition of driving licences issued by all EEA member states. This allowed holders of EEA driving licences ("Community Licences") to continue driving, without the need to exchange their licences, when changing residency between member states. Community licence holders may drive all categories of vehicles shown on their licence until such time as either it expires or when the holder reaches the age at which renewal would become necessary under Northern Ireland law, whichever is the sooner. Alternatively, they may exchange their licence for a Northern Ireland licence, including any vocational entitlement they may have, when they choose.

3.2 EEA countries include the 25 member states of the European Community (Austria, Italy, Belgium, Denmark, Luxembourg, France, Finland, Netherlands, Germany, Portugal, Greece, Spain, Ireland, United Kingdom,

Iceland, Czech Republic, Republic of Cyprus, Hungary, Estonia, Slovenia, Slovakia, Malta, Poland, Latvia and Lithuania) as well as 3 members of the European Free Trade Association (EFTA – Iceland, Liechtenstein and Norway).

3.3 New residents who hold licences issued in Gibraltar, the Channel Islands, or the Isle of Man may also exchange their licence for a Northern Ireland licence. They may drive all categories of vehicles shown on their licence for a period of up to 12 months. After this time they must apply to exchange their licence for a Northern Ireland one if they wish to continue to drive. (For drivers from Gibraltar this must be done within 5 years of becoming resident.)

3.4 Persons coming to live in Northern Ireland who hold licences issued outside the EEA, Gibraltar, the Channel Islands, or the Isle of Man, may drive small vehicles (such as motorcycles, cars vehicles up to 3500 kgs or with up to 8 passenger seats) for up to a year on their valid national driving licences. After this time they must pass a Northern Ireland driving test in order to continue to have the right to drive, unless they hold a licence issued in a country or territory designated by law for the purpose of exchange of licences. Once a country has been designated, its licences may be exchanged for Northern Ireland licences subject to the holders meeting the normal requirements for health and minimum ages.

3.5 Non-EEA countries which are presently designated for licence exchange, are Australia, Barbados, British Virgin Islands, Hong Kong, Japan, New Zealand, Singapore, Switzerland and Zimbabwe. Licences exchanged from designated countries will be limited to an entitlement to drive small vehicles only (up to 3500kgs and no more than 8 passenger seats).

3.6 DVLNI currently exchanges licences issued as a result of a driving test passed in EEA member states, Gibraltar, the Channel Islands or the Isle of Man, and non-EEA countries designated for licence exchange purposes. However, the Agency cannot exchange licences issued as a result of a driving

test passed in any of these countries if it has subsequently been exchanged for an EEA licence. In these circumstances, holders of such licences must pass a Northern Ireland driving test if they wish to continue driving here after their first 12 months of residency in Northern Ireland.

3.7 This restriction on licence exchange occurred unintentionally, and exists as an anomaly that needs to be removed. The proposal will only affect new residents in Northern Ireland who wish to obtain Northern Ireland driving licences in exchange for an EEA licence, which has been issued in exchange for a licence from a designated country, Gibraltar, Channel Islands, or Isle of Man.

Proposed Changes

3.8 This consultation paper seeks your views on the proposal which would allow:

- (a) holders of driving licences for small vehicles (up to 3500 kgs) from EEA countries, who are resident in Northern Ireland, to be able to exchange the licence for the Northern Ireland equivalent where the EEA licence submitted for exchange had previously been issued in exchange for one originally issued by a country designated for licence exchange purposes. The Northern Ireland licence would be issued subject to the normal conditions of designation and the exchange would be restricted to small vehicle (up to 3500 kgs) entitlement only, unless vocational entitlement was granted as the result of a test pass in an EEA member state.

For example: - The licence holder originally held an Australian licence, which was exchanged for a Spanish licence, and subsequently presented for exchange in Northern Ireland. If the licence holder passed their Category C+E (Large Goods Vehicle

and Trailer) test in Spain, this entitlement would be added to the Northern Ireland licence.

and;

(b) the holder of a driving licence issued in an EEA member state, but who is now resident in Northern Ireland, to exchange the licence for the NI equivalent where the EEA licence submitted for exchange had previously been exchanged for one originating in Gibraltar, the Channel Islands, or the Isle of Man. The NI driving licence would include all categories shown on the original licence, including entitlements to drive large vehicles.

For example: - The licence holder originally held a Jersey licence, which was exchanged for an Italian licence, and subsequently presented for exchange in Great Britain.

Benefit of proposal

3.9 The proposed provisions seek to achieve the following:

- a) ensuring that Northern Ireland's road traffic legislation has the powers of enforcement necessary to promote road safety;
- b) providing a better and more flexible service to the Department's customers;
- c) removing indirect discrimination on grounds of nationality, contrary to Article 12 of the European Treaty.

3.10 If accepted, these proposals would put new residents in NI, who hold a driving licence from an EEA country which was issued in exchange for a

licence from a designated country, Gibraltar, the Channel Islands, or the Isle of Man, on an equal footing with new residents in NI who have a licence from a designated country, Gibraltar, the Channel Islands, or the Isle of Man.

3.11 These proposals will only affect a small number of new residents in NI who are required to pass a driving test should they wish to continue driving in this country.

3.12 It is the aim of the Department to replicate the measure being enacted by DVLA in Swansea to correct the same anomaly in Great Britain. A copy of GB's proposed enactment is attached as Annex B. It is proposed that similar legislative change will be made in Northern Ireland via a Road Traffic Order planned for Summer 2006. Replicating the GB legislation will have the added benefit that driver licensing legislation in Northern Ireland and Great Britain will preserve or improve parity as far as is practicable.

4 IMPACT OF PROPOSAL

Equality of Opportunity

4.1 The proposals have been screened to identify any implications for the promotion of equality of opportunity and were considered against the following 4 criteria:

- Is there any evidence of higher or lower participation or uptake by different groups within any of the nine categories?
- Is there any evidence that different groups have different needs, experiences, issues and priorities in relation to the policy?

- Is there an opportunity to better promote equality of opportunity or better community relations by altering the policy or working with others in Government or the community at large?
- Have consultations with relevant groups, organisations or individuals indicated that particular policies create problems that are specific to them?

4.2 There was a negative response to each, and no significant implications for promotion of opportunity have been identified. An equality impact assessment is not, therefore, required.

Regulatory Impact

4.3 The impact of the proposal would largely affect individuals who become resident in Northern Ireland. It is believed there would be no impact upon businesses, charities or the voluntary sector. A Regulatory Impact Assessment is, therefore, not required.

Costs and Savings

4.4 The current fees collected by the DVLNI will remain the same. The cost to a new resident wishing to exchange their licence is £38. The cost to a new resident wishing to apply for a first Northern Ireland provisional licence is £38 (and this can be exchanged for a full licence free of charge upon test pass).

4.5 There will be a saving to these new residents who are currently required to complete a Northern Ireland driving test, as they will not have to pay for the test.

4.6 Amendment to the legislation will save individuals a significant amount of money, but it will mean a loss of revenue to the Driving & Vehicle Testing Agency (DVTA). However, as the numbers affected by this legislation are quite small (believed to be less than 100 a year), it will not have a significant impact on the revenue of the DVTA.

4.7 Whilst there is a financial benefit for the individuals affected, the biggest benefit to this legislation is that it will put new residents in Northern Ireland who are the holders of prescribed exchanged EEA licences on an equal footing with new residents in Northern Ireland who hold licences from any of the designated countries, British external countries or Gibraltar.

4.8 This would remove the burden on new residents in GB who hold a driving licence from an EEA country, that has been issued in exchange for a licence from a designated country, Gibraltar, the Channel Islands or Isle of Man, from the requirement to pass a British driving test if they wish to continue to drive in this country after their first 12 months.

Human Rights

4.9 The proposal does not give rise to any Human Rights implications.

Extent

4.10 This legislation will only extend to new residents in Northern Ireland as Northern Ireland driver licensing matters are devolved to the Northern Ireland Assembly. Driving licence operations in Great Britain are the responsibility of the Department for Transport, under the auspices of the Driver and Vehicle Licensing Agency in Swansea. However, similar arrangements are being effected in Great Britain.

5 IMPLEMENTATION

5.1 In order to implement the proposed change primary legislation is required. As indicated in paragraph 3.12, it is intended to provide for this in a Road Traffic Order which it is hoped to have in place by Summer 2006.

LIST OF CONSULTEES

Rev Dr I R K Paisley MP MLA, Democratic Unionist Party
Mr G Adams MP MLA, Sinn Fein
Mr M Durkan MP MLA, SDLP
Mr R Empey MLA, Ulster Unionist Party
Mr D Ford MLA, Alliance Party of Northern Ireland
NI Women's Coalition
Mr D Ervine MLA, Progressive Unionist Party
Mr R McCartney QC MLA, UK Unionist Party
The Secretary, The Worker's Party
The Secretary, Green Party
Mr Sammy Wilson MP MLA, Democratic Unionist Party
Mr Gregory Campbell MP MLA, Democratic Unionist Party
Mr J Donaldson MP MLA, Democratic Unionist Party
Mr P Robinson MP MLA, Democratic Unionist Party
Mr Jim Allister MEP, Democratic Unionist Party
Rev William McCrea MP MLA, Democratic Unionist Party
Mr N Dodds MP MLA, Democratic Unionist Party
Mrs I Robinson MP MLA, Democratic Unionist Party
Mr David Simpson MP MLA, Democratic Unionist Party
Mrs M Gildernew MP MLA, Sinn Fein Office
Mr Conor Murphy MP MLA, Sinn Fein Office
Mr P Doherty MP MLA, Sinn Fein Office
Mr M Mc Guinness MP MLA, Sinn Fein Office
Ms B De Brun MEP, Sinn Fein Office
Mr E Mc Grady MP, SDLP
Dr Alasdair McDonnell MP MLA, SDLP
Lady S Hermon MP, North Down Ulster Unionist Office
Mr J Nicholson MEP, Ulster Unionist Party
Lord Alderdice
Lord Eames
Baroness Blood
Lord Laird
Lord Kilclooney
Lord Maginnes
Lord Molyneaux
Lord Rogan
Lord Smith of Clifton
Lord Steinberg
Lord Cooke
Baroness O'Neill
Lord Ballyedmond
Lord Rana
Mr D Lidington MP, Shadow Secretary of State
Mr L Robertson MP
Mr L Opik MP
Lord Glentoran CBE DL
Mr A Carmichael MP
Lord Shutt of Greetland

Baroness Farrington
Viscount Brookeborough
Official Publications Department, Queen's University Belfast
Ms Deirdre Wildy, NIPR
TSO Bibliographic Department
The Executive Council of the Inn of Court of NI
The Law Society of NI
The School of Law, University of Ulster
Institute of Professional Legal Studies
Judge Curran, HM Council of County Court Judges
Belfast Solicitors Association
The School of Law, Queens University of Belfast
Law Centre (NI)
Law Reform Advisory Committee
NI Resident Magistrates Association
Northern Ireland Ombudsman
The General Consumer Council for Northern Ireland
NI Chamber of Commerce and Industry
NI Association of Citizens Advice Bureaux
The Office of Law Reform
Human Rights Commission for NI
Equality Commission for NI
Confederation of British Industry
Federation of Small Businesses
Northern Ireland Chamber of Trade
The NI Council for Voluntary Action
Northern Ireland Local Government Association
NIC/ICTU
Society of Local Authority Chief Executives
Regulatory Impact Unit, Inland Revenue
Northern Ireland Affairs Committee
Northern Ireland Affairs Committee
The Librarian, NI Assembly
Machinery of Government Division, OFMDFM
The Chief Constable, Police Service of Northern Ireland
Northern Ireland Policing Board
Legal Advisor, PSNI
Northern Ireland Court Service
Judges Reference Library
Director of Public Prosecutions
The Office of the Attorney General of Northern Ireland
The Librarian, The Bar Library
The Lord Chief Justice
Training For Women Network Ltd
NICVA
Road Safety Council of NI
British Motorcyclists Federation
Christian Road Safety League
N.I. Cycling Federation
Motor Cycling Union of Ireland (MCUI)
N.I. Drinks Industry Group
Road Safety Adviser Northern Region
N.I. Chamber of Trade
Motorcyclist Action Group

N.I. Private Coach Operators Association
Pedal Power
Road Transport Association (N.I.)
N.I. Walking Forum Transportation Unit
Freight Transport Association
Fire Authority for N.I.
Transport 2000
The Health & Safety Executive for N.I.
Institute of Advanced Motorists
Belfast Education & Library Board
Southern Education & Library Board
North Eastern Education & Library Board HQ
Western Education & Library Board
Child Accident Prevention Trust
South Eastern Education & Library Board HQ
NI Chamber of Commerce & Industry
Pedestrian Association
Road Haulage Association
Association of British Insurers
Ulster Automobile Club
Sustrans
Rospa (NI)
Translink
Transport Training Services Ltd.
National Federation of Self Employed & Small Businesses
Equality Forum NI
Department of the Environment & Local Government, DUBLIN
NI Motorcyclists Federation
Federation of Small Businesses
Owner Drivers Association
Northern Ireland Policing Board
Police Federation for Northern Ireland
Road Policing Development Branch, PSNI
General Consumer Council for NI
NI Ambulance Service
Association of Local Authorities NI
Antrim Borough Council
Ards Borough Council
Armagh City & District Council
Ballymena Borough Council
Ballymoney Borough Council
Banbridge District Council
Belfast City Council
Carrickfergus District Council
Castlereagh Borough Council
Cookstown District Council
Derry City Council
Dungannon & S. Tyrone Borough Council
Fermanagh District Council
Larne Borough Council
Limavady Borough Council
Lisburn Borough Council
Magherafelt District Council
Moyle District Council

Newry & Mourne District Council
North Down Borough Council
Omagh District Council
Newtownabbey Borough Council
Strabane District Council
Craigavon Borough Council
Down District Council
Coleraine Borough Council
Belfast Education & Library Board
NEELB
SELB
SEELB
WELB
Rural Development Council
Rural Community Network
Royal Automobile Club
Northern Ireland ADI Association
Newry & Mourne Driving Instructors Association
North West ADI Association
Omagh and District ADI Association
Mid Ulster ADI Association
Greater Belfast Driving Instructors Association
East Antrim ADI Association
Driving Standards Agency
Institute of Advanced Motorists
Road Safety Council for NI
NI Rider Training Scheme
Royal Mail
Community Transport Association
BT Fleet
NIPSA Branch 230
Freight Transport Association

DRAFT GB ORDER

STATUTORY INSTRUMENTS

2005 No.

REGULATORY REFORM

The Regulatory Reform (Exchangeable
Licences) Order 2005

| | |
|-------------------------------|--------|
| <i>Made</i> - - - - | 2005 |
| <i>Laid before Parliament</i> | 2005 |
| <i>Coming into force</i> - | - 2005 |

Whereas:

- (a) the Secretary of State is of the opinion that this Order does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise;
- (b) the Secretary of State has consulted such organisations as appear to the Secretary of State to be representative of interests substantially affected by the Secretary of State's proposals, statutory bodies whose functions are related to those proposals, organisations representative of such bodies, the National Assembly of Wales and such other persons as the Secretary of State considers appropriate;
- (c) it appears to the Secretary of State that it is appropriate, following that consultation, to proceed with the making of this Order;
- (d) a document setting out the Secretary of State's proposals has been laid before Parliament as required by section 6 of the Regulatory Reform Act 2001 and the period for Parliamentary consideration under section 8 of that Act has expired;
- (e) the Secretary of State has had regard to the representations made during that period;
- (f) a draft of this Order has been laid before Parliament with a statement giving details of those representations and the changes (if any) to the Secretary of State's proposals in the light of them; and

(g) a draft of this Order has been approved by resolution of each House of Parliament:

Now, therefore the Secretary of State, in exercise of the powers conferred by section 1 of the Regulatory Reform Act 2001 hereby makes the following Order:

—1. This Order may be cited as the Regulatory Reform (Exchangeable Licences) Order 2006 and shall come into force on [] 2006.

This Order extends to Great Britain.

Amendment of the Road Traffic Act 1988

In section 108 of the Road Traffic Act 1988 omit—

in subsection (1), the definition of “exchangeable licence”; and subsections (2) and (3).

After section 108 insert the following section—

“Exchangeable licences etc.

108A.—(1) For the purposes of this Part of this Act and “exchangeable licence” means, subject to the rest of this section, a document issued by a country or state other than the United Kingdom, authorising a person to drive a motor vehicle and which may be exchanged for a licence in accordance with this section.

(2) A document mentioned in paragraph (b) of the definition of Community licence in section 108 is not an exchangeable licence.

(3) An exchangeable licence may be—

- (a) issued in respect of Gibraltar by an authority of Gibraltar;
- (b) issued in respect of a country or territory which is designated without restriction by an order under subsection (8)(b) (a ‘restricted order licence’);
- (c) issued in respect of a country or territory which is designated without restriction by an order under subsection (8)(a); or
- (d) an EEA exchanged licence.

(4) An “EEA exchanged licence” means a licence—

- (a) issued in respect of an EEA State other than the United Kingdom by an authority of that or another State; and

- (b) issued in exchange for a British external licence or a document which [was or] would now be an exchangeable licence by virtue of paragraph (a), (b) or (c) or subsection (3).
- (5) An EEA exchanged licence issued in exchange for a restricted order licence is only an exchangeable licence to the same extent as that restricted licence would be, unless section subsection (6) applies.
- (6) This subsection applies where the authorisations to drive given by the restricted order licence and specified in the relevant order have been added to or extended further to a test pass by any authorisations to drive vehicles of a given class gained in respect of the EEA State which issued the EEA exchanged licence.
- (7) Where subsection (6) applies, the EEA exchanged licence is additionally an exchangeable licence to the further and necessarily implied extent of such authorisations gained.
- (8) For the purposes of subsection (3), the Secretary of State may by order made by statutory instrument designate a country or territory which neither is nor forms part of an EEA State either—
- (a) as respects all licences authorising the driving of motor vehicles granted under the law of that country or territory, where the Secretary of State is satisfied that satisfactory provision is made by that law for the granting of licences to drive motor vehicles; or
 - (b) as respects only licences authorising the driving of motor vehicles granted under the law of that country or territory of a description specified in the order, where the Secretary of State is satisfied that satisfactory provision is made for the granting of licences of that description.
- (9) An Order under subsection (8)(a) may specify a description of licence by reference to any feature of the licences concerned (including in particular the circumstances in which they are granted, any conditions to which they are subject or the classes of vehicle which they authorise the holders to drive).
- (10) An order under subsection (8)(b) may provide that a licence of a specified description shall only be an exchangeable licence in so far as it authorises its holder to drive vehicles of a class specified in the order.
- (11) Before making any order under subsection (8), the Secretary of State shall consult such representative organisations as he thinks fit.”

Amendment of the Road Traffic Offenders Act 1988

In subsection (11A) of section 36 (Disqualification until test is passed) of the Road Traffic Offenders Act 1988—

for “section 108(2)” substitute “section 108A(8)”; and

for “section 108(1)” substitute “section 108A”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which comes into force on [] 2006, is made under section 1 of the Regulatory Reform Act 2001. It reforms the law relating to driving licences which regulates which non-British driving licences may be exchanged for British licences without the need for the licence holder to take a driving test in Britain. The burden removed by virtue of this Order is the unnecessary requirement to take a British driving test currently made of a driver who has already passed a driving test of an acceptable standard.

The burden is removed by expanding the definition of “exchangeable licences” in the Road Traffic Regulation Act 1988. That definition has been placed in a new section with related and substantially unamended provisions concerning the designation of territories for the purposes of licence exchange.

Licences granted in exchange for a licence originally obtained pursuant to an acceptable driving test are now acknowledged as exchangeable licences, at least to the same extent that the originally exchanged licence would have been. For the first time, this applies to a licence granted in an EEA State if that licence was obtained in exchange for a British external licence or a licence issued by a state, country, or territory, outside the EEA whose standard of driving test is such that the driving entitlements concerned are recognised by the United Kingdom.