

EXPLANATORY MEMORANDUM TO
THE DRIVING AND MOTORCYCLE RIDING INSTRUCTORS (RECOGNITION
OF EUROPEAN PROFESSIONAL QUALIFICATIONS) REGULATIONS 2016

2016 No. 1089

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.

2. Purpose of the instrument

2.1 These regulations are made to further transpose Directive 2005/36/EC (“the Directive”) on the recognition of professional qualifications (as last amended by Directive 2013/55/EU (“the Revised Directive”) as it applies to driving and motorcycle instructors. They complement the European Union (Recognition of Professional Qualifications) Regulations 2015 (“the 2015 Regulations”)

2.2 These regulations provide for the recognition in Great Britain of the professional qualifications of motor car driving instructors, and motorcycle riding instructors, obtained in the European Economic Area or Switzerland.

2.3 They do so by making complementary amendments to the relevant road traffic legislation to ensure that the rights granted to European qualified driving and motorcycle instructors by the 2015 Regulations are compatible with that legislation.

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

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The principal legislation governing driving instructors is set out in Part V of the Road Traffic Act 1988 (“the 1988 Act”) and in the Motor Cars (Driving Instruction) Regulations 2005 (“the 2005 Regulations”). The principal legislation governing motorcycle instructors is in Part V of the Motor Vehicles (Driving Licences) Regulations 1999 (“the 1999 Regulations”). These regulations adjust this legislation to harmonise it with the rights granted by the 2015 Regulations.

4.2 The Directive, as revised by the Revised Directive, provides for mutual recognition of professional qualifications between member States of the European Economic Area and Switzerland. The Revised Directive has been scrutinised and cleared by the House of Lords and House of Commons scrutiny committees. The Revised Directive was adopted by the European Parliament and the Council on 20 November 2013 with a transposition date of 18 January 2016.

- 4.3 The 2015 Regulations implemented the Revised Directive in relation to all regulated professions (including driving and motorcycle riding instructors) other than the sectoral professions (i.e. those which involve harmonised training conditions, that is to say the professions of doctor, nurse, midwife, dentist, pharmacist, architect and veterinary surgeon). The 2015 Regulations came into force on 18 January 2016. These Regulations make further provision to implement the Revised Directive as it applies to driving and motorcycle riding instructors.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is Great Britain.
- 5.2 The territorial application of this instrument is Great Britain.
- 5.3 Northern Ireland will be making its own equivalent regulations.

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 Driving and Motorcycle Riding Instructors (Recognition of European Professional Qualifications) Regulations 2016 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 On 23 June, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all of the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in the future once the UK has left the EU.
- 7.2 The relevant road traffic legislation of Great Britain, which regulates the professions of motor car driving instructors and motorcycle riding instructors, is being adjusted to recognise the professional qualifications of motor car driving instructors, and motorcycle riding instructors, obtained in the European Economic Area or Switzerland. This is being done to harmonise this legislation with the rights granted to such European qualified instructors by the 2015 Regulations, which transposed the Revised Directive on the recognition of professional qualifications.
- 7.3 The Department has reviewed the domestic legislation governing driving and motorcycle riding instructors and has concluded that the transposition of the Revised Directive has not been fully perfected in relation to these professions. These Regulations address this by providing for the rights granted by the 2015 Regulations to be recognised in the corresponding road traffic legislation so that there is a clear mechanism for instructors from relevant European States to be able to exercise their rights to provide their services as driving or motorcycle riding instructors on a temporary and occasional basis or on an established basis.
- 7.4 The Revised Directive facilitates individual professionals to market their skills in other member States of the European Economic Area and Switzerland on a temporary

and occasional basis or on an established basis. It is intended to contribute to economic growth by enabling businesses, the public sector and consumers to access the professional services they require more readily and more economically by encouraging stronger competition for professional services. It facilitates professionals from the United Kingdom working overseas, gaining wider experience and skills.

Consolidation

7.5 There are no plans to consolidate the legalisation amended by these Regulations.

8. Consultation outcome

8.1 The Department conducted a four-week consultation in December 2015 (to which it received one positive response) and discussed the proposal at meetings with driving instructor consultative groups during 2015 and 2016. A further two-week targeted consultation was carried out in October/November 2016 with driving and motorcycle riding instructor representative organisations and road safety organisations and received nine responses.

8.2 A targeted consultation process was considered appropriate because the proposed changes are minor and have a limited scope and impact.

8.3 Of the nine responses received to the later consultation, eight were from driving instructors and one from a road safety expert. Of the eight responses from instructors, five disagreed with the proposal as they considered driving instruction within GB to be of a higher standard than elsewhere in Europe; two instructors welcomed the proposal and one asked whether the legislation would be made in light of the Referendum result. The remaining response merely provided details of their qualifications.

8.4 The Department has carefully considered all of the consultation responses and has decided to proceed to make these regulations. Driving instruction is regulated across the EU and there is no evidence that driving instruction within GB is of a higher standard than elsewhere in Europe.

9. Guidance

9.1 Guidance is available on the www.gov.uk website.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 No specific action is proposed to minimise regulatory burdens on small businesses.

11.3 The basis for the final decision on what action to take to assist small businesses is that the regulations do not increase the regulatory burdens on small businesses in Great Britain. They facilitate the employment of qualified driving and motorcycle riding instructors from other relevant European States.

12. Monitoring & review

- 12.1 The Department for Transport will monitor and review the policy.
- 12.2 These regulations include two statutory review provisions requiring the Secretary of State to carry out reviews within five years of their coming into force, and at intervals not exceeding five years thereafter. The first review clause requires the Secretary of State to carry out a review of Part V of the 1999 Regulations and the second requires the Secretary of State to carry out a review of the 2005 Regulations.
- 12.3 There is no statutory review clause in relation to the provisions which amend primary legislation as these are outside the scope the Small Business Enterprise and Employment Act 2015 which relates to review provisions in secondary legislation.

13. Contact

- 13.1 Mandy Lynch at the Driver and Vehicle Standards Agency (telephone: 0115 936 6097 or email: mandy.lynch@dsa.gsi.gov.uk) can answer any queries regarding the instrument.