



Department for

Infrastructure

An Roinn

Bonneagair

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Notice of laying of Legislative Consent Memorandum: Business and Planning Bill

In accordance with standing Order 42A, I attach a copy of a legislative consent memorandum for laying before the Assembly.

**NICHOLA MALLON MLA
Minister for Infrastructure**

LEGISLATIVE CONSENT MEMORANDUM

BUSINESS AND PLANNING BILL

Draft legislative Consent Motion

1. The draft motion, which will be tabled by the Infrastructure Minister, is:

“That this Assembly endorses the principle of the inclusion in the Business and Planning Bill of provision for temporary reduction in the duration of certain Northern Ireland driving licences.”

Background

2. This memorandum has been laid before the Assembly by the Infrastructure Minister under Standing Order 42A(2). The Business and Planning Bill was introduced to the House of Commons on 25 June. The latest version of the Bill can be found at:

<https://services.parliament.uk/Bills/2019-21/businessandplanning/documents.html>

Summary of the Bill and its policy objectives

3. The Bill includes a range of measures that are designed to help businesses to adjust to new ways of working during recovery from Covid-19. It includes provision for:
 - (i) a temporary reduction in the duration of driving licences for goods vehicles and passenger carrying vehicles (lorries and buses);
 - (ii) changes to roadworthiness testing in Great Britain;
 - (iii) facilitating loans under the Bounce Back Loan Scheme;
 - (iv) making it easier for bars, restaurants and pubs to seat and serve customers outdoors, through temporary changes to planning procedures and alcohol licensing;

- (v) ensuring that the planning system in England can operate effectively to support the planning and construction of new development following the impact of Covid-19
4. Most of these provisions relate to England, or to England and Wales. The provision relating to the Bounce Back Loan scheme also applies in Northern Ireland, and in Scotland. In relation to Northern Ireland the provision deals with both a reserved matter and transferred matter. In accordance with Devolution Guidance, consent is not required.
 5. This memorandum focuses on clause 15 of the Bill, which makes provision for the temporary reduction in the duration of driving licences for goods vehicles and passenger carrying vehicles (lorries and buses) in Northern Ireland. Taxi driving licences are not covered by the Bill.

Provisions which deal with a Devolution Matter

6. Clause 15 of the Bill includes specific provision for Northern Ireland, relating to the licensing of drivers of larger vehicles. Driver licensing is a transferred matter. Clause 14 of the Bill includes corresponding provision for Great Britain.

Reasons for making the Provisions

7. The Covid-19 crisis has meant that drivers who require a medical assessment before a driving licence can be granted are having difficulty in gaining access to a medical professional. The medical report is an integral part of the qualifying application criteria for 'Group 2 driving licences' – which are issued to lorry and bus drivers. These drivers, as key workers, are essential to our economic recovery and the maintenance of essential services.
8. For drivers up to age 65, Group 2 driving licences are issued for a 5 year period (unless the licence is medically restricted, in which case the validity period is reduced). This is in accordance with the provisions of the EU Driving Licence Directive (Directive 2006/126/EC). Drivers are required to submit a medical report with their licence application if:
 - (i) it is a first time application;
 - (ii) they are aged 45 and over; or
 - (iii) they are aged under 45 and have a medical condition that must be declared.

9. In Great Britain, in response to the current crisis, the Department for Transport (DfT) took the decision to issue 1 year licence renewals to some drivers, without prior medical assessment. This arrangement has been in place since 17 April 2020. These 1 year licences are only issued to drivers aged 45 and over and are not issued to first time applicants. Moreover, applicants in that category who declare a health issue will not be granted a 1 year licence renewal.
10. Implementation of this approach requires the amendment of primary legislation. DfT decided to do this at a later date, and apply the provisions retrospectively. Clause 14 of the Business and Planning Bill now makes the required retrospective provision.
11. In Northern Ireland, no 1 year licences have been issued to date. Instead, the Department has relied on the EU Emergency Transport Regulation (Regulation (EU) 2020/698), which became law with effect from 4 June. The Regulation includes a provision that states that all driving licences which expire or are due to expire between 1 February 2020 and 31 August 2020 are deemed to be extended for a period of 7 months.
12. Implementation of this provision has meant that driving licences in Northern Ireland – including Group 2 driving licences – must be treated as having an extended validity period. In effect, they remain valid for 7 months beyond the date that is shown on the face of the licence.
13. This provision is a temporary provision, though there is scope to make a request to the European Commission for an extension. Any such request would need to be made by DfT by 1 August, citing the reasons why an extension is required.
14. The Department will continue to keep the position under review so that, if appropriate, representations can be made to DfT in advance of the application deadline. However there is no guarantee that an extension request would be granted by the Commission.
15. Given this uncertainty, it is prudent to keep open the option of issuing 1 year licence renewals. This is a discretionary provision; the Department will not be obliged to issue 1 year licences. Moreover in circumstances where a driver is able to obtain a medical assessment, and is deemed fit to drive, the Department can grant a 5 year licence.
16. Under existing statutory provision (Article 15(2)(a) of the Road Traffic (Northern Ireland) Order 1981), a licence to drive a goods vehicle or a larger passenger carrying vehicle is normally valid for 5 years. Shorter validity

periods apply for drivers with certain medical conditions. In the case of drivers aged over 65, the licence is valid for 1 year only.

17. Clause 15 of the Business and Planning Bill contains discretionary provision that would enable the Department to issue 1 year licences, provided certain conditions are satisfied. Subsection 1 provides that these licences can only be granted during the period commencing at 1 August 2020 and ending at 24 March 2022. Effectively, this is a sunset provision. The Department's power to issue 1 year licences lapses at 24 March 2022.
18. Subsection 2 outlines the conditions that must be satisfied. The 1 year licence must be a licence to drive a goods vehicle or a passenger carrying vehicle. Also, these 1 year licences are only granted to drivers aged 45 and over - and in circumstances where the Department decides to waive the normal requirement for a medical report. Finally a second 1 year licence cannot be granted to a licence applicant; in other words, the Department cannot renew the licence for a further year.
19. In practice, the Department will only waive the medical report requirement in circumstances where drivers are aged 45 or over, are applying for a licence renewal and do not declare a medical condition that prevents them from driving safely. These 1 year licences will not be issued to any first time applicants.
20. Subsection 3 provides that 1 year licences shall not be granted in circumstances where a driver has previously been granted a motor vehicle driving licence in the previous 12 months – and submitted a medical report in support of that previous application. In these circumstances, the licence that is granted will have its normal duration.

Reasons for utilizing the Bill rather than an Act of the Assembly

21. The Department took legal advice on whether provision for 1 year driving licence renewals could be made by an Act of the Assembly. The legal advice received made reference to Section 6 of the Northern Ireland Act 1998. Section 6 provides that an Act is outside the Assembly's legislative competence if it is incompatible with EU law or Convention rights. In other words, the terms of the devolution settlement require that our devolved administration should operate within this framework.
22. In this instance, for Group 2 drivers, the relevant EU law is provided by the EU Driving Licence Directive (Directive 2006/126/EC). The Directive stipulates that Group 2 driving licences will be valid for 5 years unless a medical restriction applies.

23. An Assembly Act which provides for 1 year licence renewals could therefore be vulnerable to legal challenge, on the grounds that such action is outside the Assembly's legislative competence. Legal advice recommended that if 1 year licensing was to be introduced, the safest approach would be to do so via Westminster legislation. Parliament is under no such legislative restriction on its competence.

Consultation

24. Time constraints have meant that formal consultation has not been possible on this matter. However during recent months the limited availability of medical assessments has been a significant issue for many Group 2 drivers wishing to renew their driving licences. The Department has been urged to do everything possible to ensure that key workers can remain working at this time.
25. The EU Emergency Regulation has provided a short-term solution which will lapse, with no guarantee of extension, on 31 August 2020. It is therefore appropriate to ensure that other options are available to the Department in future months, given the level of uncertainty at this time.
26. The ability to issue 1 year licence renewals will be a short-term provision; the provision lapses at 24 March 2022. Moreover the provision will be discretionary; the Department will carefully assess any road safety implications before deciding to issue any 1 year licences, in circumstances where a prior medical assessment is normally required.
27. The Department has consulted with the DfI scrutiny committee. Again, time constraints have prevented the completion of the normal scrutiny process. However Committee Members have been advised of the detail of the draft statutory provision, and have indicated that they are content with the proposal.

Human Rights and Equality

28. No significant issues have been identified. Current practice is that prior medical assessments are normally required for: first time applicants; drivers aged 45 and over; and drivers under age 45 who declare a medical condition.
29. The ability to issue 1 year licences is a discretionary provision. It will only be used in circumstances where normal licensing arrangements cannot be restored, and where it is necessary to keep key workers on the road.

30. The Department does not propose to issue 1 year licences to any first time applicants. In the event that this provision is used, the Department intends that 1 year licences would be issued only to drivers aged 45 or over who do not declare a medical condition on their licence renewal application.
31. Any drivers, regardless of their age, who declare a medical condition when applying for renewal will be required to have a prior medical assessment, in line with current practice. Drivers aged under 45 who do not declare a medical condition will have their licence renewed for a 5 year period.

Financial Implications

32. No significant financial implications are anticipated at this stage. In the event that 1 year licences are issued the Department will determine the required licence fee.

Summary of Regulatory Impact

33. No impacts are anticipated. The provision is expected to be welcomed by industry as a prudent contingency planning measure.
34. Ideally, it will be possible to restore normal licensing arrangements in the near future and use of this provision will not be required. However the Department will assess any road safety implications before deciding to issue any 1 year licences.

Engagement to date with the Committee for Infrastructure

35. The Minister has written to the Committee to provide detail of her proposal to table a legislative consent motion on this matter. Committee members have indicated that they are content.

Conclusion

36. The view of the Minister for Infrastructure is that clause 15 of the Bill, relating specifically to Northern Ireland and dealing with a devolved measure, should be included in the Westminster Bill.

Department for Infrastructure
25 June 2020