**Explanatory Memorandum onthe Agreement in the form of an Exchange of Notes between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Spain on the Reciprocal Recognition and Exchange of National Driving Licences and on the Exchange of Information on Road Safety Related Traffic Offences**

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**Command Paper No 836**

1. **Introduction**
	1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament as an un-numbered Act Paper. It has been prepared for the purpose of fulfilling the statutory obligations under Part 2 of the Constitutional Reform and Governance Act 2010 (“CRaG Act 2010”).
2. **Subject matter and purpose of the Treaty**
	1. The Agreement between the United Kingdom of Great Britain and Northern Ireland (“the UK”) and the Kingdom of Spain (“Spain”) on the Reciprocal Recognition and Exchange of National Driving Licences and on the Exchange of Information on Road Safety Related Traffic Offences (hereafter referred to as “the Agreement”) records the commitment of the Governments of the UK and Spain to:
		* 1. mutually recognise driving licences issued by the competent authority of each Party for temporary use without the need for the licence holder to carry an International Driving Permit (“IDP”) or translation;
			2. allow holders of driving licences issued by the other Party to exchange their licence for a local licence without the need to take a practical or theory driving test; and
			3. exchange vehicle keeper data between the Parties for the purpose of road traffic offence enforcement, if requested by the other Party.
3. **Background**

***Driving abroad as a visitor***

* 1. Mutual recognition of driving licences with Spain was previously provided for by European Union law (Directive 2006/126/EC) which ceased to apply to the UK on 31 December 2020.
	2. The UK is party to the United Nations Conventions which govern the recognition of driving licences issued by signatory countries (the 1926 Paris International Convention on Automobile Traffic, the 1949 Geneva Convention on Road Traffic and 1968 Vienna Convention on Road Traffic, together the “UN Road Traffic Conventions”). Under these Conventions, UK driving licences are recognised for temporary visits in other contracting Parties. Spain is a party to the 1949 Convention and has signed but not ratified the 1968 Convention.

***Driving abroad following change of residency***

* 1. The UN Road Traffic Conventions do not make provision for the situation where a licence holder takes up residency in another contracting party and wishes to drive there. Arrangements to address this situation can be agreed bilaterally between countries. In the absence of an international arrangement with, or domestic legislation in the host country, such a driver's home licence would not be recognised in the host country. They would need to pass all relevant tests in the country where they become resident. This can be costly and time-consuming.
	2. The UK has negotiated the Agreement with Spain to provide UK licence holders who are already resident in Spain, or who become resident in future, the right to exchange their UK driving licence for a Spanish licence, without the need to take further practical or theory driving tests (and vice versa). This ensures that UK licence holders can continue to drive and therefore access basic requirements such as employment, education and medical facilities without interruption. Without the Agreement, UK licence holders would only be allowed to drive in Spain on the strength of their home licence for six months after establishing residency. After this point, they would have needed to obtain a Spanish licence by passing the relevant tests.
	3. The Agreement also confirms the treatment of Spanish licence holders who become resident in the UK: exchange rights for Spanish licence holders ensuring that they are not required to take further practical or theory tests to be able to drive in the UK.

***Exchange of information on road safety-related traffic offences***

* 1. The Agreement also provides for the exchange of vehicle and vehicle keeper data for the purpose of investigating certain specific road safety related traffic offences. Prior to the UK's departure from the EU, such information was exchangeable under the Cross Border Exchange Directive (EU/2015/413), which was transposed into UK law by Regulation 27B of the Road Vehicles (Registration and Licensing) Regulations 2002 and facilitated by the European Car and Driving Licence Information System ("EUCARIS"). Regulation 27B was subsequently revoked by the Road Vehicles (Registration and Licensing) (Amendment) (EU Exit) Regulations 2020 and the UK’s access to EUCARIS ceased from 1 January 2021.
	2. The data exchange has been included in the Agreement to facilitate enforcement action against those suspected of committing certain specified road safety related traffic offences.
1. **Territorial Application**
	1. The territorial application of the Agreement applies to metropolitan UK and extends to Gibraltar. Annex III details the specific considerations in relation to the application of the Agreement to the territory of Gibraltar. There is no substantive difference in the treatment of Gibraltar.
2. **Content**

***Scope of recognition***

* 1. The Agreement provides that visitors’ valid, current driving licences will be recognised without the licence holder needing to produce an International Driving Permit or official translation, provided that the holder is of the minimum age required by the other Party.
	2. The duration of licence recognition will be determined by each Party’s national legislation. In the UK, this is currently unlimited for Community licences, which includes Spanish licences. In Spain, recognition of UK licences is restricted to a maximum of six months.
	3. Licence holders may drive vehicles of the categories for which that licence is valid.

***Scope of exchange***

* 1. The Agreement provides that both the UK and Spain will exchange valid driving licences issued by the other party if presented for exchange by a licence holder who has become resident in the UK or Spain.
	2. The Agreement will allow the exchange of valid licences whether they were issued before or after the entry into force of the Agreement. However, for licences issued after the Agreement enters into force, there is a condition for the licence to have been issued in the Party where the licence holder was legally resident.
	3. Licences may be exchanged in both countries without the holder needing to take a practical or theory driving test.
	4. Categories will be exchanged according to equivalence tables agreed between the Parties and subject to any limitation codes contained on the licence at the point of exchange if applicable in the exchanging Party. Under the Agreement, most vehicle category entitlements can be exchanged on a like for like basis including cars, passenger vehicles, lorries and some motorbikes. The agreed equivalence tables are set out at Annex I of the Agreement.
	5. Provisional driving licences cannot be exchanged, nor can any licence that is not valid i.e. if the licence has been suspended or withdrawn due to disqualification from driving.
	6. Expired licences can also be exchanged under the Agreement, provided they were valid when the licence holder entered the country where the exchange is due to take place.

***Exchange procedures***

* 1. The Agreement is without prejudice to the obligation to complete the administrative formalities laid down in the law of each Party for the exchange of driving licences.
	2. The Agreement also provides for administrative arrangements to maintain the integrity of the exchange process. This includes checking the validity of a licence, exchanging driving licence models, raising any concerns with the original issuing authority and returning an exchanged licence to the original issuing authority.

***Vehicle and Vehicle Keeper Data***

* 1. Under the Agreement, the Parties agree to share data on vehicle and vehicle keepers for the purpose of pursuing the following road safety traffic offences: speeding, failing to use a seat belt, failing to stop at a red traffic light, drink driving, driving while under the influence of drugs, failing to wear a safety helmet, use of a forbidden lane, and illegally using a mobile telephone or any other communication device while driving.
	2. The information exchange provisions (Articles 13 – 17) outline how the information is to be shared, used, secured and requested. Specifically, the Agreement requires the exchange of information to be carried out in a reasonable, efficient and secure manner, such as through a Secure File Transfer Protocol.

 ***Data protection***

* 1. The Agreement requires the transfer of licence holder, vehicle and vehicle keeper data between the UK and Spain to the extent necessary to comply with provisions on licence exchange and provisions on the exchange of information relating to road safety related traffic offences. Under the Agreement, data will be transferred in accordance with the Parties’ domestic legislation on data protection.
	2. In the specific case of data transfers relating to Gibraltar, data will be transferred in accordance with Annex III to the Agreement. Annex III confirms that exchanges of information necessary to comply with the Annex will be formally made between the Driver and Vehicle Licensing Agency ("DVLA") of the UK and the Directorate-General for Traffic, under the Ministry of the Interior of Spain. Each Party may carry out subsequent transfers of data in accordance with domestic legislation on data protection.

***Entry into force***

* 1. The Agreement will enter into force 30 days from the date of receipt of the last notification sent between the Parties, confirming the fulfilment of the internal requirements for entry into force. In the meantime, the Agreement will be applied provisionally, as set out at section 11.
	2. The Agreement will have an indefinite duration.

***Termination***

* 1. Either Party may terminate the Agreement by written notification to the other Party through diplomatic channels. The termination would take effect 90 days after said notification is sent. Similar provisions exist in respect of Gibraltar in Annex III on a standalone basis. Annex III confirms that either party may terminate the Agreement on 90 days’ notice without termination of the Annex affecting the continuation in force of the remainder of the Agreement.

***Disputes***

* 1. If a dispute arises between the Parties, it shall be resolved by means of direct negotiations between the Parties. The Party requesting such negotiations may suspend the application of the Agreement in the meantime, giving 30 days’ written notice through diplomatic channels. The suspension can be revoked by the suspending Party or ended by the Parties by an exchange of notes through diplomatic channels. Similar provisions exist for Annex III on a standalone basis.

***Amendments***

* 1. The Agreement may be modified by mutual agreement by the Parties. The terms of a treaty, including those on the method of consent to be bound (e.g. ratification), are subject to negotiation on a case-by-case basis with treaty partners. The Government will comply with the requirements of the Constitutional Reform and Governance Act 2010 in relation to any treaty amendment which does require ratification.
1. **Implementation**
	1. All necessary implementing legislation is in place.

***Driving Licence Exchange and Recognition***

* 1. The principal relevant legislation in Great Britain is the Road Traffic Act 1988 and in Northern Ireland is the Road Traffic (Northern Ireland) Order 1981. These contain provisions on the recognition of a Spanish driving licence and the exchange of a Spanish licence for a UK licence.
	2. The Department for Transport has received assurance from His Majesty’s Government of Gibraltar that the legal framework required to give effect to the Agreement is in place in Gibraltar. His Majesty’s Government of Gibraltar has also confirmed Gibraltar can satisfy the operational delivery requirements needed to implement provisions in the Agreement.

***Provision of vehicle and vehicle keeper data***

* 1. The provision of information to enable enforcement action against those suspected of committing road safety related traffic offences is provided for under the Road Safety Act 2006, which applies to the whole of the UK.
	2. The Department for Transport has received assurance from His Majesty’s Government of Gibraltar that the legal framework required to give effect to the provision of data relating to Gibraltar is in place in Gibraltar. His Majesty’s Government of Gibraltar has also confirmed Gibraltar can satisfy the operational delivery requirements needed to implement provisions in the Agreement.
	3. The operational provision of information from the UK and Gibraltar to Spain will be delivered through bespoke electronic data transfer systems. These are being developed by the DVLA working with the Spanish and Gibraltarian authorities and are expected to be operational prior to the further provisional application of Articles 13 – 17 (i.e. 16 July 2023).
1. **Financial**
	1. In relation to driving licence recognition and exchange, there will be no direct financial implications beyond those needed to cover the process of ratifying this Agreement and the already existing administrative costs relating to driver licencing exchange.
	2. The total development of electronic systems for vehicle keeper data transfer to Spain is estimated to cost in the region £350,000 to build with annual running costs in the region of £20,000.
2. **Human Rights**
	1. The Agreement and its implementation have no significant Human Rights implications. The Agreement is compatible with the UK’s international human rights obligations.
	2. The Department for Transport has undertaken due diligence to ensure the Agreement complies with the Public Sector Equality Duty. The Department considers that the lack of an arrangement providing for licence exchange or recognition would be likely to result in effects disadvantaging some protected groups amongst UK licence holders resident in Spain. These include protected characteristics such as age, disability, pregnancy/maternity, and UK nationals (including citizens in Gibraltar). The implementation of the Agreement remedies this situation.
3. **Reservations and Declarations**
	1. No reservations or declarations have been made in relation to the Agreement.
4. **Consultation**

***Devolved Administrations ("DAs")***

* 1. The DVLA is responsible for driver licencing in Great Britain, and the Driver and Vehicle Agency ("DVA") is responsible for driver licencing in Northern Ireland.
	2. The DVLA is responsible for vehicle registration in the United Kingdom.
	3. UK Government engaged the devolved administrations on this Agreement and shared the draft text in advance of it being agreed. Comments received were considered and reflected in the Government's approach.

***Crown Dependencies ("CDs") and Overseas Territories***

* 1. The UK is committed to representing the interests of the CDs and Gibraltar in international agreements covering driver licensing, recognising our shared interests in this space.
	2. The Department for Transport consults with the CDs and Gibraltar regularly at official level and has highlighted the UK's role in representing their interests to Spain throughout all stages of the negotiation.
	3. Gibraltar is covered in the Agreement. The Agreement will enter into force in all territories at the same time and the provisions of the main Agreement will apply to Gibraltar, as amended by Annex III.
	4. The Department for Transport has shared relevant written information and text with Gibraltar and held discussions with officials on driving licence recognition and exchange in Spain.
	5. The Agreement does not apply to the CDs. The Crown Dependencies were not previously part of arrangements for the recognition and exchange of driving licences with EU Member States. However, the Government has provided assurances to the CDs that it will continue to represent their interests and that it will seek to re-engage Spain on arrangements for recognition and exchange of driving licences issued by the CDs.
1. **Provisional application**
	1. Provisional application is a mechanism which enables the parties to apply a treaty ‘provisionally’ for a period of time prior to it entering into force. The Government is committed to providing Parliament with opportunities to scrutinise international agreements in accordance with CRaG Act 2010, however it considers it necessary to apply provisionally certain provisions of the Agreement pending the conclusion of that scrutiny process and the completion of Spain’s internal requirements.
	2. UK driving licence holders resident in Spain have faced severe hardship in having been prohibited from driving using their UK licences since 1 May 2022. Therefore, in accordance with Article 19 of the Agreement, the UK and Spain have agreed to apply the Agreement, with the exception of Articles 13 – 17, provisionally from the day following Spain’s receipt of the UK’s affirmative response to Spain’s initiating note, i.e. 16 March 2023. From that date UK drivers resident in Spain will be able to drive there using their UK licences for six months, and they will also be able to exchange their UK licences for Spanish licences.
	3. Under the Agreement, Articles 13 – 17 on the exchange of information on road safety related traffic offences will be applied provisionally from a date to be agreed by the Parties, no later than four months from the date of provisional application of the rest of the Agreement, i.e. 16 July 2023. This is to enable the Parties to put necessary operational measures in place. If Articles 13 – 17 are not provisionally applied by 16 July 2023 then the Agreement will terminate immediately and the exchange of UK licences in Spain will cease.
2. **Ministerial Responsibility**
	1. The Secretary of State for Transport has overall responsibility for driving licence recognition and exchange, for the provision of driver, vehicle and vehicle keeper data, and for this Agreement.
	2. The Secretary of State for Foreign, Commonwealth and Development Affairs has overall responsibility for UK policy relating to the UK’s relations with Spain.



Rt Hon Mark Harper MP

Secretary of State for Transport