

EXPLANATORY MEMORANDUM TO
THE MOTOR VEHICLES (WEARING OF SEAT BELTS) (AMENDMENT No. 2)
REGULATIONS (NORTHERN IRELAND) 2007

SR 2007 No. 8

1. This explanatory memorandum has been prepared by The Department of the Environment (“DOE”) and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments and the House of Lords Select Committee on the Merits of Statutory Instruments.

2. Description

- 2.1 These Regulations amend the Motor Vehicles (Wearing of Seat Belts) Regulations (Northern Ireland) 1993 [SR 1993 No. 362] on seat belt wearing in motor vehicles by:

2.1.1 allowing all children aged 12 years or more to wear an adult belt in the rear of a motor vehicle and allowing children under 12 to do so if they are 135 cms or more in height; and

2.1.2 requiring children between 3 and 11 years of age but less than 135 cms in height to be secured with a child restraint appropriate for their height and weight in the rear of motor vehicles provided there is an adult belt in place to secure the child restraint.

- 2.2 There are exceptions to the requirements to use an appropriate child restraint referred to in 2.1.1 and 2.1.2 including:

2.2.1 for children riding in taxis licensed for public or private car if an appropriate child restraint is not available, and in police or security or emergency service vehicles;

2.2.2 for a child aged 3 years and over who, because of an unexpected necessity, is travelling over a short distance in a passenger car or light goods vehicle where there is no appropriate child restraint;

2.2.3 for a child aged 3 years or more riding in the rear of a vehicle with two other children in child restraints where there is not room for a third child restraint;

2.2.4 for a disabled child who needs to use a disabled seat belt where none is available;

2.2.5 for children under 14 years travelling in large buses or coaches and for the under 3s also in relation to small buses; and

2.2.6 for children aged 3 years and over but under 14 years travelling in the rear of a small bus if there is no child restraint available. Such children must then wear an adult belt if there is one available.

- 2.3 The exception for taxis, and those described at 2.2.2 and 2.2.3, will still require a child aged 3 years and over to use an adult belt.

- 2.4 The “unexpected necessity” exception described at 2.2.2 is designed to deal with those cases where someone has unexpectedly to carry a child for a short distance where no child restraint is available. The exemption is not intended to cover *regular* “school runs” and the like but rather is intended to provide for those occasions where the only alternative would be to leave a child at risk simply because a child restraint was unavailable.
- 2.5 DOE has not, for the purposes of this exemption, specified what it would take to be a “short” distance. It considers this could only be done on an arbitrary basis. In so far as the courts have to consider the issue (in most cases the position should be reasonably evident), it is expected they will look at all the circumstances and merits of a particular case, perhaps taking account of such factors as differences in the usual distances of short journeys in town and country.
- 2.6 The only exception for a child under 3 years of age relates to travel in a taxi or an emergency vehicle, when an appropriate child restraint is not available. In that event, it is considered that an adult belt is not a safe alternative for a child under 3 years.
- 2.7 The Regulations remove an existing exception for children under 1 year of age travelling in an ordinary carry cot. The existing exception for children who cannot use a seat belt or child restraint for medical reasons is retained.
- 2.8 In relation to adults and children aged 14 years and over the Regulations extend the requirement to wear available front and rear seat belts to all categories of vehicles so including for the first time the rear seats of buses and goods vehicles.
- 2.9 The requirements referred to in paragraphs 2.8 do not apply where the bus is providing a local service in a built-up area or where standing is permitted and the bus is designed for this. A service will be provided in a “built-up” area for these purposes so long as the entire route consists of roads with street lights no more than 185 metres apart. These are roads for which the normal speed limit is 30 m.p.h.

3. Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 As noted below these Regulations implement certain provisions of Directive 2003/20/EC (which amends Council Directive 91/671/EEC).
- 3.2 The Committee may wish to note that the present Regulations (i.e. the Regulations which are the subject of this memorandum) do not complete the implementation of Directive 2003/20. A further two sets of regulations have been made which make amendments to:
- (i) The Road Traffic (Northern Ireland) Order 1995 [S.I. 1995 No. 2994 (N.I. 18)] and the Road Traffic Offenders (Northern Ireland) Order 1996 [S.I. 1996 No. 1320 (N.I. 10)]; and
 - (ii) The Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) Regulations 1993 (S.R. 1993 No. 363).

These further sets of Regulations will implement Directive 2003/20's requirements in relation to children under 14 riding in front seats and the requirement to notify bus passengers to wear seat belts. They are subject to the negative resolution procedure of the Northern Ireland Assembly and will be brought into operation at the same time as the present Regulations.

- 3.3 In addition to these present Regulations, regulations to amend the Motor Vehicles (Construction and Use) Regulations (Northern Ireland 1999 (S.R. 1999 No. 454) will also be prepared. These will, among other things, implement changes to the specification of seat belts and child restraints which Directive 2003/20 requires to be used from 9 May 2008.
- 3.4 DOE is also intending to consult further over how to implement the requirement (set out at new Article 2(2)(a) of Directive 91/671 as inserted by Article 1.3 of Directive 2003/20) for children aged 3 years or more but less than 14 years of age to wear seat belts in large buses (referred to as M3 vehicles in the Directive). The present Regulations exempt drivers of such vehicles from the requirement to ensure such children are wearing seat belts or using child restraints. But because Article 24 of the Road Traffic (Northern Ireland) Order 1995 imposes obligations on drivers in relation to the under 14s rather than the children themselves this leaves no-one currently responsible here. The reasons for the current position are noted in the Policy Background section below at paragraph 7.6.
- 3.5 DOE is also still giving further consideration to what implementation, if any, is required in relation to new Article 6b of Directive 91/671 (as inserted by Article 1(6) of Directive 2003/20). This exemption may be relied upon until 9 May 2009 so any necessary changes do not need to be brought into operation until then.
- 3.6 The legislation necessary to implement Directive 2003/20 was required to be put in place before 9 May 2006 and DOE regrets that this has not been achieved. DOE also regrets that it has not yet been able to resolve the issues referred to in paragraphs 3.4 and 3.5. It is anxious now to implement the main part of the Directive's provisions as soon as possible and does not wish to delay this further whilst these outstanding issues are resolved.
- 3.7 During its consideration of the GB draft Motor Vehicles (Wearing of Seat Belts) (Amendment) Regulations 2006 [S.I. 2006 No. 1892] the House of Lords Merits of Statutory Instruments Committee reported several concerns which are also applicable to these present Northern Ireland Regulations (the 39th Report of Session 2005-06 refers) i.e.:
 - (i) that in the exception which allows children over 3 years of age to use an adult belt in an unexpected necessity or for a short journey the terms "unexpected necessity" and "short" journey are not clear enough and could impose a burden on the courts until sufficient precedents are set (paragraph 14 of the Report refers);
 - (ii) that the Regulations do not include the requirement in the Directive for children aged 3 to 14 years of age in buses to wear restraints. Also

members felt that the exemption for bus services in a ‘built up area’ is awkward as there could be some dispute as to how the rules would apply in the case of local bus routes which extended beyond roads for which the normal speed limit is 30 m.p.h. (paragraphs 15 and 16 of the Report refers); and

(iii) that the transposition of the GB Regulations missed the deadline of 9 May 2006 (paragraph 18 of the Report refers).

3.8 A response to the above points was given by Lord Davies of Oldham during the House of Lords debate on the Motor Vehicles (Wearing of Seat belts) (Amendment) Regulations 2006 on 12 July 2006 [Hansard, House of Lords, 12 July 2006, Col 775 refers]. Lord Davies’ response equally applies to the corresponding Northern Ireland provisions and is summarised hereunder.

3.9 In relation to the concern expressed at paragraph 3.7 (i) Lord Davies explained in relation to the term “unexpected necessity” that if something is unexpected it is by its nature going to be hard to define, and it would be unwise to try to pin down in advance all the types of circumstance that might arise. The comments at paragraph 2.4 of this Memorandum also refer. Concerning the term “short” Lord Davies said that the legislation is not intended to create a perception that there is a general dispensation for all short journeys, including planned and regular trips but there has to be a little flexibility. As stated in paragraph 2.5 of this memorandum a short distance may well vary between town and country, and the courts would have to take this into account. Lord Davies did not see a serious problem in the courts applying the foregoing concepts to individual cases, as they do with many other general legal concepts. He added that the provision would be kept under review to ensure that it is not overused. Northern Ireland will do likewise.

3.10 In relation to paragraph 3.7(ii) Lord Davies said that further consultation is needed as to how the requirement for children on buses who wear restraints could be enforced, taking into account the practical difficulties of requiring bus and coach operators to ensure that children are adequately secured. He added that other Member States were experiencing the same problem, although they all agreed that children should be covered by this rule. [See also paragraph 7.6]. In relation to the exemption for bus services in a ‘built up area’ and how the rules would apply in the case of local bus routes which extended beyond roads for which the normal speed limit is 30 m.p.h. it is relevant to note that the exception only applies to services wholly in a built up area – otherwise the rules would change as the bus goes along.

3.11 In relation to paragraph 3.7(iii) Lord Davies alluded to the interpretational difficulties which contributed to the delay in introducing the Regulations in GB. As already indicated in paragraph 3.6 DOE regrets that a delay has also been experienced in relation to the introduction of these provisions in Northern Ireland.

4. Legislative Background

4.1 Article 23(1) of the Road Traffic (Northern Ireland) Order 1995 (the “**RTO 1995**”) gives the Department power to make regulations requiring adults and

children of 14 years and over to wear seat belts in motor vehicles as well as power to make exceptions to these requirements.

- 4.2 The present regulations for these purposes are the Motor Vehicles (Wearing of Seat Belts) Regulations (Northern Ireland) 1993 (**the “Wearing of Seat Belt Regulations”**). These apply to persons aged 14 years and over both as regards the front and rear of vehicles and set out the requirements for the types of seat belt to be worn as well as making various exceptions to the requirements.
- 4.3 The RTO 1995, at Articles 24(1) and (2), and 24(3) and (5), makes it an offence to drive a motor vehicle with a child under 14 years in a front or rear seat if he is not using the appropriate seat belt or child restraint. Exceptions to these requirements can be set out in regulations.
- 4.4 The Wearing of Seat Belt Regulations set out the detailed requirements in relation to the types of seat belt or child restraint to be used for children travelling in the *rear* seats of motor vehicles. This is principally done by reference to the Motor Vehicles (Construction and Use) Regulations (Northern Ireland) 1999 which prescribe markings to be applied to seat belts and child restraints showing the weight and height of the children they are designed for.
- 4.5 The Wearing of Seat Belts Regulations also set out various exceptions to the requirement to use a seat belt or child restraint both in relation to particular circumstances and in relation to particular classes of vehicle.
- 4.6 For children under 14 years of age riding in the *front* of vehicles similar provision is made by the Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) Regulations (Northern Ireland) 1993 [SR 1993 No. 363] (**the “Children in Front Seat Regulations”**).
- 4.7 The existing legislation implements Council Directive 91/671/EEC. That Directive, as noted, has now been amended by Directive 2003/20/EC of 8 April 2003. These Regulations are intended to implement Directive 2003/20/EC by amending provisions of the Wearing of Seat Belt Regulations. As stated in paragraph 3.2 Regulations also made on 9 January 2007 amend the Children in Front Seat Regulations, the RTO 1995 and the Road Traffic Offenders (Northern Ireland) Order 1996.
- 4.8 The present Regulations do not amend the Children in Front Seat Regulations or the Motor Vehicles (Wearing of Seat Belts) (Amendment) Regulations (Northern Ireland) 2007 [SR 2007 No. 7] which amends the RTO 1995 and the Road Traffic Offenders (Northern Ireland) Order 1996, as these Regulations are subject to the negative resolution procedure of the Northern Ireland Assembly. The present Regulations, which are made under Article 23(1) and (2) and Article 24(3), (4), (6), (7) and (8) of the RTO 1995, are subject to the affirmative resolution procedure of the Northern Ireland Assembly (see Article 110(4) of the RTO 1995). During the current period of suspension of the Northern Ireland Assembly, Regulations which are subject to affirmative resolution before the Assembly are required to be laid before Parliament under the negative resolution procedure under paragraph 7(3) of the Schedule to the Northern Ireland Act 2000.

5. Territorial Extent and Application

These Regulations apply to Northern Ireland.

6. European Convention on Human Rights

As the Regulations are subject to the negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1 The object of Articles 23 and 24 of the RTO 1995 is the protection from injury of drivers and passengers in motor vehicles. The object of the new Regulations is to increase safety by reducing exemptions from compulsory seat belt wearing and making clearer requirements about the appropriate child restraint to be used by a child of a given age.

7.2 Subject to the points noted at paragraphs 3.2 to 3.5, the Regulations will implement provisions of Directive 2003/20/EC in relation to adults and children over 14 in the front and rear seats of vehicles and children under 14 in the rear seats of vehicles. The Regulations take advantage of various exemptions and discretions which Member States are allowed to exercise.

7.3 DOE issued a consultation letter on 22 August 2005 in respect of the new requirements for buses and coaches (see paragraphs 2.8 and 2.9); and on 31 October 2005 in respect of the new requirements relating to children travelling in cars and goods vehicles. 35 responses to the first letter were received and 12 to the second letter. The responses were from a variety of interested organisations and individuals, including local councils, motoring and road safety organisations and interested trade associations. The responses generally supported the changes proposed to the present requirements, including proposals by the Department to take advantage where possible of exemptions and discretions which the Directive allows Member States to adopt.

7.4 DOE issued a decision letter on 16 August 2006 in respect of the new requirements for buses and coaches; and on 17 July 2006 in respect of the new requirements in relation to children. These summarise the results of the Consultation and DOE's response and are available on the Department's website at: www.roadsafetyni.gov.uk

7.5 There was concern about the cost of providing signage in buses and coaches and about the proposed fines for not making an announcement to bus and coach passengers. The Regulations meet this concern by making signage one of several options. DOE has decided only to have a penalty for bus and coach operators (the level set is a maximum, the actual amount being for the court to determine) and to abandon the proposed fine for drivers.

7.6 The Directive introduces a requirement (as set out at new Article 2(2)(a) of Directive 91/671) for children aged 3 or more but less than 14 to wear seat belts in large buses. Article 24 of the RTO 1995 envisages that responsibility for children being properly restrained rests on the vehicle driver but some operators have expressed concern that this is impractical on a large bus. DOE

has not yet resolved this practical difficulty and is intending to consult further as soon as possible on how to implement the requirement.

- 7.7 There is a provision at new Article 6b of Directive 91/671 which introduces a limitation on the number of passengers which may be carried in the rear of cars and small goods vehicles. DOE intends to consult further and to make further Regulations. This requirement has to be implemented by 9 May 2009.

8. Impact

- 8.1 Separate Regulatory Impact Assessments in relation to bus and coach provisions and the general requirements as regards children are attached to this memorandum.

- 8.2 The only adverse impact on the *public sector* will be the cost to DOE of publicising the revised regulations (which is included within DOE's budget). Bus and coach travel is generally safe, but some serious incidents occur from time to time. The number of casualties varies each year, but most of them involve children before boarding or after alighting. Compulsory wearing of seat belts where they are available will reduce the risk of passenger death or injury when collisions occur. In cars, almost all younger children already travel in a child restraint but not always the right one, and parents tend to allow older children to use an adult belt when some form of child restraint would still be appropriate. There is expected to be a modest reduction in child casualties from requiring the appropriate restraint to be used. Child restraints are widely available at modest cost. For most parents and other carers the main new obligation will be to keep on using them longer than they do now. The prohibition on carrying unrestrained children under 3 will affect the very small number of those who now do so in particularly old cars in which belts cannot be easily installed.

- 8.3 Reductions in casualties will result in some savings to the Health Service.

9. Contact

Harry Green of Road Safety Branch of the Department of the Environment Tel: 02890 540073 or e-mail: harry.green@doeni.gov.uk can answer any queries regarding these Regulations.