

POLICY NOTE

THE SCOTLAND ACT 1998 (MODIFICATION OF SCHEDULE 5) ORDER 2015

S.I. 2015 No. 1379

1. The above instrument is proposed to be made under section 30(2) of the Scotland Act 1998. Section 30(2) provides a mechanism whereby Schedule 4 or Schedule 5 to that Act can be modified by an Order in Council. By virtue of section 115 of, and paragraphs 1 and 2 of Schedule 7 to, the Scotland Act 1998, this Order is subject to affirmative resolution procedures in both Houses of the UK Parliament and the Scottish Parliament.

Policy objectives

2. The Scottish Government intends to introduce legislation to ensure that seatbelts are provided on all dedicated school transport in Scotland, following agreement from the UK Government for the devolution of the necessary powers. The purpose of this Order is to amend Schedule 5 to the Scotland Act 1998 to devolve power to the Scottish Parliament to legislate in relation to the regulation of the description of motor vehicles and trailers which transport pupils and students in Scotland to and from places where they receive education or training (for example, schools and colleges).

Current situation

3. Schedule 5 to the 1998 Act lists the matters that are reserved to the UK Parliament. Section E1 of Part 2 of Schedule 5 reserves aspects of road transport, including the subject matter of the Road Traffic Act 1988, with exception to sections 39 to 40 and sections 157 to 159 of that Act. The regulation of the description of motor vehicles and trailers which transport pupils and students in Scotland to and from educational establishments relates to the subject matter of the Road Traffic Act 1988. It is a matter which is reserved to the UK Parliament.

4. Under the Education (Scotland) Act 1980, local authorities in Scotland have, in certain circumstances, an obligation to arrange for the transportation of pupils (without charge) between their homes and schools or other educational establishments which they are attending. Such arrangements will often take the form of a contract with a bus operator under which the operator provides vehicles for daily journeys to and from a school. Although it is the Scottish Government's position that the specific terms of dedicated school bus contracts are matters for individual local authorities, it intends to pursue the introduction of legislation in the Scottish Parliament which would require operators in such arrangements to use only vehicles with seatbelts installed.

5. This approach is consistent with an on-going petition before the Scottish Parliament's Public Petitions Committee (PE1098), which was introduced in 2007 and calls for provision to be made for ensuring every school bus is installed with 3-point seatbelts for every school child passenger and to ensure that proper regard is given to the safety needs of the children.

6. Currently, 17 out of 32 local authorities in Scotland specify that only vehicles fitted with seatbelts may be used in contracts to provide dedicated school transport and a further six

require them to be fitted in certain vehicles, such as those used for the transportation of primary pupils only. It is the intention of Scottish Ministers to introduce legislation which would ensure that this requirement becomes universal and seatbelts are installed on all dedicated school transport in Scotland.

7. In October 2010, the UK Government's then Parliamentary Under Secretary of State for Transport agreed that additional powers in relation to the safety of dedicated school transport, consistent with those granted to the Welsh Assembly, should be transferred to the Scottish Ministers. In January 2015 both the Parliamentary Under Secretary of State for Transport and the Parliamentary Under Secretary of State for Scotland gave formal agreement in writing to the making of his Order.

Effect of Instrument

8. It is the primary intention of the Scottish Ministers to be able to introduce legislation which would ensure that only vehicles in which seatbelts are installed are used in all dedicated school transport in Scotland. This Order amends Part 2 of Schedule 5 to make an exception to the road transport reservation at Section E1 of Schedule 5 to the 1998 Act to devolve competence to the Scottish Parliament to legislate in this area.

9. This Order does not devolve power to the Scottish Parliament to legislate to set technical standards in relation to the construction and equipment of motor vehicles and trailers which are different to any existing technical standards which might apply to such vehicles and trailers. The setting of technical standards in this respect remains reserved to the UK Parliament

10. As the purpose of this Order is to amend the legislative competence of the Scottish Parliament to allow it to consider how it can appropriately legislate for school transport and any associated safety measures, no monitoring or review of the effects of this Order are required by the UK Government. Any primary legislation introduced in the Scottish Parliament will be scrutinised in the normal way.

11. No human rights issues arise.

Consultation

12. Although there has been no general consultation specific to this Order, the Department for Transport was consulted during the drafting of this Order. All amendments contained in this Order have the approval of that department.

Financial Effects

13. The instrument has no financial effect, as any potential impact in this area would only result from any future legislation taken forward in the Scottish Parliament following devolution of competency.

Scottish Government
January 2015