



ROAD TRAFFIC LEGISLATION (AMENDMENT) BILL 2016

EXPLANATORY NOTES

*These Notes have been produced for the assistance of Members
with the approval of the Member in charge of the Bill,
the Hon Phil Gawne MHK*

INTRODUCTION

1. These Explanatory Notes relate to the Road Traffic Legislation (Amendment) Bill 2016. They have been prepared by the Department of Infrastructure ("DoI") in order to assist readers of the Bill. They do not form part of the Bill and have not been endorsed by the House of Keys.

2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. *Ipsa facto*, where a clause or part of a clause does not seem to require any explanation or comment, none is given.

BACKGROUND

3. The Bill, which has been subject to public consultation, has elicited a number of responses, which are summarised in paras 71 to 74.

4. In the opinion of the Member moving it the Bill's provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.

FINANCIAL IMPLICATIONS

5. For the most part the provisions of the Bill are cost-neutral, being either self-financing or being administered by existing personnel as part of their ongoing responsibilities with no corresponding increase in budgetary provision. There will, however, be some additional costs in purchasing drug-testing devices, whereas the ongoing costs of publicising road traffic orders and notices will be markedly reduced.

SUMMARY AND STRUCTURE OF THE BILL

6. The Bill is in 5 Parts consisting of amendments to the law on road traffic and drivers, the principal provisions being addressed below.

PART 1 – INTRODUCTORY

7. This Part gives the Bill its short title and provides for it to come into operation on one or more days appointed by DoI.

PART 2 – AMENDMENTS TO THE ROAD TRAFFIC ACT 1985

Extension of driving offences to animal-drawn vehicles

8. With the coming of the motor vehicle a century ago legislation regulating the driving of horse-drawn vehicles was swept away in the mistaken belief that their use had been entirely superseded on public roads. Yet such was not the case, as evinced by their continuing use at weddings and other events, with the lack of regulation being highlighted by a tragic incident that occurred in Derby, England, not too long ago — an incident in which a mother was seriously injured and her teenage daughter killed by a horse that broke away from its carriage and ran them down on the pavement. The only statutory offence, involving negligently or wilfully misusing a carriage, was section 78 of the GB Highway Act 1835, which had an inappropriate maximum penalty of £100. For that reason the prosecuting authority brought a charge of manslaughter, but the judge ruled that the circumstances did not warrant such a grave charge and the trial was halted. So the offender was not brought to book and the family were denied retributive justice, a central pillar of the criminal law.

9. At present such a situation could equally arise in the Island, where regulation is limited to the offence of furious driving as contained in section 66(4) of the Petty Sessions and Summary Jurisdiction Act 1927. It carries a maximum penalty of £5,000. The problem here is that "furious driving" is not defined, is in any event extremely restricted in scope, and does not cover the wide range of circumstances that the driving offences relating to mechanically propelled vehicles address.

10. Therefore, in a very economical way, clause 4 extends those driving offences to animal-drawn vehicles, being offences that relate to dangerous driving, careless or inconsiderate driving, drink or drug driving, or causing death or serious bodily harm where such driving is involved.

11. For completeness the expression "animal-drawn" is preferred to "horse-drawn".

Updating the Island's law on drug driving

12. Until 20 years ago the Island's law on driving under the influence of drugs was identical to GB's, but whereas the latter has been improved during the intervening period, the former has not. If those improvements are now enacted, they are most likely to be of equal service to the Island.

13. Accordingly, as with the preliminary breath test for use in connection with drink driving — a test that has long been on the Statute Book, clause 8 enables a constable to administer a preliminary drug test in specified circumstances by using a device approved by the Department of Home Affairs. The clause will not be brought into operation until the device is so approved and becomes available for use by the police.

14. Among the drugs that the preliminary drug test will be administered to test for is a series of controlled drugs beyond specified limits, being limits that clause 6 makes it an offence to exceed if a person drives, attempts to drive, or is in charge of a vehicle. A "controlled drug" is one classified as class A, B or C for the purposes of the Misuse of Drugs Act 1976, being a drug of a dangerous or otherwise harmful kind that it is unlawful for a person to possess unless it is prescribed or supplied for medical or dental purposes. The series of controlled drugs and their specified limits are the same as for the like offence in GB.

15. In the light of the offence created by clause 6 a number of consequential amendments are made to other provisions of the Act.

Riding on footways

16. Footways, commonly called pavements, are ways for pedestrians that adjoin the carriageways of all-purpose highways. At present it is an offence to "drive" a vehicle on them, which begs the question whether "riding" a vehicle is also covered. Therefore the law is clarified by clause 20, which specifically extends the offence to riding, but with the qualification that prescribed vehicles will be capable of being exempted from the prohibition by order. Exemptions might, for example, include Segways operated at a very low speed and pedal cycles ridden at such a speed on footways exceeding a prescribed width. The present exemption for mobility scooters will not be affected.

Manx Horse-drawn Vehicles Code

17. Power is taken in clause 21 enabling DoI to publish a code for the guidance of persons using horse-drawn vehicles on roads. A companion to the Manx Highway Code, which has been recently revised and republished, it will not in fact render a person liable to criminal proceedings if he or she fails to observe it. Nevertheless, failure will be able to be relied on in such proceedings, or civil ones, as tending to establish or to negative any liability that is in question.

Furnishing of information

18. Clause 14 substitutes a new section 20 relating to the duty of a driver or rider to provide his or her name and address, those of the vehicle's owner, and evidence of insurance or security in the case of a motor vehicle, to any person reasonably requiring them in the event of an accident. The clause makes three substantive changes: first, it is extended from motor vehicles to those that are not mechanically propelled; second, it now defines "vehicle" as including ridden animals; and finally, it requires not only a vehicle to stop, as at present, but also to remain stationary at or near where the accident occurred for as long as is reasonably necessary to comply with the duty to provide the specified information.

19. Clause 22 substitutes three new sections. In the wider interest of ensuring observance of the law section 42 extends from constables to the DoI's authorised examiners, who test vehicles and frequently attend accidents, the power to require the production of a driving licence. The section goes on to correct an anomaly whereby driving offences extend to public places but at present the above power does not. Section 43, which empowers constables to require the furnishing of names and addresses in specified circumstances, is likewise extended to authorised examiners and the same anomaly is

corrected. Section 44, which, in the case of motor vehicles, applies presently to the furnishing of names and addresses only where the offences of dangerous, or careless or inconsiderate, driving are involved, is extended to any serious driving offence (as defined in clause 33) on the ground that it is illogical and against the public interest for such wider offences to be excluded.

Enforcement of motoring fines, etc

20. To facilitate the collection of fines, compensation ordered by a court, and vehicle duty so as to lessen the overload on the courts clause 24 inserts a new section 47AB that provides for their enforcement by way of seizing motor vehicles if —

- in the case of fines or compensation, payment is outstanding for longer than 35 days, and
- in the case of vehicle duty, no current vehicle licence has been exhibited on a vehicle for at least one month.

If the fines, compensation or duty, together with the costs of seizure and retention, are not then paid within 35 days, vehicles may be disposed of and the proceeds used for payment.

21. The section applies with adaptations the provisions inserted by the Road Traffic and Highways (Miscellaneous Amendments) Act 2012 for the seizure, retention and disposal of vehicles owned by persons charged with and convicted of certain serious driving offences.

Driving disqualification where vehicles are used for the purposes of crime

22. As a further deterrent to using motor vehicles for such purposes clause 31 inserts a new section 53A enabling a court to disqualify an offender who uses a motor vehicle to commit an assault or any other offence punishable by imprisonment for a term of two years or more.

Use of Motor Insurers' Database

23. In furtherance of detection of crime clause 33 provides a revised definition of "authorised insurer", the effect of which is to require motor insurers to provide information about policy holders to the database for use by DoI, a local authority, or the police.

Regulatory powers and extension of certain liability

24. Clause 34 inserts three new sections. Section 73A takes a leaf out of corresponding statutory procedures in the UK so that, like the Department for Transport there, DoI is empowered to make safety regulations on road traffic, road transport and related matters — in DoI's case, under the Consumer Protection Act 1991. A relevant example is the UK Motor Vehicle Tyres (Safety) Regulations 1994 (as amended) made by the UK Department under the UK Consumer Protection Act 1987. Among other things, they regulate the part-worn tyre market, which a recent survey has established exists in the Island but which at present is completely unregulated to the detriment of the consumer. If the section is enacted, DoI proposes to bring forward safety regulations that will fill the gap.

25. In view of the increased danger to other road users that may arise from the misdriving of heavier or larger vehicles section 73B enables regulations effectively to provide

for 5-yearly training courses to be taken by professional drivers of lorries, buses and coaches and for the issue to them of a professional driver's card, which they must carry, certifying that they have successfully completed such a course. The scheme is analogous to that presently applying to drivers of dangerous goods vehicles. Although it will not be introduced immediately, it is clearly desirable that the enabling powers should be in place for when it is desired to proceed.

26. Section 73C inserts a deterrent measure advocated by the then High Bailiff some while ago. If a body corporate is found guilty of contravening the Island's construction and use regulations, and if it is proven that the offence was committed with the consent or connivance of a director or officer of the body or was attributable to his or her neglect, the section provides that he or she is also guilty of the offence and is personally liable to the penalty for it.

Regulation of the construction and use of vehicles and their equipment

27. Clause 36 extensively amends Schedule 2. It regularises the current practice of the police and DoI's authorised examiners when it comes to the testing and inspection of vehicles under the construction and use regulations, which will be amended if this clause is enacted. The enabling powers are modified to the extent that the authorisation conferred by the regulations —

- is not limited to testing and inspection on premises where a vehicle may be situated,
- is not dependent on the consent of the owner of the premises, should testing and inspection take place there, if the vehicle is reasonably suspected of having been involved in an accident, and
- includes a vehicle's being driven or drawn,

all of which is considered to serve better the public interest. Supplementary provision is added making it an offence to obstruct intentionally a test or inspection.

28. As requested by the Cabinet Office, regulations are also empowered to make provision as to the construction and equipment of vehicles for use, and the conditions under which they may be used, by disabled persons — a proposal that has been transferred from the Equality Bill. A draft of the regulations, which it is proposed to submit for Tynwald approval immediately after the enactment of the Bill, has been prepared and was circulated with it for public comment.

29. The Road Vehicles carrying Dangerous Goods (Construction and Use) Regulations 2008 apply with modifications certain provisions of the European Agreement concerning the International Carriage of Dangerous Goods by Road (the ADR), which is regularly updated. Unlike the GB Department for Transport, which has an extensive division dealing with dangerous goods alone, DoI simply does not have the capacity to be continually making corresponding amendments to its Regulations. Therefore, given that the updates of the ADR's applied provisions invariably involve only minor fine-tuning, provision is made giving effect to them automatically in the Island, but with substantially the same modifications, if any, as were made by the Island's Regulations to the original provisions.

30. Finally, in the interests of road safety paragraph 6I of Schedule 2 is extended to enable an authorised examiner to prohibit the driving of unfit vehicles tested, inspected or

examined under the Road Transport Act 2001, which presently applies to the licensing and registration of public passenger vehicle operators and their vehicles.

Matters relating, on the one hand, to driving licences and tests and, on the other, to disqualification

31. Clause 37 extensively amends Parts I and II of Schedule 3.

Amendment of Part I: driving licences and tests

32. In furtherance of the safety of motorcyclists paras 2 and 6 are amended enabling regulations to provide that such persons must wear protective clothing of a prescribed kind when taking a driving test or a compulsory basic training course.

33. New road-safety provisions are inserted in a substituted para 4. First, a declaration accompanying an application for a driving licence must now state, in a case where an applicant is not suffering from a relevant disability, whether he or she is suffering from a prospective relevant disability. A relevant disability, which for many years has had to be declared, is one likely to cause an applicant's driving of a vehicle to be a source of danger to the public. A prospective relevant disability, which henceforth will need to be declared, is one which, by virtue of its intermittent or progressive nature or otherwise, may become a relevant disability in the course of time. Whereas an applicant suffering from a relevant disability, unless it is prescribed in the Driving Licences and Tests Regulations 2007, may not be granted a licence, an applicant suffering from a prospective relevant disability will normally not be granted a licence for a period of more than three years and not less than one.

34. Second, para 4 now requires DoI to include in a licence the driving conditions to which the holder is subject in a case where DoI is satisfied that the person in question is suffering from a disability presenting a danger to the public if the conditions are not complied with.

35. Third, para 4 now makes it an offence, firstly, to make a false declaration to obtain a licence; secondly, to drive a motor vehicle contrary to any limitation or condition included in a licence; and finally, to fail to return forthwith a licence to DoI when required to do so under the para.

36. Finally, in the light of the Glasgow bin lorry tragedy, where the driver's failure to declare that he was liable to fall unconscious at the wheel led to the deaths of several people, and where, as at present in the Island, the law was found inadequate to bring a prosecution, the offence of making a false declaration, as provided in clause 40(36), is made triable either way: in lesser cases, summarily, with a maximum fine of £5,000; and in graver cases, on indictment, with penalties of 14 years' custody or an unlimited fine or both.

37. Two new paras are inserted, again in the interests of road safety. Para 4A requires that an application to renew a licence to drive large passenger or heavy goods vehicles or combinations must be accompanied by a certificate from a medical practitioner that the applicant is still fit to drive them. Para 4B requires that an applicant for a licence who is aged 75 or over must have passed a prescribed eyesight test.

38. Para 5 relates to DoI's obtaining advice from medical practitioners about persons suspected of suffering from a disability. At present it leaves practitioners to claim whatever

fees they think fit. In the interest of economy an amendment is now made enabling DoI to prescribe the levels of fees that are payable. In offering advice practitioners routinely but unofficially have regard to "At a glance guide to the current medical standards of fitness to drive" published periodically by the GB Driver and Vehicle Licensing Agency. A further amendment now gives statutory recognition to the document by requiring that regard must be had to it.

39. An anomaly in para 6 is corrected. At present it requires provisional licence holders to be subject to the prescribed restrictions, which include driving at a speed no faster than 50 mph and using L-plates. However, such restrictions do not extend to persons driving a vehicle by virtue of a provisional entitlement conferred by a full licence. They will now extend. Contravening the restrictions is also made a specific offence.

40. Provision is inserted in paragraph 6B to the effect that newly qualified drivers shall at an earlier date cease to be subject to the prescribed restrictions applying to them if they pass a prescribed course of driving instruction.

41. A new para 9 is substituted, which relates to a person's driving a motor vehicle on a road with eyesight not sufficiently corrected to comply with the prescribed eyesight test. As at present, it is an offence to do so. Suspected offenders must also, again as at present, be reported by the police to DoI, which must require them to take the test. What is new is provision requiring the revocation of a licence if the test is failed, together with making it an offence not to return a revoked licence forthwith to DoI when required to do so.

Amendment of Part II: disqualification

42. Paragraph 11 is amended by providing that a person convicted of the controlled drug offence (para 14 of these notes refers) is subject to disqualification for not less than two years.

43. In the interests of road safety provision is inserted in paragraph 12 reducing from 12 or over to 6 or over the number of penalty points leading to the disqualification of a provisional or newly qualified driver or to the revocation of his or her licence, as the case may be. The effects of the disqualification or the revocation are specified.

44. Para 20(4), which at present relates to the delivery of a licence to a court in cases involving obligatory disqualification, is now extended to cases of discretionary disqualification.

45. Paragraph 20(8) is substituted so that the period during which an endorsement on a licence remains effective is applied to conviction of certain offences involving drink or drugs.

46. Paragraph 22 is now modified and enables DoI to amend the complexity of Schedule 3 by regulations subject to Tynwald approval.

47. Consequent upon the revised definition of "authorised insurer", to which clause 33 relates, clause 39 enables DoI to make regulations as to the use of information obtained from the Motor Insurers' Database in furtherance of the detection of crime.

48. Clause 40 increases the penalties for not wearing a seat belt or for driving with uncorrected eyesight in view of the increased seriousness with which contravention of the related offences is now viewed. Conviction for driving while uninsured or unsecured against third-party risks — or while disqualified by order of a court — will now carry obligatory disqualification.

PART 3 — AMENDMENTS TO THE ROAD TRAFFIC REGULATION ACT 1985

Traffic regulation orders

49. To cover DoI's administrative expenses clause 44 enables traffic regulation orders to provide for the charging of fees, for example in relation to the issue of permits. Provision is also inserted exempting vehicles being used by the emergency services from complying with such orders in emergencies unless the orders specifically provide otherwise.

Regulation principally of overseas caravans coming to the Island

50. Clause 46 inserts a new section 2B, the purpose of which is primarily to regulate the entry into the Island, and the use in it, of overseas caravans, their entry being at present dependent on a gentleman's agreement with the Isle of Man Steam Packet Company. The section enables orders subject to Tynwald approval to be made prohibiting or restricting the use of vehicles on or off roads either throughout the Island or in prescribed localities.

Temporary notices regulating traffic

51. Clause 47 removes the bureaucratic involvement of the Council of Ministers by enabling DoI, without reference to the Council, to extend the validity of such temporary notices or to renew them, dependent as they are on traffic considerations. Provision is also inserted for levying charges.

Temporary alternative school crossings

52. Where school crossings have temporarily to be relocated, often for only a few hours due, for example, to road works, clause 48 replaces the present bureaucratic procedure of having to amend the related regulations by simply substituting the display of a relocation notice on site.

Overstay charges

53. Clause 50 amends section 14A and caters for the prescribing of overstay charges in the case of on-street parking places. Such charges are payable for a period in excess of an initial period for which there is no charge.

Suspended designated parking places

54. For self-evident reasons clause 51 amends section 14B by making it an offence to leave a vehicle in such suspended places.

Emergency traffic signs

55. On road-safety grounds clause 52 regularises the placement of such emergency signs when explosives are being used in a quarry such as that operated by DoI. Provision is also taken to prescribe other circumstances in which such signs may be used.

Defacement of traffic signs, etc

56. For road-safety or environmental reasons clause 53 makes it an offence to deface traffic signs or other street furniture.

Speeding

57. Despite increasing the range of penalty points for the offence, as prescribed in the Road Traffic and Highways (Miscellaneous Amendments) Act 2012, speeding remains a problem. Accordingly clause 65 increases the maximum fine from £1,000 to £3,000.

58. Clause 54 goes further by doubling the maximum fine that would normally be imposed, subject to a limit of £5,000, for speeding in certain areas where it is particularly dangerous, namely residential or road works areas or school zones. The provision is preceded by like provision made in a number of states in the USA.

Misuse of a disabled person's badge

59. As a deterrent clause 57 inserts a new section 28A making it an offence wrongly to use a disabled person's badge when parking a vehicle in circumstances where a disabled person's parking concession would be available. Such an offence is in addition to that of contravening a parking prohibition or restriction that applies to persons who are not disabled.

Parking controllers

60. Clause 58 substitutes a new section 33A that more flexibly transfers the functions of a parking controller from being specified in the Act to being specified in an order subject to Tynwald approval — the same procedure as applies to traffic wardens. More flexible provision is also made by enabling DoI to employ as parking controllers employees of an employer and to delegate its powers of appointment to local authorities.

Amendment of Schedules 5 and 5A

61. In view of the complexity of Schedules 5 and 5A clause 61 enables regulations to be made amending them subject to Tynwald approval.

Procedure to be followed when making temporary notices or traffic regulation orders, etc

62. Clauses 63 and 64 prescribe procedural arrangements whose amendment, if improvements are considered desirable, will be able to be effected fairly swiftly by regulations requiring Tynwald approval instead of otherwise waiting much longer till a further Bill becomes available.

Fixed penalty offences

63. Clause 66 prescribes a small number of new fixed penalty offences that are in keeping with those approved by Tynwald in the Road Traffic Regulation (Fixed Penalty Offences) Order 2013. All relate to unlawful parking, except the offence of contravening a caravans order (para 50 of these notes refers).

PART 4 – AMENDMENTS TO THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1984

64. Part I of this Act deals with the removal and disposal of abandoned or illegally parked vehicles.

Failure to remove an illegally parked vehicle when required by a constable to do so

65. The maximum fine on conviction for this offence was set at £1,000 by section 1 of the Criminal Justice (Penalties, etc.) Act 1993. In the intervening period, according to the Bank of England's inflation calculator, the value of the pound has depreciated by some 45% so that today £1,800 equates to the figure set in 1993. Accordingly clause 70 restores the real value of the fine plus a margin for inflation in future by prescribing a maximum amount of £2,000.

Removal of vehicles causing offence

66. Clause 71 inserts a new section 3A, which addresses the problem of vehicles left on a road or in a public place that are in such a condition that their presence there makes them offensive to the public. If a complaint is made to DoI, a local authority or the police, and if they are of opinion that a vehicle has remained parked in its location in such a condition for at least 28 days, they may remove it, but only after they have affixed a notice to the vehicle giving the owner or person in charge of it at least 14 days' grace in which to remove the vehicle.

Disposal etc of vehicles

67. Clause 73 substitutes four new sections for sections 5 to 8. Apart from making interpretive provision, they deal with the retention, release and disposal of vehicles that have been removed, whether under the new section 3A or under other existing provisions relating to the removal of abandoned or illegally parked vehicles. For consistency they adopt procedures that are analogous to those set out in clause 24 (paras 20-1 of these notes refer), requiring, as they do, the release of vehicles to be dependent on the payment of the costs of removal and retention, together with any outstanding fines or vehicle duty. As there, if payment is not made within 35 days, vehicles may be disposed of and the proceeds used for that purpose.

68. Clause 74 concludes by repealing Schedule 1, thereby enabling the removal of vehicles if any statutory prohibition or restriction is being contravened.

PART 5 – REPEALS

69. The Bill repeals 2 Acts and one provision that are redundant.

70. The Bill also makes a number of self-explanatory improvements of a lesser nature, being improvements described in the extensive Explanatory Memorandum to the Bill.

RESPONSES TO THE PUBLIC CONSULTATION

71. In the light of widespread opposition by the hospitality sector and the public at large (of 1,123 responses to an on-line survey 68.57 per cent were opposed) it has been decided to omit the proposed provision reducing the alcohol drink-drive limit.

72. At the request of Douglas Borough Council provision has been added to provide for the use of the Motor Insurers' database by local authorities as well as DoI and the police.

73. There were divergent responses to making it an offence to "ride" on pavements. Some agreed and some did not on the ground that pedal cyclists should be able to use them. The provision is, however, sufficiently flexible to allow exemption orders to be made in the case of wider pavements that can easily accommodate pedal cyclists.

74. There were a small number of divergent responses on other matters.
