



ROAD TRAFFIC LEGISLATION (AMENDMENT) BILL 2020

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 R K Harmer MHK*

INTRODUCTION

1. These Explanatory Notes relate to the Road Traffic Legislation (Amendment) Bill 2020. 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 was subject to public consultation, elicited a number of responses, which are summarised in paras 67 to 70. The Bill has previously been considered by the Council of Ministers where it was investigated by a Legislative Council Committee. The resulting report from the Committee made 11 recommendations which the DoI for the most part agreed and made changes to the Bill accordingly, including removing provisions relating to animal drawn vehicles. However, there were three recommendations which the DoI could not support, these recommendations and the reasons why they could not be supported are detailed in para 71.
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. Research in the area of the drug testing equipment has identified most police forces in England and Wales use a device known as a Securetec Drugwipe 3S which can be obtained in packs of 25 and cost approximately £18 each

SUMMARY AND STRUCTURE OF THE BILL

6. The Bill is in 6 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

Updating the Island's law on drug driving

8. Until approximately 20 years ago the Island's law on driving under the influence of drugs was identical to the provisions in the UK. The legislation in the UK has been improved during the intervening period, the Island's has not.

9. 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 7 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.

10. Clause 5 makes it an offence if a person drives, attempts to drive, or is in charge of a vehicle whilst exceeding a specified limit for specified controlled drugs in their body. 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 England and Wales.

11. In the light of the offence created by clause 5 a number of consequential amendments are made to other provisions of the Act.

Riding on footways

12. 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 specifically extending 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 which are operated at a very low speed and pedal cycles ridden on footways. The present exemption for mobility scooters will not be affected.

Furnishing of information

13. Clause 13 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.

14. Clause 19 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. The Appointed Day Order will only be brought forward for sections 42 and 43 if the police are unable to commit sufficient resources to the task. Section 44, which, in the case of motor vehicles, applies presently to the furnishing of names and addresses only where the offences of dangerous, careless or inconsiderate driving are involved, is extended to any serious driving offence (as defined in clause 30) on the grounds that it is illogical and against the public interest for such wider offences to be excluded.

Enforcement of motoring fines, etc

15. To facilitate the collection of fines, compensation ordered by a court and vehicle duty clause 21 inserts a new section 47AA that provides for 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.

16. 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

17. As a further deterrent to using motor vehicles for such purposes, clause 28 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

18. In furtherance of detection of crime, clause 30 provides a revised definition of "authorised insurer", the effect of which is to require motor insurers to provide information

about policy holders to the Motor Insurance Bureau database for use by the Department, a local authority, or the police.

Regulatory powers and extension of certain liability

19. Clause 31 inserts three new sections. Section 73A takes a leaf out of corresponding statutory procedures in the UK so that, like the UK Department for Transport, DoI is empowered to make safety regulations on road traffic, road transport and related matters. This currently happens under the Consumer Protection Act 1991 if the Office of Fair Trading is willing to progress the matter.

20. 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 desirable that the enabling powers should be in place should they be required in future by the UK or European Union.

21. Section 73C inserts a deterrent measure advocated by the then High Bailiff. 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

22. Clause 33 extensively amends Schedule 2. It regularises the current practice of the police and the 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 being driven or drawn,

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

23. 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.

24. 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, which is regularly updated. Unlike the UK Department for Transport, which has an extensive division dealing with dangerous goods alone, the 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.

25. 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

26. Clause 34 extensively amends Parts I and II of Schedule 3.

Amendment of Part I: driving licences and tests

27. Regulations under paragraph 2 are empowered to provide that a motorcyclist taking a driving test must wear prescribed clothing. They also stipulate that a specified number of hours of supervised driving practice must be completed by a prospective candidate for a driving test before they may submit themselves to take a test.

28. 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.

29. Second, para 4 requires the DoI to include in a licence the driving conditions to which the holder is subject, in a case where the 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.

30. Third, para 4 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 the DoI when required to do so under the para.

31. Finally, in light of the Glasgow bin lorry tragedy in 2014, 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 38(36), is made

triable either way: in lesser cases, summarily, with a maximum fine of £5,000 or level 4 on the standard scale; and in graver cases, on indictment, with penalties of 2 years' custody or an unlimited fine or both.

32. 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.

33. Para 5 relates to the DoI 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 the DoI to prescribe the levels of fees that are payable. In offering advice practitioners routinely but unofficially have regard to the "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.

34. 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 be extended. Contravening the restrictions is also made a specific offence.

35. 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 the 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 the DoI when required to do so.

Amendment of Part II: disqualification

36. Paragraph 11 is amended by providing that a person convicted of a controlled drug offence (para 10 of these notes refers) is subject to disqualification for not less than two years.

37. In the interests of road safety, provision is inserted in paragraph 12 that reduces from 12 points or over, to 6 points or over, the number of penalty points that lead to the disqualification of a provisional licence holder or a 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.

38. 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.

39. Paragraph 20(8) is substituted in order to clarify how long the period during which an endorsement on a licence remains effective, is applied to a conviction for certain offences involving drink or drugs.

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

41. Consequent upon the revised definition of "authorised insurer", to which clause 31 relates, clause 36 enables the DoI to make regulations as to the use of information obtained from the Motor Insurers' Database in furtherance of the detection of crime.

42. Clause 37 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.

PART 3 — AMENDMENTS TO THE ROAD TRAFFIC REGULATION ACT 1985

Traffic regulation orders

43. To cover the DoI's administrative expenses, clause 41 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.

Overnight and Weekend waiting

44. Clause 42 gives the Department greater flexibility in relation to the Overnight and Weekend regulations.

Regulation of caravans on the Island

45. Clause 43 inserts a new section 2B, the purpose of which is primarily to regulate the movement of caravans on the Island. 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

46. Clause 44 removes the bureaucratic involvement of the Council of Ministers by enabling the 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

47. Where school crossings have to be temporarily relocated, often for only a few hours due, for example, to road works, clause 45 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

48. Clause 48 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

49. For self-evident reasons, clause 49 amends section 14B by making it an offence to leave a vehicle in such suspended places.

Emergency traffic signs

50. On road-safety grounds, clause 50 regularises the placement of such emergency signs when explosives are being used in a quarry such as that operated by the DoI. Provision is also taken to prescribe other circumstances in which such signs may be used.

Defacement of traffic signs, etc

51. For road-safety or environmental reasons, clause 51 makes it an offence to deface traffic signs or other street furniture.

Speeding

52. 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 64 increases the maximum fine from £1,000 to level 3 on the standard scale.

53. Clause 52 goes further by doubling the maximum fine that would normally be imposed, subject to a limit of level 4, 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

54. As a deterrent, clause 55 inserts a new section 28A making it an offence to wrongly 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

55. Clause 56 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. More flexible provision is also made by enabling the DoI to employ as parking controllers, employees of an employer and to delegate its powers of appointment to local authorities and third parties.

Automatic Number Plate Recognition Technology

56. Clause 57 inserts a new section 33B. Subject to Tynwald approval the Police and the Department can introduce regulations to employ Automatic Number Plate Recognition technology on the roads. The use of the data is defined and will be GDPR compliant.

Amendment of Schedules 5 and 5A

57. In view of the complexity of Schedules 5 and 5A, clause 60 enables regulations to be made amending them subject to Tynwald approval. This will enable amendments to be made to the provisions within the Schedules, for example with changes to the value of fixed penalty notice fines or adding new items or removing old items that are found to be no longer required, without having to wait until an appropriate Bill becomes available.

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

58. Clauses 62 and 63 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 waiting until an appropriate Bill becomes available.

Fixed penalty offences

59. Clause 65 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 44 of these notes refers).

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

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

Removal of vehicles causing offence

61. Clause 69 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 the DoI, a local authority or the police, and if it is of the 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 in which to remove the vehicle.

Disposal etc of vehicles

62. Clause 71 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 23 (paras 15-16 of this advice 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. If payment is not made within 35 days, vehicles may be disposed of and the proceeds used for that purpose.

63. Clause 72 concludes by repealing Schedule 1, thereby enabling the removal of vehicles if any statutory prohibition or restriction is being contravened.

PART 5 – AMENDMENTS TO THE LICENSING AND REGISTRATION OF VEHICLES REGULATION 2015

64. Clause 73 provides for a consequential amendment to Regulation 22(1)(a) of the Licensing and Registration of Vehicles Regulation 2015.

PART 6 – REPEALS

65. The following Acts are repealed to the following extent —

- (a) *Road Traffic (Amendment) Act 2001* – the whole Act;
- (b) *Road Traffic (Amendment) Act 2006* – the whole Act;
- (c) *Road Traffic Act 1985* – section 13(2); and
- (d) *Equality Act 2017* – paragraph 5 of Schedule 23

66. 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

67. 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 was decided to omit proposed provision reducing the alcohol drink-drive limit.

68. Following a request by local authorities' provision has been included to enable information provided by the Motor Insurance Bureau Database to be shared by local authorities as well as the DoI and the police.

69. 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.

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

71. This Bill was also reviewed by a Legislative Council Committee who made several proposals to change the Bill. The proposed changes were accepted by the DoI with the exception of the following three items:

- Drug driving proposals, the Bill contains provisions which are exactly the same as those in place in England and Wales and were included at the request of Isle of Man Constabulary. The Committee asked for the proposals to include psychoactive drugs which the UK DfT did not include in its provisions due to the lack of supporting evidence to provide levels at which they were considered safe to drive. It should be noted these products are already dealt with by the Misuse of Drugs Act 1976 and the Psychoactive substances Act 2016 (Application) Order 2016;

- A request to introduce drink/drug driving provisions for non-motorised transport was made, this request was rejected on the basis the Isle of Man Constabulary feel that sufficient provisions already exist in legislation to allow this rare offence to be dealt with satisfactorily; and
- The removal of a clause regarding safety regulations which in the opinion of the Committee, reproduced the powers of the Office of Fair Trading for the Department. As a result of this particular recommendation the DoI has introduced modifications to these provisions to clarify the DoI does not have these powers but, as originally intended, have the power to introduce regulations concerning road safety items for enforcement by the Office of Fair Trading. Any regulations of this type will be progressed in agreement with the Office of Fair Trading and are subject to Tynwald approval.

Affected Acts

72. The four Acts affected by these proposals can be viewed at the following links:

The Road Traffic Act 1985

https://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1985/1985-0023/RoadTrafficAct1985_9.pdf

The Road Traffic Regulation Act 1985

https://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1985/1985-0020/RoadTrafficRegulationAct1985_6.pdf

The Local Government (Miscellaneous Provisions) Act 1984

https://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1984/1984-0005/LocalGovernmentMiscellaneousProvisionsAct1984_2.pdf

Equality Act 2017

https://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2017/2017-0005/EqualityAct2017_1.pdf