



## **ROAD TRAFFIC AND HIGHWAYS (MISCELLANEOUS AMENDMENTS) BILL 2011**

### **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 and Highways (Miscellaneous Amendments) Bill 2010. They have been prepared by the Department of Infrastructure 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 has evolved in part from proposals contained in the then Department of Transport's Road Safety Initiative published in 2004.

4. The Bill has been the subject of a public consultation exercise which ran for six weeks to 14 January 2011. The consultation elicited a favourable response. Only one objection - from a member of the public - was received to the principal provisions, namely the creation of new driving offences. Otherwise only a few reservations were expressed about individual matters, most of which centred on the need to incorporate a lower blood alcohol limit for drink drivers in line with that operative in most European countries.

5. In view of the Member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.

#### **SUMMARY AND STRUCTURE OF THE BILL**

6. As described below, the Bill is in five Parts consisting of amendments to different Acts relating to road traffic or highways.

#### **PART 1 - INTRODUCTORY PROVISIONS**

7. Clause 1 gives the Bill its short title.

8. Clause 2 provides for the Bill to come into operation on one or more days appointed by the Department of Infrastructure ("the Department") and caters for the making of transitional and saving provisions.

## **PART 2 - AMENDMENT OF THE ROAD TRAFFIC ACT 1985**

9. This Part deals principally with the creation of new driving offences, the imposition of increased penalties for existing ones, and the prescribing of a wider range of alternative verdicts in cases where the principal offence is not proven. The amendments to the Act are as follows.

### ***Clause 4: section 1A inserted***

10. By way of inserting the section this clause creates the new offence of causing grievous bodily harm by dangerous driving. The penalties on conviction are prescribed in subsection (1)(b) of clause 21.

11. The expression "grievous bodily harm" is not defined statutorily but has long been interpreted in case law. Generally, as interpreted by the courts, the expression has no other meaning than that which the words convey in their ordinary and natural meaning. "Bodily harm" needs no explanation, and "grievous" means no more and no less than "serious".

### ***Clause 5: section 2A amended***

12. The effect of this clause is to apply the existing definition of "dangerous driving" to the offence of causing grievous bodily harm by such driving.

### ***Clause 6: sections 2B and 2C inserted***

13. By inserting the sections in question this clause creates the new offences of causing death and grievous bodily harm respectively by careless or inconsiderate driving. The penalties on conviction are prescribed in subsection (1)(d) of clause 21.

### ***Clause 7: section 3ZA inserted***

14. This clause inserts a section defining careless or inconsiderate driving for the purposes of driving offences in which such driving is involved.

### ***Clause 8: section 3B inserted***

15. By inserting this section the clause creates the new offence of causing death by driving when unlicensed, disqualified or uninsured. The penalties on conviction are prescribed in subsection (1)(g) of clause 21.

### ***Clauses 9 and 10: sections 8 and 14 amended***

16. These clauses extend the exception to the ban on motor racing and cycle racing respectively to occasions when it is permitted by or under any enactment - for example, section 38 of the Highways Act 1986 - instead of just under the Road Races Act 1982.

***Clause 11: section 31 substituted***

17. By way of the substituted section this clause makes two principal changes to the section which it replaces. First, it caters on a permissive basis for the Manx Highway Code to consist of the GB Highway Code subject to adaptations, exceptions and modifications. Second, the Code, which contains commonsensical advice on the use of the highway, is required to be laid before Tynwald instead of being subject to its approval.

***Clause 12: sections 47A to 47D inserted***

18. This clause inserts four new sections concerned with the seizure, retention and disposal of motor vehicles and related matters.

19. Subsections (1) to (4) of section 47A give power to a constable to seize a motor vehicle if he or she has reasonable grounds for believing that it was being driven without insurance, has had no current tax disc for at least a month, or was being driven by a person who was disqualified for holding a driving licence, otherwise held no current driving licence, was unaccompanied when he or she should have been accompanied, or was committing a serious driving offence connected with drink or drugs. Subsection (5) gives power to a constable to immobilise the vehicle concerned, subsections (6) and (7) prescribe the fixing or placing of notices advising of the immobilisation, and subsection (8) prohibits any attempt to release or remove an immobilised vehicle other than by a constable or a person acting under his or her direction.

20. Section 47B enables the Department to make further provision by regulations as to the removal, retention or storage of seized vehicles and for their release, forfeiture or disposal. Subsection (3) bars civil claims in respect of such matters. Section 47C creates offences in connection with the preceding two sections, and section 47D provides definitions of terms used in them.

***Clause 13: section 53 amended***

21. This clause inserts a new provision into section 53 enabling the punishments set out in Schedule 6 to be varied by order.

***Clause 14: section 55 amended***

22. This clause makes amendments to section 55 consequential upon the substituted Part IV of Schedule 6 set out in clause 21.

***Clause 15: section 63 amended***

23. This clause amends section 63 about inquiries so that they are to be conducted by a person independent of the Department.

***Clause 16: section 74 amended***

24. This clause has the effect of requiring Tynwald approval to orders made under the new provision inserted by clause 13.

**Clause 17: Schedule 2 amended**

25. This clause amends paragraph 4 of Schedule 2 so as to empower examiners (appointed by the Department) to stop vehicles on roads for testing when a constable in uniform is present. It becomes an offence to fail to stop as required, the penalty on conviction being prescribed in subsection (1)(r) of clause 21.

**Clause 18: Schedule 3 amended**

26. By virtue of the amendments made by subsection (2)(a) and (b) the minimum period of disqualification is increased from one -

- to two years in the case of persons convicted of certain serious driving offences, and
- to five years in the case of persons convicted of the offence of failing to provide a specimen or of failing to allow a laboratory test of a specimen of blood.

27. Subsection (2)(c) makes a consequential amendment by substituting a new paragraph 11(3) and goes on to prescribe revised minimum periods of disqualification in the case of persons convicted of certain drink and drive offences, with the period being increased from three to five years where gross impairment is involved. The periods are set out in the table in new paragraph 11(3A).

28. Subsection (2)(d) enables the Department to amend the above table by regulations subject to Tynwald approval.

29. In the event that a court orders a person to remain disqualified until he or she has passed a driving test, subsection (2)(e) prescribes that the test is to be an extended test as defined in subsection (4).

30. *Inter alia*, Schedule 3 presently requires a court to order a driving test when it considers that the facts of the case raise a "serious doubt" as to an offender's competence to drive. Subsection (2)(f) substitutes "reasonable doubt" for "serious doubt".

31. Subsection (2)(g) makes a consequential amendment of paragraph 11(7).

32. If a person accumulates 12 or more penalty points, a court must, unless special reasons obtain, order him to be disqualified. Yet if a person is convicted of two or more offences committed on the same occasion, then at present, of the number of penalty points that they may carry, only the number or the highest number for one of those offences may be endorsed. Subsection (3) gives the courts discretion to endorse in respect of all of the offences.

**Clause 19: Schedule 4 amended**

33. At present only instructors giving paid instruction in the driving of "motor cars", namely passenger cars or light vans, are required to be registered or licensed by the Department's Registrar. Paragraph (a)(i) of this clause amends paragraph 3(1) of Schedule 4 so as to enable regulations to be made catering for registration or licensing in the case of motor vehicles of other prescribed classes. Paragraph (a)(ii) substitutes paragraph 3(2) of the Schedule, the effect of which is that instruction given by or on behalf of a motor trader

in connection with the supply of a motor vehicle is to be treated as paid instruction irrespective of whether or not it is actually given free of charge.

34. Paragraph (b) amends paragraph 4 of the Schedule so as to extend to fire brigade instructors the exemption from being registered.

35. Paragraph (c) inserts a paragraph 4A, which provides for the service of stop notices by the Registrar on persons giving paid instruction when unregistered or unlicensed, provided that certain conditions are met. If such a person gives instruction to someone other than a close relative in contravention of a stop notice it is an offence, for which the penalty on conviction is prescribed in subsection (1)(t) of clause 21.

36. Paragraph (f) substitutes a paragraph 9 in the Schedule, the effect of which is to include provision for appeals against stop notices and to provide for the appeals to be conducted by an independent adjudicator appointed by the Appointments Commission.

37. Paragraph (g) revises paragraph 10 of the Schedule in order -

- to reflect the current tests for becoming a registered instructor,
- to incorporate, in the case of a person failing to pass an examination or any part of it, amended provision with respect to the time period that must elapse before another such examination or part of it may be attempted, and
- to fine-tune the provisions as to examinations or parts of them that may not have been properly conducted.

***Clause 20: Schedule 5 amended***

38. This clause amends Schedule 5 so as to require a person to be insured against third-party risks by an insurance company authorised to carry on motor-insurance business anywhere in the British Islands or the European Union, whereas at present the insurer must be so authorised in the Island or the UK.

***Clause 21: Schedule 6 amended***

39. Subsection (1)(a) increases from 10 to 14 years the maximum custodial option on conviction of the offences of causing death by dangerous driving and causing death by careless driving when under the influence of drink or drugs.

40. Excluding -

- penalties which have been cross-referred to earlier in these Notes,
- increased penalties which are broadly in line with inflation, and
- amendments consequential mostly upon the new Part IV of Schedule 6 substituted by this clause,

other increased penalties are imposed by subsection (1)(e), (m) to (q) and (s) and by subsection (2).

41. Subsection (3) substitutes a new Part IV of Schedule 6. It caters for a wider range of alternative verdicts when defendants are found not guilty of the principal offence. Safeguards are provided for defendants answering lesser charges by -

- affording them the opportunity of cross-examining witnesses whose evidence has already been given,
- otherwise answering the charges, and
- requiring the court to adjourn hearings when it considers that defendants will be prejudiced in their defence by reason of the new charge or charges.

### **PART 3 - AMENDMENT OF THE ROAD TRAFFIC REGULATION ACT 1985**

#### ***Clause 23: sections 22A, 22B and 22C inserted***

42. By way of these sections the clause makes new provision prohibiting double parking and parking adjacent to a dropped footway, cycle-path, cycle track or verge. The prohibitions are enforceable as if imposed by an order under section 1. Exceptions to the prohibitions are prescribed in the case of the emergency services, vehicles delivering or collecting goods, etc.

#### ***Clause 24: section 3 amended***

43. This clause amends section 3 so as to enable temporary road closures to be effected by notice instead of order.

#### ***Clause 25: section 3A amended***

44. This clause amends section 3A so as -

- to enable temporary road closures for filming to be effected by notice instead of order,
- to enable the suspension of parking,
- to enable parking of up to six vehicles by film participants despite any statutory provision to the contrary, and
- to extend the prohibition on through traffic on a road from 24 to 48 hours in the aggregate in any period of 72 hours.

#### ***Clause 26: section 4A amended***

45. This clause is consequential upon the amendments made by clauses 24 and 25.

#### ***Clause 27: section 7 amended***

46. This clause removes a redundant provision in section 7 that is covered by the Interpretation Act 1976.

***Clause 28: section 15 amended***

47. This clause amends and clarifies the provisions in section 15 regarding the placing of traffic signs. In the case of portable light signals the Department's consent is always needed. It is an offence to place traffic signs contrary to the provisions, for which the penalty on conviction is prescribed in the amendment to Schedule 4 made by clause 36.

***Clause 29: section 17 amended***

48. This clause amends section 17 so as to extend the power to place traffic signs in an emergency to a constable or person acting under the instructions of the Chief Constable.

***Clause 30: section 24 amended***

49. This clause is consequential upon the amendments made by clause 24.

***Clause 31: section 28 amended***

50. This clause amends section 28 so that it is the Department of Social Care that is to issue disabled person's badges in the form that it considers appropriate instead of the Department making regulations for the issue of the badges by the Department of Social Care in a form prescribed by the regulations. A typographical error in the section is also corrected.

***Clause 32: section 31 amended***

51. This clause inserts a new provision in section 31 to enable the maximum levels of fines in Schedule 4 to be varied by order.

***Clause 33: section 33 substituted***

52. This clause substitutes a new section 31 providing for traffic wardens to be appointed by the Department of Infrastructure to carry out the functions conferred by or under the section under the direction of the Chief Executive of the Department. Currently traffic wardens are appointed by the Department of Home Affairs and act under the direction of the Chief Constable. The opportunity is taken to revise the wording of the section slightly for reasons of clarity.

***Clause 34: section 39 amended***

53. This clause amends section 39 so that orders made under section 31 or 33 require Tynwald approval.

***Clause 35: Schedule 1 amended***

54. This clause makes consequential amendments to Schedule 1 concerning the notification of temporary road closures.

***Clause 37: Schedule 5A amended***

55. By virtue of this amendment this clause enables an order to prescribe the amount of fixed penalties for offences under sections 11(3) and 14B(1).

***Clause 38: Schedule 6 amended***

56. This clause, which is consequential upon clause 33, inserts a transitional provision into Schedule 6, the effect of which is to import standard provisions - applicable in the case of orders providing for a transfer of departmental functions - to cover the transfer of functions with respect to traffic wardens.

**PART 4 - AMENDMENT OF THE HIGHWAYS ACT 1986**

***Clause 40: section 7A inserted***

57. This clause inserts section 7A, subsection (1) of which enables the Department, by application to the High Court, to recover extraordinary maintenance expenses arising from excessive weight passing along a highway or from other extraordinary traffic on it.

58. If, however, an operator admits liability before damage to a highway is caused, subsection (2) provides a procedure for agreeing or determining the sums involved without recourse to the High Court.

59. Subsection (3) prescribes the time within which proceedings for the recovery of sums must commence.

***Clause 41: section 16A inserted***

60. As inserted, subsection (1) of section 16A enables the Department to designate an improvement line to which a highway is to be widened.

61. Subsection (2) prohibits, without the Department's consent, new building or permanent excavation nearer to the centre line of the highway than the improvement line.

62. Subsection (3) provides a saving for the right of statutory undertakers to make excavations with respect to their apparatus.

63. Subsection (4) makes provision for an appeal to a court of summary jurisdiction by a person aggrieved by the matters specified there.

64. Subsection (5) deals with the binding effect of any condition attached to a consent given under subsection (2).

65. Subsection (6) prescribes the penalties for contravening the section or any such condition.

66. Subsection (7) deals with the revocation of an improvement line or any part of it.

67. Subsection (8) gives effect to Schedule 1B, the effect of which is described in paragraphs 87 and 88.

68. Subsections (9) and (10) deal with the recovery of compensation from the Department by a person whose property is injuriously affected by the designation of an improvement line.

69. Subsection (11) provides that nothing in the section applies to or affects, without the consent of the users concerned, any land used by a railway undertaking or specified undertakers, but such consent must not be unreasonably withheld. Any question whether it is so must be determined by the Council of Ministers under subsection (12).

***Clause 42: section 32B inserted***

70. The inserted section deals with the creation of walkways by agreement, being a right of way on foot in developments such as comprehensive shopping centres and blocks of flats. Subject to modifications made under the section, highway law will apply, which better enables access by the police for the purpose of maintaining public order.

71. Subsections (1) to (3) enable a local authority, after consultation with the Department, to enter into an agreement with a building owner for the dedication of ways as walkways and they go on to cater for matters appertaining to such an agreement.

72. Subsections (4) to (7) enable highway law to be supplemented by the making of regulations covering, *inter alia*, the conduct of persons using walkways within any given development. The procedure preparatory to the making of such regulations is set out and the penalty for contravening the regulations is prescribed.

73. Subsections (8) to (10) enable further regulations to be made disapplying, amending, modifying or adapting any enactment or instrument relating to highways or to things done on or in connection with them. The regulations are empowered to deal with the rights of statutory undertakers.

74. Subsection (11) provides that regulations made under the section are subject to Tynwald approval.

75. Subsection (12) provides a saving with respect to the powers in this Act or any other enactment to create highways.

***Clause 43: section 38 substituted***

76. This clause substitutes a new section 38, the principal alteration being that the temporary closure of highways for entertainment will be effected by public notice instead of an order. The definition of "entertainment" is now inclusive and has been expanded.

***Clause 44: section 51 amended***

77. This clause amends section 51 to enable the Department to cut, lop or fell vegetation that is overhanging or is likely to fall on to a highway if there is immediate danger or the owner or occupier otherwise fails to do so within 14 days of being served a notice requiring him or her to do so. There is provision for the Department to recover the cost of the works from the owner or occupier and a requirement for the Department, if it sells anything removed from a highway, to pay the proceeds of sale, less any expenses of removal and sale, to the owner.

***Clause 45: section 85A inserted***

78. This clause inserts section 85A, which gives power to the Department to acquire any land (including premises) that lies between an improvement line and the boundary of a highway.

***Clause 46: section 94A amended***

79. This clause is consequential upon other changes in the Bill with respect to regulation-making powers.

***Clause 47: section 109A inserted***

80. This clause inserts section 109A, subsections (1) to (3) of which enable an agreement as to the execution of works to be made in the public interest between the Department and a third party, whereby that other party pays some or all of the costs of the works, including in particular the administrative and other costs of the Department. Such agreements will mostly follow on from planning permissions which, if they are to be implemented, require the works involved to be executed.

81. Subsection (4) provides a saving with respect to the power of the Department to acquire land for the purpose of the works.

82. Subsections (5) to (7) deal with the recovery of amounts and with related matters in the event that any amount due to the Department in pursuance of an agreement is not paid.

***Clause 48: section 110 amended***

83. By way of substitutions this clause widens the ability of the Department to recover expenses so that it goes beyond its ability to recover them just from owners of premises. The interest-charging provisions are modified to match those in new section 109A(5).

***Clause 49: section 115 amended***

84. This clause amends section 115 so as to increase the maximum penalty for most of the offences under the Act from £1,000 to £2,500. It also enables the Department to vary the levels of fines specified in the section by order subject to Tynwald approval.

***Clause 50: section 118 amended***

85. This clause enables the Department merely to specify the form of documents under the Act instead of having to prescribe them by regulations.

***Clause 51: Schedule 1A amended***

86. This clause amends Schedule 1A so as to remove the requirement for the Department to have to make regulations setting out what it must do when constructing traffic restraint works.

***Clause 52: Schedule 1B inserted***

87. This clause inserts a new Schedule making further provision about improvement lines.

88. Paragraphs 1 to 5 of the Schedule prescribe the procedure to be followed by the Department before it designates such a line, whereas paragraph 6 prescribes the procedure to be followed immediately afterwards. Paragraph 7 concludes by prescribing what the Department must do if it revokes such a line or any part of it.

***Clause 53: Schedule 3 amended***

89. This clause makes a minor consequential amendment as a result of the removal of regulation-making powers.

***Clause 54: Schedule 4 amended***

90. Paragraph (a) amends in two ways paragraph 2(6) of the Road Works Code as set out in Schedule 4. First, it requires the reinstatement or making good of highways etc to be in accordance with the Department's directions instead of regulations made by it. Second, it increases from no more than 12 to no more than 24 months the period in which undertakers must keep highways in good repair as the soil broken up continues to subside.

91. Paragraph (b) deletes a sentence which is superseded by new paragraph 2(8C). Paragraph (c) inserts a new paragraph 2(7A) which enables the Department to step in and reinstate or make good a highway etc after undertakers have failed to do so adequately. Paragraph (d) makes an amendment consequential upon new paragraph 2(7A). Paragraph (e) inserts new provision with respect to the service of default notices. Finally, paragraph (f) provides an inclusive definition of what is meant by references to reinstatement and making good.

**PART 5 - MISCELLANEOUS AMENDMENTS AND REPEALS**

***Clause 55: amendment of the Petty Sessions and Summary Jurisdiction Act 1927***

92. This clause amends the above Act so as to bring the penalty for furious driving into line with that for the comparable offence of careless or inconsiderate driving under the Road Traffic Act 1985.

***Clause 56: amendment of the Civil Service Act 1990***

93. This clause makes an amendment to the Civil Service Act 1990 consequential upon the transfer of the appointment of traffic wardens from the Department of Home Affairs to the Department of Infrastructure.

***Clause 57: amendment of the Road Transport Act 2001***

94. Subsection (2) amends section 7 of the above Act so that the definition of "goods vehicle" is removed and the definition expanded to include not just motor vehicles and trailers constructed or adapted for use for the carriage of goods but any combination of them. Subsection (3) has the effect of supplementing section 10 so that the Road Transport Licensing Committee may refuse an application for registration or an operator's licence

under the Act unless prescribed requirements are met. Subsection (4) inserts provision to enable the Department to make regulations authorising the Committee to refuse, suspend or revoke any registration or licence on health grounds. Subsection (5) updates references in the Act to UK and EU legislation

***Clause 58: amendment of the Road Traffic (Amendment) Act 2006***

95. This clause corrects a minor error in the above Act.

***Clause 59: repeals***

96. This clause repeals provisions made redundant by the Bill.

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