



EXPLANATORY NOTES

Seat Belts on School Transport (Scotland) Act 2017 (asp 7)

£6.00

SEAT BELTS ON SCHOOL TRANSPORT (SCOTLAND) ACT 2017

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by officials of the Scottish Government on behalf of Gillian Martin MSP, the member in charge of the Bill for the Act, in order to assist the reader of the Act and to help inform debate on it. They do not form part of the Act and have not been endorsed by the Parliament.

2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or a part of a section does not seem to require any explanation or comment none is given.

SUMMARY

3. The purpose of the Act is to improve road safety for school children by requiring that seat belts are fitted on all motor vehicles used in dedicated school transport services, as defined in the Act. The Scotland Act 1998 (Modification of Schedule 5) Order 2015 (S.I. 2015/1379) devolved to the Scottish Parliament the legislative competence to regulate the description of motor vehicles which are used to transport pupils to and from places where they receive education and training.

4. However, the setting of technical standards for the construction or equipment of such vehicles, different from any such standards that ordinarily apply under existing UK law, was not devolved by the 2015 Order. In addition, the rest of the subject-matter of the Road Traffic Act 1988 remains reserved, as per Schedule 5 Part II Head E of the Scotland Act 1998, and so both areas are outside the Scottish Parliament's legislative competence. This includes the law as to when persons must wear seat belts, which is currently contained in the Motor Vehicles (Wearing of Seat Belts) Regulations 1993 (S.I. 1993/176).

COMMENTARY ON SECTIONS

Section 1 – Duty to ensure seat belts fitted on dedicated school transport services

6. This section imposes a duty on “school authorities” – that is, education authorities, the managers of grant-aided schools and the proprietors of independent schools – to ensure that seat belts are fitted to every passenger seat in every motor vehicle which is used in a dedicated school transport service (i.e. one belt per pupil).

7. The framing of the duty includes both vehicles that a school authority owns and directly provides for such a service and also vehicles which are indirectly provided via contractual arrangements with a third party transport operator, something which is very common in practice with education authorities in particular.

8. In order to fulfil the duty imposed by this section a school authority which does not currently use vehicles with seat belts for such provision would have the option of choosing to “retrofit” vehicles itself – or alternatively, to use, or contract for the use of, vehicles that already have seat belts fitted.

Section 2 – Meaning of “dedicated school transport service”

9. This section defines “dedicated school transport service” for the purposes of the Act and therefore determines the scope of the section 1 duty. The two kinds of service which fall within this wider definition are set out here: a “home-to-school transport service”, as defined in subsection (2), or a “school trip transport service”, as defined in subsection (3).

10. The first kind of service, a “home-to-school transport service”, refers to transport services which carry pupils to and/or from their homes and any educational establishment where they receive school education (as defined in the Education (Scotland) Act 1980) provided by a school authority. There are situations where pupils begin or end the school day at an institution at which they are not registered – for instance to take certain classes which are not offered at their own school – and this would be covered by this definition.

11. The second kind of service, a “school trip transport service”, refers to transport services arranged by school authorities which carry pupils to and/or from any place where they receive education or training in general (whether that is provided at a school or at another place, such as during a visit to a museum or castle). This is a broad definition intended to cover the wide range of excursions which are arranged by school authorities. It would include trips where the vehicle leaves and returns to the school on the same day, as well as excursions which last over a period of days or weeks. It would also include journeys between different educational establishments.

12. Both subsections (2) and (3) refer to the “sole purpose” of the transport service being to carry pupils, and therefore in determining whether a service falls within these definitions its essential purpose must be considered. For example, a transport service which is provided for the purpose of carrying both members of the general public as well as school children, even if in practice the service carries mainly school children, would be excluded from the ambit of the Act.

Section 3 – Meaning of other key terms

13. This section defines other key terms that appear in the Act.

14. The definition of “motor vehicle” is imported from section 185 of the Road Traffic Act 1988, i.e. “a mechanically propelled vehicle intended or adapted for use on roads”. The 1988 Act was the source from which legislative competence was devolved in the express terms of the 2015 Order mentioned in paragraph 3 above.

15. The definition of “school authority” is a tripartite one, comprising education authorities (i.e. local authorities constituted under section 2 of the Local Government etc. (Scotland) Act 1994), the managers of grant-aided schools and the proprietors of independent schools – thus all three kinds of school in Scotland are covered by the Act. Those and other terms in this Act which appear in the Education (Scotland) Act 1980 are collated in subsection (2) of this section. The term “school education” includes early learning and childcare as well as primary and secondary education: therefore pupils in nursery classes or at nursery schools are covered by this Act, if their transport falls within section 1. That is, for such nursery pupils, if it is a “school authority” (as defined) that provides or arranges their dedicated school transport service.

16. The effect of the definition of “seat belt” is simply to apply the existing UK law on the requirements for the types and design of seat belts that must be fitted in different classes of motor vehicles. This application without alteration is made necessary by the technical standards restriction on legislative competence mentioned in paragraph 4 above. The existing UK law is contained in the Road Vehicles (Construction and Use) Regulations 1986 (S.I. 1986/1078) (“the 1986 Regulations”), which were respectively made and amended under the two powers in the Road Traffic Acts referred to in the definition of “seat belt” in section 3 here.

17. Regulation 47 of the 1986 Regulations sets out the range of options for which kind of seat belt must be fitted in particular classes of vehicle. There are four main kinds that appear in Regulation 47: three-point belts, lap belts, child restraints and disabled person’s belts. In addition, inertia reel belts are specified as a type of three-point belt, and retractable lap belts as a type of lap belt. The 1986 Regulations also prescribe detailed technical requirements for the construction, installation and maintenance of seat belts, requirements which are not reproduced in this Act but represent the relevant law currently in force.

Section 4 – Seat belts statement

18. This section imposes a self-reporting duty on school authorities, who must prepare an annual statement relating both to their compliance with the duty relating to seat belts imposed by section 1 of this Act, and also to the actions which they have been taking to promote and assess the wearing of seat belts by pupils travelling on their dedicated school transport services (for instance, the particular policies and procedures which authorities have in place to educate pupils about the wearing of belts and to measure their use).

19. Subsection (3)(a) of this section prescribes the timing of publication of the seat belts statement and subsection (3)(b) leaves the form of publication of the statement open to individual school authorities.

Section 5 – Guidance on wearing of seat belts

20. Subsection (1) of this section imposes a duty on the Scottish Ministers to produce guidance about the kinds of actions which a school authority may take to promote and to assess the wearing of seat belts by pupils on its dedicated school transport services, with subsection (2) placing a corresponding duty on school authorities to have regard to such guidance, as representing best practice in this area. If school authorities depart from the guidance then they would have to show that it was reasonable in all the circumstances to do so.

21. The guidance could for instance advise that, if circumstances allow, it may be best practice for monitors to be on buses to ensure that seat belts are worn; alternatively it might recommend that school authorities engage in an education programme with children to promote the wearing of seat belts.

22. Subsection (3) provides that before publishing the guidance, Ministers are required to consult bodies representative of school authorities (this would include, for example, the Scottish Council of Independent Schools), and also to consult such others as Ministers consider appropriate.

Section 6 - Commencement

23. Subsection (1) of this section provides that this section and sections 2, 3 and 6 come into force on the day after Royal Assent. The remainder of the Act comes into force on the day or days appointed by the Scottish Ministers in regulations made under subsection (2).

24. Subsection (3) provides that generally commencement regulations under subsection (2) which make provision in relation to section 1 may not appoint a day later than 31 December 2018: the effect is to set that date as the deadline by which the Scottish Ministers must bring into force the duty imposed by section 1 of the Act. However there is an exception to this in relation to school authorities which had already, before the Act gained Royal Assent, entered into contracts for dedicated school transport for secondary school pupils which did not include a requirement for seat belts to be fitted. In respect of those school authorities only, the ultimate deadline for Ministers to make commencement regulations will be 31 August 2021.

25. Subsection (4)(a) provides that these commencement regulations may also include transitional, transitory or saving provision. It should be noted that these aspects are not substantive powers but are dependent on commencement. Subsection (4)(b) provides that the regulations may appoint different days for different purposes. For instance this would, subject to subsection (3), allow the duty in section 1 to be brought into force for primary school children at a different point in time to secondary school children.

Section 7 - Short title

26. This section provides that the Act will be referred to as the Seat Belts on School Transport (Scotland) Act 2017.

PARLIAMENTARY HISTORY

27. The following table sets out, for each Stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates on which the proceedings at that Stage took place, and the references to the official report of those proceedings. It also shows the dates on which Committee Reports and other papers relating to the Act were published, and references to those reports and other papers.

Proceedings and Reports	References
Proposal for Member's Bill	Proposal
Introduction	
Bill As Introduced – 1 March 2017	SP Bill 7 – Session 5 (2017)
Stage 1	
(a) Rural Economy and Connectivity Committee	
Meeting on 15 March 2017	Column 38 – 52
Meeting on 29 March 2017	Column 73 – 84
Meeting on 19 April 2017	Column 34 – 45
Meeting on 26 April 2017	Column 2 – 23
Meeting on 10 May 2017	Column 2 – 9
Stage 1 Report on the Seat Belts on School Transport (Scotland) Bill – 12 May 2017	Report
(b) Delegated Powers and Law Reform Committee	
Meeting on 14 March 2017	Column 23 – 24
Seat Belts on School Transport (Scotland) Bill at Stage 1 – 17 March 2017	Report
(c) Consideration by the Parliament	
Stage 1 Debate – 23 May 2017	Column 20 – 63
Stage 2	
Rural Economy and Connectivity Committee	
Meeting on 28 June 2017	Column 46 – 64

*These notes relate to the Seat Belts on School Transport (Scotland) Act 2017 (asp 7)
which received Royal Assent on 18 December 2017*

Proceedings and Reports	References
Bill As Amended at Stage 2 – 29 June 2017	SP Bill 7A – Session 5 (2017)
Stage 3	
Consideration by the Parliament	
Stage 3 Debate – 9 November 2017	Column 63 – 108
Bill as passed – 10 November 2017	SP Bill 7B – Session 5 (2017)
Royal Assent	
18 December 2017	http://www.legislation.gov.uk/asp/2017/7/contents/enacted

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