EXPLANATORY MEMORANDUM TO

THE MOTOR VEHICLES (WEARING OF SEAT BELTS) (AMENDMENT) (EU EXIT) REGULATIONS 2018

2018 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Act.

2. Purpose of the instrument

2.1 This instrument amends domestic legislation on the subject of the compulsory use of seat belts in motor vehicles, to remedy failures of retained EU law to operate effectively, arising from the withdrawal of the UK from the EU. The amendments ensure that child restraints and seat belts approved under the law of another EU member State, and medical certificates issued in other EU member States as exempting a person from the requirement to wear a seat belt or child restraint, continue to be recognised for the purpose of the compulsory seat belt wearing requirements in the UK after the UK leaves the EU. The instrument also amends existing powers and duties to make subordinate legislation for the purpose of implementing Council Directive 91/671/EEC of 16 December 1991 on the approximation of the laws of the member States relating to the compulsory use of safety belts in vehicles of less than 3,5 tonnes (the seat belt Directive), given that implementing a Directive will not be a valid purpose after the UK's withdrawal from the EU.

Explanations

What did any relevant EU law do before exit day?

2.2 The legislation being amended by this instrument allows child restraints and seat belts of a type approved by another EU member State to be used in the UK; and provides for recognition of medical certificates issued in other EU member States to exempt a person from the requirement to wear a seat belt in the UK. It also contains powers and duties (in the Road Traffic Act 1988 (the 1988 Act) and the Road Traffic (Northern Ireland) Order 1995 (the 1995 Order)) for the Secretary of State, in relation to GB, and the Department for Infrastructure, in relation to NI, to make regulations for the purpose of implementing the seat belt Directive.

Why is it being changed?

2.3 The legislation refers to seat belts and child restraints of a type approved under the law of 'another member State'. It is unclear if these provisions would continue to have effect as they do currently, when the UK leaves the EU and is no longer a member State. This would result in a lack of clarity as to the scope of the criminal offences of failing to wear a seat belt, or driving with an unrestrained child. A power to make subordinate legislation for the purpose of implementing an EU Directive will no longer be needed.

What will it now do?

2.4 The amendments adjust language and references to recognise that the UK is no longer a member State, to eliminate any ambiguity, but otherwise maintain the current seat belt wearing requirements regime intact in the UK. They also remove the powers and duties to make regulations for the purpose of implementing the seat belt Directive.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument varies between provisions.

3.3 The UK Government is making amendments for Northern Ireland because there is no Assembly in place. The territorial application of Part 4 is therefore Northern Ireland.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is UK for Part 1, Great Britain for Parts 2 and 3, and Northern Ireland for Part 4.

4.2 The territorial application of this instrument is UK for Part 1, Great Britain for Parts 2 and 3 and Northern Ireland for Part 4.

5. European Convention on Human Rights

5.1 The Minister of State for Transport, Jesse Norman, has made the following statement regarding Human Rights:

"In my view the provisions of the Motor Vehicles (Wearing of Seat Belts) (Amendment) (EU Exit) (Regulations) 2018 are compatible with the European Convention on Human Rights.".

6. Legislative Context

6.1 Under both GB and NI legislation, it is an offence, subject to certain exceptions, to drive a motor vehicle on a road when it is carrying a child under the age of 14, who is not wearing a seat belt or child restraint in conformity with regulations; or for a person aged 14 or over, who is not wearing such a seat belt, to drive or ride in a motor vehicle being driven on a road.

6.2 Wearing a seat belt or child restraint approved for use under the law of another EU member State currently, subject to certain conditions, constitutes wearing a seat belt in conformity with regulations. Equally, a medical certificate issued in another EU member State will provide the recipient with an exemption from the requirement to wear a seat belt or child restraint.

6.3 These provisions may, however, fail to operate effectively once the UK leaves the EU, because they refer to seat belts and child restraints of a type approved by 'another' member State, and the UK will no longer be a member State. To ensure that when the UK leaves the EU, there is legal certainty as to the scope of the offences of not wearing a seat belt, amendment of the legislation is necessary.

6.4 There are also powers and duties under the existing legislation for the Secretary of State and the Department for Infrastructure, NI to make subordinate legislation for the purpose of implementing an EU Directive. These will no longer be needed once the UK leaves the EU, therefore the instrument also amends these powers.

7. Policy background

What is being done and why?

7.1 In Great Britain, the 1988 Act, the Motor Vehicles (Wearing of Seatbelts) Regulations 1993, and the Motor Vehicles (Wearing of Seatbelts by Children in Front Seats) Regulations 1993, currently recognise child restraints and seat belts approved under the law of another EU member State, for the purpose of the compulsory seat belt wearing requirements in Great Britain. They also recognise medical certificates issued in other EU member States as exempting a person from the requirement to wear a seat belt or child restraint in Great Britain.

7.2 The 1995 Order, the Motor Vehicles (Wearing of Seat Belts) Regulations (Northern Ireland) 1993 and the Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) Regulations (Northern Ireland) 1993 have exactly the same effect in Northern Ireland.

7.3 Without amendment, it is unclear whether these provisions, which refer to 'another member State' would continue to have effect in the way they do currently, when the UK leaves the EU and is therefore no longer a member State. This would result in a lack of clarity as to the scope of the criminal offences of failing to wear a seat belt, or driving with an unrestrained child.

7.4 With the aim of facilitating continued ease of travel between the UK and EU member States, and to ensure clarity as to the scope of these criminal offences, this instrument amends the legislation so that the laws in the UK will continue to recognise child restraints and seat belts approved for use under the law of EU member States; and medical certificates issued in those States.

7.5 Failure to make these legislative amendments could lead to an increase in cases being brought before the courts and also pressure on the National Health Service with EU nationals who have a medical certificate from a member State seeking appointments with General Practitioners to obtain a British medical certificate exempting them from wearing a seat belt or child restraint. It would also be disproportionate to expect persons from member States to have to obtain a GB or NI medical certificate if they are only here visiting for a short duration (such as a two week driving holiday).

7.6 From a NI perspective, sharing a land border with an EU member State would pose particular problems given the extent and frequency of cross border travel. The difficulties would be most felt by communities living in the immediate border areas.

7.7 The instrument also amends the powers and duties in the 1988 Act and the 1995 Order to make subordinate legislation in relation to the compulsory seat belt wearing requirements. When the UK has left the EU, it will no longer be necessary to have such powers which provide for subordinate legislation to be made for the purpose of implementing the seat belt Directive.

7.8 This instrument applies to road safety which is a transferred matter for Northern Ireland under the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important

in the context of EU Exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day. With exit day less than one year away, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. UK Government Ministers have therefore decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 There are no plans for consolidation.

10. Consultation outcome

10.1 A consultation has not been held for this instrument as it will have the effect of maintaining, in the UK, the existing seat belt wearing requirements, once the UK has left the EU. We have consulted officials in the Department for Infrastructure, Northern Ireland, in the preparation of this instrument.

11. Guidance

11.1 The Government is not issuing specific guidance in relation to this instrument.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because it relates to the maintenance of existing regulatory standards.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is that no action is required.

13.3 The basis for the final decision on what action to take to assist small businesses is that the legislation will not adversely impact upon small businesses as the regulatory burden will not increase for any size of firm.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that none is planned.

14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Pippa Brown at the Department for Transport. Telephone: 07966 512031or email: pippaA.brown@dft.gov.uk can be contacted with any queries regarding the instrument.

15.2 Donald Starritt at the Department for Infrastructure in relation to any aspects of the instrument relating to Northern Ireland. Telephone: 02890 541152 or email: donald.starritt@infrastructure-ni.gov.uk.

15.3 Pauline Reeves, Deputy Director for Road User Licensing, Insurance and Safety, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.4 The Minister of State for Transport, Jesse Norman, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

1.1 The Minister of State for Transport, Jesse Norman, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Motor Vehicles (Wearing of Seat Belts) (Amendment) (EU Exit) Regulations 2018 do no more than is appropriate".

1.2 This is the case because: it ensures clarity that there is no change to the scope of a criminal offence; and it removes powers and duties to make subordinate legislation for the purpose of implementing an EU Directive, which will no longer be a valid purpose once the UK leaves the EU.

2. Good reasons

2.1 The Minister of State for Transport, Jesse Norman, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".

2.2 These are: to ensure clarity that there is no change to the scope of a criminal offence; and to remove powers and duties to make subordinate legislation for the purpose of implementing an EU Directive, which will no longer be a valid purpose once the UK leaves the EU.

3. Equalities

3.1 The Minister of State for Transport, Jesse Norman, has made the following statement:

"The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.".

3.2 The Minister of State for Transport, Jesse Norman, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, Jesse Norman, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010. This Act does not extend to Northern Ireland, and so far as the Motor Vehicles (Wearing of Seat Belts) (Amendment) (EU Exit) Regulations 2018 extend only to Northern Ireland, I have given equivalent due regard to the need to eliminate discrimination, harassment and victimisation in relation to Northern Ireland".

4. Explanations

4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.