**EXPLANATORY MEMORANDUM TO**

**THE SCOTLAND ACT 1998 (MODIFICATION OF SCHEDULE 5) ORDER 2015**

**2015 No. [XXXX]**

**1.** This Explanatory Memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

The purpose of this Order is to amend Schedule 5 to the Scotland Act 1998 ("the 1998 Act") to devolve power to the Scottish Parliament to legislate in relation to the regulation of the description of motor vehicles and trailers which transport pupils and students in Scotland to and from places where they receive education or training (for example, schools and colleges).

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

None.

**4. Legislative Context**

4.1 Schedule 5 to the 1998 Act lists the matters that are reserved to the UK Parliament. Section E1 of Part 2 of Schedule 5 reserves aspects of road transport, including the subject matter of the Road Traffic Act 1988, with exception to sections 39 to 40 and sections 157 to 159 of that Act. The regulation of the description of motor vehicles and trailers which transport pupils and students in Scotland to and from educational establishments relates to the subject matter of the Road Traffic Act 1988. It is a matter which is reserved to the UK Parliament.

4.2 In terms of the Education (Scotland) Act 1980, local authorities have, in certain circumstances, an obligation to arrange for the transportation of pupils between their homes and schools or other educational establishments which they are attending.

4.3 In October 2010, the UK Government's then Parliamentary Under Secretary of State for Transport agreed that additional powers in relation to the safety of dedicated school transport, consistent with those granted to the Welsh Assembly, should be transferred to the Scottish Ministers.

4.4 It is the primary intention of the Scottish Ministers to be able to introduce legislation which would ensure that only vehicles in which seatbelts are installed are used in all dedicated school transport in Scotland. This Order amends Part 2 of Schedule 5 to make an exception to the road transport reservation at Section E1 of Schedule 5 to the 1998 Act to devolve competence to the Scottish Parliament to legislate in that area. This

Order does not devolve power to the Scottish Parliament to set technical standards in relation to the construction and equipment of motor vehicles and trailers which are different to any existing technical standards which might apply to such vehicles and trailers. The setting of technical standards remains reserved to the UK Parliament.

## 5. Territorial Extent and Application

This instrument extends throughout the United Kingdom.

## 6. European Convention on Human Rights

The Parliamentary Under Secretary of State for Scotland, the Rt Hon David Mundell MP, has made the following statement regarding Human Rights:

> *"In my view the provisions of the Scotland Act 1998 (Modification of Schedule 5) Order 2015 are compatible with the Convention rights."*

## 7. Policy background

7.1 As outlined in 4.2, local authorities in Scotland have an obligation for the provision of dedicated school transport (without charge) in certain circumstances. Such arrangements will often take the form of a contract with a bus operator under which the operator provides vehicles for daily journeys to and from a school. Although it is the Scottish Government's position that the specific terms of dedicated school bus contracts are matters for individual local authorities, it intends to pursue the introduction of legislation in the Scottish Parliament which would require operators in such arrangements to use only vehicles with seatbelts installed.

7.2 This approach is consistent with an on-going petition before the Scottish Parliament's Public Petitions Committee (PE1098), which was introduced in 2007 and calls for provision to be made for ensuring every school bus is installed with 3-point seatbelts for every school child passenger and to ensure that proper regard is given to the safety needs of the children.

7.3 Currently, 17 out of 32 local authorities in Scotland specify that only vehicles fitted with seatbelts may be used in contracts to provide dedicated school transport and a further six require them to be fitted in certain vehicles, such as those used for the transportation of primary pupils only. It is the intention of Scottish Ministers to introduce legislation which would ensure that this requirement becomes uniform and seatbelts are installed on all dedicated school transport in Scotland.

7.4 Amending Schedule 5 to the 1998 Act, by providing an exception to Section E1, will devolve legislative competence to the Scottish Parliament in relation to dedicated school transport and associated safety measures. This will allow Scottish Ministers to introduce legislation in the desired manner. Associated safety measures refer to "construction and equipment" which may be specified in any legislation that Scottish

Ministers may bring forward in relation to dedicated school transport, such as the fitting of seat belts.

## 8. Consultation outcome

Although there has been no general consultation specific to this Order, the Department for Transport was consulted during the drafting of this Order. All amendments contained in this Order have the approval of that department.

## 9. Guidance

No additional guidance is required for this Order.

## 10. Impact

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

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

## 11. Regulating small business

The legislation does not apply to small business.

## 12. Monitoring & review

As the purpose of this Order is to amend the legislative competence of the Scottish Parliament to allow it to legislate in relation to the regulation of the description of motor vehicles and trailers which transport pupils and students in Scotland to and from places where they receive education or training, no monitoring or review of the effects of this Order are required by the UK Government. Any primary legislation introduced in the Scottish Parliament will be scrutinised in the normal way.

## 13. Contact

Emma Lopinska at the Scotland Office Tel: 0131 244 9016 or email: emma.lopinska@scotlandoffice.gsi.gov.uk can answer any queries regarding the instrument.