EXPLANATORY MEMORANDUM TO

The Motor Vehicles (Construction and Use) (Amendment) Regulations (Northern Ireland) 2010

S.R. 2010 No. 179

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department of the Environment to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2 The Statutory Rule is made under Articles 55(1) and (2) and 110(2) of the Road Traffic (Northern Ireland) Order 1995 and is subject to the negative resolution procedure.

1.3 The Rule is due to come into operation on 7th June 2010.

2. Purpose

2.1 This amendment replaces the 2.3 metre maximum width limit, imposed on trailers towed by cars and goods vehicles with a maximum laden weight not exceeding 3500kg, with a maximum width of 2.55 metres, thereby providing harmonisation with European wide construction rules for trailers.

3. Background

3.1 Regulation 7 of the Motor Vehicles (Construction and Use) Regulations (Northern Ireland) 1999 ("C & U Regulations") prohibits most classes of vehicle with a maximum gross weight of 3500 kg or less (cars and light goods vehicles) from towing trailers with a maximum width exceeding 2.3 metres. The C & U Regulations do permit the use of a trailer wider than 2.3 metres, but not more than 2.55 metres, providing it is towed by a vehicle which when laden has a weight greater than 3500 kg.

3.2 The relevant European legislation (Directive 1997/27/EC) specifies masses and dimensions requirements for certain vehicles in order to provide harmonisation of technical requirements in all Member States and to support the internal market. The Directive does not generally permit Member States to prohibit the registration, sale, entry into service or use of vehicles which satisfy the requirements relating to the dimensions set out in its first annex. It permits the approval and therefore use (in EU member states) of trailers with a maximum width of 2.55 metres, although the Directive does not apply to trailers drawn by a two or three wheeled vehicle.

3.3 Compliance with European obligations concerning the free movement of goods within the EU is mandatory.

3.4 The restrictions on the use of trailers above 2.3 metres were imposed for reasons of road safety. This limit was set prior to the introduction of EU harmonised rules and the need to meet EU law.

3.5 The objective of this amendment is to permit a small increase (25cm) in the width of trailers towed by cars and goods vehicles with a maximum laden weight of 3500kg or less to align with harmonised European construction rules. It will offer a greater choice of trailers, including caravans, which can be towed by cars and light goods vehicles and ensure compliance with our European obligations to permit EU approved vehicles on our roads.

4. Consultation

4.1 The Department consulted on a draft of these Regulations in February 2010 and a total of 9 responses were received. Two were in favour of the proposal and six either had no cause for concern or offered no comment.

4.2 A response raised concern about the impact of the change on the UK caravan industry if larger European caravans were permitted to be used here without sufficient time for the UK industry to design new wider products to compete. It is accepted that the short notice for the proposed introduction, as a result of EU infraction, might not provide UK manufacturers with sufficient time to design and develop wider products to compete with European industry immediately. However, we cannot retain a restriction on width for the purpose of protecting UK manufacturers from competition from manufacturers based in other Member States.

5. Equality Impact

5.1 A full EQIA was not required as it was not deemed to impact negatively on any of the groups identified by section 75 of the NI Act 1998.

6. Regulatory Impact

6.1 A Regulatory Impact Assessment of the effect that this instrument will have on the costs of business is available from the Department of the Environment at www.roadsafetyni.gov.uk.

7. Financial Implications

7.1 None.

8. Section 24 of the Northern Ireland Act 1998

8.1 The Regulations are not incompatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1 The Regulations implement Directive 97/27/EC, relating to the masses and dimensions of certain categories of motor vehicles and their trailers i.e. maximum trailer width, in order to provide harmonisation of technical requirements in all Member States. These Regulations will align Northern Ireland with harmonised European construction rules to permit the use of trailers with a maximum width of 2.55 metres.

10. Parity or Replicatory Measure

10.1 The GB equivalent Regulations are the Road Vehicles (Construction and Use) (Amendment) (No. 2) Regulations 2010 [S.I. 2010 / 964]. The 2010 Regulations mirrors the GB SI.

11. Additional Information

11.1 Not applicable.

TRANSPOSITION NOTE

This Transposition Note is produced to accompany the Motor Vehicles (Construction and Use) (Amendment) Regulations (Northern Ireland) 2010 and shows how the Department has transposed:

Section 7.3.2.1 of Annex I referred to in Article 2 of the Directive 97/27/EC.

For the purpose of this Note:

"Directive 96/53/EC" means Council Directive 96/53/EC of 25th July 1996 laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic.

"Directive 97/27/EC" means Directive 97/27/EC of the European Parliament and of the Council of 22nd July 1997 relating to the masses and dimensions of certain categories of motor vehicles and their trailers and amending Directive 70/156/EEC.

"Directive 2001/85/EC" means Directive 2001/85/EC of the European Parliament and of the Council of 20th November 2001 relating to special provisions for vehicles used for the carriage of passengers comprising more than eight seats in addition to the driver's seat, and amending Directives 70/156/EEC and 97/27/EC.

"Directive 2003/19/EC" means Commission Directive 2003/19/EC of 21st March 2003 amending, for the purposes of adapting to technical progress, Directive 97/27/EC of the European Parliament and of the Council relating to the masses and dimensions of certain categories of motor vehicles and their trailers.

"1999 Regulations" means the Motor Vehicles (Construction and Use) Regulations (Northern Ireland) 1999 (S.R. 1999 No. 454).

"2010 Regulations" means the Motor Vehicles (Construction and Use) (Amendment) Regulations (Northern Ireland) 2010.

These Regulations do what further is necessary to implement section 7.3.2.1 of Annex I referred to in Article 2 of the Directive 97/27/EC.

Directive 97/27/EC of 22nd July 1997 relating to the masses and dimensions of certain categories of motor vehicles and their trailers.

Directive 97/27/EC as amended by Directives 2001/85/EC and 2003/19/EC			
Articles	**Objectives**	**Implementation**	**Responsibility**
Article 2	Article 2 states (amongst other things) that no Member State may refuse entry into service or use of a vehicle on grounds relating to its dimensions if these satisfy the requirements set out in Annex I. The requirements contained in Annex I include a maximum width of 2.55 metres, that being the width for vehicles specified in section 1.2 of Annex I to Directive 96/53/EC.	Regulation 7(1) of the 1999 Regulations provides for maximum widths for different types of vehicle. This provision is amended by regulation 2 of the 2010 Regulations.This amendment permits trailers up to a maximum width of 2.55 metres to be towed by all motor vehicles apart from those with two and three wheels, as these have their own specific EU requirements.	The Department of the Environment

Regulatory Impact Assessment

1. Title of Proposal

Impact assessment of legislation increasing the permitted width of certain trailers towed by vehicles with a maximum gross weight of 3500kg.

2. Purpose and intended effect of measure

(i) Objectives

In Northern Ireland, national rules prohibit cars and light goods vehicles with a maximum gross weight of 3500kg or less from towing trailers with a maximum width exceeding 2.3 metres. However, European legislation generally permits the approval and therefore use in Member States of trailers with a maximum width of 2.55 metres.

To address this disparity and comply with European obligations concerning the free movement of goods within the European Union, it is necessary to amend Northern Ireland legislation on trailer width. Not doing so could risk current infraction proceedings leading to possible fines from the European court.

The objective therefore is to permit a small increase (25cm) in the width of trailers towed by cars and goods vehicles with a maximum gross weight of 3500kg or less. The effect of this de-regulatory measure will be to achieve harmonised rules on trailer width and to offer consumers a greater choice of trailers, including caravans, which can be towed by cars and light goods vehicles. It will also ensure that we comply with our European obligations to accept EU approved vehicles to enter into service on our roads.

(ii) Background

The requirements for motor vehicle and trailer overall widths are prescribed in regulation 7 of the Motor Vehicles (Construction and Use) Regulations (NI) 1999 (C&U Regulations). This regulation does not permit trailers (including caravans) with an overall width exceeding 2.3 metres to be towed by any vehicle (other than a motor cycle) with a maximum gross weight not exceeding 3500kg. Definitions of overall width and maximum gross weight are set out in **Annex A**.

Regulation 7 of the C&U regulations conflicts with Directive 1997/27/EC with regard to the requirements on trailer construction. Under its European obligations the Government must not have disproportionate rules which restrict use of trailers lawfully manufactured or marketed elsewhere within the internal market. It is therefore necessary to amend the C&U Regulations so as to harmonise the C&U provision on trailer width with EC law.

3. Options

Option 1: No action – retain non-harmonised national rules on trailer width

Costs

The UK Government would likely face financial penalties for non-compliance.

Non-compliance with Directive 1997/27/EC is effectively a barrier to trade. It would reduce the variety of products available to the consumer as well as reduce competition in the Northern Ireland market. Manufacturers / retailers would face barriers to entry into the NI market as their larger trailers (built to EU specifications and sold across the EU) could not be legally towed on NI or GB roads by cars and light vans.

Benefits

The European market for 2.3 metre wide trailers and caravans is likely to be small, limited to products intended for the UK market, although this has not been quantified. Domestic manufacturers / retailers might be more dominant in such a market.

Option 2: adoption of EU specifications

Costs

If there is market demand for wider trailers producers may need to introduce additions to their stock to be competitive. However, given that the proposed amended regulation would be permissible, ie., would allow the wider specification, this would be at their discretion. They may in any case already produce for the EU market, in which case they will already have “wider” goods in the current stock.

Domestic retailers and manufacturers potentially face increased competition as trailers built to EU specifications are now allowed to enter the domestic market. Depending on the intensity of competition (if any) this could impact on domestic manufacturers / retailers.

The safety risk is considered low as the increase in size is marginal and is unlikely to be hazardous given that the specifications are permitted and in use throughout the EU. The provision of update guidance on towing may be considered necessary.

Benefits

The disparity between domestic and EU legislation effectively serves as a barrier to entry of EU specification trailers entering the domestic market. Harmonisation

would lead to an increase in competition. Retailers and manufacturers who had sold / produced products to the EU specification up to the change in legislation would have an increase in their potential market. This could lead to increased sales and orders for domestic firms that are able to compete on this scale of market, leading to expansion and job creation.

Consumers would benefit from a wider choice of products; being unconstrained by specification they could choose freely between domestic and EU produced trailers. Greater competition should drive prices downwards leading to greater consumer gain

Benefits / costs assume that specifications are policed. They would be undermined if enforcement of domestic specifications were not rigorously policed. It could of course be possible that there are a number of EU specification trailers already on domestic roads.

4. Costs and benefits - summary

The costs and benefits that are likely to arise as a result of the proposed legislation are entirely dependent on the current state of the market for trailers and to what extent EU trailers may or not be already present on NI roads. While it is quite likely that some positive benefits are to be gained from the legislation, it is not possible to claim full confidence in the robustness of these benefits.

For the change to provide net benefits overall it would be necessary to assume that the proposed legislation would allow local retailers and manufacturers to expand their businesses due to the removal of a barrier to trade and that consumers would benefit from more choice at lower prices. At this stage however, given the uncertainties regarding the market structure and until more information becomes available, the judgement on net benefits from the change is debatable.

It is therefore very difficult at this stage to estimate the likely costs and benefits from the adoption of the EU specification due to uncertainty on what effects the proposed change in legislation will have on domestic manufacturers and retailers and their target markets. No quantitative evidence was provided during the consultation (see paragraph 7).

Nonetheless, adopting the EU standards for trailers would remove a barrier to competition which could benefit businesses (trailer manufacturers, importers and retailers) and consumers. Harmonisation means that those retailers and manufacturers that target both the domestic and EU markets would have reduced costs as they could specialise in selling / producing a single standard product to a single rather than segmented market.
On the other hand, there could be adverse impacts on industry emanating from the specification change that may result in new design costs or the buying of new stock to sell at retail level. Manufacturers / retailers may also face increased competition from EU counterparts who could consequently target the local market with their European standard. However, consumers should benefit as the increased competition should drive down price as well as increase choice.

5. Enforcement and Sanctions

The Driver and Vehicle Agency and the Police Service of Northern Ireland would enforce the proposed amendment to the proposed Regulations. However, this is not expected to increase their workload.

6. Other Impact Assessments

There are no equality, human rights, environmental, rural or health issues involved. In addition, the proposed measure will have no impact on development, sustainable or otherwise.

7. Consultation

A consultation was issued on 1 February 2010 to key stakeholders indicating that the legislation governing the width of certain trailers must be aligned with European Community law and inviting comments on the proposed Regulations. The consultation closed on 1 March 2010.

There were 9 responses to the consultation. 2 were in favour of the proposal and 6 either had no cause for concern or offered no comment. One response was on behalf of the caravan industry in the UK regarding the timing of the proposed amendment. Their primary concern was about the impact of the change on the UK caravan manufacturing industry if larger European caravans were permitted to be used here without sufficient time for the UK industry to design new wider products to compete. The concern was that large numbers of European made caravans, unsold in the recent economic downturn, could quickly be offered for sale in the UK at discounted prices to the detriment of UK caravan manufacturers. The Department was asked to delay implementation of the proposal until at least 1 September 2011 to allow manufacturers to adjust their production processes to develop and deliver wider products to market and effectively compete with European manufacturers.

It is accepted that the short notice for the proposed introduction, as a result of the EC infraction proceedings, might not provide manufacturers with sufficient time to design and develop products to compete with European industry. At the same, the current situation has been advantageous for UK industry – the national restriction on width has meant that the larger European caravans could not be used in GB and Northern Ireland and that European manufacturers have had to offer a specific UK model at a maximum width of 2.3 metres.

It is possible to defer implementation to meet the caravan industry concerns. However, the European Commission has made it clear that it views our national restriction on width as a barrier to free trade. Making the regulations as soon as possible is in line with a commitment given to the Commission in the context of infraction proceedings, it reduces the risk of the Commission proceeding to the next stage of the infraction and reduces the risk of the Government having to pay “Francovich” damages to manufacturers in other Member States who may claim

that current restrictions have caused them financial damage. (The Francovich principle of EU law, established in the case of Andrea Francovich & Others v. Italy, concerned a compensation scheme which Italian workers were entitled to under an EU Directive. The case established the idea of state liability for compliance with EU law.)

The caravan industry raised another issue regarding Value Added Tax. Currently caravans with a width of 2.3 metres or less and towed by cars attract VAT at standard rate (17.5%). Wider caravans which cannot lawfully be towed by passenger cars, but can be towed by heavier vehicles, are zero rated for VAT purposes. The proposed change to our regulations would result in the standard rate of VAT being applied to all caravans which are towed by road vehicles. Initial fears of the NCC that wider caravans (above 2.3m wide) would remain VAT free (and thus be considerably cheaper than current UK products) proved unfounded as the tax rules are linked to our construction and use rules and will automatically extend to cover wider caravans.

Department for Transport officials discussed options with the caravan industry on behalf of the UK. Ideally the industry wanted deferral of any action until September 2011 to allow UK industry to develop products to compete with European manufacturers. However, they indicated that, if it was not possible to delay the proposed legislation, it must be introduced so that VAT is applied equally to UK and EU manufactured caravans. As indicated above, such application of VAT would in fact apply.

DRAFT MOTOR VEHICLES (CONSTRUCTION AND USE) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2010

DECLARATION

I have read the Regulatory Impact Assessment and am satisfied that the benefits justify the costs.

Signed: **……**

DEIRDRE KENNY
Director of Road Safety Division

Contact Point

For further information please contact:

Uel Banks
Department of the Environment
Road Safety Division
Clarence Court
Belfast
BT2 8GB
Tel No (028) 9054 0608
E-mail: uel.banks@doeni.gov.uk

Annex A

Definitions – overall width and maximum gross weight

Overall width means-

the distance between longitudinal planes passing through the extreme lateral projecting points of the vehicle inclusive of all parts of the vehicle, of any receptacle which is of permanent character and accordingly strong enough for repeated use, and any fitting on, or attached to, the vehicle except—

(a) any driving mirror;

(b) any snow-plough fixed in front of the vehicle;

(c) so much of the distortion of any tyre as is caused by the weight of the vehicle;

(d) any receptacle specially designed to hold and keep secure a seal issued for the purposes of customs clearance;

(e) any lamp or reflector fitted to the vehicle in accordance with the Lighting Regulations;

(f) any sideboard which is let down while the vehicle is stationary in order to facilitate its loading or unloading;

(g) any fitting attached to part of, or to a receptacle on, a vehicle which does not increase the carrying capacity of the part or receptacle but which enables it to be

– transferred from a road vehicle to a railway vehicle or from a railway vehicle to a road vehicle;

– secured to a railway vehicle by a locking device; and

– carried on a railway vehicle by the use of stanchions;

(h) any sheeting or other readily flexible means of covering or securing a load;

(i) any receptacle with an external width, measured at right angles to the longitudinal axis of the vehicle, which does not exceed 2.5 m;

(j) any empty receptacle which itself forms a load;

(k) any receptacle which contains an indivisible load of exceptional width;

(l) any receptacle manufactured before 30th October 1985, not being a maritime container (namely a container designed primarily for carriage on sea transport without an accompanying road vehicle)

(m) any special appliance or apparatus as described in regulation 81(c) which does not itself increase the carrying capacity of the vehicle; or

(n) any apparatus fitted to a bus which enables it to be guided wholly or mainly by means of wheels bearing outwards against fixed apparatus, provided that no part of the apparatus projects more than 75 mm beyond the side of the bus when the wheels of the bus are parallel to its longitudinal axis;

and the reference in paragraph (n) above to the side of a bus is a reference to the longitudinal plane passing through the extreme lateral projecting points of the vehicle inclusive of all parts of the vehicle, of any receptacle which is of permanent character and accordingly strong enough for repeated use, and

any fitting on, or attached to, the vehicle except those items referred to in paragraphs (a) to (n).

Maximum Gross Weight means-

The sum of the weights to be transmitted to the road surface by all the wheels of the motor vehicle (including any load imposed by a trailer, whether forming part of an articulated vehicle or not, on the motor vehicle).