

Explanatory Memorandum to The Use of Invalid Carriages on Highways (Amendment) (Wales) Regulations 2015

This Explanatory Memorandum has been prepared by the Department for Economy, Science and Transport and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of amendments to "The Use of Invalid Carriages on Highways Regulations 1988". In relation to the attached Regulatory Impact Assessment, I am satisfied that the benefits justify the likely costs.

Edwina Hart MBE CStJ AM
Minister for Economy, Science and Transport
18 March 2015

1. Description

1.1 The Welsh Government intends to amend the weight limits for the Class 2 and Class 3 categories of invalid carriage (powered wheelchairs and mobility scooters).

1.2 The Welsh Government wants to enhance mobility for disabled people under the age of 14 by creating opportunities for promoting access. The Welsh Government also wants to enhance the mobility of adults and people over the age of 65 to improve access and quality of life.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 None.

3. Legislative background

3.1 Mobility vehicles, mobility scooters, wheelchairs and powered wheelchairs all come under the umbrella term “invalid carriages”.

The Use of Invalid Carriages on Highways Regulations 1988” divide different types of invalid carriage into three main categories: Class 1, Class 2 and Class 3:

- The Class 1 category of invalid carriage refers to those which are not mechanically propelled
- The Class 2 category of invalid carriage refers to those which are mechanically propelled but which are so constructed or adapted as to be incapable of exceeding a speed of 4 miles per hour on the level under their own power
- The Class 3 category of invalid carriage means a mechanically propelled invalid carriage which is so constructed or adapted as to be capable of exceeding a speed of 4 miles per hour but incapable of exceeding a speed of 8 miles per hour on the level under its own power.

3.2 The current Regulations specify weight limits on the unladen weight of these categories of invalid carriage. “Unladen” is defined in the 1988 Regulations as “the weight of the invalid carriage inclusive of the weight of water, fuel or accumulators used for the purpose of the supply of power for its propulsion and of loose tools, but exclusive of the weight of any other load or of a person carried by the invalid carriage”.

3.3 The 1988 Regulations specify that the unladen weight of a Class 2 invalid carriage shall not exceed 113.4kg and that the unladen weight of the Class 3 category of invalid carriage shall not exceed 150kg.

3.4 If an invalid carriage exceeds 254 kg in unladen weight it will not be classified as an "invalid carriage for the purposes of the Road Traffic Act

1988; the Road Traffic Offenders Act 1988 (the "RTOA"); the Road Traffic Regulation Act 1984 (the "RTRA"); and of the Road Vehicles (Construction and Use) Regulations 1986 (SI 1986/1078) (the "Construction and use Regulations"). It will, instead be a motor car or, if it has less than four wheels and the weight does not exceed 410 kg, a motor cycle.

4. Purpose and intended effect of the legislation

4.1 The Welsh Government proposes to amend the weight limits for the Class 2 and Class 3 categories of invalid carriage.

4.2 The Welsh Government is not proposing to amend the weight limit of the Class 1 category of invalid carriage. We take the view that it is unnecessary to increase in law the weight limit of this type of invalid carriage as the increased heaviness/weight of the invalid carriage might not always be commensurate with the physical strength of the user or the assistant who propels the invalid carriage.

4.3 Since the 1988 Regulations came into force, technological advancements have made it possible for features meeting various medical needs to be fitted onto these categories of invalid carriage, for example, the carriage of oxygen cylinders and other features (such as back recline and 'sit to stand' mechanisms which improve the user's circulation).

4.4 The technological developments described can increase the weight of these categories of invalid carriage. In some instances, the increased weight takes these categories of invalid carriage above the legal limit for using them on the highways. This has the effect of reducing mobility for people who depend on adaptations/equipment when using their invalid carriage. There are implications for people under the age of 14 who are not permitted by law to use the Class 3 category of invalid carriage which have a higher unladen weight limit than the Class 1 or Class 2 categories of invalid carriage. The 1988 Regulations prescribe that users of the Class 3 invalid carriage must be aged at least 14 years.

4.5 The Welsh Government proposes to retain the current unladen weight limit for the Class 2 category of invalid carriage (a weight of 113.4kg) but to exclude from the calculation the weight of equipment that is necessary to satisfy the clinical, postural, hygienic, caring or nursing requirements of users. This means effectively increasing the legal weight limit for the Class 2 category of invalid carriage to a maximum of 200kg. This would have the effect of enabling children under the age of 14 to use the Class 2 category of invalid carriage with attached oxygen cylinders and/or other necessary equipment on footpaths or pedestrian areas.

4.6 The Welsh Government also proposes to retain the current unladen weight limit for the Class 3 category of invalid carriage (a weight of 150 kg) but to exclude from the calculation the weight of medical equipment. This means effectively increasing the legal weight limit for the Class 3 category of invalid carriage to a maximum of 200kg. Increasing the weight limit for the

Class 3 category of invalid carriage would help more adults/older people who can use this class of invalid carriage on roads. This is particularly important given the increasingly ageing population.

4.7 The Welsh Government has not identified road safety or pedestrian safety issues in relation to the proposed amendment of the 1988 Regulations. However, the Welsh Government wants to gather a more robust evidence base in relation to Wales.

4.8 The Welsh Government will work with the Department for Transport at UK level to analyse statistical data relating to accidents involving the Class 2 and Class 3 categories of invalid carriage. The Welsh Government will take steps to promote knowledge and awareness of the 'Highway Code for Mobility Scooter Users'. The Welsh Government recognises that there is a need to improve the quality and availability of guidance and training for users, manufacturers and providers of these categories of invalid carriage.

Welsh Government Objectives

4.9 The Welsh Government wants to:

- enhance the mobility of disabled people under the age of 14 by creating opportunities for promoting access
- enhance the mobility of those adults and people over the age of 65 to improve access and quality of life

Why the proposed changes are necessary

4.10 The proposed changes are necessary for the following reasons:

- The proposed amendments will fit in with wider Welsh Government policies for promoting equality and increasing access – for example:
 - The Framework for Action on Independent Living supports the Welsh Government's Strategic Equality Plan and Objectives. The Framework supports Objective 5: To "tackle barriers and support disabled people so that they can live independently and exercise choice and control in their daily lives". The Framework is based on the Social Model of Disability which examines the barriers to equality and inclusion faced by disabled people and the actions needed to address them
 - Similarly, the Social Services and Well-being (Wales) Act 2014 places an emphasis on ensuring people are assessed on what they need and focusses on achieving outcomes people want for themselves and what they want to achieve
- The amendment of The Use of Invalid Carriages on the Highways Regulations 1988 complies with the United Nations Convention on the Rights of Disabled People. The Convention explicitly sets out the rights of disabled people and sets out what governments must do to promote and

protect these rights. The Convention establishes internationally recognised benchmarks for disabled people's rights in all areas of life, including the right to independent living and being part of the community

- In England, Baroness Kramer approved and signed the Statutory Instrument entitled 'The Use of Invalid Carriages on Highways (Amendment) (England and Scotland) Regulations 2015' in January 2015. The Statutory Instrument was laid before Parliament on Monday 2 February. The coming into force date was 9 March 2015. Given this, the Welsh Government wants to avoid the potential for disabled people being disadvantaged by regulations in Wales, compared to England
- The Welsh Government is committed to promoting access, particularly for an ageing population. By 2033, it is expected that almost 26% of the population in Wales will be over 65 – a proportion of this particular demographic will be disabled people who need to use the different categories of invalid carriage
- A proportion of users of the Class 2 category of invalid carriage are under the age of 14 years old

5. Consultation

5.1 This draft Regulatory Impact Assessment and Explanatory Memorandum has been published alongside the consultation outcomes.

5.2 The details of the consultation, which was undertaken between 8 August and 31 October 2014, are provided in the Regulatory Impact Assessment below.

PART 2 – REGULATORY IMPACT ASSESSMENT

There is a lack of data on which to base a quantified assessment of the costs and benefits associated with the proposed policy change and it is considered to be disproportionately costly to gather the data that would be required. The following is therefore a qualitative assessment of the likely costs and benefits.

Options

1.1 There are two options considered in this assessment:

- To do nothing/maintain the status quo;
- To amend the weight limits for different categories of invalid carriage, particularly in relation to Class 2 and Class 3.

Costs & benefits

Option 1: Do Nothing

2.1 There are no additional costs associated with this option.

2.2 The current regulations specify weight limits on the unladen weight of the different categories of invalid carriage. "Unladen" is defined in the 1988 Regulations as "the weight of the invalid carriage inclusive of the weight of water, fuel or accumulators used for the purpose of the supply of power for its propulsion and of loose tools, but exclusive of the weight of any other load or of a person carried by the invalid carriage".

2.3 The 1988 Regulations specify that the unladen weight of a Class 2 invalid carriage shall not exceed 113.4kg and that the unladen weight of a Class 3 invalid carriage shall not exceed 150kg.

2.4 If an invalid carriage exceeds 254 kg in unladen weight it will not be classified as an "invalid carriage for the purposes of the Road Traffic Act 1988; the Road Traffic Offenders Act 1988 (the "RTOA"); the Road Traffic Regulation Act 1984 (the "RTRA"); and of the Road Vehicles (Construction and Use) Regulations 1986 (SI 1986/1078) (the "Construction and use Regulations"). It will instead be classed as a motor car or, if it has less than four wheels and the weight does not exceed 410 kg, a motor cycle.

2.5 Technological developments which have occurred since the 1988 Regulations were made, particularly the incorporation of equipment on to the different categories of invalid carriage to meet users' medical needs, have increased the weight of the Class 2 and Class 3 categories of invalid carriage. In some instances, the increased weight takes the different categories of invalid carriage above the legal limit for using them on the highways. This has the effect of reducing mobility for people who depend on special adaptations/equipment when using their invalid carriage. This has serious implications for people under the age of 14 who are not permitted by law to use the Class 3 category of invalid carriage (which has a higher unladen weight limit than the Class 2 category of invalid carriage).

Advantages of the Current Position

2.6 There is no evidence/data to suggest that current weight limits (which are intended to protect the safety of other road users in the event of a collision) have safety implications for pedestrians.

Option 2

3.1 To amend the weight limits for different categories of invalid carriage, particularly in relation to Class 2 and Class 3, to improve the mobility of invalid carriage users with acute clinical/medical needs.

Cost

3.2 There is no quantitative data in relation to the use of the Class 2 and Class 3 categories of invalid carriage in Wales. However, data from the British Healthcare Trades Association (BHTA) suggests that there are between 300,000 and 350,000 users of mobility scooters in the UK¹. However, the Welsh Government does not anticipate that there will be significant costs to manufacturers, retailers or users of the Class 2 and Class 3 categories of invalid carriage. By increasing the independence of some users of the Class 2 and Class 3 categories of invalid carriage, there may be some cost savings arising from those users relying less on social services, including care services. It is difficult to quantify these cost savings without case studies or the existence of statistical data which could be analysed.

3.3 The Welsh Government anticipates that the manufacturers and retailers of the Class 2 and Class 3 categories of invalid carriage may choose to provide a wider range of goods and services in response to the demands of users for special equipment/adaptations to their invalid carriage. As a consequence, these amendments may benefit these organisations, especially as the Welsh Government anticipates that manufacturers and retailers would only develop new products where there are net benefits to the business. However, where manufacturers or retailers offer additional products as a result of increased demand, there would be temporary costs (such as those arising from understanding the new Regulations and training staff). Moreover, if entirely new products were developed, there would be costs associated with design, testing and manufacturing.

3.4 There may be potential cost implications for organisations in the public and private sectors, particularly costs associated with ensuring disability ramps, lifts and elevation platforms are able to accommodate heavier Class 2 and Class 3 categories of invalid carriages. It is difficult to quantify the scale of the possible costs in the absence of meaningful data. However, it can be argued that local authorities have a responsibility to undertake this work in any case, irrespective of the amendments to the 1988 Regulations².

¹ Mobility scooters: a market study, May 2014, Research Institute for Consumer Affairs

² The Equality Act 2010 requires providers of goods and services to the public to make 'reasonable adjustments'. This means putting things in place that make it easier for disabled people to access goods and services. Reasonable adjustments must prevent disabled people being placed at a substantial disadvantage compared to their non-disabled counterparts. Failure to comply with the reasonable adjustment requirement amounts to discrimination against a disabled person to whom the duty is owed. What is reasonable depends, among other factors, on the size and nature of the organisation and the nature of the goods, facilities or services they provide. In addition, specific duties have been imposed on public authorities by the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 and the Equality Act 2010 (Specification of Relevant Welsh Authorities) Order 2011. These have strengthened the requirement on public authorities to have due regard to the need to eliminate discrimination and

3.5 There may be cost implications for local authorities in terms of providing dropped/lowered kerbs; widened pavements; and extra places to enable users to cross roads. However, it can be argued that local authorities have a responsibility to undertake this work in any case, irrespective of the amendments to the 1988 Regulations.

Advantages

3.6 The Welsh Government anticipates that the proposed amendments will have a positive impact on the mobility, independence and quality of life of a small proportion of invalid carriage users whose need for specialist equipment would take the weight of their carriage above the current limit set by the 1988 Regulations.

3.7 There is a possibility that the overall impact on business will be positive, particularly the possibility of increased revenue for manufacturers and retailers (as described in paragraph 3.3). The proposed amendments may create new commercial opportunities for these businesses whether small, medium or large.

Disadvantages

4.1 The principal disadvantage of the proposed amendments is the increased possibility of damage or injury in the event of a collision between a heavier invalid carriage and other highway users and in particular pedestrians. There is currently only limited data available on the number of accidents involving invalid carriages or the severity of those accidents. From 2015, the UK Government's Department for Transport will be analysing statistical data, collected by the Police, on accidents involving an invalid carriage. We will be monitoring the outcomes to identify trends in accidents to enable us to assess the safety impacts of the amendments. However, the Welsh Government does not expect that the number of the heavier categories of Class 2 and Class 3 invalid carriage on the highways and roads will increase significantly as a result of this amendment, as there are very few people who require the specialist equipment identified in the Regulations.

4.2 There may be cases where a heavier invalid carriage combined with the user's body weight may prevent the user from taking their invalid carriage on to public transport where the maximum permitted weight on access ramps is 300kg. However, we do not consider that this will be an issue for many invalid carriage users and we do not consider that it is a valid or sufficiently robust reason for not implementing a measure which will improve the mobility and independence of a greater number of invalid carriage users.

4.3 There may be cost implications associated with creating an environment where access is easier for disabled people who use the Class 2 and Class 3 categories of invalid carriage. These cost implications will affect the public and private sectors generally. However, it can be argued that the public and private sectors have a responsibility to undertake this work in any case, irrespective of the amendments to the 1988 Regulations.

Summary of the Preferred Option

While it has not been possible to undertake a quantified assessment of the costs and benefits, we consider that the benefits associated with the increased mobility, independence and quality of life to the invalid carriage users are sufficient to justify the increased risk posed by heavier invalid carriages to other highway users.

Consultation

This draft Regulatory Impact Assessment and Explanatory Memorandum has been published alongside the consultation on proposed amendments.

The consultation was held between Friday 8 August–Friday 31 October 2014. The Welsh Government received 21 written responses from a range of stakeholders, namely local authorities; members of the public; third sector organisations (charities); interest groups; Community Health Councils; companies (in the mobility sector); and the Association of Chief Police Forces Cymru.

Stakeholders who responded were unanimous in their support for the proposed amendments to the 1988 Regulations, particularly given the positive impacts on disabled people who use the Class 2 and Class 3 categories of invalid carriage (such as increased social and economic participation; and greater independence and access).

Stakeholders recognised that the proposed amendments fed into related Welsh Government policies, such as the Framework for Action on Independent Living (which aims to facilitate and improve independent living for disabled people) and the Social Model of Disability (which recognises that it is the barriers to disability, rather than the impairments of disabled people, which prevent disabled people from living independently in the community).

However, stakeholders expressed concerns in relation to certain issues:

- Terminology – the term “invalid carriage” is seen by some stakeholders as being anachronistic and offensive
- Safety issues – concerns regarding the impact of the heavier Class 2 and Class 3 categories of invalid carriage on the safety of pedestrians; concerns regarding the use of drugs or mobile phones by users and the wider implications for public safety; the impact(s) of increased weights on ramps and lifts; and the lack of driver training or tests for users

- Access issues – ramps and lifts need to be suitable for the heavier Class 2 and Class 3 categories of invalid carriage ; manufacturers, when designing the Class 2 and Class 3 categories of invalid carriage, need to consider the challenges of steep gradients and uneven surfaces; and transport operators need a marking scheme to help them decide which type of invalid carriage can be allowed on to trains and buses
- Practical issues – the emergence of cross-border issues and the need for users of the Class 2 and Class 3 categories of invalid carriage to be licenced and insured

The Minister agreed to the following recommendations:

- Terminology
 - It would require primary legislation to change the terminology but there are currently no plans to introduce this legislation
- Safety issues
 - Whilst the Welsh Government will give careful consideration to safety issues, these will need to be balanced against the priority of promoting access and inclusion for disabled people who use the Class 2 and Class 3 categories of invalid carriage
 - Welsh Government will assess the outcomes of the Department for Transport's exercise to gather information on the extent to which the Class 2 and Class 3 categories of invalid carriage present a risk to pedestrians
 - Welsh Government will take steps to promote knowledge and awareness amongst stakeholders of the Highway Code for Mobility Scooter Users
 - Welsh Government will work with partners to communicate key information about the law governing the use of the Class 2 and Class 3 categories of invalid carriage to stakeholders
- Practical issues
 - Where appropriate, the Welsh Government will impart relevant advice on licencing and insurance

The Minister also agreed

- That officials establish a Working Group to consider issues in relation to training, insurance and communications with relevant stakeholders

Competition Assessment

It is not possible to form a definitive view on the effect of competition. However, the proposal is likely to open up the invalid carriage market.

Post implementation review

The Welsh Government will monitor the success of the amendments to the 1988 Regulations by engaging with stakeholders, including those representing the invalid carriage industry, invalid carriage users, pedestrians and other highway users.

If evidence of significant disadvantages arise in future, the Welsh Government will revisit the policy on the Class 2 and Class 3 categories of invalid carriage.

The paucity of statistics on invalid carriage use places a restriction on our ability to monitor the impact of the proposed amendments in quantitative terms. From April 2013, the Police started collecting statistics on accidents involving the invalid carriage. The UK Government's Department for Transport aims to assemble comprehensive data from 2015 and subsequent trends in these statistics will provide some indication of the safety impacts of the amendments. We will liaise with the Department for Transport and consider the outcomes of the statistical analysis in order to identify any associated risks which need to be mitigated, and consider whether further regulatory changes are required.

APPENDIX A

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No