

# Seat Belts on School Transport (Scotland) Bill

[As Amended at Stage 2]

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## Supplementary Financial Memorandum

### Introduction

1. As required under Rule 9.7.8B of the Parliament's Standing Orders, this Supplementary Financial Memorandum is published to accompany the Seat Belts on School Transport (Scotland) Bill as amended at Stage 2.
2. The Memorandum has been prepared by the Scottish Government to support Gillian Martin MSP, the member in charge of the Bill. It does not form part of the Bill and has not been endorsed by the Parliament. It should be read in conjunction with the Financial Memorandum, published to accompany the Bill as introduced on 28 February 2017.<sup>1</sup>
3. This Supplementary Financial Memorandum follows assurances to the Parliament by the Scottish Ministers to undertake additional engagement with local government in order to further explore and refine cost forecasts associated with the provisions in the Bill as introduced. The Memorandum also examines the costs associated with Stage 2 amendments.

### Update on estimated costs – Bill as introduced

4. The estimates in the Financial Memorandum were calculated using an established methodology for costing statutory responsibilities on local government – the so-called 'new burdens' protocol. This process, which has previously been undertaken to forecast the financial impact of Bills

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<http://www.parliament.scot/Seat%20Belts%20on%20School%20Transport/SPBill07FMS052017.pdf>

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before the Scottish Parliament, aims to ensure that all local authorities are remunerated for additional duties set by legislation.

5. The estimated cost of the Bill remains at £765,000 per annum nationally, following commencement of the legal duty for vehicles carrying pupils in both primary and secondary education. In keeping with established mechanisms for local government funding allocations, this estimate was based on administration across all local authorities, whether or not they have already contracted for a seat belt requirement in their dedicated school transport. This was in recognition that the new legal commitment would be on-going, rather than being a singular cost outlay at the point of commencement – ensuring that councils which have already undertaken implementation would not be negatively affected.

6. The allocation to specific local authorities will be undertaken at the Settlement and Distribution Group, a body made up of representatives from the Scottish Government and CoSLA, using established criteria. Although an individual council breakdown is therefore not available at this stage, this national figure equates to £23,906 when divided by 32 (the number of local authorities in Scotland). Although in practice this will not be the model for administering distribution, it provides an illustrative example of division at a local level.

7. These indicative figures have been based on a range of assumptions. Feedback from stakeholders which have already contracted for a seat belt requirement in dedicated school transport contracts from 2014, when the Scottish Ministers announced their intention to legislate, has been that the cost implications are not always as high as expected. Therefore the indicative annual figure should be seen as a ceiling of costs.

8. In terms of the length of the funding commitment, the Financial Memorandum set out from paragraph 25 onwards how this could last for 10 years after commencement of the legal duty (although the commencement dates themselves have now been revised after amendment at Stage 2). This timescale is limited because, while the statutory responsibility on local government created by the Bill will remain, it is appropriate that specific funding from central government discontinues over time due to the expectation that the bus market will adapt to the new legislative

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requirement for seat belts so that its costs will be absorbed and priced into future contracts. UK legal requirements on the construction of buses and coaches, which have been in force from 2001, also mean that newer vehicles which are purchased by bus companies over this time period are increasingly likely to have seat belts fitted already.

9. Given how far these projections are forecast into the future, it is particularly challenging to categorically state when the legal duty will no longer be a factor in increasing the cost of contracting for school transport. Yet the decade-long commitment was based on an element of goodwill from the Scottish Government. The ‘new burden’ approach does not involve the continuation of funding after local government stops incurring costs as a consequence of new legal duties. Due to the difficulty with creating a fixed date for the funding to discontinue, the Scottish Government intends to review this in 2023, five years after the new duty comes into force.

10. The estimates in the Financial Memorandum were produced in conjunction with CoSLA and the Scottish Local Government Partnership (SLGP). Three of the previous member councils of the SLGP have now returned as members of CoSLA and therefore the organisation currently represents all but one of Scotland’s local authorities. CoSLA has stated that the annual figure in previous forecasts remains the best estimate on the financial impact of the provisions covering home-to-school transport within the Bill.

## Stage 2 amendments – cost implications

### **Extension of legal duty to cover vehicles used for school trips and excursions**

11. The extension of the legal duty from dedicated home-to-school transport to include vehicles used for trips and excursions essentially puts an established and accepted practice onto a statutory footing. National risk assessment guidance Health & Safety on Educational Excursions<sup>2</sup> covers such trips. It contains stringent risk assessment responsibilities for the group leader on such excursions, including a stipulation that seat belts should be provided. Such vehicles are routinely booked by teachers – who

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<sup>2</sup> Health & Safety on Educational Excursions

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carry out their role in a closely regulated profession – and stakeholder feedback is that this practice is rigorously adhered to already.

12. Additionally, the measures in the Bill as introduced – and costed within the Financial Memorandum – will have already captured much of this provision. There are three general scenarios for organising vehicles used for school excursions: those booked by the local authority for use by the school; those booked by the school itself but using a contract framework with the operators undertaking home-to-school contracts; and those organised by schools themselves separately from local authority involvement. The first two scenarios would use vehicles from companies already undertaking home-to-school provision under the new statutory duty.

13. The Bill applies to the independent and grant-aided sectors as well as to public schools under local authority control. The Scottish Council for Independent Schools canvassed its members on this issue and their feedback was that vehicles used for school excursions are already supplied with seat belts. Likewise, grant-aided schools and Jordanhill School have not reported that this would lead to any implementation costs. Vehicles used are generally minibuses which are already covered by existing legal requirements to have seat belts fitted, rather than the older, larger coaches or double-decker vehicles which the Bill is principally aimed at.

14. Nursery schools have been covered by the Bill since introduction due to the Bill's incorporation of the definition of "primary education" from the Education (Scotland) Act 1980 (now changed after Stage 2 to a reference to "school education", but this still includes early learning and childcare provision). Since introduction the Scottish Government has surveyed the early years sector and gathered feedback from 100 providers across Scotland. All of the respondents to this survey who own or contract vehicles for school transport ensure that such vehicles are supplied with seat belts (and as such there is no change from the Financial Memorandum at introduction resulting from this survey).

15. There is therefore no significant cost implication anticipated with the extension of the legal duty to school excursions.

## **Commencement dates**

16. The Stage 2 amendment which inserted subsection (2A) into section 5 of the Bill brings forward the commencement date for secondary school

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provision from 2021 to 2018. This will pose practical and resourcing challenges for councils which have entered into contracts which run beyond that date, based on their understanding around the original phased introduction timescale. Such contracts will need to be renegotiated or broken and re-tendered.

17. The Scottish Government has surveyed local government on this point, receiving responses representing all 32 councils. This information indicates that those committed to existing contracts beyond that date and which will see such issues are Falkirk Council, Glasgow City Council, West Lothian Council, Stirling Council and Clackmannanshire Council.

18. Indications from these 5 councils are that there is not one uniform model of impact or cost that this would have. This may have significant implications for the councils concerned. Given the lack of precedent for this situation some are unable to give a cost figure. However, the estimates supplied range from a one-off cost of £3,000 to a recurring annual figure of £250,000 over a 4 year contract cycle, equating to £1 million in total for one local authority.

19. Differing terms and conditions within contracts mean that some may have flexibility to alter conditions with sufficient timescales yet incur associated costs. However the commencement date of 2018 gives little scope for notice. Others are likely to have to dissolve the existing contract, incurring the associated termination fees within the legal agreement, and then re-tender. This is likely to result in additional cost increases for the same provision due to local bus operators not being prepared for the new legal requirement and the local commercial market having to adapt without notice.

20. The wide variation given regarding the likely impact, and cost, of this amendment mean it is particularly difficult to authoritatively quantify it under the timescale for submission of this Supplementary Financial Memorandum. It will continue to be explored in more detail by the Scottish Government and local government with a view to refining the current best estimates of the costs of the earlier implementation agreed to at Stage 2, before any Act from the Bill is commenced.

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## Summary

21. The cost ceiling of £765,000 per annum would be scheduled for implementation, by way of the local government block settlement, from financial year 2018/19. This will be reviewed from year 2023/24, after a five-year allocation equating to £3.83 million – with any further financial allocation only being undertaken should the legal duty still be leading to increased contract costs.

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