

Government Response: The Restricted Roads (20 mph Speed Limit) (Wales) Order 2022

Technical Scrutiny point 1:

The Welsh Government accepts the need to make Welsh law as accessible as possible to road users. However, the drafting approach used in article 2(2) of the Order was driven by vires issues rather than the need for accessibility.

Section 81(2) of the Road Traffic Regulation Act 1984 expressly authorises the national authority by order “to increase or reduce the rate of speed fixed by subsection (1) above, either as originally enacted or as varied under this subsection”. The wording of the power is not explicit as to whether textual modification of the rate of speed is authorised. There is no express ancillary power in section 81, or elsewhere in the 1984 Act, to make consequential changes to the section to deal with territorial differentiation in the rate of speed. In order to make a textual amendment, it would be necessary to argue that the power to make ancillary adjustments to section 81 is necessarily implied by the conferral of the section 81(2) power on the Welsh Ministers in relation to Wales.

As s.81 forms part of the law of England & Wales and Scotland any ancillary power implied into section 81(2) to restate the law and make consequential amendments would also need to be capable of making changes to the law as it applies in Scotland.

If Parliament had intended for there to be such ancillary powers it could have included them at any of the points amendments were made to s.81 (via the Scotland Act 2016 or Wales Act 2017) rather than assume they would be implicit.

A person who reads the whole of section 81 will be aware that modification of subsection (1) is possible by order made separately in relation to England, Scotland or Wales; and as a result should be on notice that their enquires on the state of the law cannot stop with reading section 81. In addition, it is already the case that the speed limit in section 81(1) does not apply to everyone, despite there being no indication of the existence of exceptions in section 81 itself (see The Road Traffic Exemptions (Special Forces)(Variation and Amendment) Regulations 2011).

To make the textual modification approach viable at a practical level, the UK and both devolved administrations would need to agree on the approach and keep each other informed of any changes when they occur, which would be difficult to achieve in practice, for instance section 81(5) provides no statutory basis for the Welsh Ministers to consult the Scottish Ministers and vice versa.

On balance therefore, and in view of the uncertainties expressed above, the Welsh Government considers that a non-textual amendment is the safest course to take in respect of assuaging concerns over vires. In doing so, it acknowledges that the drafting approach taken is not ideal but one to which it has been driven by the way in which the powers in the Act are framed.

Merits Scrutiny points 2:

Officials have been in regular contact with the Department of Transport and DVSA for the past 12 months regarding the required revisions to the Highway Code. They have been fully briefed about the Welsh Government plans and proposed legislation to reduce the default restricted roads to 20mph in Wales. Plans are in place for driving test requirements to be amended to comply with the proposed new speed limit, and the printed Highway Code will also be updated accordingly.

Merits Scrutiny points 3:

Officials have considered the points raised before concluding that the impact on the justice system would be slight. In this regard, officials have been working with the Police Forces and there will be mitigations in place for the thresholds noted in the RIA. However, it would be counter-productive to the objectives to disclose these mitigations in public documents.

In addition, officials are providing guidance to local authorities that they can deploy temporary traffic signs to notify road users of reductions in speed limits at key locations where they believe there could be issues with compliance. The local authorities will be able to maintain those temporary signs for 12 months post 17th September 2023.