



**The Law Commission
and
The Scottish Law
Commission**

**(LAW COM. No. 133)
(SCOT. LAW COM. No. 85)**

ROAD TRAFFIC REGULATION BILL

**REPORT ON THE CONSOLIDATION OF THE
ROAD TRAFFIC REGULATION ACT 1967
AND CERTAIN RELATED ENACTMENTS**

*Presented to Parliament by the
Lord High Chancellor and the Lord Advocate
by Command of Her Majesty
February 1984*

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THE LAW COMMISSION AND THE SCOTTISH
LAW COMMISSION

ROAD TRAFFIC REGULATION BILL

REPORT ON THE CONSOLIDATION OF THE
ROAD TRAFFIC REGULATION ACT 1967
AND CERTAIN RELATED ENACTMENTS

*To the Right Honourable the Lord Hailsham of St. Marylebone, C.H., Lord
High Chancellor of Great Britain, and*

*the Right Honourable the Lord Mackay of Clashfern, Q.C., Her Majesty's
Advocate.*

The Road Traffic Regulation Bill which is the subject of this Report seeks to consolidate the Road Traffic Regulation Act 1967 and certain related enactments. In order to produce a satisfactory consolidation, it is necessary to make a number of recommendations which are set out in the Appendix to this Report.

The recommendations numbered 2, 6 to 8, 11, 15 and 18 relate to England and Wales only and are accordingly made by the Law Commission alone. Recommendation no. 12 relates wholly to Scotland and is therefore made solely by the Scottish Law Commission. The remainder are the recommendations of both Commissions.

The departments concerned have been consulted in connection with the recommendations, and they agree with them.

The Greater London Council and various local authority associations have been consulted in connection with recommendation no. 11, which concerns certain financial arrangements between local authorities.

The Council of the Isles of Scilly agree with recommendation no. 15, which concerns the application of the Bill to the Isles.

The Greater London Council have been consulted in connection with recommendation no. 18, which relates to traffic signs on walls in Greater London.

RALPH GIBSON,

Chairman of the Law Commission.

PETER MAXWELL,
8 February 1984.

Chairman of the Scottish Law Commission.

APPENDIX

RECOMMENDATIONS

1. Experimental traffic orders: consultation with the appropriate commissioner of police

Section 9 of the Road Traffic Regulation Act 1967 provides for the making of experimental traffic orders. Subsection (5) enables an order to include provision whereby, in certain circumstances, the order may be modified or wholly or partly suspended by a specified officer of the authority which made the order (or some person authorised by him in that behalf), after consulting with the appropriate commissioner of police and giving such public notice as the Secretary of State may direct.

As originally enacted, subsection (5) was limited to experimental traffic orders made by the Greater London Council. The "appropriate commissioner of police" would be either the commissioner of police of the metropolis or the commissioner of police for the City of London. However, Part VIII of Schedule 34 to the Local Government, Planning and Land Act 1980 repealed the words "made by the Greater London Council", so that section 9(5) now applies to an experimental traffic order made in respect of a road in any police area.

In police areas other than the metropolitan police district and the City, the chief officer of police is not styled "commissioner", and a consequential amendment is therefore needed to make the subsection apply more accurately to those areas.

Accordingly, we recommend that, in re-enacting section 9(5) of the Road Traffic Regulation Act 1967, the words "chief officer" should be substituted for the word "commissioner". Effect is given to this recommendation in clause 10(2)(a) of the Bill.

2. Control of driving over Menai Bridge

Section 19 of the Road Traffic Regulation Act 1967 provides that a motor vehicle shall not be driven on or over the Menai Bridge except in accordance with and subject to any restrictions contained in regulations made by the Secretary of State. Contravention of the regulations is an offence, punishable on summary conviction by a fine not exceeding level 3 on the standard scale as defined by section 75 of the Criminal Justice Act 1982 (at present £200).

No regulations have been made under section 19 and there is no intention to make any in the future. Section 1 of the 1967 Act has been extended by various Acts, including, in particular, the Transport Act 1968 which gives the Secretary of State wide powers to regulate driving on trunk roads. Since the road carried by the Menai Bridge is a trunk road, it is preferable, should controls be needed, to impose them by means of a traffic regulation order under section 1 of the Act. This would ensure that the controls could, if necessary, be made part of a wider scheme of traffic regulation covering roads leading to, or in the vicinity of, the Menai Bridge. Penalty for contravention of a traffic regulation order is a fine not exceeding level 3 on the standard scale, the same as in a case of contravention of regulations made under section 19(1).

Since section 19 does not serve any useful purpose, we consider that it would be wrong for it to be reproduced in the Bill.

Accordingly, we recommend that, in re-enacting the Road Traffic Regulation Act 1967, section 19 should be omitted.

3. Adaptation of land for use as temporary off-street parking place

Section 29(3) of the Road Traffic Regulation Act 1967 empowers a local authority to adapt for use as a "temporary off-street parking place" any land owned or controlled by them, but, in the case of land owned by them, excludes land acquired or appropriated by them for "such a parking place".

Because the only previous reference in the subsection to a parking place is the reference to a temporary off-street parking place, it would seem that the words "such a parking place" are meant to refer to a temporary off-street parking place. This restriction is somewhat puzzling, and, when one examines section 13(4) of the Road Traffic and Roads Improvement Act 1960 (from which section 29(3) is derived) it would appear that no such meaning is intended. Section 13(4) begins with the words "An authority having power under the said section eighty-one [of the Road Traffic Act 1960] to provide off-street parking places may adapt for use as . . .". Section 81 of the Road Traffic Act 1960, which was re-enacted in section 28 of the 1967 Act, conferred power on a local authority to provide permanent parking places. It therefore seems that the words "such a parking place" in section 13(4) of the Road Traffic and Roads Improvement Act 1960 were intended to refer to an off-street parking place provided under section 81 of the Road Traffic Act 1960, thereby precluding a local authority from adapting as a temporary parking place land acquired or appropriated by them for permanent use as a parking place. This intention became obscured in section 29(3) of the 1967 Act, and we believe that the consolidation would be improved if the intention were now to be clearly stated.

Accordingly, we recommend that, in re-enacting section 29(3) of the Road Traffic Regulation Act 1967, the words "use as an off-street" should be substituted for the words "such a". Effect is given to this recommendation in clause 33(2) of the Bill.

4. Determination of charges for use of parking place as a station for public service vehicles

Under section 33(3) of the Road Traffic Regulation Act 1967, if a public service vehicle licence holder considers that the charges fixed by a local authority for the use of a parking place as a station for his vehicles are unreasonable, then, in default of agreement, the charges shall be such as may be determined by the appropriate traffic commissioners.

The reference to a public service vehicle licence holder is obsolete, since Part I of the Transport Act 1980 substituted a system of public service vehicle operators' licences for the system of public service vehicle licences. The relevant provisions of Part I of that Act are now to be found in Part II of the Public Passenger Vehicles Act 1981.

Accordingly, we recommend that, in re-enacting section 33(3) of the Road Traffic Regulation Act 1967, the reference to the public service vehicle licence holder should be replaced by a reference to the holder of a PSV operator's licence, granted under the provisions of Part II of the Public Passenger Vehicles Act 1981. Effect is given to this recommendation in clause 38(4) and (7) of the Bill.

5. Offences relating to parking places on highways where charges are made

Section 42(1) of the Road Traffic Regulation Act 1967 penalises a person who "being the driver of a vehicle, leaves a vehicle in a parking place" otherwise than as authorised or leaves "the vehicle" there for too long a period. Section 42(1) is a re-enactment of section 88(1) of the Road Traffic Act 1960, but it fails accurately to reproduce that provision in that the words "leaves a vehicle" should be "leaves the vehicle". Section 88(1) is, in fact, itself a re-enactment of section 22(1) of the Road Traffic Act 1956, where the words are also "leaves the vehicle".

It therefore seems that the change in wording in the 1967 Act was a simple mistake and, since it was obviously intended that the offence should relate only to the vehicle of which the person in question is the driver, we believe that the mistake should be rectified by returning to the relevant wording of section 88(1) of the 1960 Act.

Accordingly, we recommend that section 42(1)(a) of the Road Traffic Regulation Act 1967 should be re-enacted so that the paragraph begins "being the driver of a vehicle leaves the vehicle in . . .". Effect is given to this recommendation in clause 47(1)(a) of the Bill.

6. Transfer of operation of parking places in Wales

Section 35A of the Road Traffic Regulation Act 1967 was inserted by paragraph 18 of Schedule 19 to the Local Government Act 1972. Section 35A(8) deals with the transfer of the operation of a parking place from one Welsh authority to another. The provision has apparently been modelled on section 35(5)(b) and (c) of the 1967 Act which is concerned with the transfer of the operation of a parking place from the Greater London Council to a London borough council or the Common Council of the City of London. Section 35A(8) provides that where a transfer has taken place the provisions of that section and sections 36, 37, 42 and 44 of the 1967 Act "shall thereafter apply as if the parking place had been designated by order made on the application of the authority to whom its operation is transferred". The words just quoted have clearly been copied from section 35(5)(c). However, since section 35A is dealing with the transfer of parking places in Wales it is meaningless to say that the provisions there referred to shall apply as if the parking place had been designated by order made *on the application* of the authority to whom its operation is transferred because, as section 35(1) provides, it is only in Greater London that designation orders are made (by the Greater London Council) on the application of the local authority. Outside Greater London the local authority may itself make a designation order and, in Wales, "local authority" means the council of a county or of a district (section 35(4)).

It seems most probable that the intention behind the words from "and the provisions of" in section 35A(8) was to apply the provisions of sections 36, 37, 42 and 44 as if the parking place had been designated by order made by the transferee authority. This would, for example, give the transferee authority the power to prescribe the charges to be paid for vehicles left in the parking place in question (section 36(1)).

We therefore recommend that in re-enacting section 35A(8) of the Road Traffic Regulation Act 1967 the word "by" should be substituted for the words "on the application of". Effect is given to this recommendation in clause 54(8) of the Bill.

7. Interpretation of provisions relating to parish parking places

Section 50 of the Road Traffic Regulation Act 1967 contains interpretation provisions for the purposes of sections 46 to 49. One of these provisions provides that "parish", in relation to a common parish council acting for two or more grouped parishes, means those parishes. In addition to sections 46 to 49, this provision is needed for the purposes of section 49A, which was inserted in the 1967 Act by paragraph 22 of Schedule 19 to the Local Government Act 1972. This point seems to have been overlooked when the 1972 Act was passed. The omission creates an anomaly which, we believe, should be corrected by the Bill.

We therefore recommend that the clause in the Bill which is to replace section 50 of the Road Traffic Regulation Act 1967 should relate to expressions occurring in the provisions which correspond to sections 46 to 49A of that Act. Effect is given to this recommendation in clause 60(4) of the Bill.

8. Traffic signs for loading areas

Section 37 of the Local Government (Miscellaneous Provisions) Act 1976 confers power to designate land as a loading area, and includes provisions for placing traffic signs on land so designated. By section 44(1) of the Act "traffic sign" is defined as having the same meaning as in the Road Traffic Regulation Act 1967. The definition of "traffic sign" in the 1967 Act, however, is expressed by reference to "traffic on roads" and to any line or mark "on a road" ("road" being defined as a highway and any other road to which the public has access). This definition of "traffic sign" is not apt in relation to loading areas. A loading area under section 37 of the 1976 Act could not be a highway; and, though customers of the occupier would have access to it, it is unlikely that it would be open to the public at large. There is therefore doubt whether, in these provisions, "traffic sign" has the requisite extended meaning, so as to be applicable to an area which is not a road. A similar doubt arises in section 84C(3)(e) of the Road Traffic Regulation Act 1967 which, as applied by section 37(4) of the 1976 Act, contains further provisions as to traffic signs in connection with loading areas.

We therefore recommend that, in re-enacting section 37 of the Local Government (Miscellaneous Provisions) Act 1976, there should be added a provision which will enable the definition of "traffic sign" in the Road Traffic

Regulation Act 1967 to apply in the context of loading areas. Effect is given to this recommendation in clause 61(8) of, and paragraph 22(2) of Schedule 9 to, the Bill.

9. Imposition of speed limits for vehicles of certain classes

Section 78 of the Road Traffic Regulation Act 1967 provides that it shall not be lawful to drive a motor vehicle of any class on a road at a speed greater than the speed specified in Schedule 5 to that Act as the maximum speed relevant to a vehicle of that class. The section also empowers the Secretary of State to impose speed limits on vehicles of particular classes by varying the provisions of Schedule 5. Section 78(6) restricts the Secretary of State's power by preventing him from imposing a limit, as respects driving on roads other than restricted roads, on a vehicle which meets certain conditions set out in that subsection. One of these conditions is that the vehicle is not adapted to carry more than seven passengers, exclusive of the driver. Since section 117(1) of the Road Traffic Act 1960 provided that a motor vehicle used for carrying passengers for hire or reward and adapted to carry eight or more passengers was to be a public service vehicle, it appears that the purpose of this condition is to ensure that, if a vehicle does not fall within the definition of "public service vehicle" by reason of the number of passengers it is adapted to carry, it will not come within the scope of the Secretary of State's power under section 78, provided that it meets the other conditions set out in section 78(6).

The Transport Act 1980 repealed section 117 of the 1960 Act and produced (in section 2) a new definition of "public service vehicle", which speaks of a vehicle adapted to carry more than eight passengers. The 1980 Act consequentially amended Schedule 5 to the 1967 Act by substituting the words "8 passengers" for the words "7 passengers" in the descriptions of the classes of vehicles which are subject to special limits. However, the 1980 Act failed to make a corresponding amendment to section 78(6) of the 1967 Act. The effect of this failure is that it is theoretically possible for the Secretary of State to vary Schedule 5 by replacing the words "8 passengers" with the words "7 passengers". This would have the effect of imposing speed limits on classes of vehicles that are not public service vehicles, and thus would seem to subvert the policy of the 1980 Act.

Accordingly, we recommend that, in re-enacting section 78(6) of the Road Traffic Regulation Act 1967, the words "8 passengers" should be substituted for the words "seven passengers". Effect is given to this recommendation in clause 86(7)(b) of the Bill.

10. Speeding offences generally

Section 78A of the Road Traffic Regulation Act 1967 was inserted in the Act by section 203(2) of the Road Traffic Act 1972. As amended by Schedule 12 to the Criminal Law Act 1977, subsection (3) of section 78A specifies three groups of enactments by or under which speed limits are imposed, viz:

- (a) "any enactment contained in this Act, except section 13(4)";
- (b) section 2 of the Parks Regulation (Amendment) Act 1926; and
- (c) "any enactment passed after the commencement of the Road Traffic Act 1960 (except section 13(4) of this Act)".

A. The references to section 13(4) of the Road Traffic Regulation Act 1967 are clearly a mistake and the references should be to section 13(2). In section 13, subsection (2) enables speed limits to be imposed by regulations. Subsection (4) only provides for penalties for contravening the regulations.

We therefore recommend that, in re-enacting section 78A of the Road Traffic Regulation Act 1967, the exception mentioned in subsection (3)(a) and (3)(c) should relate to the provision of the Bill which re-enacts section 13(2) of the 1967 Act. Effect is given to this recommendation in clause 89(3)(a) of the Bill.

B. Paragraph (c) of section 78A(3) is defective in two respects. First, it completely overlaps paragraph (a), since an enactment contained in the 1967 Act must be an enactment passed after the commencement of the Road Traffic Act 1960 (1 September 1960). Secondly, it leaves it uncertain whether the paragraph applies to any enactment passed at any future time after the passing of the 1967 Act. Since the Road Traffic Act 1972 is itself a consolidation Act, it is clear that section 78A(3)(c) must have been intended so to apply, because the section merely re-enacts section 4 of the Road Traffic Act 1960 where the corresponding words were "any enactment passed after the commencement of this Act". Those words would clearly apply to any enactment passed at any future time, however remote. There are therefore in this paragraph both an overlap and an ambiguity.

We therefore recommend that, in re-enacting section 78A(3) of the Road Traffic Regulation Act 1967, paragraph (c) should refer to any enactment not contained in the Bill, but passed after 1 September 1960, whether before or after the Bill becomes an Act. Effect is given to this recommendation in clause 89(3)(c) of the Bill.

11. Arrangements as to sharing of expenses incurred or sums received in connection with removal of vehicles

Subsection (4) of section 20 of the Road Traffic Regulation Act 1967, as substituted by the Removal and Disposal of Vehicles (Alteration of Enactments) Order 1967 (S.I. 1967/1900), and subsection (4A) of that section (inserted by the Local Government Act 1972, Schedule 19, paragraph 10(1)), both refer to arrangements as to the sharing by certain councils of expenses incurred and sums received "under this Part of this Act". In fact, the 1967 Act is not divided into Parts, so that the reference to "this Part of the Act" is meaningless and must have been inserted by mistake. It is, however, clear that sections 20, 52 and 53 of the Act, as rewritten by the 1967 Order, constitute a code of provisions about removal of vehicles, which in the Bill have been grouped together as clauses 99 to 102. It seems most probable that it was this code which the draftsmen had in mind when they referred in this context to "this Part of this Act". The use of those words has, however, created a doubt, which the Bill ought to resolve.

Accordingly, we recommend that section 20(4) and (4A) of the Road Traffic Regulation Act 1967 should be re-enacted so as to refer to arrangements as to the sharing of any expenses incurred or sums received by the council

and the Greater London Council under the provisions of the Bill which replace sections 20, 52 and 53 of that Act. Effect is given to this recommendation in clause 100(1) and (2) of the Bill.

12. Aiding and abetting etc. an offence in Scotland

In England and Wales, section 8 of the Accessories and Abettors Act 1861, read with section 1 of the Criminal Law Act 1967, makes it an offence to aid, abet, counsel or procure the commission of any offence whether the offence is an offence at common law or under a statute. The secondary party is liable to be tried, indicted and punished as a principal offender. To incite another to commit a crime is indictable at common law, subject to section 45(1) of the Magistrates' Courts Act 1980 which provides that an offence of incitement to commit a summary offence shall be triable only summarily.

In Scotland, all persons concerned with the commission of crime may be equally guilty, by virtue of the doctrine known as art and part guilt. Until 1949 it was unclear whether this doctrine applied in the case of a contravention of a statute or order, and it was therefore common for a statute to make it an offence in Scotland to aid, abet, counsel, procure or incite the commission of any offence created by or under the statute. Section 31 of the Criminal Justice (Scotland) Act 1949 (now sections 216 and 428 of the Criminal Procedure (Scotland) Act 1975) was intended to remove these doubts, since it declared that a person may be convicted of, and punished for, a contravention of any statute or order, notwithstanding that he was guilty of such contravention as art and part only. However, there is some reason to think that where an enactment restricts liability to members of a particular class, a person who is not a member of that class cannot be guilty as art and part.

An example of a provision which makes it an offence in Scotland to aid, abet, counsel, procure or incite the commission of an offence under any other provision of the same Act is section 119(8) of the Road Traffic Act 1930. Most of the 1930 Act was repealed and re-enacted by the Road Traffic Act 1960, and section 240 of the 1960 Act (itself repealed by Schedule 9 to the Transport Act 1980) reproduced section 119(8) of the 1930 Act. Section 240(1), as originally enacted, was, however, subject to a number of exceptions which arose because some of the offence-creating provisions of the 1960 Act were derived from enactments which did not contain a provision corresponding to section 119(8) of the 1930 Act.

There is no doubt that section 240, as it was originally enacted, was an unsatisfactory provision. On the one hand, it might be thought that, in the light of section 31 of the Criminal Justice (Scotland) Act 1949, it was no longer necessary in 1960 for an Act to contain specific provisions relating to aiding and abetting etc. offences under the Act. However, some of the offences created by the 1960 Act impose liability on the drivers of motor vehicles, and it is perhaps arguable that, in doing so, they restricted liability to members of a particular class. There was therefore a reason for retaining the provision that became section 240 of that Act. On the other hand, the fact that section 240 was subject to a number of specific exceptions could have raised doubts as to whether those provisions to which the doctrine of art and part had hitherto

applied were now excluded from the scope of the doctrine, by reason of their specific exception in section 240(2). The best course would have been to extend section 240 to cover every offence created by or under the 1960 Act, but since this would have changed the previous law, by extending the section to cover offences which previously were, perhaps, not subject to the art and part doctrine, it was presumably thought that such a solution was not available to a consolidator using the procedure laid down by the Consolidation of Enactments (Procedure) Act 1949, which permits only "corrections and minor improvements" (as defined by section 2 of that Act).

Parliament quite clearly considered the exceptions mentioned in section 240(2) to be anomalous and undesirable, because, two years after the passing of the 1960 Act, section 40 of and Schedule 3 to the Road Traffic Act 1962 substituted a new section 240 of the 1960 Act, which was not subject to any specific exceptions.

A large portion of the Road Traffic Act 1960 was re-consolidated in the Road Traffic Regulation Act 1967 and the Road Traffic Act 1972. The 1967 Act was passed under the procedure laid down by the Consolidation of Enactments (Procedure) Act 1949 and, as in the case of the 1960 Act, section 88 of the 1967 Act, which deals with aiding and abetting etc. in Scotland, does not cover offences derived from Acts other than the 1960 Act. In contrast, the Road Traffic Act 1972 was a consolidation with Law Commission recommendations, and recommendation no. 8 in the Appendix to the Law Commission and Scottish Law Commission Report on the Bill (Law Com. No. 46, Scot. Law Com. No. 22; Cmnd. 4731) advocated that the provision dealing with aiding and abetting etc. in Scotland should be in general terms, notwithstanding that some of the offences contained in what became the 1972 Act were derived from enactments which had nothing corresponding to section 240 of the 1960 Act. This recommendation was accepted, and as a result section 176 of the 1972 Act is in general terms.

In the present Bill, clause 119 deals with aiding and abetting etc. in Scotland. As well as the provisions which were specifically excepted by section 88 of the 1967 Act, the Bill incorporates offence-creating provisions derived from two Acts which extend to Scotland and create offences capable of being committed there—the Road Traffic Act 1974 and the Transport Act 1982—neither of which includes a provision corresponding to section 88 of the 1967 Act. The offence created by section 1(7) of the Road Traffic Act 1974 might be said to restrict liability to members of a particular class, whilst other offences (such as that created by section 53(5) of the Transport Act 1982) are clearly not so restricted.

Although it is nowadays unlikely that provisions akin to section 88 of the 1967 Act would be included in a Bill making fresh provision about road traffic regulation, we do not feel able to recommend that section 88 be repealed by the present consolidation Bill without being re-enacted in it, given that, in 1962, over a decade after the passing of the Criminal Justice (Scotland) Act 1949, Parliament saw fit not only to retain section 240 of the 1960 Act, but to recast it in general terms. Since, therefore, section 88 has to be re-enacted, it

would, we believe, be wrong to disapply clause 119 in the case of the offences derived from the 1974 and 1982 Acts, not only because their exclusion would raise doubts as to the application of the art and part doctrine in the case of excepted offences, but also because there can be no justification in policy for singling-out these offences for special treatment. It would also be wrong to retain the exceptions mentioned in section 88 of the 1967 Act because they are equally anomalous.

We therefore recommend that section 88 of the Road Traffic Regulation Act 1967 should be reproduced in such a way as to be capable of applying where a person in Scotland commits an offence against any provision of the Bill or any regulations made thereunder, regardless of the derivation of the provisions.

Effect is given to this recommendation in clause 119 of the Bill.

13. Exercise of functions by local authorities

As amended by section 130 of the Transport Act 1968, section 84(1) of the Road Traffic Regulation Act 1967 imposes a duty on local authorities so to exercise the functions conferred on them by that Act as to secure the expeditious, convenient and safe movement of vehicular and other traffic (including foot passengers) and the provision of suitable and adequate parking facilities on and off the highway. In so doing, authorities are to have regard, so far as practicable, to certain specified considerations which are set out in paragraphs (a), (b), (bb) and (c) of subsection (1).

A pure consolidation would have to exclude from the scope of the clause which is to replace section 84 all those provisions of the Bill which, whilst conferring functions on local authorities, do not derive from the 1967 Act. Such a result would be far from satisfactory, as can be seen from the four examples which follow.

The first of these concerns section 37 of the Local Government (Miscellaneous Provisions) Act 1976, which relates to the designation of land as a "loading area" for vehicles. If section 84(1) were re-enacted so as not to cover the functions conferred by section 37 this omission would look odd, since one would expect the aims mentioned in section 84(1) and the matter referred to in subsection (1)(a) (securing and maintaining reasonable access to premises) to be highly relevant when an authority is deciding to make an order designating land as a loading area. Insofar as the exclusion might suggest that these considerations ought not to be taken into account by the authority concerned, a misleading impression would be produced.

Similar considerations make it undesirable to exclude the functions conferred by section 3 of the Parish Councils and Burial Authorities (Miscellaneous Provisions) Act 1970 and section 8 of the City of London (Various Powers) Act 1968, which concern the placing of traffic signs by, respectively, parish councils and the Corporation of the City of London. There seems no logical reason why section 84(1) of the 1967 Act should not apply to the placing of traffic signs under those sections when it does apply to the placing of such signs under sections 56 and 56A of the 1967 Act.

Section 55(7) of the Transport Act 1982 confers on certain local authorities the power to request the Secretary of State to extend to their areas the provisions of sections 53 and 54 of that Act (which concern the fixing etc. of immobilisation devices to vehicles). It is difficult to see how the attraction of section 84(1) of the 1967 Act could make any difference to the way in which authorities decide whether to seek the introduction of immobilisation devices into their areas, particularly since section 84(1)(c) enables them to have regard to matters such as the prevalence of illegal parking and the difficulties in enforcing payment of excess charges and fixed penalties.

Finally, section 36 of and Schedule 5 to the Transport (London) Act 1969 and section 11 of the Transport Act 1978 concern the licensing by local authorities of off-street parking places. Since one of the aims mentioned in section 84(1) is the provision of suitable and adequate parking facilities on and off a highway, the express exclusion of these provisions might suggest that authorities are not to have regard to this aim when deciding whether to licence off-street parking places. This would be absurd.

We believe that these examples sufficiently demonstrate that it would be highly unsatisfactory if the provision of the Bill which is to replace section 84(1) of the 1967 Act specifically excluded function-conferring provisions which do not derive from that Act.

Accordingly, we recommend that section 84(1) of the Road Traffic Regulation Act 1967 should be re-enacted in such a way as to apply in respect of the functions conferred on local authorities by the Bill, whether or not a provision conferring a function is derived from the 1967 Act. Effect is given to this recommendation in clause 122 of the Bill.

14. Power to hold inquiries

Section 95 of the Road Traffic Regulation Act 1967 confers upon the Secretary of State a power to hold inquiries for the purposes of the Act except sections 80 and 81 thereof. Section 95 derives from section 248 of the Road Traffic Act 1960 which was in turn derived from section 47 of the Road and Rail Traffic Act 1933. As a result of the acceptance of a proposal for a minor improvement in the 1960 Act, made under the Consolidation of Enactments (Procedure) Act 1949, (Proposal No. 16 in the Memorandum dated 14 December 1959, published in connection with the Bill for the 1960 Act), section 248 was made to extend over the whole field of the enactments consolidated in the 1960 Act, whether or not such an enactment was one to which section 47 of the 1933 Act had previously applied, so as to avoid subjecting section 248 to a small number of apparently capricious exceptions. Section 95 of the 1967 Act was also the subject of a proposal made under the 1949 Act, (Proposal No. 8 in the Memorandum dated 10 April 1967, published in connection with the Bill for the 1967 Act) but, unlike section 248, it is not in general terms because it failed to cover two provisions derived from the Road Traffic and Roads Improvement Act 1960, which became sections 80 and 81 of the 1967 Act.

The present consolidation would, we believe, be improved if the provision relating to inquiries were generalised by including within its scope the provisions of the Bill which do not derive from the 1967 Act, as well as the pro-

visions which re-enact sections 80 and 81 of that Act. The creation of such a general provision would remove unnecessary anomalies and be seen as a return to the principle embodied in section 248 of the 1960 Act which was, incidentally, followed in the Road Traffic Act 1972, where the provision about inquiries is also in general terms.

Accordingly, we recommend that, in re-enacting section 95 of the Road Traffic Regulation Act 1967, the power therein contained to hold inquiries should be expressed in the Bill so as to be capable of applying over the whole field of the enactments now being consolidated. Effect is given to this recommendation in clause 128 of the Bill.

15. Application to Isles of Scilly

Section 108A of the Road Traffic Regulation Act 1967 (inserted by section 132 of the Transport Act 1968) enables the Secretary of State by order to apply any provision of the 1967 Act to the Isles of Scilly, subject to such modifications as may be specified, as if the Isles were a separate county or a county district. Provisions such as section 108A are often found in Acts dealing with local government, because the Scillies are neither a county nor a district and therefore do not have county or district councils. Instead, they have their own local authority called the Council of the Isles of Scilly. Accordingly, provisions of the Bill which, for example, confer functions on a district council will not be effective in the Scillies in the absence of an order which has the effect of converting references to the district council into references to the Council of the Isles. Most of the provisions of the Bill which are not derived from the 1967 Act do not require to be brought within the scope of the provision which re-enacts section 108A because these provisions do not need adaptation in order to apply to the Isles. To exclude these provisions specifically would, however, run the risk of creating an erroneous assumption that in some way they do not apply to the Isles. On the other hand, a few of these provisions, such as that derived from section 37 of the Local Government (Miscellaneous Provisions) Act 1976 (loading areas), require the benefit of an order if they are to apply. The generalisation of the power conferred by section 108A would enable the Secretary of State to make provision for the application of such provisions to the Isles, thereby avoiding the creation of anomalous exceptions.

Accordingly, we recommend that in re-enacting section 108A of the Road Traffic Regulation Act 1967, the power therein contained to provide for the application of any provision of that Act to the Isles of Scilly should be expressed in the Bill in terms of equal generality. Effect is given to this recommendation in clause 135(1) of the Bill.

16. Definition of "driver"

Section 104(1) of the Road Traffic Regulation Act 1967 provides that, except for the purposes of section 42, "driver", where a separate person acts as steersman of a motor vehicle, includes that person as well as any other person engaged in the driving of the vehicle. This provision derives ultimately from section 121 of the Road Traffic Act 1930, and the reason for the exception of section 42 appears to be that section 42 ultimately derives from section 22 of the Road Traffic Act 1956, which lacked a definition of "driver". Section 42

concerns offences relating to parking places on highways where charges are made, and as there does not seem to be any policy reason why section 42 should be excluded, it would, in our view, be undesirable to continue to except it from the partial definition of "driver" in section 104(1). It will also be necessary to allow the partial definition to cover the words "driver" and "driving" in sections 2 to 5 of the Road Traffic Act 1974, since those sections concern the enforcement of a penalty incurred with respect to an offence under section 42 of the 1967 Act. Although the proposed extension of the partial definition of "driver" is unlikely to have any practical significance, the form of the consolidation would be improved if that provision were to be generalised. The continued exception of section 42 would, we believe, perpetuate an unnecessary mystification.

Accordingly, we recommend that, in reproducing section 104(1) of the Road Traffic Regulation Act 1967, the partial definition of "driver" should not be subject to any exceptions. Effect is given to this recommendation in clause 142(1) of the Bill.

17. Definition of "road"

Section 76(1) of the Road Traffic Regulation Act 1967 provides that "road" in sections 71 to 75 of that Act "means any length of road". Section 77(10) provides the same definition for section 77. Sections 71 to 77 deal with speed limits, and it was presumably thought that there should be no doubt as to whether certain stretches of road could be subject to speed limits whilst other stretches were not.

Unfortunately, the inclusion of this definition for the purposes of sections 71 to 77 might be said to cast doubt on the meaning of "road" in other provisions of the 1967 Act. Section 1(3) and (3A) give power to make a traffic regulation order restricting the use of a "road or any part of the width thereof". It must have been the intention that traffic regulation orders can be made in respect of particular lengths of road, and not just in respect of the whole of a road or any part of the width of that road. There are obvious difficulties in deciding where one road begins and another road ends, and it seems extremely unlikely that such questions were ever intended to have any bearing on the making of traffic regulation orders or, indeed, any other orders under the Act.

If the Bill were to contain a general definition of "road" which incorporated a provision to the effect that any reference to a road shall be construed as a reference to any length of road, it would remove any doubt that presently exists as to the meaning of "road" in the 1967 Act, without at the same time affecting references to part of a road in provisions such as section 12 (temporary prohibition or restriction of traffic on roads).

Accordingly, we recommend that there should be added to the definition of "road" in section 104(1) of the Road Traffic Regulation Act 1967 a provision to the effect that any reference to a road shall be construed as a reference to any length of road (thus making it unnecessary to re-enact the separate definitions in sections 76 and 77 of that Act). Effect is given to this recommendation in clause 142(1) of the Bill.

18. Traffic signs on walls in Greater London

Section 4 of the Greater London Council (General Powers) Act 1976 confers power for affixing traffic signs to walls in Greater London. Generally, the consent of the owner of the building is required; but an application can be made to the "appropriate authority" on the grounds that consent has been unreasonably withheld. The "appropriate authority" is a magistrates' court, except in the case of certain descriptions of buildings specified in the Schedule to the Act. The description of buildings specified in the first entry in the Schedule is any building in respect of which a notice has been served under section 6 of the Ancient Monuments Act 1931, and in this case the appropriate authority is the Secretary of State for the Environment. This category is now closed, since the Ancient Monuments Act 1931 has been repealed by the Ancient Monuments and Archaeological Areas Act 1979, which is intended to provide a comprehensive procedure for the protection of scheduled monuments.

The protection afforded by the 1979 Act is such that there is no reason in policy terms for retaining the first entry in the Schedule. Nevertheless, because there may be buildings in Greater London in respect of which a notice was served under section 6 of the 1931 Act, a pure consolidation would have to retain the entry. We believe that this would be undesirable, since the perpetuation of a reference to a repealed enactment would be confusing, and might obscure the important fact that all scheduled monuments are now protected under the provisions of the 1979 Act. It is this fact which gives rise to clause 74(7) of the Bill.

The Department of the Environment have been consulted and agree to the omission of the first entry in the Schedule without putting anything in its place. In view of the fact that the Act proposed to be altered is a local Act mainly promoted by the Greater London Council, there has also been consultation with that Council, on whose behalf, it being agreed that the existing entry cannot stand, no substitute entry (as a possible alternative to omission) has been suggested.

Accordingly, we recommend that, in re-enacting the Schedule to the Greater London Council (General Powers) Act 1976, the first entry should be omitted. Effect is given to this recommendation in Schedule 5 to the Bill.

19. Power to revoke certain orders

As originally enacted, section 86 of the Road Traffic Act 1960 empowered the Minister of Transport to prescribe descriptions of parking meters to be used in connection with the parking of vehicles on the highway and to prescribe the steps to be taken for inspecting and testing such meters. Section 90 of that Act provided that these powers were exercisable by order made by statutory instrument and included power to vary or revoke such an order. In pursuance of his powers under sections 86 and 87, the Minister made the Parking Meters (Description and Testing) (England and Wales) Order 1961 (S.I. 1961/705). In Scotland, the relevant order is the Parking Meters (Description and Testing) (Scotland) Order 1959 (S.I. 1959/1348) which was made under sections 20 and 21 of the Road Traffic Act 1956 and which, on the repeal of the 1956 Act, was saved by paragraph 1 of Schedule 19 to the Road Traffic Act 1960.

The Schedule to the Road Traffic and Roads Improvement Act 1960 amended section 86 of the Road Traffic Act 1960 so as to give the Minister the power to approve the type and design of parking meters otherwise than by order. The Road Traffic Act 1962 replaced sections 86 and 87 with entirely new provisions under which the Minister had no power to approve the type and design of parking meters by means of an order. Section 29(2) of the 1962 Act preserved orders made by virtue of section 86 or 87 of the 1960 Act before the commencement of the 1962 Act, except insofar as such an order could be revoked or varied by an order made under the "new" version of sections 86 and 87. When sections 86 and 87 came to be repealed and re-enacted by the Road Traffic Regulation Act 1967, paragraph 9 of Schedule 8 to that Act preserved the validity of orders made by virtue of section 86 or 87 before 1 January 1963, and conferred a power to vary and revoke those orders by an order under section 36 or 37 of the 1967 Act.

As originally enacted, sections 36 and 37 conferred order-making powers on local authorities and on the Minister, but Schedule 14 to the Transport Act 1968 amended these sections so as to remove the Minister's order-making powers, with the exception of his power under section 37 to prescribe the steps to be taken for inspecting and testing parking meters. This final power was removed by Schedules 25 and 29 to the Local Government (Scotland) Act 1973 (in the case of Scotland) and Schedules 6 and 8 to the Local Government Act 1974 (in the case of England and Wales). The power to make orders under sections 36 and 37 is thus now confined to local authorities (including the Greater London Council). The 1973 and 1974 Acts failed, however, to preserve the Minister's power to vary and revoke orders made before 1 January 1963 under section 85, 86 or 87 of the 1960 Act, even though such a power was necessary in order to revoke general (as opposed to local) orders made under section 86 or 87.

The 1959 and 1961 Orders appear now to be obsolete. The approval of the type and design of parking meters is now achieved by means of general and special approvals by the Secretary of State. At present, the Secretary of State generally approves parking meters which conform to the British Standard Institution's specification for clockwork parking meters published on 22 February 1971 under the number B.S.4684:1971. The amendments made to section 37 by the 1973 and 1974 Acts enable local authorities to take such steps as appear to them to be appropriate in connection with the inspection and testing of meters.

Since the 1959 and 1961 Orders are general ones, there seems at present to be no means of revoking them. In order to remedy this, we recommend that, in addition to the power presently conferred on local authorities by paragraph 9 of Schedule 8 to the 1967 Act, the Secretary of State should be given power to revoke an order made by a Minister under section 86 or 87 of the Road Traffic Act 1960 before 1 January 1963, such a power to be exercisable in the manner laid down by the Road Traffic Regulation Act 1967 as it was originally enacted, that is to say, by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament. Effect is given to this recommendation in paragraph 11 of Schedule 10 to the Bill.

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