



THE LAW COMMISSION
AND
THE SCOTTISH LAW COMMISSION
(LAW COM. No. 171)
(SCOT. LAW COM. No. 113)

**ROAD TRAFFIC BILL
ROAD TRAFFIC OFFENDERS BILL
ROAD TRAFFIC (CONSEQUENTIAL PROVISIONS) BILL**

REPORT ON THE CONSOLIDATION OF
CERTAIN ENACTMENTS RELATING
TO ROAD TRAFFIC

*Presented to Parliament by the
Lord High Chancellor and the Lord Advocate
by Command of Her Majesty
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To the Right Honourable the Lord Mackay of Clashfern, Lord High Chancellor of Great Britain, and

the Right Honourable the Lord Cameron of Lochbroom, Q.C., Her Majesty's Advocate.

The Bills which are the subject of this Report consolidate certain enactments relating to road traffic. In order to produce a satisfactory consolidation, we have made a number of recommendations which are set out in the Appendix to this Report. While some of the amendments proposed by the recommendations might have been authorised under the Consolidation of Enactments (Procedure) Act 1949, most of them could not.

The departments concerned with road traffic and the prosecution and punishment of road traffic offences - that is, the Department of Transport, the Home Office and the Scottish Home and Health Department - have been consulted about the recommendations, which they welcome.

ROY BELDAM, *Chairman, Law Commission*

PETER MAXWELL, *Chairman, Scottish Law Commission*

31 May 1988

APPENDIX

RECOMMENDATIONS

1. Section 180 of the Road Traffic Act 1972 makes provision as to the time within which summary proceedings for certain of the offences mentioned in Schedule 4 to that Act must be brought. Section 46(3) to (5) of the Transport Act 1982 contains provisions to the same effect in relation to the offence under section 46(1) of giving a false statement in response to a notice to owner under Part III of that Act, but additionally applies section 331(3) of the Criminal Procedure (Scotland) Act 1975, which provides a rule for ascertaining the date on which proceedings are deemed to have been commenced. That rule would be of equal utility in relation to the offences to which section 180 of the 1972 Act applies and its application to those offences would remove the inconsistency between the two sets of provisions. We recommend that section 331(3) of the 1975 Act should be applied for the purposes of the offences referred to in section 180 of the 1972 Act in the same way as in section 46(4) of the 1982 Act. Effect is given to this recommendation in clause 6(5) of and paragraphs 1 and 2 of Schedule 1 to the Road Traffic Offenders Bill.

2. Paragraphs 1, 2 and 8 of Part IV of Schedule 4 to the Road Traffic Act 1972 each provide that on the trial in Scotland of specified offences involving motor vehicles the jury may find the accused guilty of a specified lesser offence. Paragraph 8 provides that if the jury are of the opinion that the accused was not guilty of the greater offence but was guilty of the lesser offence they may find him guilty of the lesser offence. This contrasts with paragraph 2 which allows the alternative verdict if the jury are not satisfied that the accused's driving was the cause of death but are satisfied that he is guilty of the lesser offence. The difference in wording could be construed as meaning that the test to be applied by the jury in each case is different, and we do not think that any difference was intended. To achieve consistency we recommend that paragraph 8 should be brought into line with paragraph 2. Effect is given to this recommendation in clause 23(3) of the Road Traffic Offenders Bill.

3. Section 101(4) of the Road Traffic Act 1972 made it an offence for a licence holder who is convicted of an offence involving obligatory endorsement to fail to produce it to the court when required to do so, unless he has previously posted it or had it delivered to the clerk of the court. In the event of such a failure, the licence is also suspended (and is therefore of no effect) until it is produced. Under the fixed penalty procedure contained in Part III of the Transport Act 1982, a person who appears to have committed a fixed penalty offence cannot be given a fixed penalty notice unless he surrenders his driving licence. A receipt is given for the driving licence under section 35 of that Act, and subsection (4) of that section provides that a person who posts or delivers or surrenders the receipt instead of his licence, and produces the licence to the court immediately on its return, is not guilty of the offence under section 101(4). There seems no good reason why his licence should be suspended in these circumstances, but subsection (4) does not prevent suspension of the licence. We recommend that it should prevent suspension. Effect is given to this recommendation in the opening words of clause 27(4) of the Road Traffic Offenders Bill.

4. Section 48(3) of the Transport Act 1982 requires the district court in Scotland, where a person is convicted of an offence mentioned in Schedule 1 or 2 to that Act involving obligatory endorsement, to order that particulars of the conviction be endorsed on that person's licence in accordance with section 101 of the Road Traffic Act 1972 and, where the penalty points to be taken into account under section 19(3) of the Transport Act 1981 number 12 or more, to order disqualification under section 19(2) of that Act. The purpose of section 48(3) appears to be to make clear that

endorsement of licences and disqualification are within the competence of the district court in relation to such offences. The mandatory wording of the provision, however, might be read as requiring the district court to order endorsement or disqualification in every relevant case and not leaving it the discretion to refrain from endorsement or disqualification which is available to other courts under section 101(2) of the 1972 Act and section 19(2) of the 1981 Act. We think that the opportunity should be taken to make clear that the district court is in no different position from other courts in this regard, and we so recommend. Effect is given to this recommendation in clauses 35(6) and 44(3) of the Road Traffic Offenders Bill.

5. Under sections 93(8) and 101(9) of the Road Traffic Act 1972 where a person is charged with an offence involving obligatory or discretionary disqualification or obligatory endorsement and the court grants an absolute discharge or makes a probation order, he is to be treated for the purposes of section 93 and 101 as if he had been convicted of the offence, with the result that he will be disqualified or, as the case may be, have his licence endorsed under those sections as if he had been convicted. Sections 93(8) and 101(9) were inserted by section 55 of the Criminal Justice (Scotland) Act 1980 (subsection (9) of section 101 being originally numbered (8) and subsequently corrected to (9) by paragraph 16 of Schedule 15 to the Criminal Justice Act 1982). The equivalent provision for England and Wales, section 102(1), was amended by paragraph 13 of Schedule 9 to the Transport Act 1981 to include a reference to section 19 of the 1981 Act, which provides for disqualification where the penalty points to be taken into account under that section number 12 or more. No corresponding amendment was made to the Scottish provisions. There is no apparent reason for this divergence. We recommend that the Scottish provisions should be amended to include a reference to disqualification where the penalty points to be taken into account number 12 or more. Effect is given to this recommendation in clause 46(3) of the Road Traffic Offenders Bill.

6. a. Sections 42 and 43 of the Transport Act 1982 set out a system whereby certain road traffic offences may in Scotland be dealt with by the issue of a conditional offer by the procurator fiscal to an alleged offender. If the alleged offender pays the fixed penalty specified in the offer and, where required, surrenders his licence he will not in general be liable to conviction of the offence. Under section 42(2)(c) a conditional offer must state that the discharge from liability to conviction operates only if the alleged offender is not liable to disqualification under section 19(2) of the Transport Act 1981 as having incurred 12 or more penalty points. Section 42(4), in contrast, requires the clerk of court in inspecting a licence which has been surrendered to return the licence and the payment to the alleged offender if it appears to the clerk that the alleged offender would, if convicted of the alleged offence, be liable to disqualification under section 19(2). Since the liability to conviction will be discharged only if the clerk of court is satisfied on inspecting the licence that the alleged offender is not liable to such disqualification we think that the terms of the conditional offer ought to reflect this and we recommend that section 42(2)(c) be brought into line with section 42(4) in this respect.

b. The sections as originally enacted contained a number of references to payment of a fixed penalty being "tendered" by an alleged offender. Paragraphs 26 and 27 of Schedule 2 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 substituted references to payment being "made", to exclude payments by cheques which were subsequently dishonoured. The 1985 Act did not, however, remove references to payments being accepted by the clerk of court. These references serve no purpose since the amendments made by the 1985 Act and are misleading in so far as they suggest that the clerk of court has a discretion to refuse to accept a payment properly made to him in accordance with a conditional offer. We recommend that they should be repealed.

Effect is given to these recommendations in clauses 75(7)(b) and 76(4) and (5) of

the Road Traffic Offenders Bill.

7. Section 178 of the Road Traffic Act 1972, which consolidated section 239 of the Road Traffic Act 1960, provides that if a person acts in contravention of or fails to comply with certain regulations under the Act, and the contravention or failure to comply is not made an offence under any other provision of the Act, "he shall *for each offence* be liable" to a fine. In 1972 the view was taken that section 239 of the 1960 Act might be read as an offence-creating provision, rather than as a provision that merely specified the penalty for existing offences, even though a decision to that effect would have had to reverse or distinguish the decision of the Divisional Court in *Rathbone v Bundock* [1962] 2 QB 260. So as not to prejudice any such argument, section 178 of the 1972 Act retained the form of section 239 of the 1960 Act. However, section 87 of the Road Traffic Regulation Act 1967, which was in identical form to section 239 of the 1960 Act, was consolidated in section 118 of the Road Traffic Regulation Act 1984 in the form of an offence-creating provision. We recommend that both provisions should continue to follow the form of section 239 of the 1960 Act and effect is given to this recommendation in clause 91 of the Road Traffic Offenders Bill, which consolidates them in a single provision.

8. We have been advised by the Department of Transport that section 34 of the Road Traffic Act 1972 (requirements as to employment of persons to attend to locomotives and trailers) has its origins (through section 72 of the Road Traffic Act 1960 to section 17 of the Road Traffic Act 1930) in the days when trailers had separate braking systems which were not connected to the towing vehicle. In these cases, an attendant was needed to operate the brakes of the trailer. As modern braking systems were developed after 1945, the Department progressively used their regulation-making power to exempt more and more classes of vehicle from the requirement to carry an attendant. The current exemptions are set out in regulation 91 of the Road Vehicles (Construction and Use) Regulations 1986 (SI 1986 / 1078). The Department is of the opinion that these exemptions cover nearly all vehicles currently on the road, and regulations 15 to 19, as amended by SI 1987 / 676 - which set out the current braking requirements - apply to the majority of vehicles covered by regulation 91. In these circumstances, we think that section 34 has ceased to be of any practical utility, and we recommend its repeal and the revocation of regulation 91. Effect is given to this recommendation in clause 3 of and Schedule 1 to the Road Traffic (Consequential Provisions) Bill, which repeals the whole of the Road Traffic Act 1972.

9. Section 50(6) of the Road Traffic Act 1972 provided that, in sections 47, 48 and 50, "'goods vehicle" includes a vehicle which is a chassis for, or will otherwise form part of, a vehicle which when completed will be a goods vehicle". Those sections, which dealt with the type approval scheme, were extended to vehicles generally by section 10 of, and Part II of Schedule 2 to, the Road Traffic Act 1974. Paragraph 8(4) of that schedule deleted the word "goods" in both places in the passage quoted above, so that it now contains the redundant proposition that "vehicle" includes a vehicle of the kind described. We think it was overlooked that the sections in question still contained some references to goods vehicles and that the passage quoted was still required for those references. We therefore recommend that the passage should be enacted in its unamended form. Effect is given to this recommendation in clause 62(3) of the Road Traffic Bill.

10. Sections 127(4) and 144(2)(a) of, and paragraph 1 of Schedule 3 to, the Road Traffic Act 1972 all contain references to Scottish local government areas as they existed prior to the changes made by the Local Government (Scotland) Act 1973. The amendments to these references consequential on that Act appear to have been overlooked. We recommend that they should be amended to refer to the local

government areas discharging the equivalent functions since the coming into force of the 1973 Act. Effect is given to this recommendation in clauses 124(2) and 144(2)(a) of, and paragraph 1(b) of Schedule 2 to the Road Traffic Bill.

11. In the case of accidents involving personal injury, both section 25 and section 166 of the Road Traffic Act 1972 required the driver to report the accident and give information at a police station or to a constable if the necessary information was not given at the scene of the accident. In the case of section 25, this was to be done "as soon as reasonably practicable"; in the case of section 166 "as soon as possible". In both cases it had to be done within twenty-four hours. We think that the test should be the same in both provisions. The "reasonably practicable" test is used elsewhere in the Road Traffic Bill (see clauses 14, 137, 164 and 165) and has not given rise to any substantial difficulties in the context of road traffic law. We therefore think that the test at present in section 25 is the right one. Effect is given to this recommendation in clause 170 of the Road Traffic Bill, which consolidates sections 25 and 166 in one clause.



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