THE LAW COMMISSION AND THE SCOTTISH LAW COMMISSION

(LAW COM. No. 46)
(SCOT. LAW COM. No. 22)

ROAD TRAFFIC BILL

REPORT ON THE CONSOLIDATION OF CERTAIN ENACTMENTS RELATING TO ROAD TRAFFIC

Presented to Parliament by the Lord High Chancellor, the Secretary of State for Scotland and the Lord Advocate by Command of Her Majesty
July 1971

LONDON
HER MAJESTY'S STATIONERY OFFICE
12½p net

Cmnd. 4731

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To the Right Honourable the Lord Hailsham of Saint Marylebone, Lord High Chancellor of Great Britain,

the Right Honourable Gordon Campbell, M.C., M.P., Her Majesty's Secretary of State for Scotland, and

the Right Honourable Norman R. Wylie, V.R.D., Q.C., M.P., Her Majesty's Advocate.

The Road Traffic Bill which is the subject of this Report represents the second stage in the consolidation of the enactments relating to road traffic, the first stage having been effected in the Road Traffic Regulation Act 1967. Both that Act and this Bill are based on the Road Traffic Act 1960, itself a consolidation Act of large proportions. Since then three major Acts, namely the Road Traffic Act 1962, the Road Safety Act 1967 and the Vehicle and Driving Licences Act 1967, as well as several smaller Acts like the Road Traffic (Driving Instruction) Act 1967, have added to the considerable bulk of this branch of the statute law. This Bill consolidates mainly the remainder of the Road Traffic Act 1960, except for Part III (and several other ancillary provisions) which relate to public service vehicles, together with the other Acts mentioned above and the Road Transport Lighting Acts 1957 to 1967.

In order to produce a satisfactory consolidation of these enactments we are making the recommendations set out in the Appendix to this Report. Of these recommendations we think that those numbered 1, 3, 5, 7, 10, 12 and 13 are minor corrections or improvements which could have been made under the Consolidation of Enactments (Procedure) Act 1949.

The Secretary of State for the Environment has been consulted and agrees with all our recommendations as do the Secretary of State for the Home Department and the local authorities in relation to the ninth recommendation and the Secretary of State for Defence in relation to the eleventh.

LESLIE SCARMAN,
Chairman of the Law Commission

C. J. D. SHAW,
Chairman of the Scottish Law Commission

15 *July*, 1971.

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APPENDIX

RECOMMENDATIONS

1. In many contexts in the Road Traffic Acts provision is made for applying different rules to different "classes or descriptions" of vehicle or for applying rules only to certain "classes or descriptions" of vehicle. The use of the formula "class or description" without any indication of what each word is intended to mean has on occasion been criticised, notably by Lord Goddard in *Petherick* v. *Buckland* [1955] 1 W.L.R.48. The Road Traffic Act 1956 dealt with the problem which was the occasion for that criticism and the Bill for the Road Traffic Regulation Act 1967 contained a provision, namely section 104(2), which was the result of a minor improvement made under the Consolidation of Enactments (Procedure) Act 1949, construing references throughout that Act to a class of vehicles or traffic as references to a class defined by reference to any characteristics of the vehicles or traffic or to any other circumstances whatsoever. This improvement has precedents in section 8(3) of the Road Traffic and Roads Improvement Act 1960 c.63 and section 29(2) of the Road Safety Act 1967 c.30. The improvement was made on the basis that the use of the word "class" throughout together with a comprehensive definition of that word served to promote consistency and clarity. In view of this it seems clearly right to pursue the same policy in this, the second stage of the consolidation of the road traffic enactments. In three cases, however, that is, section 24 of the Road Traffic Act 1962 and sections 2 and 3 of the Road Transport Lighting Act 1967, the word "description" alone is used with reference to vehicles. But in none of these cases does it appear that changing the reference to "class", thus attracting the comprehensive definition just mentioned, would change the law. It would certainly promote consistency of language and such a change was made in 1967 in consolidating section 51(1) of the Road Traffic Act 1960.

Accordingly we recommend that in all the contexts affected the existing references to classes or descriptions of vehicles should be replaced consistently by references simply to classes of vehicles together with a single comprehensive provision construing these references in the same terms as that contained in the Road Traffic Regulation Act 1967 and the Road Safety Act 1967.

Effect is given to this recommendation in clause 195(2) and in the numerous contexts acknowledged in the Table of Derivations attached to the Bill.

2. Section 66 of the Road Traffic Act 1960 forbids vehicles to be used on roads after ten, now three, years from the date of their first registration under the vehicles excise legislation unless a current test certificate is in force for the vehicle or the use of the vehicle falls within the exceptions there mentioned. As a means of enforcing this system section 66(6) gives the Secretary of State power to make regulations preventing the grant of a vehicle excise licence in respect of a vehicle to which that prohibition extends unless the prescribed evidence of the granting of a test certificate is given or a declaration is made showing that the intended use of the vehicle falls within one of the exceptions. The prescribed evidence may include production of the test certificate or, as a result of an amendment to section 66(6) made by section 18(1) of the Vehicle and Driving Licences Act 1969, the furnishing of a copy of it.

In 1967 the provisions of section 66 were extended by section 4 of the Road Traffic (Amendment) Act 1967 to vehicles over ten years old which have been used on roads before being registered under the vehicles excise legislation. This extension was designed mainly to cover vehicles imported from abroad and vehicles formerly belonging to the Defence Department. Section 4(3) gave to the Secretary of State a power to make regulations in relation to such vehicles which is similar to that given by section 66(6) of the Act of 1960. There are only two differences, and one appears to be accidental. The first, and essential, difference lies in the fact that the regulations relating to these vehicles must not, of course, prevent the granting of a vehicle excise licence if the vehicle is declared by the owner to be less than ten years old. But the other difference

lies merely in the fact that the prescribed evidence of the granting of a test certificate does not include furnishing a copy of the certificate. There seems to be no reason for this difference which was presumably the result of an oversight in 1969 and we think that it should be put right thus enabling the provisions of section 66(6) of the 1960 Act and section 4(3) of the 1967 Act to be reproduced in an integrated form in clause 52(1) of the Bill instead of appearing as parallel but virtually identical provisions on the same subject.

Accordingly we recommend that in reproducing section 4(3) of the Road Traffic (Amendment) Act 1967 it should be treated as if it permitted the regulations to prescribe the furnishing of a copy of a test certificate as well as the original as evidence of its having been granted.

Effect is given to this recommendation in clause 52(1) of the Bill.

3. The Road Transport Lighting Act 1957 consolidated the statutory provisions relating to the lights and reflectors to be carried by vehicles at night. That Act made it obligatory for a vehicle to carry two side lamps and two rear lamps and those lamps were further required to comply with the various regulations made under that Act relating to such matters as the character of the lamp, the manner of its attachment to the vehicle and its use. In 1962 the Road Traffic Act contained in section 15 a power for the Minister of Transport (now the Secretary of State for the Environment) to make regulations making it obligatory for vehicles of the prescribed classes to carry headlamps also. And subsection (4) of that section enabled him to make regulations about headlamps on any subject on which regulations could be made about other lamps under the 1957 Act. Section 15(4) also empowered him to apply to headlamps any regulations in force about side lamps. This power to apply other regulations has not been exercised and successive regulations about headlamps culminating in S.I. 1971 No. 694 have proceeded by way of direct statement under the other powers given by sections 15 and 16 of the 1962 Act. No useful purpose would appear to be served by reproducing this power in this consolidation.

We accordingly recommend that so much of section 15(4) of the Road Traffic Act 1962 as gives this power should not be reproduced in the Bill but should be repealed by it.

4. The principal provisions enabling the Secretary of State to regulate the basic lighting equipment carried by vehicles are section 5(1) and (2) of the Road Transport Lighting Act 1957 together with section 1(1) thereof and sections 15(4) and 16(3) of the Road Traffic Act 1962. Section 5(1) of the Act of 1957 enables the Secretary of State to make regulations prescribing the conditions subject to which side lamps and reversing lamps may be used, and section 5(2) gives a power to prescribe the conditions to be complied with by rear lamps and reflectors. The latter power includes a power to make different provision for vehicles of different classes or for vehicles of the same class in different circumstances. This apparent distinction between conditions about use and other conditions (like conditions about character) is falsified or at least blurred as soon as one considers the other powers. At the end of section 1(1) of the Act of 1957 there is a power to prescribe where and in what manner obligatory side and rear lamps are to be attached to a vehicle. And section 5(1) originally amplified the power to regulate the use of side lamps and reversing lamps by including specific powers to prescribe conditions about, for example, position, angle of projection of beam, its range and the method of obscuration of the lamp. When section 15 of the Road Traffic Act 1962 enabled the carrying of headlamps to be made compulsory, it gave a power to regulate headlamps in the same respects as other lamps (including power to differentiate by reference to class of vehicle or circumstances of use) and, by section 16(3), replaced that part of section 5(1) of the 1957 Act which amplified the power to regulate the use of side lamps and reversing lamps with a new amplification applicable to *all* lamps. But although the new amplification contains a list of particular matters capable of regulation which largely repeats the list contained in section 5(1) of the 1957 Act it is no longer attached to a power to regulate the use of certain lamps but attaches also to the power to prescribe conditions

generally to be complied with by lamps carried on vehicles. The apparent distinction referred to above is thus blurred to the point of non-existence especially when it is seen that conditions about the position of *any* lamp on a vehicle are included in the 1962 amplification.

We think that these provisions are defective in four respects. Firstly it is misleading for the general power to regulate side lamps and reversing lamps to be expressed to be limited to a power to regulate their use when it is clear from parallel and ancillary provisions that it is not so limited. Secondly it is anomalous for a list of specific powers which enables both use and other matters to be regulated to be attached on the one hand to a general power expressed to be limited to regulating the use of lamps and, on the other, to a general power expressed without any such limitation. Thirdly it is anomalous that regulations, whether about use of lamps or otherwise, can be differentiated by reference to the class of vehicle or the circumstances of its use, when they relate to rear lamps and headlamps but not when they relate to side lamps or reversing lamps. And fourthly it is anomalous that while the use of reversing lamps and their position can be regulated, their manner of attachment cannot, at least directly. For it must be difficult, if not impossible, to frame regulations preventing for example the use of reversing lights in such a way as to dazzle other road users by regulating the position of the lamp and the power and angle of projection of the light without in consequence controlling also the manner of attachment of the lamp.

Accordingly we recommend that the various powers to regulate side lamps and reversing lamps should be reproduced in a form generalised like the power contained in section 5(2) of the 1957 Act to prescribe conditions to be complied with by rear lamps and (by application) head lamps, while keeping the specific power to regulate the use of side lamps, head lamps and reversing lamps. It follows from this that the specific powers contained in section 16(3) of the 1962 Act can then properly be expressed to be amplifications of a power to prescribe the "conditions to be complied with by any lamp". And we also recommend that it should be possible for the regulations about side lamps and reversing lamps to be differentiated in the same manner as regulations about head lamps and rear lamps, and for the manner of attachment of reversing lamps to be capable of direct regulation as is the case with all the other lamps.

Effect is given to these three connected recommendations in clause 73(1), (2) and (3) of the Bill.

5. Section 225(1) of the Road Traffic Act 1960 obliges certain classes of person to produce to a constable their licence to drive a motor vehicle granted under Part II of that Act. Paragraph (*d*) of that subsection includes among those classes of person the supervisor of the holder of a provisional driving licence. Before that paragraph was amended by Schedule 2 to the Vehicle and Driving Licences Act 1969, it referred to the supervisor as being the supervisor of the holder of a provisional driving licence granted specifically under section 102 of that Act. But the Act of 1969 repealed the specific reference to section 102 so that, in theory at least, the reference to such a supervisor is capable of including not only the supervisor of the holder of an ordinary provisional licence to drive a motor vehicle but also, for the first time, the supervisor of the holder of a provisional licence granted under Part V (that is, section 194) of the Act of 1960 to drive a heavy goods vehicle. There are, however, cogent reasons for asserting that this was not the intention. For in the first place the Act of 1969 did not purport to deal with heavy goods vehicle drivers' licences but only with ordinary driving licences granted under Part II of the Act of 1960 and the repeal of the specific reference to section 102 was contained only in the Schedule of repeals. In the second place, the reason for the repeal is clear when it is realised that the reference to section 102 had to be changed because section 14 of the 1969 Act re-arranged as well as amended the statutory provisions contained in sections 101 and 102 of the Act of 1960 so that provisional licences came to be granted not under section 102 but under section 101. Thirdly, section 225 of the 1960 Act is otherwise concerned throughout with the production of

ordinary driving licences and paragraph 7 of Schedule 2 to the Vehicle and Driving Licences Act 1969 amended section 225(2) in that sense, whereas the production of heavy goods vehicle drivers' licences by supervisors and others is dealt with in regulation 14 of the regulations (S.I. 1969 No. 903) made under the powers already conferred by section 194 of the Act of 1960 and section 20(1)(*h*) of the Road Safety Act 1967.

A similar obscurity of reference occurs in section 226(2) of the Road Traffic Act 1960 which requires the supervisor of the holder of a provisional licence to give his and the vehicle owner's particulars. In this case also the Vehicle and Driving Licences Act 1969 merely repealed the specific reference to a provisional licence granted under section 102 of the 1960 Act. The first two reasons given above apply here with equal force and it is almost inconceivable that a different intention would apply in relation to section 226 than applies, there are strong reasons for thinking, in relation to section 225.

Accordingly we recommend that in reproducing sections 225(1) and 226(2) of the Road Traffic Act 1960 it should be made clear that the references to provisional licences are references to such licences granted under Part II only of that Act.

Effect is given to this recommendation in clauses 161(1)(*d*) and 162(3) of the Bill.

6. In paragraph 2 an explanation was given of the powers of the Secretary of State under section 66(6) of the Road Traffic Act 1960 and section 4(3) of the Road Traffic (Amendment) Act 1967 to enforce the testing of vehicles of a certain age by making regulations preventing vehicle excise licences from being granted for such vehicles for which a test certificate ought to be but is not in force. Part II of the Road Safety Act 1967 contains further provisions requiring certain goods vehicles to be specially tested and section 14(9) of that Act contains a similar power to make regulations preventing the granting of excise licences for such vehicles for which no goods vehicle test certificate can be shown to be in force. It is a common feature of these three powers that they require the making of statements and the production of documents by persons concerned in the use, testing or manufacture of the vehicle. Section 4(6) of the Road Traffic (Amendment) Act 1967 and section 25(2)(*a*) of the Road Safety Act 1967 each penalise, the latter in more elaborate and extensive terms, the production of false evidence or the making of false statements by imprisonment for up to four months and a fine of up to £100. These offences are consolidated in clause 170(2) and (3) of the Bill. But it is remarkable that no comparable summary offence exists to cover the case of false evidence produced or false statements made to satisfy similar regulations under section 66(6) of the Act of 1960.

The ground is covered to some extent, it is true, by other provisions. Thus section 233(2)(*a*) of the 1960 Act makes it an offence punishable with up to two years imprisonment for a person, with intent to deceive, to forge or alter or use a test certificate, but this does not cover copies or other documentary evidence. And although section 26(2)(*a*) of the Vehicles (Excise) Act 1971 consolidates pre-1960 provisions similarly penalising the making of false declarations in connection with applications for vehicle excise licences it would only apply to declarations prescribed under sections 12(1) or 16(1) of that Act and not to the declarations of intended non-use mentioned in section 66(6)(*b*) of the Act of 1960. Any overlapping there might be with these latter offences occurs equally in relation to the making of similar declarations for the purposes of regulations under the provisions of the two Acts of 1967 mentioned above. But these provisions fail to cover the ground and would appear by reason of the different scale of penalties prescribed to be unsuitable for dealing with the mischief involved in section 66.

The lacuna is the more anomalous when it is remembered that section 4 of the Road Traffic (Amendment) Act 1967, which does provide a simple summary penalty for such conduct, purports to be an extension of the scheme for testing vehicles enforced by section 66 of the Road Traffic Act 1960.

We recommend that this anomaly be removed by extending the simple summary offence created by section 4(6) of the Road Traffic (Amendment) Act 1967 to the production of false evidence and the making of false statements in declarations for the purposes of regulations made under section 66(6) of the Road Traffic Act 1960.

Effect is given to this recommendation in clause 170(3) of the Bill.

7. Section 237(2) of the Road Traffic Act 1960 as originally enacted enabled constables, certifying officers and goods vehicle examiners to seize a document or plate carried on or by the driver of a motor vehicle if they suspect that any of certain offences of dishonesty have been committed in relation to the document or plate. The plate with which the subsection was concerned was a plate for identifying the vehicle as a vehicle authorised to be used under a carrier's licence under the provisions of section 190(1)(*d*) of that Act. On 1 December 1970 Part V of the Transport Act 1968 replaced the provisions of sections 164 to 182 about carriers' licences together with the provisions of section 190(1)(*d*) about such plates. And in consequence of this, Part IV of Schedule 18 to that Act repealed paragraphs (*a*) and (*b*) of section 237(2) of the Act of 1960 together with all the references in that subsection to a plate. This repeal would have been perfectly correct had section 237(2) not been amended in 1967. But sections 9 and 10 of the Road Safety Act of that year made fresh provision for certain weights and other particulars relating to a goods vehicle to be marked on the vehicle by means of plates. And paragraph 12(2) of Schedule 1 to that Act extended section 237(2) of the Act of 1960 to the plates so provided for and certain other documents. Hence the repeal by the Transport Act 1968 of the references in section 237(2) to plates has unfortunately created a lacuna since these references are still necessary for the purposes of the new plates provided for under the 1967 Act although not for the purposes of the plates originally contemplated in that subsection.

Accordingly we recommend that in reproducing section 237(2) of the Road Traffic Act 1968 it should be treated as if the references to plates had not been so repealed.

Effect is given to this recommendation in clause 173(2) of the Bill.

8. Section 240 of the Road Traffic Act 1960 as originally enacted contained many illogical exceptions due solely to the fact that that Act being a consolidation measure had to reproduce the existing law, the main proposition of which was contained in section 119(8) of the Road Traffic Act 1930. Later Road Traffic Acts were not construed as one with the Act of 1930 and failed to apply the provisions of section 119(8) to offences created by them. This gave rise to the exceptions above mentioned. The earliest opportunity was taken of sweeping away those exceptions and section 240 was generalised in relation to all offences under the Act of 1960 by section 40 of and Schedule 3 to the Road Traffic Act 1962.

Subsequent offences created by the Road Safety Act 1967 and the Road Traffic (Driving Instruction) Act 1967 were by those Acts brought within the ambit of section 240. This was not, however, done in relation to offences created by the Road Traffic (Amendment) Act 1967 which was a Private Member's measure and this gives rise to a number of wholly illogical exceptions which would otherwise have to be reproduced. The same considerations apply to clause 81 which reproduces section 12 of the Road Transport Lighting Act 1957 and would otherwise also have to be excepted from the general proposition in clause 176.

We recommend that these illogical exceptions be removed and effect is given to this recommendation in clause 176 of the Bill which relates to all offences thereunder.

9. Section 247(1) of the Road Traffic Act 1960 (which is reproduced in clause 184(1) of the Bill) enacts that all sums paid to the Secretary of State in respect of fines imposed for offences under the Act are (with certain immaterial

exceptions) to be treated as Exchequer moneys for the purposes of section 27 of the Justices of the Peace Act 1949. Section 27 provides for all fines imposed by magistrates' courts to be paid to the Secretary of State (for the Home Department) who is then directed by section 43(3) to pay them into the Consolidated Fund. With the exception of those called by the section Exchequer moneys, these fines are then to be repaid to the local authorities responsible for the administration of justice in their localities as a subvention towards the cost of that service. And if (as is invariably the case) this is insufficient, section 27(4) empowers the Secretary of State to grant to the authorities a further amount of up to two-thirds of the amount by which this subvention falls short of the aggregate cost to the authorities of that service. "Exchequer moneys", as defined in section 27(10), consist for the most part of fines in respect of road traffic offences. These road traffic fines are then remitted to the Treasury and treated as Consolidated Fund extra receipts of the Secretary of State for the Environment as successor to the Minister of Transport to whose account they have been paid under a series of statutory provisions going back to section 117 of the Road Traffic Act 1930.

Since the Act of 1960 provision has been made in the Road Safety Act 1967 and the Road Traffic (Driving Instruction) Act 1967 for applying section 247(1) of the Act of 1960 to fines imposed in magistrates' courts for offences arising under those Acts, but the Road Traffic (Amendment) Act 1967 unfortunately failed to do so. To reproduce in clause 184(4) a series of five exceptions to the otherwise general proposition contained in the clause derived from that Act of 1967 would be to perpetuate not only an anomaly but also a small but troublesome complication which is clearly the result of an oversight.

The financial effect of ridding the Road Traffic legislation of this minor anomaly would be that the Exchequer moneys retained in central government funds would be increased by what must be an amount so small as to be almost negligible. And to the equally small extent to which the aggregate cost to the responsible authorities of the administration of justice would be thereby increased, two-thirds of this would qualify for a larger grant out of central government funds under section 27(4) of the Act of 1949. So far as it is possible to assess the net result of these small adjustments it seems that the almost negligible loss to the local authorities would be offset by the removal of the administrative complication of accounting for these fines separately. We understand that consultations are in progress between the Home Office and local authorities about a general simplification of the administrative arrangements for accounting for fines, but we think nevertheless that it is appropriate in this consolidation to remove the minor anomaly which at present exists.

We recommend, therefore, that in reproducing section 247(1) of the Road Traffic Act 1960 it should be treated as if it extended to fines arising under the Road Traffic (Amendment) Act 1967 as it extends to all other fines arising under the enactments consolidated in the Bill.

Effect is given to this recommendation in clause 184(1) of the Bill.

10. Section 248 of the Road Traffic Act 1960 (which is reproduced in clause 185 of the Bill) gives the Secretary of State a general power to hold inquiries for the purposes of that Act, as for example to assist in the determination of appeals to him on various matters, and section 249 makes general provisions about inquiries held under this general power or any specific powers given in the Act. Section 248 represents a consolidation of several, slightly different powers to hold inquiries contained in the preceding road traffic legislation generalised in the 1960 Act as a result of the acceptance of a proposal for a minor improvement in that legislation made under the Consolidation of Enactments (Procedure) Act 1949. Apart from achieving this simple, generalised form of power, the acceptance of the proposal under that Act also enabled the power to apply over the whole field of the enactments consolidated in the Road Traffic Act 1960 so as to avoid subjecting it to a small number of apparently capricious exceptions. Thus it is a matter of construction unaffected by any inferences to

be drawn from a list of exceptions whether in any particular context the general power applies.

But there are several later Acts of Parliament consolidated in this Bill which have not been brought within this general power to hold enquiries, although some have attracted to specific powers to hold enquiries provided by them the general provisions of section 249 of the Road Traffic Act 1960. Thus section 12(2) of the Road Safety Act 1967 applies section 249 to enquiries under section 12, but makes no other provision for enquiries, although an enquiry might conceivably be apt to assist the Minister (now the Secretary of State) in determining an appeal under section 13(1)(*c*). And paragraph 2(3) of Schedule 1 to the Road Traffic (Driving Instruction) Act 1967 applies it to enquiries under that Schedule, which covers the whole ground under that Act. The Road Traffic (Amendment) Act has no provision about enquiries, although it requires regulations under section 1(8) to give an appeal in the circumstances mentioned in paragraph (*c*) thereof. The Road Transport Lighting Act 1957 contains no power to hold enquiries, although the 1960 Act amended it so as to make it clear that the Minister (now the Secretary of State) had to consult representative organisations before exercising his only function under the Act of 1957, namely to make lighting regulations. In short a strict consolidation of section 248 would require the exclusion of some at least of these enactments lest a change in the law might be made by making the section capable of applying in contexts in which at present it cannot. On the other hand the introduction of apparently capricious exceptions scattered through Parts II and V of the Bill would represent a return to the situation remedied in the 1960 Act, so that faulty inferences might be drawn from the exceptions as to the other contexts in which an enquiry might be held under the general power. To generalise the power, on the other hand, might result in a minor change in the law but at least the generality of the power would preserve any questions of construction already implicit in the width of section 248 and would remove what would otherwise be a blemish on the form in which the law is now to be stated.

Accordingly we recommend that in reproducing section 248 of the Road Traffic Act 1960 the power therein contained to hold inquiries should be expressed in the Bill in terms of equal generality so as to be capable of applying over the whole field of the enactments being now consolidated.

Effect is given to this recommendation in clause 185 of the Bill.

11. The application to the Crown of the Road Traffic Act 1960 is dealt with by section 250 thereof which is reproduced in clause 187 of the Bill. Section 250(3) as extended by Part I of Schedule 4 to the Road Traffic Act 1962 prevents section 2 of the Road Traffic (Driving of Motor Cycles) Act 1960, amongst other enactments, from applying to motor cycles owned by the Defence Department and used for naval, military or air force purposes. The effect of this disapplication is that a provisional licence may, in the case of motor cycles used in the armed forces, authorise the riding of a heavy motor cycle (i.e. a cycle powered by an engine of more than 250 c.c.'s cylinder capacity) before a test for riding such cycles has been passed, although in all other cases section 2 prevents a provisional licence from doing so. The provisional licence referred to is a provisional driving licence issued simply as such. The Vehicle and Driving Licences Act 1969, however, enacted new provisions about driving licences and in particular (by section 14) inserted into the Road Traffic Act 1960 a new section 101. By subsection (4) of this new section a full driving licence authorising the driving of certain classes only of motor vehicles is to authorise its holder to drive vehicles of all other classes as if he were authorised by a separate provisional licence to do so. This provision is qualified by the rule contained in paragraph (*b*) of that subsection that such a full licence is not, in its provisional aspect, to authorise its holder to drive heavy motor cycles unless he has passed the test applicable to them. The new system thus introduces a greater measure of administrative flexibility and simplicity in the issuing of driving licences and it is clear that the same restrictions are to apply to both the ordinary provisional licence and the full licence in its provisional aspects.

Thus the new section 101(4) provides that the new kind of quasi-provisional licence is not to authorise the holder to drive a heavy motor cycle unless he has passed the test applicable to it.

But the Vehicle and Driving Licences Act 1969 did not disapply in relation to motor cycles used in the armed forces this latter restriction on the scope of the new quasi-provisional licence. This produces what appears to us to be a wholly capricious result which cannot have been intended. For whether a person rides a motor cycle under a provisional licence or under a full licence which is treated as provisional in relation to that class of motor vehicle will depend merely on whether or not he has passed a driving test for any other class of motor vehicle. And thus, as the law now stands, a serviceman riding a heavy motor cycle before passing the test for riding it will not commit an offence if he rides it under a wholly provisional licence but will if he rides it under a full licence which is treated as if it were provisional in relation to his riding motor cycles.

We recommend that this anomaly be corrected by re-enacting section 250(3) of the Road Traffic Act 1960 as if it had been extended so as to disapply not only section 2 of the Road Traffic (Driving of Motor Cycles) Act 1960 but also paragraph (*b*) of the new section 101(4) of the Road Traffic Act 1960.

Effect is given to this recommendation in clause 187(6) of the Bill.

12. Section 18 of the Road Traffic Act 1962 declares that when the drawing unit and trailer of an articulated vehicle are being used in combination they are to be treated for the purposes of the Road Traffic Act 1960 as being (as they had been assumed to be) two vehicles and not one vehicle, that is, a motor vehicle with a trailer attached. This provision has not been expressly extended for the purposes of the other Acts consolidated in the Bill and doubt arises in three cases as to whether the proposition ought or ought not to be expressed (in clause 190) as a general proposition for purposes of the whole Bill. For if it is expressed as being subject to certain exceptions derived from enactments outside the Act of 1960 then a change in the law may be made by reason of the implication which thus arises or may arise that in those cases an articulated vehicle is to be treated as one vehicle.

The first case arises because section 18 is not expressed to apply to the Road Transport Lighting Acts. This may have been because the problem to which section 18 was directed had not arisen under those Acts. But it is thought likely in view of the provisions of section 9 of the Road Transport Lighting Act 1957 modifying the requirements of that Act in the case of vehicles towing and being towed that a court would, perhaps by analogy with section 18, reach the same conclusion in relation to articulated vehicles. It must, however, be wrong, by excepting the road transport lighting provisions reproduced in clauses 68 to 81 of the Bill, to prevent a court from applying those modifications to articulated vehicles in the same way as to motor vehicles towing trailers.

The second point of doubt arises on the Road Traffic (Driving Instruction) Act 1967 which is reproduced in Part V of the Bill. This Act forbids the giving of paid instruction in the driving of "motor cars" unless the instructor is registered or licensed under that Act. "Motor car" is defined as having the same meaning as in section 253 of the Road Traffic Act 1960, which defines "motor car", as distinct from "heavy motor car", by reference *inter alia* to its unladen weight. In this case again it would seem to be wrong to imply, by excepting Part V of the Bill from the proposition about articulated vehicles, that they are to be treated as one vehicle for the purposes of that Part thus affecting the probable answer to the question whether a given vehicle is a motor car or a heavy motor car.

In the third place, section 18 is not attracted by the Road Safety Act 1967 for the purposes of the provisions of Part II about goods vehicles (including trailers). An examination of the provisions of Part II of that Act shows that there is only one point at which the proposition expressed in section 18 might

be relevant, and that is section 14(5). That subsection makes it an offence to use a motor vehicle for drawing a trailer when a plating certificate has been issued for the vehicle which does not specify the maximum laden weight for the vehicle together with any trailer which may be drawn by it. To except in relation to this one provision the proposition that articulated vehicles are to be treated as two vehicles would have consequences which, it is thought, could not have been intended. For if the vehicle in respect of which there must be a plating certificate specifying a maximum laden weight when used with a trailer is the whole articulated combination this would make it impossible in many cases to specify such a weight, for it would not be a constant weight.

We think that these connected points of doubtful construction should be resolved by reproducing section 18 of the Road Traffic Act 1962 in terms of the widest generality, and we accordingly recommend that in re-enacting that section it should be treated as if it had been extended for the purposes of all the enactments consolidated in the Bill.

Effect is given to this recommendation in clause 190 of the Bill.

13. Section 254 of the Road Traffic Act 1960 enacts that certain mechanically propelled vehicles, like grass-cutting machines, are to be treated for the purposes of that Act (except Part IV) as not being motor vehicles. The exception to this general proposition seems to be merely an historical accident since section 254 reproduced section 50 of the Road Traffic Act 1956 which applied to the "Road Traffic Acts 1930 to 1956" and the Road Transport Lighting Acts, but not to the Road and Rail Traffic Act 1933 which was not included in that collective citation. Part IV was derived from this last Act and was in terms of goods vehicles. On 1 December 1970 Part V of the Transport Act 1968 replaced virtually the whole of Part IV of the 1960 Act for regulating the carriage of goods by road. It was not thought necessary either to apply or to reproduce in that Act section 254 for the purposes of the regulation of the carriage of goods, which itself strongly suggests the commonsense view that section 254 would not need to operate in relation to goods vehicles. But the Transport Act 1968 left unrepealed sections 183 and 185 of the Road Traffic Act 1960 (section 184 having been prospectively replaced by section 16 of the Road Safety Act 1967) which, with section 16, are reproduced in clauses 56 to 58 of the Bill. On a strict view, therefore, it would be necessary to except these clauses from the proposition that these special machines are not to be treated as motor vehicles, with an implication contrary to the realities of the case. Furthermore a doubt arises as to whether the provisions of Part II of the Road Safety Act 1967 about goods vehicles should be similarly excluded since although it was made clear by paragraph 17 of the first Schedule to that Act that section 254 applied to the motor vehicle offences contained in that Part, nothing was said about Part II. Here again it seems reasonably clear that it was thought unnecessary to do so because it could not seriously be argued that grass-cutting machines and the like were goods vehicles i.e. motor vehicles constructed or adapted *for use* for the carriage of goods (1960, s.191(1)).

Accordingly we recommend that in reproducing section 254 of the Road Traffic Act 1960 it should be treated as if it were capable of applying generally to all the enactments consolidated in the Bill.

Effect is given to this recommendation in clause 192 of the Bill.

14. Similar considerations apply in relation to this recommendation as applied in the recommendation in paragraph 8 on clause 176. Section 246 of the Road Traffic Act contained parallel illogical exceptions and the earliest opportunity was taken of getting rid of those exceptions when section 246 was generalised in relation to all offences under the Act of 1960 by section 40 of and Schedule 3 to the Road Traffic Act 1962.

Subsequent offences created by the Road Safety Act 1967 and the Road Traffic (Driving Instruction) Act 1967 were by those Acts brought within the ambit of section 246. Offences created by the Road Traffic (Amendment) Act 1967

were not so brought within the ambit of section 246. Those offences together with those under section 12 of the Road Transport Lighting Act 1957 are wholly illogical exceptions which would otherwise have to be excepted from the general proposition in this paragraph.

We recommend that these illogical exceptions be removed and effect is given to this recommendation in paragraph 3 of Part IV of Schedule 4 to the Bill, which generalises the proposition in relation to offences under the Bill or any regulations made thereunder.

Printed in England by Her Majesty's Stationery Office
at St. Stephen's Parliamentary Press

(317233) Dd. 164252 K13 7/71

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