such as the United States of America, the Visiting Forces Act 1952 as extended by the International Headquarters and Defence Organisations Act 1964 will enable magistrates' courts to try him for a road traffic offence, generally speaking, unless it arose out of, and in the course of, his duty (see s.3). Thus, an American army officer driving on manoeuvres would be acting in the course of his duty and would normally not be triable in an English court, but, if he were on a domestic shopping trip with his family, he would not be acting in the course of his duty and would be triable for a road traffic offence by an English court. The Road Vehicles (Construction and Use) Regulations 1986 reg.4, the Road Vehicles Lighting Regulations 1989 reg.7, the Motor Vehicles (Tests) Regulations 1981 reg.6, and the various Motor Vehicles (Type Approval) (Great Britain) Regulations among others give certain exemptions for the vehicles of visiting forces. As to insurance, see § 10.26 and excise licences, § 12.34.

The Visiting Forces and International Headquarters (Application of Law) Order 1999 (SI 1999/1736) (as amended) applies many provisions of the Road Traffic Acts to vehicles of visiting forces and their drivers when on duty, but offences committed on duty will be tried by the service courts. The general position is that drivers and vehicles of visiting forces are subject to the same provisions of the Road Traffic Acts as persons and vehicles in the service of the Crown (see § 2.35). Section 79 of the Road Traffic Act 1991 specifically provides that nothing in Pt II of the Act (which relates to traffic in London) shall apply to any vehicle which

(a) at the relevant time is used or appropriated for use for naval, military or airforce purposes;

(b) belongs to any visiting forces (within the meaning of the Visiting Forces Act 1952); or

(c) at the relevant time is used or appropriated for use, by any such forces.

2.32 A civil court may not try for the same crime a person already tried by the service court of a visiting force and, where the civil court tries him for a different crime but he has already been tried by the service court wholly or partly for the acts or omissions in respect of which the civil court convicts him, the latter court must have regard to the sentence already passed (Visiting Forces Act 1952 s.4).

Drivers from abroad

2.33 Where a solicitor is instructed in a case relating to the duty payable on, the insurance cover for, or the application of the Construction and Use Regulations to a car brought from abroad or as to the driving licences of overseas visitors, reference should be made, inter alia, to the Motor Vehicles (International Circulation) Order 1975 (SI 1975/1208) as amended. As to driving licences reference should be made to "Drivers from abroad" under "Driving Licences" in Chapter 11. As to excise licences, see § 12.34. He or she may also wish to refer to the Road Vehicles Lighting Regulations 1989 reg.5; the Road Vehicles (Construction and Use) Regulations 1986 reg.4; and the Goods Vehicles (Plating and Testing) Regulations 1988 Sch.2 para.24. As to the need for a driver from abroad to have a valid test certificate, see "Test Certificates and Testing" in Chapter 8. For drivers' hours and records where the EU international rules apply, see "Drivers' Hours" and "Drivers' Records" in Chapter 14. International passenger services are governed by the Road Transport (International Passenger Services) Regulations 1984 (SI 1984/748). These regulations are made in implementation of EC regulations.

Diplomatic privilege

2.34 By the Diplomatic Privileges Act 1964 Sch.1 arts 31 and 37, members of the diplomatic, administrative and technical staff of a mission and members of the family of such staff forming part of their household are exempt from criminal proceedings, and members of the domestic service staff enjoy like immunity in respect of acts performed in the course of their duties. All such immunities may be waived. Private servants of members of the mission, as opposed to those of the mission itself, are not exempt; nor are members of the family of the diplomatic staff and members of the administrative and technical staff and their families who are British nationals or permanently resident here. By the Diplomatic Privileges (British Nationals) Order 1999 (SI 1999/670), where a person is a member of a mission of a country listed in Sch.1 to the Order (Commonwealth countries and the Republic of Ireland) or a private servant of such a person, and is a citizen both of that country and a British national, he has the same privileges and immunities as he would have if he were not a citizen. Similar privilege may also exist under the International Organisations Act 1968. Consular officers and consular employees, as defined in art.1 of Sch.1 to the Consular Relations Act 1968, are not subject to the jurisdiction of British courts in respect of acts performed in the course of consular functions but such immunity may be waived (Consular Relations Act 1968 Sch.1 arts 43, 45). Where any question of diplomatic or consular immunity arises a certificate should be obtained from the Secretary of State, which certificate is conclusive as to the person's entitlement to immunity.

Diplomatic immunity cannot be successfully pleaded in response to a criminal charge unless the entry into this country has been notified to the Foreign and Commonwealth Office in accordance with art.10 of the Vienna Convention on Diplomatic Relations 1961 (Cmnd.1368), even though art.10 is not reproduced in Sch.1 to the Diplomatic Privileges Act 1964; see *R. v Lambeth JJ. Ex p. Yusufu*; *R. v Brixton Prison Governor Ex p. Yusufu* [1985] Crim. L.R. 510. A certificate was similarly held to be conclusive in a case of state immunity and could not be challenged by judicial review except on the basis that it was a nullity or was issued outside the scope of the relevant statutory power (*R. v Secretary of State for Foreign and Commonwealth Affairs Ex p. Trawnik*, *The Times*, April 18, 1985). The waiver of diplomatic privilege must be made by or on behalf of the representative of the country concerned and cannot be made by the defendant himself; until there is due waiver, proceedings are without jurisdiction and are null and void (*R. v Madan* [1961] Crim. L.R. 253).

The Crown

2.35 Parts I, II, III, IV and VII of the 1988 Act apply, to the extent stated in s.183 thereof (as amended), to persons and vehicles in the public service of the Crown. Other Parts of the 1988 Act do not apply to the Crown (*Adair v Feist* 1936 S.L.T.(Sh.) 22). Section 79 of the Road Traffic Act 1991 provides that ss.66, 69–71 of the Act (parking penalties in London, immobilisation of vehicles in parking places, exceptions from s.69, and representations in relation to removal or immobilisation of vehicles) apply to vehicles in the public service of the Crown which are required to be registered under the Vehicle Excise and Registration Act 1994, *except* those exempted because at the relevant time they are used or appropriated for use for naval, military or airforce purposes. Those sections also apply to persons in the public service of the Crown.

Where under the relevant Part of the 1988 Act an offence has been committed in connection with a vehicle in the public service of the Crown, proceedings may be brought in respect of the offence against a person nominated for the purpose on behalf of the Crown and the nominated person may be convicted as well as any person actually responsible for the offence (but without prejudice to proceedings against any person so responsible) (1988 Offenders Act s.94).

2.36 Although the nominated person may be convicted, the only order which can be made is a fine (1988 Offenders Act s.94(3)). Such an order cannot be enforced and the conviction is to be disregarded for all other purposes except appeal (whether by way of case stated or otherwise).

As to penalty points see the note to Crown servants, § 19.25.

The nominated person will now normally be John Doe, the fictitious litigant of the 17th century, resurrected in *Barnett v French* [1981] R.T.R. 173. The nominated defendant in that case was responsible for 3,500 Crown vehicles and would have been at risk of becoming the citizen with the largest record of motoring convictions ever known. The Divisional Court suggested the use of the name John Doe instead. The name Doe was particularly appropriate in that it comprised the initial letters of the then Department of the Environment.

2.37 Drivers of Crown vehicles (including British servicemen on duty) are therefore fully responsible for offences of bad or drunken driving, disobeying traffic signs, not reporting accidents, breaches of the Construction and Use and Pedestrian Crossings Regulations, speeding (with certain exceptions) and so on. The position as to insurance is mentioned at § 10.26. The nationalised industries are not Crown emanations (*Tamlin v Hannaford* [1949] 2 All E.R. 327) and the BBC is not a Crown department (*British Broadcasting Corporation v Johns* [1964] 1 All E.R. 923).

A British serviceman may be convicted by Court Martial of committing a civil offence of a road traffic type abroad contrary to s.42 of the Armed Forces Act 2006. Where a person subject to the Armed Forces Act 2006 is acquitted or convicted of an offence by the Court Martial, a civilian court shall by s.64(2) be debarred from trying him subsequently for the same offence and by s.66 acquittal or conviction by a civilian court bars subsequent trial by Court Martial.

See § 11.70 as to disqualification.

Enactments not specifically naming the Crown

2.38 As stated, many of the provisions of the Road Traffic Acts apply to the Crown and its servants but the provisions of s.28 of the Road Traffic Regulation Act 1984 (stopping for school crossing patrols) are not mentioned in s.130 of the 1984 Act nor do the Highway Act 1835, the Town Police Clauses Act 1847 and the Highways Act 1980 s.137 (obstruction) contain provisions binding the Crown.

A statute which does not name the Crown does not bind it unless it is an enactment of paramount importance to public safety which requires that Crown servants should be responsible if, in performance of their duties and acting under orders, they contravene its terms (*Cooper v Hawkins* (1904) 68 J.P. 25). It is submitted that the provisions of s.28 of the Road Traffic Regulation Act 1984 and of s.78 of the Highway Act 1835 (relating to school crossing patrols and negligent opening of car doors respectively) are enactments of sufficient importance to public safety to override the rule that Crown servants acting on duty are not liable under them. Even if they do not override that rule, where there is a personal ele-

ment in a charge against a man under a statute which does not bind the Crown or an individual act by a driver apart from the performance of his duty as a servant of the Crown (per Lord Alverstone C.J. in *Cooper v Hawkins*), or an act by a driver which is his own personal act, e.g. being drunk or in a condition or under circumstances "in which he was not performing a public duty or acting in accordance with superior orders" (per Wills and Channell JJ. ibid.), it is submitted that the driver in such a case cannot claim the benefit of any Crown exemption. Although in *Cooper v Hawkins* above a conviction of an Army driver for exceeding a local speed limit was quashed because he was acting under orders and it was necessary both in the particular circumstances and in the interests of the Army generally that a low speed limit should not be observed, the cited dicta of the judges in the case are, it is argued, sufficient authority for saying that Crown drivers are in the same position as civilian drivers in regard to obeying school crossing patrols and taking precautions before opening car doors, for these are personal matters in the driver's control and save, perhaps, in exceptional circumstances, in no way hinder the performance of the functions of any Crown department. Examples of exceptional circumstances in which a Crown servant might not be liable would be a police officer opening the door of his car as quickly as possible to save life or the driver of an RAF ambulance, under orders to get to a crashed aircraft without delay, ignoring a school crossing patrol's signal. It is submitted that it is only if the driver's personal act is in direct performance of his public duty that the exemption applies.

2.39 As regards obstruction, there is no exemption for the Crown under the Road Vehicles (Construction and Use) Regulations 1986, which relate to motor vehicles and trailers, but it might sometimes be necessary to prosecute Crown drivers and their superior officers under the Highways Act 1980 s.137. Here a defence that it was necessary to leave vehicles near a particular government building for the department's work to be done more efficiently might be successful.

Crown roads are subject to the general statutory provisions which apply to roads generally, it is submitted. Those particular statutory provisions which apply to roads only if particular steps are taken, as by the making of an order, may be applied to Crown roads by order under s.131 of the Road Traffic Regulation Act 1984, e.g. restricted waiting orders, pedestrian crossings, etc.

JURISDICTION OVER OFFENCES

Venue

2.40 The venue for offences is regulated, so far as magistrates' courts are concerned, by s.2 of the Magistrates' Courts Act 1980. By s.2(3), a magistrates' court may try summarily an "either way" offence which has been committed by a person who appears or is brought before the court wherever it has been committed, provided it is committed in England or Wales or otherwise within their jurisdiction. By s.2(1), a magistrates' court has jurisdiction to try any summary offence.

Trying cases together

2.41 An important point on procedure was emphasised in *R. v Bennett* [1980] Crim.

L.R. 447. It was stated that it was the obligation of solicitors, counsel and judges to ensure that as far as possible all charges against an individual should be dealt with at the same court by the same judge on a single occasion. Where a solicitor or counsel knows that a defendant is waiting to be dealt with on other charges, there should be an application for the matter to be put back or transferred to the Crown Court centre where the outstanding charges are being tried. This would avoid inconsistency in the sentencing of individuals and the waste of time and money which could result. On the face of it there is no reason why this recommendation should not apply equally to magistrates' courts. It suggests that the practice whereby some courts and some police forces are reluctant to agree to the combination of proceedings may be wrong. Obviously there must be limits and the importance of bringing proceedings to a speedy conclusion must not be overlooked, particularly for youths: Magistrates' Courts Act 1980 s.10(3A). It may well be wrong to combine proceedings which will require witnesses to travel long distances for a disputed case. Again, a case may be so trivial as not to justify the effort.

By virtue of s.27A of the Magistrates' Courts Act 1980 a magistrates' court has power to transfer a case to another magistrates' court. Directions given by the Lord Chancellor (under s.30(3) of the Courts Act 2003) identify the criteria that will determine the place to which a case might be transferred; these are the local justice area within which the offence was committed, the defendant resides, the witnesses (or a majority of them) reside or where other cases raising similar issues are being dealt with. Guidelines issued by the Justices' Clerks' Society in October 2008 confirm the principles set out in the cases referred to above concerning the need to balance the interests of the parties, victim, witnesses and anyone else with a legitimate interest in the case.

Limitation of time

2.42 For all summary offences, except where expressly provided otherwise by the statute, the information must be laid within six calendar months of the offence (Magistrates' Courts Act 1980 s.127). In *R. v Haywards Heath JJ. Ex p. White* (2000) 164 J.P. 629, a driver was charged with dangerous driving and careless driving in respect of the same incident. The summons for dangerous driving was dismissed, but the driver was convicted on the lesser charge. The justices retired to consider sentence during which it was drawn to their attention that the summons for careless driving had been issued out of time. They returned to court (before sentence) and set aside the conviction by way of s.142 of the Magistrates' Courts Act 1980. Rejecting the driver's claim that they were they without jurisdiction, they convicted the driver of careless driving as an alternative verdict to the dangerous driving. The Divisional Court, noting that the justices had set aside the conviction on the invalid summons and that the alternative verdict on the dangerous driving summons was legitimate, dismissed the application for judicial review.

There is no limit of time in respect of indictable offences unless the statute otherwise provides. Section 127 of the 1980 Act provides that indictable offences triable summarily ("either way" offences) may be dealt with summarily at any time subject only to any time-limit for bringing proceedings for the offence on indictment.

2.43 Time runs from the commission of the offence, not from its discovery (*Teall v*

Teall [1938] 3 All E.R. 349). Provided the information is laid within six months of the offence, the hearing, the issue and service of the summons and the conviction may all be outside that period (*Abraham v Jutson* (1962) 106 S.J. 880; *R. v Fairford JJ. Ex p. Brewster* [1975] 2 All E.R. 757). Nevertheless, justices may decline jurisdiction if they conclude the prosecutor was guilty of an abuse of the process of the court by laying an information without having decided whether to prosecute (*R. v Brentford JJ. Ex p. Wong* [1981] Crim. L.R. 339). On the same principle it may be possible to refuse to hear proceedings because of inordinate delay. See "Refusal to hear a case", § 2.68. The date of the information need not be stated in the summons unless there was some question of its being out of time (*R. v Godstone JJ. Ex p. Secretary of State for the Environment* [1974] Crim. L.R. 110).

Where there is doubt as to whether an information was laid in time, it is for the prosecutor to satisfy the court that it was and the court is entitled to dismiss the case if he fails to do so (*Lloyd v Young* [1963] Crim. L.R. 703). A summons or warrant shall not cease to have effect by reason of the death of the justice or his ceasing to be a justice (Magistrates' Courts Act 1980 s.124). This provision would presumably apply to a summons issued by a justices' clerk or other person authorised by virtue of the Justices' Clerks Rules 2005 (SI 2005/545). The proceedings may be continued notwithstanding the death of the informant prior to the hearing (*R. v Truelove* (1880) 5 Q.B.D. 336), or before the appeal (*Hawkins v Bepey* [1981] 1 All E.R. 797), at least in the case of a police informant. The Divisional Court confirmed in *R. v Clerkenwell Magistrates' Court Ex p. Ewing and Clark, The Times*, June 3, 1987, that there was no breach of the six months' time-limit in which to lay information and to issue summonses in summary cases where proceedings were commenced but were not served, and fresh summonses were issued more than six months after the laying of the original information.

Section 6 of and Sch.1 to the 1988 Offenders Act lay down a special time-limit **2.44** for certain offences under the Act. Proceedings may be brought within the period of six months from the date on which sufficient evidence to warrant the proceedings in the opinion of the prosecutor came to his knowledge; and such proceedings may not be brought more than three years after the commission of the offence.

The main offences under the Road Traffic Act 1988 to which s.6 of the 1988 Offenders Act applies are s.99 (driving licence-holder failing to surrender his licence and give particulars when particulars become incorrect), s.103(1)(a) and (b) (obtaining a driving licence, or driving, while disqualified), s.143 (uninsured use of a motor vehicle), ss.173–175 (forgery, issuing and making false statements in relation to driving licences, test certificates, insurance certificates and certain other documents).

The interpretation of s.6 of the 1988 Offenders Act was considered in *Swan v* **2.45** *Vehicle Inspectorate* [1997] R.T.R. 187. The appellant argued unsuccessfully before the justices that informations laid against him for four offences of driving whilst disqualified and four offences of using a vehicle without insurance were out of time. The offences were discovered by a traffic examiner in May 1995. The following month he submitted a report to the senior traffic examiner who laid informations on a date in November which was outside the six-month limitation period. Therefore although the traffic examiner had sufficient knowledge of the offences more than six months before the beginning of November, the senior

Cartage Co v Jenks [1937] 2 All E.R. 525). Such signs are now only the round red "Stop" signs used at road works (diagram 7023 in the 2002 Regulations). Sign 7023 may be used only where one-way driving is necessary owing to temporary closure of part of the width of the carriageway of the road (direction 39(1)).

White lines and double white lines

6.51 By the Road Traffic Regulation Act 1984 s.64, lines or marks on roads may be traffic signs if they indicate a warning, prohibition, restriction or requirement prescribed or authorised under s.64. It had been held previously in *Evans v Cross* [1938] 1 All E.R. 751 that a white line on a bend or down the centre of a road was not a traffic sign. Single white lines, if disobeyed, create no offence under s.36 of the 1988 Act, although a charge of careless driving may be justified for a central white line (see *Bensley v Smith* and *R. v Warwickshire Police Ex p. Manjit Singh Mundi* at § 5.54), but reg.25(2) specifically provides that the transverse lines at the mouth of a minor road (diagram 1003), where it enters a major road, whether or not used with the "Give Way" sign (602), create the requirement that no vehicle shall pass them into the major road in such a manner or at such a time as is likely to cause danger to a vehicle on the major road or to cause it to change speed or course to avoid it. A driver who disobeys this requirement seemingly offends against s.36, since reg.10 now specifically applies s.36 to that road marking (diagram 1003).

Double white lines

6.52 Regulation 26 of the 2002 Regulations deals with the double white lines (diagrams 1013.1 and 1013.3). Double white lines consist either of two continuous white lines or one continuous white line together with a broken white line. Two continuous white lines require vehicles in either direction at all times to keep to the nearside of the nearest continuous line, and a broken line with a continuous white line requires a vehicle to keep to the nearside of the continuous white line when the continuous white line is the nearer of the two lines to his vehicle. In diagram 1013.1 five different methods of marking are indicated. The second of the five consists of two continuous white lines with hatching between them. It is not always appreciated that the double white line regulation (and thus s.36) applies to them. See below, however, as to the need for an approach arrow.

Regulation 10 applies so that contravention of the requirements of reg.26(2) becomes an offence contrary to what is now s.36.

6.53 It is an offence to stop on *either* side of a road within a double white line system, whether the lines are both continuous or only one of the two lines is continuous. It is also a requirement that the driver must keep his moving vehicle in a position on a road governed by a double white line system so that at all times the offside of the vehicle is on the nearside of the white lines while both white lines are continuous or where the nearside white line is continuous and the offside line is broken. On the other hand if the broken line of a double white line is nearest to the vehicle viewed in the direction of travel, the double line may be crossed if it is seen to be safe to do so (reg.26(7)); if it was crossed when unsafe, the charge should not be under s.36, for reg.10 does not apply to breach of reg.26(7), but careless driving. Stopping is permitted by reg.26(3)–(5) to enable a person to

board or alight from the vehicle or to load or unload goods, for building operations, road and public utility works, for vehicles used for fire or, in England or Wales, fire and rescue authority, ambulance, special forces, police or traffic officer purposes (as to this see the comments at §§ 6.26 et seq. as to the traffic lights exemption), for pedal cycles without side-cars, whether or not auto-assisted, for exigencies of traffic, to avoid an accident or with the permission of a constable in uniform or when directed by a traffic warden. It is an offence to drive on the wrong side of double white lines when both lines are continuous or only the nearside is continuous even if it is perfectly safe to do so.

6.54 Defences are set out in reg.26(6). These allow a vehicle to cross or straddle the continuous line in order to obtain access to side roads or land or premises adjoining the road; to pass a stationary vehicle; to avoid an accident or in circumstances beyond the driver's control; to pass a road maintenance vehicle moving at a speed not exceeding 10mph; to pass a pedal cycle moving at a speed not exceeding 10mph; to pass a horse that is being ridden or led at a speed not exceeding 10mph; or to comply with the direction of a uniformed police constable, a traffic officer in uniform or traffic warden. In *R. v Blything (Suffolk) JJ. Ex p. Knight* [1970] R.T.R. 218 the justices were advised by their clerk that what is now reg.26(6) only gave a defence where the vehicle actually crossed or straddled the white lines and therefore the defendant, who was on the offside of the road before the double white lines began, could not avail himself of the defence contained in the regulations. It was held that this was wrong and that "crossing or straddling" did not have this restricted meaning. On the facts the Divisional Court held that the defendant, who had commenced overtaking two vehicles before the double white lines, could not have a defence under what is now reg.26(6). *R. v Blything* was explained in the unreported case of *Hillyer v Hooper* heard in the Divisional Court on March 20, 1984. It was held in the latter case that the position depended on the facts as to whether the act or omission of a third party or parties enabled the person to bring himself within the defence of circumstances beyond the driver's control. The decision in *Blything* was that where in the circumstances a man chose to overtake and then for one reason or another—connected with the ordinary experience in the course of driving vehicles on the highway—found it impossible to get back, that was not a statutory defence.

The lines must, by reg.11(1), be white and, by reg.31(3), illuminated by reflecting material and studs incorporating reflectors between the two lines. The variations in dimensions allowed by reg.12 apply.

6.55 The lines must comply with the regulations and if they do not a person contravening them commits no offence even if the lines are readily recognisable as double white lines (*Davies v Heatley* [1971] R.T.R. 145, where the lines were not in accordance with diagram 1013 under the 1964 Regulations in so far as an intermittent white line had been placed between two continuous white lines and the continuous lines were too far apart). In *Walton v Hawkins* [1973] R.T.R. 366 it was held that diagram 1013 of the 1964 Regulations was not one unit but consisted of three separate markings each having a different purpose and the sequence in which they were imposed was a matter for the highway authority to suit the requirements of the road in question. *Aliter*, seemingly, if the markings or the arrows have been correctly marked even though they are partially invisible (cf. *Skeen v Smith* at § 6.59), providing their meaning is clear.

A trivial departure from the requirements of regulations will not however

provide immunity from prosecution (*Cotterill v Chapman* [1984] R.T.R. 73). In that case for some 30m distance the gap between the double white lines was 87mm instead of the 90mm minimum. The error had arisen following repainting.

6.56 Under the 2002 Regulations a warning arrow (diagram 1014) is mandatory (see direction 48). More than one (in line) is permissible. No approach distance is specified. The proposition in the fourteenth edition that a prosecution for a failure to comply with a double white line system should fail if there is no warning arrow received judicial support in the Divisional Court case of *O'Halloran v DPP* [1990] R.T.R. 62. Direction 42 of Pt II of the Traffic Signs Regulations and General Directions 1981 (SI 1981/859) was mandatory, and accordingly a system of double white lines which did not include an arrow preceding it was not a system lawfully placed. The justices' conclusion that although the warning arrows were mandatory at a sequence of double white lines, what was then direction 42 of the 1981 Regulations did not require arrows at every series of double solid white lines was erroneous, and the appellant's conviction had to be quashed.

Non-conforming and damaged signs

6.57 The colours, sizes, dimensions, proportions and forms of letters and numerals are dealt with by regs 11–14, illumination of signs by regs 18–21 and Sch.17, and the variations by reg.12. The dimensions of all signs are metricated.

All existing permanent regulatory signs under the 1994 and 1981 Regulations are preserved until divers dates by reg.3(2).

6.58 Where a "no waiting" order or other traffic regulation order, e.g. a clearway, has been made, normally it must be indicated by traffic signs which conform with the 2002 Regulations, even though the local authority have a discretion whether to erect such signs. If it is not so indicated or the signs do not conform, *Mac's v Hamilton* 1965 S.L.T. 305 seems to be authority for the proposition that there might be no offence against the order. In *Power v Davidson* [1964] Crim. L.R. 781 it was held in relation to former push button pedestrian crossing regulations of 1954 that where the studs were not in compliance with the regulations no offence was committed. *Davies v Heatley* [1971] R.T.R. 145 is authority for the proposition that, because by s.64(2) of the Road Traffic Regulation Act 1984 traffic signs shall be of the size, colour and type prescribed by regulation, if a sign the contravention of which is an offence contrary to s.36 is not as prescribed by the regulation, no offence is committed if the sign is contravened even if the sign is clearly recognisable to a reasonable man as a sign of that kind (but see *Sharples v Blackmore* below). The facts of *Davies v Heatley* were that a single intermittent line had originally been placed in the centre of the road. Double white lines were subsequently placed on the road but the intermittent line was insufficiently defaced. Although the court might possibly have been able to hold that the old line could be subtracted from the existing double lines and thus form no part of them, in any event the existing double lines were more widely spread than was permitted by the regulation.

A trivial departure, however, from the regulation requirements will not provide immunity from prosecution (see *Cotterill v Chapman* [1984] R.T.R. 73 under "Double white lines", §§ 6.52–6). *Cotterill v Chapman* was applied in *Canadine v DPP* [2007] EWHC 383 when holding that the fact that the black casing around an illuminated speed limit sign was visible on close frontal examination did not render it non-prescribed in accordance with s.64(1) of the 1984 Act. There was

no question of road users being misled or misinformed, and any deviation from the prescribed form was so minor that it fell to be disregarded under the de minimis principle.

In *Skeen v Smith* 1979 S.L.T. 295 the "Stop" sign on the pole was in order, but the word "Stop" painted on the road was not fully visible. The Appeal Court directed the magistrates to convict. This was not a case of an initial and continuing failure to comply with the regulations: the markings had been in order at one time and were still partially visible. **6.59**

In *Sharples v Blackmore* [1973] R.T.R. 249 the Divisional Court held that the colour of the back of a speed limit sign was immaterial as it was the front of the sign which of course conveyed the warnings to the motorist. Where, therefore, a speed limit sign's back was painted black instead of grey, the sign was nevertheless held to be a sign prescribed under the Traffic Signs (Speed Limits) Regulations and General Directions 1969 (SI 1969/1487). It would seem that a sign not complying with direction 42 of the 2002 Directions which requires the back of signs to be grey or black or in a non-reflective metallic finish (or black in the case of signs mounted on traffic lights) would, following *Sharples v Blackmore*, be held to comply with the 2002 Regulations and Directions, where the back of the sign is immaterial for its purpose of regulating traffic. *R. v Priest* (1961) 35 C.R. 31, a decision of the Ontario Court of Appeal that a non-conforming stop sign was binding on the driver providing he could have seen it if he was keeping a proper look-out, was distinguished in *Davies v Heatley* above on the ground that the Canadian legislation did not make it an offence to comply with a "prescribed stop sign" but only with a stop sign.

SIGNS AND SIGNALS: PROCEEDINGS AND PENALTIES

Warning of intended prosecution

Warning of intended prosecution (see Chapter 2) is required for all offences under ss.35 and 36 of the 1988 Act (1988 Offenders Act s.1 and Sch.1), whether committed by the driver of a motor vehicle or by the rider or propeller of any other type of vehicle, including pedal cyclists and tricyclists, or by the driver of a horse-drawn vehicle, unless s.2(1) of the 1988 Offenders Act applies in the particular case. In *Walton v Hawkins* [1973] R.T.R. 366 at 369, it was argued that the notice of intended prosecution did not comply with the statutory requirements in that the failure to observe double white lines according to the notice occurred south of a junction when in fact the road ran east and west; this contention was abandoned by the appellant with the approval of the court as the appellant had not been prejudiced by the error (following *Pope v Clarke* [1953] 2 All E.R. 704). **6.60**

Proceedings generally

An information under what is now s.35 is not bad because it uses the word "fail" instead of "neglect" (*Pontin v Price* (1933) 97 J.P. 315). **6.61**

Where a court has taken into consideration disobedience to traffic signs on convicting for dangerous or careless driving, the conviction would seem to be a bar to further proceedings under s.36 (cf. *Welton v Taneborne* (1908) 72 J.P. 419) but it would be otherwise if there had been an acquittal under s.2 or s.3. See § 5.80 as to convicting for both offences.

impose high standards in order to achieve the statutory objectives, a policy adopted to achieve those objectives cannot be said to be unlawful provided the authority is prepared to hear each case on its merits. On this occasion the policy was that a new licence would only be issued in respect of a vehicle that was new. Other decided cases have approved policies to licence only London type cabs, to require vehicles to be adapted to take wheelchair bound passengers, to licence for the first time only vehicles less than three years old and normally to refuse licences to men over 65 years.

The Divisional Court was concerned to ascertain that the local authority had considered the case on its merits and that the policy was not unreasonable or irrational.

13.249 The powers of a local authority to impose conditions on the grant of a hackney carriage licence under s.37 of the Town Police Clauses Act 1847 was raised again in *R. (on the application of Shanks) v Northumberland CC* [2012] EWHC 1539; [2012] R.T.R. 36 (p.499). The relationship between the 1847 Act and s.47 of the Local Government (Miscellaneous Provisions) Act 1976 was considered by Foskett J. who held that a hackney carriage was always a hackney carriage, no matter what it was doing or where, and that its use, for whatever purpose, could never make it a private hire vehicle in the statutory sense. The licensing of vehicles as hackney carriages was an entirely separate and distinct regime to that which existed for private hire vehicles and the regime which regulated private hire vehicles had no application to a vehicle registered as a hackney carriage. The purpose of the 1976 Act was to impose a scheme of licensing on otherwise unlicensed vehicles and their drivers. The statute did not exist to impose further regulation on already regulated hackney carriages. In order to "operate" within the meaning of the 1976 Act, was, as the definition of "operate" in s.80(1) made clear, an activity that could be carried out only in relation to a private hire vehicle as defined by that section. The definition explicitly excluded hackney carriages as that activity was not an activity carried out, or capable of being carried out, in relation to a hackney carriage, however or wherever the vehicle was being used. The provision of a hackney carriage for hire, together with the services of a driver pursuant to an advanced booking was not a licensable activity.

A penalty points system adopted by a local authority for misconduct by taxi drivers, whereby the accumulation of more than 10 penalty points within a period of three years would result in the automatic revocation of the driver's licence, was considered in *R. (on the application of Singh) v Cardiff City Council* [2012] EWHC 1852. It was held that such an approach by the council was unlawful because it left no room for judgement or discretion, nor did it allow for the statutory alternative sanction of suspension.

13.250 In *R. (on the application of Morris) v Preston Crown Court* [2012] EWHC 213, a claimant was charged under a local byelaw of "driving for hire, driving or allowing to be driven, or harnessing or allowing to be harnessed to the carriage any animal in such condition as to expose any person conveyed or being conveyed in such a carriage, or any person traversing any street, to risk of injury". The claimant's appeal against conviction at the magistrates' court was dismissed by the Crown Court, which found that a prosecution could be based upon the manner in which a hackney carriage was driven. The application before the Divisional Court concerned the object of "drive or allow to be driven" and whether the reference was to a hackney carriage or to an animal, both of which were referred to

in the statutory provision. The meaning of "driving" in the context of whether "driving" meant driving the carriage or driving the horse was also considered. It was held that a driver should not drive so as to expose persons to risk of injury and the driver shall not harness an animal to the carriage in such a condition that would expose such persons to risk of injury.

13.251 Proprietors' licences for private hire vehicles are obtained under s.48 of the 1976 Act and under that section such conditions as the council considers reasonably necessary may again be attached, including conditions requiring or prohibiting the display of signs on or from the vehicle. In addition to proprietors' licences for private hire vehicles under s.48, operators' licences for private hire vehicles are obtained under s.55 and private hire drivers' licences under s.51 of the same Act.

Section 61 of the Local Government (Miscellaneous Provisions) Act 1976, as amended, provides that licensing authorities in England and Wales outside London may suspend or revoke a hackney carriage or private hire vehicle driver's licence with immediate effect where it is the interests of public safety.

13.252 A private hire vehicle is under s.80(1) of the 1976 Act, for the purposes of Pt II of that Act and unless the subject or context otherwise requires, a motor vehicle constructed or adapted to seat fewer than nine passengers (other than a hackney carriage, a public service vehicle or a tramcar) which is provided for hire with the services of a driver for the purpose of carrying passengers. The reference to tramcars was inserted by the Transport and Works Act 1992.

Section 168 of the Equality Act 2010 makes it an offence for a taxi driver to refuse to carry an assistance dog. The taxi driver must not make any additional charge for carrying the disabled person's dog. The maximum penalty is a fine of level 3. The licensing authority may grant an exemption certificate if appropriate on medical grounds or if the vehicle is not suitable for the carriage of assistance dogs (Equality Act 2010 s.169). To be effective, that certificate must be displayed in the vehicle to which it relates.

13.253 Section 170 of the Equality Act 2010 provides that an operator or driver of a private hire vehicle commits an offence by failing or refusing to accept a booking by a disabled person on the ground that the person wishes to be accompanied by an assistance dog. No additional charge may be made for carrying the disabled person's dog. The maximum penalty is a fine of level 3. The licensing authority may grant an exemption certificate if appropriate on medical grounds or if the private hire vehicle is not suitable for the carriage of assistance dogs (Equality Act 2010 s.171). The exemption certificate must be displayed in the private hire vehicle to which it relates.

Section 160 of the Equality Act 2010, when in force, gives the Secretary of State power to make regulations in relation to England and Wales concerning the specification of technical standards to be applied to licensed taxis and the imposition of requirements upon taxi drivers. The provisions are designed to enable people to access taxis safely, even when seated in a wheelchair, and to be carried in safety and comfort. It is an offence, punishable with a fine of up to £1,000 for a driver of a regulated taxi to fail to comply with the requirements of the regulations. See also § 13.174.

13.254 Section 80(2) of the 1976 Act provides that in Pt II of the Act, references to a licence are to a licence issued by the council for the district concerned. This means that the private hire vehicle operator licensed under s.55, the vehicle and

the driver all have to have separate licences issued by the same council for the controlled district where the operations took place: *Dittah v Birmingham City Council* [1993] R.T.R. 356. It was not possible for a private hire vehicle operator licensed by the city council to use private hire vehicles and drivers licensed in Solihull.

Taxi drivers' licences granted under the Town Police Clauses Act 1847 and private hire drivers' licences granted under s.51 of the 1976 Act last for up to three years. Either licence must under s.53(3) of the 1976 Act be produced for inspection at the request of an authorised officer of the council or of a constable either forthwith or before the expiration of five days beginning with the day following that on which the request was made. In the case of the council authorised officer, it must be produced at the principal offices of the council and, in the case of a constable, it must be produced at any police station within the area of the council and nominated by the driver when the request was made. It is an offence to fail to produce it without reasonable excuse. For the procedure, a reference to Chapter 7 may assist. The maximum penalty is a fine of level 3 under s.76 of the 1976 Act.

13.255 One of the conditions for the grant of a licence to drive private hire vehicles contained in s.51 of the 1976 Act, as amended, is that the applicant must hold (and must have held for at least 12 months) a full driving licence. In *Crawley Borough Council v Crabb* [1996] R.T.R. 201 it was held that this 12 months need not be the 12 months immediately preceding the making of the application. It was sufficient for the applicant to have held a licence for 12 months in the past and to hold a licence at the date of the application even though there was no continuity between the two periods.

A vehicle which is licensed as a hackney carriage by a local authority is not for that reason prevented from being licensed as a private hire vehicle in another area: *Kingston upon Hull City Council v Wilson, The Times*, July 25, 1995.

Section 75 of the 1976 Act contains certain exemptions which are from the requirements of the whole of Pt II (ss.45–80 inclusive). These exemptions include use for weddings and funerals. The burden of proof to establish a s.75 exemption rests on the defendant on the balance of probabilities: *Leeds City Council v Azam* [1989] R.T.R. 66.

13.256 If any person be found driving, standing, or plying for hire with any carriage within the prescribed distance for which a taxi licence is required but has not been obtained, an offence is committed contrary to s.45 of the Town Police Clauses Act 1847. A minicab was not licensed as a taxi under s.37. It was marked phonetically on the side not "phone" but "Fon-a-car". The driver was approached by two plain-clothes police officers who asked "Are you free?" He replied "Yes". The Divisional Court held that at that stage when he had entered into hire negotiations, he was plying for hire and had been rightly convicted of the offence of being unlicensed contrary to s.45: *Nottingham City Council v Woodings* [1994] R.T.R. 72. A further case where a licence-holder was prosecuted for plying for hire out of area is *Nottingham City Council v Amin* [2000] R.T.R. 122. The defendant had been stopped by plain-clothes police officers and agreed to convey them for a fare. He was not in the area for which he was licensed nor was the light on his cab illuminated. The stipendiary magistrate declined to admit the evidence of the police officers after argument based on the powers under s.78 of the Police and Criminal Evidence Act 1984 and art.6(1) of the European Convention

on Human Rights but the Divisional Court returned the case with a direction to convict.

The offence has to be committed on a street, defined for the purpose of the 1847 Act by s.3 as extending to and including "any road, square, court, alley, and thoroughfare or public passage". It was held in *Young v Scampion* [1989] R.T.R. 95 that a taxi rank at an airport was not a street for the purpose of the Act as it was private property to which the public had no right of access. The Divisional Court added that the legislation did not prevent a taxi duly licensed in one area from driving through another unlicensed area when carrying a fare.

A private hire vehicle was booked at a specific time to take a person from a **13.257** specified place to an identified destination. On arrival, the driver was approached by a person of the same gender as the booked person soon after the specified time and a request was made by that person for the driver to take her to the specified place. The driver did so without asking for her identity. The person being carried was not the person who was booked. The question as to whether the driver was guilty of an offence of plying for hire contrary to s.45 of the Town Police Clauses Act 1847 was considered by the Divisional Court in *Dudley MBC v Arif* [2011] EWHC 3880; [2012] R.T.R. 20 (p.261). Before the magistrates' court, it had been decided that on the facts, the driver was not guilty. On an appeal by the Council, Pearson J. held that the question to be considered was whether, on the evidence before them, it was open to the magistrates to find that the driver was not plying for hire. Irrespective of the fact that the offence was one of strict liability, the magistrates were entitled to consider all the facts before them. It was held that it was sufficient in law for the driver to rely on assumptions. He could not be expected to take necessary steps to satisfy himself that he had the correct fare. The Council's appeal was dismissed.

A hackney carriage will ply for hire *in a street*. The authorities were reviewed **13.258** governing the situation where a taxi was stationed off a street but attracting custom from a street in *Eastbourne Borough Council v Stirling and Morley* [2001] R.T.R. 7 (p.65). Drivers of private hire vehicles were waiting at a taxi rank on a railway forecourt which was not a street. The Divisional Court held that there was no difficulty in construing the expression "plying for hire in a street" as covering a situation in which a vehicle was in a prominent position just off the street and the public were in numbers on the street. Here, the taxi rank was immediately adjacent to a public street in a busy part of the town where pedestrian traffic was high and drivers were likely to attract custom from the public using the adjoining streets. The decision of the stipendiary magistrate was overturned.

In *Darlington Borough Council v Thain* [1995] C.O.D. 360, the owner of a licensed hackney carriage drove his vehicle for a family purpose and with no intention to ply for hire but with its light lit and the plate number displayed. His hackney carriage driver's licence had not been renewed. It was decided by the Divisional Court that the holder of a hackney carriage driver's licence may not drive his own vehicle for a private purpose if that vehicle is a licensed hackney carriage and gives the appearance of such a carriage.

13.259 The principle behind the reasoning in the case of *Darlington Borough Council v Thain* was applied in *Benson v Boyce* [1997] R.T.R. 226. The defendant drove a minibus containing his employer's son and eight friends on a trip in the prosecutor's controlled district. The defendant held a hackney carriage licence but not a private hire licence. He was charged with acting as driver of a private

hire vehicle without having a current licence contrary to s.46(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976 and convicted. In upholding the conviction, the Divisional Court confirmed that s.46(1)(b) of the 1976 Act applied to all driving in a controlled district of a vehicle which s.80(1) of the Act characterised as a private hire vehicle whatever the particular reason for the vehicle being used at the time in question. The wording "provided for hire" in s.80(1) related to the nature of the vehicle not the activity and the prosecutor did not have to prove an actual hiring.

In *Reading Borough Council v Iftekhar Ahmad, The Times*, December 4, 1998, a driver used a licensed private hire car in a controlled district to collect friends under an arrangement whereby no money changed hands and was charged with acting as the driver of a private hire car (which he had borrowed) without holding a current licence under the 1976 Act. The justices had accepted the driver's submission that he did not realise that he needed a private hire vehicle's driver's licence to drive the vehicle in a private capacity when no fare was paid noting the use of the expression "knowingly contravenes" in s.46(2).

13.260 The Divisional Court said that, in order to establish that an offence under s.46(1)(b) had been committed, it was necessary for the prosecution to show that the driver knew that he was in a controlled district, that he knew that the vehicle had been licensed for private hire and that he knew that he did not hold a driver's licence for a private hire vehicle. In respect of those matters, the knowledge that an offence was being committed was immaterial; any finding as to the driver's state of mind was irrelevant to whether or not he had contravened s.46(1)(b).

Under s.80 of the Local Government (Miscellaneous Provisions) Act 1976, the definition section, "'operate' means in the course of business to make provision for the invitation or acceptance of bookings for a private hire vehicle". The defendant was licensed under s.55 as the operator of private hire vehicles. Unexpectedly he was short of staff and on two occasions arranged for his wife to carry out bookings. She had no private hire driver's licence and used vehicles which were unlicensed. On the defendant's instructions she made no charge and accepted no tip. The Divisional Court held that the defendant was acting in the course of his business and was operating the vehicles as private hire vehicles. The bookings were fulfilled, the customers remained customers and he was not engaged in a purely domestic arrangement but was fulfilling his contractual obligation. He was therefore guilty of the offences of operating a private hire vehicle without either the vehicle or the driver being licensed: *St Albans District Council v Taylor* [1991] R.T.R. 400.

13.261 A private hire operator whose offices were in Slough outside the controlled district of Maidenhead did not operate under s.80 within the controlled district merely by advertising in a directory which circulated in Maidenhead as well as Slough: *Windsor and Maidenhead Royal Borough Council v Khan (Trading as Top Cabs)* [1994] R.T.R. 87. The court held that s.80 did not relate to the places an invitation might reach but the places where provision was made to deal with it. The defendant had made the advertised provision for the acceptance of bookings in Slough and not in the other areas where the directory circulated.

In *Adur District Council v Fry* [1997] R.T.R. 257 it was confirmed that "operate" has a more restricted meaning than "use". Thus, where a booking was accepted at a licensed operator's base in Hove, there was no offence where the journey took place wholly within an adjoining area (in which the driver and vehicle were unlicensed) even where during the course of the journey, the initial passenger asked the driver to collect another person from her destination and convey that person to another destination which the driver did. The need for the driver and vehicle to be licensed in the other area is obviated by s.75(2) of the 1976 Act and, on the facts, there was no "operation" of the vehicle. The Divisional Court indicated that activity taking place outside an operator's premises could be envisaged as coming within the definition of "operate" in s.80(1), but no such activity had taken place in this case.

In *East Staffordshire Borough Council v Rendell* (1995) *Independent*, November 27, 1995, the holder of an operator's licence for a private hire vehicle in one controlled district redirected his calls from that controlled district to a telephone on premises in an adjacent controlled district for which he held no licence. It was held that he had committed an offence contrary to s.46(1)(d) of the 1976 Act since he had arranged to accept bookings in an area for which he did not hold a licence. **13.262**

In *DPP v Computer Cab Co Ltd* [1996] R.T.R. 130, the defendant company provided services including bookings to licensed cab drivers, by subscription. Drivers received bookings by radio whilst in the area for which they were licensed, but were to collect the fare in an area for which they were not licensed. On receiving the call and accepting the booking the cab driver started the meter and was obligated to the company to carry out the hiring. It was held that no offence had been committed since, once the position had been reached within the licensed area that nothing further remained to be agreed between the driver and the fare, it was proper to find that the hiring had taken place in the licensed area where the cab was when receiving the booking call and not in the unlicensed area where the fare was collected.

Where a parking order allowed a hackney carriage to wait at an authorised hackney carriage stand, parking was only permitted for the purpose of operating as a taxi. It was an offence contrary to s.5(1) of the Road Traffic Regulation Act 1984 to leave it unattended for an hour when the driver was not plying for hire: *Rodgers v Taylor* [1987] R.T.R. 86.

Justices had dismissed an information against the respondent that he was plying for hire with a motor vehicle without having obtained a licence from the appropriate authority. The relevant vehicle was a private hire vehicle and the journey was not pre-booked. The local authority appealed by way of case stated. The question to be considered was whether the justices were correct in law in acquitting the respondent on the basis of the definition of "plying" as applied in the case in question. In *Gateshead Council v Henderson* [2012] EWHC 807, the respondent had not parked his vehicle and his first passenger was still in the vehicle completing the transaction when a second passenger approached and made his request to be taken to a destination. The court held that for the purposes of the definition of plying for hire as set out in the Town Police Clauses Act 1847, it was a matter of fact and degree to be decided in each case. The decision of the justices in the present case was one which a reasonable bench, applying their minds to proper considerations and giving themselves proper directions, could come to on the findings of fact that they made. Accordingly, the Council's appeal by way of case stated was dismissed. **13.263**

London

The Private Hire Vehicles (London) Act 1998 provides for the licensing and **13.264**

cumstances, it may make such determination as it thinks fit (s.164(5)). Section 165 of the 2003 Act allows courts to remit all or part of fines discovered subsequently to have been set at too high a level.

18.14 The application of a rigid formula in the assessment of fines, even for a single offence, is not right; to apply it to each of 10 offences and add up was clearly wrong. The Divisional Court so held in *R. v Chelmsford Crown Court Ex p. Birchall* [1990] Crim. L.R. 352 in reducing fines totalling £7,600 for excess weight offences to a total of £1,300. Courts had to consider all the circumstances and apply the principles of sentencing (in particular the "totality" principle) which were well known.

A speeding driver attempted to pay a fixed penalty of £60 and have his licence endorsed with three penalty points but his attempt was thwarted by the fact that he produced what was classified as a "foreign" licence (a Northern Ireland driving licence). He was prosecuted and fined £180 and received five penalty points. His appeal against sentence was upheld by the High Court of Justiciary in *Stockton v Gallagher* 2004 S.L.T. 733 on the basis that it would be unjust and oppressive to penalise him more harshly than was provided for in the fixed penalty notice. The Magistrates' Court Sentencing Guidelines provide (at p.189) that an offender unable to pay a fixed penalty for reasons outside his or her control should not be disadvantaged; the starting point would normally be what the fixed penalty would have been.

18.15 Magistrates have power to mitigate a pecuniary penalty for any road traffic offence, including excise licence ones, however many the previous convictions (Magistrates' Courts Act 1980 s.34), unless the statute otherwise provides. It is to be noted, however, that the sum recoverable in addition to any penalty imposed for an offence of using or keeping a vehicle without an excise licence is *back-duty*, not a pecuniary penalty, and the courts have no discretion to mitigate the sum payable (*Chief Constable of Kent v Mather* [1986] R.T.R. 36).

As to the fixed penalty procedure for certain offences, see Chapter 17. As to mitigated penalties offered by the Department for Transport, see § 12.145.

Fines, costs and compensation imposed on youths

18.16 Section 137 of the 2000 Sentencing Act provides that so far as persons aged under 18 are concerned, courts should order the parent or guardian to pay the fines, etc., imposed upon the young person unless that parent or guardian cannot be found or to make such an order for payment would be unreasonable in the circumstances of the case. The Act further provides that a local authority having parental responsibility for a child or young person in its care or accommodated by it shall be treated as a parent or guardian (s.137(8)). So far as the financial circumstances of an offender are concerned, where the court makes an order for payment of fines, etc., by a parent or guardian, it is the financial circumstances of that person which have to be considered (s.138).

Notwithstanding the maximum fine levels for particular offences committed by persons aged 18 or over, there is an overriding maximum fine level of £250 in respect of offences committed by offenders aged 10 to 13, and an overall fine level of £1,000 in respect of offenders aged 14 to 17.

IMPRISONMENT AND OTHER CUSTODIAL SENTENCES

Statutory restrictions on imposition of discretionary custodial sentences

18.17 Section 152(2) of the Criminal Justice Act 2003 prevents a court from imposing a custodial sentence upon an offender unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was "so serious that neither a fine alone nor a community sentence can be justified". Section 153 of the 2003 Act stipulates that the custodial sentence must be for the shortest term that in the court's opinion is commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it.

The court must obtain a pre-sentence report before forming the opinion referred to above (s.156(3)), unless the court is of the opinion that it is unnecessary to obtain such a report (s.156(4)). In the case of offenders under the age of 18, however, a court may only dispense with the requirement to obtain a report if it has considered an existing pre-sentence report on the offender concerned (s.156(5)). Failure to obtain a report in accordance with s.156(3) does not invalidate a custodial sentence, but such a report must (subject to s.156(7) described below) be obtained by the court which deals with an appeal against sentence. Section 156(7) enables the appeal court to dispense with a pre-sentence report if of opinion that the court below was justified in concluding that such a report was unnecessary, or if of opinion that although the court below was not so justified, the circumstances of the case at the time it is before the court render such a report unnecessary.

18.18 The 2003 Act does not attempt a definition of the expression "so serious that only such a [*custodial*] sentence can be justified". Guidance issued by the Sentencing Council indicates the circumstances in which a particular offence is likely to have passed the statutory threshold thereby enabling (but not compelling) such a sentence to be imposed. Many of the offences included in this work are incorporated into the Magistrates' Court Sentencing Guidelines (see § 18.05 above and Appendix 3 below). Further specific guidelines relating to the four offences of causing death by driving have also been published (see Appendix 4 below). Sentencing Council guidelines describe the circumstances in which an offence is likely to be sufficiently serious to cross a threshold. Other than where a sentence under the "dangerous offender" provisions is necessary, a sentence must not exceed that which the seriousness of the offence permits. However, in many cases, there will be mitigating factors relating to the offender that lead a court to determine that a lesser sentence could be justly imposed.

A custodial sentence may also be imposed upon an offender if he refuses to consent to a proposed community sentence which requires his consent (s.152(3)).

18.19 Section 83 of the 2000 Sentencing Act forbids a court to sentence an offender to prison or detention, unless:

(a) he is legally represented; or

(b) he has been granted a right to representation, but the right has been withdrawn because of his conduct or financial resources; or

(c) he has been offered and has refused or failed to apply for such representation; or

(d) he has been refused representation because of his financial resources;

(e) he has been previously sentenced to immediate imprisonment or detention as the case may be.

Length of custodial sentences

18.20 As noted above, a discretionary custodial sentence shall be for such term as is (in the opinion of the court) commensurate with the seriousness of the offence (or of the offence and one or more offences associated with it). It should be noted, however, that ss.224–236 of the Criminal Justice Act 2003, as amended, have established a new regime for dealing with what the Act initially described as "dangerous offenders". A person aged 18 or over convicted of a serious or specified offence, which for the purposes of this work means manslaughter, causing death by dangerous driving, causing death by careless driving when under the influence of drink or drugs or aggravated vehicle-taking involving an accident which caused the death of any person, is liable, if certain conditions are satisfied, to either a life sentence (for manslaughter), indeterminate sentence for public protection or an extended sentence (for any of the other listed offences). The conditions which must be satisfied are that the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences. The specified offences concerned are listed in Sch.15 to the 2003 Act. Generally, such a sentence may only be imposed where the offence is sufficiently serious to justify a determinate custodial sentence of four years or more.

Young offenders and youths; custodial sentences

18.21 Section 96 of the 2000 Sentencing Act provides that where a person aged at least 18 but under 21 qualifies for a custodial sentence under what is now s.152 of the 2003 Act, the sentence that the court is to pass is a sentence of detention in a young offender institution. The maximum term of detention which may be imposed for an offence is the same as the maximum term of imprisonment for that offence.

The custodial sentence for young offenders is a detention and training order. Such orders may be imposed on a child or young person who is aged 12 and under 18 at the time of sentence (2000 Sentencing Act s.100(1)), but in the case of an offender under the age of 15 at the time of conviction, only if he is a "persistent offender" (s.100(2)(a)). When considering such a sentence, the court (whether the Crown Court or a youth court) is required to follow the Sentencing Council guideline "Overarching Principles—Sentencing Youths" (available at *http://sentencingcouncil.judiciary.gov.uk* [Accessed March 1, 2013]). This includes the approach to determining whether an offender is a "persistent offender" for these purposes and to the decision whether a case should be dealt with in the Crown Court as well as the approach to the length of a custodial sentence.

18.22 Detention and training orders are for terms of 4, 6, 8, 10, 12, 18 or 24 months (s.101(1)) and may be imposed by a youth court or the Crown Court, provided that the term of such an order does not exceed the maximum term of imprisonment that the Crown Court could impose upon an offender aged 21 or over for the offence (s.101(2)). Detention and training orders may be made consecutive to one another provided that the overall term does not exceed 24 months (s.101(4)).

Within that overall limit courts may impose consecutive sentences which may result in an aggregate sentence which does not correspond with one of the statutory periods specified in s.101(1), provided that it adds up to any even number of months between four and 24 (*R. v Norris* [2001] Crim. L.R. 48). Before imposing a custodial sentence, a court must be satisfied that a youth rehabilitation order with intensive supervision and surveillance or with fostering cannot be justified.

Suspended sentences

18.23 Sections 189–192 of the Criminal Justice Act 2003, as amended, provide that for offences committed on or after April 4, 2005, a court which passes a sentence of imprisonment for a term of at least 14 days but not more than two years (in a magistrates' court, six months for a single offence but, potentially, up to 12 months where sentence is imposed for two or more "either way" offences) may order that the sentence of imprisonment is not to take effect unless the offender commits another offence in the United Kingdom (whether or not punishable with imprisonment) during the "operational period" (s.189(1)). The court may also require the offender to comply with specified requirements during a period provided in the order (the "supervision period"). Any "supervision period" and the "operational period" must each be a period of not less than six months and not more than two years beginning with the date of the order (s.189(3)).

Detention in police cells, etc.

18.24 Section 135 of the Magistrates' Courts Act 1980 allows a court to order an offender found guilty of an offence carrying imprisonment to be detained in the courthouse or at any police station until such hour as the court may direct being not later than 8pm.

Deferment of sentence

18.25 Sections 1 and 2 of the 2000 Sentencing Act, as substituted, allow a court to defer passing sentence for a period of up to six months for the purpose of enabling the court in determining the sentence to have regard to the defendant's conduct during the period of deferment, including the making of reparation for his offence and any change in the defendant's circumstances. The substituted provisions require an offender to undertake to comply with any requirements as to his conduct during the period of deferment that the court may impose, and provide for the court to appoint a probation officer or any other person to supervise him in that endeavour. A breach of any such undertaking may result in his being sentenced before the end of the deferment period. The court can only defer sentence if the defendant consents (s.1(3)(a)); the court must be satisfied, having regard to the nature of the offence and the character and circumstances of the offender, that it would be in the interests of justice to defer sentence (s.1(3)(c)). Consent must be obtained for the defendant personally: *R. v Gilbey* [1975] Crim. L.R. 352. The use of the power to defer sentence is subject to guidelines of the Sentencing Council, "New Sentences: Criminal Justice Act 2003", Section 1 Part 2 (available at *http://sentencingcouncil.judiciary.gov.uk* [Accessed March 1, 2013]). The guidelines identify three purposes likely to be achieved by deferring sentence, testing the commitment of the offender not to reoffend, giving the offender an opportunity to do something where progress can be shown in a short

period and providing an offender with opportunity to behave (or refrain from behaving) in a particular way relevant to sentence. The guideline concludes that the use of a deferred sentence "should be predominantly for a small group close to a significant threshold" in circumstances where by his or her conduct, the defendant can give a court grounds for imposing a lesser sentence. The guideline emphasises the need for clarity in the terms of the deferral both for the benefit of the defendant and any court subsequently called upon to impose sentence. It would not seem normally appropriate for a court to defer sentence for an obligatorily disqualifiable offence, because the main penalty, that of disqualification, could not be altered after any deferment; the disqualification is mandatory unless "special reasons" exist and such special reasons are limited to the offence and cannot include "the character and circumstances of the defendant" or "his conduct during the period of deferment" (see s.1). It is bad practice and contrary to the statute to impose an order of disqualification and then defer sentence (*R. v Fairhead* [1975] Crim. L.R. 351).

The power of a court to pass sentence when the sentence has been deferred extends to committing the offender to the Crown Court for sentence (2000 Sentencing Act s.1D(2)(b)).

18.26 If sentence is deferred and the offender is subsequently convicted of another offence during the period of deferment, the court which convicts him of the new offence may also sentence him in respect of the offence for which sentence was deferred (save that a magistrates' court cannot subsequently sentence an offender in respect of an offence for which a Crown Court deferred sentence) (2000 Sentencing Act s.1C(3)(a)). In considering the sentence of an offender after deferment, the Court of Appeal will normally look at two matters: first how the offender had behaved during the period of deferment, and secondly whether the sentence imposed was excessive having regard to the actual offence (*R. v Smith* [1977] Crim. L.R. 234).

A deferred sentence is a sentence for the purposes of ss.35 and 36 of the Criminal Justice Act 1988 and may as such be referred to the Court of Appeal by the Attorney General in pursuance of his powers to refer thither cases of "unduly lenient" sentencing in the Crown Court (*Att Gen's Reference No.22 of 1992 (Thomas)* [1993] Crim. L.R. 227).

NON-CUSTODIAL SENTENCES

Community sentences

18.27 In relation to offenders aged 18 or over, s.177 of the Criminal Justice Act 2003, as amended, provides for a single community order incorporating court specified requirements inter alia for unpaid work, supervision, curfew, prohibited activities, drug rehabilitation and alcohol treatment. The court may impose more than one requirement under a community order, provided that the requirements are compatible with one another. Such an order may be imposed only in respect of an offence for which imprisonment could be imposed by the court passing sentence. For the small number of offences punishable by imprisonment in the Crown Court, but not in a magistrates' court, this will mean that, where a community order is the appropriate sentence, the case will have to be committed to the Crown Court for sentence.

Section 148 of the 2003 Act establishes three common principles governing the passing of community sentences. These are:

(1) that the offence (or the combination of the offence and one or more offences associated with it) is *serious enough* to justify such a sentence (s.148(1));

(2) that the particular requirement or combination of requirements to be imposed by the court is the *most suitable* for the offender (s.148(2)(a)); and

(3) that the restrictions on liberty implicit in the order are *commensurate with the seriousness* of *all* the offences for which the offender is being dealt with (s.148(2)(b)).

18.28 A community order must specify a date, not more than three years after the date of the order, by which all the requirements it contains have to be complied with; and if two or more different requirements are imposed, an earlier date or dates may be specified for compliance with any one or more of them (s.177(5), (5A)).

An unpaid work requirement under a community order must be, in the aggregate, for not less than 40 and not more than 300 hours (s.199).

A supervision requirement in relation to a community order subsists for the period for which the community order concerned remains in force (s.213). The approach when imposing a community order on an adult offender is set out by the Sentencing Council in its guideline "New Sentences: Criminal Justice Act 2003" and in the Magistrates' Court Sentencing Guidelines at pp.160–162.

18.29 In relation to offenders aged 10–17, the Criminal Justice and Immigration Act 2008 created a single community sentence, the youth rehabilitation order, for offences committed on or after November 30, 2009. The principles set out in s.148 of the 2003 Act apply; for the general criteria governing the use and content of this order, see the Sentencing Council guideline "Overarching Principles—Sentencing Youths".

A further way of responding to the commission of a criminal offence by a young offender is the conditional caution by which a prosecutor may impose a caution subject to specified conditions where satisfied that there is sufficient evidence to prosecute and the offender both admits the offence and agrees to the caution. For certain offences, it is now possible to include a financial penalty within such a caution (Criminal Justice Act 2003 (Conditional Cautions: Financial Penalties) Order 2009 (SI 2009/2773)). For summary offences within the scheme, the maximum amount is £150 where the offence has a maximum financial penalty of level 5 fine and £100 where the maximum fine is level 4.

Absolute or conditional discharge

18.30 Where a court thinks it inexpedient to inflict punishment, the offender may be given an absolute discharge. The *only* condition of a conditional discharge is that, if the offender commits a further offence during the period of the order (up to a maximum of three years), the court may sentence for the original offence as if the defendant had just been convicted of it.

An order for compensation or costs may be coupled with an order for conditional or absolute discharge. Section 46 of the 1988 Offenders Act requires a court to disqualify and endorse for an obligatorily disqualifiable offence and to

and in this Act *"official PSV testing station"* means a station provided, or any premises for the time being designated, under this subsection.

A11.10 *[Section 8 is printed as amended by the Road Traffic Act 1991 ss.11, 83 and Sch.8.]*

Power to prohibit driving of unfit public service vehicles

A11.11 **9.** […]

Extensions of sections 8 and 9 to certain passenger vehicles other than public service vehicles

A11.12 **9A.**—(1) Section 8 of this Act shall apply … to any motor vehicle (other than a tramcar) which is adapted to carry more than eight passengers but is not a public service vehicle as it applies to a public service vehicle.

(2) […]

A11.13 *[Section 9A was inserted by the Transport Act 1985 s.33, and is printed as amended by the Road Traffic Act 1991 s.83 and Sch.8.]*

Approval of type vehicle and effect thereof

A11.14 **10.** *[Omitted.]*

Modification of section 6 in relation to experimental vehicles

A11.15 **11.**—(1) Where it appears to the Secretary of State expedient to do so for the purpose of the making of tests or trials of a vehicle or its equipment, he may by order made in respect of that vehicle for the purposes of section 6 of this Act dispense with such of the prescribed conditions as to fitness referred to in subsection (l)(a) of that section as are specified in the order.

(2) While such an order is in force in respect of a vehicle, section 6 of this Act shall have effect in relation to the vehicle as if the prescribed conditions as to fitness referred to in subsection (l)(a) of that section did not include such of those conditions as are dispensed with by the order.

(3) An order under this section shall specify the period for which it is to continue in force, and may contain, or authorise the imposition of, requirements, restrictions or prohibitions relating to the construction, equipment or use of the vehicle to which the order relates.

(4) Where an order under this section in respect of a vehicle is revoked or otherwise ceases to have effect, any certificate of initial fitness issued under section 6 of this Act in respect of the vehicle while the order was in force shall, for the purposes of that section as regards any use of the vehicle after the order has ceased to have effect, be deemed never to have been issued.

Public service vehicle operators' licences

PSV operators' licences

A11.16 **12.**—[(1) A public vehicle shall not be used on a road for carrying passengers for hire or reward except under a PSV operator's licence granted in accordance with the following provision of this Part of this Act.]

[(1A) Subsection (1) applies in spite of Article 1.4(b) and (c) of the 2009 Regulation (exemptions unless otherwise provided in national law for certain

undertakings engaged in road passenger transport services and for slow vehicles), but is subject to section 46 of this Act and section 18 of the Transport Act 1985.]

(2)–(4) *[Omitted.]*

(5) Subject to section 68(3) of this Act, if a vehicle is used in contravention of subsection (1) above, the operator of the vehicle shall be liable on summary conviction to a fine not exceeding [level 4 on the standard scale].

[Section 12 is printed as amended by the Criminal Justice Act 1982 ss.37 and 46; the Transport Act 1985 s.1(3) and Sch.1, para.4; the Road Transport Operator Regulations 2011 (SI 2011/2632) Sch.1, para.2. A11.17

The reference to the "2009 Regulation" in subs.(1A) is to Regulation (EC)1071/2009 (O.J. No.L300, November 14, 2009, p.51).

For s.68(3) of this Act, see below.

An offence under s.12(5) is a fixed penalty offence for the purposes of Sch.3 of the Road Traffic Offenders Act 1988 (see the Fixed Penalty Offences Order 2009 (SI 2009/483) art.2). The amount for the fixed penalty offence is prescribed by the Fixed Penalty Order 2000 (SI 2000/2792), as amended by the Fixed Penalty (Amendment) Order 2009 (SI 2009/488).

The application of this section to certain vehicles is excluded (or a modified version of the section is applied); see further the notes to s.6 of this Act.]

[Detention of certain PSVs used without PSV operators' licences

12A. Schedule 2A (which relates to the detention, removal and disposal of PSVs which are adapted to carry more than 8 passengers and in respect of which it appears that section 12(1) is contravened) shall have effect.] A11.18

[Section 12A is printed as inserted by the Local Transport Act 2008 s.47.] A11.19

[Power to stop

12B.—(1) Subsection (2) applies if it appears to a stopping officer that a vehicle is being used in circumstances such that a PSV operator's licence could be required. A11.20

(2) The officer may direct the driver to stop the vehicle for the purpose of enabling checks to be carried out to establish whether the use of the vehicle is in contravention of section 12(1) or 18(1).

(3) In this section a *"stopping officer"* means an officer appointed under section 66B of the Road Traffic Act 1988.]

[Section 12B was inserted by the Road Vehicles (Powers to Stop) Regulations 2011 (SI 2011/996) reg.5.] A11.21

* * *

Conditions attached to licences

16.—(1) [Subject to subsection (1A) below and section 12(7) of the Transport Act 1985] [a traffic commissioner] on granting a PSV operator's licence shall attach to it one or more conditions specifying the maximum number of vehicles (being vehicles having their operating centre in the area of [that commissioner]) which the holder of the licence may at any one time use under the licence. A11.22

[(1A) In the case of a restricted licence, the number specified as the maximum

in any condition imposed under subsection (1) above shall not, except in any prescribed case or class of case, exceed two.]

(2) Conditions attached under subsection (1) above to a PSV operator's licence may specify different maximum numbers for different descriptions of vehicle.

(3) [A traffic commissioner] may (whether at the time when the licence is granted or at any time thereafter) attach to a PSV operator's licence granted by [him] such conditions or additional conditions as [he thinks] fit for restricting or regulating the use of vehicles under the licence, being conditions of any prescribed description.

(4) Without prejudice to the generality of the power to prescribe descriptions of conditions for the purposes of subsection (3) above, the descriptions which may be so prescribed include conditions for regulating the places at which vehicles being used under a PSV operator's licence may stop to take up or set down passengers.

(5), (6) *[Variation of operator's licence by traffic commissioner.]*

(6A), (6B) *[Consideration by traffic commissioner of undertakings given for purposes of s.16(6).]*

(7) Subject to section 68(3) of this Act, if a condition attached to a PSV operator's licence is contravened, the holder of the licence shall be liable on summary conviction to a fine not exceeding [level 3 on the standard scale].

(8) Compliance with any condition attached to a PSV operator's licence ... [(other than a condition so attached under subsection (1A) above)] may be temporarily dispensed with by the traffic [commissioner] by whom the licence was granted if [he is] satisfied that compliance with the condition would be unduly onerous by reason of circumstances not foreseen when the condition was attached or, if the condition has been altered, when it was last altered.

(9) It is hereby declared that the conditions attached under subsection (1) [or (1A)] above to a PSV operator's licence granted by the traffic [commissioner] for any area do not affect the use by the holder of the licence of a vehicle—

(a) under a PSV operator's licence granted to him by the traffic [commissioner] for another area; or

(b) in circumstances such that another person falls to be treated as the operator of the vehicle (for example, by virtue of regulations under section 81(l)(a) of this Act).

A11.23 *[Section 16 is printed as amended by the Criminal Justice Act 1982 ss.37 and 46; the Transport Act 1985 ss.3(5), 24(1), 139(2) and (3), Sch.2, Pt II, para.4(7), Sch.7, para.21(4), and Sch.8.*

For ss.68(3) and 81(1)(a) of this Act, see below.

The Public Service Vehicles (Operators' Licences) Regulations 1995 (SI 1995/2908) below were in part made under this section.]

[Conditions as to matters required to be notified

A11.24 **16A.**—(1) On issuing a standard licence, a traffic commissioner shall attach to it the following conditions, namely—

(a) a condition requiring the licence-holder to inform the commissioner of any event which could affect the fulfilment by the licence-holder of any of the requirements of section 14ZA(2) of this Act, and to do so within 28 days of the event; and

(b) a condition requiring the licence-holder to inform the commissioner of any event which could affect the fulfilment by a transport manager of the requirements mentioned in section 14ZA(3)(a) and (b) of this Act, and to do so within 28 days of the event coming to the licence-holder's knowledge.

(2) [...]

(3) Any person who contravenes any condition attached under this section to a licence of which he is the holder is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.]

[Section 16A was inserted by the Public Service Vehicles Operators (Qualifications) Regulations 1999 (SI 1999/2431; not reproduced in this work) and is printed as amended by the Road Transport Operator Regulations 2011 (SI 2011/2632) Sch.1, para.5. A11.25

Section 14ZA, referred to in s.16A above, is not reproduced in this work. Section 14ZA(2) sets out the requirement that the traffic commissioner is satisfied that the applicant: (a) has an effective and stable establishment in Great Britain; (b) is of good repute; (c) has appropriate financial standing; and (d) is professionally competent.]

Revocation, suspension, etc., of licences

A11.26 **17.** *[Omitted.]*

[Assessors to assist traffic commissioners

A11.27 **17A.** *[Omitted.]]*

Duty to exhibit operator's disc

A11.28 **18.**—(1) Where a vehicle is being used in circumstances such that a PSV operator's licence is required, there shall be fixed and exhibited on the vehicle in the prescribed manner an operator's disc issued under this section showing particulars of the operator of the vehicle and of the PSV operator's licence under which the vehicle is being used.

[(2) A traffic commissioner on granting a PSV operator's licence shall supply the person to whom the licence is granted—

(a) with a number of operators' discs equal to the maximum number of vehicles that he may use under the licence in accordance with the condition or conditions attached to the licence under section 16(1) of this Act; or

(b) with such lesser number of operators' discs as he may request.]

[(2A) Where, in the case of any PSV operator's licence, the maximum number referred to in subsection (2)(a) above is increased on the variation of one or more of the conditions there referred to, the traffic commissioner on making the variation shall supply the holder of the licence

(a) with such number of additional operators' discs as will bring the total number of operators' discs held by him in respect of the licence to that maximum number, or

(b) with such lesser number of additional operators' discs as he may request.]

[(2B) Where the number of operators' discs currently held in respect of a PSV operator's licence is less than the maximum number referred to in subsection (2)(a) above, the traffic commissioner by whom the licence was granted shall on the application of the holder of the licence supply him with such number of additional operators' discs as is mentioned in subsection (2A)(a) or (b) above.]

[(2C) Where, in accordance with regulations under subsection (3)(aa) below, all the operators' discs held in respect of a PSV operator's licence expire at the same time, the traffic commissioner by whom the licence was granted shall supply the holder of the licence with a number of new operators' discs equal to the number of discs that have expired.]

(3) Regulations may make provision—

(a) as to the form of operators' discs and the particulars to be shown on them;

[(aa) as to the expiry of operators' discs;]

(b) with respect to the custody and production of operators' discs;

(c) for the issue of new operators' discs in place of those lost, destroyed or defaced;

(d) for the return of operators' discs [on their expiry or otherwise ceasing to have effect] on the revocation or [termination] of a PSV operator's licence or in the event of a variation of one or more conditions attached to a licence under section 16(1) of this Act having the effect of reducing the maximum number of vehicles which may be used under the licence[;]

[(e) for the voluntary return of operators' discs by the holder of a PSV operator's licence.]

(4) Subject to section 68(3) of this Act, if a vehicle is used in contravention of subsection (1) above, the operator of the vehicle shall be liable on summary conviction to a fine not exceeding [level 3 on the standard scale].

A11.29 *[Section 18 is printed as amended by the Criminal Justice Act 1982 ss.37 and 46; the Transport Act 1985 ss.3(5), 24(2), and Sch.2, Pt II, para.4(9); the Deregulation and Contracting Out Act 1994 ss.63 and 68 and Sch.14, para.6.*

The Public Service Vehicles (Operators' Licences) Regulations 1995 (SI 1995/2908) below were in part made under this section.

For s.68(3) of this Act, see below.

The application of this section to certain vehicles is excluded; see further the notes to s.6 of this Act.

The text of s.18(1) in its application to an operator who is a partnership is modified by the Operation of Public Service Vehicles (Partnership) Regulations 1986 (SI 1986/1628) Sch., Pt I (not reproduced in this work) so that the firm's name is disclosed on the disc.]

Duty to inform traffic commissioners of relevant convictions, etc.

A11.30 **19.**—(1) A person who has applied for a PSV operator's licence shall forthwith notify the traffic [commissioner] to whom the application was made if, in the interval between the making of the application and the date on which it is disposed of, a relevant conviction occurs of the applicant, or any employee or agent of his, or of any person proposed to be engaged as transport manager whose repute and competence are relied on in connection with the application.

(2) It shall be the duty of the holder of a PSV operator's licence to give notice in writing to the traffic [commissioner] by whom the licence was granted of—

(a) any relevant conviction of the holder; and

(b) any relevant conviction of any officer, employee or agent of the holder for an offence committed in the course of the holder's road passenger transport business,

and to do so within 28 days of the conviction in the case of a conviction of the holder or his transport manager and within 28 days of the conviction coming to the holder's knowledge in any other case.

[(2A) For the purposes of subsections (1) and (2) above the issue to a person of a fixed penalty notice or conditional offer under Part 3 of the Road Traffic Offenders Act 1988 in respect of an offence prescribed for the purposes of this Act is to be treated as if it were a relevant conviction of him.]

(3) It shall be the duty of the holder of a PSV operator's licence within 28 days of the occurrence of—

(a) the bankruptcy or liquidation of the holder, or the sequestration of his estate [or [the entry into administration of] the holder] or the appointment of a receiver, manager or trustee of his road passenger transport business; or

(b) any change in the identity of the transport manager of the holder's road passenger transport business,

to give notice in writing of that event to the traffic [commissioner] by whom the licence was granted.

(4) [A traffic commissioner] on granting or varying a PSV operator's licence, or at any time thereafter, may require the holder of the licence to inform [him] forthwith or within a time specified by [him] of any material change specified by [him] in any of [the holder's] circumstances which were relevant to the grant or variation of the licence.

(5) Subject to section 68(1) of this Act, a person who fails to comply with subsection (1), (2) or (3) above or with any requirement under subsection (4) above shall be liable on summary conviction to a fine not exceeding [level 3 on the standard scale].

A11.31 *[Section 19 is printed as amended by the Criminal Justice Act 1982 ss.37 and 46; the Insolvency Act 1985 s.235(1) and Sch.8, para.34; the Transport Act 1985 s.3(5) and Sch.2, Pt II, para.4(10); the Insolvency Act 1986 s.439(2) and Sch.14; the Enterprise Act 2002 (Insolvency) Order 2003 (SI 2003/2096) art.4; the Road Safety Act 2006 s.7(2).*

For s.68(1) of this Act, see below.

The text of s.19(1), (2) and (3) in its application to an operator which is a partnership is modified by the Operation of Public Service Vehicles (Partnership) Regulations 1986 (SI 1986/1628) Sch., Pt I (not reproduced in this work) so as (inter alia) to require a relevant conviction of any partner, employee or agent to be notified under subs.(1) and subs.(2) and so as to require dissolution of the partnership to be given under subs.(3).]

Duty to give traffic commissioners information about vehicles

A11.32 **20.**—(1) It shall be the duty of the holder of a PSV operator's licence, on the

A24.258 *[Paragraph 11 of Sch.2A; see the note to para.1 above.]*

A24.259 **12.**—(1) The regulations may make provision as to the meaning in the regulations of *"authorised person"*.

(2) In particular, the regulations may provide that—

(a) references to an authorised person are to a person authorised by the Secretary of State for the purposes of the regulations;

(b) an authorised person may be a local authority or an employee of a local authority or a member of a police force or some other person;

(c) different persons may be authorised for the purposes of different provisions of the regulations.

A24.260 *[Paragraph 12 of Sch.2A; see the note to para.1 above.]*

A24.261 **13.** In this Schedule —

(a) references to an immobilisation device are to a device or appliance which is an immobilisation device for the purposes of section 104 of the Road Traffic Regulation Act 1984 [*q.v.*] (immobilisation of vehicles illegally parked);

(b) references to an immobilisation notice are to a notice fixed to a vehicle in accordance with the regulations;

(c) *"prescribed"* means prescribed by regulations made under this Schedule.]

A24.262 *[Paragraph 13 of Sch.2A; see the note to para.1 above.*

The Vehicle Excise Duty (Immobilisation, Removal and Disposal of Vehicles) Regulations 1997 (SI 1997/2439) below have been made in part under Sch.2A.]

Section 63

SCHEDULE 3

CONSEQUENTIAL AMENDMENTS

* * *

A24.263 **Section 64**

SCHEDULE 4

TRANSITIONALS, ETC.

General transitionals and savings

A24.264 **1.** The substitution of this Act for the provisions repealed or revoked by this Act does not affect the continuity of the law.

A24.265 **2.**—(1) Anything done, or having effect as done (including the making of subordinate legislation and the issuing of licences), under or for the purposes of any provision repealed or revoked by this Act has effect as if done under or for the purposes of any corresponding provision of this Act.

(2) Sub-paragraph (1) does not apply to the Vehicle Licences (Duration and Rate of Duty) Order 1980 [*SI 1980/1183*].

A24.266 **3.** Any reference (express or implied) in this Act or any other enactment, or in any instrument or document, to a provision of this Act is (so far as the context permits) to be read as (according to the context) being or including in relation to times, circumstances and purposes before the commencement of this Act a reference to the corresponding provision repealed or revoked by this Act.

A24.267 **4.** Any reference (express or implied) in any enactment, or in any instrument or document, to a provision repealed or revoked by this Act is (so far as the context permits) to be read as (according to the context) being or including in relation to times, circumstances and purposes after the commencement of this Act a reference to the corresponding provision of this Act.

A24.268 **5.** Paragraphs 1 to 4 have effect in place of section 17(2) of the Interpretation Act 1978 (but are without prejudice to any other provision of that Act).

Preservation of old transitionals and savings

A24.269 **6.**—(1) The repeal by this Act of an enactment previously repealed subject to savings (whether or not in the repealing enactment) does not affect the continued operation of those savings.

(2) The repeal by this Act of a saving made on the previous repeal of an enactment does not affect the operation of the saving in so far as it remains capable of having effect.

(3) Where the purpose of an enactment repealed by this Act was to secure that the substitution of the provisions of the Act containing that enactment for provisions repealed by that Act did not affect the continuity of the law, the enactment repealed by this Act continues to have effect in so far as it is capable of doing so.

Exemption for disabled passengers

A24.270 **7.**—(1) Where—

(a) a vehicle is suitable for use by persons having a particular disability that so incapacitates them in the use of their limbs that they have to be driven and cared for by a full-time constant attendant,

(b) the vehicle is registered under this Act in the name of a person who has such a disability and is a person to whom this paragraph applies,

(c) that person is sufficiently disabled to be eligible for an invalid tricycle under the National Health Service Act 1977, the National Health Service (Scotland) Act 1978 or the Health and Personal Social Services (Northern Ireland) Order 1972 [*SI 1972/1265 (NI 14)*] but too disabled to drive it, and

(d) no other vehicle registered in that person's name under this Act, or deemed to be so registered under sub-paragraph (3) of paragraph 19 of Schedule 2, is an exempt vehicle under that paragraph,

the vehicle is an exempt vehicle if used or kept for use by or for the purposes of that person.

(2) This paragraph applies to a person if—

(a) there remains valid a relevant certificate issued in respect of him before 13th October 1993 (the day on which the repeal of the provisions specified in section 12(1) of the Finance (No.2) Act 1992 came into force), or

(b) an application for a relevant certificate in respect of him had been received by the Secretary of State or the Department of Health and Social Services for Northern Ireland before that date and a relevant certificate issued pursuant to that application remains valid.

(3) In this paragraph a *"relevant certificate"* means—

(a) a certificate issued by the Secretary of State (or the Minister of Transport) containing a statement as described in Regulation 26(2)(b)(i) and (ii) of the Road Vehicles (Registration and Licensing) Regulations 1971 [*SI 1971/450*] (as in force on 29th December 1972) or a statement to similar effect, or

(b) a certificate issued by the Department of Health and Social Services for Northern Ireland (or the Ministry of Health and Social Services for Northern Ireland) containing a statement as described in Regulation 27(2)(b)(i) and (ii) of the Road Vehicles (Registration and Licensing) Regulations (Northern Ireland) 1973 [*SR & O (NI) 1973/490*] (as originally in force) or a statement to similar effect,

including (in either case) any renewal or continuation of such a certificate.

(4) For the purposes of sub-paragraph (2) a relevant certificate issued in respect of a person remains valid for as long as the matters stated in the certificate in relation to the person's disability remain unaltered.

(5) Where immediately before 13th October 1993 a person to whom this paragraph applies was under the age of five, the person ceases to be a person to whom this paragraph applies—

(a) if a relevant licence document is in force on the day on which he attains the age of five in respect of a vehicle used or kept for use for his purposes, when that licence document expires, and

(b) otherwise, on attaining the age of five.

(6) In sub-paragraph (5) *"relevant licence document"* means a document in the form of a licence issued under—

(a) Regulation 26(3A)(b) of the Road Vehicles (Registration and Licensing) Regulations 1971,

(b) Regulation 27(4)(b) of the Road Vehicles (Registration and Licensing) Regulations (Northern Ireland) 1973, or

(c) paragraph 4 or 6 of the Schedule to the Finance (No.2) Act 1992 (Commencement No.6 and Transitional Provisions and Savings) Order 1993 [*SI 1993/2272 (q.v.)*],

or any re-enactment (with or without modifications) of any of those provisions.

(7) Regulations under section 22(2) of this Act which require a person to furnish information relating to a vehicle which is an exempt vehicle under this paragraph may require him to furnish (in addition) such evidence of the facts giving rise to the exemption as is prescribed by the regulations.

(8) In spite of the repeal by this Act of section 12(2) of the Finance (No.2) Act 1992, paragraphs 4 to 8 of the Schedule to the Finance (No.2) Act 1992 (Commencement No.6 and Transitional Provisions and Savings) Order 1993 [*SI 1993/2272*] shall, until the coming into force of the first regulations made by virtue of sub-paragraph (7) (unless revoked and subject to any amendments), continue to have effect but subject to the modifications specified in sub-paragraph (9).

(9) The modifications referred to in sub-paragraph (8) are—

(a) the substitution of a reference to this paragraph for any reference to paragraph 2 of that Schedule,

(b) the addition of a reference to this Act after the first reference to the Vehicles (Excise) Act 1971 in paragraphs 4(4)(a) and 6(4)(a),

(c) the substitution of a reference to this Act for each other reference to the Vehicles (Excise) Act 1971, and

(d) the substitution of a reference to section 23 of this Act for any reference to section 19 of that Act and of a reference to subsection (3) of section 23 of this Act for any reference to subsection (2) of section 19 of that Act.

(10) Sections 44 and 45 of this Act have effect in relation to a vehicle which is an exempt vehicle under this paragraph as they have effect in relation to a vehicle which is an exempt vehicle under paragraph 19 of Schedule 2 to this Act.

(11) If and to the extent that, immediately before the coming into force of this Act, the Secretary of State had power to amend or revoke by order any provision of the Finance (No.2) Act 1992 (Commencement No.6 and Transitional Provisions and Savings) Order 1993, he has the same power in relation to so much of this paragraph as reproduces that provision.

A24.271 *[The reference in para.7(3)(a) to the "Minister of Transport" is presumed to be of historical nature and is not directly affected by the Transfer of Functions (Transport, Local Government and the Regions) Order 2002 (SI 2002/2626).*

The Road Vehicles (Registration and Licensing) Regulations 1971 (SI 1971/450) and the Road Vehicles (Registration and Licensing) Regulations (Northern Ireland) 1973 (SR & O (NI) 1973/490) referred to in para.7(3)(a) and (b) and (6)(a) and (b) above have been revoked by the Road Vehicles (Registration and Licensing) Regulations 2002 (SI 2002/2742) reg.2 and Sch.1, Pts I and III.]

Trade licences

8. [Power to substitute by order different text for that of s.13.] A24.272

Combined road-rail transport of goods

9. Section 20 (and the references to it in sections 45(1)(b) and 57(5)) shall not come into force until such day as the Secretary of State may by order appoint. A24.273

Regulations about registration and licensing

10. Regulation 12(1) of the Road Vehicles (Registration and Licensing) Regulations 1971 continues to have effect (until revoked) as if the amendments of section 23 of the Vehicles (Excise) Act 1971, as set out in paragraph 20 of Schedule 7 to that Act, which were made by paragraph 16(3) of Part III of Schedule 1 to the Finance Act 1987 had been in force when those Regulations were made. A24.274

[The Finance Act 1987 Sch.1, Pt 3, para.16, has been repealed by s.65 of and Sch.5, Pt 1, to this Act. A24.275

Regulation 12(1) of the Road Vehicles (Registration and Licensing) Regulations 1971 (SI 1971/450) has been revoked by the Road Vehicles (Registration and Licensing) Regulations 2002 (SI 2002/2742) reg.2 and Sch.1, Pt 1.]

Assignment of registration marks

11. The inclusion in this Act of subsection (2), and the words "for the time being" in subsection (3), of section 23 (which reproduce the amendments of the Vehicles (Excise) Act 1971 made by section 10(2) and (3) of the Finance Act 1989) shall not be construed as affecting the operation of— A24.276

(a) the Vehicles (Excise) Act 1971 or the Vehicles (Excise) Act (Northern Ireland) 1972, or

(b) any regulations made under either of those acts,

in relation to any time before 27th July 1989 (the day on which the Finance Act 1989 was passed).

Section 65 SCHEDULE 5

REPEALS AND REVOCATIONS

* * * A24.277

first used on or after 1st April 1988 unless it carries a receptacle which contains the items specified in Part II of Schedule 7.

(2) The receptacle referred to in paragraph (1) above shall be—

(a) maintained in a good condition;

(b) suitable for the purpose of keeping the items referred to in the said paragraph in good condition;

(c) readily available for use; and

(d) prominently marked as first aid receptacle.

(3) The items referred to in paragraph (1) above shall be maintained in good condition and shall be of a good and reliable quality and of a suitable design.

(4) This regulation does not apply to a vehicle manufactured by Land Rover UK Limited and known as the Land Rover.

Carriage of dangerous substances

B15.102 **44.**—(1) Save as provided in paragraph (2), no person shall use or cause or permit to be used on a road a minibus by which any highly inflammable or otherwise dangerous substance is carried unless that substance is carried in containers so designed and constructed, and unless the substance is so packed, that, notwithstanding an accident to the vehicle, it is unlikely that damage to the vehicle or injury to passengers in the vehicle will be caused by the substance.

(2) Paragraph (1) shall not apply in relation to the electrolyte of a battery installed in an electric wheelchair provided that the wheelchair is securely fixed to the vehicle.

(3) This regulation does not apply to a vehicle manufactured by Land Rover UK Limited and known as Land Rover.

I Power-to-Weight Ratio

Power-to-weight ratio

B15.103 **45.** [...]

[Revoked by SI 1995/1201.]

J Protective Systems

[Seat belt anchorage points

B15.104 **46.**—(1) This regulation applies to a motor vehicle which is not an excepted vehicle and is—

(a) a bus first used on or after 1st April 1982;

(b) a wheeled motor car first used on or after 1st January 1965;

(c) a three-wheeled motor cycle which has an unladen weight exceeding 255kg and which was first used on or after 1st September 1970; or

(d) a heavy motor car first used on or after 1st October 1988.

(2) Each of the following is an excepted vehicle—

(a) a goods vehicle (other than a dual-purpose vehicle)—

(i) first used before 1st April 1967;

(ii) first used on or after 1st April 1980 and before 1st October 1988 and having a maximum gross weight exceeding 3500kg; or

(iii) first used before 1st April 1980 or, if the vehicle is of a model manufactured before 1st October 1979, first used before 1st April 1982 and, in either case, having an unladen weight exceeding 1525kg;

(b) an agricultural motor vehicle;

(c) a motor tractor;

(d) a works truck;

(e) an electrically propelled goods vehicle first used before 1st October 1988;

(f) a pedestrian-controlled vehicle;

(g) a vehicle which has been used on roads outside Great Britain, whilst it is being driven from the place at which it arrived in Great Britain to a place of residence of the owner or driver of the vehicle, or from any such place to a place where, by previous arrangement, it will be provided with such anchorage points as are required by this regulation and with such seat belts as are required by regulation 47;

(h) a vehicle having a maximum speed not exceeding 16mph;

(i) a motor cycle equipped with a driver's seat of a type requiring the driver to sit astride it, and which is constructed or assembled by a person not ordinarily engaged in the trade or business of manufacturing vehicles of that description;

(j) a locomotive.

(3) A vehicle which falls within a description specified in column (2) of an item in the Table below shall be equipped with anchorage points for seat belts for the use of persons sitting in the seats specified in column (3) of that item and those anchorage points (*"mandatory anchorage points"*) shall comply with the requirements specified in column (4).

TABLE

(1) *Item*	(2) *Description of vehicle*	(3) *Seats for which mandatory anchorage points are to be provided*	(4) *Technical and installation requirements*
1.	Any vehicle first used before 1st April 1982	The driver's seat and specified passenger seat (if any)	Anchorage points must be designed to hold seat belts securely in position on the vehicle

(c) it is a seat belt that falls within regulation 47(4)(c)(i) or (ii) of these Regulations;

(d) it is a seat belt fitted [in a vehicle] and comprised in a restraint system—

(i) of a type which has been approved by an authority of another member State for use by all persons who are either aged 13 years or more or of 150 centimetres or more in height, and

(ii) in respect of which, by virtue of such approval, the requirements of the law of another member State corresponds to these Regulations would be met were it to be worn by persons who are either aged 13 years or more or of 150 centimetres or more in height when travelling [in that vehicle in that State].

(5) In these Regulations, *"child restraint"* means a seat belt or other device in respect of which the following requirements are satisfied, namely that—

(a) it is a seat belt or any other description of restraining device for the use of a child which is—

(i) designed either to be fitted directly to a suitable anchorage or to be used in conjunction with an adult seat belt and held in place by the restraining action of that belt, and

(ii) marked in accordance with regulation 47(7) of the Construction of Use Regulations; or

(b) it is a seat belt consisting of or comprised in a restraint system fitted [in a vehicle], being a restraint system—

(i) of a type which has been approved by an authority of another member State for use by a child, and

(ii) in respect of which, by virtue of such approval, the requirements of the law of that State corresponding to these Regulations would be met were it to be worn by a child when travelling [in that vehicle in that State].

(6) Subject to paragraph (7), for the purposes of these Regulations, a seat shall be regarded as provided with an adult seat belt if it is fixed in such a position that it can be worn by an occupier of that seat.

(7) A seat shall not be regarded as provided with an adult belt if the seat belt—

(a) has an inertia reel mechanism which is locked as a result of the vehicle being, or having been, on a steep incline, or

(b) does not comply with the requirements of regulation 48 of the Construction and Use Regulations.

[(8) For the purposes of these Regulations, a seat belt is appropriate—

(a) in relation to a small child, if it is a child restraint of a description prescribed for a child of his height and weight by regulation 8;

(b) in relation to a large child, if it is a child restraint of a description prescribed for a child of his height and weight by regulation 8 or an adult belt; or

(c) in relation to a person aged 14 years or more, if it is an adult belt.]

(9) For the purposes of these Regulations, any reference to a seat belt being available shall be construed in accordance with Schedule 2 to these Regulations.

[(9A) For the purposes of these Regulations, references to a bus being used to provide a service in a "built-up area" shall be construed in the same way as in section 15B(6) of the Act.]

(10) Unless the context otherwise requires, in these Regulations —

(a) any reference to a numbered regulation is a reference to the regulation bearing that number in these Regulations; and

(b) a numbered paragraph is a reference to the paragraph bearing that number in the regulation or Schedule in which the reference appears.

[Regulation 2 is printed as amended by the Vehicle Excise and Registration Act 1994 s.64 and Sch.4, para.4 and SI 2006/1892.

Section 21 of the Vehicles (Excise) Act 1971 was repealed by the Finance Act 1994 s.258 and Sch.26.] **B28.05**

Interpretation of reference to relevant vehicles

3. [...] **B28.06**

[Regulation 3 was omitted by SI 2006/1892.] **B28.07**

PART II

ADULTS IN THE FRONT OR REAR OF A VEHICLE

General

4. This Part of these Regulations shall have effect for the purpose of section 14 of the Act. **B28.08**

Requirement for adults to wear adult belts

5.—[(1) Subject to the following provisions of these Regulations, every person— **B28.09**

(a) driving a motor vehicle (other than a two-wheeled motor cycle with or without a sidecar); or

(b) riding in a front seat or rear seat of a motor vehicle (other than a two-wheeled motor cycle with or without a sidecar),

shall wear an adult belt.]

(2) Paragraph (1) does not apply to a person under the age of 14 years.

[Regulation 5 is printed as amended by SI 2006/1892.] **B28.10**

Exemptions

6.—(1) The requirements of regulation 5 do not apply to— **B28.11**

(a) a person holding a medical certificate;

[(b) the driver of or a passenger in a motor vehicle constructed or adapted for carrying goods, while on a journey which does not exceed 50 metres and which is undertaken for the purpose of delivering or collecting any thing;]

(c) a person driving a vehicle while performing a manoeuvre which includes reversing;

(d) a qualified driver (within the meaning given by [regulation 17 of the Motor Vehicles (Driving Licences) Regulations 1999]) who is supervising the holder of a provisional licence (within the meaning of

Part III of the Act) while that holder is performing a manoeuvre which includes reversing;

(e) a person by whom, as provided in the [Motor Vehicles (Driving Licences) Regulations 1999], a test of competence to drive is being conducted and his wearing a seat belt would endanger himself or any other person;

(f) a person driving or riding in a vehicle while it is being used for fire brigade [or, in England [or Wales], fire and rescue authority] or police purposes or for carrying a person in lawful custody (a person who is being so carried being included in this exemption);

[(fa) as regards England and Wales, and so far as relating to the functions of the Serious Organised Crime Agency which are exercisable in or as regards Scotland and which relate to reserved matters (within the meaning of the Scotland Act 1998), a person driving or riding in a vehicle while it is being used for Serious Organised Crime Agency purposes;]

(g) the driver of—

(i) a licensed taxi while it is being used for seeking hire, or answering a call for hire, or carrying a passenger for hire, or

(ii) a private hire vehicle while it is being used to carry a passenger for hire;

(h) a person riding in a vehicle, being used under a trade licence, for the purpose of investigating or remedying a mechanical fault in the vehicle;

(j) a disabled person who is wearing a disabled person's belt; or

(k) a person riding in a vehicle while it is taking part in a procession organised by or on behalf of the Crown.

(2) Without prejudice to paragraph (1)(k), the requirements of regulation 5 do not apply to a person riding in a vehicle which is taking part in a procession held to mark or commemorate an event if either—

(a) the procession is one commonly or customarily held in the police area or areas in which it is being held, or

(b) notice in respect of the procession was given in accordance with section 11 of the Public Order Act 1986.

(3) The requirements of regulation 5 do not apply to—

(a) a person driving a vehicle if the driver's seat is not provided with an adult belt;

(b) a person riding in the front of a vehicle if no adult belt is available for him in the front of the vehicle;

(c) a person riding in the rear of a vehicle if no adult belt is available for him in the rear of the vehicle.

[(4) The requirements of regulation 5(1)(b) do not apply to a person riding in a small or large bus—

(a) which is being used to provide a local service (within the meaning of the Transport Act 1985) in a built-up area, or

(b) which is constructed or adapted for the carriage of standing passengers and on which the operator permits standing.]

[Regulation 6 is printed as amended by SI 2004/3168; SI 2005/27; SI 2005/2929; SI 2006/594; SI 2006/1892.] **B28.12**

PART III

CHILDREN IN THE REAR OF A VEHICLE

General

7. This Part of these Regulations has effect for the purposes of section 15(3) and (3A) of the Act. **B28.13**

Description of seat belts to be worn by children

8.—(1) For a child of any particular height and weight travelling in a particular vehicle, the description of seat belt prescribed for the purpose of section 15(3) of the Act to be worn by him is— **B28.14**

(a) if he is a small child [...], a child restraint of a description specified in sub-paragraph (a) or (b) of paragraph (2);

(b) [...];

(c) if he is a large child, a child restraint of a description specified in sub-paragraph (a) of paragraph (2) or an adult belt.

(2) The descriptions of seat belt referred to in paragraph (1) are—

(a) a child restraint with the marking required under regulation 47(7) of the Construction and Use Regulations if the marking indicates that it is suitable for his weight and either indicates that it is suitable for his height or contains no indication as respects height;

(b) a child restraint which would meet the requirements of the law of another member State corresponding to these Regulations were it to be worn by that child when travelling in that vehicle in that State.

[Regulation 8 is printed as amended by SI 2006/1892.] **B28.15**

Vehicles to which section 15(3) and (3A) of the Act do not apply

9. The following classes of vehicles are exempt from the prohibition in section 15(3) and (3A) of the Act, that is to say— **B28.16**

[(a) large buses;]

(b) licensed taxis and licensed hire cars in which (in each case) the rear seats are separated from the driver by a fixed partition.

[Regulation 9 is printed as amended by SI 2006/1892.] **B28.17**

Exemptions

10.—[(1) The prohibitions in section 15(3) and (3A) of the Act do not apply in relation to— **B28.18**

(a) a child for whom there is a medical certificate;

(b) a small child aged under 3 years who is riding in a licensed taxi or licensed hire car, if no appropriate seat belt is available for him in the front or rear of the vehicle;