

*These Notes refer to the Road Safety Act 2006 (c.49)  
which received Royal Assent on 8 November 2006*

## **ROAD SAFETY ACT 2006**

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### **EXPLANATORY NOTES**

#### **INTRODUCTION**

1. These explanatory notes relate to the Road Safety Act 2006 (c.49) which received Royal Assent on 8<sup>th</sup> November 2006. They have been prepared by the Department for Transport in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

#### **SUMMARY**

3. The Act makes provision for a range of road safety matters:

##### **Drink driving**

4. With regard to drink driving the Act enables the Secretary of State to require the worst offenders to re-take the driving test. It prevents those offenders at highest risk of re-offending from driving pending medical enquiries and it amends the current drink drive rehabilitation scheme and introduces an experimental scheme for alcohol ignition interlocks.

##### **Speeding**

5. The Act provides for graduated fixed penalties for speeding and increases the range of penalty points available for those offences. The fitting to or use of a vehicle carrying speed assessment equipment detection devices will be prohibited by means of regulations and a regulation-making power is given to the Secretary of State to enable him to grant exemptions from speed limits and to make provision for training courses in the driving of vehicles at high speeds.

##### **New Offences**

6. The Act introduces new offences of causing death by careless or inconsiderate driving; causing death by driving whilst unlicensed, disqualified, or uninsured; and keeping a vehicle that does not meet insurance requirements.

##### **Penalties and enforcement**

7. The Act increases the maximum penalties for various road traffic offences and provides for the graduation of fixed penalties for offences and in circumstances specified by order, which will match the punishment to the severity of the offence. Provision is made to prevent drivers who do not have a satisfactory address from escaping punishment in Great Britain, by requiring them to pay an on-the-spot deposit where an offence is committed. To improve enforcement of road traffic legislation, the Act extends the use of retraining courses to offenders convicted of speeding and careless driving, and confers new enforcement powers on vehicle examiners.

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### **Driver training**

8. The Act enables the current "one-size-fits-all" scheme for regulating car driving instructors to be replaced with a new power to introduce schemes targeted to meet the needs of individual sectors e.g. lorries, buses, off-road and fleet driving. It contains mechanisms to make sure the public has access to information about the performance of individual instructors, their qualifications and services and introduces more flexible powers to extend the user-pays principle to all forms of testing and assessment.

### **Driver fatigue**

9. To help prevent fatigue related accidents, the Act allows for a pilot of motorway rest areas similar to French "aires".

### **Driver and vehicle licensing**

10. A number of provisions in the Act contribute to enforcement of road traffic laws through changes to the driver and vehicle licensing systems. These include a power to disclose to foreign authorities driver and vehicle data to combat driving licence and vehicle crime, the mandatory recording of various particulars (mileage, date of birth) on the vehicle register to help prevent "clocking" fraud and the extension of the current registration scheme for number plate suppliers from England and Wales to the rest of the United Kingdom.

### **Motor Insurance**

11. The Act has a number of measures aimed at reducing the current levels of uninsured driving. These include the creation of a new offence of being the registered keeper of a vehicle the use of which is not insured; powers for the Secretary of State to issue fixed penalty notices, and in appropriate cases powers to seize and dispose of uninsured vehicles.

### **Other measures**

12. The Act also contains several other measures intended to contribute to the overall programme of improving safety on our roads. These include powers to pay road safety grants to local authorities so that innovative road safety projects can continue to be developed; a regulation-making power to enable the Secretary of State to make provision for surplus income from safety camera enforcement to be used by public authorities for road safety purposes; and measures to improve the regulation of the transport of radioactive material.

## **BACKGROUND**

13. In 2000, the Prime Minister launched the Road Safety Strategy "Tomorrow's Roads - Safer for Everyone", which set out the Government's framework for improving road safety, integral to which was the achievement of casualty reduction targets of 40 per cent of those killed and seriously injured (50 per cent for children) by 2010. In 2004 the Government published the first three year review of the Strategy, which evaluated the effectiveness of the Strategy and the likelihood of delivering the 2010 targets. The Road Safety Act 2006 gives effect to several elements of the Government's wider road safety strategy to reduce casualties and it supports the push towards achieving the casualty reduction targets.

## **STRUCTURE**

14. The sections are grouped as follows:

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Sections 1-2	Payments for Road Safety
Sections 3-7	Fixed penalties
Sections 8-10	New system of endorsement
Section 11-12	Deposits and prohibition on driving
Sections 13-16	Drink-driving etc.
Sections 17-19	Speeding
Sections 20-22	New offences
Sections 23-29	Increases in penalties
Sections 30-33	Other provisions about offences
Sections 34-35	Attendance on courses
Sections 36-43	Driving standards
Sections 44-46	Regulation of registration plate suppliers
Sections 47-49	Information
Sections 50-51	Level Crossings
Sections 52-54	Hackney Carriages and private hire vehicles
Sections 55-58	Miscellaneous
Sections 59-63	Supplementary

## **COMMENTARY ON SECTIONS AND SCHEDULES**

### **Note on abbreviations**

15. In these Notes the following abbreviations are used:-

"the DVLA" means the Driver and Vehicle Licensing Agency of the Department for Transport;

"the RTA" means the Road Traffic Act 1988;

"the RTOA" means the Road Traffic Offenders Act 1988;

"the RTRA" means the Road Traffic Regulation Act 1984;

"VERA" means the Vehicle Excise and Registration Act 1994.

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## **PAYMENTS FOR ROAD SAFETY**

### **Section 1: Road Safety Grants**

16. Section 1 replaces and extends the scope of section 40 of the RTA for England and Wales. The new section 40 enables the Secretary of State (for England) or the National Assembly for Wales (for Wales) to make payments to local authorities, as well as other authorities and bodies, for meeting the whole or part of the capital or running costs of any measure for promoting road safety.

### **Section 2: Application of surplus income from safety camera enforcement**

17. This section amends Section 38 of the Vehicles (Crime) Act 2001 by inserting into that section a new subsection (4A). The new subsection (4A) enables the Secretary of State to make regulations which make provision for surplus income from safety camera enforcement to be used by public authorities for road safety purposes.

## **FIXED PENALTIES**

### **Section 3: Graduated fixed penalties**

18. This section amends Section 53 of the RTOA under which the amount of a fixed penalty is set. The amendment substitutes new *subsections (2) and (3)*. It enables the Secretary of State by order to prescribe graduated amounts for offences. The graduations can take account of the circumstances of the particular offence. Such circumstances include the nature of the offence, its severity, where it has taken place and whether the offender appears to have committed other, prescribed offences during a prescribed period.

### **Section 4: Graduated fixed penalty points**

19. This section amends section 28 of the RTOA, as amended by the Road Traffic Act 1991, which provides for the penalty points that are to be attributed to an offence when a person's driving licence is to be endorsed. The section substitutes three new *subsections, (3), (3A) and (3B)*, for subsection (3).

20. The amendment enables the Secretary of State to prescribe by order appropriate numbers of penalty points for offences. The appropriate number of points may vary depending on the circumstances of the offence. Those circumstances include the nature of the offence, its severity, where it has taken place and whether the offender appears to have committed other, prescribed offences during a prescribed period.

21. The amendments also allow the Secretary of State to amend Part 2 of Schedule 2 of the RTOA to provide for the penalty points for a fixed penalty offence to be the appropriate number of penalty points. The current penalty point provisions remain in force for any offence for which no such order is made.

### **Section 5 (and Schedule 1): Giving of fixed penalty notices by vehicle examiners**

22. Section 5 and Schedule 1 amend Part 3 of the RTOA (fixed penalties) to enable vehicle examiners to issue fixed penalty notices for those offences (predominantly roadworthiness offences) which they have powers to enforce. Vehicle examiners are appointed by the Secretary of State under section 66A of the RTA. They are staff in the Vehicle and Operator Services Agency (VOSA), an agency of the Department for Transport. The examiners will also issue conditional offers under section 75 of the RTOA (for instance where offences are detected remotely e.g. via Automatic Number-Plate Recognition or weigh-in-motion equipment).

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23. The amendments set up a system similar, but not identical, to the fixed penalty system administered by the police and fixed penalty clerks. The difference is that where a fixed penalty notice, or conditional offer, is issued by a vehicle examiner, the system will be administered by the Secretary of State. Fixed penalty payments will be sent to him and he will be responsible, where relevant, for the inspection and endorsement of driving licences. In practice this will be handled by a VOSA office. The right of the recipient of a notice or offer to ask to be heard by a court will not be adversely affected.

#### **Section 6: Goods vehicles operator licensing**

24. This section amends the Goods Vehicle (Licensing of Operators) Act 1995 to provide for fixed penalty notices in respect of heavy goods vehicles to be made notifiable, in the same way convictions are, to the traffic commissioners by an applicant for, or holder of, a goods vehicle operator's licence. It also provides for the traffic commissioners to take into consideration any fixed penalty notices, issued to the operator, their agent or transport manager, within the previous 5 years when granting, revoking, suspending or curtailing an operator's licence. Failure to notify will be an offence, as is a failure to notify a conviction.

25. The effect of the section is that an offence, which would have been notifiable, on conviction, will also be notifiable if the offender receives a fixed penalty in respect of it.

#### **Section 7: Public passenger vehicle licensing**

26. This section makes amendments, which correspond to those in the preceding section, to the Public Passenger Vehicles Act 1981. They apply to an applicant for, or holder of, a public service vehicle operator's licence.

### **NEW SYSTEM OF ENDORSEMENT**

#### **Sections 8, 9 and 10 and Schedules 2 and 3: New system of endorsement**

27. These together provide for a new system of endorsement of driving licences.

28. Under current legislation, it is only possible to issue a fixed penalty notice in respect of an endorsable road traffic offence to a person holding a driving licence and a counterpart issued in Great Britain.

29. For the purposes of Parts 3 and 4 of the RTA (driving licences generally and licences to drive large goods and passenger-carrying vehicles) and the fixed penalty provisions in the RTOA:

- a "licence" is a licence issued by the Secretary of State under powers in the RTA, i.e. it is a GB licence, and
- a "counterpart" is a document designed for recording such information as the Secretary of State may determine, including and in particular "the endorsement of particulars relating to the licence".

(See section 108(1) of the RTA and section 98(1) of the RTOA.)

30. It is therefore not possible for a police officer to issue a fixed penalty notice to non-GB licence holders, i.e. unlicensed drivers, Northern Ireland licence holders and non-UK licence holders) unless they hold a counterpart licence on which a record of their penalty points is kept (under sections 91ZA and 91A, in relation to a Northern Ireland licence holder or Community licence holder to whom a counterpart has been issued, reference to a licence in Part 3 of the RTOA includes references to a Northern Ireland licence or a European licence). Northern Ireland licence holders and holders of licences issued in the European

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Economic Area ("Community licences") may apply for counterparts but take-up is low. These provisions therefore establish a new system which will enable fixed penalty notices to be given to drivers who do not have counterpart licences. It is intended to introduce this alternative system in two stages.

31. Section 8 (driving record) inserts a new section 97A (meaning of "driving record") into the RTOA, which introduces the concept of a record held by the Secretary of State (a "driving record") designed for endorsement of particulars of offences committed by a person under the Traffic Acts (the "Traffic Acts" are defined under section 98(1) of the RTOA to mean the RTA, the Road Traffic (Consequential Provisions) Act 1988 (so far as it reproduces the effect of provisions repealed by that Act), the RTOA and the RTRA).

32. Section 9 (unlicensed and foreign drivers) and Schedule 2 (endorsement: unlicensed and foreign drivers) provide for the first stage of the new system. They introduce a system of endorsement of driving records for unlicensed and foreign drivers (other than those Community and Northern Ireland licence holders who have been issued counterparts under Part 3 of the RTA).

33. They enable a constable or vehicle examiner to give these drivers fixed penalty notices in respect of offences in cases where they would not be liable to disqualification under the "totting up" system if they were convicted of the offence. In those cases a court attendance would be required (as is currently the case for GB licence holders whose counterpart must be inspected to ascertain whether the imposition of penalty points would take the driver up to 12 or more penalty points). They achieve this by providing for the driving record to be checked, before a fixed penalty notice is issued, through the constable or vehicle examiner having access to the driver's driving record and by enabling the Secretary of State to endorse the driving record (rather than the fixed penalty clerk endorsing the counterpart licence) where the driver accepts the notice and does not elect for a court appearance. (Section 9 contains the principal provisions and Schedule 2 contains the legislative amendments necessary to enable the endorsement of driving records in the case of unlicensed and non-GB licence holders.)

34. At this first stage, there is no change for Community and Northern Ireland licence holders who have counterparts under Part 3 of the RTA. They will continue to be dealt with in the same way as GB licence holders.

35. The United Kingdom is obliged in any case to make this change following a complaint made to the European Commission in 2000 by a Dutch licence holder who was resident in the UK but did not possess a counterpart to her Community licence. Having committed a driving offence, she was obliged to be prosecuted in court, which led to her receiving a fine higher than the fixed penalty would have been and the imposition of court costs. She argued that the fixed penalty system was discriminatory against European Community licence holders in general. The Commission upheld the complaint and the Government undertook to make the necessary legislative changes to put an end to the discrimination.

36. Section 10 (all drivers) and Schedule 3 (endorsement: all drivers) introduce the second stage which will be commenced at a later date (see *section 61(8)* as regards timing). The second stage introduces the new system of endorsement of driving records for all drivers with the result that counterparts will no longer have any function. At this stage, for the purposes of the fixed penalty provisions, there will be two categories of drivers - those who hold GB licences granted under Part 3 of the RTA and those who do not. GB licence holders will still have to produce their licences in order to be given a fixed penalty notice. Community and Northern Ireland drivers who held counterparts issued under the RTA will shift from being

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dealt with in the same way as GB licence holders to being dealt with in the same way as unlicensed and other foreign drivers.

37. Schedule 3 contains further legislative amendments in order to enable the endorsement of driving records in the case of all drivers. Much of this is concerned with removing all references to the "counterpart".

## **DEPOSITS AND PROHIBITION ON DRIVING**

### **Section 11: Financial penalty deposits**

38. This section inserts a new Part 3A (sections 90A to 90F) into the RTOA.

39. Under new section 90A the police and vehicle examiners, appointed under section 66A of the RTA, will be able to require the payment of a deposit by a person they believe to have committed an offence in relation to a motor vehicle who does not provide a satisfactory address in the United Kingdom at which it is likely the person can be found. The police or vehicle examiner must also believe that the person, the offence and the circumstances in which the offence is committed are of a description specified in an order made by the Secretary of State.

40. The section enables the deposit scheme to be applied to any driver who cannot satisfy enforcement officers that he could be found in the UK, when necessary in connection with a fixed penalty or court proceedings. The deposit would be used to pay any uncontested fixed penalty notice. However, it would be open for drivers to contest in court the charge of committing an offence (including contesting a fixed penalty notice). Should the court decide in their favour or if the case did not go to court within a year (or, if shorter, any period after which no prosecution could be commenced in respect of the offence), the deposit would be refunded with the relevant interest. If the court decided against them, the deposit would be retained to be offset against all, or part, of the fine imposed.

41. New section 90D will enable the police or vehicle examiners to prohibit the moving of the vehicle if the deposit is not paid immediately, though the vehicle may be moved to another, specified place by a written direction. The prohibition would continue in force until the driver: pays the deposit or (if he received a fixed penalty notice or conditional offer) fixed penalty, is charged with the offence or informed he will not be prosecuted or payment is made, or the prosecution period comes to an end, whichever occurs first. Failure to comply with the prohibition set by non-payment of a fixed penalty notice deposit will be recorded as a level 5 offence under Part 1 Schedule 2 of the RTOA.

42. The effect of these provisions is to provide a means of enforcement against offenders who avoid payment of fixed penalties and prosecution by not having a satisfactory address in the United Kingdom.

### **Section 12 (and Schedule 4): Prohibition on driving: immobilisation, removal and disposal of vehicles**

43. Section 12 and Schedule 4 will reinforce both current powers for issuing prohibition notices and the new prohibition power in section 11, which will apply where a driver does not make a payment under the Deposit Scheme requirements. They will allow vehicles issued with an immediate prohibition to be immobilised either by the enforcement officer or authorised person until such time as the prohibition requirements are satisfied or, in cases of offenders who do not have a reliable UK address, until such time as a deposit is paid or the case is settled in Court.

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44. These provisions will strengthen the prohibition sanction generally, as immobilisation will physically prevent a prohibition being disregarded. Prohibitions under current powers are usually imposed for breaches of drivers' hours or of roadworthiness requirements. These provisions will thus also ensure that the Deposit Scheme is not open to abuse by drivers who might otherwise refuse to pay and then abscond in their vehicle, albeit under prohibition, if they thought that they would in practice incur no punishment or penalty as a result of quickly leaving the country.

#### **DRINK-DRIVING etc.**

##### **Section 13: High risk offenders: medical enquiries following disqualification**

45. High Risk Offenders, as defined by Regulation 74 of the Motor Vehicles (Driving Licences) Regulations 1999 (SI 1999/2864) (the "1999 Regulations") for the purposes of section 94(4) of the RTA, are:

- a) those disqualified for driving whilst two and half times or more over the prescribed limit;
- b) those disqualified for failure, without reasonable excuse, to supply a specimen for analysis pursuant to section 7 of the RTA; and
- c) those disqualified on two or more occasions within ten years for either exceeding the legal limit of alcohol in their breath, blood, or urine, or being unfit to drive through drink.

46. Section 88 of the RTA sets out exceptions to the general requirement for anyone wishing to drive a motor vehicle on a road to have the appropriate licence authorising him to do so. These include, under subsection (1)(a)(i) of section 88, where the driver has held a licence to drive that class of vehicle and, under subsection (1)(b)(i), where the Secretary of State has received a qualifying application by the driver for a licence to drive that class of vehicle.

47. This section prevents High Risk Offenders from having entitlement to drive by virtue of section 88 of the RTA, whilst awaiting the outcome of medical enquiries relevant to an application for the return of a licence following a period of disqualification. This will ensure that those who, by the nature of their offending, have been identified as presenting a greater risk of being medically unfit to drive are prevented from driving until the Secretary of State is satisfied that they are fit to do so.

##### **Section 14: Period of endorsement for failure to allow specimen to be tested**

48. Once an endorsement ceases to be effective, the licence-holder may apply to the DVLA for a new licence free from the endorsement. Under subsections (5) and (6) of section 45 (effect of endorsement) of the RTOA, endorsement for most driving offences remains effective for a period of four years from the conviction, or four years from the date of the offence if no order for disqualification was made.

49. Section 45(7) of the RTOA provides that the period of effectiveness of an endorsement in respect of specified driving offences connected with drink or drugs or failing to provide a specimen is eleven years from the conviction.

50. This section amends section 45(7) by adding the offence of failing to allow a specimen to be subjected to a laboratory test (section 7A(6) of the RTA), so that where a person is guilty of an offence under section 7A(6) of the RTA, the endorsement will remain effective for a period of eleven years from the conviction.

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51. This corrects a consequential amendment missed in the Police Reform Act 2002 which inserted section 7A (specimens of blood taken from persons incapable of consenting).

**Section 15: Alcohol ignition interlocks**

52. This section inserts into the RTOA new sections 34D, 34E, 34F, 34G and 41B.

53. Its effect is to give courts the power in certain circumstances to offer offenders the opportunity to participate, at their own expense, in an "alcohol ignition interlock programme". Where an offender agrees to this, his overall period of disqualification may be reduced. The provision applies to a person who is convicted of a relevant drink driving offence on a second occasion in a period of ten years and is to be disqualified for no less than two years. The period on the programme must be at least twelve months but must not exceed a half of the original unreduced disqualification period. This programme may not be offered to someone for whom an order is made under section 34A (drink drive offenders rehabilitation order).

54. The alcohol ignition interlock programme requires the offender to comply with certain conditions. These include elements of education and counselling, but a central feature is that the offender may drive only a motor vehicle that is fitted with an alcohol interlock device that is designed to prevent the vehicle being driven until a specimen of breath has been given in which the proportion of alcohol does not exceed a specified amount. If a person interferes with the device to try to prevent it working he commits a new offence, as does someone other than the offender who gives, or attempts to give, a specimen of breath to enable the offender to drive the vehicle.

55. Any failure on the part of the offender to comply with the conditions of the programme will result in restoration of the full original disqualification period. The interlock device will be type approved by the Secretary of State and will be set at 9 microgrammes of alcohol in 100 millilitres of breath, but that may be changed by regulations.

56. Provision is made for a "certificate of failing fully to participate" in a programme. In the event of such a certificate being issued the offender must be notified and given an opportunity to appeal to the supervising court. If he makes an appeal the court may allow him to continue on the programme until the outcome of the appeal is known.

57. Provision is made for approval of programmes by the Secretary of State, or, as respects Wales, the National Assembly for Wales, and, as with courses for drink drive rehabilitation this covers guidance and arrangements for appeal to the Transport Tribunal for an applicant whose approval is denied or withdrawn.

58. The Secretary of State may vary by regulations the period of ten years that determines whether a previous offence is relevant, the minimum disqualification period before an offender becomes eligible for the programme, the minimum period of the programme and the maximum proportion of the original disqualification period that may be served on a programme.

**Section 16: Experimental period for section 15**

59. This section provides for an experimental period for the alcohol ignition interlock programme described in section 15. The experiment may continue until the end of 2010 but the Secretary of State may specify a later date by order. He may also terminate the restrictions specified for the experimental period. The section provides for the Secretary of State to designate certain court areas for the purpose of the experiment. During the

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experimental period the programme would not be offered to persons convicted under Section 3A of the RTA (causing death by careless driving when under influence of drink or drugs).

## **SPEEDING**

### **Section 17: Penalty points**

60. Section 17 amends Part 1 of Schedule 2 to the RTOA with respect to the entry relating to section 17(4) of the RTRA (traffic regulation on special roads) and the entry relating to section 89(1) of that Act (speeding offences other than those on special roads), so as to change the entry in column 7 (penalty points).

*special roads* are, broadly, roads in England and Wales, provided under a scheme made under section 16 of the Highways Act 1980 and include motorways.

61. The amendments to be made by section 17 will extend the range of penalty points which may be given in respect of these two speeding offences from "3-6 or 3 (fixed penalty)" to "2-6 or appropriate penalty points (fixed penalty)". This will increase the range of penalty points available and provide for a more graduated arrangement of fixed penalties in respect of these two speeding offences.

### **Section 18: Speed assessment equipment detection devices**

62. Section 18 amends section 41 of the RTA. Section 41(1) of the RTA is an enabling provision empowering the Secretary of State to "make regulations generally as to the use of motor vehicles and trailers on roads, their construction and equipment and the conditions under which they may be so used". The amendment means that it will be possible to prohibit a vehicle being fitted with, or a person using a vehicle carrying "speed assessment equipment detection devices" by means of regulations under section 41 of the RTA. The amendment defines a "speed assessment equipment detection device" as "a device, the purpose, or one of the purposes, of which is to detect, or interfere with the operation of equipment used to assess the speed of motor vehicles". The precise subset of the devices which will be prohibited will be identified in the regulations made under section 41 of the RTA but it is not intended to include in the prohibition those devices that only contain information about published camera site locations.

63. A person who breaches a speed assessment equipment detection device requirement shall be guilty of an offence and liable to the same penalty as if they had been convicted of exceeding a prescribed speed limit, which means that the financial penalties will be higher if the offence is committed on a special road.

### **Section 19: Exemptions from speed limits**

64. Section 19 substitutes a new section 87 of the RTRA. Section 87 currently provides that vehicles being used for fire and rescue authority, ambulance, police or Serious Organised Crime Agency purposes are not subject to any statutory provision imposing a speed limit if observance of the limit would be likely to hinder their use for the purpose for which they are being used on that occasion.

65. The substituted section 87 contained in section 19 enables the Secretary of State to prescribe, by regulations, other purposes (in addition to those relating to fire and rescue authority purposes or for or in connection with the exercise of any function of a relevant authority as defined in section 6 of the Fire (Scotland) Act 2005, for ambulance purposes or for police or Serious Organised Crime Agency purposes) for which vehicles may be exempt from speed limits.

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66. The new section provides that the exemption from speed limits does not apply unless the vehicle is being driven by a person who has satisfactorily completed a course of training in the driving of vehicles at high speed provided in accordance with regulations under the new section, or is driving the vehicle as part of such a course.

67. *Subsection (3)* of the new section enables regulations to be made about courses of training in the driving of vehicles at high speed. These may include, amongst other things, provision about the nature of courses and provision for the approval by the Secretary of State of persons providing courses or giving instruction on courses. For those drivers who have already received appropriate training, paragraph (g) of *subsection (4)* of the new section provides that regulations may include provision treating courses of training in the driving of vehicles at high speed which have been completed before the coming into force of the regulations as if they had been provided in accordance with the regulations.

## **NEW OFFENCES**

### **Section 20: Causing death by careless, or inconsiderate, driving**

68. *Subsection (1)* of this section inserts new section 2B in the RTA, which makes provision for a new criminal offence of causing death by careless, or inconsiderate, driving.

69. *Subsection (2)(a)* amends section 24(1) of the RTOA to provide that conviction of an offence under section 2B may be an alternative verdict where a charge under section 1 RTA (causing death by dangerous driving) has been unsuccessful.

70. *Subsection (2)(b)* amends section 24(1) RTOA to provide that conviction of an offence under section 3 RTA (careless, and inconsiderate, driving) may be an alternative verdict to conviction of an offence under section 2B.

71. *Subsection (2)(c)* amends section 24(1) RTOA to provide that conviction of an offence under section 2B may be an alternative verdict to conviction of an offence under section 3A (causing death by careless driving when under the influence of drink or drugs).

72. *Subsection (3)* provides for sections 11 and 12(1) RTOA to apply to the offence under section 2B. Section 11 provides a mechanism for proving who was driving the car whereby this is certified by a constable. Section 12(1) relates to proving the identity of a driver in summary proceedings whereby the accused has stated in writing that he was the driver.

73. *Subsection (4)* creates an entry in Schedule 2 to the RTOA, making provision for the section 2B offence to be triable either way and setting out the maximum penalties available on summary conviction (12 months' imprisonment in England and Wales, 6 months' imprisonment in Scotland and/or a fine of £5,000) and on indictment (5 years or a fine or both). It also sets out that the offence will be subject to mandatory disqualification and endorsement and sets the range of penalty points available for this offence (3-11).

74. *Subsection (5)* inserts a reference to section 2B into sections 16 and 17 of the Coroners Act 1988 to provide for the adjournment of inquests in the event of criminal proceedings.

75. *Subsection (6)* inserts a reference to section 2B into Schedule 3 to the Crime (International Co-operation) Act 2003 to provide that the Secretary of State may inform the authorities of a third country state where one of that state's nationals is disqualified from driving as a consequence of that offence.

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**Section 21: Causing death by driving: unlicensed, disqualified or uninsured drivers**

76. *Subsection (1)* of this section inserts new section 3ZB in the RTA, which makes provision for a new offence committed where a person causes a death by driving and is, at the time of that act, driving either otherwise than in accordance with a licence or whilst disqualified or without insurance.

77. *Subsection (2)* provides for sections 11 and 12(1) RTOA to apply to the offence under section 3ZB. Section 11 provides a mechanism for proving who was driving the car whereby this is certified by a constable. Section 12(1) relates to proving the identity of a driver in summary proceedings whereby the accused has stated in writing that he was the driver.

78. *Subsection (3)* creates an entry in Schedule 2 to the RTOA, making provision for the section 3ZB offence to be triable either way and setting out the maximum penalties available on summary conviction (12 months' imprisonment in England and Wales, 6 months' imprisonment in Scotland, and/or a fine of £5,000) and on indictment (2 years or a fine or both). It also sets out that the offence will be subject to mandatory disqualification and endorsement and sets the range of penalty points available for this offence (3-11).

79. *Subsection (4)* inserts a reference to section 3ZB into sections 16 and 17 of the Coroners Act 1988 to provide for the adjournment of inquests in the event of criminal proceedings.

80. *Subsection (5)* inserts a reference to section 3ZB into Schedule 3 to the Crime (International Co-operation) Act 2003 to provide that the Secretary of State may inform the authorities of a third country state where one of that state's nationals is disqualified from driving as a consequence of that offence.

**Section 22 and Schedule 5: Offence of keeping vehicle which does not meet insurance requirements and New Schedule 2A to the Road Traffic Act 1988**

81. These provisions provide for a new scheme intended to combat uninsured driving.

82. Section 22 inserts new sections 144A, 144B, 144C, 144D and 159A into the RTA and makes a number of consequential amendments to the RTOA. Schedule 5 inserts a new schedule - Schedule 2A to the RTA.

83. Section 143 of the RTA makes it an offence to use a vehicle on a road or other public place without a policy of insurance or security against third party liability as required by Part 6 of the RTA. The new scheme will create a new offence of being the registered keeper of a vehicle the use of which is not insured against third party liability as required by Part 6 of the RTA. It will therefore be possible to detect the new offence from records of registered keepers held by DVLA and insurance records.

84. Section 144A creates the new offence which arises when a vehicle does not meet the insurance requirements. Under the insurance requirements the registration mark of a vehicle, or the vehicle's owner, must be specified in an insurance policy or security. There are a number of exceptions to the offence set out in the new section 144B. Some of these are similar to the exceptions in section 144 of the RTA which apply to the section 143 offence of using a vehicle without insurance. They include vehicles owned by local authorities, the police and the National Health Service. Other exceptions may apply where the vehicle is no longer kept by the registered keeper; it is not kept for use on a road or other public place or has been stolen. The exceptions apply only if a prior statement (such as a statutory off-road "SORN" declaration) has been made to the appropriate authorities as required by regulations.

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85. Under the new section 144C the Secretary of State can serve a fixed penalty notice on a person whom he believes has committed an offence under section 144A. The amount of fixed penalty is £100 which is variable by statutory instrument.

86. Section 144D introduces the new Schedule 2A. Under this Schedule the Secretary of State can make regulations which enable an authorised person to clamp vehicles upon reasonable suspicion that a section 144A offence has been committed and to enable the removal and disposal of such vehicles, including the time and manner in which such vehicles may be disposed of. Regulations may exempt a vehicle with a current disabled person's badge, or which meets other prescribed conditions, from being clamped. The Regulations may enable a person to obtain release of a clamped or an impounded vehicle if he or she pays any due charges and can show (a) that in driving the vehicle away he or she will not be committing an offence under section 143 of the RTA and (b) that the registered keeper is not guilty of an offence under the new section 144A. If the vehicle has already been disposed of, the regulations may provide for a sum to be paid to the vehicle's owner provided the claim is made within a prescribed period.

87. Regulations may also make it a criminal offence to interfere with a clamp or associated notice, use a vehicle in breach of statutory requirements in connection with disabled persons or give any false declaration to secure release of a vehicle.

88. Section 159A enables regulations to be made which require the Motor Insurers' Information Centre to provide information to prescribed persons. This information, together with records held by DVLA, will enable identification of registered keepers committing the offence under section 144A. The information can also be used for enforcement of other offences under Part 6 of the RTA (Third Party Liabilities) or offences made under regulations under section 160 of that Act, including those relating to immobilisation and release of vehicles provided for in the new Schedule 2A.

89. Finally, section 22 makes consequential amendments to the RTOA in connection with the new offence in section 144A and the offences which may be created by regulations.

## **INCREASES IN PENALTIES**

### **Section 23: Careless, and inconsiderate, driving**

90. Section 23 amends Part 1 of Schedule 2 to the RTOA (prosecution and punishment of offences: offences under the Traffic Acts) so as to increase the maximum fine for an offence under section 3 of the RTA from Level 4 on the standard scale (£2,500) to level 5 (£5,000).

### **Section 24: Breach of requirements relating to children and seat belts**

91. This section amends Part 1 of Schedule 2 to the RTOA so as to increase the punishment for an offence under section 15(4) of the RTA (driving a motor vehicle in contravention of requirements relating to seat belts where children in rear seat) from level 1 on the standard scale (£200) to level 2 (£500). This amendment means that the penalty on conviction for a seat belt wearing offence in respect of a child sitting in a rear seat will be the same as that in respect of a child occupying a front seat.

### **Section 25: Using vehicle in dangerous condition etc**

92. This section amends Part 1 of Schedule 2 to the RTOA to provide for obligatory disqualification of a person convicted of using a vehicle in a dangerous condition contrary to section 40A of the RTA if the offence is committed within three years of a previous conviction for the same offence.

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### **Section 26: Breach of requirements as to control of vehicle, mobile telephones etc**

93. This section inserts a new section 41D into the RTA, and amends the RTOA, to provide for obligatory endorsement (with disqualification at the court's discretion) for the offence of contravening or failing to comply with a construction and use requirement if the requirement relates either to failure to have proper control of the vehicle or a full view of the road or to the use of a hand-held mobile phone or similar device. A "construction and use requirement" is a requirement imposed by a regulation made under section 41 of the RTA (most of which are contained in the Road Vehicles (Construction and Use) Regulations 1986 (S.I. 1986/1078) as amended).

### **Section 27: Power of police to stop vehicle**

94. This section amends column (4) of Part 1 of Schedule 2 to the RTOA to increase the penalty available for an offence under section 163 of the RTA (failure to stop a mechanically propelled vehicle when required to do so by a constable) from a fine of level 3 on the standard scale (£1,000) to level 5 (£5,000). The penalty in relation to cycles is unaffected.

95. This section also amends column (2) of that Schedule to replace the word "motor" with "mechanically propelled", in order to reflect the fact that in the Road Traffic Act 1991 the section 163 offence was amended to refer to "mechanically propelled vehicle".

### **Section 28: Furious driving**

96. This section amends Part 2 of Schedule 2 to the RTOA to add an entry for the offence under section 35 of the Offences against the Person Act 1861 (furious driving). That offence is subject to discretionary disqualification. The section provides for the offence to be subject to mandatory endorsement where the offence is committed in relation to a mechanically propelled vehicle and sets the range of penalty points available for this offence (3-9).

### **Section 29: Breach of duty to give information as to identity of driver etc**

97. This section amends Part 1 of Schedule 2 to the RTOA by raising from 3 to 6 the maximum number of penalty points which can be imposed for the offence of failing to provide information about the identity of a driver.

## **OTHER PROVISIONS ABOUT OFFENCES**

### **Section 30: Meaning of driving without due care and attention**

98. This section inserts new section 3ZA in the RTA. *Subsection (1)* of the new section provides that it applies to section 2B (causing death by careless, or inconsiderate, driving), section 3 (careless, and inconsiderate, driving) and 3A (causing death by careless driving when under influence of drink or drugs).

99. *Subsection (2)* makes provision about the meaning of the phrase "without due care and attention" so that it is clear that this means driving in a way that falls below what would be expected of a competent and careful driver.

100. *Subsection (3)* provides that in determining what would be expected of a careful and competent driver, regard shall be had not only to what he could be expected to be aware of, but also to any circumstances shown to have been within the knowledge of the accused.

101. *Subsection (4)* provides further definition of the phrase "without reasonable consideration" so it is clear that this means driving in a way that inconveniences other people.

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### **Section 31: Extension of offence in section 3A of Road Traffic Act 1988**

102. *Subsection (2)* of this section extends the offence in section 3A of the RTA (causing death by careless driving when under the influence of drink or drugs etc) to allow for a person whose blood has been taken under section 7A (specimens of blood taken from persons incapable of consenting) to be prosecuted for the section 3A offence where, without reasonable excuse, that person does not (when he is later able to) consent to his blood being subjected to a laboratory test.

103. The effect of *subsection (3)* of this section is that a prosecution for the section 3A offence on the basis of a refusal of consent under section 7A is only possible where the offence was committed with a motor vehicle, as opposed to any other kind of mechanically propelled vehicle. This is consistent with the limitation already in subsection (3) of section 3A of the RTA.

104. *Subsection (4)* amends section 24(1) RTOA to provide that conviction of an offence under section 7A(6) (failing to give permission for laboratory test) may be an alternative verdict to conviction of an offence under section 3A.

### **Section 32: Alternative verdict on unsuccessful culpable homicide prosecution**

105. This section amends section 23 of the RTOA. The effect is that conviction of an offence listed in new subsection (1A) will be available as an alternative verdict where a prosecution for culpable homicide has been unsuccessful. This section applies only to Scotland.

### **Section 33: Alternative verdict on unsuccessful manslaughter prosecution**

106. This section amends section 24 of the RTOA. The effect is that conviction of an offence listed in new subsection (A2) will be available as an alternative verdict where a prosecution for manslaughter in connection with the driving of a mechanically propelled vehicle has been unsuccessful.

## **ATTENDANCE ON COURSES**

### **Section 34: Penalty points**

107. This section inserts into the RTOA new sections 30A, 30B, 30C and 30D. These have the effect of enabling courts to offer persons convicted of the offences of careless, and inconsiderate driving, failing to comply with traffic signs or speeding, the opportunity to pay for and undertake a retraining course in certain circumstances where the driver is not to be disqualified but is to have his licence endorsed with penalty points. The circumstances are that there should be at least 7 and no more than 11 points to be taken into account at the time of conviction. Where a person successfully completes a course within ten months of the date of the order, twelve months after the date of the order 3 points (or fewer if the court endorsed fewer) relating to the conviction will cease to be taken into consideration under section 29 of the RTOA (penalty points to be taken into account on conviction). Effectively this would mean that the points were no longer to be considered for the purposes of the "totting-up" provisions of section 35 of the RTOA. (Where the total number of points on the licence is 12 or more the licence holder is liable to disqualification under section 35 of the RTOA (disqualification for repeated offences)).

108. The option will **not** be available to any person who has committed one of the offences mentioned above in the previous three years and successfully completed an approved course pursuant to an order under section 30A or 34A of the RTOA on conviction of the offence, nor

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to a person who committed the offence during his probationary period under the Road Traffic (New Drivers) Act 1995. However the Secretary of State may by regulations change this three year period and may change the minimum number of points to be taken into account for an offender to be eligible for a course.

109. Other provisions in new section 30A include provisions similar to those contained in section 34A of the RTOA in requiring that the court must be satisfied that a place is available on a course before making an order, must explain, orally or in writing and in ordinary language, the effect of the order to the offender and that the offender must agree to it. New section 30B deals with certificates of completion similarly to section 34B.

110. Provision is made for approval of courses by the Secretary of State or, as respects Wales, the National Assembly for Wales and, as with courses for drink drive rehabilitation, this covers guidance and arrangements for appeal to the Transport Tribunal for an applicant whose approval is denied or withdrawn. The retraining courses provided under new sections 30A, 30B, 30C and 30D of the RTOA are entirely separate from the Driver Improvement Scheme and Speed Awareness Courses, which are at the discretion of the police without any court involvement.

### **Section 35: Reduced disqualification period for attendance on course**

111. This section substitutes sections 34A, 34B and 34C of the RTOA and inserts a new section 34BA.

112. The amended versions of these sections extend the principle of the Drink Drive Rehabilitation scheme to certain other offences. Courts will have the power to offer offenders the opportunity to pay for and undertake a retraining course, successful completion of which will reduce the period of the offender's disqualification by an amount specified in the court order. In addition to those for whom this option is currently available, it will also be available for those persons who are disqualified for 12 months or more on conviction of failing to allow a specimen to be subjected to a laboratory test in the course of an investigation into certain offences. In addition, it will also be available to those persons who are disqualified for 12 months or more on conviction of: careless, and inconsiderate, driving, failing to comply with traffic signs or speeding (defined in section 34A(3) as "specified offences"). The option will **not** however be available to an offender convicted of a specified offence if the offender has committed one of the specified offences in the previous three years and successfully completed an approved course pursuant to an order under section 34A or 30A of the RTOA, nor to a person who is within his probationary period under the Road Traffic (New Drivers) Act 1995.

113. The effect of the substituted provisions also means that the court in which the conviction is heard will administer the case (the "supervising court"). If the offender appeals against a course provider's decision not to give a certificate of completion of a course or seeks a declaration that the course provider is in default, he may apply to either the supervising court or a relevant local court in the area in which the offender resides. This replaces the previous system whereby in all cases where the offender lived outside the petty sessional division area of the court where the conviction was heard, a supervising court was appointed in the petty sessional division area in which the offender resided or was about to reside.

114. New section 34BA provides for the approval of courses by the Secretary of State, or, as respects Wales, the National Assembly for Wales. It includes a regulatory regime to monitor, grant approval and withdraw approval from course providers and courses. It also

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provides for appeal to the Transport Tribunal for an applicant whose approval is denied or withdrawn.

115. The Secretary of State may vary by regulations those specified offences in respect of training course orders that may be made under section 34A. The Secretary of State may also vary by regulations the minimum period for which a person must be disqualified to be eligible for such an order, the minimum reduction in the disqualification period, the fraction of the disqualification period that may be the reduction, and the period over which a previous conviction and successful completion of a previous training course would make the offender ineligible for a course under section 34A.

## **DRIVING STANDARDS**

### **Section 36: Driving tests**

116. This section amends sections 89 (driving tests) and 91 (repayment of test fees) of the RTA.

117. *Subsection (2)(a)* amends section 89(3)(regulations about nature of tests) so as to allow the Secretary of State to provide, by regulations, for more flexible arrangements for the booking, cancellation and rearrangement of test appointments. *Subsection 2(b)* amends section 89(3) so as to make more explicit the scope of the Secretary of State's regulation making powers relating to the appointment of driving examiners and to permit him to make reasonable charges in respect of such appointments. *Subsection (2)(c)* allows the Secretary of State, again by regulations, to require the driving test candidate to surrender his licence to the examiner in prescribed circumstances (for example, if it does not pass the necessary security checks).

118. *Subsection (3)* amends section 89(4) (provision that may be included in regulations) so as to enable the Secretary of State, by regulation, to require inspection and certification of prescribed test vehicles. (An inspection and certification process is needed to evidence compliance with the weight requirements for large goods vehicles and large trailers used for driving tests set out in Commission Directive 2000/56/EC). *Subsection (3)* also reformulates the fees provision contained in section 89(4)(b) so as to enable the Secretary of State, by regulation, to charge a reasonable fee for or in connection with the test (for example, the review of theory test results) and for any inspection of a vehicle which may be required by regulations.

119. *Subsection (4)* amends section 89(5) (driving tests in parts) by omitting paragraph (b), the contents of which are now dealt with in new *subsection (5ZA)*.

120. *Subsection (5)* inserts new *subsection (5ZA)* into section 89. This provides that regulation-making provisions in section 89(3)(b) may permit the Secretary of State to supply certificates evidencing the results of driving tests to persons authorised to conduct such tests and to charge reasonable fees in respect of the exercise of any functions conferred or imposed on the Secretary of State by regulations made under section 89(3)(b).

121. *Subsection (6)* amends section 91 so as to provide for partial refunds of fees for driving tests.

### **Section 37: Disqualification until test is passed**

122. This section amends section 36 of the RTOA (duty of court to order disqualification until test is passed) by substituting a new version of the definition of "appropriate driving test". The new definition will enable the Secretary of State to prescribe by regulations when

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the appropriate driving test is an extended test. The section also amends section 36 of the RTOA so as to require the Secretary of State to consult with such representative organisations as he thinks fit before making an order under section 36(3). It also amends section 173(2) of the RTA (forgery of documents etc.) to include reference to documents produced as evidence of the passing of an appropriate driving test for the purposes of section 36 of the RTOA.

### **Section 38: Granting of full licence**

123. *Subsection (1)* of this section amends section 89(1) of the RTA (licence not to be granted unless conditions satisfied) so as to allow the Secretary of State to prescribe the period within which, or time at which, a person applying for a licence must have passed the relevant driving test.

124. *Subsection (2)* of this section inserts a new *subsection (1ZA)* into section 97 of the RTA (grant of licences). The new subsection permits the Secretary of State, by regulations, to grant a licence subject to prescribed conditions that are effective for a prescribed period or until the happening of a prescribed event.

125. *Subsection (3)* of this section extends section 98(1)(c) of the RTA (provisional licence to specify conditions subject to which it is granted) so as to enable the Secretary of State to specify any conditions subject to which full licences are granted.

126. The power to impose conditions on licences would be used, for example, in relation to a driver who had previously been disqualified from driving for a drink driving offence, but had agreed to a court order allowing him to participate in an alcohol ignition interlock programme (*as provided for by section 15*). The condition would require the driver to drive only in accordance with the alcohol ignition interlock programme.

### **Section 39: Compulsory surrender of old-form licences**

127. Section 39 inserts a new section 98A into the RTA. This new section contains an order making power that provides for the compulsory surrender of old-form driving licences.

128. Although the first licences to be surrendered are likely to be paper ones, a recall of first generation photocard format driving licences may be necessary in the future. The section therefore provides that an order made under this new section may specify as to the description of licences to be surrendered:

- licences which are not in the form of a photocard, or
- licences in the form of a photo-card of a description no longer specified by the Secretary of State as a form in which licences are granted.

129. The order to be made under the new section will provide that a new licence be granted to every holder of a licence surrendered who pays such fee (if any) which may be charged for the issue of the replacement licences and who provides the Secretary of State with such evidence or further evidence as the Secretary of State may require (which may include a photograph which is a current likeness).

130. The order will provide that anyone failing, without reasonable excuse, to comply with any requirement imposed by the order to surrender a licence and its counterpart will be guilty of an offence punishable on summary conviction with a fine not exceeding level 3 on the standard scale (£1,000). Driving entitlement will continue until the date on which the original licence would have expired had it not been surrendered.

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#### **Section 40: Fee for renewal of photocard licence and issue of certain alternative licences**

131. *Subsection (1)* of section 40 amends subsection (7) of section 99 of the RTA and inserts a new sub section (7ZA) into that section that will enable the Secretary of State to charge such fee as may be prescribed for the renewal of a photocard licence in pursuance of subsection (2A). Subsection (2A) of section 99 of the RTA requires a photocard licence to be renewed every ten years. Section 99(7) currently specifies that photocard driving licences granted after the ten year renewal period set out in subsection (2A) must be issued free of charge.

132. *Subsection (2)* of section 40 amends subsection (2)(c) and (3) of section 117A (disqualification etc. of holders of Community licences: issue of alternative licences) of the RTA. The amendments relate to the holder of a LGV (large goods vehicle) Community licence or PCV (passenger-carrying vehicle) Community licence who is normally resident in Great Britain. The amendments mean that where the Secretary of State has ordered a holder of a LGV Community licence or PCV Community licence to be disqualified from driving certain vehicles, he may now charge such fee as may be prescribed for the issue of a British licence authorising him to drive other vehicles for which he is not disqualified.

133. The Secretary of State has the power to charge such fee (if any) as may be prescribed in respect of issuing a GB licence holder with a licence authorising him to drive other vehicles for which he is not disqualified (section 118(4) of the RTA) and so this amendment will remove the anomaly which currently exists between GB licence holders and resident Community licence holders.

#### **Section 41: Driver training**

134. *Section 99ZC* of the RTA (Driver training courses: supplementary) is a regulation-making power. *Subsection (2)* of this section amends paragraphs (b) and (c) of section 99ZC(1) so as to include express provision regarding those persons giving instruction on compulsory driver training courses. *Subsection (3)* will enable the Secretary of State, by regulations, to make available information about persons providing, or giving instruction on, driver training courses.

135. *Subsection (4)* substitutes a new paragraph (ff) of section 173(2) of the RTA (forgery of documents etc.) so that it applies to a document evidencing the successful completion of a compulsory driver training course. *Subsection (5)* amends section 174(1) of the RTA (false statements) so that a person who knowingly makes a false statement for the purpose of obtaining a document evidencing the successful completion of a compulsory driver training course is guilty of an offence.

#### **Section 42: Driving instruction**

136. Section 42 introduces Schedule 6 which amends the law relating to paid driving instruction.

#### **Schedule 6**

137. Paid instruction in the driving of motor cars is regulated by Part 5 of the RTA ("motor car" being defined in section 141A, a provision which is replaced by a new provision in the Act). Schedule 6 amends the provisions of that Part in a number of ways, by substituting new provisions for existing ones, inserting new sections and amending existing provisions. The changes are set out in more detail below.

138. Paragraph 2 substitutes new provisions for section 123 as follows:

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### **New section 123: Requirement of registration**

139. *Subsection (1)* provides that driving instructors have to be registered if they give paid instruction of any prescribed description. This enables the existing provision regarding paid driving instruction in the driving of motor cars to be extended, by regulation, to other motor vehicle types in addition to motor cars, for example, driving instruction in respect of lorries, buses and motorcycles. The subsection furthermore extends the current registration requirement by requiring not only those persons who give paid instruction but also those who carry on a business of providing paid driving instruction of a prescribed description (such as franchise operations), to be registered. "Driving instruction" is accordingly given a wider meaning by *subsection (3)* and *subsections (5) and (6)* make provision about what "paid instruction" means.

140. *Subsection (2)* sets out the requirement for all persons giving paid driving instruction or carrying on business in the provision of paid driving instruction to display evidence of their registration as required by regulation e.g. in a classroom.

141. *Subsection (4)* provides that regulations prescribing a description of driving instruction may describe it by reference to the class of motor vehicle (for example, bus or lorry), the person to whom the instruction is given (for example, provisional or full licence holder) and the nature of the instruction or where and how it is given (for example, on or off-road). Currently only instruction given in a motor car is caught by the provisions of Part 5 of the RTA.

### **New section 123A: Paid driving instruction: offences**

142. *Subsection (1)* makes it an offence to give driving instruction in contravention of section 123 and also provides that employers and franchisors commit an offence where driving instruction is given in contravention of section 123 by their employees or franchisees. *Subsection (3)* provides a defence for persons able to prove that they did not know and had no reasonable cause to believe that they were not registered or, in the case of employers and franchisors, that the person giving instruction was not registered. *Subsection (2)* makes it an offence to carry on business in the provision of driving instruction in contravention of section 123(1)(b).

143. *Subsection (4)* makes it an offence to contravene section 123(2) of the RTA (to provide paid driving instruction or carry on business in the provision of paid driving instruction without meeting the requirements regarding the display of evidence of registration).

144. Paragraph 3 substitutes a new section 124 (Exemption from prohibitions imposed by section 123) making provision for exemptions from the requirement of registration.

145. Paragraph 4 substitutes new provisions for section 125 (register of approved instructors) enabling the Secretary of State, by regulation, to establish and maintain a register for the purposes of Part 5 of the RTA.

146. Paragraph 5 inserts a new section 125ZA (Conditions of registration) as follows.

147. *Subsection (1)* provides that the Registrar must register a person who applies to be registered in respect of a description of driving instruction if he satisfies the Registrar that conditions prescribed under the subsection (for example, conditions requiring the persons to have passed certain examinations) are fulfilled.

148. *Subsection (3)* provides that a person may be registered subject to fulfilling conditions prescribed under the subsection for so long as he continues to be registered and *subsection (7)*

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provides that regulations may include provision to exempt persons from any condition in prescribed circumstances.

149. Paragraph 6 amends section 125A (registration of disabled persons). Subsections (2) to (5) of section 125 and section 125ZA of the RTA do not apply to disabled instructors and these amendments to section 125A ensure that the provisions relating to the registration of disabled persons are in line with the amendments made by new section 125 (register) and new section 125ZA (conditions of registration).

150. Paragraph 7 amends section 125B (provisions supplementary to section 125A). It provides that regulations may make provision for prescribed persons to be exempt from the holding of a current emergency control certificate (as in existing section 125B(3)).

151. Paragraph 8 substitutes a new section 126 (Duration of registration). Where a person whose registration has been terminated applies under section 125 of the RTA to be registered again he is required to show again that he fulfils such of the conditions prescribed under section 125ZA(1) as may be prescribed or, if a registered disabled instructor, such of the conditions prescribed under 125A(5) as may be prescribed.

152. Paragraph 9 amends section 127 (extension of duration of registration), substituting new *subsections (1) to (4)*. It provides that the continued registration of a person by virtue of an extension under this section may be made subject to the conditions mentioned in section 125A in the case of a registered disabled instructor and in any other case the conditions mentioned in section 125ZA.

153. Paragraph 10 substitutes new provisions for the current section 128 (removal of names from the register):

154. New section 128 (Termination of registration by Registrar) sets out the Registrar's powers to terminate a person's registration if he is satisfied that any relevant prescribed condition has not been complied with. (A "relevant prescribed condition" means, in the case of a registered disabled instructor, a condition prescribed under section 125A(7) of the RTA and, in any other case, a condition prescribed under section 125ZA(3) of the RTA.) There are provisions as to the giving of notice to the person concerned and a requirement that the Registrar must take into account any representations made by that person before exercising his powers.

155. Paragraph 11 inserts a new section 128A (Power to give direction as to further applications) into Part 5. This empowers the Registrar to impose a rehabilitation period (i.e. a period during which no further application for registration will be considered) thereby preventing persons whose registration has been terminated from making futile applications for re-registration or an extension of an existing registration.

156. Paragraphs 12 and 14. Paragraph 12 removes sections 129 and 130 (licences for giving instruction so as to obtain practical experience) from Part 5 of the RTA. Under the current law, a person may obtain a licence to give instruction prior to applying for full registration. Such licences last for 6 months subject to a limited right of renewal. This system has proved unsatisfactory as a means of training driving instructors. Instead regulations under section 124 will make provision for persons training to be driving instructors to be exempt from the requirements to be registered. There are also to be new arrangements as to examinations and training.

157. These are contained in paragraph 14 which makes major changes to the training and examination systems. It replaces the current sections 132 (examinations) and 133 (review of

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examinations) of the RTA and inserts a new section 133ZA (Training), to make the system more flexible.

158. New section 132 (Examinations) contains revised powers enabling the Secretary of State to make regulations with respect to:

- the nature of, and administrative arrangements for, examinations of fitness and ability to give driving instruction,
- persons who may conduct them
- evidence of the results of examinations, and
- the making available of information about examination results.

159. New section 133 (Review of examinations etc.) provides for a person to apply to a Magistrates Court (or in Scotland the sheriff) to determine whether a relevant instructor examination or part of such examination was properly conducted.

#### **New section 133ZA (Training)**

160. *Subsections (1), (2), (4) and (5)* enable the Secretary of State, by regulations:

- to make provision about instructors' training courses, persons providing the courses, and those giving instruction as part of that training,
- to require a person to successfully complete training in accordance with the regulations before being permitted to take any part of an examination, to become registered or to have his registration extended,
- to provide for the setting of maximum charges for persons undergoing such training, and
- to make available information about persons providing training and those giving instruction as part of that training.

161. *Subsection (3)* provides for exemptions to the general requirements and *subsection (6)* allows the Secretary of State to charge reasonable fees in respect of the exercise of any function conferred or imposed on him by the regulations.

162. It will be possible under these provisions for the Secretary of State to control better the giving of paid instruction by requiring persons giving it to undergo training.

163. Paragraph 13 makes a number of amendments to section 131 (appeals), in particular a provision for appeal to the Transport Tribunal where the Registrar has imposed a rehabilitation period.

164. Paragraph 19 substitutes a new section 134 (power to alter registration period). It enables the Secretary of State, by regulations, to make changes in the registration period, allowing for greater flexibility and to make changes as to the maximum rehabilitation period that may be imposed.

165. Paragraph 20 substitutes a new section 135 (Evidence of registration). This contains a regulation-making power regarding those items or titles that may be issued or used as evidence of a person's registration. It makes it an offence for a non-registered person to display such items or use such titles. It is also an offence for a person carrying on business in the provision of driving instruction to use such titles in relation to employees or franchisees who are not registered or to issue misleading advertisements or invitations as to the extent to which employees or franchisees are registered.

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166. Paragraph 25 substitutes new interpretation provisions for Part 5 of the RTA as follows:

**New section 141A (Interpretation)**

167. *Subsection (1)* describes the ways in which persons may carry on the business of providing driving instruction. *Subsections (2) and (3)* define what is meant by a "driving instruction franchise", "franchisor" and "franchisee", in relation to driving instruction businesses.

168. *Subsections (4) and (5)* make incidental provision.

169. Paragraphs 15 to 18, 21 to 24 and 26 to 33 make minor and consequential amendments.

**Section 43: Tests: approved assistants**

170. This section inserts new section 162A (approved test assistants) into the RTA. This gives the Secretary of State power to provide for a statutory scheme regulating the use of persons who may assist test candidates that have difficulty in hearing, understanding or responding to instructions or questions.

171. *Subsection (1)* enables regulations to be made permitting any person wishing to be accompanied at a relevant test by another person (a "test assistant") if he submits himself for the relevant test in any circumstances in which the Secretary of State considers it appropriate and if the test assistant is approved in accordance with regulations made under this section to accompany people at relevant tests in such circumstances.

172. *Subsection (2)* sets out examples of the circumstances in which the Secretary of State considers it appropriate that a person should be entitled to be accompanied by a test assistant at a relevant test.

173. *Subsection (3)* provides that the regulations may include, in particular, provision with respect to the administrative arrangements for the approval of test assistants, the conditions that may be imposed with respect to their appointment and continued approval, an appeals procedure, the circumstances in which a test assistant may not act as such, the evidencing by persons of their status as approved test assistants and the publication of information about approved test assistants. The subsection also provides that the regulations may provide for the charging of fees in respect of applications for approval, or of approvals, (or both) of fees of such amounts as are prescribed.

174. *Subsection (4)* provides that the regulations may make different provision in relation to different cases.

175. The relevant tests (specified in *subsection (5)*) are the theory and practical parts of driving tests (including those taken in order to discharge disqualification until test is passed), the examination of fitness and ability to give driving instruction and the emergency control assessment taken by prospective disabled instructors.

**REGULATION OF REGISTRATION PLATE SUPPLIERS**

**Section 44: Enforcement authorities; Section 45: Registration plates; and Section 46: Extension to Scotland and Northern Ireland**

176. These sections concern the regulation of number plate suppliers. The controls affecting such businesses, which are in Part 2 of the Vehicles (Crime) Act 2001 ("the 2001 Act"), already apply in England and Wales and are now being extended to Scotland and

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Northern Ireland. In essence the controls consist of suppliers having to register with DVLA (upon payment of a fee) and requirements as to sale of number plates, record keeping and submission to inspection. Suppliers can be prosecuted if they fail to meet these requirements.

177. Section 44 amends the 2001 Act to enhance the role of the Secretary of State in the enforcement process by allowing him to authorise persons to inspect the premises of number plate suppliers and to prosecute offenders (save in Scotland where that remains the province of the Procurator Fiscal). It also allows those trading standards officers who work for those county councils in England where there remains a two-tier structure of local government to be able to take enforcement action.

178. Section 45 amends the 2001 Act to make it an offence to supply a plate bearing a vehicle registration mark that does not comply with regulations concerning the manner in which registration numbers must be displayed. There is a power to make regulations prescribing circumstances in which the offence would not apply.

179. Section 46 extends the controls on number plate suppliers to Scotland and Northern Ireland and amends the 2001 Act in consequence.

180. The intention of the Government is that sections 44 and 45 will be brought into force before section 46 and hence, upon the commencement of the latter, Part 2 of the 2001 Act as amended by the provisions in sections 44 and 45 will extend to Scotland and Northern Ireland.

## **INFORMATION**

### **Section 47: Particulars to be included in vehicles register**

181. This section amends VERA to allow the particulars to be included in the register of vehicles held by the DVLA and DVLNI to be prescribed by regulations and such particulars may relate to the vehicle itself or its keeper. The provision of these particulars can be required of a person before being issued with a vehicle licence. These particulars can also be required of a vehicle keeper (not just of a buyer or seller as currently) and the providing of these particulars may be required at any time. The issue of a registration document may be refused if these particulars are not provided.

182. The present intention is to make regulations listing the information (relating both to the vehicle and its keeper) required for the DVLA and DVLNI vehicle registers and this will include the particulars currently held. This information will also include the odometer reading (recorded mileage) of the vehicle where it is fitted with such a device and the keeper's date of birth.

### **Section 48: Records of goods vehicle examinations**

183. This section amends the RTA to replicate in respect of goods vehicles, provision which already exists for other motor vehicles:-

- to place the Secretary of State under a duty to maintain records in relation to the testing of goods vehicles, and
- to provide that such records may be used to check the accuracy of, amend or supplement, records maintained by the Secretary of State for the purposes of his functions under VERA (and vice versa).

184. In addition, VERA is amended to provide that goods vehicle testing records may be used to check the accuracy of, amend or supplement, information obtained in connection with

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vehicle identity check examinations (and vice versa). It replicates provision which already exists for other motor vehicles.

#### **Section 49: Disclosure to foreign authorities of licensing and registration information**

185. This section provides statutory authority for the relevant agencies - the DVLA in Great Britain, and Driver and Vehicle Licensing Northern Ireland (DVLNI), in Northern Ireland - to disclose certain data to their foreign counterparts. The relevant data held by DVLA and DVLNI is that concerning driving licences and the registration of vehicles held in any form for the purposes of Part 3 or 4 of the RTA, or Part 2 of the VERA, or Part 2 or Articles 70 to 79 of the Road Traffic (Northern Ireland) Order 1981.

186. This statutory authority will enable the United Kingdom to ratify the Treaty on European Vehicle and Driving Licence Information System (EUCARIS) which was signed by the UK, Belgium, Germany, Luxembourg and the Netherlands on 29th June 2000. (The Treaty is designed to facilitate the exchange between the central registrars of the Parties of information on the subject of driving and vehicle registration).

### **LEVEL CROSSINGS**

#### **Section 50: Safety arrangements at level crossings**

187. Under the Level Crossings Act 1983 the Secretary of State may by order provide for the protection of those using any level crossing to which the public have access. Such orders may make such provision as he considers necessary or expedient for the safety or convenience of those using the crossing and in particular may impose requirements as to the installation and maintenance of barriers and other protective equipment (including traffic lights, cameras and warning signs) to be provided at or near the crossing.

188. This section amends that Act to make clear that the Secretary of State may in a level crossings order made under that Act place requirements on the local traffic authority as well as on the operator of the level crossing. By specifying the local traffic authority as a person on whom requirements may be imposed, it is intended also to make clear that road traffic measures may be included in orders under the Act (e.g. measures to slow traffic at crossings and make it harder for motorists to zig-zag around barriers). This amendment is made in response to concerns raised that the Level Crossing Act 1983 does not currently specify on whom the requirements of level crossing orders may be imposed and is not clear as to the scope of the requirements that may be imposed.

189. The section provides for a more elaborate consultation process. The Office of Rail Regulation and the local traffic authority (as well as the level crossing operator) are included in this process. The Office of Rail Regulation is the single economic and safety regulator for the rail industry.

#### **Section 51: Delegation of power to make level crossing orders**

190. This section amends paragraph 7(3)(b) of Schedule 3 to the Railways Act 2005, under which the Secretary of State may not require or authorise the Office of Rail Regulation (ORR) to make regulations or any other instruments of a legislative character, to preclude its application to action by the Secretary of State to enter into an agreement with ORR for that body to carry out on his behalf the making, varying or revoking of orders made under section 1 of the Level Crossings Act 1983.

191. The section also deems orders purportedly made under section 1 of the Level Crossings Act 1983 by the Health & Safety Executive to have been made by the Secretary of State

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notwithstanding the terms of section 13(2) of the Health & Safety at Work etc Act 1974 (which comprises a similar preclusion to that described in the said paragraph 7). This provision has prospective effect only.

## **HACKNEY CARRIAGES AND PRIVATE HIRE VEHICLES**

### **Section 52: Immediate suspension and revocation of drivers' licences**

192. This section affects taxi and private hire vehicle (PHV - minicab) drivers in England and Wales (outside London, and not in Plymouth).

193. Taxi and PHV drivers must be licensed by the relevant local authority in order to carry out taxi or PHV work. Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 gives the licensing authority the power to suspend or revoke a taxi or PHV driver's licence, but, by virtue of section 77 of that Act, the driver may continue to drive a taxi or PHV (as the case may be) until the time period for appealing to the courts against the authority's decision has expired, or, if an appeal is lodged, until the appeal has been determined.

194. This section amends sections 61 and 77 of the 1976 Act to provide licensing authorities with a power to suspend or revoke a taxi or PHV driver's licence with immediate effect in cases where it appears to them that the interests of public safety require such a course of action. If a driver's licence is suspended or revoked with immediate effect, the driver may no longer drive a taxi or PHV from the time when he is given notice of the suspension or revocation.

### **Section 53: Abolition of "contract exemption"**

195. This section affects vehicles which provide a private hire service in England and Wales (outside London, and not in Plymouth) and which are currently exempt from licensing by virtue of section 75(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976.

196. Section 75(1)(b) exempts from licensing any vehicle which is used only for carrying passengers for hire and reward under a contract for the hire of the vehicle for a period of not less than seven days. Accordingly, the driver of the vehicle and the operator (who arranges the hirings) are also exempt.

197. This section repeals section 75(1)(b) of the 1976 Act. Unless other exemptions apply, vehicles which fall within the definition of "private hire vehicle" in section 80 of the 1976 Act will have to be licensed regardless of whether they are used for one-off hirings or hired on a 'longer-term' contract basis.

### **Section 54: Private hire vehicles in London**

198. This clause amends the definition of "private hire vehicles" in section 1(1)(a) of the Private Hire Vehicles (London) Act 1998 by removing the words "to the public" from that definition. The effect is to bring within the private hire vehicle licensing regime in London those operators and drivers who are currently providing a private hire service to an identified group or organisation (but not the public at large) and who at present do not require licences.

## **MISCELLANEOUS**

### **Section 55: Trunk Road picnic areas**

199. This section amends section 112 of the Highways Act 1980 to enable the Secretary of State to provide picnic sites on land adjoining, or in the vicinity of motorways, to enter into

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arrangements with a council for the provision of facilities at such sites and to provide public sanitary conveniences on land adjoining the motorway. Currently, the power to provide picnic sites and conveniences is limited to trunk roads that are not motorways.

200. The Secretary of State also has an existing power to manage trunk road picnic sites. That power is extended to the new picnic sites adjoining motorways, and will be strengthened by allowing the enforcement of parking controls at all picnic sites (i.e. those on motorways and ordinary trunk roads) and recovering the costs of doing so.

201. The provisions apply to England and Wales. The Secretary of State's functions regarding motorways and other trunk roads, including the provision of picnic areas, are devolved matters exercisable in Wales by the National Assembly for Wales.

#### **Section 56: Vehicles modified to run on fuel stored under pressure**

202. This section amends (i) section 41 of the RTA, which empowers the Secretary of State to make regulations dealing with the construction and use of vehicles, and (ii) section 66 of the RTA, which empowers the Secretary of State to make regulations prohibiting the grant of vehicle licences except on compliance with certain conditions.

203. The powers to regulate under section 41(2) are extended to cover the modification of vehicles to enable them to be powered by fuel stored under pressure. These provisions would apply to vehicle modification in respect of fuels, such as liquefied petroleum gas (LPG) and compressed natural gas (CNG) which, because they are stored under pressure, have a higher risk of explosion than petrol or diesel stored at ambient pressure. Regulations made under section 41 are enforceable through section 42 of the RTA. Section 42 makes it an offence to contravene or fail to comply with construction and use requirements, or to use on a road a motor vehicle which does not comply with such requirements.

204. There is currently no mechanism for inspecting the safety of alternative fuel vehicle modifications or for preventing vehicles that have been so modified from being used on a road. Vehicles are often modified after they have been registered, and the adequacy of that modification will not be covered by annual MOT tests.

205. Under the new section 41(2A) powers, the Secretary of State could introduce a new scheme, requiring modified vehicles to be tested by authorised examiners and issued with a new form of certificate verifying satisfactory modification. Examiners could be authorised by the Secretary of State in accordance with the regulations. Authorised examiners could be required to notify the Secretary of State of any vehicle modification carried out (whether or not a certificate was issued).

206. Once regulations under section 41(2) are made, the Secretary of State could provide under existing powers for the annual MOT test to check the continuing safety of any alternative fuel modifications on a vehicle.

207. The section also amends section 66 to enforce the new certification provisions through the vehicle licensing regime (under which it is an offence to drive without a valid vehicle licence). The new section 66(7A) will ensure that evidence of a certificate of a satisfactory examination will be required before a vehicle licence can be granted in respect of a modified vehicle.

#### **Section 57: Powers to regulate transport of radioactive material**

208. Regulations for the safe transport of radioactive material by road are made under the Radioactive Material (Road Transport) Act 1991 ("the 1991 Act").

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209. The successful enforcement of these regulations depends on understanding the causes behind incidents and accidents involving the transport of radioactive material. This enforcement is hampered when individuals refuse to provide assistance and information voluntarily to inspectors conducting investigations.

210. Section 57 amends the regulation making powers of section 2 of the 1991 Act by allowing the making of regulations:

- to impose formal requirements for the provision of assistance and information on those involved in the transport of radioactive material; and
- to authorise such requirements being imposed by inspectors when conducting an investigation.

211. The scope of the offence in section 2(4) is expanded so that it will be an offence for any person to contravene or fail to comply with any requirement imposed by or by virtue of regulations made under section 2.

#### **Section 58: Minor corrections**

212. Section 58 corrects some minor errors in earlier legislation relevant to the provisions of the Act.

### **SUPPLEMENTARY PROVISIONS**

#### **Section 60: Power to make amendments**

213. Section 60 enables the Secretary of State to make amendments to other legislation (primary and secondary) where, as a consequence of the coming into force of a provision of the Act, he considers it appropriate to do so. Although every attempt has been made to amend or repeal all provisions of other legislation which conflict with, or are inconsistent with, a provision of the Act, such a power would need to be exercised if following Royal Assent it was discovered that the effect of a particular provision had been overlooked. The power might be also be applied to a provision of an Act passed after this Act but before the provision in question comes into force.

214. The exercise of the power is subject to an affirmative resolution in both Houses of Parliament.

#### **Section 61: Commencement**

215. Section 61 provides for commencement of the Act's provisions. Save for sections 1 and 49 and certain miscellaneous and supplementary provisions, the provisions of the Act will come into force on a day appointed by order of the Secretary of State. Sections 1 and 49 come into force two months after Royal Assent. *Subsection (8)* provides for sections 5, 8, 9 and 10 and Schedules 1, 2 and 3 to be brought into force in a particular order to give effect to the purpose of the Act. Sections 51, 58 and 60 will come into effect on Royal Assent.

216. *Subsection (4)* provides that section 2B of the RTA (the new offence of causing death by careless, or inconsiderate, driving) and section 3ZB of that Act (the new offence of causing death by driving: unlicensed, disqualified or uninsured drivers) will only apply to driving occurring after those sections are commenced.

217. The effect of *subsection (5)* is that where offences under sections 2B and 3ZB of the RTA are committed before the commencement of section 154(1) Criminal Justice Act 2003 the maximum custodial penalty on summary conviction, throughout Great Britain, will be 6 months. Once that provision does come into force, magistrates' courts in England and Wales

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will have the full benefit of their extended sentencing powers, such as the custody plus scheme.

**PUBLIC SERVICE MANPOWER IMPLICATIONS**

218. None of the Act's provisions has significant implications for public service manpower.

**TERRITORIAL EXTENT**

219. The greater part of the Act amends existing legislation, particularly the RTA and the RTOA, and the amendments generally have the same extent as the enactments amended. In consequence the majority of the Act's provisions extend to Great Britain. The exceptions are as follows:-

Sections 1, 2 and 52 to 55 extend only to England and Wales.

Sections 44 to 46 (after commencement of section 46), 47, 49(1) and 51(2) extend to the United Kingdom as a whole.

Section 49(2) extends only to Northern Ireland.

**Application to Wales**

220. The Act grants some new powers to the National Assembly for Wales and affects some of its existing powers. For more detailed analysis of these powers please refer to the relevant sections of these Notes as indicated below:

<b>Section</b>	<b>Subject matter</b>
1	Road Safety Grants
15	Alcohol Ignition Interlocks
34 & 35	Attendance on Courses
55	Trunk Road Picnic Areas

**Hansard References**

The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament:

<b>Stage</b>	<b>Date</b>	<b>Hansard reference</b>
<b><i>House of Lords</i></b>		
1 <sup>st</sup> Reading	24 May 2005	Vol. 672, Column 355
2 <sup>nd</sup> Reading	8 June 2005	Vol. 672, Columns 879-928
Committee	27 June 2005	Vol. 673, Columns 12-21;
	4 July 2005	Vol. 673, Columns 424-486 & 501-528
	17 October 2005	Vol. 674, Columns 598-668
	26 October 2005	Vol. 674, Columns 1170-1203 &

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		1215-1248 & 1263-1296
Report	22 November 2005 29 November 2005	Vol. 675, Columns 1504-1532 & 1540-1572 & 1588-1614 Vol. 676, Columns 111-185
3 <sup>rd</sup> Reading	10 January 2006	Vol. 677, Columns 61-131
<b><i>House of Commons</i></b>		
1 <sup>st</sup> Reading	11 January 2006	-----
2 <sup>nd</sup> Reading	8 March 2006	Vol. 443, Columns 827-915
Committee	21 March 2006 23 March 2006 28 March 2006 18 April 2006 20 April 2006	Standing Committee A (8 sittings)
Report	9 October 2006	Vol. 450, Columns 50-116
3 <sup>rd</sup> Reading	9 October 2006	Vol. 450, Columns 116-129
<b><i>House of Lords</i></b>		
Consideration of Commons Amendments	1 November 2006	Vol. 686, Columns 320-364
<b><i>House of Commons</i></b>		
Consideration of Lords Messages	6 November 2006	Vol. 451, Columns 640-662
<b><i>House of Lords</i></b>		
Consideration of Commons Amendments	7 November 2006	Vol. 686, Columns 664-677
<b><i>Royal Assent</i></b>	8 November 2006	Lords - Vol. 686, Column 750 Commons - Vol. 451, Column 825

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