



Isle of Man

Ellan Vannin

AT 3 of 2012

**ROAD TRAFFIC AND HIGHWAYS
(MISCELLANEOUS AMENDMENTS) ACT
2012**



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**Isle of Man***Ellan Vannin*

ROAD TRAFFIC AND HIGHWAYS (MISCELLANEOUS AMENDMENTS) ACT 2012

Signed in Tynwald: 12 July 2011
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AN ACT to amend further various enactments connect with road traffic and highways; and for connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

PART 1 – INTRODUCTORY PROVISIONS

1 Short title

The short title of this Act is the Road Traffic and Highways (Miscellaneous Amendments) Act 2012.

2 Commencement

- (1) This Act (apart from this section and section 1) comes into operation on such day or days as the Department of Infrastructure may by order appoint and different days may be appointed for different purposes of this Act.
- (2) An order under subsection (1) may make such transitional and saving provisions as the Department of Infrastructure considers necessary or expedient.

PART 2 – AMENDMENT OF ROAD TRAFFIC ACT 1985

3 Amendment of Road Traffic Act 1985

The Road Traffic Act 1985 is amended in accordance with this Part.

4 Section 1A inserted

After section 1 insert —

1A Causing serious bodily harm by dangerous driving

A person who causes serious bodily harm to another person by driving a mechanically propelled vehicle dangerously on a road or other public place is guilty of an offence.

5 Section 2A amended

In section 2A(1) and (2) for “sections 1 and 2” substitute sections 1, 1A and 2.

6 Sections 2B and 2C inserted

After section 2A insert —

2B Causing death by careless or inconsiderate driving

P1988/52/2B

A person who causes the death of another person by driving a mechanically propelled vehicle on a road or other public place without due care and attention, or without reasonable consideration for other persons using the road or place, is guilty of an offence.

2C Causing serious bodily harm by careless or inconsiderate driving

A person who causes serious bodily harm to another person by driving a mechanically propelled vehicle on a road or other public place without due care and attention, or without reasonable consideration for other persons using the road or place, is guilty of an offence.

7 Section 3ZA inserted

After section 3 but before section 3A insert —

3ZA Meaning of careless or inconsiderate driving

P1988/52/3ZA

- (1) This section has effect for the purposes of sections 2B, 2C, 3 and 3A.
- (2) A person is to be regarded as driving without due care and attention if (and only if) the way the person drives falls below what would be expected of a competent and careful driver.
- (3) In determining for the purposes of subsection (2) what would be expected of a competent and careful driver in a particular case,

regard must be had not only to the circumstances of which the accused could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused.

- (4) A person is to be regarded as driving without reasonable consideration for other persons only if those persons are inconvenienced by the person's driving. **22**.

8 Section 3B inserted

After section 3A insert —

3B Causing death by driving and at the time unlicensed, disqualified or uninsured

P1988/52/3ZB

A person is guilty of an offence under this section if the person causes the death of another person by driving a motor vehicle on a road and, at the time when he or she is driving, the circumstances are such that the person is committing an offence under —

- (a) paragraph 1(1) of Schedule 3 (driving otherwise than in accordance with a licence);
- (b) paragraph 18 of Schedule 3 (driving while disqualified); or
- (c) paragraph 1(1) of Schedule 5 (using motor vehicle while uninsured or unsecured against third party risks)."

9 Section 8 amended

In section 8(2) for "by an order made by the Department under section 1 of the Road Races Act 1982" substitute **23**by or under any enactment**22**.

10 Section 14 amended


In section 14(5) for "by an order made by the Department under section 1 of the Road Races Act 1982" substitute **23**by or under any enactment**22**.

11 Section 31 substituted

For section 31 substitute —

31 The Highway Code

- (1) The Department must prepare a code (in this section referred to as "the Highway Code") comprising such directions as appear to the Department to be proper for the guidance of persons using the roads.

- (2) The Highway Code may consist of the Highway Code having effect in Great Britain with such adaptations, exceptions or modifications as the Department thinks fit.
- (3) The Department may from time to time revise the Highway Code by revoking, varying, amending or adding to it in such manner as it thinks fit.
- (4) Subject to subsection (3), the Department must cause the Highway Code, in a form incorporating all current revisions and entitled “**The Manx Highway Code**”, to be printed and laid before Tynwald, and may cause copies of it to be sold to the public at such price as it may determine.
- (5) A failure on the part of a person to observe a provision of the Highway Code does not of itself render that person liable to criminal proceedings of any kind, but any such failure may be relied on in any proceedings (whether civil or criminal, and including proceedings for an offence under this Act or the *Road Traffic Regulation Act 1985*) by any party to the proceedings as tending to establish or to negative any liability which is in question in those proceedings.”. .

12 Sections 47A to 47D inserted

After section 47 insert —

“Seizure, retention and disposal, etc of vehicles

47A Power to seize and immobilize vehicles

- (1) If any of the conditions in subsection (2), (3) or (4) is satisfied a constable may, in accordance with vehicles regulations made under section 47B and using reasonable force if necessary —
 - (a) seize and remove a motor vehicle; and
 - (b) in order to do so, enter any premises (other than a private dwelling house) where he or she has reasonable grounds for believing the vehicle to be.
- (2) The first condition is that —
 - (a) a constable requires, under section 43, a person to produce evidence that the motor vehicle is not or was not being driven on a road in contravention of paragraph 1(1) of Schedule 5 (users of motor vehicles to be insured or secured against third-party risks);
 - (b) the person fails to produce such evidence in accordance with that section; and

- (c) the constable has reasonable grounds for believing that the vehicle is or was being driven on a road in contravention of that paragraph.
- (3) The second condition is that a constable —
- (a) stops or otherwise comes upon a motor vehicle on a road, being a vehicle on which no current vehicle licence is exhibited; or
- (b) has reasonable grounds for believing that no such licence was exhibited on a motor vehicle when it was on a road, and after making such lawful enquiries as he or she considers appropriate in the circumstances, has reasonable grounds for believing that no such licence has been displayed on that vehicle for a period exceeding one month.
- (4) The third condition is that a constable, after making such lawful enquiries as he or she considers appropriate in the circumstances, has reasonable grounds for believing that a motor vehicle has been driven on a road by a person who —
- (a) was disqualified for holding or obtaining a driving licence;
- (b) otherwise held no current driving licence;
- (c) held a provisional licence authorising the person to drive the vehicle but was not accompanied by a person currently authorised by a full licence to drive it;
- (d) held a full licence authorising the person to drive the vehicle subject to the same conditions as if he or she were authorised by a provisional licence to do so but was not so accompanied; or
- (e) was committing a serious driving offence connected with drink or drugs.
- (5) If, for any reason, a constable is unable to remove a motor vehicle immediately he or she may —
- (a) immobilise it while it remains in the road or place in which he or she finds it;
- (b) move it from that road or place to another road or place and immobilise it in that other road or place; or
- (c) authorise a contractor to do either of the things mentioned in paragraph (a) or paragraph (b),
- but the vehicle must be moved to a place of storage within the period of 24 hours beginning with the time at which any of the conditions in subsections (2) to (4) is first satisfied.

- (6) On any occasion when a vehicle is immobilised in accordance with this section, there must also be affixed to the vehicle a notice —
- (a) indicating that the vehicle is immobilised and warning that no attempt should be made to drive it or otherwise put it in motion; and
 - (b) giving such other information as may be prescribed.
- (7) If the vehicle has been removed to another place before immobilisation a copy of the notice described in subsection (6) must be placed at or near the place where the vehicle was found.
- (8) If a vehicle has been immobilised a person must not —
- (a) remove any notice that has been affixed to it under subsection (6);
 - (b) release or attempt to release it from any immobilisation device that has been fixed to it under subsection (5); or
 - (c) remove or attempt to remove it from the road or place where it was immobilised,
- unless the person is a constable or acting under the direction of a constable.

47B Removal retention, disposal and release etc of seized vehicles

- (1) The Department may by regulations make provision for —
- (a) the removal, retention or storage of motor vehicles seized under section 47A; and
 - (b) the release, forfeiture or disposal of such motor vehicles in accordance with the regulations, including any role a court may have in determining a vehicle's release, forfeiture or disposal.
- (2) Regulations under subsection (1) may, in particular, make provision about —
- (a) giving notice of the seizure of a motor vehicle under section 47A to prescribed persons;
 - (b) enabling any property found in the vehicle to be removed, delivered into custody, returned or disposed of in accordance with the regulations (including provision as to determining entitlement to such property);
 - (c) the payment of fees, charges or costs in relation to the seizure, immobilisation, removal, storage or disposal of the vehicle and any application for its release;
 - (d) the destination —

- (i) of any fees, charges or costs payable in accordance with the regulations;
 - (ii) of the proceeds (if any) arising from the disposal of the vehicle and any property found in it;
- (e) where the vehicle has been supplied under any contract of lease or hire, including a hire-purchase agreement, and despite any term of that contract —
- (i) the vehicle's release to any party to the contract;
 - (ii) enabling any such contract to be nullified or varied on release of the vehicle; and
 - (iii) without limiting any civil claim, requiring such monies to be paid to or by the parties to the contract as the court determines in accordance with the regulations.
- (3) No claim shall lie to any civil court in respect of the seizure, storage, retention, disposal or forfeiture of any motor vehicle or property found in it in pursuance or purported pursuance of section 47A or regulations made under this section.

47C Offences

- (1) A person who contravenes section 47A(8) is guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.
- (2) A person who intentionally obstructs a constable or a contractor in the exercise of his or her functions under section 47A or under regulations made under section 47B is guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.
- (3) A person who provides evidence that the person knows to be false or misleading in a material particular in order to secure the release of a vehicle seized under section 47A is guilty of an offence and liable —
 - (a) on summary conviction to a fine not exceeding £5,000; or
 - (b) on conviction on information, to custody for a term not exceeding 2 years or to a fine or to both.

47D Interpretation of sections 47A to 47C

In sections 47A to 47C —

“**contractor**” means a person who has been appointed by the Chief Constable to carry out, direct or supervise —

- (a) the immobilisation of motor vehicles, their removal to, storage at or release from a place of storage, or their destruction; or

(b) the removal, storage or disposal of property found in motor vehicles,

including a person authorised by a person so appointed and, in the case of storage, a person to whom the storage has been sub-contracted;

“**current**”, in relation to a driving licence, means not expired, cancelled, revoked or suspended;

“**current**”, in relation to a vehicle licence, means not expired or cancelled;

“**disposal**” includes sale or destruction;

“**driving licence**” means —

- (a) a licence granted under Schedule 3;
- (b) a Community licence as from time to time defined in regulations made under that Schedule;
- (c) a Convention driving permit as from time to time defined by an order made under section 1 of the *Motor Vehicles (International Circulation) Act 1955*;
- (d) a domestic driving permit as from time to time defined by such an order;

“**full licence**” means a licence granted under Schedule 3 other than a provisional licence;

“**immobilisation device**” means any device or appliance designed or adapted to be fixed to a vehicle for the purpose of preventing it from being driven or otherwise put in motion;

“**immobilise**” means immobilise by —

- (a) the seizure of the ignition key or other device by means of which access to the vehicle may be gained and by means of which the vehicle’s engine may be started; or
- (b) the use of an immobilisation device;

“**private dwelling house**” does not include a garage or other structure occupied with the dwelling house or any land appurtenant to the dwelling house;

“**provisional licence**” has the same meaning as in Schedule 3;

“**serious driving offence connected with drink or drugs**” means an offence —

- (a) under section 3A (causing death by careless driving under the influence of drink or drugs), section 5(1) (driving etc under the influence of drink or drugs) or section 5A(1)(a) (driving etc with alcohol above the prescribed limit); or

- (b) under section 6(6) (failing to provide a specimen) or section 7DA (failing to allow laboratory test of specimen of blood), where such an offence involves obligatory disqualification;

“**vehicle licence**” has the same meaning as in the *Licensing and Registration of Vehicles Act 1985*.²²

13 Section 53 amended

In section 53 after subsection (5) add —

- ²³ (6) The Department may by order amend Schedule 6 so as to vary any of the punishments there shown.²²

14 Section 55 amended

In section 55 —

- (a) for subsection (1) substitute —
- ²⁴ (1) Subject to Part IV and of Schedule 6, this section applies to any offence under this Act to which it is applied by column 8 of the Table in Part I of that Schedule.²²;
- (b) in subsection (2) delete “and to the provisions of paragraphs 3 and 4 of Part IV of Schedule 6,”.

15 Section 63 amended

- (1) Section 63 is amended as follows.
- (2) In subsections (1), (2) and (5) (wherever occurring) for “chairman or vice-chairman of the Department” substitute ²⁵the person conducting the inquiry²².
- (3) In subsection (2) for “Department had been a court of law” substitute ²⁶inquiry had been a court of law²².
- (4) In subsection (3) for “Department” substitute ²⁷inquiry²².
- (5) In subsection (4) —
- (a) for “Department holding the inquiry” substitute “person conducting the inquiry”;
- (b) for “opinion of the Department” substitute “opinion of the person conducting the inquiry”.
- (6) In subsection (5) —
- (a) for “Department may” substitute “person conducting the inquiry may”;
- (b) for “by the Department” substitute “by the person conducting the inquiry”.

16 Section 74 amended

In section 74 —

- (a) in the marginal note after “regulations” add “, orders etc”;
- (b) in subsection (3)(b) after “section 24(8),” insert “section 53(6),”.

17 Schedule 2 amended

In paragraph 4 in Part II of Schedule 2 —

- (a) in sub-paragraph (1) delete “; but a vehicle shall not be required to stop for a test except by a constable in uniform”;

- (b) after sub-paragraph (1) insert —

“(1A) In order to test a vehicle an authorised examiner may require a vehicle to stop if the following conditions are satisfied —

- (a) a constable in uniform must be present at the scene;
- (b) at least one sign indicating a police presence and warning drivers of oncoming vehicles that they may be required to stop must be displayed so as to be visible to them at such a distance from the area where the test is to be conducted as will enable them to stop safely if required to do so; and
- (c) the examiner must wear such distinguishing clothing as the Department may require.

“(1B) A driver of a vehicle who fails to stop as required by sub-paragraph (1A) is guilty of an offence.”.

18 Schedule 3 amended

(1) Part II of Schedule 3 is amended as follows.

(2) In paragraph 11 —

- (a) in sub-paragraph (1) for “for such period” until the end of the sub-paragraph substitute “in accordance with subparagraph (1A)”;

- (b) after sub-paragraph (1) insert —

“(1A) The period of disqualification is —

- (a) in the case of —
 - (i) an offence under section 1 (causing death by dangerous driving), section 1A (causing serious bodily harm by dangerous driving) or section 3B (causing death by driving when unlicensed, disqualified or uninsured), not less than 2 years as the court thinks fit; or
 - (ii) an offence under section 6(6) (failing to provide a specimen) or section 7DA (failing to allow

laboratory test of specimen of blood), where such an offence involves obligatory disqualification, not less than 5 years as the court thinks fit; or

- (b) in the case of any other offence involving obligatory disqualification and if neither of sub-paragraphs (3) or (3A) applies, not less than 12 months as the court thinks fit,

unless the court for special reasons thinks fit to order the person to be disqualified for a shorter period or not to be disqualified at all. **22**;

- (c) for sub-paragraphs (3) and (3A) substitute —

“(3) Where a person convicted of an offence under section 3A, 5(1) or 5A(1)(a) has, within the 10 years immediately preceding the commission of the offence, been convicted of any such offence, sub-paragraph (1A)(b) shall apply in relation to the person with the substitution of 5 years for 12 months.

- (3A) Without limiting sub-paragraph (3), if —

- (a) a person is convicted of an offence under section 3A, 5(1) or 5A(1)(a);
- (b) it is shown that the proportion of alcohol in the person’s breath, blood or urine was that specified in column 2 of the following table; and
- (c) the corresponding period specified in column 3 of that table consists of a longer period of disqualification than would otherwise apply under sub-paragraph (1A),

sub-paragraph (1A) applies in relation to the person with the substitution of that longer period of disqualification for the period set out in that sub-paragraph —

Proportion in 100 ml of breath	Over 50 µg but not over 75 µg	2 years
	Over 75 µg but not over 100 µg	3 years
	Over 100µg	5 years
Proportion in 100 ml of blood	Over 115mg but not over173 mg	2 years
	Over 173 mg but not over 230 mg	3 years
	Over 230 mg	5 years
Proportion 100 ml of urine	Over 153 mg but not over 230 mg	2 years

	Over 230 mg but not over 306 mg	3 years
	Over 306 mg	5 years

- (d) after sub-paragraph (3A) insert —
- █ (3B) The Department may, with the approval of Tynwald, make regulations amending the table in subparagraph (3A). █;
- (e) in sub-paragraph (5) for “that test” in each place where it occurs substitute “the extended test”;
- (f) in sub-paragraph (5A)(d) for “serious doubt” substitute “reasonable doubt”;
- (g) in sub-paragraph (7) for “section 3A, 5 or 5A in circumstances in which the court is required by subparagraph (1)” substitute “section 3A, 5(1) or 5A(1)(a) in circumstances in which the court is required by subparagraph (1A)”.
- (3) At the end of paragraph 12(1) add “unless the court determines otherwise”.
- (4) In paragraph 23 —
- (a) after the definition of “disqualified” insert —
- “**“extended test”** means the test of competence to drive modified so that the time during which the person taking the test drives on roads is not less than 60 minutes;”.

19 Schedule 4 amended

In Schedule 4 —

- (a) in paragraph 3 —
- (i) in sub-paragraph (1) after “motor car” insert “or any other motor vehicle of a class prescribed by regulations”;
- (ii) for sub-paragraph (2) substitute —
- █ “(2) However, if instruction in the driving of a motor vehicle mentioned in sub-paragraph (1) is given —
- (a) to a person who is not the holder of a current licence to drive a motor vehicle granted under Schedule 3 (other than a provisional licence within the meaning of that Schedule); and
- (b) by, or in pursuance of arrangements made by, a person carrying on business in the supply of motor vehicles, and in connection with the supply of a motor vehicle in the course of that business,

such instruction is treated as paid instruction, irrespective of whether or not it is actually given free of charge.”;

- (b) in paragraph 4 —
 (i) for sub-paragraph (1) substitute —

“(1) Paragraph 3(1) does not apply to the giving of instruction by —

- (a) a police instructor in pursuance of arrangements made by the Chief Constable;
 (b) a member of the fire brigade (within the meaning of the *Fire Services Act 1984*) in pursuance of arrangements made by the Chief Fire Officer (within the meaning of that Act),

where the duties of that member consist of or include, or have consisted of or included, the giving of instruction in the driving of motor vehicles to other such members.”;

- (ii) in sub-paragraph(2)(a) for “cars” substitute “vehicles”;
 (iii) consequentially, in the cross-heading delete “of police instructors”;

- (c) after paragraph 4 insert —

“Stop notices

4A (1) The Registrar may serve a notice in respect of a person, to be known as a “**stop notice**”, if —

- (a) it appears to the Registrar that the person is giving or has given instruction in the driving of a motor vehicle in contravention of paragraph 3(1); and
 (b) the Registrar considers it expedient to do so.

(2) Before serving a stop notice, the Registrar must —

- (a) notify the person in writing of the particulars of the grounds on which the Registrar is considering serving the stop notice and that the person has 28 days in which to make representations to the Registrar; and
 (b) take into consideration any such representations made,
 and if the Registrar decides not to serve a stop notice he or she must give further notice to the person.

(3) If the Registrar decides to serve a stop notice he or she must specify the period, which must not exceed 2 years, for which it is to apply and must serve it on the person.

(4) A stop notice is served by sending it by recorded delivery to the usual or last known address of the person in respect of whom it is to apply.

(5) A stop notice takes effect —

- (a) where no appeal under the following provisions is brought against the decision within the time limited for the appeal, on the expiration of that time;
 - (b) where such an appeal is brought and is withdrawn, struck out or dismissed, when it is so withdrawn, struck out or dismissed.
- (6) Where a stop notice has taken effect in accordance with this paragraph, a person on whom the notice was served commits an offence if the person gives instruction in the driving of a motor vehicle, whether or not that instruction is restricted by paragraph 3(1), other than to a close relative.
- (7) In proceedings for an offence under subparagraph (6) it is a defence for the accused to satisfy the court that —
- (a) the stop notice was not served on the person; and
 - (b) the person did not know, and could not reasonably have been expected to know, of its existence.
- (8) A stop notice ceases to have effect if the Registrar withdraws the stop notice and serves notice of the withdrawal on the person on whom the stop notice was served but this sub-paragraph does not affect any liability for an offence committed before the stop notice ceased to have effect.
- (9) In this paragraph “close relative” means the person’s —
- (a) spouse or civil partner, or a child of such person;
 - (b) child or parent, or spouse or civil partner of such person;
 - (c) grandchild or grandparent;
 - (d) brother or sister, or child, spouse or civil partner of such person;
 - (e) uncle or aunt, or child of such person. **22**;
- (d) in paragraph 5 (duration of registration) —
- (i) in sub-paragraph (1)(a) and sub-paragraph (2) for “cars” substitute “vehicles”;
 - (ii) for sub-paragraph (4) substitute —
- “(4) A person registered to give instruction in the driving of motor cars under Part V of the Road Traffic Act 1988 (of Parliament) is exempt from the condition specified in sub-paragraph (1)(a) in relation to those vehicles.”;
- (e) in paragraph 6(1)(b) (extension of duration of registration), for “cars” substitute “vehicles”;
 - (f) for paragraph 9 substitute —

Appeals

- 9 (1) A person who is aggrieved by a decision of the Registrar —
- (a) to serve a stop notice;
 - (b) to refuse an application for the entry of his or her name in the register;
 - (c) to refuse an application for the retention of his or her name in the register;
 - (d) to remove his or her name from the register;
 - (e) to refuse an application for the grant of a licence; or
 - (f) to revoke such a licence,
- may by notice in writing appeal by giving notice to the Department to be received within 28 days of notice of the decision being given in accordance with this Schedule.
- (2) The appeal shall be conducted by an independent adjudicator appointed by the Appointments Commission (within the meaning of section 1 of the *Tribunals Act 2006*) on such terms as to remuneration and expenses as the Treasury shall determine, being a person considered by that Commission to be suitably qualified for such appointment, and the adjudicator may be appointed to conduct one particular appeal or for any such appeal as may be made to the Department during a period determined by the Commission.
- (3) The Department may —
- (a) make rules about the procedure on appeals, including in particular applying section 63(1) to (4) (general provisions as to inquiries) to the appeals; and
 - (b) specify the form and contents of the notice of appeal.
- (4) The Registrar is the respondent to the appeal and the appellant and the respondent may make representations on the appeal to the adjudicator.
- (5) On the appeal the adjudicator may make such order for the upholding or quashing of the stop notice, for the entry, retention or removal of the name on the register or for the grant, continuation or revocation of the licence, as the case may be, as he or she thinks fit.
- (6) An order under sub-paragraph (5) may direct that an application by the appellant for the grant of a licence under this Schedule or for his or her name to be entered in the register must not be entertained for a specified period of up to 4 years beginning with the day on which the order is made.

- (7) The adjudicator may make such order as to costs as he or she thinks fit and where he or she has certified an amount of costs to be paid by the appellant that amount is recoverable from the appellant by the Department as a civil debt. **22**;
- (g) in paragraph 10 (examinations and tests of ability to give driving instruction) —
- (i) in sub-paragraph (1) from the beginning of the sub-paragraph to the end of head (a) substitute —
- 22** (1) The Department may make regulations about examinations of persons' suitability to give instruction in the driving of motor vehicles of such classes as may be prescribed and such regulations may in particular provide —
- (a) for the examination to consist of a theory test, and practical tests of driving ability and fitness and instructional ability and fitness; **22**;
- (ii) for sub-paragraph (1)(d) substitute —
- 22** (d) for preventing a person who fails to pass an examination or any part of it from submitting himself or herself to another such examination or part of it before the expiration of such period (not exceeding 12 months) as may be prescribed; **22**;
- (iii) for sub-paragraph (2) substitute —
- 22** (2) On the application of a person who has submitted himself or herself for an examination in accordance with regulations made under this paragraph the Department may determine whether the examination, or any part of it, was properly conducted in accordance with the regulations.
- (2A) If it appears to the Department that the examination, or any part of it, was not so conducted, the Department may —
- (a) declare the applicant eligible to submit himself or herself to another examination or, as the case may be, part of the examination as if he or she had not submitted himself or herself to the examination or part held not to be properly conducted; and
- (b) waive any fee that would otherwise be payable by the applicant in respect of the examination or part, or, if it has been paid, cause it to be refunded.”;
- (h) delete paragraphs 17, 18 and 19.

20 Schedule 5 amended

In paragraph 12(1)(a) in Part II of Schedule 5, in the definition of “authorised insurer”, for “in the Island or the United Kingdom” substitute **22** anywhere in the British Islands or in the territory of a member State of the Communities **22**.

21 Schedule 6 amended

- (1) In the Table in Part I of Schedule 6 –
- (a) in the entries relating to sections 1 and 3A for “10 years” in column 4 (punishment) substitute “14 years”;
- (b) after the entry relating to section 1 insert the following entry –

1A	Causing grievous bodily harm by dangerous driving	On information	5 years or a fine or both	Obligatory	Obligatory	-	Section 57 and paragraph 1 of Part IV apply
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- (c) in the entry relating to section 2 in column 8 (additional provisions) for “paragraphs 1, 2 and 3” substitute “paragraph 1”;
- (d) after the entry relating to section 2 insert the following entries –

2B	Causing death by careless or inconsiderate driving	(a) Summarily (b) On information	12 months or £5,000 or both 5 years or a fine or both	Obligatory	Obligatory	-	Sections 57 and 59 and paragraph 1 of Part IV apply
2C	Causing serious bodily harm by careless or inconsiderate driving	(a) Summarily (b) On information	6 months or £5,000 or both 2 years or a fine or both	Obligatory	Obligatory	-	Sections 57 and 59 and paragraph 1 of Part IV apply;

- (e) in the entry relating to section 3 –
- (i) in column 4 (punishment) for “£2,500” substitute “£5,000”;
- (ii) in column 7 (penalty points) for “2-5” substitute “3-9”;
- (iii) in column 8 (additional provisions) delete “and paragraphs 2 and 4 of Part IV”;
- (f) in the entry relating to section 3A, in column 8 (additional provisions) for “paragraph 1A” substitute “paragraphs 1 and 2”;
- (g) after the entry relating to section 3A insert the following entry –

3B	Causing death by driving and at the time unlicensed, disqualified or uninsured	(a) Summarily (b) On information	12 months or £5,000 or both 5 years or a fine or both	Obligatory	Obligatory	-	Sections 57 and 59 apply;
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- (h) in the entry relating to section 5(1), in column 8 (additional provisions) after “Sections 57 and 59” insert **63** and paragraphs 1 and 3 of Part IV **62**;
- (i) in the entry relating to section 5A(1)(a), in column 8 (additional provisions) after “Sections 57 and 59” insert **63** and paragraphs 1 and 3 of Part IV **62**;
- (j) in the entry relating to section 6(6), for the text in the first entry in column 2 (general nature of offence) substitute **63** Failing to provide a specimen for analysis: **62**;
- (k) in the entry relating to section 11, in column 8 (additional provisions) after “Sections 55, 57 and 59” insert **63** and paragraph 1 of Part IV **62**;
- (l) in the entry relating to section 12, in column 8 (additional provisions) delete **63** and paragraphs 2 and 4 of Part IV **62**;
- (m) in the entry relating to section 20(3) –
- (i) for the text in column 4 (punishment) substitute **63** 9 months or £5,000 or both **62**;
- (ii) in column 7 (penalty points) for “2-5” substitute **63** 5-10 **62**;
- (n) in the entry relating to section 40, for the text in column 4 (punishment) substitute –
- 63** (a) if the offence involved a motor vehicle, £5,000
(b) if the offence involved a cycle or an animal, £1,000 **62**;
- (o) in the entry relating to section 47(4), for the text in column 4 (punishment) substitute –
- 63** (a) if the offence involved a motor vehicle, £2,500
(b) if the offence involved a cycle, £1000 **62**;
- (p) in the entries relating to section 49(1), 49(2), 49(3) and 49(4), for the text in column 4 (punishment) in respect of each of the entries substitute **63** 3 months or £2,500 or both **62**;
- (q) in the entry relating to Schedule 2 paragraph 1(5) insert the following so they appear opposite each other –

- (i) in column 4 before “£1,000 in any other case” insert “£2,500 in the case of an offence of driving a motor vehicle while using a mobile telephone which is held in a hand”;
- (ii) in column 5 insert “Discretionary”;
- (iii) in column 6 insert “Obligatory”;
- (iv) in column 7 insert “4”; and
- (v) in column 8 insert “Court must order forfeiture of the mobile telephone unless it finds special reasons not so to do”;

(r) after the entry relating to Schedule 2 paragraph 1(5) insert the following entry –

Schedule 2 para 4(1B)	Failing to stop when required by authorised examiner	Summarily	£2,500	-	-	-	Sections 57 and 59 apply
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(s) in the entry relating to Schedule 4 paragraph 3(3) in column 4 (punishment) for “£1,000” substitute “£2,500”;

(t) after the entry relating to Schedule 4 paragraph 3(3) insert the following entry –

Schedule 4 para 4A(6)	Giving instruction in contravention of a stop notice	Summarily	6 months or £5,000 or both	-	-	-	-
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(2) In the table in Part III of Schedule 6, in entry 6 (relating to an offence under section 22(1) of the Road Traffic Regulation Act 1985 (speeding)) in column 2 (penalty points) for “3” substitute “1-10”.

(3) For Part IV of Schedule 6 substitute –

PART IV – ALTERNATIVE VERDICTS

1 Where –

- (a) a person charged with an offence specified in column 1 of the following table is found not guilty of that offence; but
- (b) the allegations in the information amount to or include an allegation of an offence under one or more of the provisions specified in the corresponding entry in column 2,

the person may be convicted of that offence or of one or more of those offences.

Offence charged	Alternative offence
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Manslaughter in connection with the driving of a motor vehicle	Section 1 (causing death by dangerous driving) Section 2 (dangerous driving) Section 2B (causing death by careless or inconsiderate driving) Section 3A (causing death by careless driving when under the influence of drink or drugs)
Section 1 (causing death by dangerous driving)	Section 2 (dangerous driving) Section 2B (causing death by careless or inconsiderate driving) Section 3 (careless or inconsiderate driving)
Section 1A (causing serious bodily harm by dangerous driving)	Section 2 (dangerous driving) Section 2C (causing serious bodily harm by careless or inconsiderate driving) Section 3 (careless or inconsiderate driving)
Section 2 (dangerous driving)	Section 3 (careless or inconsiderate driving)
Section 2B (causing death by careless or inconsiderate driving)	Section 3 (careless or inconsiderate driving)
Section 2C (causing serious bodily harm by careless or inconsiderate driving)	Section 3 (careless or inconsiderate driving)
Section 3A (causing death by careless driving when under the influence of drink or drugs)	Section 2B (causing death by careless or inconsiderate driving) Section 3 (careless or inconsiderate driving) Section 5(1) (driving or attempting to drive when unfit to drive through drink or drugs) Section 5A(1)(a) (driving or attempting to drive with alcohol above prescribed limit) Section 6(6) (failing to provide specimen)
Section 5(1) (driving or attempting to drive when unfit to drive through drink or drugs)	Section 5(2) (being in charge of a vehicle when unfit through drink or drugs)
Section 5A(1)(a) (driving or attempting to drive with alcohol above prescribed limit)	Section 5A(1)(b) (being in charge of a vehicle with alcohol above prescribed limit)
Section 11 (dangerous cycling)	Section 12 (careless or inconsiderate cycling)

2. Where the offence with which a person is charged is an offence under section 3A, paragraph 1 does not authorise the person's conviction of any offence of attempting to drive.

3. Where a person is charged with having committed an offence under section 5(1) or 5A(1)(a) by driving a vehicle, the person may be convicted of having committed an offence under the provision in question by attempting to drive.
4. Where by virtue of this Part a person is convicted before the Court of General Gaol Delivery of an offence triable only summarily, the court has the same powers and duties as a court of summary jurisdiction would have had on convicting the person of that offence.
5. (1) This paragraph applies where a person is prosecuted for an offence in respect of which the person may, by virtue of this Part, be liable to be convicted of an alternative offence, and the court is of opinion that the offence with which the person is charged is not proven.
- (2) Where this paragraph applies, at any time during or immediately after the hearing the court may, irrespective of any other powers it possesses, direct or allow a charge for that alternative offence to be preferred forthwith against the defendant and may then proceed with that charge.
- (3) However, the defendant and his or her advocate must be informed of the new charge and be given an opportunity, whether by way of cross-examining any witness whose evidence has already been given against the defendant or otherwise, of answering the new charge.
- (4) If it considers that the defendant is prejudiced in his or her defence by reason of the new charge being so preferred, the court must adjourn the hearing.
6. This Part does not limit section 22 of the *Criminal Jurisdiction Act 1993* (alternative verdicts)."

PART 3

AMENDMENT OF ROAD TRAFFIC REGULATION ACT 1985

22 Amendment of Road Traffic Regulation Act 1985

The *Road Traffic Regulation Act 1985* is amended in accordance with this Part.

23 Sections 2ZA, 2ZB and 2ZC inserted

After section 2 but before section 2A insert –

“2ZA Prohibition of double parking etc

P2004/18/85

- (1) A vehicle must not be parked on the carriageway in such a way that no part of the vehicle is within 50 centimetres of the edge of the carriageway.

- (2) However, subsection (1) does not apply –
- (a) where the vehicle is parked wholly within a parking place designated under section 14 or any other part of the carriageway where parking is specifically authorised;
 - (b) where the vehicle is being used for fire brigade, ambulance or police purposes;
 - (c) where –
 - (i) the vehicle is being used for the purposes of delivering goods to, or collecting goods from, any premises, or is being loaded from or unloaded to any premises;
 - (ii) the delivery, collection, loading or unloading cannot reasonably be carried out in relation to those premises without the vehicle being parked as mentioned in subsection (1); and
 - (iii) the vehicle is so parked for no longer than is necessary and for no more than 20 minutes;
 - (d) where –
 - (i) the vehicle is being used in connection with any of the matters mentioned in subsection (3);
 - (ii) it cannot be so used without being parked as mentioned in subsection (1); and
 - (iii) it is so parked for no longer than is necessary; or
 - (e) where the Department, by regulations, provides otherwise.
- (3) The matters are –
- (a) undertaking any building operation, demolition or excavation;
 - (b) collecting waste by a local authority;
 - (c) removing an obstruction to traffic;
 - (d) undertaking works in relation to a road, a traffic sign or road lighting; and
 - (e) undertaking works in relation to a sewer or water main or in relation to the supply of gas, electricity, water or communications services.

2ZB Prohibition of parking at dropped footways etc

P2004/18/86

- (1) A vehicle must not be parked on the carriageway adjacent to a footway, cycle-path, cycle track or verge where –

- (a) the footway, cycle-path, cycle track or verge has been lowered to meet the level of the carriageway for the purpose of—
 - (i) assisting pedestrians crossing the carriageway;
 - (ii) assisting cyclists entering or leaving the carriageway; or
 - (iii) assisting vehicles entering or leaving the carriageway across the footway, cycle-path, cycle track or verge; or
 - (b) the carriageway has, for a purpose within paragraph (a)(i) to (iii), been raised to meet the level of the footway, cycle-path, cycle track or verge.
- (2) However, subsection (1) does not apply –
- (a) where the vehicle is parked wholly within a parking place designated under section 14 or any other part of the carriageway where parking is specifically authorised;
 - (b) where the vehicle is parked outside residential premises by or with the consent (but not consent given for reward) of the occupier of the premises, except in the case of a shared driveway;
 - (c) where the vehicle is being used for fire brigade, ambulance or police purposes;
 - (d) where –
 - (i) the vehicle is being used for the purposes of delivering goods to, or collecting goods from, any premises, or is being loaded from or unloaded to any premises;
 - (ii) the delivery, collection, loading or unloading cannot reasonably be carried out in relation to those premises without the vehicle being parked as mentioned in subsection (1); and
 - (iii) the vehicle is so parked for no longer than is necessary and for no more than 20 minutes;
 - (e) where –
 - (i) the vehicle is being used in connection with any of the matters mentioned in subsection (3);
 - (ii) it cannot be so used without being parked as mentioned in subsection (1); and
 - (iii) it is so parked for no longer than is necessary; or
 - (f) where the Department, by regulations, provides otherwise.
- (3) The matters are –

- (a) undertaking any building operation, demolition or excavation;
- (b) collecting waste by a local authority;
- (c) removing an obstruction to traffic;
- (d) undertaking works in relation to a road, a traffic sign or road lighting; or
- (e) undertaking works in relation to a sewer or water main or in relation to the supply of gas, electricity, water or communications services.

2ZC Provisions supplementary to sections 2ZA and 2ZB

- (1) In sections 2ZA and 2ZB “**carriageway**”, “**cycle-path**”, “**cycle track**” and “**footway**” have the meanings given by section 119 of the Highways Act 1986.
- (2) References in those sections to parking include waiting, but do not include stopping where—
 - (a) the driver is prevented from proceeding by circumstances beyond his or her control or it is necessary for him or her to stop to avoid an accident; or
 - (b) the vehicle is stopped, for no longer than is necessary, for the purpose of allowing people to board or alight from it.
- (3) The prohibitions in those sections are enforceable as if imposed by an order under section 1.
- (4) No requirement under any enactment as to the placing or maintenance of any traffic sign for the purposes of indicating any prohibition or restriction applies to the prohibitions in those sections. **22**.

24 Section 3 amended

In section 3 –

- (a) in subsection (1) for “order” substitute **66**notice **22**;
- (b) in subsection (2) for “making of an order” substitute **66**issuing of a notice **22** and for “by the order” substitute **66**by it **22**;
- (c) subsections (3) and (6) are repealed;
- (d) in subsection (4) for “any such order or notice as aforesaid” substitute **66**any notice under subsection (1) **22** and for **66**no such order or notice **22** substitute **66**no such notice **22**;
- (e) in subsection (5) for “An order made or notice issued” substitute **66**A notice issued **22** and delete “order or” in each place where it occurs;

(f) for subsection (7) substitute –

“(7) A notice issued under this section shall not, without the approval of the Council of Ministers, continue in force for a longer period than 6 months from the date of issue and where the Council of Ministers has refused to approve the continuing in force of such a notice, a subsequent notice must not be issued without the consent of the Council of Ministers as respects any length of road to which the previous notice related unless at least 3 months have elapsed from the time when the previous notice ceased to have effect.”

25 Section 3A amended

In section 3A –

- (a) in subsection (1) for “order” in each place where it occurs substitute “notice”;
- (b) in subsections (2), (3), (4) and (9) for “An order” substitute “A notice”;
- (c) in subsection (3)(b) for “the order” substitute “the notice” and delete “a road or”;
- (d) in subsection (3), delete “or” at the end of paragraph (a) and after paragraph (b) insert –
 - (c) suspending the parking or waiting of vehicles on roads or any parts of roads; or
 - (d) despite any statutory provision to the contrary, allowing the parking of up to 6 vehicles being used by persons connected with the recording of a scene on film.
- (e) in subsections (5), (10) and (11) for “an order” substitute “a notice”;
- (f) in subsection (6) for “the order, an order” substitute “the notice, a notice” and in paragraph (a)(i) and (ii) for “24 hours” substitute “48 hours”;
- (g) in subsection (7) for “making of an order” substitute “issuing of a notice” and for “by the order” substitute “by it”;
- (h) for subsection (8) substitute –
 - “(8) The Department must, not less than 7 days before the matters contained in any notice under this section are to have effect –
 - (a) publicise the notice, and any alternative routes suitable for traffic affected by the notice, in one or more newspapers circulating in the Island;
 - (b) cause the notice and the alternative routes to be posted at each end of any road or part of a road to which the notice relates and in any other place affected by it; and

- (c) take any further steps that it considers appropriate to bring the matters covered by the notice to the attention of persons who may be affected by them.”.

26 Section 4A amended

In section 4A delete “(other than orders under section 3 or 3A)”.

27 Section 7 amended

Section 7(3) is repealed.

28 Section 15 amended

In section 15 for subsections (4) and (5) substitute –

- █ (4) Subject to subsection (5), no traffic signs may be placed on or near a road except –
 - (a) under and in accordance with this Act;
 - (b) where a Department, Statutory Board or local authority is required or authorised to place the signs by any other enactment, in accordance with that enactment; or
 - (c) where the operator of a tramway or railway undertaking places the signs under powers conferred by any other enactment, in accordance with those powers.
- (5) However, in the case of traffic signs that are portable light signals, despite any other enactment, they must not be placed on or near a road without the prior consent of the Department.
- (5A) A person who contravenes subsection (4) or (5) is guilty of an offence.”.

29 Section 17 amended

In section 17(1) for “A person under the authority (whether general or specific) of the Department” substitute █ A constable, or person acting under the instructions (whether general or specific) of the Chief Constable or the Department, █.

30 Section 24 amended

In section 24 for “An order under section 3(1) or a notice under section 3(3)” substitute █ A notice under section 3(1) █.

31 Section 28 amended

In section 28 –

- (a) for subsection (1) substitute –

- █ (1) The Department of Social Care may issue badges in such form as it considers appropriate for motor vehicles driven by, or used for the carriage of, disabled persons. █;
- (b) in subsection (2)(b) for “issued” substitute “used”.

32 Section 31 amended

In section 31 –

- (a) renumber existing text as subsection (1);
- (b) after the renumbered subsection (1) add –
 - █ (2) The Department may by order amend Schedule 4 so as to vary the maximum levels of fines there specified. █.

33 Section 33 substituted

For section 33 substitute –

“33 Traffic wardens

- (1) The Department may appoint persons, to be known as “**traffic wardens**” to discharge the functions conferred on them by or under this section under the direction of the Chief Executive of the Department.
- (2) However, the Department –
 - (a) must not employ a constable as a traffic warden; and
 - (b) must take steps to ensure that only persons suitable for appointment and adequately qualified are appointed as traffic wardens, and that traffic wardens are suitably trained before undertaking their duties.
- (3) Where an order of the Department so provides, traffic wardens have the following functions –
 - (a) those functions normally undertaken by a constable in connection with the control and regulation of, or the enforcement of the law relating to, traffic, which functions may be exercised for the purposes of assisting a constable;
 - (b) such other functions connected with the control and regulation of traffic as the Chief Executive of the Department may assign; and
 - (c) the function of patrolling prescribed places (within the meaning of section 8) in accordance with any arrangements made by the Department with the Department of Education and Children.

- (4) Where an order under subsection (3) confers any powers on a traffic warden that are conferred on a constable under this Act or under the *Road Traffic Act 1985*, references in those Acts to a constable include a traffic warden.
- (5) If an order under subsection (3) provides that any power of a constable under sections 40, 42(1) and (4) and 43 of the *Road Traffic Act 1985* is to be exercisable by a traffic warden, the power is limited to where –
- (a) the traffic warden is assisting a constable;
 - (b) the traffic warden has reasonable cause to believe that an offence has been committed of a description specified in relation to the section in question for the purposes of this paragraph by the order and, in the case section 43 of that Act, the order authorises the use of the power in relation to that offence; or
 - (c) in the case of section 40 of that Act, the traffic warden is exercising functions in connection with the control or regulation of traffic.
- (6) Traffic wardens must wear such uniform as the Department may determine, and may act as traffic wardens only when in that uniform. **22**.

34 Section 39 amended

In section 39(2) after “orders under” insert **23** section 31(2), section 33(3) and **22**.

35 Schedule 1 amended

In Schedule 1 for paragraphs 1 to 3 substitute –

- 23**1. (1) Subject to this Schedule, the Department must publish a notice issued under section 3(1) in one or more newspapers printed and circulating in the Island –
- (a) not less than 7 days before the notice comes into force; and
 - (b) within a period of 7 days after issuing the notice.
- (2) The Department must publish with the notice a description of any alternative routes available for traffic.
2. So long as a notice issued under section 3(1) is in force, details of the notice and any alternative routes available for traffic must be kept posted in a conspicuous manner at each end of any road or part of the road to which the notice relates and at the points at which it will be necessary for vehicles or, as the case may be, foot passengers to diverge from any such road or part.
3. Where such a notice has been posted, the Department may, before the expiration of the period for which the notice can continue in

force, proceed to issue a further notice under section 3(1) with respect to the same road or part of a road without causing notice of its intention to issue the notice to be published in any newspaper. ~~22~~.

36 Schedule 4 amended

In Schedule 4, after the entry relating to section 14B(6) insert –

“Section 15(5A) Unauthorised placing of traffic signs £1,000”.

37 Schedule 5A amended

In Schedule 5A for paragraph 3(3) substitute –

~~23~~ (3) The fixed penalty for a fixed penalty offence shall be –

- (a) such amount as may be prescribed by order made by the Department; or
- (b) one half of the maximum amount of the fine to which a person committing the offence would be liable on summary conviction,

whichever is the less.”.

PART 4 – AMENDMENT OF HIGHWAYS ACT 1986

38 Amendment of Highways Act 1986

The *Highways Act 1986* is amended in accordance with this Part.

39 Section 7A inserted

After section 7 insert –

“7A Recovery of expenses due to extraordinary traffic

P1980/66/59

(1) If it appears to the Department that, having regard to the average expense of maintaining a highway or other similar highways in the Island, extraordinary expenses have been or will be incurred by the Department in maintaining that highway by reason of the damage caused or likely to be caused by excessive weight passing along the highway or other extraordinary traffic on the highway, the Department may recover from any person (“the operator”) by or in consequence of whose order the damage has been or is likely to be caused, such expenses as may be proved to the satisfaction of the High Court to have been, or to be likely to be, incurred by the Department by reason of the damage.

- (2) However, if the operator admits liability before the damage is caused—
- (a) the operator and the Department may agree for the payment by the operator to the Department of a sum in lieu of the Department's taking proceedings; or
 - (b) either party may require that the sum to be so paid shall be determined by arbitration,
- and where a sum has been so agreed or determined the operator is liable to pay that sum to the Department and is not liable to proceedings under subsection (1).
- (3) Proceedings for the recovery of any sums under this section must be commenced within 12 months from the time at which the damage has been or is likely to be done or, where the damage or likely damage is the consequence of any particular building contract or work extending over a long period, not later than 6 months from the date of completion of the contract or work.
- (4) For the purpose of this section the expenses incurred by the Department in maintaining the highway include expenses incurred by it in maintaining a cattle-grid provided for the highway under this Act. **22**.

40 Section 32B inserted

After section 32A insert –

“32B Creation of walkways by agreement

P1980/66/35

- (1) A local authority, after consultation with the Department, may enter into an agreement with a building owner –
- (a) for the provision of ways over, through or under parts of a building, or a building when constructed, as the case may be, or parts of any structure attached, or to be attached, to the building; and
 - (b) for the dedication by the building owner of those ways as walkways.
- (2) An agreement under this section may make provision for –
- (a) the maintenance, cleansing and drainage of any walkway to which the agreement relates;
 - (b) the lighting of such walkway and of that part of the building or structure which will be over or above it;
 - (c) the provision and maintenance of support for such walkway;

- (d) entitling the local authority to enter on any building or structure in which such walkway will be situated and to execute any works necessary to secure the performance of any obligation which any person is for the time being liable to perform by virtue of the agreement or of subsection (3);
 - (e) the making of payments by the local authority to the building owner;
 - (f) the termination, in such manner and subject to such conditions as may be specified in the agreement, of the right of the public to use such walkway;
 - (g) any incidental and consequential matters.
- (3) Any covenant (whether positive or restrictive) contained in an agreement under this section and entered into by the building owner is binding to the same extent upon the building owner's successors in title whether or not it would have been binding upon those persons apart from the provisions of this subsection, and is enforceable against those persons by the local authority.
- (4) Where an agreement has been entered into under this section the Department may make regulations regulating—
- (a) the conduct of persons using any walkway to which the agreement relates;
 - (b) the times at which any such walkway may be closed to the public;
 - (c) the placing or retention of anything (including any structure or projection) in, on or over any such walkway.
- (5) The regulations may in particular provide –
- (a) that the building owner keep a copy of the regulations displayed at each location where a walkway provides an entrance to the building;
 - (b) that a person reasonably required by a constable so to do must provide the constable with his or her name and address;
 - (c) that a contravention of any provision of the regulations is an offence punishable on summary conviction by a fine not exceeding £2,500.
- (6) Not less than 2 months before the Department proposes to make regulations under subsection (4) it must display in a conspicuous position on or adjacent to the walkway in question notice of its intention to make such regulations.
- (7) A notice under subsection (6) must specify the place where a copy of the proposed regulations may be inspected and the period, which must not be less than 6 weeks from the date on which the

- notice was first displayed as aforesaid, within which representations may be made to the Department, and the Department must consider any representations made to it within that period.
- (8) The Department, after consulting such representative organisations as it thinks fit, may make regulations –
- (a) for preventing any enactment or instrument relating to highways or to things done on or in connection with highways from applying to walkways which have been, or are to be, created in pursuance of agreements under this section or to things done on or in connection with such walkways;
 - (b) for amending, modifying or adapting any such enactment or instrument in its application to such walkways;
 - (c) without limiting paragraphs (a) and (b), for excluding, restricting or regulating the rights of statutory undertakers and the operators of electronic communications code networks to place and maintain apparatus in, under, over, along or across such walkways;
 - (d) without limiting paragraphs (a) and (b), for defining the circumstances and manner in which such walkways may be closed periodically or temporarily or stopped up and for prescribing the procedure to be followed before such a walkway is stopped up.
- (9) However, regulations under subsection (8) must not exclude the rights of statutory undertakers or the operators of electronic communications code networks to place and maintain apparatus in, under, along or across any part of a walkway, being a part which is not supported by any structure.
- (10) Without limiting subsection (8), regulations under that subsection may include such incidental, supplemental and consequential provisions (and, in particular, provisions relating to walkways provided in pursuance of agreements made before the coming into operation of the regulations) as appear to the Department to be expedient for the purposes of the regulations.
- (11) Regulations under this section cannot come into operation unless they are approved by Tynwald.
- (12) Nothing in this section is to be taken as affecting any other provision of this Act, or any other enactment, by virtue of which highways may be created.
- (13) In this section –

“**building owner**” means any person having an interest in the land on which a building is, or is proposed to be, situated, being a person who by virtue of that interest has the necessary power to enter into an agreement under this section;

“**walkway**” means a highway over which the public have a right of way on foot only, but subject to such limitations and conditions, if any, affecting that right of way as may be specified in an agreement under this section and to any rights reserved by the agreement to the building owner and any person deriving title to the land under him or her.”.

41 Section 38 substituted

For section 38 substitute –

38 Temporary closure of highways for the purposes of entertainment

- (1) The Department may close any highway to such traffic or classes of traffic, and on such days or at such times, as it considers necessary to facilitate the holding of any entertainment.
- (2) The Department must give such public notice of the closure of a highway as it considers necessary in order to bring its effect to the attention of the public, including in particular the operators of any railway or tramway undertaking whose traffic is affected by it.
- (3) The Department may make such incidental or consequential arrangements as it considers necessary for the temporary prohibition, restriction, suspension or regulation of –
 - (a) traffic on any other highway; or
 - (b) tramway and railway traffic.
- (4) Any person who, without lawful authority, enters or is found on any highway closed under subsection (1), or contravenes any requirement, prohibition or restriction imposed in accordance with this section, is guilty of an offence.
- (5) In exercising its powers under this section to close any highway to facilitate the holding of any entertainment, the Department may make any arrangements that can be made by virtue of section 2(1) of the *Road Races Act 1982* [c.14] in respect of a road race order, and sections 2(2), 3, 4 and 5 of that Act apply to the exercise of the Department’s powers under subsection (1) as they apply to a road race order.
- (6) In the application of the provisions of the *Road Races Act 1982* mentioned in subsection (5) to a decision to close a highway under this section, references to a race or road racing under that

Act are to be construed as references to the entertainment in question.

- (7) Any expenses incurred by the Department in connection with –
- (a) a decision to close a highway under this section; or
 - (b) the exercise of any powers in subsection (5),
- are to be defrayed by the person at whose request the decision was made or the powers were exercised.

- (8) In this section –
- “entertainment” includes any festival, parade, display, exhibition, performance, amusement, game, sport, race or competition;
- “road race order” means an order under section 1 of the *Road Races Act 1982*.”

42 Section 51 amended

In section 51–

- (a) in subsections (1) and (2) omit “within 14 days of the date of service of the notice”;
- (b) after subsection (2) add –
 - “(3) However, the Department may instead itself carry out any appropriate cutting, lopping or felling –
 - (a) if, in the opinion of the Department, the danger is such that it needs to be carried out immediately; or
 - (b) otherwise at any time after 14 days have elapsed since service of a notice under subsection (1) or subsection (2), if it has not been carried out by the owner or occupier.
- (4) Where the Department, in carrying out any works pursuant to subsection (3), removes any thing from a highway, the Department may dispose of it in such manner as it thinks fit, but if the Department sells the thing, it must pay the proceeds of sale, less any expenses of removal and sale, to the owner.
- (5) Where the Department carries out any works pursuant to subsection (3) it may recover the cost of doing so from the owner or occupier of the land on which the hedge, tree, shrub or other vegetation is situated.
- (6) No act of the Department or of its servants or agents carried out in good faith under this section is a contravention of the *Tree Preservation Act 1993*.”

43 Section 94A amended

For section 94A(1) substitute –

- █ (1) The Department may include in street works any of the following –
- (a) works consisting of the construction of raised surfaces;
 - (b) such other traffic restraint works as it considers desirable. █.

44 Section 109A inserted

After section 109 insert –

“Financial provisions

109A Agreements as to execution of works

P1980/66/278

- (1) The Department, if it is satisfied it will be of benefit to the public, may enter into an agreement with any person for the execution by the Department or by the person of –
- (a) any works which the Department is or may be authorised to execute; or
 - (b) any such works incorporating particular modifications, additions or features, or at a particular time or in a particular manner,
- on terms that the person pays the whole or such part of the cost of the works as may be specified in or determined in accordance with the agreement.
- (2) For the purposes of subsection (1) the cost of the works is taken to include in particular –
- (a) the whole of the costs incurred by the Department in or in connection with –
 - (i) the making of the agreement;
 - (ii) the making or confirmation of any scheme or order required for the purposes of the works;
 - (iii) the granting of any authorisation, permission or consent required for the purposes of the works, and
 - (iv) the acquisition by the Department of any land required for the purposes of the works; and
 - (b) all relevant administrative expenses of the Department, including an appropriate sum in respect of general staff costs and overheads.
- (3) The agreement may also provide for the making to the Department of payments in respect of the maintenance of the works to which the agreement relates and may contain such

incidental and consequential provisions as appear to the Department to be necessary or expedient for the purposes of the agreement.

(4) The fact that works are to be executed in pursuance of an agreement under this section does not affect the power of the Department to acquire land, by agreement or compulsorily, for the purposes of the works.

(5) If any amount due to the Department in pursuance of an agreement under this section is not paid in accordance with the agreement, the Department may do any or all of the following —

(a) direct that any means of access or other facility afforded by the works to which the agreement relates must not be used until that amount has been paid;

(b) recover that amount from any person having an estate or interest in any land for the benefit of which any such means of access or other facility is afforded;

(c) declare that amount to be a charge on any such land (identifying it) and on all estates and interests in the land,

and the Department may charge compound annual interest on the amount at 2% above the base rate from time to time of the Bank of England.

(6) If it appears to the Department that a direction under subsection (5)(a) is not being complied with, the Department may —

(a) execute such works as are necessary to stop up the means of access or deny the facility, as the case may be, and may for that purpose enter any land; and

(b) recover the cost of the works from any person from whom recovery may be made under subsection (5)(b) as if it were an amount due under subsection (5).

(7) Where the Department recovers an amount from a person by virtue of subsection (5)(b) or (6)(b), he or she may in turn recover from any other person having an estate or interest in land for the benefit of which the means of access or other facility was afforded such contribution as may be found by the court to be just and equitable.

This does not affect the right of any of those persons to recover from the person liable under the agreement the amount which they are made to pay.”.

45 Section 110 amended

In section 110 —

(a) for subsection (1) substitute —

- (ii) delete sub-paragraphs (2) and (3);
- (c) in paragraph 7 –
 - (i) in sub-paragraph (1) for “where a raised surface in a highway conforms to regulations under paragraph 4, it” substitute “a raised surface in a highway”;
 - (ii) in sub-paragraph (3) for “Works (whenever constructed) of a description prescribed by regulations under paragraph 6 which conform to any requirements imposed by the regulations” substitute “Traffic restraint works (whenever constructed)”;
 - (iii) delete sub-paragraph (4);
- (d) in paragraph 8 delete the definition of “prescribed”.

49 Schedule 3 amended

In paragraph 9(1) of Schedule 3 delete “or of regulations made under this Act”.

50 Schedule 4 amended

In paragraph 2 of Schedule 4 –

- (a) in sub-paragraph (6) –
 - (i) for “When” substitute “Subject to the following provisions of this paragraph, when”;
 - (ii) in head (c) for “in accordance with regulations made by the Department” substitute “in accordance with any directions given by the Department or the relevant body, as the case may be”;
 - (iii) for “12 months” substitute “24 months”;
- (b) in sub-paragraph (7) delete the second sentence;
- (c) after sub-paragraph (7) insert –

“(7A) If the undertakers –

- (a) have not reinstated or made good a highway or bridge in accordance with the Department’s directions under sub-paragraph (6)(c); or
- (b) have failed to keep it in good repair in accordance with paragraph (6),

the Department may, having given not less than 28 days’ notice to the undertakers, carry out the works that it considers necessary itself and may recover from the undertakers the expenses reasonably incurred in so doing.

- (d) in sub-paragraph (8) for “, the Department, or, as the case may be” substitute “relating to a sewer, drain or tunnel”;

(e) after sub-paragraph (8) insert –

❏ (8A) Without limiting sub-paragraph (7A), if, in the opinion of the Department, the undertakers fail to keep in good repair a highway or bridge in accordance with sub-paragraph (6), the Department may, within the 24 month period specified in that sub-paragraph, serve a default notice on the undertakers specifying the delay or omission, and on service of that notice the period specified in that sub-paragraph is extended by a further 24 months.

(8B) If there is continuing failure of the matters referred to in sub-paragraph (8A), the Department may serve further default notices and in each case the period specified in sub-paragraph (6) is extended by a further 24 months from the service of each such notice.

(8C) If any question arises in relation to the amount of expenses reasonably incurred under sub-paragraphs (7), (7A) and (8), the question shall be determined by arbitration. ❏;

(f) after sub-paragraph (9) add –

❏ (10) In this paragraph a reference to reinstatement and making good in the context of a highway or bridge includes –

(a) the planing off and resurfacing of the carriageway to the following extent –

- (i) in a case where the undertakers' works are confined to a single lane, the full width of that lane;
- (ii) in a case where such works encompass more than one lane but do not extend beyond the centre line of the carriageway, the width of that side of the carriageway to the centre line;
- (iii) in a case where such works extend beyond the centre line, the entire width of the carriageway; and
- (iv) in a case where such works are carried out on a highway habitually forming part of a race circuit, or on a carriageway subject to heavy braking, the entire width of the carriageway;

(b) the use of materials that are of the same type as were used in the surfacing of adjacent stretches of the carriageway not affected by the works;

(c) the application of surface dressing, antiskid surfacing or special finishes in accordance with specifications approved by the Department;

(d) the replacement of line markings and catseyes; and

- (e) the making good of any object or equipment installed on the highway or bridge. **22**.

PART 5 – MISCELLANEOUS AMENDMENTS AND REPEALS

51 Amendment of Petty Sessions and Summary Jurisdiction Act 1927

In section 66(4) of the *Petty Sessions and Summary Jurisdiction Act 1927* for “a fine not exceeding £1,000, or to be imprisoned for a term not exceeding two months” substitute **23** the same penalties as would apply if the person were convicted of contravening section 3 of the *Road Traffic Act 1985* (careless or inconsiderate driving) (save that obligatory endorsement applies only if the offence were committed in respect of a carriage that is mechanically propelled). **22**.

52 Amendment of Road Transport Act 2001

(1) The *Road Transport Act 2001* is amended as follows.

(2) For section 7(1) and (2) substitute –

23 (1) In this Act “**goods vehicle**” means –

- (a) a motor vehicle constructed or adapted for use for the carriage of goods;
- (b) a trailer so constructed or adapted; or
- (c) any combination of such vehicles,

the maximum weight of which exceeds such weight as is prescribed. **22**.

(3) For section 10(4) substitute –

23 (4) In addition to the requirements of subsection (1) or (2), an application for registration or an operator's licence shall not be granted unless the Committee is satisfied that –

- (a) any place specified in the application as an operating centre of the applicant is suitable –
 - (i) for use as such an operating centre, and
 - (ii) for use as such an operating centre for the number of vehicles, or the number of vehicles of any specified class, proposed to be used under the registration or licence; and

(b) such additional requirements as may be prescribed are met. **22**”.

(4) After section 62(4) insert –

23 (4A) The Department may make regulations authorising the Committee to refuse, suspend or revoke any registration or

licence under this Act on grounds relating to the health of the person concerned. **22**.

(5) In Schedule 1 –

- (a) in paragraph 5 for “Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 (Acts of Parliament)” substitute “Armed Forces Act 2006 (of Parliament)”;
- (b) in paragraph 13(3) for the definition of “the requisite skills” substitute –

“**the requisite skills**” means the skills appropriate for the type of registration or operator’s licence applied for as set out in Annex I to Council Directive 1996/26/EC dated 29 April 1996 (on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for those operators the right to freedom of establishment in national and international transport operations), as that Directive may be amended from time to time.”.

53 Amendment of Road Traffic (Amendment) Act 2006

In section 1(11)(a) of the *Road Traffic (Amendment) Act 2006* for “and (6A)” substitute **6A** and (6) **22**.

54 Repeals

The following provisions are repealed –

- (a) the *Road Traffic (Amendment) Act 1996*, Schedule 2, paragraph 3(2);
- (b) the *Road Traffic Act 1999* section 5(2) and 4);
- (c) the *Road Traffic (Amendment) Act 2006*, section 10;
- (d) the *Criminal Justice, Police and Courts Act 2007*, section 24.

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