



THE LAW COMMISSION
AND THE SCOTTISH LAW
COMMISSION

(LAW COM. No. 39)
(SCOT. LAW COM. No. 19)

VEHICLES (EXCISE) BILL

REPORT ON THE CONSOLIDATION OF CERTAIN
ENACTMENTS RELATING TO EXCISE DUTIES ON
MECHANICALLY PROPELLED VEHICLES, AND TO
THE LICENSING AND REGISTRATION OF SUCH
VEHICLES

*Presented to Parliament by the Lord High Chancellor,
the Secretary of State for Scotland and the Lord Advocate
by Command of Her Majesty
December 1970*

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Professor A. E. Anton
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Mr. A. M. Johnston, Q.C.
Professor T. B. Smith, Q.C.

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LAW COMMISSION

VEHICLES (EXCISE) BILL

REPORT ON THE CONSOLIDATION OF CERTAIN ENACTMENTS
RELATING TO EXCISE DUTIES ON MECHANICALLY PROPELLED
VEHICLES, AND TO THE LICENSING AND REGISTRATION OF
SUCH VEHICLES

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

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

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

The Vehicles (Excise) Bill which accompanies this Report seeks to consolidate the existing legislation relating to vehicles excise duty and the licensing and registration of vehicles. It accordingly includes the Vehicles (Excise) Act 1962, itself a consolidation Act reproducing the then existing law without amendment, part of the Vehicle and Driving Licences Act 1969 which is designed to introduce extensive changes in the system of licensing and registration, and the relevant provisions of Finance Acts and other Acts since 1962.

There is one respect in which we think that the enactments to be consolidated in this Bill ought to be corrected to facilitate the consolidation. And there is another respect in which we think it would be expedient to amend those enactments. But since the latter is too substantial an amendment to be effected under the Consolidation of Enactments (Procedure) Act 1949 we think it appropriate to submit this Report recommending that both the correction and the other amendment should be made. The correction is the subject of the second, and the other amendment the subject of the first, recommendation set out in the Appendix to this Report.

LESLIE SCARMAN,
Chairman of the Law Commission

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

13 November 1970

APPENDIX

RECOMMENDATIONS

1. Section 19 of the Vehicles (Excise) Act 1962 makes provision for the institution of proceedings for offences under that Act. Subsections (1) and (3) have been repealed and replaced by sections 25 and (for Scotland) 26 of the Vehicle and Driving Licences Act 1969. Subsection (2) prevents sections 281 and 283(1) of the Customs and Excise Act 1952 from applying to offences under the 1962 Act. The effect of this is to exclude from the area of vehicles excise duty the provisions of the Customs and Excise Act 1952 which amongst other things require proceedings for offences under the excise Acts to be instituted only by order of the Commissioners of Customs and Excise and permit proceedings to be commenced within, but not later than, three years from the date of the commission of the offence.

Section 19(2), like the rest of the section, derives from section 5(5)(6) of the Finance Act 1956. Those subsections were enacted because the doubt which existed as to the extent to which the Customs and Excise Act 1952 applied to offences under the vehicles excise legislation had recently given rise to practical difficulties in the institution of proceedings. Section 5(5) excluded the application in England and Wales of the provisions of the 1952 Act mentioned above and then provided that county councils and county borough councils could institute proceedings for offences under that legislation. It further provided that, in relation to proceedings for excise penalties for using motor vehicles without an excise licence or proper excise licence, those councils (and the police with their consent) were the only authority competent to prosecute and that they had three years from the commission of the offence within which to do so. Section 5(6), which gave power to local authorities in Scotland to prosecute for certain offences with a similar time limit, did not exclude section 281 of the Customs and Excise Act 1952.

The Vehicles and Driving Licences Act 1969 created several further offences and is itself in part an "excise Act" within the meaning of section 307(1) of the Customs and Excise Act 1952. It is thought that of those further offences, at least those created by sections 7(2), 8(4) and 12(2) and under section 6(3) must be offences to which sections 281 and 283(1) are capable of applying since they relate directly to vehicle excise licences. This being so, it is clearly desirable that the principle implicit in section 19 of the 1962 Act should be extended so as to prevent sections 281 and 283(1) of the Customs and Excise Act 1952 from applying to offences arising under the 1969 Act except, of course, those like section 22 relating not to vehicle excise licences but to driving licences. That this was the intention of Parliament in the 1969 Act is shown by the fact that the provisions in sections 25 and 26 regulating certain aspects of the institution of proceedings e.g. giving the Minister (and a constable) power to prosecute vehicle excise offences, and superseding the provisions of section 19(1) and (3) of the 1962 Act apply not only to offences under the 1962 Act but also to certain offences under the 1969 Act. To this extent the 1969 Act operates as an implied ouster of the rule contained in section 281 of the Customs and Excise Act 1952. The defect in the existing law is, therefore, that section 19(2) of the Act of 1962 was not extended in 1969 so as to have the same effect in relation to offences under the Act of 1969 as it has in relation to offences under the 1962 Act.

We recommend that in re-enacting section 19(2) it should be given the same effect in relation to offences under the Act of 1969 which are reproduced in the Bill as it has in relation to offences under the Act of 1962.

Effect is given to this recommendation in clause 28(5).

2. Section 17(3) of the Vehicles (Excise) Act 1962 provides that a person who contravenes or fails to comply with any regulations under that Act shall be liable on summary conviction to a fine not exceeding £20. This subsection is to be replaced by the new subsection (3) contained in section 28(3) of the Vehicle and Driving Licences Act 1969. The new section 17(3) (which is reproduced together with other enactments in clause 37(3) of the Bill) enables a more flexible system of regulations under the 1962 Act to be adopted in that it is left to the Minister to specify the

regulations which are to carry criminal sanctions. This system is paralleled in the regulation-making powers conferred by the 1969 Act in section 6(3)(f), 19(2)(d) and 20(3)(d) combined with section 32 which specifies the maximum penalties. In these cases the power of the Minister is confined to prescribing the regulations breach of which is to constitute a criminal offence. Once the Minister has done this section 32 operates to give the appropriate maximum fine which may be imposed. When one turns to the new section 17(3), however, it is difficult to say with confidence whether the Minister's power is similarly confined or whether he has been given a further power to prescribe in the regulations to which section 17(3) relates lower maximum penalties than the £20 (or in one case £50) mentioned there. If this further power has been given then the regulation-making powers consolidated in the Bill are in point of criminal sanctions subject to two different regimes. There seems to be no reason for such a distinction and we think that section 17(3) and the other enactments consolidated in clause 37(3) should be made consistent.

We think that this should be achieved not by amending those other enactments so as to give the Minister a new power which he clearly does not possess under them but by taking the narrower interpretation of the somewhat ambiguous provisions of the new section 17(3) so that the maximum fines are in all cases those specified in the Bill and not any lower ones which he may from time to time prescribe in regulations. Although the subject will thereby lose the conjectural benefit of lower maximum fines in some cases, we think this disadvantage will be more than compensated for by two advantages which will accrue to him (and to those concerned with the administration of justice) from the acceptance of our proposal. In the first place, it will be easier to ascertain what are the maximum fines attaching at any time to a breach of the specified regulations. And in the second place the scheme of fines will be simpler than if two regimes apply. The Minister of Transport (now the Secretary of State (for the Environment)) has been consulted about our proposal and has expressed satisfaction with it.

We recommend that in re-enacting section 17(3) of the 1962 Act as substituted by section 28(3) of the 1969 Act the power to attach to breach of specified regulations the criminal sanctions there mentioned should be made consistent with the similar powers contained elsewhere in the 1969 Act.

Effect is given to this recommendation in clause 37(3).

