



RESEARCH PAPER 01/15
7 FEBRUARY 2001

The Road Transport Bill

Bill 12 of 2000-2001

The *Road Transport Bill* was introduced by James Gray MP, who came second in the ballot for Private Members' Bills, and is due to have its second reading on 9 February 2001. It introduces a variety of amendments to the law including requiring local authorities to take measures to safeguard motorists and pedestrians from the effects of snow and ice; measures to assess the appropriateness of speed limits and to simplify the procedure for introducing them; banning the use of hand-held telephones by drivers; removing part of the exemption for delivery people from seat belt wearing; and extending the areas in which mandatory travel concessions apply.

The Bill applies only to England and Wales. Explanatory Notes (Bill 12-EN) were published by James Gray on 6 February 2001.

Fiona Poole

BUSINESS AND TRANSPORT SECTION

HOUSE OF COMMONS LIBRARY

Recent Library Research Papers include:

00/98	The <i>Homes Bill</i> [Bill 5 of 2000-2001]	20.12.00
00/99	Defence Statistics	21.01.00
01/01	Improving NHS performance, protecting patients, modernising pharmacy and prescribing services: the <i>Health and Social Care Bill</i> [Bill 9 of 2000-2001]	08.01.01
01/02	Care trusts and long term care in the <i>Health and Social Care Bill</i> [Bill 9 of 2000-2001]	08.01.01
01/03	The <i>Armed Forces Bill</i> [Bill 4 of 2000-2001]	08.01.01
01/04	Tax Law Rewrite: the <i>Capital Allowances Bill</i> [Bill 10 of 2000-2001]	11.01.01
01/05	The <i>Children's Commissioner for Wales Bill</i> [Bill 3 of 2000-2001]	15.01.01
01/06	Unemployment by Constituency, December 2000	17.01.01
01/07	The <i>Social Security Contributions (Share Options) Bill</i> [Bill 8 of 2000-2001]	22.01.01
01/08	Developments in the Middle East Peace Process 1991-2000	24.01.01
01/09	The Middle East Crisis: Camp David, the 'Al-Aqsa Intifada' and the Prospects for the Peace Process	24.01.01
01/10	The <i>Criminal Justice and Police Bill</i> [Bill 31 of 2000-2001]	25.01.01
01/11	The <i>House of Commons (Removal of Clergy Disqualification) Bill</i> [Bill 34 of 2000-2001]	26.01.01
01/12	The <i>Outworking Bill</i> [Bill 11 of 2000-2001]	30.01.01
01/13	Economic Indicators	01.02.01

Research Papers are available as PDF files:

- *to members of the general public on the Parliamentary web site, URL: <http://www.parliament.uk>*
- *within Parliament to users of the Parliamentary Intranet, URL: <http://hcl1.hclibrary.parliament.uk>*

Library Research Papers are compiled for the benefit of Members of Parliament and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public. Any comments on Research Papers should be sent to the Research Publications Officer, Room 407, 1 Derby Gate, London, SW1A 2DG or e-mailed to PAPERS@parliament.uk

Summary of main points

The *Road Transport Bill 2000-01* (Bill 12) is being introduced by James Gray MP, who came second in the ballot for Private Members' Bills. The Bill deals with five separate road transport issues:

- It imposes a duty on highway authorities to deal with snow and ice on their roads as far as they deem reasonable. This provision arises in part from the House of Lords case *Goodes v East Sussex County Council*, where it was held that the existing provisions in the *Highways Act 1980* for the maintenance of highways only dealt with the fabric of the roads themselves and not with matter lying on the roads such as snow and ice.¹ Clause 1 introduces a provision similar to that in operation in Scotland since 1984, that a roads authority should take such steps as it considered reasonable to prevent snow and ice endangering the safe passage of pedestrians and vehicles.
- Clause 2 requires traffic authorities to conduct a review of the speed limits in their areas, as drivers tend to ignore inappropriate speed limits. This provision is accompanied by a provision in clause 3 to simplify the procedure for altering speed limits.
- Clause 4 introduces a new road traffic offence of driving while operating a hand-held mobile telephone. The offence is to be punishable by a level three fine, an obligatory three-point endorsement and disqualification in more serious cases.
- Clauses 5-7 amend the law with respect to the wearing of seat belts. Clause 5 removes the exemption that applies to those making frequent deliveries or collections, but retains it for drivers who travel only short distances between stops, such as those making postal deliveries. The Bill also makes further, minor amendments to the law relating to wearing of seat belts.
- Clause 8 amends the *Transport Act 2000* in relation to mandatory travel concessions for the elderly and disabled. That Act introduced a 50% fare for such people travelling within an authority's area. However, this still means that an elderly person might have to pay the full fare to travel from a village in one local authority area to the nearest town, which might be in another authority's area. The Bill alters this provision to make the mandatory requirement apply to journeys which start and end in an authority's area or the area of a neighbouring authority.

The Bill applies to England and Wales only.

¹ *Goodes v East Sussex County Council* [2000] 1 WLR 1356

Private Members' Bills are not subject to the requirement of section 19 of the *Human Rights Act 1998* that the Minister in charge of a Bill should make a statement on its compatibility with the European Convention on Human Rights before second reading.

CONTENTS

I	Highway authorities and poor weather	7
	1. The legislation	7
	2. The court case	8
	3. Code of practice	9
	4. Government's response	10
	5. Scotland	12
II	Speed limits	13
	1. The legislation	14
	2. Government policy	14
	3. Effect of speed	15
	4. Appropriate speeds	17
	5. Procedure for speed limits	21
	6. Scotland and Wales	24
III	Mobile phones	24
	1. The legal position	24
	2. Government policy	25
	3. Research	27
IV	Seat belts	29
	1. Legislation	29
	2. Exemption for deliveries and collection	30
V	Concessionary fares	32
VI	Selected reading	33
	Appendix: Goodes v East Sussex County Council	35

I Highway authorities and poor weather

Clause 1 of the bill requires local authorities to safeguard motorists and pedestrians from the effects of snow and ice on public roads. It introduces a duty on highway authorities to "take such steps as they consider reasonable to prevent snow and ice endangering the safe passage of pedestrians and vehicles over the highway."

Such a clause was thought necessary following the court case, *Goodes v East Sussex County Council* which had led to doubt and confusion as to the precise liability on local authorities to undertake winter maintenance. The court of appeal in January 1999 decided that highway authorities had a statutory duty to prevent ice forming on the road. However, the House of Lords subsequently said they did not have a legal duty to keep their roads free of ice and snow.² The transport minister, Keith Hill, has said he expects authorities to continue to salt their roads in icy conditions in accordance with their code of good practice on highway maintenance.³

The wording of clause 1 follows that contained in the Scottish legislation, the *Roads (Scotland) Act 1984*. It would make it clear that local authorities must take reasonable steps to clear ice and snow from roads in their area.

1. The legislation

Section 41 of the *Highways Act 1980* states that the highway authority has a duty to "maintain the highway." Section 58 provides that in an action for damages arising out of the authority's failure to maintain, "it is a defence ... to prove that the authority had taken such care as in all the circumstances was reasonably required to secure that the part of the highway to which the action relates was not dangerous to traffic." Under section 150 the highway authority has a responsibility to clear snow from the highway, but only if it is causing an obstruction.

The *Highways Act 1980* section 130 gives the highway authority a general duty to protect the right of the public to use and enjoy the highway:

Protection of public rights

130.—(1) It is the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority, including any roadside waste which forms part of it.

² *Goodes v East Sussex County Council* [2000] 1 WLR 1356

³ PQ HC Deb 15 January 2001 c 18W

(2) Any council may assert and protect the rights of the public to the use and enjoyment of any highway in their area for which they are not the highway authority, including any roadside waste which forms part of it.

This legislation applies only to England and Wales.

2. The court case

The court case, *Goodes v East Sussex County Council*, centred on the meaning of "maintain" as used in section 41 of the 1980 Act: whether it meant a duty to maintain the fabric of the road in good repair or a duty to prevent or remove the formation or accumulation of ice and snow. Geoffrey Goodes, of School Lane, Polegate, near Eastbourne, had sought damages against East Sussex county council after his car skidded in November 1991 and hit a bridge over the Wellbrook, near Mayfield. He suffered injuries that had left him almost entirely paralysed. Although the council denied that it had a statutory duty to keep roads ice free, it followed the councils' code of good practice that salting should be complete before 7.30am. After a forecast of freezing conditions, it had sent out lorries at 5.30am but they had not reached the section of road by the time Mr Goodes drove along it.

The court of appeal found by a majority that a highway authority, by failing to act to prevent ice forming on the surface of the road, was in breach of its statutory duty to maintain it.⁴ It concluded that the 1980 Act imposed a wider duty on councils, including gritting. One of the points made was that sufficient time had elapsed to make it unreasonable for the highway authority not to have acted. East Sussex county council went to the House of Lords, who allowed the appeal. In the House of Lords, the judges concluded that a highway authority had an absolute duty to keep the fabric of the highway in a good state of repair so as to render it safe for ordinary traffic at all seasons of the year, but that did not include a duty to remove the formation or accumulation of ice and snow on the road.⁵

The Times reported the House of Lords judgement in *Goodes v East Sussex County Council* on 16 June 2000 and it is reproduced in full in the appendix to this paper.⁶

There have been some earlier court cases on this point. In *Cross v Kirklees Metropolitan Borough Council*, the court of appeal found in 1997 that the duty to maintain the highway imposed by section 41 was not a duty to keep the highway at all times entirely clear of surface water, snow and ice. The duty to maintain was limited to taking reasonable steps

⁴ *Times* law report, 7 January 1999

⁵ *Times* law report, 16 June 2000

⁶ *Times* law report 16 June 2000 "Duty to repair does not include ice removal"

to prevent the formation of ice or to deal with it promptly after it formed to keep the surface reasonably safe.⁷

3. Code of practice

Information about the guidelines and code of practice was given in reply to a PQ in January 2000.⁸

Mr. Hoyle: To ask the Secretary of State for the Environment, Transport and the Regions what guidelines his Department has issued for the gritting of roads in icy conditions. [105056]

Mr. Hill: The Highways Agency aims to provide a winter maintenance service of de-icing and snow clearing which, as far as possible, allows the safe movement of traffic on motorways and all purpose trunk roads in England, and keeps delays and accidents caused by adverse weather to a minimum. Their maintenance agents undertake the operational management of this service following the guidelines in the Highways Agency Trunk Road Maintenance Manual: Volume 2, Routine and Winter Maintenance Code.

For local authority roads, the Code of Good Practice for Highway Maintenance produced by the local government associations in England and Scotland in 1989 provides advice on systems to predict freezing conditions at Appendix 4.7. A partnership project between DETR, the Local Government Association, the Welsh Assembly, and DOE(NI) is currently considering the revision of this code.

The discussions on the revision of the code are still going on and a new edition is likely to be published in the early summer. New techniques have meant that the guidelines need to be updated but the section on gritting is unlikely to change. The code of practice is not a statutory document but is published with the backing of central and local government.

The legal position of the local authorities as seen by the Local Government Association is set out in paragraphs 8.1.4-7 of the *Winter maintenance supplement*.⁹

8.1.4 Highway authorities are under a statutory duty to maintain the highway. This general duty - set out in the Highways Act 1980 and the Roads (Scotland) Act 1984 - embraces winter maintenance. In addition to this statutory duty, highway authorities may take preventive measures against the accumulation of snow and ice.

⁷ *Times* law report, 10 July 1997

⁸ PQ HC Deb 20 January 2000 c 529W

⁹ Local Government Association *Highway Maintenance: a code of practice - winter maintenance supplement*, 1991

8.1.5 Local authorities take their winter maintenance responsibilities extremely seriously, but it is important to recognise in the context of a highway authority's statutory maintenance duty that:

- (i) the highway authority is not obliged to take preventive measures in anticipation of snow or ice;
- (ii) the duty to clear ice and snow from maintainable highways is not absolute and the authority will be under no liability unless the breach of duty to maintain is blameworthy. In other words, so long as the decision as to whether or not to act has been taken on reasonable grounds, with due care and with regard to relevant considerations, the authority will not be liable.
- (iii) it has been said judicially that when there is a transient danger due to the elements, be it snow or ice or heavy rain, the existence of danger for a short time is no evidence of a failure to maintain the highway.

Highway authorities are, of course, permitted to take preventative measures against the accumulation of snow and ice and to protect the highway over and above the minimum statutory requirements. The use of this power is relevant to an authority's road safety responsibilities as well as its highway maintenance function.

8.1.6 In order to ensure that a highway authority can show that it is meeting its legal obligations, and is doing so in a way which ensures that its resources are being deployed in the most economic, efficient and effective way, winter maintenance operations must be planned in a systematic manner. This code provides a framework for such an approach.

8.1.7 It is also important that the general public is aware of and understands the authority's approach to winter maintenance. Publicity should be given to this well before the beginning of winter. This can be done by issuing press releases and information leaflets describing the level of service provision and operational contact points.

The Highway Maintenance Standard Spending Assessment (SSA) contains a winter maintenance element but as the sums are not ring fenced, an authority may choose to spend more or less on gritting depending on local priorities. The government has no plans to add any additional element or to ring fence the existing amount.¹⁰

4. Government's response

Lord Whitty said the following in response to a PQ in March 1999 following the judgement of the court of appeal:¹¹

¹⁰ PQ HC Deb 16 January 2001 c 191W

¹¹ PQ HL Deb 8 March 1999 c 3

Lord Campbell of Croy asked Her Majesty's Government:

What action they are taking to improve arrangements for applying salt and grit to public roads in the United Kingdom, including those for which local authorities have responsibilities, in order to reduce accidents in winter conditions.

The Parliamentary under-secretary of state, Department of the Environment, Transport and the Regions (Lord Whitty): My Lords, arrangements for applying salt on trunk and national roads in the United Kingdom are reviewed on a regular basis in the light of changed circumstances, usage and technological developments. We encourage local highway or roads authorities to do the same.

Lord Campbell of Croy: My Lords, I am grateful to the noble Lord for his reply. Are the Government concerned about reports that some local authorities have been reducing the resources needed to keep roads safe? Does he agree that our climate produces sudden changes in temperature to below freezing in different parts of the country and that that often happens, most unfortunately, at holiday periods and at weekends? (...)

Lord Whitty: My Lords, the situation under the last government, as under this Government, is dealt with through their operation of the Highways Agency in England and the Secretaries of State for Scotland and Wales in relation to their roads. There is a fairly firm code of practice as to what is required in terms of salt application in that it should be undertaken before the ice forms or snow settles on the roads. We give similar advice to local authorities. However, it is not part of our interpretation of the law or that advice that it is the responsibility of the highway authorities to keep open all roads at all times. (...)

Following the House of Lords judgement, Keith Hill said in July 2000 that the government was "considering the full implications of this judgement before deciding whether to propose any changes to existing highway legislation."¹² On 15 January 2001, he replied:¹³

Mr. Dismore: To ask the Secretary of State for the Environment, Transport and the Regions what action he proposes to take following the judgment of the House of Lords in the case of *Goodes v. East Sussex*; and if he will make a statement.

Mr. Hill: The judgment was that there was no duty on local highway authorities under the Highways Act 1980 to remove ice from highways. Nevertheless, we expect authorities to continue to salt their roads in icy conditions in accordance with their code of good practice on highway maintenance, which has been in place since 1989. All our soundings with local highway authorities have confirmed that it is their intention to maintain existing practices.

¹² PQ HC Deb 24 July 2000 c 384W

¹³ PQ HC Deb 15 January 2001 c 18W

We have instructed the Highways Agency to continue its usual practice of keeping motorways and trunk roads free of ice and snow.

Road users should follow the advice in the Highway Code that they should drive extremely carefully when the roads are icy.

The transport minister, Keith Hill, was asked by Bernard Jenkin MP, the opposition transport spokesman, if he would "bring forward legislation to amend the *Highways Act 1980* to require highway authorities to produce winter road maintenance plans for salting and snow clearance."¹⁴ He replied:

No. Local highway authorities are already strongly recommended to prepare comprehensive detailed plans for winter maintenance in the local authority code of good practice on highway maintenance, which has been in place since 1989.

For practical purposes the situation is unlikely to change: local authorities will still continue to act in accordance with the code of practice as they have done in the past.

5. Scotland

The *Highways Act 1980* only applies to England and Wales. The relevant legislation in Scotland is the *Roads (Scotland) Act 1984*. Section 1 says that authorities shall "manage and maintain" roads in their area. It continues that for the purpose of maintenance, they shall have the power to "alter, improve or renew" them. Section 34 says that "a roads authority shall take such steps as they consider reasonable to prevent snow and ice endangering the safe passage of pedestrians and vehicles over public roads." It is this wording that James Gray has used in his Bill.

The highway maintenance code of practice was drawn up by what were the associations of county councils, district councils and metropolitan councils and also the convention of Scottish local authorities and is followed by local authorities in both England and Scotland.

The Times law report of *Goodes v East Sussex County Council* does not refer to Scotland but a fuller account includes the following comment:

57. Reference was made during the hearing to the corresponding statutory provisions in the *Roads (Scotland) Act 1984* and I should make some comment about the position in Scotland. Section 1(1) of that Act imposes a duty on a local roads authority to manage and maintain the roads entered on the local list of public roads. In terms of section 151 "maintenance" includes, among other things

¹⁴ PQ HC Deb 30 January 2001 c 128W

"repair." But express provision is made by section 34 for the clearance of snow and ice in these terms:

"A roads authority shall take such steps as they consider reasonable to prevent snow and ice endangering the safe passage of pedestrians and vehicles over public roads."

58. It would seem from this that the obligation to maintain in section 1 is not intended to include the clearance of snow or ice. The construction of the word "maintain," subject to the full terms of the statutory definition, may thus be in line with the construction of the corresponding language of the *Highways Act 1980*. In Scottish practice a roads authority may be open to liability for personal injury caused by the presence of snow or ice making the passage of pedestrians or vehicles over pavements or roads unsafe. An example, where in the circumstances the claim failed, can be found in *Grant v. Lothian Regional Council 1988 S.L.T. 53-3*. The claim there was brought both under section 34 and at common law.

The section on maintenance would seem to be similar to that in the English legislation.

The cases in Scotland have centred on section 34, which is not the same as section 150 of the *Highways Act 1980*. In the case of *Grant v Lothian Regional Council 1988* cited above, Susan Grant lost a claim for compensation for a fall on an icy pavement on the basis that the council's system for clearing pavements of snow was reasonable. The report of this case referred to *Cameron v Inverness County Council 1935* in relation to the duties of a highway authority where there had been widespread snow affecting substantial miles of road. This concluded that a duty was owed to all road users and one could not expect a local authority to overcome problems everywhere at the same time. In another case, *Taylor v George Smith and others 1996*, it was decided that the defendants had acted reasonably and so could not be held to be negligent, even though black ice on the road had caused the accident.

It would therefore appear that although a Scottish authority may be liable in law for personal injury caused by the presence of snow or ice under section 34, it is unlikely to be held liable if it has taken reasonable action to keep the roads clear.

II Speed limits

Clause 2 of the Bill requires local authorities to prepare and publish a review to assess the speed limits in their area and identify those considered inappropriate. They would then produce a list of speed limits they proposed to alter in the form of a draft order. The secretary of state could issue guidance about the content of the reviews and the consultation process.

1. The legislation

Between 1865 and 1896 locomotives on the highway had to be preceded by a pedestrian carrying a red flag and were subject to a speed limit of 2 mph in populated areas, and 4 mph elsewhere. The maximum speed limit was then increased to 14 mph and in 1903, to 20 mph. In 1930 speed limits for cars and motorcycles were abolished.

Roads in built up areas (which are defined as those with street lighting placed not more than 200 yards apart) have had a general limit of 30 mph since 1934. Other roads had no speed limit at all until 1965 when a general national upper limit of 70 mph was introduced for all roads including motorways. Since 1977 the speed limit for cars on dual carriageways has been 70 mph and 60 mph on single carriageway roads. The speed limit on an unclassified road, assuming it is single carriageway, is therefore 60 mph.¹⁵

The current legislation is contained in part IV of the *Road Traffic Regulation Act 1984*.

2. Government policy

In the 1998 transport white paper, the government announced a review of speed limits generally.¹⁶ Lord Whitty formally launched the review on 23 October 1998.¹⁷ It was to cover the traditional road safety issues and take account of new casualty reduction targets. It also looked at how speed management could mitigate the adverse effects of traffic on the environment and on the general quality of people's lives. It covered all types of roads in Great Britain and examined best practices in engineering, enforcement, education and publicity.

In March 2000 the government published a white paper on road safety, *Tomorrow's roads - safer for everyone*.¹⁸ At the same time it published a separate review of speed management, *New directions in speed management*.¹⁹ The aim of the strategy is to cut road deaths and serious injuries by 40% from their current annual levels of 3,5000 and 40,000 over the next ten years. The strategy includes many elements such as better driver training, improved traffic law enforcement and stiffer penalties for offenders, and road safety education, but the focus is on speed reduction policies.

¹⁵ *Road Traffic Regulation Act 1984* section 81

¹⁶ DETR *A new deal for transport: better for everyone* July 1998, paras 3.227-30

¹⁷ DETR press notice 23 October 1998 "Whitty launches national speed policy review"

¹⁸ DETR *Tomorrow's roads - safer for everyone*, March 2000

¹⁹ DETR *New directions in speed management*, March 2000

The main findings of the speed review are summarised in chapter 6 of the road safety white paper, where the government set out its strategy on speed as:²⁰

- publicise widely the risks of speed and the reasons for limits;
- develop a national framework for determining appropriate vehicle speeds on all roads, and ensuring that measures are available to achieve them;
- research a number of speed management problems to gain the necessary information to develop and test new policies; and
- take into account environmental, economic and social effects of policies when assessing their ability to reduce casualties.

3. Effect of speed

The severity of accidents is closely linked to speed: at 20 mph only five per cent of pedestrians die if struck by vehicle whereas at 30 mph 45 per cent die and at 40 mph 85 per cent die. The government's 2000 review of speed management summarised some of the studies that have been carried out in this area:²¹

Speed and the risk of collision

34. The relationship between speed and safety is a complex one. But from the national and international literature there is overwhelming evidence that lower speeds result in fewer collisions of lesser severity (Finch et al 1994, Taylor et al 2000, Transportation Research Board 1998). Some interesting conclusions can be drawn from research so far.

35. In any given situation, the faster the average traffic speed, the more collisions there are.

- Accident frequency rises disproportionately with increasing speed. It rises approximately with the square of the average traffic speed (providing the ratio of the standard deviation to the mean remains constant). For example, on urban roads a 21% increase in collisions could result from a 10% increase in mean speeds (Taylor et al 2000).
- Speeding or inappropriate speed contributes to a significant percentage of all crashes and a higher percentage of more serious crashes. Driver error is a contributory cause in over 90% of accidents: driving too fast is a driver error in judging what is safe.
- About a fifth of rural accidents involve vehicles going too fast for the situation with a further quarter likely to be associated with speed (Sabey 1993).
- In an urban area about 4% were directly related to excessive speed and another 21% due to speed related factors (Carsten et al 1989).

²⁰ DETR *Tomorrow's roads - safer for everyone*, March 2000 para 6.3

²¹ DETR *New directions in speed management*, March 2000 paras 34-44

36. Broughton et al's (1998) work indicates that excessive speed was a contributory factor in 424 of the 2795 accidents studied (about 15%). But this is likely to be an underestimate. Speed will have been a part of the reason for other factors such as failure to judge another person's path or speed, which caused 623 of the accidents, about 22%. It is not possible to quantify these contributions directly.

37. New research (Taylor et al 2000) has examined the scope for reducing collisions through speed management. Broadly each 1 mph reduction in average speed is expected to cut accident frequency by 5%. This is a robust general rule, but now we have a much fuller picture which indicates that the reduction varies according to road type as follows:

- about 6% for urban main roads and residential roads with low average speeds;
- about 4% for medium speed urban roads and lower speed rural main roads; and
- about 3% for the higher speed urban roads and rural single carriageway main roads.

38. The greatest reduction in casualties would come from reducing the speeds of the faster drivers (Taylor et al 2000, ..):

- if the proportion of speeders doubles, accidents go up by 10%;
- if their average speed goes up by 1mph, if all else is held constant accidents go up by 19%; and
- if an individual drives more than 10-15% above the average speed of the traffic around them, they are much more likely to be involved in an accident (Maycock et al 1998, Quimby et al 1999a and b ...).

39. From surveys of 800 English car drivers Stradling et al (1999) find that one in three of those drivers who had been penalised for speeding offences in the last three years had been involved in an accident as a driver in the same period.

40. Research also indicates that drivers scoring high as 'violators' on the Manchester driver behaviour questionnaire (...) are likely to speed and 'violate' other road traffic rules such as close following, red-light running, getting angry with other drivers, and drinking and driving. Stradling also proposes that 'violations' reduce safety margins so that there is less room or time to correct errors such that: Violation+Error=Crash (Stradling 1999)

Speed and injury severity

41. The likelihood of being seriously injured in a collision rises significantly with small changes in impact speed. The impact speeds at which this increase is most pronounced are lower than most would think. The probability of serious injury to a belted car occupant in a front seat at an impact speed of 30mph is three times greater than at 20mph. At 40mph it is over five times greater (Hobbs and Mills 1984). ...

42. For pedestrians and cyclists the reality is even more stark. At-the-scene investigations of collisions involving pedestrians and cars or car-derived vans

found that 85% of fatalities occurred at impact speeds below 40 mph (Ashton and Mackay 1979). This compared with 45% which occurred at less than 30 mph and 5% at speeds below 20 mph.

43. About 40% of pedestrians who are struck at speeds below 20 mph sustain non-minor injuries. This rises to 90% at speeds up to 30 mph, (...) The change from mainly survivable injuries to mainly fatal injuries takes place at speeds of between about 30 and 40 mph (Ashton 1981). Elderly pedestrians are more likely to sustain non-minor injuries than younger people in the same impact conditions.

44. It is the combination of speed and lack of protection that makes motorcyclists vulnerable.

The report also showed slower speeds not only lead to reduced casualties but also to:

- reduced through traffic flows
- achievement of road safety plan objectives
- reduced vehicle emissions
- improvements in the general amenity and environment of the area

4. Appropriate speeds

Two particular speed limits have caused concern, those through villages and those on certain rural roads. Changes have already been introduced to make it easier to introduce 20 mph speed limits and home zones in urban areas.

A working group, the village speed control working group, was set up in July 1991, composed of members of the county surveyors' society and the department of transport, including the Transport Research Laboratory (TRL). Its purpose was to look at the problem of speeding traffic in villages and to investigate the costs, benefits and effectiveness of various ways of controlling the speed of vehicles. Its final report was published in June 1994: it concluded that low cost schemes only secured small reductions in speed and that the more comprehensive the proposals the more effective they were. Traffic advisory leaflet 1/94 summarised the findings of that report.²² A later TRL study assessed the effectiveness of more comprehensive schemes that have been applied on main roads through villages carrying high levels of traffic.²³ This found that highly visible signs and traffic calming could help but speeds were still above the speed limit.

²² Department of transport *VISP - a summary*, June 1994 TAL 1/94

²³ TRL *Traffic calming in villages on major roads: final report*, 1999 TRL report 385; DETR *Traffic calming in villages on major roads*, March 2000 TAL1/00

Helen Brinton MP put down an Early Day Motion in the last session calling on the government to ensure that 30 mph speed limits were introduced to all villages and 60 mph limits on were introduced on country lanes:²⁴

462 SPEEDING TRAFFIC IN THE COUNTRYSIDE

That this House welcomes the Government's announcement that 30 mph should be the normal speed limit in all villages; recognises that this will have major benefits to the countryside and people's quality of life; encourages the Government to ensure 30 mph limits apply for all villages within the life of its Ten Year Transport Plan; calls on the Government to review the regulations governing road signage in the countryside; and calls for urgent legislation to reduce speed limits on country lanes from the current 60 mph, and new powers for local authorities to designate quiet lanes where residents, walkers, cyclists and horse riders have legal priority over motorists.

Ms Brinton had earlier introduced a 10 minute rule bill, the *Country Lanes and Villages Bill 1998-99*.²⁵ This would have given the secretary of state the power to reduce the speed limits in rural areas and to allow local authorities to designate certain roads as quiet lanes where pedestrians, cyclists and horse riders would have priority and the speed limit would be 20 mph. It also made provision to reduce the national speed limit for certain rural roads.

In the road safety white paper, the government rejected general nationwide cuts in speed limits. It believed that, in general, the problem was that drivers exceeded the current speed limit rather than that the limit itself was necessarily too high. As a result it is devolving the decision making to local authorities. In urban areas, it is encouraging local authorities to introduce carefully chosen 20 mph zones and limits, in particular around schools and in residential areas where children are active. The government agreed that lower speed limits would be appropriate on some rural roads: it supported the proposal that 30 mph should be the norm through villages and that on some rural single carriageway rural roads and country lanes, 60 mph is too fast.

It summarised its policy on "appropriate speeds" in the white paper:²⁶

APPROPRIATE VEHICLE SPEEDS

6.14 On roads where it is possible to drive faster, speed limits are intended to let drivers know the maximum safe speed in good conditions. Sensible limits should be appropriate both to the location and function of the road and thus the safety of all people who use it - pedestrians, cyclists, horse riders, as well as motorists. Badly set or inappropriate limits, on the other hand, are often ignored and make drivers less willing to comply with the system generally.

²⁴ EDM 462 1999/2000

²⁵ Bill 99 of 1998/99, speech by Helen Brinton, HC Deb 12 May 1999 cc 321-3

²⁶ DETR *Tomorrow's roads - safer for everyone*, March 2000, para 6.14-6.17

6.15 The 70 mph and 30 mph limits are well established and well understood and there is no case for a blanket change on safety or environmental grounds. The range of limits between those levels are less well understood, and often less consistently applied, and there is a case for greater flexibility for local authorities to introduce lower limits, particularly in urban areas and villages, where there are more substantial numbers of pedestrians and cyclists. There may also be situations where raising the limit may be appropriate if other safety criteria are satisfied, and existing limits are inappropriate.

6.16 We will revise our guidance to local authorities on the setting of local speed limits to achieve appropriate and consistent standards nationally to reflect, as far as possible, the needs of all road users on different classes of roads. The guidance will help authorities to take sensible measures, including lower speed limits where necessary, to achieve safer vehicle speeds.

6.17 We will also provide better information to help drivers choose appropriate speeds, including:

- more effective speed limit signing;
- speed activated signs at hazards; and
- additional signing for speed cameras.

We will draw on the experience of innovative local authorities like Suffolk and Norfolk when developing new speed management policies.

HIGH SPEED ROADS

6.18 On motorways and dual carriageways the safety record is significantly better than on other types of road. The main improvements here will come from better compliance with existing speed limits. We will be using cameras and other targeted enforcement activity to encourage compliance and improve safety where:

- there is a 70 mph limit on road sections where we know traffic speeds are in excess of this, and there is a higher risk of injuries; and
- where lower limits are in force for reasons of road maintenance or traffic management.

On rural roads, the government concluded:

RURAL SINGLE CARRIAGEWAY ROADS

6.19 The national speed limit of 60 mph remains appropriate for many stretches of high quality rural roads. But it is clear that on some rural single carriageway roads and country lanes, vehicle speeds of 60 mph are too fast. At present the law does not distinguish between them.

6.20 Using the normal classification of roads (A, B, C and unclassified roads) is not appropriate for speed management purposes since those designations define routes rather than the nature or function of the road or its relative safety.

We need to make distinctions before a new national speed limit could be applied. However, a local targeted approach is possible. Some authorities using their existing powers have already attempted to treat the problem by setting 50 or 40 mph speed limits, and we will learn from their experience. On the other hand, we do not want to develop a complex system of different speed limits which would not only cause confusion, but would also involve substantial signing and marking with the associated costs and visual intrusion. This would be particularly

inappropriate on those roads where vehicle speeds are already at an appropriate level.

6.21 We are therefore proposing to develop a new hierarchy of roads defined by their function and quality, which would combine flexibility at local level with consistency nationally.

The County Surveyors' Association and the Institution of Highways and Transportation have been aiming towards this for some time and we would seek to encourage and build on this work.

6.22 Among the features resulting from a new hierarchy would be:

- in villages a normal speed limit of 30 mph; and
- lower speed limits on country lanes, where needed, to achieve appropriate vehicle speeds.

In both cases there are definition problems to address and further research will be needed. Usually these issues are best dealt with locally. Local authorities will need to consider the application of this new hierarchy to their roads as part of future local transport plans (LTP). This will take time and has both resource and procedural implications. We will also need to make use of the DETR *New Approach to Traffic Appraisal* (NATA) as a basis for developing an assessment framework for setting speed limits. This would take into account the economic, environmental and social effects as well as the primary objective of safety.

6.23 These changes will require corresponding changes to legislation to simplify the making of speed limit orders by local authorities, including some form of overall package, possibly within the LTP, rather than the individual road by road approach required at present.

6.24 At the same time we will continue to develop speed reduction measures through route treatment on rural roads using road markings, signing and road engineering, in addition to targeted interventions at speed-related accident sites.

It set out its views on urban speed limits as:

URBAN AREAS

6.25 The speed review concluded that a 30 mph limit should remain the norm in urban areas, but with improved compliance. To introduce lower speed limits over the whole urban area, as well as being too general, would have a negative environmental effect by increasing CO₂ emissions and reducing air quality. Although these environmental effects are linked to vehicle characteristics, driving style can have significant impacts on fuel consumption and gaseous emissions. Even at low speeds, smoother, more careful and less aggressive driving styles can do a great deal to improve the environment, and also save drivers money with no loss of their time.

6.26 However, there are residential urban areas where speed limits lower than 30 mph are appropriate for safety reasons. Last year the Government gave local authorities powers to make 20 mph limits without recourse to the Secretary of State. Traffic calming where necessary will make these lower speed limits self-enforcing. We support the home zone concept and are establishing pilot schemes to evaluate the role they can play in improving the quality of life in some residential areas. There are also strong reasons for reducing speed and parking in the vicinity of schools. As well as making the sort of improvements in safety and the environment which are needed, these developments would improve the

quality of life in our urban areas - very much in line with our policy for improved quality of urban living as exemplified in *Towards an Urban Renaissance*.

6.27 High streets with mixed traffic and diverse use present a unique combination of safety problems, and are among the least safe of urban roads. We are therefore planning further research to develop and test practical solutions to improve safety on such roads.

6.28 In urban areas, therefore, we would wish to encourage more local authorities to use the increased powers they now have to introduce 20 mph zones and speed limits in residential areas, where appropriate. This should be a priority, particularly in areas where there is a large number of children such as in the vicinity of schools (where parking restrictions can also play a part in enhancing safety).

6.29 It would be intended in the longer term to develop an urban hierarchy of roads to provide clearer guidance in this area, in a similar manner to that proposed for rural roads.

There is considerable support to rationalise speed limits. The AA undertook research into speed in 1999 and found that many drivers did not understand the current speed limits and often could not see their purpose. This led drivers to set limits for themselves. In order to counter the impression that speed limits were inconsistent, the right speed must be set for the right stretch of road.²⁷ There is support for the government's emphasis on local action, although there may be some disadvantages to the policy.²⁸ It is feared that it might lead to confusion amongst the public over what speed limit applies where. It also has to be recognised that changing speed limits can cost extra money for the accompanying traffic calming and new signing and it is not clear that there will be more money available from central government in the local transport plans.

Furthermore reduced speed limits may not be popular so a local council might hesitate to introduce them. A study of the effects that 20 mph zones may have on the activities of residents in a zone is being undertaken by the TRL. The full results will not be available for some years but preliminary results indicate that whilst residents are initially enthusiastic about the introduction of a 20 mph limit, they become less supportive if the limits are not observed.

5. Procedure for speed limits

Clause 3 of the Bill simplifies the procedure for alterations to speed limits that have been identified in the review prepared under clause 2. The clause allows speed limits identified in the review to be altered without having to follow the procedure set out in the *Road Traffic Regulation Act 1984* and its associated regulations, as they will have already

²⁷ AA Foundation for Road Safety Research *What limits speed?* July 1999

²⁸ See for example, *Local Transport Today* 16 March 2000 "Lower speeds spearhead drive for new road casualty cut ..." which quotes various authorities

been subject to consultation. An example given in the Explanatory Notes, estimates that moving a speed limit sign 100 yards from just after to just before a school would cost an authority about £5000 and take about 12 months to implement.

The government promised to simplify the process for making speed limit orders by local authorities but as this would need primary legislation, no date was given in the white paper.²⁹

The *Road Traffic Regulation Act 1984* section 81(a) lays down a speed limit of 30 mph on what is known as a restricted road. Section 81(b) allows a minister to make an affirmative order to increase or reduce the limit:

General speed limit for restricted roads

81.—(1) It shall not be lawful for a person to drive a motor vehicle on a restricted road at a speed exceeding 30 miles per hour.

(2) The Ministers acting jointly may by order made by statutory instrument and approved by a resolution of each House of Parliament increase or reduce the rate of speed fixed by subsection (1) above, either as originally enacted or as varied under this subsection.

Section 82 defines a road as a restricted road in England and Wales if it has street lighting provided by lamps not more than 200 yards apart. (The definition in Scotland is slightly different). It also allows the traffic authority for the road to make a traffic order to direct that a road is restricted or not.

Highway authorities have the power to alter or change speed limits, by order, on roads other than restricted roads. Section 84 of the *Road Traffic Regulation Act 1984*, as amended by the *Road Traffic Act 1991*, allows the imposition of variable speed limits indicated by traffic signs. The power rests with the secretary of state for trunk roads and the local authorities in respect of other roads. A local highway authority does not need the consent of the secretary of state to set speed limits of more than 30 mph:

Speed limits on road other than restricted roads

84: (1) An order made under this subsection as respects any road may prohibit-

- the driving of motor vehicles on that road at a speed exceeding that specified in the order,
- the driving of motor vehicles on that road at a speed exceeding that specified in the order during periods specified in the order, or
- the driving of motor vehicles on that road at a speed exceeding the speed for the time being indicated by traffic signs in accordance with the order.

(1A) An order made by virtue of subsection (1)(c) above may-

- make provision restricting the speeds that may be indicated by traffic signs or the periods during which the indications may be given, and

²⁹ DETR *Tomorrow's roads - safer for everyone*, March 2000, para 6.23 (reproduced above)

- provide for the indications to be given only in such circumstances as may be determined by or under the order;
- but any such order must comply with regulations made under subsection (1B) below, except where the Secretary of State authorises otherwise in a particular case,
- (1B) The Secretary of State may make regulations governing the provision which may be made by orders of local authorities under subsection (1)(c) above, and any such regulations may in particular--
- prescribe the circumstances in which speed limits may have effect by virtue of an order,
 - prescribe the speed limits which may be specified in an order, and
 - make transitional provision and different provision for different cases.
- (2) The power to make an order under subsection (1) is exercisable by the traffic authority, who shall before exercising it in any case give public notice of their intention to do so.
- (3) While an order made by virtue of subsection (1)(a) above is in force respects a road, that road shall not be a restricted road for the purposes of section 81 of this Act (...)

The procedure to be adopted by local authorities under this section is set out in schedule 9 part III of the 1984 Act and the *Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996*.³⁰ Under the regulations, the local authority is required to consult parties likely to be affected, to advertise the proposal in specified places and provide a general opportunity for objections to be submitted and to give such objections due consideration, before an order is made.

Thus local traffic authorities are free to change the limits if they feel that they are inappropriate for some of the roads which they cover. The DETR and Scottish Executive issued advice on setting local speed limits. The existing guidelines are set out in circular 1/93 issued by the then department of transport in 1993 and in Scotland SOID circular 1/93. They explain what to take into account when deciding the speed limit appropriate for a road. The circulars also advise authorities to monitor vehicle speeds where they have changed limits and advise them on measures to bring speeds in line with the new limit if they are too high. According to the government's white paper, revised guidance on setting local limits will be issued in the next two to three years.³¹

Until 1999 (when local authorities were able to introduce 20 mph limits without prior consent³²) all proposals made by local authorities for speed limits below 30 mph had to be approved by the secretary of state. This is still the case for any speeds other than 20 mph.

³⁰ SI 1996/2489

³¹ DETR *Tomorrow's roads - safer for everyone*, March 2000, para 6.16 (reproduced above)

³² The *Road Traffic Regulation Act 1984 (Amendment) Order 1999* SI 1999/1608. The order was discussed in the House of Commons 6th standing committee on delegated legislation on 21 April 1999 and by the House of Lords joint committee on statutory instruments on 20 April 1999. Traffic Advisory Leaflet 9/99 *20 mph speed limits and zones* provides advice.

6. Scotland and Wales

Following devolution, responsibility for speed limits on motorways and trunk roads in Scotland and Wales passed respectively to Scottish ministers in the devolved administration and to the Welsh Assembly. This included in each country the power to approve any speed limit on a local road which requires consent (e.g. some speed limits below 30 mph). The primary legislation on speed limits remained unchanged. The Westminster Parliament remains responsible for setting vehicle and national speed limits although there is a requirement to consult the Welsh Assembly before any change could be made to the 30 mph urban limit. In practise the DETR would consult the devolved executives, and road user organisations, before making any changes to these limits.

If the local traffic authority has not imposed its own limit on a road a national speed limit applies. The national 30 mph speed limit is normally associated with urban areas and applies to all roads in England and Wales with street lighting and in Scotland to all class C and unclassified roads with street lighting.

III Mobile phones

Clause 4 and the schedule to the Bill ban the use of hand-held telephones by drivers. James Gray considers that the combination of reduced physical control of a vehicle (while holding the telephone) and loss of concentration on driving (while having a conversation) is seen as posing a sufficiently serious risk to road safety as to justify the creation of a new offence. The clause would create a new offence in the *Road Traffic Act 1988*, punishable by a level three fine, an obligatory three-point endorsement and a disqualification in more serious cases.

The clause is modelled on a provision used in the Isle of Man.³³

1. The legal position

It is not illegal to use a mobile phone while driving, but the Highway Code says you should not do so. The wording in the most recent edition (1999) is:

³³ The *Road Vehicles (Maintenance and Use) (Amendment) Regulations 2000*, SD 178/00

127. You **MUST** exercise proper control of your vehicle at all times. Never use a hand held mobile phone or microphone when driving. Using hands free equipment is also likely to distract your attention from the road. It is far safer not to use any telephone when you are driving - find a safe place to stop first.

This does not mean it is an offence to drive using a telephone but that if there were an accident the fact that you were using the phone at the time would be taken into account. The Highway Code is laid before Parliament and therefore is issued with its authority. The *Road Traffic Act 1988* section 38 states:

A failure on the part of a person to observe any provision of the Highway Code shall not of itself render that person liable to criminal proceedings of any kind, but any such failure may in any proceedings (whether civil or criminal ...) be relied upon by any party in the proceedings as tending to establish or negative any liability which is in question in those proceedings.

2. Government policy

The government stopped short of banning car phones when it revised the Highway Code in 1998-99. Its view was that the police can and do successfully prosecute the offences of dangerous driving, careless driving or failing to exercise proper control of a vehicle that may arise from the use of a mobile phone while driving.³⁴ This view was reiterated in the safety white paper, *Tomorrow's roads - safer for everyone*, published in March 2000 although the government did say that if drivers did not stop using their phones when driving, it would review the case for taking specific legislation.³⁵

The government is also consulting on a review, led by the Home Office, of penalties for road traffic offences. It is proposed that the maximum penalty for careless driving should be increased from level 4 to level 5 (£2,5000 to £5,000).³⁶ This could have implications for those mobile phone users who are convicted of careless driving.

The government's position was summarised by Baroness Hayman on 15 July 1998:

Baroness Hayman: Existing road traffic legislation places the responsibility on drivers to have proper control of their vehicles at all times. Any motorist who fails to do so, for whatever reason, is liable to prosecution.

Drivers may be charged with failing to exercise proper control of a vehicle, or either careless and inconsiderate driving or dangerous driving, if using a mobile

³⁴ See, for example PQ HC Deb 13 July 1998 c 8W

³⁵ DETR *Tomorrow's roads - safer for everyone*, March 2000 p 31

³⁶ Home Office et al *Road traffic penalties: a consultation paper*, December 2000

phone causes them to drive in such a manner. The Association of Chief Police Officers considers that existing legislation is sufficient for the police to deal with cases arising from the use of a mobile phone while driving.

A review of the evidence currently available about the use of mobile phones while driving indicates that there is even an association between hands-free telephone use and increased accident risk. The publicity campaign I launched on 16 March aims to educate drivers about the problems and dangers of using any type of mobile phone while on the move.³⁷

Lord Davies of Oldham introduced the *Road Traffic (Use of Mobile Telephones) Bill* on 6 May 1999 to make it an offence to drive while using a hand-held mobile telephone. Lord Carter, for the government, responded to the second reading debate as follows:³⁸

... My noble friend has, with this Bill, suggested that the next logical step is to introduce specific legislation to criminalise the use of a hand-held mobile phone while driving. I have heard the arguments that we should penalise drivers who fail to heed the messages that we send and who put the safety of themselves and the safety of others at risk through improper and unsafe use of their mobile phones.

I agree that the police should have the power to penalise those people who ignore the safety risks of using mobile phones--hands-held or hands-free--and who drive without proper control of their vehicle as a result. However, the police have powers available to them under existing legislation. Possible offences and the penalties available upon conviction include: failing to have proper control of the vehicle, which has a maximum fine of £2,500; and careless and inconsiderate driving, which has a maximum fine of £2,500, three to nine penalty points and discretionary disqualification. Even the offence of dangerous driving can be used if using a mobile phone causes such driver behaviour. It carries a maximum penalty of two years' imprisonment, an unlimited fine and a minimum one-year disqualification and extended retest.

We know that offenders are being prosecuted by the police under these powers or being offered fixed penalty tickets. We expect the police to continue doing that, just as they would prosecute any offence in which drivers are not in control of their vehicles. The police have available to them--and use--the existing powers to prosecute not just people who drive unsafely while using hand-held mobile phones, but for any sort of activity that causes distraction and results in drivers not having proper control of their vehicles. This can include tuning radios, eating or arguing with passengers--the sorts of distractions that are mentioned in the Highway Code--or other types of distraction. Research cannot tell us the level at which any of these or similar activities causes enough distraction to cause an

³⁷ PQ HL Deb 15 July 1998 WA 30

³⁸ HL Deb 9 July 1999 cc 1167-71

accident, and that is why it is better to have a blanket power to tackle all of them, rather than singling out one type of activity for special legislation.

The noble Lord, Lord Brabazon, asked about the reaction of the Association of Chief Police Officers. According to its brief, which I will send to the noble Lord, ACPO considers the existing legislation to be sufficient to deal with cases that allege driving offences arising from the use of a mobile telephone. The police believe that specific legislation for mobile phones could weaken their ability to prosecute similar offences such as eating while driving (...)

We believe that the existing powers are adequate at this stage - and so do the police. Our campaign about the dangers of using hand-held phones must be given a chance to persuade drivers about the proper use of mobile phones. Although we do not support this Bill, road safety will continue to be one of our highest priorities. We have not closed our minds to the option of further legislation, but, as I have said, precise drafting may prove difficult. If drivers fail to take notice of the dangers of using mobile phones in cars and fail to behave responsibly - as all drivers are required to do - we shall certainly review the case for specific legislation.

3. Research

a. TRL

In 1997 the TRL published a review of the evidence then available on the road safety implications of using mobile phones while driving.³⁹ It looked at various research projects in different countries. It had been commissioned by the DETR following the publication in February 1997 of an article about Canadian research.⁴⁰

The TRL report concluded that the use of hand-held mobile phones while driving was widely regarded as unsafe. Most safety researchers regarded this as so self evident that there had been few specific studies. Hands free phones received the greatest attention and the debate in the research community centred on the extent to which hands-free conversation impacts on driving performance. Studies suggested that the distraction effect of phones reduced as they were made easier to use. However, the distraction caused by the mental effort of telephone conversation was present, even with advanced devices.

Manual dialling and intense telephone conversations have been shown to cause considerable distraction and it is thought that this may impact on road safety. Although the evidence was largely circumstantial, it all pointed in the same direction - that there

³⁹ Stevens, A and Paulo, DAO *The use of mobile phones while driving: a review* TRL Report 318, November 1997

⁴⁰ *New England Journal of Medicine* 13 February 1997

was an association between telephone use and increased accident risk. Furthermore there was evidence that phone conversations were more stressful than equivalent conversations with passengers.

b. RoSPA

Research from the Royal Society for the Prevention of Accidents in 1999 indicated that using a mobile phone while driving greatly increased the chance of having an accident. The research was carried out using a driving simulator. The study, carried out by the psychology department at Aston university, showed that the danger existed whether the phone was hands-held or hands-free and whether the car was manual or automatic. It also confirmed that the danger remained in the minutes after a phone call had finished.⁴¹

c. IEGMP

The Independent Expert Group on Mobile Phones, under the chairmanship of Sir William Stewart, considered the possible health effects of mobile phones, base stations and transmitters and its report on *Mobile Phones and Health* published on 11 May 2000.⁴² It referred to the use of mobile phones and driving as follows:

Mobile phone use and motor vehicle accidents

5.262 As reviewed above, the available data suggest that mobile phone use can be a factor causing road traffic accidents, but they do not show greater risk in relation to hand-held as compared with hands-free phones nor whether mobile phones increase risk more than other causes of inattention such as the use of radios or conversations with passengers. The relationship of mobile phone use to the occurrence of accidents has major implications for public health policy, and it is therefore important to gain evidence on which to base this policy, especially on the comparative risks from hand-held and hands-free devices.

5.263 *We propose that further epidemiological studies should be undertaken to clarify the relation of mobile phone use to the risk of motor vehicle accidents, and in particular whether the risk differs between hand-held and hands-free phones, and whether the risk of hands-free use exceeds that of other forms of driver distraction, notably conversation with passengers.*

d. Other countries

It was reported in the House of Lords that the following countries had a specific law banning hand-held mobile phones while driving: Australia (some states), Brazil, Greece, Israel, Italy, Portugal and Spain.⁴³

⁴¹ RoSPA press notice 25 February 1999 "New research links mobile phones with road accidents"

⁴² Published on the IEGMP website

⁴³ PQ HL Deb 11 October 1999 WA 65

IV Seat belts

Clauses 5-7 amend the law with respect to the wearing of seat belts. Clause 5 removes the exemption on seat belt wearing which applies to those making frequent deliveries or collections, but retains it for drivers who travel only short distances between stops, such as postmen and milkmen. Delivery van drivers have been exempt since the introduction of compulsory seat belt legislation, but the wording of the exemption goes beyond the intended purpose of the legislation and enables drivers making relatively infrequent deliveries not to wear seat belts. This has led to enforcement problems for the police.

The government support this clause. The TRL estimates that it would save around 20 lives and 270 serious injuries a year.

Clause 6 raises the fine for an offence in respect of a child not wearing a restraint in the rear seat of a car from level 1 (currently £200) to level 2 (currently £500), to bring it into line with the penalty which applies to a similar offence relating to a child in the front seat.

Clause 7 rectifies an omission that was made when the *Road Traffic Act 1988* was passed, by updating a reference to the power to make payments for medical examinations in relation to exemptions from seat belt wearing. The *Transport Act 1972* section 70 (1) allows the secretary of state to make payments for the medical examination of certain applicants.

1. Legislation

The general rules governing the wearing of seat belts are:

- when travelling in the front seat of any vehicle, an adult must wear a seat belt if one is available;
- when travelling in the back seat of a car an adult must wear a seat belt if it is available;
- no child may be carried unrestrained in the front seat of any vehicle;
- no child may be carried unrestrained in the rear seat of a car if there is an appropriate restraint available anywhere in the car.

The provisions on the wearing of seat belts by adults were initially in the *Transport Act 1981* section 27. The present legislation is the *Road Traffic Act 1988* section 14. The provisions were essentially enabling ones and allowed the secretary of state for transport "to make regulations requiring, subject to such exceptions as may be prescribed, persons who are driving or riding in motor vehicles on a road to wear seat belts of such description as may be prescribed." The Act itself made specific provision for certain exceptions from the requirement to wear seat belts for:

- drivers making local rounds of deliveries;
- drivers performing a manoeuvre including reversing;
- and for any person holding a valid certificate signed by a medical practitioner to the effect that it is inadvisable on medical grounds for him or her to wear a seat belt.

The current regulations are the *Motor Vehicles (Wearing of Seat Belts) Regulations 1993*, governing the wearing of seat belts by adults travelling in the front and rear of a car and by children in rear seats.⁴⁴ The regulations governing the wearing of seat belts worn by children travelling in the front of a car are the *Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) Regulations 1993*.⁴⁵ These had to be separate as they were made under section 15, not section 14, of the *Road Traffic Act 1988*.

2. Exemption for deliveries and collection

The *Road Traffic Act 1988* section 14 includes an exemption for "the users of vehicles constructed or adapted for the delivery of goods or mail to consumers or addresses, as the case may be, while engaged in making local rounds of deliveries." This is repeated almost word for word in paragraph 6 of the *Motor Vehicles (Wearing of Seat Belts) Regulations 1993*. The *Road Transport Bill 2000-01* would substitute in section 14 of the 1988 Act "the driver or passenger in a motor vehicle constructed or adapted for carrying a burden, while on a journey which does not exceed the prescribed distance and which is undertaken for the purpose of delivering or collecting anything."

There was no discussion on this particular exemption when the relevant clause of the *Transport Bill* was discussed in the House of Commons on 28 July 1981.

At the time the regulations were first made, the secretary of state set out the general principles that would be applied in making the regulations:⁴⁶

The secretary of state has come to the firm conclusion that Parliament did not expect him to extend the obligation on adults to wear seat belts beyond those classes of vehicles and seating positions where seat belts are generally already fitted. But equally he believes that within these classes Parliament would wish any exemption from the obligations to wear to be granted only in the most exceptional circumstances, particularly as the main ones, such as medical exemptions, have already been provided for in the Act itself. Otherwise the legislation's potential for saving casualties would be reduced, the law would not

⁴⁴ SI 1993 no 176

⁴⁵ SI 1993 no 31

⁴⁶ Department of Transport *Compulsory seat belt wearing for adults and children in cars, proposals by the secretary of state for transport presented to Parliament on 8 December 1981*, 1981

be regarded as fair as between one road used and another and the problems of the police in enforcing it would be increased.

The secretary of state proposed certain additional exemptions to those in the 1981 Act. In particular, the exemption for those engaged on local delivery rounds of goods or mail was to be extended to those collecting goods or mail as well as those delivering it. Certain public service drivers would be exempted, including the police when escorting civilians. Front seat passengers who were prison officers escorting prisoners in light vans and firemen putting on equipment while travelling to an emergency would also be excluded.

The consultation considered the various other categories of driver for whom it had been suggested that there should be specific exemptions e.g. on grounds of age, for short people, for drivers on short journeys, and for those who had conscientious objections. The secretary of state rejected all the suggestions.

The proposals went into some detail about the position on medical exemptions. It was made clear that the terms of the Act itself meant that a person, whatever his or her medical condition, would not be exempt unless and until he or she had obtained a medical certificate. The Act also left the decision on whether or not to issue a certificate to the judgement of the doctor concerned. There would be no prescribed list of medical conditions for which exemption must be given, and exemption would depend on the circumstances in each individual case.

The disabled were also to be covered by the certification procedure rather than have a separate exemption procedure.

The regulations came into effect on 31 January 1983. They contained some additional exemptions to those laid down in the Act itself and suggested in the secretary of state's proposals. The extra exemptions were the result of representations made by various interests and the main ones including:

- people instructing holders of provisional licences while the holder is performing a manoeuvre which includes reversing;
- the drivers of taxis and private hire vehicles;
- people conducting driving tests.

A full list of exemptions is given in paragraph 6 of the *Motor Vehicles (Wearing of Seat Belts) Regulations 1993*.

V Concessionary fares

Clause 8 extends the area within which mandatory travel concessions outside Greater London apply.

The legislation covering concessionary fares in England has been amended by the *Transport Act 2000*. The new rules will come into effect on 1 June 2001 outside London and 1 April 2001 in London.⁴⁷ Local authorities will have to introduce a half fare concession or better for pensioners and the disabled. Sections 145-59 of the Act give elderly people (defined in section 146 as "a person who has attained pensionable age") and disabled persons in their area the entitlement to a half-fare concession on local bus travel during the "relevant time" (defined as Saturdays, Sundays, bank holidays and between 9.30 a.m. and 11 p.m.).

The existing legislation is set out in part V of the *Transport Act 1985*. This allows the Passenger Transport Authorities and local authorities in England outside London to provide at their discretion travel for specifically defined categories of persons set out in section 93 of the Act. This includes men over the age of sixty-five years and women over the age of sixty years, children under 16, those between 16 and 18 in full time education, the blind and the disabled. Local authorities are free to decide whether or not to operate a scheme in their area. They may, if they chose, act jointly with other local authorities to establish a scheme throughout their area. Authorities that do operate a scheme retain the right to choose virtually any scheme and any level of concession but must observe a number of detailed rules.

The government's new proposals will provide a minimum concession but will not preclude local authorities from being more generous. A consultation paper, *Implementation of statutory minimum concessionary fares commitment*, was published on 20 December 1999. The administration remains largely as set out in the *Transport Act 1985* and will continue to be the responsibility of the local authorities. A local authority will still be able to provide an alternative scheme, as long as it also provides the statutory scheme. An elderly person can opt to use the discretionary scheme if, for them, it is more attractive.

At present local authorities are free to offer reciprocity if they so chose. For example the holder of a bus pass issued by one authority might be able to use it for travel in a neighbouring authority. This will continue under the *Transport Act 2000*. What arrangements are made will vary from area to area and will depend on the local authorities - as happens now. Although a local authority will have to offer the minimum standard in its own area, it will not have to offer the minimum standard beyond the

⁴⁷ *The Transport Act 2000 (commencement no 1 and transitional provisions) Order 2000* SI 2000 no 3229

border. Thus a local authority will be able to make a charge for using a pass in a neighbouring area.

The *Transport Act 2000* covers only England and Wales: separate proposals are being put forward for Scotland.⁴⁸

Clause 8 of the Bill would substitute "in the authority's area" in section 145 with "each of which is either in the authority's area or in the area of the neighbouring authority." This would broaden the scope of the mandatory travel concessions for the elderly and disabled people by allowing travel between points that are either in the issuing authority's area or any neighbouring authority. Under the provisions in the clause, both ends of the journey could be outside the issuing authority's area; this would cover, for example, a journey from a village in the issuing authority to a town in another authority and a further journey within the town to a hospital.

VI Selected reading

1. DETR *A new deal for transport: better for everyone*, July 1998
2. DETR *Tomorrow's roads - safer for everyone*, March 2000
3. DETR *New directions in speed management*, March 2000
4. Stephen Plowden and Mayer Hillman *Speed control and transport policy*, PSI 1996
5. PACTS *Taking action on speeding*, October 1996
6. Stevens, A and Paulo, DAO *The use of mobile phones while driving: a review*, TRL Report 318, November 1997
7. *Country Lanes and Villages Bill 1998-99*, speech by Helen Brinton MP, HC Deb 12 May 1999 cc 321-3
8. AA Foundation for Road Safety Research. *What limits speed?* July 1999
9. Second reading the *Road Traffic (Use of Mobile Telephones) Bill*, HL Deb 9 July 1999 cc 1167-71

⁴⁸ Concessionary fares are within the remit of the Scottish Parliament and the Welsh Assembly

10. "Emerging DETR speed policy highlights need for consistency to help 'confused' motorists" *Local Transport Today* 9 September 1999
11. "Lower speeds spearhead drive for new road casualty cut ..." *Local Transport Today* 16 March 2000
12. Home Office et al *Road traffic penalties: a consultation paper*, December 2000

Appendix: Goodes v East Sussex County Council

The Times reported the decision of the House of Lords in the case of *Goodes v East Sussex County Council* on 16 June 2000 as follows:

HOUSE OF LORDS. Published June 16, 2000. *Goodes v East Sussex County Council*. Before Lord Slynn of Hadley, Lord Steyn, Lord Hoffmann, Lord Clyde and Lord Hobhouse of Woodborough.

Mr Christopher Wilson-Smith, QC and Mr John Stevenson for the council; Mr John G. R. Ross and Mr Richard Carron for the plaintiff.

A highway authority had an absolute duty under section 41(1) of the *Highways Act 1980* to keep the fabric of the highway in a good state of repair so as to render it safe for ordinary traffic at all seasons of the year, but that did not include a duty to prevent or remove the formation or accumulation of ice and snow on the road. The **House of Lords** so held, allowing an appeal by **East Sussex County Council** from a decision of the Court of Appeal (Lord Justice Morritt and Lord Justice Hutchison, Lord Justice Aldous dissenting) (The Times January 7, 1999; (1999) RTR 210) allowing an appeal by the plaintiff, Geoffrey Graham Goodes, from a decision of Judge Hargrove, QC, who, sitting as a deputy Queen's Bench Division judge on January 28, 1998, had dismissed the plaintiff's action claiming damages for personal injuries caused by the council's alleged breach of statutory duty.

LORD HOFFMANN said that on a frosty November morning in 1991 Mr Goodes was driving his Ford Capri on the A267 at Wellbrook Hill near Mayfield in Sussex. As he moved out to overtake on a straight stretch of road, a rear wheel skidded on a patch of black ice. He lost control and the car crashed into the parapet of a bridge over the Wellbrook. He suffered dreadful injuries and now was almost entirely paralysed. He claimed damages against the council on the ground that it was in breach of its statutory duty under section 41(1) of the 1980 Act to "maintain the highway". He did not complain that there was anything wrong with the road surface. In freezing weather black ice could form on the best laid surfaces. But he said that the council should have prevented the formation of the ice by spreading salt and grit on the road before dawn.

Although the council denied that it had a statutory duty to keep the roads free of ice, it did in fact make considerable efforts to do so. The highway superintendent received weather forecasts from the Southampton Meteorological Office and decided whether and when to send out the council's fleet of gritting lorries. Each lorry had a route to cover. The council followed a code of good practice issued by the Association of County Councils and three other local authority associations which said that the salting should be completed before the morning rush hour started at 7.30am. In the present case there had been a forecast of freezing conditions in the early hours and the lorries had been despatched at 5.30am. Unfortunately, by the time of the accident the lorry covering the A267 had not yet got to Wellbrook Hill.

But the majority of the Court of Appeal decided, on the assumption that the statute imposed a duty to keep the road free of ice, that the council was nevertheless in breach of duty. The gritting should have been completed before the time when, according to the forecast, ice was likely to form.

There was a partial definition of "maintain" in section 329(1) of the 1980 Act. It provided that "maintenance" included repair, and "maintain" and "maintainable" were to be construed accordingly. The 1980 Act was a consolidation Act and section 41(1) and the accompanying definition reproduced identical provisions which had first appeared as sections 44(1) and 295(1) of the *Highways Act 1959*. There was nothing to suggest that any change of meaning was intended. The 1959 Act was also a consolidation Act but there was no exact antecedent of section 44(1) and the definition. Mr Ross argued that if maintenance "included" repair, it must also include something else, thus the concept must be wider than merely repairing the fabric of the highway, and, as a matter of ordinary language "maintenance" was capable of including salting and gritting. That argument was attractive and in *Haydon v Kent County Council* ((1978) QB 343) it was accepted in principle by the majority of the Court of Appeal. It was however rejected by Lord Denning, Master of the Rolls, who in a lucid exposition explained why, notwithstanding the definition, the liability to "maintain the highway" was concerned only with keeping the fabric in repair. The majority opinion was followed by the Court of Appeal in *Cross v Kirklees Metropolitan Borough Council* ((1998) 1 All ER 564) and in the present case.

However, Lord Hoffmann said he found the judgment of Lord Denning completely convincing. Although as a matter of ordinary speech the "maintenance of the highway" was capable of including salting and gritting and the removal of ice and snow, the context in which the words appeared might give them a narrower meaning. It seemed quite impossible in construing the 1959 Act to shut one's eyes to the fact that it was not a code which sprang fully formed from the legislative head but was built upon centuries of highway law. The provisions of the Act itself also invited reference to the earlier law and in some cases were unintelligible without them. At common law the "inhabitants of a parish" were under a duty to keep its highways in repair. The Act was thus using "maintenance" in the defined sense, as equivalent to the previous duty of the inhabitants at large, which was to keep the highways in repair. By a series of statutes commencing in the 16th century, parishes were authorised or required to organise their affairs by levying a highway rate and appointing a "surveyor of highways", who was an agent of the inhabitants at large, to whom the parish would entrust the duty of maintaining the highways and the necessary funds. During the 19th century however, the duty was in many cases transferred by highways and public health Acts, from the inhabitants to statutory highway authorities. That process was completed by section 38 of the 1959 Act, which abolished any remaining liability of the inhabitants at large and transferred the responsibility for maintaining all "highways maintainable at public expense" to the highway authorities constituted under the Act. If one read sections 38 and 44 together, the duty to maintain under section 44(1) of the 1959 Act was the same duty as that which common law or statute imposed before the Act upon the inhabitants at large, or by succession, the previous highway authorities.

The duty was not absolute in the sense that the road had to be perfect. But as Lord Diplock put it in *Burnside v Emerson* ((1968) 1 WLR 1490, 1497), the duty was to put the road in such a good state of repair as rendered it reasonably passable for the ordinary traffic of the neighbourhood at all seasons of the year without danger caused by its physical condition. But the highway authority had an absolute duty to maintain the highway in a state which satisfied that objective standard. It must levy whatever rate was necessary for the purpose. If the condition of the highway fell short of the statutory standard, the highway authority was in breach of the duty. It was no answer that it took all reasonable care or that its resources were insufficient. It seemed clear that before the 1959 Act the duty to maintain the highway did not include a duty to remove ice or snow. Still less was there a duty to prevent ice and snow from settling. The streets of early 19th century London were filthy. Mud, rubbish and horse and cattle manure as well as snow and ice in winter often made them dangerous and unpleasant. But the highway surveyors of the London parishes were under no duty to clean the streets or take other steps to remove dirt, snow or ice. Readers of Dickens or Mayhew would be aware that gangs of small boys made a precarious living off tips by sweeping crossings to clear a passage for pedestrians to cross the road. The *Metropolis Management Act 1855* constituted the vestries or boards of works of the London parishes as highway authorities and transferred to them the powers and duties of the parish highway surveyors. But the special provision made for keeping the highway free of dirt, ice and snow showed that the general duty to maintain them was regarded as confined to keeping the fabric in repair. If the previous duty to maintain did not include a duty to remove snow or ice, the duty under section 44(1) of the 1959 Act did not do so either.

Mr Ross maintained that nevertheless the law should move with the times, that public expectations changed and what might have been regarded as sufficient maintenance in Victorian times would not necessarily be regarded as sufficient now and that the use of vehicles moving at much higher speeds made ice on the roads a far greater hazard thus requiring a higher standard of maintenance. That again was an attractive argument, but his Lordship could not accept it. The duty in question was an absolute one and in that context there seemed an important difference between a duty to maintain the fabric of the road in good repair and a duty to prevent or remove the formation or accumulation of ice and snow. In the case of the duty to repair, the road either satisfied the objective test formulated by Lord Diplock in *Burnside v Emerson* or it did not. The requirements of that objective test might become more exacting with the passing of the years, but the court could examine the highway and decide whether it met the test or not.

There was obviously a case for saying that a person who suffered a catastrophic accident as a result of the presence of ice, which in modern conditions, the highway authority could reasonably have removed, should have a remedy. His Lordship expressed no opinion as to whether the facts of the present case fell within that description, but was quite satisfied that Parliament had not yet provided such a remedy. Lord Slynn and Lord Clyde delivered concurring speeches; Lord Steyn agreed with Lord Slynn and Lord Clyde; Lord Hobhouse agreed with Lord Hoffmann.