Chapter 1

# Definitions



9781526526601_txt_print.indb 1 14/11/2023 20:58

## 1.1 STATUTORY BASIS AND GENERAL DEFINITIONS

Road transport, the vast majority of the provisions of the Road Traffic Act 1988 and the Road Traffic Offenders Act 1988, remain reserved matters in terms of the Scotland Act 1998.[1] However, since 3 July 2012 and the coming into force of ss 20–22 of the Scotland Act 2012, the Scottish Government has had the power to alter drink driving limits and speed limits. It did so in relation to the former by lowering the drink drive limits with effect from 5 December 2014 with, it appears, positive impact.[2] Similarly, since 2 March 2015,[3] Scottish ministers have had powers to set drug driving

1 Scotland Act 1998 Sch 5 Part II E. See *Martin & Miller v HMA* [2010] UKSC 10, 2010 SCCR 401, the first true devolution appeal concerning the competence of the Scottish Parliament in introducing 12-month sentences for summary RTA cases involving offences triable either way. This was at odds with the penalty provisions in the Road Traffic Offenders Act 1988, Sch 2. Ultimately, after months of deliberation, and by a majority of three to two, the Court held that the amendments made were principally concerned with penalties and jurisdiction and as a result did not relate to a reserved matter.

2 See the Road Traffic Act 1988 (Prescribed Limit) (Scotland) Regulations 2014, and Chapters 4 and 5.

3 With the coming into force of the Crime and Courts Act 2013.

limits, limits which they specified with effect from 21 October 2019.[1] UK legislation continues to provide most of the statutory definitions and descriptions of terms used in road traffic law. (The only addition is reference to a potential 'Scottish national speed limit' in the Road Traffic Regulation Act 1984, which thus far remains an unrealised ambition).

Some of the most important of these definitions have been considered and interpreted by the courts. Section 185 of the Road Traffic Act 1988 provides a series of definitions of the term 'motor vehicle' and other expressions relating to vehicles. However, the Road Traffic Act 1991 replaces the term 'motor vehicle' with the phrase 'mechanically propelled vehicle' in a number of the principal sections of the 1988 Act.[2] Sections 186–191 of the 1988 Act give a number of supplementary and additional descriptions relating to such vehicles. Section 192 of the 1988 Act (as amended) sets out a number of general interpretations of words and phrases used throughout the Act, and s 194 provides a definition index. Section 11 (as amended) gives a number of particular interpretations relating to ss 3A–10, dealing with drink-related and drug-related offences; ss 85 and 86 are respectively an interpretation section and a definition index relative to Pt II of the Act (Construction and Use provisions); s 108 is the interpretation section for Pt III (Drivers' Licences); s 121 provides definitions for Pt IV (HGV Drivers' Licences and Passenger-carrying Vehicle Drivers' Licences); and ss 161 and 162 are respectively the interpretation section and definition index for Pt VI (Insurance). Further definition sections are found in ss 136–142 of the Road Traffic Regulation Act 1984 and reg 3 of the Road Vehicles (Construction and Use) Regulations 1986, with recent amendments to reflect increasing use of electric vehicles.[3] In addition, other words and phrases associated with driving offences have been the subject of judicial interpretation.

A description of some of the more commonly used terms now follows. However, while the definition of a particular term will generally suffice for most of the occasions and purposes of its use in different contexts throughout the legislation, there are certain exceptions to this general rule which are indicated as appropriate in the text. In particular, special significance has been additionally applied to some of these terms in relation to the drink-related and drug-related offences described in ss 3A–10 of the Road Traffic Act 1988, and this is discussed at 3.3.1 below.

1 Drug Driving (Specified Limits) (Scotland) Regulations 2019.
2 See 1.2.1 below.
3 SI 1986/1078 as amended.

## 1.2 MOTOR VEHICLES

### 1.2.1 General

A 'motor vehicle' was originally defined in terms of s 185(1) of the Road Traffic Act 1988 as 'a mechanically propelled vehicle intended or adapted for use on the roads'. In other words, the vehicle must be constructed for the purpose of being used on the roads, or alternatively be altered or adapted to make it suitable for that purpose.[1] Whether a vehicle has been 'adapted for use on the roads' will depend on the facts and circumstances in each case.[2] In addition, in terms of the statutory definition it is essential that the vehicle is so constructed that it can be mechanically propelled.

Section 4 of the Road Traffic Act 1991 replaced, in a number of important sections, the term 'motor vehicle' with the words 'mechanically propelled vehicle'. The sections of the Road Traffic Act 1988 so affected are ss 1–4 (although not s 5), s 10, s 163, s 168, s 170 and s 181; and also s 11(1) and s 23 of the Road Traffic Offenders Act 1988. The purpose of this amendment is specifically to exclude the qualification of vehicles being 'intended or adapted for use on the road' from these sections, and thus give them a wider application. For example, scrambler motor cycles, some kinds of stock cars, and certain types of building site vehicles could be described as not being intended or adapted for the purpose of being used on the roads, and would not therefore have been caught by the relevant sections as previously described. However, the term 'motor vehicle' is still extensively used in other parts of the legislation.

The words 'mechanically propelled vehicle' therefore now appear in two slightly different contexts in the legislation. Firstly, the words appear, by themselves, and without particular further definition, in the above sections of the Road Traffic Act 1988, as amended by the Road Traffic Act 1991; and secondly they continue to feature in the definition of the term 'motor vehicle' where it appears unaltered elsewhere.

In general, the words 'mechanically propelled vehicle' as used in either context should be interpreted in an ordinary as opposed to a strictly technical sense. Essentially, the phrase means precisely what it says. The definition may be applicable to a vehicle whether that vehicle is moving under its own power, whether it is capable of so moving, or whether it is temporarily out of order. However, if a vehicle is in such a condition that there are no reasonable prospects of it being mobile again, it is no

1 *French v Champkin* [1920] 1 KB 76.
2 *Taylor v Mead* [1961] 1 WLR 435, [1961] 1 All ER 626, a case where a commercial traveller adapted a private car to carry goods.

longer a mechanically propelled vehicle.[1] Equally, a vehicle will not qualify for inclusion in the statutory definition if it has reached 'such a state of mechanical or structural decrepitude' that it would offend against common sense to describe it as a mechanically propelled vehicle.[2]

In considering the test to be used in determining whether any particular vehicle falls within these statutory definitions, regard should principally be had to the construction of the vehicle rather than the use to which it is put. In *McEachran v Hurst*,[3] a broken-down moped was being pedalled along a road; it was held that the vehicle was still a moped rather than a cycle. A vehicle, therefore, which is plainly not constructed or adapted or intended for use on the roads will not normally fall within the statutory definition of a motor vehicle. The fact that a vehicle is temporarily broken down or has had its engine removed does not necessarily take the vehicle outwith the statutory definition; even where a vehicle has had its source of motor power removed it can still properly be described as being so constructed as to be mechanically propelled.[4] But if the evidence demonstrates that essential parts of the vehicle, such as the engine or gear box, have been permanently removed and are unlikely to be replaced, then such a vehicle may no longer qualify as a mechanically propelled vehicle. A mechanically propelled vehicle may be in such a dangerous condition that simply by driving it an offence is committed.[5]

A further matter that may also have to be taken into account in considering whether or not a particular vehicle falls within the statutory definition of a motor vehicle in terms of s 185(1) of the Road Traffic Act 1988 is to decide if it can be said, on a reasonable person's view of the facts and circumstances, that one of the vehicle's uses would be use on the roads, in the sense that some general use on the roads must be contemplated, irrespective of the intention of the manufacturer or the owner.[6] Vehicles which are not obviously road vehicles may, however, be found by the courts to be motor vehicles as defined, as illustrated by *Grant v McHale, a case concerning a 'mini-moto' or miniature motorcycle*.[7] There, a much more simplistic and rigid approach was adopted, concluding, under reference

1 *Maclean v Hall* 1962 SLT (Sh Ct) 30; *McNeill v Ritchie* 1967 SLT (Sh Ct) 68.
2 *Tudhope v Every* 1976 JC 42, 1977 SLT 2.
3 *McEachran v Hurst* [1978] RTR 462.
4 *Newberry v Simmonds* [1961] 2 QB 345, [1961] 2 WLR 675, [1961] 2 All ER 318.
5 RTA 1988, s 2A(2); *Carstairs v Hamilton* 1998 SLT 220, 1997 SCCR 311; see also Construction and Use Regulations generally.
6 *Burns v Currel* [1963] 2 QB 433; *Nichol v Heath* [1972] RTR 476; *O'Brien v Anderton* [1979] RTR 388; *Clark v Higson* 2004 SCCR 146.
7 *Grant v McHale* 2005 SCCR 559.

9781526526601_txt_print.indb 5 14/11/2023 20:58

to the wide Scottish statutory definition of 'road' (see 1.8.2 below), that the statutory test was satisfied as the vehicle was both mechanically propelled and capable of carrying an adult driver and that, as such, a reasonable person looking at the mini-moto would say that one of its uses would be a road use. Nevertheless, while this might be seen as bringing every mechanically propelled vehicle – including those used solely off the public roads and intended only for such use – within the statutory definition, the long line of reasonable person authorities, both north and south of the border was cited, and remain relevant.

In defining the term 'motor vehicle', s 185(1) draws specific attention to the special provision made for invalid carriages in terms of the Chronically Sick and Disabled Persons Act 1970.[1]

Section 185(1), together with s 136 of the Road Traffic Regulation Act 1984, provides further definitions of different types of vehicles.

### 1.2.2 Towed vehicles

A motor vehicle does not cease to be classified as such when it is towed by another vehicle.[2] In terms of s 185(1) of the Road Traffic Act 1988, a trailer simply means a vehicle drawn by a motor vehicle. Any kind of vehicle which is towed is liable to fall within the definition of a trailer; such a vehicle may therefore be at the same time both a motor vehicle and a trailer. Accordingly, the towed vehicle will also require to be covered by insurance and will be subject to the requirements of the Vehicles (Excise) Act 1971 and the relevant Construction and Use Regulations. This is because the vehicle, although being towed, is still 'used' on the road. Trailers are described at 1.5 below. The position of drivers of towed vehicles is referred to at 1.7.1 and 3.3.2 below.

### 1.2.3 General application

In terms of s 87 of the Road Traffic Act 1988, an appropriate licence is required before any person can drive a motor vehicle of any class on a road; and in terms of s 143 of the 1988 Act there is a requirement that the use of a motor vehicle on a road should be covered by a policy of insurance or other security. In both those instances the definition of a motor vehicle found in s 185 of the 1988 Act should be applied. In terms of s 1(1) of the Vehicle Excise and Registration Act 1994, an excise duty is charged in respect of every 'mechanically propelled vehicle' used or kept on a public road. A 'public road' in this context has the same meaning as in the Roads

1 See 1.6.8 below.
2 *Cobb v Whorton* [1971] RTR 392.

(Scotland) Act 1984.[1] The phrase 'mechanically propelled vehicle' is not defined in that Act; reference should be made to 1.2.1 above.

### 1.2.4 Exceptions

In terms of s 189(1) of the Road Traffic Act 1988, and s 140 of the Road Traffic Regulation Act 1984, certain vehicles such as grass-cutting machines which are controlled by a pedestrian and not capable of being used or adapted for any other purpose, and electrically assisted pedal cycles, which are quite strictly defined,[2] are not to be considered as motor vehicles. However, given the potentially wide interpretation of motor vehicle as discussed above, it is suggested that privately owned grass-mower with a seat for the driver which are used on a verge forming part of the road could potentially be found to be a motor vehicle.

A cycle is taken to mean a bicycle, tricycle or a cycle having four or more wheels, and is similarly not to be regarded as a motor vehicle;[3] neither, as touched upon above, is an electrically assisted pedal cycle of such a class as is prescribed by regulations. Offences connected with the riding of cycles on the roadway are found in ss 24, 26; and ss 28–32 of the 1988 Act; reference should be made to 2.7, 2.18, 3.18 and 7.2.4 below. A hovercraft is a motor vehicle, whether or not it is adapted or intended for use on the road,[4] but it is not to be regarded as a vehicle of any of the classes as defined in s 185 of the 1988 Act.

Within these general guidelines the question of whether any vehicle does or does not come within the statutory definition of a motor vehicle will depend on the facts and circumstances of each case. In addition to the statutory definition of a motor vehicle, there are numerous regulations governing the construction and use of all kinds of such vehicles. The principal regulations in this respect are the Road Vehicles (Construction and Use) Regulations 1986.[5]

## 1.3 MOTOR CARS

A 'motor car' is defined in terms of s 185(1) of the Road Traffic Act 1988 as –

> 'a mechanically propelled vehicle, not being a motor cycle or an invalid carriage, which is constructed itself to carry a load or passengers and the weight of which unladen –

1 Section 62: see 1.8 and 8.15.2 below.
2 See Electrically Assisted Pedal Cycles Regulations 1983 (SI 1983/1168).
3 RTA 1988, s 192(1); 1.6.7 below.
4 RTA 1988, s 188.
5 Road Vehicles (Construction and Use) Regulations 1986 (SI 1986/1078).

(a) if it is constructed solely for the carriage of passengers and their effects, is adapted to carry not more than seven passengers exclusive of the driver, and is fitted with tyres of such type as may be specified in regulations made by the Secretary of State, does not exceed 3,050 kilograms,

(b) if it is constructed or adapted for the conveyance of goods or burden of any description, does not exceed 3,050 kilograms, or 3,500 kilograms if the vehicle carries a container or containers for holding for the purpose of its propulsion any fuel which is wholly gaseous at 17.5 degrees Celsius under a pressure of 1.013 bar or plant and materials for producing such fuel,

(c) does not exceed 2,540 kilograms in a case not falling within sub-paragraph (a) or (b) above.'

A practically identical definition is provided in s 136(2) of the Road Traffic Regulation Act 1984 while reg 3 of the Road Vehicles (Construction and Use) Regulations 1986[1] gives a simpler but similar definition. The significance of the phrase 'mechanically propelled' is discussed at 1.2.1 above.

## 1.4 GOODS VEHICLES

### 1.4.1 General

A 'goods vehicle', in the Road Traffic Act 1988, is a motor vehicle constructed or adapted for use for the carriage of goods, or a trailer so constructed or adapted.[2] In the Road Vehicles (Construction and Use) Regulations 1986,[3] the definition is 'a motor vehicle or trailer constructed or adapted for use for the carriage or haulage of goods or burden of any description'.

Whether a vehicle has been constructed for the carriage of goods will normally be self-evident. The question of whether a vehicle has been adapted for such use is a question of fact and degree in each case and is likely to depend chiefly on the nature of the use to which the vehicle is put in its altered state.[4]

1 Road Vehicles (Construction and Use) Regulations 1986 (SI 1986/1078).
2 RTA 1988, s 192(1).
3 Road Vehicles (Construction and Use) Regulations 1986 (SI 1986/1078), reg 3(2).
4 *Taylor v Mead* [1961] 1 WLR 435, 1 All ER 626; *Backer v Secretary of State for Environment* [1983] 1 WLR 1485, [1983] 2 All ER 1021.

9781526526601_txt_print.indb 8 14/11/2023 20:58

There is special provision for the licensing of drivers of large goods vehicles[1] and the licensing of operators of goods vehicles is described at 9.11 below.

### 1.4.2 Goods

The term 'goods' in the 1988 Act includes goods or burden of any description; and the phrase 'carriage of goods' includes the haulage of goods.[2] It is not necessary that the goods carried on the vehicle are for sale; the term can include such diverse matters as workmen's equipment and effluent.[3] However, if a vehicle is fitted with a crane, dynamo, welding plant or other special appliance or apparatus which is a permanent or essentially permanent fixture, the appliance or apparatus is not to be deemed to constitute a load or goods or burden of any description, but it to be deemed to form part of the vehicle.[4]

## 1.5 TRAILERS

A 'trailer', in the 1988 Act, is a vehicle drawn by a motor vehicle.[5] This definition is general and extremely wide and includes virtually anything on wheels which is towed or drawn by a motor vehicle. For example, a poultry shed being moved for sale on wheels drawn by a car will be classified as a trailer,[6] as will a wheeled roadman's hut used as an office and taken onto the road.[7]

In *Johnston v Cruickshank*,[8] a case under the Lighting Regulations, it was held that where a mechanically propelled vehicle was drawing a trailer, the vehicle doing the towing, and not the composite vehicle, was to be regarded as the motor vehicle in terms of the requirements of the regulations.

For the purpose of drivers' hours and records, a trailer is defined as any vehicle designed to be coupled to a motor vehicle or a tractor.[9]

1 See 9.12 below.
2 RTA 1988, s 192(1).
3 *Clarke v Cherry* [1953] 1 WLR 268, [1953] 1 All ER 267; *Sweetway Sanitary Cleaners v Bradley* [1962] 2 QB 108.
4 RTA 1988, s 186(3).
5 RTA 1988, s 185(1). RTA 1988, s 185(1).
6 *Garner v Burr* [1951] 1 KB 31.
7 *Horn v Dobson* 1933 JC 1.
8 *Johnston v Cruickshank* 1963 JC 5, 1962 SLT 409.
9 Regulation (EC) 561/2006 Art 4.

It is important to note that for the purposes of drivers' hours and records of work (the tachograph legislation) the total weight of a commercial vehicle is to be calculated on the composite weight of both the towing vehicle and the trailer. If this total weight exceeds the statutory minimum (currently fixed at 3.5 tonnes) then the vehicle will require to be fitted with a tachograph, and the driver will be subject to the regulations concerned with the maximum hours which it is permitted to work. Small commercial vehicles below 3.5 tonnes, currently exempt, may therefore fall under these requirements during any periods when a trailer takes the total weight including its load over the statutory minimum.[1]

A side-car attached to a motor cycle is not normally to be regarded as a trailer (see Road Traffic Act 1988 186(1), as well as reg 92 Road Vehicles (Construction and Use) Regulations 1986 for the correct attachment of a sidecar.

Regulations 83–93 of the same Regulations supply detailed provisions in respect of trailers and side-cars drawn by various kinds of vehicles, and the number of trailers that can be pulled at one time.

A semi-trailer is defined as a trailer which is constructed or adapted to form part of an articulated vehicle including a vehicle which is not itself a motor vehicle but which has some or all of its wheels driven by the drawing vehicle.[2]

Towed vehicles are described at 1.2.2 above.

## 1.6 VARIOUS VEHICLES

### 1.6.1 Introduction

Throughout the general legislation there are definitions provided of a variety of sorts of vehicles for different purposes. The principal relevance of these definitions is in licensing, weight limits, and construction and use regulations generally. A general description of some of the most commonly used definitions follows.

### 1.6.2 Articulated vehicles

In terms of s 108(1) of the Road Traffic Act 1988, dealing with licensing of drivers, an 'articulated goods vehicle' means 'a motor vehicle which is so constructed that a trailer designed to carry goods may by partial superimposition be attached to it in such manner as to cause a substantial

1 RTA 1988, s 108(1) – definition of 'permissible maximum weight'.
2 Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 3.

part of the weight of the trailer to be borne by the motor vehicle'. By virtue of the same section, an 'articulated goods vehicle combination' is defined as 'an articulated goods vehicle with a trailer so attached'. For the purposes of the Road Vehicles (Construction and Use) Regulations 1986,[1] the term defined is an 'articulated vehicle', which is 'a heavy motor car or motor car, not being an articulated bus, with a trailer so attached that part of the trailer is superimposed on the drawing vehicle and, when the trailer is uniformly loaded, not less than 20 per cent of the weight of its load is borne by the drawing vehicle'. An articulated goods vehicle, or an articulated vehicle is therefore regarded, when not divided, as two separate vehicles, namely the drawing vehicle (which is either a motor car or a heavy motor car (depending on the individual weight)), and the trailer. A vehicle which is so constructed that it can be divided into two parts both of which are vehicles and one of which is a motor vehicle shall (when not so divided) be treated for the purposes of the Traffic Acts and certain other pieces of legislation, as being a motor vehicle with the other part attached as a trailer, in terms of s 187 of the 1988 Act. There are also further provisions in that section on the definition of articulated passenger vehicles.

As indicated at 1.5 above, there are restrictions on the number of trailers that can be drawn by a vehicle and various conditions applicable to their use.

### 1.6.3 Heavy motor cars

A 'heavy motor car' for the purpose of the Road Traffic Act 1988 means 'a mechanically propelled vehicle, not being a motor car, which is constructed itself to carry a load or passengers and the weight of which unladen exceeds 2,540 kg';[2] an identical definition is provided in the Road Traffic Regulation Act 1984.[3] For the purposes of the Road Vehicles (Construction and Use) Regulations 1986, a heavy motor car is defined as 'a mechanically propelled vehicle, not being a locomotive, a motor tractor, or a motor car, which is constructed itself to carry a load or passengers and the weight of which unladen exceeds 2,540 kg'.[4] Heavy motor vehicles are accordingly the heaviest class of motor vehicle and neither the statute nor the regulations provide an upper limit on their unladen weight. However, other regulations restrict the laden and total weights of such vehicles.

1 Road Vehicles (Construction and Use) Regulations 1986 (SI 1986/1078), reg 3.
2 RTA 1988, s 185(1).
3 RTA 1988, s 136(3).
4 Road Vehicles (Construction and Use) Regulations 1986, reg 3(2).

The drawing unit of most articulated vehicles is therefore a heavy motor car, except where it does not exceed 2,540 kilograms, when it is simply a motor car.

### 1.6.4 Commercial vehicles

A 'heavy commercial vehicle' means any goods vehicle which has an operating weight exceeding 7.5 tonnes.[1]

Goods vehicles generally are described at 1.4.1 above, and the term 'goods' is described at 1.4.2 above.

A 'large goods vehicle' is defined, with some technical detail, in s 50 and Sch 5 of the Goods Vehicles (Licensing of Operators) Act 1995 for specific purposes of controlled and authorised use within the terms of that Act.

A 'medium-sized goods vehicle', for the purposes of the licensing of drivers, means a motor vehicle which is constructed or adapted to carry or to haul goods and is not adapted to carry more than nine persons inclusive of the driver and the permissible maximum weight of which exceeds 3.5 but not 7.5 tonnes, which can be inclusive of a trailer where the relevant maximum weight of the trailer does not exceed 750kg.[2]

A 'small vehicle', by virtue of the same section, is 'a motor vehicle (other than an invalid carriage, moped, or motor bicycle) which is constructed or adapted to carry more than nine persons inclusive of the driver and which has a maximum gross weight not exceeding 3.5 tonnes'. As indicated at 1.5 above, the permissible maximum weight of 3.5 tonnes is to be calculated by including the weight of any trailer with an unladen weight exceeding 1,020 kilograms and its contents drawn by such a vehicle at the relevant time. This is of particular importance in the drivers' hours of work and tachograph legislation, which comes into effect when a vehicle qualifies as a small goods vehicle. Accordingly, a goods vehicle which is under 3.5 tonnes in weight, and which is not therefore subject to drivers' hours and tachograph requirements, may exceed the minimum weight limit when a trailer in excess of 1,020 kilograms is added; if this happens then the vehicle must be fitted with a tachograph, and the driver and owner of the vehicle are subject to the drivers' hours and record of work legislation. 'Motor vehicle' is defined at 1.2.1 above. The licensing of large goods

1 RTRA 1984, s 138 and in s 20 of the RTA 1988 for the purposes of s 19 of that Act (prohibition of parking on verges, dangerous positions etc). See also 9.12.1 below.

2 RTA 1988, s 108, which also provides a number of definitions concerned with weight considerations relating to commercial vehicles.

vehicle drivers and the operators of goods vehicles is discussed in Pt 2 of Ch 9.

### 1.6.5 Passenger and public service vehicles

A passenger vehicle is defined for the purpose of the Construction and Use Regulations as 'a vehicle constructed solely for the carriage of passengers and their effects.'[1] Distinctions in the same Regulations, subject to numbers of seated passengers, are also drawn between 'bus' (more than eight seated passengers in addition to the driver); 'minibus' (more than eight but not more than 16 seated passengers in addition to the driver); and 'large bus' (more than 16 seated passengers in addition to the driver).

A public service vehicle is defined in s 1 of the Public Passenger Vehicles Act 1981 for the purpose of that Act as 'a motor vehicle (other than a tramcar) which – (a) being a vehicle adapted to carry more than eight passengers, is used for carrying passengers for hire or reward; or (b) being a vehicle not so adapted, is used for carrying passengers for hire or reward at separate fares in the course of a business of carrying passengers'. There are further qualifications of this definition within s 1, and the topic is more fully discussed at 9.2.1 below.

The term 'motor vehicle' is discussed at 1.2.1 above.

### 1.6.6 Motor cycles

A 'motor cycle' is defined within the 1988 Act as a 'mechanically propelled vehicle, not being an invalid carriage, with less than four wheels and the weight of which unladen does not exceed 410 kg'.[2] The definition of a motor cycle for these purposes includes a variety of vehicles, including three-wheelers, motor bicycles and mopeds, each of which is governed for various purposes by further legislation, including within the 1988 Act itself. For the definition of 'mechanically propelled vehicle', see 1.2.1 above.

Section 23 of the Road Traffic Act 1988 imposes restrictions on the carriage of persons on motor cycles. It is the driver, and not the passenger, who is guilty of any offence.

Regulation 102 of the Road Vehicles (Construction and Use) Regulations 1986 requires that footrests are fitted for any passenger. Helmets, or

1 Road Vehicles (Construction and Use) Regulations 1986 (SI 1986/1078), reg 3(2).

2 RTA 1988, s 185(1); Road Vehicles (Construction and Use) Regulations 1986 (SI 1986/1078), reg 3(2).

protective headgear, to be used by motor-cyclists are described in ss 16–18 of the Road Traffic Act 1988 and the associated regulations, being the Motor Cycle (Protective Helmets) Regulations 1998/1807 and the Motor Cycles (Eye Protectors) Regulations 1999.

### 1.6.7 Cycles

A 'cycle', for the purposes of the 1988 Act, is 'a bicycle, tricycle, or cycle having four or more wheels, not being in any case a motor vehicle'.[1]

The Secretary of State has power to make regulations as to the use on roads of cycles, their construction and equipment, and the conditions under which they may be so used.[2] Although made under previous legislation, the Pedal Cycles (Construction and Use) Regulations 1983/1176 remain in force and have been updated using the power contained in s 81 of the 1988 Act.[3]

Reference should also be made to the Electrically Assisted Pedal Cycles Regulations 1983 as amended by the Electrically Assisted Pedal Cycles (Amendment) Regulations 2015.[4] Offences concerned with the riding of cycles are found in ss 24 and 26; s 28 (as amended by s 7 of the Road Traffic Act 1991); and ss 29–32 of the Road Traffic Act 1988; reference should be made to 2.18, 3.18 and 7.2.4 below.

A uniformed police officer has the power to stop any person riding a cycle on a road.[5]

### 1.6.8 E-scooters and other 'powered transporters'

At section 1.2.1 above, when dealing with the definition of 'motor vehicles', reference was made to scrambler motorcycles, some stock cars, and certain types of building site vehicles, all of which are now undoubtedly caught by the modern definition of 'motor vehicle', being mechanically propelled. The modern, wide, definition, has the effect that many novel types of vehicle are also caught by the relevant road traffic legislation. The UK Government refers to these modern vehicles as 'powered transporters',[6] a term which does not appear in law. The most

1 RTA 1988, s 192.
2 RTA 1988, s 81.
3 Pedal Cycles (Construction and Use) Regulations 1983 (SI 1983/1176).
4 Electrically Assisted Pedal Cycles Regulations 1983 (SI 1983/1168) and Electrically Assisted Pedal Cycles (Amendment) Regulations 2015 (SI 2015/24).
5 RTA 1988, s 163(2).
6 https://www.gov.uk/government/publications/powered-transporters/information-sheet-guidance-on-powered-transporters.

(in)famous and ubiquitous of these is the e-scooter, though the powered unicycle and, indeed, the hoverboard are not unheard of. The Segway's time may have been and gone. There is no restriction on ownership of such novel vehicles, however they are subject to road traffic law as other motor vehicles. They are not legal, therefore, in pedestrianised areas and pavements, on cycle paths, or on roads without compliance with the full suite of road traffic law – most immediately possession of an appropriate driving licence (category Q) and insurance and compliance with all construction and use requirements.

Particularly attention is drawn to s 143 (no insurance) of the Road Traffic Act 1988 with its mandatory minimum six penalty points, and the use of an e-scooter on a road can result in 'totting up' disqualification or an outright revocation of licence by the DVLA for a new driver. While that has been seen on occasion in Scottish courts, experience suggests, however, that the use of these 'powered transporters' including e-scooters is not policed and enforced as thoroughly as it could, and should, be judging by the number of such vehicles to be seen on roads and pavements across Scotland.

This is emphasised by the significant consequences that can follow the misuse of such motor vehicles. A 39-year-old was sentenced to 14 months imprisonment in July 2023 for death by careless driving after he collided with an 88-year-old pedestrian whilst driving an electric unicycle at between 20-30 mph on a pavement in Luton. There were ten deaths in the UK involving e-scooters in 2021.[1]

There are UK government plans for a Transport Bill seeking to regulate the use of e-scooters on public roads, but a series of delays to this proposed legislation means that, at date of publication, there is no draft Bill. There are no express plans in Scotland for the regulation of e-scooters, though there has at least been a public campaign by the Police Service of Scotland highlighting the illegality of using such vehicles on a public road.[2]

### 1.6.9 Invalid carriages

An invalid carriage, for the purposes of the 1988 Act and the Road Vehicles (Construction and Use) Regulations 1986, is 'a mechanically propelled vehicle the weight of which unladen does not exceed 254 kg and which is specially designed and constructed, and not merely adapted, for the use of a person suffering from some physical defect or disability and is solely

1 https://www.thetimes.co.uk/article/electric-unicycle-rider-jailed-for-killing-88-year-old-pedestrian-bs8bkb99v.

2 https://www.scotland.police.uk/what-s-happening/news/2020/december/looking-to-purchase-an-e-scooter-this-christmas/.

used by such a person'.[1] Special provision for the use of invalid carriages, slightly differently defined, on footways is provided by s 20 of the Chronically Sick and Disabled Persons Act 1970;[2] and s 21 of the same Act makes provision for the issuing by local authorities of badges for display on motor vehicles used by disabled persons.[3] The Blue Badge scheme is UK wide but appeals from decisions by Scottish Local Authorities go to the Scottish Ministers.[4] Wrongful use of a disabled person's badge is an offence.[5] Aiding and abetting such an offence is specifically prohibited by s 119. Special parking provisions for the disabled are discussed at 7.9.1 below.

For the phrase 'mechanically propelled vehicle', see 1.2.1 above.

### 1.6.10 Breakdown and recovery vehicles

These are two distinct categories of vehicle. A recovery vehicle is described in the Vehicle Excise and Registration Act 1994, Sch 1 para 5 as being a vehicle which is constructed or permanently adapted primarily for any one or mor of the purposes of lifting, towing, and transporting a disabled vehicle. A break-down vehicle in reg 3 of the Goods Vehicles (Plating and Testing) Regulations 1988 is a motor vehicle on which is permanently mounted apparatus designed for raising one disabled vehicle partly from the ground and for drawing that vehicle when so raised, and which is not equipped to carry any load other than articles required for the operation of, or in connection with, that apparatus or for repairing disabled vehicles.[6]

### 1.6.11 Automated, or self-driving, vehicles

Automated vehicles are vehicles which are designed or adapted to be capable, in at least some circumstances or situations, of safely driving themselves.[7] The Secretary of State (not the Scottish ministers) must prepare and keep up to date a list of all such motor vehicles although, as at time of writing, no vehicles have yet been listed.

1 RTA 1988, s 185(1); Road Vehicles (Construction and Use) Regulations 1986 (SI 1986/1078), reg 3(2).
2 As amended by the RTA 1991, Sch 4 para 3.
3 See the Disabled Persons (Badges for Motor Vehicles) (Scotland) Regulations 2000 (SSI 2000/59).
4 Disabled Persons' Parking Badges (Scotland) Act 2014, s 6 and the Disabled Persons (Badges for Motor Vehicles) (Scotland) Regulations 2000/59.
5 RTRA 1984, s 117.
6 SI 1988/1478.
7 Automated and Electric Vehicles Act 2018, s 1

9781526526601_txt_print.indb 16 14/11/2023 20:58

The Automated and Electric Vehicles Act 2018 provides sections covering, inter alia, appropriate insurance for such vehicles and questions of liability which may be foreseen.

In terms of the Road Vehicles (Construction and Use) (Automated Vehicles) Order 2022,[1] It will not be a criminal offence, in certain circumstances, to see a television screen while 'driving' an automated vehicle.

### 1.6.12 General

It should be noted in considering the foregoing paragraphs that certain vehicle term definitions are provided for particular purposes such as construction and use regulations, licensing and so on. Care should therefore be taken in considering the context of any definition provided in the legislation. As indicated above,[2] there are a large number of further statutory definitions of various kinds of vehicles and features relating thereto in the definition sections of the principal Acts and Regulations.

## 1.7 DRIVERS: DRIVING

### 1.7.1 General

The courts in Scotland have generally held that the driver of a motor vehicle is someone who is either in the driving seat or in control of the steering wheel, and in addition has something to do with (although not necessarily complete control over) the propulsion of the vehicle. In *Ames v McLeod*,[3] a motorist steered his car (which had run out of petrol) down an incline by walking beside it with his hand on the steering wheel. In those circumstances he was held on appeal to be driving the vehicle at the material time. The Lord Justice-General (Clyde) indicated[4] that it was not essential for the purposes of determining whether a person was driving that it is established that the engine was running or that the accused should be sitting in the driving seat. The true test was whether the accused is 'in a substantial sense controlling the movement and direction of the car'; or, in other words, whether the extent of the accused's intervention with the movement and direction of the vehicle was sufficient to establish

1 SI 2022/470
2 At 1.1.
3 *Ames v McLeod* 1969 JC 1 (followed in *McArthur v Valentine* 1990 JC 146, 1990 SLT 732, 1989 SCCR 704).
4 At 3.

that he was driving. It should be noted, however, that in almost identical circumstances an opposite conclusion was reached in England.[1] *Ames v McLeod*[2] was followed in *Lockhart v Smith*;[3] in that case a boy who on instruction from the milkman released the handbrake of a milk float so that it rolled downhill, but who did not touch the steering wheel, was held not to be driving.

Motorbikes are perhaps different. Simply pushing and steering one might not obviously be driving. Sitting or being astride one as well as steering it might well be.

Actual movement of the vehicle is not essential. In *Hoy v McFadyen*[4] the appellant was convicted of disqualified driving after sitting in the driver's seat with the engine running. The car was on a hill and since the handbrake was defective the car had to be held in position using either the foot brake or the gears when the engine was off. There was slight movement of the car when he engaged the gears having been told to turn the engine off by police officers. Lord Sutherland indicated 'The correct test is to look at what the appellant was doing and not necessarily the result' as 'the question of movement of the car is not essential if the driver's activities have got beyond the stage of mere preparation but have got to the stage when there is active intervention on his part to prevent movement and direction'.[5] This approach has been followed in England.[6]

The person behind the steering wheel of a towed vehicle will in normal circumstances be regarded as driving the vehicle. In *Wallace v Major*[7] it was observed that such a person might not fall within the definition of a driver because he had no control over the propulsion of the vehicle.[8] However, although this case has not been overturned, in *McQuaid v Anderton*[9] a disqualified driver was held to be driving when steering a towed vehicle. There appears to be no reason why anyone behind the

1 *R v MacDonagh (sub nom MacDonald)* [1974] QB 448, [1974] RTR 372, [1974] 2 All ER 257.
2 *Ames v McLeod* 1969 JC1.
3 *Lockhart v Smith* 1979 SLT (Sh Ct) 52.
4 *Hoy v McFadyen 2000 SCCR 873*, followed more recently in *Halliday v PF Paisley* XJ5/09 Decision of 15 May 2009.
5 At p 877E-G.
6 *DPP v Alderton [2004] RTR 23* where the driver, with the handbrake on, was wheel spinning in his driveway to vent frustration following an argument with his wife.
7 *Wallace v Major* [1946] KB 473.
8 At 477 per LCJ Goddard.
9 *McQuaid v Anderton [1980] RTR 371* (followed in *Caise v Wright* [1981] RTR 49).

9781526526601_txt_print.indb 18 14/11/2023 20:58

steering wheel of a towed vehicle should not be regarded as driving for most of the purposes of the road traffic legislation.

Whether or not a person is in fact driving at the material time, or is to be regarded as 'the driver' of a vehicle for the purposes of a particular prosecution, will depend on the facts and circumstances of each case, in the context of the particular offence in question.

It should be noted that it is possible that more than one person can fall within the definition of being the driver of the vehicle at the same time.[1] For example, a learner driver and an instructor may well be regarded as both driving at the same time if in practice both have some measure of control over both the steering and the propulsion of the vehicle.[2]

In *HMA v Cooper*[3] – a case where a couple shared the driver's seat, she was sitting on his lap after he had asked if she 'wanted a go' – both were convicted of causing death by dangerous driving (the female accused tendered a guilty plea and gave evidence). The jury appeared to accept the Crown's invitation that a broader view of 'driving' meant that the male accused 'was and continued to be the default driver, allowing some freedom to Ms J under his directions but always ready, he thought, to take over if need be and certainly with the intention that that is how the arrangement should work'. The evidence included apparent efforts by both to operate the brakes and steering before the fatal collision.

Further, where a person acts as a steersman of a motor vehicle, the Road Traffic Act 1988, s 192(1) provides that he is to be included in the term 'driver' as well as any other person engaged in the driving of the vehicle. This provision is specifically excluded from applying to prosecutions under s 1 of the Act, however. Where a driver has been effectively prevented or dissuaded from driving his vehicle, he can no longer be regarded as driving.[4] In *Farrell v Stirling*,[5] a case involving careless driving under summary procedure, a diabetic experienced for the first time an attack of hypoglycaemia shortly before an accident, and the court there concluded that he could not be described as driving his vehicle at the material time. In *McLeod v Mathieson*,[6] however, this defence was not available to a driver who knew he suffered from such a condition. In recent years this has become an increasingly vexed issue in light of the

1 *Tyler v Whatmore* [1976] RTR 83.
2 *Langman v Valentine* [1952] 2 All ER 803.
3 2016 SCCR 352.
4 *Edkins v Knowles* [1973] QB 748 at 757, [1973] RTR 257.
5 *Farrell v Stirling* 1975 SLT (Sh Ct) 71.
6 *McLeod v Mathieson* 1993 SCCR 488.

9781526526601_txt_print.indb 19 14/11/2023 20:58

fatal bin lorry incident in Glasgow in 2014 and the subsequent failed bills of criminal letters, discussed below at 1.7.3.[1]

The question of whether a motorist was driving or not at any material time may be a relevant issue in many different situations other than those described above, such as where someone is called upon to produce documentation, or to comply with a direction given by a police officer.

Not infrequently the prosecution has to establish that an accused has been driving a vehicle in the absence of direct evidence by reference to the surrounding facts and circumstances.[2]

Further definition of the nature of driving in the context of the drink/driving legislation is found at 3.3.2 below.

### 1.7.2 Sleeping

Drivers losing control because of fatigue or falling asleep at the wheel has been the source of a number of prosecutions,[3] principally under the heading of dangerous driving in its various forms, though occasionally as careless driving, subject to the circumstances.

Shortly put, sleep will not amount to involuntary driving (see below), save perhaps in exceptional circumstances. The approach to such offences is succinctly summed up in *Alexander v Dunn*:[4]

> '**[3]** The sole question is whether the sheriff was entitled to convict the appellant of dangerous driving by reason of her falling asleep. The test for what constitutes dangerous driving is an objective one (*Allan v Patterson*). It is whether the driving falls far below the standard to be expected of a competent and careful driver and occurs in the face of obvious and material dangers which were or ought to have been observed, appreciated and guarded against (LJG (Emslie) at p.60). It is no defence for a driver to assert that he did not intend to drive in a manner which was dangerous or that he did not intend to fall asleep at the wheel.
>
> **[4]** The act of driving, which is deemed to be dangerous, still requires to be voluntary. Involuntary actions cannot form the basis for a conviction. Once a driver is asleep, his actions cannot be said to be voluntary, as he lacks consciousness. However, the act of falling asleep, in the absence of special circumstances, is a voluntary act and, when it occurs in the context of driving, will usually be regarded as dangerous. That is because drivers who fall asleep:

1 *Stewart v Payne* 2017 SCCR 56.
2 See eg, *Henderson v Hamilton* 1995 SCCR 413.
3 See eg, *Burke v PF Tain* [2016] SAC (Crim) 31; 2016 SCCR 585.
4 2016 JC 125; 2016 SLT 337; 2016 SCCR 305.

> "are always aware that they are feeling sleepy, … there is always a feeling of profound sleepiness and they reach a point where they are fighting sleep …"

Although that is a passage of testimony quoted from *R v Wilson* ([2010] EWCA Crim 991; [2011] 1. Cr. App. R. (S) 3,), it coincides with human experience (see *Attorney General's Reference No. 1 of 2009* at p.745 [2009] 2 Cr. App. R. (S.) 742.; *Kay v Butterworth (1945) 61 TLR 452*). It does not require formal proof. A jury are entitled to infer, from the fact that a driver falls asleep, that, prior to falling asleep, he or she was aware of doing so and ignored the obvious dangers in so doing.

**[5]** There may be special circumstances which make falling asleep involuntary. These include the onset of a medical condition, such as sleep apnoea, narcolepsy or a hypoglycaemic episode (e.g. *Farrell v Stirling 1975 SLT (Sh Ct)71; Macleod v Mathieson 1993 SCCR 488*). However, a driver who knows of his medical condition, and can foresee that he may fall asleep, will be precluded from relying on that condition. It is for an accused to put any special circumstances in issue, and thereafter for the Crown to establish beyond reasonable doubt that the act of driving was nevertheless voluntary because the special circumstance ought to have been foreseen (*Hill v Baxter*).'

### 1.7.3 Involuntary driving

As noted in the commentary to the SCCR report of *Alexander v Dunn*, supra, the Crown positively libelled that the act of falling asleep was dangerous. An alternative approach would have been simply to libel the driving as dangerous and leave it for the accused to plead that the driving was involuntary, which would be a complete defence to the charge.

Involuntary driving received considerable attention in the cases of *(1) John & Linda Stewart (2) Allan & Aileen Convey v William Payne*; *(1) Matthew & Jacqueline McQuade and (2) Yvonne Reilly v Henry Clarke*,[1] unsuccessful attempts to raise bills of criminal letters seeking private prosecutions following the Crown's decision not to prosecute either driver. Both had suffered blackouts at the wheel, but the view was taken by Crown Office that there was not sufficient evidence that it was foreseeable that either driver would lose consciousness.

The bills sought to prosecute both men for contraventions of ss 1, 1A and 2 of the Road Traffic Act 1988, or alternatively culpable and reckless driving. However, the Appeal Court, on the particular facts and circumstances of both cases, concluded that the Crown had not erred as a matter of law in either marking decision.

1 [2016] HCJAC 122; 2017 JC 155; 2017 SLT 159; 2017 SCCR 56.

As with *Anderson*, supra, the position was succinctly set out in the decision of the Court:

> '**The legal requirements of a charge of dangerous driving**
>
> [82] A person drives dangerously if: (a) the standard of his driving falls far below that which would be expected of a competent and careful driver; and (b) it would be obvious to a competent and careful driver that to drive in such a way would be dangerous. The test for dangerous driving is an objective one, directing attention to the quality of the driving at the time in question. Although the test is an objective one, in determining whether the driving was dangerous regard must be had to circumstances shown to have been within the knowledge of the individual driver (s.2A(3) of the 1988 Act).
>
> [83] A person who falls unconscious at the wheel is, on the face of it, no longer driving voluntarily. However, if the driver is aware that he has a medical condition liable to render him unconscious whilst driving, he may be precluded from relying on that condition as a basis for maintaining that his acts were involuntary. The driver would, however, need to know that he had such a condition. A driver who has been diagnosed with a condition rendering him liable to fall unconscious clearly has that knowledge. Thus a diabetic who knew his condition pre-disposed him to hypoglycaemic episodes rendering him unconscious without warning knew that to drive was to do so in the face of obvious and material danger. The driver in question had suffered such incidents on an increasing basis prior to the accident, including incidents whilst at the wheel (*R v Marison* [1997] RTR 457) --he thus knew that at the material time he was driving in a defective state. The Lord Advocate accepted, correctly, that the knowledge that one is in a defective state rendering it dangerous to drive, need not come from the diagnosis of a condition. Past experience and medical history of the driver might be sufficient to create in him the knowledge that to drive at any given time might be dangerous. Clearly the evidential obstacles in the way of establishing the latter may be greater than in relation to the former, but there is no reason why a driver's general medical history and experience might not be sufficient to create the necessary knowledge in the absence of a diagnosis.
>
> [84] In *Marison* the driving was said to begin at the start of the driver's journey on the day in question and to conclude with the collision. The critical question in any case such as this is the quality of the driving at the time of the collision. The Crown was thus correct to focus on the day in question in each case. In doing so it was not taking an over-narrow approach to the issue. In particular the Crown did not focus only on the state of health of each respondent on the day in question, or at the start of their journeys. It is clear that the Crown correctly considered that the state of knowledge of each respondent on the day in question had to be assessed in the context of all the information known to each of them, including their

> medical history and any inferences which might reasonably be drawn therefrom. Accordingly, we do not consider that the Crown made an error of law.'

While both cases, on their particular facts, did not merit prosecution, it may be anticipated that this area of law is likely to become more significant in light of the increasing number of unfit and elderly drivers on the roads. The cases also emphasise the need for a more proactive approach by drivers, medical professionals and the DVLA to the issue of medical fitness (see 8.1.4 and 8.1.5 below).

### 1.7.4 Attempting to drive

The question of whether a motorist is attempting to drive his vehicle is a question of fact. The phrase has its principal significance in offences under ss 4(1), 5(1) and 6 of the Road Traffic Act 1988, and is more fully described at 3.3.3 below.

## 1.8 ROAD

### 1.8.1 General

In the Road Traffic Act 1988 as originally framed, and in earlier legislation, the majority of road traffic offences occurred if the driving or other conduct complained of took place 'on a road'. The principal exceptions to this rule were the drink driving offence sections[1] where the offence occurred if it took place 'on a road or other public place'. Accordingly, two lines of authority developed, namely what was meant by 'a road', and what was to be understood by the phrase 'other public place'. The cases involving the latter normally involved drinking and driving charges; there were, and are, features common to both definitions.

By virtue of the terms of ss 1, 2 and 3 of the Road Traffic Act 1991, the qualification of the offence taking place 'on a road or other public place' is extended to cover ss 1, 2, 3 and 3A of the 1988 Act. Accordingly, most offences under ss 1–6 inclusive of the Road Traffic Act 1988 as amended occur if the driving or other conduct complained of takes place 'on a road or other public place'. Sections 3ZB, 3ZC and 3ZD are 'on a road' only. In the majority of the other sections of the legislation offences are established if the actions of the motorist take place simply 'on a road'.

The legislation therefore seeks to extend the ambit of the most serious driving offences beyond the public roadway, to other places to which the

1 Originally RTA 1988, ss 4, 5 and 6.

public resort, for example forestry roads. Provision for special motoring events and certain exemptions from prosecution are found in the Road Traffic Act 1988, s 13, and s 13A.[1] The Roads (Scotland) Act 1984 makes a number of provisions in respect of the use of roads and highways, a detailed discussion of which is outwith the scope of this book. However, in general terms the 1984 Act gives extensive powers to the roads authority (normally the local council or, in the case of special or trunk roads, the appropriate minister) to control works and excavations, and traffic[2] and to prevent obstruction and interference.[3] Reference should also be made to the New Road and Street Works Act 1991. The Road Traffic Act 1988, s 33 controls the use of footpaths and bridleways for motor vehicle trials; and s 34 prohibits the driving of motor vehicles elsewhere than on roads although s 34(3) allows driving within 15 yards of a road for the purpose of parking.

### 1.8.2 Roads

The statutory definition of a 'road' is found in the Roads (Scotland) Act 1984, s 151(1).[4] The definition as contained in the 1984 Act is:

> 'any way (other than a waterway) over which there is a right of passage (by whatever means) and whether subject to a toll or not and includes the road's verge, and any bridge (whether permanent or temporary) over which, or tunnel through which, the road passes; and any reference to a road includes a part thereof.'

To this definition must be added the further description of the term found in s 192(1) of the Road Traffic Act 1988 which provides: 'in relation to Scotland… any road within the meaning of the Roads (Scotland) Act 1984 and any other way to which the public has access, and includes bridges over which a road passes.'

These additional provisions are not intended to affect the exceptions contained in s 151(3) of the Roads (Scotland) Act 1984, which relate to certain public paths, footpaths and recreational grounds.

For convenience the entire collated statutory definition of 'a road' is as follows:

> 'a "road" means … (a) any way (other than a waterway) over which there is a public right of passage (by whatever means and whether subject to a toll or not) and includes the road's verge, and any bridge (whether

1 As introduced by the RTA 1991, s 5.
2 Roads (Scotland) Act 1984, Pt V.
3 R(S)A 1984, Pt VIII.
4 Which is incorporated into the RTA 1988 by s 192(2) of that Act.

> permanent or temporary) over which, or tunnel through which, the road passes; and any reference to a road includes a part thereof; … (and) … (b) .. any other way to which the public has access, and includes bridges over which a road passes.'

The definition of a 'road' has therefore gone through three historical stages. Prior to the Roads (Scotland) Act 1984, a number of cases described a road as essentially a highway or other road to which the public had access or had obtained access thereto without having to overcome a physical obstruction or in defiance of an express or implied prohibition.[1] This reflected the terms of s 121(1) of the Road Traffic Act 1930, which was common to both Scotland and England, and which provided a definition in effect as 'any highway and any other road to which the public has access'. The principal feature of the definition introduced by the Roads (Scotland) Act 1984 was that there should exist a public right of passage over the way in question. The effect of this was to diminish the significance of public access other than by right in any particular case. In *Young v Carmichael*[2] a driver was found on the lawn attached to a private apartment block, onto which he had driven from one of two car parks adjacent to the building. Access to the building was gained from a public road which passed through a gap in the fence surrounding the apartment block and its amenity grounds. The car parks were used by residents, their guests, tradesmen and police. There were signs at the entrance indicating that the car parks were private and for the use of residents only. In the Appeal Court it was held (a) that as the public had no right of access to the car park it was not a road, and (b) that as there was no evidence that members of the public had access to the car parks in the sense that they normally resorted to it and so might be expected to be there, the car park was not 'a public place'. The report also considers the history of the definition of the terms 'road' and 'other public place' to that date. *Young v Carmichael*[3] therefore concluded that cases decided under earlier legislation which in general terms defined a road as a 'highway or any other road to which the public has access' were of limited value.

However, the additional definition provided by the Road Traffic Act 1991, Sch 4 para 78, passed after the decision in *Young v Carmichael*, seeks to re-introduce the idea of public access into the definition of the term 'road'. Accordingly the case of *Young v Carmichael* is not the final word on this subject and cases decided before the 1984 Act remain of interest. See,

1 Eg *Harrison v Hill* 1932 JC 13; *Purves v Muir* 1948 JC 122, 1948 SLT 529; *Hogg v Nicholson* 1968 SLT 265.
2 *Young v Carmichael* 1993 SLT 167, 1991 SCCR 332.
3 *Young v Carmichael* 1993 SLT 167, 1991 SCCR 332.

9781526526601_txt_print.indb 25 14/11/2023 20:58

for example, *Yates v Murray*[1] which ultimately applied the test enunciated in *Harrison v Hill*. It is also worth noting that the suggestion that all roads should be seen as public unless there was evidence to the contrary was rejected. The onus remains on the Crown to establish the nature of the road in question.[2]

The importance of public access was emphasised in the unsuccessful Crown appeal in *Teale v Macleod*.[3] There, an existing but damaged road under repair, which was coned off and with signs directing the public to a temporary parallel road, was confirmed not to be a road in terms of the legislation.

A footway associated with a carriageway, or a footpath not so associated, are included in the definition of a road.[4] A lay-by or verge is also part of the road,[5] as is a parking area next to a place of public resort such as an inn, on the basis that it is a way over which there is a public right of passage.[6] The car deck of a ferry was held to be a road when connected to a ramp on the dock in *Dick v Walkingshaw*.[7] The court is entitled to understand that the M9 is a motorway and therefore a road by reference to the prefixed 'M'[8]

In *Adair v Davidson*[9] the drive to a private house was held to be a road, but this was doubted by Lord Guthrie in *Hogg v Nicholson*[10] at 268; see also *Carmichael v Wilson*.[11]

### 1.8.3 Other public places

The phrase 'other public place' means a place to which the public may resort by express or implied permission. The principles which apply are in some respects similar to the question of whether a road is public or not. For example, an isolated farmyard where there were few visitors or passers-by and where in general there would be little if any expectation that the public might be present is not a public place,[12] whereas a private road commonly walked by fishermen and hill walkers is a public place.[13]

1 *Yates v Murray* 2003 SCCR 727.
2 At para 21.
3 2008 SCCR 12.
4 Roads (Scotland) Act 1984, s 151(2).
5 Roads (Scotland) Act 1984, s 151(1); *MacNeill v Dunbar* 1965 SLT (Notes) 79.
6 *Beattie v Scott* 1991 SLT 873, 1990 SCCR 435.
7 *Dick v Walkingshaw* 1995 SLT 1254, 1995 SCCR 307.
8 *Donaldson v Valentine* 1996 SLT 643, 1996 SCCR 374.
9 *Adair v Davidson* 1934 JC 37, 1934 SLT 316.
10 *Hogg v Nicholson* 1968 SLT 265.
11 *Carmichael v Wilson* 1993 SLT 1066.
12 *Alston v O'Brien* 1992 SLT 856, 1992 SCCR 238.
13 *Thomson v MacPhail* 1992 SCCR 466.

9781526526601_txt_print.indb 26 14/11/2023 20:58

A field used as a car park at the Highland Show was held to be a public place,[1] as was a spare piece of ground used as an overflow parking area at a cattle mart.[2] The prosecution may have to prove the right to resort to a particular area.[3] In certain circumstances a dock road may be a public place.[4] A driveway from a public road to a hotel, even where the proprietors of the hotel reserved the right to exclude certain members of the public, may still be a public place;[5] similarly, a private camping and caravan site occupied by persons who had gained access through the permission of the site owners was held to be a public place even although other members of the public were effectively excluded from the site.[6] A car park attached to a public house may also be a public place as well as a road.[7] On the other hand, a private car park attached to an apartment block signposted as private was held not to be a public place[8] although in different circumstances a Sheriff's assessment that such a car park was public was upheld.[9]

A garage forecourt is a public place; in *Brown v Braid*[10] it was observed that the test was 'whether the forecourt was a place on which members of the public might be expected to be found and over which they might be expected to be passing, or over which they are in use to have access.' Reference should also be made on the question of whether the public has access to a particular place.[11]

### 1.8.4 Motorways

Driving on motorways is governed by the Motorways Traffic (Scotland) Regulations 1995.[12] The court is entitled to assume from its own knowledge that the M9 is a motorway, as indeed are all roads prefixed 'M'.[13]

1 *Paterson v Ogilvy* 1957 JC 42, 1957 SLT 354.
2 *McDonald v McEwen* 1953 SLT (Sh Ct) 26.
3 *Elkins v Cartlidge* [1974] 1 All ER 829; *Pugh v Knipe* [1972] RTR 286.
4 *Renwick v Scott* 1996 SLT 1164.
5 *Dunn v Keane* 1972 JC 39.
6 *DPP v Vivier* [1991] RTR 205.
7 *Vannet v Burns* 1999 SLT 340, 1998 SCCR 414.
8 *Young v Carmichael* 1993 SLT 167, 1991 SCCR 332; see 1.8.2 above.
9 *McPhee v Maguire* 2001 SCCR 715.
10 *Brown v Braid* 1985 SLT 37, 1984 SCCR 286, 1984 CO Circulars A/22.
11 *Rodger v Normand* 1995 SLT 411, 1994 SCCR 861; *Aird v Vannet* 1999 JC 205, 2000 SLT 435, 1999 SCCR 327; *Vannet v Burns 1*999 SLT 340, 1998 SCCR 414.
12 Motorways Traffic (Scotland) Regulations 1995 (SI 1995/2507).
13 *Donaldson v Valentine* 1996 SLT 643, 1996 SCCR 374.

9781526526601_txt_print.indb 27 14/11/2023 20:58

## 1.9 ACCIDENT

Whether or not an accident has occurred will depend on the facts and circumstances of each case. A satisfactory definition of the word is not easy to provide, having regard to the variety of circumstances under which what might be described as an 'accident' can occur. No definition of the term appears anywhere in the legislation, and the courts have not been anxious to provide a general or all-purpose definition of the word, preferring normally to draw conclusions from the circumstances of each case. It has been suggested that an appropriate test might be to consider whether an ordinary man who witnessed what happened would say that in all the circumstances there had been an accident. It is, however, clear that an accident can arise out of a deliberate act, and need not involve another vehicle. It is also clear that an impact does not have to take place before it can be said there has been an accident.[1]

The matter was considered by the Appeal Court in *Pryde v Brown*,[2] where two pedestrians walking on a main road were obliged to take evasive action when a vehicle came round a bend at speed on the wrong side of the road. In holding that this had been an 'accident', the Appeal Court said:

> 'We do not think that any precise definition of the word "accident" … can be formulated. We do not think that any of the tests adumbrated in the cases referred to are wholly satisfactory in every circumstance. We do not think that only unintended occurrences can be included in the word "accident", as the word may obviously include occurrences which may have been intended. We do not think it can be limited to untoward occurrences having an adverse physical result, because it is possible to visualise an "accident" having no adverse physical result at all. It seems to us to be more appropriate to proceed on the basis that it will depend on the circumstances of each case whether a happening can properly be described as an "accident" The test is one of common sense rather than conformity with a definition difficult to formulate and providing an exhaustive cover.'

The circumstances in which an accident can be said to have occurred are therefore wide and general. Incidents where a vehicle has been required to take avoiding action as a result of the conduct of another vehicle; where an obstruction or object, as opposed to another vehicle or person, has been struck; or where something has happened as a result of the way a vehicle is being driven completely outwith the awareness of the driver,

1 *Bremner v Westwater* 1994 SLT 707, 1993 SCCR 1023.
2 *Pryde v Brown* 1982 SLT 314, 1982 SCCR 26.

9781526526601_txt_print.indb 28 14/11/2023 20:58

may all be termed as accidents. Section 170 of the Road Traffic Act 1988[1] envisages that an accident has occurred if injury is caused to any other party or damage is caused to any other vehicle, to specified animals or to any property constructed on, fixed to, growing in or otherwise forming part of the land on which the road is situated or land adjacent thereto. The *de minimis* rule would seem to have very little relevance, if any, in the interpretation of the word.

In a more recent decision by the Sheriff Appeal Court, *McLaughlin v PF Perth*,[2] the court held that the meaning accident could not simply be an unintended occurrence and could not be limited to untoward occurrences having an adverse physical result. The court called for a common sense approach to the interpretation of the word 'accident'. The case involved the appellant, who felt he had been cut up by the complainer, subsequently speeding up, overtaking the complainer's vehicle, before then braking sharply in front of the complainer's car, causing the complainer to perform an emergency stop in order to (successfully) avoid a collision. In such circumstances, the Sheriff was entitled to hold that there had been an accident.

The question of whether or not an accident has taken place may be of particular importance inter alia in prosecutions under the breathalyser legislation;[3] in charges of failing to stop after an accident;[4] and in respect of prosecution restrictions in terms of s 2(1) of the Road Traffic Offenders Act 1988. The duty on a driver to stop after an accident is discussed at 7.6.3 below.

## 1.10 USING, CAUSING AND PERMITTING

### 1.10.1 General

Throughout the legislation there are a number of offences which are committed when an accused person uses a vehicle, or causes or permits a vehicle to be used, in a particular way. The terms 'use' or 'using', 'causing' and 'permitting' have always to be considered in the context in which they are employed; however, certain general observations may be made on these terms.

1 As amended by the RTA 1991, Sch 4 para 72.
2 [2019] SAC (Crim) 8.
3 RTA 1988, s 6(2).
4 RTA 1988, s 170.

### 1.10.2 Using

The most common offences involving use are those which contravene s 143 of the Road Traffic Act 1988 (compulsory insurance), s 87 of the same Act (licensing of drivers) or the use of vehicles in a manner contrary to many of the Road Vehicle (Construction and Use) Regulations 1986.[1] An offence involving 'use' as opposed to 'causing' or 'permitting' normally involves strict liability and the question of *mens rea* is irrelevant. The word has been interpreted in a wide sense and, for example, convictions for using a car without insurance are commonplace where the only use made of the vehicle is to park it on the street. Even if a vehicle is broken down and unable to move by its own power, it will be regarded as being used on the road for the purpose of s 143. 'Driving' involves the use of a vehicle.

A vehicle being towed will also be regarded as being used for all relevant purposes of the legislation.[2] A corporate entity may be guilty of an offence involving use of a vehicle, and because most of such offences carry absolute liability, the employer of a driver who drives or uses a vehicle which contravenes the construction and use regulations may well be guilty of an offence even although the employer had no direct or personal knowledge of the defect which caused the offence.[3] The word 'use' can also mean 'have the use of' and two people may therefore be using a vehicle at the same time.[4]

However, the nature of 'use' has been qualified in certain circumstances. In *Hamilton v Blair and Meechan*[5] it was held that an owner of a vehicle who had hired it out for an excursion to a third party (who was to supply the driver) was not 'using' the vehicle at the material time, nor was the hirer 'using' the vehicle at a time when she was not within the vehicle. In the latter instance, Lord Carmont[6] indicated that the hirer, although not using the vehicle, may have been causing or permitting its use. In *Valentine v MacBrayne Haulage Ltd*[7] (a first instance Sheriff Court case) it was held that where a statute penalised both using and causing as well as permitting use of a vehicle, the category of 'user' should be confined to the driver of the vehicle and his employer at the material time, and should not be extended further. The report usefully considers the principal authorities on the term 'using'. If the vehicle in question is the subject of a hire

1 Road Vehicle (Construction and Use) Regulations 1986 (SI 1986/1078).
2 *Cobb v Whorton* [1971] RTR 392.
3 *Swan v MacNab* 1977 JC 57, 1978 SLT 192, 1978 CO Circulars A/13.
4 *Dickson v Valentine* 1989 SLT 19, 1988 SCCR 325.
5 *Hamilton v Blair and Meechan* 1962 JC 31, 1962 SLT 69.
6 At 76.
7 *Valentine v MacBrayne Haulage Ltd* 1986 SCCR 692.

9781526526601_txt_print.indb 30 14/11/2023 20:58

agreement, then the person who is 'using' the vehicle at the material time is the hirer and not the hire firm.[1]

Whether a vehicle is being 'used' or not may depend upon the particular offence in question. Thus in *Tudhope v Every*[2] it was held that a vehicle which was immobile and parked on a road was being used in terms of s 143 of the Road Traffic Act 1972 (which required vehicles used on a road to be covered by insurance), but was not being used on a road in terms of s 44(1) of the same Act (which requires vehicles used on a road to be covered by an MOT certificate).

The reason for this differing treatment of the same word is that the meaning of the term 'use' contemplated in the two sections of the Act, and the nature of the prohibition involved in each case, is different. A parked car, even when immobile, may cause or be involved in an accident; therefore it must be insured. However, the MOT certificate is designed to cover other areas of use which an immobile vehicle could not perform, and accordingly such a vehicle is not being used for that purpose.

Nothing in the Road Traffic Acts authorises a person to use on a road a vehicle so constructed or used as to cause a nuisance, or affects the liability, under statute or common law, of the driver or owner so using such a vehicle.[3]

### 1.10.3 Causing or permitting

'Causing' and 'permitting' are two separate ideas. In practice their meanings may overlap. Corporate entities may be guilty of causing or permitting. The principal application of the terms is again in the Road Traffic Act 1988, s 87 (licensing of drivers) and s 143 (compulsory insurance) and in the Construction and Use Regulations.

The two words are used, normally together, in slightly different ways and contexts throughout the legislation, and consideration has to be given to the particular nature of the offence in each case. For general purposes, the term 'causing' involves some measure of direction or control by the accused towards or over a third party in a matter where the accused has the proper capacity to make such a direction or exercise such control. In other words, actual or constructive knowledge of the offence must be established, as well as some measure of participation in allowing the offence to take place, or failing to take reasonable steps to stop it

1 *Mackay Brothers & Co v Gibb* 1969 JC 26, 1969 SLT 216; *Farrell v Moggach* 1976 SLT (Sh Ct) 8.
2 *Tudhope v Every* 1976 JC 42, 1977 SLT 2.
3 Road Traffic (Consequential Provisions) Act 1988, s 7.

happening. The most common example of 'causing' in practice is where an employer instructs an employee to drive the employer's vehicle.

For an accused to be convicted of 'causing' a third party to commit an offence, the prosecution will normally have to establish both that the accused directed or controlled the substantive acts complained of, and that he was aware or should have been aware that those acts constituted an offence. In other words, actual or constructive knowledge of the offence must be established, as well as some measure of participation in allowing the offence to take place; a failing to take reasonable steps to stop it happening. This is notwithstanding that most of the offences in which the terms are used involve strict liability.

In *Smith of Maddiston Ltd v Macnab*,[1] a limited company was charged with using, or causing or permitting to be used, a vehicle with an insecure load. The company had hired out to a third party a vehicle and a driver to transport a load. The driver, who was experienced in such matters, elected to secure the load in an ineffective manner although he had been supplied with suitable securing material. The Appeal Court (overruling *Hunter v Clark*)[2] held that the company could not be guilty of the offence as it neither knew nor should have known of the contravention of the relevant regulations, and could not therefore be said to have caused or permitted the use complained of.

In *Macdonald v Wilmae Concrete Co Ltd*,[3] it was held that a company was not guilty of causing or permitting a vehicle to be used with a defective brake in circumstances where it was not proved that any responsible official of the company knew of the defect. In particular, it was held to be insufficient for a conviction simply to show that the company took no action or even that this system of inspection was not perfect. However, in *Brown v Burns Tractors Ltd*,[4] it was held (following *Smith of Maddiston Ltd v Macnab*)[5] that knowledge, in relation to a statutory provision, includes 'the state of mind of a man who shuts his eyes to the obvious and allows another to do something in circumstances where a contravention is likely, not caring whether a contravention takes place or not' – in other words wilful blindness or culpable ignorance in respect of the relevant statutory provisions on the part of an accused in a charge of causing or permitting

1 *Smith of Maddiston Ltd v Macnab* 1975 JC 48, 1975 SLT 86, 1975.
2 *Hunter v Clark* 1956 JC 59.
3 *Macdonald v Wilmae Concrete Co Ltd* 1954 SLT (Sh Ct) 33.
4 *Brown v Burns Tractors Ltd* 1986 SCCR 146.
5 *Smith of Maddiston Ltd v Macnab* 1975 JC 48, 1975 SLT 86.

9781526526601_txt_print.indb 32 14/11/2023 20:58

is not a defence. In this context, reference may also be made to *Clydebank Co-operative Society v Binnie*;[1] *Mackay Bros v Gibb*;[2] and *Farrell v Moggach*.[3]

'Permitting' means simply giving permission, or allowing a third party to do something. The permission must, however, be proved to be something which the accused can properly give. In addition, for conviction it must be shown, as in the case of 'causing', that the accused was aware that what was permitted constituted an offence; actual or constructive knowledge of the offence has to be demonstrated, as well as direct or indirect evidence of permission. The same general considerations that apply to 'causing' described above apply also to 'permitting'.

In *MacDonald v Howdle*[4] a driver who offered his car to another on condition that he got it insured was held not to have permitted its use, when the other driver drove without getting insurance. A discussion of what may be meant by the term 'permitting' is found in *Elsby v McFadyen*.[5]

It is competent and common practice for accused persons or corporate entities to be charged with 'using' and 'causing or permitting' as alternatives.

## 1.11 IDENTIFICATION OF DRIVER

### 1.11.1 General

Except in some limited cases where there is specific statutory exemption, corroborative evidence of the identity of the driver of a vehicle is still required for the purposes of prosecution of road traffic offences, albeit there has been practical and arguably sensible erosion of the requirement, for example with reliance on registered keeper status.[6] The debate around the future of corroboration in Scots criminal law generally continues at time of writing.

A car driver will not be considered in normal circumstances to be a person in a special capacity in terms of s 255 of the Criminal Procedure (Scotland) Act 1995;[7] however, an accused charged with driving while disqualified will be regarded as being in such a special capacity by

1 *Clydebank Co-operative Society v Binnie* 1937 JC 17, 1937 SLT 114.
2 *Mackay Bros v Gibb* 1969 JC 26, 1969 SLT 216.
3 *Farrell v Moggach* 1976 SLT (Sh Ct) 8.
4 *MacDonald v Howdle* 1995 SLT 779, 1995 SCCR 216.
5 *Elsby v McFadyen* 2000 SCCR 97.
6 *Mitchell v MacDonald* 1959 SLT (Notes) 74; *Sinclair v MacLeod* 1964 SLT (Notes) 60.
7 *Cruickshanks v MacPhail* 1988 SCCR 165.

9781526526601_txt_print.indb 33 14/11/2023 20:58

reference to the disqualification and so in those circumstances the need for corroborative evidence of the disqualification does not arise.[1] Production of an extract conviction does not amount to waiver by the Crown of the right to rely on this section.[2]

If the only evidence of identification is that of two police officers who speak to an admission by the driver that he was driving at the material time, this is insufficient for conviction.[3] Reference in this respect should be made to 7.5.8 below. It may be said that very little will be required by means of corroboration in such circumstances, however.

An admission by a driver, made to a police officer or any other person, that he was driving at the time of the alleged offence can be sufficient evidence of identification if the surrounding facts and circumstances confirm that identification.[4]

That can include corroboration by the fact that the accused was the registered keeper,[5] an approach extended in *Coltman v PF Dunoon*,[6] where the relevant VQ5 document showed that the registered keeper was the accused's wife. The court observed: 'corroboration can also be found in the fact that the registered keeper of the car was the appellant's wife, a close family member.' It is worth noting that that information came to hand firstly by inadmissible (Crown concession) hearsay evidence taken from the Police National Computer plus the document itself, produced by the defence during the Crown case. Proximity to the vehicle also provided a sufficiency.

1 *Smith v Allan* 1985 SLT 565, 1985 SCCR 190.
2 *Paton v Lees 1992 SCCR 212*; see also *Campbell v HM Advocate* 1999 JC 147, 1999 SLT 399.
3 *Sinclair v McLeod* 1964 SLT (Notes) 60.
4 *Frew v Jessop* 1990 JC 15, 1990 SLT 396, 1989 SCCR 530; *Hingston v Pollock* 1990 JC 138, 1990 SLT 770, 1989 SCCR 697; *Fisher v Guild* 1991 SLT 253, 1991 SCCR 308; *McClory v McInnes* 1992 SLT 501, 1992 SCCR 319; *Souter v Lees* 1995 SCCR 33); *Henderson v Hamilton* 1995 SCCR 413; *Templeton v Crowe* 1999 JC 47, 1999 SCCR 7).
5 *Elpinstone v Richardson* 2013 JC 29 2012 SCCR 428, which did not follow *Winter v Heywood* 1995 JC 60, 1995 SLT 586, 1995 SCCR 276 (which was authority for the proposition that one source of identification together with the fact that the accused is the registered driver is not enough; although the court's subsequent reliance on a false statement to provide circumstantial sufficiency must be doubted given the court's obiter remarks in *Brown v HMA* 2002 SCCR 1032, paragraph 8); *Henderson v Hamilton* 1995 SCCR 413; *Templeton v Crowe* 1999 JC 47, 1999 SCCR 7).
6 [2018] SAC (Crim) 6.

9781526526601_txt_print.indb 34 14/11/2023 20:58

Likewise, being the registered keeper, allied with surrounding facts and circumstances, may provide sufficient inference that a person is the driver at the material time.[1] Having the relevant car keys is an adminicle of evidence which is potentially corroborative of being the driver.[2]

A statement made in reply to a caution, or a caution and charge, if properly administered by a police officer, is competent evidence as to both the identity of the driver and any other relevant matters included in the statement.

### 1.11.2 Statement made in response to a question

At common law, an admission by an accused that he was the driver at the time of an alleged offence in response to a question from a police officer may be admissible in evidence.[3] The test as to whether such an answer is admissible or not is to be determined having regard, in all the circumstances, to the principle of fairness to the accused. In considering that test, regard must be given to the accused's circumstances and position, and also to the public interest in ascertaining the true facts of each case, and the detection of offences. If, having regard to all these matters, it is decided that the request for information imposes unfairness on the accused, the evidence will generally be inadmissible; equally, if no unfairness is caused to the accused, the evidence will be allowed.[4]

Following the decision in *Cadder v HMA*[5] in relation to the issue of access to legal advice, considerable time and energy has been spent on this area of law. It is perhaps striking that, ultimately, the preceding paragraph, written pre *Cadder*, remains untouched. In relation to roadside cases the most relevant decision is *Ambrose v Harris*.[6] It is, of course, fact specific but emphasises that if not in custody or subject to some element of intimidation, answers to questions are likely to be admissible particularly if a caution has been appropriately given.

Reference should be made to the relatively recent case of *Wilson v PF Dumfries*[7] wherein the Sheriff Appeal Court reiterated that fairness is the underlying consideration, and also discussed the appropriate circumstances in which a driver should, and perhaps more importantly

1 *McCormick v Harrower* 2011 SCCR 710.
2 *Gray v Harvie* 2015 SCCR 201.
3 *Miln v Cullen* 1967 JC 21, 1967 SLT 35.
4 *McClory v McInnes* 1992 SLT 501, 1992 SCCR 319.
5 [2010] UKSC 43, 2010 SCCR 951, 2010 SLT 1125.
6 2012 SCCR 465 post the decision reported at [2011] UKSC 43, 2011 SCCR 651, 2011 SLT 1005.
7 *Wilson v PF Dumfries* [2021] SAC (Crim) 4.

9781526526601_txt_print.indb 35 14/11/2023 20:58

should not, be arrested at the roadside for apparent or alleged road traffic offences, particularly in the context of suspects' rights of access to a solicitor.

### 1.11.3 Duty to give information to police

In terms of s 172(2) of the Road Traffic Act 1988, as amended by s 21 of the Road Traffic Act 1991, where a driver of a vehicle is alleged to be guilty of any road traffic offence (apart from certain exceptions listed within the section), the keeper of the vehicle or any other person may be required by a police officer to give information as to the identity of the driver at the material time. The phrase 'any other person' includes the alleged driver himself.[1] An admission by the driver under this sub-section is presently admissible in evidence[2] and, as in the case of other forms of admission, can satisfy the test of corroborative evidence if there is supporting evidence from another credible source.[3] The requirement to give this information is not a breach of the European Convention on Human Rights;[4] nor is the use of the admission as evidence in court.[5] The admission can also be used as evidence of identification to a linked non-road traffic charge.[6] Section 172 is discussed in more detail at 7.5.7, 7.5.8 and 7.5.9 below. This and other duties to provide information are described at 2.6 and ch 7 below.

### 1.11.4 Exceptions

The evidence of a single witness will suffice to establish certain statutory offences.[7] Details of the fixed penalty procedure for traffic light and speeding offences which in the first instance does away with the common law evidential requirements of identification are found at 7.8.3 below.

1 *Foster v Farrell* 1963 JC 46, 1963 SLT 182, overruling *Stewart v McLugash* (1962) 78 Sh Ct Rep 189.
2 *Foster v Farrell* 1963 JC 46, 1963 SLT 182.
3 *Galt v Goodsir* 1982 JC 4, 1982 SLT 94, 1981 SCCR 225.
4 *Jardine v Crowe* 1999 SCCR 52.
5 *Brown v Stott* 2001 SCCR 62.
6 *How v Harvie* 2016 SCCR 435.
7 RTOA 1988, s 21, as amended by the RTA 1991, Sch 4 para 89; ch 7 below, *passim*.

9781526526601_txt_print.indb 36 14/11/2023 20:58