

**DRAFT ROAD TRAFFIC (No. 51) (JERSEY) REGULATIONS 199 (P.127/99): AMENDMENTS (P.173/99) -
REPORT**

**Presented to the States on 2nd November 1999
by the Defence Committee**



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REPORT

A. General observations

In January 1999, the Law Draftsman drew attention to discrepancies in the various penalty provisions in the Road Traffic (Jersey) Law 1956, as amended. He pointed out that some of those provisions were expressed in monetary terms, while others incorporated references to the standard scale of fines in the Schedule to the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993 which was debated and approved by the States on 22nd June 1993. This has now prompted a thorough re-assessment of the penalty provisions in the 1956 Law in consultation with Her Majesty's Attorney General.

The standard scale of fines fixes upon four levels *viz* level 1 £50, level 2 £500, level 3 £2,000 and level 4 £5,000.

The Defence Committee, working within the constraints of those four levels of fine laid down by the States in 1993, has attempted to fix upon the appropriate level on the scale in respect of each and every offence under the Road Traffic (Jersey) Law 1956, as amended. In considering the appropriate levels of penalty, the Committee has always kept in mind that the relevant levels of fine are not mandatory levels, but maximum amounts of fine. It is within the discretion of the Magistrate's Court or of the Royal Court to impose much lesser penalties where the actual circumstances of the offence are not serious.

By fixing upon the relevant levels on the standard scale, there will be no need in the future to have to come back to the States on each and every occasion when inflation may have eroded the deterrent effect of a particular maximum fine. This exercise has been carried out in relation to many other enactments and the Committee can see no reason why penalties under the Road Traffic Law should be an exception.

The result, however, of there being four specified levels on the standard scale is that, in certain cases, an existing fine will be substituted with a new maximum fine which may be seen to represent an increase above and beyond the inflation rate since the relevant penalties were last amended. However, in certain other instances, there will have been no increase at all in the amount of fine in respect of a particular offence. The task for the House is to look at each and every offence concerned and to try to assess its potential gravity in the light of all considerations *at the present day*. It is not simply a task of calculating the increase in the cost of living as Deputy Baudains appears to argue.

The Defence Committee, in consultation with the Attorney General, is satisfied in the case of each of the proposed amendments proposed by Deputy Baudains, that its proposed level of fine is proper in the light of all relevant considerations.

B. Comments on the specific amendments proposed by Deputy Baudains

1. Giving driving instruction when unregistered - Article 3A(3)

The Committee proposes increasing the current penalty from £500 to level 3 (£2,000). Deputy Baudains argues for level 2 (£500).

The Committee has noted that the United Kingdom penalty for the same offence is £2,500. The Committee of course does not base its view simply upon the current United Kingdom penalty, but regards this as a helpful yardstick.

The Committee notes that it is a feature of this offence that the person giving instruction has received payment in respect of the instruction given. Thus there is an element of fraud. More importantly, there are obvious dangers in an unqualified person purporting to give instruction in the driving of motor vehicles. The Committee does not regard a maximum fine of £500 as an adequate deterrent, especially in the case of a second or subsequent offence.

2. Failure to deliver licence revoked on fitness grounds - Article 5(4)

The Committee proposes an increase from the existing £100 fine to level 2 (£500). Deputy Baudains equates this offence with the offence of driving without holding a licence which would carry a fine of level 3 (£2,000).

Examples of the offence under Article 5(4) are often of elderly persons whose licence has been revoked, but who have failed to comply with the administrative requirement to deliver it to the Parish Hall. It must be borne in mind that, once the licence has been revoked, it is of no effect. If the person concerned continues to drive, the offence of driving without a licence is committed. Thus, in the example of an elderly person whose licence had been revoked, if he/she had not in fact driven a car, the lesser penalty would apply under Article 5(4) as the Committee proposes but, in the case of a person who carried on driving, his/her offence would attract the higher level of penalty which the Committee proposes under Article 3(1).

In these circumstances, the Committee does not regard the offence under Article 5(4) of failing to deliver up the licence as being as serious as the offence of actually driving without holding a licence under Article 3(1).

3. Failure to comply with conditions of provisional licence - Article 6(2)

The Committee proposes to increase the current penalty of £500 and/or three months' imprisonment to level 3 (£2,000). Deputy Baudains argues that the maximum fine should remain at £500.

The conditions attached to a provisional licence include -

- (a) that the vehicle only be used when the driver is under the supervision of a person who has held a licence for at least three years;
- (b) in the case of a motor cycle or moped, not to carry any passengers.

In most cases, these conditions concern the driving of a vehicle by young persons. The implications of a young inexperienced person driving a motor vehicle without the supervision of a licence holder or of carrying passengers on a motor cycle are, on any objective analysis, potentially very serious. The Committee does not believe that, in a wealthy Island, a maximum fine of £500 is an adequate deterrent for a young person intent upon driving a powerful motor car or motor cycle without proper supervision or in circumstances where, due to his or her inexperience alone, the safety of passengers and/or other road users may be put in jeopardy. It is especially inadequate in the case of repeat offenders.

4. False statement to obtain a licence - Article 11(2)

The Committee proposes to increase the existing fine of £1,000 to level 4 (£5,000). Deputy Baudains argues for level 3 (£2,000).

This offence not only involves dishonesty, but may involve an elaborate fraud to procure an international licence or a licence in another jurisdiction. The offences in Article 11 of the Road Traffic (Jersey) Law 1956 equate to sections 44 and 45 of the Vehicle Excise and Registration Act 1994 of the United Kingdom, under which there is a potential maximum penalty of two years' imprisonment and/or an unlimited fine. In the opinion of the Committee, the penalty for this offence has been allowed to remain for too long at a level which does not represent an adequate deterrent against sophisticated operations of fraud on an international level.

5. Driving/permitting driving by under-aged/inexperienced drivers - Article 13(3)

The Committee proposes to increase the existing penalty from £500 to level 3 (£2,000). Deputy Baudains argues for a maximum of £500.

Article 13 relates to under-age driving and applies not only to the under-aged driver himself, but to any person who encourages a youngster to drive a motor vehicle. The consequences of encouraging (say) a 15 year-old to drive a powerful motor vehicle could be most serious, indeed fatal. The Committee does not believe that a maximum fine of £500 can possibly stand today as a sufficient deterrent. This would be particularly true of second or subsequent offences.

6. Alcohol concentration above the prescribed limit - Article 16A

The Committee proposes to increase the existing £2,000 penalty to level 4 (£5,000) [together with the existing alternative of imprisonment not exceeding six months]. Deputy Baudains argues for level 3 (£2,000) and apparently seeks to draw a distinction between the offence of driving with alcohol above the prescribed limit and that of being unfit to drive (i.e. the "old" offence under Article 16 which still can be charged).

When the breathalyser was introduced in Jersey, the House was in no doubt that the maximum penalty for this offence should be no less than that for the original offence of driving whilst unfit. To this extent, the arguments about the penalty provisions for this offence have been well rehearsed. It is, however, relevant to note that the equivalent of both offences of driving whilst unfit and driving whilst above the prescribed limit carry penalties in the United Kingdom at the maximum of the standard scale, i.e. £5,000, and similar provisions as to alternative imprisonment.

Furthermore, it should be noted that many very serious offences are actually charged under Article 16A where, for example, the specimen of breath proves to be three, four or in some extreme cases five times the prescribed limit. The Committee believes that it would be absurd in the much more serious cases to deprive the Court of the same sentencing power as it has in relation to the offence of being unfit to drive.

7. Failure to provide specimen of breath - Article 16B (the “roadside test”)

The Committee proposes to increase the existing £500 fine to level 3 (£2,000). Deputy Baudains argues for no increase at all.

In the United Kingdom the offence carries a fine of £1,000, but that penalty is contained in the Road Traffic Offenders Act 1988 and therefore has existed for some years.

The Committee does not believe that a maximum penalty of £500 stands as a sufficient incentive in this respect. This is an offence which is liable to (and may well often be calculated to) impede the police. It is not to be treated lightly.

8. Failure to provide specimen for analysis - Article 16C (the test at the Police Station)

In common with drink driving offences themselves, the Committee proposes to increase the penalty from £2,000 and/or six months’ imprisonment to level 4 (£5,000) and/or six months’ imprisonment. Deputy Baudains suggests level 3 (£2,000). His report also refers to the fact that certain offences (of which this is one) carries disqualification and that this should “colour the level of fines set”.

The Committee views Deputy Baudains’ argument as especially misguided. If the penalty under Article 16C were any less than for other “D.I.C.” offences, there would obviously be a ready incentive for a person who knew that he/she had consumed a large amount of alcohol simply to refuse to provide a specimen for analysis. Indeed his proposed amendment would penalise persons who actually co-operated because, if their reading was very high indeed, they would stand to be punished more severely than a person who had refused to co-operate, even though that person might have consumed just as much, if not more, alcohol.

9. Failure to wear a seat belt - Article 22A

The Committee proposes to increase the existing fine of £50 to a maximum of level 2 (£500). Deputy Baudains argues in favour of retaining the existing £50 fine.

The Committee has taken note of the United Kingdom penalty which has been fixed at £500 for some years. It should be borne in mind that the maximum penalty would seldom, if ever, be deployed against a first offender, but ought to be available as a deterrent in the case of persistent offenders. It is also to be borne in mind that this provision applies not only to the driver himself or herself, but to children for whose safety the driver is responsible. A maximum penalty of £50 is not considered appropriate, especially in relation to the persistent neglect of a person to ensure the safety of child passengers.

10. Unlawfully carrying pillion passengers on motor cycles - Article 23

The Committee proposes to increase the existing £500 to level 3 (£2,000). Deputy Baudains argues for the retention of the existing maximum £500 fine.

The dangers of pillion riding on a motor cycle are self-evident, and the offence carries the risk of injury or death, not only to persons on the motor cycle, but to pedestrians and other road users. Especially in the case of a persistent offender, the Committee believes that it would be irresponsible to confine the powers of the Court to a maximum fine of £500 in respect of an offence which may result in severe injury or even in death.

11. Failing to stop when required by the police - Article 26(1)

The Committee proposes to increase the existing £500 fine to level 3 (£2,000). Deputy Baudains argues for the retention of the existing £500 fine.

This offence in the United Kingdom has for some time carried a £1,000 fine. It is to be borne in mind that the failure of a person to stop when required to do so by the police may well often be attributable to the fact that he/she is intoxicated, or to avoid detection of some other crime. The lesser the fine in relation to this offence, the greater the

incentive will be for a person such as a drunk driver to try to evade a legitimate requirement by a police officer to stop the vehicle. In more routine cases, the actual level of fine will reflect the more routine nature of the offence. However, the Committee does not wish to deprive the Courts of the ability in the more extreme cases to impose fines exceeding £500.

12. Using vehicle contrary to restriction on road - Article 33

The Committee proposes to increase the existing £100 fine for contravention of Road Traffic Orders to a potential maximum of £2,000 under such Orders. Deputy Baudains suggests level 2 (£500).

It should be borne in mind that Orders under Article 33 may cover an enormous variety of offences, some admittedly trivial, but others potentially more serious. These of course are the standard Orders relating to one-way traffic, pedestrian precincts, waiting of vehicles, unloading of vehicles etc. or restricting over-taking and so on. There may be situations in which breaches of such provisions (for example driving against one-way traffic or driving on pedestrian precincts) might have serious consequences. In the United Kingdom, it has been possible to impose fines of up to £1,000 since 1988. In practice, the actual fine will of course depend upon the circumstances of the case. If the offence is trivial, the fine imposed will reflect that fact. However, the Committee does not think it proper to deprive the courts of the ability to impose a fine of more than £500 in cases in which the offence may well have put road users/pedestrians in grave danger, or in the case of habitual offenders where a very substantial fine proves to be the only effective deterrent.

13. Failing to obey traffic directions - Article 36(1)(a)

The Committee proposes to increase the existing £500 fine to a maximum of level 3 (£2,000). Deputy Baudains proposes no change.

In the United Kingdom the penalty has been £1,000 for some years.

The consequences of failing to stop a vehicle or make it proceed along a particular road or keep to a particular line of traffic when directed to do so by a traffic controller or of failing to obey traffic lights, could be very serious. For the most part, such offences will be relatively minor offences, and the penalty imposed by the Court will reflect that fact. But, again, the Committee believes that it would be wrong to deprive the Court of a discretion to impose a fine of more than £500 in cases where the refusal to obey the traffic officer was liable to have serious consequences, or in cases in which the offender had a particularly bad record of offences.

14. Failing to obey a traffic sign

The Committee proposes a maximum of level 3 (£2,000) and again Deputy Baudains proposes no change in respect of the existing £500 penalty which was fixed by the States almost ten years ago.

Precisely the same arguments apply in relation to this provision as in relation to the preceding provision, and it is unnecessary to elaborate upon what the Committee believes to be self-evident dangers in failing to conform to traffic signs.

15. Supplying/altering vehicle in un-roadworthy condition - Article 41(3)

The Committee proposes to increase the existing £1,000 fine to level 4 (£5,000). Deputy Baudains argues for level 3 (£2,000).

Article 41 relates to requirements (amongst other things) in respect of brakes, steering gear and tyres. The Committee treats it as axiomatic that the House will wish to deter the sale of un-roadworthy vehicles. Such vehicles may find their way out of the Island. If Deputy Baudains' amendment in this respect were to be carried, the penalty for selling un-roadworthy vehicles in Jersey would be substantially less than in other countries. For example, in the United Kingdom, the equivalent offence carries a £5,000 fine.

It is unnecessary to explain at length the dangers inherent in the supply of a vehicle in an un-roadworthy condition. But it should be borne in mind that this offence includes causing or permitting a vehicle to be supplied or altered so that it is un-roadworthy. If this were done maliciously, a maximum penalty of £2,000 would in the opinion of the Committee hardly represent a proper deterrent penalty.

16. Fitting defective parts - Article 41B(1)

The Committee proposes to increase the existing £500 fine to level 4 (£5,000). Deputy Baudains argues for no change.

The considerations here are similar to those in Article 41(3) above. The equivalent United Kingdom offence carries

a maximum fine of £5,000. The implications of a breach of Article 41B are potentially very serious. This is more than an offence simply of fitting defective vehicle parts. It includes causing or permitting a vehicle part to be fitted to a vehicle. It may be committed with malice. In those more serious cases, the Committee does not believe that a maximum fine of £500 can possibly mark the gravity of the offence.

17. Deletion of draft Regulation 7(b) - pages 15/16 of the Projet

Deputy Baudains puts forward this amendment so that there would be no power to order disqualification or endorsement in the case of a contravention of a requirement of an Order made under Article 39 of the Road Traffic (Jersey) Law 1956 in relation to lighting equipment or reflectors.

The Committee included the draft Regulation 7 partly as a consequential amendment flowing from the recent repeal of the Road Transport Lighting (Jersey) Law 1956. Under that Law, there was indeed no ability to impose disqualification or endorsement in respect of a first offence. Disqualification or endorsement could, however, be ordered in respect of a second or subsequent offence. The Committee's *projet* ensures that failure to carry lighting equipment or reflectors is treated, for the purposes of disqualification or endorsement, in exactly the same way as brakes, silencers, steering gear or tyres. If the amendment of Deputy Baudains were to be carried, the situation would arise whereby -

- (i) on the one hand, contravening any requirement as to brakes, silencers, steering gear or tyres could give rise to disqualification/endorsement; but
- (ii) on the other hand, contravening any requirement as to lighting equipment or reflectors could never carry disqualification/endorsement [even though under the Road Transport Lighting (Jersey) Law 1956 such disqualification /endorsement was possible in respect of a second or subsequent offence].

The Committee believes that a contravention in relation to lighting equipment is just as serious (if not more serious) than a contravention in relation to, for example, silencers.

Conclusion

In summary, the Committee is not convinced that any one of the amendments proposed by Deputy Baudains has merit.