

Butterworths Road Traffic Service

Bulletin Editor
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NEW LEGISLATION

Finance Act 2013

This Act makes various amendments to the **Vehicle Excise and Registration Act 1994 (VERA)**, which is reproduced in volume 2 of BRTS. Section 187 prescribes new VED rates for light passenger vehicles, light goods vehicles, motorcycles etc. Section 188 sets out in amended form (new s 33A of VERA) the periods of grace for not exhibiting a VEL, which are:

- First registration – the period of 14 days beginning with the day on which the vehicle is first registered under the Act;
- Change of keeper – 14 days beginning with the day on which a new licence or nil licence is issued for the vehicle because of a change in the person by whom the vehicle is being kept;
- Renewal etc – 14 days following the time when a licence or nil licence for or in respect of the vehicle, or a relevant declaration applying to the vehicle, ceases to be in force, but only if an application for a licence or nil licence for or in respect of the vehicle to run from that time has been received before that time;
- Replacement – the period beginning with the time when a licence or nil licence that is in force for or in respect of the vehicle is delivered to the Secretary of State with an application for a replacement licence, and ending with the time when the replacement licence is obtained.

Section 189 is concerned with vehicles not kept or used on public roads and amends s 7A(1A)(d) and Sch 2A, para 1(10)(b) of VERA by omitting, in both cases, the words ‘within the immediately preceding period of 12 months’.

Section 190 gives effect to Schedule 37. This is concerned with vehicle licences for disabled persons. In particular, it amends para 19 of Sch 2 to VERA (exemption where a vehicle is being used or is kept for use by or for the purposes of a disabled person).

Fixed penalty offence, amounts and financial deposits

The following SI's were made after the issue of the last bulletin, but in time for inclusion in the last update so the following is a summary only. The **Fixed Penalty Offences Order 2013, SI 2013/1565** added careless driving to the list of fixed penalty offences. The **Fixed Penalty (Amendment) Order 2013, SO 2013/1569 (amended by SI 2013/1840)**, substituted a new table in Sch 1 to the Fixed Penalty Order 2000. Some fixed penalties have risen considerably, eg no insurance is now £300. The **Road Safety (Financial Penalty Deposit) (Appropriate Amount) (Amendment) Order 2013, SI 2013/2025**, made corresponding increases to financial penalty deposits.

Motor Vehicle Orders

Crown Court legal aid is granted subject to a contribution order where the defendant's means exceed a certain level. The **Criminal Legal Aid (Motor Vehicle Orders) Regulations 2013, SI 2013/1686**, authorise a court to make a 'motor vehicle order' (ie an immobilisation or vehicle sale order) for the purpose of enabling the recovery of overdue legal aid contributions.

Goods vehicle operator licence exemptions etc.

The **Goods Vehicle (Licensing of Operators) (Amendment) Regulations 2013, SI 2013/1750** amend the Goods Vehicle (Licensing of Operators) Regulations 1995, SI 1995/2869) to create an exemption where a vehicle transporting vehicles of up to nine seats is being used for national carriage for hire or reward by a haulier who holds a community licence and whose driver, if not a national of a Member State, holds a driver attestation. The exemption applies to certain types of motor vehicles being used at specified times of the year (the peak registration periods). The explanatory note states that:

'The exemption is in addition to that available under paragraph 23 of Schedule 3 to the Goods Vehicles (Licensing of Operators) Regulations 1995 for cabotage operation in accordance with Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market. The obligations on the haulier are substantially the same except that during the prescribed periods, and where the vehicle is being employed for the specified use, the haulier is not subject to a time limit on the number of cabotage operations or unloadings that may be conducted.'

The **Motor Vehicles (Driver Testing and Vehicle Load) Regulations 2013, SI 2013/1753** further amend the above regulations and also the Motor Vehicles (Driving Licences) Regulations 1999, SI 1999/2864, and the Vehicle Drivers (Certificate of Professional Competence) Regulations 2007, SI 2007/605. The changes allow certain vehicles to carry prescribed training loads during practical driving and certificate of professional competence tests.

Enforcement of penalty charges

The **Road User Charging Schemes (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2013, SI 2013/1783** make provision for the civil enforcement of penalty charges imposed pursuant to a road user charging scheme made under Part III of the **Transport Act 2000**. See Section J, para [0.41] of Volume 1 of BRTS for a summary of these provisions.

Rights of passengers in bus and coach transport

The **Rights of Passengers in Bus and Coach Transport (Exemptions and Enforcement) Regulations 2013, SI 2013/1865** give effect to exemptions available under Council Regulations EU 181/2011. Of particular note, reg 12 modifies the Public Passenger Vehicles Act 1981 to disapply criminal offences that would otherwise attach to contraventions of licences held by public service vehicle operators and to empower traffic commissioners to hold and summon witnesses to attend public enquiries for the purpose of these Regulations.

Disabled Persons' Parking Badges Act 2013

This Act was summarised in the April bulletin. The Act makes various amendments to the Chronically Sick and Disabled Persons Act 1970, with minor consequential amendments to other legislation. The **Disabled Persons' Parking Badges Act 2013 (Commencement) Order 2013, SI 2013/2202**, appoints October 8 as the commencement date for the Act. Accompanying the commencement order, the **Disabled Persons (Badges for Motor Vehicles) (England) (Amendment) Regulations 2013, SI 2013/2203** have been made. This amends the Disabled Persons (Badges for Motor Vehicles) (England) Regulations 2000, SI 2000/682 for the purposes of implementing the 2013 Act's provisions and clarifying the application of certain provisions of the 2000 regulations.

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Causing death by driving unlicensed etc.

R v Jenkins

The Road Safety Act 2006 introduced new offences of causing death by careless/inconsiderate driving (RTA 1988, s 2B) and causing death by driving when unlicensed, disqualified or uninsured.

(I interpose their operation in practice is the subject of a recent article in the Criminal Law Review (Issue 9), to which readers are commended.)

The former was enacted to bridge the yawning gap between causing death by dangerous driving (maximum penalty now 14 years) and careless driving (formerly non imprisonable, whatever the consequences). The rationale behind the offence of causing death by driving when unlicensed, etc, was that such drivers should not be on the road at all; therefore, they deserve to face higher penalties if their illegal driving of a vehicle is causally connected with a fatality. However, what causal connection is necessary? It was held in *R v*

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Williams [2010] EWCA Crim 2552, [2011] 3 ALL ER 969, (2011) 174 JP 606 that no fault or blameworthy conduct on the part of the defendant was necessary; it was sufficient that driving was a cause. This decision was followed in Prosecution Appeal: *R v H* [2011] EWCA Crim 1508, [2011] 4 ALL ER 761, where the collision between the appellant's vehicle and the deceased's vehicle had been entirely the fault of the latter, who had been driving erratically for some time before the collision and had taken a significant quantity of heroin. These cases effectively defined 'cause' as synonymous with 'owing to the presence of a mechanically propelled vehicle on a road', the phrase used in the offences of failing to stop/report an accident (RTA 1988, s 170). The required connection was only between the vehicle being on the road and the fatality; the manner of driving was irrelevant.

However, the Supreme Court reversed the decision in *R v H* in *R v Hughes* [2013] UKSC 56, [2013] 1 WLR 2461. The key extracts from the judgment are set out below.

[14] What has to be decided in this case is what is meant by the expression in s 3ZB "causes the death of another person by driving ...". Although that question is asked in this context of a driver who is committing one of the three specified offences, it is formulated in a way which could equally be asked of any driver. Has a driver caused the death of another person by his driving:

"(a) whenever he is on the road at the wheel and a fatal incident involving his vehicle occurs? or

(b) when he has done or omitted to do something in his control of the vehicle which is open to proper criticism and contributes in some more than minimal way to the death?"...

[23] The law has frequently to confront the distinction between "cause" in the sense of a sine qua non without which the consequence would not have occurred, and "cause" in the sense of something which was a legally effective cause of that consequence. The former, which is often conveniently referred to as a "but for" event, is not necessarily enough to be a legally effective cause. If it were, the woman who asked her neighbour to go to the station in his car to collect her husband would be held to have caused her husband's death if he perished in a fatal road accident on the way home. In the case law there is a well recognised distinction between conduct which sets the stage for an occurrence and conduct which on a common sense view is regarded as instrumental in bringing about the occurrence....

[25] By the test of common sense, whilst the driving by Mr Hughes created the opportunity for his car to be run into by Mr Dickinson, what brought about the latter's death was his own dangerous driving under the influence of drugs. It was a matter of the merest chance that what he hit when he veered onto the wrong side of the road for the last of several times was the oncoming vehicle which Mr Hughes was

driving. He might just as easily have gone off the road and hit a tree, in which case nobody would suggest that his death was caused by the planting of the tree, although that too would have been a *sine qua non* ...

[28] It follows that in order to give effect to the expression “causes ... death ... by driving” a Defendant charged with the offence under s 3ZB must be shown to have done something other than simply putting his vehicle on the road so that it is there to be struck. It must be proved that there was something which he did or omitted to do by way of driving which contributed in a more than minimal way to the death. The question therefore remains what can or cannot amount to such act or omission in the manner of driving.

[32] ... We are driven to the view that there is no logical or satisfactory intermediate position between holding (a) that the law imposes guilt of homicide whenever the unlicensed motorist is involved in a fatal accident and (b) that he is guilty of causing death only when there is some additional feature of his driving which is causative on a common sense view and the latter entails there being something in the manner of his driving which is open to proper criticism. To give effect to the words “causes ... death ... by driving” there must be something more than “but for” causation. If causing death by driving cannot be constituted simply by being involved in a fatal collision, it would be contrary to the common law’s common sense approach to agony of the moment situations for it to be constituted by (for example) a desperate last-millisecond attempt to swerve out of the way of the oncoming vehicle of such as Mr Dickinson. Once this is accepted, there is no stopping point short of some act or omission in the driving which is open to criticism, ie which involves some element of fault. ... The statutory expression cannot, we conclude, be given effect unless there is something properly to be criticised in the driving of the Defendant, which contributed in some more than minimal way to the death. It is unwise to attempt to foresee every possible scenario in which this may be true. It may well be that in many cases the driving will amount to careless or inconsiderate driving, but it may not do so in every case.

Cases which might not could, for example, include driving slightly in excess of a speed limit or breach of a construction and use regulation. If on facts similar to the present case, D who was driving safely and well at 34mph in a 30mph limit, or at 68mph in a 60mph limit was unable to stop before striking the oncoming drunken driver’s car, but would have been able to stop if travelling within the speed limit, his driving would be at fault, and one cause of the death, but would be unlikely to amount, by itself, to careless driving. The same might be true if he could not stop in time because a tyre had become underinflated or had fallen below the prescribed tread limit, something which he did not know but could, by checking, have discovered.

[33] Juries should thus be directed that it is not necessary for the Crown to prove careless or inconsiderate driving, but that there must be

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something open to proper criticism in the driving of the Defendant, beyond the mere presence of the vehicle on the road, and which contributed in some more than minimal way to the death. How much this offence will in practice add to the other offences of causing death by driving will have to be worked out as factual scenarios present themselves; it may be that it will add relatively little, but this is the inevitable consequence of the language used and the principles of construction explained above ...

[35] The certified question in this case asks:

“Is an offence contrary to section 3ZB of the Road Traffic Act 1988, as amended by section 21(1) of the Road Safety Act 2006, committed by an unlicensed, disqualified or uninsured driver when the circumstances are that the manner of his or her driving is faultless and the deceased was (in terms of civil law) 100% responsible for causing the fatal accident or collision?”

[36] For the reasons set out, enquiry into apportionment of liability in civil terms is not appropriate to a criminal trial. But it must follow from the use of the expression “causes ... death ... by driving” that s 3ZB requires at least some act or omission in the control of the car, which involves some element of fault, whether amounting to careless/inconsiderate driving or not, and which contributes in some more than minimal way to the death. It is not necessary that such act or omission be the principal cause of the death. In which circumstances the offence under s 3ZB will then add to the other offences of causing death by driving must remain to be worked out as factual scenarios are presented to the courts ...’ (per Lords Hughes and Toulson)

Commentary

*Most practitioners will welcome this decision. It restores the distinction between ‘causing the death of another person by driving’ used in ss 1–3A and the ‘owing to the presence of’ terminology used in s 170 (see my introductory remarks). However, it raises difficulties. First, when is driving blameworthy but not ‘careless’? The latter is defined in s 3ZA as driving which ‘falls below what would be expected of a competent and careful driver’, the determination of which requires regard ‘not only to the circumstances of which (the driver) could be expected to be aware but also to any circumstances should to have been within (his) knowledge’. According to the examples given in para [32], slightly exceeding the speed limit or driving with a defective tyre would be unlikely by themselves to be caught even where the victim would not otherwise have died. But in both these examples, a civil court would surely find the defendant guilty of contributory negligence. So careless driving requires something more, it seems, than minor negligence or breach of a traffic regulation, and this is consistent with earlier decisions. In *Scott v Warren* [1974] RTR 104 the Divisional Court did not interfere with an acquittal of careless driving even though the case involved a clear breach of the Highway Code. Similarly, in *Gibbons v Kahl* [1956] 1 QB 59 it was held that it did not follow that because the defendant had committed a breach of the Pedestrian Crossing Regulations that*

he was guilty of careless driving. For a more extreme example, it was held in Hurlock v Inglis [1963] 107 SJ 95 that driving at a speed of 100 mph on a motorway was not, of itself, proof of negligence. It may be that some, or all, of these cases would be decided differently if they came before the courts today. Views on what is 'competent' and 'careful' driving reflect concerns about road safety, which are rightly now much higher. Nevertheless, as the Supreme Court has confirmed, there can be blameworthy driving falling short of careless driving.

*In reaching their decision, the Justices were heavily influenced by the fact that these are offences of homicide and serious consequences can follow from a conviction. There should, therefore, be an element of fault in the driving which was causative, at least to some degree, of the fatality. With very great respect, however, the logic of these offences is that disqualified, uninsured and unlicensed drivers should not be driving at all. **That** is the fault element and if it is in any way connected with a fatality the driver is answerable regardless of the manner of his driving. This is my recollection of what was meant at the time, and if the draftsman had turned to s 170 I am sure he would have adopted its terminology.*

We are left following this decision with an offence which lies somewhere between what Parliament almost certainly meant and causing death by careless driving.

Sentencing: causing death by dangerous driving – length of disqualification

R v Dixon

In *R v Dixon* [2012] EWCA Crim 3149, [2013] 2 Cr App R (S) 39 the appellant (23), who was a recently qualified driver, got home at 2.15 am from a weekend holiday and was collected by a work colleague at 7.00 am. As he was driving home in a works van, he crossed central white lines on a bend and collided with three cars driving in the opposite direction. One of the drivers was fatally injured. The appellant pleaded guilty to causing death by dangerous driving on the basis that his attention had been distracted. He denied falling asleep at the wheel, but accepted that the loss of attention must have been more than momentary. He was sentenced to two years' imprisonment and five years' disqualification. The appeal was confined to the latter, and was successful.

The case fell into category 3 of the guidelines, which is the lowest level. The risks posed by the appellant to other road users did not justify a five-year ban. The period was reduced to three years, meaning it would run for two years following the appellant's release from prison.

Sentencing: causing death by careless driving when unfit through drugs

R v Cockroft

In *R v Cockroft* [2012] EWCA Crim 2675, [2013] 2 Cr App R (S) 29 the appellant had a history of drug based criminality. He pleaded guilty to offences of causing death by careless driving when unfit through drugs,

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causing death by driving while uninsured and possession of a class A drug. He had collided with a 77-year-old man, who was crossing the road. The appellant's speed had not been excessive, but blood analysis showed he had taken heroin and cocaine. There was clear evidence of impairment.

The judge placed the case in the highest category of the guidelines (despite both counsel agreeing it fell into level 2) and imposed nine years' imprisonment. The Court of Appeal agreed this was too long. A 10-year starting point was the highest the judge could reasonably have taken and allowing appropriate credit for the guilty plea the Court of Appeal reduced this to seven and a half years.

Sentencing: causing death by dangerous driving

R v Singh

In *R v Singh* [2013] EWCA Crim 62, [2013] 2 Cr App R (S) 52, the appellant approached a light-controlled junction at night at a speed of about 50 mph when the limit there was 30 mph. The lights were green in his favour. A motorcycle approaching from the opposite direction was seeking to turn right across the appellant's path. The appellant collided with the bike killing its driver. The views of both parties were restricted by traffic stationary in the junction waiting to turn right. The appellant had a two-year old previous conviction for using a mobile phone when driving.

The judge placed the case in the highest category, took two years as his starting point and reduced this by 25% to reflect the (slightly delayed) guilty plea. The Court of Appeal agreed with this assessment. In view of the time and day and state of the traffic it was not safe to approach this junction even at 30 mph. The deceased would have completed his manoeuvre safely but for the appellant's speed. It could not be said that the deceased had contributed culpably to the accident. He was not in a position to foresee the excessive speed at which the appellant was driving. The previous conviction was a further aggravating factor. In the court's view, driving while using a mobile phone represented a conscious decision to run a risk, or to expose others to risk.

Disqualification for non motoring offences

Knight and others

In *Knight and Others* [2012] EWCA Crim 3019, [2012] 2 Cr App R (S) 45 the appellants pleaded guilty to conspiracy to burgle. The burglaries involved breaking into houses to steal the keys of vehicles. They were sentenced to various terms of imprisonment and disqualified in each case from driving for a period of four years under s 147 of the Powers of Criminal Courts (Sentencing) Act 2000. Their appeals were limited to the disqualification.

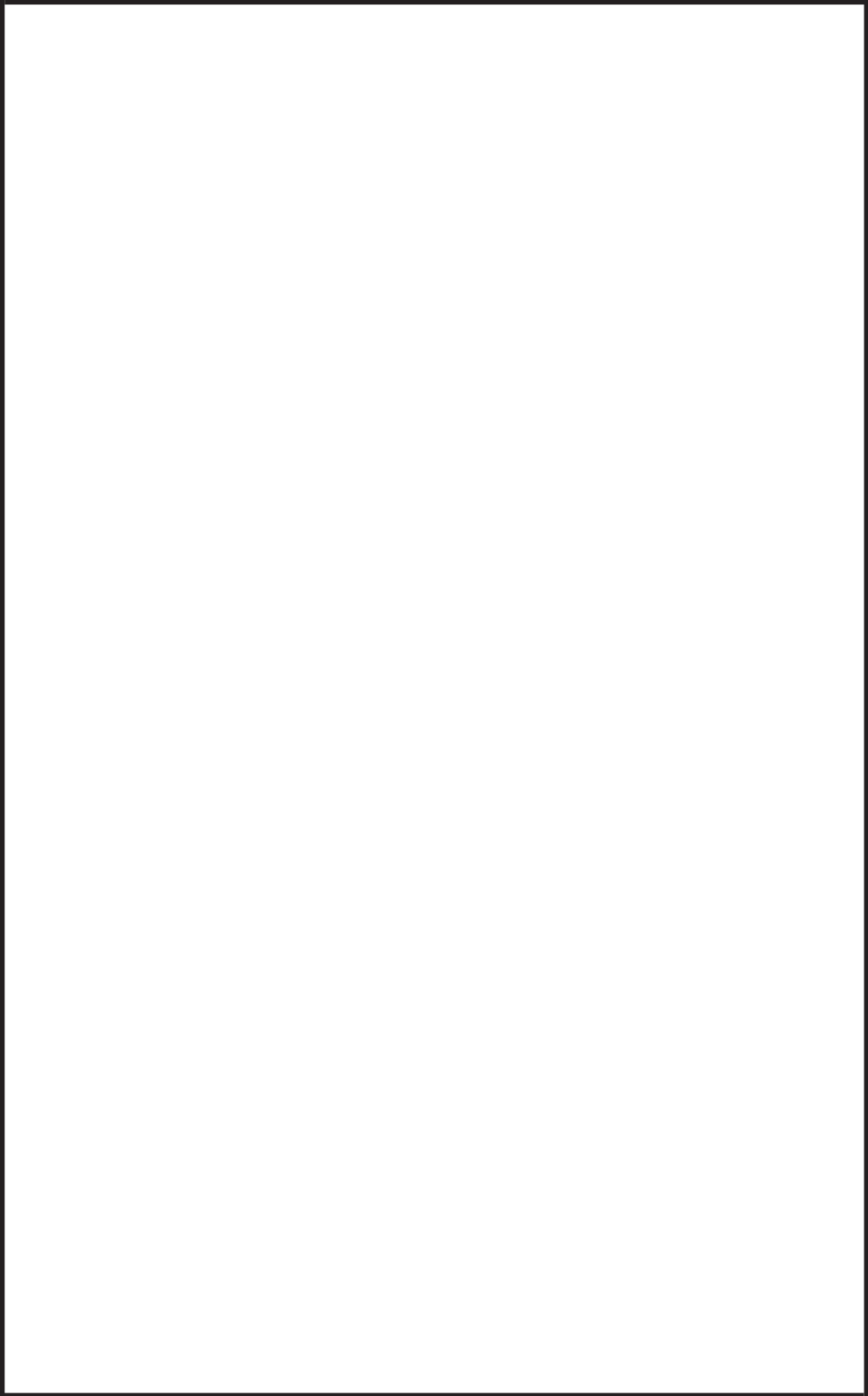
It was held that the appellants could have been disqualified under either s 146 or s 147. Disqualification was meant to be punitive. Therefore it had to extend beyond the date of release from prison. However, it should not be so long as to impair rehabilitation. It was necessary in each case to do some 'fine

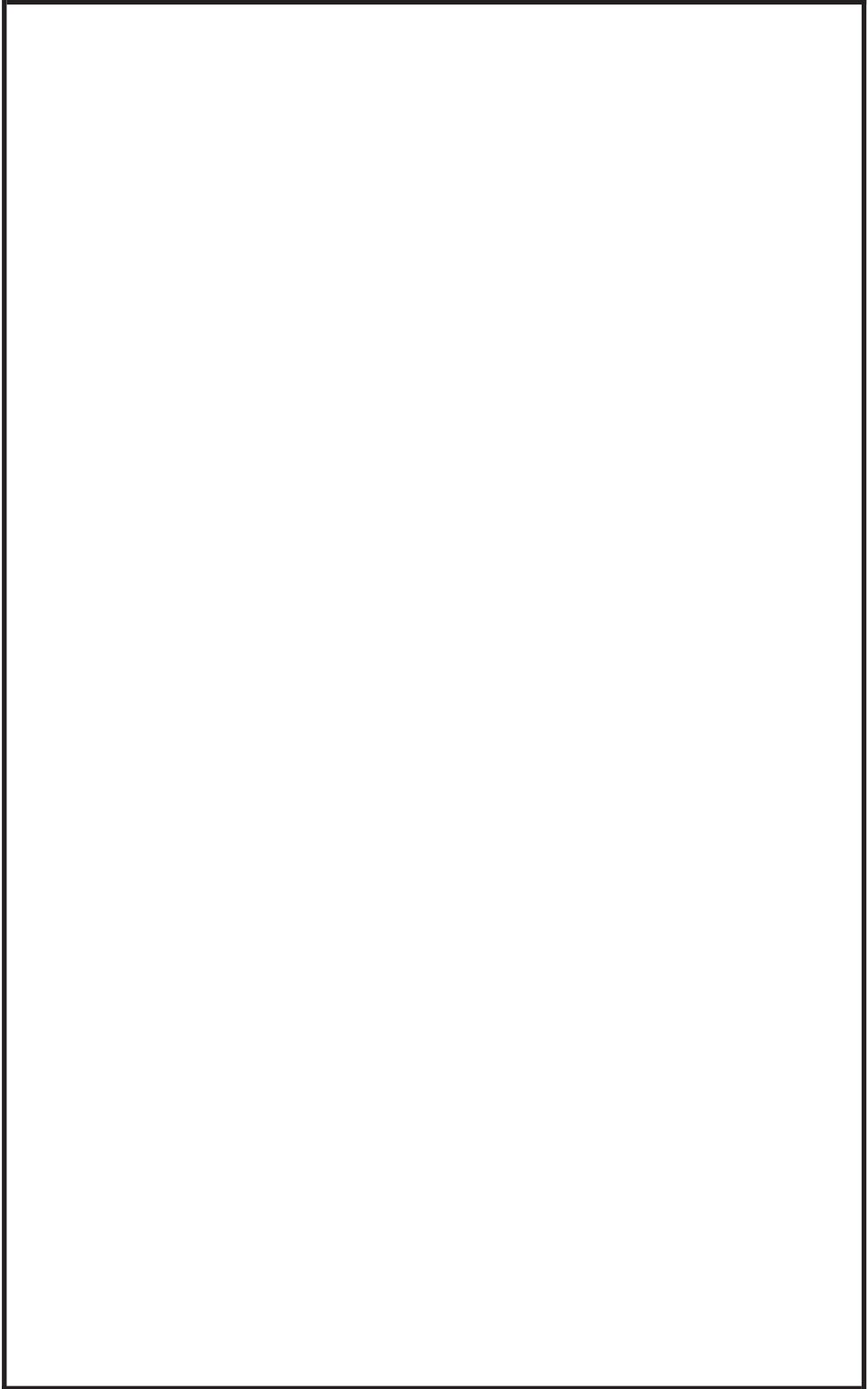
tuning' and the judge had been in error in treating all the appellants in the same way regardless of the length of their custodial sentences and individual circumstances. Periods of 18 – 40 months were substituted. Release dates and effect on employment prospects were the dominant considerations in determining the periods.

Criminal procedure: when appropriate for a judge to call a witness – scope of case stated appeal procedure

K v Crown Prosecution Service

It was affirmed in *K v Crown Prosecution Service* [2013] EWHC 1678 (Admin), [2013] All ER (D) 175 (Jul) that, while a judge in a criminal trial had the power to call a witness it was a power to be exercised only sparingly. In the present case, the kind of evidence which the judge had directed to be adduced would have taken away a number of points that the defence might have argued at the close of the trial to support self defence. It was also held that an appeal by way of case stated should be on a clearly focused issue and the procedure should not be used to obtain guidance on broad issues or questions.





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