

Butterworths Road Traffic Service

Bulletin Editor
Adrian Turner
Barrister

NEW LEGISLATION

Fixed penalty for parking outside Greater London

The Fixed Penalty (Amendment) (No 2) Order 2013, SI 2013/1840 amended SI 2013/1569 before the latter came into force, with the effect of leaving unchanged the fixed penalty level for parking offences outside Greater London. In consequence, the last entry in the list on page X-28 should change to 'Any other fixed penalty offence except for a fixed penalty parking offence – £50' and the following needs to be added: 'Any other fixed penalty parking offence – £30'.

Civil enforcement of parking contraventions

The Civil Enforcement of Parking Contraventions Designation Order 2013, SI 2013/2594 designates the area of the Malvern Hills District Council, with the exception of the roads referred to in Sch 1, as a civil enforcement area for parking contraventions and as a special enforcement area for the purposes of Pt 6 of the Traffic Management Act 2004. This order also amends the Civil Enforcement of Parking Contraventions (City of Newcastle upon Tyne) Designation Order 2009, SI 2009/596, to permit civil enforcement on some of the roads that were previously excluded. This order redesignates the area previously designated by the SI 2008/3198 alongside a further area so as to designate the whole of the area of Cheshire West and Chester Borough Council with the exception of the roads referred to at Sch 2. A consequential amendment is made to the Bus Lane Contraventions (Approved Local Authorities) (England) Order 2005, SI 2005/2755.

Certificates of professional competence

The Vehicle Drivers (Certificates of Professional Competence) (Amendment) Regulations 2013, SI 2013/2667, amend reg 3 of the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007. Regulation 2(2) amends reg 3(2)(c) of the 2007 Regulations to provide that the 2007 Regulations do

NEW LEGISLATION

not apply where a person is driving a relevant vehicle to or from a 'relevant test' for the purposes of technical development, repair or maintenance. Regulation 2(3) inserts new sub-paragraph (h) into reg 3(2), which applies a new exemption to vehicles being driven in accordance with all the conditions in new paragraph (3). Regulation 2(4) adds new paragraphs (3) and (4) into reg 3 of the 2007 Regulations, to provide that the 2007 Regulations do not apply where a relevant vehicle is being driven by a person whose principal work activity is not driving such vehicles, where, apart from any fixed items, no goods or passengers are being carried and where the vehicle is only being driven within a limited area.

Evidence of insurance for excise licences

The Motor Vehicles (Third Party Risks) (Amendment) Regulations 2013, SI 2013/2904, amend the Motor Vehicles (Third Party Risks) Regulations 1972 and the Motor Vehicles (International Motor Insurance Card) Regulations 1971 to remove the requirements to produce, respectively, evidence of insurance and an insurance card when applying for an excise licence.

Nil licence and SORN statements

The Road Vehicles (Registration and Licensing) (Amendment) Regulations 2013, SI 2013/2909, provide for first nil licences for vehicles to run from specified dates during a month. Such licences may run for a period of 12 months plus a further period commencing on the 10th, 17th or 24th day (as appropriate) of the month in which the licence first has effect. Regulation 4 alters provisions relating to statutory off-road notifications to provide that once a statutory off-road notification is made it will have effect indefinitely, until such time as a vehicle licence or nil licence is taken out for that vehicle. In the event, however, of a change of vehicle keeper, if the new keeper wishes to keep the vehicle unlicensed he will have to make a new statutory off-road notification.

Revoked regulations

The Road Traffic, Public Passenger Transport and Vehicles (Revocations) Regulations 2013, SI 2013/2987, revoked 16 sets of regulations (unless otherwise stated) either because they have become redundant or have been superseded. The regulations are: the Motorcycles (Sound Level Measurement Certificates) Regulations 1980, SI 1980/765, and three amending instruments, SIs 1988/1640, 1989/713 and 1989/1591; the Public Service Vehicles (London Local Service Licences) Regulations 1986, SI 1986/1691, and one amending instrument, SI 1988/408; the Cycle Racing on Highways (Tour de France 1994) Regulations 1994, SI 1994/1226; the Vehicles (Conditions of Use on Footpaths) Regulations 1963, SI 1963/2126, and one amending instrument, SI 1966/864 (the government has decided to allow individual authorities in England to determine local requirements); the Public Service Vehicles (Lost Property) Regulations 1978, SI 1978/1684, and two amending instruments, SIs 1981/1623 and 1995/185 (the government has decided to allow companies to make their own arrangements); the Road Traffic (Carriage of Dangerous Goods and Substances) (Amendment) Regulations 1992, SI 1992/1213, and

the Road Traffic (Training of Drivers of Vehicles Carrying Dangerous Goods) (Amendment) Regulations 1993, SI 1993/1122; the Parking Attendants (Wearing of Uniforms) (London) Regulations 1993, SI 1993/1450; and the Drivers' Hours (Passenger and Goods Vehicles) (Exemption) Regulations 1996, SI 1996/240.

Vehicle excise exemptions for certain vehicles brought temporarily into the UK

The Motor Vehicles (International Circulation) (Amendment) Order 2013, SI 2013/3150, this order amends art 5 of the Motor Vehicles (International Circulation) Order 1975, which exempts from excise duty certain vehicles brought temporarily into the United Kingdom and updates definitions in art 2(7) of the same order. Article 2(3) exempts a vehicle from excise duty when used for certain types of cabotage operations which are not already exempt under art 5(2)(b). The vehicle is exempt if it is used by a haulier resident outside the United Kingdom who is the holder of a Community licence provided that the vehicle is being used in Great Britain for the carriage only of vehicles in categories M1 (vehicles designed and constructed for the carriage of passengers and comprising no more than eight seats in addition to the driver's seat) and N1 (vehicles designed and constructed for the carriage of goods and having a maximum mass not exceeding 3.5 tonnes), and the use is in specific times in the year being the period between 22 February and 31 March and that between 25 August and 30 September.

MAGISTRATES COURTS' SENTENCING GUIDELINES

Update 10 of the Magistrates Courts' Sentencing Guidelines applies to offenders sentenced on or after 1 April. The main changes concern sexual offences, but pages 185–186 ('Totting disqualification' to 'New drivers') have also been replaced. The key change is about disqualification in absence. Previous caution to exercise this power only if sure the defendant knows of the hearing and the likely imposition of disqualification is replaced with:

'Disqualification in the offender's absence

23. When considering disqualification in absence the starting point should be that disqualification in absence should be imposed if there is no reason to believe the defendant is not aware of the proceedings, and after the statutory notice has been served pursuant to section 11(4) of the 1980 Act where appropriate. Disqualification should not be imposed in absence where there is evidence that the defendant has an acceptable reason for not attending or where there are reasons to believe it would be contrary to the interests of justice to do so.'

CASES OF NOTE

Overtaking on approach to zebra crossing

In *Brooks v Blackpool Borough Council* [2013] EWHC 3735 (Admin), (2014) 178 JP 79 the defendant was driving a private hire vehicle and carrying

CASES OF NOTE

passengers. He was in a line of stationary vehicles waiting to move forward. He then pulled out of the line from a position of four cars back from a car ahead of him that was closest to a pedestrian crossing. He overtook the cars, passed over the crossing and then turned left. There was no evidence of pedestrians on the crossing at the time. The defendant was charged with overtaking vehicles 'proceeding in the same direction' on the approach to the crossing, contrary to reg 24(1)(a) of the Zebra, Pelican and Puffin Pedestrian Crossing and General Regulations 1997. He argued that, as the other cars had been stationary at the time, he had not passed any other vehicle 'proceeding in the same direction'. The prosecution counter-submitted, successfully, that vehicles remained 'proceeding' if they were on a journey.

The Administrative Court (Haddon-Cave J) upheld the defendant's appeal by way of case stated. An offence under reg 24(1)(b) of the Zebra, Pelican and Puffin Pedestrian Crossing and General Regulations 1997 is only committed where a vehicle passes ahead of a vehicle which is stationary because: a) of a red light, b) it has stopped to give precedence to a pedestrian at zebra crossing, or c) it has stopped to give precedence to a pedestrian at a pedestrian crossing. These were the only circumstances in which an offence of passing ahead of a stationary vehicle could occur. The justices had been wrong to interpret 'proceeding in the same direction' as including stationary cars on a journey. Vehicles which are waiting to proceed are, by definition, not proceeding.

No profiting from parking charges

In *R (on the application of Attfield) v Barnet LBC* [2013] EWHC 2089 (Admin), [2013] RTR 33 the claimant successfully challenged the defendant local authority's increase in parking charges.

The authority had exercised its powers under s 45 of the Road Traffic Regulation Act 1984 to designate parking places on the highway, to charge for their use and to issue parking permits for a charge. It then increased its charges beyond what was necessary to administer the scheme; the purpose of the increase was to create a surplus to fund other transport expenditure, such as road repair, concessionary fares and other road transport costs.

The Administrative Court (Lang J) upheld the challenge. The 1984 Act was not fiscal measure and it did not authorise local authorities to raise surplus revenue for other transport purposes funded by the general fund.

Aggravated vehicle taking – length of disqualification for passenger

In *R v Roberts* [2013] EWCA Crim 785, [2013] RTR 32 the facts were particularly serious. A group of young men had been partying at a house. Earlier in the day, R (18) moved the householder's car (he claimed, at her request) despite being uninsured and unlicensed and over the limit), leaving the keys inside. R was then the front seat passenger when G took the car for a joyride. There were four others in the car, sitting in the rear. It was driven at

considerable speed and finally crashed, causing the death of one of the rear passengers, who was the 13-year-old son of the householder.

The Court of Appeal (Lord Judge LCJ, Royce and Globe JJ) had no hesitation in upholding the custodial of 12 months' detention. The requirement to take an extended retest was also upheld. Though R had not been the driver when the fatality occurred, he had driven earlier while uninsured, etc, and under the influence, and a young boy had died in the incident. However, the period of disqualification – five years, which was the same as for the driver – was held to be too long. R had no previous convictions. The term was accordingly reduced to three years.

The court was clearly concerned that this had not been charged as causing death by dangerous driving. The CPS had apparently concluded that there was insufficient evidence to secure a conviction on this offence which, in any event, carried the same maximum penalty as aggravated vehicle. The court disagreed with this approach. The sentencing guidelines for the causing death offence were higher and, where the facts supported a conviction, this should be the preferred charge.

Tachograph exemption – non-commercial carriage of goods

In *Criminal Proceedings against Lundberg* C-317/12, [2014] RTR 2 the defendant was an amateur rally driver, who received sponsorship. He had his own lorry, with an attached trailer for transporting his rally car. The combined weight of the combination exceeded 3.5 tonnes. He was prosecuted for infringing art 3(1) of Regulation 3821/85 for failing to equip the vehicle with an approved tachograph.

The issue was whether or not this was 'non-commercial carriage' within the meaning of the derogation in art 3(h) and, consequently, enjoyed exemption. The Court of Justice of the European Union noted that this term was undefined and held that its meaning and scope fell to be determined in accordance with the objectives of the Regulation. Its aim was to improve working conditions for employees and to improve road safety. On the other hand, the purpose of the derogation was to exclude the carriage of goods by private individuals outside any professional or commercial activity. The defendant was within the derogation, since he carried the goods for his own purposes purely as part of his hobby, even though he enjoyed sponsorship from undertakings and private individuals.

Operator's licence disc – whether vehicle 'used on a road for carrying passengers' when it was stationary on a road waiting for a disc

In *Grey v Swansea City and County Council* [2013] EWCA Civ 1057, [2014] RTR 3 G owned a transport business. He held a PSV operator's licence which authorised a maximum of four PSVs and four operator's discs. In fact, he owned a total of eight PSVs, but only operated a maximum of four at any

CASES OF NOTE

given time and transferred discs between them, as necessary. On the occasion in question a bus was sent to pick up children from school, but the disc intended for use on the bus was not available, owing to a mistake by another driver. It was arranged for the disc to be taken to the school pickup point. By the time the disc arrived, children had boarded the bus, but it had not moved. G was prosecuted under s 18 of the Public Passenger Vehicles Act 1981. It was not suggested that the bus needed to display a disc on its way to the school. The issue was whether, during the brief period after its arrival and before the disc arrived, it was being used for carrying passengers. Did 'carry' imply movement?

The Court of Appeal (Richards, Davis and Lloyd-Jones LJJ) held that a vehicle is being used for carrying passengers throughout the period when it has passengers on board for the purpose of being transported from one place to another. This gave effect to the policy of the legislation, which was to provide a high degree of control over the use of PSVs for the carrying of passengers for hire or reward. Enforcement would be made more difficult if the licensing and disc requirements were engaged only when the vehicle was in motion.

Duties of motorists approaching a mini-roundabout

In *Starks v Chief Constable of Hertfordshire* [2013] EWCA Civ 782, [2014] RTR 4 there was a collision between two vehicles on a mini-roundabout, which was situated on a T junction the three entrances to which were marked with give way lines. The claimant arrived at the roundabout first and began to make a right turn. A police vehicle arrived shortly after from the right side of the roundabout and took a line which involved passing over the middle of it. The police vehicle did not slow down from its speed of 30 mph and it struck the claimant's vehicle in the centre of the roundabout on the rondel itself. Both drivers were injured, but the claimant's injuries were much more serious. At first instance, the judge held the claimant to be 55% responsible.

The Court of Appeal (Moore-Bick, Patten and Underhill LJJ) allowed the claimant's appeal. By para 188 of the Highway Code the same rules apply to mini-roundabouts as to normal ones. In particular, vehicles must pass round the central markings. The presence of the rondel also has a safety consequence, namely to cause vehicles travelling at or near the permitted limit to slow down. The police driver should not have been travelling at more than 20 mph, irrespective of the claimant's presence. The rules about formal priority were not decisive in the present case: which vehicle ought to accommodate the other involved an exercise of judgment on the part of each driver, where each should be prepared to stop if there was room for doubt about the other's intentions. Both drivers were seriously at fault in failing properly to appreciate what the other might do, but in the case of the police driver there was also the fact that she wholly ignored the existence of the mini-roundabout. While there was no difference between the parties' relative culpability, the causative potency of their acts and omissions also had to be assessed. The expert evidence in the trial was if the police driver had entered the roundabout at 15 mph the accident would probably have been averted altogether; if the speed

had been 20 mph it would either have been averted or have been much less serious, because the collision would have been with the rear of the claimant's car. The court accordingly reduced the apportionment of blame on the part of the claimant to 35%.

Excess alcohol – legality of requirement to provide alternative specimen of blood: application of s 78 of the PACE to results of blood analysis

In *Bodhaniya v CPS* [2013] EWHC 1743 (Admin), (2014) 178 JP 1 the appellant was involved in a serious RTA and provided a positive roadside test. At the police station he was unable, however, despite several attempts to provide a second breath specimen for analysis. The constable was aware that the accident had been significant and that the appellant had been quiet at the scene. He believed that the appellant had genuinely tried to provide the second sample and had failed to do so because of the effects of the accident. He therefore decided not to charge him with failing to provide a sample, but to request a specimen of blood or urine. The specimen of blood then provided revealed the presence of excess alcohol. The district judge drew the inference on the officer's evidence that the failure to provide the second breath specimen was on medical grounds and that the alternative specimen had, therefore, been properly requested.

The Administrative Court (Moses LJ and Burnett J) dismissed the appeal. The inference drawn by the district judge was one which had been open to him. The court then considered what the position would have been if the constable had not complied with s 7(3) of the Road Traffic Act 1988. The matter was to be approached through s 78 of the Police and Criminal Evidence Act. Exclusion of the evidence was not automatic. While 'In the overwhelming majority of cases it may be that a failure to comply with s 7(3) of the Road Traffic Act 1988, before requiring an accused to provide a specimen of blood, will have the result that all evidence of that specimen will be excluded. But it is not necessarily so. The facts of this case, where on any view the constable concerned bent over backwards to try to assist the appellant in difficult circumstances, provide an example where exclusion under s 78 would not have been appropriate' (per Moses LJ at para 18).

Failing to supply information as to the identity of the driver

In *Foster v DPP* [2013] EWHC 2039 (Admin), [2014] 178 JP 15, following the commission of a speeding offence a notice was sent to the registered keeper, the appellant, requiring him to furnish details of the driver. He claimed not to have received the notice or the subsequent summons, but the Crown Court (on the first appeal) deemed that both had been served and upheld the conviction. He challenged these conclusions in an appeal by way of case stated, but the Administrative Court (Laws LJ and Wilkie J) raised a prior issue, namely whether the information that had been laid disclosed the

CASES OF NOTE

commission of any offence at all. It asserted that the offence had been committed on a date prior to the expiration of the 28 days allowed for responding to the notice.

The prosecution conceded that it did not, but argued, nonetheless, that s 123 of the Magistrates' Court Act 1980 applied to the effect that no objection could be taken to the information. Unsurprisingly, the court rejected this argument. Where an information does not disclose any offence at all, it must be amended before it can properly be tried. That had not happened, and the Crown Court would not have had any power to amend if the magistrates' court had not done so.

The court added that it would have required considerable persuasion to accept the finding of deemed service of the summons. It had been sent by recorded delivery, but the defendant had not signed for it and it had consequently been returned to, and retained by, the Post Office. The defendant had not, therefore, received it. Nor had he had any inkling of its contents.

Sentencing driving while disqualified where the fixed period has expired but a retest has not been taken

In *R v Zar* [2013] EWCA Crim 1897, [2013] All ER (D) 34 (Nov), the defendant was subject to a suspended prison sentence for dangerous driving, with requirements including unpaid work. He was also disqualified and ordered to take an extended retest. He completed the period of disqualification. However, before he had taken an extended driving test he drove his father's car. He was stopped by police and gave a false name and details. He was later arrested, once his true identity had been ascertained, and charged with driving while disqualified, driving without insurance and obstructing the police in the execution of their duty. He pleaded guilty to all three charges and was committed to the Crown Court for sentence. By the time the defendant appeared in court for the instant offences, he had completed all the unpaid work requirement of the earlier sentence and had a reasonable record of attending the probation service for supervision appointments. The judge sentenced the defendant to three months' imprisonment for driving while disqualified, with no separate penalty on the charges of driving uninsured and obstructing the police. The judge considered that it was inappropriate to do anything other than impose a custodial sentence. The judge further imposed a further disqualification of 18 months and activated half of the suspended sentence, namely six months' imprisonment, to run consecutively.

The Court of Appeal (Bean and Burnett JJ) reduced the disqualification and overall prison term. People of working age should not be kept from driving for long periods and the present offence had not involved bad driving. The defendant would still be required to take the extended retest before he could drive again. The court agreed with the judge in the lower court that it would have been inappropriate to do anything other than impose a custodial sentence. On the facts, the activation of the suspended sentence was not excessive. However, there was nothing exceptional in the driving while disqualified offence to take it out of the usual case of someone whose full

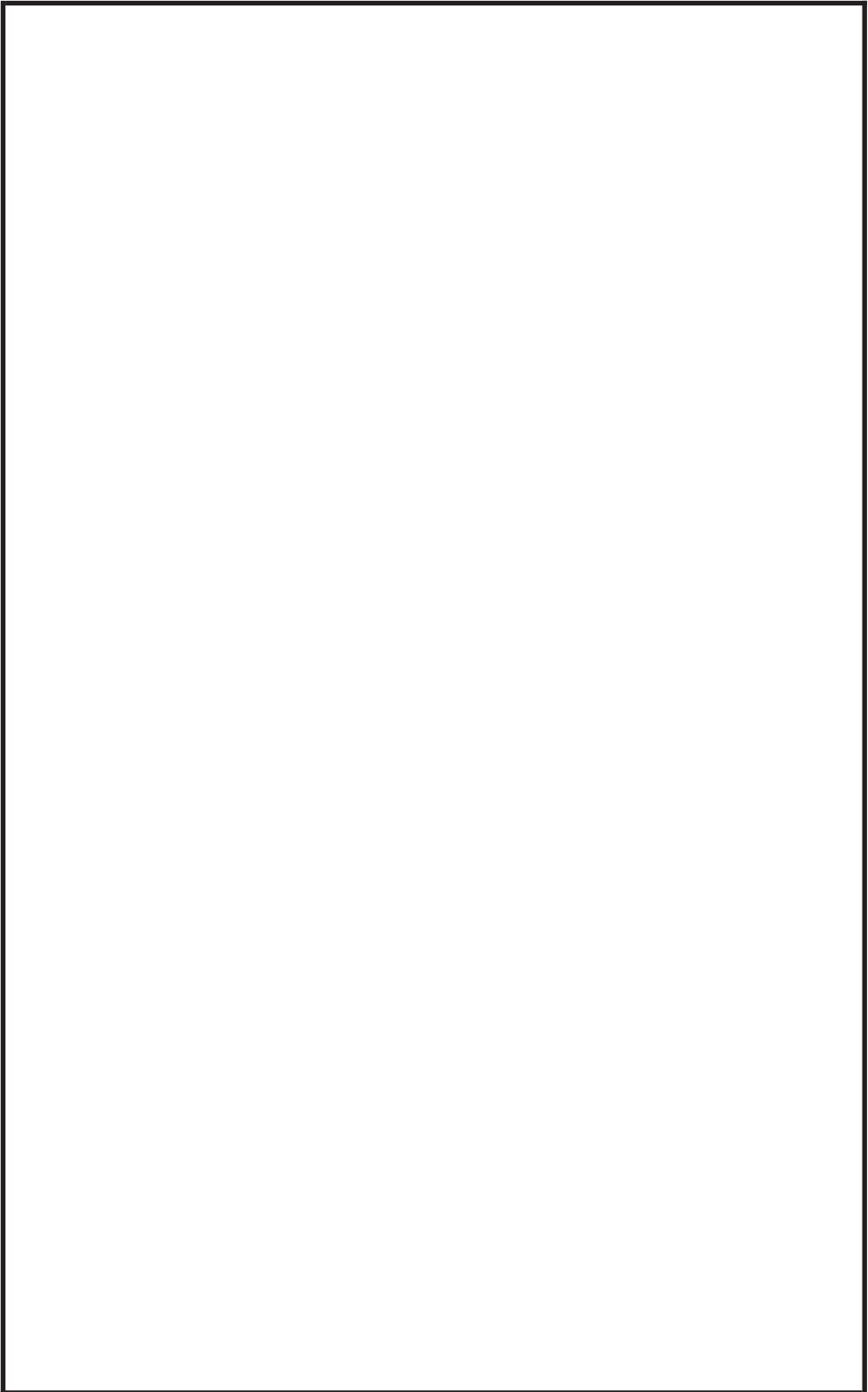
period of disqualification had expired but who had not retaken the test. Having regard to the sentencing guidelines, had the driving while disqualified stood alone, the appropriate penalty would have been a community order. In all the circumstances, it was excessive to order the terms to run consecutively.

Autrefois acquit

In *DPP v Jarman* [2013] All ER (D) 116 (Dec), a charge was dismissed for want of prosecution when the prosecutor failed to appear, even though the court was told another prosecutor would appear. Subsequently, the CPS laid a new information alleging the same offence. The district judge ruled that the earlier decision should bring finality to the proceedings similar to *autrefois acquit* and ordered a stay of the proceedings.

The Administrative Court (Beatson LJ and Griffith Williams J) held that the district judge had been in error by ruling that the dismissal for want of prosecution should be treated as bringing finality, and a plea of *autrefois acquit* could not succeed. Further, the respondent had not been in peril in any way because, while the justices had been competent and there had been a valid charge, the dismissal had not been on the merits. There had been no prosecutor and the justices had heard no evidence. The judge had accepted that there had been no bad faith by the prosecution and that there had been no evidence that the respondent could not receive a fair trial. The judge had failed to have regard to the overriding objective which, while including a requirement to deal with cases efficiently and effectively, should not be used, save in the most exceptional circumstances, to punish the prosecution. There was no ground for a stay of proceedings for abuse of process following the preferment of the second information.





Correspondence about the contents of this Bulletin should be sent to Stephen Hunt, Editorial Department, LexisNexis Lexis House 30 Farringdon Street London, EC4A 4HH (tel 020 7400 2887).

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