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ROAD RACES BILL 2015

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Explanatory Memorandum

1. This Bill is promoted by the Department of Infrastructure on behalf of the Council of Ministers. If enacted, it will supersede the *Road Races Act 1982* ("the 1982 Act").
2. *Part 1* of the Bill comprises clauses 1 to 4. These clauses deal respectively with the short title, the commencement and application of the resulting Act ("the new Act"), and the interpretation of terms used in the new Act. Clause 3 makes it clear that the new Act will apply only to racing involving mechanically propelled vehicles with a maximum net engine power which exceeds 2kW. This eliminates an overlap with the provisions on the closure of roads for the purposes of entertainments in the *Highways Act 1986*.
3. *Part 2* of the Bill sets out the substantive provisions on road racing.
4. *Clause 5* introduces the concept of "a racing authorisation". This is in many respects similar to a road racing order under the existing 1982 Act, but will not need to be laid before Tynwald although it will need to be published in advance of the racing in such manner as the Department thinks appropriate. Clearly, the nature and extent of the publication will depend on the racing which is to be authorised. The organiser of a race will be required to have appropriate insurance or indemnity cover in place to cover specified risks associated with the racing (see subsection (4)(b) of the clause). The clause does not permit the making of an authorisation for racing on a Sunday before 1 p.m. over the whole of the TT Mountain Course or the Billown Circuit (although it would permit racing during that time over a stretch of either of those circuits).
5. *Clause 6* makes provision for a racing authorisation to include supplemental provision dealing with such matters as the erection of stands on land owned by the Crown or occupied by a Department or Statutory Board, prohibiting traffic in other areas for the purposes of the race and prohibiting access to areas affected. The inclusion of a prohibition on access will not be possible if both the landowner and the occupier notify the Department that they object to it.
6. *Clause 7* provides for the variation, suspension and revocation of an authorisation during racing or in the four hours immediately preceding it if there has been a significant and serious failure to comply with its terms or an emergency has arisen. The clause also makes it clear that this does not affect the power to amend or revoke an authorisation at any other time.
7. *Clause 8* provides for the appointment, by the organiser of a race, of marshals.
8. *Clause 9* sets out a marshal's functions and powers in connection with a race. Unlike the corresponding provision of the 1982 Act, under the new provisions

marshals are not deemed to be constables, though they will continue to be subject to the same liabilities, and have the same immunities, as constables. The difference in approach is intended to clarify the position as to oversight of, and liability for the actions of, marshals.

9. *Clause 10* deals with a marshal's power of removal of persons, animals and vehicles.
10. *Clause 11* makes it clear (in subsection (1)) that a marshal when performing the functions and exercising the powers conferred on a marshal by a racing authorisation has the same privileges and immunities, and is subject to the same liabilities, as a constable. Subsection (2) explains that subsection (1) does not affect the liability of the organiser.
11. *Clause 12* makes it clear that a constable in uniform has the same powers as those conferred on a marshal under clauses 6, 9 and 10. For the sake of completeness, it also states that nothing in the Act limits a constable's powers under any other enactment.
12. *Clause 13* creates new summary offences in relation to non-compliance with a racing authorisation, obstructing a race official and interfering with race signage.
13. *Clauses 14 to 16* make provision about the disapplication of enactments in order to facilitate racing and making alternative provision in place of those enactments in connection with a race.
14. *Part 3* contains the Bill's closing provisions. *Clause 17* provides for the Tynwald control of regulations and orders under the new Act. *Clause 18* makes consequential amendments to other Acts as a result of the enactment of the new Act to ensure that cross-references are correct. *Clause 19* repeals the 1982 Act and two Acts which amended it. Finally *clause 20* provides for the expiry of both *clauses 18 and 19* once the amendments and repeals made by them have all taken effect.
15. The Bill is not expected to increase public expenditure or reduce the income of any public body.
16. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.

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ROAD RACES BILL 2015

Index

Section	Page
PART 1 – INTRODUCTION	7
1 Short title	7
2 Commencement	7
3 Application	7
4 Interpretation.....	7
PART 2 – ROAD RACES	9
5 Racing authorisations.....	9
6 Racing authorisation: supplemental provisions.....	10
7 Variation, suspension or revocation of a racing authorisation	12
8 Marshals: appointment	12
9 Marshals: powers and functions.....	13
10 Marshals: power to remove	14
11 Marshal: liabilities and immunities.....	15
12 Constables.....	15
13 Offences.....	15
14 Suspension of enactments relating to road traffic etc.....	16
15 Determination suspending other enactments.....	17
16 Orders may make generally applicable provisions	17
PART 3 – CLOSING PROVISIONS	18
17 Tynwald control of orders and regulations	18
18 Consequential amendments.....	18
19 Repeal of Acts.....	19
20 Revocations.....	19

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ROAD RACES BILL 2015

A **BILL** to make fresh provision about road races; and for connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

PART 1 – INTRODUCTION

1 Short title

The short title of this Act is the Road Races Act 2015.

2 Commencement

- (1) This Act comes into operation on such day or days as the Department may by order appoint.
- (2) An order under subsection (1) may make such consequential, incidental, supplemental, transitional and transitory provision as the Department considers appropriate.

3 Application

This Act applies to the racing of mechanically propelled vehicles with a maximum net engine power which exceeds 2kW.

4 Interpretation

- (1) In this Act —

“**the Clerk of the Course**” means a person appointed by the organiser to take responsibility for the overall conduct of the race, and includes, in that person's absence, any Deputy Clerk of the Course so appointed;

“**Commonwealth country**” means a country, other than the United Kingdom which is a member of the Commonwealth;

“**the Constabulary**” means the Isle of Man Constabulary;

“**the Department**” means the Department of Infrastructure;

“**land**” includes any building on the land;

“**marshal**” means a person appointed as a marshal under section 8 (but see also section 12);

“**marshalling**” is to be construed in accordance with section 9(1);

“**organiser**”, in respect of a racing authorisation, means the person or body of persons organising the race and seeking the authorisation;

“**prescribe**” means prescribe by regulations;

“**prohibit**” includes restrict or regulate;

“**promoter**”, in relation to a race, means the person or body of persons promoting the race;

“**race**” includes a trial of speed, and any practice, trial, heat, parade, or display preliminary to or in connection with a race;

“**racing authorisation**” or “**authorisation**” means an authorisation to use a road or roads for a race or races given by the Department under section 5;

“**regulations**” means regulations made by the Department;

“**relevant governing body**” means any of the following bodies—

- (a) the Auto Cycle Union Limited, of ACU House, Wood Street, Rugby;
- (b) the Fédération Internationale de l’Automobile, 8, Place de la Concorde, 75008 Paris, France;
- (c) the Fédération Internationale de Motocyclisme, 11 route Suisse, 1295 Mies, Switzerland;
- (d) the Royal Automobile Club Motor Sports Association Limited, of Motor Sports House, Riverside Park, Colnbrook, Slough;

“**relevant photographic identification**” means, in relation to a marshal—

- (a) photographic identification issued by a relevant governing body which identifies the holder as a marshal;
- (b) a driving licence issued to the marshal—
 - (i) in the Island or any of the Channel Islands;
 - (ii) in a member State of the European Union;
 - (iii) in the United States of America;
 - (iv) in any Commonwealth country or British overseas territory; or
 - (v) by a body of a prescribed description; or
- (c) a passport or national identity card issued to the marshal—
 - (i) in any of the countries or territories mentioned in paragraph (b); or
 - (ii) in a prescribed country or territory;

“**road**” means —

- (a) a road under the *Highways Act 1986*;
- (b) any path, way or verge (whether publicly or privately owned) next to or near to a road;
- (c) a barrier next to or near to a road; and
- (d) any land (whether publicly or privately owned) between the road and such a barrier;

“**supplemental provision**”, in respect of a racing authorisation, means a provision included in the authorisation under section 6 or by virtue of an order made under section 16;

“**traffic**” means any class of traffic, including —

- (a) all forms of transport, whether or not mechanically propelled and whether or not intended for use on roads; and
 - (b) the presence (with or without movement) of people or animals and the passage of people or animals on foot.
- (2) The Department may by order amend the definitions of “relevant governing body” and “relevant photographic identification” in subsection (1).

PART 2 — ROAD RACES

5 Racing authorisations

- (1) The Department may, following receipt of a written application from the organiser of a proposed race, authorise the use of a road or roads for the race.
- (2) An authorisation must be in writing and must specify —
 - (a) the road or roads that may be used for the race;
 - (b) the type or types of vehicles that are to participate in the race;
 - (c) the days and times when the race may take place.
- (3) An authorisation may also include —
 - (a) conditions the organiser must comply with concerning road safety and in particular —
 - (i) signs to be used to indicate that racing is taking place;
 - (ii) signs and other indications to be used to mark diversionary routes;
 - (b) any provisions suspending or modifying enactments in accordance with section 15; and
 - (c) any supplemental provisions.

- (4) However, the Department may not authorise the use of a road or roads for a race unless it is satisfied that —
- (a) the organiser is competent to organise the racing that is proposed in the written application given under subsection (1);
 - (b) there is or will be in place in connection with the race such security, or such insurance and indemnity, against risks, liabilities, injuries or damage as may be specified by the Department.
- (5) A racing authorisation is of no effect unless the security or insurance and indemnity required under subsection (4)(b) is in place before the racing which it authorises begins.
- (6) In relation to racing on a Sunday on the whole of —
- (a) the Tourist Trophy Mountain Course, or
 - (b) the Billown Circuit,
- a racing authorisation may authorise racing only between 1 p.m. and 9 p.m.
- A racing authorisation to which this subsection applies may provide for the closure of roads and the imposition of other requirements outside those times so far as is reasonably necessary to facilitate racing within them.
- (7) The Department must, before the racing authorised by the authorisation begins, publish a notice, in such a way as it considers appropriate, setting out the authorisation's effect.
- (8) In this section "security" includes—
- (a) the deposit of an amount of money; and
 - (b) the provision of a bond, guarantee, indemnity or other surety, mortgage or undertaking.

6 Racing authorisation: supplemental provisions

- (1) A racing authorisation in respect of the use of a road or roads for a race may, or may empower the Department or the organiser to —
- (a) prohibit traffic on, or access to, any roads, including roads not being used for the purpose of the race;
 - (b) require the establishment for the race of a coordination centre;
 - (c) authorise the erection and maintenance on the highway or upon land vested in the Crown, a Department or a Statutory Board, of stands, enclosures, barriers, bridges, decorations or other apparatus; and
 - (d) make consequential, incidental, or supplemental arrangements necessary or appropriate for the proper conduct of the race.

- (2) A racing authorisation may also —
- (a) prohibit traffic on, or access to, any land (not being a road) or foreshore specified in the authorisation, or
 - (b) empower the Department or the organiser to do any of those things,
- unless the owner and any other occupier of the land have notified the Department in writing that they object to the proposed authorisation so far as it concerns land they own or occupy (or any part of it) (“the relevant land”).
- (3) A notice given under subsection (2) must be accompanied by such evidence as the Department prescribes demonstrating the owner or occupier’s interest in the relevant land.
- (4) Subsection (5) applies if —
- (a) a notice is given under subsection (2); but
 - (b) the Department considers that the use by race officials or spectators of the relevant land would constitute a hazard to their safety, or the safety of others.
- (5) If this subsection applies, the Department may —
- (a) place signs on the relevant land or elsewhere indicating the hazard, or
 - (b) by notice require the organiser or the owner or occupier of the land—
 - (i) to indicate (whether by placing signs on the relevant land or elsewhere) that, in the Department’s view, use of the relevant land constitutes such a hazard; and
 - (ii) to take such steps as the Department may specify to draw the attention of persons using the land to the Department’s view that the use of the relevant land constitutes a hazard.

For the sake of clarity, this subsection does not limit the power of the Department to impose conditions as part of a racing authorisation.

- (6) In framing a racing authorisation and in determining whether to exercise the powers conferred by subsection (5), the Department must have regard to any risk assessment which appears to it to be relevant.
- (7) Before a racing authorisation is issued, the Department or the organiser must give notice of a proposed prohibition under subsection (2) in such manner as it may determine, to every owner or occupier likely to be affected by it.

An accidental failure on the part of the Department or the organiser to give notice required by this subsection does not invalidate a racing authorisation.

- (8) If, in accordance with subsection (1)(c), a racing authorisation authorises the erection and maintenance of a stand, enclosure or similar facility, it may also authorise a person specified in the authorisation to charge for its use.
- (9) A prohibition having effect by virtue of subsection (1) or (2) does not apply so as to prohibit access with the consent of the Clerk of the Course.
- (10) The Department may, by written or oral notice to the organiser, extend the period of a prohibition having effect by virtue of subsection (1) or (2) if it considers it necessary to do so to deal with an emergency or a serious incident or for the continuance of the race in question.
- (11) The Department must not extend the prohibition for longer than is reasonably necessary to deal with the emergency or incident or for the continuance of the race in question.

7 Variation, suspension or revocation of a racing authorisation

- (1) Whilst racing is taking place in pursuance of a racing authorisation, or within 4 hours of its anticipated start, the Department may by written or oral notice (“a change notice”) to the organiser vary, suspend or revoke a racing authorisation if the Department is satisfied that—
 - (a) there is a significant and serious contravention of the authorisation; or
 - (b) there is an emergency that justifies doing so.
- (2) A variation or suspension has effect until the Department notifies the organiser that it has ceased to apply or (if the change notice so provides) that it will cease to apply from a specified time.
- (3) A variation or suspension of a racing authorisation does not—
 - (a) affect the application of a supplemental provision of the authorisation, or
 - (b) nullify, or change the effect of, a determination made under section 15 (suspension of other enactments),unless the change notice otherwise provides.
- (4) The organiser must publicise the change notice in such manner as it considers appropriate to bring its effect to the attention of the public.
- (5) For the sake of clarity, the provisions of this section only limit the Department’s power to amend or revoke a racing authorisation during the period specified in subsection (1).

8 Marshals: appointment

- (1) An organiser to whom a racing authorisation has been given may appoint marshals in accordance with the authorisation for a race to be held pursuant to the authorisation.

- (2) An organiser who appoints a marshal in respect of a race must—
 - (a) ensure that, before the race commences, the marshal has received appropriate training, and is competent, to discharge the functions of a marshal; and
 - (b) give the marshal an identity card evidencing the marshal's authority.
- (3) The identity card must —
 - (a) contain a recent photograph of the marshal, or be accompanied by relevant photographic identification;
 - (b) contain the signature of the individual who authorised its issue;
 - (c) identify the person as a marshal;
 - (d) state the race or races for which the marshal is appointed; and
 - (e) state the date on which it expires.
- (4) An organiser may revoke a marshal's appointment at any time, and must do so if the Department or the Chief Constable requests its revocation.

9 Marshals: powers and functions

- (1) The functions of a marshal are —
 - (a) to marshal the race for which the marshal is appointed; and
 - (b) to administer and enforce the racing authorisation in accordance with directions given to the marshal by the organiser by whom the marshal was appointed.

For the sake of clarity marshalling the race includes taking any reasonable steps to secure the safety of competitors, officials or spectators.

- (2) A marshal, in performing those functions, may —
 - (a) move, or cause to be moved, a vehicle, person or animal, using, if necessary, reasonable force and assistance to do so;
 - (b) require any person to stop doing anything which in the marshal's opinion puts the safety of competitors, officials or spectators at risk;
 - (c) detain a person for so long as is necessary to secure the person's safety or public safety using, if necessary, reasonable force and assistance to do so;
 - (d) stop or otherwise control traffic;
 - (e) erect, maintain or remove apparatus to close a road or otherwise control traffic.
- (3) A marshal, when performing those functions, must —
 - (a) produce the marshal's identity card for inspection upon request, or

(b) have the identity card displayed so that it is clearly visible, and inform any person in relation to whom those functions are to be exercised that the marshal is empowered to exercise them under this section.

This is subject to the following qualification.

- (4) When performing those functions, if the marshal's identity card does not contain a recent photograph of the marshal, the marshal must also —
- (a) have relevant photographic identification in his or her possession, and
- (b) produce that identification for inspection upon request.
- (5) Section 10 makes additional provision about a marshal's power to remove persons, animals and vehicles.

10 Marshals: power to remove

- (1) If a marshal finds a person on a road or land, not being a road or land over which racing is to take place —
- (a) in contravention of a prohibition having effect by virtue of section 6; or
- (b) in such a position as to obstruct or otherwise hinder the conduct of a race held pursuant to a racing authorisation,
- the marshal may —
- (i) detain the person until he or she can be delivered into the custody of a constable,
- (ii) remove the person to a place where no obstruction or hindrance will occur, or
- (iii) remove the person as mentioned in paragraph (b) and thereafter detain the person until he or she can be delivered into the custody of a constable.
- (2) In exercising the powers conferred by subsection (1) the marshal may, if necessary, use reasonable force and assistance.
- (3) However, before exercising the powers conferred by subsection (1), the marshal must —
- (a) warn the person that the marshal considers the person's conduct constitutes an offence; and
- (b) inform the person of the marshal's powers under that subsection.
- (4) If marshal finds an animal or vehicle —
- (a) on a road closed under a prohibition having effect by virtue of section 6; or

- (b) on land, or in a position, where it could obstruct or otherwise hinder the conduct of a race held pursuant to a racing authorisation;

the marshal or anyone assisting the marshal may remove the animal or vehicle from the road, land or position.

- (5) Subsections (3) and (4) of section 9 apply to a marshal's exercise of the functions in this section as they apply to that section.

11 Marshal: liabilities and immunities

- (1) A marshal, in exercising the powers and performing the functions of that appointment, is subject to the same liabilities, and enjoys the same immunities, as a constable.
- (2) Subsection (1) does not affect the vicarious liability of the organiser for anything done by a marshal.

12 Constables

- (1) Nothing in this Act is to be taken to limit the powers and duties of a constable under any other enactment.
- (2) A constable in uniform may exercise any power conferred by section 6, 9 or 10 on a marshal.

Accordingly any reference to a marshal —

- (a) in those sections, other than section 9(3), (4) or (5), and
- (b) in section 13 so far as relating to sections 6, 9 and 10,

is to be taken to include a constable.

13 Offences

- (1) A person commits an offence, and is liable on summary conviction to a fine not exceeding £5,000, custody for a term not exceeding 6 months, or both, if the person without lawful authority or reasonable excuse —
 - (a) obstructs or otherwise hinders the conduct of a race held pursuant to a racing authorisation;
 - (b) obstructs or otherwise hinders an official performing a function in connection with a race held pursuant to a racing authorisation;
 - (c) fails to comply with a requirement imposed by a marshal under section 9(2)(b);
 - (d) enters, is found or remains on a road or land in contravention of a prohibition having effect by virtue of section 6;
 - (e) removes, defaces or obscures a sign or notice erected for the purpose of, or in connection with, racing authorised by a racing authorisation;

- (f) fails to comply with a requirement imposed by the Department under section 6(5)(b);
 - (g) otherwise contravenes a racing authorisation or any of its supplemental provisions;
 - (h) keeps an animal, or owns or is in charge of a vehicle, that is found on a road or land the subject of a prohibition having effect by virtue of section 6; or
 - (i) contravenes an alternative provision mentioned in section 15(3).
- (2) In proceedings for an offence –
- (a) under subsection (1)(a) or (b), it is a defence for the defendant to prove that the obstruction or hindrance was not intentional;
 - (b) under subsection (1)(e) it is a defence for the defendant to prove that he or she acted in accordance with authority given by the Department, the organiser or a constable.
- (3) For the purpose of subsection (1)(b) “an official performing a function in connection with a race held pursuant to a racing authorisation” means a person performing that function who is –
- (a) a marshal;
 - (b) a person appointed by the organiser as an official (however described) in respect of the race who is displaying an identity card that is clearly visible and who has been appointed in accordance with the race authorisation; or
 - (c) a person appointed by the Department and notified to the organiser.
- (4) For the purposes of subsection (1)(h) a person “keeps” an animal, if the person –
- (a) owns the animal;
 - (b) has charge or possession of it; or
 - (c) is the head of a household of which a member under the age of 16 owns the animal or has it in the member’s charge or possession.

14 Suspension of enactments relating to road traffic etc

No provision of any enactment (other than this Act) –

- (a) prohibiting, restricting or regulating traffic;
- (b) restricting the speed of vehicles;
- (c) regulating the manner of driving vehicles;
- (d) regulating the construction, use, maintenance or lighting of vehicles;
- (e) requiring a policy of insurance or security to be in force in relation to the use of any vehicle;

- (f) relating to the duty chargeable on, and the licensing and registration of, vehicles;
- (g) requiring the driver of a vehicle to hold a licence authorising him to drive the vehicle;
- (h) imposing any penalty for the infringement of any provision referred to in paragraphs (a) to (g);

applies to a vehicle or its driver while engaged in a race held pursuant to a racing authorisation, unless the provision is incorporated in the authorisation.

15 Determination suspending other enactments

- (1) The Department may, in connection with the use of a road or roads for a race to be held pursuant to a racing authorisation, make a determination suspending any provision made by or under —
 - (a) the *Road Traffic Act 1985*;
 - (b) the *Road Traffic Regulation Act 1985*; or
 - (c) the *Licensing and Registration of Vehicles Act 1985*; or
 - (d) the *Highways Act 1986*.
- (2) The Department must specify in the determination the period of the suspension, which must not exceed a period starting not more than 4 weeks before the race and ending not more than one week after it.
- (3) In the determination the Department must specify any alternative provisions that are to apply during the period of the suspension.
- (4) The Department must as soon as practicable notify the public of any determination it makes under this section.
- (5) The notice —
 - (a) must be given in a way the Department considers is appropriate to bring the determination to the attention of the public; and
 - (b) must set out details of any alternative provisions that are to apply during the period of the suspension.

16 Orders may make generally applicable provisions

- (1) The Department may by order provide that all racing authorisations or those specified in the order are to be taken to include such provisions, as specified in the order, as could be included in an authorisation by the Department by virtue of this Act.
- (2) The Department may by order apply, either to all authorisations or those specified in the order, such provisions or determinations as may be made in respect of a particular race under this Act.

PART 3 – CLOSING PROVISIONS

17 Tynwald control of orders and regulations

- (1) Regulations and orders under this Act must not come into operation unless they are approved by Tynwald.
- (2) Subsection (1) does not apply to an order under section 2, but such an order must be laid before Tynwald as soon as practicable after it is made.

18 Consequential amendments

- (1) In the *Control of Advertising Act 1981* –
 - (a) in section 1(1) for “an order made by the Department of Infrastructure pursuant to the provisions of the *Road Races Act 1982*” substitute «a racing authorisation under the *Road Races Act 2015*».
 - (b) in section 2 in the definition of “a road racing course” for “by order made by the Isle of Man Highway and Transport Board pursuant to the *Road Races Act 1982*” substitute «by a racing authorisation under the *Road Races Act 2015*».
- (2) In section 38 of the *Highways Act 1986* –
 - (a) in subsection (5) for the words following “by virtue of” substitute –

«a racing authorisation under the *Road Races Act 2015* and sections 5 to 9 and 12 to 16 of that Act apply to the exercise of the Department’s powers under subsection (1) as they apply to a racing authorisation.»;
 - (b) for subsection (6) substitute –

«(6) In the application of the provisions of the *Road Races Act 2015* mentioned in subsection (5) to a decision to close a highway under this section, references to a race under that Act are to be construed as references to the entertainment in question.»
 - (c) for subsection (7) substitute –

«(7) If the Department incurs expense in connection with—

 - (a) a decision to close a highway under this section, or
 - (b) the exercise of any powers mentioned in subsection (5),

the Department may by notice require the person at whose request the decision was made, or the powers were exercised, to defray all or part of that expense.
 - (7A) The power in subsection (1) may not be exercised in order to close a highway in circumstances where a racing authorisation could provide for the closure.

For the purposes of this subsection, disregard section 5(6) of the *Road Races Act 2015* (restriction on use of racing authorisations for Sunday racing).».

- (d) in subsection (8) —
 - (i) in the definition of “**entertainment**” for “race or competition;” substitute —
 - «competition or race (other than a race in respect of which provision can be made under the *Road Races Act 2015*);»
 - (ii) for the definition of “**road race order**” substitute —
 - «“**racing authorisation**” has the meaning given by section 5 of the *Road Races Act 2015*,».

19 Repeal of Acts

The following are repealed —

- (a) the Road Races Act 1982;
- (b) the Road Races (Amendment) Act 1987; and
- (c) the Road Races (Amendment) Act 1994.

20 Revocations

- (1) Sections 18 and 19 and this section are revoked on the day following the coming into operation of the last of the provisions of sections 18 and 19.
- (2) The revocation does not—
 - (a) affect the continuing operation of the amendments made by section 18; or
 - (b) revive the Acts repealed by section 19.