

## ARRANGEMENT OF SECTIONS

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**An Act to provide for the registration and licensing of motor vehicles; for the issue of driving licences; for the creation of offences relating to the use of vehicles and for the regulation of traffic; and for matters incidental thereto.**

*[Date of Commencement: 1st January, 1975]*

**Part:I Preliminary ss 14**

**1. Short title**

This Act may be cited as the Road Traffic Act.

**2. Interpretation**

(1) In this Act, unless the context otherwise requires-

**"articulated vehicle"** means a combination of vehicles comprising a motor vehicle and semi-trailer coupled to the motor vehicle;

**"authorized officer"** means a person specially or generally authorized by the Minister for the matter in question;

**"bridge"** includes culvert and causeway;

**"bus"** means a motor vehicle having seating accommodation for more than 30 passengers and not more than 100 passengers on a single deck, exclusive of the driver;

**"call-cab"** means a light motor vehicle having seating capacity for not more than four passengers, exclusive of the driver, and available for hire or operated for reward from a defined private place;

**"carriageway"** means the part of a road normally used by vehicular traffic, including those portions commonly known as the shoulders, but excluding any portion of any such road which is set aside for use by pedestrian traffic;

**"cattle"** includes oxen, bulls, cows, horses, camels, mules, donkeys, sheep, goats and swine;

**"combination of vehicles"** means coupled vehicles which travel on the road as a unit;

**"commercial vehicle"** means a motor vehicle wholly or primarily constructed or adapted for the carriage of goods or burdens of any description in connection with any trade, business or agriculture, but does not include any type or class of motor vehicle which the Director may, by notice in the *Gazette*, declare not to be a commercial vehicle for the purposes of this Act;

**"conductor permit"** means an authorisation issued to a person employed by a public service vehicle operator to handle fees from passengers and handle luggage of passengers;

**"conversion"** means the replacement of a driving licence obtained outside Botswana with a new Botswana driving licence;

**"cycle"** means any vehicle with one or more wheels which is propelled by the muscular energy of the driver acting on the pedals;

**"demerit point"** means a point incurred by a person who has contravened any offence under this Act

**"detecting device"** means a device prescribed as a traffic offence detecting device for the purposes of this Act;

**"Director"** means the Director of Road Transport and Safety appointed under section 3;

**"double-deck bus"** means a bus having an upper and lower deck with seats exceeding 100 passengers, exclusive of the driver;

**"drive"**, in relation to a vehicle, includes the steering of such vehicle;

**"driver"**, in relation to a vehicle, means any person who drives or guides, or is in actual physical control of, any vehicle, and in relation to cattle, means the person in charge or control of the cattle;

**"driving licence"** means a licence to drive a motor vehicle issued under this Act, and any document deemed to be a driving licence by virtue of any regulations made under this Act;

**"driving school"** means a business licensed under this Act which employs for a reward, licensed driving instructors to instruct or supervise any person in the driving of a motor vehicle on a road;

**"driving test examiner"** means any person appointed to be a driving test examiner under section 3(1)(b);

**"gross vehicle mass (GVM)"** means the maximum weight of a vehicle and its load as specified by the manufacturer or, in the absence of such specification, as determined by a competent authority;

**"hazardous goods"** means dangerous goods or substances which shall include but not be limited to packages, unit load, bulk containers, bulk transportation equipment, petroleum-based flammable liquids and other objects that are considered hazardous or dangerous in terms of the following Acts-

- (a) Explosives Act;
- (b) Fire Services Act;
- (c) Mines and Minerals Act;
- (d) Wildlife Conservation and National Parks Act;
- (e) Atmospheric Pollution (Prevention) Act; or
- (f) Arms and Ammunition Act.

**"heavy commercial vehicle"** means a commercial motor vehicle wholly or primarily constructed or adapted for the carriage of goods the gross weight of which exceeds 7500 kg;

**"heavy motor vehicles"** has the meaning ascribed to it by section 4(2)(c);

**"heavy trailer"** means a trailer of a GVM exceeding 750 kg;

**"identification plate"** means one of the prescribed number of identification plates required to be carried on a motor vehicle under section 11 or section 24;

**"institutional vehicle"** means a vehicle registered under the name of any formal institution such as training colleges, universities, schools, churches, Government and parastatal organisations;

**"laden weight"** means the actual weight of the vehicle as loaded, with the crew and passengers on board;

**"licensing officer"** means a licensing officer appointed under section 3(2);

**"light trailer"** means any trailer of a GVM not exceeding 750 kg;

**"light vehicle"** means a motor vehicle other than a motor cycle having a permissible maximum weight not exceeding 3 500 kilograms;

**"light commercial vehicle"** means a commercial motor vehicle wholly or primarily constructed or adapted for the carriage of goods the gross weight of which does not exceed 7500 kg;

**"main road"** means any road declared to be a main road under section 100;

**"mini-bus"** means a motor vehicle having seating capacity for more than 11 but not more than 15 passengers, exclusive of the driver;

**"midi-bus"** means a motor vehicle having seating capacity for more than 15 passengers but not more than 30 passengers, exclusive of the driver;

**"motor car"** means a motor vehicle having seating accommodation for not more than seven passengers excluding the driver, but does not include a motor cycle;

**"motor cycle"** means any two or three or four-wheeled vehicle as prescribed under section 4;

**"motor dealer"** means any person who deals by way of business in motor vehicles or trailers including a manufacturer and a repairer of such vehicles;

**"motor dealer's licence"** means a licence issued under section 23;

**"motor omnibus"** means-

- (a) a public service vehicle having seating accommodation for more than seven passengers exclusive of the driver; or
- (b) a motor vehicle having seating accommodation for more than 11 passengers exclusive of the driver;

**"motor vehicle"** means any vehicle, self-propelled by mechanical or electrical power, but excluding any vehicle running on a specially prepared way such as a railway or tramway or cables and such other vehicles as the Minister may, from time to time by notice published in the *Gazette*, declare not to be motor vehicles for the purposes of this Act;

**"motor vehicle examiner"** means any person appointed to be a motor vehicle examiner under section 3(1)(b);

**"motor vehicle licence"** means a motor vehicle licence issued under Part III;

**"owner"**, in relation to a vehicle, includes the owner, joint owner or part owner of a vehicle and, where a vehicle is the subject of a hire-purchase agreement or hiring agreement, includes the person in possession of the vehicle under that agreement;

**"permit"** means an authorisation issued under section 108 of the Act;

**"physically disabled"** means any person driving a light motor vehicle with automatic transmission and adapted and clearly marked with a badge for driving by handicapped persons and which may make use of the facility, road, or portion of the road indicated by an appropriate road sign;

**"plying for hire"** includes-

- (a) standing on any public taxi stand;
- (b) being offered for hire by any notice, advertisement or announcement, or any express or implied invitation;
- (c) standing or travelling whilst exhibiting a "For Hire" notice of any kind;

**"private hire vehicle"** means any public service vehicle used for the conveyance of passengers or goods for rental purposes;

**"Professional Driving Permit (PrDP)"** means, respectively, one of the permits issued under section 106;

**"provisional licence"** means a licence to drive a motor vehicle issued under section 32;

**"public service vehicle"** means any vehicle which is licenced under Part XIII to-

- (i) carry passengers or goods for hire or reward or on own account; or
- (ii) ply for hire or reward or is let out for hire or reward;

**"qualified person"** means a pathologist, police officer, medical practitioner, laboratory technician, intern or houseman, forensic analyst, laboratory scientist or registered nurse of or above the rank of staff nurse or such other person as the Minister may prescribe;

**"registered owner"** means the person in whose name a vehicle is registered under section 6;

**"registration book"** means the registration book issued by the Director in respect of a vehicle under section 6(5);

**"registration number"** means the number allocated to a vehicle when it is registered under section 6(5);

**"road"** means the entire surface of any way, road, street, thoroughfare, wharf, car park, footpath, bridle-path or road reserve on which a vehicle is capable of travelling and to which the public have access, and includes-

- (a) any bridge, drift, ford or ferry traversed thereby;
- (b) any road established, proclaimed or recognised as such under the provisions of any written law; and

- (c) any road however created which, before or after the commencement of this Act, has been in the undisturbed use of the public or which the public has had the right to use during a period of not less than three years:

Provided that in any prosecution under this Act the road on which the offence is alleged to have occurred shall be presumed to be a road to which the public has access, or which has been in the undisturbed use of the public, or which the public have had a right to use, for not less than three years, unless the contrary is proved;

**"road authority"**, where a road in any area or district has been lawfully vested in a local authority or any other person, means such local authority or such person, and where a road has not been so vested means such public officer as the Minister may, by notice published in the *Gazette*, appoint to be the road authority for that road for the purposes of this Act;

**"school-bus"** means a motor vehicle used solely for the conveyance of school children from place of abode to a school and vice versa or to undertake extra-curricula activities;

**"tare weight"** means the weight of a vehicle when unladen without the crew, passengers or load, but with a full standard supply of fuel and with the tools and spare parts which the vehicle normally carries;

**"taxi"** means any public service vehicle having seating accommodation for not more than four passengers, excluding the driver, which is licensed under this Act or any other written law relating to the licensing and operation of taxi to ply for hire from a taxi rank or other public place;

**"tractor"** means an agriculture vehicle designed or adapted solely for agricultural activities and does not include a road or passenger vehicle;

**"traffic sign"** means any sign, signal, signpost, notice, light or other device or object, whether fixed or portable, erected or in any way displayed upon or adjacent to any road by or with the consent of the road authority, for the purpose of warning, regulating, restricting or prohibiting traffic and vehicles of any kind on a road and includes any line, mark, words or other sign on the surface of the road for conveying such warning, regulation, restriction or prohibition:

Provided that all traffic signs shall conform to any regulations as to size, colour and type which may be prescribed under this Act;

**"trailer"** means any vehicle without motive power designed to be drawn by a motor vehicle, whether or not part of the trailer is superimposed on the drawing vehicle, but does not include a sidecar attached to a motor cycle;

**"train-bus"** means a bus which-

- (i) consists of two sections connected to form a unit;
- (ii) can swivel in a horizontal plane at the connection between such sections; and
- (iii) is designed or adapted solely or principally for the conveyance of at least 100 passengers, exclusive of the driver;

**"unladen weight"** means the weight of the vehicle without crew, passengers or load, but with a full supply of fuel, oil, grease, spare wheel and with the tools which the vehicle normally carries.

**"vehicle"** means any conveyance or structure which is designed to be propelled or drawn on land, and includes a motor vehicle, a trailer and an aircraft when such aircraft is stationary or in motion upon a road, but excludes a conveyance propelled or drawn by a human being and designed and used for transporting infants or infirm persons.

(2) A vehicle shall for the purposes of this Act or any regulations made thereunder be deemed to be used when it is on a road, whether it is stationary or moving, and a person shall be deemed to use a vehicle if he is the owner thereof, or is the person in possession, charge or control thereof, or is the driver thereof or if he is the person who caused it to be used.

### **3. Appointment of officers**



- (1) The Minister shall, by notice published in the *Gazette*, appoint-
- (a) a Director of Road Transport and Safety, who shall have such duties relating to the administration of this Act, as the Minister may, from time to time, determine, which duties the Director may, with the consent of the Minister, delegate to any public officer;
  - (b) such motor vehicle examiners and driving test examiners as may be necessary for carrying out the purposes and provisions of this Act and any regulations made thereunder.

(2) The Director shall, by notice published in the *Gazette*, appoint such licensing officers as may be necessary for carrying out the purposes and provisions of this Act.

#### **4. Classification of motor vehicle**

(1) This Act shall apply to all motor vehicles and other traffic on a road and other surfaces normally used by motor vehicles.

(2) For the purposes of this Act and any regulations made thereunder, motor vehicles shall be divided into the following classes-

- (a) motor cycles-
  - (i) (A1) not exceeding 125 cubic centimetres (cc) engine capacity and not exceeding 230 kg GVM;
  - (ii) (A) exceeding 125 cubic centimetres engine capacity or 230 kg GVM;
- (b) light motor vehicles-
  - (B) light motor vehicles not exceeding 3500 kg GVM;
- (c) heavy motor vehicles-
  - (i) (C1) heavy motor vehicles with GVM exceeding 3500 kg GVM but not more than 16000 kg GVM;
  - (ii) (C) heavy motor vehicles with GVM exceeding 16000 kg;
- (d) combination of vehicles-
  - (i) (EB) combination of vehicles with a light motor vehicle not exceeding 3500 kg GVM and a light trailer (exceeding 750 kg GVM);
  - (ii) (EC1) combination of vehicles with a heavy motor vehicle exceeding 3500 kg GVM but not exceeding 16000 kg with a trailer not exceeding 750 kg GVM; and
  - (iii) (EC) combination of vehicles with a heavy motor vehicle exceeding 16000 kg GVM and one or more trailers exceeding 750 kg GVM;
- (e) tractors-
  - (F) a motor vehicle constructed or adapted for the purpose of hauling trailers but which is not itself designed to carry goods or passengers;
- (f) Professional Driving Permit [PrDP "P" (Passengers), "G" (Goods) "H" (Hazardous)-
  - (i) the vehicle classes to which the PrDP "P" shall apply include call-cab, taxi, mini-bus, midi-bus, schoolbus, bus, train-bus, double-deck bus, and special;
  - (ii) the vehicle classes to which the PrDP "G" shall apply include a motor vehicle other than a motor cycle or motor car, designed or adapted for the conveyance of goods and in the process of loading or off-loading goods on a public road for hire and reward or on own account;
  - (iii) the vehicle classes to which the PrDP "H" shall apply include any vehicle used for the conveyance of hazardous substances.
- (g) special types-
  - (H) motor vehicles as may be specially authorised by the Director.

#### **art:II Registration of Vehicles ss 515**

#### **5. Records of vehicles**

(1) The Director shall keep records of all motor vehicles and trailers registered in Botswana, and shall cause every licensing officer to keep records of all vehicles registered by him.

(2) Vehicle records maintained by the Director or a licensing officer shall be open for inspection by any police officer, and any other person duly authorized by the Minister, who shall be entitled to copy any entry in such records free of charge.

(3) Any person who satisfies the Director that he has reasonable cause therefor shall be entitled, on payment of the prescribed fee, to a copy of any entry in such vehicle records.

## **6. Motor vehicles and trailers to be registered**

(1) No person shall own, possess or use a motor vehicle or trailer unless such motor vehicle or trailer is registered under this Act:

Provided that this subsection shall not apply in the case of-

- (i) an unregistered vehicle which is owned by and in the possession of a motor dealer for the purposes of sale;
- (ii) a vehicle which is lawfully used under the authority of and in accordance with the conditions of a motor dealer's licence issued under section 23;
- (iii) a vehicle which is being driven to or from any place specified by a licensing officer for inspection or testing, or while it is being tested by a motor vehicle examiner;
- (iv) a vehicle lawfully brought into Botswana in accordance with any regulations made by the Minister under section 130; or
- (v) a vehicle exempted under the provisions of this Act.

(2) Application for the registration of any motor vehicle or trailer shall be made to a licensing officer in the prescribed form and shall be accompanied by the prescribed fee:

Provided that where a person satisfies the licensing officer that he has been authorized in writing for the purpose of this section, by a person who is absent from Botswana to make application on his behalf for the registration of a vehicle, the application form may be signed by the person so authorized.

(3) Before registering a motor vehicle or trailer a licensing officer shall, if the vehicle or trailer is over three years old at the time of application, or may in any other case if he thinks fit, require the vehicle or trailer to be inspected by a motor vehicle examiner in order to satisfy himself that the vehicle or trailer is in a fit and proper condition for the purpose for which it is intended to be used, and conforms in all respects to the requirements of this Act.

(4) If an application is made to register a motor vehicle or trailer the weight or load capacity of which has not been declared by the manufacturers of the chassis, the licensing officer shall not register the vehicle until a motor vehicle examiner has determined its weight and load capacity, such determination being final.

(5) The licensing officer shall, on being satisfied as to the accuracy of the particulars contained in a form of application for the registration of a motor vehicle or trailer and as to the other matters regarding which he is required to be satisfied under this section, issue to the owner of the vehicle and in his name a registration book in the prescribed form containing the registration number allocated to the vehicle and particulars of the vehicle.

(6) A registration book or duplicate thereof issued under this section shall be proof of the registration of the vehicle, the name of the registered owner and the registration number of the vehicle.

(7) The licensing officer shall furnish the Director with details of the contents of every registration book issued under this section and the Director shall enter those details in his records.

(8) If a registration book has been lost, destroyed, or defaced, or the particulars thereon have become illegible, the owner of the vehicle shall apply in the prescribed form for a duplicate thereof, and the Director shall, if satisfied as to such loss, destruction, defacement or illegibility, and upon payment of the prescribed fee, issue a duplicate of the said registration book:

Provided that-

- (i) the Director shall cancel and destroy any defaced or illegible registration book; and

- (ii) where any registration book which has been lost is subsequently found such book, or the duplicate thereof, shall forthwith be returned to the Director for cancellation and destruction.

(9) In the event of any change of circumstances which affects the accuracy of the registered particulars of a motor vehicle or trailer, the owner thereof shall forthwith inform the Director of such change, shall forward to him the registration book in order that it may be amended or cancelled, and shall supply the Director with any further information that may be required. If any registered motor vehicle or trailer is broken up, stolen, destroyed, or becomes permanently unfit for use as a motor vehicle or trailer, or is removed permanently from Botswana, the Director shall cancel the registration of the vehicle.

(10) If a licensing officer has reason to believe that a motor vehicle or trailer in respect of which registration has been applied for is or may be of a type not previously registered, or is of a type so registered but constructed according to different specifications, he may refuse to register the vehicle until plans or specifications thereof have been submitted to and approved by the Director.

#### **7. Inspection fee**

Where a vehicle is required to be inspected by a motor vehicle examiner under the provisions of this Part, the owner of such vehicle shall, before any inspection is carried out, pay the prescribed fee to a licensing officer.

#### **8. Owner of vehicle**

The person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle for the purposes of this Act, or for the purpose of any criminal or civil proceedings arising under or by virtue of this Act.

#### **9. Change of ownership**

(1) A vehicle, the ownership of which has been transferred by the registered owner thereof, shall not be used on a road for more than seven days after the date of such transfer unless the new owner is registered as the owner thereof.

(2) Upon the transfer of ownership of a vehicle, the registered owner thereof shall immediately deliver to the new owner the registration book in respect of the vehicle and the new owner shall within seven days immediately after the delivery to him of the registration book deliver the same together with the prescribed fee to a licensing officer in order that the vehicle may be registered in his name.

(3) Subsections (1) and (2) shall not apply to a change of possession consequent on a contract of hiring where the period of hiring does not exceed three months, or where the registered owner continues to employ and pay the driver of the vehicle.

(4) Application for registration of a new owner may be made before the actual transfer of the vehicle, but the registration of a new owner shall not be effective until the registration book has been surrendered to and reissued by a licensing officer.

(5) Subsections (1), (2) and (4) shall not apply to any change of possession of a vehicle which occurs by reason of the vehicle being lawfully seized under a hire purchase agreement, but in such event the following provisions shall apply-

- (a) the person from whose possession the vehicle was seized shall, within 14 days of the seizure, deliver the registration book to the person who has seized the vehicle, and inform the Director in writing of the change of possession; and
- (b) the person seizing the vehicle shall, within 14 days of receiving the registration book, apply to the Director to be registered as the new owner, and on payment of the prescribed fee, the Director shall so register him.

(6) On registering a new owner, the Director shall make any necessary alterations to the registration book, and shall deliver it, or if he thinks fit a replacement of such registration book, to the new owner.

#### **10. Registration of vehicles imported into Botswana**

Notwithstanding any other provision of this Act, where a motor vehicle or trailer has been imported into Botswana, a licensing officer shall not register the vehicle until the owner thereof satisfies him-

- (a) that the vehicle has been lawfully exported from its country of origin or the country in which it was last registered; and
- (b) that the vehicle has been lawfully imported into Botswana, and by producing documentary evidence, in the form of a customs clearance certificate issued by the Department of Customs and Excise, that the vehicle has been cleared from customs control.

#### **11. Vehicles to carry identification plates**

A motor vehicle or trailer registered under this Act shall not be used on a road unless there is fixed onto the vehicle in the prescribed manner, the prescribed number of identification plates of the prescribed design and colour on which is inscribed the registration number of the vehicle.

#### **12. Production of registration books**

(1) The owner of a motor vehicle or trailer shall, when requested by a police officer or an authorized officer, produce for inspection, either immediately to such officer or within 10 days of such request being made, at a police station nominated by such owner at the time of such request being made, the registration book issued in respect of such vehicle.

(2) Where-

- (a) a motor vehicle or trailer does not bear any special identification number or mark; or
- (b) the manufacturer's serial number or similar identification number or mark has been obliterated or defaced,

the Director may cause a special identification number or mark to be cut, impressed, embossed on or attached permanently to such vehicle, which shall thereafter be deemed sufficient identification for the purpose of the registration of such vehicle.

(3) In the circumstances referred to in subsection (2)(b), the Director shall cause a full description of such vehicle and the name and address of the applicant applying for registration to be furnished to the nearest police station.

(4) No person shall, without the written permission of the Director, alter, obliterate, deface, or cause the alteration, obliteration or defacement of any identification number or mark used for the purpose of registration in accordance with this Act.

#### **13. Cancellation of registration in certain cases**

(1) Where the Director has reason to believe that a vehicle registered under this Part has been destroyed, broken up, or has left Botswana permanently, he may give notice, either personally or by post, to the registered owner thereof that he intends to cancel the registration of the vehicle, and if before the elapse of one month from the date of service of such notice the registered owner fails to satisfy him that such vehicle has not been destroyed, broken up, or has not left Botswana permanently, the Director shall cancel the registration thereof forthwith.

(2) When the Director cancels the registration of a vehicle under this section, the registered owner of the vehicle shall within 10 days thereafter hand or send the registration book in respect thereof to the Director for cancellation.

#### **14. Offences and penalties**

Any person who contravenes any of the provisions of this Part or who fails to comply with a requirement lawfully made of him by a police officer, authorised officer, licensing officer or the Director under this Part, shall be guilty of an offence and liable to a fine not exceeding P1 000, or to imprisonment for a term not exceeding 12 months, or to both.

#### **15. Exemptions**

The Minister may, by order published in the *Gazette*, exempt any vehicle or any class or description of vehicle from the provisions of this Part.

**Part:III Motor Vehicle Licences ss 1622**

## **16. Motor vehicles to be licensed**

(1) No person shall own or possess a motor vehicle or trailer, or use it on a road, unless such vehicle is licensed under and in accordance with this Part:

Provided that this section shall not apply in the case of a motor vehicle or trailer-

- (i) lawfully used under the authority of and in accordance with the conditions of a motor dealer's licence;
- (ii) lawfully in Botswana in accordance with regulations made by the Minister under section 130 of this Act;
- (iii) which is owned by and in the possession of a motor dealer for the purpose of sale;
- (iv) which is being driven to or from any place specified by a licensing officer for inspection or testing, or while it is being tested by a motor vehicle examiner; or
- (v) exempted under subsection (2) or any other provision of this Act.

(2) Where the owner or person in possession of a motor vehicle or trailer gives written notice to the Director that for a stated period he does not intend that it shall be used on a road, and it is not at any time used on the road during such period, or where he satisfies the Director that for a stated period such vehicle was not used on a road, it shall not be necessary for such vehicle to be licensed under this Part during the stated period.

## **17. Application for motor vehicle licence**

Applications for motor vehicle licences shall be made to a licensing officer in the prescribed form accompanied by the prescribed fee and the vehicle registration book.

## **18. Conditions for the issue of motor vehicle licences**

(1) A licensing officer shall not issue or renew a motor vehicle licence or carry out any other transaction regarding the vehicle unless he is satisfied that-

- (a) the vehicle is duly registered;
- (b) the particulars in the registration book are correct;
- (c) the vehicle is duly and validly insured in accordance with any written law relating to vehicle insurance;
- (d) any licence issued in respect of such vehicle has not been cancelled or revoked;
- (e) there is no outstanding fine owed to the Government relating to the use of the vehicle in contravention of the provisions of this Act.

(2) Before issuing or renewing a motor vehicle licence in respect of any vehicle of a class or description prescribed for the purposes of this subsection, a licensing officer shall require the applicant to produce a certificate of roadworthiness showing that the vehicle has been examined by a motor vehicle examiner during the three months immediately preceding the commencement of the licence and that the vehicle complies with the provisions of this Act:

Provided that a certificate issued under section 108(2)(g) and dated not earlier than three months before the commencement of the licence shall be deemed to be a certificate of roadworthiness for the purposes of this section.

(3) Where under this section the owner of any motor vehicle is required to have it examined by a motor vehicle examiner, he shall make application therefor in the prescribed form, paying the prescribed fee, and thereupon a motor vehicle examiner shall examine the vehicle and shall issue a certificate in the prescribed form certifying that the vehicle is roadworthy or is not roadworthy.

(4) A certificate certifying that a vehicle is not roadworthy shall state the reasons why the motor vehicle examiner considers the vehicle not to be roadworthy.

## **19. Motor vehicle licences**

Motor vehicle licences shall be in the prescribed form, and may be issued for such period and upon payment of such fees as may be prescribed:

Provided that, where a period is prescribed, a licence issued before the period is prescribed shall not be invalid solely because the period for which it was issued is different from that prescribed.

## **20. Licence to be carried on vehicle**

A motor vehicle or trailer which is required to be licensed under this Part shall not be used on a road unless the motor vehicle licence or such part thereof as may be prescribed, which shall be legible and not defaced or mutilated, is carried on the vehicle in the prescribed manner.

#### **21. Duplicate motor vehicle licences**

Where a motor vehicle licence is lost, defaced, mutilated or rendered illegible, the Director shall, on being satisfied that the licence has been so lost, defaced, mutilated or rendered illegible, and that the person applying on the prescribed form and paying the prescribed fee is entitled to the issue of such licence, issue or cause to be issued a duplicate of the licence:

Provided that where a motor vehicle licence which has been lost is subsequently found the duplicate shall be returned to the Director for cancellation.

#### **22. New motor vehicle licence required in certain circumstances**

(1) The holder of a motor vehicle licence shall apply for a new motor vehicle licence where-

- (a) he desires to use the vehicle for any purpose not authorized by the licence; or
- (b) the vehicle is so altered that a higher duty or duty of a different class is required.

(2) A new motor vehicle licence shall not be issued under this section until the old licence has been surrendered for cancellation and the prescribed fee paid.

#### **Part:IV Motor Dealers039 Licences ss 2327**

#### **23. Motor dealer's licence**

(1) The Director may issue to a motor dealer, upon application in the prescribed form and upon payment of the prescribed fees, such number of motor dealer's licences as the applicant may require, and with each such licence shall issue two identification plates in the prescribed form.

(2) Subject to sections 24, 25, 26, and 27, and to any other conditions which may from time to time be prescribed, the holder of a motor dealer's licence shall use the said licence only in respect of vehicles in his possession in the course of his business as a motor dealer, and shall not use more than one such vehicle under the authority of one licence at any one time.

#### **24. Use of motor dealer's licence**

(1) A vehicle shall not be used on a road under the authority of a motor dealer's licence-

- (a) unless such vehicle carries identification plates issued under section 23(1), displayed in the prescribed manner;
- (b) to convey passengers or goods for hire or reward;
- (c) to carry or convey any goods whatsoever except such load as may be necessary for the purpose of testing the motor vehicle, and no such load, and no part thereof, shall be removed from the motor vehicle at any time between the departure from and the return to the loading place of the motor vehicle, except in the case of an accident; or
- (d) except with the permission in writing of the Director, for any purpose other than-
  - (i) for proceeding to or returning from any inspection, examination or test as provided for by this Act;
  - (ii) for proceeding from the premises of a motor dealer to a railway station for entraining, or from a train to such premises;
  - (iii) for test or trial during or after completion, construction, assembly or repair;
  - (iv) for test or trial by or on behalf of an intending purchaser, or for proceeding to or from the place where the purchaser intends to keep it;
  - (v) for proceeding to or from a public weighbridge for the purpose of its weight being ascertained or to or from a place for registration;

- (vi) for exportation outside Botswana;
- (vii) for importation into Botswana;
- (viii) for proceeding from the premises of a motor dealer to the premises of a purchaser or of another motor dealer;
- (ix) for towing a motor vehicle which while being driven upon a road has become unable to proceed under its own power from the place where it has broken down to a place for repair or storage;
- (x) for proceeding to or returning from a workshop in which a body is to be or has been fitted to the motor vehicle or where the motor vehicle is to be or has been painted or repaired; or
- (xi) for proceeding to or returning from an exhibition of motor vehicles.

(2) In any proceedings under this section, the burden of proving the fact of an accident for the purposes of subsection (1)(c) shall lie on the person charged.

(3) A motor vehicle shall not be used on any road under the authority of a motor dealer's licence unless the holder of the licence, or a person duly authorized by him, accompanies such vehicle.

(4) Not more than two persons, in addition to the driver, shall be carried within or upon any such vehicle and such persons shall be limited to a prospective purchaser and his agent or a member of his family or, in the case of a vehicle proceeding to or from an accident, two mechanics.

(5) Upon the issue of a motor dealer's licence, the Director shall also supply to the person to whom such licence is issued a book in a form approved by the Director, in which the holder of such licence shall on each occasion and before such licence is used complete in duplicate the entries for which provision is therein made.

(6) One copy of such entries shall remain in the book and the other copy shall be carried with the vehicle during the whole of the journey to which such entries relate, and shall be produced at any time during such journey by the driver for inspection upon demand made by any police officer, authorized officer, licensing officer or the Director.

(7) Every such book shall be produced at all reasonable times for inspection by a police officer, authorized officer, licensing officer or the Director, and shall be kept available for inspection at the place specified in the declaration made on application for the motor dealer's licence as the place at which the book will be kept.

(8) Any person who defaces or mutilates any such book, or makes any entry therein which is to his knowledge false or misleading, or alters or obliterates any entry made therein, or except as provided by this Act makes any entry therein or addition thereto, or after its removal from such book makes, alters or obliterates any entry in any copy to be carried on the vehicle, shall be guilty of an offence and liable to the penalties provided in section 29.

## **25. Duration of motor dealer's licence**

(1) A motor dealer's licence shall continue in force until the 31st December next following the date of issue.

(2) Every motor dealer's licence shall cease to be valid if the motor dealer ceases to carry on business as a motor dealer in the district for which it is issued.

(3) When a motor dealer's licence expires or is cancelled or otherwise ceases to be valid under this Act, the holder of the licence shall deliver to the Director the identification plates which were issued to such holder with such licence:

Provided that upon the expiry of the licence the holder may retain the identification plates issued with such licence if he applies for and is issued with a new licence in respect of the same identification plates and such new licence would during the period of its validity authorize the use of such identification plates in the same manner as the expired licence.

## **26. Cancellation of motor dealer's licence**

(1) The Director may at any time cancel a motor dealer's licence for a breach of any of the provisions of this Act which relate to motor dealer's licences.

(2) Any person holding a motor dealer's licence who is aggrieved by the decision of the Director under this section may, within one month from the date of the service on him of notice of cancellation, appeal to a magistrate's court presided over by a Magistrate Grade I or over.

### **27. Motor dealer's licence not to be transferred without authority**

A motor dealer's licence shall not be used for any purpose other than a purpose provided for in this Act, and shall not be transferred or assigned to any other person without the written consent of the Director.

#### **Part:V Recovery of Fees and Penalties ss 2829**

### **28. Recovery of licence fees by civil process**

Where under Part III or Part IV a licence is required and has not been obtained, a sum equal to the prescribed fee payable in respect of such licence shall be due and owing to the State by the person failing to obtain the licence, and shall be a civil debt recoverable summarily.

### **29. Penalties**

(1) Any person who contravenes any of the provisions of Part III or Part IV shall be guilty of an offence and liable for a first offence to a fine not exceeding P500, or to imprisonment for a term not exceeding six months, or to both, and for each subsequent offence to a fine not exceeding P1 000, or to imprisonment for a term not exceeding 12 months, or to both:

Provided that sentencing may include the following-

- (i) community service, or
- (ii) probation.

(2) If any person is convicted of an offence under this Act in a case where a licence fee under Part III or Part IV is payable and has not been paid, the court may, whether or not any other penalty is imposed, impose a fine (which shall be disposed of in the same manner as the fee payable on the licence) of an amount equivalent to the fee unpaid, and the payment of such fine shall operate in satisfaction of any civil debt due under section 28.

#### **Part:VI Driving Licences ss 3043**

### **30. Drivers to be licensed**

(1) No person shall drive a motor vehicle of any class on a road unless-

- (a) he is a holder of a valid driving licence in respect of that class of vehicle; and
- (b) in the case of a holder of a provisional driving licence, such person is accompanied by a holder of a driving instructor certificate issued under section 41.

(2) No person shall be entitled to have more than one driving licence issued under this Act.

(3) The driver shall always carry with him the driving licence while driving and must produce it on demand to a police officer for inspection.

(4) No person who owns or is in charge of a motor vehicle of any class shall cause or permit any person to drive such motor vehicle unless such person is the holder of a valid driving licence for that class of vehicle.

(5) Driving licences shall be issued by a licensing officer and shall, unless previously revoked, suspended or cancelled in accordance with the provisions of this Act, remain in force for the lifetime of the holder.

(5A) Notwithstanding the provisions of subsection (5), the holder of a driving licence shall, every five years, present himself to a licensing officer to have his eyesight screened by such apparatus as may be prescribed and the licensing officer shall deal with his licence in such manner as the Minister may prescribe.



(6) Notwithstanding any other provision of this Act, a person who, immediately before the commencement of this Act, holds a valid driving licence, other than a provisional driving licence, in respect of any class or classes of vehicle, shall not be required to obtain a driving licence for the same class or classes of vehicles under this Act for a period of two years from the date of commencement of this Act, and the old driving licence shall be deemed to be a driving licence issued under this Act for the same class or classes of vehicles:

Provided that this section shall be without prejudice to any provision of this Act relating to the revocation, suspension or cancellation of licences.

(7) Any person who contravenes the provisions of subsection (3) shall be guilty of an offence and liable to a fine not exceeding P500, or to imprisonment for a term not exceeding six months, or to both.

(8) Any person who contravenes any of the provisions of subsections (1), (2) and (4) shall be guilty of an offence and shall be sentenced to a fine of not less than P500 but not more than P3 000, or to imprisonment for a term of not less than six months but not more than 18 months, or to both.

### **31. Conditions for granting of driving licence**

(1) A licensing officer shall not grant an applicant a driving licence in respect of any class of motor vehicle or validate a driving licence in respect of any other class of motor vehicle unless the applicant-

- (a) produces to the licensing officer a certificate of competency showing that he has passed a test of competence to drive that class or other class of motor vehicle conducted under section 39 or is the holder of a full valid driving licence for that class or other class of motor vehicle granted by a competent authority in Botswana or any other prescribed country;
- (b) makes a declaration in the prescribed form-
  - (i) as to whether or not he is suffering from any such disease or disability as may be specified in the form, or any other disease or disability which would be likely to cause the driving by him of a motor vehicle, being a vehicle of such class as he would be authorized by the licence to drive, to be a source of danger to the public;
  - (ii) that he is able to read, with glasses if normally worn, a motor vehicle identification plate at a distance of eight metres; and
  - (iii) stating his age at the date of the application.

(2) If it appears to a licensing officer that there is reason to believe that an applicant for a driving licence, or the renewal of a driving licence, or the validation of a driving licence in respect of any other class of vehicle, is suffering from a disease or disability likely to cause the driving by him of a motor vehicle, of the class or classes in respect of which the application is made, to be a source of danger to the public, he may refuse to grant such application unless the applicant-

- (a) produces a certificate from a medical practitioner, stating that in the opinion of such medical practitioner the applicant is fit to drive the class or classes of motor vehicle in question; and
- (b) undergoes and passes a driving test.

(3) Any person who is aggrieved by the refusal of the Director or a licensing officer to grant or renew a driving licence or to validate a driving licence in respect of any other class of vehicle may, after giving to the Director notice of his intention to do so, appeal to a magistrate's court presided over by a Magistrate Grade I or over, which shall after considering the grounds for such refusal make such order as it thinks fit, and any order so made shall be binding on the Director.

### **32. Provisional driving licence**

(1) Notwithstanding section 31(1), a licensing officer may issue to an applicant for a driving licence, or for the validation of a driving licence in respect of another class of vehicle,

a provisional driving licence validated in respect of any class or classes, or that other class, as the case may be, of motor vehicle, in order that the applicant may learn to drive such class or classes of vehicle, or that other class of vehicle.

(2) A holder of a provisional driving licence shall not drive at a speed exceeding 60 kilometres per hour.

(3) Provisional driving licences shall be valid for six months only and may be issued subject to such conditions as may be prescribed.

### **33. Age limits for granting of driving licences**

A driving licence shall be subject to the following minimum age limit conditions-

- (a) 16 years - class F;
- (b) 18 years - class A1, A, B, EB, H (Special type);
- (c) 21 years - C1, C, EC1, EC,  
PrDP "P" Call-cab,  
PrDP "P" Taxi,  
PrDP "P" Mini-bus,  
PrDP "P" Midi-bus,  
PrDP "P" Special, and  
PrDP "G" Goods,
- (d) 25 years - Pr DP "P" Train-bus,  
PrDP "P" Double-deck bus,  
PrDP "P" School-bus  
PrDP "P" Bus, and  
PrDP "H" Hazardous Goods.

### **34. Form of application**

Applications for driving licences shall be made to a licensing officer in the prescribed form, accompanied by the prescribed fee, and the particulars required in such form shall be signed by the applicant.

### **35. Driving licences to members of security forces**

Notwithstanding the provisions of this Part, the Minister may, in regulations made under section 130, prescribe special terms and conditions for the issue of driving licences to uniformed members of the Botswana Defence Force, the Botswana Police Force or the Prison Service for the purpose of driving service vehicles while on duty, and he may in such regulations order that such licences shall be issued without the payment of any fee.

### **36. ....**

### **37. Form of driving licence**

(1) Driving licences shall be in the prescribed form, and there shall be affixed to each licence a photograph of the licence holder, which shall be impressed with the official stamp of the licensing officer.

(2) The signature of the licence holder shall also be affixed to the licence.

(3) No person shall use a mutilated or defaced driving licence.

(4) A driving licence to be issued to any person who is suffering from any disease or disability as referred to in section 31 shall only be issued with the written permission of the Director and shall be subject to such restrictions or conditions as may be determined by the Director; such restrictions or conditions shall be entered on the licence, which shall not be valid unless such conditions or restrictions are complied with by the holder thereof.

(5) Notwithstanding the provisions of this section the Minister may prescribe different requirements with regard to the form of the driving licence.

### **38. Duplicate licences**

If a driving licence is lost, defaced or mutilated, the Director shall, upon application being made in the prescribed form and upon payment of the prescribed fee, issue to the holder a duplicate of such driving licence:

Provided that where any driving licence which has been lost is subsequently found the holder shall forthwith return such duplicate to the licensing officer for cancellation.

### **39. Driving test**

(1) Driving tests for the purposes of this Act shall be conducted by driving test examiners.

(2) Driving tests shall be carried out in the prescribed manner upon payment of the prescribed fee and shall in any case include a test of the applicant's-

- (a) knowledge of the rules of the road;
- (b) knowledge of recognized traffic signs and signals made by drivers of vehicles;
- (c) knowledge of any authorized highway code;
- (d) fitness to drive a motor vehicle of the class for which the licence is required;
- (e) ability to drive a motor vehicle of the class to which the application relates; and
- (f) eyesight.

### **40. Suspension, etc. of driving licence or permit**

(1) The Director may-

- (a) suspend or revoke a driving licence, provisional driving licence, driving instructor's permit or PrDP of any person who-
  - (i) appears by any reason to be unfit;
  - (ii) has reached the prescribed demerit point limit; or
  - (iii) is unfit to hold a driving instructor's certificate under section 41;
- (b) order a fresh driving test in the case of any holder of a driving licence who appears to the Director to be so deficient in driving ability as to be a source of danger to the public, and, if the licence holder fails to pass such tests, revoke his licence; or
- (c) order a refresher training course for a holder of a particular class of licence to reduce the number of demerit points.

(2) Where the Director has suspended or revoked a driving licence, provisional driving licence or permit under subsection (1), the owner of such licence shall deliver his driving licence within 48 hours to the Director, who shall endorse on it the reason for its suspension or revocation.

(3) The Director shall restore a driving licence, provisional driving licence or permit suspended under subsection (1) to the person in question under the following conditions-

- (a) in the case of a licence suspended under subsection (1) (a), if such person satisfies the Director, by means of a certificate referred to under section 31 (2) (a) that he is not suffering from any disease or disability likely to cause the driving by him of a vehicle, of the class or classes in respect of which his licence was issued, to be a source of danger to the public; and
- (b) in the case of a driver having accumulated the prescribed legal limit of demerit point, such conditions as the Minister may prescribe.

(4) Where a licence or permit is revoked under subsection (1) (a) (ii), the driver shall be disqualified from acquiring another licence for a prescribed period.

(5) Any person who is aggrieved by the suspension or revocation of a licence under this section may, after giving the Director notice of his intention to do so, appeal to a Magistrate Grade I or over, who shall, after considering the grounds for such suspension or revocation, make such order as he thinks fit.

### **41. Driving instructors' certificates**

(1) No person shall, for reward, instruct or supervise any other person in the driving of a motor vehicle on a road unless he holds a certificate (for the purposes of this Act referred to as "a driving instructor's certificate") issued to him by the Director.

(2) A person desiring to obtain a driving instructor's certificate shall apply to the Director on the prescribed form which shall be accompanied by two passport-type photographs of the applicant's head and shoulders from which he may be readily identified, each copy being approximately 5 cm by 4 cm in size and shall pay the prescribed fee.

(3) The Director shall require an applicant for a driving instructor's certificate to submit himself to-

- (a) an examination and a test by a competent person nominated by the Director in order to determine the competence of such applicant to act as an instructor of learner-drivers; and
- (b) a medical examination by a medical practitioner nominated by the Director in order to determine the physical and mental fitness of such applicant to act as an instructor of learner-drivers.

(4) The applicant shall bear the cost of any medical examination carried out under subsection (3)(b) and shall pay the prescribed fee for an examination for a driving instructor's certificate.

(5) The Director shall, if satisfied that an applicant referred to in subsection (3) is competent and is a fit and proper person to act as an instructor of learner-drivers, is not suffering from any physical or mental defect so to act, and complies or has complied with such conditions as may be prescribed for the purposes of this subsection, issue to such applicant a driving instructor's certificate in the prescribed form which shall have firmly affixed to it at the time it is issued one of the photographs submitted with the application for the certificate.

(6) A driving instructor's certificate shall be valid for one year from the date of its issue.

(7) The holder of a driving instructor's certificate shall, whilst he is, for reward, instructing or supervising another person in the driving of a motor vehicle on a road, prominently display the certificate within the vehicle or, if the vehicle has no interior, keep it on his person and produce it immediately for examination by the person he is so instructing or supervising or by a police officer in uniform on being required to do so by that person or by such a police officer.

(8) The holder of a driving instructor's certificate or a duplicate thereof issued under this section shall at all times keep the certificate or duplicate thereof in a clean, unmarked, undamaged, undefaced and legible condition and the photograph affixed to it at the time the certificate or duplicate thereof was issued firmly so affixed.

(9) Any person who is aggrieved by the refusal of the Director to issue to him a driving instructor's certificate, may, within 21 days of such refusal, lodge a written notice of appeal with the Minister, and such person shall at the same time serve a copy of such notice on the Director.

(10) The Director shall forthwith after receipt of the copy of a notice referred to in subsection (9), furnish the Minister with his reasons for the refusal to which such notice refers.

(11) For the purpose of deciding an appeal the Minister may-

- (a) appoint any person to examine and test the appellant in order to determine his competence to act as an instructor of learner-drivers;
- (b) appoint a medical practitioner to carry out a medical examination in order to determine the appellant's physical and mental fitness to act as instructor of learner-drivers; and
- (c) require either party to such appeal to furnish such information or evidence as he may deem expedient.

(12) The appellant shall bear the cost of any medical examination carried out under subsection (11)(b).

(13) The Minister shall notify the result of an appeal under this section, in writing, to the parties concerned and, if such appeal is allowed, the Director shall give effect to the decision of the Minister.

(14) Any person desiring to replace a driving instructor's certificate lost, destroyed, damaged or defaced or that has become dirty, marked or illegible shall apply to the Director on the prescribed form for a duplicate thereof, which form shall be accompanied by two passport-type photographs of the applicant's head and shoulders from which he may be

readily identified, each photograph being approximately 5 cm by 4 cm in size, and shall pay the prescribed fee.

(15) Where the Director is satisfied that the original certificate has been lost, destroyed, damaged or defaced or has become dirty, marked or illegible, he shall grant every application under subsection (14) and issue to the applicant a duplicate of his original driving instructor's certificate which shall have firmly affixed to it at the time it is issued one of the copies of the photographs submitted with the application for the duplicate.

#### **42. No penalty prescribed**

Any person who contravenes any of the provisions of this Part for which no specific penalty is prescribed shall be guilty of an offence and shall be sentenced to a fine of not less than P500, but not more than P2 000 or to imprisonment for a term of not less than six months but not more than 15 months, or to both.

#### **43. ....**

### **Part:VII Driving and other Offences relating to the Use of Vehicles on Roads ss 4474**

#### **44. Speed limit**

(1) No person shall drive, or being the owner or person in charge of a vehicle, cause or permit any other person to drive, a vehicle on a road at a speed greater than such speed as the Minister may prescribe as the maximum speed for that class of vehicle.

(2) Every vehicle, other than a motor car or a motor cycle, which is subject to a speed limit under subsection (1) of this section shall have painted or affixed to the rear thereof, as close to the rear number plate as possible, and in such a manner as to be conspicuous to any person within eight metres of the rear of the vehicle, a mark in the prescribed form indicating its maximum speed.

(3) Notwithstanding subsection (1), no person shall drive, or, being the owner or person in charge of a vehicle, cause or permit any other person to drive, any vehicle at a speed exceeding 60 kilometres per hour on any road within the boundaries of any village or township:

Provided that-

- (i) it shall be lawful for a road authority, subject to any written directions which the Minister may give, either generally or in any specific instance, to make bye-laws permitting any class of vehicle, other than a vehicle which is subject to a speed limit of 60 kilometres per hour or less under subsection (1), to be driven on any road at such speed, being in excess of 60 kilometres per hour, as may be specified in such bye-laws;
- (ii) any such road authority shall display and maintain prescribed traffic signs so as plainly to indicate to drivers entering or leaving the boundaries of such villages or townships where the 60 kilometres per hour speed limit restriction begins and ends, and where any other speed limit restriction imposed under this subsection begins and ends.

(4) Notwithstanding subsections (1) and (3), and subject to any written directions which the Minister may give either generally or in any specific instance, a road authority may-

- (a) impose on any road such lower limit of speed as it considers necessary in circumstances when, by reason of repairs, reconstruction or damage to the road or the condition of the road, any lower limit of speed is necessary for the public safety or to prevent damage to the road:

Provided that such lower limit shall be imposed only for such period as is necessary to carry out repairs or reconstruction or until the condition of the road is satisfactory;

- (b) impose on any road or area such lower limit of speed as may be necessary for the safety of the public having regard to the width of streets, nature of traffic or general development of the area.

(5) Where any lower limit imposed under subsection (4) is in force, indication of the maximum speed permitted shall be given by prescribed traffic signs displayed and maintained so as plainly to indicate to drivers entering or leaving such restricted road or area where the lower speed limit begins and ends.

(6) The provisions of this section or of any other Act imposing a speed limit on motor vehicles shall not apply to any vehicle which is fitted with a gong, siren, bell or other warning instrument, when it is being used in cases of emergency for fire brigade, ambulance or police purposes, if the observance of such provisions would be likely to hinder the use of the vehicle for the purpose for which it is being used, and provided that the gong, siren, bell or other instrument is constantly sounded on that occasion:

Provided that this obligation to sound constantly a gong, siren, bell or other warning instrument shall not apply to any vehicle being used for police purposes in order to ascertain whether an offence under this Act is being committed.

#### **44A. Detecting devices**

(1) An authorised officer may mount on the road a detecting device and evidence provided through such devices shall be admissible in court.

(2) In the case of an offence detected under subsection (1) it shall be presumed that the owner of the vehicle was the driver during the commission of the offence unless such owner can provide proof that he was not the driver at the material time.

(3) Where an offence is detected under subsection (2) an authorised officer shall, within 30 days, serve the owner of the vehicle with a prescribed notice detailing the offence and the penalty thereof.

(4) The owner of a vehicle who was the driver at the time of the commission of the offence detected under subsection (2) shall upon receipt of the notice under subsection (3), pay the penalty prescribed in the notice within 14 days.

(5) Where the owner of the vehicle was not the driver at the time of the commission of the offence, the owner shall complete a prescribed form and submit it to the authorised officer within 14 days, nominating the person who was driving the vehicle during the commission of the offence or the person who had control of the vehicle.

(6) An authorised officer shall, on receiving a form completed under subsection (5), issue a notice referred under subsection (3) to the person nominated in the form as being the driver of the vehicle or the person who had control of the vehicle at time of the commission of the offence.

(7) The provisions of subsections (4), (5) and (6) shall with necessary modifications apply to each person served with a notice under this section.

(8) A person who makes a false statement under this section commits an offence.

(9) No person shall own, sell, use or possess a device having as one of its purposes the prevention of effective use of a detecting device or to detect when the detecting device is being used.

(10) Any person who contravenes a provision of this section shall be guilty of an offence and shall be sentenced to a fine of not less than P1 000 but not more than P5 000, or to imprisonment for a term of not less than 12 months, but not more than two years, or to both, and for each subsequent offence to a fine of not less than P2 000 but not more than P10 000, or to imprisonment for a term of not less than 15 months, but not more than five years, or to both.

#### **45. Penalties in relation to speed**

(1) Any person who contravenes a provision of section 44 shall be guilty of an offence and shall be sentenced to a fine of not less than P100 plus P20 for every kilometre per hour exceeded but not more than P5 000, or to imprisonment for a term not exceeding two years, or to both.

(2) In any proceedings in respect of an offence under this section, a certificate purporting to be signed by a police officer to the effect that a device manufactured for the purpose of measuring the speeds at which vehicles are driven measured the speed at which

any vehicle sufficiently identified in the certificate was being driven on the day and road specified in the certificate as the speed specified in the certificate shall, on being placed before the court by public prosecutor, be admissible in evidence without further proof thereof and the court shall presume that the vehicle so identified was, on that day and road being driven at that speed, unless the contrary is proved.

#### **46. Driving, or being in charge, when under influence of drink or drugs**

(1) No person shall drive or attempt to drive a motor vehicle when the alcohol content in his breath or blood is in excess of the prescribed limit.

(2) Without prejudice to subsection (1) no person shall drive or attempt to drive a motor vehicle whilst unfit to drive through drinks or drugs.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be sentenced to a fine of not less than P3 000 but not more than P5 000 or to imprisonment for a term not less than 18 months but not more than two years, or to both.

(4) Any person who contravenes subsection (2) shall be guilty of an offence and shall be sentenced to a fine of not less than P5 000 but not more than P10 000 or to imprisonment for a term of not less than two years but not more than five years, or to both.

(5) Without prejudice to subsections (1) and (2), a person who, when in charge of a motor vehicle, is unfit to drive through drink or drugs or when the alcohol content in his breath or blood is in excess of the prescribed limit shall be guilty of an offence and shall be sentenced to a fine of not less than P2 000 but not more than P5 000, or to imprisonment for a term of not less than 15 months but not more than two years, or to both:

Provided that a person shall be deemed for the purposes of this subsection not to have been in charge of a motor vehicle if he or she proves that at the material time the circumstances were such that there was no likelihood of his driving the vehicle so long as he she remained unfit to drive through drink or drugs.

(6) Notwithstanding the provision of subsections (3) and (4) any person who drives a motor vehicle for which a professional driving permit is required and contravenes subsection (1) or (2) shall be guilty of an offence and shall be sentenced to a fine of not less than P5 000 but not more than P10 000, or to imprisonment for a term of not less than two years but not more than five years, or to both.

#### **47. Power to require breath specimen**

(1) A police officer may require any person who is driving or is in charge of a motor vehicle to provide, at any place which that officer may specify, a specimen of breath for analysis by means of a breathalyser of a type prescribed by the Minister.

(2) Where the results of the analysis of the specimen of breath provided in accordance with subsection (1) indicate that the level of alcohol in the breath of the person who provided the specimen is in excess of the amount prescribed as being the amount permissible in a specimen of breath for analysis by means of a breathalyser, the police officer shall require that person to provide, at a place specified by that officer, another specimen of breath for analysis, at that place, by the same police officer or any other qualified person.

(3) Where the results of an analysis of breath provided in pursuance of subsection (2) indicate that the level of alcohol in the breath of a person who provided the specimen exceeds the prescribed limit of alcohol, those results shall be deemed to be *prima facie* evidence that the person was unfit to drive.

(4) A police officer may cause a person suspected of driving under the influence of drinks or drugs to have that person's blood specimen taken and tested for the level of alcohol in that person's blood, by a qualified person, at any hospital or clinic, if-

- (a) the suspected person is, by reason of injury or other disability, incapable of providing a specimen of breath for analysis by means of a breathalyser; or
- (b) a test with a breathalyser is impracticable due to the lack of serviceable equipment, or due to the distance from the point of arrest to the nearest available breathalyser.

(5) A person who, without reasonable excuse refuses or fails to provide a specimen of breath or blood or sufficient specimen of breath or blood when required to do so in pursuance of this section shall be guilty of an offence and shall be sentenced to a fine of not less than P3 000 but not more than P5 000, or to imprisonment for a term of not less than 18 months but not more than two years, or to both.

#### **48. Evidence on charge of unfitness to drive through drink or drugs or causing death thereby**

(1) In any proceedings for an offence under section 46 or for an offence under section 50(3) in connection with a motor vehicle, the court shall, subject to subsections (2), (7) and (9), have regard to any evidence which may be given of the proportion or quantity of alcohol or of any drug which was contained in the blood or breath of the accused, as the case may be, as ascertained by analysis of a specimen of blood or breath taken from him by a qualified person, at any material time:

Provided the specimen is not taken more than three hours following the offence.

(1A) No evidence of the proportion or quantity of alcohol found in a specimen of blood or breath shall be admissible for the purposes of this section on behalf of the prosecution unless the specimen was taken from the accused with his consent:

Provided that such evidence shall be admissible on behalf of the prosecution, notwithstanding that the specimen of blood or breath was taken from the accused without his consent, where the specimen was taken in accordance with subsection (4) or (5).

(2) Where, in any proceedings for an offence under section 46 or for an offence under section 50(3) in connection with a motor vehicle, it is proved that the accused refused to consent to the taking of a specimen of blood or a specimen of breath for analysis by a qualified person, his refusal shall, unless reasonable cause therefor is shown, be treated as supporting any evidence given on behalf of the prosecution or as rebutting any evidence given on behalf of the defence.

(3) Notwithstanding any law to the contrary, a qualified person may, on being requested to do so by a police officer, take a specimen of blood from any person without that person's consent if, at the time the specimen is taken, that person is unable by reason of his physical condition to give or to refuse his consent to the taking of the specimen and if the qualified person then believes on reasonable grounds-

- (a) that the person is detained in the lawful custody of a police officer in respect of an offence under section 46 or of an offence under section 50(3) in connection with a motor vehicle;
- (b) that the person has recently driven or attempted to drive or been in charge of a motor vehicle and that his physical condition is due, either wholly or in part, to the influence of drink or of any drug; or
- (c) that the person's physical condition is due, either wholly or in part, to the involvement in an accident of a motor vehicle which, at the time of the accident, was being driven by that person,

but in taking the specimen no other means nor any greater degree of force shall be used than would, in the particular circumstances, be lawful if that person had given his consent.

(4) Where a specimen of blood taken under subsection (3) is one which, in the opinion of the qualified person, it is not practicable to divide, he may, immediately after taking that specimen, take a second specimen of blood from the same person without that person's consent and without being requested to do so by a police officer but otherwise in accordance with that subsection; but no further specimen shall be taken.

(5) For the purposes of any proceedings for an offence under section 46 or for an offence under section 50(3) in connection with a motor vehicle, a certificate purporting to be signed by a qualified person, and certifying the proportions of alcohol or of any drug found in a specimen of blood or breath as the case may be, shall be evidence without any need for the giving of any oral evidence, on the matters so certified, by the person who signed the certificate:



Provided that the accused has, not less than seven days before the hearing or trial, been served with a copy of the certificate.

(6) Where the accused, at the time a specimen of blood was taken from him with his consent, asks to be supplied with such a specimen, evidence of the proportion of alcohol or of any drug found in the specimen shall not be admissible on behalf of the prosecution unless-

- (a) the specimen is either one of two taken on the same occasion or is part of a single specimen which was divided into two parts at the time it was taken; and
- (b) the other specimen or part was supplied to the accused.

(7) A police officer requesting any person to consent to the taking of a specimen of blood for analysis shall offer to supply to him, in a suitable container, part of the specimen or, in the case of a specimen which it is not practicable to divide, another specimen which he may consent to have taken.

(8) Where the accused from whom a specimen of blood has been taken without his consent under subsection (3) asked, at the time the offer was made to him under subsection (9), to be supplied with such a specimen, evidence of the proportion of alcohol or of any drug found in the specimen shall not be admissible in evidence on behalf of the prosecution unless-

- (a) the specimen is either one of two taken on the same occasion or is part of a single specimen which was divided into two parts at the time it was taken; and
- (b) the other specimen or part was supplied to the accused.

(9) Where a specimen of blood has been taken from a person without his consent under subsection (3), a police officer shall, as soon as it is reasonably practicable to do so, offer to supply to him, in a suitable container, part of the specimen or, where a second specimen has been taken under subsection (4), that specimen.

(10) The Minister may prescribe a limit to the amount of alcohol permissible in a specimen of blood or breath taken from an accused under this Act.

#### **49. Reckless and dangerous driving generally**

(1) If a person drives a motor vehicle recklessly or at a speed or in a manner which is dangerous to other persons, having regard to all the circumstances of the case, he shall be guilty of an offence and shall be sentenced to a fine of not less than P2 000 but not more than P10 000, or to imprisonment for a term of not less than 15 months but not more than five years, or to both.

(2) Notwithstanding the provisions of subsection (1), any person who, being the driver of a motor vehicle for which a professional driving permit is required, drives the vehicle recklessly or at a speed or in a manner which is dangerous to other persons, having regard to all the circumstances of the case, shall be guilty of an offence and shall be sentenced to a fine of not less than P5 000 but not more than P20 000, or to imprisonment for a term of not less than two years but not more than 10 years, or to both.

(3) Where a person is convicted of aiding, abetting, counselling, procuring or inciting the commission of an offence under this section, and it is proved that he was present in the vehicle at the time of the commission of the offence, the offence of which he is convicted shall, for the purpose of the provisions of this Act relating to disqualification from driving or from holding or obtaining driving licences, be deemed to be an offence in connection with the driving of a motor vehicle.

(4) Where a holder of a professional driving permit drives a motor vehicle recklessly or in a manner dangerous or at a speed dangerous to other persons he shall be guilty of an offence and shall be sentenced to a fine of not less than P10 000 but not more than P20 000, or to imprisonment for a term of not less than five years but not more than 10 years, or to both.

#### **50. Causing death by reckless driving, etc.**

(1) Any person who causes the death of another person by driving a motor vehicle recklessly or in a manner which is dangerous to other persons, having regard to all

circumstances of the case shall be guilty of an offence and shall be sentenced to a fine of not less than P10 000 but not more than P30 000, or to imprisonment for a term of not less than five years but not more than 15 years, or to both.

(2) Any person who causes the death of another person by driving a vehicle which is in such a condition as to constitute a danger to the public shall be guilty of an offence and shall be sentenced to a fine of not less than P5 000 but not more than P15 000, or to imprisonment for a term of not less than two years but not more than eight years, or to both.

(3) Any person who causes the death of another person by driving a vehicle whilst he is unfit to drive through drink or drugs shall be guilty of an offence and shall be sentenced to a fine of not less than P10 000 but not more than P30 000, or to imprisonment for a term of not less than five years or more than 15 years, or to both.

(4) Any person who causes the death of another person by leaving any vehicle on a road in such a position or manner, or in such a condition as to constitute a danger to the public having regard to all the circumstances of the case including the nature, condition and use of the road, and the amount of traffic or number of animals which are actually, or which are reasonably expected to be on the road at the time, shall be guilty of an offence and shall be sentenced to a fine of not less than P5 000 but not more than P15 000, or to imprisonment for a term of not less than two years but not more than eight years, or to both.

(5) Any person who, being the driver of a vehicle for which a professional driving permit is required causes the death of another person by driving that vehicle on a road whilst the alcohol content in his blood or breath is above the prescribed limit shall be guilty of an offence and shall be sentenced to a fine of not less than P15 000 but not more than P40 000, or to imprisonment for a term of not less than eight years but not more than 20 years, or to both.

(6) Any person who, being the driver of a vehicle for which a professional driving permit is required causes the death of another person by driving that vehicle on a road whilst the vehicle is not roadworthy, shall be guilty of an offence and shall be sentenced to a fine of not less than P10 000 but not more than P20 000, or to imprisonment for a term of not less than five years but not more than 10 years, or to both.

#### **51. Careless and inconsiderate driving**

(1) If a person drives a motor vehicle without due care and attention, or without reasonable consideration for other persons, he shall be guilty of an offence and shall be sentenced to a fine of not less than P500 but not more than P2 000, or to imprisonment for a term of not less than six months but not more than 15 months, or to both.

(2) Notwithstanding the provisions of subsection (1), any person who, being the driver of a motor vehicle where a professional driving permit is required, drives the vehicle without due care and attention or without reasonable consideration for other persons, shall be guilty of an offence and shall be sentenced to a fine of not less than P2 000 but not more than P10 000 or to imprisonment for a term of not less than 15 months but not more than five years, or to both.

(3) Where a person is convicted of an offence under subsection (1) or (2) and he has been previously convicted of an offence under section 49 or 50 he shall be treated for the purposes of subsection (2) as having been previously convicted under that subsection.

#### **52. Alternative offences**

(1) Upon the trial of a person for manslaughter contrary to section 200 of the Penal Code in connection with the driving of a motor vehicle, the court may, if it considers that offence not proved, but is satisfied that he is guilty of an offence under section 49, 50 or section 51, find him guilty of such other offence.

(2) Upon the trial of a person for an offence under section 46 in connection with the driving of a motor vehicle or under section 50 the court may, if it considers that offence not proved, but is satisfied that he is guilty of an offence under section 49 or section 51, find him guilty of such other offence.

(3) Upon the trial of a person for an offence under section 49 the court may, if it considers that offence not proved, but is satisfied that he is guilty of an offence under section 51, find him guilty of that offence.

### **53. Mandatory disqualification**

(1) Where a person is convicted of manslaughter contrary to section 200 of the Penal Code in connection with the driving of a motor vehicle, or of an offence under section 50 of this Act, the court convicting him shall order that he be disqualified from driving or from holding or obtaining a driving licence for not less than three years or more than five years.

(2) Where a person is convicted of an offence under section 46(1), the court convicting him shall order that he be disqualified from driving or from holding or obtaining a driving licence for not less than one year or more than three years.

(3) Where a person is convicted of an offence under section 46(2), the court convicting him shall order that he be disqualified from driving or from holding or obtaining a driving licence for not less than two years or more than five years.

(3A) Where a person is convicted of an offence under section 46 the court convicting him shall order that he be disqualified from driving or holding or obtaining a driving licence for not less than one year but not more than three years.

(4) Where a person is convicted of an offence under section 49(1), the court convicting him shall order that he be disqualified from driving or from holding or obtaining a driving licence for not less than one year or more than two years.

(5) Where a person is convicted of an offence under section 45, 46, 49, 50, or 51 committed within a period of one year from a previous conviction for the same offence, the court convicting him shall disqualify him from driving or from holding or obtaining a driving licence for three months.

### **54. Power of arrest**

(1) Without prejudice to the powers of arrest conferred on a police officer under any other written law, a police officer may arrest without warrant the driver of any motor vehicle whom he suspects of having committed an offence under section 46, 49 or 50.

(2) A police officer may require any person whom he suspects of having committed an offence under this Act to give his name and address and if such person fails on demand to give his name and address the police officer may arrest him without a warrant, and any such person who fails on demand to give his name and address when it is so demanded from him, or who gives a false name or false address, shall be guilty of an offence and liable to a fine not exceeding P500, or to imprisonment for a term not exceeding six months, or to both.

### **55. Right to demand name and address**

If any person has reasonable grounds for believing that the driver or person in charge of any motor vehicle has committed an offence under section 46, 49, 50 or 51, he may, within a reasonable time after the occurrence of the event which gave rise to such belief and in the absence of a police officer, require any person who is or was in any way connected with such motor vehicle at the time of such occurrence, to furnish him with his name and address, and if such last-mentioned person fails to comply with such requirement or furnishes a false name or false address he shall be guilty of an offence and liable to a fine not exceeding P500, or to imprisonment for a term not exceeding six months, or to both.

### **56. Proper fuel to be used in motor vehicles**

(1) No fuel shall be used in any motor vehicle except that specified in the vehicle licence in respect of such vehicle or, in the case of a motor vehicle the motor unit of which is a compression ignition engine, light amber mineral fuel oil:

Provided that the Minister may, subject to such conditions as he may see fit to impose, exempt any specified vehicle, the motor unit of which is a compression ignition engine, from the provisions of this subsection and may specify the fuel which shall be used in such motor vehicle.

(2) If the owner or the driver of any motor vehicle uses any fuel contrary to subsection (1) or if any person sells any fuel having reason to believe that it will be so used, the owner and the driver and such other person shall each be guilty of an offence and shall be sentenced to a fine of not less than P2 000 but not more than P5 000, or to imprisonment for a term of not less than 12 months but not more than two years, or to both, and in addition such vehicle shall be liable to be forfeited.

#### **57. Signals and signs to be obeyed**

(1) The driver of a vehicle shall at all times-

- (a) obey any directions given, whether verbally or by signal, by a police officer in uniform, in the execution of his duty;
- (b) conform to the indications given by any duly prescribed traffic sign or signal; and
- (c) when any person in charge of any cattle, on or about to cross any road, raises his hand or in any manner gives a signal to stop, forthwith stop his vehicle and keep it stationary for as long as it is reasonably necessary for the safety of road users.

(2) Notwithstanding subsection (1) instructions conveyed by traffic signs consisting of lights shall take precedence over those conveyed by other means, and the directions given by a police officer in uniform shall take precedence over the instructions conveyed by any traffic sign and over any rules of the road.

(3) Any person who contravenes a provision of this section shall be guilty of an offence and shall be sentenced to a fine of not less than P1 000 but not more than P5 000, or to imprisonment for a term of not less than 12 months but not more than two years, or to both.

#### **58. Offences relating to parking bays and areas**

(1) Any person who, being the driver of a vehicle, in any parking bay or parking area-

- (a) leaves the vehicle for a period in excess of the time prescribed by any traffic sign relating to that bay or area;
- (b) contravenes or fails to comply with any traffic sign relating to that bay or area as to the manner in which vehicles shall stand in or be driven into or out of, the bay or area; or
- (c) leaves the vehicle in contravention of any traffic sign relating to that bay or area, shall be guilty of an offence and liable to a fine not exceeding P100.

(2) In relation to an offence under subsection (1), the reference in that subsection to the driver of a vehicle shall be construed as a reference to the person driving the vehicle at the time it was left in the parking bay or parking area.

(3) Where the driver of a vehicle is alleged to be guilty of an offence under subsection (1)-

- (a) the owner of the vehicle shall give such information as to the identity of the driver as he may be required by a police officer to give; and
- (b) any other person shall, if required as aforesaid, give any information which it is in his power to give and which may lead to the identification of the driver.

(4) A person who fails to comply with-

- (a) subsection (3)(a) shall be guilty of an offence unless he shows to the satisfaction of the court that he did not know and could not with reasonable diligence have ascertained who the driver of the vehicle was; and
- (b) subsection (3)(b) shall be guilty of an offence, and liable to a fine not exceeding P1 000 or to imprisonment for a term not exceeding 12 months, or to both.

(5) In this section-

"parking area" means an area designated as such by a road authority where motor vehicles, or vehicles of any class or description, may wait;

"parking bay" means a space in a parking area where a vehicle may wait.

#### **59. Vehicles not to obstruct roads**

(1) A vehicle shall not be allowed to remain in any position on any road so as to obstruct or to be likely to obstruct or cause inconvenience or danger to other traffic using the road, and except where the contrary is expressly provided in this Act, every vehicle on a road, when not in motion, shall be drawn up as close to the side of the road as possible:

Provided that, except in order to avoid an accident or in compliance with a traffic sign or with a direction given by a police officer or for any cause beyond the control of the driver, a vehicle shall not be drawn up on the right hand side of a road facing on-coming traffic.

(2) The driver of any vehicle shall, in case of a breakdown, remove such vehicle from the carriageway as soon as possible, and until so removed the vehicle shall be placed as close to the side of the carriageway as possible.

(3) If the vehicle remains on the carriageway between sunset and sunrise, its position shall be clearly indicated by a light or lights visible to drivers of vehicles approaching from either direction and by such other means as may be prescribed.

(4) Any person who leaves a vehicle on a road or carriageway in such a position or manner or in such condition as to cause or be likely to cause any danger to any person shall be guilty of an offence and shall be sentenced to a fine of not less than P1 000 but not more than P2 000, or to imprisonment for a term of not less than 12 months but not more than 15 months, or to both.

#### **60. Racing, pacemaking and trial of speed**

(1) No person shall, without the written consent of the road authority and of the Commissioner of Police, promote or take part in any race, road rally or speed trial between vehicles on a road, and in giving their consent the road authority and the Commissioner of Police may impose such conditions as they think fit.

(2) A person convicted of an offence under this section shall, unless the court for special reasons thinks fit to otherwise order, and without prejudice to the power of the court to order a longer period of disqualification, be disqualified from driving and from holding or obtaining a driving licence for a period of 12 months.

#### **61. Condition of vehicles**

(1) A vehicle shall not be used on a road unless such vehicle and all parts and equipment thereof, including lights and tyres, comply with the requirements of this Act, and such parts and equipment shall at all times be maintained in such a condition that the driving of the vehicle is not likely to be a danger to other users of the road or to persons travelling on the vehicle.

(2) A motor vehicle the weight or dimensions of which laden or unladen exceeds the maximum weight or dimensions provided for such vehicles by regulations made under this Act shall not be used on a road.

(3) Any person who contravenes a provision of this section shall be guilty of an offence and shall be sentenced to a fine of not less than P100 but not more than P1 000, or to imprisonment for a term of not less than one month but not more than 12 months, or to both.

#### **62. Limitation**

(1) A vehicle shall not be used on a road with a load greater than the load specified by the manufacturer of the chassis of the vehicle or than the load capacity determined by a motor vehicle examiner under this Act.

(2) No vehicle shall be used on a road if it is loaded in such a manner as to make it a danger to other persons using the road or to persons travelling in the vehicle; and should any load or part of a load fall from any vehicle on to a road such fact shall be *prima facie* evidence that the vehicle was loaded in a dangerous manner until the contrary is proved to the satisfaction of the court.

(3) For the purposes of this section, persons travelling in a vehicle shall be deemed to be part of the load.

#### **63. Exemptions**

(1) A road authority may, with the approval of any police officer of the rank of Sergeant or above, grant a permit subject to such conditions as may be specified therein-

- (a) for the use on a road of a vehicle the weight or dimensions of which exceed the maximum weight or dimensions provided for by regulations made under this Act;
- (b) for the carriage by a vehicle on a road of any specified load which it is unlawful to place on the vehicle under the provisions of any regulations made under this Act.

(2) Every permit granted under this section shall be in writing, and shall be carried on the vehicle in question whenever such vehicle is being used under the authority of such permit.

#### **64. Penalty for improper condition or overloading**

(1) Any person who drives or uses on a road a vehicle in contravention of section 61 or 62 shall be guilty of an offence and liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding two years, or to both.

(2) For the purposes of subsection (1), any person who is shown to the satisfaction of the court to be responsible for the maintenance of the vehicle, and any person who is shown to the satisfaction of the court to have been responsible for the loading of the vehicle, shall be deemed to have used the vehicle on the road.

(3) In any case where a vehicle is twice or more times, in a period of 12 months, the subject of a successful prosecution under section 61 or 62 the court may order the Director to suspend the licence of such vehicle for a period of six months.

(4) The Director shall thereupon suspend the licence of such vehicle for such period, and the owner of the vehicle shall return the licence of the vehicle to the Director, who in no case shall issue another licence in respect of such vehicle until the termination of the period of suspension.

(5) A vehicle licence shall not be returned or a new licence shall not be granted in respect of a vehicle whose licence has been so suspended unless a motor vehicle examiner certifies that the vehicle is fit in all respects for use upon the road.

(6) When a vehicle licence has been suspended under subsection (3), no refund of licence fee shall be made.

#### **65. Obstructing driver of motor vehicle**

(1) No person shall molest, obstruct or interfere with the driver of a motor vehicle while it is being driven.

(2) Passengers shall not be carried in such numbers or in such a position in a motor vehicle as to be likely to interfere with the safe driving of such motor vehicle; and in the event of a contravention of this subsection the driver and the person in charge of the motor vehicle shall be guilty of an offence.

(3) No person driving a motor vehicle shall be in such a position that he cannot control the same or obtain a full view of the road including traffic ahead and in the rear.

(4) Any person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and shall be sentenced to a fine of not less than P500 but not more than P2 000 or to imprisonment for a term of not less than six months but not more than 15 months, or to both.

(5) In the case where an accident occurs as a result of an offence committed under subsections (1), (2) or (3) the offender shall be guilty of an offence and shall be sentenced to a fine of not less than P2 000 but not more than P5 000 or to imprisonment for a term of not less than 15 months but not more than two years, or to both.

(6) In the case where an accident referred to in subsection (5) results in the death of another person, the offender shall be guilty of an offence and shall be sentenced to a fine of not less than P5 000 but not more than P15 000 or to imprisonment for a term of not less than two years but not more than eight years, or to both.

#### **66. Motor cycles**

(1) No person shall drive a motor cycle on a road unless his feet are, except for exceptional and temporary reasons, resting on foot rests suitable for the purpose and, where

the design of such motor cycle makes it possible to do, he is seated astride the saddle of such motor cycle.

(2) No person shall, on a road, carry a passenger on a motor cycle unless such cycle has an engine with a cylinder capacity of not less than 49 cubic centimetres and unless such passenger is seated astride a pillion attached to such cycle and, in such event, foot rests have been provided for such passenger.

(3) Not more than two persons shall ride upon a motor cycle on a road.

(4) No person shall be carried in a side-car attached to a motor cycle on a road.

(5) No person or animal or article shall be carried on a motor cycle on a road in front of the driver thereof:

Provided that an article of a non-bulky nature may be so carried if securely attached to the motor cycle or placed in a suitable carrier fitted thereon for that purpose and carried in such a way as not to obstruct the driver's view or prevent his exercising complete control over such motor cycle.

(6) Persons, other than police officers, driving motor cycles on a road shall drive in single file except in the course of overtaking another motor cycle, and two or more persons driving motor cycles shall not overtake another vehicle at the same time:

Provided that where a road is divided into traffic lanes each such lane shall, for the purposes of this subsection, be regarded as a road.

(7) No person driving a motor cycle on a road shall take hold of any other vehicle in motion.

(8) A person driving a motor cycle on a road shall do so with at least one hand on the handle-bars of such motor cycle.

#### **67. Riding in a dangerous position**

(1) Except for the purpose of testing or repairing a motor vehicle, no person shall ride or be carried on the footboard, tailboard, steps, mudguards, canopy, roofing or elsewhere on the outside of any vehicle.

(2) No person shall ride or be carried on any load upon a vehicle if such a proceeding is unsafe.

#### **68. Restriction on towing and mounting a vehicle**

(1) No person, otherwise than with lawful authority or reasonable cause, shall take or retain hold of, or get on or off, a motor vehicle or trailer while it is in motion on any road.

(2) No person shall drive or permit any person to drive any vehicle on a road towing another vehicle-

(a) unless the tow-rope or chain or other connecting appliance is so adjusted that the distance separating the two vehicles does not exceed four metres;

(b) unless the towed vehicle is securely attached to the towing vehicle and is under proper control;

(c) unless the means of connection between the two vehicles has been rendered easily discernible to other users of such road:

Provided that this paragraph shall not apply where the towed vehicle is a trailer or where the distance separating the two vehicles does not exceed two metres;

(d) unless there is a person in control of the steering apparatus of the towed vehicle, where such towed vehicle is a motor vehicle other than a trailer, and such person holds a licence entitling him to drive the class of vehicle which is being towed:

Provided that the provisions of this paragraph shall not apply when a vehicle is so towed that its steering wheel or wheels is or are carried clear of the ground or where the towed vehicle is connected to the towing vehicle by a steering lock tow-bar;

(e) at a speed in excess of the rate of 30 kilometres per hour in the case of a motor vehicle towing another motor vehicle, other than a trailer, unless the connecting

- appliance is a tow-bar, in which case the speed shall not exceed 60 kilometres per hour;
- (f) if the towed vehicle is conveying passengers, except where such towed vehicle is a trailer:
- Provided that-
- (i) a tractor not designed for or capable of exceeding a speed of 30 kilometres per hour on a reasonably level road, may tow one trailer conveying passengers, otherwise than for hire or reward, where such conveyance is not prohibited in terms of any other provision of this Act; and
- (ii) this paragraph shall not apply where the towed vehicle is a trailer intended for and licensed for the carriage of passengers;
- (g) if the towed vehicle is a motor vehicle without efficient brakes, unless the connecting appliance is a tow-bar.

#### **69. Causing damage to a vehicle**

No person shall throw any object at a vehicle or at any person in or on such vehicle, nor shall he place any object on any road nor by any means impede the progress of any vehicle whereby injury or damage might be caused to such vehicle or any person.

#### **70. Tampering with a vehicle**

No person shall, without the knowledge or permission of the owner, or without reasonable excuse, get on to a motor vehicle, or attempt to manipulate any of the levers, the starter, brakes or machinery of such a vehicle, or in any way tamper with a vehicle.

#### **71. Taking a vehicle without authority**

(1) If any person, whether employed by the owner or not, takes and drives away or attempts to take and drive away a motor vehicle without the consent of the owner thereof or other lawful authority, he shall be guilty of an offence and liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding two years, or to both:

Provided that if the court is satisfied that the accused acted in the reasonable belief that he had lawful authority, or in the reasonable belief that the owner would, in the circumstances of the case, have given his consent if he had been asked therefor, the accused shall not be liable to be convicted of an offence.

(2) If, in any prosecution for stealing a motor vehicle, the court is of the opinion that the defendant is not guilty of stealing the motor vehicle, but is guilty of an offence under this section, the court may find him guilty of an offence under this section.

(3) In addition to any penalty specified in this section, the court may order that the convicted person shall pay to the owner of the motor vehicle such sum as represents fair compensation for any damage sustained by the owner of the motor vehicle.

#### **72. Unattended motor vehicles**

No person shall, on a road-

- (a) leave unattended any motor vehicle with the engine running; or
- (b) quit any vehicle without having taken due precautions against its moving from its stationary position.

#### **73. Offences in connection with level crossings**

(1) No person shall drive, pull or push, or attempt to drive, pull or push any vehicle, conveyance or animal on to or across a level crossing on a railway line when there is any risk of the vehicle, conveyance or animal being involved in a collision with a locomotive, railcar, carriage, wagon or other vehicle using the railway line.

(2) Every person driving a motor vehicle shall when approaching a level crossing reduce speed to enable the motor vehicle to be brought to a halt if necessary before reaching the level crossing and shall not increase speed until he has crossed the railway line. It shall be his duty to keep a vigilant look-out for any approaching locomotive, railcar, carriage, wagon or other vehicle using the railway line.

(3) If at any level crossing there is erected an automatic warning device and such device is giving warning of the approach of any locomotive, railcar, carriage, wagon or other



vehicle using the railway line, it shall be the duty of the person in charge of any vehicle or animal to stop the vehicle or animal clear of the railway line and not proceed over the level crossing until it is safe to do so.

(4) If at any level crossing there is erected a traffic sign warning traffic to stop, it shall be the duty of the person in charge of any vehicle or animal to stop the vehicle or animal clear of the railway line before crossing it for such time as may be necessary for him to ascertain whether there is any risk of the vehicle or animal being involved in a collision with any locomotive, railcar, carriage, wagon or other vehicle using the railway line.

(5) Any person who contravenes the provisions of this section or who crosses or attempts to cross any railway line when it is unsafe to do so, shall be guilty of an offence and shall be sentenced to a fine of not less than P1 000 but not more than P5 000, or to imprisonment for a term of not less than 12 months but not more than two years, or to both.

#### **74. Offences and penalties**

Any person who contravenes the provisions of this Part for which no other penalty is provided shall be guilty of an offence and shall be sentenced to a fine of not less than P500 but not more than P5 000, or to imprisonment for a term of not less than six months but not more than two years, or to both

### **Part:VIII Regulation of Traffic ss 7581**

#### **75.**

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#### **76. Highway Code**

(1) The Minister may prepare a code (in this section referred to as the Highway Code) comprising such directions as appear to him to be proper for the guidance of persons using roads, and may from time to time revise the Highway Code by revoking, varying, amending or adding to the provisions thereof in such manner as he thinks fit.

(2) The Highway Code and any alterations proposed to be made in the provisions thereof shall be laid before the National Assembly and, if a resolution of the National Assembly is passed within 30 days of their being so laid that such Code be revoked or amended in accordance with such resolution, such Code shall be deemed to be revoked or amended accordingly, but without prejudice to anything previously done or suffered by virtue thereof.

(3) A failure on the part of any person to observe any provision of the Highway Code shall not of itself render that person liable to criminal proceedings of any kind, but any such failure may in any proceedings (whether civil or criminal, and including proceedings for an offence under this Act) be relied upon by any party to the proceedings as tending to establish or to negative any liability which is in question in those proceedings.

#### **77. Police empowered to regulate traffic**

Without prejudice to any powers or duties of the police under this Act or any other written law, the police shall have power-

- (a) to regulate all traffic and to keep order and prevent obstruction on all roads, in parking places and other places of public resort;
- (b) to divert traffic temporarily, or to restrict or close and deny public access to any road, parking place or other place of public resort, where any emergency or any assembly or other event appears to render advisable such a course; and
- (c) to temporarily forbid any person to continue to drive or be in charge of a vehicle if it appears to a police officer that such person, by reason of his physical or mental condition, howsoever arising, is incapable for the time being of driving or being in charge of such a vehicle and, in such a case, the police officer shall arrange for the safe disposal or parking of the vehicle as in his opinion may be necessary or desirable in the circumstances.

#### **78. Traffic signs**

(1) Subject to and in conformity with such general or other directions as may be given by the Minister, a road authority may cause or permit traffic signs to be placed on or near a road.

(2) Traffic signs shall be of the prescribed size, colour and type except where the Minister authorizes the erection or retention of a sign of another character.

(3) After the commencement of this Act, no traffic signs shall be placed on or near any road except under and in accordance with subsections (1) and (2):

Provided that-

- (i) nothing in this subsection shall apply to any notice in respect of the use of a bridge; and
- (ii) a road authority or police officer of or above the rank of Inspector may authorize the erection of any traffic sign for any special purpose for a period not exceeding seven days, and such traffic sign shall be deemed to be lawful even though it does not conform to the requirements of this section.

(4) For the purposes of this Act, all traffic signs shall be deemed to have been lawfully erected until the contrary is proved.

(5) A road authority may, by notice in writing, require the owner or occupier of any land on which there is any traffic sign or any object which so closely resembles a traffic sign that it might reasonably be taken to be such a sign, to remove it, and if any person fails to comply with such a notice the road authority may effect the removal and may recover the expense incurred in so doing as a civil debt recoverable summarily from the person so in default:

Provided that this subsection shall not apply in the case of any sign or object so long as its retention is expressly authorized by the road authority.

(6) Any person who contravenes a provision of this section shall be guilty of an offence and shall be sentenced to a fine of not less than P1 000 but not more than P5 000, or to imprisonment for a term of not less than 12 months but not more than two years, or to both.

#### **79. Closure of roads**

(1) A road authority or its authorized representative may, with the approval of the Minister, for the purposes of preventing damage being caused to any road or for the purpose of carrying out any works which it considers necessary or desirable in connection with the maintenance or improvement of any road, close the whole or any part of such road to all vehicles or any particular type of vehicle at any time for such period as it thinks fit.

(2) Where, in the opinion of a police officer of or above the rank of Assistant Superintendent, it is desirable in the interests of public safety, or of maintaining law and order, or for the enforcement of this Act, to block or close any road, such police officer may direct the blockage or closure of such road for such period, not exceeding 48 hours, as he thinks fit.

#### **80. Injury to bridge and roads**

If any injury is caused to a bridge or road as a result of any contravention of this Act, the road authority concerned may make good such injury and recover the cost thereof from the owner of the vehicle responsible for the injury, and the certificate of the road authority of the amount of the cost of making good such injury shall be conclusive evidence of the amount payable by such owner.

#### **81. Power of road authority to instal parking meters**

(1) A road authority may charge fees in respect of the parking of vehicles on a road or section thereof within its area of jurisdiction and may, for the purpose of collecting any such fees, instal parking meters.

(2) The fees referred to in subsection (1) may differ in respect of different roads or different sections of the same road as the road authority thinks fit.

(3) A parking meter referred to in subsection (1) shall only be installed in conjunction with a demarcated parking place and shall bear thereon a legend indicating the days and

hours when the requirements to deposit coins therein shall apply and the value of the coins to be deposited for a specified period of parking.

(4) The period of time for which a vehicle may be lawfully parked in a parking place referred to in subsection (3) shall, unless the contrary is proved, be as measured by the parking meter for such place.

(5) All fees collected by a road authority by means of parking meters under this section shall be used only to defray the costs of and incidental to any scheme, works or undertaking for the improvement or regulation of traffic conditions within its area of jurisdiction, including the cost of installing and maintaining such meters.

(6) The exercise by a road authority of its functions under this section shall not render the road authority subject to any liability in respect of the loss of or damage to any vehicle or the contents or fittings of any such vehicle while such vehicle is in a parking place.

**Part:IX Accidents ss 8284**

**82. Duty to stop and report**

(1) If a vehicle is involved in or contributes to any accident whereby the death of or injury or damage to any person, property, cattle or other domestic animal is caused, the driver of the vehicle shall stop and, if requested to do so by any person having reasonable grounds for so requiring, give his name and address, the name and address of the owner of the vehicle and of the company with whom the vehicle is insured and the registration number of the vehicle.

(2) Any other person in the vehicle at the time of the accident shall also, if required to do so, give his name and address.

(3) In the case of such an accident, the driver of the vehicle shall report the accident at a police station or to a police officer as soon as it is reasonably practicable to do so and in any event within 48 hours immediately after the accident-

(a) if for any reason he does not, at the scene of the accident, supply the particulars referred to in subsection (1) in accordance with that subsection:

Provided that this paragraph shall not apply in the case of an accident whereby-

- (i) the death of or injury to any domestic animal other than cattle is caused; or
- (ii) the death of or injury or damage to any property or cattle is caused, which property or cattle is, at the time of the accident, owned by and in the possession of the driver of the vehicle;

(b) if the death of or injury to any person is caused by the accident; or

(c) if, as a result of the accident, any vehicle is left in such a position, manner or condition as to obstruct or inconvenience or be likely to obstruct or inconvenience any traffic using a road or to constitute or be likely to constitute a danger to the public.

(4) After reporting the accident at a police station or to a police officer in accordance with this section, the driver of the vehicle shall remain at the scene of the accident or return to the scene of the accident and wait until he has been authorized by a police officer to depart or unless he has to assist the injured or receive attention himself.

(5) Until the driver of the vehicle concerned reports the accident to the police in accordance with this section, he shall not take any intoxicating liquor or drug unless it is prescribed by a medical practitioner or registered nurse and shall not drive the vehicle involved in the accident until authorised by a police officer.

(6) When stopping as required by this section, the driver of the vehicle concerned in the accident shall take such steps as he is reasonably able to ensure the safety of other traffic at the scene of the accident.

(7) The owner of a vehicle which is involved in or contributes to an accident shall supply to the police all information necessary to identify the driver of the vehicle at the time of the accident.

(8) It shall be the duty of any person who has witnessed an accident to report such accident to the nearest police station.

### **83. Penalties for not stopping and reporting**

Any person who contravenes or fails to comply with any of the provisions of section 82 shall be guilty of an offence and liable-

- (a) where the accident has resulted in the death of or injury to a person, to a fine not exceeding P5 000 or to imprisonment for a term not exceeding two years, or to both;
- (b) where the accident has resulted in damage to any property or animal, to a fine not exceeding P3 000 or to imprisonment for a term not exceeding 18 months, or to both;
- (c) where as a result of a driver's failure to report an accident in which he was involved, injury or death occurs, his driving licence and any other related permit shall, in addition to the fines prescribed in paragraphs (a) and (b), be suspended for not less than one year; and
- (d) where having witnessed an accident he fails to report such accident to the nearest police to a fine not exceeding P3 000 to imprisonment for a term of not exceeding 18 months, or to both.

### **84. Police empowered to inspect and remove and detain vehicles involved in an accident**

(1) Where an accident arises out of the presence of a motor vehicle on a road, any police officer, or any person duly appointed in writing by a police officer, may inspect any vehicle in connection with which the accident arose, and for that purpose may enter at any reasonable time any premises where the vehicle is, and if any person obstructs such police officer or duly appointed person in the performance of his duty under this subsection he shall be guilty of an offence.

(2) Where an accident arises out of the presence of a motor vehicle on a road, any police officer, or any person duly appointed in writing by a police officer, may, if he considers the presence of such vehicle on a road to be likely to cause an obstruction or to create a danger to other traffic or if he wishes to investigate the roadworthiness of such vehicle, may remove it or cause it to be removed to such place as he may determine and there detain it until collected by the owner or until its roadworthiness is ascertained, as the case may be, and if any person obstructs such police officer or duly appointed person in the performance of his duty under this subsection he shall be guilty of an offence.

(3) Any person who is guilty of an offence under this section shall be sentenced to a fine of not less than P1 000 but not more than P2 000, or to imprisonment for a term of not less than six months but not more than 15 months, or to both.

## **Part:X Powers of Court, Disqualification, etc. ss 8592**

### **85. Powers of court**

(1) A court may, for any offence for which it is not obliged to impose mandatory disqualification under section 53-

- (a) disqualify such person from driving, and from holding or obtaining a driving licence for such period as it may determine;
- (b) if the person convicted holds a driving licence, suspend such licence until such time as the person passes another driving test under section 39; or
- (c) if the person convicted holds a driving licence, cause particulars of the conviction to be endorsed thereon, and forward a notice of the conviction and endorsement to the Director.

(2) Any disqualification or suspension imposed under subsection (1) may be limited to the driving of a particular class or description of vehicle.

(3) Where a court suspends a driving licence under subsection (1)(b), a licensing officer shall, on application being made and upon payment of the prescribed fee, issue a provisional driving licence to such holder.

#### **86. Right of appeal**

An appeal shall lie against any order made by a court under section 85 in the same manner as against a conviction, and the court making the order or the court to which the appeal lies may suspend the operation of the order pending the determination of the appeal.

#### **87. Effects of disqualification or suspension**

(1) Where a court disqualifies a person from driving or suspends a licence under any provision of this Act, it shall require and obtain production of any driving licence held by the offender, shall cause particulars of the offence to be endorsed on the licence, and forward it to the Director together with a notice of the conviction and sentence.

(2) Where a driving licence has been suspended the Director shall retain such licence until the holder passes another driving test, when it shall be returned to the holder.

(3) Where a court disqualifies a person from driving for a period in excess of six months, any driving licence held by such person shall be cancelled in respect of the class or classes of vehicles in respect of which the disqualification was made, and, at the end of the period of disqualification, the licensing officer shall treat such person as if he were applying for a driving licence in respect of such class or classes of vehicles for the first time, and shall in no circumstances issue him with a driving licence until he has passed the prescribed driving test.

(4) Any new driving licence issued to such person shall contain any endorsements that were on his previous licence.

(5) Where a court disqualifies a person from driving for a period of six months or less, the Director shall, on application by the holder and subject to the exercise of his powers under section 40 return the licence to the holder on the expiration of the period of disqualification.

(6) Where the suspension or disqualification by the court is limited to a particular class of vehicles, the Director shall, upon receipt of the licence, issue to the licence holder a new licence on which there shall be indicated in the prescribed manner the class or classes of vehicle which the licence holder is thereby authorized to drive.

#### **88. Driving whilst disqualified**

(1) Any person who, whilst he is disqualified from driving or from holding or obtaining a driving licence under this Part or any other provisions of this Act-

(a) drives a motor vehicle on a road; or

(b) if the disqualification is limited to the driving of a motor vehicle of a particular class or description, drives a motor vehicle of that class or description on a road,

shall be guilty of an offence and shall be sentenced to a fine of not less than P2 000 but not more than P5 000, or to imprisonment for a term of not less than 15 months but not more than two years, or to both, and the court convicting him shall disqualify him from driving or from holding or obtaining a driving licence for a period of one year consecutive to his current period of disqualification.

(2) Any person who is guilty of a second or subsequent offence under this section shall be sentenced to a fine of not less than P5 000 but not more than P10 000, or to imprisonment for a term of not less than two years but not more than five years, or to both.

#### **89. Fraudulent application for driving licence**

(1) Any person who-

(a) having had an application for a driving licence refused, or having been disqualified from driving or from holding or obtaining a driving licence, applies for and obtains a licence without disclosing the fact of such refusal or disqualification; or

(b) whilst he is, either under this Part or any other provision of this Act, disqualified from driving or from holding or obtaining a driving licence either generally or in respect of a particular class or description of motor vehicle, applies for and obtains

a driving licence, or a driving licence for the particular class or description of motor vehicle, as the case may be, shall be guilty of an offence and shall be sentenced to a fine of not less than P2 000 but not more than P5 000, or to imprisonment for a term of not less than 15 months but not more than two years, or to both, and any driving licence so obtained shall be of no effect.

(2) Where the accused is disqualified from driving or from holding or obtaining a driving licence, any period during which he has held such a fraudulently obtained licence shall be added to such period of disqualification.

#### **90. Particulars of endorsement to be inserted in new licence**

On the issue of a driving licence to any person, the particulars endorsed on any previous licence held by him shall be inserted in the new licence, unless he has previously become entitled under section 92 to the issue of a licence free from endorsement.

#### **91. Applying for licence without disclosing endorsement**

If any person whose driving licence has been ordered to be endorsed, and who has not previously become entitled under section 92 to have a licence issued to him free from endorsement, applies for or obtains a licence without giving particulars of the order, he shall be guilty of an offence and shall be sentenced to a fine of not less than P2 000 but not more than P5 000, or to imprisonment for a term of not less than 15 months but not more than two years, or to both, and any licence so obtained shall be of no effect.

#### **92. Issue of new licence free from endorsement**

Where a person in respect of whom an order has been made under this Act requiring the endorsement of any driving licence held by him has, during a continuous period of three years or upwards since the order was made, had no other such order made against him, he shall be entitled, at any time, on application and subject to the payment of the prescribed fee and to the surrender of any existing licence, to have issued to him a new licence free from endorsement:

Provided that in reckoning the said period of three years any period during which the person was by virtue of the order disqualified from driving and from holding or obtaining a driving licence or during which his driving licence was suspended shall be excluded.

### **Part:XI Offences by Drivers of Vehicles other than Motor Vehicles ss 9396**

#### **93. Driving under the influence of drink**

Any person who when driving or attempting to drive, or when in charge of a vehicle, other than a motor vehicle, on a road or in a public place, is under the influence of drink or drugs to such an extent as to be incapable of having proper control of the vehicle shall be guilty of an offence and shall be sentenced to a fine of not less than P500 but not more than P2 000 or to imprisonment for a term of not less than six months but not more than 15 months, or to both.

#### **94. Reckless driving**

Any person who drives any vehicle, other than a motor vehicle, on a road or in a public place, recklessly or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road and the amount of traffic which is actually, or which might reasonably be expected to be on the road, at the time, shall be guilty of an offence and shall be sentenced to a fine of not less than P500 but not more than P2 000 or to imprisonment for a term of not less than six months but not more than 15 months, or to both.

#### **95. Careless driving**

Any person who, on a road or in a public place, drives a vehicle other than a motor vehicle, without due care or attention, shall be guilty of an offence and shall be sentenced to a fine of not less than P100 but not more than P2 000 or to imprisonment for a term of not less than one month but not more than 15 months, or to both.

#### **96. Restrictions on riding cycles**

(1) No person shall ride a cycle on a road unless he is seated astride the saddle of such cycle.

(2) Persons riding cycles on a road shall ride in single file except in the course of overtaking another cycle and two or more persons riding cycles shall not overtake another vehicle at the same time.

(3) No person riding or seated on a cycle on a road shall take hold of any other vehicle in motion.

(4) No person riding a cycle on a road shall deliberately cause such cycle to swerve from side to side.

(5) No person riding a cycle on a road shall carry thereon any animal or article which obstructs his view or which prevents him from exercising complete control over the movements of such cycle.

(6) No person riding a cycle on a road shall carry thereon more than one person who shall not be carried otherwise than sitting on a carrier securely fixed to the cycle or on a step especially fitted to carry a passenger.

(7) A person riding a cycle on a road shall do so with at least one hand on the handle-bars of such cycle.

(8) Whenever a road authority has set aside a portion of a road for use by persons riding cycles, no person shall ride a cycle on any other portion of such road, except for the purpose of crossing the road.

(9) Any person who contravenes a provision of this section shall be guilty of an offence and liable to a fine not exceeding P1 000 or to imprisonment for a term not exceeding 12 months, or to both.

## **Part:XII Miscellaneous Provisions as to Roads ss 97106**

### **97. Restrictions on pedestrians**

(1) Whenever a sidewalk or footpath abuts on a road, a pedestrian shall not walk on such road except for the purpose of crossing from one side of such road to the other or for some other sufficient reason.

(2) A pedestrian on a road which has no sidewalk or footpath abutting on it shall walk as near as is practicable to the edge of the road on his right hand side so as to face on-coming traffic on such road.

(3) A pedestrian shall not cross a road without satisfying himself that the road is sufficiently free of on-coming traffic to permit him to do so in safety.

(4) A pedestrian, when crossing a road, shall not loiter thereon but shall proceed with due despatch.

(5) A pedestrian on a road shall not conduct himself in such a manner as to or as is likely to constitute a source of danger to himself or to other traffic which is or may be on such road.

### **98. Pedestrian crossings**

The Minister may make regulations with respect to the precedence of vehicles and pedestrians respectively and generally with respect to the movement of traffic (including pedestrians) on roads, and at or in the vicinity of road crossings, including the establishment of special crossings for pedestrians, the traffic signs to be used on or near road crossings or pedestrian crossings, and such other matters as may be necessary or desirable in connection with such crossings.

### **99. Restrictions on animal-drawn vehicles on roads**

(1) No person shall operate an animal-drawn vehicle on a road unless the vehicle and the harness and other equipment thereof are in an efficient and safe condition.

(2) The owner of an animal-drawn vehicle shall not cause or permit such vehicle to be used on a road by any person who is not competent to drive and control such vehicle.

(3) The driver of an animal-drawn vehicle on a road shall at all times give his undivided attention to the driving of the vehicle under his control and, if the vehicle is standing on a road, the driver shall not cease to retain control over every animal which is still harnessed to the vehicle unless some other person competent to do so takes charge of every such animal or every such animal is so fastened that it cannot move from the place where it has been left.

(4) The driver or other person in charge of a vehicle drawn by any animal shall not, on a road outside an urban area, permit such vehicle to follow any other vehicle similarly drawn at a distance of less than 150 metres reckoned from the foremost animal of such first-mentioned vehicle, except for the purpose of overtaking a vehicle travelling at a slower speed or when a vehicle travelling at a greater speed, having overtaken such vehicle, is drawing away from it.

(5) The owner, driver or person in charge of a vehicle drawn by animals, shall not allow an animal which is of materially defective vision to be used for drawing such vehicle on a road.

(6) No person shall drive or conduct any vehicle drawn by animals on a road without having reins to guide the animals, unless a person leads or drives the animals in such a manner as to have proper control over them.

(7) Any person who contravenes a provision of this section shall be guilty of an offence and liable to a fine not exceeding P1 000, or to imprisonment for a term not exceeding 12 months, or to both.

#### **100. Offences in connection with roads**

(1) No person shall on any road-

- (a) wilfully or negligently lead or drive any animal or vehicle on a footpath or in a road drain;
- (b) play any games to the annoyance, inconvenience or danger of persons using the road;
- (c) wilfully obstruct the free passage of persons or vehicles passing along the road.

(2) No owner or person in charge of any cattle or other animals shall-

- (a) permit such cattle or other animals to be on a main road unless they are attended by a person in such a manner as to have proper control over them;
- (b) leave such cattle or other animals in a place from which they are likely to stray on to a main road,

and any person who contravenes any of the provisions of this subsection shall be guilty of an offence and shall be sentenced to a fine of not less than P2 000 but not more than P5 000, or to imprisonment for a term of not less than 15 months but not more than two years, or to both.

(3) Any person driving or conducting any cattle, dog or other animal along the carriageway of a main road shall keep it or them as close as possible to the edge of the carriageway on the left hand side, allowing on-coming traffic to pass on his right.

(4) No person shall, on a main road or a road proclaimed as a public road under the Public Roads Act-

- (a) use a vehicle drawn by a team of more than 18 oxen or of more than six donkeys, mules or horses;
- (b) use a vehicle drawn by a team of animals which are more than two abreast.

(5) The Minister may, by order, declare any road to be a main road for the purposes of this section.

#### **101. Offences in connection with gates by which cattle might gain access to certain roads**

(1) No person shall-

- (a) open or unfasten a gate which gives access, either directly or indirectly, to a road habitually used by motor vehicles and by which cattle might gain access to the road, except for the purpose of then and there passing through the gate, with or



without any vehicle or animals in his care, or of enabling some other person so to pass; or

- (b) having passed through a gate such as is referred to in paragraph (a) or enabled some other person so to pass, fail immediately to close and securely fasten the gate or ensure that it is closed and securely fastened.

(2) Where, in any proceedings in respect of a contravention of any of the provisions of this section, it is alleged in the charge that a gate gave access to a road habitually used by motor vehicles and by which cattle might have gained access to the road, the court shall presume that the allegation is true unless the contrary is proved.

(3) Any person who contravenes a provision of this section shall be guilty of an offence and liable to a fine not exceeding P1 000, or to imprisonment for a term not exceeding 12 months, or to both.

#### **102. Encroachment on and damage to roads**

(1) Any person who, without the written permission of the appropriate road authority-

- (a) encroaches on a road or on any land reserved therefor at the side or sides thereof by making or erecting any building, fence, ditch, advertisement sign or other obstacle or by digging thereon or by planting or sowing any tree, shrub or seeds thereon;
- (b) leaves on a road any timber, stones or other material so as to obstruct or endanger persons using the road or wilfully or negligently deposits or causes or permits to be deposited upon a road or any land reserved therefor at the side or sides thereof any petrol or other liquid fuel or any oil, grease or other inflammable or offensive matter or any ashes, bottle, can, tin, carton, food remnants or other refuse or litter whatsoever;
- (c) digs up, removes, alters or damages in any way the soil or surface of a road, or of any land reserved therefor at the side or sides thereof, or if done for the purpose of moving a vehicle without immediately thereafter making good the damage;
- (d) wilfully fills up, alters or obstructs any ditch or drain, whether on a road or contiguous thereto, made by or under the control of the road authority to carry water off the road or to keep it from flowing on to the road;
- (e) allows any sludge or any filthy or noisome matter to flow from any building or land in his occupation on to a road or into any ditch or drain made by, or under the control of, the road authority;
- (f) causes or allows any timber, sledge, plough or other heavy material, vehicle or implement not wholly raised above the ground on wheels to be dragged on a road;
- (g) pitches any tent, booth or stall on a road; or
- (h) makes any fire on any road,

shall be guilty of an offence and shall be sentenced to a fine of not less than P500 but not more than P2 000 or to imprisonment for a term of not less than six months but not more than 15 months, or to both:

Provided that any person who has been unable to avoid creating an obstruction such as that referred to in subsection (1)(b) due to any reason beyond his control shall not be guilty of an offence if he takes the requisite steps to remove it as soon as possible and, if he cannot remove it immediately, to warn other road-users and the police of its presence.

(2) It shall be lawful for the road authority to remove anything whatsoever which has been placed or erected on a road or land reserved therefor in contravention of this section.

#### **103. Prohibition on use of tracked vehicles**

(1) No person shall use or cause or permit to be used on any road any vehicle having ribbed, studded or spiked wheels or fitted with crawler type metal tracks:

Provided that this subsection shall not apply-

- (i) where such wheels or tracks are fitted with special rims or street plates which would ensure an even contact with the road surface;

(ii) in any case where the road authority has given permission in writing for the use of such a vehicle and such permission is carried on the vehicle to which it relates.

(2) No person shall use or cause or permit to be used on any road any vehicle not fitted with pneumatic tyres, except in the case of an ox-drawn vehicle being used on a road set aside for ox-drawn vehicles or on a road where no alternative road in a reasonably usable condition exists for ox-drawn vehicles.

(3) No person shall use or cause or permit to be used on any road which has a bituminous surface any vehicle the wheels of which are fitted with chains or any device of a similar kind which damage or are likely to damage the road surface.

(4) Any person who contravenes any of the provisions of this section shall be liable to a fine not exceeding P200.

#### **104. Restriction with regard to use of bridge**

It shall not be lawful for the driver or person in charge of a vehicle to drive or haul the vehicle or cause it to be driven or hauled over any bridge on or near which a conspicuous notice has been placed to the effect that such a bridge is insufficient to carry traffic in excess of a specified weight, unless the gross weight of such vehicle and any trailer attached thereto is less than the weight specified or unless he has obtained the consent in writing of the road authority.

#### **105. Non-liability of road authority for damage**

(1) A road authority shall not be liable for any loss or damage which may be caused to any person or property through the condition of a road or the failure of a road to sustain the weight of a vehicle.

(2) Nothing in this Act shall affect the right of the road authority or of any person to recover compensation from the owner or driver of any vehicle for any loss, damage or injury which may be sustained by the road authority or such person by the use of a vehicle.

(3) If any injury to a bridge or road or any traffic sign or other marker used on the bridge or road is caused through any contravention of this Act, it shall be lawful for the road authority to make good such injury and to recover the cost thereof from the person or persons responsible and the certificate of the road authority of the amount of the cost of making good such injury shall be conclusive evidence of the amount payable by such person or persons.

#### **106. Requirements for certain public service vehicles**

(1) No person shall drive a call-cab, taxi, mini-bus, midi-bus or any motor omnibus, used for hire or reward unless he is the holder of a valid PrDP "P" for that class of vehicle.

(2) No person shall drive a vehicle conveying goods for hire or reward or on own account unless he is the holder of a PrDP "G" or PrDP "H" for that class of vehicle.

(3) No person shall drive a school-bus unless he is the holder of a valid PrDP "P" for that class of vehicle and the sign "school-bus" is displayed in front and at the back of the vehicle.

(4) Any person who contravenes a provision of this section shall be guilty of an offence and shall be sentenced to a fine of not less than P2 000 but not more than P5 000, or to imprisonment for a term of not less than 15 months but not more than two years, or to both.

#### **106A. Penalties**

Any person who contravenes a provision of this Part for which no penalties are provided shall be guilty of an offence and shall be sentenced to a fine of not less than P500 but not more than P1 000, or to imprisonment for a term of not less than six months but not more than 12 months, or to both.

### **Part:XIII Public Service Vehicles ss 107115**

#### **107. Requirement for certain public service vehicles**

(1) No person shall drive a call-cab, taxi, mini-bus, midi-bus or any motor omnibus, used for hire or reward unless he is a holder of a valid PrDP "P" for that class of vehicle.

(2) No person shall drive a vehicle conveying goods for hire or reward or on own account unless he is a holder of a PrDP "G" or PrDP "H" for that class of vehicle.

(3) No person shall drive a school-bus unless he or she is a holder of a valid professional driving permit "special" for that class of vehicle and the sign "school-bus" is displayed on the left front and at the right rear side of the school bus next to the number plate.

(4) Any person who contravenes a provision of this section shall be guilty of an offence and shall be sentenced to a fine of not less than P1 000 but not more than P5 000, or to imprisonment for a term of not less than six months but not more than 12 months, or to both.

#### **108. Application for public service vehicle permit**

(1) Application for the licensing of any motor vehicle as a public service vehicle shall be made by the registered owner of such vehicle to a licensing officer in the prescribed form and in the prescribed manner.

(2) No public service vehicle permit shall be issued in respect of any motor vehicle-

- (a) other than to the registered owner of such vehicle;
- (b) which is not registered and licensed under Parts II and III of this Act;
- (c) which does not comply with the provisions of this Act as to construction, equipment and use;
- (d) which is intended to be used as a motor omnibus, unless the owner of such vehicle is in possession of a valid road service permit in respect thereof issued under any written law relating to transport licensing and unless such vehicle complies with any conditions attached to such permit;
- (e) which is intended to be used as a taxicab or private hire vehicle, unless such vehicle has been registered or licensed as a taxi or call-cab or private hire vehicle under any other written law relating to such vehicles;
- (f) unless a certificate is granted to the applicant by a police officer of or above the rank of Inspector or by the District Commissioner of the district in which the applicant is residing, certifying that the applicant is a fit and proper person to hold such permit; or
- (g) which has not previously been so licensed, or the construction of which has been altered or modified in any way since it was last so licensed, and which is intended to be used as a motor omnibus, unless the owner of the vehicle has obtained in respect thereof a certificate in the prescribed form signed by a motor vehicle examiner, certifying that the vehicle is fit for the purpose for which it is to be licensed, and has paid the prescribed fee.

#### **109. Issue and conditions of public service permit**

(1) The licensing officer, if he is satisfied that the provisions of section 108(2) have been complied with, shall, upon payment of the prescribed fee, issue a public service vehicle permit in the prescribed form.

(2) A public service vehicle permit may be issued for such period as may be prescribed:

Provided that, where a period is so prescribed, a permit issued before the period is prescribed shall not be valid solely by reason that the period for which it was issued is different from that prescribed.

(3) Where any public service vehicle licence is cancelled for any reason during the period of its validity, no refund of licence fee shall be made in respect of the unexpired period of such licence.

(4) Every licence issued under this section shall be carried on the vehicle to which it relates in the prescribed manner.

(5) A public service vehicle licence shall not be transferred or assigned to any other person or vehicle.

(6) Whenever the holder of any public service vehicle licence ceases to be the owner of the vehicle specified in the licence, he shall forthwith return such licence to the Director for cancellation, and the vehicle shall from the date of such change of ownership cease to be licensed as a public service vehicle.

(7) If any public service vehicle licence is lost, or becomes illegible, the owner of the vehicle to which such licence relates shall forthwith apply to the Director in the prescribed form for a duplicate thereof and shall return any illegible licence to the Director for cancellation; the Director shall, on payment of the prescribed fee and on being satisfied as to the loss or illegibility, issue a duplicate of such licence.

(8) Where any public service vehicle licence which has been lost is subsequently found, any duplicate public service vehicle licence issued under this subsection shall forthwith be delivered up to the Director for cancellation.

#### **110. Drivers and conductors of public service vehicles**

(1) Any person who drives or acts as a conductor of a public service vehicle without being authorised for that purpose under this Part, and any person who employs or permits any person who is not so authorised to act as a conductor of a public service vehicle shall be guilty of an offence and shall be sentenced to a fine of not less than P500 but not more than P2 000 in the case of a conductor and P2 000 but not more than P5 000 in the case of a driver or any person who employs or permits any person who is not so authorised.

(2) Subject to the other provisions of this section and to such other provisions as may be prescribed for the purposes of this section, upon application being made in the prescribed manner and form and upon payment of the prescribed fee, the Director shall issue the permit applied for.

(3) In the case of an application under this section for a permit to drive a public service vehicle, the Director shall refuse to issue the permit unless-

- (a) he is satisfied that the applicant has attained the age of 25 years;
- (b) the applicant holds and produces a driving permit issued under Part VI valid for light vehicles or heavy commercial vehicles and has held the permit for not less than two years;
- (c) the applicant produces a certificate, dated within the immediately preceding period of 90 days and signed by a police officer of or above the rank of Assistant Superintendent, certifying that the applicant has not, to the signatory's knowledge, within the immediately preceding period of five years-
  - (i) been convicted, by a court within or outside Botswana, of an offence against any person or of an offence against property involving dishonesty, which is a criminal offence under the law of Botswana, and sentenced therefor to a term of imprisonment (whether or not the operation of the sentence was suspended), other than a term of imprisonment in respect of the non-payment of a fine imposed or the offence, in respect of which offence the applicant has not been granted a free pardon, the conviction or sentence has not been set aside or some other punishment has not been substituted for such imprisonment; or
  - (ii) been disqualified by such a court from driving or from holding or obtaining a driving permit for any period, which disqualification has not been set aside; and
- (d) the applicant produces a certificate, dated within the immediately preceding period of 30 days and signed by a medical practitioner, certifying that the applicant is not, in the signatory's opinion, suffering from any disease or disability which would impair or be likely to impair his ability to drive vehicles of the class or classes in respect of which the application is made.

(4) In the case of an application under this section for a public service vehicle driver's permit, the Director may refuse to issue the permit until the applicant has passed a driving test of the class or classes of vehicle in respect of which the application is made.

(5) In the case of an application under this section for a permit to act as the conductor of a public service vehicle, the Director shall refuse to issue the permit unless-

- (a) he is satisfied that the applicant has attained the age of 18 years; and
- (b) the applicant produces a certificate, dated within the immediately preceding period of 90 days and signed by a police officer of or above the rank of Sub-Inspector, certifying that the applicant has not, to the signatory's knowledge, within the immediately preceding period of five years been convicted, by a court within or outside Botswana, of an offence against any person or of an offence against property involving dishonesty, which is a criminal offence under the law of Botswana, and sentenced therefor to a term of imprisonment (whether or not the operation of the sentence was suspended), other than a term of imprisonment in respect of the non-payment of a fine imposed for the offence, in respect of which offence the applicant has not been granted a free pardon, the conviction or sentence has not been set aside or some other punishment has not been substituted for such imprisonment.

(6) Where a person wishing to apply for a public service vehicle driver's or conductor's permit is unable to obtain the certificate he is required to produce under subsection (3)(c) or (5)(b), as the case may be, by reason of his having been convicted and sentenced as therein described, he may apply in writing to the Minister to direct the Director-

- (a) in the case of an application by that person for a public service vehicle driver's permit, to waive the requirement that the certificate certify the matters prescribed by subsection (3)(c)(i); or
- (b) in the case of an application by that person for a public service vehicle conductor's permit, to waive the requirement that he produce a certificate.

(7) Every application under subsection (6) shall set out in full the submissions which the applicant wishes the Minister to take into account in determining the application.

(8) The Minister shall consider every application made to him under subsection (6) and may, if he is satisfied that the interests of the public are unlikely to be prejudiced thereby, direct the Director in writing to waive the relevant requirement, and the Director shall comply with that direction.

(9) The Director may issue a public service vehicle driver's or conductor's permit subject to such conditions as he thinks fit.

(10) A public service vehicle driver's or conductor's permit shall be valid for two years unless cancelled earlier under this Part; and, where such a permit is cancelled for any reason, no refund of the permit fee shall be payable in respect of any unexpired period of the permit.

(11) A person licensed as a driver or conductor of a public service vehicle shall not drive or act as the conductor of such a vehicle whilst it is carrying passengers on a road unless he is wearing the prescribed badge.

(12) In the event of a public service vehicle driver's or conductor's permit or badge being lost, destroyed or defaced or becoming illegible, the holder thereof shall forthwith apply to the Director in such form as he may require, together with the prescribed fee and any permit or badge which has been defaced or become illegible, for a duplicate permit or badge to be issued.

(13) Where the original public service vehicle driver's or conductor's permit or badge is recovered by the holder thereof after being lost, he shall forthwith return to the Director any duplicate thereof which may have been issued to him.

### **111. Power to cancel permit and disqualify**

(1) Any permit issued under this Part may be cancelled at any time by the Director if he is satisfied that, by reason of the conduct of the holder of such permit or the condition of any vehicle in respect of which the permit is issued such cancellation would be in the public interest; and upon receipt of a notice of such cancellation, the permit holder shall forthwith deliver up such permit to the Director.

(2) Any court before which a person is convicted of any offence under this Part, or any offence relating to the construction, equipment, condition or use of a public service vehicle may-

- (a) cancel any permit issued under this Part to the accused, and disqualify him from holding or obtaining a similar permit for a stated period; or
- (b) cause or direct particulars of the conviction to be endorsed on any permit held by the accused.

(3) Where the court has made any order under subsection (2)(a), it shall require and obtain production of the permit concerned and forward it to the Director together with a notice of the conviction and order.

(4) Any such permit issued to the accused after the period of disqualification shall be endorsed with particulars of the conviction and order, unless the Director otherwise directs.

#### **112. Right of appeal**

Any person aggrieved by the refusal or failure to grant or by the cancellation of a permit under this Part or by any condition attached thereto by the Director, or by the refusal of a police officer or a District Commissioner to issue a certificate required under section 108(2)(f), may appeal in writing to a magistrate's court presided over by a Magistrate Grade I or over, whose decision shall be final, and any such permit shall continue in force during the period of its validity until the appeal has been disposed of.

#### **113. Passengers and loads**

(1) The Director shall in respect of any public service vehicle, and in accordance with this Act, determine the maximum number of passengers, whether sitting or standing, and the weight of baggage or goods allowed to be carried at any time on such vehicle or on any vehicle of a similar class or description.

(2) If any public service vehicle carries more persons, baggage or goods than it is licensed to carry, the driver, the conductor and the owner of such vehicle, or the agent of such owner, shall each be guilty of an offence and shall be sentenced to a fine of not less than P500 but not more than P1 000, or to imprisonment for a term of not less than six months but not more than 12 months, or to both:

Provided that the owner or agent shall not be guilty as aforesaid if such offence is committed without his knowledge or consent and if he took all reasonable precautions to prevent it.

(3) No person who is requested by the owner, owner's agent, driver or conductor of a public service vehicle not to enter the vehicle shall enter or attempt to enter the vehicle when it is carrying the full number of persons it is licensed to carry; and any person disobeying such a request shall be guilty of an offence and liable to a fine not exceeding P100, or to imprisonment for a term not exceeding one month, or to both.

(4) For the purposes of this section-

- (a) a child who is under the apparent age of five years and who does not occupy a seat shall not be counted as a person;
- (b) any two children each of whom is over the apparent age of five years and under the apparent age of 12 years shall count as one passenger.

#### **114. Touting**

No person shall, for the purpose of inviting or obtaining passengers for any public service vehicle, make any noise or sound any instrument, or do anything which causes or is likely to cause annoyance, inconvenience or danger to the public.

#### **115. Penalties**

Any person who contravenes a provision of this Part shall be guilty of an offence and liable to a fine not exceeding P5 000, or to imprisonment for a term not exceeding two years, or to both.

**Part: XIV General ss 116-133**

#### **116. Inspection of vehicles**

(1) A police officer in uniform may stop any vehicle, and the Director, a police officer, licensing officer, motor vehicle examiner, transport inspectors or any authorised person may-

- (a) enter and inspect any vehicle;
- (b) drive any vehicle which he is licensed to drive or cause any vehicle to be driven; and
- (c) upon reasonable suspicion of any offence under this Act, enter any premises or order and require the owner of any vehicle to bring the vehicle to him,

for the purpose of carrying out any examination and test of any vehicle with a view to ascertaining whether this Act is being complied with.

(2) If any person is not attired in official uniform when exercising any authority conferred upon him by this Act, he shall, if so required by any person in charge of any vehicle or the owner or occupier of any premises in respect of which such authority is being exercised, produce an official identification document bearing his photograph and signature.

(3) Any person who fails to comply with any instruction or order given under this section shall be guilty of an offence and liable to a fine not exceeding P2 000, or to imprisonment for a term not exceeding 15 months, or to both.

#### **117. Removal of vehicles from road**

(1) Where any vehicle is found in use on a road in contravention of the provisions of this Act, or where any vehicle has been left on any road or other public place in such circumstances as to make it appear that such vehicle has been abandoned or should be removed to a place of safety, or where any vehicle has been left on a road in a position which causes or is likely to cause danger to other road users and the owner or driver cannot readily be found, any police officer or any motor vehicle examiner may take the vehicle or cause it to be taken to a police station or other place of safety by such method, route and under such conditions as he may consider necessary, having regard to all the circumstances of the case.

(2) Where under subsection (1) it is considered necessary to have a vehicle towed, transported, driven or otherwise removed, or where it is considered necessary to carry out emergency repairs or to adjust or off-load any part of the load of such vehicle, any expense incurred thereby shall be payable by the owner of the vehicle and no such vehicle shall be released from the police station or other place of safety until either-

- (a) such expenses have been paid to the person to whom they are due; or
- (b) such person certifies in writing that he is willing to allow the vehicle to be removed before he receives such expenses due to him.

(3) A police officer or motor vehicle examiner who orders the removal of a vehicle under this section shall not be held liable for any damage to or loss of any item from such vehicle during its removal to or detention at a police station or other place of safety.

(4) Any police officer of or above the rank of Inspector or who is in charge of a police station, any licensing officer, any motor vehicle examiner or the Director, if he is of the opinion that any vehicle is being used in contravention of section 61 or 62 or in contravention of any regulations relating to the construction, use and equipment of vehicles, may by order prohibit the use of such vehicle, under such conditions and for such purposes as he may consider necessary for the safety of the public or to ensure that such vehicle does comply with the aforementioned provisions; and any such order shall remain in force until the repairs specified therein have been satisfactorily completed and the vehicle has been certified as complying with the aforesaid conditions with respect to construction, use, equipment and weight.

(5) Any person who uses any vehicle in respect of which any prohibition or restriction is in force other than in conformity with any conditions or for such purpose as may have been specified shall be guilty of an offence and shall be sentenced to a fine of not less than P500 but not more than P3 000, or to imprisonment for a term of not less than six months but not more than 18 months, or to both.

(6) Any order issued under this section shall be in writing.

(7) Where any vehicle is required to be examined and tested for the purpose of being certified as complying with the provisions of this Act, the fee, if any, shall be paid by the owner of the vehicle.

(8) Any person who fails to comply with any instruction or order given under this section shall be guilty of an offence and shall be sentenced to a fine of not less than P200 but not more than P1 000, or to imprisonment for a term of not less than six months but not more than 12 months, or to both.

#### **118. Detention of vehicles**

A police officer may detain at a police station or other place of safety any vehicle which has been removed from a road or other public place under section 117 until such inquiries have been made by the police as they may think necessary in the circumstances of the case.

#### **119. Certificates admissible in evidence**

(1) If in any proceedings under this Act any question arises as to whether a vehicle does or does not comply with this Act, the certificate of a motor vehicle examiner to the effect that he has examined the vehicle and as to the result of his examination may be read as evidence although the motor vehicle examiner is not called as a witness.

(2) The court, if it thinks fit, may summon and examine the motor vehicle examiner as to the subject matter of his certificate.

(3) In any proceedings under this Act an extract from the records of registered vehicles, certified under the hand of the Director or a licensing officer, may be received in evidence although the Director or licensing officer is not called as a witness, and shall be *prima facie* evidence of the facts therein set forth.

#### **120. Owner or other person to furnish name and address of driver of vehicle**

The owner of any vehicle and any other person who is able to provide such information shall, as soon as reasonably possible and in any case within seven days after having received a verbal or written request for such information, give such information as he may be required by a police officer to give as to the identity of the driver of such vehicle.

#### **121. Owner to keep list of drivers employed**

(1) Any person who employs any other person to drive a motor vehicle shall keep a written record of the name, address and driving licence number of such other person.

(2) Such record shall be preserved for a period of six months after the date when such person ceases to be employed as a driver, and shall be made available to any police officer on demand.

(3) Any person who fails to comply with a provision of this section shall be guilty of an offence and liable to a fine not exceeding P100, or to imprisonment for a term not exceeding one month, or to both.

#### **122. Verification of facts**

Any person to whom any application is made for anything to be done under this Act may require any facts stated in the application to be verified to his satisfaction.

#### **123. Giving false information**

Any person who makes any statement which to his knowledge is false or in any respect misleading in connection with any information lawfully demanded or required under this Act shall be guilty of an offence and shall be sentenced to a fine of not less than P1 000 but not more than P3 000, or to imprisonment for a term of not less than 12 months but not more than 18 months, or to both, and if such statement is made to any person in connection with an application for any licence or permit the court convicting such person may also order that any licence or permit issued as a result of such application shall be of no effect and that no similar licence or permit shall be issued for a stated period.

#### **124. Fraudulent imitation, etc. of documents**

(1) Any person who fraudulently imitates, alters, mutilates, destroys or uses, or fraudulently lends or allows to be used by any other person, any licence, permit, document, plate or mark issued or prescribed under this Act shall be guilty of an offence and shall be sentenced to a fine of not less than P1 000 but not more than P5 000, or to imprisonment for a term of not less than 12 months but not more than two years, or to both.



(2) A police officer may after issuing a receipt to the person concerned take possession of any licence, permit, document, plate or mark relating to any suspected offence under this section.

#### **125. Endorsement of licence to be proof of conviction**

Notwithstanding anything to the contrary contained in any written law, it shall be lawful for a court to accept the particulars of endorsements on any licence issued in compliance with this Act as *prima facie* evidence of previous convictions recorded against the holder thereof.

#### **126. Notice to attend court**

(1) Notwithstanding anything to the contrary contained in any written law, a police officer may serve, either personally or by post, upon any person who is reasonably suspected of having committed any offence in connection with the use of any vehicle which is punishable only by a fine, or by a fine and imprisonment for a period not exceeding six months, a notice in the prescribed form requiring such person to attend court in answer to the charges stated thereon, at such place and on such date and time (not being less than 14 days from the date of such service) as are shown on such notice or to appear by advocate or to enter a written plea of guilty:

Provided that-

- (i) such notice shall be served not later than three months from the date upon which the offence is alleged to have been committed;
- (ii) failure to comply with this requirement shall not be a bar to the conviction of the accused in any case where the court is satisfied that the name and address of the accused could not with reasonable diligence have been ascertained in time for such notice to be served as aforesaid, or that the accused by his own conduct contributed to the failure.

(2) Such notice as aforesaid shall for all purposes be regarded as a summons issued under the Criminal Procedure and Evidence Act.

(3) A copy of such notice as aforesaid shall be placed before the court by which the charge is to be heard before the time fixed for such hearing.

#### **127. Axle load, weight and dimensions**

(1) Notwithstanding and in addition to the provisions of section 126 and any other provision of the Act, the following provisions of this section shall apply in respect of axle-load violations, and to offences under sections 61 and 62 of this Act.

(2) The Minister may by notice in the *Gazette* appoint specified public officers to be authorized officers for the purposes of this section.

(3) Such an authorized officer may issue notification of a traffic offence to any person reasonably suspected of exceeding the axle load restrictions prescribed by the Road Transport (Permits) Regulations, or of offences under sections 61 and 62 of this Act setting out the offence, and the penalty for such offence in accordance with the tables set out in the Schedule to or otherwise in this Act.

(4) If the offender wishes to plead guilty in writing, the authorized officer is hereby empowered to accept such written plea, and the appropriate penalty as set out in the said Schedule or otherwise in this Act. He will then forward the notification of the written plea of guilty, and the appropriate penalty, to the nearest court in the area in which the offence took place.

(5) If the offender does not plead guilty in writing and pay the appropriate penalty, the procedure as set out in section 126 shall be followed, as appropriate, the authorized officer being substituted for the police officer therein referred to, and the offences and penalties being deemed to be Traffic offences and penalties prescribed by the Minister in accordance with section 126(1).

(6) Where the offending axle weight exceeds the maximum shown in the Schedule, the authorized officer shall suspend the permit with immediate effect, and send a report to the Road Transport Controller appointed under section 3 of the Road Transport (Permits) Act who may, if

he considers the circumstances so warrant, revoke the permit, or return it upon such conditions as he may consider appropriate.

(7) Notwithstanding any other provision in this section, where there is an axle load violation, an authorized officer shall require any excess load to be off-loaded before allowing the vehicle to proceed further and where there are offences under sections 61 and 62 of this Act an authorized officer shall require the offending vehicle to be made to conform with the requirements of the sections before allowing it to proceed further.

(8) In respect of an offence under section 61 or section 62 of this Act, and notwithstanding the provisions of section 63, where the offender wishes to plead guilty in writing and pay the appropriate penalty to the authorised officer, the statutory penalty for the offence shall be P2 000.

#### **128. Scheduled traffic offences**

(1) The Minister may, by regulation, prescribe-

- (a) a schedule of traffic offences (in this section referred to as the "scheduled offences") which may be dealt with and prosecuted in accordance with the provisions of this section, and may for the purposes of this section prescribe a statutory penalty, which shall not exceed the penalty prescribed for such offence by this Act, for any of the scheduled offences to be so dealt with and prosecuted; and
- (b) a form of police notification of a traffic offence for use under this section.

(2) Subject as herein, any statutory penalty prescribed under subsection (1) shall, notwithstanding that any other penalty may be prescribed by this Act, have effect for offences dealt with under this section.

(3) Notwithstanding any provision contained in this or any other written law, it shall be lawful for any police officer to serve, either personally or by affixing the same prominently to the vehicle concerned, upon the owner or person in charge of any motor vehicle who is reasonably suspected of having committed any of the scheduled offences, a police notification of a traffic offence in the prescribed form charging such person with having committed the offence or offences indicated in the notification and requiring such person to attend court to answer such charge or charges, at such time (not being sooner than 21 days after the date of such service) as is shown on such notification.

(4) Such notification as aforesaid shall for all purposes be regarded as a summons issued under the Criminal Procedure and Evidence Act:

Provided that the person served with the notification shall not be obliged to attend court in answer to the charge if he has pleaded guilty in writing and sent the notification, together with the amount of the statutory penalty or penalties for the offence or offences to which he has pleaded guilty by prepaid registered post or by hand, to the address indicated in the notification so as to reach that address within the time indicated in the notification.

(5) A copy of the notification shall be placed before the court by which the charge is to be dealt with at the time fixed for the attendance of the accused to answer the charge, and, unless the court otherwise directs, such copy may be used as a charge sheet.

(6) If any person having been served with a notification issued under this section fails either to attend the court on the day and at the time specified in such notice or to plead guilty and pay the statutory penalty in the manner indicated before such day, he may be brought before the court either by summons or by warrant.

(7) If any person served with a notification under this section fails to comply with such notification, and cannot with reasonable diligence be found, the registered owner of the vehicle or, when the registered owner is a company, the person appointed by the company for the purposes of this subsection or, in default of such appointment, the secretary, or person performing the duties of secretary, of such company, shall be liable for the offence unless it is shown by such person, owner or secretary, as the case may be, that he was not driving or in charge of the vehicle at the relevant time and he satisfies the court that he has given all information at his disposal to the police or the court to enable the person who was driving or in charge at the relevant time to be summoned.

(8) If any person, other than an authorised person, removes from a vehicle a police notification of a traffic offence which has been affixed thereto by a police officer in pursuance of this section, or any portion of such notification, or tears or defaces the same, he shall be guilty of an offence and liable for a first offence to a fine not exceeding P100 and for each subsequent offence to a fine not exceeding P500 or to imprisonment for a term not exceeding six months, or to both.

(9) For the purposes of subsection (8), "authorized person" means the driver, owner or person in charge of the vehicle or any person authorized by the owner to remove the notification.

(10) Any driver, owner or person in charge of a vehicle who finds affixed thereto a police notification of a traffic offence which appears to have been torn or defaced so that it is not fully legible shall within two days report, either in writing or personally, to the police station of the area in which the notification was found, and if he fails so to report he shall be guilty of an offence and liable to a fine not exceeding P200 or to imprisonment for a term not exceeding two months, or to both.

(11) The provisions of this section shall be without prejudice to the power of the police to proceed in the normal manner against the accused person, in which case the statutory penalties prescribed under this section and the other provisions of this section shall not apply.

### **129. General penalty**

(1) Any person who acts in contravention of or fails to comply with any provision of this Act, or who acts in contravention of or who fails to comply with the conditions of any licence, order, demand, requirement or direction issued under or in pursuance of this Act, shall be guilty of an offence.

(2) Any person who is guilty of an offence under this Act for which no penalty is otherwise provided shall be liable to a fine not exceeding P5 000, or to imprisonment for a term not exceeding two years, or to both.

(3) The penalties imposed under this Act shall be in addition to the demerit point as the Minister may prescribe.

### **130. Regulations**

(1) The Minister may make regulations in respect of any matter contemplated, required or permitted to be prescribed under this Act and generally as to the use of any vehicle on a road, its construction and equipment, and the conditions under which it may be so used, and in any other respect for the better carrying out of this Act, and in particular, but without prejudice to the generality of the foregoing, such regulations may make provision concerning-

- (a) the height and width of any load which may be carried by any vehicle, the manner in which it may be loaded, and the extent of any projection or overhang of the load;
- (b) the emission of exhaust gas, smoke, fuel, oil, sparks, ashes or grit from any vehicle on a road;
- (c) excessive noise made by any vehicle on a road;
- (d) the towing of any vehicle by another vehicle;
- (e) the conditions in which a lefthand-drive vehicle may be used on a road;
- (f) the number and nature of brakes to be used on any vehicle, or any class of vehicle, and for ensuring that brakes and steering gear shall be efficient and in proper working order;
- (g) the furnishing of accident reports and statistics of any nature whatsoever;
- (h) the fees to be charged for any purpose under this Act;
- (i) the carriage of persons as passengers on any vehicle which has been constructed or designed solely or primarily for the carriage of goods and not for the carriage of passengers and their effects;
- (j) the forms to be used for any purpose of this Act;
- (k) the weight of goods and passengers, the number of passengers which vehicles may carry, the method by which seating capacity may be determined and the gross weight of vehicles;

- (l) the weight and size of vehicles which may be permitted on any class of road and the manner in which, if at all, vehicles whose weight or size is in excess of the prescribed maximum weight or size may be allowed to use any road;
- (m) the carrying on any class of vehicle or of vehicles used by any particular class of persons of any special identification plates;
- (n) all matters relating to the inspection, registration, licensing, regulation and control of vehicles and to the conditions which may be imposed in regard thereto;
- (o) the regulation of the conduct of drivers and conductors of public service vehicles and the wearing by them of special badges and uniforms;
- (p) conditions of service and hours of work for persons employed by owners of public service and commercial vehicles;
- (q) the regulation of the carriage of luggage and goods on public service vehicles;
- (r) the rules of the road, and the signals to be given and obeyed by the drivers of vehicles;
- (s) the procedure to be adopted and the conditions to be observed in connection with the issue of documents necessary for international travel, and the use of such documents in Botswana;
- (t) the conditions in which motor vehicles licensed outside Botswana may be used within Botswana and in which persons holding driving licences or permits issued outside Botswana may be allowed to drive within Botswana;
- (u) giving effect to any convention or agreement relating to the circulation of traffic;
- (v) measures for controlling or prohibiting the movement of vehicles of any specified class or description between sunset and sunrise;
- (w) measures for generally restricting or regulating the use of vehicles in such manner as the circumstances and safety on the roads may appear to him to require;
- (x) any matter relating to safety in connection with the use of vehicles, including special safety equipment or apparel to be used in vehicles or to be worn by the drivers of vehicles;
- (y) the regulation of motor dealers and the records that they may be required to keep and maintain;
- (z) the offences for which demerit points are incurred and the number of points and the date on which they are to be taken to be incurred;
- (aa) the keeping of a demerit points register;
- (ab) the period of suspension of a driving licence or permit to be imposed by the Director under section 40 (1) (a);
- (ac) circumstances in which the Director is to be required to revoke a person's driving licence due to incurring of demerit points and the period of disqualification of such person from driving a motor vehicle;
- (ad) traffic offences which may be detected by detecting devices;
- (ae) giving effect to the provisions of the Act relating to offences detected by detecting devices, including time limits, forms and procedures;
- (af) prescribing devices for the purposes of detecting traffic offences.

(2) In any case when the Minister has not prescribed a suitable form for the purposes of this Act, the Director may direct that a particular form shall be used for a particular purpose.

(3) Notwithstanding the provisions of Part II of this Act, regulations made by the Minister may, where for reasons of security, improvement of control over vehicles and their identification, the high incidence of vehicle thefts, or for any other sufficient reason, he considers such a course to be necessary or desirable, provide that vehicles and trailers previously registered under this Act and allocated registration numbers and registration books, should have such registration cancelled, should be required to be re-registered and should be allocated new registration numbers and new registration books, on such terms as he may specify.

### **131. Road Safety Committee and National Road Safety Fund**

Regulations made by the Minister under section 130 may provide for-

- (a) the establishment and constitution of a Road Safety Committee, the procedure of such Committee and the powers that may be exercised, or the duties that may be performed by such Committee;
- (b) the establishment and management of a National Road Safety Fund, the revenues of which shall consist of such moneys as may be provided by Parliament, the proceeds of any levy provided for under paragraph (c) and such other moneys as may be provided for in the regulations;
- (c) the imposition and collection of a levy to be paid annually by all users or owners of vehicles in Botswana or visiting Botswana.

**132. Power to suspend, and exempt from, certain provisions**

The Minister may, by order published in the *Gazette*, suspend, restrict or limit the application of any of the provisions of this Act, either generally or in respect of any particular class or classes or description of vehicle, for such period and subject to such conditions as he may think fit, and, similarly, may exempt any vehicle or any class or classes or description of vehicle from all or any of such provisions.

**133. Admission of guilt**

Notwithstanding the provisions of section 307(1) of the Criminal Procedure and Evidence Act, a police officer may accept a fine not exceeding P1000 from any person who, in accordance with the said section, signs a document admitting that he is guilty of an offence under this Act.

**SCHEDULE**

(section 127)

PENALTY IN PULA FOR SINGLE AND TWO AXLE GROUPS PER AXLE:

(a) FOUR TYRES PER AXLE-

(Maximum permitted axle weight - 8200 kg)

<i>Axle Weight in kg</i>	<i>Penalty in Pula</i>
8601 - 9500	250
9501 - 10500	400
10501 - 11500	600
11501 - 12500	900
12501 - 13500	1 830
14501 - 15500	2 500

(b) TWO TYRES PER AXLE-

(Maximum permitted axle weight - 7700 kg)

<i>Axle Weight in kg</i>	<i>Penalty in Pula</i>
8101 - 9000	260
9001 - 10000	410
10001 - 11000	650
11001 - 12000	1 000
12001 - 13000	1 450
13001 - 14000	2 040
14001 - 15000	2 830