



SAMOA

ROAD TRAFFIC ORDINANCE 1960

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ROAD TRAFFIC ORDINANCE 1960

1960

No. 23

AN ORDINANCE to consolidate and amend certain enactments relating to road traffic and to the use of motor vehicles and other vehicles on roads.

[Assent and commencement date: 24 November 1960]

PART 1**PRELIMINARY**

1. Short title and commencement – (1) This Ordinance may be cited as the Road Traffic Ordinance 1960.

(2) This Ordinance comes into force on a day to be appointed for the commencement thereof by the Council of State by notice published in the *Samoa Gazette*.

2. Interpretation – In this Ordinance, unless the context otherwise requires:

“authorised officer” has the same meaning in the Land Transport Authority Act 2007;

“bicycle” includes a bicycle or tricycle driven by pedals or handles, but does not include any motor vehicle or any bicycle as defined used as a child’s toy;

“blood specimen” means a specimen of venous blood taken in accordance with normal medical procedures;

“blood test” means the taking of a blood specimen for analysis;

“breath screening device” means a device of a kind approved for the purpose of breath screening tests by the Minister;

“breath screening test” means a test carried out by means of a breath screening device under this Act;

“certificate of fitness” or “certificate” means a certificate given by a duly authorised person that a public service vehicle complies with all conditions prescribed for the construction and equipment of such a vehicle, and that the condition of the vehicle, the lights, and all mechanical equipment are in good and serviceable order and mechanical condition as prescribed for vehicles of such class;

“Chief Executive Officer” means the Chief Executive Officer of the Land Transport Authority;

“Court” means the Supreme Court or the District Court, as the case may be, dealing with any information, application, or appeal within its jurisdiction;

“Commissioner” means Commissioner of Police and Prison Services;

“driver” means the driver of a vehicle, and includes the rider of a motor cycle or of a bicycle and also includes a

person in control of a motor vehicle which is being towed, and where a separate person acts as steersman of a motor vehicle includes that person as well as any other person engaged in the driving of the vehicle, and “drive” is to be construed accordingly;

“enforcement officer” means:

- (a) a police officer in uniform; or
- (b) an authorised officer in uniform that carries out the functions, duties and powers of an enforcement officer;

“evidential breath test” means a test carried out by means of an evidential breath test device under this Act;

“evidential breath test device” means a device of a kind approved for the purpose of conclusive evidential breath tests under this Act;

“Examining Officer” means an officer of the Ministry of Transport who is appointed as an Examining Officer under the Land Transport Authority Act 2007;

“goods vehicle” means a motor vehicle which is constructed or adapted or primarily used for the carting of goods or merchandise of any description in connection with trade, business, or agriculture or with the carrying on by the Government or any public body of its functions;

“gross weight” means the net weight of the vehicle together with the weight of its load;

“Licence Controller” means the Licence Controller appointed under this Act;

“load” includes passengers;

“medical officer” means:

- (a) a person acting in a hospital and who, in the normal course of the person’s duties, takes blood specimens; or
- (b) a nurse; or
- (c) a medical laboratory technician;

“medical practitioner” has the same meaning as in section 2 of the Medical Practitioners Act 2007;

“Minister” means the Minister responsible for Transport;

“motor cycle” means a motor vehicle designed to travel on not more than 3 wheels and the net weight of which does not exceed 5 cwt;

- “motor tractor” means any mechanically propelled vehicle not being itself constructed to carry any load other than water, fuel, accumulators, and other equipment used for the purpose of propulsion, loose tools, and loose equipment;
- “motor vehicle” means any vehicle propelled by mechanical power and constructed for use on roads and not on rails or specially prepared ways and includes a trailer and any other vehicle of a class declared by regulations under this Ordinance to be motor vehicles;
- “motor omnibus” means a public service vehicle constructed to carry more than 8 passengers excluding the driver;
- “net weight” means the weight of the vehicle itself together with a full supply of fuel, water, tools, spare wheels, or rims and tyres usually carried on the vehicle and every other means of energy used in its propulsion;
- “owner” in relation to a vehicle which is the subject of a hiring agreement or a hire purchase agreement or a bill of sale, includes a person in possession of the vehicle under that agreement or in apparent possession of the vehicle under that bill of sale;
- “passive breath testing device” means a passive breath testing device of a kind approved by the Minister responsible for Transport;
- “police officer” means any member of the Police Service acting in the course of his or her duty as such member;
- “public place” has the same meaning as in section 2 of the Police Offences Ordinance 1961;
- “prescribed” means prescribed by this Ordinance or by regulations made thereunder, and in so far as any matter is not so prescribed, means prescribed by the Principal Licensing Authority or by the Board under the authority of this Ordinance;
- “prescribed fee” means the appropriate fee prescribed by regulations made under the Land Transport Authority Act 2007;
- “public service vehicle” means a motor vehicle used for carrying passengers for hire or reward: **PROVIDED THAT** a motor vehicle let on hire to any person who

himself or herself drives that motor vehicle or provides the driver thereof is taken not to be a public service vehicle solely by reason of such hiring;

“private motor vehicle” means a motor vehicle other than a goods vehicle, motor tractor, or public service vehicle;

“rental vehicle” means a private motor vehicle let on hire (otherwise than under a hire purchase agreement or under a bailment that is for a period exceeding 6 months) for the carriage of passengers (including the driver) or of goods or both to a person who himself or herself drives the vehicle or provides a driver therefore;

“road” includes any street or highway; and also includes any place to which the public have access, whether as of right or not; and also includes all bridges, culverts, ferries, fords and footpaths forming part of any road, street, highway or place as aforesaid;

“taxi” means a public service vehicle other than a week omnibus;

“traffic sign” includes all signals, warning sign posts, direction posts, signs, or other devices for guidance or direction of persons using roads;

“trailer” means a vehicle without motive power, designed solely or principally for the carriage of persons or goods and drawn by a motor vehicle, but does not include a side-car attached to a motor cycle;

“vehicle” includes any motor vehicle, trailer, or bicycle;

“warrant of fitness” or “warrant” means a warrant of mechanical fitness issued by a duly authorised person in respect of any motor vehicle other than a public service vehicle that the lights, brakes, steering gear, and any other equipment required by regulations made under this Ordinance to be warranted in respect of such a vehicle are in good and serviceable order and mechanical condition.

3. Appointment of officers – (1) There shall be appointed under the Land Transport Authority Act 2007 a Licence Controller who shall be charged with the licensing of motor vehicles, trailers and drivers, other than riders of bicycles, and

matters incidental thereto, a Road Safety Controller, a Traffic Controller and such other officers of the Ministry of Transport as may be necessary for the efficient administration of this Act, Land Transport Authority Act 2007 and matters incidental thereto.

(2) The Principal Licensing Authority may appoint such Licensing Authorities, and designate such licensing areas as may be necessary for carrying out Parts 2 and 4 of the Land Transport Authority Act 2007.

(3) The Commissioner of Police Service may appoint such inspectors as may be necessary for carrying out the provisions of this Ordinance.

(4) All appointments made under the provisions of this section shall be made by notice in the *Savali*.

4. Register of vehicles – The Principal Licensing Authority shall keep or cause to be kept a register of all vehicles registered under the provisions of this Ordinance.

5. Application of Ordinance – Except as otherwise provided in this Ordinance, this Ordinance applies to all vehicles: **PROVIDED THAT** section 12 relating to licence labels and section 13 relating to registration (except that the payment for licence plates shall be required for motor vehicles to which paragraph (c) of this proviso applies) do not apply to the following motor vehicles but such vehicles shall be distinguished as follows:

- (a) motor vehicles regularly used by the Head of State; by the Crest of Samoa of such size as to be readily distinguishable at a reasonable distance;
- (b) motor vehicles regularly used by any member of the Council of Deputies or the Prime Minister: by licence plates bearing the word “OFFICIAL”;
- (c) motor vehicles regularly used by the head of a diplomatic mission or a senior staff member of such mission: by licence plates bearing a figure or figures preceded by the letters D.C.

PART 2 REGULATING LICENSING AND REGISTRATION OF VEHICLES

Division 1 – General

5A. Licensing Areas – (1) The Chief Executive Officer may designate such licensing areas as may be necessary for carrying out the provisions of this Ordinance.

(2) There may be appointed under the Land Transport Authority Act 2007, for any licensing area so designated under subsection (1), an Assistant Licence Controller who shall in all respects act under the conform to the directions of the Licence Controller and may exercise all the functions of the Licence Controller as expressed in this Ordinance.

6. Prohibition of vehicles not complying with regulations as to construction – (1) Subject as hereinafter provided it shall not be lawful to use on any road a motor vehicle trailer or bicycle which does not comply with the regulations applicable to the class or description of vehicle to which the vehicle belongs, as to construction, weight and equipment thereof:

PROVIDED THAT:

- (a) if any regulations made after the passing of this Ordinance contain provisions varying the requirements as regards the construction or weight of any class or description of vehicle, provision shall be made by the regulations for exempting for such period (not being less than 5 years) as may be specified therein from the provisions aforesaid, any vehicle of that class or description registered under this Ordinance before the expiration of one year from the making of the regulations if such vehicle complies with the law as it existed immediately prior to the passing of such regulations:
 - (b) in the case of any requirement relating to the position of the steering column of a vehicle the requirement may take effect at any time after 6 months.
- (2)** If a vehicle is used on a road in contravention of this section any person who so uses the vehicle or causes or permits the vehicle to be so used commits an offence.

Division 2 – Licensing and registration of Motor Vehicles

7. Vehicles to be licensed – (1) Subject to section 8, no person shall drive, or, being the owner, shall permit any other person to drive any vehicle required to be registered or licensed under this Ordinance upon the road unless such vehicle is duly registered and licensed.

(2) A person who contravenes this section commits an offence.

8. Exemptions – Section 7 does not apply to a person who, with the permission in writing of the Principal Licensing Authority or a person authorised by the Principal Licensing Authority in that behalf, drives a motor vehicle along a road for the purpose of:

- (a) taking the vehicle to a licensing authority for registration or licensing or to an authorised officer for examination; or
- (b) taking the vehicle to a motor garage for repairs; or
- (c) taking the vehicle to a place where it is intended to be used otherwise than on a road; or
- (d) taking a vehicle to a place where it is to be examined for the purpose of obtaining a certificate of fitness or a warrant of fitness.

9. Application for annual vehicle licence – Application for a motor vehicle licence on first registration of the vehicle and annually thereafter shall be made by the owner of the vehicle on the prescribed form and shall be made to the licensing authority of the area in which the owner resides or carries on business and such licensing authority shall, on payment of the appropriate fee set out in the First Schedule to this Ordinance, issue to the applicant a licence in the prescribed form:

PROVIDED THAT:

- (a) as from the date prescribed for requiring vehicles to have a certificate or warrant of fitness, no licensing officer shall issue a licence for a public service vehicle unless there shall first have been produced to him or her a certificate of fitness in relation to such vehicle issued by an authorised officer under the provisions of section 55 and valid for a period

not less than the period of validity of the licence issued to him or her, nor for any other motor vehicle unless there shall first have been produced to him or her a warrant of fitness which is in force in relation to such vehicle:

- (b) the licensing authority may, before he or she registers or licenses any vehicle, verify all particulars in the form of application, and may, if the licensing authority thinks fit, examine the vehicle (not being a public service vehicle) or send the vehicle to an authorised officer appointed under section 56 or other authorised person for examination in order to satisfy himself or herself that the vehicle is in a fit and proper condition for the purpose for which it is intended, and may refuse to grant a licence if he or she is not so satisfied.

10. Fee payable where motor vehicle belongs to 2 or more classes, etc. – (1) If any motor vehicle is within 2 or more of the classes specified in the First Schedule, one licence only shall be issued and one licence fee only shall be paid for any period in respect thereof, and if different fees are fixed for such classes the licence shall be issued in respect of that class for which the highest fee is payable.

(2) A person who uses a motor vehicle for which a licence fee has been paid as a motor vehicle of a class for which a higher licence fee is payable and has not been paid, and any person who permits any motor vehicle to be so used, commits an offence.

11. Period of licence – (1) A motor vehicle licence may, on payment of the appropriate fee set out in the First Schedule to this Ordinance, be issued for any number of months not exceeding 12.

(2) In accordance with a resolution of the Board, and in accordance with regulations made under the Land Transport Authority Act 2007, the period of validity of a vehicle licence may be for the 12 months next following the date of issue of the licence unless specified otherwise by regulations made under section 36 of the Land Transport Authority Act 2007.

12. Licence label – (1) With every motor vehicle licence issued under this Part there shall be issued in every year, except

years when a new form, design, or colour of registration plate is issued commencing on 1 April 1961, a licence label which shall be affixed to the vehicle in the manner prescribed.

(2) If a licence label is lost, discoloured, defaced, or illegible, the holder may obtain a duplicate label upon payment of the prescribed fee.

(3) A person who, except as mentioned in subsection (1), uses a motor vehicle on a road or causes or permits a motor vehicle to be so used without having a licence label affixed in the prescribed manner commits an offence.

13. Registration – (1) Upon the first issue of a motor vehicle licence, the licensing authority shall register the applicant as the owner of the vehicle and shall enter in the register the particulars of the vehicle.

(1A) The licensing authority shall also, on production of such current certificate or warrant of fitness as may be prescribed and required at that time, assign a registration number to the vehicle and issue registration plates in respect thereof on payment of the prescribed fee.

(2) The registration number shall consist of such figures or a combination of such figures and letters of such design and colour as may be prescribed.

(3) A person who uses any motor vehicle on any road or causes or permits any motor vehicle to be so used without having the assigned registration plate affixed thereto in the prescribed manner commits an offence.

(4) The sum payable for motor vehicle registration plates shall be that prescribed under the Land Transport Authority Act 2007.

14. Alteration of vehicle – (1) If any motor vehicle licensed under this Part is altered so as to cause the vehicle to require a higher licence fee or to be licensed in a different class, according to the provisions of the First Schedule, the licence shall thereby become void and the holder shall surrender the licence to the licensing authority for cancellation.

(2) In such a case under subsection (1), the holder, upon providing the prescribed particulars is, subject to the other provisions of this Part, entitled to receive a new licence to have effect for the period for which the surrendered licence would

have remained in force if not surrendered on payment of such amount, if any, as represents the difference between the fee paid for the surrendered licence and the fee prescribed for the new licence together with the cost of any new plates which are necessary.

15. Owner to notify destruction or removal of vehicle – (1)

The registered owner of any motor vehicle which has been destroyed or rendered permanently unserviceable or is removed from Samoa shall notify the Principal Licensing Authority of such fact within 30 days of the happening of such event.

(2) Notice of intention to remove a motor vehicle must be given before it is actually removed.

(3) Before actually removing such vehicle, the owner shall satisfy an officer of Customs that he or she has complied with this section.

(4) A person who fails to comply with this section commits an offence.

16. Licence not transferable – No motor vehicle licence under this Part is to be transferred except as provided in section 17.

17. Change of possession – (1) On the change of possession of a motor vehicle otherwise than by death of the registered owner:

- (a) the motor vehicle shall not be used for more than 7 days after such change of possession unless the new owner is registered as the owner thereof;
- (b) the registered owner shall within 7 days in writing inform the licensing authority of the area in which the vehicle is registered, of the name and address of the new owner, and of the date of the change of possession of the motor vehicle;
- (c) the registered owner shall within 7 days deliver his or her motor vehicle licence to the licensing authority.

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

(3) Application for registration of a new owner may be made before the actual transfer of the motor vehicle, but the registration of a new owner is not effective until the old motor vehicle licence has been surrendered to the licensing authority and transferred to the new owner or a new licence issued to that new owner.

(4) In the case of the death of the registered owner the legal personal representative of the deceased in Samoa or, in the absence of any legal personal representative in Samoa, the person into whose possession the motor vehicle shall lawfully come shall be deemed to be the registered owner and such personal representative or other person as aforesaid shall notify the licensing authority of the death of the registered owner within one month of the happening of such event.

(5) Subsections (1) and (3) do not apply to any change of possession of a motor vehicle which occurs by reason of the vehicle being lawfully seized in execution of any judgment, on bankruptcy, or under a hire purchase agreement or bill of sale, but in such event the following provisions shall apply:

- (a) the registered owner or his representative shall, within 7 days of the seizure, deliver the motor vehicle licence to the person who has seized the motor vehicle, and inform the licensing authority in writing of the change of possession;
- (b) such person shall, within 7 days of receiving the motor vehicle licence, apply to the licensing authority to be registered as the owner thereof in place of the registered owner, and shall on payment of the prescribed fee be registered accordingly.

(6) On the application of the new owner and the payment by him or her of the prescribed fee, the licensing authority shall make the necessary alterations to the motor vehicle licence and shall deliver the amended licence to the new registered owner.

(7) If, in any case upon a change of possession, the registered owner has failed to comply with the requirements of this section applicable to such change of possession the licensing authority, on being satisfied that such registered owner has died or has left Samoa or refuses to comply with such requirements, may on payment of the prescribed fee cause the motor vehicle to be registered in the name of the new owner.

(8) A person commits an offence who:

- (a) uses a motor vehicle in contravention of subsection (1)(a); or
- (b) fails to comply with paragraph (a) or (b) of subsection (5); or
- (c) fails to notify the licensing authority under subsection (4).

18. Motor vehicle to include trailer – All references in sections 8 to 17, (both inclusive), to motor vehicles are taken to include references to trailers, and all references to motor vehicle licences are taken to include references to licences in respect of trailers.

19. Dealers' licences – (1) If a person, being in business as a dealer in or repairer of motor vehicles, makes in the prescribed manner an application to the Principal Licensing Authority that he or she may be entitled, instead of taking out a licence for each vehicle kept by him or her at the prescribed fee for each vehicle, to take out a dealer's licence in respect of all vehicles kept by him or her, the Principal Licensing Authority may, subject to the prescribed conditions, issue to him or her such a licence on payment of the prescribed fee.

(2) A licence issued under this section expires on 31 March next following the issue thereof unless specified otherwise by regulations made under section 36 of the Land Transport Authority Act 2007.

(3) The holder of any licence issued under this section is not entitled by virtue of that licence to use more than one vehicle at any one time except in the case of a vehicle drawing a trailer and used for the prescribed purpose, or to use any vehicle for any purpose other than such purposes as may be prescribed.

(4) Nothing in this section prevents a person entitled to take out a dealer's licence from holding 2 or more such licences.

(5) Any holder of a dealer's licence who permits such licence to be used in connection with a motor vehicle which is not in such a condition that a certificate or warrant of fitness, if required, could be issued in respect thereof commits an offence.

20. International certificates issued elsewhere than in Samoa – The owner or driver of any motor vehicle for which an international certificate has been issued elsewhere than in Samoa

under any International Convention relating to motor traffic to which Samoa is a party may, subject to the conditions of the Convention and to such conditions as may be prescribed, be exempted by the Principal Licensing Authority from any requirement to hold a licence in Samoa in respect of such vehicle for one or more periods of stay not exceeding in all 90 days passed in Samoa within a period of one year.

21-26. *Repealed.*

Division 3 – Driving Licences and Permits

27. Licensing of drivers – (1) Subject to section 28, a person commits an offence who:

- (a) drives a motor vehicle of any class upon a road unless the person is the holder of a driving licence valid in respect of such class under the provisions of this Act, or
- (b) employs or permits or allows any other person so to drive a motor vehicle of any class unless that other person is the holder of such a driving licence in respect of such class.

(2) An international driving permit issued outside Samoa in accordance with the terms of an international convention applicable to Samoa and endorsed by the Principal Licensing Authority is taken to be for all purposes a valid driving licence issued under the provisions of this Act for the period and in accordance with the conditions specified thereon.

(3) Driving licences shall be in a form or forms determined by the Principal Licensing Authority by Notice.

(4) The Principal Licensing Authority:

- (a) shall determine the period of validity of a driving licence by Notice; and
- (b) may determine different periods of validity for each class or category of driving licence.

(4A) The Principal Licensing Authority shall publish any Notice under subsections (3) and (4) in Samoan and English in the *Savali* and one other newspaper circulating in Samoa.

(5) A person driving a motor vehicle on a road shall, on being so required by any police officer or authorised officer, produce his or her driving licence for examination so as to enable the

police officer or authorised officer to ascertain the name and address of the holder of the licence and the date of issue, and if the person fails so to do commits an offence.

(6) A person shall be disqualified from obtaining a driving licence:

- (a) while another driving licence granted to him or her is in force whether the licence is suspended or not;
- (b) if he or she is by a conviction under this Part or by an order of the Court thereunder disqualified from holding or obtaining a driving licence.

(7) In any proceedings, the fact that a driving licence has been granted to a person shall be evidence that such person for the purpose of obtaining that licence made a declaration that he or she was not disqualified from holding or obtaining the licence.

27A. Amendment to the First Schedule – (1) Despite the other provisions of this Act, the First Schedule may be amended by the Minister by Notice.

(2) The Minister shall cause any Notice under subsection (1) to be published in Samoan and English in the *Savali* and one other newspaper circulating in Samoa.

(2A) The holder of an international driving permit (including any licence to drive a motor vehicle issued by an authority in an overseas country) shall pay the prescribed fee for an endorsement to drive in Samoa.

28. Learners – (1) For the purpose of enabling a person over the age of 16 to learn to drive a motor vehicle with a view to passing a prescribed test, the Principal Licensing Authority may, if so requested by such applicant and on payment of the prescribed fee, grant him or her permission in writing to drive an unladen motor vehicle upon any road on condition that:

- (a) for a motor vehicle other than a motor cycle, he or she is accompanied for the purpose of instruction by a licensed driver sitting next to him or her; and
- (b) in any case there is exhibited on the front and the back of the vehicle a plate bearing the letter "L" in red on a white background in such a manner as to be easily discernible to other users of the road.

(2) The learner and the person accompanying the learner shall be jointly and severally responsible for any offence against this

Ordinance which may be committed by the learner while in charge of a motor vehicle.

(3) A learner's permit remains in force for a period of 3 months from the date of issue:

PROVIDED THAT where the holder of a learner's permit is disqualified from holding or obtaining a driving licence, his or her permit shall thereupon cease to have effect.

(4) A permit obtained under this section by a person who at the time of obtaining it is disqualified from holding or obtaining a driving licence shall be of no effect.

(5) If a person to whom a learner's permit is granted fails to comply with any of the conditions thereto he or she commits an offence.

29. Grant and refusal of driving licences – (1) Subject to this section, the licensing authority shall on payment by the applicant of the prescribed fee grant a licence to any person to drive a motor vehicle of the class or classes for which he or she desires a licence to drive

who applies for it in the prescribed manner and makes a declaration in the prescribed form:

- (a) that he or she is not under the provisions of this Ordinance disqualified by reason of age or otherwise from obtaining the licence for which he or she is applying; and
- (b) as to whether or not he or she is suffering from any such disease or physical disability as may be prescribed or any other disease or physical disability which would be likely to cause the driving by him or her of a motor vehicle, being a vehicle of such a class or description as he or she would be authorised by the licence to drive, to be a source of danger to the public; and either
- (c) that he or she has at some time passed the prescribed test of competence to drive the class or classes of vehicle for which he or she desires a licence to drive; or
- (d) that at some time before the commencement of this Ordinance he or she held a licence authorising him or her to drive a vehicle of such class or

description as he or she would be authorised by the licence applied for to drive.

(2) If from the declaration it appears that the applicant is suffering from any disease or disability specified in subsection (1), the licensing authority shall refuse to grant the licence:

PROVIDED THAT:

- (a) the applicant may, except in the case of such diseases and disabilities as may be prescribed, on payment of the prescribed fee, claim to be subjected to a test as to his or her fitness or ability to drive a motor vehicle of any such class or description as he or she would be authorised by the licence to drive, and if he or she passes the prescribed test and is not otherwise disqualified, the licence shall not be refused by reason only of the provisions of this subsection so, however, that if the test proves his or her fitness to drive vehicles of a particular construction or design only, the licence shall be limited to the driving of such vehicles;
- (b) if on the first application for the grant of a licence by a person who at the commencement of this Ordinance is the holder of a driver's licence under the Road Traffic Ordinance 1931, an applicant who is suffering from a disease or disability other than a disease or disability prescribed as aforesaid makes a declaration that despite his or her disease or disability he or she has during the 6 months immediately preceding the application been in the habit of driving a motor vehicle of any such class or description as he or she would be authorised by the licence to drive and that the disease or disability from which he or she suffered did not cause the driving of such a motor vehicle by him or her to be a source of danger to the public, the licence shall not be refused by reason only of the provisions of this subsection;
- (c) if on the application for the grant of a licence the applicant makes a declaration that on the occasion of a previous application by him or her a licence was granted to him or her after passing such a test as aforesaid, or making such a declaration as is

mentioned in the last preceding proviso, a further test shall not be required, unless from the declaration as to physical fitness made by him or her for the purposes of his or her application, or from information received by the licensing authority, it appears that the disease or physical disability from which the applicant is suffering has become more acute, or that the applicant is suffering from some disease or disability not disclosed on the previous occasion or contracted since that occasion.

(3) If it appears to a licensing authority that there is reason to believe that any person who holds a driving licence granted by it is suffering from a disease or physical disability likely to cause the driving by him or her of a motor vehicle, being a vehicle of any such class or description as he or she is authorised by the licence to drive, to be a source of danger to the public, and on inquiry into the matter the authority is satisfied that the licence holder is suffering from such a disease or disability as aforesaid, then, whether or not the licence holder so suffering as aforesaid has previously passed a test under this section, the licensing authority may, after giving the licence holder notice of its intention so to do, revoke the licence, and the licence holder shall on receipt of such notice deliver the licence to the licensing authority for cancellation:

PROVIDED THAT the licence holder may, except in the case of such diseases and disabilities as may be prescribed, claim to be subjected to a test as to his or her fitness or disability to drive a motor vehicle, and if he or she passes the prescribed test the licence shall not be revoked.

(4) An application for a licence or for renewal of a licence to drive a public service vehicle shall be refused by the licensing authority if the licensing authority, by reason of the nature of any conviction of the applicant or for other good cause, is of opinion that the applicant is not a fit and proper person to drive a public service vehicle.

(5) If a person is aggrieved by the refusal of a licensing authority to grant a licence or by the revocation of a licence under this section, he or she may, after giving to the authority notice of his or her intention so to do, appeal to a District Court, and on

any such appeal the Court may make such order as it thinks fit, and any order so made shall be binding on the licensing authority.

30. Test of competence – (1) The Head of State, acting by and with the advice of Cabinet, may make regulations with respect to the nature of tests of competence to drive any class or classes of vehicle for the purposes of this Part, to the qualifications, selection, and appointment of examining officers by whom they may be conducted, and to the revocation of any appointment, to evidence of the results thereof, and without prejudice to the foregoing provisions, regulations made under this section may provide:

- (a) for requiring a person submitting himself for a test to provide a suitable vehicle for the purposes thereof;
- (b) for requiring a person submitting himself or herself for a test to pay for the prescribed fee . Different fees may be prescribed in respect of tests of competence to drive different classes of vehicle;
- (c) in regard to disease or disabilities as mentioned in this Part.

(2) Subject to any regulations made under this section, the Minister may appoint suitable persons as examining officers, and may revoke any appointment so made.

31. Classification of vehicles – (1) The classification of vehicles may be determined by the Principal Licencing Authority by Notice as may be necessary for the purposes of sections 27, 29 and 30.

(2) The Principal Licensing authority shall cause to be published any Notice under subsection (1) in Samoan and English in the *Savali* and one other newspaper circulating in Samoa.

32. Driving licences, renewals and replacements – (1) A driving licence may be renewed upon payment of the prescribed fee.

(1A) The renewal shall be endorsed on the licence, or a new licence may be issued.

(2) The licensing authority may issue a duplicate driving licence to any person on payment of the prescribed fee if that

person satisfies him or her that his or her licence has become lost or accidentally destroyed. In such a case the licensing authority may require the applicant to make a statutory declaration as to the circumstances under which it was lost or destroyed.

(3) The period of any licence renewed under this section shall be that which is determined by the Board under section 27(4).

33. Disqualification for offences and endorsement of convictions – If a person is convicted of any offence in connection with the driving of a motor vehicle, the Court:

- (a) may in any case, and shall when so required by this Part, order him or her to be disqualified from holding or obtaining a driving licence for such period as the Court thinks fit; and
- (b) may in any case, and shall where a person is by virtue of a conviction disqualified from holding or obtaining a driving licence, or where an order so disqualifying any person is made or when so required by this Part, order that particulars of the conviction and of any disqualification to which the convicted person has become subject shall be endorsed on any driving licence held by the offender:

PROVIDED THAT if the Court thinks fit, any disqualification under this section may be limited to the driving of a motor vehicle of the same class or description as the vehicle in relation to which the offence was committed.

33A. Court may order driving test – If a person is convicted of any offence in connection with the driving of a motor vehicle, and the Court has ordered under section 33 the disqualification of that person from holding a driving licence and the suspension of his or her licence, the Court may further order that the disqualification and suspension shall continue until such time as that person has passed the prescribed test of competence to drive any class or classes of vehicles as the Court may determine.

34. Provisions as to disqualifications and suspensions – (1)
If a person, who is disqualified by virtue of a conviction or order under this Part, is the holder of a driving licence, the driving

licence shall be suspended so long as the disqualification continues in force.

(2) A driving licence suspended by virtue of this Part shall during the time of suspension be of no effect.

(3) A person who by virtue of a conviction or order under this Part is disqualified from holding or obtaining a driving licence may, at any time after the expiration of 6 months from the date of the conviction or order, apply to the Court to remove the disqualification, and on any such application the Court may as it thinks proper, having regard to the character of the person disqualified and his or her conduct subsequent to the conviction or order, the nature of the offence, and any other circumstances of the case, either by order remove the disqualification as from such date as may be specified in the order, or refuse the application:

PROVIDED THAT, where an application under this subsection is refused, a further application thereunder shall not be made within 3 months after the date of the refusal.

(3A) If the Court orders a disqualification to be removed, the Court shall cause particulars of the order to be endorsed on the licence, if any, previously held by the applicant.

(4) If any person who under this Part is disqualified from holding or obtaining a driving licence, applies for or obtains a driving licence while he or she is so disqualified, or if any such person while he or she is so disqualified drives on a road a motor vehicle, or, if the disqualification is limited to the driving of a motor vehicle of a particular class or description, a motor vehicle of that class or description, that person shall be liable on summary conviction to imprisonment for a term not exceeding 6 months or, if the Court thinks that, having regard to the special circumstances of the case, a fine would be an adequate punishment for the offence, to a fine not exceeding 5 penalty units, and a driving licence obtained by any person disqualified as aforesaid shall be of no effect.

35. Provisions as to endorsements – (1) An order that the particulars of any conviction or of any disqualification to which the convicted person has become subject are to be endorsed on any driving licence held by the offender shall, whether the offender is at the time the holder of a driving licence or not, operate as an order that any driving licence he or she may then

hold or may subsequently obtain, shall be so endorsed until he or she becomes entitled under this section to have a driving licence issued to him or her free from endorsements.

(2) When an order is made requiring any driving licence held by an offender to be endorsed, then:

- (a) if the offender is at the time the holder of a driving licence, the offender shall if so required by the Court produce the driving licence within 5 days or such longer time as the Court may determine for the purpose of endorsement; and
- (b) if the offender is not then the holder of a driving licence, but subsequently obtains a driving licence, the offender shall within 5 days after so obtaining the driving licence produce it to the Court for the purpose of endorsement,—

and if the offender fails to do so, the offender commits an offence; and if the driving licence is not produced for the purpose of endorsement within such time as aforesaid, it shall be suspended from the expiration of such time until it is produced for the purpose of endorsement.

(3) On the issue of a new driving licence to any person, the particulars endorsed on any previous licence held by him or her shall be copied on to the new driving licence unless he or she has previously become entitled under this section to have a driving licence issued to him or her free from endorsements.

(4) If a person whose driving licence has been ordered to be endorsed and who has not previously become entitled under this section to have a driving licence issued to him or her free of endorsement applies for or obtains a driving licence without giving particulars of the order, the person is liable on summary conviction to a fine not exceeding 2 penalty units or to imprisonment for a term not exceeding 3 months or, and any driving licence so obtained shall be of no effect.

(5) If a person for whom an order has been made under this Part has, during a continuous period of 3 years or upwards since the order was made, had no such order made against the person, the person is entitled at any time, either on applying for the grant of a driving licence under this Part or, subject to payment of the prescribed fee, and subject to surrender of any subsisting driving licence, to have issued to him or her a new driving licence free from endorsements:

PROVIDED THAT, in computing the period of 3 years, any period during which the person was by virtue of the order disqualified from holding or obtaining a driving licence shall be excluded.

(6) If a Court orders particulars to be endorsed on a driving licence held by any person, or where by a conviction or order of the Court a person is disqualified from holding or obtaining a driving licence, the Court shall send notice of the conviction or order to the Principal Licensing Authority and, in a case where a person is so disqualified, shall also on the production of the driving licence for the purpose of endorsement retain the driving licence and forward it to the Principal Licensing Authority and that Authority shall keep the driving licence until the disqualification has expired or been removed and the person entitled to the driving licence has made a demand in writing for its return to him or her.

(6A) If the disqualification to which a person has become subject is limited to the driving of a motor vehicle of a particular class or description, the Principal Licensing Authority shall after the receipt thereof issue to that person a new driving licence on which there shall be indicated in the prescribed manner the class or description of vehicle which the holder of the driving licence is not thereby authorised to drive, and the driving licence so issued shall remain in force either for the unexpired period of the original driving licence or for the period of the disqualification, whichever is the shorter.

(7) If, on an appeal against any such order, the appeal is allowed, or if any such conviction is quashed, the Court shall send notice thereof to the Principal Licensing Authority.

(8) Particulars of a conviction endorsed on a driving licence may be produced as *prima facie* evidence of the conviction.

Division 4 – Provisions as to Driving and Offences in Connection therewith

36. Restriction on driving by young persons, etc. – (1)
Except in the case of any person learning to drive under section 28, a person under 17 years of age shall not drive a motor vehicle on a road.

(2) A person under 21 years of age shall not drive a public service vehicle or goods vehicle the net weight of which exceeds

3 tonnes, on a road unless on first applying for a licence after the commencement of this Ordinance he or she satisfied the licensing authority that he or she was during the 6 months immediately preceding the commencement of this Ordinance licensed to drive and in the habit of driving a motor vehicle of that class.

(2A) A person under 25 years of age shall not drive a motor omnibus.

(3) A person prohibited by this section by reason of his or her age from driving a motor vehicle or a motor vehicle of any class is, for the purposes of this Part, taken to be disqualified under the provisions of this Part from holding or obtaining any driving licence other than a licence to drive such motor vehicle, if any, as he or she is not by this section forbidden to drive.

(4) A person shall not drive on a road any motor vehicle of a class other than that which he or she is entitled to drive by virtue of the terms of a licence issued to him or her.

(5) A person who drives or causes or permits any person to drive a motor vehicle in contravention of this section commits an offence.

37. Speed limit – If a person drives a motor vehicle on a road at a speed greater than the speed prescribed by regulation, the person commits an offence:

PROVIDED THAT this section does not apply in respect of the driving of any vehicle on an occasion when it is being used for fire brigade, ambulance, or police purposes if the observance of those provisions would be likely to hinder the use of the vehicle for the purpose for which it is being used on that occasion.

38. Careless driving – If a person drives a motor vehicle on a road without due care and attention or without reasonable consideration for other persons using the road, the person commits an offence.

38A. Dangerous riding on, or overcrowding of, vehicles –

(1) No person shall ride, and the driver shall not permit any person to ride in or on any vehicle:

- (a) in a manner or position which may be liable to cause injury to that person or any other person;
- (b) where the number of passengers in such vehicle exceeds any maximum number of seated

passengers as may be set by the Principal Licensing Authority for that vehicle:

PROVIDED THAT for the purpose of the paragraph (b):

(i) any 2 children under the apparent age of 12 years shall be counted as 1 passenger;

(ii) any 3 children under the apparent age of 12 years shall be counted as 2 passengers.

(2) A person convicted of an offence against this section is liable to a fine not exceeding 10 penalty units or to imprisonment for a term not exceeding 12 months.

38B. Unsafe vehicles – (1) No person shall operate any vehicle in such condition or in such manner or so loaded or with a load so unsafe or insecure, as to cause, or be liable to cause, injury to any person.

(2) A person convicted of an offence against this section is liable to a fine not exceeding 10 penalty units or to imprisonment for a term not exceeding 12 months.

39. Reckless or dangerous driving – (1) If a person drives a motor vehicle on a road 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 at the time or which might reasonably be expected to be on the road, the person commits an offence and is liable upon conviction to a fine not exceeding 10 penalty units or to imprisonment for 2 years.

(2) The Court shall order particulars of any such conviction to be endorsed on any driving licence held by the person convicted.

(3) On a second or subsequent conviction under this section the conviction Court shall exercise the power conferred by this Part of ordering that the offender shall be disqualified from holding or obtaining a driving licence unless the Court, having regard to the lapse of the time since the date of the previous or last previous conviction or for any other special reason thinks fit to order otherwise, but this provision shall not be construed as affecting the right of the Court to exercise the power aforesaid on a first conviction.

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

39A. Negligent driving causing death – A person commits an offence and is liable on conviction to a fine not exceeding 20 penalty units or to imprisonment for a term not exceeding 5 years who recklessly or negligently drives or rides a vehicle and thereby causes bodily injury to or the death of any person.

40. Contravention of specified breath alcohol and blood alcohol limits and drugs – (1) A person commits an offence if the person drives or attempts to drive a motor vehicle while the proportion of alcohol in the person's breath, as ascertained by an evidential breath test subsequently undergone by that person under section 40B exceeds 40 micrograms of alcohol per 100 millilitres of breath.

(2) A person commits an offence if the person drives or attempts to drive a motor vehicle while the proportion of alcohol in the person's blood as ascertained by the analysis of a blood specimen subsequently taken from the person under section 40E or section 40F, exceeds 80 milligrams of alcohol per 100 millilitres of blood.

(3) A person commits an offence who drives or attempts to drive a motor vehicle while under the influence of:

- (a) alcohol; or
 - (b) one or more drugs; or
 - (c) alcohol and 1 or more drugs,
- to such an extent as to be incapable of having proper control of the motor vehicle.

(3A) An information for an offence under subsection (3) may allege that the person was under the influence of:

- (a) alcohol; or
- (b) one or more drugs; or
- (c) alcohol and 1 or more drugs; or
- (d) in the alternative—

- (i) alcohol and 1 or more drugs; or
- (ii) one or more drugs.

(3B) If an information under subsection (3A) alleges the influence of any drug, the information must state the drug (or at least one of the drugs) concerned.

(3C) An offence against subsection (3) is proved if the court is satisfied that the defendant was, to such an extent as to be incapable of having proper control of the motor vehicle, under the influence of:

- (a) alcohol; or
- (b) another drug stated in the information; or
- (c) two or more other drugs, at least one of which is stated in the information; or
- (d) alcohol and 2 or more other drugs, at least one of which is stated in the information.

(4) For the purposes of subsection (3), a “drug” means a narcotic prescribed under the Narcotics Act 1967 or any other substance that can impair driving ability.

(5) A person who is convicted of an offence against subsection (1), (2) or (3) is liable to a fine not exceeding 50 penalty units, or imprisonment for a term not exceeding 5 years imprisonment, or both.

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

40A. Who must undergo a breath screening test – (1) An enforcement officer may require any of the following persons to undergo a breath screening test without delay:

- (a) a driver of, or a person attempting to drive, a motor vehicle on a road; or
- (b) a person whom the officer has good cause to suspect has recently committed an offence against this Act that involves the driving of a motor vehicle; or
- (c) if an accident has occurred involving a motor vehicle —
 - (i) the driver of the vehicle at the time of the accident; or

- (ii) if the enforcement officer is unable to ascertain who the driver of the motor vehicle was at the time of the accident, a person whom the officer has good cause to suspect was in the motor vehicle at the time of the accident.

(2) An enforcement officer may not require a person who is in a hospital or doctor's surgery as a result of an accident involving a motor vehicle to undergo a breath screening test.

(3) A person who has undergone a breath screening test under this section must remain at the place where the person underwent the test until after the result of the test is ascertained, and an enforcement officer may arrest the person without warrant if the person refuses or fails to remain at that place.

(4) If an enforcement officer is entitled to require a person to undergo a breath screening test, the officer may also require that person to undergo a test using a passive breath testing device, which test is one where the officer holds a passive breath testing device near the person's mouth for the purpose of ascertaining whether or not there is any alcohol in the person's breath.

(5) The use or non-use of a passive breath testing device does not of itself affect the validity of a breath screening test.

40B. Who must undergo an evidential breath test – (1) An enforcement officer may require a person to accompany an enforcement officer to a place where it is likely that the person can undergo an evidential breath test or a blood test (or both) when required to do so by the officer, if the person:

- (a) has undergone a breath screening test under section 40A and it appears to the officer that the test indicates that the proportion of alcohol in the person's breath exceeds 40 micrograms of alcohol per 100 millilitres of breath; or
- (b) fails or refuses to undergo a breath screening test without delay after having been required to do so by the officer under section 40A; or
- (c) could be required to undergo a breath screening test without delay under section 40A but cannot be tested because either a breath screening device is not readily available or for any reason a breath screening test cannot then be carried out, and there

is good cause to suspect that the person has consumed alcohol.

(2) If it is not practicable for a person to undergo an evidential breath test at a place, to which the person has accompanied an enforcement officer under subsection (1), an enforcement officer may require the person to accompany the officer to any other place where it is likely that the person can undergo an evidential breath test or a blood test (or both).

(3) For the avoidance of doubt, it is declared that an enforcement officer may require a person to accompany the officer to a place under subsection (1) if:

- (a) it is likely that the person can undergo an evidential breath test at that place, whether or not it is likely that the person can undergo a blood test at that place; or
- (b) it is likely that the person can undergo a blood test at that place, whether or not it is likely that the person can undergo a blood test at that place.

(4) If the person:

- (a) has accompanied an enforcement officer to a place under this section; or
- (b) has been arrested under subsection (6) and taken to or detained at a place, –

an enforcement officer may require the person to undergo without delay at that place an evidential breath test (whether or not the person has already undergone a breath screening test).

(5) A person must:

- (a) accompany the enforcement officer to a place when required to do so under this section; or
- (b) if the person has accompanied an enforcement officer to a place under this section, remain at that place until the person is required to undergo an evidential breath test or a blood test under this Act, or to accompany an enforcement officer to another place under this section; or
- (c) if the person has undergone an evidential breath test under this section, remain at the place where the person underwent the test until after the result of the test is ascertained.

(6) An enforcement officer may arrest without warrant a person who contravenes subsection (5).

(7) An enforcement officer may not require a person who is in a hospital or doctor's surgery as a result of an accident involving a motor vehicle to undergo an evidential breath test.

40C. Person may be required to undergo further evidential breath test if initial test fails to produce result – (1)

If for any reason an evidential breath test carried out under section 40B by an enforcement officer fails to produce a result, the enforcement officer may, at his or her discretion, either require the person to undergo without delay a further evidential breath test or proceed as if section 40E(1)(c) applies.

(2) A requirement made under subsection (1) is taken to be a requirement under section 40B.

40D. (repealed by Act 2013, No.21)

40E. Who must give blood specimen at places other than hospital or surgery – (1) A person must permit a medical practitioner or medical officer to take a blood specimen from the person when required to do so by an enforcement officer if:

- (a) the person fails or refuses to undergo without delay an evidential breath test after having been required to do so by an enforcement officer under section 40B; or
- (b) *(repealed by Act 2013, No.21)*
- (c) an evidential breath testing device is not readily available at the place to which the person has accompanied an enforcement officer under section 40B (whether or not at the time the requirement was made it was likely that the person could undergo an evidential breath test at that place) or to which the person has been taken under arrest (as the case may be), or for any reason an evidential breath test cannot then be carried out at that place; or
- (d) the officer has arrested the person and has good cause to suspect that the person has committed an offence against any of sections 40 to 40E and either —
 - (i) a medical practitioner has examined the person and believes that the person may be under influence of drink or drug, or both; or

- (ii) the person has refused to be examined by a medical practitioner for the purposes of this paragraph.

(2) A person who has been required by an enforcement officer under subsection (1) to permit the taking of a blood specimen must, without delay after being requested to do so by a medical practitioner or medical officer, permit that practitioner or medical officer to take blood specimen from that person.

(3) If it is not practicable for a blood specimen to be taken from a person by a medical practitioner or medical officer at a place where the person has been required under this section to permit the taking of a blood specimen, the person must accompany an enforcement officer to any other place where it is likely that a blood specimen can be taken from the person by a medical practitioner or medical officer if the officer requires the person to do so.

(4) If a blood specimen taken under this section is insufficient to be divided into 2 parts in accordance with section 40G:

- (a) the person from whom the specimen was taken must permit a medical practitioner or medical officer to take a further blood specimen immediately after being requested to do so by the medical practitioner or medical officer; and
- (b) a further blood specimen so taken is to be treated as part of the original blood specimen taken from the person.

(5) An enforcement officer may arrest a person without warrant if the person:

- (a) fails or refuses to accompany an enforcement officer to a place when required to do so under this section; or
- (b) having accompanied an enforcement officer to a place under this section, fails or refuses to remain at that place until requested by a medical practitioner or medical officer to permit a blood specimen to be taken under this section.

40F. Who must give blood specimen in hospital or surgery

– (1) A person who is under examination, care or treatment in a hospital or doctor's surgery must permit a blood specimen to be taken from the person by:

- (a) the medical practitioner who is in immediate charge of the examination, care or treatment of the person; or
 - (b) another medical practitioner or a medical officer.
- (2) If a person under examination, care, or treatment in a hospital or doctor's surgery is unconscious, a blood specimen may be taken from the person under this section by:
- (a) the medical practitioner who is in immediate charge of the examination, care, or treatment of the person; or
 - (b) another medical practitioner or a medical officer.
- (3) The medical practitioner who is in immediate charge of the examination, care, or treatment of the person in a hospital or doctor's surgery:
- (a) may cause a blood specimen to be taken by another medical practitioner or a medical officer; and
 - (b) must either take a blood specimen or cause a blood specimen to be taken by another medical practitioner or medical officer, if an enforcement officer requests him or her to do so, –
- whether or not the person has consented to taking of the specimen and whether or not the person is capable of giving consent.
- (4) If the specimen originally taken is insufficient to be divided into 2 parts under section 40G, the medical practitioner who is in immediate charge of the examination, care, or treatment of the person may take or cause to be taken by another medical practitioner or a medical officer a further blood specimen (which further specimen is for the purposes of this Act to be treated as a part of the original blood specimen taken from the person), whether or not the person has consented to the taking of the specimen and whether or not the person is capable of giving consent.
- (5) Despite subsection (3)(b), a blood specimen may be taken under any provision of this section only if the medical practitioner:
- (a) has reasonable grounds to suspect that the person is in hospital or doctor's surgery as a result of an accident involving a motor vehicle;
 - (b) has examined the person and is satisfied that the taking of blood specimen would not be prejudicial to the person's proper care or treatment; and

- (c) tells the person (unless the person is unconscious) that the blood specimen is being or was taken under this section for evidential purposes.

(6) If a blood specimen is taken under this section from a person who is unconscious, the medical practitioner or medical officer who took the specimen must notify the person in writing as soon as practicable that the specimen was taken under this section for evidential purpose.

(7) No civil or criminal proceedings may be taken against the Government, a health service provider, or any other person in respect of the taking of a blood specimen under this section, or in respect of the sending of a blood specimen to an approved analyst, on the ground of lack of consent of a person whose consent to the taking of the blood specimen would have been otherwise required by law if this section had not been enacted.

(8) Nothing in subsection (7) applies to any proceeding on the ground of any negligent act or omission in the taking of a blood specimen.

40G. Procedure for dealing with blood specimens – (1) A blood specimen taken under section 40E or 40F must be divided into 2 parts, and:

- (a) each part must be placed in a separate bottle and the bottle must then be sealed; and
- (b) each part is a blood specimen for the purposes of this Act.

(2) One or more preservative substances and anti-coagulant substances may be added to a blood specimen by placing them in the bottle, whether before or after the specimen is taken and placed in the bottle.

(3) In the case of a blood specimen taken under section 40E, an enforcement officer must, within 7 days after the date on which the specimen was taken, deliver or cause to be delivered (whether by courier or otherwise), or post by registered post or cause to be posted by registered post, both parts of the blood specimen to an approved analyst for the analysis of one of those parts and the custody of the other.

(4) In the case of a blood specimen taken under section 40F, the medical practitioner or medical officer by whom the specimen was taken must:

- (a) within 7 days after the date on which the specimen was taken, deliver or cause to be delivered (whether by courier or otherwise), or post or cause to be posted by registered post, both parts of the blood specimen to an approved analyst for the analysis of one of those parts and the custody of the other; and
 - (b) give the Commissioner a written notification —
 - (i) identifying the approved analyst to whom the parts of the blood specimen were (or are being) delivered or posted; and
 - (ii) naming the person from whom the blood specimen was taken.
- (5)** If a person from whom a blood specimen was taken wishes to have the specimen analysed by a private analyst:
 - (a) the person (or the person's solicitor or counsel) may apply to the Commissioner in accordance with subsection (7); and
 - (b) if the application complies with subsection (7) —
 - (i) the Commissioner, or a person authorised for the purpose by the Commissioner, must forward a copy of the application to the approved analyst to whom the blood specimen taken from the person was delivered or posted under subsection (3) or (4); and
 - (ii) that analyst must send by registered post, personal delivery, or delivery by courier one part of that blood specimen to the private analyst specified in the application.
- (6)** If an application under subsection (5) does not comply with subsection (7), the Commissioner or authorised person may refuse to forward a copy of the application to the approved analyst.
- (7)** An application under subsection (5)(a) must:
 - (a) be made in writing to the Commissioner not later than 28 days after —
 - (i) the date on which a summons in respect of an offence against this Act (which offence is an offence arising out of the circumstances in

- respect of which the blood specimen was taken) is served on the defendant; or
- (ii) if the defendant is arrested in respect of any such offence, the date on which the defendant is so arrested; or
 - (iii) in any case to which subparagraph (i) or (ii) does not apply, the date on which the defendant is first charged in court with any such offence; and
- (b) state the full name and address and the occupation of the person and the date of the alleged offence; and
 - (c) identify the private analyst to whom the part of the blood specimen is to be sent and the address of the private analyst.

(8) A blood specimen sent to an approved analyst under subsection (3) or (4) may be destroyed at any time later than one year after the date the specimen was so sent.

40H. Certificates in blood-alcohol proceedings – (1)

Except as provided in section 40L, production of a certificate to which this section applies in proceedings for an offence against driving while intoxicated is sufficient evidence, in the absence of proof to the contrary, of such of the matters as are stated in the certificate and of the sufficiency of the authority and qualifications of the person by whom the certificate is made and, in the case of a certificate referred to in subsection (5), of the person who carried out the analysis.

(2) This section applies to a certificate purporting to be signed by a medical practitioner or medical officer and certifying that:

- (a) a specimen of venous blood was taken by the practitioner or medical officer in accordance with normal medical procedures from a person named in the certificate; and
- (b) the specimen was divided by the practitioner or medical officer into 2 parts, or the specimen was insufficient for division and the practitioner or medical officer took a further specimen; and
- (c) the practitioner or medical officer placed and sealed in a separate bottle each part or specimen (as the case may be); and

- (d) each separate bottle was received by the practitioner or medical officer in a sealed blood specimen collecting kit; and
 - (e) the practitioner or medical officer handed each such separate bottle to an enforcement officer named in the certificate.
- (3)** This section also applies to a certificate purporting to be signed by a medical practitioner and certifying that:
- (a) the person named in the certificate was in a hospital or doctor's surgery;
 - (b) the practitioner, being a medical practitioner in immediate charge of the examination, care, or treatment of that person, took a blood specimen or caused a blood specimen to be taken by any other medical practitioner or any medical officer from the person under section 40F;
 - (c) at the time the blood specimen was taken from the person, the practitioner had reasonable grounds to suspect that the person was in the hospital or doctor's surgery as a result of an accident involving a motor vehicle; and
 - (d) before taking the blood specimen or causing the blood specimen to be taken from the person, the practitioner examined the person and was satisfied that the taking of the blood specimen would not be prejudicial to the person's proper care or treatment; and
 - (e) the practitioner either —
 - (i) told the person that the blood specimen was being or had been taken under section 40F for evidential purposes; or
 - (ii) if the person was unconscious when the specimen was taken, notified the person in writing as soon as practicable that the blood specimen was taken under section 40F for evidential purposes.
- (4)** This section also applies to a certificate purporting to be signed by a medical practitioner or medical officer and certifying:
- (a) all the matters referred to in subsection(2)(a) to (d);
 - (b) that the practitioner or medical officer sent or caused to be sent by registered post, personal delivery, or

delivery by courier, on a specified date, both parts of the specimen (or both specimens) to a specified approved analyst under section 40G; and

- (c) that the practitioner or medical officer notified the Commissioner in writing of the approved analyst to whom the parts of the specimen (or the specimens) were delivered or posted.

(5) This section also applies to a certificate purporting to be signed by an approved analyst and certifying that:

- (a) a blood specimen in a sealed bottle was, on a specified date, delivered to an approved analyst (or a person employed by an approved laboratory and approved for the purpose by an approved analyst) for analysis, and was delivered by registered post or personal delivery or delivery by courier;
- (b) on analysis of the blood specimen by an analyst specified in the certificate, a specified proportion of alcohol or of a drug, or both (as the case may be), was found in the specimen; and
- (c) no such deterioration or congealing was found as would prevent a proper analysis.

(6) This section also applies to a certificate purporting to be signed by an approved analyst and certifying that, following an application under section 40G, a part of a blood specimen was posted to a specified private analyst by registered post, personal delivery, or delivery by courier, and addressed to the private analyst at the address given in the application.

(7) For the purposes of this section, it is not necessary for the person making a certificate to specify his or her entitlement to give the certificate if the certificate indicates that the person belongs to the general category of persons who may make such a certificate.

40I. Certificates of compliance for evidential breath testing devices – (1) An evidential breath testing device must be supported by a certificate of compliance given under this section by a person approved for the purpose by the Minister.

(2) At any trial or defended hearing for an offence involving excess breath alcohol recorded by the device (being an offence committed on or after the commencement of this section), the prosecution must produce to the court a certified copy of the

certificate of compliance. The certification must be given by a person authorised for the purpose by the Commissioner and must state that the copy is a true copy of the original certificate.

(3) Subject to subsection (4), a certificate of compliance or a certified copy of it that is produced under subsection (2) is for all purposes conclusive evidence of the matters stated in the certificate, and neither the matters stated in the certificate nor the manufacturer's specifications for the device concerned may be challenged, called into question, or put in issue in any proceedings in respect of an offence involving excess breath alcohol recorded by the device.

(4) In the absence of proof to the contrary, a document purporting to be a certificate of compliance or a certified copy of a certificate of compliance:

- (a) must be treated as such a certificate or certified copy; and
- (b) is conclusive evidence of the sufficiency of the authority of the person who signed the document.

(5) The Minister may approve for each kind of evidential breath testing device the matters that are required to be stated in a certificate of compliance.

(6) Without limiting subsection (5):

- (a) in the case of any kind of evidential breath testing device approved after the commencement of this section, the approval under subsection (5) must be given in conjunction with the notice approving that kind of device;
- (b) an approval under subsection (5) must specify the maximum period of service for the relevant kind of device, and must require a certificate of compliance to specify the date on which that period began or begins;
- (c) an approval under subsection (5) must specify the maximum period permitted between the date on which a certificate of compliance is issued and the date by which a test result must be obtained, and must require a certificate of compliance to specify the date on which the certificate of compliance was issued;
- (d) an approval under subsection (5) must require a certificate of compliance to include a statement to

the effect that the device is being maintained within the manufacturer's specifications.

40J. Presumptions relating to blood specimens – (1) In proceedings for an offence against this Act it is to be presumed, in the absence of proof to the contrary, that:

- (a) if a certificate referred to in section 40H names a person having the same name, address, and occupation as the defendant as the person from whom the specimen of blood was taken, the specimen was taken from the defendant;
- (b) every approved analyst who signed a certificate referred to in section 40H was duly authorised to sign it; and
- (c) if the bottle in which a blood specimen (or part of a blood specimen) was placed was received by a medical practitioner or medical officer in a sealed blood specimen collecting kit, the bottle contained a substance (whether or not a combination or mixture of 2 or more substances) and that substance was a preservative and anti-coagulant.

(2) On the request of a person from whom a blood specimen has been taken under section 40E or 40F, or of the person's solicitor or counsel, copies of any certificates referred to in subsection (1) that relate to that blood specimen must be supplied by the prosecutor to the person making the request.

40K. Presumptions relating to alcohol-testing – (1) For the purposes of proceedings for an offence against this Act arising out of the circumstances in respect of which an evidential breath test was undergone by the defendant, it is to be conclusively presumed that the proportion of alcohol in the defendant's breath at the time of the alleged offence was the same as the proportion of alcohol in the defendant's breath indicated by the test.

(2) For the purposes of proceedings for an offence against this Act arising out of the circumstances in respect of which a blood specimen was taken from the defendant under section 40E or 40F, it is to be conclusively presumed that the proportion of alcohol in the defendant's blood at the time of the alleged offence was the

same as the proportion of alcohol in the blood specimen taken from the defendant.

(3) Except as provided in subsection (4), the result of a positive evidential breath test is not admissible in evidence in proceedings for an offence against any of sections 40 to 40E, if:

- (a) the person who underwent the test is not advised by an enforcement officer, without delay after the result of the test is ascertained, that the test was positive—
 - (i) in the case of a positive test that indicates that the proportion of alcohol in the person's breath exceeds 40 micrograms of alcohol per 100 millilitres of breath, the test could of itself be conclusive evidence to lead to that person's conviction for an offence against this Act; or
- (b) the person who underwent the test complies with section 40E(2).

(4) Subsection (3)(a) does not apply if the person who underwent the test fails or refuses to remain at the place where the person underwent the test until the person can be advised of the result of the test.

(5) The result of a positive evidential breath test is not rendered inadmissible under subsection (3) if:

- (a) the test was carried out by means of a conclusive evidential breath testing device; and
- (b) the test indicated that the proportion of alcohol in the breath of the person who underwent the test exceeded 50 micrograms of alcohol per 100 millilitres of breath.

(6) If it is proved in proceedings for an offence against section 40M that the defendant failed or refused to comply with section 40O without reasonable cause, that failure or refusal may be treated as supporting any evidence given on behalf of the prosecution, or as rebutting any evidence given on behalf of the defendant, concerning the defendant's condition at the time of the alleged offence.

40L. Circumstances in which certificate not admissible in proceedings – (1) No certificate referred to in section 40H(2),(3) or (4) (which certificates relate to the taking of a blood specimen by a medical practitioner or medical officer) is admissible in

evidence in proceedings for an offence against this Act if the court, on application made by the defendant not less than 14 days before the hearing, orders that the registered medical practitioner or medical officer who gave the certificate ought to appear as a witness at the hearing.

(2) No certificate referred to in section 40H (which certificate is given by an approved analyst and relates to the proportion of alcohol, a drug, or both, found to be in a blood specimen) is admissible in evidence in proceedings for an offence against this Act if:

- (a) application has been made in accordance with section 40G for 1 part of the blood specimen to be sent to a private analyst; and
- (b) that part of the specimen has not been sent to the private analyst in compliance with the application, –

but this subsection does not apply in respect of a specimen destroyed under the authority of section 40G(8) before the date of publication.

(3) No certificate referred to in subsection or subsection of section 40H (which certificate is given by an approved analyst and relates to the proportion of alcohol, a drug, or both, in a blood specimen, or to the sending of one part of a specimen to a private analyst) is admissible in evidence in proceedings for an offence against this Act if the court, on application made by the defendant not less than 14 days before the hearing, orders that:

- (a) for a certificate referred to in that subsection (5), the person who made the analysis or the approved analyst who gave the certificate ought to appear as a witness at the hearing; or
- (b) for a certificate referred to in that subsection (6), the person who posted or delivered the part of the specimen, or the person who gave the part of the specimen to the courier, or the approved analyst who gave the certificate ought to appear as a witness at the hearing.

(4) The court may not make an order under subsection (3) unless the application made by the defendant under that subsection is accompanied by an affidavit, sworn by the private analyst who is specified in the defendant's application under section 40G, to the effect that:

- (a) since the date given to the private analyst as the date on which application was made under section 40G for the sending to the analyst of a blood specimen relating to the defendant, the analyst has not received any such specimen; or
 - (b) the blood specimen received by the private analyst relating to the defendant —
 - (i) was not suitable for analysis; or
 - (ii) was suitable for analysis but, for specified reasons, that analysis was not carried out; or
 - (iii) was suitable for analysis and that analysis was carried out but, for specified reasons, the results of the analysis are not available; or
 - (c) the blood specimen received by the private analyst relating to the defendant has been analysed and found to contain not more than 80 milligrams of alcohol per 100 millilitres of blood; or
 - (d) the blood specimen received by the private analyst relating to the defendant has been analysed and found to contain 20 milligrams or more of alcohol per 100 millilitres of blood more or less than the proportion of alcohol per 100 millilitres of blood specified in the certificate referred to in section 40H.
- (5) Where a blood specimen is destroyed under section 40G, that act does not affect the admissibility in proceedings of a certificate given for the specimen by an approved analyst for the purposes of this Act.

40M. Failure or refusal to remain at specified place or to accompany enforcement officer – (1) A person commits an offence if the person:

- (a) fails or refuses to remain at the place where the person underwent a breath screening test under section 40A until after the result of the test is ascertained; or
- (b) fails or refuses to accompany without delay an enforcement officer to a place when required to do so under section 40B; or

- (c) having accompanied an enforcement officer to a place under a requirement under section 40B or section 40E —
 - (i) fails or refuses to remain at that place until the person is required either to undergo an evidential breath test or a blood test under this Act; or
 - (ii) fails or refuses to accompany an enforcement officer to another place under either of those sections; or
 - (d) having undergone an evidential breath test under a requirement under section 40B, fails or refuses to remain at the place where the person underwent the test until after the result of the test is ascertained.
- (2) If a person is convicted of an offence against subsection (1):
- (a) the maximum penalty is a fine not exceeding 50 penalty units; and
 - (b) the court may disqualify the person from holding or obtaining a driver licence for such period as the court thinks fit.

40N. Failure or refusal to permit blood specimen to be taken – (1) A person commits an offence if the person:

- (a) fails or refuses to permit a blood specimen to be taken after having been required to do so under section 40E by an enforcement officer; or
 - (b) fails or refuses to permit a blood specimen to be taken without delay after having been requested to do so under section 40E by a medical practitioner or medical officer; or
 - (c) is a person from whom a medical practitioner or medical officer may take a blood specimen under section 40F and refuses or fails to permit such a person to take a blood specimen.
- (2) If a person is convicted of an offence against subsection (1):
- (a) the maximum penalty is a fine not exceeding 20 penalty units or imprisonment for a term not exceeding one year; and

- (b) the court must order the person to be disqualified from holding or obtaining a driving licence for 6 months or more.

40O. Drivers and other road users to comply with directions of enforcement officers, etc. – (1) A person must comply with sections 40A, 40B, 40C, 40E and 40F (which relate to the administration of breath screening tests, evidential breath tests, and blood tests).

(2) A person must comply with all lawful requirements, directions, and requests made by an enforcement officer under any of sections 40A, 40B, 40C, 40E and 40F.

(3) A person must comply with all lawful requirements and requests made by a medical practitioner or medical officer under section 40E or section 40F (which relate to the administration of blood tests).

(4) A person commits an offence punishable by a fine not exceeding 10 penalty units or 6 months imprisonment, if the person fails to comply with any lawful requirement or direction given by an enforcement officer, to which this section applies.

40P. Defences – (1) It is a defence to proceedings for an offence against section 40N (which relates to failing or refusing to supply a blood specimen) if the court is satisfied, on the evidence of a medical practitioner, that the taking of a blood specimen from the defendant would have been prejudicial to the defendant's health.

(2) It is no defence to proceedings for an offence that a provision forming part of sections 40A to 40I, and 40K has not been strictly complied with or has not been complied with at all, provided there has been reasonable compliance with such of those provisions as apply.

(3) In any proceedings against any person for an offence against section 40O(4) arising out of circumstances in which an enforcement officer exercised powers under section 40Q and in respect of which a breath screening test or an evidential breath test or a blood test was undergone by the person, it is no defence that:

- (a) the breath screening test or evidential breath test indicated that the proportion of alcohol in the

person's breath did not exceed 40 micrograms of alcohol per 100 millilitres of breath; or

- (b) any evidence given in respect of the results of a blood test indicates that the proportion of alcohol in the person's blood did not exceed 80 milligrams of alcohol per 100 millilitres of blood.

(4) It is no defence to proceedings for an offence against section 40N (which relates to failing or refusing to supply a blood specimen) that:

- (a) there was or may have been an error in the result of the breath screening test or evidential breath test; or
- (b) the occurrence or likely occurrence of any such error did not entitle or empower a person to request or require an evidential breath or a blood test.

(5) It is no defence to proceedings for an offence against this Act in respect of the proportion of alcohol in a person's breath:

- (a) that there was or may have been an error in the result of the breath screening test or evidential breath test; or
- (b) that the occurrence or likely occurrence of any such error did not entitle or empower a person to request or require an evidential breath test.

(6) It is no defence to proceedings for an offence against this Act in respect of the proportion of alcohol in a person's blood:

- (a) that there was or may have been an error in the result of the breath screening test or evidential breath test; or
- (b) that the occurrence or likely occurrence of any such error did not entitle or empower a person to request or require an evidential breath test or a blood test.

40Q. Arrest of persons for alcohol or drug-related offences, or assault on enforcement officer – (1) An enforcement officer may arrest a person without warrant if the officer has good cause to suspect that the person:

- (a) has committed an offence against any of sections 40, 40M, 40N or 40O; or

- (b) has assaulted that or any other enforcement officer while the officer was acting in the course of the officer's official duties.
- (2) The powers conferred by this section are in addition to any other powers of arrest under this or any other enactment.

41. Taking a motor vehicle without the owner's consent –

(1) A person who takes and drives any motor vehicle without having either the consent of the owner thereof or other lawful authority commits an offence:

PROVIDED THAT if the Court is satisfied that the accused acted in a reasonable belief that he or she had lawful authority, or in the reasonable belief that the owner would have given his or her consent if he or she had been asked, the accused shall not be liable to be convicted.

(2) If on the trial of any information for stealing a motor vehicle the Court is of the opinion that the defendant was not guilty of stealing the motor vehicle but was guilty of an offence under this section the Court may find him or her guilty of an offence under this section and thereupon he or she shall be liable to be punished accordingly.

(3) A police officer may arrest without a warrant any person reasonably suspected by him or her of having committed or of attempting to commit an offence under this section.

42. Restriction on prosecutions under the preceding sections – If a person is prosecuted for an offence under any of the provisions of this Part relating respectively to the maximum speed at which motor vehicles may be driven, to reckless or dangerous driving, and to careless driving he or she shall not be convicted unless either:

- (a) the person was warned at the time the offence was committed that the question of prosecuting him or her for an offence under someone or other of the provisions of this Part would be taken into consideration; or
- (b) within 14 days of the commission of the offence a summons for the offence was served on him or her; or
- (c) within that 14 days, a notice of the intended prosecution specifying the nature of the alleged

offence and the time and place where it is alleged to have been committed was served on or sent by registered post to him or her or the person registered as the owner of the vehicle at the time of the commission of the offence:

PROVIDED THAT:

- (a) 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 —
 - (i) neither the name or address of the accused nor the name and address of the registered owner of the vehicle could with reasonable diligence have been ascertained in time for a summons to be served or for a notice to be served or sent as aforesaid; or
 - (ii) the accused by his or her own conduct contributed to the failure; and
- (b) the requirement of this section shall in every case be taken to have been complied with unless and until the contrary is proved.

43. Limitation of time for which drivers of certain vehicles may remain continuously on duty – (1) It shall not be lawful in the case of:

- (a) any public service vehicle;
- (b) any goods vehicle, the net weight of which exceeds 60 cwt.; or
- (c) any motor tractor, –

for a person to drive or cause or permit any person employed by him or her or subject to his or her orders to drive —

- (i) for any continuous period of more than 5½ hours;
- (ii) for periods amounting in the aggregate to more than 11 hours in any one day;
- (iii) so that the driver has not at least 10 consecutive hours for rest in any period of 24 hours calculated from the commencement of any period of driving:

PROVIDED THAT it is sufficient compliance with the provisions of this subparagraph if the driver has at least 9 consecutive hours for rest in any such period of 24 hours provided that he or she has

an interval of at least 12 consecutive hours for rest in the next following period of 24 hours.

(2) For the purposes of this section:

- (a) any 2 or more periods of time is taken to be a continuous period unless separated by an interval of not less than half an hour in which the driver is able to rest;
- (b) any time spent by a driver on other work in connection with the vehicle or the load carried thereby, including in the case of a public service vehicle any time spent on a vehicle while on a journey in any capacity other than as a passenger, shall be reckoned as time spent in driving;
- (c) for a vehicle which is being used in the course of operations of agriculture or forestry, a person is taken not to be driving the vehicle or to be spending time on work in connection with the vehicle or the load carried thereby so long as the vehicle is elsewhere than on a road.

(3) A person who acts in contravention of this section commits an offence:

PROVIDED THAT a person shall not be convicted under this section if the person satisfies the Court that the contravention was due to unavoidable delay in the completion of any journey arising out of circumstances which the person could not reasonably have foreseen.

44. Duties of drivers in cases of accidents – (1) If an accident, arising directly or indirectly from the use of a motor vehicle, occurs to a person or to any horse or vehicle in charge of any person, the driver of the motor vehicle shall stop, and shall also ascertain whether he or she has injured any person, in which event it shall be his or her duty to render all practicable assistance to the injured person including transportation of that person to hospital.

(2) In the case of any such accident (whether any person has been injured thereby or not) the driver of the motor vehicle shall, if required, give to any constable or to any person concerned his or her name and address and also the name and address of the owner and the numbers assigned to the registration plates and licence label of the motor vehicle. If the accident involves injury

to any person, the driver shall report the accident in person at the nearest police station or to a constable as soon as reasonably practicable, and in any case not later than 24 hours after the time of the accident, unless the driver is incapable of doing so by reason of injuries sustained by him or her in the accident.

(3) A driver who fails to comply with any obligation imposed on him or her by subsection (1) in any case where any other person is injured in the accident commits an offence and is liable to a fine not exceeding 20 penalty units or to imprisonment for a term not exceeding 5 years.

(4) A driver who fails to comply with any obligation imposed on him or her by subsection (1) in any case where no other person is injured in the accident commits an offence and is liable on summary conviction to a fine not exceeding 2 penalty units or to imprisonment for a term not exceeding 3 months.

(5) A person who fails to comply with any obligation imposed on him or her by subsection (2) commits an offence.

(6) It is a defence to any charge of failing to comply with the obligations imposed on a driver by subsection (1) if he or she satisfies the Court that he or she had reasonable grounds to apprehend violence from bystanders if he or she stopped his or her vehicle, and that he or she with all reasonable expedition reported the accident as provided in subsection (2).

44A. Driving improvement courses – (1) If a person is convicted of an offence against this Part or of any other offence (whether against this Ordinance or any other Act or regulations) in connection with the driving of a motor vehicle, the Court, whether or not it imposes any other penalty in respect of the offence, may order that person to attend for such period as the Court specifies a driving improvement course conducted by the Principal Licensing Authority.

(2) If an offender ordered under this section to attend a driving improvement course completes the course to the satisfaction of the person conducting the course, the Principal Licensing Authority shall issue to him or her a certificate to that effect.

(3) An offender ordered under this section to attend a driving improvement course shall, not later than 21 days after the completion of the course, pay to the Principal Licensing

Authority the amount of the fee usually charged by that Authority for that course.

(4) A person commits an offence who, having been ordered under this section to attend a driving improvement course:

- (a) fails to attend the course in accordance with the order; or
- (b) fails to comply with the reasonable directions of the person conducting the course; or
- (c) fails to pay the fee payable in respect of that course.

45. Regulations – (1) The Head of State, acting by and with the advice of Cabinet, may make regulations for any purpose for which regulations may be made under this Part and for prescribing anything which may be prescribed under this Part and generally as to the use of vehicles on roads, their construction and equipment and the conditions under which they may be so used and otherwise for the purpose of carrying this Part into effect and in particular but without prejudice of the foregoing may make regulations on any of the following matters:

- (a) licences and registration number plates, and the attaching thereof to vehicles and in particular with respect to the records to be kept of licences, the form of stickers to denote the payment of a licence fee in respect of a motor vehicle, for preventing a person holding more than one driving licence, and for facilitating the identification of holders of driving licences;
- (b) the width, height, and length of motor vehicles and of trailers and the load carried thereby, the diameter of wheels and the width, nature, and condition of tyres of motor vehicles and of trailers;
- (c) dividing motor vehicles for the purposes of regulations under this Part into classes whether according to weight, construction, nature of tyres, use, or otherwise;
- (d) the consumption of smoke and the emission of visible vapour, sparks, ashes, and grit;
- (e) excessive noise due to the design or the condition of the vehicle or the loading thereof;

- (f) the maximum net weight of any motor vehicle and the maximum gross weight of motor vehicles and trailers and the maximum weight to be transmitted on the road or any specified area thereof by a motor vehicle or trailer of any class or description or by any part or parts of such a vehicle or trailer in contact with the road and the conditions under which and the manner in which the weight may be required to be tested;
- (g) the particulars to be marked on motor vehicles or trailers;
- (h) the towing or drawing of vehicles by motor vehicles;
- (i) the number and nature of any brakes, lights, and any other fittings or equipment required for a motor vehicle and for ensuring that any brakes, lights and any other fittings or equipment shall be efficient and kept in proper working order and mechanical condition and for empowering persons authorised by or under the regulations to test and inspect either on the road or subject to the consent of the owner of the premises, on any premises where the vehicle is, such brakes, lights and any other fittings or equipment;
- (j) the appliances to be fitted for signalling the approach of a motor vehicle or enabling the driver of a motor vehicle to become aware of the approach of another vehicle from the rear, or for intimating any intended change of speed or direction of a motor vehicle and for the use of such appliances and for securing that they shall be efficient and kept in proper working order;
- (k) the kind of lamps that may be carried on motor vehicles, the carrying of such lamps and how and when the same shall be used;
- (l) the registration of dealer's licences, the assigning by the Principal Licensing Authority of registration numbers in respect of dealer's licences, the display of such numbers, and the conditions under which and the purposes for which a vehicle licensed under a dealer's licence may be used;
- (m) the speed limit of any vehicle or class of vehicles;

- (n) the keeping of records by holders of licences for public service vehicles, goods vehicles of which the net weight exceeds 60 cwt., or motor tractors, and without prejudice to the foregoing such regulations may make provision for requiring drivers of any such vehicles aforesaid to carry prescribed documents and to make prescribed entries therein and for the production of such documents;
- (o) the issue of warrants of fitness, the persons who are authorised to issue the same, the time when and the period for which they may be issued, and the matters which are to be warranted thereby; the charges (not exceeding 50 sene for each examination), and the persons to whom such charges are to be paid. Such regulations may also fix the date after which motor vehicles are required to have warrants of fitness and the period for which such warrants shall remain in force;
- (p) generally regulating traffic of all classes, whether vehicular, pedestrian, animal, or otherwise and the use of vehicles, and the observance of traffic signs and prescribing the conditions upon or subject to which they may be used or observed;
- (q) the establishment and regulation of school patrols and their duties in respect of the direction of traffic.

(2) The Principal Licensing Authority may, with the approval of the Minister, make and promulgate in such manner as it thinks fit, rules on any matter mentioned in subsection (1) for which provision has not been made by regulation:

PROVIDED THAT no rule so made shall be inconsistent with any such regulation, and on the making of any regulation any rule inconsistent therewith is taken to be to that extent abrogated.

46. Exemptions – The Head of State, acting by and with the advice of Cabinet, may by Order in Council declare that any motor vehicle or class of motor vehicle shall be exempt from the provisions of this Part of this Ordinance and may in like manner revoke any such Order in Council either wholly or in part.

PART 3
ROADS, BRIDGES, AND TRAFFIC SIGNS

47. Power of Director of Works temporarily to prohibit or restrict traffic on roads – (1) If the Director of Works is satisfied that traffic on any road should by reason of works or repair or construction being required or being in progress on that road be restricted or prohibited, he or she may by order restrict or prohibit the use of that road or any part thereof by motor vehicles of any particular class or description to such extent and subject to such conditions as to speed or otherwise and for such period as he or she may consider necessary.

(2) So long as any order made under this section is in force a notice stating the effect of the order and describing the alternative route, or routes, if any, available for traffic shall be kept posted by the Director of Works in a conspicuous manner at each end of the part of the road to which the order relates and at the points, if any, at which it will be necessary for vehicles to diverge from the road.

(3) No order made under this section shall, without the approval of the Minister, continue in force for a longer period than 3 months.

(4) A person using or permitting the use of a vehicle in contravention of any restriction or prohibition imposed under this section commits an offence.

48. Restriction on the use of bridges – (1) If the Director of Works is satisfied that in the interests of safety it is necessary to limit the weight or speed of vehicles passing over a bridge, he or she may by a conspicuous notice so placed as to be easily seen by the drivers of vehicles approaching the bridge limit the use of the bridge to vehicles of a specified gross weight and to vehicles proceeding at not more than a specified speed.

(2) The Director of Works may by the same or a similar notice prohibit vehicles from standing on the bridge or passing each other thereon.

(3) If any person drives a motor vehicle across or permits or causes a motor vehicle to stand on a bridge where a notice has been so placed as aforesaid in contravention of the notice, he or she shall be guilty of an offence, without prejudice however to

any civil liability of that person in the case of damage being caused to the bridge.

(4) If any damage be caused to a bridge by any contravention of this section, the Director of Works may make good such damage and recover the cost thereof with full cost of suit from the owner of the vehicle.

49. Traffic signs – (1) Traffic signs shall be of the size, colour, and type prescribed by regulations made under this Ordinance or determined by the Minister and notified in the *Savali*.

(2) The Minister may cause or permit traffic signs to be placed on or near any road.

(3) No traffic sign shall be placed on or near any road except under and pursuant to subsections (1) and (2).

(4) The Minister may by notice in writing require the owner or occupier of any land on which there is a 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.

(5) A person who places, or fails when required to do so, to remove any traffic sign or other object mentioned in subsection (4) commits an offence.

(6) No advertising boarding shall be placed on or near any road without the written permission of the Chief Executive Officer.

(7) For the purposes of this Ordinance or of any regulations or rules made thereunder, a traffic sign placed on or near a road is deemed to be of the correct size, colour, and type and to have been lawfully so placed unless the contrary is proved.

(8) A person who, wilfully alters, defaces, moves, or otherwise interferes with any traffic sign commits an offence.

50. Drivers and pedestrians to comply with traffic directions and signs – (1) If a police officer or an authorised officer is in uniform, or any school patrol is for the time being engaged in the regulation of traffic at a pedestrian crossing and is wearing a uniform, insignia or badge of office:

- (a) a person using any vehicle or riding or driving any animal on the road shall stop the vehicle or animal, as the case may be, or cause it to proceed in or keep to a particular line of traffic or

direction, when directed so to do by the police officer or an authorised officer or school patrol;

- (b) no pedestrian shall proceed across the road in contravention of a direction to stop given by the police officer or an authorised officer or school patrol, either to pedestrians or to pedestrians and other traffic.

(2) A pedestrian and a person using a vehicle or riding or driving an animal on the road shall conform to or cause the vehicle or animal to conform to the directions given by any traffic sign.

(3) A person who fails to comply with this section commits an offence.

PART 4 TRANSPORT CONTROL

51. Transport Control Board – (1) There is hereby constituted the Transport Control Board.

(2) The Board shall consist of the following members:

- (a) the Chairperson, appointed by the Minister for a term of 2 years, but may be reappointed;
- (b) the Secretary for Transport;
- (c) the Director of Works;
- (d) the Manager of the Accident Compensation Board;
- (e) the Commissioner of Police Service or a nominee of the Commissioner; and
- (f) three persons, appointed by the Minister for a term of 2 years, but may be reappointed.

(3) The Minister shall appoint a member of the Board to be Chairperson of the Board.

(4) The Board shall report to and be accountable to the Minister, under this Ordinance.

52. Quorum and proceedings of the Board – (1) Not less than 3 members of the Board constitute a quorum at any meeting of the Board.

(2) At all meetings of the Board the chairperson or in his or her absence such member as the other members present may select shall preside.

(3) All acts, matters, and things authorised and required to be done by the Board shall be decided by resolution at any meeting at which a quorum is present, and, in the case of an equality of votes, the person presiding at such meeting has a second or casting vote.

53. Functions of the Board – (1) The Board shall:

- (a) advise the Minister on all matters affecting traffic on the roads;
- (b) consider applications for licences forwarded to it under the provisions of this Part and deal with such applications in accordance with the provisions of this Part;
- (c) consider and determine any matter which may be referred to it under the provisions of this Ordinance;
- (d) exercise such further and additional functions as may be prescribed;
- (e) with the consent of the Minister, make traffic regulations, orders and rules in accordance with the provisions of this Ordinance; and
- (f) by 30 September of each year prepare and provide to the Minister an Annual Report of the work of the Board for the 12 months ending on 30 June.

(2) The Minister shall table the Annual Report of the Board in Parliament within 14 days of the Minister receiving the Annual Report the Annual Report and, where Parliament is not meeting, within 7 days of the commencement of the next meeting.

(3) The Controller and Auditor General must audit the accounts of the Board annually.

53A. Remuneration and allowances of Board Members –

(1) There may be paid, from money appropriated by the Legislative Assembly for that purpose, to each member of the Transport Control Board who is not a salaried employee of the Government:

- (a) any travelling expenses reasonably incurred by him or her in respect of the performance of his or her duties as a member of the Board; and

- (b) a sum not exceeding \$4.20 as Cabinet may approve in respect of each day or part of a day which such member spends upon the business of the Board.
- (2) Any such approval may be expressed to operate from, before, on, or after the date thereof, and if not so expressed shall operate from the date thereof.

54. Secretary – There shall be a secretary of the Board who shall be a member of the Public Service approved by the Minister:

PROVIDED THAT the Minister may, if he or she thinks fit, appoint a member of the Board to be secretary-member thereof.

55. Certificate of fitness of public service vehicles – (1) Subject to subsection (11), no motor vehicle shall be used for carrying passengers for hire or reward unless a certificate of fitness has been issued by an authorised officer that the prescribed conditions as to fitness have been complied with in respect of the vehicle, and such certificate is in force and remains affixed to the inside of the windscreen in a position where it is least likely to obscure the view of the driver.

(2) A certificate of fitness shall state:

- (a) the number of seated passengers the vehicle is fit to carry;
- (b) the number of standing passengers (if any) which the vehicle is fit to carry on occasions when standing passengers are permitted.

(3) A public service vehicle shall not be licensed to carry a greater number of passengers than the number specified under subsection (2)(a):

PROVIDED THAT in such areas and at such times as the Board may from specify in the *Savali* a public service vehicle is taken to be licensed to carry a number of passengers not greater than the combined total of the number of passengers specified in the certificate of fitness under subsection (2)(a) and (b).

(4) An authorised officer may, on inspection of a public service vehicle, vary a certificate of fitness in respect of the number of passengers which the vehicle is certified to carry:

PROVIDED THAT if a variation is made so as to reduce the number of passengers, subsection (10) applies.

(5) A certificate of fitness shall, unless previously revoked or cancelled, continue in force for such period as may be prescribed or if the authorised officer thinks fit for such shorter period as may be specified in the certificate.

(6) If on the inspection of a public service vehicle it appears to an authorised officer that the vehicle does not comply with the prescribed conditions as to fitness, the officer may revoke or suspend the certificate of fitness of that vehicle and thereupon the vehicle ceases to be a vehicle in respect of which a certificate of fitness is in force unless a new certificate is obtained or the suspension is removed:

PROVIDED THAT where in the opinion of the authorised officer inspecting the vehicle the defects in the vehicle are such as can be remedied within 48 hours and are not defects which involve danger to the public, the officer may give notice to the owner of the vehicle that the suspension of the certificate of fitness shall not operate before the expiration of 48 hours nor operate after that time if the holder of the certificate before the expiration of that time furnishes evidence to the satisfaction of the officer that the defects have been remedied.

(7) A suspension of a certificate of fitness under this section remains in force until it is removed or ceases under this section.

(8) When an authorised officer suspends or revokes a certificate of fitness under this section, the officer shall give notice to the Board and to the owner of the vehicle specifying in what respects he or she has found the vehicle to be unfit.

(9) A suspension of a certificate of fitness may be removed by the authorised officer who imposed it, and where any authorised officer removes any suspension, the officer shall give notice of the removal to the Board and to the owner of the vehicle.

(10) If an authorised officer refuses to grant a certificate of fitness, or to remove the suspension of any certificate of fitness, the owner of the vehicle may make application to the Board to have the vehicle examined by another authorised officer appointed by the Board, and where any such application is made an authorised officer on the matter being referred to him or her shall, if he or she considers that the prescribed conditions as to fitness are fulfilled in respect of the vehicle, recommend to the Board accordingly, and the Board may, if it thinks fit, remove the suspension.

(11) A person who uses a motor vehicle or causes or permits a motor vehicle to be used in contravention of this section commits an offence:

PROVIDED THAT during the first year after the commencement of this Ordinance a person may use a motor vehicle being a motor vehicle in respect of which a public service vehicle licence was granted under any Ordinance repealed by this Ordinance during the year immediately preceding the commencement of this Ordinance, despite that the provisions of subsection (1) have not been complied with in so far as the certificate of fitness relates to conditions prescribed for the construction and equipment of such vehicle.

55A. Plying public service vehicles in dangerous condition

– (1) A person who, being the owner of a public service vehicle, knowingly allows the vehicle to ply for hire in a dangerous condition commits an offence and is liable on conviction to a fine not exceeding 5 penalty units or to imprisonment for a term not exceeding 6 months and to the suspension of the road service licence in respect of such vehicle for such term as the Court may impose.

(2) For the purposes of this section, the production in Court of a certificate from any authorised officer to the effect that a vehicle was in a dangerous condition at the time of any alleged offence is prima facie evidence that the vehicle was in a dangerous condition at the time of the alleged offence.

56. Authorised officer – (1) For the purposes of the provisions of this Part with respect to the certificate of fitness of vehicles, the Board may appoint such officers (in this Part referred to as authorised officers) as it thinks fit and those officers shall perform such duties in relation to the examination of vehicles, the issue of certificates of fitness and otherwise as the Board or the licensing authority may require, and may with the concurrence of the Commissioner of Police Service make arrangements for the employment of suitable police officers for this purpose.

(2) An authorised officer is at any time, on production if so required of his or her authority, entitled to enter and inspect any public service vehicle and for that purpose may require any public service vehicle to be stopped and may at any time which is reasonable having regard to the circumstances enter any

premises in which the officer has reason to believe that a public service vehicle is kept, and if any person obstructs any such authorised officer in the performance of the officer's duty, or when required so to do fails to stop the vehicle, the person commits an offence.

57. Notice to be given of failure in, damage to, or alteration of vehicle – (1) The holder of a certificate of fitness, on the happening to the vehicle in respect of which the certificate was granted of any failure or damage of a nature calculated to affect the safety of the passengers or of persons using the road, shall, as soon as may be, report the matter in writing to an authorised officer.

(2) The holder of a certificate of fitness on any alteration otherwise than by way of replacement of parts being made in the structure or fixed equipment of the vehicle, shall give notice in writing of the alteration to the Board.

(3) A person who fails to comply with this section, commits an offence.

Division 1 – Road Service Licences

58. Road service licences – (1) Subject to this section, no person shall use or permit to be used any motor vehicle for carrying passengers for hire or reward except pursuant to a licence granted by the Board (in this Ordinance referred to as a road service licence) and in accordance with the terms and conditions of such licence.

(2) A person who uses a vehicle, or causes or permits a vehicle to be used in contravention of this section, or being the holder of a road service licence wilfully or negligently fails to comply with any of the conditions attached to that licence commits an offence:

PROVIDED THAT the personal representative of a deceased holder of a road service licence is taken not to contravene this section by reason only that he uses a vehicle for a period not exceeding one month, or such longer period not exceeding 3 months, from the date of the death of the holder of the licence, as the Board may allow.

(3) A motor vehicle hired for the carriage of goods is taken to be carrying passengers for hire if it carries during such hiring any

person other than the driver and not more than 4 persons whose services are necessary for the purpose of tending, loading, or unloading goods.

58A. Offence to carry passengers for reward on goods or pick-up vehicles – (1) It is an offence to use or permit to be used any goods vehicle or pick-up vehicle for the purpose of carrying passengers for hire or reward and on conviction a person is liable to a fine not exceeding 10 penalty units or to imprisonment for a term not exceeding 12 months.

(2) Subsection (1) does not apply to the carriage of passengers for hire or reward where the vehicle:

- (a) had been hired for a special purpose where no other mode of public transportation was available, or where the vehicle had been hired on the occurrence of an accident or other emergency, in either case where the driver did not offer or did not hold himself or herself out as willing to use his or her vehicle to carry passengers for hire or reward; or
- (b) is a vehicle constructed to carry in addition to goods not more than eight persons excluding the driver and has at least two doors on the right hand side and at least one door on the left hand side all of which are able conveniently to be used by persons wishing to enter or leave the vehicle.

59. Application for road service licences – An application for a road service licence shall be made in the prescribed form and shall be forwarded to the Board accompanied by:

- (a) particulars of the type or types of vehicle proposed to be used on the route;
- (b) copies of certificates of fitness in respect of each vehicle proposed to be used on the route;
- (c) timetables and fare-tables of the service which it is proposed to provide under the licence;
- (d) the prescribed fee, –

and the Board may require any applicant to submit such further particulars as may be reasonably necessary to enable it to discharge its duties in relation to the application.

60. Grant or refusal of road service licences – (1) On receipt of an application for a road service licence under section 59, or on receipt of an application for renewal, transfer, or amendment of a road service licence accompanied by such particulars as may be reasonably necessary, the Board shall give notice in such manner as it considers adequate to inform persons likely to be interested, or as may be prescribed, specifying the details of the application and stating that within the next 10 days following the date of the notice it will receive representations in writing for or against the application, or other applications in respect of the proposed service:

PROVIDED THAT where the application is for a road service licence which in the opinion of the Board should not be granted because the needs of the area of the proposed service are already adequately served, or because the route proposed is unsuitable for the regular passage of a public service vehicle or for other good cause, the Board may refuse the application without giving any public notice of the application:

PROVIDED FURTHER THAT this subsection does not apply to any amendment of a road service licence which in the opinion of the Board is not substantial and does not seriously affect the public or any other holder of a road service licence.

(2) If no written representations against the application and no other applications in respect of the service are received by the Board within the time specified in the notice, the Board may, subject to the provisions of this Part and in its discretion, grant the application upon payment by the applicant of the prescribed fee.

(3) If any written representations against the granting of the licence, or any other application for the proposed service are received by the Board within the time specified in the notice, the Board shall:

(a) by public notice in manner set out in subsection (1)

—

(i) specify the name of any applicant for the proposed service; and

(ii) appoint a day, not less than 14 days after the date of the notice, and place for the purpose of receiving in public evidence for or against any application; and

(b) forward to each applicant a copy of the notice and any other application,–
for the proposed service, together with a copy of the written representations received by the Board.

(4) After receiving any evidence and any representations for or against any application in respect of the proposed service the Board may, in its discretion but subject to the provisions of this Ordinance, grant or refuse any application in respect of the proposed licence.

(5) The Board in granting an application under this section may make such variations in the route, timetable, and fare-table applied for as it may deem expedient:

PROVIDED THAT the Board shall not make:

- (a) such variations in the route as would make it a substantially different route; or
- (b) any substantial alteration in the time-table unless the existing licensee for the route applied for has had an opportunity to make representations on the proposed alteration.

(6) When the Board grants an application, the secretary shall, upon payment of the prescribed fee, issue the road service licence as granted by the Board.

61. Matters to be considered before determining application for licence – (1) The Board shall not grant a road service licence in respect of any route if it appears to it from the particulars provided under section 59 that any provision restricting the speed of any motor vehicle or class of motor vehicle or of all motor vehicles in any area made under this Ordinance or under the regulations is likely to be contravened.

(2) In exercising its discretion to grant or refuse a road service licence for any route and its discretion to attach any conditions to any such licence the Board has regard to the following matters:

- (a) the extent to which the proposed service is necessary or desirable in the public interest;
- (b) the extent to which the needs of the area through which the proposed route will pass are already met;
- (c) the desirability of encouraging the provision of adequate and efficient services and eliminating unnecessary and un-remunerative services;

- (d) the applicant's reliability, financial stability, and the facilities at his disposal for carrying out the proposed services;
- (e) the number, type, and design, of vehicles which the applicant proposes to use under the licence;
- (f) any evidence and representations received by it at any public sitting held under section 60 and any representations otherwise made by any persons carrying on transport services of any kind likely to be affected:

PROVIDED THAT before taking into consideration any adverse representations made otherwise than at a public sitting, the Board shall give the applicant and all other persons likely to be affected a reasonable opportunity to reply to the representations.

62. Conditions of licences – Subject to the provisions of any regulations made under this Ordinance, the Board may attach to a road service licence such conditions as it thinks fit with respect to the matters to which it is required to have regard under section 61, and in particular conditions:

- (a) for securing that copies of timetables and fare-tables shall be carried in the vehicle in a position easily available to passengers in that vehicle;
 - (b) for securing that passengers shall not be taken up or set down except at specific points or shall not be taken up or set down between specified points;
 - (c) prescribing —
 - (i) for regular service, the timetables and fare-tables of the services which it is proposed to provide under the licence;
 - (ii) for any other case, such particulars as to the frequency of the services and the times to be taken on the journeys included in these services as the Board may require.
 - (d) where the Board considers it desirable in the public interest, fixing maximum fares;
 - (e) for securing that where fare-tables are fixed, fares shall not be charged in excess of such maximum;
 - (f) for securing that the vehicle shall be maintained in a fit and serviceable condition,—
- and generally for securing the safety and security of the public; and

the Board may vary in such manner as it thinks fit the conditions attached to a road service licence:

PROVIDED THAT in prescribing any fare-table under paragraph (c) the Board may vary any existing fare-table.

63. Power to revoke or suspend licences for non-compliance with conditions – (1) A road service licence may be revoked or suspended by the Board on the ground that any condition subject to which the licence was granted has not been complied with:

PROVIDED THAT the Board shall not revoke or suspend such a licence unless, owing to the frequency of the breach of such conditions, or to the breach having been committed wilfully or to the danger to the public involved in the breach, the Board is satisfied that the licence should be revoked or suspended.

(2) If a licensee abandons or curtails any service in respect of which the licensee has been granted a road service licence without the prior permission of the Board, the Board may in its discretion revoke the licence for that service.

(3) The Board shall, before revoking or suspending any road service licence, give the licensee a due opportunity to be heard.

64. Duration of licences – (1) Subject to this section, a road service licence shall, unless it is sooner revoked, expire on a date to be specified by the Board on the licence, being not later than 3 years from the date of issue of the licence.

(2) When application is made for the renewal of a licence in accordance with the provisions of section 65, the licence, if the application for renewal is not disposed of before the date of expiry of the licence, shall continue in force until the application is disposed of, unless the Board otherwise directs.

65. Renewal of licences – (1) An application for the renewal of a road service licence shall be made in the prescribed form not less than 28 days before the expiry of the licence.

(2) An application for a renewal of a licence is taken to be an application for a new licence and shall be made and dealt with accordingly.

66. Transfer of licences – (1) Subject to this section, a road service licence may be transferred to any person.

(2) Application for the transfer of a road service licence shall be made in the prescribed form and forwarded to the Board accompanied by the prescribed fee.

(3) Subject to section 60, the Board may:

- (a) refuse the transfer of the licence; or
- (b) grant the transfer of the licence, either unconditionally or upon or subject to such conditions as it thinks fit, –

but it shall not in any case grant a transfer of a licence unless it is satisfied that the proposed transferee is financially able to carry on the service and is likely to carry it on satisfactorily.

67. Amendment of licences – (1) During the currency of a road service licence the Board may of its own motion or on the application of the licensee amend the licence by altering or revoking any of the terms or conditions of the licence, or by adding any new terms or conditions that in its opinion are necessary in the public interest.

(2) In the exercise of its powers under subsection (1), the Board may in particular require the licensee to effect such improvements in the service to which the licence relates whether by way of extension or amendment of the routes authorised, the improvement of the timetable or frequency of service, or in any other manner as the Board considers desirable in the public interest.

(3) Application for the amendment of a road service licence shall be made in the prescribed form and forwarded to the Board accompanied by the appropriate fee set out in the First Schedule.

(4) If the Board intends of its own motion to amend any licence under this section, the provisions of section 60 apply, with the necessary modifications, as if the Board had received an application for the proposed amendment. In any such case a copy of the public notice given under that section shall be given to the licensee not less than 7 clear days before the expiry of the time specified in the public notice for the receipt of written representations against the proposed amendment.

68. Temporary road service licences – The Board may, on payment of the prescribed fee, grant a licence, to be known as a temporary road service licence, for a road service to be carried on for a specified period of not more than 7 days, or for any

specified occasion or occasions. The Board may, subject to such conditions as it thinks fit, delegate to any member or to the secretary power to grant a temporary road service licence.

69. Appeals to Minister – (1) A person aggrieved by any decision of the Board may within 7 days of such decision being communicated to him or her lodge with the Board an appeal to the Minister in the prescribed form.

(2) The Board shall forward such notice of appeal to the Minister, together with its comments on the matters complained of by the appellant.

(3) The Minister may, either after or without hearing the appellant and the Board, confirm, vary, or cancel the decision.

(4) The variation or cancellation of a decision is final and binding on the Board and on all parties affected thereby.

70. Regulations – The Head of State, acting by and with the advice of Cabinet, may make regulations for any purpose for which regulations may be made under this Part and for prescribing anything which may be prescribed under this Part and generally for the purpose of carrying this Part into effect, and in particular, but without prejudice to the foregoing, may make regulations with respect to any of the following matters:

- (a) the application for an issue of a certificate of fitness, the fees to be paid in respect thereof, and the requirements to be complied with before such certificate shall issue;
- (b) the issue of and the fees to be paid in respect of copies of licences or certificates of fitness in the case of licences or certificates lost or destroyed;
- (c) the documents, plates, and marks to be carried by public service vehicles and the manner in which they are to be carried;
- (d) the determination of the number of passengers a public service vehicle is adapted to carry and the number who may be carried;
- (e) the carriage of luggage and goods on public service vehicles;
- (f) the safe custody and redelivery or disposal of any property accidentally left in a public service vehicle;

- (g) the equipment to be carried by public service vehicles;
- (h) the fixing of rates and fares in respect of passengers and goods carried by public service vehicles;
- (i) the framing of timetables and fare-tables and the publication of the same;
- (j) the conduct of passengers, drivers, and conductors in public service vehicles;
- (k) the permissible loading, construction, seating accommodation, and equipment in any public service vehicle;
- (l) the grant of certificates of fitness; the persons who, subject to this Ordinance, are authorised to grant the certificate; the prescribing of conditions of construction and equipment which must be complied with before a certificate of fitness may be granted; and other matters relating to the condition and mechanical fitness of public service vehicles. Such regulation may also fix a date from which public service vehicles are required to have certificates of fitness and the period for which such certificates shall remain in force;
- (m) the use of taxi-meters, and different regulations may be made as respects different classes or descriptions of public service vehicles and as respects the same class and description of public service vehicles in different circumstances.

PART 5 MISCELLANEOUS

71. Forgery, etc., of licences and certificates – (1) If, with intent to deceive, any person:

- (a) forges or alters or uses or lends to or allows to be used by any other person any licence, certificate, or warrant under any Part of this Ordinance; or
- (b) makes or has in his or her possession any document so closely resembling such a licence, certificate, or warrant as to be calculated to deceive,–

the person commits an offence and is liable on conviction to a fine not exceeding 10 penalty units or to imprisonment not exceeding 2

years.

(2) If a person for the purpose of obtaining the grant of any licence, certificate, or warrant to himself or herself or any other person or the variation of any licence, certificate, or warrant or for the purpose of preventing the grant or variation of any licence or for the purpose of procuring any condition or limitation in relation to a licence, knowingly makes any false statement, the person commits an offence and upon conviction is liable to a fine not exceeding 5 penalty units or to imprisonment not exceeding 6 months.

(3) If a police officer has reasonable cause to believe that any licence, certificate, or warrant produced to him or her under this Ordinance by the driver of a motor vehicle is a document in relation to which an offence under this section has been committed, the officer may seize the document and retain it until the matter has been investigated.

72. Duty to give information – If the driver of a vehicle is alleged to have committed an offence under this Ordinance or any offence involving dishonesty towards a passenger or with respect to any goods or freight carried on the vehicle, the owner of the vehicle shall, on demand by any police officer, give such information as the owner can as to the identity of the driver, and if the owner fails to do so, the owner commits an offence.

72A. Offences and general penalties – (1) A person who fails to do any act required by this Ordinance to be done and any person who does any act which this Ordinance forbids to be done commits an offence.

(2) A person convicted of an offence under this Ordinance or any regulation made thereunder for which no special penalty is provided is liable in the case of the first offence to a fine not exceeding 2 penalty units and in the case of a second or subsequent conviction to a fine not exceeding 4 penalty units or to imprisonment for a term not exceeding 3 months.

(3) A person who commits a breach of any rule or traffic order made by the Principal Licensing Authority or by the Board for which no special penalty is provided in this Ordinance or any regulation made under it is liable on conviction to a fine not exceeding 0.5 penalty units.

72B. Powers of police officers or authorised officer – (1) A police officer or an authorised officer, if in uniform or in possession of any warrant or other evidence of his or her authority as a police officer or an authorised officer, is authorised to enforce the provisions of this Ordinance and any regulations or rules in force under this Ordinance, and in particular may at any time:

- (a) direct any person being in charge of or in any vehicle, whether on a road or not, or any person on any road to stop and provide his or her name and address and give any other particulars required as to his or her identity and give such information as is within his or her knowledge and as may lead to the identification of the driver or person-in-charge of any vehicle;
- (b) inspect, test, and examine the brakes or any other part of any vehicle on any road or any equipment thereof;
- (c) at the expense of the owner, move or cause to be moved to any place of safety any vehicle on any road, if the police officer or authorised officer believes on reasonable grounds that it causes an obstruction in the road or to any vehicle entrance to any property or its removal is desirable in the interests of road safety or for the convenience or in the interests of the public;
- (d) direct the driver or person-in-charge of any vehicle on any road to remove the vehicle from the road or any specified part of any road, if the police officer or authorised officer believes on reasonable grounds that it causes an obstruction in the road or to any vehicle entrance to any property or its removal is desirable in the interests of road safety or for the convenience or in the interests of the public.

(2) A police officer, if the officer believes on reasonable grounds that any vehicle does not comply with the provisions of this Ordinance or the provisions of any regulations for the time being in force under this Ordinance, may, by notice in writing given to the driver or owner of the vehicle, direct that the vehicle be not used on any road, and that notice shall continue in force

until the vehicle has been made to comply with the provisions of any such Ordinance or regulations as aforesaid:

PROVIDED THAT any such notice may be subject to a condition to the effect that the vehicle may continue to be used to reach any specified place for repair or may continue to be used for a given time or under limitations as to speed or route or otherwise.

(3) A police officer, if he or she believes on reasonable grounds that any vehicle on any road is not in a safe condition to use the road, may affix or cause to be affixed to the vehicle a notice to that effect and may give to the driver or owner of the vehicle a notice directing that the vehicle shall be removed from the road and shall not be used on any road until:

- (a) it has been inspected by an officer authorised to issue a certificate of fitness or a warrant of fitness, as the case may require; and
- (b) the officer is satisfied that the vehicle is in a safe condition for use on the road; and
- (c) a new certificate of fitness or a new warrant of fitness, as the case may require, has been issued for the vehicle and is displayed on that vehicle:

PROVIDED THAT any such notice may be subject to a condition to the effect that the vehicle may continue to be used on a road to reach any specified place for repair.

(4) When a direction is given under subsection (2), the owner of the vehicle shall not use that vehicle on a road until a new certificate of fitness or a new warrant of fitness, as the case may require, has been obtained for and is displayed on that vehicle.

(5) A person commits an offence who removes, obscures, or renders indistinguishable a notice affixed to a vehicle under subsection (3), unless a new certificate of fitness or permit or warrant of fitness, as the case may require, has been obtained for that vehicle.

(6) A person to whom any direction is given under this section shall comply with that direction, and no person shall do any act which is for the time being forbidden under this section:

PROVIDED THAT no person is taken to have committed a breach of this subsection in so far as it relates to a prohibition under subsection (2) or (3), unless the Court is satisfied that the police officer had reasonable grounds for believing that in all the circumstances of the case the prohibition was necessary in the interests of the safety of the driver or person in charge of the vehicle

or of any other person or of the public.

72C. Information and inspection – (1) An authorised officer may carry out the powers under section 72B(1).

(2) When carrying out the powers under section 72B(1), the authorised officer may carry out any pointing duty on a road if the authorised officer has reasons to believe that it is in the interest or convenience of road safety or of the public.

72D. Impounding of vehicles – (1) This section applies if, after carrying out an inspection, testing or examination under section 72B(1), an authorised officer is satisfied that the vehicle should be impounded.

(2) If a vehicle is to be impounded under this section, the officer must:

- (a) take possession of and arrange the vehicle to be towed or driven to the Authority's compound at the owner's costs fixed by the Authority;
- (b) record the details of the vehicle, its owner or any other relevant detail on a register in a form approved by the Authority; and
- (c) issue an impounding notice, in a form approved by the Authority, and give or serve the notice on the owner.

(3) The impounding notice must set out the remedial action to be undertaken by the owner and the time in which the action is to be undertaken.

(4) The vehicle is to be released to the owner if the remedial action is undertaken to the satisfaction of the Authority.

72E. Sale of impounded vehicles – (1) If, after 3 months from the expiry of the time specified in the impounding notice, no remedial action is taken by the owner and the Authority intends to sell the vehicle, the Authority must:

- (a) serve a sale notice on the owner; or
- (b) if it is impracticable to serve the owner, publish the sale notice in a newspaper.

(2) On expiry of 14 days from the service of the sale notice or from the date of publication of the sale notice under subsection (1), the Authority must publish a notice, in a newspaper, for a

date (at least 5 working days from publication of the notice) in which it will conduct the public auction.

(3) If the vehicle is not sold at the first public auction, the Authority may issue another notice for a second public auction.

(4) If the vehicle is not sold at the second auction, the Authority may sell the vehicle by private sale or dispose of the vehicle in a manner it considers proper.

(5) When a vehicle is sold under this section, the Authority must apply the proceeds of sale in the following order:

- (a) to pay any fees and charges for impounding and selling of the vehicle; and
- (b) to pay any penalty for the offence under any traffic infringement notice issued under an enactment or imposed by the court; and
- (c) pay the balance of the proceeds of sale to the owner of the vehicle.

73. Board may control traffic – (1) The Board may, with the consent of the Minister, by notice in the *Savali* make traffic orders for any or all of the following purposes:

- (a) prescribing speed limits in any specified place or any specified route not being in excess of any speed limit prescribed by regulations under this Ordinance, and special speed limits may be prescribed for vehicles of a particular class;
- (b) constituting one-way streets;
- (c) prohibiting or restricting the use of specified roads by motor vehicles of any specified class or weight either generally or during specified hours, but not so as to prevent such access to premises as may reasonably be required;
- (d) appointing public stands, parking places, and bus stops, and prescribing rules to be obeyed and rental to be paid to the Board by drivers of motor vehicles and other persons using the same;
- (e) controlling the plying for hire of public service vehicles and directing in what places such vehicles shall or shall not stop to put down or pick up passengers and on what routes or streets such vehicles may or may not ply for hire;

- (f) prescribing the times during which and the places at which goods vehicles may be parked for the purpose of loading or unloading goods;
- (g) prohibiting touting;
- (h) prohibiting the use of sound signals on any specified road between specified hours;
- (i) establishing crossings for pedestrians and for providing for the precedence of vehicles and pedestrians respectively and generally with respect to the movement of traffic (including pedestrians) at or in the vicinity of a crossing;
- (j) regulating or restricting the parking of vehicles or classes of vehicles subject to any general regulations as to parking;
- (k) providing that vehicles shall stop at certain intersections or other places;
- (l) such other purposes concerning any area of traffic regulation, traffic management and road usage not provided for under paragraphs (a) to (k).

(2) In addition to the power to make traffic orders conferred by subsection (1), the Board may, with the approval of the Minister, make and promulgate in such manner as it thinks fit, rules in respect of any matter mentioned in section 70 for which provision has not been made by regulation:

PROVIDED THAT no rule so made shall be inconsistent with any such regulation, and on the making of a regulation in regard to any matter, any rule inconsistent therewith shall to that extent be deemed to be abrogated.

(3) The power conferred on the Board by this section shall be deemed to include power to vary or revoke the regulations to control the standing of motor vehicles on public roads published in the *Samoa Gazette* No. 85 of 26 February 1935, and to make Traffic Orders relating to the standing of motor vehicles on public roads.

(4) A person contravening a traffic order made under this section commits an offence and on conviction is liable to a fine not exceeding 2 penalty units.

74. Board may require removal of obstructions to vision

– (1) For the purpose of securing that the vision of persons using vehicles on a highway is not impeded by obstructions in a manner

which is likely to be dangerous, the Board may by notice in writing require the persons having the control or possession of any such obstruction on or near a highway, other than a structure which has been erected or set up on a highway under or in pursuance of any enactment, to remove it within such time as may be specified in the notice.

(2) A person on whom any notice is served under this section may, within one month of the service of the notice, appeal to a District Court, and if it is shown to the satisfaction of the Court that the removal of the obstruction, or the removal of the obstruction within the time specified in the notice would cause undue hardship to any person, the Court may vacate the notice or may extend the time by such period as it thinks just.

(3) If an obstruction in respect of which a notice has been served under this section is not removed within the time specified in the notice, the Board may itself remove the obstruction and recover the expense of so doing as a debt from the person having the control or possession of the obstruction:

PROVIDED THAT the power of the Board under this subsection shall not be exercised until the expiration of one month after the date of the service of the notice or, if an appeal has been made to the Court against the notice, until after the appeal has been determined.

(4) In this section, “obstruction” means any machine, sign, pump, post, fence, hedge or other growing thing, or any other object of such a nature as to be capable of impeding vision.

(5) A notice under this section may be served either personally or by registered post.

75. Non-liability of Government – The Government is not liable for any injury, damage, or loss which may occur to any person or property through the failure of any road to sustain the weight of any motor vehicle or trailer.

76. Avoidance of contracts restrictive of liability – A contract for the conveyance of a passenger in a public service vehicle shall, so far as it purports to regulate or restrict the liability of any person in respect of any claim which may be made against that person in respect of the death of or bodily injury to the passenger while being carried in or entering or alighting from

the vehicle or which purports to impose any conditions with respect to the enforcement of any such liability, be void.

77. Saving of rights – Nothing in this Ordinance affects the right of the Government or a person to recover compensation from the owner or driver of any vehicle for any injury, damage, or loss which may be sustained by the Government or by such person by reason of the use of such vehicle.

78. Nuisances – Nothing in this Ordinance authorises any person to use on any road any vehicle so constructed or used as to cause a public nuisance or affects the civil liability of the driver or owner so using such a vehicle.

79. Repeals and savings – (1) The enactments specified in the Second Schedule are hereby repealed.

(2) All offices, regulations, warrants, registers, registrations, books, records, licences, certificates, notices, orders, decisions, and generally all acts of authority that originated under any of the enactments hereby repealed, and are subsisting or in force at the commencement of this Ordinance shall ensure for the purposes of this Ordinance as fully and effectually as if they had originated under the corresponding provisions of this Ordinance, and accordingly shall, where necessary, be deemed to have so originated.

(3) All matters and proceedings commenced under any enactment repealed and pending or in progress at the commencement of this Ordinance may be continued, completed, and enforced under this Ordinance.

80. Repeal of the First Schedule – The First Schedule shall be deemed to be repealed upon the commencement of regulations made under the Land Transport Authority Act 2007 which prescribe fees and charges to replace those prescribed in the First Schedule.

FIRST SCHEDULE

(Repealed by regulation 8 of the LTA (Licence Fees and Other Charges) Regulations 2011)

REVISION NOTES 2008 – 2018

This is the official version of this Act as at 31 December 2018.

This Act has been revised by the Legislative Drafting Division from 2008 to 2018 respectively, under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa;
- (b) Amendments have been made to up-date references to offices, officers and statutes;
- (c) Insertion of the commencement date;
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General:
 - (i) “Every” and “any” changed to “a/an” or “each” where appropriate;
 - (ii) Present tense drafting style where appropriate:
 - “shall be” and “has been” changed to “is/are” or “is/are to be”;
 - “shall be deemed” changed to “is/are taken”;
 - “shall have” changed to “has”;
 - “it shall be lawful” changed to “may”;
 - “it shall be the responsibility” changed to “shall”;
 - “hereof” removed;
 - “forthwith” removed;
 - “hereby” and “from time to time” (or “at any time” or “at all times”) removed;
 - (iii) Offence provisions: “shall be guilty” changed to “commits”;
 - (iv) Use of plain language:
 - “notwithstanding” changed to “despite”;
 - “pursuant to” or “in accordance with the provisions of” changed to “under”;
 - “furnish” changed to “provide” or “submit”;
 - “in lieu of” changed to “instead”;
 - “where” changed to “if”;
 - “in the case of” changed to “for”;
 - “in respect to” changed to “on”;
 - “for the purposes of” changed to “in”;
 - (v) Numbers in words changed to figures. Part numbering changed to decimal;
 - (vi) Removal of superfluous terms:
 - “the generality of”;
 - “against this Act”;
 - “of this Act/section/subsection”;
 - “the provisions of”;
 - (vii) Sections 6(1), 9, 40L and 60(3) and (5), 66(3) paragraphed;
 - (viii) Reference to “Public Service Act 1977” changed to “Public

The following amendments were made to this Act since the publication of the Consolidated and Revised Statutes of Samoa 2007:

By the *Road Traffic Amendment Act 2008, No.30*:

First Schedule - is repealed by the new section 80 inserted by Road Traffic Amendment 2008.

Part II - Insertion of new sections 11(2) and 27(2A)

Part V - Insertion of new section 80

Sections 12(2), 28(1), 29(1), 32(2), 35(5), 17(6), 19(1), 32(1), 68, 60(2), 66(2), 30(1)(b), 13(1), 13(4) and 59(d) - amended

Note: Section 7 of the Road Traffic Amendment Act 2008 has not been incorporated because this amendment was previously incorporated under a 2004 amendment. Apparently the 2008 amendment was drafted using the pre-2004 amendment copy of the Act.

By the *Road Traffic (Breathalyser) Amendment Act 2009, No.10* (commenced 31 August 2009)

Section 2 - New words and interpretations

Part II, Division 4 - New sections 40, 40A, 40B, 40C, 40D, 40E, 40F, 40G, 40H, 40I, 40J, 40K, 40L 40M, 40N, 40O, 40P and 40Q inserted.

By section 35 of the *Land Transport Authority Act 2007* (consolidation omitted in 2008-2009).

Section 11 and 19(2) - The words “unless specified otherwise by regulations made under section 36 of the Land Transport Authority Act” were inserted at the end of each provision.

By the Second Schedule of the *Ministry of Transport Act 1978*, (consolidation omitted during previous Consolidations).

Section 2 - The definition of "Board" repealed, and inserting the definitions for:

"Assistant Secretary Road Transport",
"Certifying Officer", "Examining Officer",
"Licence Controller" and "Traffic Officer"

- Section 3(1)** - repealed and substituted with existing provision

- Part II** - By inserting before section 6, *section 5* for licensing areas

- section 27(5)** - inserting after the words "police officer" wherever they occur, the words "or traffic officer".

- section 49(6)** - omitting the words "Director of Works" and substituting the words "Assistant Secretary Road Transport".

- section 50(1) and 72B** - inserting after the words "police officer" wherever they occur, the words "or traffic officer"

- First Schedule** - Empowering provision of the schedule inserted.

By the *Land Transport Authority (Licence Fees and Other Charges) Regulations 2011*:

- First Schedule** - Repealed

By the *Road Traffic Amendment Act 2013, No.21 [commencement date: 15 October 2013]*

- Section 40(3)** - Substituted
- Section 40D** - Repealed
- Section 40E(1)(b)-** Repealed
- Section 40K(3)** - Paragraph (a) amended; paragraph (b) substituted

By the Audit Act 2013, No.22:

- section 53 - by adding a new subsection (3).

By the *Road Traffic Amendment Act 2015, No.32*, commenced on 2 September 2015:

- Section 2** Inserting new terms with definitions for "authorised officer", "Chief Executive Officer"; deleting definitions for "Assistant Secretary Road Transport", "Certifying Officer" and "Traffic Officer"; paragraph (b) of the definition for "enforcement officer" substituted;

- Section 3(1)** Inserting "Land Transport Authority Act 2007"

after “this Act”;

Section 3(2)

Inserting “Part VI of the Land Transport Authority Act 2007” after “Part II”;

Section 27(5)

proviso to subsection (5) repealed and replaced semi-colon with a fullstop after “offence”.

Section 36(2)

substitute “60cwt” with “3 tonnes” and inserting new subsection (2A) after subsection (2);

Section 72C – 72E

Inserting new sections 72C, 72D and 72E after 72B;

Whole Act

Reference to “Assistant Secretary Road Transport”, is replaced by “Chief Executive Officer”;
Reference to “Public Service Act 2004” is replaced by the “Land Transport Authority Act 2007”;
Reference to “traffic officer” and “certifying officer”, respectively, is replaced by “authorised officer”.



Lemalu Hermann P. Retzlaff
Attorney General of Samoa

*This Ordinance is administered by
the Ministry of Works, Transport and Infrastructure.*
