

Malawi

## Road Traffic Act

Chapter 69:01

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# Malawi

## Road Traffic Act

### Chapter 69:01

Commenced on 15 January 1998

*[This is the version of this document at 31 December 2014.]*

*[Note: This version of the Act was revised and consolidated in the Forth Revised Edition of the Laws of Malawi (L.R.O. 1/2015), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]*

**An Act to amend and consolidate the law relating to road traffic and vehicles in Malawi and for matters connected therewith or incidental thereto**

### Part 1 – Preliminary

#### 1. Short title

This Act may be cited as the Road Traffic Act.

#### 2. Interpretation

In this Act, unless the context otherwise indicates—

"**ambulance**" means a motor vehicle specially constructed or adapted for the purpose of conveying sick or injured persons to or from a place for medical treatment and which is registered as such;

"**animal**" means any horse, cattle, ass, mule, sheep, pig, goat or dog;

"**articulated motor vehicle**" means a combination of motor vehicles consisting of a truck-tractor and a semi-trailer;

"**authorized officer**" means a road traffic examiner, motor vehicle examiner, weighbridge inspector or a traffic police officer and includes any other person whom the Minister may, from time to time, by regulation declare to be an authorized officer;

"**breakdown vehicle**" means a motor vehicle designed or adapted solely for the purpose of recovering or salvaging motor vehicles and which is registered as such;

"**breath test**" means a test for the purpose of indicating the concentration of alcohol in a person's blood carried out on that person's breath by means of a device and procedures authorized by the Minister;

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

"**builder**" means any person who, for the purposes of the business of selling motor vehicles, manufactures or assembles motor vehicles in whole or in part from used components;

"**bus**" means a motor vehicle designed or adapted for the conveyance of ten or more persons including the driver;

"**certificate of fitness**" in relation to a motor vehicle, means a certificate issued under [section 71](#);

"**combination of motor vehicles**" means two or more motor vehicles coupled together;

"**cross**" or any like expressions, means to move on a public road in a direction which intersects the normal course of travel of traffic on such road;

"**Director**" means the Director of Road Traffic appointed under [section 3](#) or his duly authorized representative;

"**driver**" means any person who drives or attempts to drive any vehicle or who rides or attempts to ride any pedal cycle or who guides any draught, pack or saddle animal or herd or flock of animals, and "drive" or any like word has a corresponding meaning;

"**driver's licence**" means a driver's licence referred to in Part V;

"**driver's licence testing centre**" means a driver's licence testing centre referred to in Part V;

"**enforcement agency**" means the Malawi Police Service or any local authority which has a traffic warden in its employment or any other agency authorized by some written law to enforce traffic law;

"**examiner**" means a road traffic examiner or a motor vehicle examiner as the case may be appointed under Part II;

"**fire-fighting vehicle**" means a motor vehicle designed or adapted solely or principally for fighting fires and which is registered as such;

"**freeway**" means a public road or a section of a public road which has been designated as a freeway by an appropriate road traffic sign;

"**goods**" means any movable property;

"**gross combination mass**", in relation to a motor vehicle which is used to draw any other motor vehicles, means the maximum mass of any combination of motor vehicles, including the drawing vehicle and load as specified by the manufacturer thereof or, in the absence of such specification, as determined by the Director;

"**gross vehicle mass**" in relation to a motor vehicle, means the maximum mass of such vehicle and its load as specified by the manufacturer or, in the absence of such specification, as determined by the Director;

"**highway authority**" has the meaning assigned thereto in the Public Roads Act;

[Cap. 69:02]

"**importer**" means any person who, for the purposes of his business of selling motor vehicles, imports new or used motor vehicles into Malawi;

"**instructor**" means any person who for direct or indirect reward—

- (a) instructs any person in the driving of a motor vehicle;
- (b) teaches any other person the rules of the road or road traffic signs in order to obtain a learner's or a driver's licence;

"**intersection**" means the area embraced within the prolongation of the lateral boundary lines of two or more public roads, open to vehicular traffic, that join one another at any angle, whether or not one such public road crosses the other;

"**intoxicating liquor**" has the meaning assigned thereto in the Liquor Act;

[Cap. 50:07]

"**learner's licence**" means a learner's licence referred to in Part IV;

"**left**" means left reckoned by reference to the direction or towards which the vehicle, animal or person is facing at the material time;

"**manufacturer**" means a person who, for the purposes of his business of selling motor vehicles, manufactures or assembles new motor vehicles;

"**medical practitioner**" means any person registered as such under the Medical Practitioners and Dentists Act;

[Cap. 36:01]

"**motorcycle**" means a motor vehicle which has two wheels and includes any such vehicle having a side-car attached;

"**motor quadrucycle**" means a motor vehicle, other than a motor cycle or a tractor, which has four wheels and which is designed to be driven by the type of controls usually fitted to a motor cycle;

"**motor trader**" means any person who is engaged in the business of buying, selling, exchanging or repairing motor vehicles required to be registered and licenced in terms of the Automotive Trades Registration and Fair Practices Act or of building permanent structures onto such vehicles and who complies with the prescribed conditions;

[Cap. 50:05]

"**motor tricycle**" means a motor vehicle, other than a motor cycle or a tractor, which has three wheels and which is designed to be driven by the type of controls usually fitted to a motor cycle;

"**motor vehicle**" means any self-propelled vehicle and includes—

- (a) a trailer; and
- (b) vehicle having pedals and an engine or an electric motor as an integral part thereof or attached thereto and which is designed or adapted to be propelled by means of such pedals and engine or motor, but does not include—
  - (i) any vehicle propelled by electrical power derived from storage batteries and which is pedestrian-controlled; or
  - (ii) any vehicle with a mass of not more than two hundred and thirty kilograms and specially designed and constructed, and not merely adapted, for the use of any person suffering from some physical defect or disability and used solely by such person;

"**motor vehicle inspection station**" means a motor vehicle inspection station registered under [section 64](#);

"**operate on a public road**" or any like expression in relation to a vehicle, means to use or drive a vehicle or to permit a vehicle to be used or driven on a public road, or to have or to permit a vehicle to be on a public road;

"**operator**" means the person responsible for the use of a motor vehicle of any class contemplated in Part VII, and who has been registered as the operator of such vehicle;

"**owner**" in relation to a vehicle, means—

- (a) the person who has the right to the use and enjoyment of vehicle in terms of a contractual agreement with the title holder of such vehicle;
- (b) any person referred to in paragraph (a), for any period during which such person has failed to return that vehicle to the title holder in accordance with the contractual agreement referred to in paragraph (a);
- (c) the person who is a title holder and has the use and enjoyment of the vehicle; or
- (d) a motor trader who is in possess of a vehicle for the purpose of sale, and who is registered as such under [section 11](#); and "owned" or any like word has a corresponding meaning;

"**park**" means to keep a vehicle, whether occupied or not, stationary for a period of time longer than is reasonably necessary for the actual loading or unloading of persons or goods, but does not include any such keeping of a vehicle by reason of a cause beyond the control of the person in charge of such vehicle;

"**pedal cycle**" means any bicycle or tricycle designed for propulsion solely by means of human power;

"**pedestrian crossing**" means—

- (a) that marked portion of a public road at an intersection included within the prolongation or connexion of the kerb line and adjacent boundary line of such road; or
- (b) any other portion of public road designated as a pedestrian crossing by appropriate road traffic signs;

**"prescribed territory"** means any state or territory declared by the Minister by notice published in the *Gazette* to be a prescribed territory;

**"professional driver"** means the driver of a motor vehicle in respect of which an operator is registered;

**"professional driving permit"** means a professional driving permit referred to in Part V;

**"public road"** has the meaning assigned thereto in the Public Roads Act;

[Cap. 69:02]

**"rescue vehicle"** means a motor vehicle designed or adapted solely for the purpose of rescuing persons and which is owned or controlled by a department of the government, local authority or a body of persons approved by the Director and is registered as such;

**"road service permit"** means a road service permit referred to in Part VII;

**"road traffic examiner"** means a road traffic examiner appointed under Part II;

**"road traffic sign"** means a road traffic sign prescribed under [section 89](#);

**"roadworthy"** in relation to a vehicle, means a vehicle which complies with the relevant provisions of this Act and is otherwise in a fit condition to be operated on a public road;

**"semi-trailer"** means a trailer having no front axle and so designed that at least fifteen per cent of its tare is superimposed on and borne by a vehicle drawing such trailer;

**"sidewalk"** means that portion of a verge intended for the exclusive use of pedestrians;

**"tare"** in relation to a motor vehicle, means the mass of such vehicle ready to travel on a road and includes the mass of—

- (a) any spare wheel and all other accessories and equipment supplied by the manufacturer as standard for the particular model of motor vehicle concerned;
- (b) anything which is a permanent part of the structure of such vehicle;
- (c) anything affixed to such vehicle so as to form a structural alteration of a permanent nature; and
- (d) the accumulators, if such vehicle is self-propelled by electrical power, but does not include the mass of—
  - (i) fuel; and
  - (ii) anything affixed to such vehicle which is not of the nature referred to in paragraph (b) or (c);

**"title holder"** in relation to a vehicle, means—

- (a) the person who has to give permission for the alienation of that vehicle in terms of a contractual agreement with the owner of such vehicle, or
- (b) the person who has the right to alienate that vehicle,

and who is registered as such under [section 11](#);

**"tractor"** means a motor vehicle designed or adapted mainly for drawing other vehicles and not to carry any load thereon, but does not include a truck-tractor;

"**traffic lane**" means a longitudinal division of a public road of sufficient width to accommodate the passage of a single line of vehicles;

"**traffic signal**" means a road traffic sign which, by means of automatic signals, alternately directs traffic to stop and permits it to proceed;

"**traffic warden**" means a traffic warden referred to in [section 182](#);

"**trailer**" means a vehicle which is not self-propelled and which is designed or adapted to be drawn by a motor vehicle, but does not include a side-car attached to a motor cycle;

"**truck-tractor**" means a motor vehicle designed or adapted—

- (a) for drawing other vehicles; and
  - (b) not to carry any load other than that imposed by a semitrailer or by ballast,
- but does not include a tractor;

"**vehicle**" means a device designed or adapted principally to travel on wheels or crawler tracks and includes such a device which is connected with a draw-bar to a breakdown vehicle and is used as part of the towing equipment of a breakdown vehicle to support any axle or all the axles of a motor vehicle which is being salvaged other than such a device which moves exclusively on rails;

"**verge**" means that portion of a road, street or thoroughfare which is not the roadway.

## Part II – Registering authority and officers

### 3. Appointment of Director of Road Traffic

There shall be appointed a Director of Road Traffic who shall, subject to the general or special directions of the Minister, exercise such powers and perform such duties as are conferred upon him by or in pursuance of this or any other Act.

### 4. Appointment of officers

- (1) For the purposes of this Act, the Director may, subject to this Act, delegate any of his duties to authorized officers.
- (2) Each authorized officer shall be under the direction of the Director.

### 5. Establishment of Committee for Road Traffic Law Enforcement

- (1) The Minister shall, by notice published in the *Gazette*, establish a Committee for Road Traffic Law Enforcement consisting of members representing such organizations as shall be prescribed in the notice.
- (2) The Committee referred to in subsection (1) shall advise the Minister with regard to any matter relating to road traffic law enforcement and shall perform such other functions assigned to it by the Minister.

### 6. Determination and enforcement of national policy on road traffic law enforcement

- (1) The Minister may determine the national policy to be followed in respect of road traffic law enforcement.
- (2) The Minister may make regulations in relation to the policy referred to in subsection (1) and the enforcement thereof.

## 7. Powers and duties of an examiner

- (1) In addition to the powers and duties conferred upon him by or under this Act an examiner may, subject to the provisions of this Act or any other written law—
  - (a) require the driver of any vehicle to stop such vehicle and by notice in writing as prescribed, direct the owner, operator, driver or person in charge of any vehicle, wherever found, which in his opinion does not comply with the requirements for a certificate or fitness to produce such vehicle for inspection, examination or testing to an appropriately registered motor vehicle inspection station for such class of vehicle at a time and place specified in such notice;
  - (b) in respect of any motor vehicle, demand from the owner, operator or driver thereof the production of any document required from such person in respect of that motor vehicle in terms of this Act, or any like document issued by a competent authority outside Malawi;
  - (c) require from any instructor—
    - (i) where such instructor is engaged in teaching or instructing for gain another person in the driving of a motor vehicle, forthwith; or
    - (ii) where such instructor is not so engaged, within seven days, to produce evidence of his registration;
  - (d) examine any motor vehicle in order to satisfy himself whether it is the motor vehicle in respect of which a document referred to in paragraph (b) was issued;
  - (e) impound any document referred to in paragraph (b) which appears to be or which the officer has reasonable grounds to believe that it is invalid or which has been or appears to have been unlawfully altered or defaced or which is being put to unlawful use, and where any document is so impounded, the examiner shall issue a receipt in respect thereof to the person concerned;
  - (f) require the owner, operator, driver or person in charge of any vehicle forthwith to furnish his name and address, and give any other particulars required as to his identification, and where applicable, immediately to produce a professional driving permit;
  - (g) demand from any person immediately to produce a licence or any other document authorizing him to drive a motor vehicle, and to produce any other document which he is required to have in respect of any motor vehicle in terms of this Act;
  - (h) impound any licence or document produced to him in terms of paragraph (g) which in his opinion may afford evidence of a contravention of any provision of this Act, and where any licence or document is so impounded, the examiner shall issue a receipt in respect thereof to the person concerned;
  - (i) require any person, whether or not such person is in any vehicle, to furnish his name and address and to give any other particulars required as to identification, as well as such information as is within his power to furnish and which may lead to the identification of the owner, operator or driver of such vehicle;
  - (j) at any reasonable time, having regard to the circumstances of the case, on the production of a search warrant, and in the exercise of any power or the performance of any duty which in terms of this Act he is authorized or required to exercise or perform, enter any premises on which he has reason to believe that any vehicle is kept;
  - (k) if he is a motor vehicle examiner, inspect, examine and test or cause to be inspected, examined or tested any vehicle in order to determine whether it is roadworthy and for that purpose may dismantle the vehicle or any part thereof or its equipment or accessories;

Provided that he shall reassemble any vehicle so dismantled unless he is requested by the person in charge of the vehicle not to do so;

- (l) drive any vehicle when necessary in the performance of his duties, if in the case of a motor vehicle, he is licensed to drive a motor vehicle of the class concerned; and
  - (m) test any applicant for a learner's licence or driver's licence in the manner and in regard to the matters as prescribed, in order to determine whether such applicant is fit and competent to obtain a learner's licence or driver's licence for the class of vehicle for which he applies.
- (2) No examiner shall test any applicant for a driver's licence under [section 24](#) unless such examiner himself is licensed to drive a vehicle of the class for which the applicant applies to obtain a driver's licence.

## 8. Powers and duties of a traffic police officer

A traffic police officer may, subject to the provisions of this Act and any other written law—

- (a) exercise or perform all the powers or duties conferred upon an examiner in [section 7\(1\)](#) except those referred to in paragraphs (k), (l) and (m) of that section;
- (b) when in uniform, require the driver of any vehicle to stop such vehicle;
- (c) on production of an identity card cause to be inspected, examined and tested at a motor vehicle inspection station, any part and the functioning of any vehicle and the equipment thereof, with a view to ascertaining whether such vehicle or the functioning thereof and the equipment comply with the provisions of this Act:

Provided that no such motor vehicle inspection station instructed by such officer to inspect, examine or test such vehicle shall, in the exercise of the authority hereby conferred upon it, permit any person to dismantle the mechanism or any working parts of any motor vehicle unless that person is a motor vehicle examiner or a licensed motor vehicle inspector and if he has so dismantled such vehicle, he shall reassemble the dismantled mechanism or parts unless he is requested by the person in charge of the vehicle not to do so;

- (d) ascertain the dimensions of, the load on, or the mass, axle mass load or axle unit mass load of any vehicle or the mass of any combination of vehicles, laden or unladen, and, if necessary for the purpose of ascertaining such mass, require any vehicle or combination of vehicles to proceed to a weighbridge or mass measuring device, and if the mass of any vehicle or combination of vehicles exceeds the mass allowed under this Act, prohibit the operation of such vehicle or combination of vehicles on a public road until such mass has been reduced or adjusted to comply with this Act:

Provided that where the load on a vehicle includes any hazardous cargo, indivisible cargo, perishable cargo, or cargo for which a special overload permit has been issued, the reduction and handling of the mass should be undertaken as prescribed by this Act or any other written law;

- (e) drive any vehicle when necessary in the performance of his duties if, in the case of any motor vehicle, he is licensed to drive a motor vehicle of the class concerned;
- (f) if any person, being the driver or apparently in charge of a vehicle, appears to such officer, by reason of his physical or mental condition, howsoever arising, to be incapable for the time being of driving or being in charge of such vehicle, temporarily forbid such person to continue to drive or be in charge of such vehicle and make such arrangements for the safe disposal or placing of the vehicle as in his opinion may be necessary or desirable in the circumstances;
- (g) regulate and control traffic upon any public road, and give such directions as may, in his opinion, be necessary for the safe and efficient regulation of the traffic and, where he is of the opinion that the driver of a motor vehicle is hampering or impeding the normal flow of traffic on a public road, direct the driver to remove the vehicle from such road and to follow another route;

- (h) require any person to furnish his name and address and give any other particulars which are required for his identification or for any process if such officer reasonably suspects such person of having committed an offence under this Act or if in the opinion of such officer he is liable to give evidence in regard to the commission or suspected commission of any such offence;
- (i) in respect of any motor vehicle, demand from the owner, operator or driver thereof to produce any document prescribed under this Act;
- (j) impound any document referred to in paragraph (i) produced to him and which in his opinion may afford evidence of a contravention of or failure to comply with any provision of this Act, and where any document is so impounded, the traffic police officer shall issue a receipt therefore to the person concerned;
- (k) require any professional driver or the operator or owner of any motor vehicle to produce for inspection and to have a copy made of—
  - (i) any record or document which that person is required under this Act to carry or have in his possession or which is required to be affixed to any such motor vehicle; or
  - (ii) any record which that person is required under this Act to preserve;
- (l) at any time enter any motor vehicle of an operator and inspect such vehicle and any recording device installed therein for the purposes of Part V of this Act, and inspect and make a copy of any record regarding the vehicle which has been produced by such recording device;
- (m) at any time enter upon any premises on which he has a reason to believe that a motor vehicle of an operator is kept or that any record or other document required to be kept under Part V of this Act are to be found, and inspect such vehicle, and inspect and copy any such record or document;
- (n) if he has reason to believe that an offence under Part V of this Act has been committed in respect of any record or document inspect by him, impound that record or document, and where any document is so impounded, the traffic police officer shall issue a receipt therefor to the person concerned;
- (o) inspect any motor vehicle or part thereof and impound any document issued in connexion with the registration and licensing of such motor vehicle which relates to such motor vehicle, where it is found that the engine or chassis number of such motor vehicle differs from the engine or chassis number as specified on the document, and direct that such motor vehicle be taken to any police station specified by such traffic police officer for police clearance, and may, after such clearance has been obtained, return the impounded document to any person who is entitled thereto, or notify the owner of the motor vehicle concerned that such vehicle must be re-registered, as the case may be;
- (p) by means of an approved speed measuring device, detect and measure the speed of any vehicle moving on a public road; and
- (q) by means of an approved device, administer a breath test to any driver of a vehicle or any person being the holder of a driver's licence occupying the seat next to a holder of a learner's licence while the holder of the learner's licence is or was driving a vehicle on a public road.

## **9. Failure to comply with instruction or direction of an authorized officer**

- (1) No person shall—
  - (a) fail to comply with any instruction or direction given to him by an authorized officer or obstruct, hinder or interfere with any authorized officer in the exercise of any power or the performance of any duty under this Act;

- (b) in order to compel any person referred to in paragraph (a) to perform or to abstain from performing any act in respect of the exercise of his powers or the performance of his duties, or on account of such person having performed or abstained from performing such an act, threaten or suggest the use of violence against or restraint upon such person or any of his relatives or dependants, or threaten or suggest any injury to the property of such person or of any of his relatives or dependants.
- (2) Whenever the production of any document which is not required to be affixed to a vehicle or to be kept with him in a vehicle by any person is demanded under section 7 (b) or 8 (i), the production thereof at any police station or office set aside by a competent authority for use by a traffic police officer, within a period of seven days after being so demanded, shall be deemed to be sufficient compliance with the demand.
- (3) Whenever any document is produced under subsection (2) at any police station or office referred to in that subsection, the officer--in-charge of such police station or office so set aside shall forthwith notify accordingly the officer who made the demand concerned and shall issue an acknowledgement of production of such document to the person producing it.
- (4) Where a document is not produced under subsection (2) and any process is to be handed to or served upon a person under this Act and any other written law, an examiner or traffic police officer may require the imprint of the left thumb of the person to whom the process relates on such process, and such person shall be obliged to furnish such imprint in the manner and at the place or places on that document and copies thereof as directed by the examiner or traffic police officer concerned:
- Provided that if it is not possible to obtain the left thumb print of such person, the imprint of any other finger may be required, in which case the finger thus used shall be identified in writing by the examiner or traffic police officer concerned under each imprint of such finger.
- (5) Any person convicted of an offence under subsection (1) shall be liable to a fine not exceeding K5,000 or to imprisonment for a period not exceeding two years or both such fine and imprisonment.

## 10. Impersonating authorized officer or inducing any such officer not to perform his duty

- (1) No person shall, by word, conduct or demeanour, impersonate an authorized officer.
- (2) No person shall connive with or induce or attempt to induce any authorized officer to omit to carry out his duty or to commit an act inconsistent with his duty.
- (3) Any person convicted of an offence under subsection (1) or (2) shall be liable to a fine not exceeding K5,000 or to imprisonment for a period not exceeding two years or both such fine and imprisonment.

## Part III – Registration and licensing of motor vehicles

### 11. Registration and licensing of motor vehicles

- (1) The Minister shall, by regulations published in the *Gazette*, prescribe the registration and licensing system of motor vehicles, including the structure and manner of implementing that system.
- (2) No person shall operate on a public road any motor vehicle which is not registered and licensed under this Part.

**12. Previous registration deemed to be registration under this Act**

Notwithstanding anything contained in [section 11](#), any motor vehicle registered under the Act now repealed shall be deemed to be registered under this Act, and the registration mark assigned to such motor vehicle under the Act now repealed shall be deemed to have been assigned under this Act.

**Part IV – Registration and licensing of manufacturers, builders and importers****13. Application for registration and registration of manufacturer, builder and importer**

- (1) Every manufacturer, builder or importer shall apply in the prescribed manner to the Director for registration as a manufacturer, builder or importer.
- (2) If the Director is satisfied that an applicant referred to in subsection (1) complies with the qualifications for competency as prescribed for the specific category in respect of which the application is made, the Director shall register such applicant on the conditions and in the manner prescribed.
- (3) The Director may alter the conditions referred to in subsection (2).

**14. Suspension and cancellation of registration of manufacturer, builder or importer**

The Director may, upon giving reasons in writing, suspend for a stated period or cancel the registration of a manufacturer, builder or importer.

**15. Manufacturer, builder or importer to register motor vehicles**

Every manufacturer, builder or importer of motor vehicles shall register in the prescribed manner every motor vehicle manufactured, built or imported by him before he distributes or sells such vehicle.

**16. Right of appeal to Minister**

- (1) Any person who is aggrieved by the refusal of the Director to register him as a manufacturer, builder or importer or at the suspension or cancellation of his registration as a manufacturer, builder or importer or at the conditions on which he is so registered may, within twenty-one days after such refusal, suspension or cancellation, or notification of the conditions on which he is so registered, appeal to the Minister against such refusal, suspension, cancellation or conditions in accordance with such procedure and upon payment of such fees as may be prescribed, and such person shall at the same time serve a copy of the appeal on the Director.
- (2) After receipt of the copy of the appeal referred to in subsection (1), the Director shall forthwith furnish the Minister with his reasons for the refusal, suspension, cancellation or conditions to which such appeal refers.
- (3) The Minister may after considering the appeal give such decision as he may deem fit.

**17. Appointment of inspector of manufacturers, builders and importers**

- (1) The Minister shall designate a person, an authority or an organization as an inspector of manufacturers, builders and importers.
- (2) The powers and duties of the inspector referred to in subsection (1) in relation to the registration and inspection of manufacturers, builders or importers and any motor vehicles manufactured, built or imported shall be as prescribed.

## Part V – Licensing of drivers, issuing professional driving permits and hours of driving

### 18. Driver of motor vehicle to be licensed

- (1) No person shall drive a motor vehicle, teach for gain the driving of motor vehicles or accompany a holder of a learner's licence on a public road except under the authority and in accordance with the conditions of a driver's licence issued to him under this Part or of any document deemed to be a licence for the purposes of this Part and unless he keeps such driver's licence or document or any other prescribed authorization with him in the vehicle.
- (2) Subject to [section 20](#), no person shall drive a motor vehicle on a public road under the authority of a learner's licence unless such person is accompanied by and is under the direct personal supervision of a person who is in possession of a driver's licence authorizing him to drive that class of vehicle and occupying the seat next to such holder of a learner's licence.

### 19. Licence to drive

- (1) A licence authorizing the driving of a motor vehicle shall be issued by the Director in accordance with the provisions of this Part and shall be either—
  - (a) a learner's licence; or
  - (b) a licence, to be known as a driver's licence, and, except as otherwise provided in this Part, no person shall be examined or tested for the purpose of the issue to him of a driver's licence unless he is the holder of a learner's licence.
- (2) A learner's licence, a driver's licence and a professional driving permit issued by the Director shall remain the property of the Government.

### 20. Prescribing, classification and extent of learner's or driver's licence

Subject to the provisions of this Part—

- (a) the category of a learner's or driver's licence;
- (b) the class of motor vehicle to which each category of such licence relates;
- (c) the authority conveyed by such licence;
- (d) the period of validity of such licence;
- (e) the limitations to which the authority conveyed by such licence shall be subject; and
- (f) the form and content of such licence, shall be as prescribed.

### 21. Disqualification from obtaining or holding learner's or driver's licence

- (1) A person shall be disqualified from obtaining or holding a learner's or driver's licence—
  - (a) if he—
    - (i) in the case of any licence for a motor cycle without a side-car having an engine with a cylinder capacity not exceeding 125 cubic centimetres or which is propelled

- by electrical power or which is a vehicle as contemplated in paragraph (b) of the definition of "motor vehicle" is under the age of sixteen years;
- (ii) in the case of any licence for a motor vehicle, being a motor vehicle not of a class as referred to in subparagraph (i) and the gross vehicle mass of which does not exceed 3,500 kilograms or, where such motor vehicle is—
    - (A) a goods vehicle, the gross vehicle mass of which does not exceed 3,500 kilograms; or
    - (B) a combination of motor vehicles, the gross combination mass of which does not exceed 3,500 kilograms, is under the age of eighteen years; or
  - (iii) in the case of any other licence, is under the age of twenty-one years;
- (b) during any period in respect of which he has been declared by a competent authority to be disqualified from obtaining or holding a licence to drive a motor vehicle, while such disqualification remains in force;
  - (c) where a licence to drive a motor vehicle held by him has been suspended by a competent authority, while such suspension remains in force;
  - (d) where a licence to drive a motor vehicle held by him has been cancelled by a competent authority, while such cancellation remains in force;
  - (e) if such licence relates to a class of motor vehicle which he may already have driven under a licence held by him unless the applicant is obtaining a renewal of such licence;
  - (f) if he is suffering from one or other of the following diseases or disabilities—
    - (i) epilepsy;
    - (ii) sudden attacks of disabling giddiness or fainting due to hypertension or any other causes;
    - (iii) any form of mental illness to such an extent that it is necessary that he be detained, supervised, controlled and treated as a patient under the Mental Treatment Act;  
*[Cap. 34:02]*
    - (iv) any condition causing muscular incoordination;
    - (v) uncontrolled diabetes mellitus;
    - (vi) defective vision ascertained in accordance with a prescribed standard;
    - (vii) any other disease or physical defect which is likely to render him incapable of effectively driving and controlling a motor vehicle of the class to which such licence relates without endangering the safety of the public:  
  
Provided that deafness shall not of itself be deemed to be such a defect;
  - (g) if, on the basis of expert medical evidence, he is addicted to the use of any drug having a narcotic effect or the excessive use of intoxicating liquor; or
  - (h) in such other circumstance as may be prescribed, either generally or in respect of a particular class of a learner's or driver's licence.
- (2) The Director shall, before issuing a driver's or learner's licence, ensure that the person is not disqualified under paragraphs (f) and (g) of subsection (1), and for that purpose, the Director may administer a test in such a manner as he may deem fit.

- (3) The Director may, if he deems it expedient and on such conditions as he may deem fit, declare that any person shall no longer be subject to any disqualification, suspension or cancellation referred to in subsection (1) (b), (c) or (d), respectively.

## 22. Failure to disclose disqualification in respect of licence authorizing driving of motor vehicle

- (1) No person shall, when applying for a learner's or driver's licence, wilfully fail to disclose any disqualification to which he is subject under [section 21](#).
- (2) Any person who—
  - (a) is the holder of a licence authorizing the driving of a motor vehicle under this Part; and
  - (b) becomes aware thereof that he is disqualified from holding such licence, shall, within a period of seven days after having so become aware of the disqualification, surrender the licence to the Director.
- (3) When a licence is surrendered under subsection (2) the Director shall cancel it:  
Provided that the licence shall not be cancelled if the Director is satisfied that the holder thereof is competent to drive the class of motor vehicle concerned with the aid of corrective lenses, an artificial limb or any other physical aid, in which case the Director shall—
  - (a) endorse the licence accordingly and such endorsement shall be a condition subject to which the licence is held; and
  - (b) return the licence.

## 23. Application for and issue of learner's licence

- (1) A person desiring to obtain a learner's licence shall in person apply therefore in the prescribed manner to a designated driver's licence testing centre.
- (2) An application made under subsection (1) shall be accompanied by the prescribed fees.
- (3) Upon receipt of an application under subsection (1), the driver's licence testing centre concerned shall, if it is satisfied from the information furnished in the application or from such further information as such centre may reasonably request, that the applicant is not disqualified from obtaining a learner's licence, examine and test the applicant for a learner's licence and in respect of the matters as prescribed.
- (4) If the examiner is satisfied that the applicant has sufficient knowledge of the matters as prescribed in respect of the class of vehicle concerned, and is not disqualified under [section 21](#) from obtaining a learner's licence, such examiner shall upon payment by the applicant of the prescribed fees issue or authorize the issue of a learner's licence to such applicant in respect of the appropriate class of motor vehicle.
- (5) A person who wilfully or negligently issues or authorizes the issue of a learner's licence contrary to the provisions of this Part commits an offence.
- (6) Any person convicted of an offence under subsection (5) shall be liable to a fine not exceeding K5,000 or to imprisonment for a period not exceeding two years or both such fine and such imprisonment.

## 24. Application for and issue or renewal of driver's licence

- (1) The holder of a—

- (a) learner's licence who desires to obtain a driver's licence; or
  - (b) valid driver's licence who desires to obtain a renewal of a valid driver's licence, shall apply in the prescribed manner to a designated driver's licence testing centre for a licence to drive a motor vehicle of a class the driving of which is authorized by his learner's licence or valid driver's licence as the case may be.
- (2) An application under subsection (1) shall be accompanied by the prescribed fees.
  - (3) Upon receipt of an application under subsection (1), the driver's licence testing centre concerned shall, if it is satisfied from the information furnished in the application or from such further information as such centre may reasonably request, that the applicant is not disqualified from obtaining a driver's licence, determine a day on and time at which the applicant shall present himself to be examined by an examiner in the manner and on the matters as prescribed and for such purpose the applicant shall supply a motor vehicle of the class to which his application relates.
  - (4) An examiner shall test an applicant for a driver's licence in the manner and in respect of the matters as prescribed.
  - (5) If an examiner has satisfied himself under subsection (4) that an applicant for a driver's licence is competent to drive a motor vehicle of the class to which such applicant's application relates, such examiner shall upon payment by the applicant of the prescribed fees issue or authorize the issue of the driver's licence to such applicant in respect of such class of motor vehicle, and the examiner or the person authorized by him shall—
    - (a) in the case where the applicant has under subsection (3) provided a motor vehicle equipped with an automatic or semiautomatic transmission, endorse the driver's licence to the effect that authorization is granted only for the driving of a motor vehicle equipped with the automatic or semi-automatic transmission; and
    - (b) in the case where the applicant is found to be competent to drive with the aid of corrective lenses, an artificial limb or other physical aid, endorse the licence accordingly.
  - (6) A person who wilfully or negligently—
    - (a) issues a driver's licence;
    - (b) authorizes the issue of a driver's licence; or
    - (c) renews a driver's licence,contrary to the provisions of this section, commits an offence.
  - (7) Any person convicted of an offence under subsection (6) shall be liable to a fine not exceeding K5,000 or to imprisonment for a period not exceeding two years or both such fine and imprisonment.

## 25. Power of Director in respect of examination and testing of applicant for learner's or driver's licence

Notwithstanding anything to the contrary contained in this Act, the Director may, whenever he deems it expedient, direct where by which examiner an applicant for a learner's or driver's licence shall be examined and tested and at which driver's licence testing centre such applicant may apply for a learner's or driver's licence.

**26. Holders of licence to drive motor vehicle shall give notice of change of particulars**

When the holder of a motor vehicle driver's licence which was issued under this Part has changed his place of residence permanently or his name he shall, within fourteen days after such change, notify the Director of his new residential and postal address or his new name as the case may be.

**27. Right of appeal to Director**

- (1) Any person who is aggrieved by the refusal of an examiner to issue or authorize the issue to him of a learner's or driver's licence may, within twenty-one days after such refusal, appeal to the Director in accordance with such procedure and upon payment of such fees as may be prescribed and such person shall at the same time serve a copy of the appeal on the examiner for drivers' licences concerned.
- (2) After receipt of the copy of the appeal referred to in subsection (1), the examiner shall forthwith furnish the Director with his reasons for the refusal to which such appeal refers.
- (3) For the purpose of deciding an appeal under subsection (1), the Director may appoint any person to examine and test the appellant as to his competency to drive the class of motor vehicle concerned and may, in addition, require each party to the appeal to furnish such information and evidence as he may deem expedient.
- (4) The Director may after considering the appeal give such decisions as he may deem fit.

**28. When licence not issued in terms of this Act deemed to be driver's licence**

- (1) Subject to the provisions of subsection (2)—
  - (a) a licence authorizing the driving of a motor vehicle issued in a prescribed territory; and
  - (b) an international driving permit issued while the holder thereof was not permanently or ordinarily resident in Malawi,shall, in respect of the class of motor vehicle to which that licence or permit relates and subject to the conditions thereof, be deemed to be a licence for the purposes of this Part:

Provided that if that licence is a provisional licence of any kind or an international driving permit, it shall not authorize the driving of a motor vehicle carrying passengers and for which a professional driving permit is required.
- (2)
  - (a) The period for which a licence referred to in subsection (1) (a) or an international driving permit referred to in subsection (1) (b) shall be deemed to be a licence for the purposes of this Part shall be as prescribed.
  - (b) The holder of a licence referred to in subsection (1)(a) or an international driving permit referred to in subsection (1) (b) may apply for a driver's licence to take the place of such licence or permit.
- (3) An application under subsection (2) (b) shall be made in the prescribed manner to a designated driver's licence testing centre and shall be accompanied by the prescribed fee.
- (4) On receipt of an application under subsection (2) (b), the driver's licence testing centre concerned shall issue to the applicant a driver's licence.

## 29. Suspension or cancellation by Director of learner's or driver's licence

- (1) Where the Director is of the opinion that the holder—
  - (a) of a learner's or driver's licence issued under this Part or the repealed Act is disqualified under [section 21](#) from holding the licence, he shall cancel such licence; or
  - (b) of a licence referred to in paragraph (a) would constitute a source of danger to the public by driving a motor vehicle on a public road, he may cancel or suspend such licence.
- (2) For the purposes of subsection (1) the Director may request the holder of the licence concerned to submit himself within such period as the Director may determine—
  - (a) to an examination and a test by one or more examiners nominated by the Director to determine his competency to drive a motor vehicle of the class to which his licence relates and for the purpose of such examination and test the holder of the licence concerned shall provide a motor vehicle of the class concerned:

Provided that the holder of the licence concerned may request that he be submitted to such examination and test to determine his competency to drive a motor vehicle—

    - (i) of any other class of which the driving is authorized by his licence; or
    - (ii) of a specific prescribed class,  
and for the purpose of such examination and test he shall provide a motor vehicle of the class concerned;
  - (b) to an examination by a medical practitioner nominated by the Director to determine his physical and mental fitness to drive a motor vehicle; or
  - (c) to an examination and test referred to in paragraph (a) and an examination referred to in paragraph (b).
- (3) Where the holder of the licence concerned is after the examination and test under subsection (2) (a) found to be competent to drive a motor vehicle of the class provided by him and is not disqualified under [section 21](#), the Director may direct—
  - (a) that every licence authorizing the driving of a motor vehicle and of which he is the holder shall be cancelled; and
  - (b) that a driver's licence in respect of a motor vehicle of the class provided by him shall be issued to him free of charge and for the purpose the provisions of [section 24](#) (5) (a) and (b) shall apply *mutatis mutandis*.
- (4) The cost of any examination referred to in subsection (2) (b) shall be a charge against the holder of the licence concerned.
- (5) Where a person fails to comply with a request under subsection (2), the Director may forthwith suspend or cancel, as the case may be, the licence concerned unless such person is able to satisfy the Director within a period determined by the Director that such failure was due to a reason beyond his control and that such licence should not be so suspended or cancelled.
- (6) The suspension or cancellation of a licence under this section shall apply to any other learner's or driver's licence held by the holder of such suspended or cancelled licence and recognized under this Part as a valid licence, as the Director may determine.
- (7) When a licence is cancelled or suspended under subsection (1) or is cancelled under subsection (3) (a), the holder thereof shall forthwith surrender the licence to the Director who shall effect an appropriate endorsement thereon and, in the case where the licence has been suspended—

- (a) retain the licence for the period of suspension; and
  - (b) return the licence to the holder thereof upon the expiry of the period of suspension.
- (8) The Director may, where he deems it expedient and on such conditions as he may deem fit, reinstate a licence suspended under this section.
- (9) The Director may, where he deems it expedient and on such conditions as he may deem fit, authorize a person whose licence has been cancelled under this section to apply for a learner's and a driver's licence.
- (10) A person whose learner's or driver's licence has been cancelled by any competent authority, shall be deemed to be unlicensed.
- (11) Where any circumstance arises in relation to the holder of a motor vehicle driver's licence issued in a prescribed territory, which, would have disqualified such person as under [section 21](#) from obtaining a driver's licence, or if such holder would, constitute a source of danger to the public by driving a motor vehicle on a public road, he may inform such person that such licence is of no force and effect within Malawi and from the date on which such person is so informed the licence shall cease to be in force within Malawi.

### 30. Lapsing of endorsement on licence

- (1) An endorsement pursuant to any order of a court effected upon any motor vehicle driver's licence under this Part shall lapse after the expiry of a period of three years from the date upon which such endorsement was made:
- Provided that no other period of suspension of such licence shall be included in the calculation of the period of three years.
- (2) Where, in relation to a driver's licence, all endorsements have lapsed under subsection (1), the Director may, upon application by the holder thereof in the prescribed manner and upon payment of the fees referred to in [section 24](#) (2), issue to such holder a driver's licence free from any endorsements.

### 31. Cancellation or amendment of endorsement on licence

- (1) Where the holder of a licence—
- (a) authorizing the driving of a motor vehicle in Malawi; and
  - (b) on which an endorsement has been effected, is of the opinion that there are circumstances justifying the cancellation or amendment of such endorsement, he may apply to the Director for the cancellation or amendment of such endorsement.
- (2) An application under subsection (1) shall be accompanied by—
- (a) the licence concerned;
  - (b) a statement by the applicant setting forth the reasons for the application; and
  - (c) the prescribed fees.
- (3) Upon receipt of an application under subsection (1), the Director may, for the purpose of the consideration thereof—
- (a) require the applicant to submit such further statement or document; or
  - (b) take such other steps,

as the Director may deem expedient.

- (4) Where an application under subsection (1)—
  - (a) is refused by the Director, he shall notify the applicant accordingly and return the licence concerned to him; or
  - (b) is granted by the Director, he shall cancel the licence and issue or authorize the issue of a new licence without endorsement or reflecting the amended endorsement, as the case may be.

### **32. Driving instructor to be licensed**

- (1) No person shall act as a driving instructor and teach for gain the driving of motor vehicles unless he is licensed under [section 34](#).
- (2) No person shall employ any other person as a driving instructor or make use of his services as a driving instructor unless such person is licensed as an instructor in terms of [section 34](#).

### **33. Application for driving instructor's licence**

- (1) A person desiring to be licensed as a driving instructor shall apply to the Director in the prescribed manner.
- (2) An application referred to in subsection (1) shall be accompanied by the prescribed fees.

### **34. Licence and classification of driving instructor**

Where the Director is satisfied that an applicant referred to in [section 33](#) fulfills the competency and classification qualifications pertaining to the specific category of the application, he shall license and classify such applicant.

### **35. Suspension and cancellation of driving instructor's licence**

The Director may suspend for such period as he may deem fit, or cancel, the licence of a driving instructor if such instructor—

- (a) is guilty of misconduct in the exercise of his powers or the performance of his duties; or
- (b) failed without reasonable cause to attend an appropriate refresher course at a training centre approved by the Minister within a prescribed period.

### **36. Right of appeal to Minister**

- (1) Any person who is aggrieved by the refusal of the Director to licence him as a driving instructor or with the suspension or cancellation of his licence as a driving instructor may, within twenty-one days after such refusal, suspension or cancellation, appeal to the Minister against such refusal, suspension or cancellation in accordance with such procedure and upon payment of such fees as may be prescribed and such person shall at the same time serve a copy of the appeal on the Director.
- (2) After receipt of the copy of the appeal referred to in subsection (1), the Director shall forthwith furnish the Minister with his reasons for the refusal, suspension or cancellation to which such appeal refers.
- (3) The Minister may after considering the appeal give such decision as he may deem fit.

**37. Driving school to be licensed**

No person or organization shall act as a driving school unless he or it is licensed under [section 39](#).

**38. Application for driving school licence**

- (1) A person or organization desiring to be licensed as a driving school shall apply to the Director.
- (2) An application referred to in subsection (1) shall be accompanied by the prescribed fees.

**39. Licence and classification of driving schools**

Where the Director is satisfied that an applicant referred to in [section 38](#) fulfils the competency and classification qualifications as prescribed pertaining to the specific category of the application, he shall licence and classify such applicant.

**40. Suspension and cancellation of driving school licence**

The Director may, upon giving reasons in writing, suspend for a stated period or cancel, the license of a driving school if such driving school—

- (a) is guilty of misconduct in the exercise of its powers or the performance of its duties; or
- (b) employs any person not licensed and classified under [section 34](#) for the purpose of teaching for gain the driving of motor vehicles.

**41. Right of appeal to Minister**

- (1) Any person or organization aggrieved by the refusal of the Director to license him or it as a driving school or with the suspension or cancellation of his or its licence as a driving school may, within twenty-one days after such refusal, suspension or cancellation, appeal to the Minister against such refusal, suspension or cancellation in accordance with such procedure and upon payment of such fees as may be prescribed and such person or organization shall at the same time serve a copy of the appeal on the Director.
- (2) After receipt of the copy of the appeal referred to in subsection (1), the Director shall forthwith furnish the Minister with his reasons for the refusal, suspension or cancellation to which such appeal refers.
- (3) The Minister may, make such decision on the appeal as he may deem fit.

**42. Learner's or driver's licence issued contrary to provisions of this part to be void**

A learner's or driver's licence issued contrary to the provisions of this Part shall be void and upon the request of the Director, or a traffic police officer, as the case may be, the holder of such licence shall forthwith submit it to the Director, or such traffic police officer, as the case may be, who shall cancel the licence:

Provided that the traffic police officer may cancel such licence only with the prior approval of the Director.

**43. Use of learner's or drivers licence by another person prohibited**

No person who is the holder of a learner's or driver's licence shall allow such licence to be used by any other person.

#### **44. Unlicensed driver not to be employed or permitted to drive motor vehicle**

No person who is the owner or operator or is in charge or control of a motor vehicle shall employ or permit any other person to drive such vehicle on a public road unless such other person is licensed under this Part to drive the vehicle.

#### **45. Permit required by professional driver**

- (1) No person shall drive on a public road a motor vehicle in respect of which an operator is registered except in accordance with the conditions of a permit, to be known as a professional driving permit, issued to him under this Part and unless he keeps such permit with him in the vehicle:

Provided that the provisions of this subsection shall not apply to the holder of a learner's licence who drives such vehicle while he is accompanied by a person registered as a professional driver for such category of vehicle.

- (2) Any document issued by a competent authority in any prescribed territory and serving in such territory a purpose similar to that of a professional driving permit shall, subject to the conditions thereof and to such conditions as may be prescribed, be deemed to be a professional driving permit for the purpose of subsection (1).

#### **46. Prescribing of classification and extent of professional driving permit**

Subject to the provisions of this Part—

- (a) the categories of professional driving permits;
- (b) the authority conveyed by such permits;
- (c) the period of validity of such permits; and
- (d) the form and contents of such permits, shall be as prescribed.

#### **47. Application for professional driving permit**

- (1) Any person desiring to obtain a professional driving permit shall, subject to the provisions of this Part, apply in the prescribed manner to a driving licence testing centre.
- (2) An application referred to in subsection (1) shall be accompanied by the prescribed fees.

#### **48. Registration of professional driver**

If the Director is satisfied that the applicant referred to in [section 47](#) fulfils the prescribed requirements for the issue to him of a professional driving permit, he shall register such applicant as a professional driver.

#### **49. Issue of professional driving permit**

After the Director has registered an applicant as a professional driver under [section 48](#), the Director shall issue in the prescribed manner a professional driving permit to the applicant.

**50. Suspension or cancellation of professional driving permit by Director**

- (1) Where any circumstance arises in relation to the holder of a professional driving permit issued in Malawi which, in the opinion of the Director, would entitle him to refuse to issue a professional driving permit to such holder, or if such holder has been convicted of a second or subsequent offence which, in the opinion of the Director, relates to the driving of a motor vehicle or a failure to stop after or report an accident, the Director may, upon giving reasons in writing, suspend or cancel the professional driving permit held by such person and in such event the Director shall notify that person accordingly.
- (2) If a suspension or cancellation is effected under subsection (1), the person concerned shall forthwith surrender the professional driving permit to the Director.
- (3) After the expiry of any period of suspension the Director shall upon request restore to the person entitled thereto the professional driving permit surrendered to him under subsection (2), if the validity thereof has not expired.
- (4) Where any circumstance arises in relation to the holder of a professional driving permit or like document issued outside Malawi which, in the opinion of the Director, would have entitled him to refuse to issue a professional driving permit to such holder or if such holder has been convicted of a second or subsequent offence which, in the opinion of the Director, relates to the driving of a motor vehicle or a failure to stop after or report an accident, the Director may inform such person that such permit is of no force and effect within Malawi and from the date on which such person is so informed the permit shall cease to be in force within Malawi.

**51. Right of appeal to Minister**

- (1) Any person who is aggrieved by the refusal of the Director to issue him with a professional driving permit or the conditions subject to which a professional driving permit has been issued to him may, within twenty-one days after such refusal or such issuance, as the case may be, appeal to the Minister against any such refusal or conditions in accordance with such procedure and upon payment of such fees as may be prescribed and such person shall at the same time serve a copy of the appeal on the Director.
- (2) On receipt of the copy of the appeal referred to in subsection (1), the Director shall forthwith furnish the Minister with his reasons for the refusal or the conditions of issuance to which such appeal relates.
- (3) The Minister may, make such decision on the appeal as he may deem fit.

**52. Driver of motor vehicle in respect of which operator is registered to hold professional driving permit**

No person who—

- (a) is the owner or operator of or is in charge or control of a motor vehicle in respect of which an operator is registered shall employ or permit any driver to drive such vehicle on a public road unless such driver is the holder of a professional driving permit where such permit is required under this Part for that purpose; or
- (b) is the holder of a professional driving permit under this Part shall allow such permit to be used by any other person.

**53. Professional driving permit issued contrary to provisions of this Part to be void**

Any professional driving permit issued contrary to the provisions of this Part shall be void, and the holder thereof shall, on demand by the Director or by a traffic police officer, surrender forthwith such permit to the Director or such traffic police officer.

**54. Drivers to comply with driving hours**

- (1) No driver of a motor vehicle for a class prescribed for the purposes of this subsection shall drive such motor vehicle on a public road for a period or periods of time exceeding the prescribed period or periods.
- (2) No operator or person exercising control over a professional driver shall permit, induce, force or in any other way influence such driver to contravene the provisions of subsection (1).

**55. Certain classes of motor vehicles to contain recording device to measure time**

- (1) No person shall operate on a public road a motor vehicle of a class referred to in [section 54](#) (1) unless such vehicle is fitted with a prescribed automatic, electronic, electrical or mechanical device for the purpose of recording the period of time for which such vehicle is being driven.
- (2) The driver of a motor vehicle of class referred to in [section 54](#) (1) shall, when driving such motor vehicle on a public road, use the recording device referred to in subsection (1).

**56. Duties of operator and driver of certain class of motor vehicle with regard to records**

The duties of an operator and a driver of a motor vehicle of a class referred to in [section 54](#) (1), in relation to the maintenance and preservation of records of driving hours produced by the recording device referred to in [section 55](#) (1) shall be as prescribed.

**57. Records produced by recording device may be removed and analyzed**

- (1) In the event of a motor vehicle being involved in an accident, a traffic police officer may remove and analyze or cause to be removed and analyzed the records produced by a recording device referred to in [section 55](#) (1) pertaining to that vehicle.
- (2) A record produced by means of a recording device, shall *prima facie* be regarded as referring to the motor vehicle to which that recording device is attached and the information recorded by or in such recording device shall *prima facie* be deemed to be correct.

**58. Production of licence and permit to court**

- (1) Where any person is charged with any offence under this Act relating to the driving of a motor vehicle or a failure to stop after or report an accident, he shall produce every licence and permit of which he is the holder, or a duplicate thereof if he is not in possession of the original, to the court at the time of the hearing of the charge.
- (2) For the purposes of this Part—
  - (a) "licence" means a learner's or driver's licence; and
  - (b) "permit" means a professional driving permit.
- (3) No person referred to in subsection (1) shall fail, without reasonable excuse, to produce under that subsection every licence and permit of which he is the holder.

**59. Court may issue order for endorsement, suspension or cancellation of licence or permit disqualify person from obtaining licence or permit**

- (1) A court convicting a person of an offence under this Act relating to the driving of a motor vehicle or a failure to stop after or report an accident may, in addition to imposing a sentence, issue an order if the person convicted is—
  - (a) the holder of a licence, that particulars of the conviction, sentence and any other order of the court consequent thereupon be endorsed on such licence and the registrar or clerk of such court shall endorse such licence accordingly;
  - (b) the holder of a driver's licence or of a learner's licence and a permit that such driver's licence or learner's licence and permit be suspended for such period as the court may deem fit or that such licence or licence and permit be cancelled and any such order shall be endorsed on such licence as provided for in paragraph (a);
  - (c) the holder of a driver's licence or of a learner's licence and a permit that such driver's licence or learner's licence and permit be cancelled and that the person convicted be disqualified from obtaining a driver's licence or a learner's licence and permit for any class of motor vehicle for such period as the court may deem fit and such order shall be endorsed on the licence as provided in paragraph (a); or
  - (d) not the holder of a driver's licence or of a learner's licence and permit declaring him to be disqualified from obtaining a driver's licence or a learner's licence and permit either indefinitely or for such period as the court may deem fit.
- (2) The making of an endorsement under subsection (1) may be postponed by the court issuing the order until any appeal against the conviction or sentence or both has been disposed of.

**60. On conviction of certain offences licence and permit shall be suspended for minimum period and learner's or driver's licence cannot be obtained**

- (1) The driver's licence or the learner's licence and permit of any person convicted of an offence referred to in—
  - (a) [section 124](#) (1) (a), (b) or (c), in the case of injury to a person;
  - (b) [section 126](#) (1), if the court found that the offence was committed by driving recklessly; or
  - (c) [section 128](#) (1) or (2), shall be suspended in the case of—
    - (i) a first offence, for a period of at least six months;
    - (ii) a second offence, for a period of at least one year; or
    - (iii) a third or subsequent offence, for a period of at least five years.
- (2) A court convicting any person of an offence referred to in subsection (1) shall bring the provisions of subsection (1) to the notice of such person.
- (3) The provisions of [section 61](#) shall apply *mutatis mutandis* to the suspension of a driver's licence or a learner's licence and permit under this section.

**61. Procedure subsequent to endorsement, suspension or cancellation of licence or permit**

- (1) Where a court has issued an order that a licence be endorsed or that such licence or any permit be suspended or cancelled the court shall advise the Director of the conviction and sentence of the person concerned.
- (2) Where the court has issued an order that a licence, or a permit be cancelled the court shall transmit such licence or permit to the Director.
- (3) A licence or a permit which has been suspended as a result of an order of the court shall, after it has been endorsed accordingly by the court concerned, be transmitted to the Director who shall return such licence to the person entitled thereto after the period of suspension has lapsed.
- (4) Whenever a licence is endorsed, or a licence and permit are suspended or cancelled under a court order, the endorsement, suspension or cancellation shall apply to every other licence and permit, as the case may be, held by the person concerned and every such other licence or permit shall be endorsed accordingly by the court and thereafter returned to the person entitled thereto:

Provided that if such other licence or permit—

- (a) is suspended, that licence or permit shall be transmitted to the Director who shall return such licence to the person entitled thereto after the period of suspension has lapsed; or
- (b) is cancelled, that licence and permit shall be transmitted by the court to the Director.

**Part VI – Fitness of vehicles****62. Motor vehicle inspection station to be registered**

- (1) No person or organization shall operate a motor vehicle inspection station after a date to be determined by the Minister by notice in the *Gazette*, unless such station is registered and classified under this Part.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding K5,000 or to imprisonment for a period not exceeding two years or both such fine and imprisonment.

**63. Application for registration of motor vehicle inspection station**

- (1) Any person or organization desiring to operate a motor vehicle inspection station shall apply to the Director for the registration and classification of such station.
- (2) An application made under subsection (1) shall be accompanied by the prescribed fees.

**64. Registration and classification of motor vehicle inspection station**

Where upon receipt of an application referred to in [section 63](#) the Director is satisfied that with regard to the motor vehicle inspection station concerned the prescribed requirements for registration of such a motor vehicle inspection station have been met, the Director shall register and classify the station upon the conditions and in the manner as may be prescribed and shall give notice of such registration and classification in the *Gazette*.

**65. Persons empowered to examine vehicles exempted from liability for damage**

No person who is empowered under this Act to examine, inspect or to order the examination or inspection of or to issue any other directions concerning any vehicle under this Act shall be liable for the loss of any such vehicle or the contents thereof or for any damage caused to any such vehicles or the contents thereof resulting from any action taken by such person in good faith and without negligence and in the intended exercise of any such powers.

**66. Suspension or cancellation of registration of motor vehicle inspection station**

The Director may, if in his opinion a registered motor vehicle inspection station no longer complies with the requirements referred to in [section 64](#), suspend for such period as he may deem fit or cancel the registration of a motor vehicle inspection station.

**67. Right of appeal to Minister**

- (1) A person or organization who or which is aggrieved by the refusal of the Director to register him or it as a motor vehicle inspection station or at the suspension or cancellation of his or its registration as a motor vehicle inspection station may, within twenty-one days after such refusal, suspension or cancellation, appeal to the Minister against such refusal, suspension or cancellation in accordance with such procedure and upon payment of such fees as may be prescribed and such appellant shall at the same time serve a copy of the appeal on the Director.
- (2) After receipt of the copy of the appeal referred to in subsection (1), the Director shall forthwith furnish the Minister with his reasons for the refusal, suspension or cancellation to which such appeal refers.
- (3) The Minister may, make such decision on the appeal as he may deem fit.

**68. Appointment of inspector of motor vehicle inspection stations**

- (1) The Minister shall designate a person or organization as an inspector of motor vehicle inspection stations.
- (2) The powers and duties of the inspector of motor vehicle inspection stations in relation to the inspection and the control of standards, classification and functioning of motor vehicle inspection stations shall be as prescribed.
- (3) The Minister may, in order to defray the expenditure incurred by or on behalf of the inspector for the purposes of performing its functions, prescribe fees to be paid in respect of every vehicle inspection conducted or test carried out under [section 71](#).

**69. Certificate of fitness required in respect of motor vehicle**

- (1) No person shall on a public road operate a motor vehicle which is not in a roadworthy condition.
- (2) No person shall operate a motor vehicle on a public road unless the requirements in respect of the certificate of fitness referred to in subsection (3) pertaining to such motor vehicle are complied with and except in accordance with the conditions of such a certificate of fitness.
- (3) Subject to the provisions of this Part—
  - (a) the categories of certificates of fitness;

- (b) the classes in which motor vehicles are classified for the purposes of prescribing the requirements relating to roadworthiness and the requirements for the certificate of fitness applicable to each class of motor vehicle; and
  - (c) the period of validity of certificate of fitness, shall be as prescribed.
- (4) Any document issued by a competent authority in a prescribed territory and serving a similar purpose to that of a certificate of fitness under this Act shall be deemed to be a certificate of fitness for the purposes of subsection (2).

## **70. Application for certificate of fitness**

- (1) Any person desiring to obtain a certificate of fitness as referred to in [section 69](#) shall present the motor vehicle to a registered motor vehicle inspection station authorized to inspect the class of motor vehicle presented.
- (2) The presentation of the motor vehicle made under subsection (1) shall be accompanied by the prescribed fees.

## **71. Examination of motor vehicle and issue of certificate of fitness**

- (1) Upon presentation of the motor vehicle referred to in [section 70](#), a motor vehicle examiner or a licensed motor vehicle inspector shall test and examine the motor vehicle concerned in the manner and in respect of the features as prescribed.
- (2) If the motor vehicle examiner or licensed motor vehicle inspector, after the examination and testing of such motor vehicle—
  - (a) is satisfied that the vehicle is roadworthy, he shall, upon payment by the applicant of the prescribed fees, affix to such motor vehicle a certificate of fitness and the issuer of such certificate shall submit a copy thereof to the Director; or
  - (b) is not so satisfied, he shall affix to such motor vehicle in the prescribed manner a rejection notice indicating the number of days, after the date of such examination and testing, the applicant has to remedy any defect in such vehicle, and if the motor vehicle examiner or motor vehicle inspector is thereafter so satisfied, he shall act under paragraph (a).
- (3) Notwithstanding the provisions of subsection (1), a motor vehicle examiner or a licensed motor vehicle inspector authorized in writing by a motor vehicle inspection station may, at any time before the motor vehicle which is being or has been examined and tested with a view to the issue of a certificate of fitness in respect thereof under the subsection, is returned to the applicant, re-examine that motor vehicle and for that purpose—
  - (a) he shall be deemed to be the motor vehicle examiner or motor vehicle inspector referred to in subsection (1); and
  - (b) any prior action taken in respect of that vehicle under subsections (1) and (2) shall be of no force and effect.
- (4) No person shall wilfully or negligently issue or authorize the issue of a certificate of fitness which is materially incorrect, or issue or authorize the issue of such certificate of fitness in respect of a motor vehicle which does not comply with the prescribed requirements.
- (5) No person shall remove or replace the components of a vehicle in respect of which a certificate of fitness was issued, except in the normal course of maintenance or use of such vehicle.

- (6) Any person who contravenes subsections (4) and (5) shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding K10,000 or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

#### **72. Prohibition against licensing of unroadworthy vehicle**

A motor vehicle which does not comply with the requirements referred to in [section 69](#) (3) (b) shall not be licensed or relicensed.

#### **73. Prohibition against holding of more than one certificate of fitness in respect of the same motor vehicle**

No person shall in respect of the same motor vehicle hold more than one valid certificate of fitness at any one time.

#### **74. Certificate of fitness to be affixed to motor vehicle**

- (1) Subject to the provisions of subsections (2) and (3), no person shall operate or permit to be operated on a public road a motor vehicle of a prescribed class—
- (a) unless a certificate of fitness is affixed thereto; or
  - (b) if a certificate of fitness—
    - (i) the period of validity of which has expired; or
    - (ii) which does not relate to such vehicle is affixed thereto.
- (2) A certificate of fitness issued by a competent authority in a prescribed territory and the purpose of which is similar to that of a certificate of fitness shall, for the purposes of subsection (1), be deemed to be a certificate of fitness.
- (3) Where a document the purpose of which is similar to that of a certificate of fitness has been issued by a competent authority in any prescribed territory in respect of a motor vehicle, but no certificate of fitness is required to be affixed to such vehicle in terms of a law of the territory concerned, the provisions of subsection (1) (a) shall not apply to such motor vehicle during the period of validity of such document.
- (4) A document referred to in subsection (3) shall, during the period of validity thereof, at all times be in or on the motor vehicle concerned while it is operated on a public road in Malawi.

#### **75. Authority conveyed by certificate of fitness subject to provisions of this Act**

The conditions of a certificate of fitness relating to a motor vehicle and the authority conveyed thereby shall not be construed as derogating from any provisions of this Act and in the event of any inconsistency between the conditions of such certificate of fitness and any provisions of this Act, the latter shall prevail.

#### **76. Effect of alteration of motor vehicle on certificate of fitness**

- (1) A certificate of fitness in respect of a motor vehicle shall become void where such motor vehicle is altered in such a manner that—
- (a) the certificate no longer correctly describes the motor vehicle; or
  - (b) such alteration affects the conditions of that certificate of fitness.

- (2) Within seven days after a certificate of fitness became void in terms of subsection (1), the holder of such certificate of fitness shall present the motor vehicle to which such certificate of fitness is affixed for examination and testing under [section 70](#).

#### **77. Right of appeal to Director**

- (1) Any person who is aggrieved at the refusal of a motor vehicle examiner or a motor vehicle inspection station to issue a certificate of fitness in respect of a motor vehicle or at the conditions subject to which such certificate was issued to him may, within twenty-one days after such refusal or after the issue of the certificate subject to the conditions concerned, appeal against any such refusal or conditions concerned to the Director in accordance with such procedure and upon payment of such fees as may be prescribed and such person shall at the same time serve a copy of the appeal on the motor vehicle examiner or the motor vehicle inspection station concerned.
- (2) After receipt of the copy of the appeal referred to in subsection (1), the motor vehicle examiner or motor vehicle inspection station concerned shall forthwith furnish the Director with his or its reasons for the decision to which such appeal relates.
- (3) For the purpose of deciding an appeal under subsection (1), the Director may—
  - (a) where the appeal concerns a certificate of fitness, cause the motor vehicle concerned to be examined and tested by a motor vehicle examiner or motor vehicle inspection station nominated by him; and
  - (b) require each party to the appeal to furnish such information and evidence as the Director may deem necessary.
- (4) The Director may, make such decision as he may deem fit.

#### **78. Voidness of certificate of fitness issued contrary to provisions of this Part**

Any certificate of fitness issued contrary to the provisions of this Part shall be void and the holder thereof shall, on demand by the motor vehicle inspection station which issued such certificate of fitness, an examiner or by a traffic police officer, forthwith surrender such certificate of fitness to such motor vehicle inspection station, examiner or traffic police officer.

#### **79. Suspension or cancellation of certificate of fitness by Director**

- (1) Where the holder of a certificate of fitness issued in Malawi is convicted of a second or subsequent offence which, relates to the roadworthiness of a motor vehicle or to such certificate of fitness the Director may suspend, for such period as he may determine, or cancel such certificate of fitness.
- (2) Where the Director suspends or cancels a certificate of fitness under subsection (1), he shall detain the motor vehicle and make arrangements with a reputable garage to have the faults repaired and the garage shall make an undertaking not to release the motor vehicle until the Director has inspected it and is satisfied that it is fit. All the expenses in respect of the vehicle shall be borne by the owner of the motor vehicle.
- (3) The Director shall notify the motor vehicle inspection station concerned of every certificate of fitness suspended or cancelled under subsection (1).
- (4) Upon the expiry of the period of suspension referred to in subsection (1), the Director shall, upon request, authorize a new examination for a certificate of fitness by a motor vehicle examiner or a motor vehicle inspection station.

- (5) No person shall, without the consent of the Director obtain a certificate of fitness for a motor vehicle during the period in which a certificate of fitness of which he was the holder is suspended or has been cancelled under subsection (1).
- (6) Where the holder of—
  - (a) a document serving a similar purpose to that of a certificate of fitness; or
  - (b) a certificate affixed to a motor vehicle with a similar purpose to that of a certificate of fitness, issued in a prescribed territory,is convicted of a second or subsequent offence which, in the opinion of the Director, relates to the roadworthiness of a motor vehicle or to such a document or certificate, the Director may inform that person that every such document or certificate held by him is no longer in force within Malawi, and from the date on which that person is so informed, every such document or certificate shall cease to be in force within Malawi.

#### **80. Notice to discontinue operation of motor vehicle**

- (1) Where a motor vehicle is not roadworthy, a traffic police officer or a motor vehicle examiner may, by notice in the prescribed form served on the driver, owner or operator of such vehicle, direct that such vehicle shall not be operated on a public road or that such motor vehicle shall only be operated under specified conditions.
- (2) The manner in which and circumstances under which such traffic police officer or motor vehicle examiner may issue a notice referred to in subsection (1) and the further steps which shall or may be taken in respect of the vehicle concerned, shall be as prescribed.

### **Part VII – Operator fitness**

#### **81. Registration of operator**

- (1) The owner of a motor vehicle of a class which is prescribed for the purposes of the application of this Part shall be the operator of such motor vehicle and shall be registered as such under subsection (4).
- (2) The owner of a motor vehicle referred to in subsection (1) shall, upon payment of the prescribed fees—
  - (a) upon the licensing of such motor vehicle under Part III make known; or
  - (b) within twenty-one days—
    - (i) after the conclusion or amendment of an agreement; or
    - (ii) after the vehicle became a vehicle of a class referred to in subsection (1), notify the Director,which person, hereinafter referred to as the designated person, is to be registered as the operator of such motor vehicle.
- (3) The owner of any motor vehicle registered in a foreign state shall, unless he is deemed to be the holder of a road service permit under [section 82](#) (3), before entering Malawi with such vehicle, upon payment of the prescribed fee, notify the Director which designated person shall be registered as the operator of such vehicle.
- (4) The Director shall, if satisfied that the designated person should be registered as the operator, register such person as the operator of the motor vehicle concerned.

## 82. Issue of road service permit

- (1) The Director shall provide and issue, in respect of each motor vehicle referred to in [section 81](#) (1) a road service permit upon payment of the prescribed fee, to the operator concerned.
- (2) The categories, period of validity, form and contents of a road service permit shall be as prescribed.
- (3) Any document issued by a competent authority in a prescribed territory and serving in such territory a purpose similar to that of a road service permit shall, subject to the conditions thereof and to such conditions as may be prescribed, be deemed to be a road service permit for the purposes of subsection (1).
- (4) Where any circumstance arises in relation to the holder of a road service permit referred to in subsection (3), which in the opinion of the Director would have entitled him to act under [section 86](#) if such permit was issued in Malawi, the Director may inform such holder that such permit is of no force and effect within Malawi, and from the date on which such person is so informed such permit shall cease to be in force within Malawi.

## 83. Road service permit to be displayed on motor vehicle

No person shall operate a motor vehicle of any class referred to in [section 81](#) (1) on a public road unless a valid road service permit is displayed on such motor vehicle.

## 84. Proof of certain facts

- (1) If in any prosecution the question arises as to who is the operator of a motor vehicle, an imprint or copy of or an extract from a road service permit certified by a road traffic examiner or a traffic police officer to be true shall upon production thereof be *prima facie* proof that the person whose name appears as operator on such permit was the operator of such vehicle at the time when the offence was committed.
- (2) No person shall under subsection (1) certify any imprint, copy or extract to be true, knowing that it is not a true imprint, copy or extract.
- (3) Any person who contravenes subsection (2) shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding K10,000 or to imprisonment for a period not exceeding three years or to both such fine and imprisonment.

## 85. Duties of operator

The operator of a motor vehicle shall—

- (a) notify, within seven days—
  - (i) the owner, if applicable, of such motor vehicle; and
  - (ii) the Director, of any change in the circumstances pertaining to his registration as the operator of such motor vehicle and return the road service permit in respect of that motor vehicle to the Director;
- (b) keep safe and protect from theft a road service permit issued to him and if any such permit is lost, stolen or destroyed he shall notify the nearest police station within twenty-four hours and the Director within seven days after having become aware of such loss that he should have been aware of such loss, theft or destruction or after it could reasonably be expected that he should have been aware of such loss, theft or destruction, whichever event occurred first;

- (c) exercise proper control over the driver of such motor vehicle to ensure the compliance by such driver with all the provisions of this Act, in particular the provisions regarding—
  - (i) the driving hours referred to in [section 54](#);
  - (ii) the requirements in respect of the professional driving permit referred to in [section 45](#); and
  - (iii) the loading of vehicles;
- (d) ensure that such motor vehicle complies with fitness requirements;
- (e) conduct his operations with due care to the safety of the public;
- (f) if hazardous substances are conveyed, ensure that all requirements for the conveyance of such substances are complied with; and
- (g) take all reasonable measures to ensure that such motor vehicle is used on a public road in compliance with the provisions for the loading and transportation of passengers and goods.

#### **86. Power of Director in respect of motor vehicle, drivers and activities of operators**

- (1) The Director may, on account of any evidence as to the state of fitness of a motor vehicle in respect of which an operator is produced to him under subsection (4), by written notice—
  - (a) notify such operator that such motor vehicle is suspected of being unroadworthy and that the operator should forthwith take adequate steps to ensure its continued roadworthiness;
  - (b) demand from such operator to indicate in writing what precautions he has taken to ensure the continued roadworthiness of his motor vehicle;
  - (c) direct such operator to produce such motor vehicle for inspection, examination or testing at a time and place to be specified in such notice; and
  - (d) suspend the road service permit issued in respect of the motor vehicle, if such motor vehicle has been examined or tested under paragraph (c) and found to be unroadworthy for such period as such motor vehicle is so unroadworthy.
- (2) The Director may, on account of the record of a driver of a motor vehicle for which an operator is registered, by written notice—
  - (a) inform such operator if the Director has reasonable grounds to believe that he does not exercise proper control over the drivers under his authority as required under [section 85](#);
  - (b) demand from such operator to indicate in writing what precautions he has taken in order to ensure proper control over drivers under his authority;
  - (c) demand such operator to produce for examination the records relating to drivers which an operator is required to keep under this Act; and
  - (d) direct that the driver concerned be retested under [section 29 \(2\)](#).
- (3) The Director may, if the record of an operator indicates that such operator does not comply with the provisions of this Act, by written notice—
  - (a) direct such operator to fulfil the duties conferred on him under [section 85](#);
  - (b) appoint a person whom he deems fit, to investigate the activities or specific activities of such operator and direct the person so appointed to make a written recommendation to him as to what measures should be taken in respect of such operator;

- (c) direct such operator to appear before him or before any other person appointed by him, in order to furnish reasons for his failure to fulfil the duties conferred on him under [section 85](#); and
- (d) notify such operator—
  - (i) that a road service permit shall only be issued to him on such conditions as the Director may deem fit;
  - (ii) that no further road service permit shall be issued to him for such period as the Director may specify in the notice; or
  - (iii) that the road service permit or permits pertaining to such motor vehicle or motor vehicles as the Director may determine in respect of which he is registered as the operator is or are suspended until the Director is satisfied that the grounds for such suspension no longer exist:  
Provided that—
    - (A) the period of any suspension under subparagraph (iii) shall not exceed twelve months;
    - (B) any decision by the Director under this paragraph shall only be taken on the basis of a recommendation by a person appointed under paragraph (b); and
    - (C) the Director shall within twenty-one days after the date of the notice, in writing furnish such operator with the reasons for his decision.
- (4) The Director may, in the exercise of his powers under this section—
  - (a) demand from any operator to make discovery of documents by way of affidavit or by answering interrogatories on oath and to produce such documents for inspection;
  - (b) demand from any operator to allow inspection of any records and documents related to any vehicle required to be kept by an operator under this Act;
  - (c) any time require that an inquiry be instituted into the operational activities of an operator by a person appointed by him for that purpose and, if such operator is a company, also into any other company in a group of companies of which the operator is the controlling company.
- (5) The Director may, if he has reasonable grounds to believe that any person registered as the operator of a motor vehicle is not the *bona fide* operator of such vehicle, demand proof from the owner of the vehicle.

## 87. Appeal to Minister

- (1) Any person who feels aggrieved by the refusal of the Director to register him as an operator or by a decision of the Director under [section 86](#) (3) (d) may, within twenty-one days after having received notice of such refusal or decision, appeal against such refusal or decision, as the case may be, to the Minister in accordance with such procedure and upon payment of such fees as may be prescribed, and such person shall at the same time serve a copy of the appeal on the Director.
- (2) After receipt of the copy of the appeal referred to in subsection (1), the Director shall forthwith furnish the Minister with his reasons for the refusal or decision, as the case may be, to which the appeal refers.
- (3) The Minister may, make such decision on the appeal as he may deem fit.

**88. Act or omission of manager, agent or employee of operator**

- (1) Whenever any manager, agent or employee of an operator commits an act or omission and it would have constituted an offence under this Act if an operator had committed the act or failed to commit the act then such operator, unless he proves—
  - (a) that he did not connive at or permit such act or omission;
  - (b) that he took all reasonable measures to prevent an act or omission of the nature in question; and
  - (c) that an act or omission of the nature of the act or omission charged did not under any circumstances fall within the scope of the authority of the employment of such manager, agent or employee,shall be deemed himself to have committed or failed to commit such act and be liable to be convicted and sentenced in respect thereof, and for the purposes of paragraph (b) the fact that the operator forbade an act or omission of the nature in question, shall not by itself be regarded as sufficient proof that he took all reasonable measures to prevent such act or omission.
- (2) Whenever any manager, agent or employee of an operator commits an act or omission which would constitute an offence under this Act if such operator had committed the act or omission, such manager, agent or employee shall be liable to be convicted and sentenced in respect thereof as if he were such operator.

**Part VIII – Road traffic signs, general speed limit and parking fees****89. Minister to prescribe road traffic signs**

- (1) The Minister may, subject to the provisions of this Act and for the purpose of prohibiting, limiting, regulating or controlling traffic in general or any particular class of traffic on a public road or a section of such road or for the purpose of designating any public road or section thereof as a public road of a particular class, prescribe such signs, signals, markings or other devices, to be known as road traffic signs, as he may deem expedient, as well as their significance and the conditions and circumstances under which any road traffic sign may be displayed on a public road.
- (2) The Minister may, subject to such conditions as he may deem expedient, authorize any person or body to display on a public road any sign, signal, marking or other device for the purpose of ascertaining the suitability of such sign, signal or device as a road traffic sign.

**90. Authority to display road traffic sign**

- (1) The Minister may, in respect of any public road, cause or permit to be displayed such road traffic signs as he may deem expedient.
- (2) Subject to and in conformity with such general or other directions as may be given by the Minister, a highway authority, or any person authorized by it either generally or specifically, may in respect of any public road, cause or permit to be displayed in the prescribed manner such road traffic signs as it or he may deem expedient.
- (3) A local authority may, in respect of any public road within the area of jurisdiction of that local authority, display or cause to be displayed such road traffic signs as such local authority may deem expedient.
- (4) Subject to such conditions as may be determined by the National Road Safety Council of Malawi established under the National Road Safety Council of Malawi Act, scholars or students may be organized into patrols, to be known as scholars' patrols, for the purpose of displaying an

appropriate road traffic sign so as to ensure the safety of scholars or students crossing a public road.

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- (5) The highway authority may authorize any association or club to display such road traffic signs, subject to such conditions as the highway authority may deem expedient, and any such association or club may thereupon display a badge or other token of the association or club in conjunction with any such road traffic sign.
- (6) A railway administration may in respect of any railway level crossing on any public road for which the railway administration is responsible, cause or permit to be displayed, such road traffic signs as the railway administration may deem expedient.
- (7) Notwithstanding the provisions of subsections (3) and (6), the highway authority may direct that any road traffic sign be displayed or removed by a local authority on or along any public road in the area of such local authority, or by the railway administration on or along any railway level crossing over a public road for which the railway administration is responsible and if the local authority or the railway administration fails to comply with the direction, the highway authority may cause such sign to be displayed or removed, as the case may be, and the highway authority shall recover the cost of such display or removal from the local authority or from the railway administration, as the case may be.
- (8) Any road traffic sign displayed under the repealed Act and which complies with a road traffic sign referred to in [section 89](#), shall be deemed to be displayed under this Act.
- (9) No person shall display any road traffic sign on a public road without having been authorized under this Act.
- (10) The highway authority or a local authority may, by notice in writing, direct the owner or occupier of any land on which any road traffic sign or other object resembling a road traffic sign is displayed, or on which any object is displayed which obscures or interferes with the effectiveness of any road traffic sign, to remove such sign or object within a period stated in the notice, and if the owner or occupier concerned fails to comply with the notice the highway authority or local authority may cause such sign or other object to be removed.
- (11) Any person who wilfully or negligently removes or damages any road traffic sign or alters the position thereof or the inscription, lettering, colour or design thereof or thereon shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding K5,000 or to imprisonment not exceeding one year; for a second offence shall be liable to a fine not exceeding K10,000 or to imprisonment not exceeding two years and for subsequent offence shall be liable to four years imprisonment without an option of a fine.

## 91. Failure to obey road traffic sign

- (1) Subject to the provisions of subsection (3), any person who shall, unless otherwise directed by a traffic police officer, fail to comply with any direction conveyed by a road traffic sign commits an offence.
- (2) In any prosecution for a contravention of or a failure to comply with the provisions of subsection (1), it shall be presumed, until the contrary is proved, that the road traffic sign concerned was displayed by the proper authority pursuant to the powers granted by this Act.
- (3) The driver of a vehicle belonging to—
  - (a) the Director's Department;
  - (b) a fire-fighting organization;
  - (c) a rescue organization or a hospital; or

(d) a traffic police department,

who drives a vehicle in the execution of his duties, may disregard the directions of a road traffic sign:

Provided that—

- (a) he shall drive the vehicle with due regard to the safety of other traffic; and
- (b) in the case of a vehicle belonging to the Director's Department, a fire-fighting vehicle, a rescue vehicle, an ambulance, a police vehicle or a vehicle driven by a person while he is engaged in civil protection such vehicle shall be fitted with device capable of emitting a sound or with a bell and with an identification lamp and such device or bell shall be constantly sounded and such lamp shall be in operation while the vehicle is driven in disregard of the road traffic sign.

## 92. Speed limit

(1) The general speed limit—

- (a) in respect of every public road or section thereof situated within an urban area;
- (b) in respect of every public road or section thereof situated outside an urban area; and
- (c) in respect of every freeway, shall be as prescribed.

(2) An appropriate road traffic sign may be displayed on any public road indicating a speed limit other than the general speed limit which under subsection (1) applies in respect of that road:

Provided that such other speed limit shall not be higher than the speed limit prescribed under subsection (1) (c).

(3) The Minister may, after consultation with the Director, in respect of any particular class of vehicle prescribe a speed limit which is lower or higher than the general speed limit prescribed under subsection (1) (b) or (c).

(4) No person shall drive a vehicle on a public road at a speed in excess of—

- (a) the general speed limit which under subsection (1) applies in respect of that road;
- (b) the speed limit indicated under subsection (2) by an appropriate road traffic sign in respect of that road; or
- (c) the speed limit prescribed by the Minister under subsection (3) in respect of that class of vehicle concerned.

## 93. Certain drivers may exceed general speed limit

Notwithstanding the provisions of [section 92](#), the driver of a vehicle belonging to—

- (a) the Director's Department;
- (b) a fire-fighting organization;
- (c) a rescue organization or hospital; or
- (d) a traffic police department,

who drives a vehicle in the execution of his duties may exceed the applicable general speed limit:

Provided that—

- (a) he shall drive the vehicle concerned with due regard to the safety of other traffic; and
- (b) in the case of a vehicle belonging to—
  - (i) the Director's Department;
  - (ii) a fire-fighting organization;
  - (iii) a rescue organization or hospital;
  - (iv) a traffic police department, or a vehicle driven by a person while he is engaged in civil protection,

such vehicle shall be fitted with a device capable of emitting a sound or with a bell and with an identification lamp, as prescribed, and such device or bell shall be constantly sounded and such lamp shall be in operation while the vehicle is driven in excess of the applicable general speed limit.

#### **94. Certain classes of motor vehicles to contain recording device to measure speed**

- (1) No person shall operate on a public road a motor vehicle of a prescribed class unless such vehicle is fitted with a prescribed automatic, electronic, electric or mechanical recording device to record the speed at which such motor vehicle is being driven.
- (2) The driver of a motor vehicle of a class referred to in subsection (1) shall, when driving such motor vehicle on a public road, use the recording device referred to in subsection (1).

#### **95. Power of local authority to collect parking fees**

- (1) A local authority may charge fees in respect of the parking of vehicles on any public road or section thereof within its area of jurisdiction.
- (2) The fees referred to in section (1) may differ in respect of different public roads or different sections of the same public road.
- (3)
  - (a) If a parking meter is installed for the purpose of collecting fees referred to in subsection (1), it shall be installed in conjunction with a demarcated parking bay or bays and shall bear thereon a legend indicating the days and hours when payment shall be made for parking and the amount payable for a specific period of parking.
  - (b) If any method other than a parking meter is used to collect the fees referred to in subsection (1), provision shall be made for a sign to be displayed at the parking area concerned indicating the days and hours when payment shall be made for parking, the amount payable for a specific period of parking and the manner of payment for a specific period of parking.
- (4)
  - (a) The period of time for which a vehicle may be lawfully parked in a parking bay referred to in subsection (3) (a), shall, unless the contrary is proved, be as measured by the parking meter for such bay.
  - (b) If any method other than a parking meter is used to collect the fees referred to in subsection (1), the period of time for which a vehicle may be lawfully parked in a parking area referred to in subsection (3) (b), shall, unless the contrary is proved, be as measured by means of the method concerned in respect of the vehicle concerned.
- (5) Any local authority may established upon a public road within the area of its jurisdiction ranks or stands, to be known as special parking places, for the parking of passenger-carrying motor vehicles

or any class of such vehicles and may make by-laws for the regulation and control of the use of those special parking places—

- (a) to provide for the issue of permits allocating particular special parking places or subdivisions thereof to particular persons or vehicles for their exclusive use;
  - (b) to prohibit the use of any special parking place or subdivision so allocated by any other person or vehicle;
  - (c) to charge fees in respect of the use of special parking places; and
  - (d) to provide for matters incidental thereto:  
Provided that provision may be made in any permit or in any renewal thereof for the limitation of the hours during which the holder shall have the exclusive use of a particular special parking place and during which the use thereof by any other person or vehicle is prohibited.
- (6) By-laws made under subsection (5) shall provide for the annual renewal, subject to the good conduct of the applicant, of the right to use any such special parking place or subdivision thereof.
  - (7) All fees collected by a local authority by means of a parking meter, or in respect of any parking area or special parking place as contemplated in this section, shall, as far as possible, be used to defray the cost of, and incidental to, any scheme, work or undertaking for the improvement or regulation of traffic conditions within the area of such local authority, including the costs of installing and maintaining any such parking meter, parking area or special parking place.
  - (8) The exercise by a local authority of its powers under this section shall not render the local authority subject to any liability in respect of the loss of or damage to any vehicle or the contents or fittings of any such vehicle while such vehicle is in a parking area or special parking place.

## Part IX – Rules of the road

### 96. Vehicle to be driven on left side of roadway

- (1) Any person driving a vehicle on a public road shall do so by driving on the left side of the roadway and, where such roadway is of sufficient width, in such manner as not to encroach on that half of the roadway to his right:  
Provided that such encroachment shall be permissible—
  - (a) where it can be done without obstructing or endangering other traffic or property which is or may be on such half and for a period and distance not longer than is necessary and prudent and provided that it is not prohibited by a road traffic sign;
  - (b) in compliance with a direction of a traffic police officer or a road traffic sign; or
  - (c) when overtaking.
- (2) The provisions of subsection (1) shall not apply in the case of a public road which is restricted to traffic moving thereon in one direction only.

### 97. Driving on divided public road

- (1) Whenever any public road has been divided into two or more roadways by means of an intervening space or by a physical barrier or dividing section so constructed as to impede vehicular traffic, no person shall drive a vehicle upon such public road except upon the left-hand roadway unless directed or permitted by an appropriate road traffic sign or a traffic police officer to use another roadway.

- (2) No person shall drive a vehicle on, over, across or within any dividing space, barrier or section referred to in subsection (1), except through an opening in such space, barrier or section or at a cross-over or intersection:

Provided that no person shall so drive through any such opening or at any such cross-over or intersection where such driving is prohibited by an appropriate road traffic sign or by a traffic police officer:

Provided further that the provisions of this subsection shall not apply to a traffic police officer in the performance of his duties.

## 98. Passing of vehicle

- (1) Subject to the provisions of subsections (2) and (4) and [section 96](#), the driver of a vehicle intending to pass any other vehicle proceeding in the same direction on a public road shall pass to the right thereof at a safe distance and shall not again drive on the left side of the roadway until safely clear of the vehicle so passed:

Provided that, in the circumstances as aforesaid, passing on the left of such vehicle shall be permissible if the person driving the passing vehicle can do so with safety to himself and other traffic or property which is or may be on such road and—

- (a) the vehicle being passed is turning to its right or the driver thereof has signalled his intention of turning to his right;
  - (b) such road is a public road in an urban area and—
    - (i) is restricted to vehicles moving in one direction; and
    - (ii) the roadway is of sufficient width for two or more lines of moving vehicles;
  - (c) such road is a public road in an urban area and the roadway is of sufficient width for two or more lines of moving vehicles moving in each direction;
  - (d) the roadway of such road is restricted to vehicles moving in one direction and is divided into traffic lanes by appropriate road traffic signs; or
  - (e) he is driving in compliance with the directions of a traffic police officer or is driving in traffic which is under the general direction of such officer, and in accordance with such direction.
- (2) The driver of a vehicle shall not pass other traffic proceeding in the same direction on a public road when approaching—
- (a) the summit of a rise;
  - (b) a curve; or
  - (c) any other place where his view is so restricted that any such passing could create a hazard in relation to other traffic which might approach from the opposite direction, unless—
    - (i) he can do so without encroaching on the right-hand side of the roadway; or
    - (ii) the roadway of such road is restricted to vehicles moving in one direction.
- (3) The driver of a vehicle on a public road shall, except in the circumstances referred to in the first proviso to subsection (1), upon becoming aware of other traffic proceeding in the same direction and wishing to pass his vehicle, cause his vehicle to travel as near to the left edge of the roadway as is possible, without endangering himself or other traffic or property on the roadway, and shall not accelerate the speed of his vehicle until the other vehicle has passed.

- (4) When about to pass oncoming traffic, the driver of a vehicle on a public road shall ensure that the vehicle driven by him does not encroach on the roadway to his right in such manner as may obstruct or endanger oncoming traffic.
- (5) The driver of a vehicle intending to pass a stationary bus on a public road shall do so with due care for the safety to persons who are approaching or leaving or may approach or leave such bus.
- (6) Any person who contravenes subsection (2) shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding K10,000 or to imprisonment for a period not exceeding three years or both such fine and imprisonment.

## 99. Crossing or entering public road or traffic lane

- (1) The driver of a vehicle shall not cross a public road unless the road is clear of moving traffic for a sufficient distance to allow him to cross the road without obstructing or endangering any such traffic.
- (2) The driver of a vehicle shall not enter a public road unless he can do so with safety to himself and other traffic.
- (3) The driver of a vehicle on a public road divided into traffic lanes by appropriate road traffic signs shall not turn from one lane into or across another lane unless he can do so without obstructing or endangering other traffic.

## 100. Driving signals

The driver of a vehicle on a public road who intends to stop such vehicle or suddenly reduce speed thereof or to turn such vehicle to the left or to the right or to move such vehicle to the left or right on the roadway shall give a conspicuous signal of his intention, visible to any person approaching him from the front or from the rear or from the side and of a duration sufficient to warn any such person of his intention.

## 101. Right of way at certain road junctions

The driver of a vehicle on a public road shall, when he intends to enter any portion of a public road which constitutes a junction of two or more public roads where vehicular traffic is required to move around a traffic island within such junction, yield the right of way to all vehicular traffic approaching from his right within such junction, unless his entry into such junction is controlled by an instruction given by a traffic police officer or a direction conveyed by a road traffic sign requiring him to act differently.

## 102. Procedure when turning

- (1) The driver of a vehicle on a public road who desires to turn to the left shall, having due regard to the provisions of [section 101](#), before reaching the point at which he intends to turn, indicate his intention to turn and shall steer his vehicle as near to the left side of the roadway on which he is travelling as circumstances may permit and shall make such turn with due care and merge into the public road into which he desires to turn.
- (2) The driver of a vehicle on a public road who desires to turn to the right shall, having due regard to the provisions of [section 101](#), before reaching the point at which he desires to turn, indicate his intention to turn and shall not effect such turning unless he can do so without obstructing or endangering other traffic and—
  - (a) if he is driving a vehicle on the roadway of a public road which roadway is intended for traffic in both directions—

- (i) he shall steer such vehicle as near as circumstances may permit to the immediate left of the middle of the roadway on which he is travelling; and
  - (ii) where the turn is at an intersection, he shall not encroach on the right half of the roadway into or out of which he intends to turn except in the intersection itself, but shall in any event pass to the left of any traffic island in such intersection or comply with the direction conveyed by any appropriate road traffic sign; or
- (b) if he is driving a vehicle on a roadway of a public road where such roadway is intended for traffic in only one direction—
- (i) he shall steer such vehicle as near as circumstances permit to the right side of such roadway; and
  - (ii) where the turn is at an intersection, he shall not encroach on the right half of the roadway into which he intends to turn, except in the intersection itself but shall in any event pass to the left of any traffic island in such intersection or comply with the direction conveyed by an appropriate road traffic sign:  
Provided that where such turn is to be made into a roadway intended for traffic only in one direction, he may encroach on the right half of that roadway.

### 103. Towing of vehicles

No person may operate any vehicle on a public road while towing or drawing another vehicle save in the manner prescribed for the towing or drawing of any vehicle by another vehicle on a public road.

### 104. Stopping of vehicles

Except in order to avoid an accident or in compliance with a road traffic sign or with a direction given by a traffic police officer or for any cause beyond the control of the driver, no person shall stop a vehicle on the roadway of a public road—

- (a) alongside or opposite an excavation or obstruction on the public road if other traffic would be obstructed or endangered by such stopping;
- (b) within any tunnel or subway or on any bridge or within six metres of any tunnel, subway or bridge;
- (c) on, or within six metres from the beginning or end of, any part of such roadway where the normal width thereof has for any reason been constricted;
- (d) in contravention of any road traffic sign;
- (e) on the right-hand side of such roadway facing oncoming traffic;
- (f) alongside or opposite any other vehicle on such roadway, where such roadway is less than nine metres wide;
- (g) within the railway reserve at a level crossing;
- (h) within nine metres of his approaching site of a pedestrian crossing demarcated by appropriate road traffic signs; or
- (i) in any other place where the stopping of a vehicle would or would be likely to constitute a danger on an obstruction to other traffic.

### 105. Parking of vehicles

- (1) No person shall park a vehicle on a public road—

- (a) in contravention of any road traffic sign;
  - (b) in any place referred to in [section 104](#);
  - (c) on the same side as a fire hydrant within an area bounded by the centre line of the roadway and lines at right angles to such centre line one and a half metre on either side of the hydrant, if such hydrant is clearly visible to and recognizable as such by drivers of moving vehicles or if it is indicated by an appropriate road traffic sign;
  - (d) in any place where the vehicle would obscure any road traffic sign;
  - (e) in such manner as to encroach upon the sidewalk, if any; or
  - (f) in such manner as to obstruct any private or public vehicular entrance to such road.
- (2) No person shall park a vehicle on any portion of the roadway, excluding the shoulders, of a public road outside an urban area or with any part of such vehicle within one metre of the edge of such roadway except in a parking place demarcated by an appropriate road traffic sign.
- (3) No person shall park a vehicle on the roadway of a public road within an urban area—
- (a) within nine metres of the side from which he approaches a pedestrian crossing demarcated by appropriate road traffic signs, unless such parking is permitted by appropriate road traffic signs;
  - (b) within five metres of any intersection unless such parking is permitted by a road traffic sign;
  - (c) upon or over the actuating mechanism of a traffic signal;
  - (d)
    - (i) with the outside of any left-hand wheel thereof more than 450 millimetres within the roadway; or
    - (ii) where the public road concerned is restricted to vehicles moving in one direction and the vehicle is parked on the right-hand side of the roadway, with the outside of any right-hand wheel thereof more than four hundred and fifty millimetres within the roadway, unless such parking is permitted by appropriate road traffic sign; or
  - (e) which is less than five and a half metres wide unless the public road concerned is restricted to vehicles moving in one direction and such parking is permitted by appropriate road traffic signs.
- (4) No person shall park a motor vehicle on a traffic island or in a pedestrian mall or a pedestrian lane.
- (5) Whenever a vehicle has been parked in contravention of any provisions of this Act or in contravention of or in disregard of the directions of any road traffic sign or notice board such vehicle may be removed or caused to be removed and impounded by a traffic police officer or authorized officer, and unless the vehicle has been so parked in the course of a theft thereof, the owner shall bear the costs of such removal and impoundment.

#### **106. Certain vehicles may be stopped and parked at any place where necessary**

- (1) Notwithstanding the provisions of sections [104](#) and [105](#), the driver—
- (a) of a car belonging to—
    - (i) fire-fighting organization;
    - (ii) a rescue organization or hospital;

- (iii) a traffic police department or in the execution of its duties; or
  - (b) who drives a vehicle while it is used in construction or maintenance of a public road or is rendering essential public service, may stop or park the vehicle concerned at any place where it may be necessary to do so.
- (2) A vehicle stopped or parked under subsection (1) shall, while such vehicle is so stopped or parked, display prescribed identification lamps.

### 107. Compulsory stop

The driver of a vehicle on a public road shall stop such vehicle in compliance with any direction conveyed by a road traffic sign or given by a police officer in uniform.

### 108. General duties of driver of vehicle or passenger on public road

- (1) No person driving or having a vehicle on a public road shall—
- (a) cause such vehicle to travel backwards for a distance or time longer than may be necessary for the safety or reasonable convenience of any occupant of that vehicle or of other traffic on such road;
  - (b) follow another vehicle more closely than is reasonable and prudent having regard to the speed of such other vehicle and the traffic on and the condition of the roadway, or more closely than is permitted;
  - (c) permit any person, animal or object to occupy any position in or on such vehicle which may prevent the driver thereof from exercising complete control over the movements of the vehicle or signalling his intention of stopping, slowing down or changing direction;
  - (d) when driving such vehicle, permit any person to take hold of or interfere with the steering or operating mechanism of the vehicle;
  - (e) when driving such vehicle, occupy such position that he does not have complete control over the vehicle or does not have a full view of the roadway and the traffic ahead of such vehicle;
  - (f) allow such vehicle to remain unattended on such road without so setting its brake or adopting such other method as will effectively prevent the vehicle from moving from the position in which it is left;
  - (g) if such vehicle is parked or is stationary at the side of such road, drive the vehicle from that position unless he is able to do so without interfering with moving traffic approaching from any direction and with safety to himself or others;
  - (h) fail to give an immediate and absolute right of way to a vehicle sounding a device or bell referred to in section 91 (3) or 93;
  - (i) fail to give way to any railway locomotive or rolling stock which is approaching or crossing such road;
  - (j) allow any portion of his body to protrude beyond such vehicle while it is in motion on such road except for the purpose of giving any hand signals which he is required or authorized to give under this Act or unless he is engaged in examining or testing or parking such vehicle;
  - (k) permit any person or animal to occupy the roof, any step or running board or any other place on top of a vehicle while such vehicle is in motion;

- (l) cause or allow the engine thereof to run in such manner that it emits smoke or fumes which would not be emitted if the engine were in good condition or ran in an efficient manner;
  - (m) cause or allow the engine thereof to run while the motor vehicle is stationary and unattended;
  - (n) negligently or wilfully deposit or cause or permit to be deposited any petrol or other liquid fuel or any oil or other flammable or offensive matter, or other refuse, of whatever nature, from such vehicle upon or alongside such road;
  - (o) cause or allow the engine thereof to run while petrol or other flammable fuel is being delivered into the fuel tank of such vehicle, or cause or allow such engine to be started up before the delivery of the petrol or other flammable fuel into the fuel tank of such vehicle has been completed and the cover of such fuel tank has been replaced; or
  - (p) speak on a cellular phone unless the cellular phone is attached to the vehicle or the person pulls off the road.
- (2) No person, other than the driver, shall take hold of or interfere with the steering or operating mechanism of a vehicle while it is in motion on a public road, unless it may reasonably be inferred that the driver is no longer capable of steering or controlling such vehicle.
- (3) No passenger in a vehicle on a public road shall permit any part of his body to protrude beyond such vehicle.
- (4) No person shall enter or alight from any vehicle on a public road unless such vehicle is stationary and unless he can do so with safety to himself and other users of the road.
- (5) No person shall drive, pull or push a vehicle upon a sidewalk:  
Provided that the provisions of this subsection shall not apply to a perambulator, invalid chair, baby cart or child's play vehicle.

#### **109. Duties relating to motor cycle, motor tricycle or motor quadrucycle**

- (1) No person shall drive a motor cycle, motor tricycle or motor quadrucycle on a public road unless his feet are resting on the motor front foot-rests suitable for the purpose and where the design of such motor cycle, motor tricycle or motor quadrucycle makes it possible to do so, he is seated astride on the saddle of such motor cycle, motor tricycle or motor quadrucycle.
- (2) No person shall on a public road carry a passenger on a motor cycle unless such cycle has an engine with a cylinder capacity exceeding fifty cubic centimetres and unless such passenger is seated in a side-car or astride on a pillion attached to such cycle and, in such latter event, the feet of the passenger are resting on foot-rests suitable for that purpose.
- (3) No person shall ride on a motor cycle or in a side car attached to a motor cycle, motor tricycle or motor quadrucycle on a public road unless such person at all times wears a protective helmet of the pattern and standard as prescribed.
- (4) Subject to the provisions of subsection (2), not more than two persons shall ride upon a motor cycle on a public road, excluding a person riding in a side-car attached to such motor cycle.
- (5) Not more than two persons shall be carried in a side-car attached to a motor cycle on a public road.
- (6) No person or animal or object shall be carried on a motor cycle, motor tricycle or motor quadrucycle on a public road in front of the driver thereof:  
Provided that an object of a non-bulky nature may be so carried if securely attached to the motor cycle, motor tricycle or motor quadrucycle or placed in a suitable carrier fitted thereon for that

purpose and carried in such a way as not to obstruct the driver's view or prevent his exercising complete control over such motor cycle, motor tricycle or motor quadrucycle.

(7)

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

Provided that where a public road is divided into traffic lanes, each such lane shall, for the purposes of this paragraph, be regarded as a public road; and

- (b) For the purposes of paragraph (a), a motor cycle shall include a motor tricycle or motor quadrucycle.
- (8) No person driving a motor cycle, motor tricycle or motor quadrucycle on a public road or seated on such motor cycle, motor tricycle or motor quadrucycle shall take hold of any other vehicle in motion.
- (9) Any person driving a motor cycle, motor tricycle or motor quadrucycle on a public road shall do so with at least one hand on the handle-bars of such motor cycle, motor tricycle or motor quadrucycle.
- (10) Any person driving a motor cycle, motor tricycle or motor quadrucycle on a public road shall do so with the headlight of such motor cycle, motor tricycle or motor quadrucycle illuminated at all times.
- (11) Any person driving a motor cycle, motor tricycle or motor quadrucycle on a public road shall do so in such manner that all the wheels of such motor cycle, motor tricycle or motor quadrucycle are in contact with the surface of the road at all times.

#### **110. Vehicle causing excessive noise**

No person shall operate or permit to be operated on a public road a vehicle causing noise—

- (a) in excess of the prescribed noise level; or
- (b) resulting from the use of methods, accessories or appliances the use of which is prohibited by regulation.

#### **111. Use of hooter**

No person shall on a public road use the audible warning device or hooter of a vehicle except when such use is necessary in order to comply with the provisions of this Act or on the grounds of safety.

#### **112. Riding on pedal cycles**

- (1) No person shall ride a pedal cycle on a public road unless he is seated astride on the saddle of such pedal cycle.
- (2) Persons riding pedal cycles on a public road shall ride in single file except in the course of overtaking another pedal cycle, and two or more persons riding pedal cycles shall not overtake another vehicle at the same time.
- (3) No person riding or seated on a pedal cycle on a public road shall take hold of any other vehicle in motion.

- (4) No person riding a pedal cycle on a public road shall deliberately cause such pedal cycle to swerve from side to side.
- (5) No person riding a pedal cycle on a public road shall carry thereon any person, animal or object which obstructs his view or which prevents him from exercising complete control over the movements of such pedal cycle.
- (6) A person riding a pedal cycle on a public road shall do so with at least one hand on the handle-bars of such pedal cycle.
- (7) Whenever a portion of a public road has been set aside for use by persons riding pedal cycles, no person shall ride a pedal cycle on any other portion of such road.
- (8) A person riding a pedal cycle on a public road or a portion of a public road set aside for use by persons riding pedal cycles shall do so in such manner that all the wheels of such pedal cycle are in contact with the surface of the road at all times.

### 113. Device running on rails

- (1) Whenever rails laid across any public road are used for the purposes of any locomotive or other device running on rails, whether such device is drawn or propelled, no person driving or being in charge of such locomotive or device shall cause or allow such locomotive or device to cross such public road unless he has given sufficient warning to users of such roadway of the intention to drive, draw or propel the locomotive or device across such road.
- (2) No person driving or being in charge of any locomotive or device mentioned in subsection (1) shall cause or allow it to be stopped on a public road in such manner as to obstruct or hinder traffic on such road:  
  
Provided that the provisions of this subsection shall not apply to a locomotive or device mentioned in subsection (1) which is temporarily stopped on a public road—
  - (a) in compliance with an order or instruction, whether in writing or otherwise, or a hand signal or any other signal in relation to the use of such locomotive or device;
  - (b) for the purpose of loading or off-loading goods or allowing persons to board or alight at any place; or
  - (c) for shunting purposes.

### 114. Animal on public road

- (1) Subject to the provisions of subsection (3), no person shall leave or allow any animal to be on any section of a public road and no person shall leave such animal in a place from where it may stray onto such section of a public road.
- (2) The owner of any animal left or allowed to be on any section of the public road under subsection (1) shall be vicariously liable for the acts of the person actually in charge of the animal.
- (3) The provisions of subsection (1) shall not apply—
  - (a) to any animal which is being ridden or is being used to draw a vehicle along a public road; or
  - (b) to any animal which is being driven from one place to another in such manner as not to constitute a source of danger or injury to any person or vehicle using such road.
- (4) In any prosecution for a contravention of subsection (1), it shall be presumed, until the contrary is proved, that any animal referred to in subsection (1) was left or allowed to be on the public road.

- (5) No person shall drive an animal referred to in subsection (1)—
  - (a) along a public road during the period from sunset to sunrise, unless a person carrying a red light visible in clear weather for a distance of at least one hundred and fifty metres tends such an animal or, in the case of a flock or herd of more than ten animals, a person tending such animals and carrying a light as aforesaid precedes and another such person carrying a light as aforesaid follows such animals; or
  - (b) along a public road during any other period, unless a person displaying in a conspicuous manner a red cloth of not less than three hundred millimetres three hundred millimetres, tends such animal or, in the case of a flock or herd of more than ten animals, a person tending such animals and displaying a cloth as aforesaid precedes and another such person displaying a cloth as aforesaid follows such animals.
- (6) A person in charge of an animal on a public road shall tend the animal in such a manner so as not to constitute an obstruction or danger to other traffic.
- (7) A traffic police officer may take charge of any animal referred to in subsection (1) on a public road or take such steps in respect of the animals as may be prescribed.

### **115. Animal-drawn vehicles**

- (1) No person shall operate an animal-drawn vehicle on a public road unless the name and address of the owner thereof is affixed or painted in a conspicuous position on the left side of such vehicle in letters not less than twenty-five millimetres high.
- (2) No person shall operate an animal-drawn vehicle on a public road unless the vehicle and the harness and other equipment thereof are in an efficient and safe condition.
- (3) The owner of an animal-drawn vehicle shall not cause or permit such vehicle to be used on a public road by any person who is not competent whether by reason of his age or otherwise to drive and control such vehicle.
- (4) The driver of an animal-drawn vehicle on a public road shall at all times give his undivided attention to the driving of the vehicle under his control and if the vehicle is standing on a public road, the driver shall not cease to retain control over every animal which is still harnessed to the vehicle, unless some other person competent to do so takes charge of every such animal or every such animal is so fastened that it cannot move from the place where it has been left.
- (5) No person shall operate on a public road a vehicle drawn by a team of animals not controlled by reins unless there is a person leading the team and exercising control over such team.
- (6) The driver or other person in charge of a vehicle drawn by any animal shall not, on a public road outside an urban area, permit such vehicle to follow any other vehicle similarly drawn at a distance of less than one hundred and fifty metres reckoned from the foremost animal of such first-mentioned vehicle, except for the purpose of overtaking a vehicle travelling at a slower speed or when a vehicle travelling at a greater speed, having overtaken such vehicle, is drawing away from it.

### **116. Pedestrian's right of way in pedestrian crossing**

- (1) Where a pedestrian crossing is situated in conjunction with a traffic signal, a pedestrian shall not enter such crossing except in accordance with the indications of such traffic signal.
- (2) In circumstances not referred to in subsection (1), the driver of a vehicle shall yield the right of way slowing down or stopping if need be to so yield to a pedestrian crossing the roadway within a pedestrian crossing when the pedestrian is upon that half of the roadway upon which the vehicle is

travelling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

- (3) No pedestrian shall suddenly enter a pedestrian crossing and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield as referred to in subsection (2).
- (4) Whenever any vehicle is stopped at a pedestrian crossing to permit pedestrians to cross the roadway, the driver of any other vehicle approaching from the rear shall not pass such stopped vehicle.

### 117. Duties of pedestrians

- (1) Whenever a sidewalk or footpath abuts on the roadway of a public road, a pedestrian shall not walk on such roadway except for the purpose of crossing from one side of such roadway to the other or for some other sufficient reason.
- (2) A pedestrian on a public road which has no sidewalk or footpath abutting on the roadway shall walk as near as is practicable to the edge of the roadway on his right-hand side so as to face oncoming traffic on such roadway, except where the presence of pedestrians on the roadway is prohibited by a road traffic sign.
- (3) No pedestrian shall cross a public road without satisfying himself that the roadway is sufficiently free from oncoming traffic to permit him to cross the road in safety.
- (4) A pedestrian, when crossing a public road by means of a pedestrian crossing or in any other manner, shall not linger on such road but shall proceed with due despatch.
- (5) No pedestrian on a public road shall conduct himself in such a manner as to or as is likely to constitute a source of danger to himself or to other traffic which is or may be on such road.
- (6) A pedestrian may cross a public road only at a pedestrian crossing or an intersection or at a distance further than fifty metres from such pedestrian crossing or intersection.
- (7) A pedestrian on or along a public road shall comply with traffic directions given to the pedestrian by a traffic police officer or a road traffic sign.

### 118. Racing and sport on a public road

- (1) For the purposes of this section the expression "race or sport" includes—
  - (a) any race, speed trial, reliability trial; hill climbing competition or sports meeting;
  - (b) any other activity whatsoever—
    - (i) which may constitute a source of danger to traffic; or
    - (ii) which may hamper, impede or disrupt the normal flow of traffic.
- (2) No person shall organize or take part in any race or sport on a public road, unless the prior written consent of the Director has been obtained or, where the race or sport will take place wholly within the area of jurisdiction of a local authority, the prior written consent of such local authority has been obtained.
- (3) In granting consent under subsection (2), the Director or the local authority may—
  - (a) in addition to any requirement, impose such further conditions as he or it may deem expedient;
  - (b) exempt any person concerned with the race or sport for the duration thereof—

- (i) from any provision of this Act regarding any speed limit or determine another speed limit for the road concerned;
  - (ii) from any other provision of this Act or from any by-law;
  - (c) levy fees for defraying the expenses incurred by the Director or local authority in connexion with the race or sport.
- (4) Any consent granted under subsection (2) may be withdrawn at any time.

### 119. Hindering or obstructing traffic on a public road

- (1) No person shall wilfully or unnecessarily prevent, hinder or interrupt the free and proper passage of traffic on a public road.
- (2) Subject to the provisions of this Act or any other law, no person shall place or abandon or cause to be placed or abandoned on a public road any object that may endanger or cause damage to traffic on such road.

### 120. Vehicle left or abandoned on a public road

- (1) Any vehicle standing on a public road in a position or in circumstances which in the opinion of a traffic police officer or authorized person are likely to cause danger or an obstruction to other traffic on such road may be removed forthwith to a safer place by any such traffic police officer or authorized person or any authority instructed by such officer or authorized person to remove such vehicle:

Provided that such traffic police officer or person or authority shall, in removing such vehicle, use such device or devices as may be necessary having regard to the public safety.

- (2) Any vehicle—
    - (a) parked in a place where—
      - (i) the stopping of a vehicle is prohibited under [section 104](#); or
      - (ii) a vehicle of a class to which such vehicle belongs may not be parked;
    - (b) left for a continuous period of more than—
      - (i) forty-eight hours in the same place on a public road outside an urban area;
      - (ii) seventy-two hours in the same place on a public road within an urban area; or
    - (c) found on a public road and to which—
      - (i) no registration number is affixed or, a false registration number is affixed; or
      - (ii) no other number or anything else is affixed which may, serve to identify the owner,
- shall be deemed to have been abandoned by the owner and such vehicle may be removed by or on behalf of the Director or local authority having jurisdiction over the place or road concerned and the Director or such local authority shall take all reasonable steps to trace the owner and the owner shall, be liable to the Director or such local authority for the expenses incurred—
- (A) in the removal of such vehicle;
  - (B) in keeping the vehicle in custody for a period not exceeding four months; and

- (C) in connexion with the endeavour to trace him, and the Director or such local authority may, subject to the provisions of subsection (3), retain possession of such vehicle until such expenses have been paid.
- (3) If—
- (a) such owner is traced by the Director or local authority referred to in subsection (2) and fails to recover the vehicle concerned and pay the expenses referred to in that subsection within one month after being requested to do so; or
- (b) after a lapse of three months from the date of removal contemplated in subsection (2), the owner cannot be traced,  
such vehicle or anything contained therein may be sold by auction by the Director or local authority and in the case of sale by a local authority, such local authority shall notify the Director of the sale.
- (4) The proceeds of any sale referred to in subsection (3) shall be applied firstly to the costs of the removal, custody and sale of the vehicle concerned and all the endeavours made to trace the owner of such vehicle and any balance shall be paid to the owner thereof upon his establishing his claim thereto:  
Provided that if no claim can be established within one year from the date of such sale, such balance shall be forfeited to the Director or the local authority concerned.
- (5) The Director or any local authority referred to in subsection (2) may delegate, either generally or specifically, any power conferred upon the Director or local authority under that subsection to any organization or person.
- (6) The reasonable exercise by the Director or any local authority of the powers conferred by this section shall not render the Director or local authority subject to any liability in respect of the loss or theft of or damage to any vehicle or part thereof or of anything therein or thereon.
- (7) Subject to the provisions of any other law, no person shall leave a vehicle in the same place on a public road for a continuous period of more than seventy-two hours.

### 121. Damage to public road

No person shall on a public road—

- (a) cause any wheel of any vehicle to drag or spin upon the surface of the roadway, except in the case of an emergency;
- (b) make use of chocks or shoes between any wheel of any vehicle moving along the roadway and the surface of such roadway; or
- (c) use any vehicle or thing or move any vehicle or thing on the roadway in a manner causing or likely to cause damage thereto.

### 122. Trading on public road

Except—

- (a) on or in premises zoned or demarcated for that purpose by a competent authority under any written law; or
- (b) in such circumstances and in accordance with such requirements as may be prescribed or determined by by-law, no person shall sell, display, offer for sale or deliver pursuant to a sale, any goods—

- (i) on or alongside a public road inside an urban area, within one hundred and eighty metres of a railway level crossing or any road traffic sign denoting a blind comer or rise thereon or within five metres from any intersection thereon; or
- (ii) on or alongside any public road:  
Provided that where the public road is inside an urban area, the competent authority of such urban area shall not so zone or demarcate premises in such urban area situated alongside such a road, without the prior written approval of the Director.

### **123. Requirement on vehicles to stop for President**

- (1) When a vehicle in which the President is travelling is in motion on any road and is accompanied by an escort, the driver of every other vehicle on that road shall, as soon as the leading vehicle of the escort is within such a distance as to be easily recognizable, draw his vehicle as is reasonably practicable to the side of the carriageway and shall stop such vehicle until the vehicle in which the President is travelling and its escort have passed.
- (2) No person driving a vehicle shall overtake or attempt to overtake any vehicle in which the President is travelling with an escort or any vehicle in such escort.
- (3) When the vehicle in which the President is travelling and the escort are stationary on the carriageway every person driving a vehicle shall conform to any traffic directions given by a police officer.
- (4) In this section "escort" means the vehicle or vehicles in which the President and his staff are travelling and includes a police car immediately preceding and following the same.
- (5) For the purposes of this section the two sides of a dual carriageway shall together be deemed to constitute one road.

## **Part X – Accidents and accident reports**

### **124. Duty of driver in event of accident**

- (1) The driver of a vehicle on a public road at the time when such vehicle is involved in or contributes to any accident in which any other person is killed or injured or suffers damage in respect of any property—
  - (a) shall immediately stop the vehicle;
  - (b) shall ascertain the nature and extent of any injury sustained by any person;
  - (c) shall, if a person is injured, render such assistance to the injured person as he may be capable of rendering;
  - (d) shall ascertain the nature and extent of any damage sustained;
  - (e) shall, if required to do so by any person having reasonable grounds for so requiring, give his name and address, the name and address of the owner of the vehicle driven by him and, in the case of a motor vehicle, the registration or similar mark thereof;
  - (f) shall, if he has not already furnished the information referred to in paragraph (e) to a traffic police officer at the scene of the accident, and unless he is incapable of doing so by reason of injuries sustained by him in the accident, as soon as is reasonably practicable, and in any case within twenty-four hours after the occurrence of such accident, report the accident to any police officer at a police station or at any office set aside by a competent authority for

use by a traffic police officer, and there produce his driver's licence and such information as is referred to in that paragraph; and

- (g) shall not, except on the instructions of or when administered by a medical practitioner in the case of injury or shock, take any intoxicating liquor or drug having narcotic effect unless he has complied with the provisions of paragraph (f), where it is his duty to do so, and has been examined by a medical practitioner if such examination is required by a traffic police officer:

Provided that for the purposes of subsection (1) (a) and (b), where the driver is genuinely apprehensive of his safety he shall not be required to stop but shall drive straight to a police station and report the accident.

- (2) No person shall in an urban area remove any vehicle involved in an accident in which another person is killed or injured from the position in which it came to rest, until such removal has been authorized by a traffic police officer, except when such accident causes complete obstruction of the roadway of a public road, in which event the vehicle involved, may without such authority and after its position has been clearly marked on the surface of the roadway by the person moving it, be moved sufficiently to allow the passage of traffic.
- (3) Subject to subsection (2), no person shall remove a vehicle involved in an accident from the scene of such accident, other than for the purpose of sufficiently allowing the passage of traffic, without the permission of the owner, driver or operator of such vehicle or a person who may lawfully take possession of such vehicle.
- (4) In any prosecution for a contravention of any provision of this section it shall be presumed, until the contrary is proved, that the accused was aware of the fact that the accident had occurred, and that he did not report the accident or furnish the information as required by subsection (1) (f).
- (5) Any person who contravenes subsection (1) shall be guilty of an offence and upon conviction shall be liable—
- (a) in the case of the death of or injury to a person where it is proved that the person convicted has failed to comply with paragraphs (a) (b), (c) or (f) of subsection (1), to a fine not exceeding K20,000 or to imprisonment for a period not exceeding five years or to both such fine and imprisonment;
- (b) in the case of damage in respect of any property of another person where it is proved that the person convicted has failed to comply with paragraphs (a), (d) or (f) of subsection (1), to a fine not exceeding K10,000 or to imprisonment for a period not exceeding two years or to both such fine and imprisonment; or
- (c) where it is proved that he has failed to comply with paragraph (e) or (g) of subsection (1), to a fine not exceeding K5,000 or to imprisonment for a period not exceeding one year or to both such fine and imprisonment; or
- (d) in the case of damage in respect of an animal of another person where it is proved that the person convicted has failed to comply with paragraphs (a), (b) or (f) of subsection (1) to a fine not exceeding K5,000 or to imprisonment for a period not exceeding six months but not both.
- (6) Any person who contravenes subsection (2) shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding K10,000 or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

## 125. Garage to keep record of motor vehicle involved in accidents

- (1) Any person in charge of a garage or other place where motor vehicles are repaired, and to which any motor vehicle showing signs or marks of having been involved in an accident is brought for the

purpose of the repair of such signs or marks, shall keep a record specifying the nature of such signs or marks, the engine number, chassis number and the registration or similar mark and number, and if known, the name and address of the owner and driver of such vehicle.

- (2) A person required to keep a record under subsection (1) shall retain such record for a period of three years from the date on which it was made and any such record shall, on demand, be produced to a traffic police officer.

### **Part XI – Reckless or negligent driving, inconsiderate driving, driving while under the influence of intoxicating liquor or a drug having a narcotic effect and miscellaneous offences**

#### **126. Reckless or negligent driving**

- (1) No person shall drive a vehicle on a public road recklessly or negligently.
- (2) Without restricting the ordinary meaning of the word "reckless" any person who drives a vehicle in wilful or wanton disregard for the safety of persons or property shall be deemed to drive that vehicle recklessly.
- (3) In considering whether an offence has been committed under subsection (1), the court shall have regard to all circumstances of the case, including, but without prejudice to the generality of the foregoing provisions of this section, the nature, condition and use of the public road upon which the offence is alleged to have been committed, the amount of traffic which at the time actually was or which could reasonably have been expected to be upon that road and the speed at and manner in which the vehicle was driven.
- (4) Any person who contravenes subsection (1) shall be guilty of an offence and upon conviction shall be liable—
  - (a) in the case where the court finds that the offence was committed by driving recklessly, to a fine not exceeding K10,000 or to imprisonment for a period not exceeding three years or to both such fine and imprisonment;
  - (b) in the case where the court finds that the offence was committed by driving negligently, to a fine not exceeding K5,000 or to imprisonment for a period not exceeding two years or to both such fine and imprisonment; or
  - (c) in the case where death results from reckless or negligent driving, to a fine not exceeding K30,000 or to imprisonment for a period not exceeding three years or to both such fine and imprisonment and for subsequent offence to imprisonment for three years with no option of a fine and permanent revocation of a driver's licence.

#### **127. Inconsiderate driving**

- (1) No person shall drive a vehicle on a public road without reasonable consideration for any other person using the road.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding K2,000 or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

#### **128. Driving while under the influence of intoxicating liquor or drug having narcotic effect or with excessive amount of alcohol in blood**

- (1) No person shall on a public road—

- (a) drive a vehicle;
  - (b) occupy the driver's seat of motor vehicle the engine of which is running; or
  - (c) being the holder of driver's licence, occupy the seat in motor vehicle next to a holder of a learner's licence while the holder of the learner's licence is or was driving the vehicle on a public road,  
while under the influence of intoxicating liquor or a drug having a narcotic effect.
- (2) No person shall on a public road—
- (a) drive a vehicle;
  - (b) occupy the driver's seat of a motor vehicle the engine of which is running; or
  - (c) being the holder of a driver's licence, occupy the seat in a motor vehicle next to a holder of a learner's licence while the holder of the learner's licence is or was driving the vehicle on a public road,  
while any specimen of breath, blood or urine taken from his body indicates an alcohol concentration of not less than either 0.08 grams of alcohol per one hundred millilitres of blood or 0.08 grams of alcohol per two hundred and ten litres of breath.
- (3) Where a traffic police officer has reason to believe that any person—
- (a) is or was driving a vehicle upon a public road;
  - (b) is or was occupying the driver's seat of a motor vehicle the engine of which is running;
  - (c) being the holder of a driver's licence, is or was occupying the seat in a motor vehicle next to a holder of a learner's licence while the holder of the learner's licence is or was driving the vehicle on a public road,  
then such traffic police officer may require that person to undergo a breath test in accordance with the directions given by such traffic police officer or provide a sample of blood or urine.
- (4) A traffic police officer may arrest any person without warrant—
- (a) when the result of the breath test specified in subsection (3) exceeds the limit of alcohol concentration expressed in subsection (2); or
  - (b) when the person refuses or fails to—
    - (i) undergo a breath test as specified in subsection (3); or
    - (ii) provide a sample of blood or urine as directed in subsection (3) by a traffic police officer.
- (5) No person shall, who when required by a traffic police officer under subsection (3) to—
- (a) submit to a breath test—
    - (i) refuse or fail to submit to the test; or
    - (ii) willfully do anything to alter the concentration of the alcohol in his blood; or
  - (b) provide a sample of blood or urine, refuse or fail to do so.
- (6) If, in any prosecution for a contravention of the provisions of subsection (2), it is proved that the concentration of alcohol in any specimen taken from the body of the person concerned was not less than 0.08 grams of alcohol per one hundred millilitres of blood or 0.08 grams of alcohol per two hundred and ten litres of breath at any time within two hours after the alleged offence, it shall be presumed, until the contrary is proved, that such concentration was not less than 0.08 grams of

alcohol per one hundred millilitres of blood or two hundred and ten litres of breath at the time of the alleged offence.

- (7) In any civil or criminal action or proceedings for a contravention of the provisions of subsection (1) or (2) evidence of the concentration of alcohol or other drugs in a person's blood or breath at the time of the contravention as determined by analysis of the person's blood, urine, breath or other bodily substance shall be admissible.
- (8) Where in any prosecution under this Act, evidence is tendered of the analysis of a specimen of breath, blood or urine of any person, it shall be presumed, until the contrary is proved, that any device used for obtaining such specimen and the receptacle in which such specimen was placed for despatch to an analyst if required, were free from any substance or contamination which could have affected the result of such analysis.
- (9) Any person convicted of an offence under subsection (1) or (2) shall be liable—
  - (a) to a fine not exceeding K10,000 or to imprisonment for a period not exceeding three years or to both such fine and imprisonment; or
  - (b) in the case of the death of or injury to a person, to a fine not exceeding K50,000 or to imprisonment for a period not exceeding five years or to both such fine and imprisonment, for a second or subsequent offence no option of a fine but to imprisonment of five years and permanent revocation of a driver's licence.

### **129. Unauthorized acts in relation to vehicle**

- (1) No person shall, without reasonable cause or without the consent of the owner, operator or person in lawful charge of a vehicle—
  - (a) set the machinery thereof in motion;
  - (b) place such vehicle in gear;
  - (c) in any way tamper with the machinery, accessories or parts of such vehicle; or
  - (d) enter or climb upon such a vehicle.
- (2) No person shall ride in or drive a vehicle without the consent of the owner, operator or person in lawful charge thereof.
- (3) No person shall without lawful excuse tamper with a vehicle or with any part of the equipment or the accessories of any vehicle or wilfully damage the vehicle or throw any object at any such vehicle.
- (4) No person shall, without the written consent of the Director alter, obliterate or mutilate the engine number or chassis number of a motor vehicle or allow it to be altered, obliterated or mutilated.
- (5) Any person convicted of an offence under this section shall be liable to a fine not exceeding K10,000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

### **130. Furnishing false information**

Without derogating from any other provision of this Act, no person shall—

- (a) in connexion with any application under this Act; or
- (b) in connexion with the furnishing of any information which, to his knowledge, is to be or may be used for any purpose under this Act,

make a declaration or furnish information which to his knowledge is false or in any material respect misleading.

### **131. Unlawful acts in relation to registration number, registration mark or certain documents**

- (1) No person shall—
  - (a) falsify or counterfeit or, with intent to deceive, substitute, alter, deface or mutilate or add anything to a registration number or a registration mark or a similar number or mark issued by a competent authority outside Malawi; or
  - (b) be in possession of such number or mark which has been falsified or counterfeited or so substituted, altered, defaced or mutilated or to which anything has been so added.
- (2) No person shall—
  - (a) falsify or counterfeit or, with intent to deceive, substitute, alter, deface or mutilate or add anything to a certificate, licence or other document issued or recognized under this Act; or
  - (b) be in possession of such certificate, licence or other document which has been falsified or counterfeited or so substituted, altered, defaced or mutilated or to which anything has been so added.
- (3) No person shall—
  - (a) use a certificate, licence or other document issued or recognized under this Act and of which he is not the holder; or
  - (b) permit such certificate, licence or other document of which he is the holder to be used by any other person.
- (4) Where in a prosecution for a contravention of subsection (1) (b) or (2) (b) it is proved that a person was found in possession of a registration number or a registration mark or a similar number or mark or a document which has been falsified or counterfeited or substituted, altered, defaced or mutilated or to which anything has been added, it shall until the contrary is proved, be presumed that such person knew that—
  - (a) such number, mark or document was—
    - (i) falsified or counterfeited; or
    - (ii) substituted, altered, defaced or mutilated with intent to deceive; or
  - (b) whatever was added to such number, mark or document was added thereto with intent to deceive.
- (5) No person shall—
  - (a) with intent to deceive, tamper with the engine or chassis number of a motor vehicle; or
  - (b) without lawful cause be in possession of a motor vehicle of which the engine or chassis number has been tampered with.
- (6) Where in prosecution for a contravention of subsection (5) it is proved that a person was found in possession of a motor vehicle the engine or chassis number of which has been tampered with, it shall, until the contrary is proved, be presumed that such person knew that such number had been tampered with intent to deceive.

- (7) Any person convicted of an offence under subsections (1), (2), (3), or (5) shall be liable to a fine not exceeding K10,000 or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

## Part XII – Presumptions and legal procedure

### 132. Presumption in regard to public road, freeway and public road in urban areas

- (1) Where in any prosecution under this Act it is alleged that an offence was committed on a public road, the road concerned shall, until the contrary is proved, be presumed to be a public road.
- (2) Where in any prosecution under this Act it is alleged that an offence was committed on a freeway, the road concerned shall, until the contrary is proved, be deemed to be a freeway.
- (3) Where in any prosecution under this Act it is alleged that an offence was committed on a public road in an urban area, the road concerned shall, until the contrary is proved, be presumed to be a public road in an urban area.

### 133. Presumption in regard to mass ascertained by a mass-measuring bridge or other mass-measuring instrument

Where in any criminal proceedings arising out of an alleged contravention of this Act, evidence to prove such contravention is given of any mass as ascertained by means of a mass-measuring bridge or other mass-measuring instrument, such mass shall be deemed to be correct until the contrary is proved.

### 134. Presumption in regard to gross vehicle mass of motor vehicle

Where in any prosecution under this Act it is alleged that an offence was committed in relation to the gross vehicle mass of a motor vehicle, the mass so alleged shall, in the absence of evidence as contemplated in [section 133](#), be presumed, until the contrary is proved, to be the gross vehicle mass of such vehicle.

### 135. Proof of gross vehicle mass of motor vehicle

Any document purporting to have been issued by a manufacturer and stating the gross vehicle mass of any particular model of motor vehicle manufactured by him, shall be *prima facie* evidence as to the gross vehicle mass of such model.

### 136. Presumption that owner drove or parked vehicle

- (1) Where in any prosecution relating to the driving of a vehicle on a public road, it is immaterial to prove who was the driver of a vehicle, it shall be presumed, until the contrary is proved, that such vehicle was driven by the owner thereof.
- (2) Whenever a vehicle is parked in contravention of any provision of this Act, it shall be presumed, until the contrary is proved, that such vehicle was parked by the owner thereof.
- (3) For the purposes of subsections (1) and (2) it shall be presumed until the contrary is proved, that, where the owner of the vehicle concerned is a corporate body, such vehicle was driven or parked, as contemplated in those subsections, by a director or servant of the corporate body in the exercise of his powers or in the performance of his duties as such director or servant or in furthering or endeavouring to further the interests of the corporate body.

**137. Presumption in regard to officers**

In any prosecution under this Act, the fact that any person purports to act or has purported to act as a traffic police officer or an examiner, or any other authorized person, shall be *prima facie* evidence of his appointment and authority so to act:

Provided that the provisions of this section shall not apply with regard to a prosecution on a charge relating to impersonation.

**Part XIII – Registers and records****138. Register of records to be kept**

- (1) The registers or records as may be prescribed shall be kept by—
  - (a) the Director;
  - (b) a motor vehicle inspection station;
  - (c) an enforcement agency;
  - (d) any court convicting a person of an offence under this Act;
  - (e) any local authority; and
  - (f) any other person determined by the Minister by notice published in the *Gazette*.
- (2) The prescribed particulars shall be recorded in the prescribed manner in the registers and records referred to in subsection (1).
- (3) Any authority referred to in subsection (1) shall, in the manner and at such intervals, furnish the Minister or any person or body designated by the Minister with information recorded in a register or record of such authority and the Minister shall from the information so furnished compile or cause to be compiled such register as he may deem fit.
- (4) The Minister may prescribe that any person or organization shall keep such additional registers or records as he may deem expedient.

**139. Copy of entry in register or record to be evidence**

- (1) A document purporting to be an extract from or copy of any register or record kept in terms of this Act and purporting to be certified as such shall in any court and upon all occasions whatsoever be admissible as evidence and shall be *prima facie* evidence of the truth of the matters stated in such document without the production of the original register or record or any certificate, licence, other document, microfiche, microfilm or computerized record from or of which such extract or copy was made.
- (2) The information contained in a register or record kept for the purposes of this Act shall be furnished to—
  - (a) a traffic police officer or an examiner who requires it for the performance of his duties;
  - (b) any person authorized thereto by the Minister or the Director to demand such furnishing;
  - (c) a competent authority in a foreign state; or
  - (d) a local authority:

Provided that the consent of the Minister or any person authorized thereto by him shall be obtained before such information is furnished to an authority referred to in paragraph (c).

- (3) Any authority keeping a register or record under [section 138](#) shall, upon payment of the prescribed fees, confirm whether or not certain information corresponds to the information contained in such register or record, to any person who, in the opinion of such authority, on reasonable grounds requires confirmation of such information.

#### **140. Cognizance may be taken of information contained in register or record**

The Minister or the Director may, in exercising a discretion or taking a decision under this Act, take cognizance of the information contained in a register or record contemplated in [section 138](#).

### **Part XIV – Compulsory third party insurance**

#### **141. Users of motor vehicle to be insured against third party risks**

- (1) Subject to this Act, it shall not be lawful for any person to use or cause or permit any other person to use a motor vehicle on a public road unless there is in force in relation to the use of such motor vehicle by that person or that other person, as the case may be, such a policy of insurance or such a security in respect of third party risks as complies with the requirement of this Part.
- (2) Any person who contravenes subsection (1), shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding K10,000 or to imprisonment for a period not exceeding two years or to both fine and such imprisonment.
- (3) Where any person is convicted of an offence under subsection (1), the court convicting him shall, in addition to any other penalty, disqualify him from holding or obtaining a driving licence, for a first offence, for a period of not less than six months, and for a second offence a period of not less than one year and for a third and subsequent offence for a period of not less than 5 years.

#### **142. Saving in respect of liability**

A person charged with using a motor vehicle in contravention of [section 144](#) shall not be convicted if he proves that such motor vehicle did not belong to him and was not in his possession under a contract of hire or of loan, that he was using the motor vehicle in the course of his employment and that he neither knew nor had reason to believe that there was not in force in relation to such motor vehicle a policy of insurance or security as compiled with the requirements of this Part.

#### **143. Requirements in respect of policies of insurance**

In order to comply with the requirements of this Part a policy of insurance must be a policy which—

- (a) is issued by an insurer approved by the Director; and
- (b) insures such persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of—
  - (i) the death of or bodily injury to any person; or
  - (ii) damage to property, caused by or arising out of the use of the motor vehicle on a public road.

#### **144. Restriction of liability**

A policy of insurance shall not be required to cover—

- (a) any liability in respect of the death of or bodily injury to a person in the employment of a person insured by the policy if such death or bodily injury arises out of and in the course of his employment;
- (b) Except in the case of a motor vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, liability in respect of the death of or bodily injury to persons being carried in or upon entering or getting on to or alighting from such motor vehicle at the time of the occurrence of the event out of which the claims arose;
- (c) liability under [section 143](#) (b) (i)—
  - (i) in respect of a total sum in excess of the prescribed amount or the policy limits whichever is the larger arising out of the claims for any one person in respect of the death of or bodily injury to any person;
- (d) liability under [section 143](#) (b) (ii)—
  - (i) in respect of total sum in excess of the prescribed amount or the policy limits whichever is the larger arising out of the claims for any one accident in respect of each motor vehicle or combination of motor vehicles concerned;
  - (ii) for damage to property of or in the possession, custody or control of the person insured, his agent, driver or representative;
  - (iii) for damage to property in or on the motor vehicle of the person insured; or
  - (iv) for damage to any bridge, weighbridge, road, ramp, ferry, railway line, or anything in or below the surface of a road; or
- (e) any contractual liability.

#### 145. Requirements in respect of securities

In order to comply with the requirements of this Part a security must—

- (a) consist of an undertaking by the giver of the security to make good, subject to any conditions specified therein and up to an amount approved by the Minister, any failure by the owner of the motor vehicle or such other persons or classes of persons as may be specified in the security duly to discharge any such liability as is required to be covered by a policy of insurance under [section 143](#) which may be incurred by him or them; and
- (b) be approved by the Minister and deposited with the Minister.

#### 146. Certificate of security

- (1) Whenever such a security as is mentioned in the preceding section is approved by the Minister and deposited with him the Minister shall give to the owner of the motor vehicle concerned a certificate of security in the form prescribed for certificates of insurance issued under [section 151](#) and the said [section 151](#) shall apply to certificates of security in all respects as they apply to certificates of insurance.
- (2) References in the remainder of this Part to a policy, an insurer or an insured shall be deemed to include references to a security, a giver of a security or a person secured as the case may be.

#### 147. Certain conditions in policies of insurance to be of no effect

- (1) Save as in this Act expressly provided any condition in a policy under this Part providing that in the event of some specified thing being done or omitted to be done after the happening of the

event giving rise to a claim no liability shall arise under the policy or that in any such event any liability so arising shall cease to be of no effect in connexion with any claim in respect of which the policy holder is required to be insured by virtue of this Part:

Provided that nothing in this section shall be taken to render void any provision in a policy requiring the person insured to repay to the insurer any sums which the latter may have become liable to pay under the policy and which have been applied to the satisfaction of the claims of third parties.

- (2) Where a certificate of insurance has been issued under this Part in favour of the person by whom a policy has been effected, so much of a policy as purports to restrict the insurance of the person insured thereby reference to—
- (a) the age or physical or mental conditions of the person driving the vehicle;
  - (b) the condition of the vehicle;
  - (c) the number of persons that the vehicle carried;
  - (d) the weight or physical characteristics of the goods that the vehicle carries;
  - (e) the times at which or the areas within which the vehicle is used;
  - (f) the horse power or value of the vehicle;
  - (g) the carrying on the vehicle of any particular apparatus; or
  - (h) the carrying on the vehicle of any particular means of identification other than any means of identification required to be carried by or under the laws for the time being in force relating to motor vehicles,

shall as respects such liabilities as are required to be covered by this Part be of no effect:

Provided that nothing in this subsection shall require an insurer to pay any sum in respect of the liability of any person otherwise than in or towards the discharge of that liability, and any sum paid by an insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this subsection shall be recoverable by the insurer from that person.

#### **148. Right of injured party to proceed against insurer**

- (1) Any person having a claim against a person insured in respect of any liability in regard to which a policy of insurance has been issued for the purposes of this Part shall be entitled in his own name to recover directly from the insurer any amount, not exceeding the amount covered by the policy, for which the person insured is liable to the person having the claim:

Provided that—

- (a) the rights of any such person claiming directly against the insurer shall, except as provided in subsection (2), be not greater than the rights of the person insured against such insurer;
  - (b) the right to recover directly from the insurer shall terminate upon expiration of a period of two years from the date upon which the claimant's cause of action against the person insured arose; or
  - (c) the expiration of such period as is mentioned in paragraph (b) of this proviso shall not affect the validity of any legal proceedings commenced during such period for the purpose of enforcing a right given under this section.
- (2) In respect of the claim of any person claiming directly against the insurer by virtue of subsection (1), any condition in a policy purporting to restrict the insurance of the person insured thereby shall be of no effect:

Provided that nothing in this section shall require an insurer to pay any sum in respect of the liability of any person otherwise than in or towards the discharge of that liability, and any sum paid by an insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of the operation of this subsection may be recovered by the insurer from that person.

#### **149. Restriction of liability in respect of passengers in public service vehicles to be void**

So far as any contract for the conveyance of a passenger in a public service vehicle purports to negative or to 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, entering or alighting from the vehicle or purports to impose any conditions with respect to the enforcement of any such liability, it shall be void.

#### **150. Hospital expenses**

Where an insurer makes any payment under the provisions of this Part in respect of the death of or bodily injury to any person who has received treatment in a hospital in respect of the fatal or other bodily injury so arising the insurer shall also pay to such hospital the expenses reasonably incurred by the hospital in affording such treatment to an amount as prescribed for each person so treated as either an in-patient or as an out-patient.

#### **151. Certificate of insurance**

- (1) Upon the issue of a policy of insurance in accordance with the requirements of this Part the insurer shall issue to the insured in respect of each vehicle and trailer insured a certificate (in this Part referred to as "a certificate of insurance") in the prescribed form and containing such particulars of any conditions subject to which the policy is issued and different forms and different particulars may be prescribed in relation to different circumstances.
- (2) A certificate of insurance referred to in subsection (1), shall at all times be in the motor vehicle concerned while it is operated on a public road.
- (3) A certificate of insurance may be inspected by a police officer or by any person so authorized in writing by the Director.
- (4) Any person who shall manufacture or be in possession of any false policy or certificate of insurance or who shall alter any policy or certificate of insurance shall be guilty of an offence and upon conviction shall be liable—
  - (a) in case of a first offence to a fine not exceeding K5,000 and to imprisonment for one year or to both such fine and such imprisonment; and
  - (b) in the case of a second or subsequent offence to a fine not exceeding K10,000 and to imprisonment for two years or to both such fine and such imprisonment.

#### **152. Driver to give name and address**

- (1) Any person driving a motor vehicle on a public road or any person whom a police officer or any other authorized person has reasonable cause to believe to have been the driver of a motor vehicle at a time when an accident occurred owing to its presence on a public road or any person whom a police officer has reasonable cause to believe to have committed an offence in relation to the use of a motor vehicle on a public road shall on being so required by a police officer give his name and address and the name and address of the owner of the vehicle.

- (2) It shall be the duty of the owner of a motor vehicle to give such information as he may be required by a police officer or any other authorized person to give for the purpose of determining whether the vehicle was or was not being driven in contravention of [section 141](#), and to produce the policy or certificate of insurance relating to the motor vehicle if required to do so by a police officer or any other authorized person.

### 153. Making false statements

- (1) No person shall for the purpose of obtaining a policy of insurance as required by [section 141](#) make any false statement knowing it to be false, in consequence whereof the policy is liable to be avoided, or wilfully commit any act which disentitles him to claim under the policy.
- (2) Any person who contravenes subsection (1), shall be guilty of an offence and upon conviction shall be liable—
  - (a) in case of a first offence to a fine not exceeding K2,000 and to imprisonment for one year or to both such fine and imprisonment; and
  - (b) in the case of a second or subsequent offence to a fine not exceeding K5,000 and to imprisonment for two years or to both such fine and imprisonment.

### 154. Duty of insurer when policy is cancelled

- (1) Where, to the knowledge of an insurer, a policy issued for the purposes of this Part ceases to be effective without the consent of the person to whom it was issued otherwise than by the effluxion of time or by reason of his death the insurer shall forthwith notify the Director and the Commissioner of Police of the date on which the policy ceased to be effective.
- (2) Where in the circumstances mentioned in subsection (1), any policy of insurance ceases to be effective the person insured shall forthwith surrender any certificate of insurance held by him to the insurer.

### 155. Duplicate certificate of insurance

No insurer shall issue a replacement certificate of insurance until he has made such enquiries as to satisfy him beyond reasonable doubt that the original certificate of insurance has been lost or destroyed or otherwise rendered unusable.

## Part XV – General provisions

### 156. Exemption from previous relating to parking

Notwithstanding anything to the contrary contained in any law, a local authority may, in such circumstances and subject to such conditions as it may deem expedient, exempt—

- (a) a medical practitioner;
- (b) a nurse or midwife registered under the Nurses and Midwives Act; or  
*[Cap. 36:02]*
- (c) any person who in, the opinion of such local authority, by reason of a permanent disability has substantial difficulty in walking or is unable to walk, from the provisions of any law relating to the parking of a motor vehicle in force within its area of jurisdiction.

**157. Doubt concerning use or classification of motor vehicle**

If, for the purposes of this Act, doubt arises as to the use to which any vehicle is put or the classification of any vehicle, such matter shall be referred to the Director.

**158. Vehicle and load may be exempted from provisions of this Act**

The Director may, subject to such conditions and upon payment of such fees or charges as he may determine, authorize in writing, either generally or specifically, the use on a public road of a vehicle which does not comply with the provisions of this Act or the conveyance on a public road of passengers or any load otherwise than in accordance with the provisions of this Act.

**159. Director may authorize certain refunds**

- (1) The Director may, if he is satisfied that any amount paid by a person was in excess of the amount properly chargeable under this Act, authorize a refund of such amount or of any part thereof to such person.
- (2) The Director shall not authorize any refund under this section unless the claim therefore is received within twelve months after the date of the payment concerned.

**160. Inspection for ensuring that provisions of this Act are being given effect to**

- (1) The Minister may authorize any person, organization, or authority to carry out any inspection which the Minister deems necessary in order to ensure that the provisions of this Act are being complied with.
- (2) If the Minister delegates the power conferred upon him by subsection (1) to the Director, the Director may authorize any person, organization, or authority to carry out the inspection concerned.
- (3) No person shall obstruct or hinder any person in the carrying out of any inspection referred to in subsection (1).

**161. Variation of prescribed form**

The Minister may, in such circumstances as he may deem expedient, authorize any authority to use, in substitution for a form prescribed for a particular purpose, a form which varies from such prescribed form, and in respect of such authority such varied form shall be deemed to be the prescribed form for that purpose.

**162. Duplicate of document or token**

- (1) Subject to the provisions of subsection (3), the Director if satisfied that a certificate, licence or other document or token issued by the Director in terms of this Act has been lost, destroyed or defaced or that the figures or particulars thereon have become illegible shall, upon receipt of an application on the prescribed form and upon payment of the prescribed fees, issue a duplicate of such certificate, licence or other document or token to the person who, in the opinion of the Director, is entitled thereto, with either the word "DUPLICATE" written thereon or the issue number printed thereon:

Provided that a duplicate of a learner's licence, a driver's licence, or a professional driving permit, shall only be issued to the person to whom the original licence or permit was issued.

- (2) An application for a duplicate of a licence or permit referred to in the proviso to subsection (1), shall be made as prescribed and the Director shall issue the duplicate as prescribed.
- (3) If, after the issue of a duplicate under subsection (1), the original certificate, licence or other document or token is found, the person to whom the duplicate was issued shall take all reasonable steps to obtain possession thereof and surrender it forthwith to the Director.

### **163. Signature upon documents**

Any person who is unable to sign his name shall, whenever his signature is required upon any document under this Act, impress in place thereof his left thumb print upon the space within which he would otherwise have been required to sign his name, and if his left thumb print is not available, he shall substitute therefore another of his fingerprints, and in such latter event the document so marked shall then be endorsed by the officer in whose presence the print was made, identifying the finger used.

### **164. Service of notices**

- (1) Whenever under this Act any notice is authorized or required to be served upon or issued to any person, such notice shall either be served personally upon the person to whom it is addressed or be sent to him by registered post to his last known address:

Provided that the address furnished by the holder of a driver's licence at the time of his application for such licence or recorded against his name in a register of drivers' licences, or the address recorded against the registration of a vehicle in a register of motor vehicles as the address of the owner of such vehicle, shall serve as his domicile of summons and execution for all purposes arising from or for the purposes of the Act, for the service of notices, post or processes on such person.

- (2) Service by registered post in terms of subsection (1), shall be deemed to have been effected on the seventh day after the date stamped upon the receipt for registration issued by the post office which accepted the notice.
- (3) A certificate by the officer who issued the notice referred to in subsection (1), or by a person subordinate to such officer, stating the time, place and manner of issuing such notice, shall be evidence that such notice was duly issued, unless and until the contrary is proved.

### **165. Application to the Government**

- (1) The provisions of Part XIV shall apply to vehicles owned by the Government other than such vehicles as are allocated for use by the Malawi Army.
- (2) Any officer in the public service or any employee, servant or agent of the Government who, in the course of his duties as such drives, uses, exercises control over or is in-charge of any vehicle owned by the Government, shall be personally subject to all of the provisions of this Act, and shall personally be liable for any offence committed by him against any of the said provisions of this Act while so driving, using, exercising control over or being in-charge of such vehicle.

### **166. Seizure of vehicles**

- (1) Subject to subsection (2), a traffic police officer, an examiner, or an authorized officer may seize a vehicle or a vehicle with its load which is used in or is on reasonable grounds believed to be used in the commission or suspected commission of an offence under this Act.
- (2) The manner and conditions in respect of the seizure, storage and disposal of a vehicle or a vehicle with its load referred to in subsection (1), shall be as prescribed.

### 167. Offences and penalties

- (1) Any person who contravenes or fails to comply with any provision of this Act shall be guilty of an offence.
- (2) Any person convicted of an offence under any provision of this Act for which no special penalty is provided by this Act shall be liable to a fine not exceeding K20,000 or to imprisonment for a period not exceeding one year or both such fine and imprisonment.

### 168. Forfeiture

The court convicting any person of an offence under [section 167](#) (1) as read with [section 83](#), or a regulation made under [section 181](#) (1) (d), (l), (n) or (q), may, without notice to any person, declare a vehicle or its load or both which was or were used in the commission of the offence and which was or were seized under the provisions of this Act, or the convicted person's rights in such vehicle or load or both, to be forfeited to the Government:

Provided that such declaration shall not affect any right which any person other than the convicted person may have to the vehicle or load or both, if it is proved that that other person did not know that that vehicle or its load or both was or were being used or would be used in the commission of the offence concerned, or that he could not prevent such use.

### 169. Delegation

- (1) The Minister may—
  - (a) delegate to any other person any power conferred upon him by this Act, other than the power conferred by [section 181](#); and
  - (b) authorize any other person to perform any duty assigned to the Minister by this Act, and may effect such delegation or grant such authorization subject to such conditions as he may deem fit.
- (2) The Director may—
  - (a) delegate to any other person any power conferred upon him by or under this Act; and
  - (b) authorize any other person to perform any duty assigned to the Director by or under this Act, and may effect such delegation or grant such authorization subject to such conditions as he may deem fit.
- (3) Any delegation effected or authorization granted under subsection (1) or (2), may at any time be withdrawn by the Minister or by the Director, as the case may be.

## Part XVI – Traffic Court

### 170. Minister may prescribe offences

Notwithstanding anything in this Act or any other written law the Minister may prescribe a schedule of traffic offences (hereinafter referred to as prescribe offences) which may be dealt with and prosecuted in any area in which a Traffic Court exercises jurisdiction in accordance with this section or any rules made hereunder; and the Minister may for the purposes of this section prescribe statutory maximum penalties for such offences, which shall not exceed the penalties prescribed for such offences elsewhere in or under this Act.

**171. Statutory maximum penalty to have effect**

A statutory maximum penalty prescribed for a prescribed offence shall, notwithstanding any other penalty prescribed for such offence by or under this Act, have effect where the person charged with such offence submits a written plea of guilty which is accepted in accordance with this section.

**172. Notification of a prescribed offence by an authorized officer**

Notwithstanding anything elsewhere in this Act or any other written law, an authorized officer may, if it is under his authority to do so and he considers it appropriate, serve either personally or by affixing the same prominently to the vehicle concerned, upon the owner, driver or person in charge of control of any motor vehicle who the authorized officer reasonably believes to have committed any of the prescribed offences, a notification of a traffic offence (hereinafter referred to as a notification) in the prescribed form charging such person with having committed the offence or offences indicated in the notification and requiring such person to attend the Traffic Court specified in the notification to answer such charge or charges at such date and time (being not sooner than twenty-one days after the date of such service) as is specified in such notification.

**173. Person served with notification may send a written plea of guilty to Traffic Court**

Subject to [section 176](#) a person served with a notification under this section shall not be obliged to attend the Traffic Court concerned in answer to such notification if he has pleaded guilty unequivocally in writing and sent the notification, together with the prescribed proof of payment for the amount of the statutory maximum penalty or penalties for the offence or offences to which he has pleaded guilty, by prepaid registered post or by hand, to that Traffic Court so as to reach the Court not later than the day and time indicated in the notification for his attendance:

Provided that where an authorized officer considers that in all the circumstances a plea of guilty in writing should not be accepted he may; by notice in the prescribed form under his hand, served on the accused and on the Traffic Court concerned at least seven clear days before the date indicated in the notification, require the accused to attend the Traffic Court in person on the day and at the time indicated in the notification.

**174. Notification to be placed before the Traffic Court**

A copy of the notification shall be placed before the Traffic Court concerned at the time fixed for the attendance of the accused to answer the charge or charges and unless that Court otherwise directs, such copy shall be used as a charge sheet.

**175. Procedure after a plea of guilty**

A Traffic Court may, on receipt of a plea of guilty, either in writing, or by the accused in person, proceed to conviction and may, after considering any mitigating circumstances stated in writing or personally by the accused, pass sentence, which in the case of a written plea of guilty shall be the statutory maximum penalty unless the Traffic Court for special reasons decides to remit the penalty in whole or in part, in which case it shall direct that the penalty or part thereof be refunded to the accused.

**176. Where a Traffic Court is not satisfied that a written plea of guilty is unequivocal**

Where a Traffic Court is not satisfied that a written plea of guilty is unequivocal or where, for good reason shown, the Court decides not to accept a written plea of guilty, it shall issue a summons requiring the accused to attend before it or any other court to answer the charge or charges indicated in the notification, on such date and at such time as shall be specified in the summons.

**177. Where accused pleads not guilty**

Where an accused appears before a Traffic Court and pleads not guilty to the charge or charges indicated on the notification, the Traffic Court may hear and determine the charge or charges forthwith or may adjourn the proceedings to another date either before itself or any other court.

**178. Where a person fails to attend Traffic Court after notification**

Where any person, having been served with a notification issued in accordance with this section, fails to attend the Traffic Court concerned on the day and at the time specified in such notification and has not pleaded guilty in writing and paid the statutory maximum penalty in the prescribed manner indicated before such day and time (and a person on whom has been served a notice in the prescribed form under the proviso to [section 173](#) shall be deemed not to have pleaded guilty in writing for the purposes of this subsection) he may be brought before the Traffic Court, either by summons or by warrant of arrest, and, unless he shows good cause why he has failed to attend in accordance with such notification he shall be guilty of an offence and shall be liable forthwith, by order of the court, to a fine of K5,000 and to imprisonment for three months, and the court may thereupon proceed to deal with the charge or charges indicated in the notification, or may adjourn the hearing of such charge or charges to another date before itself or any other court.

**179. Registered owner of vehicle to be liable where there is failure to comply with notification**

Where any person served with a notification under this section fails to comply with such notification then the registered owner of the vehicle concerned shall be liable for the offence:

Provided that such owner shall not be liable for the offence if he satisfies the court that he was not driving or in charge or control of the vehicle at the relevant time, and that he has, upon being so requested by an authorized officer or the court, given to the authorized officer or to the court all the information at his disposal, or which should reasonably be at his disposal, to enable the person who was driving or in charge or control, of the vehicle at the relevant time to be brought before the court.

**180. Unauthorized person not to remove notification affixed to a vehicle**

No person other than the person to whom it is addressed, or a person authorized by such person in that behalf, shall remove from a vehicle a notification which has been affixed thereto by an authorized officer under this section, or any portion of such notification, or willfully tear, deface or destroy any such notification.

**Part XVII – Regulations and by-laws****181. Power of Minister to make regulations**

- (1) The Minister may, make regulations in respect of any matter contemplated, required or permitted to be prescribed under this Act and generally as to the use of any vehicle on a public road, its construction and equipment and the conditions under which it may be used and in any other respect for the better carrying out of the provisions or objects of this Act, and in particular, but without prejudice to the generality of the foregoing provisions, with respect to—
  - (a) the safety of traffic on a public road, including the restriction of the use of any such road or part thereof by such traffic and the duties of the users of any such road;
  - (b) the identification of vehicles and, in relation to a motor vehicle, the size, shape, colour and character of the registration mark to be displayed under this Act and the means to be

applied to render any such mark easily distinguishable, whether by night or day, when any such vehicle is operated on a public road;

- (c) the width, height and length of any vehicle, and the diameter of the wheels and the width, nature and condition of the tyres of any vehicle when operated on a public road;
- (d) the maximum mass, laden or unladen, of any vehicle, the height and the width of any load which may be carried by any vehicle, the manner in which any vehicle may be loaded, the extent to which any load may project in any direction and the maximum mass of any vehicle or any part thereof supported by the road or by any specified area thereof, when any vehicle referred to in this paragraph is operated on a public road;
- (e) the emission of exhaust gas, smoke, fuel, oil, visible vapours, sparks, ash or grit from any vehicle operated on a public road;
- (f) excessive noise owing to the design or condition of any vehicle or the loading thereof, or to the design, condition or misuse of a silencer, or of a hooter, bell or other audible warning device, when any such vehicle is operated on a public road;
- (g) the particulars to be marked on any vehicle;
- (h) the towing, pushing or drawing of any vehicle by another vehicle on a public road;
- (i) the conditions under which any motor vehicle fitted with steering apparatus on the left side may be operated on a public road;
- (j) the number, nature and kind of lamps, including retroreflectors, to be carried by any vehicle operated on a public road, the position in which they shall be carried, the manner, conditions and times of their use and the use of any lamp or lighting device which may endanger public safety and, for the purposes of this paragraph, a retro-reflector may be defined as meaning a reflector which bears a standardization mark or which bears such other identification mark as may be prescribed;
- (k) the number and nature of brakes and for ensuring that brakes, silencers and steering gear shall be efficient and in proper working order, in respect of any vehicle operated on a public road;
- (l) the regulation of the use and control of any vehicle on a public road, its construction, equipment; width of tracks, dimensions, mass and use in respect of either chassis and body or chassis, body and load and the conditions under which it may be used;
- (m) in relation to a vehicle operated on a public road, the devices to be fitted for signalling the approach thereof, for enabling the driver thereof to become aware of the approach of another vehicle from the rear, and for intimating any intended movement thereof and the use of any such devices and for securing that they shall be efficient and kept in proper working order;
- (n) the protection of any public road, the mass, tyres and load of any vehicle in relation to any specified bridge or ferry, the time when and speed at which any vehicle of a speeded mass may be allowed to cross any bridge or ferry, and furnishing of security by any person against damage to any public road by reason of heavy traffic, and making good the cost of repairing such damage;
- (o) the stopping with and parking of vehicles on public roads or parking places;
- (p) the furnishing of accident reports and statistics of any nature whatsoever;
- (q) the determination of the number of passengers for the transport of which a certain class of motor vehicle is adapted and the number which may be transported, the general safety, comfort and convenience of passengers carried on or by such a motor vehicle and the conduct of the driver, conductor and passengers on such a vehicle;

- (r) the specification for the examination of any vehicle;
  - (s) any light which, in the opinion of the Minister, is likely to interfere with the proper view of any road traffic sign or be confused with any such sign;
  - (t) the method of determining any fact which is required for the purposes of this Act;
  - (u) any form, process or token which the Minister may deem expedient for the purposes of this Act and the nature and extent of any information to be furnished for the purpose of any such form;
  - (v) the uniform to be used by officers appointed under this Act;
  - (w) the fees to be charged for any purpose under this Act, including administrative fees for overload offences;
  - (x) notwithstanding the provisions of the General Interpretation Act, the maximum penalty and fine for different offences for the violations of regulations;
- [Cap. 1:01]*
- (y) the application of fines as spot fines according to fixed rates;
  - (z) the carriage of persons as passengers on any vehicle which has been constructed or designed solely or chiefly for the carriage of goods and not for the carriage of passengers and their effects;
  - (aa) the additional duties for operators of specific classes of motor vehicles or operators engaged in activities which require additional safety measures for the protection of the public;
  - (bb) the preparation of a Code to be known as the Highway Code containing such directions as appear to the Minister to be proper for the guidance of persons using public roads;
  - (cc) devices and procedures to be used in detecting and measuring the speed of a vehicle moving on a public road;
  - (dd) devices and procedures to be used in administering a breath test; and
  - (ee) to do all such things as may be necessary for the proper carrying out of this Act.
- (2) Regulations made by the Minister under subsection (1) with regard to—
- (a) specific categories:
    - (i) of road transport undertakings;
    - (ii) of industries or trades or occupants concerned with road transport;
    - (iii) of persons by whom any undertaking or occupation referred to in subparagraphs (i) and (ii) is carried on or exercised; or
    - (iv) of operators of vehicles concerned with, or new entrants to, any undertaking or occupation referred to in subparagraph (iii);
  - (b) specific circumstances in which any undertaking or occupation referred to in paragraph (a) (iii) is carried on or exercised;
  - (c) specific areas in which any undertaking or occupation referred to in paragraph (a) (iii) is carried on or exercised,
- shall be so made by the Minister with due regard to the specific requirements of the category, circumstance or area concerned.

- (3) The power to make regulations for any purpose referred to in subsection (1), shall include the power to restrict or prohibit any matter or thing in relation to that purpose either absolutely or conditionally.
- (4) Any regulation under this section may be made to apply generally throughout Malawi or within any specified part thereof or to any specified category of vehicles or persons.
- (5) A regulation made under subsection (1) may provide for penalties for a contravention thereof and also for different penalties in the case of successive or continuous contraventions.

## **182. Power of local authority to make by-laws**

- (1) Subject to the provisions of any law in relation to the procedure to be followed in the making, approval and promulgation of any by-law by a local authority, a local authority may, in consultation with the Director, make by-laws not inconsistent with the provisions of this Act in respect of—
  - (a) the safety of traffic on any public road, the duty of any user of such road and the use of any such road by any vehicle;
  - (b) subject to the provisions of any law and any regulation or by-law made thereunder in relation to the restriction, regulation or control of the carrying on of the business of street vendor, peddler or hawker, the stopping with and parking of any vehicle on any public road or portion thereof, including by-laws relating to the installation, regulation, supervision, maintenance and control of parking meters and parking places;
  - (c) the appointment and licensing of private parking attendants and the withdrawal of any such licence;
  - (d) the appointment of traffic wardens;
  - (e) subject to the provisions of any law and any regulation or by-law made thereunder in relation to the restriction, regulation or control of the carrying on of the business of street vendor, peddler or hawker, any public road which is not to be used by any vehicle, either generally or at specific times;
  - (f) the relative position on a public road of traffic of differing speeds and classes;
  - (g) the place where and time when vehicle may not turn so as to face in the opposite direction to that in which it was proceeding or where it may only so turn under specified conditions;
  - (h) the loading and off-loading of any vehicle on a public road;
  - (i) the rules as to priority of entry of certain motor vehicles into a main thoroughfare;
  - (j) the use of hooter, bell or other audible warning device and the conditions under which any such audible warning device may be used within any specified area, whether at all times or during specified periods;
  - (k) the appointment of an advisory traffic control board consisting of not fewer than three members to advise the local authority on all questions of traffic control;
  - (l) the use of any public road by traffic in general;
  - (m) the limitation of the age of drivers of vehicles drawn by animals;
  - (n) any form or token which a local authority may deem expedient for the purposes of any by-law, and the nature and extent of any information to be furnished for the purpose of any such form;

- (o) the mass of any goods which or the number of passengers who or animals which may be conveyed on a pedal cycle;
  - (p) the regulation, restriction, prohibition or control of the parking upon public roads of vehicles owned, kept or used by motor traders or which have been placed in their custody or under their control in the course of any motor trader's business carried on by them; and
  - (q) any other matter in regard to which a local authority may make by-laws under this Act.
- (2) The power to make by-laws for any purpose referred to in subsection (1), shall include the power to restrict or prohibit any matter or thing in relation to that purpose, either absolutely or conditionally.
- (3) Any by-law under subsection (1), may be made to apply generally throughout the area of the local authority or within any specified part thereof or to any specified category of vehicles or persons.
- (4) Any by-law made under this section may provide for penalties for a contravention thereof, and may also provide for different penalties in case of successive or continuous breaches, but no penalty shall exceed a fine of K7,500 or imprisonment for a period of six months or both such fine and imprisonment.

### **183. Local authority may determine fees**

A local authority may determine the fees to be charged for any purpose contemplated in [section 182](#).

## **Part XVIII – Repeal and savings**

### **184. Repeal and savings**

- (1) The Road Traffic Act is hereby repealed.
- (2) Any subsidiary legislation made under the Act repealed by subsection (1), in force immediately before the commencement of this Act—
  - (a) shall remain in force unless inconsistent with this Act and be deemed to be subsidiary legislation made under this Act; and
  - (b) may be replaced, amended or repealed by subsidiary legislation made under this Act.