

**FIRST SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

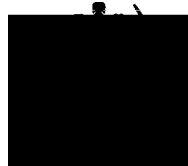
No. 2,581 of 22nd NOVEMBER, 1990.

I ASSENT,

DEREK REFFELL

GOVERNOR.

22nd November, 1990.



GIBRALTAR

No. 53 of 1990.

**AN ACT to amend the Traffic Act. ENACTED by the Legislature of
Gibraltar.**

Title and commencement.

1. This Act may be cited as the Traffic (Amendment) (No. 2) Act, 1990, and -
shall come into effect on such day as the Governor may by notice in the
Gazette appoint and different days may be so appointed for different
purposes.

Amendment to section 2.

2. Section 2 of the Traffic Act (hereinafter called "the principal Act") is amended by inserting after the definition of "road" the following new definitions—

"" road haulage operator licence" means a licence to undertake the activity of transporting goods for hire or reward by means of either

- (a) a self contained motor vehicle; or
- (b) a combination of coupled vehicles,

having a pay load in excess of 3,500 kilogrammes or a total laden weight in excess of 6 metric tonnes:

Provided that for the purposes of Part IV of the Act, a road haulage operator licence shall not be required where such activity is undertaken by a person on his own account, that is to say where the following conditions are satisfied—

- (a) the goods carried are the property of the person or have been sold, or let out on hire or hired, produced, extracted, processed or repaired by that person;
- (b) the purpose of the journey is to carry the goods to or from the premises of the person or to move them, either inside the premises or outside the premises but for the purpose of the business of the person;
- (c) the motor vehicles used for such carriage are driven by employees of the person;
- (d) the vehicles carrying the goods are owned by the person or have been bought by him on deferred terms or are hired provided that, except in the case of the use of replacement vehicles during a short breakdown of the vehicle normally used, the terms of hiring are in accordance with Directive 84/697 of the European Economic Communities on the use of vehicles hired without drivers for the carriage of goods; and
- (e) the carriage of the goods is no more than ancillary to the overall activities of the person;

"road passenger transport operator licence" means a licence to undertake the activity of operating, by means of motor vehicles falling within category D in section 16G(1) of the Act, passenger transport services for the public or any specific category of passengers for which payment is made by the passenger or by the person who has organised the provision of the transport;

"road service licence" means a licence to operate as a public service vehicle a motor vehicle falling within category B in section 16G(1) of the Act;

"road transport operator" means a person to whom a road haulage operator licence or a road passenger transport operator licence has been granted by the competent authority in a member State of the European Economic Communities;"

Amendment to section 6.

3. Section 6 of the principal Act is amended in subsection (t) by omitting the words "other than a motor cycle with an engine capacity of 50cc or less".

Amendment to section 9.

4. Section 9 of the principal Act is amended in subsection ([) by omitting the words "and a motorcycle with an engine capacity of 50cc or less".

Amendment to section 47.

5. Section 47 of the principal Act is amended—

(a) by omitting the fullstop at the end of paragraph (d) and substituting therefor a semi-colon;

(b) by inserting new paragraphs (e) and (f) as follows—

"(e) for the purpose of implementing in Gibraltar—

(i) international agreements and conventions;

(ii) legislation of the European economic Communities,

concerned with road transport;

(f) for the purpose of applying in Gibraltar instruments of the European Economic Community concerned with mutual recognition of diplomas, certificates and other evidence of formal qualification in respect of road transport operators."

Amendment to section 54.

6. Section 54 of the principal Act is amended by omitting paragraph (b) and substituting therefor the following new paragraph—

"(b) consider applications for

- (i) road haulage operator licences;
- (ii) road passenger transport operator licences;
- (iii) road service licences,

forwarded to it under the provisions of this Part, and deal with the applications in accordance with the provisions of this Part;".

Amendment to Heading.

7. The principal Act is amended by omitting the heading appearing between section 57 and section 58 and substituting therefor the following heading—

"Road Service and Operators Licences".

Amendment to section 58.

8. Section 58 of the principal Act is amended—

- (a) by omitting subsection (1) and substituting therefor the following new subsection

"(1) No person shall use or cause or permit to be used any motor vehicle falling within category B in section 16G(1) of the Act as a public service vehicle except under a road service

licence granted by the Commission and in accordance with the terms and conditions thereof.";

- (b) in subsection (2) by inserting after the word "vehicle" where it occurs for the first time the words "to which this section applies".

Repeal of section 59.

9. Section 59 of the principal Act is repealed.

Amendment to section 60.

10. (1) Section 60 of the principal Act is amended in subsection (1)—

- (a) in paragraph (a) by omitting the words "or types of vehicles" and substituting therefor the words "of vehicle";
- (b) in paragraph (b) by—
 - (i) omitting the words "each vehicle proposed to be used" and substituting therefor the words "the vehicle it is proposed to use";
 - (ii) inserting after the semi-colon the word "and";
- (c) by omitting paragraph (c).

(2) Section 60 of the principal Act is further amended by inserting the following new sub-sections—

"(3) Within 14 days of making an application under sub-section (1) the applicant shall cause to be published in a newspaper circulating in Gibraltar a notice

- (a) giving such details of that application;
- (b) in the form,

as shall be prescribed by the Commission from time to time and shall provide to the Commission a copy of the published notice.

(4) The Commission shall consider written representations in support or otherwise of the application relating to the matters dealt with in paragraphs (a), (b), (c) and (d) of section 63 received by it and copied by the objector to the applicant within 14 days of the date of the publication of the notice required by sub-section (3).

(5) If no written representations against the granting of the licence are received by the Commission within the time specified in sub-section (4), the Commission may, subject to the provisions of this Part and in its discretion, grant or refuse the application.

(6) If any written representations against the granting of the licence are received by the Commission within the time specified in sub-section (4) the Commission may decide to hold a hearing in public.

(7) If a public hearing is to be held the Commission shall give notice to the applicant and to any objectors of the time and place appointed for such public hearing not less than 14 days before the day appointed.

(8) After receiving any evidence and any representations against the application, and, where no public hearing has taken place, having given to the applicant an opportunity to comment in writing on any objection made under sub-section (4), the Commission may, subject to the provisions of this Part and in its discretion, grant or refuse such application."

Repeal and replacement of section 61.

11. Section 61 of the principal Act, together with the marginal note thereto, is repealed and replaced by the following new section—

"Suitability for intended use.

60. (1) Notwithstanding any other provisions of this Act, the Commission shall refuse to grant a road service licence unless the Commission is satisfied that the vehicle is suitable in type, size and design for its intended use."

Repeal of section 61A.

12. Section 61A, together with the marginal note thereto, of the principal Act is repealed.

Amendment to section 63.

13. Section 63 of the principal Act is amended—

- (a) in paragraph (c) by omitting the comma after the word "reliability" together with the words "and in the case of an omnibus service financial stability,";
- (b) by omitting paragraph (d) and substituting therefor the following paragraph—

"(d) the type and description of the vehicle which the applicant proposes to use under the licence;"

Amendment to section 64.

14. Section 64 of the principal Act is amended by—

- (a) inserting after the figure "64" the figure "(1)";
- (b) omitting paragraphs (a), (b) and (c);
- (c) inserting a new subsection (2) as follows

"(2) The breach by a person to whom a licence has been granted of a condition attached to that licence under subsection (1) shall be a summary offence punishable on conviction by a fine of £500."

Amendment to section 68.

15. Section 68 of the principal Act is amended

- (a) in subsection (1) by omitting the colon after the word "with" together with the proviso to the subsection and substituting therefor the following words

"and, without prejudice to the generality of the foregoing, a licence may be suspended, revoked or not renewed

(a) if the vehicle is unfit for the use for which the licence was granted;

(b) where the holder of the licence or driver of the licensed vehicle has been convicted of an offence under this Act;

(c) where the holder of the licence or driver of the licensed vehicle has failed to comply with a specific condition attached to the licence; or

(d) for any other reasonable cause.";

(b) by inserting a new subsection (4) as follows—

"(4) A road service licence may be reviewed by the Commission and such conditions may be added as in the opinion of the Commission are necessary to achieve provision of the service for which the licence has been granted or renewed."

Amendment to section 70.

15A. Section 70 of the principal Act is amended in subsection (2) by—

(a) omitting the fullstop at the end of the sub-section and substituting therefor a colon;

(b) inserting the following proviso—

"Provided that save where the holder of a licence is himself seeking an amendment to any condition to which that licence was subject, the provisions of section 60(3) shall not apply but the Secretary to the Commission shall cause to be published in a newspaper circulating in Gibraltar a notice—

(a) giving such details of the application for renewal; and

(b) In the form,

as shall be prescribed by the Commission from time to time and shall provide to the applicant for renewal of the licence a copy of the published notice."

Amendment to section 71.

16. Section 71 of the principal Act is amended by omitting subsection (1) together with the proviso thereto and substituting the following new subsection—

"(1) A road service licence may not be transferred to any person unless the licence was issued or renewed subject to a condition that it may with the consent of the Commission be so transferred:

Provided that in respect of licences issued prior to the 1st of November 1990, such licence may be transferred unless it was issued or renewed on terms that it may not be so transferred."

Amendment to section 72.

17. (1) Section 72 of the principal Act is amended in subsection (2) by omitting the words "whether by way of extension or amendment of the routes authorised, the improvement of the time table or frequency of service, or in any other manner."

(2) Section 72 of the principal Act is amended in sub-section (4) by omitting the figure "61" and substituting therefor the figure "60"

Amendment to section 73.

18. Section 73 of the principal Act is amended in paragraph (c) by inserting after the letter "(c)" the words "whose licence may be transferred and".

Insertion of new sections 73A-73L.

19. The principal Act is amended by inserting after section 73 the following new sections—

"Operator licence required.

73A. (i) No person shall use or cause or permit to be used any motor vehicle—

- (a) falling within category C or C I in section . 16G (1) of the Act except under a road haulage operator licence granted by the Commission and in accordance with the terms and conditions thereof; or
- (b) falling within category D in section 16G (1) of the Act except under a road passenger transport operator licence granted by the Commission and in accordance with the terms and conditions thereof.

(2) The driver on a road of any vehicle required to be operated under either of the licences referred to in subsection (1) (hereinafter referred to as an "operator licence") shall on being so required by a Police officer produce a copy of the operator licence under the authority of which the vehicle is being used, for examination by the Police officer.

(3) A person who uses a vehicle or causes or permits it to be used in contravention of the provisions of this section or being the holder of the operator licence wilfully or negligently fails to comply with any of the conditions attached to the licence is guilty of an offence.

Application for operator licence.

73B. (1) An application for an operator licence. shall be made in the prescribed form and shall be forwarded to the Commission accompanied by—

- (a) particulars of the type or types of vehicles proposed to be used;
- (b) copies of test certificates in respect of each vehicle proposed to be used;
- (c) in the case of an application for a road passenger transport operator licence in respect of a regular service by omnibuses, particulars of the route, time tables and fare tables of the service it is proposed to provide; and
- (d) such other particulars as the Commission may consider to be reasonably necessary to enable it to discharge its duties in relation to the application.

(2) When an application for an operator licence is made before a vehicle which is proposed to be used under such licence is acquired by the applicant, then, notwithstanding that the Commission has, in accordance with the provisions of section 73D, decided to grant a licence it shall not do so until a test certificate is produced in respect of such vehicle.

(3) Within 14 days of making an application under sub-section (1) the applicant shall cause to be published in a newspaper circulating in Gibraltar a notice—

(a) giving such details of that application; and

(b) in the form,

as shall be prescribed by the Commission from time to time and shall provide to the Commission a copy of the published notice.

(4) The Commission shall consider written representations in support or otherwise of the application relating to the matters dealt with in paragraphs (a), (b), (c) and (d) of section 73D received by it and copied by the objector to the applicant within 14 days of the date of the publication of the notice required by sub-section (3).

(5) If no written representations against the granting of the licence are received by the Commission within the time specified in subsection (4) the Commission may, subject to the provisions of this Part and in its discretion, grant or refuse the application.

(6) If any written representations against the granting of the licence are received by the Commission within the time specified in subsection (4) the Commission may decide to hold a hearing in public.

(7) if a public hearing is to be held the Commission shall give notice to the applicant and to any objectors of the time and place appointed for such public hearing not less than 14 days before the day appointed:

(8) After receiving any evidence and any representations for or against the application, and, where no public hearing has taken place, having given to the applicant an opportunity to comment in writing on any objection made under sub-section (4), the Commission may, subject to the provisions of this Part and in its discretion, grant or refuse the application.

Suitability of vehicles.

73C. Notwithstanding any other provisions of this Act, the Commission shall refuse to grant an operator licence—

- (a) in respect of an omnibus where more than 12 years have elapsed since the date of its manufacture;
- (b) unless the Commission is satisfied that the vehicle is suitable in type, size and design for its intended use.

Criteria for grant of operator licence.

73D. In exercising its discretion to grant or refuse an operator licence and its discretion to attach any condition to such licence, the Commission shall have regard to the following matters—

- (a) the extent to which the needs of the area of the proposed service are already met;
- (b) the desirability of encouraging the provision of adequate and efficient services, and eliminating unnecessary and unremunerative services;
- (c) the need to establish that the applicant for the licence
 - (i) is of good repute;
 - (ii) is of appropriate financial standing;
 - (iii) satisfies the prescribed conditions as to professional competence;
- (d) the number, type and description of the vehicles which the applicant proposes to use under the licence and the facilities at the disposal of the applicant for carrying out the proposed service,

- (e) any representations made by the Licensing Authority, Commissioner of Police, or any other public body.

Conditions of operator licence.

73E. (1) The Commission may attach to an operator licence such conditions as it thinks fit with respect to the matters to which it is required to have regard under section 73D and in particular for securing that—

- (a) in relation to a road passenger transport operator licence
 - (i) copies of timetables and fare tables shall be carried in every omnibus in a position easily available to passengers in the vehicle and that copies of - the timetable shall be displayed at the expense of the licensee at all stopping points;
 - (ii) passengers shall not be taken up or set down on to or from any omnibus except at specified points and shall not be taken up or set down between specified points;
 - (iii) a ticket shall be issued in respect of every fare;
- (b) in respect of any operator licence
 - (i) any vehicle operated under the licence shall be maintained in a fit and serviceable condition;
 - (ii) generally for securing the safety and convenience of the public,

and the Commission may from time to time vary in such manner as it thinks fit the conditions attached to a licence. ..

(2) The breach by a person to whom a licence has been granted of a condition attached to that licence under subsection (1) shall be a summary offence punishable on conviction* by a fine of £500..

Revocation and suspension of operator licence.

73F. (1) An operator licence may be revoked or suspended by the Commission on the ground that any condition subject to which the licence was granted has not been complied with and,

without prejudice to the generality of the foregoing, a licence may be suspended, revoked or not renewed—

- (a) if a vehicle in respect of which the licence has been granted is unfit for its intended use;
- (b) where the operator has been convicted of an offence under this Act;
- (c) where the operator has failed to comply with any specific condition attached to the licence or
- (d) for any other reasonable cause.

(2) If any holder of an operator licence abandons or curtails any service in respect of which a licence has been granted without the prior permission of the Commission, the Commission may in its discretion revoke that licence.

(3) The Commission shall before revoking or suspending any operator licence give the holder a due opportunity to be heard.

(4) An operator licence may be reviewed by the Commission and such conditions may be added as in the opinion of the Commission are necessary to achieve provision of the service for which the licence has been granted or renewed:

Duration of operator licence.

73G. (1) Subject to the provisions of this section, every operator licence shall, unless it is sooner revoked, expire on a date to be specified by the Commission on the licence not later than 5 years from the date of issue of the licence.

(2) When an application is made for the renewal of the licence in accordance with the provisions of section 73H, the licence, if the application for renewal is not disposed of before the date of expiry of the licence, shall continue in force until the application is disposed of, unless the Commission otherwise directs.

Renewal of operator licences.

73H. (1) Every application for the renewal of an operator licence shall be made in the prescribed form not less than 56 days before the expiry of the licence.

(2) Every application for the renewal of a licence shall be deemed to be an application for a new licence and shall be made and dealt with accordingly:

Provided that save where the holder of a licence is himself seeking an amendment to any condition to which that licence was subject, the provisions of section 73H (3) shall not apply but the Secretary to the Commission shall cause to be published in a newspaper circulating in Gibraltar a notice—

- (a) giving such details of the application for renewal; and
- (b) in the form,

as shall be prescribed by the Commission from time to time and shall provide to the applicant for renewal of the licence a copy of the published notice.

Non transferability of operator licences.

73I. An operator licence granted to any person under the provisions of, this act shall not be transferable to any other person,

Amendment of operator licences.

73J. (1) During the currency of any operator licence the Commission may, of its own motion or on application of the licensee, amend. the licence by altering or revoking any of the terms or conditions of the licence or by adding any new terms or conditions that may be necessary in the public interest.

(2) In the exercise of its powers under subsection (1), the Commission may, in particular, require the holder of an operator licence to effect such improvements in the service to which the licence relates

- (a) where the licence is a road passenger transport operator licence, by way of—
 - (i) extension or amendment of the routes authorised;

(ii) the improvement of the timetable; or

(iii) the frequency of the service;

(b) in relation to any operator licence, in any other manner,

as may be desirable in the public interest.

(3) Application for the amendment for an operator licence shall be made in the prescribed form and forwarded to the Commission accompanied by the prescribed fee.

(4) Where the Commission intends of its own motion to amend any licence under this section the Commission shall follow the procedure specified in section 73H(2) as if it was dealing with an application for renewal of the licence and shall inform the licensee in writing of the decision of the Commission not less than 7 clear days before the day on which the Commission propose to make such amendment.

Appeal to Supreme Court in respect of operator licence.

73K. Any person whose—

(a) application for an operator licence has been refused;

(b) operator licence has been suspended or revoked;

(c) application for amendment of his operator licence has been refused; or

(d) operator licence has been amended by the Commission,

and who considers himself aggrieved thereby may within 21 days of notice of the decision being given appeal to the Supreme Court against that decision of the Commission praying such leave as the case may require.

Transitional provisions.

73L. (I) A person to whom section 73A applies and who at the 31st day of December 1990—

- (a) is undertaking an activity for which a road haulage operator licence is required and who holds in respect of that activity a road transport contracting licence issued under the Trade Licensing Act; or
- (b) is undertaking an activity for which a road passenger transport operator licence is required and who holds in respect of that activity a road service licence issued under this Act,

shall be deemed to satisfy the provisions of section 73A in respect of the activity so licensed unless the licence referred to in paragraph (a) or (b), as the case may be, ceases to be valid.

(2) The licence referred to in subsection (1) may be the licence in existence at the 31st day of December 1990, renewed or varied from time to time in accordance with the provisions of the relevant Act dealing with such licences."

Amendment to section 74.

20. Section 74 of the principal Act is amended in subsection (4) by omitting the fullstop and inserting the following words—

"and without prejudice to the generality of the foregoing, a licence may be suspended, revoked or not renewed, if the driver or conductor

- (a) is convicted of an offence involving dishonesty, indecency or violence;
- (b) is convicted of an offence under, or fails to comply with any relevant provisions of this Act; or
- (c) for any other reasonable cause."

Amendment to section 83.

21. Section 83 of the principal Act is amended—

- (a) by omitting at the end of paragraph (u) the comma and substituting therefor a semi-colon;
- (b) by inserting the following new paragraph

"(v) for the purpose of implementing legislation of the European Economic Communities in relation to the licensing of operators, drivers and conductors of road haulage and road transport passenger vehicles,".

Passed by the Gibraltar House of Assembly on the 8th day of November, 1990.

C. M. COOM

Clerk to the Assembly.