

**FIRST SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 2,958 of 16th January 1997



I ASSENT,
HUGO WHITE,
GOVERNOR

16th January, 1997



GIBRALTAR

No. 4 of 1997

AN ACT to amend the Traffic Act; to further provide for the transposition of Council Directive 74/561 EEC as last amended by Regulation 3572/90 EEC, Council Directive 74/562 EEC as last amended by Regulation 3572/90 EEC and Council Directive 77/796 EEC all as consolidated in Council Directive 96/26 EC on the admission to the occupation of road haulage operator and road passenger transport operator and the mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operations; and for connected purposes.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1.(1) This Act may be cited as the Traffic (Amendment) (No.2) Act 1997.

(2) This Act shall come into force on such day as the Governor shall appoint by notice published in the Gazette and different days may be appointed for different provisions and different purposes.

Amendment to section 2 of the Traffic Act.

2. Section 2 of the Traffic Act shall be amended as follows-

- (a) after the definition of "Commission" by inserting the definitions-

""company" means a body corporate;

"contravention", in relation to any condition or provision, includes a failure to comply with the condition or provision, and "contravene" shall be construed accordingly;"

- (b) after the definition of "the Inner City" by inserting the definition-

""international" operation means a road passenger transport operation or a road haulage operation starting or terminating in Gibraltar and involving an international journey by the vehicle concerned, whether or not any driver leaves or enters Gibraltar with that vehicle;"

- (c) after the definition of "omnibus" by inserting the definition-

""operator" has the meaning given by subsection (2C) below;"

- (d) after the definition of "road" by inserting the definition -

""Schedule", without more, shall be a reference to Schedule 1 to this Act;"

- (e) after the definition of "trailer" by inserting the definition-

""transport manager", in relation to a business, means an individual who, either alone or jointly with one or more other persons, has continuous and effective

responsibility for the management of the road passenger transport operations or road haulage operations of the business as the case may be;"

- (f) after subsection (2A), by inserting the following subsections-

"(2B)."Relevant conviction" for the purposes of Part IV means-

(a) a conviction of any of the offences specified in paragraph (b) below-

(i) of the holder of a licence, or the applicant for a licence;

(ii) where the holder of a licence, or the applicant for a licence, is a partnership, of a partner in that partnership;

(iii) of any transport manager whom the holder of a licence employs or proposes to employ, and of any transport manager whom an applicant for a licence employs or proposes to employ; and

(iv) of any person appointed or otherwise engaged as an officer, employee or agent of the holder of, or of an applicant for, a licence in relation to any business which such holder or applicant carries on, or proposes to carry on;

- (b) the offences referred to in paragraph (a) above are offences in relation to a vehicle to which section 73A(1) applies or the operation thereof under or by virtue of this Act relating to-

(i) the speed at which such vehicles may be driven,

(ii) the amount of hours such vehicles may be driven without having a rest period,

(iii) any duty by the driver of a said vehicle to keep records of his journey, or any other offences which are serious offences as defined in paragraph 1(4) of Schedule 2 or road transport offences as defined in paragraph 1(5) of that same Schedule.

(2C) For the purposes of Part IV, the person who is to be regarded as the operator of a vehicle to which section 73A(1) applies -

(a) which is made available by one road passenger transport operator or road haulage operator as the case may be, to another under a hiring arrangement is the holder from whom the vehicle is hired in a case where -

(i) the holder to whom the vehicle is hired is not, under the hiring arrangement, entitled to keep the vehicle in his possession for a total period of more than 14 days;

(ii) not less than 14 days have elapsed between the finish of any previous period (of whatever duration) in which the hirer to whom the vehicle is entitled to the use of the vehicle under a hiring arrangement with the holder from whom the vehicle is hired and the start of the period mentioned in paragraph (a) above; and

(iii) at all times when the vehicle is being used for carrying passengers for hire or reward during the period mentioned in paragraph (a) above, there is affixed to the vehicle an identification disc pursuant to the Traffic (Licensing and Registration) Regulations, which has been issued to the holder from whom the vehicle is hired;

(b) in circumstances other than those specified in paragraph (a) above, the operator of the said vehicle shall be-

(i) the driver, if he owns the vehicle; and

(ii) in any other case, the person for whom the driver works (whether under a contract of employment or any other description of contract personally to do the work).”.

Amendment to section 73D of the Traffic Act.

3. Section 73D of the Traffic Act shall be amended as follows-

- (a) after the reference 73D there shall be inserted the reference "(1)";
- (b) after subsection (1) there shall be added the following subsection-
 - "(2) The provisions of Schedule 2 to this Act shall have effect for supplementing the provisions of subsection (1)(c) above, and for modifying the operation of that subsection in the case of persons engaged in road passenger transport or road haulage transport and to which section 73A(1) applies, before the dates set out in that Schedule.";
- (c) for subsection (1)(c)(ii) there shall be substituted the following-
 - "(ii) satisfies the requirements as to appropriate financial standing;"

Amendment to section 83 of the Traffic Act.

4. For paragraph (a) of section 83 of the Traffic Act there shall be substituted the following paragraph-

- "(a) the application for and issue of road service licences, road haulage operator licences, road passenger transport licences, test certificates, the fees to be paid in respect thereof and the manner and conditions of payment;"

Amendment to the Schedule to the Traffic Act.

5. The Schedule to the Traffic Act shall be amended by adding after the word "Schedule" where it first appears the reference "1".

New Schedule 2 to the Traffic Act.

6. The following Schedule shall be inserted after Schedule 1 to the Traffic Act -

"SCHEDULE 2

**SUPPLEMENTARY PROVISIONS AS TO QUALIFICATIONS FOR
PUBLIC TRANSPORT VEHICLE OPERATOR'S LICENCE**

Section 73D (2)

Good repute.

1.(1) In determining whether an individual is of good repute, the Commission shall have regard to all the relevant evidence and in particular to-

- (a) relevant convictions of his and of his employees and agents; and
- (b) such other information as the Commission may have as to his previous conduct, in whatever capacity, in relation to the operation of vehicles of any description in the course of a business.

(2) In determining whether a company is of good repute, the Commission shall have regard to all the relevant evidence and in particular to-

- (a) relevant convictions of the company's officers, employees and agents; and
- (b) such other information as the Commission may have as to previous conduct of-
 - (i) the company's officers, employees and agents in relation to the operation of vehicles of any description in the course of any business carried on by the company; and
 - (ii) each of the company's directors, in whatever capacity, in relation to the operation of vehicles of any description in the course of any other business.

(3) The Commission shall determine that an individual is not of good repute if that person-

- (a) has been convicted of serious offences; or

- (b) has been repeatedly convicted of road transport offences.
- (4) For the purposes of sub-paragraph (3)(a) above, a serious offence is-
- (a) any offence under the laws of Gibraltar for which a sentence of imprisonment for a term exceeding three months or a fine exceeding level 4 on the standard scale was imposed; and
 - (b) any corresponding offence under the law of a country or territory outside Gibraltar for which a corresponding punishment was imposed.
- (5) For the purposes of sub-paragraph (3)(b) above, a road transport offence is-
- (a) any offence under the laws of Gibraltar relating to road transport, including in particular drivers' hours and rest periods; the weights and dimensions of commercial vehicles and road and vehicle safety; and
 - (b) any corresponding offence under the law of a country or territory outside Gibraltar.
- (6) In sub-paragraph (4)(a) above, "a sentence of imprisonment" includes any form of custodial sentence or order other than one under any enactment relating to mental health.
- (7) For the purposes of sub-paragraph (3) above, the Commission may disregard an offence if such time as the Commission considers appropriate has elapsed since the date of the conviction.
- (8) Sub-paragraph (3) is without prejudice to the power of the Commission to determine that an individual is not of good repute for reasons other than convictions of the kind there mentioned.
- (9) In this paragraph references to an individual include references to a transport manager as well as to an individual who is an applicant for, or the holder of a licence under Part IV of the Act.

Appropriate financial standing.

2.(1) Being of appropriate financial standing in relation to an applicant for, or holder of, a public transport operator's licence or a road haulage operator's licence consists in having available sufficient financial resources to ensure the establishment and proper administration of the business carried on, or proposed to be carried on, under the licence.

(2) An applicant for, or the holder of, such a licence authorising the use of vehicles for international operations shall not be considered to be of appropriate financial standing unless he has available capital and reserves of an amount equal to at least-

- (a) 3,000 European Currency Units multiplied by the number of vehicles which are to be or are used under the licence; or
- (b) 150 European Currency Units multiplied by the number of passenger seats in that number of vehicles, whichever is the less.

Professional competence.

3. References in section 73D to professional competence are to the professional competence of an individual; and a company satisfies the requirement as to professional competence if, and so long, as, it has a transport manager or transport managers of its road transport business who, or each of who, is of good repute and professionally competent.

4. Where an individual is not himself professionally competent, the requirement as to professional competence shall be regarded as satisfied in relation to him if, and so long as, he has a transport manager of his road passenger transport business who is of good repute and professionally competent.

5.(1) Where the holder of a road haulage operator's licence or a public transport operator's licence relies on a single transport manager to satisfy the requirement as to professional competence and that manager-

- (a) dies or ceases by reason of physical disability or mental disorder to be capable of discharging his duties as transport manager;
- (b) ceases to work for the business; or
- (c) ceases to be of good repute,

the holder shall nevertheless not be treated as failing to satisfy that requirement until the expiry of such period as in the opinion of the Commission is reasonably required for the appointment of a new transport manager.

(2) Where the holder of a road haulage operator's licence or a road transport operator's licence is a company with two or more transport managers and any of them ceases to be of good repute the company shall nevertheless not be treated as failing to satisfy the requirement as to professional competence until the expiry of such period as in the opinion of the Commission is reasonably required for his removal or the appointment of a transport manager in his place.

6. Subject to paragraph 10 below, an individual shall be treated as professionally competent for the purposes of section 73D of this Act if, and only if-

- (a) he has demonstrated possession of the requisite skills by passing a written examination, which may take the form of a multiple-choice examination, organised by an approved body and he is the holder of a certificate to that effect issued by that approved body; or
- (b) he is the holder of any other certificate of competence, diploma or other qualification recognised for the purposes of this paragraph by the Minister.

7.(1) In paragraph (6) above, "approved body" means-

- (a) a body or authority whether based in Gibraltar or the United Kingdom, which is approved by the Minister for the purposes of that paragraph; or
- (b) a body or authority designated by another member State for the purposes of-
 - (i) Article 2(4) of Council Directive (EEC) 74/562 of 12th November 1974 on admission to the occupation of road passenger transport operations as amended by Council Directive transport operator in national and international (EEC) 89/438 of 21st June 1989, or

- (ii) for the purposes of Article 3(4) of Council Directive (EEC) 74/561 of the 12th November 1974 on admission to the occupation of road haulage operator in national and international transport operations,

as consolidated in Council Directive (EC) 96/26 of the 29th April 1996,

and "the requisite skills" means skills in the subjects listed in Part A of Annex I to the last of those Directives and, in the case of a licence to cover international operations, also skills in the subjects listed in Part B of that Annex.

(2) In this Schedule, and unless the context otherwise provides, references to the Minister shall be construed as references to the Minister charged with responsibility for traffic.

Persons engaged in road passenger or haulage transport before the coming into effect of the Act.

8.(1) For the purposes of paragraphs 9 and 10 below, an individual or company was authorised to engage in the occupation of road passenger transport operator or road haulage transport operator at any time if, and only if, at that time-

- (a) he was the holder, or one of the joint holders of a road service licence, road haulage operator licence or road passenger transport operator licence under Part IV of the Traffic Act; or
- (b) he was, under or by virtue of any provision in the Traffic Act deemed to be the holder or one of the joint holders of such a licence; or
- (c) he was so authorised under the law of another member State; or
- (d) he was the transport manager of a person within paragraph (a), (b) or (c).

9.(1) An individual or company authorised to engage in the occupation of road passenger transport operator or road haulage transport operator at any time before the coming into force of this Act shall be deemed until the

contrary is proved to satisfy the requirements to be of good repute, appropriate financial standing and professional competence.

(2) An applicant for a licence to which this paragraph applies, or for the variation of such a licence, shall not be obliged to furnish the Commission in support of his application information relating to a requirement that is deemed to be satisfied by virtue of sub-paragraph (1) above, unless it appears to the Commission that there are grounds for thinking that the requirement is not satisfied.

10. For the purposes of section 73D of this Act, an individual shall be regarded as professionally competent if he was authorised to engage in the occupation of road passenger transport operator or road haulage transport operator before this Act is in force and was so authorised-

- (a) for a period of, or for periods amounting in the aggregate to, two years during the period 1st January 1975 to 31st December 1979; or
- (b) at any time in the period 1st January 1970 to 31st December 1974."

Passed by the Gibraltar House of Assembly on the 7th day of January, 1997.

D. J. REYES,

Clerk to the Assembly.