

## MOTOR-VEHICLE DEALERS BILL

### EXPLANATORY NOTE

THE general purposes of this Bill are—

- (a) To provide for the licensing of dealers in motor vehicles, whether new or secondhand:
- (b) To ensure that when a dealer sells a motor vehicle the purchaser will get a good title thereto:
- (c) To ensure that money received by dealers in respect of transactions as agents for other persons are duly paid to the persons entitled thereto.

The term “motor-vehicle dealer” is defined in *clause 2* as meaning a person who carries on business as a dealer in motor vehicles, whether new or second-hand. The term “motor vehicle” does not include vehicles running on rails, invalid carriages, motor cycles not exceeding 60 c.c. capacity, power cycles, steam rollers, trailers (except those forming part of an articulated vehicle), aircraft, and other vehicles excluded by Order in Council; and dealers in those classes of vehicles are not required to register.

#### *Licensing of Motor-Vehicle Dealers*

*Clause 3* provides that after 31 March 1959 every person who carries on a motor-vehicle dealer's business must hold a dealer's licence. A person carrying on business as a motor-vehicle dealer at the date of commencement of the Act who applies for a licence within three months after that date will be entitled to carry on business without a licence until his application has been disposed of or, in the case of an appeal against the Magistrate's refusal to grant a licence, until the appeal is determined.

*Clause 4* sets out the procedure for applying for a licence. The application must be filed in the nearest Magistrate's Court.

*Clause 5* requires an applicant for a licence to lodge with his application an approved bond in the sum of £2,000 or, where the applicant carries on business as a dealer in motor cycles only, the sum of £500, conditioned to secure the performance by the dealer of his obligations in relation to money received by him as the agent of any person and in relation to the title to motor vehicles sold, exchanged, or disposed of by him.

*Subclause (4)* provides that the amount secured by a bond is security for the payment of compensation to any person for any loss sustained by reason of the failure of the dealer to comply with the provisions of *clause 19* (which relates to the duties of a dealer as to accounting for money received in the course of his business) or by reason of the breach by the dealer of the warranty as to title and encumbrances implied by *clause 27*.

*Clause 6* provides that bonds may be expressed to enure during the term of any renewals of the licence, but the sureties may withdraw before the licence is renewed, in which case the licensee must lodge a fresh bond.

*Clause 7* provides that notice of an application for a licence must be advertised, and that objections to the grant of the licence may be made on grounds affecting the character or fitness or financial position of the applicant or his partner or, in the case of a company, the directors, manager, or other responsible officers.

*Clause 8* provides that every application for a motor-vehicle dealer's licence must be heard by a Magistrate, who, if satisfied as to the applicant's fitness to hold a licence, must grant the licence.

Under *clause 9* the Magistrate hearing an application for a licence must require evidence as to the character, fitness, and financial position of the applicant and of each partner of the applicant and also, in the case of a company, unless he considers it unnecessary, the character and fitness of each director and the general manager and other responsible officers of the company.

*Subclause (4)* provides that no licensee is to carry on business as a motor-vehicle dealer under any name that is not his own name or the name of his partner, or in the case of a company the name of the company, unless the name has first been approved by a Magistrate.

*Clause 10* specifies the persons who are disqualified from obtaining a motor-vehicle dealer's licence. The clause disqualifies undischarged bankrupts, persons under twenty-one years of age, and persons whose application for a licence has been refused within the past 12 months or whose licence was cancelled during that period. *Subclause (2)* prohibits any person from becoming or acting as a director or the manager or other principal officer of any company holding a motor-vehicle dealer's licence or the manager of any branch who, if he were a licensee, would be disqualified from obtaining a licence or would be liable to have his licence cancelled on any of the grounds specified in *clause 25 (1)* of the Bill.

*Clause 11* provides that a licensee shall not, without the prior consent of a Magistrate, employ in negotiating for the sale, purchase, or exchange of motor vehicles any person whom the licensee knows to have been convicted of a crime involving dishonesty within the past five years.

*Clause 12* provides that a motor-vehicle dealer's licence authorises the licensee to act as a motor-vehicle dealer at any place in New Zealand, but must not carry on business at any place not specified in the licence unless he first notifies the Registrar of the Magistrate's Court.

*Clause 13* provides that licences are to be annual, and may be renewed from year to year.

*Clause 14* provides for the renewal of licences. Where no objection to the renewal has been filed, the renewal may be granted by the Registrar of the Magistrate's Court, and need not be dealt with by a Magistrate.

*Clause 15* enables the Magistrate to award costs where an objection to the granting or renewal of a licence is made.

*Clause 16* declares that licences are not transferable, and shall not vest by operation of law in any person other than the licensee.

*Clause 17* enables a temporary licence to be granted where a licensee dies, or becomes bankrupt, or (in the case of a company) goes into liquidation, or becomes mentally defective, or where a manager of his estate is appointed under the Aged and Infirm Persons Protection Act 1912.

*Clause 18* requires a licensee to obtain the consent of a Magistrate before entering into a partnership with any other person. In the case of a company, no person who was not a director or the manager or other principal officer or the manager of any branch at the time of the grant of the licence shall act as such without the consent of a Magistrate. The Magistrate must refuse his consent unless he is satisfied as to the character, fitness, and financial position of the proposed partner.

#### *Duties of Motor-Vehicle Dealers*

*Clause 19* sets out the duties of a motor-vehicle dealer with respect to money received as agent in the course of business. The clause specifies that all such money must be paid to the person on whose behalf the dealer has acted on the demand of that person or, if no such demand is made, then within seven days after the completion of the transaction.

*Clause 20* provides that a motor-vehicle dealer must furnish an account to his principal of money received by the dealer in respect of any transaction in his capacity as a dealer and as an agent for any person. The account must be furnished on demand or, if no such demand is made, then within seven days after the completion of the transaction.

*Clause 21* requires dealers to keep records in a form prescribed by regulations of all transactions in which they have acted as dealers in the sale, purchase, or exchange of, or other dealing in, motor vehicles. The records must be kept for at least six years and must be produced for inspection on demand by any constable.

*Clause 22* requires a dealer to produce his licence on demand by any constable.

*Clause 23* provides that a dealer must display on every place where he carries on business as a motor-vehicle dealer a notice of his name and the fact that he is a licensed dealer, and that this information must be clearly shown in every notice, advertisement, or other publication issued by him and in all letters, accounts, agreements, and other documents sent out or entered into or published by him in the course of his business as a dealer.

*Clause 24* makes it an indictable offence for a dealer fraudulently to convert to his own use money received by him in his capacity as a dealer and as an agent for any person, or to render false accounts. Offences under this clause may be dealt with summarily by a Magistrate under the Summary Proceedings Act 1957.

#### *Cancellation of Licences*

*Clause 25* prescribes the grounds upon which licences may be cancelled. The clause includes provisions that a licence may be cancelled if the licensee is convicted of certain breaches of the Act or of any crime involving dishonesty as defined in section 237 of the Crimes Act 1908. A licence may also be

cancelled if the licensee without the prior consent of a Magistrate enters into a partnership with any other person or knowingly employs in his business any person who has been convicted of any of the offences specified in *subclause (1)*, if the licensee is adjudged bankrupt or makes an assignment for the benefit of his creditors, or, in the case of a licence issued to a company, if any director or the general manager is convicted of any offence referred to in that subclause or is adjudged bankrupt or makes an assignment or composition for the benefit of his creditors.

#### *Appeals*

*Clause 26* specifies the cases in which appeals may be made to the Supreme Court against decisions of Magistrates under the Act. An appeal will lie in the following cases only:

- (a) Against the refusal of a Magistrate to grant a licence to a person who was in business as a motor-vehicle dealer at the date of the commencement of the Act.
- (b) Against the refusal of a Magistrate to grant a renewal of any licence.
- (c) Against an order of a Magistrate cancelling any licence.

#### *Miscellaneous*

*Clause 27* provides that in every contract of sale or exchange or other disposition of a motor vehicle made by a dealer, whether as principal or agent and whether made by the dealer or by his partner or by any person in his employ, there shall be implied a warranty that—

- (a) The person by whom or on whose behalf the vehicle is sold or exchanged or disposed of is the true owner thereof; and
- (b) The vehicle is not subject to any encumbrances not disclosed in writing to the purchaser at the time of the transaction.

*Clause 28* provides that no person is entitled to recover commission in respect of work performed as a motor-vehicle dealer, unless he held a dealer's licence and his appointment was in writing.

*Clause 29* makes it an offence for any person who is not the holder of a motor-vehicle dealer's licence to describe himself or hold himself out as a motor-vehicle dealer or carry on the business of a motor-vehicle dealer. The clause provides that any person who is convicted of an offence under this clause shall forfeit to the Crown money received by him by way of remuneration for work performed by him as an unlicensed motor-vehicle dealer.

*Clause 30* declares it to be an offence for any person to do any act in contravention of or fail to comply with any provision of the Bill.

*Clause 31* prescribes a general penalty for offences, and specifies that, except where the Bill otherwise provides, all offences are to be dealt with summarily by a Magistrate.

*Clause 32* specifies that nothing in the Bill is to affect any civil remedy that any person may have against a motor-vehicle dealer.

*Clause 33* provides for licence fees to be paid into the Consolidated Fund, and *clause 34* prescribes the matters in respect of which regulations may be made.

Hon. Mr Mason

## MOTOR-VEHICLE DEALERS

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## A BILL INTITULED

**An Act to provide for the licensing of dealers in motor vehicles and for the regulation of trading in motor vehicles**

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows: 5

**1. Short Title and commencement**—(1) This Act may be cited as the Motor-Vehicle Dealers Act 1958.

(2) This Act shall come into force on the first day of January, nineteen hundred and fifty-nine. 10

**2. Interpretation**—(1) In this Act, unless the context otherwise requires,—

“Invalid carriage” means a vehicle which is drawn or propelled by mechanical power, and which is specially designed and constructed, and not merely adapted, 15 for the use of persons suffering from a physical defect or disability:

“Motor cycle” means a motor vehicle running on two wheels, or on not more than three wheels when fitted with a sidecar; but does not include a power cycle: 20

“Motor vehicle” means a vehicle that is drawn or propelled by mechanical power; and includes a trailer forming part or intended to form part of an articulated vehicle; but does not include—

(a) A vehicle running on rails; or 25

(b) An invalid carriage; or

(c) A motor cycle the total cylinder capacity of which does not exceed sixty cubic centimetres; or

(d) A power cycle; or

(e) A steam roller; or 30

(f) A trailer not forming part or intended to form part of an articulated vehicle; or

(g) An aircraft; or

(h) Any other class or description of vehicle declared by the Governor-General, by Order in Council, not to be a motor vehicle for the purposes of this Act: 35

“Motor-vehicle dealer” or “dealer” means a person who carries on business as a dealer in motor vehicles, whether new or secondhand: 40

“Motor-vehicle dealer’s licence” or “licence” means a motor-vehicle dealer’s licence granted under this Act; and “licensee” has a corresponding meaning:

5 “Power cycle” means a pedal bicycle or pedal tricycle that for alternative propulsion is fitted with a motor attachment (whether detachable or not) the total cylinder capacity of which does not exceed sixty cubic centimetres:

10 “Trailer” means a vehicle without motive power that is drawn or propelled or is capable of being drawn or propelled by a motor vehicle from which it is readily detachable; and includes a sidecar for a motor cycle:

15 “Vehicle” means a contrivance that is equipped with wheels or revolving runners upon which it moves or is moved.

(2) For the purposes of this Act, and without limiting the meaning of the term “motor-vehicle dealer” as defined in subsection one of this section, every person shall be deemed  
20 to be a motor-vehicle dealer who acts, or holds himself out to the public as ready to act, for reward as a dealer in motor vehicles, notwithstanding that he may carry on any other business either in conjunction with the business of a motor-vehicle dealer or separately therefrom:

25 Provided that a solicitor shall not be deemed to be a motor-vehicle dealer for the purposes of this Act by reason merely of the fact that he may, in connection with his business as a solicitor, act as agent in respect of the sale or purchase or other disposal or acquisition of any motor vehicle, unless he  
30 is remunerated for so acting by a commission in addition to, or instead of, his professional charges.

(3) Where two or more persons carry on business as motor-vehicle dealers, each of these persons shall be deemed to be a motor-vehicle dealer.

35 *Licensing of Motor-Vehicle Dealers*

**3. Dealers to be licensed**—(1) After the thirty-first day of March, nineteen hundred and fifty-nine, no person shall as a dealer buy, sell, exchange, or in any way deal in any motor vehicle, unless—

40 (a) He is the holder of a motor-vehicle dealer’s licence for the time being in force; and

(b) There is for the time being in force an approved bond lodged by the dealer with the Registrar of the Magistrates' Court under the provisions of section five of this Act.

(2) Where any person who immediately before the commencement of this Act was carrying on business as a motor-vehicle dealer has, at any time before the first day of April, nineteen hundred and fifty-nine, duly applied for a motor-vehicle dealer's licence and his application has not been decided before that date, he shall be deemed for the purposes of this Act, pending the Magistrate's decision on the application, or in the case of an appeal against that decision until the determination of the appeal, to be the holder of a licence in terms of his application. 5  
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**4. Application for licence—**(1) Every person who desires to obtain a licence shall make application for the licence in the form prescribed by regulations under this Act. 15

(2) An application under this section shall be filed in the Magistrate's Court nearest by the most convenient road or rail route to the place named in the application as the place of business or principal place of business of the applicant. 20

(3) Every such application shall state the place or places of business of the applicant. Where the applicant has or proposes to have two or more places of business, he shall specify in his application which of these places of business is his principal place of business. The application shall contain such other particulars as may be prescribed. 25

**5. Applicants to give security by an approved bond—**

(1) With every application for a licence there shall be lodged in the Magistrates' Court an approved bond to Her Majesty the Queen in the form in the Schedule to this Act in the sum of two thousand pounds, or, where the applicant proposes to carry on business as a dealer in motor cycles only, in the sum of five hundred pounds, conditioned to secure the performance by the applicant of the conditions specified in the bond: 30  
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Provided that in the case of an application by persons carrying on business as motor-vehicle dealers in partnership it shall be sufficient if one bond is lodged conditioned to secure the performance by each of the partners in the firm of the conditions specified in the bond: 40



Provided also that, where a licensee has lodged a bond in the sum of five hundred pounds on the ground that he proposes to carry on business as a dealer in motor cycles only, he shall not as a dealer buy, sell, exchange, or in any way  
5 deal in any other kind of motor vehicle unless he has lodged another approved bond in the sum of two thousand pounds in substitution for the bond originally filed.

(2) The sum named in a bond under this section shall not be deemed to be a penalty, but shall be liquidated damages,  
10 and shall accordingly be recoverable in full as a debt due by the surety or sureties to Her Majesty the Queen, unless the surety or sureties prove performance of every condition upon which the bond is defeasible.

(3) Every sum so recovered shall be paid into the Public  
15 Account to the credit of the Consolidated Fund and the residue, after the deduction of costs and other expenses, may, with the approval of the Minister of Finance and without further appropriation than this Act, be applied—

(a) In compensating any principal or customer of the  
20 motor-vehicle dealer, or other person, for any loss sustained by reason of—

(i) The defaults or omissions of the dealer, his  
25 servant or agent, and any person with whom he is carrying on in partnership the business of a motor-vehicle dealer, in complying with the provisions of section nineteen of this Act (which relates to the duties of a dealer as to accounting for money received as an agent in the course of his business):

(ii) The breach by the dealer of the warranty as  
30 to title and encumbrances implied by section twenty-seven of this Act; and

(b) In refunding to the surety or sureties any balance left after payment of that compensation.

(4) Where any claim is received by the Secretary for  
35 Justice from any person claiming compensation out of any sum recovered under a bond under this section, the Secretary shall cause a notice to be published in such one or more newspapers as he deems sufficient calling upon all persons desiring to claim compensation for any loss sustained by reason of any  
40 of the matters specified in paragraph (a) of subsection three of this section to establish their claims to the satisfaction of the Secretary (whether by judgment against the dealer or

otherwise) within six months after the date of the first advertisement of the notice; and the Secretary shall not apply any sum so recovered in compensating any person until the expiration of the said period of six months.

(5) Where several such claims are established to the satisfaction of the Secretary for Justice within the said period of six months and the balance of the money recovered under the bond is insufficient to pay all those claims in full, that balance shall be applied rateably among the several claimants in the proportions that the several claims bear to the total of all the claims. 5 10

(6) Where any sum is recovered under this section from the surety or sureties under any bond, the licence shall be deemed to be suspended until the licensee lodges with the Registrar another approved bond in the full sum of two thousand pounds or five hundred pounds, as the case may require. 15

**6. Bond may enure so as to apply to renewals of licence—**

(1) A bond given under this Act may, if it is so provided therein, enure not only during the term of the licence in respect of which it is originally given, but during the term of any licence to the same person issued in renewal of the licence. 20

(2) If a bond is so given as to enure in respect of the renewal or further renewal of a licence, it shall be lawful for the surety or sureties, by notice in writing addressed to the Registrar of the Magistrates' Court at any time before the issue of a licence in renewal, to determine his or their liability under the bond in respect of any act or default that may be done or made after the thirty-first day of March next following the date of the notice, and in any such case the Magistrate shall not issue a licence in renewal until another approved bond has been lodged by the applicant. 25 30

**7. Notice of application for licence, and provisions as to objections—**(1) Notice in the prescribed form of every application for a motor-vehicle dealer's licence shall be published by the applicant twice at least at intervals of not more than fourteen days in newspapers or a newspaper to be approved for the purpose by the Registrar of the Magistrates' Court in which the application is filed, and the application for the licence shall not be heard before the expiry of one month after the first publication of that notice. 35 40

(2) Any person who objects to the issue of the licence may, within one month after the first publication of the notice of application pursuant to subsection one of this section, file in the Magistrates' Court in which the application for the  
5 licence is filed a notice in the prescribed form of his objection and of the grounds thereof.

(3) No such objection shall be considered unless, and except to the extent that, the grounds thereof affect the character or fitness or financial position of the applicant; or,  
10 in the case of an application by or on behalf of a firm, the character, fitness or financial position of the partners; or, in the case of an application by a company, the financial position of the company or the character or fitness of the directors, manager, or any other responsible officer of the company.

15 **8. Hearing of application**—Every application for a licence and the objections thereto (if any) shall be heard by a Magistrate exercising jurisdiction in the Court in which the application is filed; and the Magistrate, if satisfied that the provisions of this Act have been complied with, and that the  
20 applicant is a fit person to be the holder of a licence to carry on business as a motor-vehicle dealer, shall, on payment of the prescribed fee, grant to the applicant a licence in the prescribed form.

**9. Magistrate to require evidence as to character, fitness, and financial position**—(1) Before granting an application  
25 for a motor-vehicle dealer's licence, the Magistrate shall require the production of sufficient evidence to satisfy him that the character, fitness, and financial position of the applicant are such that he is, in the opinion of the Magistrate, having  
30 regard to the interests of the public, a fit and proper person to carry on business as a motor-vehicle dealer.

(2) Where application for a licence is made by a person carrying on or proposing to carry on business as a motor-vehicle dealer in partnership with any other person, the Magistrate  
35 shall require the production of evidence as to the character, fitness, and financial position of each of the partners.

(3) Where application for a licence is made by a company, the Magistrate shall require the production of evidence as to the financial position of the company, and as to the character  
40 and fitness of the directors and manager, and of such other responsible officers of the company as the Magistrate thinks fit.

(4) No licensee shall carry on business as a motor-vehicle dealer under any name that is not his own name or the name of his partner in the business or, in the case of a company, the name of the company, unless that name has first been approved by a Magistrate. 5

(5) The Magistrate shall refuse to approve any name if he considers that the proposed name is that of any person, company, or firm—

- (a) Whose licence has been cancelled under section twenty-five of this Act; or 10
- (b) Whose application for a licence has been refused; or
- (c) Who or which is disqualified from holding a licence.

**10. Disqualification of applicants—**(1) No motor-vehicle dealer's licence shall be issued to any person, not being a company, who— 15

- (a) Is under the age of twenty-one years; or
- (b) Is a bankrupt who has not obtained his order of discharge, or whose order of discharge is suspended for a term not yet expired or is subject to conditions not yet fulfilled. 20

(2) No motor-vehicle dealer's licence shall be issued to any person where—

- (a) An application by him for a licence or for the renewal of a licence has been refused within the immediately preceding period of twelve months; or 25
- (b) A licence previously held by him was cancelled under section twenty-five of this Act within the immediately preceding period of twelve months.

(3) Every person commits an offence against this Act who, being disqualified from obtaining a licence under subsection one or subsection two of this section, applies for a motor-vehicle dealer's licence. 30

(4) No person shall become or act as a director or the manager or other principal officer of any company holding a motor-vehicle dealer's licence or the manager of any branch 35 where the company carries on business as a motor-vehicle dealer who is disqualified from obtaining a licence under subsection one or subsection two of this section, or who, if he held a motor-vehicle dealer's licence, would be liable to have his licence cancelled on any of the grounds specified in sub- 40 section one of section twenty-five of this Act.

**11. Licensees not to employ certain persons to deal in motor vehicles**—No licensee shall, without the prior consent of a Magistrate, knowingly employ either as servant or agent any person who within the immediately preceding period of five  
5 years has been convicted of a crime involving dishonesty as defined by section two hundred and thirty-seven of the Crimes Act 1908:

10 Provided that a licensee may employ either as servant or agent any such person otherwise than in negotiating for the sale, purchase, or exchange of, or other dealing in, any motor vehicle.

**12. Effect of licence**—A motor-vehicle dealer's licence shall authorise the licensee to act as a motor-vehicle dealer in any part of New Zealand during the currency of the licence:

15 Provided that it shall not be lawful for a motor-vehicle dealer to carry on business as such at any place of business not specified in his licence, unless he has first given to the Registrar of the Magistrates' Court in which the licence was granted notice of his intention to carry on business in that  
20 place, and has paid such additional fee (if any) in respect of that place of business as may be prescribed.

**13. Duration of licence**—Every licence shall, unless sooner terminated in accordance with this Act, continue in force until the close of the thirty-first day of March next following, and  
25 may from time to time be renewed for the period ending with the thirty-first day of March next after the commencement of an order for renewal.

**14. Renewal of licence**—(1) Application for the renewal of a licence may be made not earlier than the first day of  
30 January and not later than the last day of February preceding the date of the expiry of the licence, and shall be filed by the applicant in the same manner as if it were an application for the grant of a licence.

(2) Every person who objects to the renewal of a licence  
35 may, at any time before the seventh day of March in any year, file in the Magistrates' Court in which application for the renewal of the licence has been filed a notice in the prescribed form of his objection to the application and of the grounds thereof.

(3) No such objection shall be considered except to the extent that the grounds thereof affect the character, fitness, or financial position of the applicant, or, in the case of an application by a person carrying on business as a motor-vehicle dealer in partnership with any other person, the character, fitness, or financial position of any of the partners, or, in the case of an application by a company, the financial position of the company or the character or fitness of the directors or of the manager or any other responsible officer of the company. 5

(4) Where any objection is lodged to the renewal of a licence, the Magistrate shall hear and determine the application for renewal in the same manner as if it were an application for the issue of a licence. 10

(5) In the absence of any objection to an application for the renewal of a licence, the Registrar of the Court may, on payment of the prescribed fee, grant a renewal without further inquiry as to the fitness of the applicant to carry on the business of a motor-vehicle dealer. 15

(6) The Magistrate may, in his discretion, hear and determine any application for the renewal of a licence, or any objection to any such renewal, notwithstanding that the application or objection may not have been filed within the time limited by this section in that behalf, provided the application was filed not later than the thirty-first day of March. 20

(7) If application for the renewal of a licence has been filed, but is not determined on or before the thirty-first day of March in any year, the licence shall, notwithstanding anything to the contrary in this Act, but provided an approved fidelity bond is for the time being in force, be deemed to be extended until the application is disposed of by a Magistrate in accordance with this Act. 25 30

**15. Magistrate may award costs**—On the hearing of any application for a licence or for the renewal of a licence, the Magistrate shall, if any objection to the application has been filed, have jurisdiction to determine what costs (if any) shall be paid to or by the objector or the applicant respectively, and to adjudge that those costs be paid, and those costs shall be recoverable accordingly as a final judgment of the Magistrates' Court. 35 40

**16. Licences not transferable**—A motor-vehicle dealer's licence shall not be transferable, and shall not vest by operation of law in any person other than the licensee.

**17. Temporary licences—**(1) Any person being—

- (a) The personal representative of a deceased licensee; or
- (b) The assignee in bankruptcy of a licensee who has been adjudged a bankrupt; or
- 5 (c) The liquidator of a company which is a licensee; or
- (d) In the case of a licensee whose estate the Public Trustee is authorised to administer under the Mental Health Act 1911, or of whose estate the Public Trustee or any other person has been appointed the committee under that Act, the Public Trustee, or, 10 as the case may be, the committee of the estate of the licensee; or
- (e) In the case of a licensee in respect of whom a protection order is in force under the Aged and Infirm Persons Protection Act 1912, the manager of his 15 estate—

may, with the consent of a Magistrate, carry on, or appoint some other person to carry on, the business as a motor-vehicle dealer of the licensee for such period as the Magistrate determines, subject to the person carrying on the business (not 20 being the Public Trustee or the holder of a motor-vehicle dealer's licence) filing an approved fidelity bond under section five of this Act as if he were an applicant for a licence.

(2) While any person carries on any business pursuant to 25 subsection one of this section, he shall for the purposes of this Act be deemed to be the holder of the licence.

**18. Licensee not to enter into partnership, etc., without Magistrate's consent—**(1) No licensee shall after the issue of his licence enter into any partnership with any person in 30 respect of his business as a motor-vehicle dealer without the prior consent of a Magistrate, and the Magistrate shall refuse to grant that consent unless he is satisfied as to the character, fitness, and financial position of the proposed partner.

(2) Where a company registered under the Companies 35 Act 1955 as a private company is a licensee under this Act, no person who is not at the date of issue of the licence or, as the case may be, at the date of the last renewal of the licence a director or the manager or other principal officer (by whatever name he is called) of the company or the manager of 40 any branch where the company carries on business as a

motor-vehicle dealer shall act as a director or, as the case may be, the manager or other principal officer of the company or the manager of any such branch for a period of more than fourteen days without the prior consent of a Magistrate; and the Magistrate shall refuse to grant that consent unless he is satisfied as to the character and fitness of that person: 5

Provided that, where within the said period of fourteen days an application has been made to a Magistrate for his consent to any person acting in any capacity specified in this subsection and the application has not been disposed of before the expiration of that period, that person may, subject to the provisions of sections ten and eleven of this Act, act in that capacity pending the Magistrate's decision on the application. 10

(3) Every person who commits a breach of this section commits an offence against this Act and, in addition to any penalty to which he may be held liable in respect of the offence, his licence or, as the case may be, the licence of the company shall be liable to cancellation under section twenty-five of this Act. 15

#### *Duties of Motor-Vehicle Dealers*

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**19. Duties of dealers with respect to money received in course of business**—Subject to any authority or instructions in writing received by the dealer from the person for whom he has acted as agent, all money received by a motor-vehicle dealer in respect of any transaction in his capacity as a dealer and as an agent for any person (after deducting the amount of any fee or commission or other charges for his services previously agreed upon by the dealer and that person) shall be paid by the dealer to that person forthwith on the demand of that person or, if no such demand is made, within seven days after the receipt of that money by the dealer: 25 30

Provided that, where the person for whom the dealer has acted cannot after reasonable inquiry be found within the said period of seven days, the dealer shall pay the money to that person as soon as his address is known to the dealer. 35

**20. Dealers to furnish account to principal**—(1) Where a motor-vehicle dealer buys or sells or exchanges or otherwise deals in any motor vehicle as an agent, he shall forthwith on the demand of the person for whom he has acted as agent in the transaction, or, if no such demand 40



is made, then within seven days after the completion of the transaction, render to the person on whose behalf he has acted as agent an account in writing, setting forth particulars of all money received by him in the transaction in his capacity as agent for that person, and as to the application thereof.

(2) For the purposes of this section the completion of a transaction shall be deemed not to be dependent on the vendor of the motor vehicle giving to a Deputy Registrar of Motor Vehicles notice of change of ownership in accordance with the provisions of section twenty-six of the Transport Act 1949.

**21. Dealers to keep record of transactions—**(1) Every motor-vehicle dealer shall keep in the prescribed form a record of all transactions in which he has acted as a dealer in relation to the sale, purchase, or exchange of or other dealing in any motor vehicle.

(2) Every dealer shall keep the record required to be kept by subsection one of this section for a period of not less than six years from the date of the making of that record, or the date of the last entry in any book containing more than one such record.

(3) Every record required to be kept under the provisions of this section and every book containing more than one such record shall be open to inspection at all times by any constable, who may make such copies thereof or extracts therefrom as he thinks fit.

(4) Every person commits an offence against this Act who—

(a) Wilfully delays or obstructs any constable in the exercise of his powers under subsection three of this section; or

(b) On demand refuses or fails to produce to any constable demanding the same any record or book of records required for inspection under this section and in his possession, custody, or control.

**22. Licence to be produced—**Every motor-vehicle dealer shall produce his licence for inspection whenever required so to do by any constable.

**23. Dealers to display notice on place of business, etc.—**

(1) Every person to whom a motor-vehicle dealer's licence is granted shall exhibit and keep exhibited in a prominent place on his principal place of business and on every branch

office where his business as a dealer is conducted, so as to be easily read from outside that place of business or branch office, a notice of his name and of the fact that he is licensed as a motor-vehicle dealer, together with the name or style under which he carries on business as a motor-vehicle dealer, if the business is not carried on in his own name. 5

(2) The information required by subsection one of this section to be specified in the notice referred to in that subsection shall also be clearly shown on all notices, advertisements, and other publications issued by the licensee and in all letters, accounts, agreements, and other documents sent out, entered into, or published by or on behalf of the licensee in or in the course of or in connection with his business as a motor-vehicle dealer. 10

**24. Indictable offences by dealers—**(1) Every person is liable on conviction on indictment to imprisonment for a term not exceeding five years or to a fine not exceeding five hundred pounds, or to both, who— 15

(a) Fraudulently converts to his own use any money received by him in his capacity as a motor-vehicle dealer and as an agent for any person; or 20

(b) Renders an account purporting to be an account of money received or applied by him in his capacity as a motor-vehicle dealer and as an agent for any person, knowing the same to be false in any material particular. 25

(2) The First Schedule to the Summary Proceedings Act 1957 is hereby amended by inserting in Part II, after the reference to the Merchandise Marks Act 1954, the following words: 30

“The Motor-Vehicle Dealers Act 1958	24	Offences in respect of money received as agent”.
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#### *Cancellation of Licences*

**25. Cancellation of licences—**(1) A licence under this Act may be cancelled on any of the grounds following, namely: 35

(a) If the licensee or any partner of the licensee is convicted of an offence against section nineteen, section twenty, section twenty-one, or section twenty-four of this Act; or

(b) If the licensee or any partner of the licensee, having been convicted of an offence against this Act, is within twelve months after the conviction again convicted of an offence against this Act; or 40

- (c) If the licensee or any partner of the licensee is convicted, whether summarily or on indictment, of any crime involving dishonesty as defined by section two hundred and thirty-seven of the Crimes Act 1908; or
- 5 (d) If the licensee, without the prior consent of a Magistrate, knowingly employs in or about his business as a motor-vehicle dealer any person as a buyer, salesman, or negotiator of purchases or sales who has been convicted of any offence mentioned in the  
10 foregoing provisions of this subsection; or knowingly permits any such person to act as a buyer, salesman, or negotiator as aforesaid in or about the licensee's business as a motor-vehicle dealer; or
- 15 (e) If after the issue of the licence the licensee, without the prior consent of a Magistrate, enters into any partnership with any other person in respect of his business as a motor-vehicle dealer; or
- (f) If, after issue or renewal of a licence to a company registered under the Companies Act 1955 as a private  
20 company, any person who was not at the date of the issue or renewal a director or the manager or other principal officer of the company or the manager of any branch where the company carries on business as a motor-vehicle dealer acts, without the prior  
25 consent of a Magistrate, as a director or, as the case may be, the manager or other principal officer of the company or the manager of any such branch for a period of more than fourteen days:  
30 Provided that, where within the said period of fourteen days an application has been made to a Magistrate for his consent to any person acting in any capacity specified in this paragraph and the application has not been disposed of before the  
35 expiration of that period, the provisions of this paragraph shall not apply pending the decision of the Magistrate on the application; or
- (g) If the licensee or any partner of the licensee is adjudged bankrupt or makes any assignment for the benefit of his creditors or makes any composition with his  
40 creditors; or
- (h) In the case of a licence issued to a company, if any director or the manager or other principal officer of the company is convicted of any offence referred to in paragraph (c) of this subsection, or is adjudged

bankrupt or makes an assignment for the benefit of his creditors or makes any composition with his creditors.

(2) The Court before which any person is convicted of any offence may of its own motion cancel his licence in any case where the conviction is a ground for the cancellation of the licence. 5

(3) Application for the cancellation of a licence on any of the grounds aforesaid may be made by any person, and shall be made by filing the application in the Magistrates' Court nearest by the most convenient road or rail route to the place of business, or the principal place of business, of the licensee, and thereupon any Magistrate exercising jurisdiction in that Court shall have power to hear the application and cancel the licence. 10 15

#### *Appeals*

**26. Appeal against decision of Magistrate—**(1) Where any person who immediately before the commencement of this Act was carrying on business as a motor-vehicle dealer duly applies for a motor-vehicle dealer's licence before the first day of April, nineteen hundred and fifty-nine, and the Magistrate refuses to grant the licence in terms of the application, the applicant may appeal against that decision to the Supreme Court. 20

(2) Every licensee may appeal to the Supreme Court against the decision of a Magistrate or of a Magistrate's Court refusing to grant a renewal of the licence or cancelling the licence. 25

(3) The provisions of Part IV of the Summary Proceedings Act 1957, as far as they are applicable and with the necessary modifications, shall apply with respect to every such appeal as if it were a general appeal under that Part. 30

(4) The decision of the Supreme Court on any such appeal shall be final.

(5) Subject to the provisions of this section, every decision of a Magistrate or of a Magistrate's Court under this Act shall be final. 35

#### *Miscellaneous*

**27. Warranty implied in contracts by motor-vehicle dealers—**In every contract of sale or exchange or other disposition of a motor vehicle made by a motor-vehicle dealer, 40

whether as principal or agent and whether made by the dealer or by his partner or by any person in his employ, there shall be implied a warranty by the dealer that—

- 5 (a) The person by whom or on whose behalf the motor vehicle is sold or exchanged or otherwise disposed of is the true owner thereof, or is duly authorised to sell, exchange, or otherwise dispose of the motor vehicle pursuant to a power of attorney from the true owner thereof; and
- 10 (b) The motor vehicle is not subject to any encumbrance other than those (if any) disclosed to the other party to the transaction in writing by the dealer at the time of the sale or exchange or other disposition;—
- 15 and, where the other party to the transaction suffers any loss arising out of the breach of any such warranty, that party shall be entitled accordingly to recover the amount of the loss from the dealer.

**28. Evidence of contract of agency—**No person shall be entitled to sue for or recover any commission, reward, or other valuable consideration in respect of any service or work performed by him as an agent in selling, buying, exchanging, or otherwise dealing in any motor vehicle, unless—

- 25 (a) He was the holder of a licence as a motor-vehicle dealer at the time of the performing of the service or work; and
- 30 (b) His appointment to act as agent is in writing signed, either before or after the performance of the service or work, by the person to be charged with the commission, reward, or consideration, or by some person on his behalf lawfully authorised to sign the appointment.

**29. Holding out as a motor-vehicle dealer without licence—**

- 35 (1) Every person, not being the holder of a motor-vehicle dealer's licence for the time being in force, commits an offence, and is liable to a fine not exceeding two hundred pounds, who describes himself in writing or who holds himself out as a motor-vehicle dealer, whether as principal or agent, and shall be liable to forfeit to Her Majesty the Queen all money received by him by way of commission or profit for any services
- 40 or work performed by him as an unlicensed motor-vehicle dealer.

(2) All money forfeited to Her Majesty under subsection one of this section shall be recoverable at the suit of Her Majesty in any Court of competent jurisdiction, or may be assessed by the Court by which the defendant is convicted and be recoverable in like manner as a fine. 5

**30. General offences**—Every person commits an offence against this Act who does any act in contravention of or fails to comply with any provision of this Act.

**31. General penalty for offences**—(1) Except where this Act otherwise provides, every person who commits an offence against this Act or against any regulations under this Act is liable to a fine not exceeding fifty pounds. 10

(2) Except where this Act otherwise provides, every offence against this Act or against any regulations under this Act shall be punishable on summary conviction before a Magistrate. 15

**32. Civil remedies not affected**—Nothing in this Act shall affect any civil remedy that any person may have against a motor-vehicle dealer in respect of any matter.

**33. Licence fees to be paid into the Consolidated Fund**— 20  
All licence fees received under this Act shall be paid into the Public Account to the credit of the Consolidated Fund.

**34. Regulations**—(1) The Governor-General may from time to time, by Order in Council, make all such regulations as may in his opinion be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof. 25

(2) Without limiting the general power to make regulations conferred by subsection one of this section, regulations may be made under this section for any of the following purposes: 30

- (a) Prescribing forms of applications for motor-vehicle dealers' licences and renewals of licences and forms of licences and of objections to the granting or renewal of licences: 35

- (b) Prescribing forms of advertisements and other notices under this Act:
  - (c) Prescribing the fees payable on the issue or renewal of a licence.
- 5 (3) Any regulations under this section prescribing the fees payable on the issue or renewal of a licence may prescribe—
- (a) Additional fees in respect of every additional place of business of the licensee:
  - 10 (b) Smaller fees in respect of additional places of business of the licensee in the same city, borough, town district, or locality:
  - (c) Different fees in respect of different kinds of motor vehicles:
  - (d) Reduced fees in respect of licences issued after the first
- 15 day of April in any year.
- (4) All regulations made under this section shall be laid before Parliament within twenty-eight days after the making thereof if Parliament is then in session and, if not, shall be
- 20 laid before Parliament within twenty-eight days after the commencement of the next ensuing session.
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Section 5

## SCHEDULE

## BOND

KNOW all men by these presents that \_\_\_\_\_, of \_\_\_\_\_, is (are) held and firmly bound unto Her Majesty the Queen in the sum of pounds (£ \_\_\_\_\_), for the payment of which sum to Her Majesty the said \_\_\_\_\_ doth (do jointly and severally) bind himself (itself) and his (its) successors (ourselves, our executors, and administrators) firmly by these presents.

Whereas \_\_\_\_\_, of \_\_\_\_\_ (hereinafter referred to as the licensee), has made application for the issue to him of a licence under the Motor-Vehicle Dealers Act 1958:

Now the condition of the above-written bond is such that if the licence is granted to the licensee, and if the licensee during the currency of the term of the licence (and during the currency of the term of every licence granted to the licensee in renewal of the licence)—

- (a) Always duly applies in the manner required by the said Act all money received by the licensee on behalf of any other person;
- (b) Always duly renders accounts in writing of all money received by the licensee on behalf of any other person within the times and to the persons required by the said Act; and
- (c) Always when selling, exchanging, or otherwise disposing of any motor vehicle—
  - (i) Is the true owner thereof or is the duly authorised agent of the true owner thereof or of a person who is authorised to sell, exchange, or otherwise dispose of the motor vehicle pursuant to a power of attorney from the true owner thereof; and
  - (ii) Discloses in writing to the other party to the transaction the existence, nature, and extent of all encumbrances to which the motor vehicle is at the time subject,—

then the above-written obligation shall be void, but otherwise shall remain in full force and effect.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

Signed by the above-named in the  
presence of [*Or, as the case may  
require, in the case of a company*]: