

## TRANSPORT AMENDMENT BILL

### EXPLANATORY NOTE

This Bill amends the Transport Act 1962.

*Clause 1* relates to the Short Title and commencement. *Clause 4* (relating to a fee for a driving test) and *clause 13* (relating to the closing of roads and streets) are to come into force on 1 November 1964. *Clause 17* (relating to the payment of motor spirits tax into the National Roads Fund) is retrospective to 1 April 1964, and *clause 18* (relating to rebates of duty) is to come into force on 1 October 1964.

*Clause 2*: Section 11 (1) of the principal Act requires annual licences for motor vehicles to be affixed to the motor vehicles in the manner prescribed by regulations. This clause will enable a licence issued for any licensing year to be affixed to the motor vehicle during the month of June immediately preceding the commencement of that licensing year and to have effect as a valid licence for the licensing year in which it is affixed to the vehicle.

*Clause 3*: By section 25 (2) of the principal Act, it is not an offence for an unlicensed person to drive a motor vehicle if he is accompanied by an approved testing officer who is testing him for the issue or extension of a driver's licence or by a licensed driver who is teaching him to drive.

This clause extends that provision by permitting a learner driver to undergo a test under the direction of an approved testing officer, not necessarily seated alongside him, e.g., in the case of a person undergoing a test for a licence to drive a motor cycle or a tractor.

*Clause 4*: Section 26 (9) of the principal Act provides for the payment to the local authority of a testing fee of 5s. where an applicant for a licence or an extension of a licence is required to undergo a driving test. This clause enables regulations to be made granting exemptions from the provision, and increases the testing fee to 10s.

*Clause 5* provides that a local authority may arrange for the issue of drivers' licences in its district by the Commissioner of Transport. In such a case, such proportion (if any) of the licence fees as is agreed upon between the local authority and the Commissioner is to be paid to the local authority.

*Clause 6* provides that where under section 35 of the principal Act the Court makes an order of partial exemption from disqualification and the defendant is subsequently disqualified upon conviction for another offence, the order of partial exemption from disqualification will thereupon be deemed to be revoked and any licence issued pursuant to it be deemed to be cancelled.

*Clause 7* inserts a new section 35A in the principal Act giving the Court a limited power to grant partial exemption from disqualification on the ground of undue hardship.

At present, the Court has power under section 35 of the principal Act to grant partial exemption from disqualification authorising the disqualified person to obtain a licence to drive for the purposes of his occupation or employment and for no other purpose.

Where the disqualification order is made upon conviction for an offence under section 39 (driving while disqualified or in breach of an order of partial disqualification), section 55 (2) (causing bodily injury or death through driving while under influence of drink or drugs), or section 58 (driving while under influence of drink or drugs), an application for an order of partial exemption may at present not be made before the expiration of certain periods of time specified in section 42.

This clause will give to the Court a limited power of granting partial exemption in any case (including cases where the order of disqualification was made upon conviction for an offence against sections 39, 55 (2), or 58), if the disqualified person satisfies the Court that the order of disqualification has caused or will cause undue hardship, whether to himself or to any other person. In such a case the Court may make an order authorising him to obtain a licence to drive a specified kind of motor vehicle for a purpose specified in the order and to the least extent necessary to alleviate the undue hardship, but may not make an order authorising him to obtain a licence to drive in connection with his occupation or employment, unless such a licence is essential for the purposes of his occupation or employment and arrangements to obtain the services of another driver cannot reasonably be made.

Application may not be made for an order under this section before the expiration of six months after the date of the order of disqualification if that order was made upon conviction for an offence against section 39 of the principal Act or upon a first conviction for an offence against section 55 (2) or section 58, nor before the expiration of two years after the date of the order of disqualification where that order was made upon conviction for a second or subsequent offence against section 55 (2) or section 58. There is no minimum period in other cases.

*Clause 8* re-enacts in an amended form section 36 of the principal Act, which enables the Court when making an order of disqualification to direct that it shall commence on a date later than the date of the order. It has recently been held by the Court that a disqualification order does not have effect until the day following the date of the making of the order.

The new section provides that a period of disqualification commences on the date of the making of the order (unless it is to commence on the expiration of a period of disqualification then current), but the disqualified person does not commit an offence if he drives on that date at any time before the making of the order. The section re-enacts the existing provision authorising the Court to defer the operation of the order.

*Clause 9:* By section 55 (2) of the principal Act, it is an offence if any person in charge of a motor vehicle while under the influence of drink or a drug to such an extent as to be incapable of having proper control of the vehicle causes bodily injury to or the death of any person by any act or omission in relation to the vehicle. It was decided by the Court of Appeal

in *The Queen v. Wolter* [1959] N.Z.L.R. 1178 that the act or omission causing the injury or death need not necessarily be a negligent one (in this respect affirming an opinion expressed by some of the Judges in *The King v. Johnson* [1951] N.Z.L.R. 253), but must be of such a character that it should not have happened if the accused had not been under the influence of drink or a drug to such an extent as to be incapable of having proper control of the vehicle.

The effect of the amendment made by this clause will be that on a charge for an offence against section 55 (2) it will not be necessary for the prosecution to prove that the act or omission was a negligent one (thus restating the law as decided in *Wolter's* case), nor will it be necessary to prove that it was an act or omission of such a character that it should not have happened if the accused had not been under the influence of drink or a drug (in this respect amending the law as stated in *Wolter's* case and restoring the law to what had been generally accepted as being the position before the decision in that case).

The effect of the clause, therefore, will be that a person who drives while under the influence of drink or a drug and by any act or omission in relation to the motor vehicle causes injury to or the death of any person will be absolutely liable, and the absence of negligence or the fact that the act or omission was of such a nature that it would probably have occurred whether or not the accused had been under the influence of drink or a drug may be taken into account only in mitigation of punishment.

*Clause 10:* Section 61 of the principal Act provides that the Court may not order the suppression of the name of any person who is convicted of an offence against section 55 (2) (causing injury or death while driving under influence of drink or drugs) or section 58 (driving while under influence of drink or drugs). The effect of this clause is to empower the Court to make an order for suppression of the name of the convicted person where for special reasons the Court thinks fit to make such an order.

*Clause 11:* By section 77 (1) (g) of the principal Act, regulations may be made fixing fees for warrants of fitness not exceeding 5s. This clause authorises a fee of up to 7s. 6d. to be so fixed.

*Clause 12* authorises the making of regulations prohibiting or restricting the use of reflective material on advertising signs and hoardings that are visible from a road.

*Clause 13:* By section 77 (1) (u) of the principal Act, regulations may be made relating to the closing of roads on the occasion of vehicle races or trials or of processions, carnivals, sporting events, or other special events. At least 14 days' public notice of the intention to close the road must be given, and, if any objections are received, the road may be closed only with the Minister's consent.

*Subclause (1)* of this clause extends the period of public notice to 28 days.

*Subclause (2)* repeals the provisions requiring the consent of the Minister where objections are received, and replaces those provisions with a provision that the authority closing the road must be satisfied that the person or organisation controlling the race or trial or other event is adequately insured against liability to pay damages in respect of the death of or injury to any person or damage to any property resulting from the holding of the race or trial or other event.

*Clause 14* provides for the appointment of deputies of the Nominal Defendant's Advisory Committee. The deputy of a member will be entitled to attend any meeting of the Committee in the absence of the member whose deputy he is, and will otherwise be entitled to act in the place of that member.

*Clause 15: Subclause (1)* authorises the transfer of part of a transport licence.

By the proviso to section 138 (1) of the principal Act, a taxicab-service licence granted after the commencement of that Act may not be transferred within three years after it was granted and may be transferred after that period only in special circumstances. *Subclause (2)* of this clause will authorise a transfer of such a licence where the grant of the licence is conditional on an amendment to an existing licence reducing the number of vehicles which may be operated under the existing licence.

*Clause 16* authorises the making of regulations in relation to the conduct of passengers carried in vehicles or harbour ferries used in transport services.

*Clause 17:* By section 187 of the principal Act, of the Customs duties on motor spirits and motor spirits duty an amount of 1s. 3 $\frac{3}{4}$ d. per gallon is declared to be motor spirits tax, and, after deducting the cost of collection, is to be paid into the National Roads Fund. The remaining duty amounting to 2d. per gallon is paid into the Consolidated Revenue Account. Provision is made in sections 188 and 189 for refunds in respect of motor spirits used for certain purposes.

The effect of the amendments made by this clause will be that the whole of the money received as Customs duties on motor spirits or as motor spirits duty, less the cost of collection, will be payable into the National Roads Fund. The same provisions are also to apply to milage tax which is payable in respect of motor vehicles that do not derive their motive power from motor spirits.

This clause is retrospective to 1 April 1964. Since that date, the whole of the money received as Customs duties on motor spirits or as motor spirits duty, less the cost of collection, has been paid into the National Roads Fund, and rebates have been made from that Fund.

*Clause 18* repeals the existing provisions whereby a rebate of the 2d. per gallon may be claimed in respect of motor spirits used in passenger-service vehicles. No alteration is made in the rebates that may be claimed in respect of motor spirits used for other purposes. In all such cases, the motor spirits are used otherwise than in motor vehicles or are used in motor vehicles that are exempt from annual licensing.

This clause is to come into force on 1 October 1964, which is the commencement of a quarterly period.

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*Hon. Mr McAlpine*

## TRANSPORT AMENDMENT

### ANALYSIS

Title	
1. Short Title and commencement	9. Causing bodily injury or death through driving while under influence of drink or a drug
2. Annual licences	10. Suppression of names of drivers under influence of drink or drugs
3. Learner drivers	11. Fees for warrants of fitness
4. Fee for driving test	12. Reflective material on advertising signs
5. Issue of drivers' licences by Commissioner	13. Closing of roads
6. Partial exemption from disqualification	14. Deputies of members of Nominal Defendant's Advisory Committee
7. Partial exemption from disqualification order on ground of undue hardship	15. Transfer of part of transport licence
8. Commencement of period of disqualification	16. Regulations as to conduct of passengers
	17. Motor spirits tax
	18. Refund of duty on motor spirits

### A BILL INTITULED

#### An Act to amend the Transport Act 1962

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

1. **Short Title and commencement**—(1) This Act may be cited as the Transport Amendment Act 1964, and shall be read together with and deemed part of the Transport Act 1962\* (hereinafter referred to as the principal Act).
- 10 (2) Sections 4 and 13 of this Act shall come into force on the first day of November, nineteen hundred and sixty-four.

\*1962, No. 135  
Amendments: 1963, Nos. 62, 119

(3) Section 17 of this Act shall be deemed to have come into force on the first day of April, nineteen hundred and sixty-four.

(4) Section 18 of this Act shall come into force on the first day of October, nineteen hundred and sixty-four. 5

(5) Except as otherwise provided in subsections (2) to (4) of this section, this Act shall come into force on the date of its passing.

**2. Annual licences**—Section 11 of the principal Act is hereby amended by adding to subsection (1) the following 10 proviso:

“Provided that, notwithstanding anything in paragraph (b) of section 15 of this Act, where a licence has been issued in respect of a motor vehicle for any licensing year a licence issued in respect of that vehicle for the next ensuing licensing 15 year may be affixed to that vehicle during the last month of the first-mentioned licensing year, and the affixing of the licence for that next ensuing licensing year shall be deemed to be sufficient compliance with the provisions of this subsection and of paragraph (b) of subsection (1) of section 7 20 of this Act.”

**3. Learner drivers**—Section 25 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) Where any person (hereinafter referred to as the 25 learner) is while driving a motor vehicle undergoing a test for the issue or an extension of a driver’s licence under the direction of an approved testing officer for motor drivers or is accompanied by a person seated alongside him who is the holder of a licence for the time being in force which authorises 30 him to drive such a motor vehicle and is engaged in teaching the learner to drive,—

“(a) The learner shall be deemed not to act in contravention of paragraph (a) of subsection (1) of this section; and 35

“(b) The testing officer or any person employing or permitting the learner to drive the motor vehicle shall be deemed not to act in contravention of paragraph (b) of that subsection:

“Provided that nothing in this subsection shall apply where the learner has not attained the age that qualifies him to obtain a licence to drive the motor vehicle that he is driving, or is subject to an order which disqualifies him from driving  
5 that vehicle.”

**4. Fee for driving test**—Section 26 of the principal Act is hereby amended—

- (a) By inserting in subsection (9), before the words “Where any applicant”, the words “Unless otherwise provided by regulations under this Act”:  
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- (b) By omitting from subsection (9) the words “five shillings”, and substituting the words “ten shillings”.

**5. Issue of drivers’ licences by Commissioner**—The principal Act is hereby further amended by inserting, after  
15 section 26, the following section:

“26A. (1) Any local authority may from time to time arrange for the issue in its district of drivers’ licences by the Commissioner, and in that case, so long as the arrangement continues in force, drivers’ licences shall be issued in that  
20 district by the Commissioner and not by the local authority.

“(2) Where any such arrangement has been made, there shall be paid to the local authority such proportion (if any) of the licence fees received by the Commissioner as is agreed upon between the local authority and the Commissioner, and  
25 the provisions of section 27 of this Act shall apply with respect to the proportion so paid to the local authority.

“(3) Where pursuant to any such arrangement drivers’ licences are issued by the Commissioner, the provisions of this Part of this Act (except section 27) and of Part IV of  
30 this Act, as far as they are applicable and with any necessary modifications, shall apply as if every reference to a local authority or to the local authority which issued a licence were a reference to the Commissioner.”

**6. Partial exemption from disqualification**—Section 35 of  
35 the principal Act is hereby amended by adding the following subsection:

“(8) Where any person in respect of whom the Court has made an order under this section is convicted of any offence specified in the Third Schedule to this Act and upon that conviction the Court makes an order disqualifying him from holding or obtaining a driver’s licence (whether the subsequent order of disqualification takes effect on the date thereof or is to take effect on a later date), the order made under this section shall thereupon be deemed to be revoked and any driver’s licence issued to him pursuant to that order shall thereupon be deemed to be cancelled.” 5  
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**7. Partial exemption from disqualification order on ground of undue hardship—**(1) The principal Act is hereby further amended by inserting, after section 35, the following section:

“35A. (1) This section applies with respect to any person who is disqualified by an order made under this Part of this Act (whether before or after the commencement of this section) from holding or obtaining a driver’s licence or was so disqualified by an order made before the commencement of this Act under the provisions of any former Act. 15

“(2) Subject to the provisions of subsections (3) and (4) of this section, on the making of the order of disqualification or at any time thereafter, the Court, on the application of the person in respect of whom the order was made, may, if it is satisfied that the order of disqualification has resulted or will result in undue hardship (whether to the applicant or to any other person), may make an order under this section authorising him to obtain, immediately or after the expiration of such period as the Court may specify, a driver’s licence authorising him to drive such kind of motor vehicle, and no other, for such purpose, and for no other purpose, and to such extent (being the least extent that is necessary to alleviate that hardship) as the Court specifies in the order: 20  
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“Provided that no order shall be made under this section authorising the applicant to obtain a driver’s licence authorising him to drive in connection with his occupation or employment, unless the Court is satisfied that such a licence is essential for the purposes of his occupation or employment and that arrangements to obtain the services of another driver cannot reasonably be made. 35  
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“(3) Where the order of disqualification was made upon conviction for an offence against section 39 of this Act or a first offence against subsection (2) of section 55 or section 58 of this Act, no application may be made for an order under this section before the expiration of six months after the date of the order of disqualification.

“(4) Where the order of disqualification was made upon conviction for a second or subsequent offence against subsection (2) of section 55 or section 58 of this Act, no application may be made for an order under this section before the expiration of two years from the date of the order of disqualification.

“(5) For the purposes of this section, a conviction for an offence against a corresponding provision of any former Act shall be deemed to be a conviction against subsection (2) of section 55 or against section 58 of this Act, as the case may require.

“(6) If any application under this section is refused, an application in respect of the same order shall not be entertained if made within three months after the date of that refusal, unless the circumstances have changed since that date.

“(7) Where at the time when the Court makes an order under this section the applicant is the holder of a driver’s licence issued pursuant to an order under section 35 of this Act, then, on application by him to a local authority, the local authority shall grant an extension of that licence authorising him to drive in accordance with the terms of the order under this section the kind of motor vehicle specified in the order, and no other.

“(8) The provisions of subsections (3), (5), (6), and (8) of section 35 of this Act shall apply with respect to every application for an order under this section and to every such order.”

(2) Section 35 of the principal Act is hereby further amended by inserting, after subsection (6), the following subsection:

“(6A) Where at the time when the Court makes an order under this section the applicant is the holder of a driver’s licence issued pursuant to an order under section 35A of this Act, then, on application by him to a local authority, the local authority shall grant an extension of that licence authorising him to drive in accordance with the terms of the order under this section the kind of motor vehicle specified in the order, and no other.”

- (3) The principal Act is hereby further amended—
- (a) By inserting in paragraph (b) of subsection (1) of section 39, after the words “section 35”, the words “or section 35A”:
  - (b) By inserting in subsection (1) of section 42, after the words “section 35”, the words “or section 35A”:
  - (c) By inserting in section 43, after the words “section 35”, the words “or section 35A”:
  - (d) By inserting in section 48, after the words “section 35”, the words “or section 35A”.

**8. Commencement of period of disqualification—**(1) The principal Act is hereby further amended by repealing section 36, and substituting the following section:

“36. (1) Subject to the provisions of section 33 of this Act, where an order is made under this Part of this Act disqualifying any person from holding or obtaining a driver’s licence, the period of disqualification shall commence on the date of the making of the order:

“Provided that that person shall not be deemed to have committed an offence against section 39 of this Act by reason of the fact that he drove a motor vehicle on any road at any time on that day before the making of the order.

“(2) Notwithstanding anything in subsection (1) of this section, the Court by which an order is made disqualifying a person from holding or obtaining a driver’s licence may direct that the period of disqualification so ordered shall commence on a date later than the date of the order.”

(2) Section 30 of the principal Act is hereby amended by omitting the words “from the date of the conviction”.

**9. Causing bodily injury or death through driving while under influence of drink or a drug—**Section 55 of the principal Act is hereby amended by adding to subsection (2) the words “whether or not the act or omission is negligent, and whether or not the act or omission is of such a character that it should not have happened if the person in charge of the motor vehicle had not been under the influence of drink or a drug to such an extent as to be incapable of having proper control of the vehicle”.

**10. Suppression of names of drivers under influence of drink or drugs**—Section 61 of the principal Act is hereby amended by inserting, before the words “The power of prohibiting” the words “Unless for special reasons the Court thinks fit to order otherwise”.

**11. Fees for warrants of fitness**—Section 77 of the principal Act is hereby amended by omitting from paragraph (g) of subsection (1) the words “five shillings”, and substituting the words “seven shillings and sixpence”.

**12. Reflective material on advertising signs**—Section 77 of the principal Act is hereby further amended by inserting in subsection (1), after paragraph (r), the following paragraph:  
“(rr) Prohibiting or restricting the use of reflective material on signs, hoardings, and similar structures used or intended to be used for the purposes of advertising and visible from any road:”.

**13. Closing of roads**—(1) Section 77 of the principal Act is hereby further amended by omitting from the first proviso to paragraph (u) of subsection (1) the word “fourteen”, and substituting the words “twenty-eight”.

(2) Section 77 of the principal Act is hereby further amended by repealing the second proviso to paragraph (u) of subsection (1), and substituting the following proviso:

“Provided further that no road shall be closed pursuant to any regulation made under this paragraph, unless the local authority or other body or person having control of the road is satisfied that the person or organisation promoting the vehicle races or trials, procession, carnival, celebration, sporting event, or other special event, as the case may be, has arranged adequate insurance against his or its liability to pay damages to any person in respect of any claim on account of the death of or bodily injury to any person or damage to property where the death or bodily injury or damage results from the holding of the vehicle races or trials, procession, carnival, celebration, sporting event, or other special event, as the case may be:”.

**14. Deputies of members of Nominal Defendant's Advisory Committee**—The principal Act is hereby further amended by inserting, after section 90c (as inserted by section 6 of the Transport Amendment Act 1963), the following section:

“90cc. (1) The Minister may from time to time, by notice in the *Gazette*, appoint a person to be the deputy of any appointed member of the Nominal Defendant's Advisory Committee. 5

“(2) The provisions of subsections (2) to (5) of section 90c of this Act shall apply with respect to every such deputy as if references in those subsections to an appointed member were references to the deputy of that member. 10

“(3) The deputy of an appointed member of the Committee shall be entitled to attend any meeting of the Committee in the absence from that meeting of the member whose deputy he is, and shall otherwise be entitled to act in the place of that member, and while so attending or acting shall be deemed to be a member of the Committee. The fact that any such deputy attends any such meeting or so acts shall be conclusive proof of his authority to do so.” 15 20

**15. Transfer of part of transport licence**—(1) Section 138 of the principal Act is hereby amended by inserting in subsection (1), after the word “transferred” where it first occurs, the words “in whole or in part”.

(2) Section 138 of the principal Act is hereby further amended by adding to subsection (1) the following additional proviso: 25

“Provided further that the provisions of the first proviso to this subsection shall not apply to any taxicab-service licence granted after the commencement of this Act where the grant of the licence is conditional upon an amendment to an existing taxicab-service licence reducing the number of vehicles which may be operated under the existing licence.” 30

**16. Regulations as to conduct of passengers**—Section 186 of the principal Act is hereby amended by inserting, after paragraph (n), the following paragraph: 35

“(nn) Prescribing matters in relation to the conduct of passengers carried in vehicles or harbour ferries used in transport services:”.

**17. Motor spirits tax**—(1) Section 187 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection: 40

“(1) All money received under items 332.100.2, 512.240.4, and 599.991.9 of the Customs Tariff as Customs duties on motor spirits imported into New Zealand, or entered therein for home consumption, and all money received under the  
5 Motor Spirits Duty Act 1961 as motor spirits duty shall be deemed to be received as a tax in respect of the use of motor vehicles (hereinafter referred to as motor spirits tax).”

(2) Section 187 of the principal Act is hereby further amended by repealing subsection (3).

10 (3) Section 191 of the principal Act is hereby amended by repealing subsection (7), and substituting the following subsection:

“(7) Subject to the provisions of subsection (4) of section 22 of the National Roads Act 1953, all money paid  
15 or recovered under the foregoing provisions of this section shall be paid into the Public Account to the credit of the National Roads Fund.”

**18. Refund of duties on motor spirits**—(1) The principal Act is hereby further amended—

20 (a) By omitting from paragraph (a) of subsection (3) of section 188 the words “one shilling and threepence”, and substituting the words “one shilling and five-pence”:

25 (b) By omitting from paragraph (b) of the same subsection the words “one shilling and one penny”, and substituting the words “one shilling and threepence”:

(c) By repealing section 189:

(d) By omitting from subsection (1) of section 190 the words “or section 189”:

30 (e) By omitting from the second proviso to paragraph (c) of subsection (4) of section 190 all words following the words “section 13 of this Act”.

(2) During the period commencing on the first day of April, nineteen hundred and sixty-four, and ending with the  
35 thirtieth day of September, nineteen hundred and sixty-four, section 189 of the principal Act shall be deemed to have had effect as if for subsection (4) there had been substituted the following subsection:

40 “(4) All refunds under this section shall be paid out of the National Roads Fund without further appropriation than this section.”