

CHAPTER 69:03
ROAD TRANSPORT (PERMITS)
ARRANGEMENT OF SECTIONS

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An Act to provide for the co-ordination and control of the means of and facilities for road transport by way of permits and for matters incidental thereto and connected therewith.

[Date of Commencement: 28th December, 1973]

PART I

Preliminary (ss 1-2)

1. Short title

This Act may be cited as the Road Transport (Permits) Act.

2. Interpretation

In this Act, unless the context otherwise requires-

"Advisory Board" means a Transport Advisory Board appointed under section 4;

"Appeal Tribunal" means the Appeal Tribunal established under section 21;

"authorized vehicle", in connection with a permit of any class, means a vehicle specified in such permit and authorized for use in accordance with such permit;

"carriage of goods" includes the haulage of goods;

"carriage on own account" means-

(a) the delivery or collection by a person in a vehicle owned by him of goods sold, used or let on hire or hire-purchase in the course of and ancillary to a trade or business carried on by him; or

(b) the delivery or collection by a person in a vehicle owned by him of goods which have been, or are to be, subject to a process or treatment in the course of and ancillary to a trade or business carried on by him;

"Controller" means the Road Transport Controller appointed in accordance with section

3;

"driver", in relation to a vehicle, means any person who drives or guides, or is in an actual physical control of, any vehicle, and in relation to a trailer means the driver of the vehicle by which the trailer is drawn;

"fare" means the amount paid or payable for a conveyance of a passenger in a public service vehicle, and includes any sum paid or payable in respect of such passenger's luggage;

"goods" include goods or burden of any description;

"goods vehicle" means a vehicle wholly or primarily constructed or adapted for the carriage of goods of any description in connection with any trade, business or agriculture, but does not include any type or class of vehicle which the Minister may prescribe not to be a goods vehicle for the purposes of this Act;

"holder" in relation to a permit, means the person to whom the permit was granted;

"motor vehicle" means any vehicle, self-propelled by mechanical or electrical power, but excluding any vehicle running on a specially-prepared way such as a railway or tramway or cables and such other vehicles as the Minister may prescribe not to be motor vehicles for the purposes of this Act;

"owner", in relation to a vehicle, includes the owner, joint owner or part owner thereof, and where a vehicle is the subject of a hire-purchase agreement or hiring agreement, includes the person in possession of that vehicle under that agreement;

"permit" means a permit issued under this Act;

"public service vehicle" has the meaning assigned to it in the Road Traffic Act;

"road" has the meaning assigned to it in the Road Traffic Act;

"trailer" has the same meaning as in the Road Traffic Act.

PART II

Transport Controller and Transport Advisory Boards (ss 3-4)3. Transport Controller

(1) There shall be appointed a Transport Controller who shall be responsible for the administration of this Act and shall perform the duties and functions and exercise the powers conferred upon him by or under this Act.

(2) The Controller may, with the approval of the Minister, delegate to any public officer the power and authority to carry out on his behalf such duties and functions, and to exercise such powers, as he may determine, and at the time of delegating any such duty, function or power, or at any time thereafter, he may give such directions as he may see fit as to the manner in which such duties or functions are to be carried out or such powers exercised.

(3) The Controller shall keep such records, books, registers and other documents as the Minister may require.

(4) All permits issued under this Act shall be under the hand of the Controller or under the hand of some person to whom the Controller has delegated his power to issue permits.

(5) The Controller shall, for the purpose of hearing and determining applications for permits or the amendment of any term or condition of a permit, hold public sittings in such places and at such times as appear necessary to him, having regard to the provisions of this Act and the interests of the applicants and any objectors:

Provided that no public sitting shall be necessary-

- (i) in respect of an application for or for the renewal of a permit for the carriage of goods on own account;
- (ii) for the issue of BS, TS and short-term permits under the provisions of section 10;
- (iii) on giving 14 days' notice in the *Gazette*, for the renewal of a permit of any class other than a permit for the carriage of goods on own account;
- (iv) on giving 14 days' notice in the *Gazette* of his intention to do so, for the variation or amendment of a permit where the Controller is of the opinion that, having regard to the trivial nature of the variation or amendment, it is not necessary that a public sitting be held.

4. Transport Advisory Boards (1) For the purposes of advising the Controller on any application before him there shall be one or more Transport Advisory Boards appointed, constituted and regulated in accordance with the Schedule.

(2) When a public sitting under section 3(5) is being held a Board shall sit with the Controller.

PART III

Permits (ss 5-8)

5. Permits required

(1) Subject to subsection (4) no person shall, except under and in accordance with the terms and conditions of a permit-

- (a) use a motor vehicle on a road for the carriage of goods-
 - (i) for hire or reward; or
 - (ii) on his own account in a vehicle the carrying capacity of which exceeds three tonnes;
- (b) for hire or reward use a vehicle to convey any person by means of a motor vehicle; or
- (c) let on hire any vehicle whether for the carriage of goods or passengers.

(2) When a goods vehicle is being used on a road for the carriage of goods, the driver of the vehicle, if it belongs to him, or is in his possession under an agreement for hire or hire-purchase, and, in any other case, the person in whose ownership or possession the vehicle is, shall, for the purposes of this Act, be deemed to be the user of the vehicle.

(3) Where at any time goods are carried in a goods vehicle, being a vehicle which has been let on hire by the person who, at the time of the carriage of the goods, is, within the

meaning of this Act, the user of the vehicle, such goods shall be deemed to be carried by that person for hire or reward.

(4) This section shall not apply to-

- (a) the use of a Government vehicle for Government purposes;
- (b) the use of a vehicle for the purpose of funerals;
- (c) the use of a vehicle for towing a disabled vehicle or for removing goods from a disabled vehicle to a place of safety;
- (d) the use of any vehicle equipped and used solely for fire-fighting purposes;
- (e) the use of any vehicle equipped and used solely as an ambulance;
- (f) the carriage of goods in a vehicle which is being used under and in accordance with the terms and conditions of a motor dealer's licence issued under the Road Traffic Act.

(5) The Minister may, by order published in the *Gazette*, exempt any person or class of persons or any motor vehicle or class of motor vehicles, from all or any of the provisions of this Act.

6. Classes of permits

(1) The following classes of permits may be issued under this Act-

- (a) Botswana operations annual permit (in this Act referred to as a BA permit);
- (b) Botswana operations single trip permit (in this Act referred to as a BS permit);
- (c) Transit operations annual permit (in this Act referred to as a TA permit);
- (d) Transit operations single permit (in this Act referred to as a TS permit);
- (e) Passenger transport permit (in this Act referred to as a P permit).

(2) Botswana operations pertain to the movement of goods that originate in or are destined for places in Botswana. This covers internal traffic within Botswana, imports from across borders to places in Botswana and exports from Botswana to places across borders.

(3) Transit operations pertain to the movement of goods that transit Botswana and neither originate from nor are destined for places in the country.

(4) A P permit shall entitle the holder thereof to use the authorized public service vehicle, subject to any conditions attached to the permit, to carry passengers and baggage for hire or reward or on own account.

(5)(a) The Controller may issue BA and BS permits to allow the holders thereof to use the authorized vehicle, subject to any conditions attached to the permit, for the carriage of goods on own account only.

(b) Notwithstanding anything in this Act contained, the Controller may, in case of emergency and subject to such conditions as he thinks fit to impose, authorize the holder of such a permit to use an authorized vehicle for the carriage of goods for any person to whom he lets the vehicle, if the Controller is satisfied that the needs for such person cannot conveniently be met from other sources.

(6) The Controller may issue a BA or BS permit with an endorsement entitling the holder thereof to use the authorized public service vehicle, subject to any conditions attached to the permit, to carry passengers for hire or reward in addition to goods for hire or reward or on own account. The holder will be charged the fees of a BA or BS permit as applicable.

(7) The Controller may issue a TA permit with an endorsement entitling the holder thereof to operate the authorized vehicle, subject to any conditions attached to the permit, additionally for the carriage of goods under a BA permit. The holder will be charged the higher of the fees in existence pertaining to the TA or BA permit.

(8) The Controller may issue any of the above permits with an endorsement which shall entitle the holder thereof to hire out the authorized vehicle for the carriage of goods or passengers, such vehicle to be driven by-

- (a) the hirer;
- (b) a member of the family of the hirer;
- (c) where the hirer is a company, a director of the company;

(9) An E permit shall entitle the holder thereof to hire out the authorized vehicle for the carriage of goods or passengers, such vehicle to be driven by-

- (a) the hirer;
- (b) a member of the family of the hirer;
- (c) where the hirer is a company, a director of the company; or
- (d) an employee of the hirer.

(10) The vehicles authorized to be used under a permit shall be-

- (a) such motor vehicles, being vehicles belonging to the holder of the permit or in his possession under a hire-purchase agreement, as are specified in the permit; and
- (b) trailers from time to time belonging to the holder of the permit or in his possession under a hire-purchase agreement, not exceeding at any time such maximum number as may be specified in the permit.

(11) For the purposes of subsection (10) different types of motor vehicles or different types of trailers, as the case may be, may be distinguished in a permit and a maximum number may be specified in the permit for vehicles and trailers of each type.

7. Use of foreign registered vehicles Where a goods vehicle or public service vehicle not registered in Botswana is found to be in use or operation in Botswana by a police officer in uniform or other person duly authorized in writing by the Controller and such officer or person is not satisfied that the provisions of this Act have been complied with in relation to such vehicle, such officer or person may require the driver or owner of such vehicle to cause such vehicle either-

- (a) to be returned with or without escort, to the point at which the vehicle entered Botswana; or
- (b) to be driven to the nearest point of exit from Botswana,

and then to leave Botswana.

8. Exclusive permits (1) Notwithstanding any other provision of this Act, the Controller may, with the approval of the Minister, and subject to such conditions as he may think fit to impose, grant to any person an exclusive permit authorizing such person to operate vehicles for the carriage of goods or passengers in such areas, over such routes or between such places and for such period as the Controller may decide, and the provisions of this Act regarding applications for and objections to the grant of a permit shall apply.

(2) Where the Controller intends to grant an exclusive permit under subsection (1), he shall, by notice published in the *Gazette* and in such manner as is, in his opinion, most likely to bring it to the notice of persons concerned, give notice of his intention to grant such permit, and no such permit shall be granted until a period of one month after the date of publication of such notice has elapsed.

PART IV

General Provisions with regard to Permits (ss 9-20)

9. Exemptions from conditions of permit

In the case of any permit, and notwithstanding that a vehicle is an authorized vehicle, the conditions of the permit shall not apply while the vehicle is being used for any purpose for which it might lawfully be used without the authority of a permit.

10. Duration of permits

(1) Subject to the provisions of subsections (2) and (3), BA and TA permits shall, unless previously revoked, remain in force for four quarters of the year. Annual permits shall expire on the last day of the fourth quarter following the date of issue, the quarter in which the permit is issued being the first quarter.

(2) With a view to enabling goods vehicles or passenger-carrying vehicles to be used temporarily-

- (a) for the purpose of a seasonal business;
- (b) for the purpose of the execution of a particular piece of work; or

(c) for any purpose of a limited duration, a BS, TS or P permit may be granted for one trip or endorsed for a period not exceeding three months, and any permit granted under this subsection or subsection (3) is hereinafter in this Act referred to as a short-term permit.

(3) Without prejudice to the generality of subsection (2), the Controller may grant short-term permits if he is satisfied that the demand for the use of the vehicles to be so authorized is urgent and that the demand does not conflict with the public interest, including the interest or interests of persons requiring, as well as of persons providing, facilities for transport.

(4) The grant of a short-term permit shall not require a public sitting.

(5) No appeal against the grant or refusal of a short-term permit shall lie to the Appeal Tribunal.

(6) Any person aggrieved by the grant or refusal of a short-term permit may appeal to the Minister whose decision shall be final and shall not be questioned in any court.

(7) The fees to be paid for short term permits shall be-

(a) for a single trip, the fees in force for BS, TS or P permits; or

(b) for periods of up to 3 months, the BA fees in force for local operations, TS fees in force for single transit operations or P fees in force for passenger operations.

11. Power to revoke or suspend permit (1) A permit may be revoked or suspended by the Controller on the ground that there has been a breach of any of the conditions of the permit or that an authorized vehicle to which the permit relates has not been used for a period of three months.

(2) A permit may be revoked or suspended by the Controller on the ground that the owner or driver of an authorized vehicle to which the permit relates has been convicted of an offence under this Act or under the Road Traffic Act in connection with the use of that authorized vehicle.

(3) In any case where a permit is revoked or suspended the Controller shall, if requested by the permit-holder, state in writing the grounds for such revocation or suspension.

(4) The Controller may, instead of revoking or suspending a permit, direct that one or more of the vehicles specified therein shall be removed therefrom, or that the maximum number of vehicles or trailers specified in such permit shall be reduced, and references in this Act to the revocation or suspension of a permit shall include a reference to the giving of a direction under this subsection.

(5) Notwithstanding the provisions of this Part the Minister may, if he is satisfied that it is in the National interest to do so, revoke any permit issued under this Act, either with immediate effect or within such period as he may consider necessary, or may impose any conditions for its continuation as he may consider necessary.

12. Variation of permits (1) On the application of the holder of any type of permit, the Controller may direct that an additional vehicle or vehicles or trailer or trailers be specified thereon or that any vehicle or vehicles or trailer or trailers be removed therefrom.

(2) On the application of the holder of any type of permit to vary the route thereon, the Controller shall take such action as may be necessary in the manner prescribed for new applications.

13. Power to hold enquiries The Controller may hold such enquiries as he thinks necessary into an applicant's reliability and financial stability, and the facilities at his disposal for carrying out mechanical repairs.

14. Power to call for further particulars A person applying for a permit shall, in addition to any particulars which he is required to furnish with his application, give to the Controller any further information he may reasonably require for the discharge of his duties in relation to the application, and, in particular and without prejudice to the generality of the foregoing, shall, if required by the Controller, submit to him such particulars as may be required with respect to any business as a carrier of goods or passengers for hire or reward carried on by the applicant at

any time before the making of the application, and of the rates charged or proposed to be charged by the applicant and of the wages and conditions and hours of employment of persons employed in connection with the vehicles proposed to be used under the permit.

15. Applicant to furnish details of vehicle within three months (1) When an application for any type of permit has been approved by the Controller, the applicant, in any case where at the time of the application he has not yet purchased but intends to purchase a vehicle in respect of which the application was made, shall furnish the prescribed details required of such vehicle within three months after the date of the approval; and if he fails to do so the approval shall lapse and no subsequent application made by the same person for a similar permit shall, except at the discretion of the Controller, be entertained or adjudicated upon by the Controller until a period of six months from the date of such application has expired:

Provided that, where the Controller is satisfied that the period of three months may not be sufficient within which to purchase a vehicle in respect of which an application was made, he may extend such period to not more than 12 months.

(2) The decision of the Controller under this section shall be final and conclusive and no appeal shall lie therefrom to any court.

16. Applications, if refused, not to be entertained for six months (1) Notwithstanding anything contained in this Act, where an application made by any person for a permit has been refused, no subsequent application by that person for a similar permit shall, except at the discretion of the Controller, be entertained or adjudicated upon until a period of six months from the date of such application has expired.

(2) The decision of the Controller under this section shall be final and conclusive and no appeal shall lie therefrom to any court.

17. Conditions of permits

(1) It shall be a condition of every permit-

- (a) that authorized vehicles be maintained in a fit and serviceable condition; and
- (b) that the provisions of this Act relating to the keeping of records be complied with.

(2) The Controller may attach to a permit of any class all or any of the following conditions-

- (a) a condition that the authorized vehicles shall or shall not be used in a specified area or over specified routes;
- (b) a condition that certain classes or descriptions of goods shall or shall not be carried;
- (c) a condition specifying the charges or the maximum or minimum charges to be made for the carriage of goods;
- (d) a condition specifying the number and type of vehicles or trailers to be used;
- (e) in the case of BA and BS permits, a condition that the authorized vehicles may only be used in a specified district or between specified places.

(3) Subject to the provisions of this Act, the Controller may attach to a P permit such conditions as he may think fit and, in particular, and without prejudice to the generality of the foregoing, he may attach conditions for securing that-

- (a) the fares shall not be unreasonable;
- (b) where desirable in the public interest the fares shall be so fixed as to prevent wasteful competition with alternative forms of transport, if any, along the routes specified in the permit or any part thereof, or in proximity thereto;
- (c) copies of the time-table and fare-table shall be carried on and be available for inspection in vehicles used on the service;
- (d) passengers shall not be taken up or set down except at specified points or shall not be taken up or set down between specified points;
- (e) every fare-paying passenger shall receive a ticket or receipt in respect of the fare paid;
- (f) the safety and convenience of the public shall be safeguarded.

(4) Subject to subsection (1) the Controller may cancel or vary any of the conditions

attached to a permit, and may insert additional conditions.

18. Permits not transferable No permit of any class shall be transferable except with the written consent of the Controller, and, in the case of an exclusive permit, with the written consent of the Minister, endorsed thereon.

19. Permit expires on sale or transfer Where the holder of a permit sells, transfers (except by way of security for any purpose) or otherwise disposes of the vehicle, or of the business in respect of which such permit was issued, such permit shall, unless written consent under section 18 has been endorsed thereon, expire with effect from the date of such sale, transfer or other disposal, and the vendor or transferor, or person who otherwise disposes of such vehicle, shall return such permit to the Controller.

20. Authorized vehicle not to be changed without permission except in emergency

Notwithstanding any provision contained in this Act, a permit-holder may, in the event of a breakdown or other unforeseeable emergency in connection with an authorized vehicle, temporarily substitute another vehicle for such authorized vehicle if he cannot in any other way provide the service authorized under his permit:

Provided that-

- (i) he shall, within 48 hours thereof, report such substitution to a police station;
- (ii) he shall, within 10 days thereof, report such substitution to the Controller in writing; and
- (iii) no such substitution shall last more than 30 days without the consent of the Controller.

PART V

Appeals (s 21)

21. Appeals against decision of Controller (1) Subject to the provisions of sections 10(5) and (6), 15(2) and 16(2), any person who-

- (a) being an applicant for the grant or amendment of a permit, is aggrieved by the decision of the Controller on his application;
- (b) having duly made an objection to any such application, being an objection which the Controller is bound to take into consideration, is aggrieved by the decision of the Controller thereon; or
- (c) being the holder of a permit, is aggrieved by the revocation or suspension thereof, may, within the time and in the manner prescribed for appeal to the Appeal Tribunal; any such appeal shall be accompanied by a cash deposit of P20, which deposit may, in the discretion of the Appeal Tribunal upon the conclusion of the appeal, be refunded to the appellant or be awarded to either party to the appeal as costs or part thereof.

(2) For the purposes of hearing appeals under this section the Minister may appoint an Appeal Tribunal consisting of such persons, not exceeding five, as he may determine:

Provided that, before the Minister makes any appointments to the Appeal Tribunal, every person to be appointed shall be required to declare whether he has any, and if so what, financial interest in any transport undertaking operating in Botswana.

(3) The members of the Appeal Tribunal shall hold office for such term and under such conditions as the Minister may determine.

(4) Except as may be prescribed, the Appeal Tribunal may regulate its own procedure and proceedings as it may think fit.

(5) Three members of the Appeal Tribunal shall form a quorum.

(6) The Appeal Tribunal may, on any appeal, confirm or reverse the decision of the Controller, or make such other order as to the Appeal Tribunal appears necessary and just.

(7) The Appeal Tribunal may summarily reject any appeal which appears to it either to be frivolous or not to disclose sufficient reason for interfering with the decision of the Controller.

(8) A decision of the Appeal Tribunal under this section shall be final and conclusive and shall not be questioned in any court.

PART VI

Offences and Penalties (ss 22-25)

22. Forgery, etc., of permits

(1) Any person who, with intent to deceive-

- (a) forges within the meaning of Division VII of Part II of the Penal Code, or alters or uses or lends to or allows to be used by any other person, a permit, or any document, plate or mark by which the subject of the permit is to be identified as authorized under this Act;
- (b) makes or has in his possession any document, plate or mark so closely resembling a permit or such document, plate or mark as aforesaid, as to be calculated to deceive; or
- (c) alters any record to be kept or maintained under this Act,

shall be guilty of an offence and liable to a fine not exceeding P200 or to imprisonment for a term not exceeding three years, or to both.

(2) Any person who, for the purpose of-

- (a) obtaining the grant of a permit, whether for himself or for any other person;
- (b) preventing the grant or amendment of any permit; or
- (c) procuring the insertion of any condition in any permit,

knowingly makes any false statement, shall be guilty of an offence and liable to a fine not exceeding P100 or to imprisonment for a term not exceeding six months, or to both.

23. Offences

Any person who uses a vehicle in contravention of any of the provisions of this Act, or, being the owner of such vehicle, permits it to be so used, and any driver or other person in charge of any vehicle in respect of which any class of permit has been granted under this Act who uses such vehicle in contravention of any condition of such permit, or, being the owner of such vehicle, permits it to be so used, shall be guilty of an offence.

24. Offence to operate vehicle on another's permit Where any person has been granted a permit in respect of any vehicle under this Act, and transfers such vehicle to any other person by way of security, it shall be an offence, except with the prior written consent of the Controller for such other person to operate such vehicle under such permit.

25. Penalties where no special penalty provided

Any person guilty of an offence under this Act for which no special penalty is provided shall be liable, in the case of a first offence, to a fine not exceeding P100, or in the case of a second and subsequent offence, to a fine not exceeding P200.

PART VII

Miscellaneous Provisions (ss 26-28)

26. No right to continuance of benefit

(1) It is hereby declared that nothing in this Act is to be construed as conferring on the holder of a permit of any class any right to the continuance of any benefits arising from the provisions of this Act, or from a permit, or from any conditions attached to a permit.

(2) The grant of a permit of any class under this Act shall not relieve the holder thereof from complying with the provisions of any other written law relating to motor vehicles.

27. Power to stop and inspect

(1) A police officer in uniform or any person duly authorized by the Controller in writing may stop any vehicle with a view to ascertaining whether or not the provisions of this Act are being complied with, and may demand for inspection the production of any permit, certificate, document or record which may, under this Act, be required to be carried on such vehicle, and may require the driver or any other person travelling on such vehicle to give such information as such police officer or authorized person may require in order to ascertain whether or not the provisions of this Act are being complied with.

(2) Any person who obstructs a police officer or duly authorized person in the execution of the powers conferred on him by this section or fails to comply with any lawful order given by such police officer or duly authorized person or refuses to give any information when requested to do so shall be guilty of an offence.

28. Regulations

The Minister may make regulations for the better carrying out of the purposes and provisions of this Act, and in particular and without prejudice to the generality of the foregoing, may make regulations with respect to any of the following matters-

- (a) the particulars to be furnished for any of the purposes of this Act;
- (b) the procedure on applications for, and the determination of questions in connection with, the grant, variation, suspension and revocation of permits;
- (c) the fees payable in respect of the grant or variation of permits, and the time such payment is to be made;
- (d) the issue of permits, and the issue of duplicates in the case of permits lost or destroyed;
- (e) the means whereby vehicles are to be identified, whether by plates, marks or otherwise, as being authorized for use under this Act;
- (f) the custody of permits, the production, return and cancellation of permits on expiry, suspension or revocation, and the custody, production and return of documents and plates;
- (g) the notification to the Controller of vehicles which have ceased to be used under a permit,

and different regulations may be made in respect of different classes or descriptions of vehicles or in respect of the same class or description in different circumstances.

SCHEDULE TRANSPORT ADVISORY BOARDS

(s. 4)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Appointment of members
2. Membership of a Board
3. Remuneration and allowances
4. Controller not bound to accept advice

1. Appointment of members

The Minister may, by notice published in the *Gazette*, appoint such number of suitable persons as he considers necessary to serve as members of any Transport Advisory Board and may amend the list of members so appointed.

2. Membership of a Board

A Board shall consist of such persons, being not less than two in number, as the Minister may in each case determine.

3. Remuneration and allowances

The members of a Board, other than public officers, shall receive such remuneration and travelling allowances out of public funds as the Minister, after consultation with the Minister for the time being responsible for finance, may prescribe.

4. Controller not bound to accept advice

The function of a Board shall be to advise the Controller on any application before him, but the Controller shall not be bound to accept such advice. In the event of the Controller declining to accept the advice of a Board he shall record his reasons for so doing.