

**THIRD SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

No. 4,269 of 2nd June, 2016

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**B. 18/16**

**BILL**

**FOR**

**AN ACT** to amend the Traffic Act 2005 to make further provision in respect of certain driving offences; to further provide for the use of certain devices in the prosecution of offences; amend the provisions relating to fixed penalty notices; confer powers for the issue of penalty points; make further provision in relation to driving under the influence of drink or drugs, including preliminary testing; and for connected purposes.

**ENACTED** by the Legislature of Gibraltar.

**Short title.**

1. This Act may be cited as the Traffic (Amendment) Act 2016.

**Commencement.**

2. This Act comes into operation on the day of publication.

**Amendment of Traffic Act.**

3. The Traffic Act 2005 is amended in accordance with the provisions of sections 4 to 23.

**Amendment to section 2.**

4. In section 2—

(a) after the definition of “owner” insert the following definition—

““prescribed device” means a device which has been prescribed as such under section 44C;” and

- (b) in the definition of “road” for “sections 24, 45, 46, 47, 62 and 63” substitute “sections 24, 45, 45A, 45B, 46, 47, 62, 63, 63A and 63B”.

**Section 39.**

- 5. In section 39(1) for “section 62 or 63” substitute “section 62, 63, 63A or 63B”.

**Sections 44 to 44F.**

- 6. For section 44 substitute–

**“Speed limit.**

- 44.(1) A person who drives a motor vehicle on a road at a speed greater than the speed prescribed by regulations made under this Act for such vehicle or class of vehicle, or in respect of such road, is guilty of an offence and is liable on summary conviction to a fine at level 1 on the standard scale and in the case of a second or subsequent conviction to a fine of twice the amount at level 1 on the standard scale.
- (2) Subsection (1) shall not apply in respect of the driving of any vehicle on an occasion when it is being used for fire brigade, ambulance, police or customs purposes if the observance of those provisions would be likely to hinder the use of the vehicle for the purpose for which it is being used on that occasion.
- (3) A first or second conviction under this section shall not render the person convicted liable to be disqualified from holding or obtaining a licence.
- (4) A person prosecuted for an offence under this section shall not be liable to be convicted solely on the evidence of one witness to the effect that in the opinion of the witness the person prosecuted was exceeding the speed permitted by this section.
- (5) Subsection (4) does not apply if the evidence relied upon is a record from a device prescribed under section 44C and the procedure set out in section 44E has been followed.

**Duty to give information as to identity of driver etc in certain circumstances.**

- 44A.(1) This section applies where a person is alleged to have committed an offence under section 44 and evidence of the commission of that offence has been obtained by a prescribed device in accordance with the provisions of sections 44C to 44E.
- (2) Where the driver of a vehicle is alleged to be guilty of an offence to which this section applies-
- (a) the registered owner of the vehicle shall give such information as to the identity of the driver as he may be required to give by a police officer or an authorised person; and
  - (b) any other person shall if required as stated above give any information which it is in his power to give and may lead to identification of the driver.
- (3) Subject to the following provisions, a person who fails to comply with a requirement under subsection (2) is guilty of an offence.
- (4) A person shall not be guilty of an offence by virtue of subsection (2)(a) if he shows that he did not know and could not with reasonable diligence have ascertained who the driver of the vehicle was.
- (5) Where a body corporate is guilty of an offence under this section and the offence is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or a person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of that offence and liable to be proceeded against and punished accordingly.
- (6) Where the alleged offender is a body corporate, or the proceedings are brought against him by virtue of subsection (5), subsection (4) shall not apply unless, in addition to the

matters there mentioned, the alleged offender shows that no record was kept of the persons who drove the vehicle and that the failure to keep a record was reasonable.

- (7) A requirement under subsection (2) may be made by written notice served by post, and where it is so made—
- (a) it shall have effect as a requirement to give the information within the period of 28 days beginning with the day on which the notice is served; and
  - (b) the person on whom the notice is served shall not be guilty of an offence under this section if he shows either that he gave the information as soon as reasonably practicable after the end of that period or that it has not been reasonably practicable for him to give it.
- (8) Where the person on whom a notice under subsection (7) is to be served is a body corporate, the notice is duly served if it is served on the secretary or clerk of that body.
- (9) For the purposes of this section the proper address of any person in relation to the service on him of a notice under subsection (7) is—
- (a) in the case of the secretary or clerk of a body corporate, that of the registered or principal office of that body or (if the body corporate is the registered owner of the vehicle concerned) the registered address; and
  - (b) in any other case, his last known address at the time of service.

- (10) In this section—

“Register” means the register maintained pursuant to regulation 5 of the Traffic (Licensing and Registration) Regulations;

“registered address”, in relation to the registered owner of a vehicle, means the address recorded in the Register; and

“registered owner”, in relation to a vehicle, means the person in whose name the vehicle is registered in the Register.

**Proof, in summary proceedings, of identify of driver of vehicle.**

44B. Where on the summary trial of an information for an offence under section 44—

- (a) it is proved to the satisfaction of the court, on oath or in manner prescribed by rules of court, that a requirement under section 44A(2) to give information as to the identity of the driver of a particular vehicle on the particular occasion to which the information relates has been served on the accused by post; and
- (b) a statement in writing is produced to the court purporting to be signed by the accused that the accused was the driver of that vehicle on that occasion,

the court may accept that statement as evidence that the accused was the driver of that vehicle on that occasion.

*Prescribed devices*

**Prescribed device.**

44C.(1) The Minister may by Notice in the Gazette prescribe, by reference to the type, manufacturer or in such other manner as the Minister deems fit, any device that produces a record or a measurement which may be used to determine whether an offence under this Act or any subsidiary legislation made hereunder has been committed.

- (2) The Minister may by further Notice make such amendment to a Notice issued under subsection (1) as he deems fit, including revoking such Notice.
- (3) A Notice under subsection (1) may include such conditions as to the purposes for which, the manner or other circumstances in which any device of the type concerned is to be used, as the Minister deems fit.

**Installation of prescribed devices.**

- 44D.(1) A prescribed device may only be installed at such locations as the Minister has approved.
- (2) Subsection (1) shall not operate to prohibit or restrict the use of any handheld or mobile device.

**Prescribed device: evidence.**

- 44E.(1) Evidence of a fact relevant to proceedings for an offence under section 44 may be given on the production of—
- (a) a record produced by a prescribed device; and
- (b) a signed certificate by a police officer or an authorised person, whether as part of the record referred to in paragraph (a) or in another document, as to the circumstances in which the record was produced and states, where applicable, that the conditions imposed pursuant to section 44C(3) have been satisfied.
- (2) In proceedings for an offence, evidence—
- (a) of a measurement made by a device, or of the circumstances in which it was made;
- (b) that the device was a prescribed device; or
- (c) that any conditions subject to which a device was prescribed were satisfied,

may be given by the production of a document which is signed as mentioned in subsection (1) and which, as the case may be, gives particulars of the measurement or of the circumstances in which it was made, or states that the device was a prescribed device or that, to the best of the knowledge and belief of the person making the statement, all such conditions were satisfied.

- (3) For the purposes of this section a document purporting to be a record, a certificate or other document of the kind mentioned in subsection (1) shall be deemed to be a record or to be so signed, unless the contrary is proved.
- (4) Nothing in subsections (1) or (2) makes a document or certificate admissible as evidence in proceedings for an offence unless a copy of it has, not less than 7 days before the hearing or trial, been served on the person charged with the offence, and nothing in those subsections makes a document admissible as evidence of anything other than the matters shown on a record produced by a prescribed device if that person, not less than 3 days before the hearing or trial or within such further time as the court may in special circumstances allow, serves a notice on the prosecutor requiring the attendance at the hearing or trial of the person who signed the document or certificate.
- (5) In this section “authorised person” means a person authorised by the Minister in writing.

**Conviction on the basis of evidence from prescribed device.**

44F. A person prosecuted for any offence under this Act is liable to be convicted solely on the evidence of a record or measurement made or taken by a prescribed device.”.

**Section 45.**

7. In section 45(1) for “five years” substitute “14 years”.

**Section 45A and 45B.**

8. After section 45 insert—

**“Causing death by careless, or inconsiderate, driving.**

45A. A person who causes the death of another person by driving a motor vehicle on a road or other public place without due care and attention, or without reasonable consideration for other persons using the road or place, is guilty of an offence and is liable—

- (a) on summary conviction to a fine at level 5 on the standard scale or to imprisonment for 12 months or to both;
- (b) on conviction on indictment to imprisonment for five years and to a fine.

**Causing death by careless driving when under influence of drink or drugs.**

45B.(1) If a person causes the death of another person by driving a motor vehicle on a road or other public place without due care and attention, or without reasonable consideration for other persons using the road or place, and—

- (a) he is, at the time when he is driving, unfit to drive through drink or drugs;
- (b) he has consumed so much alcohol that the proportion of it in his breath, blood or urine at that time exceeds the prescribed limit;
- (c) he has in his body a specified controlled drug and the proportion of it in his blood or urine at that time exceeds the specified limit for that drug, or
- (d) he is, within 18 hours after that time, required to provide a specimen in pursuance of section 65 of this Act, but without reasonable excuse fails to provide it,

he is guilty of an offence and liable—

- (i) on summary conviction to a fine at level 5 on the standard scale or to imprisonment for 12 months, or to both;
  - (ii) on conviction on indictment to imprisonment for fourteen years and to a fine.
- (2) For the purposes of this section a person shall be taken to be unfit to drive at any time when his ability to drive properly is impaired.”.



**Amendments to section 52.**

9. In section 52–

- (a) at the end of paragraph (a)(ii) of the proviso to subsection (1), for “and” substitute “or” and
- (b) immediately preceding paragraph (b) of the proviso to subsection (1) insert the following subparagraph–
  - “(aa) failure to comply with this requirement shall not be a bar to the conviction of the accused where the identity of the accused was established following a disclosure under section 44A(2); and”;
- (c) after subsection (2) insert the following subsection–
  - “(3) The requirement of this section does not apply in relation to an offence in respect of which–
    - (a) a fixed penalty notice (within the meaning of Part VIIA of this Act) has been given or fixed; or
    - (b) a notice has been given under section 94D.”.

**New Part IIIA.**

10. After section 61A insert the following Part–

**“PART IIIA  
PENALTY POINTS**

**Penalty points.**

- 61B.(1) The Minister may by regulations provide for the endorsement of a licence record with penalty points in connection with the commission of an offence.
- (2) Regulations under subsection (1) may–
- (a) designate offences as penalty point offences;

- (b) provide for penalty points to be awarded upon the conviction of a person by a court;
  - (b) provide for the award of penalty points on the acceptance of a fixed penalty notice;
  - (c) provide the period of disqualification upon the accumulation of a specified number of penalty points;
  - (d) include provision for the notification to be given to a person to whom penalty points have been awarded and in connection with the termination of a period of disqualification;
  - (e) provide for any appeal against the imposition of any penalty point;
  - (f) provide for the suspension of a licence upon the accumulation of a specified number of penalty points;
  - (g) provide the basis upon which penalty points are to be expunged;
  - (h) provide different criteria for different categories of drivers;
  - (h) amend the application of any provision of this Act in connection with the imposition of penalty points;
  - (i) provide for the mutual recognition of penalty points awarded and any disqualification imposed outside Gibraltar;
  - (j) provide for anything that may be reasonably required for the purposes of and in connection with penalty points.
- (3) In this section a “licence record” means–
- (a) the entry in the register kept by the licensing authority under section 23 in respect of a particular person; and

- (b) where an offence is committed before a person holds a licence, the relevant entry in the register in respect of that person, whenever that entry is made.”.

**Sections 63A to 63F.**

11. After section 63A insert–

**“Driving or being in charge of a motor vehicle with concentration of specified controlled drug above specified limit.**

63A.(1) This section applies where a person (“D”)–

- (a) drives or attempts to drive a motor vehicle on a road or other public place; or
- (b) is in charge of a motor vehicle on a road or other public place,

and there is in D’s body a specified controlled drug.

- (2) D is guilty of an offence if the proportion of the drug in D’s blood or urine exceeds the specified limit for that drug.
- (3) It is a defence for a person (“D”) charged with an offence under this section to show that–
  - (a) the specified controlled drug had been prescribed or supplied to D for medical or dental purposes;
  - (b) D took the drug in accordance with any directions given by the person by whom the drug was prescribed or supplied, and with any accompanying instructions (so far as consistent with any such directions) given by the manufacturer or distributor of the drug; and
  - (c) D’s possession of the drug immediately before taking it was not unlawful under section 506 Crimes Act 2011 (restriction of possession) because of an exemption in regulations made under section 509 of that Act (authorisation of activities otherwise unlawful).

- (4) The defence in subsection (3) is not available if D's actions were—
  - (a) contrary to any advice, given by the person by whom the drug was prescribed or supplied, about the amount of time that should elapse between taking the drug and driving a motor vehicle; or
  - (b) contrary to any accompanying instructions about that matter (so far as consistent with any such advice) given by the manufacturer or distributor of the drug.
- (5) If evidence is adduced that is sufficient to raise an issue with respect to the defence in subsection (3), the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (6) It is a defence for a person ("D") charged with an offence by virtue of subsection (1)(b) to prove that at the time D is alleged to have committed the offence the circumstances were such that there was no likelihood of D driving the vehicle whilst the proportion of the specified controlled drug in D's blood or urine remained likely to exceed the specified limit for that drug.
- (7) The court may, in determining whether there was such a likelihood, disregard any injury to D and any damage to the vehicle.
- (8) In this section, and in sections 45B, 63D(1), 63E and 68, "specified" means specified in regulations made by the Government.
- (9) A limit specified under subsection (2) may be zero.

**Power to administer preliminary tests.**

- 63B.(1) If any of subsections (2) to (5) applies a police officer may require a person to co-operate with any one or more preliminary tests administered to the person by that police officer or another police officer.

- (2) This subsection applies if a police officer reasonably suspects that the person–
  - (a) is driving, is attempting to drive or is in charge of a motor vehicle on a road or other public place; and
  - (b) has alcohol or a drug in his body or is under the influence of a drug.
- (3) This subsection applies if a police officer reasonably suspects that the person–
  - (a) has been driving, attempting to drive or in charge of a motor vehicle on a road or other public place while having alcohol or a drug in his body or while unfit to drive because of a drug; and
  - (b) still has alcohol or a drug in his body or is still under the influence of a drug.
- (4) This subsection applies if a police officer reasonably suspects that the person–
  - (a) is or has been driving, attempting to drive or in charge of a motor vehicle on a road or other public place; and
  - (b) has committed a traffic offence while the vehicle was in motion.
- (5) This subsection applies if–
  - (a) an accident occurs owing to the presence of a motor vehicle on a road or other public place; and
  - (b) a police officer reasonably believes that the person was driving, attempting to drive or in charge of the vehicle at the time of the accident.
- (6) A person who, without reasonable excuse, fails to co-operate with a preliminary test in pursuance of a requirement imposed under this section is guilty of an offence punishable on

summary conviction to a fine at level 5 on the standard scale or to imprisonment for 6 months or to both.

- (7) A police officer may administer a preliminary test by virtue of any of subsections (2) to (4) only if he is in uniform.
- (8) In this section a reference to a preliminary test is to a test described in section 63B.

**Preliminary breath test.**

63C.(1) A preliminary breath test is a procedure whereby the person to whom the test is administered provides a specimen of breath to be used for the purpose of obtaining, by means of a device of a type approved by the Government, an indication whether the proportion of alcohol in the person's breath or blood is likely to exceed the prescribed limit.

- (2) A preliminary breath test administered in reliance on section 63B(2) to (4) may be administered only at or near the place where the requirement to co-operate with the test is imposed.
- (3) A preliminary breath test administered in reliance on section 63B(5) may be administered-
  - (a) at or near the place where the requirement to co-operate with the test is imposed; or
  - (b) if the police officer who imposes the requirement thinks it expedient, at a police station specified by him.

**Preliminary drug test.**

63D.(1) A preliminary drug test is a procedure by which a specimen of sweat or saliva is-

- (a) obtained; and
- (b) used for the purpose of obtaining, by means of a device of a type approved by the Government, an indication whether the person to whom the test is administered has a drug in his body and if so-

- (i) whether it is a specified controlled drug,
  - (ii) if it is, whether the proportion of it in the person's blood or urine is likely to exceed the specified limit for that drug.
- (2) A preliminary drug test may be administered–
- (a) at or near the place where the requirement to co-operate with the test is imposed; or
  - (b) if the constable who imposes the requirement thinks it expedient, at a police station specified by him.
- (3) Up to 3 preliminary drug tests may be administered.

**Arrest.**

- 63E.(1) A police officer may arrest a person without warrant if as a result of a preliminary breath test or preliminary drug test the constable reasonably suspects that–
- (a) the proportion of alcohol in the person's breath or blood exceeds the prescribed limit; or
  - (b) the person has a specified controlled drug in his body and the proportion of it in the person's blood or urine exceeds the specified limit for that drug.
- (2) The fact that specimens of breath have been provided under section 65 of this Act by the person concerned does not prevent subsection (1) above having effect if the police officer who imposed on him the requirement to provide the specimens has reasonable cause to believe that the device used to analyse the specimens has not produced a reliable indication of the proportion of alcohol in the breath of the person.
- (3) A police officer may arrest a person without warrant if–
- (a) the person fails to co-operate with a preliminary test in pursuance of a requirement imposed under section 63B; and

- (b) the police officer reasonably suspects that the person has alcohol or a drug in his body or is under the influence of a drug.
- (4) A person may not be arrested under this section while at a hospital as a patient.

**Power of entry.**

63F. A police officer may enter any place (using reasonable force if necessary) for the purpose of—

- (a) imposing a requirement by virtue of section 63B(5) following an accident in a case where the police officer reasonably suspects that the accident involved injury of any person; or
- (b) arresting a person under section 63E following an accident in a case where the police officer reasonably suspects that the accident involved injury of any person.”.

**Section 65.**

12. In section 65—

- (a) in subsection (1) for “62 or 63” substitute “62, 63 or 63A”; and
- (b) in subsection (2)(c) after “62” insert “or 63A”.

**Section 66.**

13. For section 66 substitute—

**“Specimens of breath.**

- 66. Where a person provides two specimens of breath pursuant to section 65, that with the lower proportion of alcohol in the breath shall be used for the purposes of an investigation into an offence having been committed contrary to this Part and the other specimen shall be disregarded.”.



**Section 68.**

14. In section 68–

- (a) in subsection (1) for “62 or 63” substitute “62, 63 or 63A”; and
- (b) for subsection (2) substitute–

“(2) A person shall not be detained in pursuance of this section if it appears to a police officer that there is no likelihood of his driving or attempting to drive a motor vehicle whilst–

- (a) the person’s ability to drive properly is impaired;
- (b) the proportion of alcohol in the person’s breath, blood or urine exceeds the prescribed limit; or
- (c) the proportion of a specified controlled drug in the person’s blood or urine exceeds the specified limit for that drug.”.

**Section 69.**

15. In section 69, in the section heading and in subsection (1) for “62 or 63” substitute “62, 63 or 63A”.

**Section 71.**

16. In section 71(1) for “sections 62, 63 or 65(5)” substitute “sections 62, 63, 63A, 63B or 65(5)”.

**Section 73.**

17. In section 73–

- (a) after the definition “authorised analyst” insert the following definition–

““controlled drug” has the meaning given by section 502 Crimes Act 2011;”;

- (b) in the definition “prescribed limit” for the full-stop substitute a semi-colon and after that definition inset the following definition–

““specified”, in relation to a controlled drug, has the meaning given by section 63A(8).”.

**New Part VIIA.**

18. After section 94 insert the following Part–

**“PART VIIA  
FIXED PENALTIES**

*Introductory*

**Fixed penalty offences.**

- 94A.(1) Subject to subsection (2) any offence, in respect of a vehicle, specified in regulations made by the Minister under this section is a fixed penalty offence for the purposes of this Part.
- (2) An offence specified in accordance with subsection (1) is not a fixed penalty offence for those purposes if it is committed by causing or permitting a vehicle to be used by another person in contravention of any provision made or restriction or prohibition imposed by or under any enactment.
- (3) Regulations made under subsection (1) may provide for any limitation or exception to the listing of an offence as a fixed penalty offence.

**Fixed penalty notices.**

- 94B.(1) In this Part “fixed penalty notice” means a notice offering the opportunity of the discharge of any liability to conviction of the offence to which the notice relates by payment of a fixed penalty.
- (2) A fixed penalty notice must give such particulars of the circumstances alleged to constitute the offence to which it

relates as are necessary for giving reasonable information about the alleged offence.

- (3) A fixed penalty notice must state—
- (a) the that proceedings cannot be brought against any person for the offence to which the notice relates until after 28 days following the date of the notice (referred to in this Part as the “suspended enforcement period”);
  - (b) the amount of the fixed penalty; and
  - (c) to whom and the address at which the fixed penalty may be paid.

**Amount of fixed penalty.**

94C.(1) Fixed penalties for offences shall be prescribed in regulations made under section 94A.

- (2) The regulations referred to in subsection (1) may provide for—
- (a) a reduction in the sums due on account of prompt or early payment; and
  - (b) an increase in the fixed penalty in the circumstances so prescribed.

*Giving notices to suspected offenders*

**Notices on-the-spot.**

94D.(1) Where on any occasion a constable in uniform or an authorised person has reason to believe that a person he finds is committing or has on that occasion committed a fixed penalty offence the constable or authorised person may give him a fixed penalty notice in respect of the offence.

- (2) No proceedings shall be brought against the recipient for the offence to which the fixed penalty notice relates before the end of the suspended enforcement period.

- (3) Where the fixed penalty has not been paid in accordance with this Part of this Act after the end of the suspended enforcement period, proceedings may be brought in respect of the offence against that person.

*Notices fixed to vehicles*

**Fixing notices to vehicles.**

- 94E.(1) Where on any occasion a constable or authorised person has reason to believe in the case of any stationary vehicle that a fixed penalty offence is being or has on that occasion been committed in respect of it, he may fix a fixed penalty notice in respect of the offence to the vehicle.
- (2) If at the end of the suspended enforcement period the fixed penalty has not been paid in accordance with this Part proceedings may be brought in respect of the offence against the registered owner of the vehicle.
  - (3) A person is guilty of an offence if he removes or interferes with any notice fixed to a vehicle under this section, unless he does so by or under the authority of the driver or person in charge of the vehicle or the person liable for the fixed penalty offence in question.

**Payment of penalty.**

- 94F. Payment of a fixed penalty under this Part of this Act must be made to such person or entity as the Minister may designate by regulations made hereunder.

*Conditional offer of fixed penalty*

**Issue of conditional offer.**

- 94G.(1) Where—
- (a) a police officer or authorised person has reason to believe that a fixed penalty offence has been committed; and

- (b) no fixed penalty notice in respect of the offence has been given under sections 94D or 94E,

a notice under this section may be sent to the alleged offender.

- (2) A notice under this section is referred to in this section and section 94H as a “conditional offer”.
- (3) A conditional offer must—
  - (a) give such particulars of the circumstances alleged to constitute the offence to which it relates as are necessary for giving reasonable information about the alleged offence;
  - (b) state the amount of the fixed penalty for that offence; and
  - (c) state that proceedings against the alleged offender cannot be commenced in respect of that offence until the end of the period of 28 days following the date on which the conditional offer was issued.
- (4) A conditional offer must indicate that if within the period of 28 days following the date on which the offer was issued, payment is made any liability to conviction of the offence shall be discharged.
- (5) Regulations made under section 94A may also provide for a reduction in the sums due on account of prompt or early payment.

**Effect of offer and payment of penalty.**

- 94H.(1) This section applies where a conditional offer has been sent to a person under section 94G.
- (2) Where the alleged offender makes payment of the fixed penalty in accordance with the conditional offer, no proceedings shall be brought against him for the offence to which the offer relates.

- (3) Where, on the expiry of the period of 28 days following the date on which the conditional offer was made the conditions specified in the offer have not been fulfilled, proceedings may be brought in respect of the offence.
- (4) In any proceedings a certificate by a police officer or designated person that by a date specified payment of a fixed penalty was or was not received shall be evidence of the facts stated.
- (5) In subsection (4) the reference to a designated person is a reference to a person so designated under section 94F.

*Proceedings in fixed penalty cases*

**General restriction on proceedings.**

- 94I.(1) Proceedings shall not be brought against any person for the offence to which a fixed penalty notice relates until the end of the suspended enforcement period.
- (2) Proceedings shall not be brought against any person for the offence to which a fixed penalty notice relates if the fixed penalty is paid in accordance with this Part of this Act before the end of the suspended enforcement period.

**Defence.**

- 94J.(1) Subject to subsection (3), in any proceedings in respect of an offence to which this Part applies it shall be a defence for the registered owner of the vehicle to prove that-
  - (a) at the time of the commission of the offence the vehicle was in the charge of some other person; and
  - (b) he had exercised all such diligence as was practicable to avoid the commission of the offence by that person.
- (2) A person shall not, without the leave of the Court, be entitled to rely on subsection (1) unless within a period ending 7 clear days before the hearing, he has served on the prosecutor a notice in writing giving such information or assisting in the

identification of that other person as was then in his possession.

- (3) This section does not apply to an offence under sections 44 or 44A.

**Service of documents.**

94K. A notice to a registered owner may be served on that person—

- (a) by delivering it to him or by leaving it the address held in the register of motor vehicles; or
- (b) by sending it to him by registered post,

and where the person on whom such a notice is to be served is a body corporate it is duly served if it is served on a director or the secretary or by sending it to the registered office or principal place of business.

**Interpretation of Part.**

94L. In this Part—

“authorised person” means a person authorised under section 44E(5).”.

**Amendments to section 96.**

19. In section 96-

- (a) the existing section is renumbered section 96(1); and
- (b) after the renumbered subsection (1) insert the following subsection-

“(2) This section does not apply where a person is required to provide information pursuant to section 44A.”.

**Repeal of section 97.**

20. Section 97 is repealed.

**Repeal of section 98A.**

21. Section 98A is repealed.

**Repeal of section 104.**

22. Section 104 is repealed.

**Amendments to Schedule.**

23. The Schedule is amended–

(a) by substituting the following paragraph for paragraph 5–

“5. Manslaughter by the driver of a motor vehicle, any offence under the Crimes Act (causing bodily harm) committed by the person having charge of the motor vehicle, causing death by reckless or dangerous driving or any offence under section 45A,45B, 46 or 47 committed in respect of a motor vehicle.”;

(b) by substituting the following paragraph for paragraph 8–

“8.(1) Stealing or attempting to steal a motor vehicle.

(2) An offence under section 408 Crimes Act committed with reference to the taking of a motor vehicle without the owner’s consent.

(3) An offence under section 409 Crimes Act 2011 aggravated vehicle taking.”.

**Savings and transitional provisions.**

24.(1) In this section a reference to a section is a reference to a section of the Traffic Act 2005.

(2) Where any proceedings for the contravention of any section has commenced but not concluded before the coming into operation of this Act, including any appeal, those proceedings shall continue as though the section had not been amended or repealed by this Act.



(3) Anything declared by the Government by Regulations or by Notice in the Gazette under section 97, notwithstanding the repeal of that section by this Act, is deemed to have been made under sections 94A to 94L of that Act.

(4) The repeal of section 98A shall not affect -

- (a) any conviction secured under that section prior to its repeal; and
- (b) any notice by the Minister approving a camera or other electronic device,

and in the case of paragraph (b) such notice shall continue to have effect until further notice.

(5) The repeal of section 104 shall not affect—

- (a) any authorisation issued under subsection (1);
- (b) any designation made under subsection (2); and
- (c) the approval of persons or entities under subsection (3),

unless the Minister by further notice provides otherwise.

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#### **EXPLANATORY MEMORANDUM**

This Act amends the Traffic Act 2005.

With respect to the offence of speeding, section 44 is recast. Additionally sections 44A and 44B insert new provisions relating to the identity of the driver and in particular the duty to provide information as to the identity of the driver when requested to do so. Failure to provide such information is an offence in its own right.

New sections 44C to 44F relate to offences which are detected by devices that provide a record or a measurement which may be used to prosecute an offence, such as speeding. Devices need to be approved prior to their use or installation. Evidence obtained from such devices may be relied upon for the purposes of a prosecution.

The amendment to section 45 and the added sections 45A and 45B relate to instances where the use of a motor vehicle has resulted in death. The penalty for death caused by reckless or dangerous driving is increased from a maximum of 5 to 14 years imprisonment. Section 45A provides a separate offence where a person causes death through careless or inconsiderate driving, and section 45B where there has been careless driving and the driver was under the influence of drink or drugs.

Part IIIA has provides the Minister with powers to make regulations for the introduction and administration of a penalty points regime.

New sections 63A to 63F are provisions that confer added powers to deal with breath and drugs tests for drivers. Additionally, section 63A creates an offence of driving when the amount of specified drugs exceeds a prescribed limit. There are also new powers to require a preliminary drugs and breath tests other than in a police station and in certain circumstances, including where there is a reasonable suspicion that a person had been driving. There are also attendant powers of arrest and entry.

Section 66 is replaced by a new section which provides for the breath specimen with the lowest proportion of alcohol to be used where two specimens had been obtained.

Part VIIA introduces framework for the use of fixed penalty notices in certain circumstances, and sets out the procedural requirements governing their use.

The Schedule is amended to reflect amendments made by this Act and also updates certain references.

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