

Examined and certified by:

J. H. S. S. S.
Clerk of the Parliament

In the name and on behalf of Her Majesty Queen Elizabeth the Second I hereby assent to
this Act this 27th day of June, 2016



N. Marsden
Queen's Representative

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An Act to amend the Transport Act 1966 to—

- (a) provide for an effective driver licensing system; and
- (b) make wearing of approved safety helmets mandatory for persons aged between 16 and 25 while riding motorcycles in Rarotonga; and
- (c) improve the operability of certain provisions; and
- (d) provide for related matters.

The Parliament of the Cook Islands enacts as follows—

- 1 Title**
This Act is the Transport Amendment Act 2016.
- 2 Commencement**
This Act comes into force on a date appointed by the Queen's Representative by Order in Executive Council.
- 3 Principal Act amended**
This Act amends the Transport Act 1966.

4 Section 2 amended (Interpretation)

- (1) Section 2 is amended by inserting the following definitions in their appropriate alphabetical order—

“**breath screening device** means a device of a kind approved by the Commissioner by notice in the Gazette and in the Police General Instructions

“**breath screening test** means a test carried out by means of a breath screening device in a manner prescribed by the Commissioner by notice in the Gazette and in the Police General Instructions”.

- (2) Section 2 is amended by inserting in the definition of **approved device** “or a breath screening device” after “breathalyser test device”.

5 Section 17 amended (Unlicensed persons not to drive motor vehicles)

- (1) Section 17 is amended by repealing subsection (2) and substituting the following subsection—

“(2) A person who wishes to obtain a motor driver’s licence for a prescribed class of licence must apply to the Registrar or Deputy Registrar, who must issue the licence on being satisfied that—

“(a) the applicant is 16 years of age or over; and

“(b) the applicant has passed the practical and other driving tests or examinations prescribed for a vehicle of that class; and

“(c) the applicant has passed the medical or other physical tests or examinations prescribed for a vehicle of that class, and any required medical certificate was signed 14 days or less before the date of applying for the licence.”

- (2) Section 17 is amended by repealing subsections (4) to (6) and substituting the following subsections—

“(4) The following provisions apply in relation to an application for a motor driver’s licence and any licence issued—

“(a) the application must be in the prescribed form:

“(b) the licence—

“(i) must be in the prescribed form:

“(ii) must state the prescribed class of vehicles for which it is issued:

“(iii) is subject to the conditions, restrictions, and endorsements prescribed by regulations under this Act for a motor driver’s licence to drive vehicles of that class.

“(5) An applicant for a motor driver’s licence must pay the appropriate prescribed fees and charges.

“(6) Unless a different validity period is prescribed in relation to a licence, a motor driver’s licence is valid until the close of 31 March following the date of its issue.

“(7) A motor driver’s licence remains valid for the relevant validity period under subsection (6) subject to—

“(a) the provisions of this Act and the regulations relating to the alteration, replacement, renewal, surrender, suspension, expiry, and cancellation of licences:

“(b) the provisions of the regulations relating to demerit points:

“(c) any provision of any other Act that affects the licence.

- “(8) To avoid doubt, a reference in this section to any prescribed matter is, unless the context otherwise requires, a reference to a matter prescribed by regulations made under section 24A or 126.”

6 New section 24A inserted

The following section is inserted after section 24—

“24A Regulations relating to driver licensing

Without limiting the general power to make regulations under section 126, the Queen’s Representative may, by Order in Executive Council, make regulations not inconsistent with this Act that—

- “(a) put in place a system or provide for the licensing of drivers of motor vehicles, including provisions for the issue, endorsement, alteration, replacement, renewal, surrender, suspension, expiry, and cancellation of licences:
- “(b) prescribe different requirements for drivers of different age groups or experience, including requirements relating to the issue and expiry of licences:
- “(c) provide for and specify the effect of—
 - “(i) a learner motor driver’s licence that may be issued for up to 2 years:
 - “(ii) a visitor’s motor driver’s licence for any specified class of visitors to the Cook Islands or vehicles:
 - “(iii) other different classes of driver licences for different classes of vehicles (or for different vehicles of the same class, according to their engine capacity or on some other basis):
- “(d) prescribe any conditions and restrictions that apply to a class of licence or a licence to drive vehicles of a particular class (which regulations may, for example, restrict a licence so that it applies to vehicles not exceeding a prescribed engine capacity, require a driver to attach an L plate to the vehicle, restrict the carriage of pillion passengers, require the driver wear a safety helmet while driving, restrict the hours during which the driver may drive the vehicle, prescribe maximum speed limits for the driver, or require the driver to undergo prescribed driving or other practical tests):
- “(e) prescribe the documentary evidence and other information to be submitted with applications relating to driver licences:
- “(f) provide for the theoretical, practical, and medical examination and testing of applicants and holders of driver licences, and set out standards for theoretical, practical, and medical examinations and tests:
- “(g) provide for the approval of persons who have functions under the regulations, including persons who are to conduct the theoretical or practical or medical examination or testing of applicants for or holders of driver licences:
- “(h) provide for the use of aids or the driving of vehicles that are specially adapted or have particular features:
- “(i) provide for the recognition of driver licences issued outside the Cook Islands:

- “(j) prescribe the number of demerit points to be recorded by the Commissioner in respect of a person convicted of any specified offence against the Act (including any minor offence) or the regulations, provide for the cancellation and reinstatement of demerit points in circumstances specified in the regulations, and prescribe the level at which demerit points may result in the suspension, restriction, or cancellation of a licence or other action referred to in paragraph (a):
- “(k) prescribe the fees and charges payable in respect of applications for motor driver’s licences and the issue of licences, which fees and charges may differ according to the class of motor vehicle concerned:
- “(l) give effect to any international convention concerning the recognition of driver licences and permits issued outside the Cook Islands and the recognition of international driving permits.”

7 Section 28 amended (Driving while under the influence of drink and/or drugs, etc)

Section 28(1) is amended by inserting “, to such an extent as to be incapable of having proper control of the vehicle,” after “or both”.

8 New section 28B substituted

Section 28B is repealed and the following section is substituted—

“28B Who must undergo breath screening test or breathalyser test

- “(1) Where a constable has reasonable cause to suspect that a person—
 - “(a) is driving or attempting to drive or is in charge of a motor vehicle on a road; or
 - “(b) has recently been driving or attempting to drive or has been in charge of a motor vehicle on a road; or
 - “(c) was the driver or person in charge of a motor vehicle which was involved in a motor vehicle crash,—
 the constable may, subject to section 28F, require that person to undergo without delay a breath screening test or a breathalyser test; and, if the person refuses to undergo a breath screening test as required, the constable may require the person to undergo without delay a breathalyser test.
- “(2) A person who is required to undergo a breath screening test or a breathalyser test must remain at the place where the person undergoes the test until after the result of the test is ascertained.
- “(3) The breath screening test or breathalyser test must be conducted on the spot where the person is apprehended or at a police station.
- “(4) A person commits an offence who—
 - “(a) refuses to undergo a breath screening test or a breathalyser test; or
 - “(b) refuses to accompany a constable to a police station; or
 - “(c) refuses to remain at the place where the person is required to undergo the breath screening test or breathalyser test.

- “(5) A person who commits an offence against subsection (4) is liable on conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$1,000 or both, and the Court must, in addition to any other penalty, order him or her to be disqualified with or without condition from holding or obtaining a driver's licence for a minimum period of 12 months.
- “(6) In addition to the penalties specified in subsection (5), the Court may also upon conviction impose the sentence of community work.”

9 Section 28F amended (Evidence)

Section 28F(1) is amended by omitting “for an offence under section 28 or 28A” and substituting “under this Act”.

10 New section 28G inserted

The following section is inserted after section 28F—

“28G Reasonable compliance

It is no defence to proceedings for an offence against any of sections 28 to 28F that a provision forming part of those provisions has not been strictly complied with or has not been complied with at all, provided there has been reasonable compliance with such of those provisions as apply.”

11 Section 29 amended (Power of arrest)

Section 29(1) is amended by repealing paragraphs (c) and (d) and substituting the following paragraphs—

- “(c) section 28A(1)(a);
“(c) section 28A(1)(b);”.

12 Section 55C amended (Prosecution of minor offences)

Section 55C(1) is amended by omitting “\$100.00” and substituting “\$500”.

13 New section 86A substituted

Section 86A is repealed and the following section is substituted—

“86A Safety helmets

- “(1) Subject to subsections (2) and (3), in any place in the Cook Islands a person must not drive or ride on a motorcycle or a motorised quad-bike, trike, or bicycle on any road at a speed exceeding 40 kilometres an hour without wearing an approved safety helmet appropriate for that vehicle or bicycle.
- “(2) In Rarotonga, a person who is 16 or over and under 25 years of age must not drive or ride on a motorcycle or a motorised quad-bike, trike, or bicycle on any road at any speed without wearing an approved safety helmet appropriate for that vehicle or bicycle.
- “(3) In Rarotonga, a person who is the holder of a visitor's licence or an overseas motorcycle licence must not drive or ride on a motorcycle or a motorised quad-bike, trike, or bicycle without wearing an approved safety helmet appropriate for that vehicle or bicycle.
- “(4) For the purposes of subsections (1) to (3), an approved safety helmet must—

- “(a) be of the class, type, or make that meets the safety standards for safety helmets as set out in the Schedule; and
- “(b) bear a sticker inside it stating the standard with which it complies.
- “(5) A person who contravenes subsection (1), (2), or (3) commits an offence and is liable to a fine not exceeding \$100, and is deemed to have committed a minor offence under and subject to Part VA (Minor Offences).
- “(6) No safety helmet may be imported or sold in the Cook Islands for road use unless it complies with 1 or more approved international safety standards for safety helmets and bears the standard mark as specified in the Schedule.
- “(7) A person who contravenes subsection (6) commits an offence and is liable to a fine not exceeding \$1,000.”

14 First Schedule amended (Transport Act fees)

The First Schedule is amended by repealing items (b) to (i) in clause 3.

15 Second Schedule repealed (Forms)

The Second Schedule (forms 1 and 2) is repealed.

This Act is administered by the Cook Islands Police Service.
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