

THE MOTOR VEHICLES INSURANCE (THIRD-PARTY RISKS) ACT

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THE MOTOR VEHICLES INSURANCE (THIRD-PARTY RISKS) ACT

[1st January, 1941.]

Cap. 257.
Laws
37 of 1957,
67 of 1958,
7 of 1959.
Acts
45 of 1964,
8 of 1971
S. 109,
4 of 1989,
28 of 2005.

1. This Act may be cited as the Motor Vehicles Insurance (Third-Party Risks) Act. Short title.

2. In this Act—

“chief officer of police” means the Officer or Sub-Officer of the Police Force within the meaning of the Constabulary Force Act in charge of a parish or district;

Interpretation.
67/1958
S. 2.

“driver” where a separate person acts as steersman of a motor vehicle, includes that person as well as any other person engaged in the driving of the vehicle, and the expression “drive” shall be construed accordingly;

“insurer” means any person carrying on the business of—

45/1964
S. 2.

(a) issuing policies of insurance; or

(b) giving securities,

against liabilities to third-parties in relation to the user of motor vehicles, being a person registered under Part II of the Insurance Act, to carry on motor vehicle insurance business or a member of any association of underwriters approved under that Act by the Superintendent;

8/1971
S. 109.

“motor vehicle” means any mechanically propelled vehicle intended or adapted for use on roads, but shall not include trolley vehicles;

“owner” in relation to a motor vehicle which is the subject of a hiring agreement or hire purchase agreement, means the person in possession of the vehicle under that agreement;

“policy of insurance” includes a covering note;

“road” means any main or parochial road, and includes bridges over which a road passes, and any roadway to which the public is granted access and any roadway declared to be a road pursuant to the provisions of section 3;

7/1959
S. 2.

“trolley vehicle” means a mechanically propelled vehicle adapted for use upon roads without rails and moved by power transmitted thereto from some external source.

Power of
Minister to
declare
roadway to be
road.
7/1959
S. 3.

3.—(1) The Minister may by order declare any roadway to be a road for the purposes of this Act.

(2) For the purposes of this section “Minister” means the Minister responsible for communications.

Users of motor
vehicles to
be insured
against third-
party risks.

4.—(1) Subject to the provisions of this Act, it shall not be lawful for any person to use, or to cause or permit any other person to use a motor vehicle on a road, unless there is in force in relation to the user of the vehicle by that person or that other person, as the case may be, such a policy of insurance or such a security in respect of third-party risks as complies with the requirements of this Act.

4/1989
S. 2.

(2) If any person acts in contravention of this section he shall be guilty of an offence and shall, on summary conviction thereof before a Resident Magistrate, be liable to a penalty not exceeding two thousand dollars or to imprisonment, with or without hard labour, for a term not exceeding six months, or to both such penalty and imprisonment, and a person convicted of an offence under this section shall (unless the Court for special reasons thinks fit to order otherwise and without prejudice to the power of the Court to order a longer period of disqualification) be disqualified for holding or obtaining a licence under the law for the time being in force relating to motor vehicles, for a period of twelve months from the date of the conviction.

A person disqualified by virtue of a conviction under this section or of an order made thereunder for holding or obtaining a licence shall, for the purposes of the law for the time being in force relating to motor vehicles, be deemed to be disqualified by virtue of a conviction thereunder, or any enactment amending or substituted for the same.

(3) Notwithstanding any enactment prescribing a time within which proceedings may be brought before a Resident Magistrate's Court, proceedings for an offence under this section may be brought—

- (a) within a period of six months from the date of the commission of the alleged offence; or
- (b) within a period which exceeds neither three months from the date on which it came to the knowledge of the prosecutor that the offence had been committed, nor one year from the date of the commission of the offence,

whichever period is the longer.

5.—(1) In order to comply with the requirements of this Act the policy of insurance must be a policy which—

- (a) is issued by a person who is an insurer; and
- (b) subject to the provisions of this section, insures such person, persons or classes of persons, as may be specified in the policy, against any liability incurred by him or them in respect of—
 - (i) the death of, or bodily injury to, any person; and
 - (ii) any damage to property, caused by or arising out of the use of the motor vehicle on the road.

(2) In respect of death or bodily injury claims, the policy shall be required to cover—

Requirements in respect of policies.
4/1989
S. 3 (a).

4/1989
S. 3 (a).

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L.N.
94/1997.

(a) subject to paragraph (b), liability to any one person for a sum of not less than one million dollars; and

L.N.
94/1997.

(b) a total liability of not less than three million dollars, in relation to each motor vehicle insured under the policy, arising out of all such claims as aforesaid in connection with any one accident.

4/1989
S. 3 (a).

(3) In respect of property damage claims, the policy shall be required to cover—

L.N.
94/1997.

(a) subject to paragraph (b), liability to any one person for a sum of not less than five hundred thousand dollars; and

L.N.
94/1997.

(b) a total liability of not less than one million dollars, in relation to each motor vehicle insured under the policy, arising out of all such claims as aforesaid in connection with any one accident.

4/1989
S. 3 (a).

(4) The policy shall not be required to cover—

(a) liability in respect of the death, arising out of and in the course of his employment, of a person in the employment of a person insured by the policy, or of bodily injury sustained by such a person arising out of, and in the course of, his employment;

(b) any contractual liability;

L.N.
94/1997.

(c) in respect of any death or bodily injury claim by any one person, liability for the first one hundred dollars;

L.N.
94/1997.

(d) in respect of any death or bodily injury claims generally, liability for any sum in excess of three million dollars arising out of all such claims in connection with any one accident for each motor vehicle insured under the policy;

- (e) in respect of any damage to property, liability for any sum in excess of one million dollars arising out of all claims for such damage in connection with any one accident for each motor vehicle insured under the policy; or
- (f) subject to subsection (5), until other provision is made pursuant to section 25, liability in respect of the death of, or bodily injury to persons being carried in or upon, or entering or getting onto or alighting from, the vehicle at the time of the occurrence out of which the claims arise.

(5) Paragraph (f) of subsection (4) shall not apply in the case of a motor vehicle duly licensed for the purpose in which passengers are carried for hire or reward and in the case of a motor vehicle in which passengers are carried by reason of, or in pursuance of, a contract of employment with a person duly insured by the policy.

(6) The Minister may, by order, subject to negative resolution, amend subsections (2), (3) and (4) of this section and subsection (1) of section 7 so as to change the amounts specified therein, so, however, that such order shall not affect the validity of policies or securities in force at the date of commencement of the order until and unless such policies or securities are renewed after the date of commencement aforesaid.

(7) Where any payment is made (whether or not with an admission of liability) by—

- (a) an insurer under or in consequence of a policy issued under this Act; or
- (b) the owner of a motor vehicle in relation to the use of which a security under this Act is in force, in respect of the death of, or bodily injury to, any person, arising out of the use of a motor vehicle on a road, and the

67/1958
S. 3 (a).

person who has so died or been bodily injured, has to the knowledge of the insurer or such owner, as the case may be, received treatment at a hospital, whether as an in-patient or as an out-patient, in respect of the injury so arising, the insurer or owner as the case may be shall notify the hospital of such payment and there shall also be paid by the insurer or such owner to such hospital, the expenses reasonably incurred by the hospital in affording such treatment, after deducting from such expenses any moneys actually received by the hospital in payment of a specific charge for such treatment:

4/1989
S. 3. (c).

Provided that the amount to be paid by the insurer or such owner shall not exceed two thousand dollars for each person so treated as an in-patient, or five hundred dollars for each person so treated as an out-patient.

For the purposes of this subsection, "hospital" means an institution (not being an institution carried on for profit) which provides medical or surgical treatment for in-patients, and the expression "expenses reasonably incurred" means—

- (a) in relation to a person who receives treatment at a hospital as an in-patient, an amount for each day such person is maintained in such hospital representing the average daily cost for each in-patient of the maintenance of the hospital and the staff thereof and the maintenance and treatment of the in-patients therein; and
- (b) in relation to a person who receives treatment at a hospital as an out-patient, reasonable expenses actually incurred.

(8) Notwithstanding any rule of law or anything in this or any other enactment to the contrary, a person issuing a policy of insurance under this section shall be liable to indemnify the persons, or classes of persons, specified in

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the policy, in respect of any liability which the policy purports to cover, in the case of those persons or classes of persons.

(9) A policy shall be of no effect for the purposes of this Act unless and until there is issued by the insurer in favour of the person by whom the policy is effected, a certificate (in this Act referred to as a "certificate of insurance") in the prescribed form and containing such particulars of any conditions subject to which the policy is issued and of any other matters as may be prescribed, and different forms and different particulars may be prescribed in relation to different cases or circumstances.

(10) Any insurer or owner who in contravention of subsection (7) fails to notify a hospital of a payment made shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding two hundred dollars.

67/1958
S. 3 (b).
4/1989
S. 3 (d).

6. A chief officer of police shall, if so requested by an executive officer of a hospital alleging that the hospital is entitled to claim a payment for treatment under section 5, furnish to that hospital any information at the disposal of the chief officer as to the identification marks of any motor vehicle which the executive officer alleges to be a vehicle out of the use of which the bodily injury arose, and as to the identity and address of the insurer and of the person who was using the vehicle at the time of the event out of which it arose.

Police to supply information to hospital.
67/1958
S. 4.

7.--(1) In order to comply with the requirements of this Act a security must—

- (a) be given by an insurer; and
- (b) consist of an undertaking by the insurer to make good, subject to any conditions specified therein, and up to the amount, in the case of an undertaking

Requirements in respect of securities.
45/1964
S. 4 (a).
45/1964
S. 4 (b).

4/1989
S. 4.

relating to the use of any motor vehicle, of not less than one million dollars in respect of each vehicle, any failure by the owner of the vehicle, or such other persons or classes of persons, as may be specified in the security, duly to discharge any such liability as is required to be covered by a policy of insurance under section 5, which may be incurred by him or them.

67/1958
S. 5.

(2) A security shall be of no effect for the purposes of this Act unless and until there is issued by the insurer giving the security to the person to whom it is given, a certificate (in this Act referred to as a "certificate of security") in the prescribed form and containing such particulars of any conditions subject to which the security is issued and of any other matters as may be prescribed, and different forms and different particulars may be prescribed in relation to different cases or circumstances.

45/1964
S. 4 (c).

Certain conditions to policies or securities to be of no effect.

8.—(1) Any condition in a policy or security issued or given for the purposes of this Act, providing that no liability shall arise under the policy or security, or that any liability so arising shall cease, in the event of some specified thing being done or omitted to be done after the happening of the event giving rise to a claim under the policy or security, shall be of no effect in connection with such claims as are mentioned in subsections (1), (2) and (3) of section 5:

4/1989
S. 5 (a)

Provided that nothing in this subsection shall be taken to render void any provision in a policy or security requiring the person insured or secured to repay to the insurer any sums which the latter may have become liable to pay under the policy or security and which have been applied to the satisfaction of the claims of third-parties.

45/1964
S. 5.

4/1989
S. 5 (b).

(2) Where a certificate of insurance has been issued under subsection (9) of section 5 in favour of the person by whom a policy has been effected, so much of a policy as

purports to restrict the insurance of the persons insured thereby by reference to any of the following matters—

- (a) the age or physical or mental condition of persons driving the vehicle; or
- (b) the condition of the vehicle; or
- (c) the number of persons that the vehicle carries; or
- (d) the weight or physical characteristics of the goods that the vehicle carries; or
- (e) the times at which or the areas within which the vehicle is used; or
- (f) the horse power or value of the vehicle; or
- (g) the carrying on the vehicle of any particular apparatus; or
- (h) the carrying on the vehicle of any particular means of identification other than any means of identification required to be carried by or under the law for the time being in force relating to motor vehicles,

shall as respects such liabilities as are required to be covered by a policy under subsections (1), (2) and (3) of section 5, be of no effect:

4/1989
S. 5 (b).

Provided that nothing in this subsection shall require an insurer to pay any sum in respect of the liability of any person otherwise than in or towards the discharge of that liability, and any sum paid by an insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this subsection shall be recoverable by the insurer from that person.

9. A person applying for a licence in respect of a motor vehicle under the law for the time being in force relating to motor vehicles shall append to the application a certificate of insurance or a certificate of security, or shall produce such evidence as may be prescribed that either—

Production
of certificate
of insurance
or certificate
of security
on applica-
tion for
motor
vehicle
licences.

- (a) on the date when the licence comes into operation there will be in force the necessary policy of

insurance or the necessary security in relation to the user of the motor vehicle by the applicant or by other persons on his order or with his permission; or

- (b) the motor vehicle is a vehicle to which this Act does not apply.

Requirements as to production of certificate of insurance or of security.

4/1989
S. 6 (a).

10.—(1) Any person driving a motor vehicle on a road shall, on being required by a constable, give his name and address and the name and address of the owner of the vehicle and produce his certificate, and if he fails so to do he shall be guilty of an offence and shall on summary conviction thereof before a Resident Magistrate be liable to a penalty not exceeding two hundred dollars:

Provided that, if the driver of a motor vehicle within five days after the date on which the production of his certificate was so required, produces his certificate in person at such police station as may have been specified by him at the time its production was required, he shall not be convicted of an offence under this subsection by reason only of failure to produce his certificate to the constable.

(2) In any case where owing to the presence of a motor vehicle on a road an accident occurs involving personal injury to another person, the driver of the vehicle shall at the time produce his certificate to a constable on demand and to any other person who having reasonable grounds for so doing, has required its production, and the driver shall also as soon as possible, and in any case within twenty-four hours of the occurrence of the accident, report the accident at a police station and thereupon produce his certificate.

If he fails to do so he shall be guilty of an offence and shall, on summary conviction thereof before a Resident Magistrate, be liable to a penalty not exceeding two hundred dollars:

4/1989
S. 6 (a).

Provided that a person shall not be convicted of an offence under this subsection by reason only of failure to produce his certificate if, within five days after the occurrence of the accident, he produces the certificate in person at such police station or at one of such police stations as may have been specified by him at the time its production was demanded or required or at the time the accident was reported.

(3) It shall be the duty of the owner of a motor vehicle to give such information as he may be required, by or on behalf of an officer of the Constabulary Force above the rank of Inspector, to give for the purpose of determining whether the vehicle is not or was not being driven in contravention of section 4, on any occasion when the driver was required under this section to produce his certificate, and if the owner fails to do so he shall be guilty of an offence and shall, on summary conviction thereof before a Resident Magistrate, be liable to a penalty not exceeding five hundred dollars.

4/1989
S. 6 (b).

(4) In this section the expression "produce his certificate" means produce for examination the relevant certificate of insurance or certificate of security or such other evidence that the vehicle is not or was not being driven in contravention of section 4 as may be prescribed.

11.—(1) The rights of any person in respect of any liability incurred by an insured shall, in the event of the death of the insured, and notwithstanding this enactment or any other law to the contrary, be preserved to and be enforceable by such person against the personal representatives of the insured in the same manner and to the same extent as such rights would have been enforceable against the insured if he had survived and the provisions of subsection (8) of section 5 shall apply accordingly.

Saving of
rights in
case of
death of
person
insured.

4/1989
S. 7.

(2) For the purposes of this section the word "insured" means a person who is insured under a contract

of insurance against liabilities to third-parties or in respect of whom security is given in accordance with the provisions of this Act.

Transfer of
rights of
insured
against
insurer on
bankruptcy.

12.—(1) Where under any contract of insurance a person (hereinafter referred to as the insured) is insured against liabilities to third-parties which he may incur, then—

- (a) in the event of the insured becoming bankrupt or making a composition or arrangement with his creditors; or
- (b) in the case of the insured being a Company, in the event of a winding up order being made, or a resolution for a voluntary winding up being passed, with respect to the Company, or of a Receiver or Manager of the Company's business or undertaking being duly appointed, or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in or subject to the charge,

if either before or after that event any such liability as aforesaid is incurred by the insured, his rights against the insurer under the contract in respect of the liability shall, notwithstanding anything in any enactment, or other law to the contrary, be transferred to and vest in the third-party to whom the liability was so incurred.

(2) Where an order is made under section 70 of the Bankruptcy Act, for the administration of the estate of a deceased debtor according to the law of Bankruptcy then, if any debt provable in bankruptcy is owing by the deceased in respect of a liability against which he was insured under a contract of insurance as being a liability to a third-party, the deceased debtor's rights against the insurer under the contract in respect of that liability shall, notwithstanding anything in the said Act, be transferred to and vest in the person to whom the debt is owing.

(3) In so far as any contract of insurance made after the 1st January, 1941, in respect of any liability of the insured to third-parties purports, whether directly or indirectly, to avoid the contract or to alter the rights of the parties thereunder upon the happening to the insured of any of the events specified in paragraph (a) or paragraph (b) of subsection (1), or upon the making of an order under section 70 of the Bankruptcy Act in respect of his estate, the contract shall be of no effect.

(4) Upon a transfer under subsection (1) or subsection (2), the insurer shall, subject to the provisions of section 15, be under the same liability to the third-party as he would have been under to the insured, but—

- (a) if the liability of the insurer to the insured exceeds the liability of the insured to the third-party, nothing in this Act shall affect the rights of the insured against the insurer in respect of the excess; and
- (b) if the liability of the insurer to the insured is less than the liability of the insured to the third-party, nothing in this Act shall affect the rights of the third-party against the insured in respect of the balance.

(5) For the purposes of this Act the expression "liabilities to third-parties", in relation to a person insured under any contract of insurance shall not include any liability of that person in the capacity of the insurer under some other contract of insurance.

(6) The provisions of this section and of sections 14 and 15 shall not apply where a Company is wound up voluntarily merely for the purposes of reconstruction or amalgamation with another Company.

Bankruptcy,
etc., of
insured
persons not
to affect
certain
claims by
third-parties.
4/1989
S. 8.

13. Where a certificate of insurance has been issued under subsection (9) of section 5 in favour of the person by whom a policy has been effected, the happening in relation to any person insured by the policy of any such event as is mentioned in subsection (1) or subsection (2) of section 12 shall, notwithstanding anything in this Act, not affect any such liability of that person as is required to be covered by a policy under subsections (1), (2) and (3) of section 5, but nothing in this section shall affect any rights against the insurer conferred by this Act on the person to whom the liability was incurred.

Duty to give
necessary
information
to third-
parties.

14.—(1) In the event of any person becoming bankrupt or making a composition or arrangement with his creditors or in the event of an order being made under section 70 of the Bankruptcy Act in respect of the estate of any person, or in the event of a winding up order being made, or a resolution for a voluntary winding up being passed, with respect to any Company, or of a Receiver or Manager of the Company's business or undertaking being duly appointed or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in or subject to the charge, it shall be the duty of the bankrupt, debtor, personal representative of the deceased debtor or Company, and, as the case may be, of the Trustee in Bankruptcy, Trustee, Liquidator, Receiver or Manager, or person in possession of the property to give at the request of any person claiming that the bankrupt, debtor, deceased debtor, or Company, is under a liability to him, such information as may be reasonably required by him for the purpose of ascertaining whether any rights have been transferred to and vested in him by this Act and for the purpose of enforcing such rights if any, and any contract of insurance, in so far as it purports, whether directly or indirectly, to avoid the contract or to alter the rights of the parties thereunder upon the giving of any such information

in the events aforesaid or otherwise to prohibit or to prevent the giving thereof in the said events, shall be of no effect.

(2) If the information given to any person in pursuance of subsection (1) discloses reasonable ground for supposing that there have or may have been transferred to him under this Act, rights against any particular insurer, that insurer shall be subject to the same duty as is imposed by the said subsection on the persons therein mentioned.

(3) The duty to give information imposed by this section shall include a duty to allow all contracts of insurance, receipts for premiums, and other relevant documents in the possession or power of the person on whom the duty is so imposed to be inspected and copies thereof to be taken.

(4) If, without reasonable excuse any person fails to comply with the provisions of this section, or wilfully makes any false statement in reply to any such request as aforesaid he shall be guilty of an offence and shall be liable on summary conviction thereof before a Resident Magistrate to a penalty not exceeding five hundred dollars.

4/1989
S. 9.

15. Where the insured has become bankrupt or where, in the case of the insured being a Company, a winding up order has been made or a resolution for a voluntary winding up has been passed with respect to the Company, no agreement made between the insurer and the insured after the liability has been incurred to a third-party and after the commencement of the bankruptcy or winding up, as the case may be, nor any waiver, assignment, or other disposition made by, or payment made to the insured, after the commencement aforesaid shall be effective to defeat or affect the rights transferred to the third-party under this Act, but those rights shall be the same as if no such agreement, waiver, assignment, disposition or payment had been made.

Settlement
between
insurers and
insured
persons.

Duty of persons against whom claims are made to give information as to insurance.
4/1989
S. 10 (a), (b).

16.—(1) Any person against whom a claim is made in respect of any such liability as is required to be covered by a policy under subsections (1), (2) and (3) of section 5 shall, on demand by or on behalf of the person making the claim, or by the Registrar of the Supreme Court or the Clerk of the Courts of any Resident Magistrate's Court, state whether or not he was insured in respect of that liability by any policy having effect for the purposes of this Act, or would have been so insured if the insurer had not avoided or cancelled the policy, and, if he was or would have been so insured, give such particulars with respect to that policy as were specified in the certificate of insurance delivered in respect thereof under subsection (9) of section 5.

(2) If, without reasonable excuse, any person fails to comply with the provisions of this section, or wilfully makes any false statement in reply to any such demand as aforesaid, he shall be guilty of an offence and shall be liable on summary conviction thereof before a Resident Magistrate to a penalty not exceeding five hundred dollars.

4/1989
S. 10 (c).

Duty to surrender certificate on cancellation of policy.
4/1989
S. 11 (a), (b).

17. Where a certificate of insurance has been issued under subsection (9) of section 5 in favour of the person by whom a policy has been effected and the policy is cancelled by mutual consent or by virtue of any provision in the policy, the person in whose favour the certificate was issued shall, within seven days from the taking effect of the cancellation, surrender the certificate to the insurer or, if it has been lost or destroyed, make a statutory declaration to that effect, and if he fails to comply with the provisions of this section he shall be guilty of an offence and shall be liable on summary conviction thereof before a Resident Magistrate to a penalty not exceeding five hundred dollars.

18.—(1) If after a certificate of insurance has been issued under subsection (9) of section 5 in favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under subsections (1), (2) and (3) of section 5 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment the amount covered by the policy or the amount of the judgment, whichever is the lower, in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

Duty of insurers to satisfy judgments against persons insured in respect of third-party risks.
4/1989
S. 12(a), (b).

28/2005
S. 2(a).

(1A) The right of payment under subsection (1) shall not be limited by reference to—

28/2005
S. 2(b).

- (a) the minimum liability coverage required under subsection (1), (2) or (3) of section 5;
- (b) any limitation of liability to claim specified in subsection (4) of section 5.

(2) Subject to subsection (1A), no sum shall be payable by an insurer under the foregoing provisions of this section—

28/2005
S. 2(c).

- (a) liability for which is exempted from the cover granted by the policy pursuant to subsection (4) of section 5; or
- (b) in respect of any judgment, unless before or within ten days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the bringing of the proceedings; or
- (c) in respect of any judgment, so long as execution thereof is stayed pending an appeal; or
- (d) in connection with any liability, if before the happening of the event which was the cause of the death or bodily injury or damage to property giving rise to the liability, the policy was cancelled by mutual consent or by virtue of any provision contained therein and either—

4/1989
S. 12(c).

4/1989
S. 12(d).

- (i) before the happening of the said event the certificate was surrendered to the insurer or the person in whose favour the certificate was issued made a statutory declaration stating that the certificate had been lost or destroyed; or
- (ii) after the happening of the said event, but before the expiration of a period of fourteen days from the taking effect of the cancellation of the policy the certificate was surrendered to the insurer or the person in whose favour the certificate was issued made such a statutory declaration as aforesaid; or
- (iii) before or after the happening of the said event, but within the said period of fourteen days, the insurer has commenced proceedings under this Act in respect of the failure to surrender the certificate.

(3) No sum shall be payable by an insurer under the foregoing provisions of this section, if, in an action commenced before, or within three months after, the commencement of the proceedings in which the judgment was given he has obtained a declaration that, apart from any provision contained in the policy, he is entitled to avoid it on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular, or if he has avoided the policy on that ground, that he was entitled so to do apart from any provision contained in it:

Provided that an insurer who has obtained such a declaration as aforesaid in an action shall not thereby become entitled to the benefits of this subsection as respects any judgment obtained in proceedings commenced before the commencement of that action, unless before or within ten days after the commencement of that action he has given notice thereof to the person who is the plaintiff in the said

proceedings specifying the non-disclosure or false representation on which he proposes to rely, and any person to whom notice of such an action is so given, shall be entitled, if he thinks fit, to be made a party thereto.

(4) If the amount for which an insurer becomes liable under this section to pay in respect of a liability of the person insured by a policy exceeds the amount for which he would, apart from the provisions of this section, be liable under the policy in respect of that liability, he shall be entitled to recover the excess from that person.

(5) In this section the expression "material" means of such a nature as to influence the judgment of a prudent insurer in determining whether he would take the risk, and if so, at what premium and on what conditions, and the expression "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel, or has avoided or cancelled the policy.

(6) In this Act references to a certificate of insurance in any provision relating to the surrender or the loss or destruction of a certificate of insurance shall, in relation to policies under which more than one certificate is issued be construed as references to all the certificates and shall, where any copy has been issued of any certificate be construed as including a reference to that copy.

19. It shall be the duty of the Registrar of the Supreme Court or of any Clerk of the Courts of any Resident Magistrate's Court, within ten days of the commencement by a third-party injured by a motor vehicle required to be insured by this Act, of any proceedings in any such Court, to give notice to the insurer of such proceedings.

Registrar or
Clerk of
Courts to
give notice
to insurer.

Application
of certain
sections of
this Act to
securities
given under
this Act.

45/1964
S. 6.

20. The provisions of subsection (2) of section 8 and of sections 13, 16, 17 and 18 shall apply in relation to securities having effect for the purposes of this Act as they apply in relation to policies of insurance, and in relation to any such security as aforesaid, references in the said provisions to "being insured" to a "certificate of insurance" and to "persons insured" shall be construed respectively as references to the having in force of the security, to the certificate of security, and to the person whose liability is covered by the security.

Forgery of
certificate.

21.—(1) If, with intent to deceive, any person—

(a) alters or uses, or lends to or allows to be used, by any other person, a certificate of insurance or certificate of security under this Act; or

(b) makes or has in his possession any documents so closely resembling such a certificate as to be calculated to deceive,

he shall be guilty of a misdemeanour and shall be liable on conviction on indictment to imprisonment with or without hard labour for a term not exceeding two years.

(2) If any person for the purpose of obtaining the issue of a certificate of insurance or of a certificate of security under this Act knowingly makes any false statement or knowingly withholds any material information, he shall be liable on summary conviction thereof before a Resident Magistrate to imprisonment, with or without hard labour, for a term not exceeding six months or to a penalty not exceeding five hundred dollars and in default of payment thereof to imprisonment, with or without hard labour, for a term not exceeding six months or to both such imprisonment and penalty.

4/1989
S. 13 (a).

(3) If any person issues a certificate of insurance or a certificate of security which is to his knowledge false in

any material particular, he shall be liable, on summary conviction thereof before a Resident Magistrate, to imprisonment, with or without hard labour, for a term not exceeding six months or to a penalty not exceeding one thousand dollars and, in default of payment thereof to imprisonment, with or without hard labour, for a term not exceeding six months or to both such imprisonment and penalty.

4/1989
S. 13 (b).

(4) If any constable has reasonable cause to believe that any certificate of insurance or certificate of security produced to him in pursuance of the provisions of this Act by the driver of a motor vehicle is a document in relation to which an offence under this section has been committed, he may seize the document and when any document is seized under this section, the person from whom it was taken shall, unless the document has been previously returned to him or he has previously been charged with an offence under this section, be summoned before a Resident Magistrate's Court to account for his possession of the said document and the Court shall make such order respecting the disposal of the said document and award such costs as the justice of the case may require.

(5) In this section the expressions "certificate of insurance" and "certificate of security" include any document issued under regulations made by the Minister in pursuance of the provisions of section 9 to prescribe evidence which may be produced in lieu of a certificate of insurance or a certificate of security.

22. Notwithstanding anything contained in this Act, where any document purporting to be—

- (a) a policy of insurance; or
- (b) a security,

against liabilities to third-parties in relation to the user of motor vehicles has been issued by a person who is not an insurer or by a person whose registration as an insurer was

Saving
of certain
contracts.
45/1964
S. 7.

cancelled, whether before or after the issue of the document, such person shall be bound by any offer or undertaking made or given by him in such document to the same extent that he would be if the document were a policy or security which complies with the requirements of this Act, and sections 12 to 16 and section 18 shall have effect in relation to him as if he were an insurer.

Regulations. 23.—(1) The Minister may make regulations for prescribing anything which may be prescribed under this Act and generally for the purpose of carrying this Act into effect, and in particular, but without prejudice to the generality of the foregoing power may make regulations—

- (a) as to the forms to be used for the purposes of this Act;
- (b) as to the applications for and the issue of certificates of insurance and certificates of security and any other documents which may be prescribed, and as to the keeping of records of documents, and the furnishing of particulars thereof, or the giving of information in respect thereto, to the Commissioner of Police;
- (c) as to the issue of copies of any such certificates or other documents which are lost or destroyed;
- (d) as to the custody, production, cancellation and surrender of any such certificates or other documents;
- (e) as to the evidence which may be produced in lieu of a certificate of insurance or a certificate of security;
- (f) for providing that any provisions of this Act shall, in relation to vehicles brought into the Island by persons making only a temporary stay therein, have effect, subject to such modifications and adaptations as may be prescribed.

(2) Notwithstanding the provisions of section 29 of the Interpretation Act, regulations made under this section may prescribe greater penalties than those specified in the said section 29, so, however, that the maximum penalty that may be imposed shall be imprisonment with hard labour for a term of six months and a fine of one thousand dollars.

45/1964
S. 8 (b).

(3) Regulations made under this section shall not have any force or effect until they have been published in the *Gazette*.

24. This Act shall not apply—

Exemptions.

(a) to trolley vehicles, the use of which is authorized or regulated by a special Act;

(b) to a motor vehicle kept by a person in the service of Her Majesty where the vehicle is used and employed exclusively in Her Majesty's Service, or to a motor vehicle kept by the Council of the Kingston and Saint Andrew Corporation or a Parish Council or the National Water Commission, where the vehicle is used and employed exclusively in the service of such Council, Board, or Commission;

(c) to a motor vehicle being driven for the purpose of testing or examining such vehicle by any person appointed an officer or servant of any Traffic Area Authority under the provisions of the Road Traffic Act.

37/1957
S. 2.

25.—(1) Subject to subsections (2) and (4), with effect from such date as may be prescribed by the Minister by order published in the *Gazette*, notwithstanding the provisions of section 5(4)(f), a policy of insurance under the Act shall be required to cover liability in respect of the death of, or bodily injury to persons being carried in or upon, or entering or getting onto or alighting from, the vehicle at the time of the occurrence out of which the claims arise.

Compulsory
insurance of
passengers.
4/1989
S. 14.

(2) As regards a person in possession of a motor vehicle pursuant to a hiring agreement, the policy of insurance referred to in subsection (1) shall not be required to cover, as regards the persons referred to in that subsection, liability for death or bodily injury claims in excess of—

- (a) five thousand dollars in respect of any one person; or
- (b) fifty thousand dollars arising out of all claims in connection with any one accident for each motor vehicle insured under the policy.

(3) Where a person uses a motor vehicle in circumstances so that pursuant to subsection (1) there is required to be in force in relation to his use of it such a policy of insurance or security as is mentioned in subsection (1) then, if any other person is carried in or upon the vehicle while the user is so using it, any antecedent agreement or understanding between them (whether intended to be legally binding or not) shall be of no effect so far as it purports or might be held—

- (a) to negative or restrict any such liability of the user in respect of persons carried in or upon the vehicle other than a person referred to in paragraph (a) of subsection (4) of section 5; or
 - (b) to impose any conditions with respect to the enforcement of any such liability of the user,
- and the fact that a person so carried willingly accepted as his the risk of negligence on the part of the user shall not be treated as negating any such liability of the user.

(4) For the purposes of this section references to a person being carried in or upon a vehicle include references to a person entering or getting onto, or alighting from, the vehicle, and the reference to an antecedent agreement is to one made at any time before the liability arose.

(5) Subsection (1) shall not apply as respects any vehicle insured at the date prescribed by the Minister under that subsection until and unless the policy or security is renewed after that date.