

# BECHUANALAND PROTECTORATE.

No. 18 of 1946.

(Promulgated 16th August, 1946.)

## PROCLAMATION

BY HIS EXCELLENCY THE HIGH COMMISSIONER  
Entitled the Bechuanaland Protectorate Motor  
Vehicle Insurance Proclamation, 1946.

Whereas it is expedient to provide for compensation for certain loss or damage caused unlawfully by means of motor vehicles in the Bechuanaland Protectorate and for matters incidental thereto.

Now therefore under and by virtue of the powers in me vested I do hereby declare, proclaim and make known as follows:—

1. (1) In this Proclamation, unless inconsistent with the context—

“ District Officer ” includes an Assistant District Officer;

“ insurance company ” means a person who or an association of persons which is entitled to carry on motor insurance business (as defined in the applicable law relating to insurance) in the Union of South Africa and has established *domicilium citandi et executandi* in the Territory;

“ insurance period ” means the period from the first January to the thirty-first December in any year;

“ motor dealer ” means a person who, as a business or trade, manufactures, assembles, repairs or deals in motor vehicles;

“ motor vehicle ” means any vehicle designed for propulsion on a road by means of any power (other than human or animal power) without the aid of rails, but does not include—

(a) a vehicle designed for propulsion by means of human power with the assistance of mechanical power;

(b) a vehicle weighing not more than five hundred pounds which is specially constructed for the use of persons who suffer from a physical defect or disability, and which is designed to carry only one person;

(c) a roller;

“owner” in relation to a motor vehicle means the person who is the owner of that motor vehicle in terms of the law relating to motor vehicles;

“registered company” means an insurance company which has been named by the High Commissioner by Notice in the *Gazette* under sub-section (1) of section *two* as an insurance company which is willing to undertake the insurance of motor vehicles under this Proclamation and which has not notified the High Commissioner in terms of sub-section (2) of section *two* that it will no longer undertake such insurance;

“regulation” means a regulation made under section *twenty-four*;

“specifically insured” in relation to a motor vehicle, means insured by means of a declaration of insurance issued in terms of section *three*, which relates to that particular motor vehicle;

“tariff” in relation to a registered company, means that company’s tariff of insurance premiums submitted to and published by the High Commissioner in the *Gazette* in terms of section *two*.

(2) For the purposes of this Proclamation a motor vehicle which is being propelled by any mechanical, animal or human power or by gravity or momentum shall be deemed to be driven by the person in control of the vehicle.

(3) For the purposes of this Proclamation a person who has placed or left a motor vehicle at any spot shall be deemed to be driving that motor vehicle while it moves from that spot as a result of gravity, or while it is stationary at that spot or at a spot to which it moved from the first-mentioned spot as a result of gravity.

Registra-  
tion of  
insurance  
companies.

2. (1) If during the month of November in any year an insurance company has notified the High Commissioner in writing that it is willing to undertake the insurance under this Proclamation of all classes of motor vehicles, and has submitted with that

notification a tariff of its premiums for such insurance, the High Commissioner shall, in the month of December in the said year, publish in the *Gazette* a Notice of the fact that the said company is willing to undertake such insurance as aforesaid, and in that Notice set forth the company's aforesaid tariff of premiums.

(2) An insurance company which has notified the High Commissioner in any year in terms of sub-section (1) may in the month of November in any subsequent year notify the High Commissioner in writing—

(a) that it will no longer undertake the insurance of motor vehicles under this Proclamation; or

(b) that it has altered its tariff of premiums for such insurance in a manner set forth in such notification,

and the High Commissioner shall thereupon in the month of December in the said year publish in the *Gazette* a Notice that the said company will no longer insure motor vehicles under this Proclamation, or the company's altered tariff, as the case may be.

3. (1) Subject to the provisions of section *six*, a registered company shall be obliged to insure under this Proclamation any particular motor vehicle whose owner applies in a form prescribed by regulation to the company for the insurance of that motor vehicle over the whole of the insurance period or over the remaining part of such insurance period reckoned as from a date specified in the application not being earlier than the date on which such application is actually made to the registered company, and who pays or tenders to the company the premium for such insurance in accordance with the company's tariff: Provided that a registered company shall not be obliged to effect such insurance if the application therefor is made earlier than a date thirty days before the commencement of the period over which the insurance is to extend.

Registered  
companies  
obliged to  
insure.

(2) Such insurance shall be effected by means of a written declaration of insurance which the registered company shall issue to the applicant.

(3) Such a declaration shall set forth—

(a) such particulars of the insured motor vehicle as may be necessary to identify it; and

(b) a statement that the registered company has insured the said vehicle; and

(c) the duration of the insurance, which shall extend from the date on which the insurance is to take effect to the end of the insurance period, but subject to the provisions of sub-section (4) of section *fifteen* and of section *seventeen*.

(4) If an applicant for the insurance of a motor vehicle under this Proclamation makes a false statement in respect of any material particular in his application, which he knows to be false, he shall be guilty of an offence and liable to a fine not exceeding fifty pounds.

(5) If a registered company fails to fulfil any obligation imposed upon it by this section, it shall be guilty of an offence and liable to a fine not exceeding fifty pounds.

Tokens  
of insurance

4. (1) When a registered company issues to the owner of a motor vehicle a declaration of insurance in terms of section *three*, it shall issue to him together with that declaration a token of insurance, in a form prescribed by regulation, whereon are inscribed the particulars for which provision is made on the prescribed form.

(2) The Resident Commissioner shall cause forms for such tokens to be printed and to be issued to any registered company at its request.

Insurance  
of motor  
vehicles  
belonging  
to motor  
dealers.

5. The provisions of section *three* shall *mutatis mutandis* apply in connection with an application made by a motor dealer for the insurance of all motor vehicles of which he is the owner in connection with his business as a motor dealer: Provided that the declaration of insurance issued by the registered company concerned to the applicant shall not refer to any particular motor vehicle but to all motor vehicles of which the said applicant is the owner in connection with his business as motor dealer, and upon the issue of such a declaration of insurance the registered company shall be deemed to have insured under this Proclamation every motor vehicle of which the motor dealer concerned is the owner and which is not insured by means of a declaration of insurance relating specifically to that motor vehicle.

6. (1) When the owner of a motor vehicle has applied to a registered company for the insurance of that motor vehicle under this Proclamation, or when a motor dealer has applied to a registered company for the insurance under this Proclamation of all motor vehicles of which the dealer is the owner in connection with his business as a motor dealer, and in either case the company has reasonable grounds to believe that the applicant, while driving any motor vehicle, or any person, while driving any motor vehicle belonging to the applicant, has unduly endangered the safety of the public, or that the applicant or any member of his household or any person in his employ is likely to endanger unduly the safety of the public if he drives a motor vehicle, the registered company concerned may refuse to insure the motor vehicle in question, or the motor vehicles which the applicant owns in connection with his business as a motor dealer, as the case may be, unless the applicant gives the company an undertaking in writing, that he will not, during the period for which the insurance is to be effected, drive any motor vehicle to which the desired insurance is to relate (if the applicant himself is alleged to have endangered or to be likely to endanger the safety of the public, as aforesaid), or permit any other named person who is alleged to have endangered the safety of the public or to be likely to endanger the safety of the public as aforesaid, to drive any motor vehicle to which the desired insurance is to relate.

Circumstances justifying refusal to insure under this Proclamation.

(2) If such an applicant as is mentioned in sub-section (1) who has given such an undertaking as aforesaid, drives a motor vehicle or permits any person to drive a motor vehicle in breach of his undertaking, he shall be guilty of an offence and liable to a fine not exceeding fifty pounds.

(3) When the owner of a particular motor vehicle has applied to a registered company for the insurance under this Proclamation of that motor vehicle, the company may refuse to insure that vehicle if the company has reasonable grounds to believe that the motor vehicle is not roadworthy, or, if the company doubts its roadworthiness, the company may demand that the applicant submit the motor vehicle for examination and test to a person indicated by the company at any place upon which the parties may agree, or failing such agreement, any place indicated by the

company in the town or village in which the applicant resides, or if he resides outside a town or village, at any place indicated by the company in the principal town of the district in which the applicant resides.

(4) If the applicant has failed to comply with the company's demand, the company may refuse to insure the motor vehicle in question (irrespective of whether it is or is not roadworthy) until the applicant has complied with that demand.

Applica-  
tion for  
order to  
compel a  
registered  
company to  
insure  
under this  
Proclama-  
tion.

7. (1) When a registered company has refused an application for insurance under this Proclamation [otherwise than under sub-section (4) of section *six*] the applicant may apply in writing to the District Officer of the district in which the applicant resides (if he applied for the insurance of a particular motor vehicle) or in which the applicant carries on business as a motor dealer (if he applied for the insurance of all motor vehicles which he owns in connection with that business) for an order to compel the company concerned to effect the insurance in question.

(2) The application shall be supported by an affidavit or affidavits in which the facts upon which the application is based, are set forth.

(3) If the District Officer is of the opinion that the application is *prima facie* well founded, he shall forthwith cause to be delivered or to be sent by registered post to the registered company concerned (which is hereinafter in this section called the respondent) a copy of the application and of every affidavit submitted in support thereof, and a notice calling upon the respondent to show cause, at a time stated in the notice, which shall be not earlier than seven days after the date upon which the respondent received the notice, and at a place mentioned in the notice, why he shall not be ordered to effect the insurance in question. The District Officer shall, immediately after the delivery or despatch of the notice to the respondent, cause a copy of the notice to be delivered or to be sent by registered post to the applicant or to a person whom he has indicated as his representative.

(4) At the time and place mentioned in the notice the District Officer shall enquire into the allegations of the applicant, and at the enquiry (at which either party to the

proceedings shall be entitled to representation by his attorney or counsel) the District Officer shall hear such relevant evidence and arguments as either party may submit and he shall record all such evidence and he may from time to time adjourn the enquiry.

(5) The law relating to the summoning, swearing, examination and cross-examination of witnesses shall *mutatis mutandis* apply in connection with any person whose testimony either party to the aforesaid enquiry desires to submit to the District Officer, and the law relating to contempt of a Subordinate Court shall apply, as if the enquiry were a civil trial in a Subordinate Court, and for the purposes of the law relating to perjury such an enquiry shall be deemed to be proceedings in a court of law.

(6) If at the conclusion of the enquiry the District Officer is not satisfied that the respondent was justified under section *six* in refusing the applicant's application for insurance, he shall order the respondent within a period defined in the order, to effect the insurance in question on payment, by the applicant, of the premium payable for such insurance, and if the respondent fails to comply with that order he shall be guilty of an offence and liable to a fine not exceeding fifty pounds.

(7) If at the conclusion of the enquiry the District Officer is satisfied that the respondent was justified under section *six* in refusing the applicant's application for insurance, he shall refuse the application.

(8) The District Officer may order either party to the proceedings to pay any costs incurred by the other party in connection with the enquiry and those costs shall be taxable as if they were costs incurred in connection with civil proceedings in a Subordinate Court.

8. (1) When a registered company has issued to any person a declaration of insurance in terms of section *three* or *five* the said company may apply to the District Officer of the district in which the motor vehicle, to which the said declaration applies, is registered under any law relating to the registration of motor vehicles, or if the declaration was issued to a motor dealer, to the District Officer of the district in which the motor dealer carries on business, for

Applica-  
tion for  
cancellation  
of driver's  
licence.

the cancellation of the licence to drive a motor vehicle which was issued under any law relating to the licensing of drivers of motor vehicles, to the owner of the aforesaid motor vehicle, or to the said motor dealer, as the case may be, or to any other person who has from time to time driven the said motor vehicle while it belonged to the said owner, or to any person who has from time to time driven any motor vehicle belonging to the said motor dealer, as the case may be, on the ground that the person for the cancellation of whose licence application is made (who is in this section called the respondent), has unduly endangered the safety of the public while driving a motor vehicle or is likely to endanger unduly the safety of the public if he drives a motor vehicle.

(2) If the applicant submits with his application two copies thereof and an affidavit or affidavits (with two copies of each such affidavit) which, in the opinion of the District Officer, establish *prima facie* the allegations upon which the application is based, the District Officer shall summon the respondent by notice in writing to appear before him (with his licence to drive a motor vehicle if he holds such a licence) at a time (which shall not be earlier than seven days after the date upon which the respondent received the notice) and a place stated in the notice to show cause why his licence to drive a motor vehicle shall not be cancelled.

(3) The District Officer shall attach to the notice a copy of the application and of each affidavit and shall cause the notice to be delivered to the respondent at the applicant's expense, by the messenger of the Subordinate Court. The District Officer shall also as soon as may be cause a copy of the notice and of each affidavit to be delivered, by the said messenger at the applicant's expense, to the person to whom the applicant issued the declaration of insurance mentioned in sub-section (1), and he shall, further, as soon as may be cause a copy of the notice to be delivered or sent by registered post to the applicant or to a person indicated by the applicant as his representative.

(4) At the time and place mentioned in the notice the District Officer shall enquire into the applicant's allegations and the provisions of sub-sections (4) and (5) of

section *seven* shall apply in connection with an enquiry held by a District Officer under this section.

(5) If at the conclusion of the enquiry the District Officer is satisfied that the respondent has, while driving a motor vehicle, unduly endangered the safety of the public or that he is likely to endanger unduly the safety of the public if he drives a motor vehicle and that it is necessary in the interests of the public that the respondent be debarred from driving a motor vehicle, he shall make an order declaring the respondent unfit to drive a motor vehicle and declaring null and void every licence to drive a motor vehicle which was issued to the respondent and he shall impound every such licence which the respondent produced at the enquiry, and if he holds any such licence which he has not so produced, the District Officer shall direct the respondent to produce that licence to him and the District Officer shall thereupon impound it.

(6) When a District Officer has declared a licence to be null and void he shall notify the authority which issued the licence of that fact.

(7) If no licence to drive a motor vehicle was issued to the respondent, the District Officer may nevertheless deal with the respondent *mutatis mutandis* in accordance with the preceding provisions of this section and make an order declaring the respondent to be unfit to drive a motor vehicle.

(8) When a respondent has been declared, in terms of this section, to be unfit to drive a motor vehicle, any licence which he held and which has become null and void in terms of sub-section (5) shall, for the purposes of any provisions of the law relating to the licensing of owners or drivers of motor vehicles, be deemed to have been cancelled under that law, and while the order declaring him unfit is in force, he shall be deemed to be disqualified under that law from obtaining or holding any licence to drive a motor vehicle: Provided that a licence which has been declared null and void under this section shall not be reinstated or revived under any such law and the said disqualification from obtaining or holding a licence of a person who has been declared unfit as aforesaid shall not be removed or set aside under any such law.

(9) If a respondent fails to comply with a direction given to him by the District Officer under sub-section (5) he shall be guilty of contempt of court.

Appeals  
against  
District  
Officer's  
decision.

9. (1) When a District Officer has made an order under section *seven* or under section *eight*, the respondent mentioned in the section in question, or when a District Officer has refused an application under either of the said sections, the applicant mentioned in the section in question, may appeal against the order or refusal, as the case may be, to the High Court, *mutatis mutandis* in the same manner as if the enquiry in question had been a civil suit between the parties concerned in the Subordinate Court of the district in which the enquiry in question was held, and the High Court shall have jurisdiction to hear the appeal and in doing so it shall have the powers which it has in hearing an appeal against a decision of the Subordinate Court in a civil suit.

(2) An appeal under sub-section (1) shall not suspend any order of a District Officer against which the appeal is brought, and if the High Court has set aside an order under sub-section (6) of section *seven*, a declaration of insurance mentioned in section *three*, which was issued by the appellant in terms of that order, shall remain in force for a period of three days as from the end of the day on which the said order was set aside, (unless it expired by effluxion of time within the said period) and at the end of the said period the said declaration of insurance shall lapse, unless it has been confirmed during the said period by the former appellant.

(3) The former respondent in the said appeal shall, within the said period of three days, return to the former appellant the said declaration of insurance and the token of insurance mentioned in section *four* which was issued to him as a result of the said order (unless the former appellant has confirmed the declaration of insurance, as aforesaid) and if he fails to comply with the requirement of this sub-section he shall be guilty of an offence and liable to a fine not exceeding twenty-five pounds.

Applica-  
tion for  
revival of  
right to  
hold a  
driver's  
licence.

10. (1) A person against whom a District Officer has made an order under section *eight* may, after the effluxion of a period of two years as from the date on which the order was made, apply in writing to the District

Officer of the district in which the order was made, for the cancellation of that order on the ground that the applicant will no longer endanger the safety of the public if he is permitted to drive a motor vehicle.

(2) If the applicant submits with his application three copies thereof and an affidavit or affidavits (with three copies of each such affidavit) which in the opinion of the District Officer established *prima facie* the contentions upon which the application is based, the District Officer shall enquire into those contentions and appoint a time and place for the holding of the enquiry.

(3) Not less than fourteen days before the date fixed for the holding of the enquiry, the District Officer shall cause a copy of the application and of each supporting affidavit to be delivered or to be sent by registered post to—

(a) the officer in control of the police in the district in question; and

(b) the authority (if any) in that district whose duty it is (apart from the police) to control motor vehicle traffic or to enforce the law relating to motor vehicles at the place where the enquiry is to be held; and

(c) the insurance company upon whose application the order in question was made (if that company is still a registered company),

and notify them and the applicant of the time and place of the holding of the enquiry.

(4) The provisions of sub-sections (4) and (5) of section *seven* shall *mutatis mutandis* apply in connection with an enquiry under this section, and for the purposes of applying those provisions the officer and the authority and the insurance company mentioned in sub-section (3) of this section shall be deemed to be a party to the enquiry.

(5) Apart from any evidence or arguments submitted at the enquiry by any of the aforementioned parties, the District Officer may himself summon and examine as a witness any person who may be able to give any evidence which is relevant to the enquiry, and the District Officer may subject the applicant to any examination or test which he may deem desirable for the purpose of determining whether the application should be granted or refused.

(6) If as a result of the enquiry the District Officer is satisfied that the conditions which gave rise to the aforesaid order no longer exist and that the safety of the public will not be endangered unduly if the applicant is permitted to drive a motor vehicle, the District Officer may cancel the aforesaid order forthwith or suspend it during a period not exceeding two years and authorise the applicant to renew his application after the effluxion of a period specified by the District Officer, which shall not extend beyond the period of suspension of the order. If the applicant does not renew his application before the expiration of the period of suspension his application shall be deemed to have been refused.

(7) During the period of suspension of the said order in terms of sub-section (6) the applicant may apply for and obtain a licence to drive a motor vehicle, but that licence shall become null and void if the suspended order is not cancelled as a result of the renewed application mentioned in sub-section (6).

(8) When a District Officer has refused an application under this section, the applicant shall not within a period of three years as from the date of the refusal again apply under this section for the cancellation of the aforesaid order but subject to the provisions of sub-section (10).

(9) If a licence to drive a motor vehicle, which was issued to an applicant mentioned in this section, was suspended or cancelled under any other law, or if the applicant has under any other law become disqualified from obtaining or holding such a licence, any action taken under this section with reference to the applicant shall not affect that suspension, cancellation or disqualification or negative or modify its effect.

(10) When a District Officer has refused an application under this section, the applicant, or when the District Officer has granted such an application, any other party to the enquiry, may appeal against the refusal or grant, as the case may be, to the High Court *mutatis mutandis* in the same manner as if the enquiry had been a civil suit between the parties concerned in the Subordinate Court of the district in which the enquiry was held, and the High Court shall have jurisdiction to hear the appeal and in doing so it shall have the powers which it has in hearing an appeal from a decision of the Subordinate Court in a civil suit.

11. (1) A registered company which has insured or is deemed to have insured a motor vehicle in terms of section *three* or *five* shall be obliged to compensate any person whatsoever (in this section called the third party) for any loss or damage which the third party has suffered as a result of—

Liability arising from insurance under this Proclamation.

(a) any bodily injury to himself;

(b) the death of or any bodily injury to any person,

in either case caused by or arising out of the driving of the insured motor vehicle by any person whatsoever at any place in the Territory during the period over which the insurance extends, if the injury or death is due to the negligence or other unlawful act of the person who drove the motor vehicle (hereinafter in this section called the driver) or of the owner of the motor vehicle: Provided that—

(i) the registered company shall not be obliged to make good under this section any loss or damage for which neither the driver of the motor vehicle nor the owner thereof would have been liable if section *thirteen* had not been enacted;

(ii) the registered company shall not be obliged to compensate as aforesaid an employee of the driver or of the owner of the motor vehicle or a dependant of such an employee for any loss or damage for which the employee or dependant is entitled to compensation under the law relating to compensation of workmen for loss or damage in respect of occurrences which arose out of and in the course of their employment;

(iii) the registered company shall not be obliged to compensate as aforesaid any person who has suffered any loss or damage as a result of bodily injury to, or the death of any person who, at the time of the occurrence which caused that injury or death was being conveyed otherwise than for reward and otherwise than in the course of the business of the driver or owner of the motor vehicle in question and otherwise than in the course of his employment as servant of the driver or owner, in or upon that motor vehicle, or was in the act of entering or mounting that vehicle for the purpose of being so conveyed or was in the act of alighting from that vehicle after having been so conveyed;

(iv) the liability of the registered company in connection with any one occurrence to pay compensation to a third party for any loss or damage which is the result of any bodily injury to, or the death of any person who, at the time of the occurrence which caused that injury or death, was being conveyed for reward or in the course of the business of the driver or owner of the motor vehicle in question, in or upon that motor vehicle, or was in the act of entering or mounting that vehicle for the purpose of being so conveyed, or was in the act of alighting from that vehicle after having been so conveyed, shall be limited to the sum of two thousand pounds in respect of any bodily injury to, or the death of, any one such person or to a sum of ten thousand pounds in all in respect of any bodily injury to, or the death of, any number of such persons (but in either case exclusive of the cost of recovering the said compensation).

(2) The right to claim compensation under sub-section (1) from a registered company shall become prescribed upon the expiration of a period of two years as from the date upon which that claim arose.

Direct  
payment of  
certain  
incidental  
expenses.

12. If the cost of the accommodation of any person in a hospital or nursing home, or of any treatment of or service rendered or goods supplied to any person, is included in any compensation for which a registered company is liable under section *eleven*, the company shall pay that cost direct to the person who is entitled to payment therefor, unless it has already been paid.

Claim for  
compensa-  
tion lies  
against  
insurance  
company  
only.

13. When a person is entitled under section *eleven* to claim from a registered company any compensation in respect of any loss or damage resulting from any bodily injury to or the death of any person caused by or arising out of the driving of a motor vehicle insured under this Proclamation by the owner thereof or by any other person with the consent of the owner, the first-mentioned person shall not be entitled to claim compensation in respect of that loss or damage from the owner or from the person who drove the vehicle as aforesaid, unless the registered company concerned is unable to pay the compensation.

Right of  
recourse by  
insurer.

14. When a registered company has paid any compensation under section *eleven* or *twelve*, it may, without having obtained a

formal cession of the right of action, recover from any person (including the owner of the insured motor vehicle in question) whose negligence or other unlawful act caused the loss or damage in question, so much of the amount paid by way of compensation as the third party mentioned in section *eleven* could, but for the provisions of section *thirteen*, have recovered from the person whose negligence or other unlawful act caused the loss or damage, if the registered company had not paid any such compensation: Provided that the registered company shall not have any such right of recourse against the said owner or against any person who, at the time of the occurrence which gave rise to the payment of the said compensation, was driving the insured motor vehicle with the consent of its owner unless—

(a) the owner or his representative made a false statement in respect of any material particular in his application which he knows to be false for the declaration of insurance under which the compensation was paid; or

(b) the person driving the said motor vehicle at the time of the said occurrence was under the influence of intoxicating liquor or of a drug to such a degree that his condition was the sole cause thereof, or was driving the said motor vehicle contrary to an undertaking given under sub-section (1) of section *six*, or without holding a licence mentioned in sub-section (1) of section *eight*, or was using the said motor vehicle for a purpose or in a manner other than the purpose or manner of use for which it was intended according to the application mentioned in paragraph (a) and in the latter case the owner of the said motor vehicle would have been obliged to pay a higher premium for the insurance of the said motor vehicle had he stated in the said application that he intended using the said motor vehicle for the purpose for which or in the manner in which it was used as aforesaid; or

(c) the owner or driver of the said motor vehicle has failed to comply with any requirement of sub-section (1) of section *twenty-two* with reference to the said occurrence, or has furnished the said registered company with false information relating to that occurrence, which he knew to be false.

Use of insured motor vehicles in manner not contemplated when insurance was effected.

15. (1) Before the owner of a specifically insured motor vehicle, during the period covered by the insurance, uses that vehicle or permits it to be used in such a manner or for such a purpose or in such circumstances or after it was altered in such a manner that, as a result of such use or alteration, it would fall into a class of motor vehicles for which a higher insurance premium than the premium which the owner paid for the insurance is provided in the tariff of the registered company concerned, the said owner shall give notice in writing to the registered company concerned of the proposed change of use or alteration: Provided that a motor vehicle which, on the date on which the insurance was effected, was within a particular class of motor vehicles shall not be deemed to fall into any other class merely by reason of its registration (under the law relating to the registration of motor vehicles) at a place other than the place where it was registered on that date, or by reason of the fact that the owner of that vehicle has since that date taken up his residence or commenced to carry on business elsewhere than at the place where he resided or carried on business on that date.

(2) Before a motor dealer, whose motor vehicles which he owns in connection with his business as a motor dealer are insured under this Proclamation, during the period covered by the insurance, increases the number of those vehicles or increases the volume or alters the nature of his business in such a manner that, if he had insured those vehicles after the said increase or alteration, he would have had to pay a higher insurance premium under the tariff of the registered company concerned, than the premium which he paid, he shall give notice in writing to that company of the proposed increase or alteration.

(3) When the owner of a motor vehicle has notified a registered company in terms of subsection (1) with reference to a motor vehicle which will, after the proposed change of use or alteration, fall into a different class of motor vehicles, or when a motor dealer has notified a registered company in terms of subsection (2), he shall subject to the provisions of section *eighteen* be liable to pay to the company the difference between the premium actually paid and the aforesaid higher premium in respect of the remainder of the insurance period reckoned as from the date upon which the occurrence, of which notice was given, takes place.

(4) If any person whose duty it is to comply with any provision of sub-section (1) or (2) fails to comply therewith, he shall be guilty of an offence and liable to a fine not exceeding fifty pounds or to imprisonment without the option of a fine for a period not exceeding three months, and he shall be liable to pay to the registered company concerned an amount equal to three times the difference between the insurance premium which he actually paid and any higher premium for the payment whereof he would have been liable if he had complied with the said provision.

(5) If a motor dealer whose motor vehicles, which he owns in connection with his business as a motor dealer, are insured under this Proclamation and who owns a motor vehicle which is not specifically insured, uses that motor vehicle otherwise than in connection with his business as a motor dealer, he shall be guilty of an offence and liable to a fine not exceeding fifty pounds, and he shall be liable to pay to the registered company with whom his motor vehicles are insured as aforesaid, a sum equal to three times the amount which is payable under the company's tariff for a full year's insurance under this Proclamation in respect of the class of motor vehicle in question.

(6) When a specifically insured motor vehicle has, during the period covered by the insurance, been altered in such a manner or is, during that period, to be used in such a manner or for such a purpose or in such circumstances that, as a result of that alteration or use, it has fallen or will fall into a class of motor vehicles in respect whereof a lower insurance premium is provided in the tariff of the registered company concerned, than the premium which was paid for the insurance of that vehicle, the company shall (subject to the provisions of section *eighteen*) refund to the owner of that vehicle at his request, an amount equal to the difference between the premium actually paid and the aforesaid lower premium, in respect of the remainder of the insurance period for the said motor vehicle reckoned as from the date upon which that vehicle has fallen or will fall into the said lower-rated class of motor vehicles: Provided that (subject to the provisions of section *eighteen*) the company shall not be obliged to make such a refund merely by reason of the fact that the motor vehicle

in question has been registered (under the law relating to the registration of motor vehicles) at a place other than the place where it was registered on the date on which the insurance premium was paid as aforesaid or merely by reason of the fact that the owner of that vehicle has since that date taken up his residence or commenced to carry on business elsewhere than at the place where he resided or carried on business on that date.

Un-  
authorised  
insurer is  
bound by  
his under-  
taking.

16. When any person who is not a registered company has issued to the owner of a motor vehicle a declaration of insurance relating to that vehicle in terms of section *three* or *five*, that person shall be deemed, for the purposes of sections *eleven*, *twelve* and *fourteen*, to be a registered company and to have insured that motor vehicle under this proclamation.

Termina-  
tion of  
insurance.

17. (1) The insurance of a motor vehicle which is insured under this Proclamation shall terminate—

(a) on the expiration of the insurance period;

(b) in the circumstances mentioned in sub-section (4) of section *fifteen*;

(c) when the insured motor vehicle ceases permanently to be capable of being driven;

(d) when the owner transfers his ownership in the motor vehicle to another person.

(2) When the owner of a specifically insured motor vehicle transfers his ownership therein to another person, he shall, before delivering the vehicle, remove therefrom the token of insurance which was attached thereto in accordance with the provisions of section *twenty* and return that token to the registered company from whom he obtained it and inform the company of the name and address of the transferee.

(3) When the insurance of a specifically insured motor vehicle terminates otherwise than in terms of paragraph (a) of sub-section (1) the registered company concerned shall, subject to the provisions of section *eighteen*, refund to the owner of the motor vehicle an amount which bears the same ratio to the amount of the insurance premium paid, as the period reckoned from the date of the termination of the insurance to the termination of the insurance period in question bears to the whole insurance period.

18. The owner of a motor vehicle and a registered company may by agreement validly supersede or vary the provisions of sub-sections (3) and (6) of section *fifteen* and of sub-section (3) of section *seventeen* in so far as those provisions apply or may become applicable in connection with any transaction between the parties concerned.

Agreements  
as to sup-  
plementary  
payments  
of  
premiums  
or refunds.

19 (1) Subject to the provisions of sub-section (2) no person shall, after a date to be fixed by the High Commissioner by Notice in the *Gazette*, drive or permit any other person to drive a motor vehicle on a public road or street or in any other place to which the public has access, unless that motor vehicle is insured as provided in section *three* or *five*.

Prohibition  
against  
driving  
uninsured  
motor  
vehicle.

(2) The provisions of sub-section (1) shall not apply in connection with a motor vehicle—

(a) of which any state or government or the representative of any government in the British Commonwealth is the owner; or

(b) which is registered at a place outside the Territory in terms of a law in force at that place, if the person who drives or permits another person to drive the said vehicle has made such provision as may have been prescribed by regulation, to ensure that compensation will be paid for any such loss or damage as is mentioned in sub-section (1) of section *eleven*, which may have been caused by, or which may have arisen out of, the driving of the said motor vehicle in the Territory by the owner thereof or by his servant or agent; or

(c) whose owner is the holder of a valid certificate of exemption mentioned in sub-section (1) of section *twenty-one* in respect of the said motor vehicle.

(3) Any person who or any state, government or body of persons which owns a motor vehicle [other than a motor vehicle mentioned in paragraph (b) of sub-section (2) to which the provisions of sub-section (1) do not apply] which is not insured under this Proclamation shall be liable *mutatis mutandis* in accordance with the provisions of sections *eleven* and *twelve* for any loss or damage caused by or arising out of the driving of that motor vehicle by any person whatsoever at any place in the Territory, as if that person, state, government or body of persons were a registered company which has issued a

declaration of insurance under section *three* with reference to that motor vehicle, but the foregoing provision of this sub-section shall not detract from any right to recover compensation from any person for any such loss or damage which any person may have under any other law.

(4) Any person who contravenes sub-section (1) shall be guilty of an offence and shall, subject to the provisions of sub-section (5), be liable to a fine not exceeding fifty pounds, and if he was, within a period of three years immediately preceding the date on which the offence was committed, convicted of contravening sub-section (1) or the provision of any law in force before the commencement of this Proclamation, which prescribed the effecting of insurance against claims for compensation in respect of any loss or damage caused by means of a motor vehicle, the court convicting him may suspend, for a period not exceeding two years, his licence to drive a motor vehicle, or if he does not hold such a licence, declare him to be disqualified for a period not exceeding two years from acquiring such a licence.

(5) If a person who has twice been convicted of an offence mentioned in sub-section (4) or who has been convicted of both offences mentioned in sub-section (4) is again convicted of contravening sub-section (1) he shall be liable to a fine of not less than twenty-five pounds and not exceeding one hundred pounds or to imprisonment for a period not exceeding six months without the option of a fine, and, if he holds a licence to drive a motor vehicle, it shall become void, and whether he does or does not hold such a licence, he shall be disqualified for a period of four years from acquiring such a licence.

(6) If a court has under sub-section (4) suspended a licence to drive a motor vehicle or has convicted a person whose licence to drive a motor vehicle has lapsed under sub-section (5) as a result of that conviction, the court shall direct the person concerned to produce that licence and shall cause the suspension to be endorsed thereon or shall cause the licence to be impounded, as the case may be, and if the said person without reasonable excuse fails to comply with that

direction, he shall be guilty of contempt of court: Provided that if a licence which has lapsed as aforesaid, was issued at a place outside the Territory, the court shall not cause it to be impounded but shall cause to be endorsed thereon that it has become invalid in the Territory.

(7) When a court has taken any action under sub-section (6) with reference to a licence issued in the Territory, the court shall cause notice of the suspension or lapsing of the licence to be given to the authority which issued the licence.

(8) If a licence to drive a motor vehicle has been suspended or has lapsed under this section, it shall, for the purposes of any provision of a law relating to the licensing of owners or drivers of motor vehicles, be deemed to have been suspended or cancelled, as the case may be, under the said law, and a disqualification under sub-section (5) from acquiring a licence to drive a motor vehicle shall, for the purposes of that law, be deemed to be a disqualification under that law from obtaining or holding any such licence.

20. (1) The owner of a motor vehicle to whom a token of insurance relating to that vehicle has been issued in terms of section *four*, shall attach the token to the vehicle in a manner prescribed by regulation and shall keep it attached thereto throughout the duration of the insurance in connection wherewith the token was issued. If such an owner fails to comply with any requirement of the preceding provisions of this sub-section, he shall be guilty of an offence and liable to a fine not exceeding ten pounds.

Means of  
identifying  
insured  
vehicles.

(2) If it is proved that at a particular time a motor vehicle did not bear, in the manner prescribed by regulation, such a token of insurance as aforesaid which relates to that motor vehicle, that motor vehicle shall for the purposes of sub-section (1) of section *nineteen* be deemed not to have been insured under this Proclamation at that time, unless it is proved that the vehicle was in fact so insured at that time.

(3) An authority authorised under any law relating to the licensing of motor vehicles to issue licences to motor dealers in respect of motor vehicles which they own in connection with their businesses as motor dealers shall not issue to a motor dealer such a licence in respect of any period, unless the motor dealer

produces a declaration of insurance issued to him under sections *three* and *five*, showing that the motor vehicles which he owns as aforesaid are insured under this Proclamation throughout the said period.

Security in  
lieu of  
insurance.

21. (1) For the purpose of being exempted from the provisions of sub-section (1) of section *nineteen*, any person may deposit with the Resident Commissioner—

(a) a sum of ten thousand pounds if he is to be exempted in respect of a motor vehicle designed for the conveyance of more than eight persons, including the driver, which is used for the conveyance of persons for reward or in respect of two or more such vehicles; or

(b) a sum of three thousand pounds if he is to be exempted in respect of any other motor vehicle or two or more other motor vehicles;

or any security approved of by the Resident Commissioner which is in the opinion of the Resident Commissioner of a value of not less than ten thousand pounds or three thousand pounds, as the case may be, or any sum of money and such security which together are in the opinion of the Resident Commissioner of a value of not less than ten thousand pounds or three thousand pounds, as the case may be, and thereupon the Resident Commissioner shall, upon payment by the said person of the sum of one pound, issue to him a certificate of exemption from the said provisions in respect of the class of vehicles in question. A person who has made such a deposit of a value of ten thousand pounds shall be exempt in respect of all motor vehicles of which he is the owner.

(2) At the request of the holder of a valid certificate of exemption mentioned in sub-section (1) (who is hereinafter referred to as a depositor) the Resident Commissioner shall furnish him with a token of exemption from sub-section (1) of section *nineteen* for every motor vehicle which the depositor owns or proposes to acquire, on payment by the depositor of a fee of two shillings and sixpence for each such token.

(3) The said token shall be in a form prescribed by regulation and the person issuing it on behalf of the Resident Commissioner shall inscribe thereon the particulars for which provision is made thereon.

(4) A depositor shall affix, in a manner prescribed by regulation, to every motor vehicle of which he is the owner and which is in use, a token mentioned in sub-section (2) and shall keep it affixed thereto, and before alienating or abandoning a motor vehicle bearing such a token, he shall remove the token and as soon as may be thereafter return it to the officer from whom he received it.

(5) A depositor who fails to comply with any requirement of sub-section (4) shall be guilty of an offence and liable to a fine not exceeding ten pounds.

(6) If in the opinion of the Resident Commissioner the value of a deposit made in terms of sub-section (1) has fallen below ten thousand pounds or three thousand pounds, as the case may be, the Resident Commissioner shall direct the depositor concerned, by a letter delivered to him or by a registered letter sent through the post, to deposit a sum of money or further security to make up the deficiency, and if the depositor fails to comply with that direction within a period of ten days as from the date upon which the said letter was delivered or posted to him, his certificate of exemption mentioned in sub-section (1) and every token of exemption mentioned in sub-section (2) which was issued to him shall become void.

(7) If in the opinion of the Resident Commissioner the value of any such deposit exceeds ten thousand pounds or three thousand pounds, as the case may be, the Resident Commissioner shall, at the request of the depositor concerned, return to him so much of the deposit as exceeds the said sum.

(8) A depositor may substitute for any security which he has deposited in terms of sub-section (1) or for any part thereof, any other security approved of by the Resident Commissioner: Provided that the total value of the deposit after the substitution is, in the opinion of the Resident Commissioner, not less than ten thousand pounds or three thousand pounds, as the case may be.

(9) At the request of a depositor and upon the return by him of the certificate of exemption mentioned in sub-section (1) and of every token of exemption furnished to him in terms of sub-section (2), which he has in his possession, the Resident Commissioner shall return his deposit to him, unless the Resident Commissioner has reason to believe that any person has preferred against the depositor a

bona fide claim for compensation for any loss or damage which the claimant may have suffered as a result of any bodily injury to himself or the death of or bodily injury to any other person, which was caused by or arose out of the driving of a motor vehicle of which the depositor was the owner and that the said claim has not been satisfied, or unless the Resident Commissioner has reason to believe that any person intends to prefer such a claim against the depositor. Upon the return of the deposit to the depositor, his exemption from the provisions of sub-section (1) of section *nineteen* shall cease and every token of exemption mentioned in sub-section (2) of this section which was issued to him shall become void.

(10) Subject to the provisions of sub-section (9) the Resident Commissioner shall hold a deposit made in terms of sub-section (1) as security for the payment of compensation mentioned in sub-section (3) of section *nineteen* for which the depositor concerned may become liable and for any costs incurred in recovering such compensation, and no claim against the depositor other than a claim for such compensation and such costs shall be paid out of the said deposit, except in so far as its value exceeds ten thousand pounds or three thousand pounds, as the case may be.

(11) The manner in which such a deposit shall be made available for the payment of the compensation and costs mentioned in sub-section (10) and the method of apportioning the deposit between different persons entitled to such compensation and costs shall be prescribed by regulation.

(12) If a claim or part of a claim has been paid out of such a deposit in a manner prescribed by regulation and the value of the deposit is after such payment less than ten thousand pounds or less than three thousand pounds, as the case may be, the certificate of exemption mentioned in sub-section (1) and every token of exemption mentioned in sub-section (2) which was issued to the depositor concerned shall become void.

(13) When a certificate of exemption has become void, in terms of sub-section (6) or sub-section (12), the Resident Commissioner shall direct the depositor concerned to return to him the said certificate and every token of exemption which is in his possession. If the depositor fails to comply with that direction he shall be guilty of an offence and liable to a fine not exceeding twenty-five pounds.

(14) The Resident Commissioner shall invest any sum of money deposited in terms of sub-section (1) or sub-section (6) in such manner as may be prescribed by regulation, and shall pay over to the depositor concerned the interest derived from such investment and any interest earned by any security other than money which he may have so deposited.

22. (1) When, as the result of the driving of a motor vehicle insured under this Proclamation, any person other than the driver of that motor vehicle was killed or injured, the owner and the driver (if he is not the owner) of the motor vehicle shall as soon as may be after the occurrence inform the registered company which insured the vehicle of the occurrence and of the place and time of the occurrence and shall furnish it with the name and address (if known) of any person who was killed or injured and of every person who was upon the vehicle in question at the time of the occurrence, with a description of any other vehicle involved in the occurrence with the name and address (if known) of the driver of every such other vehicle and of any other person who witnessed the occurrence and with any other reasonable information at his disposal in regard to the occurrence which the registered company may from time to time request him to furnish.

Giving information of accident to insurer and third party.

(2) When, as a result of the driving of a motor vehicle insured under this Proclamation, any person other than the driver of that motor vehicle was killed or injured, the owner of the motor vehicle shall, at the request of any person or of the agent of any person, who has suffered any loss or damage as a result of the death of the person so killed, or at the request of the person so injured (or at the request of his agent) produce to the person making the request the declaration of insurance whereby the motor vehicle was insured at the time of the occurrence in question, and a copy of any information which the said owner furnished to the registered company concerned in terms of sub-section (1) (other than such information which the owner was not obliged to furnish except at the request of the registered company concerned) and permit the person who made the request to make a copy of the declaration of insurance and of any such information or take an extract therefrom.

(3) If the owner or driver of an insured motor vehicle which was involved in an occurrence mentioned in sub-section (1) or

sub-section (2) fails to comply, within a reasonable time after having become aware of the occurrence, with any requirement of sub-section (1), or fails to comply with any requirement of sub-section (2), he shall be guilty of an offence and liable to a fine not exceeding twenty-five pounds unless he is unable to comply with such requirement and his inability is not due to his own action or default.

Certain provisions of motor vehicle laws to apply in connection with insurance.

23. The provisions of any law in force in the Territory which deal with the production to a proper authority or the falsification, fabrication, alteration, defacement or improper use of licences, certificates, tokens or marks relating to motor vehicles, shall *mutatis mutandis* apply in connection with the production, falsification, fabrication, alteration, defacement or improper use of a declaration of insurance, token of insurance or token of exemption issued under this Proclamation, and apart from any such provision, any person who attaches to a motor vehicle or who drives a motor vehicle to which is attached any such token as aforesaid which does not relate to that motor vehicle, or a false or fabricated or altered token, shall be guilty of an offence and liable *mutatis mutandis* to the penalties prescribed in sub-sections (4) and (5) of section *nineteen*.

Regulations.

24. The High Commissioner may make regulations not inconsistent with this Proclamation dealing with any matter which may, in terms of this Proclamation, be dealt with by regulation or prescribing—

(a) the form in which an application for insurance under section *three* or section *five* shall be made;

(b) the form of any declaration of insurance in terms of section *three* or *five*;

(c) the form of any token to identify any motor vehicle mentioned in paragraph (a) or (b) of sub-section (2) of section *nineteen*, and the method of attaching such tokens to the vehicles to which they belong; and the High Commissioner may by regulation include the name or description of any person, body of persons, authority or institution in paragraph (a) of sub-section (2) of section *nineteen* for the purpose of exempting him or it from the provisions of sub-section

(1) of that section, and the High Commissioner may further by regulation substitute for the insurance period or any month specified in this Proclamation, any other period or month.

25. This Proclamation may be cited as Short title.  
the Bechuanaland Protectorate Motor Vehicle  
Insurance Proclamation, 1946.

GOD SAVE THE KING.

Given under my Hand and Seal at Pretoria this  
Twenty-third day of July One thousand Nine  
hundred and Forty-six.

E. BARING,  
High Commissioner.

By Command of His Excellency  
The High Commissioner.

H. E. PRIESTMAN,  
Administrative Secretary.