

# Supplementary Order Paper

---

## HOUSE OF REPRESENTATIVES

---

Tuesday, the 19th Day of November 1968

### TRANSPORT AMENDMENT BILL

#### *Proposed Amendments*

HON. MR GORDON, in Committee, to move the following amendments:

*Clause 1:* To omit subclauses (2) to (5), and substitute the following subclauses:

(2) Sections 3A, 3B, 5 to 8, 19A, 19B, and 23 of this Act shall come into force on the first day of April, nineteen hundred and sixty-nine.

(3) Sections 11, 12, 19, and 25 of this Act shall come into force on such date or dates as are fixed by the Governor-General, by Order in Council.

(4) Except as provided in subsections (2) and (3) of this section, this Act shall come into force on the first day of January, nineteen hundred and sixty-nine.

*New clauses 3A and 3B:* To insert, after clause 3, the following new clauses:

**3A. Meaning of "use"**—Section 2 of the principal Act is hereby further amended by omitting from the definition of the term "use" in subsection (1) the words "and 'to use' has a corresponding meaning", and substituting the words "and 'to use' and 'user' have corresponding meanings".

**3B. Meaning of "gross weight" and "weight"**—(1) Section 2 of the principal Act is hereby further amended by inserting in subsection (1), after the definition of the expression "goods-service vehicle", the following definition:

"'Gross weight', in relation to any vehicle or combination of vehicles, means the weight of the vehicle or of the vehicles comprising the combination, together with the load that the vehicle or, as the case may be, the vehicles are for the time being carrying, including any equipment and accessories:"

(2) Section 2 of the principal Act is hereby further amended by repealing the definition of the term "weight" in subsection (1) (as substituted by section 2 of the Transport Amendment Act 1966), and substituting the following definition:

"'Weight', in relation to a wheel, an axle, a group of axles, or a vehicle, means the weight, or, as the case may be, the sum of the weights, recorded on a weighing device of a type approved for the purpose by the Minister by notice in the *Gazette* and used in a manner prescribed by the Minister, by notice in the *Gazette*:"

(3) Section 2 of the principal Act is hereby further amended by inserting, after subsection (3A) (as inserted by section 3 of the Transport Amendment Act 1966), the following subsections:

"(3B) For the purposes of this Act and of any regulations under this Act, where the longitudinal centre line of any axle of a motor vehicle is less than three feet four inches distant from the longitudinal centre line of another axle, the two axles shall be deemed to be one (in this subsection referred to as a dual axle). For the purposes of measuring the distance of any dual axle from any other axle, the measurement shall be taken from the longitudinal centre line of that one of the two axles comprising the dual axle which is nearer to the axle from which the distance is to be measured.

"(3C) For the purposes of this Act and of any regulations under this Act, and without limiting the methods by which the gross weight of a vehicle may be determined, the gross weight of a vehicle may be determined by adding the weights on its axles or groups of axles."

(4) Section 69 of the principal Act is hereby amended by repealing subsection (2).

(5) Section 2 of the Transport Amendment Act 1966 is hereby consequentially repealed.

*New clauses 19 to 19c:* To omit clause 19, and substitute the following clauses:

**19. Limitation of weight of motor vehicles for use on road—**(1) The principal Act is hereby further amended by repealing section 69, and substituting the following section:

"69. Subject to the provisions of section 70 of this Act, it shall not be lawful to use a motor vehicle on any road—

"(a) If the weight on any axle of the vehicle, not being an oscillating axle, exceeds eighteen thousand pounds:

"(b) If the weight on any oscillating axle of the vehicle exceeds twenty-one thousand pounds."

(2) Section 15 of the Transport Amendment Act 1966 is hereby consequentially repealed.

**19A. Powers of traffic officers in respect of heavy motor vehicles**—The principal Act is hereby further amended by inserting, after section 69 (as substituted by section 19 of this Act), the following section:

“69A. (1) A traffic officer may at any time—

“(a) Inspect the load on any heavy motor vehicle on any road:

“(b) Measure, or require to be measured, the weight of any heavy motor vehicle on any road or the weight on any of its axles:

“(c) Where he has good cause to suspect that the weight of any heavy motor vehicle on any road or on any axle of any heavy motor vehicle on any road exceeds the maximum prescribed by this Act or by or pursuant to regulations made under this Act, direct the driver or person in charge to drive the vehicle to any site and onto a weighing device specified by the traffic officer for the purpose of ascertaining the weight of the vehicle or the weight on its axles:

“Provided that nothing in this paragraph shall authorise a traffic officer to direct the driver or person in charge, in order to drive his vehicle to any site or weighing device, to travel a distance that would increase the total length of his journey by more than two miles, or by more than ten miles in any case where the traffic officer has good cause to suspect that the driver has detoured from his normal route for the purpose of avoiding being required to have the weight of his vehicle or on any axle of his vehicle measured.

“(2) Where the weight of any heavy motor vehicle on any road is measured by or by the direction of a traffic officer, and the gross weight of the motor vehicle exceeds by twenty percent or more any gross weight restriction imposed by or pursuant to regulations made under this Act, then, unless the load on the motor vehicle is indivisible, the traffic officer shall, by direction given to the driver or person in charge of the motor vehicle,—

“(a) Direct that the motor vehicle be kept stopped at that place; or

“(b) Direct that the motor vehicle be removed to a place of safety approved by the traffic officer and be kept stopped at that last-mentioned place—

until such part of the load is removed as is necessary to reduce the gross weight of the motor vehicle to not more than the amount of that weight restriction.

“(3) Where the weight on any axle or group of axles of any heavy motor vehicle on any road is measured by or by the direction of a traffic officer, and—

“(a) The weight on any axle of the motor vehicle, being an axle which is eight feet or more distant from the nearest other axle, exceeds by twenty percent or more the maximum weight prescribed by section 69 of this Act or by or pursuant to any regulations made under this Act; or

“(b) The weight on any axle of the motor vehicle, being an axle which is less than eight feet from the nearest other axle, exceeds by twenty percent or more the maximum weight prescribed by section 69 of this Act or by or pursuant to regulations made under this Act increased by ten hundredweight; or

“(c) The weight on any group of axles of the motor vehicle, being a group of axles each of which is less than eight feet from the nearest other axle, exceeds by twenty percent or more the sum of the maximum weights for the individual axles of that group prescribed by this Act or by or pursuant to regulations made under this Act,—

then, unless the load on the motor vehicle is indivisible, the traffic officer shall, by direction given to the driver or person in charge of the motor vehicle, direct that the vehicle be kept stopped at that place or be removed to a place of safety approved by the traffic officer and kept stopped at that last-mentioned place, until part of the load is removed or the load is rearranged so as to reduce the weight on all the axles and groups of axles of the motor vehicle to not more than the maximum so prescribed.

“(4) Every person commits an offence, and is liable to a fine not exceeding one thousand dollars, who—

“(a) Fails to comply with or does any act in contravention of any direction of a traffic officer given under subsection (1) or subsection (2) or subsection (3) of this section; or

“(b) Removes the load or any part of the load of any motor vehicle for the purpose of complying with any such direction and leaves the load or part so removed, or any of it, in a such a position as to be likely to constitute a danger to persons using the road; or

“(c) Having placed on any road the load or any part of the load of any motor vehicle that has been removed for the purpose of complying with any such direction, fails to remove the load or that part of the load within a period of twenty-four hours or within any longer period specified by the traffic officer in any particular case; or

“(d) Whether or not he is the person to whom any such direction is given, knowingly drives a heavy motor vehicle on any road in breach of any direction given under subsection (2) or subsection (3) of this section.

“(5) Where the load or any part of the load is removed from a motor vehicle for the purpose of complying with any direction given under subsection (2) or subsection (3) of this section, neither the Crown, nor, in the case of a direction given by a traffic officer who is an officer of a local authority, that local authority, nor any traffic officer giving the direction shall be liable for any loss of or damage to any part of the load so removed arising directly or indirectly from that removal.”

19B. New sections (as to overloading infringements) inserted—The principal Act is hereby further amended by inserting, after section 69A (as inserted by section 19A of this Act), the following sections:

“69B. Overloading infringements—(1) In this section and in sections 69c and 69D of this Act—

“‘Enforcement authority’ means—

“(a) The Secretary, in the case of an alleged overloading infringement detected by a traffic officer who is an officer of the Department:

“(b) The local authority, in the case of an alleged overloading infringement detected by a traffic officer who is an officer of a local authority:

“‘Overloading infringement’ means the use on any road of any heavy motor vehicle in breach of any provision of this Act or of any regulations made under this Act—

“(a) By or pursuant to which maximum gross weight limits for motor vehicles are fixed; or

“(b) By or pursuant to which maximum weight limits for axles or groups of axles of motor vehicles are fixed;—

and for the purposes of this section and of section 69c of this Act an overloading infringement shall be deemed to have been committed in respect of every axle and of every axle of a group of axles the weight on which exceeds the maximum so fixed:

“‘Overloading-infringement fee’ means an overloading-infringement fee prescribed pursuant to subsection (3) of this section:

“‘Overloading-infringement notice’ means a notice under this section containing the particulars specified in subsection (6) of this section.

“(2) Where the user of any motor vehicle commits an overloading infringement, he shall be liable to pay to the enforcement authority, in accordance with this section, the appropriate overloading-infringement fee.

“(3) The Minister may from time to time, by notice in the *Gazette*, prescribe a scale of overloading-infringement fees, not exceeding five hundred dollars in the case of any infringement, payable under this section in respect of overloading infringements of any specified description. The scale of fees so prescribed may fix different amounts having regard to the extent of the overloading.

“(4) Where a traffic officer has reason to believe that the user of any motor vehicle has committed an overloading infringement, he may cause to be served an overloading-infringement notice as hereinafter provided.

“(5) An overloading-infringement notice may be served by serving it personally on the user of the motor vehicle who appears to have committed the infringement or by sending it by registered letter addressed to him at his last known place of residence or business. Every overloading-infringement notice served by registered letter shall be deemed to have been received when in the ordinary course of post it would be delivered, and in proving service it shall be sufficient to prove that the letter was properly addressed and posted.

“(6) Every overloading-infringement notice shall be in a form prescribed by the Minister, by notice in the *Gazette*, and shall contain the following particulars:

“(a) Such details of the alleged overloading infringement as are sufficient fairly to inform the user to whom it is addressed of the time, place, and nature of the infringement; and

“(b) The amount of the appropriate overloading-infringement fee payable to the enforcement authority in respect of the infringement; and

“(c) The place at which the fee shall be paid and the times during which it may be paid; and

“(d) A statement that if the fee is not paid before the date specified in the notice, being not less than fourteen days after the date of service of the notice, proceedings may be taken under the Summary Proceedings Act 1957 for an offence against subsection (7) of this section, a copy of which subsection shall be set out in the notice.

“(7) Every person commits an offence against this Act who, being the user of the motor vehicle in respect of which an overloading infringement is committed, and having been served with an overloading-infringement notice relating to the infringement, fails without reasonable cause, proof of which cause shall lie on the defendant, to pay to the enforcement authority before the date specified in the notice the appropriate overloading-infringement fee payable in respect of that infringement.

“(8) In proceedings for an offence against subsection (7) of this section, where the gross weight of the motor vehicle or the weight on any axle or group of axles of the motor vehicle is measured at some place other than the place where the overloading infringement is alleged to have been committed, it shall be presumed, in the absence of proof to the contrary, that the gross weight of the motor vehicle or, as the case may be, the weight on that axle or group of axles at the time when and the place where the infringement is alleged to have been committed was the same as the gross weight or, as the case may be, the weight on that axle or group of axles as ascertained at the time when and the place where that weight was measured.

“(9) Where any person is convicted of any offence which is an overloading infringement in respect of which an overloading-infringement notice was served on him under this section, then, whether or not any penalty is imposed in respect of the offence, there shall be payable by the defendant to the enforcement authority as a debt due to that authority the amount of the appropriate overloading-infringement fee.

“(10) Notwithstanding anything in section 69 or section 193 of this Act or in any regulations made under this Act, a breach of the said section 69 or of any provision of any such regulations which is an overloading infringement within the meaning of this section shall not be an offence.

"69c. Overloading of Crown vehicles—(1) Where any overloading infringement is committed in respect of any heavy motor vehicle being used in the service of the Crown by an employee of the Crown, there shall be payable to the enforcement authority in accordance with this section, out of money appropriated by Parliament, the appropriate overloading-infringement fee.

"(2) Where a traffic officer has reason to believe that an overloading infringement to which subsection (1) of this section applies has been committed, he may cause to be served on the Permanent Head of the Department of State in the service of which the motor vehicle was being used a notice containing the following particulars:

"(a) Such details of the alleged overloading infringement as are sufficient fairly to inform that Permanent Head of the time, place, and nature of the infringement; and

"(b) The amount of the appropriate overloading-infringement fee payable to the enforcement authority in respect of the infringement; and

"(c) The place at which the fee shall be paid and the times during which it may be paid; and

"(d) A statement that unless an objection is made under subsection (4) of this section before the date specified in the notice, being not less than fourteen days after the date of the service of the notice, the overloading-infringement fee must be paid to the enforcement authority not later than the date so specified.

"(3) A notice under subsection (2) of this section shall be served by sending it by registered letter addressed to the Permanent Head at the head office of the department in Wellington, and shall be deemed to have been received when in the ordinary course of post it would be delivered.

"(4) The Permanent Head may, by notice in writing given to the Secretary before the date specified in the notice given pursuant to subsection (2) of this section, object to the last-mentioned notice on the ground that no overloading infringement was committed or on the ground that the amount of the overloading-infringement fee specified in the notice exceeds the amount properly payable. The Secretary shall refer the objection to the Transport Licensing Authority for the transport district in which the overloading infringement is alleged to have been committed.

"(5) The Transport Licensing Authority shall consider the objection, and may allow it or dismiss it, and, notwithstanding anything in this Act, the decision of that Authority shall be final. If the objection is dismissed, the appropriate overloading-infringement fee shall be payable to the enforcement authority not later than fourteen days after the notification of the decision to the objector.

**“69D. Overloading infringement fees payable into National Roads Fund—**All overloading-infringement fees received by an enforcement authority under section 69B or section 69C of this Act shall be paid into the National Roads Fund:

“Provided that the enforcement authority shall be entitled to deduct such portion of the fees so received as the Minister of Finance from time to time approves as being the expenses incidental to the collection thereof.”

#### EXPLANATORY NOTE

*Clause 1:* These amendments alter the commencing date of certain provisions of this Bill. The commencement of *clauses 11, 12, and 25* is postponed to a date to be fixed by Order in Council because of the possibility that a sufficient supply of breath-testing devices may not be available by 1 April 1969.

*Clause 3A:* This is a minor drafting amendment to facilitate the drafting of later provisions.

*Clause 3B: Subclause (1)* inserts a definition of “gross weight” in the principal Act. This definition is inserted for the purposes of the new provisions as to overloading referred to later in this note.

*Subclause (2)* substitutes a new definition of “weight” in the principal Act. The new definition requires the weight of a motor vehicle or on any axle to be recorded on an approved device used in a manner prescribed by the Minister by notice in the *Gazette*.

*Subclause (3)* inserts new subsections (3B) and (3C) in section 2 of the principal Act. Subsection (3B) transfers to the general interpretation section a provision at present in section 69 (2) of the principal Act defining for the purposes of that section only what is a dual axle. It makes no change in the definition. Subsection (3C) provides that the gross weight of a vehicle may be determined by adding the weights on its axles.

*Subclauses (4) and (5)* are consequential repeals.

*Clause 19:* This amendment omits the present clause 19 of the Bill, and substitutes a new *clause 19* relating to the maximum weight of motor vehicles on roads. The new provisions fix a maximum axle loading, except in the case of oscillating axles, of 18,000 pounds, and, in the case of oscillating axles, of 21,000 pounds.

*Clause 19A* inserts a new section 69A in the principal Act defining the powers of traffic officers in relation to heavy motor vehicles. The new section 69A provides as follows:

- (a) By subsection (1), a traffic officer may inspect the load on any heavy motor vehicle, and may measure the weight of any heavy motor vehicle. These powers are at present contained in regulation 16 of the Heavy Motor Vehicle Regulations 1955 (reprinted, S.R. 1961/159). In addition, if he has had good cause to suspect that the vehicle is overloaded, he may require the driver to drive his motor vehicle to a site and onto a weighing device for the purpose of being weighed, but the driver cannot be required to travel a total extra distance of more than 2 miles, or more than 10 miles in any case where the traffic officer has good cause to suspect that the driver has made a detour to avoid having his vehicle weighed.
- (b) By subsections (2) and (3), where a traffic officer finds that a heavy motor vehicle is overloaded by more than 20 percent (or, in the case of an axle which is less than 8 ft from any other axle, by more than 20 percent of the maximum loading plus 10 cwt), he must, unless the load is indivisible, require the driver to remain stopped or to drive the vehicle to a place of safety and remain stopped there until the excess load is removed. There are at present discretionary powers to require removal of part of an excessive load in regulation 16 of the Heavy Motor Vehicle Regulations 1955.
- (c) The penalty for an offence against the new section 69A will be a fine not exceeding \$1,000.



Clause 19B inserts new sections 69B, 69C, and 69D in the principal Act relating to overloading infringements.

Under section 69B, the user of the motor vehicle in respect of which an overloading infringement is committed may pay to the appropriate enforcement authority (the Secretary for Transport or a local authority) a fee fixed according to a scale prescribed by the Minister of Transport, and in that event proceedings will not be taken for the offence. If he does not make the payment within the time fixed in a notice given to him by the enforcement authority, he may be proceeded against for an offence, but not the offence of overloading.

The new section 69B provides as follows:

- (a) The appropriate overloading-infringement fee is to be according to a scale prescribed by the Minister by notice in the *Gazette*. The maximum fee he may fix for any infringement will be \$500.
- (b) A traffic officer who has reason to believe that an overloading infringement has been committed may serve on the person against whom proceedings would otherwise be commenced an overloading-infringement notice, giving particulars of the alleged infringement, the amount of the fee payable to the enforcement authority in respect of the infringement, and the place and times at which the fee may be paid, and containing a statement that if the fee is not paid before the date set out in the notice (which must be at least 14 days after service of the notice) proceedings for the offence of non-payment may be taken against him.
- (c) If proceedings for the offence of non-payment are taken and the defendant is convicted, then, in addition to any penalty imposed on him by the Court, he will be liable to the enforcement authority for the amount of the appropriate overloading-infringement fee.
- (d) *Subsection (7)* of the new section 96B makes it an offence if any person, without reasonable excuse, fails to pay the overloading-infringement fee before the date specified in the notice.

The new section 69C provides for payment of overloading-infringement fees in respect of Government vehicles that are overloaded. A notice similar to that required to be given under section 69B must be given to the Permanent Head of the department of State concerned. He may object to the notice upon the ground that no overloading infringement was committed or that the amount of the overloading-infringement fee claimed exceeds the amount properly payable.

The objection is to be referred to the Transport Licensing Authority for the transport licensing district in which the infringement is alleged to have been committed.

The new section 69D provides that all overloading infringement fees received under section 69B or section 69C by an enforcement authority (less the expenses of collection as approved by the Minister of Finance) will be payable into the National Roads Fund.

---