

No. 23 of 2010.

*Transport (Collection of Information) (Amendment) Act 2010.*

Certified on : 06 DEC 2011



No. of 2010.

*Transport (Collection of Information) (Amendment) Act 2010.*

**ARRANGEMENT OF SECTIONS.**

1. New Section 1B.

**“1B. COMPLIANCE WITH CONSTITUTIONAL AND OTHER REQUIREMENTS**

2. Interpretation (Amendment of Section 1).
3. Repeal and Replacement of Section 2.
4. Repeal and Replacement of Section 3.
5. Repeal and Replacement of Section 4.
6. New Section 4A.

**“4A. JOINT COLLECTION AND PUBLICATION OF INFORMATION.**

7. Repeal and Replacement of Section 5A.
8. Repeal and Replacement of Section 7.



No. of 2010.

AN ACT

entitled

*Transport (Collection of Information) (Amendment) Act 2010,*

Being an Act to amend the *Transport (Collection of Information) Act* (Chapter 248).

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

1. **NEW SECTION 1B.**

The Principal Act is amended by inserting after Section 1A the following new section -

**“1B. COMPLIANCE WITH CONSTITUTIONAL AND OTHER REQUIREMENTS.**

(1) For purposes of Section 38 of the Constitution, this Act and the Principal Act are laws made to give effect to the public interest in defence, public safety, public order and public welfare to the extent that this Act and the Principal Act regulate or restrict any of the following rights and freedoms:

- (a) the right to freedom conferred by Section 32 of the *Constitution*; and
- (b) the right to freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (c) the right to privacy conferred by Section 49 of the *Constitution*; and
- (d) the protection from unjust deprivation of property conferred by Section 53 of the *Constitution*.

*Transport (Collection of Information) (Amendment)*

“(2) The purpose of this Act and the Principal Act are public purposes and, for the purposes of Sections 41 and 42 of the *Organic Law on Provincial and Local-level Governments*, this Act and the Principal Act concern, and are declared to be, matters of national interest.

“(3) This Act binds the State.”.

2. **INTERPRETATION (AMENDMENT OF SECTION 1).**

Section 1 of the Principal Act is amended by –

(a) repealing the following definitions -

“Authority”; and

“road transport”; and

“water transport”; and

(b) inserting in alphabetical order the following definitions -

“information” includes all information concerning or related to transport and transport infrastructure of whatever nature and in whatever form including, without limitation, in writing, orally, electronically and in visual or machine readable medium, including CD, ROM, magnetic and digital form and includes financial information;

“person” includes -

(a) any National, Provincial or Local-level Government, State Agency or other Government Body; and

(b) any body, agency, committee or organization, whether incorporated or otherwise established, and includes any person who is a member of or is employed by or is an agent of or contractor to such body, agency, committee or organization;

“purpose” specified in this Act means –

(a) for the development and implementation of transport and transport infrastructure strategy, policy, planning and regulation;

(b) for the development and implementation of transport and transport infrastructure safety and security; or

(c) for ensuring compliance with any law concerning or connected with transport or transport infrastructure;

“Secretary” means the Secretary of the Department responsible for Transport and any person appointed in writing by the Secretary to exercise any function or power under this Act;

“State Agency” includes -

(a) the National Public Service

(b) a Department of the National Public Service;

(c) a Provincial Government;

(d) a Local-level Government;

*Transport (Collection of Information) (Amendment)*

- (e) a corporation or statutory body or other body established by or under an Act; and
  - (f) any person, body or organization declared to be a State Agency by notice by the Minister responsible for transport;
- “transport” includes land transport, maritime transport and aviation transport and any operations or activities involving or associated with transport;
- “transport infrastructure” includes any land, water, under water area, airspace, channel, building, structure, facility, machinery, vehicle, craft, vessel, aircraft, object or thing used for or in connection with transport or the construction or maintenance of transport infrastructure.”

**3. REPEAL AND REPLACEMENT OF SECTION 2.**

Section 2 of the Principal Act is repealed and replaced with the following -

**“2. SUPPLY OF INFORMATION.**

(1) The Secretary may, by notice, require any person to supply the Secretary with information as to transport or transport infrastructure for a purpose specified in this Act.

“(2) A notice under Subsection (1) -

- (a) shall be in writing; and
- (b) may be directed to a particular person or class of persons; and
- (c) shall specify the information to be supplied and when the information is to be supplied; and
- (d) may specify the form, format, frequency and manner in which the information is to be supplied; and
- (e) may be sent to the person by hand, post, fax, email or by publication in a broadcast medium (radio, television or newspaper).

“(3) A notice under Subsection (2) is deemed to have been sent to and received by a person, if the notice is published twice in a broadcast medium which circulates or is broadcast, as the case require, in the area in which the person lives or resides.

“(4) A person who receives a notice under this section shall comply with the requirements of the notice.”

*Transport (Collection of Information) (Amendment)*

4. **REPEAL AND REPLACEMENT OF SECTION 3.**

Section 3 of the Principal Act is repealed and replaced with the following -

**“3. COLLECTION OF INFORMATION.**

For the purpose of acquiring any information referred to in Section 2, the Secretary may -

- (a) stop any person, transport or transport infrastructure; and
- (b) enter and examine any transport or transport infrastructure; and
- (c) require any person to –
  - (i) complete and supply to the Secretary any form of information specified by the Secretary in accordance with any instructions contained in the form or accompanying it; or
  - (ii) allow and assist the Secretary to examine and take copies of any information or documents in the possession or control of the person; or
  - (iii) take the transport or transport infrastructure, together with its cargo (if any), to a place selected by the Secretary for the purpose of examining, weighing or measuring the transport or transport infrastructure and its cargo, and allow and assist the Secretary to complete such examination, weighing and measurement.”

5. **REPEAL AND REPLACEMENT OF SECTION 4.**

Section 4 of the Principal Act is repealed and replaced with the following -

**“4. DUTY TO MAINTAIN INFORMATION CONFIDENTIAL.**

(1) Subject to this Act, the Secretary and all persons acting under the authority of the Secretary shall -

- (a) use information received by them only for a purpose specified in this Act; and
- (b) take such measures as the Secretary deems necessary to ensure that information supplied to the Secretary which is of a personal or commercially sensitive nature, is not used or disclosed to any person other than for a purpose specified in this Act; and
- (c) ensure that where information is published under Section 5A, any personal or commercially sensitive information is not disclosed in a manner which could identify any particular person, organization or body or the source of the information.

“(2) Subject to Subsection (3), any person who, except to the extent required by the person’s official duties or this Act, discloses any information given to the Secretary under this Act is guilty of an offence.

*Transport (Collection of Information (Amendment))*

Penalty: A fine not exceeding K100,000.00 or imprisonment for a period not exceeding 1 year, or both.

- “(3) Subsection (2) does not apply where the information is disclosed -
- (a) to another person for the purpose of an official duty or a purpose specified in this Act; or
  - (b) with the consent of the person by whom or on whose behalf the information was supplied.”.

**6. NEW SECTION 4A.**

The Principal Act is amended by inserting after Section 4, the following new section -

**“4A. JOINT COLLECTION AND PUBLICATION OF INFORMATION.**

- (1) For the purpose of -
  - (a) ensuring that information is collected and used in an efficient and effective manner; and
  - (b) minimizing the need for persons to supply information more than is required under any law,

the Secretary may enter into an agreement or arrangement with the National Statistician or a State Agency to collect, exchange and publish information required for a purpose specified in this Act, either jointly with the National Statistician or State Agency or by or on behalf of the Secretary, the National Statistician or State Agency.

“(2) For the purpose of removal of doubt, any information required or supplied under an agreement referred to in Subsection (1) is information under this Act.”.

**7. REPEAL AND REPLACEMENT OF SECTION 5A.**

Section 5A of the Principal Act is repealed and replaced with the following new section -

**“5A. PUBLICATION OF INFORMATION.**

- (1) Subject to Section 4A, the Secretary may -
  - (a) provide information received under this Act to a State Agency concerned with Transport and Transport Infrastructure; and
  - (b) compile, tabulate and publish information received under this Act in such manner as -
    - (i) the Minister responsible for Transport directs; or
    - (ii) the Secretary deems necessary,

for a purpose specified in this Act.”.

*Transport (Collection of Information (Amendment))*

8. **REPEAL AND REPLACEMENT OF SECTION 7.**

Section 5 of the Principal Act is repealed and replaced with the following section -

**“7. GENERAL OFFENCES.**

(1) Any person who -

- (a) fails to comply with the requirements of a notice to supply information under this Act; or
- (b) knowingly makes a false or misleading statement or any material omission in completing or filling in any form or concerning any information supplied under this Act; or
- (c) without lawful authority, destroys, defaces, removes or mutilates any form or other document requesting information under this Act; or
- (d) acts in contravention of, or without lawful excuse, fails to comply with any requirement under this Act; or
- (e) willfully deceives or attempts to deceive the Secretary or any person acting with the authority of the Secretary under this Act,

is guilty of an offence.

Penalty: A fine not exceeding K50,000.00 or imprisonment for a term not exceeding 6 months, or both.

“(2) Any person who -

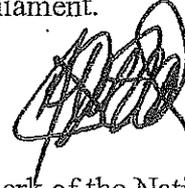
- (a) willfully prevents; or
- (b) attempts to prevent; or
- (c) cause or incites any other person to prevent,

the Secretary or any person acting with the authority of the Secretary under this Act, commits an offence.

Penalty: A fine not exceeding K50,000.00 or imprisonment for a term not exceeding 6 months, or both.

*Transport (Collection of Information) (Amendment)*

I hereby certify that the above is a fair print of the *Transport (Collection of Information) (Amendment) Act 2010* which has been made by the National Parliament.



Clerk of the National Parliament.

06 DEC 2011

I hereby certify that the *Transport (Collection of Information) (Amendment) Act 2010* was made by the National Parliament on 25 November 2010 by an absolute majority in accordance with the *Constitution*.



Speaker of the National Parliament

06 DEC 2011