

TRADING LICENCES ORDER, 1975

Date of commencement: 1st January, 1976.

Date of Assent: 29th May, 1975.

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A King's Order-in-Council to repeal the Trading Licences Act No. 27 of 1939, as amended and to make new provisions for the grant of trading licences and matters incidental thereto.

Short title.

1. This King's Order-in-Council may be cited as the Trading Licences Order, 1975.

Interpretation.

2. (1) In this Order, except where the context otherwise requires —
“business” means a concern carrying on the occupation of —
(a) a regulated trade;

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- (b) importing or exporting goods;
- (c) commission agent;
- (d) manufacturers representative;
- (e) produce dealer or produce broker;
- (f) business broker or management consultant;
- (g) estate agent; or
- (h) subject to any other law, any other occupation, whether or not similar to any of the foregoing, which the Minister may, by notice in the Gazette, declare to be a business for the purposes of this Order;

“business transaction” means a transaction in respect of or in connection with the occupation carried on by the concern which constitutes the business;

“commission agent” means a person employed by his principal to sell goods on a commission basis;

“court” means a magistrate’s court established under the Magistrate’s Court Act No. 66 of 1938, but does not exclude the functions of the High Court;

“general business area” means an area declared under section 3 to be a general business area for the purposes of this Order;

“informal sector” means any private, unregistered and unincorporated micro-enterprise owned by an individual, household or informal employer for which no formal and complete accounts are available who apply to be issued with a trading licence;

[Definition of “informal sector” added A. 9/2011.]

“licence” means a licence granted under this Order;

“licensee” means holder of a licence;

“licensing officer” means a person designated to be a licensing officer under section 6;

“manufacturer’s representative” means a person resident in Eswatini in the year in question who acts as agent for a manufacturing or trading concern on a retainer basis or on the basis of the orders which he obtains in Eswatini, or both;

“Minister” means the Minister for Commerce;

“regulated trade” means —

- (a) wholesale or retail trade in any movables or goods of any kind whatsoever;
- (b) catering;
- (c) laundering or dry-cleaning;
- (d) hairdressing;
- (e) beauty culture;

- (f) shoe repairing;
- (g) motor vehicle repairing;
- (h) cinematograph film exhibition; or
- (i) advertising;

“specified goods” means any goods or goods of any particular class, declared under section 4 to be specified goods for the purposes of this Order.

- (2) For the purposes of this Order a person conducts business if he is —
 - (i) the owner or a part owner of the business; or
 - (ii) the person controlling or a person partly controlling the business.

Declaration of general business area.

3. After consultation with the Minister for Interior, and the approval of the Council of Ministers, the Minister may by notice in the Gazette —

- (a) declare any area to be a general business area for the purposes of this Order; or
- (b) revoke any declaration made by him under this section.

Declaration of specified goods.

4. The Minister may by notice in the *Gazette* —

- (a) declare any particular goods or goods of any particular class to be specified goods for the purposes of this Order; or
- (b) revoke any declaration made by him under this section.

Restriction of trade.

5. (1) After a day to be determined by the Minister by notice in the Gazette, no person may conduct any business —

- (a) except under and in accordance with the terms of a licence or a licence issued under and still valid under the law hereby repealed; or
- (b) in any place which is not situate within a general business area without the written authority of the Minister:

Provided that this paragraph shall not apply to a licence granted under the Act hereby repealed or since the coming into force of this Order;

[Proviso amended K.O-I-C. 31/1976.]

- (c) in any specified goods unless his licence authorises him to do so.

(NOTE: The Minister by Legal Notice 8 of 1976 has appointed the 2nd February, 1976 as the day determined under section 5(1).)

(2) Any person who contravenes this section shall be guilty of an offence and liable on conviction to a fine of E500 or imprisonment for one year or both.

(3) Upon the conviction of a person of an offence under this section the court may revoke the licence, if such person is a licensee; or, if such a person is not a licensee, direct in writing that no licence may be granted to him during such period as the court may specify.

(4) If in a prosecution for an offence under this section it is alleged that a person does not hold a current licence, it shall be presumed that such person does not hold a current licence until the contrary is proved.

Designation of licensing officers.

6. (1) The Minister shall designate a public officer to be a licensing officer and shall also designate a public officer to be a deputy licensing officer in each district.

(2) A deputy licensing officer shall carry out the functions of a licensing officer if for any cause the latter is unable to do so.

Application for the grant, amendment or transfers of licences.

7. (1) Any person desiring to make an application for the grant, amendment or transfer of any licence shall do so in writing to the licensing officer for the district in which he desires to carry on such business.

(2) Every application for the grant, amendment or transfer of a licence shall contain the following information: —

- (a) the full name and postal address of the applicant;
- (b) the nationality of the applicant and if the applicant is a company or a partnership the nationality of the shareholders or partners, as the case may be;
- (c) the amount of money the applicant intends to invest in the proposed business;
- (d) full particulars of any financial interest (whether as a partner, shareholder as a result of any loan, guarantee or other financial transaction) which any other person has in the applicant's proposed business;
- (e) the nature of the licence applied for;
- (f) full particulars of the proposed business site;
- (g) full particulars of the transferor, in the case of an application for a transfer;
- (h) full particulars of the amendment, in the case of an application for an amendment.

(3) Notice of such application, the time, date and place of hearing thereof shall be published by the licensing officer once in the Gazette and in a newspaper circulating in Eswatini at least 3 days prior to the date of the hearing of such application.

[Sub-s. (3) amended A. 9/2011.]

(4) An applicant for the grant, amendment or transfer of a licence shall pay such application fees as the Minister may prescribe from time to time.

(5) Any person desiring to oppose an application under this Order shall give notice thereof together with reasons for such objection to the licensing officer and the applicant in writing not later than 3 days prior to the hearing of such application.

[Sub-s. (5) amended A. 9/2011.]

(6) All applications under this Order shall be heard in public and the licensing officer, applicant or objector, as the case may be, may subpoena witnesses to give evidence or to produce books or documents at any such hearing, and such subpoena shall be issued under the hand of the Clerk of the Court.

(7) Any witness who has been subpoenaed shall be paid fees at the same rate as is paid to Crown witnesses subpoenaed to give evidence at a criminal trial in a magistrate's court.

(8) Any witness who has been subpoenaed or called by the licensing officer shall be paid his witness fees by the Government, but any other witness subpoenaed by the applicant or objector, as the case may be, shall be paid by the party requiring his attendance.

(9) Owners of businesses in the informal sector are exempt from the requirement to advertise when applying for a licence.

[Sub-s. (9) added A. 9/2011.]

Functions of licensing officers.

8. (1) A licensing officer may grant or refuse an application for the grant, amendment or transfer of a licence to conduct a business in a general business area:

Provided that no such application shall be granted, amended, or transferred if the business is to be carried on in premises situate on Eswatini nation land without the written consent thereto of the Ngwenyama or of any person authorised in writing by the Ngwenyama, either generally or specifically, to grant such consent.

Provided further that consent to conduct business on Eswatini Nation Land shall only be given to indigenous Eswatini and companies wholly owned by the indigenous Eswatini.

[Added A. 9/2011.]

(2) A licensing officer may grant an application for the grant, amendment or transfer of a licence subject to such conditions as he may deem just.

(3) A licensing officer shall give reasons for his decision in writing, if requested to do so by an applicant or objector, as the case may be.

Power of revocation or suspension.

8bis. (1) A licensing officer may at any time on good cause after due notice in writing to the licensee concerned revoke or suspend for such period as the licensing officer may deem fit, any licence granted, amended or transferred under section 7 or issued under the Act hereby repealed:

Provided that a licence, entitling the holder thereof to carry on any business on Eswatini nation land, shall not be revoked or suspended unless the Ngwenyama or a person authorised by him in writing in that behalf has given his written consent to such revocation or suspension.

(2) The notice referred to in subsection (1) shall call upon the licensee concerned to show cause by making any oral or written representation to the licensing officer within a reasonable period to be stated in such notice why the licence referred to shall not be revoked or suspended, as the case may be.

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(3) Any person who carries on the business in respect of which the licence has been revoked after such revocation or, if the licence has been suspended during the period of such suspension, shall be guilty of an offence and liable on conviction to imprisonment for five months or a fine of 5000 emalangeni.

[Sub-s. (3) amended A. 9/2011.]

(4) Sections 9 and 10 shall with necessary alterations apply to a revocation or suspension of a licence in terms of this section.

[S. 8bis added K.O-I-C. 31/1976. Sub-s. (4) amended A. 9/2011.]

Appeals against decisions of licensing officers.

9. (1) Any person aggrieved by the decision of a licensing officer may within 14 days from the date of such decision appeal in writing to the Minister by delivering a notice of appeal to the licensing officer.

(2) The notice of appeal shall concisely set out the grounds of appeal and shall be accompanied by an appeal fee to be prescribed by the Minister from time to time.

(3) A copy of the notice of appeal shall be served on the applicant or objector or representative of the applicant or objector or both as the case may be.

(4) The licensing officer shall within 7 days of the lodging with him of the notice of such appeal, forward the full record of the proceedings to the Minister.

Powers of the Minister on appeal.

10. (1) The Minister may —

- (a) confirm, revise or alter the decision of a licensing officer;
- (b) remit the record to the licensing officer for the taking of such further evidence as he may direct;
- (c) cause the parties or any other person under subpoena to give evidence or produce such books, documents etc. as he may order.

(2) The decision of the Minister on appeal shall be final.

Licences.

11. (1) A licence shall specify the premises where the licensee has to conduct his business, and, if a business is conducted at more than one premises, a separate licence shall be required for each of such premises:

Provided that if a business is conducted by one management in premises divided by walls but otherwise communicating internally with one another only one licence shall be required for such premises.

(2) Every licence shall expire on the 31st day of December of the year for which it was granted or subsequently renewed, as the case may be.

(3) A licensee may renew his licence on completion of a prescribed form and paying the licensing officer the annual licence fee prescribed for such licence:

Provided that the licensing officer may refuse to issue a renewal of such licence if the form is not satisfactorily completed by or on behalf of such licensee.

[Amended K.O-I-C. 31/1976.]

(4) Any licences granted under the law repealed by this Order shall be deemed to have been granted under this Order.

Amendment of licences.

12. (1) A licensing officer may on application in the manner prescribed in this Order amend a licence by substituting another kind of business for the kind of business specified in the licence, or other premises for the premises specified in the licence or by adding another kind of business.

(2) There shall be payable upon an amendment of a licence under this section the appropriate fee prescribed in respect of each business authorised by the licence as amended.

(3) An amended licence shall be valid until the 31st December in the year in which it was amended or subsequently renewed, as the case may be.

Transfer of licences.

13. (1) Save as provided in this section, no licence shall be transferred to any person.

(2) A licensee who lends, transfers, or attempts to lend or transfer his licence to any other person and any person who borrows or makes use of a licence granted to another and not lawfully transferred to him as provided under this section shall be guilty of an offence.

(3) Notwithstanding subsections (1) and (2) hereof, a licensing officer may on application in the manner prescribed in this Order transfer a licence to any of the following persons —

- (a) in the case of the death of the licensee, to the surviving spouse, the executor of the estate or an heir, as the case may be, of such licensee;
- (b) in the case of the insolvency of the licensee to the lawfully appointed trustee;
- (c) in the case of a corporation or a company in liquidation, to the lawfully appointed liquidator;
- (d) in any case where the licensee becomes subject to a legal disability, to any person lawfully appointed to administer his affairs;
- (e) in the case of a sale of business to the purchaser.

(4) Any licence so transferred shall be valid until the 31st day of December of the year in which it was transferred or subsequently renewed, as the case may be.

Exhibition of licences.

14. (1) Every licence or the duplicate thereof issued in terms of subsection (2) shall, except when lodged with a licensing officer for any purpose under this Order, be displayed in a prominent position on the premises in respect of which it was issued.

(2) A licensee who fails or neglects to display the licence or duplicate thereof as mentioned in subsection (1) shall be guilty of an offence.

(3) If upon application in the prescribed manner, a licensing officer is satisfied that a licence has been lost, destroyed or defaced such licensing officer shall, upon payment of a fee of 50 cents, issue a duplicate of such licence to the licensee.

Right to enter premises.

15. (1) Any licensing officer, customs official, police officer of or above the rank of sub-inspector or an administrative officer, authorised in writing to do so, may at any reasonable time —

[Sub-s. (1) amended A. 9/2011.]

- (a) enter any premises in which he has reasonable grounds for believing that business is being conducted and inspect such premises, any book, document or any other thing found therein for the purpose of ascertaining whether or not this Order is being complied with; and
- (b) require any person appearing to be conducting the business therein to give such information as the officer may reasonably require to enable him to ascertain whether or not this Order is being complied with.

(2) Any person who hinders or obstructs an officer acting under this section shall be guilty of an offence.

Ownership of licensed business.

16. (1) No person shall own the whole or the major portion of any business which is being conducted under a licence granted to another person under this Order, whether by way of ownership of the goods of such business or by sharing in the profits of such business or in any other manner, without the written consent of the licensing officer who has granted such licence.

(2) Any person contravening subsection (1) shall be guilty of an offence.

Offences.

17. (1) A licensee shall be liable for any offence committed by his partner, agent or servant under this Order unless he can prove he had *bona fide* reasonable grounds for believing that the provisions of this Order were being complied with and that he had taken all reasonable steps to prevent the commission of such offence.

(2) On a charge against a licensee for an offence committed by his partner, agent or servant under this Order, such partner, agent or servant may be jointly charged with the licensee.

(3) Any person who makes a false statement, or a statement which he has reason to believe is not true, in an application under this Order or to an officer acting under this Order shall be guilty of an offence.

(4) A person who forges a trading licence shall be guilty of an offence and liable on conviction to imprisonment for a period of one year or to a fine of E10,000-00 or to both.

[Added A. 9/2011.]

Penalties.

18. Any person who is guilty of an offence under this Order for which no penalty is specifically provided shall be liable on conviction to imprisonment for a period not exceeding three months or E5,000-00 or both.

[Amended A. 9/2011.]

Non-applicability of this Order.

19. Sections 5 and 12 shall not apply in respect of any licence which has been granted under the Act repealed by section 21, and this Order shall not apply to any licence granted under any other law.

Regulations.

20. The Minister may make regulations —

- (a) for the carrying out of the provisions of this Act and prescribing the forms to be used and fees payable; and
- (b) declaring any trade or business to be reserved and licenced only to Eswatini citizens or companies wholly owned by Eswatini citizens.

[Para. (b) replaced A. 9/2011.]

Repeal.

21. The Trading Licences Act No. 27 of 1939 is hereby repealed.
