

Policy For:

The Amendment of the Motor Vehicles and Road Traffic Act, Chapter 48:50 to Modernise the Law regarding the Use and Enforcement of Window Film on Motor Vehicles in Trinidad and Tobago.

Ministry of Works and Transport
Legal Services Unit
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EXECUTIVE SUMMARY

1. Among the various functions of the Ministry of Works and Transport (MOWT) is the responsibility for developing, reviewing and implementing traffic law enforcement measures for the regulation of traffic management and road use, as well as the promotion of road safety in Trinidad and Tobago. In this regard, MOWT has noted that while the **Motor Vehicles and Road Traffic Act, Chapter 48:50** currently restricts window tinting on motor vehicles, the law remains nebulous and arguably, draconian in its arbitrary enforcement. Further, the Act is silent as to the procedure and device to be utilised when testing the degree of obscurity of film (“tint”) applied or affixed to a motor vehicle’s windscreens and windows. For the purposes of this policy, all references to windscreens include the front and rear except where the contrary is stated.
2. It is therefore imperative that the current law is reviewed and updated so as to enable our law enforcement personnel to be equipped with objective criteria, defined procedure and methodology to enforce the use of any material applied or affixed to the windscreens or windows of a motor vehicle which has the effect of reducing the passage of light and/or visibility through the said windscreens or windows of motor vehicles. It is proposed that regulations would provide for the following:
 - Permissible percentages of visible light transmittance of any material applied or affixed to a motor vehicle’s windscreens and windows;
 - Privacy Exemptions;
 - Medical exemptions for persons with particular medical conditions which would require them to be protected from the sun’s ultra-violet (UV) rays;
 - The use of light transmittance measuring devices by law enforcement personnel for measuring the percentage of visible light transmittance of any material applied or affixed to a motor vehicle’s windscreens and windows; and
 - Imposition of Penalties.
3. In formulating the proposed amendments to the **Motor Vehicles and Road Traffic Act, Chapter 48:50**, MOWT conducted a detailed examination of the legislative framework of various jurisdictions that have specific laws which govern the use of any material applied or affixed to the windscreens or windows of a motor vehicle which has the effect of reducing the passage of light and/or visibility through the windscreens or windows. The jurisdictions which were reviewed include the United Kingdom, Australia (Provinces of Queensland, South Australia, Tasmania and Victoria), United States of America (the

States of Florida and New York), Canada (Province of Quebec), Cayman Islands and Jamaica.

1. INTRODUCTION

1.1 In Trinidad and Tobago there is currently no law that prescribes or regulates the degree to which a motor vehicle's windscreens and windows may be tinted, treated or darkened. **Section 23(1) (d) of the Motor Vehicles and Road Traffic Act, Chapter 48:50 (“the MVRT Act”)** which currently regulates the use of motor vehicle window film, states as follows:

(1) *“Save as provided in this section-*

(a);

(b);

(c);

(d) *no motor vehicle the windscreen or any other window of which is fitted with glass so tinted, treated or darkened as to obscure the view of the inside of the vehicle from the outside;*

(e);

shall be used upon any road.”

1.2 Under **section 23(1A) of the MVRT Act**, it is also provided that the Licensing Authority shall cancel the registration of any motor vehicle where the provisions of section 23(1) are contravened. Additionally, if a person is found guilty of contravening the provisions of **section 23(1)(d) of the MVRT Act**, he or she is liable on summary conviction to a fine of Five Thousand Dollars (\$5,000.00) pursuant to **section 23(1B)**. The offence is also captured in the **Motor Vehicles and Road Traffic (Enforcement and Administration) Act, Chapter 48:52 (the MVRT (E&A) Act)** and is therefore ticketable, attracting a fixed penalty of Two Thousand Dollars (\$2,000.00) in accordance with item 61 of the First Schedule of the **MVRT (E&A) Act**.

1.3 Generally, ‘window tint’ in relation to a motor vehicle refers to a film or coating applied to the windscreens and windows of a motor vehicle to block out the sunlight and harmful UV rays.¹ It bears noting that during the manufacturing process, the windscreens and windows on most contemporary model motor vehicles are treated or slightly darkened to help reduce the harmful effects of ultra-violet (UV) rays on occupants of the motor vehicles. This is done in accordance with accepted industry standards. Commonly, additional treatments, coatings or film are applied to the existing slight manufacturer treatment which causes the percentage of visible light transmittance (VLT) of the motor vehicle's windscreens and windows to decrease, therefore obscuring the degree of

¹ Source: ><https://legaldictionary.net/window-tint/>< accessed 25 April, 2018

visibility into and out of the motor vehicle. Further, motor vehicle owners have adopted the practice of applying perforated film with artwork/graphics and temporarily affixing sunscreen shades/devices to the glass or inside surface of the motor vehicle's rear windscreen and side windows (i.e. a plastic shade device on a side window, held in place with suction cups) which also has the effect of reducing the percentage of visible light transmittance (VLT) through a motor vehicle's windscreens and windows (see photographs of motor vehicles with perforated film with artwork/graphics applied and sun shades temporarily affixed to the windscreens and windows appended as *Appendix A*).

1.4 There are many practical reasons for the use of material on the windscreens or windows of a motor vehicle which has the effect of reducing the passage of light and/or visibility through the windscreens or windows. These include:

- protection to a person sitting inside a motor vehicle from the sun's harmful ultra-violet (UV) rays which may cause premature skin aging and skin cancer. As such, tinted film may be very helpful on long journeys where there could be a risk of overexposure;
- reduction of the amount of infrared rays and visible light that passes through the windscreens and windows of a motor vehicle which creates a better driving environment;
- reduction of the heat generated by direct sunlight into the motor vehicle making the interior naturally cooler so that the air conditioning will not have to work as hard to keep temperatures at a constant low, saving fuel and therefore money for the owner of the motor vehicle;
- reduction in glare from the sun and other motor vehicles' headlights, enabling drivers to have better visibility;
- holding together shattered glass if involved in a motor vehicular accident thereby reducing the occupants exposure to glass splinters;
- increased privacy for the occupants while driving or while stationary;
- safety and security of the contents or belongings present in the motor vehicle thereby reducing the risk of vehicle break-ins.

1.5 Notwithstanding the above, if the material which is used to reduce the passage of light and/or visibility through the windscreens or windows of a motor vehicle is too dark or excessively tinted, this can lead to certain difficulties such as:

- The inability of law enforcement personnel to visually identify the driver and occupants of a motor vehicle to determine whether there might be any security risk based upon the behaviour of the occupants or to detect the presence of any possible weapon;
- The inability of a driver to see through the windscreens and windows of the motor vehicle during conditions of reduced natural light e.g. at dusk/night, or poor weather conditions which leads to a reduction in safety;
- The retention of heat in the motor vehicle which may result in increased cabin temperature; and
- Preventing other motorists and pedestrians from being able to make eye contact with or gesture towards the driver of a motor vehicle. The ability to do such improves safety and can avoid accidents particularly at intersections.

1.6 The Ministry therefore appreciates that there is some value to be gained from the use of any material applied or affixed to the windscreens or windows of a motor vehicle which has the effect of reducing the passage of light and/or visibility through the windscreens or windows. However, the current law regarding the use of window film applied or affixed to a motor vehicle in Trinidad and Tobago is nebulous and subjective. Therefore, it is proposed that the **MVRT Act** be amended to provide for objective criteria, defined procedures and the use of modern devices to enforce the use of any material applied or affixed to the windscreens or windows of a motor vehicle which has the effect of reducing the passage of light and/or visibility through the windscreens or windows.

1.7 In making amendments, the following fundamental factors be addressed:

- i. The permissible percentage of total Visible Light Transmittance of the glass and any material applied or affixed to a motor vehicle's windscreens and windows;
- ii. The allowance of Privacy and Medical exemptions;
- iii. The approved device to be utilised for the measurement of the percentage of total Visible Light Transmittance of the glass and any material applied or affixed to a motor vehicle's windscreens and windows; and

- iv. The appropriate penalties to be imposed for contravention of the proposed amendments.

1.8 A thorough examination of the relevant legislation governing the regulation and enforcement of window film applied or affixed to a motor vehicle's windscreens and windows in various Commonwealth Countries and other jurisdictions provided guidance for the amendment of our present legislation. In particular, a detailed analysis of the legislation implemented in the United Kingdom²; Australia (Queensland, South Australia, Tasmania and Victoria)³; the Province of Quebec⁴, Canada⁵; Jamaica⁶, Cayman Islands⁷ and the States of Florida and New York, United States of America⁸ were undertaken. This comprehensive review has informed the key proposals contained in this policy document (See table depicting the relevant legislative provisions for the aforementioned jurisdictions at *Appendix B*).

² United Kingdom: The Roads Vehicles (Construction and Use) Regulations 1986. Regulations 32(10)-(13) < http://www.legislation.gov.uk/ukxi/1986/1078/pdfs/ukxi_19861078_en.pdf> accessed 27 June 2016

³ Australia: Province of South Australia - Schedule 1 of the Road Traffic (Light Vehicle Standards) Rules, 2018 >[https://www.legislation.sa.gov.au/LZ/C/R/ROAD%20TRAFFIC%20\(LIGHT%20VEHICLE%20STANDARDS\)%20RULES%202018/CURRENT/2018.5.AUTH.PDF](https://www.legislation.sa.gov.au/LZ/C/R/ROAD%20TRAFFIC%20(LIGHT%20VEHICLE%20STANDARDS)%20RULES%202018/CURRENT/2018.5.AUTH.PDF)< accessed 25 April 2018

⁴ Canada: Province of Quebec - *Société de l'assurance automobile du Québec*, 'Tinted Windows' ><https://saaq.gouv.qc.ca/en/road-safety/modes-transportation/automobile/modified-cars/tinted-windows/>< accessed 27th February 2018 & <<http://legisquebec.gouv.qc.ca/en/ShowDoc/cr/C-24.2,%20r.%2032>> accessed 25 April 2018

⁵ Canada: Province of Quebec: Regulation respecting safety standards for road vehicles. C-24.2, r32, Sections 58-64 ><http://legisquebec.gouv.qc.ca/en/ShowDoc/cr/C-24.2,%20r.%2032/>> accessed 28 June 2016

⁶ Jamaica: The Road Traffic Act, section 15B: http://moj.gov.jm/sites/default/files/laws/Transport%20Authority%20Act_0.pdf<

⁷ Cayman Islands: Traffic Regulations (2017 Revision) of the Traffic Law, 2011 (Law 26 of 2011) ><http://www.gov.ky/portal/pls/portal/docs/1/12420393.PDF><accessed 1 June 2018

⁸ State of Florida, U.S.A: The 2005 Florida Statutes. Title XXIII-Sections 316.2951-316.2957 >http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=Ch0316/tit0316.htm&StatuteYear=2005&Title=%2D%3E2005%2D%3EChapter%20316< accessed 29 June 2016

2. OBJECTIVES OF THE POLICY

The objectives of this policy are to:-

- a) propose the amendment of **section 23(1)(d) of the Motor Vehicles and Road Traffic Act, Chapter 48:50** to include:
 - i. Permissible percentages of total Visible Light Transmittance of the glass and any material applied or affixed to a motor vehicle's windscreens and windows;
 - ii. privacy and medical exemptions; and
 - iii. the use of modern devices to enforce the restrictions on the use of any material applied or affixed to the windscreens or windows of a motor vehicle which has the effect of reducing the passage of light and/or visibility through the windscreen or window,
thereby ensuring the objective operation of the law;
- b) Encourage general compliance with road traffic laws;
- c) Promote uniform enforcement of the laws regarding the use of window film on motor vehicles; and
- d) Ensure and promote road safety for both motorists and pedestrians on the nation's road network.

3. THE CASE FOR REFORM:

TTPS powers under MVRT Act and MVRT (E&A) Act

- 3.1 Currently, the **MVRT Act** does not specify the degree or permissible percentage of window film that is legal in Trinidad and Tobago. In a Newsday article dated March 29, 2009, it was highlighted that in Trinidad and Tobago, “the VLT of thirty-five (35) per cent is generally considered “legal” but this is not specified by law and many vehicles — including some official vehicles have much darker tints” (see spectrum⁹ of tint film levels and ranges of Visible Light Transmittance percentages appended as *Appendix C*). Further, some businesses have stated what they believe is the “Legal shades in each quality... Legal Tints are 35%, 50% & 70% ...” of window film (see advertisement at *Appendix D*).¹⁰ Accordingly, citizens of Trinidad and Tobago have continuously sought clarification as to the acceptable grade of tint for window film or other material that can be utilised on their motor vehicles.
- 3.2 The **MVRT Act**, presently requires the law enforcement officer to conduct a subjective assessment when ascertaining if the windscreen or window of a motor vehicle is so tinted, treated or darkened so as to obscure the view of the inside of the vehicle from the outside. This subjective assessment ordinarily consists of the law enforcement officer during a motor vehicle traffic stop/exercise looking at the motor vehicle to determine whether they can adequately see into the motor vehicle.
- 3.3 This practice has the potential of two (2) law enforcement officers arriving at diametrically opposed conclusions regarding the degree of obscurity when viewing into the inside of the motor vehicle in question from the outside. Factors that may influence a law enforcement officer’s judgement in such a scenario include:
- the law enforcement officer’s visual capabilities;
 - ambient light (day or night);
 - background light;
 - the colour of the interior of the motor vehicle such as the upholstery; and
 - if eyewear is worn by the law enforcement officer - the opacity of the eyewear of the officer.
- 3.4 Such circumstances ordinarily result in the arbitrary enforcement of the law especially where the windscreens and all four (4) windows of the motor vehicle are so tinted or darkened, that breach may result in five (5) fixed penalty notices/tickets being issued to

⁹ Source: <http://www.cartintlaw.com/window-tint-examples/> accessed on 1 May 2018

¹⁰ Source: <http://motorcityt.com/6-window-films-and-tools.html> accessed on 1 May 2018

the driver amounting to a total fixed penalty sum of Ten Thousand Dollars (\$10,000.00).¹¹ The most recent occurrence of such an incident was reported by CNC3 news on 29th May, 2018.¹² This report reiterated the current deficiency in the law namely that “*there is no specification in the law as to what grade of tint is acceptable or not allowed in this country*” [emphasis added].

- 3.5 As illustrated in Table 1 hereunder, information obtained from the Trinidad and Tobago Police Service (TTPS) shows that the number of Fixed Penalty Notices (Tickets) issued by the TTPS Traffic and Highway Patrol Branch for the years 2015, 2016 and 2017 for breach of **section 23(1)(d) of the MVRT Act, Ch. 48:50** amounted to 198, 200 and 206 respectively. The total value of the Fixed Penalty Notices (Tickets) issued for the years 2015 - 2017, amounted to the estimated total value of **One Million, Two Hundred and Eight Thousand Dollars (\$1,208,000.00)**. Appended as *Appendix E* is a detailed monthly statistical breakdown for the number of Fixed Penalty Notices (Tickets) issued by the TTPS Traffic and Highway Patrol Branch for the offence under **section 23(1)(d) of the MVRT Act, Ch. 48:50** for the years 2015, 2016 and 2017.

Table:

Number of Fixed Penalty Notices (Tickets) issued for breach of Section 23(1)(d) of the MVRT Ch. 48:50 & No.61 of First Schedule MVRT (E&A) Ch. 48:52 for the years 2015 -2017

Year	Total Number of Fixed Penalty Notices (Tickets) issued for section 23(1)(d)	Estimated Total Value (\$) Fixed Penalty - \$2,000.00
2015	198	\$396,000.00
2016	200	\$400,000.00
2017	206	\$412,000.00
TOTAL:	604	\$1,208,000.00

- 3.6 In a Media Release dated March 28th, 2009, the Policy and Media Research Unit of the Ministry of the Attorney General¹³ recognised that **section 23(1)(d) of MVRT Act** is silent on the degree of visibility. It further stated that, “the use of tint where vision is

¹¹ LoopTT News Website Article: “Petition launched over 'obscure' window tint laws” created by Loop News dated 6 February 2018 - ><http://www.looptt.com/content/petition-launched-over-obscure-window-tint-laws>< accessed on 6 April 2018

¹² CNC3 Television News Website Article: “Man ticketed \$2,000 each for 5 tinted windows” created on 29 May, 2018 - ><https://www.cnc3.co.tt/press-release/man-ticketed-2000-each-5-tinted-windows> < accessed on 31 May 2018

obscured has created a serious problem for law enforcement and it is well known that the motor vehicle has become an important tool in the arsenal of criminals, facilitating their movement from place to place.” Moreover, the media release poignantly acknowledges that “in the wider sense, *every offence, however, trivial it may appear, is an offence and every breach which is permitted or ignored a further descent into lawlessness*” [emphasis added].

- 3.7 During the debate of the **Motor Vehicles and Road Traffic (Amendment) Bill, 2017** members of the Senate during the committee stage on 6th June, 2017 highlighted that the law on the use of “tint” in its current form is subjective, disproportional and oppressive.¹⁴ Furthermore, currently the **MVRT Act** does not contain any provision for exemptions from the prohibited use of window film (“tint”) on motor vehicles as specified in **section 23(1)(d) of the MVRT Act**.
- 3.8 Consequently, the Ministry of Works and Transport proposes to amend the **Motor Vehicles and Road Traffic Act, Ch. 48:50** to allow for objective criteria, a defined procedure and modern devices needed to enforce the law regarding the use of any material applied or affixed to the windscreens or windows of a motor vehicle which has the effect of reducing the passage of light and/or visibility through the windscreens or windows of a motor vehicle.

¹³ Media Release: “*Government Commends Citizens in the Continued Fight against Crime*”, Policy and Media Research Unit of the Ministry of the Attorney General dated 28 March 2009
>http://www.ag.gov.tt/Portals/0/Documents/Press%20Releases/Media_Realease-Tint_Issue.pdf < accessed 6 April 2018

¹⁴ Trinidad and Tobago Parliament **Hansard – Senate dated 6 June, 2017: “Members had raised the issue of the tint...”** at pages 167 to 172 - > <http://www.tparliament.org/hansards/hs20170606.pdf> < accessed on 26 April 2018

4. KEY RECOMMENDATIONS FOR THE AMENDMENT OF LAWS REGARDING THE USE OF WINDOW FILM ON MOTOR VEHICLES IN TRINIDAD AND TOBAGO

4.1 It is crucial that the current antiquated laws which regulate the use of window film on the windscreens and windows of a motor vehicle are amended so that Trinidad and Tobago can take one further step toward aligning its laws with internationally accepted guidelines and best practice. In this regard, it is proposed that the law in Trinidad and Tobago regarding the use of any material applied or affixed to the windscreens or windows of a motor vehicle which has the effect of reducing the passage of light and/or visibility through the windscreens or windows have the following key features:

❖ Permissible Percentage of Total Visible Light Transmittance (VLT):

4.2 From the jurisdictional analysis, it is noted that the laws regulating the use of window film on the windscreens and windows of a motor vehicle were primarily concerned with the degrees of Visible Light Transmittance (VLT). Most of these countries have legislation in place which stipulates the permissible percentage of total Visible Light Transmittance of any material applied or affixed to the windscreens or windows of the motor vehicle. Visible Light Transmittance is the measure of the amount of light that passes through the windscreens and windows of a motor vehicle. For example, thirty-five per cent (35%) VLT means thirty-five per cent (35%) of the visible light passes through the windscreen or window and the rest of the light is blocked. The 'Total Visible Light Transmittance' refers to the amount of light that passes through both the glass and material/film, and not just the material/film alone.

4.3 Some jurisdictions also have laws relative to the percentage of Visible Light Reflectance (VLR) that the motor vehicle's windscreens and windows allow. VLR refers to the amount of light that is reflected by the windscreen or window. Motor vehicle window tinting reduces the VLR through the windows of the vehicle. Also, some window films contain metallic/mirror elements (silver mirror look) that reflect incoming light and reduce the glare and heat generated by visible light. Therefore, the higher the VLR as produced by mirror like material, the greater the likelihood that the reflection of light off a motor vehicle's windscreens or windows may dazzle and impair the vision of other road users by reflecting sunlight or headlight beams. In light of this it is proposed that the application or affixture of any reflective (metallic/mirror) material on the windscreens and windows of a motor vehicle is prohibited.

- 4.4 Additionally, it is proposed that **section 23(1)(d) of the Motor Vehicles and Road Traffic Act** be repealed.
- 4.5 **Section 100 of the MVRT Act** would therefore be amended by inserting after paragraph (e), a new paragraph (f) to provide for the permissible percentage of total Visible Light Transmittance of the glass and any material applied or affixed to the windscreens or windows of a motor vehicle. Accordingly, **section 100 of the MVRT Act** would be required to be renumbered. The amendment to the MVRT Regulations of the **MVRT Act** for the application or affixture of any material on the windscreens or windows of a motor vehicle which has the effect of reducing the passage of light and/or visibility through the windscreen or window of a motor vehicle would be included as a **new Regulation 45A**. Currently, **Regulation 45 of the Regulations of the MVRT Act**, deals with safety glass for windshields. This proposed amendment would now empower the Minister with the responsibility for Transport to make Regulations subject to negative resolution of Parliament to stipulate the permissible percentage of total Visible Light Transmittance of the glass and any material applied or affixed to the windscreens or windows of a motor vehicle.
- 4.6 Based on the jurisdictional analysis of the motor vehicle window tint laws, it is proposed that the law be amended to stipulate that:

❖ **Windows – Front Side (driver and passenger)**

Where the front side windows (i.e. the driver's and passenger front moveable and non-moveable windows) of a motor vehicle are treated or darkened with material, they must when measured with a light transmittance meter must have a total Visible Light Transmittance through both the material and the glass of at least thirty-five (35) per cent of visible light.¹⁵

❖ **Windows – Rear (behind front side windows including the rear windscreen)**

Where the rear side windows (any side windows behind the front side windows including the rear windscreen) of a motor vehicle are treated or darkened with material, they must when measured with a light transmittance meter must have a total Visible Light Transmittance through both the material and the glass of at least twenty (20) per cent of visible light.¹⁶

¹⁵ Australia: Province of Victoria - Road Traffic Act/Road Safety (Vehicles) Regulations, 2009 – Regulation 257

¹⁶ Australia: Province of Queensland – Transport Operations (Road Use Management Vehicle Standards and Safety) Regulation 2010 – Part 4 section 33(5)(a)

❖ **Windshield/ Front Windscreen:**

Where the windshield/front windscreen of a motor vehicle is treated or darkened with material, it must when measured with a light transmittance meter must have a total Visible Light Transmittance through both the material and the glass of at least seventy (70) per cent of visible light.¹⁷

❖ **General Prohibition:**

The use of any reflective (metallic/mirror) material on the windscreens and windows (front side driver and passenger and rear) of a motor vehicle is prohibited. Additionally, the use or installation of any curtains, sun screen devices or other similar device on the windscreens and windows (front side driver and passenger and rear) of a motor vehicle is prohibited.¹⁸

❖ **Non-reflective strip or band on windshield/front windscreen:**

A strip or band of non-reflective material with a total Visible Light Transmittance through both the material and the glass of at least thirty-five per cent (35%) of visible light transmittance not exceeding fifteen centimetres (15cm) in width measured from the top of the windshield/front windscreen may be applied to the windshield/front windscreen of a motor vehicle. Additionally, this band must not extend into the windshield wiper arc area.¹⁹ This proposed amendment partially mirrors **Maxi-Taxi Regulation 12(2) of the Maxi -Taxi Act, Chap. 48:53** which states that the owner of a maxi-taxi may display his name or the name of the maxi-taxi on the front or rear windscreen of the motor vehicle, within an area not exceeding fifteen centimetres (15cm) from the top of the windscreen. Also, in Jamaica the guidelines which govern the use of tint film on public passenger vehicles provide that, “No tinting of windscreen (front or back) however, a six (6) inch visor is allowed at the top of the front windscreen.”²⁰

❖ **General Safety Requirements:**

Where the windscreens and windows of a motor vehicle are treated or darkened with material, it must be free of bubbles, scratches or other defects that could

¹⁷ United Kingdom: The Road Vehicles (Construction and Use Regulations 1986 - Regulation 32(10) and Cayman Compass News Website Article, “Police seek window tinting blackout”, published on March 27, 2014 ><https://www.caymancompass.com/2014/03/27/police-seek-window-tinting-blackout/> < accessed on 1 June 2018.

¹⁸ Jamaica: Regulation 15(b) of the Transport Authority Regulations, 1988

¹⁹ *ibid*, fn 4.

²⁰ Jamaica: Tinting Guidelines effective February 13, 2017 | Transport Authority, ><http://www.ta.org.jm/node/236>< accessed 25 April 2018

unreasonably impair or adversely affect the driver's vision.²¹ A person who contravenes this provision would be issued a warning by the law enforcement officer. This warning would require the violator to remedy the defects identified and produce the motor vehicle for further inspection at the nearest Police Station within the district where the violator resides within thirty (30) days from the date the warning was issued.²²

❖ **Definitions:**

The following terms should be specifically defined.²³ Accordingly:

- (i) "Material" means film, glazing, perforated adhesive mesh advertisement/artwork, sun screening, advertising stickers, labels, logos, decals, vinyl or adhesive wrap and any other material such as paint etc. which might be applied or affixed to a motor vehicle's windscreens and windows.
- (ii) "Treated or darkened" means any material applied or affixed to the windscreens or windows of a motor vehicle which has the effect of reducing the passage of light and/or visibility through the windscreens or windows of a motor vehicle;
- (iii) "Visible Light Transmittance" means the ratio of the amount of total light, expressed in a percentage, which is allowed to pass through the glass and any material, to the amount of total light falling on the glass and any material applied or affixed to a motor vehicle's windscreens and windows.
- (iv) "Windscreen" includes a windshield.²⁴

❖ **Exemptions:**

A. General - Privacy

4.7 It is proposed that the restrictions outlined at paragraph 4.6 above shall not apply, on a case by case basis, to any motor vehicle that is so exempted by the Licensing Authority. An

²¹Australia: "Tasmanian Government- Department of State Growth AIS Compliance Unit- Fact Sheet No 3"

>http://www.transport.tas.gov.au/_data/assets/pdf_file/0014/110426/FACT_SHEET_NO_3_-_Are_you_Checking_your_Light_Vehicle_Regulatory.pdf.< and

>http://www.transport.tas.gov.au/_data/assets/pdf_file/0010/149959/Light_vehicle_inspection_manual.pdf.< accessed 25 April 2018

²² This timeframe is consistent with the period for the payment of a fixed penalty under **section 82** of the **Motor Vehicles and Road Traffic (Amendment) Act, Act No. 9 of 2017**.

²³ State of Florida, U.S.A.: Title XXIII Motor Vehicles Statute of Florida, 2005- Section 316.2951 <

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=Ch0316/tit0316.htm&StatuteYear=2005&Title=%2D%3E2005%2D%3EChapter%20316> accessed 29 June 2016

²⁴ United Kingdom: Regulation 32(13) of the RV (Construction and Use) Regulations, 1986 – SI 1986/1078

application for an exemption would have to be submitted in the approved form to the Licensing Authority for consideration by the Transport Commissioner. Applications can be made for the following:

- vehicles utilised to transport State Officials;
- Ambulances;
- Protective Services vehicles;
- vehicles owned by the Military Authority²⁵;
- vehicles registered to a Protective Service Agency within the meaning of the **Supplemental Police Act, Chapter 15:02**²⁶; and
- vehicles utilised by an undertaker or funeral home or limousines.

4.8 Where such an exemption is granted, a motor vehicle must be outfitted with dual external rear vision mirrors. These mirrors would assist in reducing blind spots and promote safe road use.²⁷ It is also proposed that any exemption granted on a case by case basis, will be valid for a period of not more than two (2) years.

B. Medical

4.9 There are certain medical conditions and disorders that would require a person to be protected from the sun's ultra-violet (UV) rays. As such, it is proposed that the restrictions outlined at paragraph 4.6 above relative to the front windows, rear windows and windscreens of a motor vehicle should not apply on medical grounds. However, this proposed exemption does not apply to public service vehicles, private school buses, motor omnibuses and maxi-taxis as so defined under the **MVRT Act**. The under mentioned list of medical conditions and disorders qualify the owner of a motor vehicle to apply to the Licensing Authority (Transport Commissioner) for an exemption where the owner or habitual passenger or habitual driver suffers from such a medical condition or disorder. Such an application must be supported by the following:

- i. a medical certificate from a medical specialist who is registered as a medical specialist in the Medical Specialist Registrar²⁸;

²⁵ See **Section 42(7)** of the **Motor Vehicles and Road Traffic Act, Chap. 48: 50**.

²⁶ A Protective Service Agency is defined under the **Supplemental Police Act, Chapter 15:02** as "*protective service agency*" means a body corporate registered under the Companies Act whose principal object is the protection of persons and property by providing guards and escorts and approved for that purpose by the Minister.

²⁷ Australia: National Heavy Vehicle Standards (Window Tinting) Exemption (Notice), 2017 (No. 1) – Commonwealth of Australia.

²⁸ See section 10A of the **Medical Board Act, Chap. 29:50**.

- ii. in relation to a habitual driver proof that the person is endorsed on the insurance policy for the motor vehicle as an authorised driver;
- iii. in relation to a habitual passenger proof that the person is a spouse, child, dependent, parent or a member of the household of the registered driver.

Medical Conditions:

4.10 The following medical conditions (not an exhaustive list) justify the granting of a medical exemption, provided that its existence is certified by a medical specialist and personal protective measures, including wearing sun-protective clothing, sunscreen or eye protection devices or clear UV protective window films, are inadequate:

- albinism
- chronic actinic dermatitis/actinic reticuloid
- dermatomyositis
- lupus erythematosus
- porphyria
- xeroderma (pigmentosa) pigmentosum
- severe drug photosensitivity, provided that the course of treatment causing the photosensitivity is expected to be of prolonged duration
- photophobia associated with an ophthalmic or neurological disorder
- any other condition or disorder causing **severe** photosensitivity in which the individual is required for medical reasons to be shielded from the direct rays of the sun.²⁹

This list of medical conditions justifies an exemption from the general restrictions outlined at paragraph 4.6 above relative to the front windows, rear windows and windscreens of a motor vehicle.

Validity:

4.11 It is further proposed that a person should only be issued a medical exemption certificate for no more than two (2) motor vehicles. It is also proposed that this certificate be valid for a period of not more than two (2) years.

4.12 It is proposed this medical exemption certificate would become invalid upon the sale or transfer of the motor vehicle identified on the said certificate or if the applicant or

²⁹ State of New York, U.S.A.: “Application for tinted window exemption” - ><https://dmv.ny.gov/forms/mv80w.pdf>< accessed 27 February 2018

habitual passenger or habitual driver no longer suffers with the medical condition or disorder. It is further proposed that the original medical exemption certificate ought to be carried in the motor vehicle to which it applies at all times and will be void if altered, defaced or mutilated.

- 4.13 Where an exemption no longer applies, the windows and windscreens of the previously exempted motor vehicle would now have to be compliant with the restrictions outlined at paragraph 4.6 above.

❖ **Application Form:**

- 4.14 It is also recommended that the application for a privacy or medical exemption certificate should be made on a standard form to be approved by the Licensing Authority.

Medical Exemption:

The application form must be completed by both the applicant and a medical specialist. The form must contain, *inter alia*, the following information³⁰:

- the name, address and driving permit number/identification number/passport number of the registered owner/s of the motor vehicle;
- the name, address and driving permit number/identification number/passport number of the person with the medical condition where that person is a habitual passenger or a habitual driver (*the registered owner may not necessarily be the person afflicted with the medical condition*);
- the motor vehicle description including the make, model, type, year of manufacture, registration plate number and vehicle chassis number;
- the medical specialist's statement of certification i.e. the specialist's name, medical qualifications in the area of specialisation, business address and a signed and dated declaration confirming the person's medical condition or disorder; and
- the signature of the registered owner of the motor vehicle and date of the application.

³⁰State of New York, U.S.A. – Application for tinted window exemption - ><https://dmv.ny.gov/forms/mv80w.pdf><; and State of Florida – Application for Sunscreening Medical Exemption Form ><https://www.flhsmv.gov/dmv/forms/BTR/83390.pdf> < accessed 27 February 2018

❖ **Application and Processing Fee:**

4.15 It is recommended that a fee be charged in an amount sufficient to defray the expenses incurred by the Licensing Authority when processing and issuing an exemption certificate.³¹

❖ **Register of Exemptions**

4.16 It is further proposed that the Licensing Authority shall establish and maintain a register to document all medical and privacy exemptions granted and exemption certificates issued.

❖ **Light Transmittance Measuring Device/Meter**

4.17 A light transmittance meter is an instrument used for measuring the total amount of light permeability (total Visible Light Transmittance) through the glass and any material applied or affixed to a motor vehicle's windscreens or windows.

4.18 It is proposed that the Transport Commissioner may by Order specify the device which is to be used by trained constables in determining whether the glass and the material applied or affixed to a motor vehicle's windows and windscreens meets the permissible percentages of total Visible Light Transmittance (VLT) as provided for in paragraph 4.6 above.

4.19 It is further recommended that, for the purpose of deciding upon and procuring the ideal device, the following features and specifications ought to be generally met³²:

- The ability to measure the percentage of total Visible Light Transmittance (VLT) of the glass and any material applied or affixed to the windscreens and windows of a motor vehicle;
- Measurement Range from zero per cent (0%) to one hundred per cent (100%);
- Auto Calibration for optimum results;
- Digital and backlit display option to make it easier to test windscreens and windows in darker environments especially in the evening, night or on overcast days;
- Rechargeable battery/long battery life;
- Low battery indicator;
- Accurate and reliable reading results;

³¹ These proposed medical exemption provisions bears some resemblance to the medical exemption provision contained in section 316.29545 of Title XXIII Motor Vehicles Statue of Florida, U.S.A.

- Convenient size;
- Easy to use, light weight and easy to carry;
- Come equipped with a carrying case for its protection;
- Durable through falls bumps and drops and have a solid structure;
- Require minimal maintenance/servicing; and
- Ability to connect to Digital Hardware/Devices such as tablets/printers to provide for a printout of the results of a test.

4.20 In addition, it is proposed that each light transmittance measuring device should have its own reference sample to verify the device's accuracy. The reference samples ought to be replaced at least once per year. In addition, light transmittance measuring devices should maintain unit accuracy within plus or minus three percentage (3%) points³³ of the reference sample/s and should have repeatability within plus or minus one percentage (1%) point from reading to reading.

4.21 It is also proposed that only constables, who are certified by the Commissioner of Police or Transport Commissioner as having successfully completed the requisite training, can issue a fixed penalty notice/ticket in respect of a violation detected by the use of a light transmittance measuring device.

4.22 Furthermore, it is recommended that a constable utilising a light transmittance measuring device must comply with the following general guidelines:³⁴

- (a) The light transmittance measuring device ought to be tested for accuracy at the beginning and end of each shift or road traffic exercise (as the case may be) and such testing should be performed in compliance with the manufacturer's directions, guidelines and recommendations. The constable must maintain and use a log book to record the accuracy tests performed at the beginning and end of each shift;
- (b) Individual devices must be maintained and operated in accordance with the manufacturer's directions, guidelines and recommendations; and
- (c) Constables must ensure that the area of the windscreen or window of the motor vehicle to be tested is clean and free from scratches. If necessary, the constable

³³ This proposed tolerance level mirrors **section 316.2955(2) of Title XXIII Motor Vehicles Statute of Florida**. This would allow for any margin of errors associated with the devices utilised in the measurement of the VLT of tint.

³⁴Florida: Use of Tint Meters (Light Transmittance Measuring Devices), Florida Highway Patrol Policy Manual, Policy Number 17.27 dated 7/18/12 > <https://www.flhsmv.gov/fhp/Manuals/1727.pdf> < accessed 27 February 2018

should clean the area to be tested by wiping the area with a soft cloth to remove dust etc.

These Guidelines ought to be incorporated into the **MVRT Regulations**.

❖ Penalties

- 4.23 Currently, under **section 23(1)(d) of the MVRT Act**, where *the windscreen or any other window of a motor vehicle is fitted with glass so tinted, treated or darkened as to obscure the view of the inside of the vehicle from the outside*, the ultimate penalty prescribed for breach of this prohibition is the cancellation of a motor vehicle's registration. In light of the proposed repeal of **section 23(1)(d) of the MVRT Act** as stated in paragraph 4.4 above, the cancellation of the motor vehicle's registration will no longer be applicable to this offence. **Section 23(1B)** provides that this notwithstanding, a person who contravenes **section 23(1)(d)**, commits an offence and is liable on summary conviction to a fine of Five Thousand Dollars (\$5,000.00). Under the fixed penalty system, the fixed penalty for breach of this offence is Two Thousand Dollars (\$2,000.00) as prescribed at **Item 61 of the First Schedule of the Motor Vehicles and Road Traffic (Enforcement and Administration) Act, Chapter 48:52**.
- 4.24 The Ministry is of the view that the current fine and fixed penalty of Five Thousand Dollars (\$5,000.00) and Two Thousand Dollars (\$2,000.00) respectively are proportionate to the proposed violation and as such, ought to be replicated in the proposed amendment to the Regulations.³⁵ Also, it will become necessary for the wording of **Item 61 of the First Schedule of the Motor Vehicles and Road Traffic (Enforcement and Administration) Act, Chapter 48:52** to be amended to reflect the proposed amendments to **Section 23(1)(d) of the Act**. Having regard to the Demerit Points System contained in the **Motor Vehicles and Road Traffic (Amendment) Act 2017, Act No. 9 of 2017** and the need to deter habitually errant behaviour it is proposed that where a person is convicted of this proposed violation or where the fixed penalty for the proposed violation is paid, three (3) demerit points shall be recorded against the driving permit record of the person. Therefore, an amendment would have to be made to Fourth Column of item four (4) in the Ninth Schedule of the **MVRT Act** by inserting the number "3".

³⁵ It should be noted that the **Motor Vehicles and Road Traffic (Amendment) Act, Act No. 9 of 2017** (yet to be proclaimed) converts the breach of **section 23(1) of the Motor Vehicles and Road Traffic Act, Chap. 48:50** from an offence to a traffic violation.

- 4.25 Further, it is proposed that a penalty/fine, as well as, a fixed penalty be imposed for the contravention of the requirement to have dual side mirrors on a motor vehicle. The penalty/fine and the fixed penalty imposed for such contravention ought to replicate the current penalty/fine imposed for breach of **Regulation 40 of the MVRT Regulations** in the sum of One Thousand Five Hundred Dollars (\$1,500.00) and the fixed penalty of Seven Hundred and Fifty Dollars (\$750.00) as stipulated at **item 40 of the First Schedule of the Motor Vehicles and Road Traffic (Enforcement and Administration) Act, Chapter 48:52.**
- 4.26 It is also recommended that where a driver and/or owner of a motor vehicle is found to be in contravention of the restrictions outlined at paragraph 4.6 above, relative to one (1) window/windscreen or all windscreens (2) and (4) windows, **only one (1) fixed penalty notice (ticket) with the requisite number of demerit points** ought to be issued since the contravening act/s in question are of the same nature, comprising of one activity and are connected in time and place.³⁶

❖ **Transition Period**

- 4.27 It is proposed that there be a transition period of three (3) months to allow citizens ample opportunity to make their motor vehicles compliant with the proposed amendments to the **MVRT Act.**

³⁶ Seetahal Dana. (2001) . *Commonwealth Caribbean Criminal Practice and Procedure*, Cavendish Publishing, pg. 89.

5. CONCLUSION

5.1 The proposed repeal of **section 23(1)(d)** and the amendment to **section 100 of the Motor Vehicles and Road Traffic Act, Chapter 48:50** would finally bring clarity to the antiquated laws regarding the use of window film and any other material on motor vehicles which currently exists in Trinidad and Tobago. The amendments provide for the following:

- Permissible percentages of total visible light transmittance of the glass and any material applied or affixed to a motor vehicle's windscreens and windows;
- privacy and medical exemptions;
- the use of light transmittance measuring devices/meters by constables for measuring the percentage of total visible light transmittance of the glass and any material applied or affixed to a motor vehicle's windscreens and windows; and
- the imposition of penalties.

These proposed amendments would ensure that the law is uniformly enforced in a fair and reasonable manner. Moreover, these amendments would bring Trinidad and Tobago in line with most developed countries that already have similar laws regulating application or affixture of any material to the windscreens or windows of a motor vehicle which has the effect of reducing the passage of light and/or visibility through the windscreens or windows.