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## GENERAL NOTICE

**NOTICE 898 OF 1998**

**DEPARTMENT OF TRANSPORT**

**DRAFT ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES  
BILL, 1998**

The above-mentioned Draft Bill is published in the Schedule for comment .

Interested parties are invited to submit written comments no later than 22 June 1998 to:

Ms D. Briesch (Law Advisor)  
Department of Transport  
Forum Building (Room 4109)  
Private Bag x 193  
PRETORIA  
0001  
Fax No: (012) 328 5102

The Draft Bill is explained in the Backgrounder preceding the attached Draft Bill.

**SCHEDULE****DRAFT ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES BILL, 1998****BACKGROUNDER**

1. The main aims of the Act are to:
  - 1.1 introduce an alternative procedure whereby the majority of road traffic offences (known as "infringements") are settled outside the courts;
  - 1.2 discourage the non-payment of penalties by imposing additional costs on persons (known as "infringers");
  - 1.3 introduce a "fast track" procedure for those infringements (known as "major" infringements) which are more likely to end up in court (i.e. as a result of severity and quantum of the penalty);
  - 1.4 introduce a representations procedure for "minor" infringements to grant infringers the opportunity to make petitions by providing facts which would lead a court on reasonable grounds not to hold them liable for penalties;
  - 1.5 ensure that cases are "filtered" by the representations procedure so that petitions with merit are allowed, while infringers whose petitions are without merit are fully informed why their representations are rejected and are so discouraged to opt to go to trial;
  - 1.6 promote even-handedness in penalising infringers by providing that uniform penalties are imposed for infringements handled administratively;
  - 1.7 introduce a points demerit system in terms of which illegal behaviour is penalised by the imposition of points which may ultimately lead to the suspension or cancellation of a driving licence, professional driving permit or operator card;
  - 1.8 prohibit the issuing of a driving licence, professional driving permit an operator card or licence disc to an infringer in respect of whom an enforcement order has been issued, until the penalty and fees are paid; and
  - 1.9 establish a Road Traffic Infringement Agency to facilitate and manage the administration of infringements, overseen by a board.
2. Based on a preliminary survey, it is anticipated that in the region of 90% of traffic offences for which notices or summonses are currently issued in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), will fall in the ambit of the Act. Of these, a large percentage will, in turn, be dealt with as infringements, leaving a small portion of traffic offences likely to end up in court. This will ensure that the resources of the courts and the prosecuting authority are freed to deal with the most serious offences, hopefully resulting in higher conviction rates and the imposition of sentences with a greater deterrent value.
3. The main features of the Act are dealt with in further detail below.
4. **ROAD TRAFFIC INFRINGEMENT AGENCY**
  - 4.1 The agency is established at national level at arms length from government, subject to the joint oversight of the Ministers of Transport and Justice. It will perform certain quasi-judicial, as well as execution and prosecution support functions. Examples of these are:

- Considering representations against the issuing of an infringement notice;
  - Undertaking the collection of penalties on behalf of provincial and local traffic authorities in respect of notices where infringers are in default;
  - Serving and executing warrants to seize property in respect of infringers defaulting on the payment of penalties; and
  - Providing expert witnesses to testify in road traffic prosecutions.
- 4.2 As the agency will be performing certain quasi-judicial functions, it will be headed by a **registrar** who has a thorough understanding and experience of cross-functional business management and motivational leadership. The registrar will be assisted by 3 (or more) deputy registrars. Deputy registrars will be responsible for:
- quasi-legal functions (e.g. representations, execution, etc);
  - financial management and control; and
  - information management.
- 4.3 The agency personnel will also comprise a component of **representations officers**. Representations officers will be road traffic specialists who are legally-qualified or have experience in road traffic management. These officers will be the first port of call for persons on whom infringement notices have been served in so far as they will consider representations where persons feel there are reasonable grounds why they would not be held liable by a court. These officers will play an important role in filtering the majority of cases by ensuring that most cases are settled administratively rather than by the courts. On the one hand, these officers will ensure that where representations have merit, the matter is not pursued and notices are cancelled. If representations are rejected, officers will fully explain their reasons to infringers in writing. This will ensure that infringers can make informed decisions whether their cases have any merit and whether it is worthwhile to insist on being tried.
- 4.4 Representations officers will, in practice, become highly proficient in evaluating the merits of individual road traffic cases. It is, therefore, envisaged that they may also be utilized as expert witnesses to assist in the prosecution of serious offences in the courts. At the same time, they could assist in the training of prosecutors responsible for road traffic prosecutions.
- 4.5 It is envisaged that the agency may also appoint **sheriffs** to assist with its execution functions. Although sheriffs will be employees of the agency they will in all other respects comply with the Sheriffs Act, 1986. Sheriffs will execute their function in terms of the rules promulgated in the Magistrates' Courts Act, 1944.
- 4.6 The efficient functioning of the agency will largely depend on an appropriate **information management system**. In practice, the agency will be handling large volumes of transactions emanating from traffic authorities throughout the country. At the same time, the agency will deal directly with infringers during various stages of the administrative process. This will require an appropriate database and the necessary links to the National Traffic Information System. Finally, the agency will be dealing with the courts by referring for trial those cases in which infringers have opted to be tried.
- 4.7 The agency will be funded mainly from fees for collecting penalties and by charging infringers for the issuing of courtesy letters, enforcement orders and warrants. In practice, a huge volume of transactions are likely to be handled. This will require an appropriate **financial management system** to process transactions and account for monies received and disbursed. In line with the existing practise, penalties paid to the issuing authorities are retained by these authorities.

- 4.8 The agency will be represented by a **board** comprising of an Attorney-General, the chairperson of the Magistrates' Commission, three persons representative of the private sector appointed on account of their commercial expertise and the registrar. The function of the board will be to strengthen co-operation between these authorities, to monitor the activities of the agency, advise on ways to improve its effectiveness and identify areas where the agency may assist the law enforcement and adjudication process.

## 5. PROCEDURE

- 5.1 The main features of the procedure to be implemented by the agency are:

- Infringers are served by with **infringement notices** imposing a fixed penalty for an alleged infringement. Notices will provide detailed guidelines regarding the administrative procedure, including the rights enjoyed by infringers in terms of the procedure.
- Offenders respond to a notice by paying a **fixed penalty** to the authority which issued the notice, i.e. local or provincial authority (If a notice has been issued by a SAPS member or other authorised person, it is proposed that the money be channelled to the local authority in whose jurisdiction the infringement was committed). Alternatively, an infringer may opt to be tried in court on a charge of having committed the alleged offence. In this case, an infringer will be summonsed, without the option of paying an admission of guilt fine. Failing to opt for a trial will mean that the infringer has abandoned his or her right to be tried in court and has accepted the consequences of the administrative procedure.
- Offenders who pay the penalty within the initial time allowed, qualify for a discount on the penalty. This measure is intended to encourage high compliance rates. The discount is aimed at ensuring that the vast majority of penalties are paid to local or provincial authorities, and that the number of notices referred to the agency are limited.
- If a minor infringement has been committed, the infringer has the option to make **representations** to the agency. If the representation is unsuccessful, a representations fee will be added to the original penalty. Representation officers are empowered to recommend to infringers that facts revealed by the representations require further consideration by a court. An infringer is then entitled to opt to be tried, failing which he or she is required to comply with the notice by paying the penalty and the representations fee.
- Failure to respond to an infringement notice, results in the issuing of a **courtesy letter**. If an infringer has been notified that his or her representations have been rejected, such notification has the same effect as a courtesy letter. This informs the infringer of his or her failure to respond to an infringement notice and gives notice that an **enforcement order** will be issued by the registrar of the agency. The cost of the courtesy letter is now added to the penalty payable by the infringer.
- In the case of major infringements, infringers will not have the option to make representations (this is motivated by the expectation that in the event of an unsuccessful outcome, infringers will still opt to be tried due to the quantum of the penalty which may be imposed or the number of demerit points which may be incurred). Infringers failing to pay their penalties in this case, are, therefore, immediately issued with a courtesy letter.
- Upon receipt of a courtesy letter, an infringer exercises the option either to pay the penalty (and the cost of the courtesy letter) or to be prosecuted.

- If an infringer opts to be tried, he or she is prosecuted in the magistrates court in the normal manner. If the infringer fails to appear for trial, the matter is, in addition to contempt proceedings, referred back to the agency and an enforcement order may be issued forthwith.
- If an infringer does not exercise the right to be tried, he or she must pay the penalty (and costs) or accept the consequences that an enforcement order is issued and that his or her property may be seized in terms of a warrant to cover the penalty and the fee for the order and execution of the warrant.

**5.2 The administrative procedure is supported by a number of additional mechanisms:**

- The Act prescribes **standard response periods** of 28 days to any notice, etc. which may be served on an infringer.
- In practice, all documentation will either be **served** by hand or by registered mail. This will ensure that there is a high degree of certainty that documentation is served and eliminate the possibility that non-service is used as a defence.

**5.3 The bill also introduces a points demerit system which applies to drivers, professional drivers and operators of motor vehicles. Infringers will incur prescribed demerit points which will result in the suspension of a driving licence, professional driving permit or operator card once the prescribed threshold is exceeded (points will, similarly, also be incurred upon conviction by a court). In the event that a person incurs a third suspension, this will result in the cancellation of the licence, permit or card as the case may be. During the period of suspension, a person is prohibited from driving or operating a motor vehicle.**

**BILL**

**To promote road traffic quality by providing for a scheme to discourage road traffic contraventions, to facilitate the adjudication of road traffic infringements, to support the prosecution of offences in terms of the national and provincial laws relating to road traffic, and implement a points demerit system; to provide for the establishment of an agency to administer the scheme; to provide for the establishment of a board to represent the agency; and to provide for matters connected therewith.**

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows: -

**CHAPTER I*****Interpretation of Act*****Definitions**

1. In this Act, unless the context otherwise indicates -

"acceptable identification" means -

- (a) a temporary identity certificate or an identity document issued in terms of the Identification Act, 1986 (Act No. 72 of 1986);
- (b) in the case of a person not permanently resident in the Republic, an identity document issued by a foreign country or a traffic register number certificate;
- (c) in the case of -
  - (i) a company, a certificate of incorporation or name change issued in terms of the Companies Act, 1973 (Act No. 61 of 1973); or
  - (ii) a close corporation, a founding statement or a certificate of name change issued in terms of the Close Corporations Act, 1984 (Act No. 69 of 1984);
- (d) in the case of -
  - (i) a person carrying on a business which, for the purpose of this definition, includes farming activities; or
  - (ii) a body of persons not referred to in paragraph (c).  
a traffic register number certificate; or
- (e) a photocopy of the applicable certificate or document referred to in paragraphs (a) to (d);

"agency" means the Road Traffic Infringement Agency established by section 3;

"authorised officer" means -

- (a) a traffic officer or a traffic warden appointed in terms of the laws of any province;

- (b) a member of the service as defined in section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995);
- (c) a national road transport inspector appointed in terms of section 37(1) of the Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998), or any duly appointed provincial road transport inspector; or
- (d) a municipal police officer appointed under any law;

"board" means the board of the agency established by section 6;

"courtesy letter" means a courtesy letter contemplated in section 20;

"date of service" means the date on which an infringer has signed for the relevant document served on him or her under section 31;

"demerit points" means demerit points contemplated in section 25;

"Director-General" means the Director-General of the Department of Transport;

"disqualification period" means the period contemplated in section 26 during which a person is disqualified from driving or operating a motor vehicle;

"enforcement order" means an enforcement order contemplated in section 21;

"infringement" means a major or a minor infringement;

"infringement notice" means an infringement notice contemplated in section 17;

"infringer" means a person who allegedly committed an infringement;

"issuing authority" means -

- (a) a local authority contemplated in Chapter 7 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), the Local Government Transition Act, 1993 (Act No. 209 of 1993), or any other applicable law; or
- (b) a provincial administration,

in so far as such authority or administration is responsible for traffic matters in its area of jurisdiction;

"major infringement" means an offence prescribed as a major infringement under section 30(a);

"MEC" means a member of an Executive Council appointed in terms of section 132 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), and who is responsible for road traffic matters;

"Minister" means the Minister of Transport acting with the concurrence of the Minister of Justice;

"minor infringement" means an offence prescribed as a minor infringement under section 30(a);

"national contraventions register" means the National Traffic Information System on which the offence details of every individual are recorded in terms of this Act;

"offence" means an offence prescribed under section 30(a);

"penalty" means the administrative penalty payable for an infringement as contemplated in section 32;

"prescribed" means prescribed by regulation by the Minister under section 34;

"this Act" includes any notice or regulation made under it.

### Objects of Act

2. The objects of this Act, are despite the Criminal Procedure Act, 1977 (Act No. 51 of 1977), to -

- (a) encourage and promote compliance with the national and provincial laws relating to road traffic;
- (b) encourage the payment of penalties imposed for infringements and to allow alleged minor infringers to make representations;
- (c) establish a procedure for the effective and expeditious adjudication of infringements;
- (d) relieve the courts of the burden of trying offenders for infringements;
- (e) penalise drivers and operators who are guilty of infringements or offences through the imposition of demerit points leading to the suspension and cancellation of driving licences, professional driving permits or operator cards;
- (f) prohibit the issuing of a driving licence, professional driving permit or licence disc to a person in respect of whom an enforcement order has been issued;
- (g) reward law abiding behaviour by reducing demerit points imposed if infringements or offences are not committed over specified periods;
- (h) establish an agency to support the law enforcement and judicial authorities and to undertake the administrative adjudication process; and
- (i) strengthen co-operation between the judicial, prosecutory and law enforcement authorities by establishing a board to represent the agency.

## Chapter II

### Road Traffic Infringement Agency

#### Establishment of agency

3. (1) An agency, known as the Road Traffic Infringement Agency, is hereby established as a statutory authority responsible to the Minister.

(2) (a) The agency is a juristic person and may do anything that is necessary to perform its functions in terms of any law, or assigned to it by the Minister.

(b) The Minister may, on request of an issuing authority that lacks the capacity to perform its functions in terms of this Act, assign those functions to the agency.

(3) The agency must establish one central office, and may establish sub-offices at provincial or municipal level.

### Functions of agency

4. (1) The functions of the agency are, despite the Criminal Procedure Act, 1977 (Act No. 51 of 1977), to -

- (a) administer a procedure to discourage the contravention of road traffic laws and to support the adjudication of infringements as set out in subsection (2);
- (b) enforce penalties imposed against persons contravening road traffic laws as set out in subsection (3);
- (c) provide specialised prosecution support services as set out in subsection (4); and
- (d) undertake community education and community awareness programs in order to ensure that individuals understand their rights and options as set out in subsection (5).

(2) The agency undertakes its functions in terms of subsection (1)(a) by -

- (a) receiving notices from any issuing authority if an infringer has failed to comply with an infringement notice issued in terms of section 17;
- (b) considering representations from an infringer in terms of section 19 with regard to an infringement notice relating to a minor infringement;
- (c) issuing a courtesy letter in terms of section 20 to an infringer who has failed to comply with an infringement notice;
- (d) issuing an enforcement order in terms of section 21 against an infringer who has failed to comply with the requirements of a notification contemplated in section 19(7) or a courtesy letter contemplated in section 20(2)(b), or who has failed to appear in court;
- (e) issuing a warrant to seize property in execution in terms of section 22 against an infringer who has failed to comply with an enforcement order;
- (f) revoking an enforcement order in terms of section 21 (9);
- (g) referring the matter to the court for trial in terms of section 20(4)(a) or 22(5)(a); and
- (h) updating the national contraventions register after every action contemplated in this subsection.

(3) The agency undertakes its functions in terms of subsection (1)(b) by -

- (a) serving a courtesy letter in terms of section 20 on an infringer who has failed to comply with an infringement notice;
- (b) serving an enforcement order in terms of section 21 on an infringer who has failed to comply with the requirements of a notification contemplated in section 19(7) or a courtesy letter contemplated in section 20(2)(b), or failed to appear in court; and

- (c) executing a warrant to seize property in terms of section 22 against an infringer who has failed to comply with an enforcement order.
- (4) The agency undertakes its functions in terms of subsection (1)(c) by -
- (a) assisting the prosecuting authorities to get persons who committed offences before the courts through serving of documents and keeping of records on its database;
  - (b) providing and operating traffic law enforcement equipment;
  - (c) providing, at the request of the Office of an Attorney-General, a person to testify as an expert witness in a trial on a charge relating to an offence; and
  - (d) providing training, where possible, to authorised officers or staff of the prosecuting authority.
- (5) The agency undertakes its functions in terms of subsection (1)(d) by -
- (a) disseminating information regarding the role and functions of the agency, and the rights enjoyed by individuals, in terms of this Act;
  - (b) applying efficient and equitable procedures to encourage compliance with this Act and foster law abiding behaviour by road users; and
  - (c) supporting road safety awareness programs.
- (6) The agency must, in order to properly execute its functions, establish the prescribed information management system and database which is connected with the national contraventions register, and utilise such database to create, process and maintain records with regard to any action performed by it in terms of this Act.

### Sub-contracting

5. (1) The agency may, subject to the business plan approved by the board, appoint agents, or contract with any person, to perform any function vested in it in terms of this Act or any other law.
- (2) Similar procedures as those laid down in the State Tender Board Act, 1968 (Act No. 86 of 1968), must be followed in respect of any contract contemplated in subsection (1), but the State Tender Board may not be involved.

### Establishment of board

6. (1) A board to represent and control the agency is hereby established, comprising -
- (a) three persons, who are not employed by the State, appointed by the Minister on account of their commercial and technical expertise;
  - (b) an Attorney-General jointly nominated by the Attorneys-General of the Republic from among their ranks;
  - (c) the chairperson of the Magistrates' Commission; and
  - (d) the registrar of the agency.

(2) The members of the board contemplated in subsection (1)(a) must serve for a period determined by the Minister, whereafter they may be re-appointed.

(3) The meetings of the board are chaired by the member designated by the Minister.

(4) The board meets at least twice per year or as often as may be required.

(5) The board may determine its own procedures for meetings and decisions.

(6) Members of the board who are not in the full-time employment of the State may be paid such remuneration and allowances as may be determined by the Minister with the concurrence of the Minister of Finance.

#### Role of board

7. (1) The role of the board is to -

- (a) approve the business plan prepared by the registrar in terms of section 8(2), and monitor the efficient and effective operation of the agency;
- (b) monitor the success achieved by the agency in promoting compliance with road traffic laws;
- (c) receive annual reports contemplated in section 8(4) from the registrar on the activities and operations of the agency, and to advise the registrar on measures to be taken to improve the agency's effectiveness;
- (d) advise the Minister regarding amendments to this Act or any other road traffic legislation in order to improve the effectiveness of the agency;
- (e) identify and recommend institutional, technical and logistical support which the agency may provide to assist the prosecution of road traffic offenders and the adjudication of offences by the courts; and
- (f) consider any other matter which the board deems advisable in order to achieve the objects of this Act.

(2) The board may assign any of its functions to any employee of the agency, or a member of the board, whom the board deems fit to perform the function.

(3) The board must annually submit a report on the activities of the agency to the Minister for tabling in Parliament.

#### Appointment of registrar

8. (1) The members of the board referred to in section 6(1)(a), (b) and (c) must appoint a person with proven expertise in corporate and financial management as the registrar of the agency.

(2) The registrar oversees the functions of the agency in accordance with a business plan prepared by the registrar and approved by the board, and in particular the -

- (a) the efficiency of penalty collection and supporting administrative procedures;
- (b) the operational and organisational functioning of the agency; and

- (c) the introduction of managerial and operational improvements to facilitate the implementation of this Act.

(3) The registrar may, in writing, assign a function contemplated in subsection (2) to a deputy registrar or registrars.

(4) The registrar must annually submit a report concerning the activities and operations of the agency to the board.

#### **Appointment of deputy registrars**

9. (1) The board may appoint such persons as deputy registrars as may be necessary.

(2) No person may be appointed as a deputy registrar unless that person has -

- (a) occupied a post as magistrate under the Magistrates Act, 1993 (Act No. 90 of 1993), or a post as senior prosecutor, for an uninterrupted period of at least five years; or
- (b) has a tertiary qualification in financial or information management and at least three years appropriate experience.

#### **Appointment of representations officers**

10. (1) The registrar may, subject to the business plan approved by the board, appoint such persons as representations officers as may be necessary.

(2) No person may be appointed as a representations officer unless that person -

- (a) holds a three year legal qualification and has proven expertise in the field of road traffic law; or
- (b) holds a prescribed qualification in road traffic management and control.

#### **Appointment of sheriffs**

11. (1) The registrar may, subject to the business plan approved by the board, appoint such persons as sheriffs or deputy sheriffs as may be necessary.

(2) The provisions of the Sheriffs Act, 1986 (Act No. 90 of 1986), apply, with the necessary changes, to a sheriff appointed under subsection (1).

#### **Administrative staff, and remuneration**

12. (1) The registrar must, subject to the business plan approved by the board, establish the administration of the agency and may appoint such administrative staff members as may be necessary.

(2) The agency may pay to the persons in its employ such remuneration and allowances, and may provide them with such pensions and other benefits, as the board may determine with the approval of the Minister granted with the concurrence of the Minister of Finance.

### Financing of agency

13. (1) The agency finances its operating and capital costs from -

- (a) fees paid to the agency in terms of this Act;
- (b) deductions from penalties collected by the agency as contemplated in section 33;
- (c) money borrowed by the agency;
- (d) money appropriated by Parliament for that purpose; and
- (e) donations received, which must be declared in the annual report contemplated in section 7(3).

(2) The agency must utilise any money contemplated in subsection (1) in accordance with the statement of estimated expenditure referred to in subsection (3).

(3) The registrar -

- (a) must, subject to the business plan approved by the board, in each financial year, at a time determined by the board, submit a statement of estimated income and expenditure for the following financial year to the board for approval by the Minister; and
- (b) may in any financial year submit adjusted statements of estimated income and expenditure to the board for approval by the Minister.

(4) The financial year of the agency is determined by the Minister.

(5) At the end of each financial year the registrar must invest any surplus funds of the agency in a separate account, from which payments may be made to any authority or body for the purpose of road safety or law enforcement.

### Bookkeeping and auditing

14. (1) The agency must, in accordance with generally accepted accounting practice, keep such accounting and related records as are necessary to represent fairly the state of affairs and business of the agency and to explain its transactions and financial position.

(2) The registrar is the accounting officer of the agency and charged with the responsibility of accounting for all monies received and payments made by the agency.

(3) The accounting and related records of the agency must be audited annually by an auditor registered in terms of section 15 of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991).

### Banking account

15. The agency may, with the approval of the Director-General, open and maintain one or more accounts with a bank registered finally as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990), in which must be deposited the money received by the agency and from which payments by it or on its behalf may be made.

**Limitation of liability**

16. No employee of the agency nor the agency is liable by reason of any act done in good faith by such employee in terms of this Act.

**CHAPTER III****Adjudication procedure****Infringement notice**

17. (1) If a person is alleged to have committed an infringement, an authorised officer or a person duly authorised by an issuing authority, must in stead of a notice contemplated in section 56 or 341 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), serve or cause to be served on that infringer an infringement notice, which must -

- (a) specify the name and residential or postal address of the infringer, if known, at the time when the infringement was committed;
- (b) state the prescribed particulars of the infringement;
- (c) specify the amount of the penalty payable in respect of that infringement, the issuing authority to which the penalty is payable and the place where the penalty may be paid;
- (d) specify the prescribed discount which may be obtained if the penalty is paid not later than 28 days after the date of service of the infringement notice;
- (e) inform the infringer that the demerit points position may be ascertained from the national contraventions register at the office of any issuing authority, registering authority or driving licence testing centre, after payment of the prescribed fee;
- (f) inform the infringer that he or she may not later than 28 days after the date of service of the infringement notice -
  - (i) pay the specified penalty, as reduced by the discount contemplated in paragraph (d), or make representations to the agency, in the case of a minor infringement;
  - (ii) pay the specified penalty, as so reduced, in the case of a major infringement;
  - (iii) elect in the prescribed manner to be tried in court on a charge of having committed the alleged offence; or
  - (iv) provide information to the satisfaction of the issuing authority that he or she was not the driver of the motor vehicle at the time of the alleged infringement, coupled with the name, acceptable identification and residential or postal address of the alleged driver or person in control of the vehicle, if known,

falling which the matter will be referred to the agency and a courtesy letter will be issued in terms of section 20, whereafter the infringer becomes liable to pay both the penalty and the prescribed fee of the courtesy letter.

(2) If an infringer fails to comply with an infringement notice within the period contemplated in subsection (1), the issuing authority must give notice of it, in the prescribed manner, to the agency for further action in terms of section 20.

### Compliance with infringement notice

18. (1) If an infringer complies with an infringement notice by paying the penalty, as reduced by the discount contemplated in section 17(1)(d), the issuing authority must -

- (a) update the national contraventions register in the prescribed manner;
- (b) record the demerit points incurred by the infringer in terms of section 25 in the national contraventions register;
- (c) notify the infringer by registered mail that the demerit points have been recorded against his or her name in the national contraventions register in respect of the infringement in question; and
- (d) provide the infringer with a printout of the demerit points incurred to date, together with an indication of the amount of points left before his or her licence, permit or operator card is suspended in terms of section 26 or cancelled in terms of section 28.

(2) If the infringer elects to be tried in court, the issuing authority must -

- (a) issue a summons in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977); and
- (b) update the national contraventions register in the prescribed manner.

(3) If the infringer satisfies the issuing authority that he or she was not the driver of the motor vehicle as contemplated in section 17(1)(g)(iv), the issuing authority must cancel the infringement notice, and may serve or cause to be served on the person identified as the driver an infringement notice in relation to the alleged infringement.

### Representations

19. (1) An infringer who has been served with an infringement notice alleging that he or she has committed a minor infringement, may make representations with respect to that notice to the agency.

(2) Representations under subsection (1) are made by submitting a sworn statement to the agency in the prescribed manner, indicating the existence of reasonable grounds why he or she should not be held liable for the penalty payable in terms of the infringement notice.

(3) No representations are valid unless the sworn statement referred to in subsection (2) is submitted not later than the 28 days specified in section 17(1)(g).

- (4) (a) The representations officer must, in the prescribed manner, inform the issuing authority concerned if representations of merit have been received from an infringer, and update its database contemplated in section 4(6).
- (b) Any representations of merit received must be submitted to the issuing authority concerned, who must reply thereto within the prescribed time.

(5) A representations officer must duly consider the representations and any reply thereto, may conduct independent investigations to verify the facts and may -

- (a) allow the representations if there are reasonable grounds indicating that the infringer should not be held liable for the penalty payable in terms of the infringement notice; or
- (b) reject the representations if there are no such reasonable grounds.

(6) If the representations are allowed the agency must forthwith cancel the infringement notice, and inform the infringer in the prescribed manner of the decision.

(7) If the representations are rejected, the representations officer may advise the infringer to go to court, and must serve or cause to be served on the infringer a written notification informing him or her -

- (a) of the reasons for the decision, and provide the issuing authority concerned with a copy thereof;
- (b) that the penalty and the representations fee are payable to the agency not later than 28 days after the date of service of the notification; and
- (c) that a failure to either pay the penalty and the representations fee will result in an enforcement order being served on the infringer and that the infringer will become liable to pay the penalty, the representations fee and the prescribed fee of the enforcement order.

(8) If an infringer pays the specified penalty as contemplated in subsection (7)(b), the agency must -

- (a) update the national contraventions register in the prescribed manner;
- (b) record the demerit points incurred by the infringer in the national contraventions register;
- (c) notify the infringer by registered mail that the demerit points have been recorded against his or her name in the national contraventions register in respect of the infringement in question; and
- (d) provide the infringer with a printout of the demerit points incurred to date, together with an indication of the amount of points left before his or her licence, permit or operator card is suspended in terms of section 26 or cancelled in terms of section 28.

#### **Courtesy letter**

20. (1) If an infringer has failed to comply with an infringement notice as contemplated in section 17(1)(f) and the agency has been notified of it in terms of section 17(2), the agency must issue a courtesy letter and serve it on the infringer.

(2) A courtesy letter must -

- (a) inform the infringer that he or she has failed to comply with the infringement notice;
- (b) give notice that the infringer must not later than 28 days after the date of service of the courtesy letter -

- (i) make representations in respect of a minor infringement;
  - (ii) pay the specified penalty and the prescribed fee of the courtesy letter to the agency; or
  - (iii) notify the agency in the prescribed manner that he or she elects to be tried in court; and
- (c) state that a failure to comply with the requirements of the courtesy letter within the time permitted, will result in the registrar issuing an enforcement order in terms of section 21.

(3) If an infringer pays the penalty and fee as contemplated in subsection (2)(b), the agency must -

- (a) update the national contraventions register in the prescribed manner;
- (b) record the demerit points incurred by the infringer in the national contraventions register; and
- (c) notify the infringer by registered mail that the demerit points have been recorded against his or her name in the national contraventions register in respect of the infringement in question; and
- (d) provide the infringer with a printout of the demerit points incurred by him or her to date, together with an indication of the amount of points left before his or her licence, permit or operator card is suspended in terms of section 26 or cancelled in terms of section 28.

(4) If an infringer notifies the agency that he or she wishes to be tried in court, the agency must -

- (a) refer the matter to the court that has jurisdiction; and
- (b) update the national contraventions register in the prescribed manner.

### Enforcement orders

21. (1) If an infringer fails to comply with the requirements of a notification contemplated in section 19(7) or a courtesy letter contemplated in section 20(2)(b), as the case may be, the registrar must, subject to subsection (2) -

- (a) issue an enforcement order, serve it on the infringer and update the national contraventions register accordingly;
- (b) record the demerit points incurred by the infringer in the national contraventions register;
- (c) notify the infringer by registered mail that the demerit points have been recorded against his or her name in the national contraventions register in respect of the infringement in question; and
- (d) provide the infringer with a printout of the demerit points incurred by him or her to date, together with an indication of the amount of points left before his or her licence, permit or operator card is suspended in terms of section 26 or cancelled in terms of section 28.

(2) No enforcement order is issued, unless the registrar is satisfied that -

- (a) an infringement notice has been served on the infringer in question;
- (b) a notification contemplated in section 19(7) or courtesy letter, as the case may be, has been served on the infringer in question;
- (c) a period of at least 28 days has passed since the date of service of the said notification or courtesy letter, as the case may be;
- (d) the penalty and prescribed fees have not been paid;
- (e) there are no pending representations in the case of a minor infringement;
- (f) the infringer has not elected to be tried in court, or has elected to be tried in court and has failed to appear; and
- (g) the infringer was at the time of the alleged infringement either the owner or operator of the motor vehicle or the driver of it.

(3) An enforcement order must -

- (a) state that the infringer on whom it is served may not later than 28 days after the date of service of the order, pay the specified penalty, representations fee, if any, and the prescribed fees of the courtesy letter and the enforcement order to the agency at the specified place and in the specified manner, and that the prescribed demerit points will be recorded in the national contraventions register; and
- (b) inform the infringer that a failure to pay the said penalty and fees within the period contemplated in paragraph (a) will result in a warrant being issued to seize and sell property of the infringer in order to recover the penalty, representations fee, if any, and the prescribed fees of the courtesy letter, the enforcement order and the warrant.

(4) If an infringer pays the specified penalty and fees as contemplated in subsection (3)(a), the agency must update the national contraventions register in the prescribed manner.

(5) Subject to subsection (6), no -

- (a) driving licence;
- (b) professional driving permit; or
- (c) licence disc,

may be issued to an infringer or in respect of a motor vehicle registered in the name of an infringer, if an enforcement order has been issued in respect of such infringer.

(6) The provisions of subsection (5) do not apply in respect of an infringer who provides proof in the prescribed manner that he or she has in the meantime paid the penalty and fees specified in the enforcement order.

(7) An infringer on whom an enforcement order has been served may comply with it by paying the specified penalty and fees to -

- (a) a registering authority; or
- (b) a driving licence testing centre.

(8) A registering authority or driving licence testing centre must notify the agency in the prescribed manner if it has received any payment contemplated in subsection (7) and must pay over such payment to the agency after reduction of the prescribed collection fee.

(9) An enforcement order must be revoked by the registrar if -

- (a) the infringer applies to the agency in the prescribed manner and submits reasons to the satisfaction of the agency why an enforcement order must be revoked; or
- (b) the issuing authority applies in the prescribed manner for a revocation of the enforcement order.

(10) If an infringer has elected to be tried for an infringement in terms of this Act, and the infringer has failed to appear for trial, the clerk of the court must, subject to the Criminal Procedure Act, 1977 (Act No. 51 of 1977), notify the agency of such failure, and the registrar must proceed to issue an enforcement order against the infringer in terms of subsection (1).

### Warrants

22. (1) If an infringer on whom an enforcement order is served does not comply with the provisions of the order contemplated in section 21(3)(a), the registrar may issue a warrant against the infringer and update the national contraventions register, and may report the infringer to a credit bureau.

(2) Sections 66, 67 and 68 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), apply with the necessary changes to a warrant issued in terms of this section, and in such application the infringer is deemed to be the judgement debtor.

(3) A warrant must be executed by a sheriff, appointed under section 11, in the manner prescribed in rules 41 and 42 of the rules of Court promulgated in terms of the Magistrates' Courts Act, 1944.

(4) If a warrant has been executed, the registrar must record the payment of the penalty and fees from the proceeds of the execution on the national contraventions register.

(5) If the execution of a warrant produces no property to seize and sell, the agency must, subject to section 32(2) -

- (a) refer the matter to the court that has jurisdiction; and
- (b) update the national contraventions register in the prescribed manner.

### Non-prosecution

23. (1) An issuing authority may, at any time after an enforcement order has been issued, apply in writing to the registrar not to refer a case of an alleged infringement to the court.

(2) If an application is made not to refer a case to court, the registrar must -

- (a) if the enforcement order has not been revoked in terms of section 21(9) -
  - (i) revoke the enforcement order;
  - (ii) not refer the matter to the court; and
  - (iii) update the national contraventions register; and

- (b) if the enforcement order has been revoked, not refer the matter to the court and notify the person against whom the order had been made -
  - (i) of the revocation of the order, if it was made in terms of paragraph(a)(i);
  - (ii) that the matter will not be referred to the court; and
  - (iii) that the national contraventions register has been updated.

(3) Despite any other law, an infringer who has been dealt with administratively in terms of this Chapter may not be prosecuted again on the same facts.

### **Trial**

24. Once the agency has referred a matter to the court in terms of section 20(4)(a) or 22(5)(a), the Criminal Procedure Act, 1977, (Act No. 51 of 1977), applies, and -

- (a) the prosecutor must notify the agency and the issuing authority in writing if he or she declines to prosecute;
- (b) the clerk of the court must notify the issuing authority or the agency of the outcome of the case, so that the national contraventions register may be updated; and
- (c) no admission of guilt may be accepted.

## **Chapter IV**

### **Points demerit system**

#### **Points demerit system**

25. (1) Any person who has committed an offence or infringement, incurs the number of demerit points prescribed under section 30(c) in accordance with subsections (2) and (3).

(2) Subject to subsection (4), demerit points are incurred on the date on which the penalty and fee, if any, imposed for the infringement are paid, an enforcement order is issued or the infringer is convicted of the offence, as the case may be.

- (3) (a) If a person has committed two or more infringements or is convicted by a court of two or more offences arising out of the same circumstances, points are recorded, subject to paragraph (b), only in relation to one such infringement or offence, being, in any case where the same number of demerit points does not apply to all those infringements or offences, the infringement or offence to which the greatest number of demerit points applies.
- (b) The demerit points in respect of offences or infringements by operators and drivers are recorded separately even if they arise out of the same circumstances.

(4) If a person appeals against a conviction by the court for an offence no demerit points are recorded unless the appeal is rejected or abandoned in the prescribed manner.

(5) A printout from the national contraventions register which is verified by the agency is on the face of it evidence of the demerit points incurred by the person, but nothing prevents a person from approaching the court on appeal or review in connection with the demerit points recorded against that person in the said register.

### Prohibition on driving or operating motor vehicle

26. (1) If a person incurs demerit points which, when added to the points previously recorded against that person in the national contraventions register, exceeds the total contemplated in section 30(d), that person is disqualified from driving or operating any motor vehicle for the period referred to in subsection (2).

(2) (a) The disqualification period equals in months the number of points by which the total referred to in section 30(d) is exceeded, multiplied by three or such number as may be prescribed by the Minister.

(b) The Minister may prescribe different numbers under paragraph (a) in respect of a driver and an operator of a motor vehicle.

(3) A person who is disqualified in terms of this section -

(a) must immediately hand in any driving licence, professional driving permit or operator card to the issuing authority contemplated in section 27(2) for suspension during the disqualification period; or

(b) may not apply for such licence, permit or card during the disqualification period.

(4) Any person who drives or operates a motor vehicle during his or her disqualification period is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding one year.

### Notification

27. (1) A notice, as prescribed, must forthwith be sent by registered mail to a person who has incurred more than the number of demerit points referred to in section 30(d), which notice must -

(a) inform that person of the number of demerit points incurred by him or her and of the offences or infringements for which those points have been incurred;

(b) inform that person that he or she may not drive or operate any motor vehicle during the disqualification period, and specify the length and expiry date of that period;

(c) inform that person of the contents of section 26(3) and (4); and

(d) in the event that section 28 applies, inform that person to forthwith surrender his or her driving licence, professional driving permit or operator card, to the issuing authority at the place specified in the notice.

(2) A notice referred to in subsection (1) must be sent by the issuing authority within whose area of jurisdiction the person in question is resident.

### Surrender of driving licence, professional driving permit and operator card

28. (1) A person who incurs demerit points resulting in a disqualification in terms of section 26 to drive or operate a motor vehicle for a third time, must forthwith surrender his or her driving licence,

professional driving permit or the operator card issued in respect of that motor vehicle to the issuing authority contemplated in section 27(2) for cancellation.

(2) An issuing authority must, upon receipt of a driving licence, professional driving permit or operator card, as the case may be, take the necessary steps to cancel such licence, permit or card.

(3) A person whose licence, permit or card has been cancelled in terms of this section is during his or her disqualification period also disqualified from applying for or being issued with -

- (a) a driving licence or a professional driving permit; or
- (b) an operator card in respect of the motor vehicle concerned.

(4) Upon expiry of his or her disqualification period, a person referred to in subsection (3) may re-apply for and be issued with a driving licence, professional driving permit or operator card in terms of the national road traffic laws.

### **Reduction of demerit points**

29. If demerit points have been incurred by any person, the issuing authority contemplated in section 27(2) must reduce the total number of points recorded in the national contraventions register against that person with one point for every three months, or such other period as may be prescribed, during which no demerit points are incurred by that person, except for -

- (a) the time the court found that the court process had been deliberately delayed by that person to obtain a reduction in points; or
- (b) the disqualification period of a person whose licence, permit or card has been cancelled in terms of section 28.

### **Categorisation of offences and infringements and demerit points**

30. The Minister, acting with the concurrence of the MEC of each province, may for the purpose of this Act -

- (a) prescribe offences, and divide them into minor infringements, major infringements and other offences;
- (b) prescribe the penalty which must be imposed for each infringement, as contemplated in section 32;
- (c) prescribe the demerit points which are incurred for each offence, as contemplated in section 25; and
- (d) prescribe the total number of demerit points which, if exceeded, disqualifies a person from driving or operating any motor vehicle as contemplated in section 26.

**CHAPTER V****General Matters****Service of documents**

31. Any document required to be served on an infringer in terms of this Act may be served personally or by registered mail, and it is regarded to have been served on the date the infringer has signed for the receipt of the document.

**Penalties**

32. (1) The penalty prescribed under section 30(b) for each infringement must, despite any other law, be imposed administratively in terms of Chapter III, subject to the discount contemplated in section 17(1)(d).

(2) The laws on prescription are not applicable to penalties, and they may be collected at any time.

**Apportionment of penalties**

33. Despite section 6 of the Finance and Financial Adjustments Acts Consolidation Act, 1977 (Act No. 11 of 1977), any penalty received by the agency in terms of this Act must be paid over monthly, after deduction of an amount equal to the discount contemplated in section 17(1)(d), to the issuing authority under whose authority the infringement notice was issued, and if it was not issued under the authority of such authority, to the issuing authority within whose area of jurisdiction the infringement was committed.

**Regulations**

34. The Minister may make regulations, which are not inconsistent with this Act, relating to any matter that may or must be prescribed in terms of this Act, including -

- (a) the manner in which any application, notification or submission is to be made, and the record to be kept of such application, notification or submission;
- (b) the manner in which any information regarding any offence or infringement is to be recorded in the national contraventions register, and the nature of such information;
- (c) the period for which any information or record is to be maintained in the said register;
- (d) the fees which may be charged for any document, order or action required to be issued, made or performed, and the manner in which record is to be kept of any receipt or payment of money;
- (e) the manner in which any payment is required to be made;
- (f) the manner in which any proof is required to be submitted; and
- (g) any other matter that the Minister considers necessary or expedient to prescribe or govern by regulation in order to achieve the objects of this Act mentioned in section 2.

**Transitional provisions**

35. (1) Any notice issued in terms of section 56 or 341 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977, before the date of commencement of section 17, may be continued and finalised under that Act, but no such notice may be issued after that date in respect of an offence.

(2) Chapter IV only applies in respect of offences or infringements committed on or after the date of commencement of that Chapter.

**Short title and commencement**

36. (1) This Act is called the Administrative Adjudication of Road Traffic Offences Act, 1998, and comes into operation on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act and different areas of the Republic.

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