

REPUBLIC OF SOUTH AFRICA

ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary of
the Bill published in Government Gazette No. 39395 of 12 November 2015)
(The English text is the official text of the Bill)*

(MINISTER OF TRANSPORT)

[B 38—2015]

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[] Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

To amend the Administrative Adjudication of Road Traffic Offences Act, 1998, so as to substitute and insert certain definitions; to simplify the manner of service of documents; to provide for financing of the Authority; to provide for the apportionment of penalties; to effect textual corrections; and to provide for matters connected therewith.

Amendment of section 1 of Act 46 of 1998, as amended by section 1 of Act 22 of 1999 and section 1 of Act 72 of 2002

(a) by the substitution in the definition of “acceptable identification” for paragraph (f) of the following paragraph:

(b) by the deletion of the definition of “agency”;

(c) by the insertion after the definition of “authorised officer” of the following definition:

(d) by the insertion after the definition of “disqualification period” of the following definition:

(a) communication by means of data messages, including data attached to, incorporated in or logically associated with, other data that may be electronically retrieved;

(e) by the substitution for the definition of “infringement” of the following 25
definition:

“**‘infringement’** means any act or omission in contravention of this Act or road traffic legislation;”;

- (f) by the deletion of the definition of “major infringement”;
- (g) by the deletion of the definition of “minor infringement”;
- (h) by the deletion of the definition of “national contraventions register”;
- (i) by insertion after the definition of “Minister” of the following definition:
 - “**‘National Road Traffic Offences Register’** means the National Road Traffic Offences Register administered by the Authority in which the details of infringements and offences of every infringer are recorded;”;
 - and
- (j) by the substitution for the definition of “representations officer” of the following definition:
 - “**‘representations officer’** means a person appointed in terms of section 10 to adjudicate on representations contemplated in section 18;”.

Amendment of section 4 of Act 46 of 1998

- 2. Section 4 of the principal Act is hereby amended—
 - (a) by the deletion in subsection (2) of paragraph (e);
 - (b) by the insertion in subsection (3) of the word “and” at the end of paragraph (a);
 - (c) by the substitution in subsection (3) for the expression “; and” at the end of paragraph (b) of a full-stop; and
 - (d) by the deletion in subsection (3) of paragraph (c).

Amendment of section 13 of Act 46 of 1998, as amended by section 7 of Act 72 of 2002

- 3. Section 13 of the principal Act is hereby amended—
 - (a) by the deletion in subsection (1) of the word “and” at the end of paragraph (d);
 - and
 - (b) by the insertion in subsection (1) after paragraph (d) of the following paragraph:
 - “(dA) penalties issued and collected by or on behalf of an issuing authority; and”.

Substitution of section 15 of Act 46 of 1998

- 4. The following section is hereby substituted for section 15 of the principal Act:

“Banking account

15. The [agency] Authority may, with the approval of the [Director-General] Board, 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] Authority and money received from issuing authorities, driving licence testing centres and registering authorities, and from which payments by [it] the Authority or on its behalf may be made.”.

Amendment of section 19B of Act 46 of 1998, as inserted by section 11 of Act 72 of 2002

- 5. Section 19B of the principal Act is hereby amended—
 - (a) by the substitution for subsection (1) of the following subsection:
 - “(1) If an infringer makes an insufficient payment to the [agency] Authority in terms of this Act in respect of a fine or the cheque used for payment is dishonoured, a notice as prescribed must be served on the infringer, informing him or her [—
 - (a)] that the full amount owed, including the prescribed fee for the notice, must be paid within 32 days of service of the notice [; and
 - (b) that failure to comply with the notice contemplated in paragraph (a) will lead to a warrant being issued against him or her in terms of section 21]. ”;

- (b) by the substitution in subsection (2) for the expression “; and” at the end of paragraph (b) of a comma; and
- (c) by the deletion of paragraph (c).

Amendment of section 20 of Act 46 of 1998, as amended by section 12 of Act 72 of 2002

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6. Section 20 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) An enforcement order must [—

(a)] state that the infringer on whom it is served may, not later than 32 days after the date of service of the order, pay the penalty, representations fee and the fees of the courtesy letter, if any, and the prescribed fee of 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]** National Road Traffic Offences Register **]; and**

(b) **state that a failure to comply with the requirements of the enforcement order within the period contemplated in paragraph (a) will result in a warrant being issued to recover the applicable penalty and fees].”.**

Repeal of section 21 of Act 46 of 1998

7. Section 21 of the principal Act is hereby repealed.

Amendment of section 22 of Act 46 of 1998, as substituted by section 14 of Act 72 of 2002

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8. Section 22 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) If[—

(a)] an infringer elects to be tried in court—

[(i)](a) under section 17(1)(f)(iv), the issuing authority must cancel the infringement notice; or

[(ii)](b) under section 18(7)(c) or 19(2)(b)(iii), the **[agency]** Authority must inform the issuing authority who must cancel the infringement notice**]; or**

(b) **the execution of a warrant in terms of section 21 (1) produces no movable property to seize and sell or the infringer otherwise fails to comply with the enforcement order after execution of the warrant, the agency must inform the issuing authority who must cancel the infringement notice],** and the issuing authority must prepare a summons in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).”.

Amendment of section 30 of Act 46 of 1998, as substituted by section 3 of Act 22 of 1999

9. Section 30 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) Any document required to be served on an infringer in terms of this Act, must be served on the infringer **[personally or sent by registered mail to his or her last known address]** as prescribed, including by postage or electronic service.”; and

(b) by the substitution for subsection (2) of the following subsection:

“(2) A document which is sent **[by registered mail]** in terms of subsection (1), is **[regarded]** deemed to have been served on the infringer on the tenth day **[after the date which is stamped upon the receipt issued by the post office which accepted the document for registration]** after posting the said document or of the electronic service, and such electronic service reflected in the National Road Traffic Offences Register, unless evidence to the contrary is adduced, which evidence may be in the form of an affidavit.”.

Substitution of section 32 of Act 46 of 1998, as amended by section 21 of Act 72 of 2002

10. The following section is hereby substituted for section 32 of the principal Act:

“Apportionment of penalties

32. (1) Any penalty received by the Authority in terms of this Act must, as prescribed, be paid over to the issuing authority that issued the infringement notice, after deduction of an amount equal to the discount contemplated in section 17(1)(d). 5

(2) Any prescribed fees or monies contemplated in section 13(1)(dA) collected by or on behalf of the issuing authority in terms of this Act must, as prescribed, be paid to the Authority. 10

(3) The penalty referred to in subsection (1) may be withheld by the Authority where there is evidence of non-compliance with this Act, until such time that the Act is complied with to the satisfaction of the Authority. 15

(4) Despite any other law, any monies received in respect of any conviction under the applicable road traffic legislation must be disbursed as prescribed.“. 15

Amendment of section 35 of Act 46 of 1998

11. Section 35 of the principal Act is hereby amended by substitution for subsection (1) of the following subsection: 20

“(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 or] infringement.”.

Substitution of certain words and expressions 25

12. The principal Act is hereby amended—

- (a) by the substitution for the expressions “Agency” and “agency”, wherever they occur, of the expression “Authority”;
- (b) by the substitution for the expressions “major infringement” and “minor infringement”, wherever they occur, of the expression “infringement”; 30
- (c) by the substitution for the expression “AGENCY”, wherever it occurs, of the expression “AUTHORITY”; and
- (d) by the substitution for the expression “national contraventions register”, wherever it occurs, of the expression “National Road Traffic Offences Register”. 35

Short title and commencement

13. This Act is called the Administrative Adjudication of Road Traffic Offences Amendment Act, 2015, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

**MEMORANDUM ON THE OBJECTS OF THE ADMINISTRATIVE
ADJUDICATION OF ROAD TRAFFIC OFFENCES AMENDMENT
BILL, 2015**

1. BACKGROUND AND PURPOSE

- 1.1 The Administrative Adjudication of Road Traffic Offences Act, 1998 (Act No. 46 of 1998) (the Act), seeks to promote road traffic quality by providing for a scheme that discourages road traffic contraventions and facilitate the efficient adjudication of road traffic infringements.
- 1.2 The Act has been in operation on a pilot phase in the jurisdictional areas of Tshwane and Johannesburg Metropolitan Municipalities, where some challenges and inefficiencies have been identified. The said challenges need to be addressed before the national roll-out. We also note that there has been an attempt to roll out the implementation of the Act to the jurisdictional area of the City of Cape Town, and that this was successfully challenged by the City of Cape Town in *City of Cape Town v South African National Roads Agency Ltd and Others* (6165/2012) [2015] ZAWCHC 135.
- 1.3 The Administrative Adjudication of Road Traffic Offences Amendment Bill (the Bill) seeks to amend the Act in order to achieve efficiency and financial sustainability of issuing authorities as well as the Road Traffic Infringement Agency which the Bill seeks to rename to the Road Traffic Infringement Authority (the Authority).
- 1.4 The amendments identified in the Bill will assist the Authority as well as the issuing authorities to be financially stable in order to proceed with proper implementation.

2. CLAUSE-BY-CLAUSE ANALYSIS

2.1 Clause 1

Clause 1 of the Bill amends section 1 of the Act by adding, deleting and substituting certain definitions.

2.2 Clause 2

Clause 2 of the Bill amends section 4 of the Act, which provides for the objects and functions of the Authority. Clause 2 mainly deletes section 4(3)(e) of the Act, which deals with the issuing by the registrar of a warrant against an infringer who has failed to comply with an enforcement order made in terms of the Act. The deletion of this subsection is aligned with the proposed repeal (in clause 7) of section 21 of the Act, which deals with the issuing of warrants by the registrar.

2.3 Clause 3

Clause 3 of the Bill amends section 13 of the Act, which provides for the financing of the Authority. Clause 3 inserts a new paragraph in section 13 of the Act to provide that the finances of the Authority are also derived from penalties issued and collected by or on behalf of an issuing authority. The Act defines an “issuing authority” as a local authority, a provincial administration or the Road Traffic Management Corporation established under section 4 of the Road Traffic Management Corporation Act, 1999 (Act No. 20 of 1999).

2.4 Clause 4

Clause 4 of the Bill amends section 15 of the Act, which provides for the banking account of the Authority. Clause 4 provides that the Authority may open and maintain one or more bank accounts with the approval of the Board of the Authority. Currently section 15 requires the approval of the Director-

General. The account(s) must be used to deposit monies received by the Authority and money received from issuing authorities, driving licence testing centres and registering authorities.

2.5 Clause 5

- 2.5.1 Clause 5 of the Bill amends section 19B of the Act, which provides for the payment of fines imposed for traffic infringements. Clause 5 of the Bill seeks to delete subsections (1)(b) and (2)(c) of section 19B of the Act.
- 2.5.2 Section 19B(1)(b) provides that if an infringer makes an insufficient payment to the Authority in respect of a fine or if the cheque used for a payment is dishonoured, a notice must be served on the infringer, informing the infringer that failure to comply with the notice will result in a warrant being issued against him or her in terms of section 21 of the Act.
- 2.5.3 Section 19B(2)(c) provides that if an infringer who has made arrangements to pay a fine or monies, if any, in instalments, fails to pay the instalments or makes an insufficient payment on an instalment or if the cheque used for payment of that instalment is dishonoured, a notice must be served on the infringer, informing him or her that failure to comply with the notice will result in a warrant in respect of the full amount owed being issued against him or her in terms of section 21 of the Act. The deletion of these subsections is aligned with the proposed repeal (in clause 7) of section 21 of the Act, which deals with the issuing of warrants by the registrar.

2.6 Clause 6

- 2.6.1 Clause 6 of the Bill amends section 20 of the Act by deleting subsection (3)(b) of section 20. Section 20 of the Act provides for enforcement orders issued by the registrar in respect of failure to pay fines imposed for traffic infringements.
- 2.6.2 Section 20(3)(b) stipulates that an enforcement order must state that a failure to comply with the requirements of the enforcement order not later than 32 days after the date of service of the order will result in a warrant being issued to recover the applicable penalty and fees. The deletion of this paragraph is in line with the repeal (in clause 7) of section 21 of the Act, which deals with the issuing of warrants by the registrar.

2.7 Clause 7

- 2.7.1 Clause 7 of the Bill repeals section 21 of the Act. Section 21 of the Act empowers the registrar to issue a warrant against a traffic infringer who fails to comply with an infringement notice or an enforcement order which requires him or her to pay a traffic penalty.
- 2.7.2 The proposed repeal means that the consequences of the failure to comply with an enforcement order will be dealt with in terms of section 20(5) of the Act, which provides that an infringer who does not comply with an enforcement order may not be issued with a driving licence, professional driving permit or licence disc in respect of a motor vehicle registered in the name of an infringer, until such enforcement order has been complied with or has been revoked. In respect of infringement notices, section 19(2)(c) of the Act provides that if an infringer fails to comply with an infringement notice, the Authority must issue a courtesy letter and serve it on the infringer, stating 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 20 of the Act.

2.8 Clause 8

Clause 8 of the Bill amends section 22 of the Act, which provides for the procedure in respect of a trial of an infringer who does not pay a fine but elects to be tried in court. Clause 8 of the Bill seeks to delete subsection (1)(b) of section 22 of the Act, which provides that if the execution of a warrant in terms of section 21(1) produces no movable property to seize and sell or the infringer otherwise fails to comply with the enforcement order after execution of the warrant, the Authority must inform the issuing authority, who must cancel the infringement notice. This deletion corresponds with the proposed repeal (in clause 7) of section 21 of the Act, which deals with the issuing of warrants by the registrar.

2.9 Clause 9

Clause 9 of the Bill amends section 30 of the Act, which provides for service of documents on an infringer, personally or by registered mail. The proposed amendment provides for service of documents by means of postage and electronic service. The amendment also provides that a document is deemed to have been served on the infringer on the tenth day of postage or of the electronic service, and such electronic service being reflected in the National Road Traffic Offences Register, unless evidence to the contrary is adduced, which evidence may be in the form of an affidavit.

2.10 Clause 10

Clause 10 of the Bill substitutes the whole of section 32 of the Act, which provides for the apportionment of penalties. The new substitution provides for the apportionment and distribution of penalties received by the Authority to the relevant the issuing authorities, after deduction of an amount equal to the prescribed discount. Penalties collected by or on behalf of an issuing authority in terms of the Act must be paid to the Authority. In addition, the Authority may withhold a penalty due to the issuing authority if there is evidence of non-compliance with the Act by that issuing authority, until such time that the issuing authority complies with the Act.

2.11 Clause 11

2.11.1 Clause 11 of the Bill amends section 35 of the Act which deals with transitional provisions. Clause 11 provides that a 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 the Criminal Procedure Act, but the said notice may not be issued after that commencement date in respect of an infringement, thus removing the reference to an “offence”. Section 17 of the Act provides for the issuing of an infringement notice by an authorized officer or a person duly authorised by an issuing authority.

2.11.2 It must be noted that currently the only dates for commencement of section 17 are 1 July 2008 in respect of the City of Tshwane Metropolitan Municipality, and 1 November 2008 in respect of the City of Johannesburg Metropolitan Municipality. This is in line with section 36(2) of the Act, which provides that different dates may be determined in respect of different provisions of the Act and different areas of the Republic.

2.12 Clause 12

2.12.1 Clause 12 of the Bill generally provides for the substitution of certain expressions. In effect, the name “Road Traffic Infringement Agency” is replaced with “Road Traffic Infringement Authority”. The expressions “major infringement” and “minor infringement” are to be replaced with “infringement” throughout the Act.

2.12.2 The expression “national contraventions register” is replaced with “National Road Traffic Offences Register”.

2.13 Clause 13

Clause 13 of the Bill provides for the short title and commencement.

3. DEPARTMENT/BODIES CONSULTED

3.1 The Bill was presented to the National Economic Development and Labour Council Task Team, and after numerous meetings it was approved.

3.2 The Bill was published for public comment in Government Gazette No 36613 of 28 June 2013.

3.3 The comments where necessary were incorporated in the final draft Bill.

3.4 A wide range of stakeholders were consulted in preparation for the draft Bill, including—

- The Road Traffic Management Corporation;
- the Road Traffic Infringement Agency;
- the Johannesburg Metropolitan Police Department;
- the Tshwane Metropolitan Police Department;
- the Ekurhuleni Metropolitan Police Department;
- the Provincial Departments of Transport;
- the Justice Project South Africa;
- the South African Vehicle Rental and Leasing Association; and
- the South African Local Government Association.

3.6 The Bill was presented to the Justice, Crime Prevention and Security Cluster (JCPS Cluster) and was approved subject to the Department, NPA and SAPS convening meetings to resolve and research further on, implementation challenges that might arise and reporting progress to the JCPS Cluster committee.

4. FINANCIAL IMPLICATIONS

The Bill is expected to have the following financial implications:

- (a) The revenue of the issuing authorities and the agency will be increased due to the provision of electronic methods of service, which will drastically reduce the cost of registered mail as is currently the case. This will further increase the support of the administrative adjudication of road traffic offences by issuing authorities who have been concerned with the high costs of the legal requirement of serving notices with registered mail.

- (b) Large fleet operators will benefit from the efficient service as the drastically reduced costs of submitting nominations will be electronic, thereby introducing efficiencies in their business operations.

5. PARLIAMENTARY PROCEDURE

- 5.1 The Constitution prescribes procedure for the classification of Bills, therefore a Bill must be correctly classified so that it does not become inconsistent with the Constitution.
- 5.2 The State Law Advisers have considered the Bill against the provisions of the Constitution relating to the tagging of Bills and against the functional areas listed in Schedule 4 (functional areas of concurrent national and provincial legislative competence) and Schedule 5 (functional areas of exclusive provincial legislative competence) to the Constitution.
- 5.3 The established test for classification of a Bill is that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4 to the Constitution must be classified in terms of that Schedule. The process is concerned with the question of how the Bill should be considered by the provinces and in the National Council of Provinces. Furthermore, how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces. The more the Bill affects the interests, concerns and capacities of the provinces, the more say the provinces should have on the contents of the Bill.
- 5.4 Therefore the issue to be determined is whether the proposed amendments to the Act, as contained in the Bill, in substantial measure fall within a functional area listed in Schedule 4 to the Constitution.
- 5.5 The Bill seeks to promote road traffic quality by providing for a scheme that discourages road traffic contraventions and facilitate the efficient adjudication of road traffic infringements. The Bill seeks to amend the Act in order to achieve efficiency and financial sustainability of issuing authorities as well as the Authority.
- 5.6 The Bill provides for the National Road Traffic Offences Register that is to be administered by the Authority. The National Road Traffic Offences Register records and contains all the electronic details of infringements and offences of every infringer throughout the country.
- 5.7 The Bill provides for the financing of the Authority by penalties issued and collected by issuing authorities, which have the power, among other things, to issue infringement notices and enforcement orders. The issuing authorities are local authorities, provincial administrations and the Road Traffic Management Corporation, which is a national public entity listed as such under the Public Finance Management Act, 1999 (Act No. 1 of 1999), whose objective is to enhance the overall quality of road traffic service provision and, in particular, to ensure safety, security, order, discipline and mobility on the roads, nationally.
- 5.8 The Bill provides for service of documents by means of postage and electronic service. The service of documents is conducted by issuing authorities. The electronic service must be reflected in the National Road Traffic Offences Register, indicated above.
- 5.9 In terms of the Bill, the Authority has the power to receive and distribute penalties it receives to the relevant issuing authorities, after deduction of the prescribed discounts in terms of the Act.
- 5.10 The proposed amendments reflected have been carefully examined to establish whether, in substantial measure, they fall within any of the functional areas listed in Schedule 4 to the Constitution.

- 5.11 It appears that the provisions of the Bill and its subject matter, in substantial measure, fall within the functional area, namely “road traffic regulation”, contained in Schedule 4 to the Constitution. The provisions of the Bill affect the provinces because they require the involvement of the provinces in their implementation and they affect the interests, concerns and capacities of the provinces, therefore the provinces should have more say on the contents of the Bill that relate to road traffic.
- 5.12 The State Law Advisers and the Department of Transport are therefore of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76(1) or (2) of the Constitution since it falls within a functional area listed in Schedule 4 to the Constitution, which is “road traffic regulation”.
- 5.13 The State Law Advisers are also of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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