
GENERAL NOTICE

NOTICE 677 OF 2013

DEPARTMENT OF TRANSPORT

PUBLICATION FOR PUBLIC COMMENTS: DRAFT ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES AMENDMENT BILL, 2013

The Minister of Transport hereby publishes the abovementioned draft Bill for public comments. Interested persons are requested to submit written comments on the draft Bill within 30 (thirty) working days from the date of publication of this Government Gazette.

Comments should be posted to the Director-General: Department of Transport for the attention of Adv. Adam Masombuka at:

Department of Transport

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0001

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REPUBLIC OF SOUTH AFRICA

ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES

AMENDMENT BILL

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

(MINISTER OF TRANSPORT)

[B — 2013]

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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactment.
_____ Words underlined with a solid line indicate insertions in existing enactments.
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BILL

To amend the Administrative Adjudication of Road Traffic Offences Act, 1998, so as to substitute and insert certain definitions; to simplify 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.

Parliament of the Republic of South Africa enacts as follows:—

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

1. Section 1 of the Administrative Adjudication of Road Traffic Offences Act, 1998 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the substitution in the definition of "**acceptable identification**" for paragraph (f) of the following paragraph:

"(f) a clear and legible copy of the applicable certificate or document referred to in paragraphs (a) to (e).";

- (b) by the deletion of the definition of "**Agency**";
- (c) by the insertion after the definition of "**authorised officer**" of the following definition:

" '**Authority**' means the Road Traffic Infringement Authority, established in terms of section 3.;"

- (d) by the substitution for the definition of "**infringement**" of the following definition:

" '**Infringement**' means any act or omission in contravention of this Act or road traffic legislation.;"

- (e) by the deletion of the definition of "**major infringement**";
- (f) by the deletion of the definition of "**minor infringement**";
- (g) by the deletion of the definition of "**national contraventions register**";
- (h) by insertion after the definition of "**minor infringement**" of the following definition:

" '**National Offences Register**' means the National Offences Register administered by the Authority on which the details of infringements and offences of every infringer are recorded.;" and

- (i) 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 sections 18;"

Amendment of section 13 of Act 46 of 1998, as amended by section 6 of Act 72 of 2002

2. Section 13 of the principal Act is hereby amended 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;"

Substitution of section 15 of Act 46 of 1998

3. 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."

Repeal of section 21 of Act 46 of 1998

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

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

5. Section 30 of the principal Act hereby 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 postage and 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]** of postage or of the electronic service, which is reflected in

the National 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

6. 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).
- (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.
- (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.

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

Amendment of section 35 of Act 46 of 1998

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

"(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

8. 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";
 - (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 Offences Register".

Short title and commencement

9. This Act is called the Administrative Adjudication of Road Traffic Offences Amendment Bill, 2013, 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, 2013

1. BACKGROUND AND PURPOSE

1.1 The Administrative Adjudication of Road Traffic Offences Act, 1998 (Act No. 46 of 1998) (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.

1.3 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 (agency).

1.4 The amendments identified in the Bill will assist the agency as well as the issuing authorities to be financial stable in order to proceed with proper implementation.

2. CLAUSE-BY-CLAUSE ANALYSIS

2.1 Clause 1

Clause 1 of the Bill deletes and substitutes certain definitions.

2.2 Clause 2

Clause 2 of the Bill inserts a new paragraph in section 13 of the Act to provide for the finances of the Authority.

2.3 Clause 3

Clause 3 of the Bill deals with the substitution of the "**Director-General**" with the Board as well as the substitution of "**agency**" with "**Authority**".

2.4 Clause 4

Clause 4 of the Bill repeals section 21 of the Act.

2.5 Clause 5

Clause 5 of the Bill provides for service of documents by postage and electronic service.

2.6 Clause 6

Clause 6 of the Bill amends section 32 of the Act with the addition of an empowering provision for the Authority to withhold the revenue share due to the issuing authority in circumstances where there is non-compliance with the Act by that issuing authority, until such time that compliance is accomplished.

2.7 Clause 7

Clause 7 of the Bill effects a technical amendment.

2.8 Clause 8

Clause 8 of the Bill provides for the substitution of expressions. For instance the name "Road Traffic Infringement Agency" is replaced with "Road Traffic Infringement Authority".

2.9 Clause 9

Clause 9 of the Bill provides for the short title and commencement.

3. DEPARTMENT/BODIES CONSULTED

A wide range of stakeholders were consulted in the preparation for the draft Amendment Bill, including the following:

- The Road Traffic Infringement Agency;
- The Road Traffic Management Corporation;

- Johannesburg Metropolitan Police Department;
- Tshwane Metropolitan Police Department;
- Ekurhuleni Metropolitan Police Department;
- Provincial Departments of Transport;
- Justice Project South Africa;
- South African Vehicle Rental and Leasing Association;
- Business, Labour and Community Organisations under NEDLAC.

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 AARTO by issuing authorities who have been concerned with the high costs of required registered mail service, whereas normal mail has been used under the Criminal Procedure Act.
- (b) large fleet operators will benefit from efficient service and the drastically reduced costs of submitting nominations, will be electronic, thereby introducing efficiencies in their business operations.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the Department of Transport are of the opinion that this Bill may be dealt with in accordance with the procedure established by section 76 of the Constitution since it falls within a functional area listed in Schedule 4 to the Constitution, namely "Road traffic regulation".

5.2 The State Law Advisers are 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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