

REPUBLIC OF SOUTH AFRICA

PORTFOLIO COMMITTEE AMENDMENTS

TO

ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES

AMENDMENT BILL

[B38 — 2015]

(As agreed to by the Portfolio Committee on Transport (National Assembly))

AMENDMENTS AGREED TO
ADMINISTRATIVE ADJUDICATION OF ROAD TRAFFIC OFFENCES
AMENDMENT BILL

[B 38—2015]

CLAUSE 1

1. On page 2, in line 7, to omit paragraph (a) and to substitute:

“(a) by the substitution in the definition of “acceptable identification” for paragraphs (d) and (f) of the following paragraphs respectively:

“(d) in the case of –

(i) a company, a certificate of incorporation or name change issued in terms of the **[Companies Act, 1973 (Act No, 1973)]** Companies Act, 2008 (Act No. 71 of 2008);

“(f) a clear certified copy of the applicable certificate or document referred to in paragraphs (a) to (e).”

2. On page 2, after line 15, to insert the following paragraph:

“(d) by the substitution for the definition of “date of service” of the following definition:

“**date of service**” means the date on which an infringer has **[signed for]** received the relevant document served on him or her under section 30;”

3. On page 2, in line 18, to omit the definition of “electronic service” and to substitute with the following definition:

“ “**electronic service**” means service by means of an electronic communication as defined in the Electronic Communications Act, 2005 (Act No. 36 of 2005).”

4. On page 2, after line 26, to insert the following paragraph:

“(e) by the the insertion after the definition of “enforcement order” of the following definition:

“habitual infringer” means an infringer, operator or a juristic person who, in terms of section 25, incurs demerit points resulting in a disqualification more than two times;

5. On page 2, in line 28, to omit the definition of “infringement” and to substitute with the following definition:

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

6. On page 2, after line 28, to insert the following paragraph:

“(f) by the substitution for the definition of “issuing authority” of the following definition:

“issuing authority” means —

- (a) local authority contemplated in Chapter 7 of the Constitution of the Republic of South Africa, 1996, [(Act 108 of 1996)], the Local Government Transition Act, 1993 (Act No. 209 of 1993), or any other applicable law;
- (b) a provincial administration; or
- (c) the Road Traffic Management Corporation, established under section 4 of the Road Traffic Management Corporation Act, 1999,
- (d) any other state institution declared by the Minister by regulation to be an issuing authority;

in so far as such authority, administration or state institution is responsible for road traffic and road transport matters;”.

7. On page 3, after line 12, to insert the following paragraph:

“(k) by the deletion of the definition of “sheriff”;

8. On page 3, after line 12, to insert the following paragraph:

“(l) by the deletion of the word “and” after the definition of “sheriff”, the insertion of the word “and” after the definition of “this Act”, the deletion of the full-stop after the definition of “this Act” and the addition after the definition of “this Act” of the following definition:

“Tribunal” means the Appeals Tribunal established by section 29A”.

CLAUSE 2

1. On page 3, from line 13, to omit clause 2 and to substitute with the following clause:

“Amendment of section 4 of Act 46 of 1998

2. Section 4 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
- “(a) to administer a procedure to discourage the contravention of road traffic and transport laws and to support adjudication of infringements as set out in subsection (2);”

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

“(b) considering representations from an infringer in terms of section 18 with regard to an infringement notice or the non-compliance with the prescribed processes by an issuing authority relating to [a minor] an infringement;

(c) by the deletion in subsection (2) of paragraph (e);

(d) by the deletion in subsection (2) of the word "and" at the end of paragraph (f);

(e) by the deletion in subsection (2) of the full-stop at the end of paragraph (g) and the insertion in that subsection of the word "and" at the end of that paragraph;

(f) by the addition in subsection (2) of the following paragraph:

“(h) administering prescribed rehabilitation programmes for habitual infringers.”

(g) by the insertion in subsection (3) of the word "and" at the end of paragraph (a);

(h) by the deletion in subsection (3) of the word "and" at the end of paragraph (b) and the insertion in that subsection of a full-stop at the end that paragraph;

(i) by the deletion in subsection (3) of paragraph (c);

(j) by the insertion in subsection (4) of the word “and” at the end of paragraph (b);
and

(k) by the deletion is subsection (4) of paragraphs (a) and (c), respectively;”.

NEW CLAUSE

1. That the following be a new clause:

“Amendment of section 11 of Act 46 of 1998

3. Section 11 of the principal Act is hereby amended by substitution for subsection (2) of the following subsection:

"(2) The **[agency] Authority** may pay to the persons in its employ such remuneration and allowances, and may provide them with pensions and other benefits, as the **[board] Board** may determine **[with the approval of the Minister acting in consultation with the Minister of Finance]**."

NEW CLAUSE

1. That the following be a new clause:

"Repeal of section 12 of Act 46 of 1998

4. Section 12 of the principal Act is hereby repealed."

NEW CLAUSE

1. That the following be a new clause:

"Amendment of section 17 of Act 46 of 1998, as amended by section 8 of Act 72 of 2002

6. Section 17 of the principal Act is hereby amended —

(a) by the substitution in subsection (1) for paragraph (e) of the following paragraph:—

“(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]** in the prescribed manner;”

(b) by the deletion in subsection (1)(f) of subparagraph (iv); and

(c) by the the substitution for subsection (5) of the following subsection:

“(5) The owner or operator of a motor vehicle who permits any person to drive such vehicle or otherwise to exercise any control over such vehicle, without having ascertained the full names, **[acceptable identification and]** residential **[and]**, postal and where applicable business and e-mail address of an infringer, such person is **[guilty of an offence and]** liable **[upon conviction to a fine or imprisonment for a period not exceeding one year or to both a fine and such imprisonment]** for the prescribed penalty and fees.”

NEW CLAUSE

1. That the following be a new clause:

“Amendment of section 18 of Act 46 of 1998, as amended by Act 72 of 2000

7. Section 18 of the principal Act is hereby amended—

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

“(1)(a) An infringer who has been served with an infringement notice alleging that he or she has committed **[a minor]** an infringement, may make **[representations]** a representation in the prescribed manner, with respect to that notice and infringement to the **[Agency]** Authority.

(b) In the event a representation is successful as a result of prescribed procedures not being complied with, that infringement notice may be served again on that infringer in the prescribed manner within 40 days from the date that the representation was finalised, provided that such notice must not be served later than 180 days from the date the infringement was committed.”; and

(b) by the substitution for subsection (7) of the following subsection:

“(7) If the representations are rejected, the representations officer may advise the infringer **[to elect in the prescribed manner to be tried in court,]** of his or her right of review or appeal and must serve or cause to be served on the infringer a prescribed written notification informing him or her—

(a) of the reasons for the decision, and provide the issuing authority concerned with a copy thereof;

(b) if the infringer does not **[elect to be tried in court]** exercise the right of review and appeal—

- (i) that the penalty, the prescribed representations fee and the prescribed fee of the courtesy letter, if any, are payable to the agency or that the arrangements are made with the agency in the prescribed manner to pay in instalments, not later than 32 days after the date of service of the notification; and
- (ii) that failure to pay the penalty and fees or to make arrangements to pay in instalments will result in an enforcement order being served on the infringer and that the infringer will become liable to pay the penalty and fees and the prescribed fee of the enforcement order; and

- (c) if the infringer elects to **[be tried in court, which may only be done on the advice of the representations officer,]** exercise the right of review and appeal that the provisions of section **[22] 29A** apply.”

CLAUSE 5

1. On page 3, from line 40, to omit clause 5 and to substitute with the following clause:

“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 in subsection (1) for the words preceding paragraph (a) of the following words:

“(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 an infringer, informing him or her—”

(b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) that failure to comply with the notice contemplated in paragraph (a) will lead to **[a warrant] an enforcement order** being issued against him or her in terms of section **[21] 20.**”; and

(c) by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) that failure to comply with the notice will lead to **[a warrant] an enforcement order** in respect of the full amount owed being issued against him or her in terms of section **[21] 20;**”.

NEW CLAUSE

1. That the following be a new clause:

“Amendment of section 25 of Act 46 of 1998, as amended by Act No. 72 of 2002

9. Section 25 of the principal Act is hereby amended —

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

“(1) If a person, operator or a juristic person who is not an operator, incurs demerit points which, when added to the points previously recorded against that person, operator or a juristic person who is not an operator in the **[national contraventions register]** National Road Traffic Offences Register and reduced as contemplated in section 28, exceed the total contemplated in section 29(d), that person, operator or a juristic person who is not an operator is disqualified **[with effect from]** for 32 days, after such excess points have been incurred, from driving or operating a motor vehicle on a public road.”;

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

“(2)(b) The Minister may prescribe different numbers under paragraph (a) in respect of a driver, a learner driver, **[and]** an operator of a motor vehicle and a juristic person who is not an operator.”

(c) by the substitution in subsection (3) for paragraph (a) of the following paragraph:

“(3) A person **[who is disqualified in terms of this section]** contemplated in subsection (1)—

(a) must **[immediately]** within a period of 32 days hand in any driving licence card **[or]**, professional driving permit, motor vehicle licence disc, operator card or any other permit, card or licence issued in terms of road traffic and transport legislation, where applicable, in the

prescribed manner to the relevant issuing authority contemplated in section 26(2) for retention by such issuing authority during the disqualification period, produce any driving licence contained in an identity document to such issuing authority for endorsement as suspended or must remove the prescribed operator card and deal therewith in the prescribed manner; and”;

(d) by the substitution for subsection (4) of the following subsection:

“(4) **[Any]** A person contemplated in subsection (1) who fails to comply with the provisions of subsection (3)(a) or who drives or operates a motor vehicle during his or her disqualification period his or her license, permit or card is suspended for a further one year for every subsequent driving or operation and such person is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding one year or both a fine and such imprisonment.”; and

(e) by the substitution for subsection (5) of the following subsection:

“(5) Upon expiry of his or her disqualification period, a person referred to in subsection (3) may apply in the prescribed manner to the relevant issuing authority **[to] for the return of his or her [driving licence card or professional driving permit or to reissue an operator card] document referred in subsection (3)(a).**”.

NEW CLAUSE

1. That the following be a new clause:

“Insertion of a heading after section 29 of Act 46 of 1998

10. The following heading is hereby inserted after section 29 of the principal Act:

**“Chapter IVA
APPEALS TRIBUNAL”**

NEW CLAUSE

1. That the following be a new clause.

“11. The following Chapter is hereby inserted in the principal Act after Chapter IV:

"CHAPTER IVA

APPEALS TRIBUNAL

Establishment and constitution of the Tribunal

29A. (1) The Appeals Tribunal is hereby established.

(2) The Tribunal—

(a) has jurisdiction throughout the Republic;

(b) is a juristic person;

(c) is a tribunal of record; and

(d) must exercise its functions in accordance with this Act or any other applicable legislation.

(3) The Tribunal consists of a Chairperson and not less than 8 other women or men appointed by the President, on a part time basis, and on the recommendation of the Minister.

(4) The President must—

(a) appoint the Chairperson and other members of the Tribunal no later than the date on which this Act comes into operation; and

(b) appoint a person to fill any vacancy on the Tribunal.

(5) To be eligible for appointment or designation as a member of the Tribunal, and to continue to hold that office, a person must—

(a) not be subject to any disqualification set out in subsection (6); and

(b) have submitted to the Minister a written declaration stating that the person—

(i) is not disqualified in terms of subsection (6); and

(ii) does not have any interests referred to in subsection (6)(b).

(6) A person may not be a member of the Tribunal if that person—

(a) is an office-bearer of any party, movement, organisation or body of a partisan political nature;

(b) personally or through a spouse, partner or associate—

(i) has or acquires a direct or indirect financial interest in a registrant; or

(ii) has or acquires an interest in a business or enterprise, which may conflict or interfere with the proper performance of the duties of a member of the Tribunal;

(c) is an unrehabilitated insolvent or becomes insolvent and the insolvency results in the sequestration of that person's estate;

(d) has ever been, or is, removed from an office of trust on account of a guilty finding in respect of a complaint of misconduct related to fraud or the misappropriation of money;

(e) is subject to an order of a competent court holding that person to be mentally unfit or disordered;

(f) within the previous 10 years has been, or is, convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), an offence under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), or an offence involving dishonesty; or

(g) has been convicted of any other offence committed after the Constitution of the Republic of South Africa, 1996, took effect, and sentenced to imprisonment without an option of a fine.

(7) For the purpose of subsection (6)(b), a financial interest does not include an indirect interest held in any fund or investment if the person contemplated in that subsection has no control over the investment decisions of that fund or investment.

(8) A member of the Tribunal must promptly inform the Minister in writing after acquiring an interest that is, or is likely to become, an interest contemplated in subsection (6)(b).

(9) A member of the Tribunal must not—

(a) engage in any activity that may undermine the integrity of the Tribunal;

(b) attend, participate in or influence the proceedings of the Tribunal, if, in relation to the matter before the Tribunal, that member has an interest—

(i) contemplated in subsection (6)(b); or

(ii) that precludes that member from performing the functions of a member of the Tribunal in a fair, unbiased and proper manner;

(c) make private use of, or profit from, any confidential information obtained as a result of performing that person's functions as a member of the Tribunal; or

(d) divulge any information referred to in paragraph (c) to any third party, except as required as part of that person's official functions as a member of the Tribunal.

(10) If, at any time, it appears to a member of the Tribunal that a matter being considered by the Tribunal during proceedings concerns an interest of that member referred to in subsection (9)(b), that member must—

(a) immediately and fully disclose the nature of that interest to the members present; and

(b) withdraw from the proceedings to allow the remaining members to discuss the matter and determine whether the member should be prohibited from participating in any further proceedings concerning that matter.

(11) The disclosure by a member of the Tribunal in terms of subsection (10)(a), and the decision by the Tribunal in terms of subsection (10)(b), must be expressly recorded in the records of the proceedings in question.

(12) Proceedings of the Tribunal, and any decisions taken by a majority of the members present and entitled to participate in those decisions, are binding despite—

(a) a member of the Tribunal failing to disclose an interest as required by subsection (10); or

(b) a member of the Tribunal, having an interest, attending or participating in those proceedings.

Functions of the Tribunal

29B. (1) The Tribunal may—

(a) adjudicate on any matter brought to it by an infringer aggrieved by a decision taken by the representation officer in terms of this Act;

(b) hear appeals from, or review any decision of, the representation officer that may in terms of this Act be referred to it; and

(c) make any ruling or order necessary or incidental to the performance of its functions in terms of this Act.

(2) The appeal referred to in subsection (1)(b) must be lodged with the Tribunal within 30 days of receipt of the reasons for the decision, and lodged in the manner and on payment of fees, as prescribed by the Minister.

Qualifications of members of Tribunal

29C. (1) The members of the Tribunal, viewed collectively—

(a) must represent a broad cross-section of the population of the Republic;
and

(b) must comprise sufficient persons with legal training and experience in road infringements related matters.

(2) Each member of the Tribunal must—

(a) be a citizen of South Africa, who is ordinarily resident in the Republic;

(b) have suitable qualifications and experience in a field related to road traffic and transport legislation or any special skills, qualifications, expertise or experience in matters concerning legal, financial and economic matters;

and

(c) be committed to the purposes of this Act.

Conditions of appointment and terms of office of members

29D. (1) The Chairperson and any other member of the Tribunal must, for each day or part of a day in any month on which the duties attached to the office concerned were performed, be remunerated and paid a travelling and subsistence allowance, at such daily rate as the Minister in consultation with the Minister of Finance may determine from time to time.

(2) A member of the Tribunal holds office for a period of five years and is, on the expiration of such member's terms of office, eligible for reappointment by the President for one additional term only.

(3) (a) The other conditions of appointment will be as prescribed by the Minister.

(b) Different categories of appointment may be prescribed in respect of different categories of members.

Vacancies in Tribunal

29E. (1) A member of the Tribunal vacates office—

(a) if the member becomes subject to any disqualification referred to in section 29A(6); and

(b) in the case where the member has resigned by giving one month's notice in writing to the Minister, when the member's resignation takes effect.

(2) The President, on the recommendation of the Minister, may remove any member of the Tribunal from office—

(a) for misconduct;

(b) for failing to perform the duties of a member or to perform such duties diligently and efficiently; or

(c) if the member, because of any physical or mental illness or disability, has become incapable of performing a member's duties or performing the duties diligently and efficiently.

(3) (a) Any vacancy in the office of the Tribunal must be filled by the President through the appointment of another member in terms of section 29A(4).

(b) A member so appointed holds office for the unexpired portion of the predecessor's term of office.

Deputy Chairperson of the Tribunal

29F. (1) The President must designate a member of the Tribunal as Deputy Chairperson of the Tribunal.

(2) The Deputy Chairperson performs the functions of Chairperson whenever—
(a) the office of Chairperson is vacant; or
(b) the Chairperson is for any other reason temporarily unable to perform those functions.

Sittings of Tribunal

29G. (1) The Tribunal must sit at office of the Authority on such days and during such hours as the Chairperson may determine.

(2) The presence of at least fifty per cent of the members will be necessary to constitute a sitting of the Tribunal.

(3) If both the Chairperson and the Deputy Chairperson are absent from a sitting of the Tribunal, the members present must from among their number elect a person to preside at the sitting.

(4) The Chairperson may for the purposes of hearing an appeal—

(a) summon any person who may give material information concerning the subject matter of the hearing or who has in his or her possession or custody or under his or her control any document which has any bearing upon the subject of the hearing, to appear before him or her at a time and place specified in the summons, to be interrogated or to produce that document, and the chairperson may retain for examination any document so produced;

(b) administer an oath or affirmation from any person called as a witness at the hearing; and

(c) call any person present at the hearing as a witness and interrogate him or her and require him or her to produce any document in his or her possession or custody or under his or her control, which has a bearing on the subject matter of the hearing.

Decisions of the Tribunal

29H. (1) The Tribunal may confirm, vary or set aside any decision against which an appeal has been lodged in terms of section 29B.

(2) The decision of a majority of the members present at a sitting of the Tribunal constitutes a decision of the Tribunal, and in the event of an equality of votes on any matter, the person presiding at the sitting must have a casting vote in addition to that person's deliberative vote.

(3) No decision taken by the Tribunal is invalid merely by reason of a vacancy in the Tribunal or of the fact that any person not entitled to sit as a member of the Tribunal, sat as such a member at the time when the decision was taken, if the decision was taken by the majority of the members of the Tribunal present at the time and who were entitled to sit as members of the Tribunal.

Appeals against decision of Tribunal

29I. (1) Any infringer affected by a decision of the Tribunal may appeal to any High Court having jurisdiction on the matter.

(2) An appeal contemplated in subsection (1) must be dealt with as if it were an appeal against a judgment of a Magistrate's Court in a civil case and all rules applicable to such an appeal apply to an appeal in terms of subsection (1).

Administrative work of Tribunal

29J. The administrative work of Tribunal must be performed by employees of the Authority designated for that purpose by the Registrar."

CLAUSE 9

1. On page 4, from line 43, to omit "as prescribed including postage or electronic services" and to substitute "by postage and electronic services as prescribed"

CLAUSE 10

1. On page 5, from line 1, to omit clause 10 and to substitute with the following clause:
"Substitution of section 32 of Act 46 of 1998, as amended by section 21 of Act 72 of 2002

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

NEW CLAUSE

1. That the following be a new clause:

"Amendment to section 34 of the Act 46 of 1998

15. Section 34 of the principal Act is hereby amended by the deletion of the word "and" at the end of paragraph (f), the insertion of the word "and" at the end of paragraph (g), the deletion of the full stop at the end of paragraph (g), and the addition of the following paragraph:

"(h) the manner in which an infringement notice, courtesy letter or infringement order may be reissued." "

CLAUSE 12

1. On page 5, after line 35, to add the following paragraph:

"(e) by the substitution for the expression of "board", wherever it occurs, of the expression of "Board"."

LONG TITLE

1. On page 2, to omit the long title and to substitute the following:

“To amend the Administrative Adjudication of Road Traffic Offences Act, 1998, so as to substitute and insert certain definition; to improve the manner of serving documents to infringers; to add to the functions of the Authority; to repeal certain obsolete provisions; to establish and administer rehabilitation programs; to provide for the apportionment of penalties to provide for the establishment of the Appeals Tribunal; to effect textual corrections and to provide for matters connected therewith”.