

## Administrative Adjudication of Road Traffic Offences Amendment Bill [B 38B–2015]

### 1. Background

Justice Project South Africa (no date):

The AARTO Act was assented to in Parliament in September 1998. Section 36(2) of the Act prescribes that “Different dates may be determined under subsection (1) in respect of different provisions of this Act and different areas of the Republic” and, as a result, the AARTO Act was proclaimed to be in force in the jurisdictions of the cities of Tshwane and Johannesburg with effect from 1 July 2008 and 1 November 2008 respectively, ten years after the AARTO Act became law.

Since that time, and although the Act was later proclaimed to be in force from 1 June 2010 in the cities of Ekurhuleni, eThekweni (Durban) and Cape Town, these proclamations were withdrawn and, as a result, the provisions of the AARTO Act only apply in the cities of Tshwane and Johannesburg where some challenges and inefficiencies have been identified.

Regulation 24 of the AARTO Act, which gives effect to the points demerit system, has **not** been proclaimed to be in force and, therefore, demerit points on driving licences and operator cards are **not yet in force anywhere in South Africa**.

### 2. Viewpoints expressed on Cape Talk, Randburg Sun and IOL News by Justice Project South Africa

JOHANNESBURG – The passing of the Administrative Adjudication of Road Traffic Offences (“AARTO”) Amendment Bill, 2015, (as amended by the Parliamentary Portfolio Committee on Transport in August 2017) in the National Assembly brings with it some ominous provisions with serious implications for holders of driving licences and/or owners of motor vehicles.

The Act will be amended to weight it further in favour of driving traffic fine revenues for authorities, while leaving motorists virtually powerless to defend themselves. The amendments also pave the way for the national rollout of the AARTO Act and the implementation of the points demerit system.

Among the amendments are the complete removal of the courts from the AARTO process, replacing them with a compulsion to make written representations to the Road Traffic Infringement Authority (RTIA) (formerly Agency) which is a state-owned enterprise funded almost entirely by traffic fine revenues (95,47% of its 2015/16 annual revenue) and to appeal adverse decisions by the RTIA’s representation officers to a newly created Tribunal.

Applications for appeal or review made to that Tribunal must be made within 30 days of the adverse decision and must be accompanied by the payment of a fee yet to be prescribed by the Minister of Transport.

Failure to exercise any of one’s so-called “elective options” within the prescribed time frame will speedily lead to the issue of an enforcement order which blocks the issuing of a driving licence [card], a professional driving permit, any permit or licence issued in terms of any road traffic

legislation or transport legislation and/or the issue of a vehicle licence disc, along with the imposition of demerit points on the alleged infringer's driving licence or operator card.

In addition, demerit points will now be applied against the driving licences of proxies for juristic entities (companies, etc.) which are registered owners of motor vehicles – in relation to infringements committed by other people who drive those vehicles. The actual drivers who commit such infringements will be able to evade the points demerit system by simply driving vehicles registered to juristic entities.

### **3. How does the demerit system work?**

*Sunday Times* (8 September 2017)

The draft regulations for the Aarto Act states that all drivers and cars will start with zero points. Points are allocated to drivers and cars based on infringements, and demerit points will be deducted at a rate of one point every three months provided no points have been incurred over that period.

Driving without a seatbelt and driving 131 km/h–135 km/h in a 120 km/h speed zone: a R250 fine and no demerit points.

Offences including driving an unregistered or unlicensed vehicle; driving with no licence plate visible; holding and using a cellphone; skipping a stop sign and skipping a red light: a R500 fine and one demerit point.

Six demerit points will be given to drivers under the influence of alcohol; exceeding 100 km/h in a 60 km/h zone, 140 km/h in a 100 km/h zone, and 160 km/h in a 120 km/h zone. In addition, a fine determined by a court will be imposed.

The demerit points system has been introduced to penalise drivers and operators who are habitual offenders. But it also rewards law-abiding road users, as it reduces 1 point every 3 months down to zero demerit points if no contraventions occur.

#### **Demerit points are recorded against your name in the following instances:**

- When penalties and fees are paid
- When you apply to pay in instalments
- When you are convicted in court
- When an enforcement order is issued

#### **How are demerits awarded?**

Every person starts with 0 points and the maximum permissible number of points is 12. In other words, a person is allowed to drive until he/she has 12 points. Every point exceeding 12 points results in a three-month suspension of the licence. One point is reduced every three months if no further contraventions occur within the three-month period. A licence is cancelled when it has been suspended for the third time. The demerit points in respect of vehicle operators and drivers are recorded separately even if they arise out of the same incident.

#### **Reduction of demerit points**

If demerit points have been incurred by an Infringer, such total number of points as recorded in the national contraventions register against that person and will be reduced with one (1) point for every three (3) months during which no demerit points were incurred by that person, except for the time the court found that the court process had been deliberately delayed by that person to obtain a reduction in points.

#### **What if?**

- **Multiple infringements**

If you have committed two or more infringements arising from the same incident, demerit points are recorded only in relation to one such infringement or offence to which the greatest number of demerit points applies.

- **Learner's licence**

If you have a learner's licence at the time of the infringement, your demerit points will only start to reduce when your licence is issued.

- **Unlicensed drivers**

If you are an unlicensed driver, you receive no discount and your demerit points will only start to reduce when your licence is issued. If you are caught for the third time as an unlicensed driver you will be arrested.

- **Non-operators**

A juristic person who is not an operator receives no demerit points, but pays three times the penalty amount. Proxies cannot get demerit points on behalf of a company.

- **Court cases**

If you elect to go to court under AARTO, demerit points are only recorded when you are found guilty. If you appeal against a conviction by the court for an offence, no demerit points are recorded unless of course the appeal is rejected or abandoned. Nothing prevents you from approaching a court to appeal or review the total amount of demerit points recorded against your name.

#### **4. Suspension of a driving licence, professional driving permit or operator card**

*Sunday Times* (8 September 2017)

If a person incurs demerit points which, when added to the points previously recorded against that person in the national contraventions register, exceeds a total of twelve (12), that person will be disqualified from driving or operating a motor vehicle. The disqualification period equals in months the number of points by which the total of twelve (12) is exceeded, multiplied by three (3).

A person who is so disqualified:

- (a) Must immediately hand in any driving licence or professional driving permit to the issuing authority for retention by such authority during the disqualification period or must remove the prescribed operator card from the vehicle in applicable cases; and
- (b) May not apply for a driving licence, professional driving permit or operator card during the disqualification period.

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 (1) year or to both a fine and such imprisonment.

**Upon expiry of his or her disqualification period, a person may reapply for and be issued with a driving licence, professional driving permit or operator card in terms of the applicable road traffic laws.**

## 5. Cancellation of a driving licence, professional driving permit or operator card

*Sunday Times* (8 September 2017)

A person who incurs demerit points resulting in a disqualification to drive or operate a motor vehicle for a third (3rd) time, must immediately hand in his or her driving licence, professional driving permit or operator card issued in respect of that vehicle to the issuing authority. Upon receipt of such a driving licence, professional driving permit or operator card, as the case may be, the authority will take the necessary steps to destroy such licence, permit or card.

Infringement	Fine amount	Demerit points
Driving an unregistered vehicle	R500,00	1
Driving an unlicensed vehicle	R500,00	1
Driving a vehicle with licence plate not visible	R500,00	1
Driving without a driving licence	R1 250,00	4

Driving without a seat belt	R250,00	0
<b>Driving under influence of intoxicating substance</b>	<b>Court decision</b>	<b>6</b>
Driving while holding and using a cellphone	R500,00	1
<b>FAILING TO STOP</b>		
Skipping a stop sign (light vehicles)	R500,00	1
Skipping a stop sign (buses, trucks)	R750,00	2
Skipping a red light (light vehicles)	R500,00	1
Skipping a red light (buses, trucks)	R750,00	2
Failing to yield to a pedestrian	R500,00	1
<b>OVERTAKING/OVERLOADING</b>		
Overtaking across a barrier line (light vehicles)	R500,00	1
Overtaking across a barrier line (buses, trucks)	R750,00	2
Overloading a heavy truck by up to 13,99%	R1 500,00	5
<b>SPEEDING</b>		
81–85 km/h in a 60 km/h zone	R750,00	2
<b>100 km/h+ in a 60 km/h zone</b>	<b>Court decision</b>	<b>6</b>
106–110 km/h in an 80 km/h zone	R1 000,00	3
<b>120 km/h+ in an 80 km/h zone</b>	<b>Court decision</b>	<b>6</b>
121–125 km/h in a 100 km/h zone	R750,00	2

131–135 km/h in a 100 km/h zone	R1 250,00	4
<b>140 km/h+ in a 100 km/h zone</b>	<b>Court decision</b>	<b>6</b>
131–135 km/h in a 120 km/h zone	R250,00	0
141–145 km/h in a 120 km/h zone	R750,00	2
151–155 km/h in a 120 km/h zone	R1 250,00	4
<b>160 km/h+ in a 120 km/h zone</b>	<b>Court decision</b>	<b>6</b>

**In summary: Arrive Alive (RTIA)**

The points demerit system can be explained as follows:

- Each driver will start out with zero points (irrespective of the number of classes of vehicle licences held);
- Points are allocated according to infringements or offences committed (there are different values for different infringements and offences);
- Points are incurred (allocated) on the date a penalty (fine) is paid or when the person is convicted of the offence (as the case may be);
- Operators receive points separately from their drivers (ie a transport company receives points allocated to the operators permit);
- When you reach 12 points and more, the licence (and/or operator card) is suspended with effect from 32 days after the maximum points (12) have been reached;
- The suspension period is calculated in months equal to the number of points exceeding 12, multiplied by three (or such number as may be prescribed by the Minister of Transport);
- The number of points (demerits) added will depend on the severity of the offence;
- The driver/operator may apply for the return of the licence on expiry of the suspension (disqualification) period;
- A driver/operator who is disqualified for the third time will permanently lose the licence/operator card and will have to reapply for testing and issue (as if a first time licence/operator applicant) after expiry of the disqualification period;
- Demerit points will be reduced (for all persons operators) at a flat rate of one point per every three months (or as otherwise prescribed), except in the case where evidence points to the fact that the process has been deliberately delayed to obtain a reduction in points.

.....End.....