

Administrative Adjudication of Road Traffic Offences Act 46 of 1998 (AARTO)

Topic: Transport

IN A CALABASH

Introduction

The Administrative Adjudication of Road Traffic Offences Act 46 of 1998 seeks to ensure safety and discipline on South African roads. The act came about in 1998 and was implemented as a pilot in Tshwane in July 2008 and Johannesburg in February 2009.

The Act outlines the process relating to adjudication in case of infringement, representations, courtesy letters and enforcement for failure to comply with the requirements. Furthermore, the Act outlines processes relating to warrant, trial and the demerit point system for those who are non-compliant.

Objectives of the Act

AARTO aims to–

- raise compliance with laws regulating road traffic and to promote road safety;
 - ensure the payment of penalties (fines) and allow alleged offenders to make representations;
 - establish a procedure for the effective and expeditious adjudication of infringements with the purposes of encouraging compliance with the national and provincial laws and alleviating the burden on the courts of trying offenders for infringements.
 - 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 licenses, professional driving permits or operating cards; and
 - reward law-abiding behaviour by reducing demerit points if imposed infringements or offences are not committed over specified periods.
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Application of the Act and its implication to Tourism

The AARTO will apply to all road users. In addition, most entities, be they public or privately-owned, make use of vehicles to transport persons and/or goods or make use of

transport services or service providers who use the roads. These entities must monitor all drivers and/or service providers who operate vehicles on public roads for any infringement of AARTO and possible loss of a license.

With regard to implications to tourism, it is important for users of rental vehicles and any other mode of transport to familiarise themselves with the rules of the road in South Africa. Rental companies always refer the penalties for traffic violations to the responsible driver.

Summary of the provisions of the Act

Adjudication procedure

If a person is alleged to have committed an infringement, an authorised officer will issue an infringement notice to be served on the alleged offender. The notice must specify the particulars of the infringer, details of the infringement, payable penalty and applicable discounts, should payment be made before a specified date. In addition, the infringer may make arrangement to pay in instalments, elect to be tried in court or provide evidence that he or she was not a driver of vehicle at the time of the infringement.

An infringer who has been served with a notice of a minor offence may make representations in the form of a sworn statement. This statement should provide reasonable grounds why the infringer should not be held liable for the penalty imposed. If the representations are deemed reasonable, the infringement notice will be cancelled and the alleged infringer will be informed of the decision. Should the representations fail, the infringer should elect to be tried in court or to pay the infringement.

If the infringer fails to pay the prescribed amount, the road traffic management agency may issue a courtesy letter indicating the failure of payment, the need to pay the prescribed penalty within a specified number of days and an option to make representations. Should the infringer fail to pay the penalty after the period prescribed in the courtesy letter, an enforcement order may be issued and the demerits points will be incurred by the infringer. There is a grace period for the infringer to pay the fine after an enforcement order has been issued.

In cases where the infringer fails to comply with the enforcement order, a warrant may be issued against the infringer to seize and sell his or her property to pay the infringement, seize his or her driving license or deface the license disc of the motor vehicle involved. Upon issuing the warrant, such information may be reported to the credit bureau.

If the infringer elects to be tried in court or if the execution of the warrant produces no property to seize and sell, a summons may be issued in terms of the Criminal Procedure Act. Should the infringer fail to appear in court, the clerk of the court may notify the National Road Traffic Agency of the courts' finding and the registrar must issue an enforcement order against the infringer. In instances where the infringer commits the same offence, he or she shall be dealt with in terms of the Criminal Procedure Act.

Points demerit system

Any person who has committed an offence or an infringement will incur the number of demerits points prescribed by the Act. The demerit points are incurred on the date on which the penalty and fee are paid for the infringement. When the person commits two or more infringements or gets convicted by the court of the two or more offences arising out of the same circumstances, the demerits points are recorded in the national contravention registrar. If the person appeals against the conviction by the court for an offence, no demerit points are recorded until the appeal is recorded.

If a person incurs demerit points beyond the accepted limit prescribed by the Minister of Justice and the relevant MEC, that person may be disqualified from driving or operating a motor vehicle. The disqualification period is determined on the basis of the demerit points accumulated. A person prohibited to operate a motor vehicle must hand over his or her driving license or professional driving permit to the issuing authority within the area of his or her jurisdiction. Any person who drives or operates a motor vehicle during the disqualification period may be guilty of an offence or liable on conviction to a fine or imprisonment not exceeding one year or both fine and such imprisonment.

A person who incurs demerit points resulting in disqualification for a third time must immediately handover his or her driving license or professional driving permit to the issuing authority. The authority must take necessary steps to destroy such license or permit upon receipt. Upon the expiry of the disqualification period, a person may reapply and be issued with a driving license or professional permit in line with the applicable road traffic laws.

If demerit points have been incurred by any person, the issuing authority must reduce the total number of points recorded in the national contraventions register against that person with one point or such other number of points or period as may be prescribed for every three months during which no demerit points were incurred by that person, except when the court found that the court process had been deliberately delayed by that person to obtain a reduction in points.

The AARTO has not as yet come into operation. For now, become familiar with the provisions of the AARTO, analyse the impact it may have on an operation and ensure that all drivers employed or used by the operation or entity are made aware of the AARTO, its impact and the risks which it presents.



WHAT HAPPENS IF YOU DO NOT COMPLY?

There are various consequences for not complying with the Act:

- AARTO imposes a system of demerit points for contravention of any road traffic law;
- Each contravention will be penalised with a fine, subject to a discount should the fine be paid within a certain time period, and accompanying demerit points;

- Thirteen or more demerit points against a license will result in the suspension of that driving license.;
- When the maximum demerit points (12) are exceeded for the third time, the driving license will be cancelled. Application for a new license may only be made after the suspension period has expired; and
- An entity whose driver loses his or her license will be exposed to consequential risks, such as the inability to use one's driver or vehicle on the public roads. This eventuality could lead to loss of business or clients and, potentially, even closure of one's business.



RECOMMENDED ACTIONS OR CONTROLS WHICH SHOULD BE IMPLEMENTED BY THE TARGET AUDIENCE TO ENSURE COMPLIANCE WITH THE ACT

- Raise awareness of the Act and the penalties which can be imposed when road laws are disobeyed and fines are not paid;
- Ensure that drivers are properly trained;
- Monitor fleet operators and drivers;
- Organise disciplinary proceedings when demerits are received by a driver;
- Retain records and documents for a minimum of 7 years;
- Link AARTO policy and procedure to disciplinary code and practices; and
- Include specific compliance obligations for drivers in employment contracts.

FURTHER INFORMATION

Regulators

Department of Transport
Road Traffic Infringement Agency

Websites

www.aarto.gov.za
www.transport.gov.za