

**NATIONAL LAND TRANSPORT ACT 5 OF 2009<sup>1</sup>**

[ASSENTED TO 3 APRIL 2009]

[DATE OF COMMENCEMENT: 8 DECEMBER 2009]

(Unless otherwise indicated)

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GG 32110 of 8 April 2009

**commencements**

(see s. 96 of this Act)

<b>provisions</b>	<b>date</b>	<b>refer to</b>
ss. 1, 3, 8 (1), (3) and (4), 11 (1), 40-43, 46, 56 and 91	31 August 2009	Proc 54 in GG 32532 of 31 August 2009
ss. 2, 4-7, 8 (2), 9, 10, 11 (2)-(7), 12-47 (4), 48 (1) and (2) and 49-96	8 December 2009	Proc R87 in GG 32788 of 8 December 2009

**Regulations under this Act****ACT**

**To provide further the process of transformation and restructuring the national land transport system initiated by the National Land Transport Transition Act, 2000 (Act 22 of 2000); and to provide for matters connected therewith.**

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

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**CHAPTER 1**

**GENERAL PROVISIONS (ss 1-10)**

**1 Definitions**

(1) [sic] In this Act, unless the context indicates otherwise-

**'adapted light delivery vehicle'** means a vehicle that has been designed or modified by a registered manufacturer to carry persons in accordance with the National Road Traffic Act;

**'authorised officer'** means-

- (a) an inspector contemplated in section 86;
- (b) a member of the South African Police Service, including a member of a municipal police service as defined in section 1 of the South African Police Service Act, 1995 (Act 68 of 1995);
- (c) a person in the service of a provincial department or a municipality, or the Road Traffic Management Corporation established by the Road Traffic Management Corporation Act, 1999 (Act 20 of 1999), whose duty is to control traffic or to inspect motor vehicles or licences for motor vehicles;

(d) a road transport inspector contemplated in section 37 of the Cross-Border Act;

'**bus**' means a motor vehicle designed or modified to carry more than 35 persons, including the driver;

'**charter service**' means a public transport service operated by road involving the hire of a vehicle and a driver for a journey at a charge arranged beforehand with the operator, where-

(a) neither the operator nor the driver charges the passengers individual fares;

(b) the person hiring the service has the right to decide the route, date and time of travel; and

(c) the passengers are conveyed to a common destination, and includes vehicles hired with drivers contemplated in section 67;

'**commercial service contract**' means an agreement concluded between a contracting authority and an operator in terms of section 43, and in terms of which the operator-

(a) is to operate a public transport service provided for in an integrated transport plan; and

(b) does not receive any subsidy or other financial support from any organ of state except, where applicable, a subsidy in respect of concessionary fares;

'**commuting**' means travelling daily between home and work by means of a public transport service, and 'commuter' has a corresponding meaning;

'**concessionary fare**' means the fare paid by a passenger falling within a special category;

'**Constitution**' means the Constitution of the Republic of South Africa, 1996;

'**contract**' means a subsidised service contract, negotiated contract or commercial service contract;

'**contracting authority**' means-

(a) the Department;

(b) a province, subject to section 11 (6); and

(c) a municipality, subject to section 11 (2) and (5);

'**courtesy service**' means a service provided by or on behalf of an organisation such as an hotel, which is not an operator, for its customers or clients, either by means of its own vehicle or the vehicle of an operator in terms of an agreement with that organisation, with no direct charge to the passengers;

'**Cross-Border Act**' means the Cross-Border Road Transport Act, 1998 (Act 4 of 1998);

'**cross-border road transport**' means cross-border road transport as defined in section 1 of the Cross-Border Act;

'**Department**' means the national Department of Transport;

'**designed or modified**' means designed or lawfully adapted by a registered manufacturer in compliance with the National Road Traffic Act;

'**eNaTIS**' means the electronic National Traffic Information System controlled by the Department, or any similar replacing system;

'**framework**' means an outline for the structure within and the form according to which a plan, policy or strategy is determined and developed;

'**Gazette**' means the national *Government Gazette*;

'**holder**' means the holder of an operating licence or permit;

'**infrastructure**', in relation to land transport, means fixed capital equipment and facilities in the land transport system;

'**inspector**' means an inspector appointed under section 86;

**'integrated development plan'** means the integrated development plan which, in terms of Chapter 5 of the Systems Act, must be prepared by a municipality;

**'integrated public transport network'** means a system in a particular area that integrates public transport services between modes, with through-ticketing and other appropriate mechanisms to provide users of the system with the optimal solutions to be able to travel from their origins to destinations in a seamless manner;

**'integrated transport plan'** means an integrated transport plan contemplated in section 36;

**'interprovincial service'** means a public transport service operating between two or more provinces;

**'intraprovincial service'** means a public transport service operating within the boundaries of a province;

**'land transport'** means the movement of persons and goods on or across land by means of any conveyance and through the use of any infrastructure and facilities in connection therewith;

**'lift club'** means an arrangement whereby every member of the club has a turn to convey or cause to be conveyed by means of a motor car the other members of such a club or other person designated by such members to or from specified places for a specified purpose as contemplated in section 69, and subject to that section;

**'long-distance service'** means a scheduled or unscheduled public transport service, other than a service for commuting, that is provided beyond the boundary of the area covered by an integrated transport plan, where passengers are charged fares individually, as contemplated in section 65;

**'major special event'** means an event such as, but not limited to, the FIFA 2010 World Cup, and includes the periods before and after that event necessary to conduct and finalise the necessary land transport arrangements;

**'MEC'** means the Member of the Executive Council of a province who is responsible for public transport in that province;

**'metered taxi service'** means a public transport service operated by means of a motor vehicle contemplated in section 66 which-

- (a) is available for hire by hailing while roaming, by telephone or otherwise;
- (b) may stand for hire at a rank; and
- (c) is equipped with a sealed meter, in good working order, for the purpose of determining the fare payable, that is calibrated for such fare or complies with any other requirements applicable to such meters;

**'midibus'** means a motor vehicle designed or modified solely or principally for conveying more than 16 but not more than 35 persons, including the driver, and for the purposes of the National Road Traffic Act is a type of sub-category of bus;

**'minibus'** means a motor vehicle designed or modified solely or principally for conveying more than nine but not more than 16 seated persons, including the driver;

**'minibus taxi-type service'** means an unscheduled public transport service operated on a specific route or routes, or where applicable, within a particular area, by means of a motor car, minibus or midibus;

**'Minister'** means the Minister responsible for transport in the national sphere of government;

**'motor car'** means a motor vehicle, other than a motor cycle, motor tricycle or motor quadrucycle as defined in the National Road Traffic Act, designed or modified solely or principally for conveying not more than nine persons, including the driver;

**'motor vehicle'** and **'vehicle'** means a motor vehicle as defined in section 1 of the National Road Traffic Act;

**'municipal entity'** means a municipal entity as defined in section 1 of the Systems Act;

**'Municipal Finance Management Act'** means the Municipal Finance Management Act, 2003 (Act 56 of 2003);

**'Municipal Land Transport Fund'** means a municipal land transport fund established in terms of section 27;

**'municipality'** includes all types of municipalities contemplated in section 155 of the Constitution;

**'municipal operator'** means a municipality or municipal entity which operates a public transport service;

**'municipal public transport'** means public transport contemplated in section 11 (1) (c) and any other function assigned to the municipality under section 11 (2) or (3);

**'National Land Transport Strategic Framework'** means the National Land Transport Strategic Framework contemplated in section 34;

**'National Public Transport Regulator'** means the National Public Transport Regulator contemplated in section 20;

**'National Road Traffic Act'** means the National Road Traffic Act, 1996 (Act 93 of 1996), and includes regulations made under that Act;

**'negotiated contract'** means a contract contemplated in section 41 (1);

**'non-contracted service'** means a public transport service other than one operated in terms of a commercial service contract, subsidised service contract or negotiated contract;

**'operating licence'** means a licence required by section 50 and granted and issued in accordance with this Act or the Transition Act;

**'operator'** means a person carrying on the business of operating a public transport service;

**'organ of state'** means an organ of state as defined in section 239 of the Constitution;

**'permit'** means a public road carrier permit issued in terms of the Road Transportation Act, 1977 (Act 74 of 1977), or another law predating the Transition Act and recognised as valid by the Transition Act, and which is in force and has not yet been converted to an operating licence on the date of commencement of this Act;

**'persons with disabilities'** means all persons whose mobility is restricted by temporary or permanent physical or mental disability, and includes the very young, the blind or partially-sighted and the deaf or hard of hearing;

**'planning authority'** means a municipality in relation to its planning functions;

**'prescribed'** means prescribed by regulation by the Minister, unless otherwise indicated or unless the Minister has delegated to the MEC the power to make the regulation in question by notice in the *Gazette*;

**'provincial department'** means the department within the administration of a province that is charged with public transport matters;

**'Provincial Land Transport Framework'** means a provincial land transport framework contemplated in section 35;

**'provincial law'** includes a provincial act or regulations made by the MEC under this Act;

**'Provincial Regulatory Entity'** means a provincial regulatory entity contemplated in section 23;

**'Public Finance Management Act'** means the Public Finance Management Act, 1999 (Act 1 of 1999);

**'public transport'**-

- (i) in relation to the national sphere of government, means the functions mentioned in section 11 (1) (a);

- (ii) in relation to the provincial sphere of government, means the functions mentioned in section 11 (1) (b), and any other function assigned to the province under section 11 (2);

**'public transport service'** means a scheduled or unscheduled service for the carriage of passengers by road or rail, whether subject to a contract or not, and where the service is provided for a fare or any other consideration or reward, including cabotage in respect of passenger transport as defined in the Cross-Border Act, and except where clearly inappropriate, the term **'public transport'** must be interpreted accordingly;

**'rail service'** means a public transport service operated on a rail track or any rail guiding mechanism, and includes light and heavy rail;

**'registered manufacturer'** means a manufacturer, importer or builder of motor vehicles registered under section 5 of the National Road Traffic Act;

**'regulatory entity'** means the National Public Transport Regulator, a Provincial Regulatory Entity, or a municipality to which the operating licence function has been assigned;

**'roadworthy certificate'** means a certificate certifying the roadworthiness of a motor vehicle in accordance with the requirements of the National Road Traffic Act;

**'scheduled service'** means a public transport service operated by road on a particular route or routes in accordance with a timetable;

**'service'** means a public transport service;

**'South African Rail Commuter Corporation'** means the South African Rail Commuter Corporation established in terms of section 23 of the Legal Succession to the South African Transport Services Act, 1989 (Act 9 of 1989);

**'special categories of passengers'** means persons with disabilities, the aged, pregnant women and those who are limited in their movements by children;

**'special event'** means a one-off cultural, religious, sporting or recreational event, or any entertainment, conference, exhibition or show;

**'staff service'** means a public transport service by road provided by means of a vehicle owned by an employer or a vehicle provided by an operator in terms of a contract with the employer, used exclusively for conveying the employer's employees;

**'Structures Act'** means the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

**'subsidised'**, in relation to services, means a situation where passengers are provided with financial assistance to be able to afford services that they could not otherwise afford or where services are subsidised for other reasons, for example to encourage public transport usage, relieve traffic congestion, or to support land use and transport integration;

**'subsidised service contract'** means an agreement between a contracting authority and an operator to operate a service provided for in an integrated transport plan and in terms of which the operator receives direct or indirect financial support in terms of a tendered contract;

**'Systems Act'** means the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);

**'this Act'** includes any regulation made in terms of this Act;

**'timetable'** means a published document informing passengers of headways (intervals between departures or the passing of vehicles), or times when and places where public transport services are available, indicating at least origin and destination points and significant intermediate locations along the route;

**'tourist transport service'** means a scheduled, unscheduled or chartered public transport service by road for the carriage of tourists to or from tourist attractions according to a predetermined itinerary, and includes transfers of tourists, for example from hotels to and from airports;



**'transfer'**, in relation to an operating licence, means a transfer from the holder of the operating licence to another person;

**'Transition Act'** means the National Land Transport Transition Act, 2000 (Act 22 of 2000);

**'Transport Appeal Tribunal'** means the Transport Appeal Tribunal established by section 3 of the Transport Appeal Tribunal Act, 1998 (Act 39 of 1998);

**'transport plan'** includes the National Land Transport Strategic Framework, the Provincial Land Transport Framework and an Integrated Transport Plan;

**'travel demand management'** means a system of actions to maximise the capacity of the transport system for the movement of people and goods rather than vehicles, among others, through increasing vehicle occupancy, developing priority measures for public transport, encouraging travel during off-peak periods, shifting demand between modes, restricting the space available for parking, adjusting the price of parking, and other appropriate measures;

**'tuk-tuk'** means a three-wheeled motor vehicle designed or modified solely or principally for conveying not more than three seated persons, including the driver; and

**'unscheduled service'** means a public transport service operated by road on a particular route or routes, or, where applicable, within a particular area, without a timetable.

[Date of commencement of s. 1: 31 August 2009.]

## **2 Purpose and scope of Act**

The purpose of this Act is-

- (a) to further the process of transformation and restructuring the national land transport system initiated by the Transition Act;
- (b) to give effect to national policy;
- (c) to prescribe national principles, requirements, guidelines, frameworks and national norms and standards that must be applied uniformly in the provinces and other matters contemplated in section 146 (2) of the Constitution; and
- (d) to consolidate land transport functions and locate them in the appropriate sphere of government.

## **3 Application of Act**

The provisions of this Act apply throughout the Republic of South Africa.

[Date of commencement of s. 3: 31 August 2009.]

## **4 Principles for national land transport policy**

The Minister must prescribe principles that apply to the determination, formulation, development and application of land transport policy in the Republic.

## **5 Functions of Minister**

(1) The Minister may, after consulting the MECs, publish national land transport policy, which may include target dates for the transformation of the land-based public transport sector.

(2) The Minister must monitor all provincial land transport policies and frameworks and all transport planning required or envisaged by this Act, to see that it is developed, prepared and formulated within the ambit of the national transport policy, and take appropriate action where necessary to promote compliance, subject to the Constitution and the Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005).

(3) Subject to the Cross-Border Act, the Minister is responsible for land transport arrangements with other countries regarding transport between the Republic and those countries, in collaboration with the Minister of Foreign Affairs.

(4) The Minister must-

- (a) monitor the implementation of national land transport policy and any investigations conducted into matters arising from its implementation, and cause the necessary adjustments, if any, to be made to that policy;
- (b) facilitate the increased use of public transport;
- (c) ensure that the money available for land transport matters is applied in an efficient, economic, equitable and transparent manner;
- (d) assist provincial departments that lack the necessary staff or resources in meeting their responsibilities and performing their functions and duties with regard to land transport;
- (e) co-ordinate between the three spheres of government and public entities with a view to avoiding duplication of effort and resources;
- (f) give guidance concerning education, training and capacity building in connection with land transport matters, and prescribe requirements in this regard, subject to the relevant legislation on education and training;
- (g) in taking any measures relating to public transport-
  - (i) accommodate therein relevant national and international benchmarks and best practice;
  - (ii) promote, within overall land transport objectives, the safety of passengers;
  - (iii) encourage efficiency and entrepreneurial behaviour on the part of operators and encourage them to tender competitively for contracts and concessions;
  - (iv) promote a strategic and integrated approach to the provision of public transport;
  - (v) promote the efficient use of energy resources, and limit adverse environmental impacts in relation to land transport;
- (h) promote public transport that-
  - (i) is effective in satisfying user needs;
  - (ii) operates efficiently as regards the use of resources;
  - (iii) is of an acceptable standard and readily accessible and is operated in conjunction with effective infrastructure provided at reasonable cost;
  - (iv) is safe;
- (i) ensure the integration of public transport modes, giving due consideration to the needs of users; and
- (j) promote effective integrated transport planning.

(5) The Minister may, after consultation with the MECs, by notice in the *Gazette*, set standards for interoperability between fare collection and ticketing systems.

(6) When a province or municipality cannot or does not fulfil an executive obligation in terms of matters relating to public transport, the Minister may intervene by taking the appropriate steps to ensure the fulfilment of that obligations, including issuing a directive to the provincial executive or municipal council, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations and the provincial executive or municipality must comply with such directive.

## **6 Information systems**

(1) The Minister must establish and maintain a national information system with regard to land transport and, in collaboration with the provinces, integrate that system with the information systems kept by provinces.

(2) Every MEC and municipality must provide the Minister, in the manner and at the times prescribed by the Minister, with the prescribed information with regard to-

- (a) the objects and purposes of this Act;

- (b) the national land transport policy; and
- (c) the utilisation of monies made available to them by the Department, whether directly or indirectly, for the performance of their functions with regard to land transport in terms of this Act.

(3) Despite subsection (2), the Minister may, at any time by notice in writing, request the MEC or municipality to provide the Minister with any information which the Minister may require.

(4) The Minister must have all the information that was provided in terms of subsections (2) and (3) included in the national information system, and may make it available to interested parties on payment of the prescribed fee, if any, subject to the provisions of the Promotion of Access to Information Act, 2000 (Act 2 of 2000).

(5) As part of the national information system, the Minister must, in the prescribed manner, establish and maintain an Operating Licence Administrative System containing the prescribed information, which must be accessible to and maintained by regulatory entities.

(6) The Operating Licence Administrative System contemplated in subsection (5) must incorporate information in the existing Operating Licence Administrative System, the former Registration Administration System and the Subsidy Management System, and such system and eNATIS must be interoperable.

## **7 Delegations by Minister**

(1) The Minister may delegate to any officer in the Department any power or assign any duty conferred or imposed upon the Minister in terms of this Act, except the power to make regulations and the power to issue directives under section 5 (6).

- (2) Any delegation of a power or assignment of duty under subsection (1)-
  - (a) does not prevent the Minister from exercising that power or performing that duty;
  - (b) must be done in writing; and
  - (c) may at any time be amended or withdrawn.

## **8 Regulations by Minister**

(1) The Minister may, after consultation with the MECs, make regulations relating to-

- (a) any matter which may or must be prescribed by way of a regulation under this Act;
- (b) requirements for integrated fare systems, comprising fare structures, levels and technology, to ensure compatibility between such systems;
- (c) national norms and standards relating to the qualifications and conduct of inspectors;
- (d) a process to be followed for offering alternative services in the place of existing services to holders of operating licences or permits under section 39;
- (e) the types of vehicles that may or may not be used for public transport services and standards or specifications for vehicles, subject to the National Road Traffic Act;
- (f) procedures for the regulation of interprovincial transport;
- (g) standard forms for responses of planning authorities under section 55;
- (h) colour coding and branding of vehicles used for public transport;
- (i) special requirements for drivers of vehicles used for public transport including, but not limited to, testing for knowledge of the area in question;
- (j) policy and principles to be applied in paying subsidies;

- (k) electronic fare collection and ticketing systems and the control of such systems by the provinces or municipalities either alone or in partnership with operators;
- (l) information systems to be kept by the National Public Transport Regulator, each Provincial Regulatory Entity and planning authorities relating to this Act and information to be supplied to the national information system contemplated in section 6 from these systems, including the time within which it must be submitted;
- (m) information to be kept by operators and supplied to authorities contemplated in this Act, including the time within which it must be submitted;
- (n) meetings of the National Provincial Transport Regulator, Public Regulatory Entities and municipalities to which the operating licensing function contemplated in section 11 (1) (a) (viii) has been assigned;
- (o) procedures at those meetings, quorums and the keeping of records;
- (p) functions and duties of the National Public Transport Regulator and municipalities in addition to those specified in this Act;
- (q) principles for transport planning;
- (r) the content of transport plans;
- (s) procedures for the preparation, updating and approval of transport plans;
- (t) procedures to be followed in promoting public participation in the transport planning process;
- (u) requirements and procedures for negotiated contracts and their conversion to tendered contracts;
- (v) amounts to be paid as a deposit to the Department or other entity to cover possible fines or penalties should the operator fail to comply with this Act or other prescribed requirements;
- (w) information that must be supplied to the National Public Transport Regulator by tourist transport operators applying for accreditation under section 82;
- (x) required signage, vehicle identification or livery for vehicles used for tourist transport services;
- (y) requirements and time-frames for vehicles and facilities to be made accessible to persons with disabilities, including principles for accommodating such persons in the public transport system;
- (z) the time within which an offer made under section 46 must be made or accepted, and the manner in which the procedures and negotiations contemplated in that section must be conducted;
- (aa) the period within which application for renewal of existing operating licences must be submitted, and such regulations may provide that such operating licences will remain valid when the application for renewal is being processed;
- (bb) requirements regarding liability insurance cover to be taken out by operators to supplement the cover provided in terms of the Road Accident Fund Act, 1996 (Act 56 of 1996); and
- (cc) generally any other ancillary or incidental administrative or procedural matters that are necessary to prescribe for the proper implementation or administration of this Act.

[Date of commencement of sub-s. (1): 31 August 2009.]

(2) Before making any regulations contemplated in subsection (1), the Minister must publish a draft of such regulations for public comment in the *Gazette*, and must consider any comments received in response to such publication.

(3) The regulation made under this section may provide that any person who contravenes a provision thereof or fails to comply therewith is guilty of an offence, and liable on conviction to a fine or to imprisonment not exceeding three months.

[Date of commencement of sub-s. (3): 31 August 2009.]

(4) A regulation made in terms of the Transition Act and in force immediately before the commencement of this Act with regard to matters in relation to which the Minister, in terms of subsection (1), is competent to make regulations, is regarded for the purposes of this Act as a regulation made under that subsection until superseded by a new regulation under this section.

[Date of commencement of sub-s. (4): 31 August 2009.]

## **9 Functions of MECs**

(1) An MEC may, after consulting planning authorities in the province, publish provincial land transport policy.

(2) An MEC must-

- (a) monitor the implementation of provincial land transport policy and any investigations conducted into matters arising from the implementation, and cause the necessary adjustments, if any, to be made to that policy;
- (b) ensure that the money available for land transport matters is applied in an efficient, economic, equitable and transparent manner;
- (c) assist municipalities that lack the necessary staff or resources in meeting their responsibilities and performing their functions and duties with regard to land transport;
- (d) produce an annual report on the state of transport affairs in the province in the prescribed manner and submit it to the Minister in the prescribed time;
- (e) improve the planning, co-ordination and facilitation of the land transport functions of the province;
- (f) promote intergovernmental relations within the land transport environment;
- (g) ensure that there is a link with matters having an impact on transport in the province, including land use management, environmental issues, population growth, economic development and investment in infrastructure, to facilitate integration and efficient transport;
- (h) set standards, performance criteria and related indicators to ensure intermodal and intramodal co-ordination and efficient management of investment in transport and of transport infrastructure and systems;
- (i) take an active role in sourcing international, national, local, private and public funding to promote the objects of this Act in the province; and
- (j) co-ordinate transport initiatives with municipalities, and other stakeholders in the transport field by establishing co-ordinating structures or by other methods.

## **10 Regulations by MEC**

(1) An MEC may make regulations with regard to-

- (a) any matter which, in terms of this Act, may or must be prescribed by an MEC;
- (b) a code of conduct for operators or drivers of public transport vehicles, which may differ according to the mode of transport concerned;
- (c) the establishment, membership and procedures of co-ordinating structures for transport planning in the province;
- (d) frequency of meetings of Provincial Regulatory Entities;
- (e) procedures at meetings of Provincial Regulatory Entities, quorums and the keeping of records;
- (f) the powers and duties of Provincial Regulatory Entities; and
- (g) procedures to be followed in promoting public participation in the transport planning process.

(2) The regulations may provide that any person who contravenes a provision thereof or fails to comply therewith, is guilty of an offence and on conviction liable to imprisonment not exceeding three months or to a fine.

(3) Regulations made in terms of the Transition Act or preceding legislation and in force immediately before the commencement of this Act with regard to matters in relation to which the MEC, in terms of subsection (1), is competent to make regulations, are regarded for the purposes of this Act as regulations made in terms of this subsection until such time as the MEC makes new regulations under this section.

(4) Where an MEC has failed to make regulations on any matter on which provincial regulations are required under this Act, the Minister may within a reasonable time make such regulations after consultation with that MEC.

## **CHAPTER 2**

### **INSTITUTIONAL ARRANGEMENTS FOR LAND TRANSPORT (ss 11-26)**

#### **Institutional arrangements: general matters (ss 11-13)**

#### **11 The responsibilities of the three spheres of government**

(1) The responsibilities of the three spheres of government are as follows:

(a) The national sphere of government is responsible for-

- (i) the formulation of national transport policy and strategy;
- (ii) national strategic transport planning and co-ordination, and preparing a National Land Transport Strategic Framework in terms of section 34;
- (iii) co-ordination between provinces and to address arrangements between the three spheres of government and public entities with a view to ensuring the effective and efficient execution of the land transport function;
- (iv) assigning functions to the most appropriate sphere of government;
- (v) liaising with other government departments in the national sphere with responsibilities that impact on transport issues with a view to co-ordinating land transport;
- (vi) capacitating and monitoring provinces and municipalities that lack capacity or resources to perform their land transport functions;
- (vii) co-ordinating transport relations between the Republic and other countries and implementing international agreements;
- (viii) performing the functions contemplated in this Act in relation to applications for operating licences;
- (ix) regulation of tourism transport;
- (x) regulation of interprovincial road transport;
- (xi) acting as contracting authority for subsidised service contracts, interim contracts, current tendered contracts and negotiated contracts concluded in terms of the Transition Act; and
- (xii) performing the other functions assigned to the Minister in terms of this Act.

(b) The provincial sphere of government is responsible for-

- (i) the formulation of provincial transport policy and strategy, within the framework of national policy and strategy;
- (ii) planning, co-ordination and facilitation of land transport functions in the province, and preparing the Provincial Land Transport Framework in terms of section 35;
- (iii) co-ordination between municipalities with a view to ensuring the effective and efficient execution of land transport in the province

- and promoting provincial legislation with a view to promoting the objects of this Act;
- (iv) liaising with other government departments in the national and provincial spheres with responsibilities that impact on transport and land use planning issues, and bringing together key players;
  - (v) ensuring that municipalities that lack capacity and resources are capacitated to perform their land transport functions;
  - (vi) building capacity in municipalities to monitor the implementation of this Act;
  - (vii) ensuring implementation of the provincial integrated development strategy and public transport strategy, with due attention to rural areas, with the focus on less capacitated municipalities or those that do not fulfil their responsibilities in respect of transport service delivery, either by direct implementation or assistance under paragraph (v); and
  - (viii) performing the other provincial functions assigned to the MEC in terms of this Act.
- (c) The municipal sphere of government is responsible for-
- (i) developing land transport policy and strategy within its area based on national and provincial guidelines, which includes its vision for the area and incorporates spatial development policies on matters such as densification and infilling as well as development corridors;
  - (ii) promulgating municipal by-laws and concluding agreements, as appropriate, in the municipal sphere;
  - (iii) ensuring co-ordination between departments and agencies in the municipal sphere with responsibilities that impact on transport and land use planning issues, and bringing together the relevant officials;
  - (iv) in its capacity as planning authority, preparing transport plans for its area, ensuring the implementation thereof and monitoring its performance in achieving its goals and objectives;
  - (v) financial planning with regard to land transport within or affecting its area, with particular reference to transport planning, infrastructure, operations, services, maintenance, monitoring and administration, with due focus on rehabilitation and maintenance of infrastructure;
  - (vi) managing the movement of persons and goods on land within its area by co-ordinating such movement;
  - (vii) encouraging and promoting the optimal use of the available travel modes so as to enhance the effectiveness of the transport system and reduce travelling time and costs;
  - (viii) developing, implementing and monitoring a strategy to prevent, minimise or reduce any adverse impacts of the land transport system on the environment in its area;
  - (ix) developing, operating and maintaining a land transport information system for its area;
  - (x) encouraging, promoting and facilitating public consultation and participation in the planning, regulation and implementation of public transport, and applying the requirements of the Systems Act in that regard;
  - (xi) marketing and promoting public transport and promoting publicity associated with the public transport system;
  - (xii) providing information to users or potential users of public transport;
  - (xiii) promoting safety and security in public transport;

- (xiv) ensuring there is provision for the needs of special categories of passengers in planning and providing public transport infrastructure, facilities and services to meet their needs, in so far as possible by the system provided for mainstream public transport;
- (xv) liaising on a continuous basis with the South African Police Service, Road Traffic Management Corporation, the relevant provincial and municipal law enforcement authorities or agencies, and the inspectors appointed under the Cross-Border Act, with a view to ensuring co-ordinated transport law enforcement within its area;
- (xvi) applying traffic management techniques aimed at improving road traffic movement;
- (xvii) undertaking functions relating to municipal roads, as well as measures to limit damage to the road system;
- (xviii) the planning, implementation and management of modally integrated public transport networks and travel corridors for transport within the municipal area and liaising in that regard with neighbouring municipalities;
- (xix) in relation to the planning functions contemplated in paragraph (iv) include service level planning for passenger rail on a corridor network basis in consultation with the South African Rail Commuter Corporation;
- (xx) introducing, establishing or assisting in or encouraging and facilitating the establishment of integrated ticketing systems, the managing thereof including through-ticketing and determining measures for the regulation and control of revenue-sharing among operators involved in those systems;
- (xxi) subject to standards set by the Minister under section 5 (5), if any, set standards for interoperability between fare collection and ticketing systems in its area;
- (xxii) formulating and apply travel demand management measures for its area;
- (xxiii) in the case of gross cost contracts for subsidised services, determining fare structures and fare levels and periodically adjusting fares after publishing the proposed adjustment for public comment;
- (xxiv) determining concessionary fares for special categories of passengers in the prescribed manner;
- (xxv) exercising control over service delivery through-
  - (i) the setting of operational and technical standards and monitoring compliance therewith; and
  - (ii) the monitoring of contracts and concessions;
- (xxvi) concluding subsidised service contracts, commercial service contracts, and negotiated contracts contemplated in section 41 (1) with operators for services within their areas;
- (xxvii) developing and managing intelligent transport systems for their areas in the prescribed manner; and
- (xxviii) performing the other functions of municipalities in terms of this Act.

[Date of commencement of sub-s. (1): 31 August 2009.]

(2) The Minister may assign any function contemplated in subsection (1) (a) to a province or municipality, subject to sections 99 and 156 (4) of the Constitution and sections 9 and 10 of the Systems Act, to achieve the objectives of the Constitution and this Act.



(3) The MEC may assign any function contemplated in subsection (1) (b) to a municipality, subject to section 156 (4) of the Constitution and sections 9 and 10 of the Systems Act to achieve the objectives of the Constitution and this Act.

(4) Any municipality may request the Minister or MEC to assign a function contemplated in subsection (1) (a) or (b) to it, subject to sections 156 (4) of the Constitution and sections 9 and 10 of the Systems Act, where such municipality has an acceptable integrated transport plan.

(5) Where a municipality is performing a function contemplated in subsection (1) (a) on the date of commencement of this Act, such function is deemed to have been assigned to that municipality under subsection (2).

(6) Subject to section 21, where a province is performing a function contemplated in subsection (1) (a) on the date of commencement of this Act, it must continue performing that function, unless that function is assigned to a municipality by the Minister in terms of this Act.

(7) The Minister may make regulations or issue guidelines providing for transitional arrangements where a function is assigned under subsection (2), which may differentiate between-

- (a) different categories of municipalities, budgetary size or in any other determinable manner; or
- (b) functional areas.

## **12 Intergovernmental relations**

(1) A province may enter into an agreement with one or more municipalities in the province to provide for the joint exercise or performance of their respective powers and functions contemplated in this Act and may establish a provincial entity or similar body in this regard, subject to the Constitution and this section.

(2) One or more adjacent municipalities may agree on the joint exercise or performance of their respective powers and functions contemplated in this Act, or may establish municipal entities in terms of the Systems Act for this purpose.

(3) If the spheres of government cannot agree, subject to this Act, on the division of land transport functions between them, they must act in a manner and spirit consistent with the principles of co-operative government prescribed by section 41 of the Constitution and apply the provisions of the Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005).

## **13 Impartiality**

(1) The following persons and their spouses, partners and immediate family members must be impartial, have no direct financial or business interest in any sector of the public transport industry, and may not decide or adjudicate on a matter in which they have such an interest:

- (a) Members of the National Public Transport Regulator, Provincial Regulatory Entities and municipalities directly involved in dealing with applications concerning operating licences;
- (b) members of the Transport Appeal Tribunal established by section 3 of the Transport Appeal Tribunal Act, 1998 (Act 39 of 1998);
- (c) officials of planning authorities directly responsible for the development of integrated transport plans;
- (d) officials directly involved in the management and execution of public transport related law enforcement; and
- (e) officials operating or working at testing stations contemplated in the National Road Traffic Act,

or such a member or official who has been such person in the year prior to his or her appointment.

(2) No serving member of Parliament or of a provincial legislature or councillor of a municipal council, or a person who has been such a member or councillor in the previous year, may be a member or official contemplated in subsection (1) (a), (b), (c), (d) or (e).

### **Institutional arrangements: planning authorities (ss 14-16)**

#### **14 Planning authorities**

All planning authorities must-

- (a) prepare the integrated transport plans as contemplated in section 36;
- (b) perform the constitutional transport functions listed in Parts B of Schedules 4 and 5 of the Constitution;
- (c) supply directions to the entities responsible for the granting, renewal, amendment or transfer of operating licences in terms of their integrated transport plans in the prescribed manner; and
- (d) perform any other land transport-related functions assigned to them in terms of the Constitution and this Act.

#### **15 Intermodal planning committees**

(1) Every municipality that is establishing an integrated public transport network or has significant passenger rail services in its area must establish an intermodal planning committee consisting of the prescribed technical officials and prescribed representatives of rail operators, other public transport modes, users and organised business.

(2) The function of an intermodal planning committee is to co-ordinate public transport between the modes in order to achieve the objects of this Act.

#### **16 Land transport advisory boards**

(1) A planning authority may establish a land transport advisory board with representation from government and the private sector, to advise it in relation to land transport matters.

(2) The Minister may, after consulting the relevant MECs, make regulations on the membership of such advisory boards, the appointment and qualifications for membership, procedures and frequency of meetings, and related matters.

### **Institutional arrangements: municipalities (ss 17-19)**

#### **17 Establishment of division for the operating licence function and arrangement of administration of certain municipalities**

(1) Every municipality to which the operating licence function has been assigned under section 11 (2) must-

- (a) establish a division within its administration to perform that function in terms of this Act;
- (b) ensure such division consists of dedicated officials of the municipality, appointed either on a full-time or part-time basis by virtue of their specialised knowledge, training or experience in public transport or related matters.

(2) The Minister may prescribe minimum qualifications or experience for officials of such division or of officials undertaking specific land transport functions.

(3) No person contemplated in section 13 may be an official of such division.

(4) Every such municipality must arrange or, if necessary, reorganise its administration so that the function of managing and funding transport matters, and land use planning, as well as the other related functions contemplated by this Act, are integrated.

## **18 Regulatory functions of municipalities**

(1) A municipality to which the operating licensing function has been assigned under section 11 (2) must receive and decide on applications relating to operating licences for services wholly in their areas of jurisdiction, excluding applications that must be made to the National Public Transport Regulator or a Provincial Regulatory Entity.

(2) In considering applications regarding operating licences, such municipalities must, in the case of services provided in terms of their integrated transport plan, apply that plan and give due regard to the relevant Provincial Land Transport Framework.

(3) Such a municipality may give notice in the prescribed manner that it will no longer receive applications for operating licences for new services except in accordance with invitations given by it for specified services on specified routes or in specified areas in accordance with its integrated transport plan, either for the purpose of concluding a contract or because those routes or areas are already adequately served.

(4) Such a municipality may, in appropriate cases, make inquiries or hold hearings to enable it to perform its functions contemplated in this section, and also has the prescribed powers.

(5) Every municipality that establishes an integrated public transport network must in the prescribed manner establish a call centre where passengers and other interested persons may lodge complaints or inquiries regarding public transport services in its area, and must follow up such complaints and, where appropriate, take the necessary action to remedy the situation.

## **19 Adjacent municipalities**

(1) Where there are significant transport movements between two or more adjacent municipalities, they may establish an inter-municipality forum in terms of section 28 of the Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005) to co-ordinate their functions in terms of this Act and to ensure that their integrated transport plans take account of such movements.

(2) As an alternative to such an inter-municipality forum, such municipalities may establish a multi-jurisdictional service utility for the purpose in terms of Part 4 of Chapter 8A of the Systems Act.

## **Institutional arrangements: National Public Transport Regulator (ss 20-22)**

### **20 Establishment of National Public Transport Regulator**

(1) The Minister must establish the National Public Transport Regulator within the Department, to perform the functions of that Regulator in terms of this Act.

(2) The National Public Transport Regulator consists of designated officials of the Department, appointed either on a full-time or part-time basis, whose specialised knowledge, training or experience, taken collectively, at least covers-

- (a) public transport;
- (b) transport economics;
- (c) accounting, auditing or actuarial science;
- (d) the law;
- (e) tourism transport; and
- (f) vehicle standards and specifications.

(3) The prescribed quorum of members of the National Public Transport Regulator contemplated in subsection (2) must take decisions of that Regulator.

(4) The Department must allocate staff as a dedicated unit to assist that Regulator in the performance of its functions.

### **21 Functions of National Public Transport Regulator**

(1) The National Public Transport Regulator must-

- (a) monitor and oversee public transport in the country in general and the activities of Provincial Regulatory Entities and municipalities in relation to their land transport functions;
- (b) receive and decide on applications relating to operating licences or accreditation for-
  - (i) interprovincial transport, excluding daily commuter transport to and from the area of a municipality to which the operating licensing function has been assigned under section 11 (2), which must be dealt with by that municipality;
  - (ii) tourist transport services; and
  - (iii) any other services designated by the Minister by notice in the *Gazette*;
- (c) oversee fares charged for public transport services throughout the country; and
- (d) advise the Minister on the making of regulations in relation to fares or fare structures in terms of section 8.

(2) The National Public Transport Regulator must produce and regularly update a standardised procedures manual for itself and for Provincial Regulatory Entities, municipalities, contracting authorities and the Transport Appeal Tribunal in respect of their activities in terms of this Act, subject to this Act.

(3) In the case of an application for an operating licence for an interprovincial service other than a tourist transport service or charter service, the National Public Transport Regulator must consult the relevant Provincial Regulatory Entities and relevant planning authorities in the prescribed manner.

(4) Where a Provincial Regulatory Entity refuses to receive an application, or delays an application unduly in the prescribed manner, the applicant may submit the application to the National Public Transport Regulator in the prescribed time and manner.

(5) Any application concerning an operating licence or conversion of a permit to an operating licence that is pending before a provincial operating licensing board on the date that this section comes into operation, and that relates to a service specified in subsection (1) (b), must be finalised by that board or by the National Public Transport Regulator once it has been established, applying the provisions of this Act.

(6) As soon as possible after its appointment, the National Public Transport Regulator must formulate an implementation plan for establishing the entities required by this Act and for capacitating them, and for implementing the other provisions of this Act.

## **22 Powers of National Public Transport Regulator**

(1) The National Public Transport Regulator may, in appropriate cases, make inquiries or hold hearings to enable it to perform its functions set out in section 21.

(2) In dealing with any matter before it the National Public Transport Regulator must have the prescribed powers.

### **Institutional arrangements: Provincial Regulatory Entities (ss 23-25)**

## **23 Establishment of Provincial Regulatory Entities**

(1) Every MEC must establish a Provincial Regulatory Entity within the relevant provincial department, to perform the functions of that entity in the province.

(2) The Provincial Regulatory Entity must consist of dedicated officials of the provincial department, appointed either on a full-time or part-time basis by virtue of their specialised knowledge, training or experience of public transport or related matters and is accountable to the head of the provincial government.

(3) No serving member of Parliament or of a provincial legislature or councillor of a municipal council may be an official of the Provincial Regulatory Entity.

(4) No person contemplated in section 13 may be an official of the Provincial Regulatory Entity.

#### **24 Functions of Provincial Regulatory Entities**

(1) Each Provincial Regulatory Entity must-

- (a) monitor and oversee public transport in the province;
- (b) receive and decide on applications relating to operating licences for intra-provincial transport where no municipality exists to which the operating licence function has been assigned, but excluding applications that must be made to the National Public Transport Regulator in terms of section 21.

(2) As soon as possible after this section comes into operation, the MEC must take steps to disestablish the relevant operating licensing board and to establish the relevant Provincial Regulatory Entity and transfer that board's functions to the Provincial Regulatory Entity.

(3) Any application concerning an operating licence or conversion of a permit to an operating licence that is pending before a provincial operating licensing board on the date that this section comes into operation, must be finalised either by that board before it is disestablished or by the Provincial Regulatory Entity after it is established, in terms of this Act and directions given by the MEC.

#### **25 Powers of Provincial Regulatory Entities**

(1) A Provincial Regulatory Entity may, in appropriate cases, make inquiries or hold hearings to enable it to perform its functions set out in section 24.

(2) In dealing with any matter before it a Provincial Regulatory Entity must have the prescribed powers.

### **Agreements on regulatory matters (s 26)**

#### **26 Agreements on regulatory matters**

(1) The National Public Transport Regulator, a Provincial Regulatory Entity or a municipality may agree that one of them will undertake the functions of another relating to receiving and considering applications concerning operating licences, either temporarily or permanently, where-

- (a) there is a significant travelling of commuters on a daily basis between the areas for which they are responsible;
- (b) the nature of transport movements between them would make such an agreement advisable from a transport or land use planning viewpoint; or
- (c) for other prescribed reasons.

(2) The Minister may prescribe regulations on the circumstances in which and the conditions on which such agreement may be concluded, and procedures or requirements for its implementation.

### **CHAPTER 3 FUNDING ARRANGEMENTS FOR LAND TRANSPORT (ss 27-30)**

#### **27 Municipal land transport funds**

(1) Subject to subsection (2), every municipality that is establishing an integrated public transport network must establish a fund for its area known as a Municipal Land Transport Fund, into which shall be paid-

- (a) money appropriated by the Minister for that Fund;
- (b) money appropriated by the MEC for that Fund;
- (c) user charges collected in terms of section 28;

- (d) interest on invested cash balances belonging to that Fund; and
- (e) donations and contributions to that fund from any other source, including foreign aid agencies.

(2) Such a municipality must administer that fund and use it to defray the cost of the functions of that authority in terms of this Act or its integrated transport plan, and to cover any other expenditure that will promote the objects of this Act in its area.

(3) Such a municipality may invest money in that fund that is not immediately required by it subject to the Municipal Finance Management Act and any other applicable legislation.

(4) Such a municipality must keep proper accounts of all money accruing to or paid out of that fund, which must be audited by the Auditor-General.

(5) The municipal manager or chief executive officer of such a municipality must submit, annually to its council, for approval estimates of expenditure to be defrayed from that fund, and may make no payment from that fund except in accordance with such estimates or with the prior approval of that council.

(6) The provisions of the Municipal Finance Management Act apply to such funds, and the Minister of Finance may make regulations clarifying the application of that Act to those funds.

## **28 Public transport user charges**

(1) Subject to the Municipal Fiscal Powers and Functions Act, 2007 (Act 12 of 2007), a municipality, which has established a municipal land transport fund under section 27 may impose user charges, which may differ from case to case, on-

- (a) specified classes of motor vehicles entering specified portions of its area at specified times;
- (b) land, buildings or other developments that generate the movement of passengers, including land or buildings of which the State is the owner, in its area; and
- (c) the parking of motor vehicles in a building or on land in specified portions of its area;
- (d) parking places for, or the use of ranks, stops and terminals by, motor vehicles in such portions.

(2) Amounts received in terms of subsection (1) accrue to such fund.

## **29 Minister may provide funds for land transport**

(1) For the performance of the Minister's functions in terms of this Act and to meet the expenditure incurred by the Department in the performance of work arising from or otherwise connected with those functions, the Minister must use monies appropriated by Parliament for that purpose.

(2) The moneys made available to municipal transport funds by the Minister are to be applied so as to give effect to land transport policy and to achieve the objects and purposes of this Act, and the Minister may for that purpose impose conditions including conditions relating to specific purposes for which the money is to be used.

(3) Money made available in terms of this Act-

- (a) for use for a particular or specified purpose, may not be used for any other purpose; or
- (b) subject to specified conditions, may not be dealt with contrary to those conditions.

(4) Any conditions imposed must be framed in such a manner as to permit flexibility and ease of implementation, while requiring compliance with the principles of land transport policy as contemplated in section 4 of this Act.

## **30 MEC may provide funds for land transport**

(1) For the performance of an MEC's functions in terms of this Act, and to meet the expenditure incurred by the provincial department in performance of the work connected with those functions, the MEC must use moneys received from the Minister or appropriated by the relevant provincial legislature for that purpose.

(2) An MEC may, from funds received under subsection (1), make monies available to municipalities to perform their responsibilities in terms of this Act.

(3) The moneys made available under subsection (1) are to be applied so as to give effect to the national and provincial land transport policy and to achieve the objects and purposes of this Act, and the MEC may for that purpose impose conditions including conditions relating to specific purposes for which the money is to be used.

(4) Moneys made available in terms of this section-

- (a) for use for a particular or specified purpose, may not be used for any other purpose; or
- (b) subject to specified conditions, may not be dealt with contrary to those conditions.

## **CHAPTER 4 TRANSPORT PLANNING (ss 31-39)**

### **31 General principles for transport planning and its integration with land use and development planning**

Land transport planning must be integrated with the land development and land use planning processes, and the integrated transport plans required by this Act are designed to give structure to the function of municipal planning mentioned in Part B of Schedule 4 to the Constitution, and must be accommodated in and form an essential part of integrated development plans, with due regard to legislation applicable to local government, and its integrated transport plan must form the transport component of the integrated development plan of the municipality.

### **32 Types of plans required by this Act**

For the purposes of this Act, the following plans are required:

- (a) A National Land Transport Strategic Framework prepared by the Minister;
- (b) Provincial Land Transport Frameworks prepared by the MECs; and
- (c) integrated transport plans prepared by planning authorities.

### **33 General provisions on transport planning**

(1) (a) A planning authority may enter into an agreement with any other planning authority or the provincial department to assist it in performing its functions in terms of this Chapter.

(b) Despite subsection (1), the planning authority is not divested of its ultimate responsibility for the functions entrusted to it by this Chapter.

(2) The Minister, MEC and planning authority must, before finalising the national land transport strategic framework, provincial land transport framework or integrated transport plan, as the case may be, publish a notice in English and at least one other official language in a newspaper circulating nationally, in the province, or in the area of the planning authority, as the case may be, informing the relevant stakeholders that the plan in question has been completed and is available for public inspection at a place stated in the notice.

### **34 National Land Transport Strategic Framework**

(1) The Minister must prepare a five-year National Land Transport Strategic Framework for the country to guide land transport planning countrywide.

(2) The last National Land Transport Strategic Framework prepared in terms of the Transition Act must be regarded as the applicable National Land Transport Strategic Framework, until the Minister prepares a replacing one in terms of subsection (1).

(3) The Minister must update the National Land Transport Strategic Framework every five years.

(4) The National Land Transport Strategic Framework must serve to guide land transport planning countrywide and must not derogate from the constitutional planning functions of provinces and municipalities.

(5) As regards overall strategic planning for transport, all spheres of government and public entities are bound by the provisions of the National Land Transport Strategic Framework.

### **35 Provincial Land Transport Frameworks**

(1) Every MEC must prepare a five-year Provincial Land Transport Framework in accordance with the requirements prescribed by the Minister after consultation with all the MECs.

(2) The Provincial Land Transport Framework must provide a transport framework as an overall guide to transport planning within the province, being guided by the National Land Transport Strategic framework.

(3) Provincial Land Transport Frameworks must include the planning of both intraprovincial and interprovincial long-distance services, which must be linked where applicable with other public transport services, and may provide for charter services and staff services, and in the case of interprovincial transport, this must be done in consultation with the MEC of the other province or provinces concerned.

(4) The Minister must, as soon as possible after the commencement of this Act, in consultation with the MECs and by notice in the *Gazette*, determine a date by which each province must have prepared its Provincial Land Transport Framework.

(5) All Provincial Land Transport Frameworks must include routes for the transporting of dangerous goods through the province, as reflected in the integrated transport plans within its jurisdiction.

(6) The dates for preparing integrated transport plans must be linked to the Provincial Land Transport Frameworks and must be as agreed upon by the MECs and planning authorities.

(7) The Provincial Land Transport Framework must summarise all available integrated transport plans in the province.

(8) The last Provincial Land Transport Framework prepared under the Transition Act is regarded for all purposes as the Provincial Land Transport Framework prepared in terms of this Act, until the new Provincial Land Transport Framework has been approved by the MEC.

(9) The MEC must update the Provincial Land Transport Framework every two years.

(10) The Provincial Land Transport Framework must be submitted to the Minister for approval on or before the date determined under subsection (4) and must be accompanied by copies of all agreements regarding interprovincial transport concluded between the province and other provinces.

(11) The Minister's approval in terms of subsection (10) is limited to-

- (a) monitoring compliance with the National Land Transport Strategic Framework and with this Act and other applicable legislation;
- (b) procedures and financial issues that affect the national government;
- (c) seeing that the MEC followed the correct procedures and otherwise complied with the prescribed requirements;



- (d) national policies and principles regarding interprovincial and cross-border transport; and
- (e) modes and aspects of transport under the control of the national government or national public entities.

### **36 Integrated transport plans**

(1) All planning authorities must prepare and submit to the MEC, by the date determined by the Minister, integrated transport plans for their respective areas for the five-year period commencing on the first day of the financial year determined by the MEC, and must update them in the prescribed manner and as frequently as prescribed.

(2) Integrated transport plans must be in accordance with requirements and in the manner and form as the Minister may prescribe in consultation with the MECs, but the MEC may prescribe the content of integrated transport plans in addition to such requirements, and the aforementioned regulations may prescribe different matters for different types or categories of municipalities.

(3) All integrated transport plans must include routes for the transporting of dangerous goods by road through their areas.

(4) Each integrated transport plan must be submitted to the MEC for approval by the date determined under subsection (1), which approval must relate only to-

- (a) monitoring compliance with the provincial land transport framework and with this Act and other applicable legislation;
- (b) procedures and financial issues that affect the province;
- (c) seeing that the planning authority followed the correct procedures and otherwise complied with the prescribed requirements;
- (d) provincial policies and principles regarding transport across the boundaries of planning authorities;
- (e) modes and aspects of transport under the control of the provincial government or provincial public entities;
- (f) issues of co-ordination of transport between municipalities, or other institutions;
- (g) procedures and financial issues that affect the province; and
- (h) any other matter provided for in provincial laws.

(5) The planning authority must submit its integrated transport plan to the Minister for approval of the commuter rail component of the integrated transport plan, within the prescribed manner and time.

(6) Every planning authority must make its integrated transport plan available to the National Public Transport Regulator and relevant Provincial Regulatory Entity and make recommendations to them relevant to applications for new operating licences, in the prescribed manner.

### **37 Freight transport**

(1) Subject to requirements prescribed by the Minister under section 36 (2), planning authorities must develop a freight transport strategy, with due regard to national and provincial policy, covering the transporting of goods to, from and through the area by road, taking into account-

- (a) the movement of goods to, from, and through the area by rail or pipeline; and
- (b) the movement of goods to and from ports or airports.

(2) The strategy contemplated in subsection (1) must identify routes for moving goods so as to promote their seamless movement and to avoid conflict with road traffic.

(3) The strategy must also include a plan for the movement of dangerous substances contemplated in section 2 (1) of the Hazardous Substances Act, 1973 (Act

15 of 1973), by road along designated routes in accordance with the general strategy or plan provided for in the relevant Provincial Land Transport Framework.

(4) A person must not transport dangerous substances in the area of a planning authority except on a route so designated and indicated in an integrated transport plan, where such a route has been determined and published.

(5) Any person who contravenes or fails to comply with subsection (4) is guilty of an offence.

(6) By virtue of the deregulation of the road freight industry effected by the Transport Deregulation Act, 1988 (Act 80 of 1988), planning authorities must collaborate with the MEC and registering authorities contemplated in the National Road Traffic Act, to promote effective regulation of freight operations by means of the operator card system provided for in Chapter VI of the National Road Traffic Act, to prevent damage to the road system and to achieve the other objects of this Act.

### **38 Publication of transport plans and substantial changes in land use and public transport infrastructure and services**

(1) On approval of the national land transport strategic framework, a provincial land transport framework or an integrated transport plan, the Department, MEC or planning authority, as the case may be, must publish, in the *Gazette*, *Provincial Gazette* or newspaper circulating nationally, in the province or municipality, as the case may be, the prescribed particulars of such plans, which must include particulars of routes for dangerous goods.

(2) All persons, including the State and parastatal institutions, agencies and utilities, are bound by the provisions of integrated transport plans published under subsection (1), and-

- (a) no substantial change or intensification of land use on any property may be undertaken without the written consent of the relevant planning authority;
- (b) developments on property within the area of the planning authority are subject to traffic impact assessments and public transport assessments as prescribed by the Minister;
- (c) where new or upgraded transport infrastructure or services are suggested in such assessments, the costs thereof must be paid by the planning authority, unless it has agreed with a developer or other person to pay those costs; and
- (d) no action may be taken that would have the result of substantially decreasing the quantity or availability of land transport infrastructure or services, unless the owner of the land on which the infrastructure is situated, or the holder of the relevant operating licence, as the case may be, has notified the relevant planning authority in writing not less than 30 days before the action is taken.

(3) Despite any law to the contrary, any authority with responsibility for approving substantial changes in land use or development proposals which receives an application for such change or intensification, must-

- (a) within 14 days of receipt of such application and prior to considering or ruling on such application, submit such application to the relevant planning authority for its assessment and determination of the impact of the application on the integrated transport plan and public transport services; and
- (b) ensure that such application is accompanied by the required traffic impact assessment and public transport assessment, and has sufficient information for the authority to assess and determine the impact of the application on transport plans and services.

(4) The planning authority must, within 90 days-

- (a) approve or refuse an application for a change or intensification in land use or development proposal submitted in terms of subsection (3); and

- (b) submit its written decision contemplated in paragraph (a) and any objections with respect to such application, including directions or conditions for compliance with the integrated transport plan, to such authority vested with responsibility for considering the application.

(5) The authority must make a decision, but may not approve such application, in conflict with the directions of or conditions required by the planning authority as contemplated in subsection (4) (b).

(6) The planning authority, in accordance with the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000), must furnish the applicant with written reasons for its decision.

(7) Where any person is aggrieved by any decision of a planning authority in terms of this section, such person may appeal against the decision in the manner and within the time prescribed, to the tribunal or other entity in the relevant province responsible to hear appeals lodged by persons who are dissatisfied with the decisions of municipalities regarding applications to establish townships or to change land uses.

(8) Despite any provision to the contrary in the Deeds Registries Act, 1937 (Act 47 of 1937), or any other law-

- (a) conditions imposed in terms of subsection (4) (b) must be registered or endorsed against the relevant title deed; and
- (b) the registrar of deeds may, with the written approval of the planning authority, cancel any condition which has in terms of paragraph (a) been inserted in a deed of transfer or endorsed upon a title deed.

(9) Any person who undertakes a development involving a change or intensification in land use or development proposal without the approval of the planning authority under this section, or contrary to a condition imposed by such an authority, is guilty of an offence and is liable on conviction to imprisonment for a period not exceeding six months.

(10) Where a building or structure has been erected without the approval of a planning authority in circumstances where such approval should have been obtained under this section, or is in conflict with a condition imposed under this section, the relevant planning authority may apply to the High Court having jurisdiction for an order-

- (a) compelling the owner of the property to demolish or remove the building or structure at the owner's cost; or
- (b) authorising the authority to do so and claim the costs incurred from the owner; or
- (c) alternative relief as the court may deem just.

### **39 Rationalisation of public transport services**

(1) When a planning authority in rationalising public transport services in its area concludes, based on its integrated transport plan, that there is a surplus of legally operated services by operators on a particular route as a result of which an existing non-contracted public transport service is no longer required, the planning authority must, where possible-

- (a) offer the operator an alternative service; or
- (b) allow the operator to continue providing the service and impose a moratorium on the issuing of new operating licences on that route.

(2) The Minister may make regulations on the procedures to be followed in proceeding under subsection (1) and (2).

## **CHAPTER 5 CONTRACTING FOR PUBLIC TRANSPORT SERVICES (ss 40-46)**

### **40 Integration of bus contract system into larger public transport system**

Provinces and planning authorities must take steps as soon as possible after the date of commencement of this Act to integrate services subject to contracts in their areas, as well as appropriate uncontracted services, into the larger public transport system in terms of relevant integrated transport plans.

[Date of commencement of s. 40: 31 August 2009<sup>2</sup> and 8 December 2009<sup>3</sup>.]

<sup>2</sup> Proc 54 in GG 32532 of 31 August 2009

<sup>3</sup> Proc R87 in GG 32788 of 8 December 2009

#### **41 Negotiated contracts**

(1) Contracting authorities may enter into negotiated contracts with operators in their areas, once only, with a view to-

- (a) integrating services forming part of integrated public transport networks in terms of their integrated transport plans;
- (b) promoting the economic empowerment of small business or of persons previously disadvantaged by unfair discrimination; or
- (c) facilitating the restructuring of a parastatal or municipal transport operator to discourage monopolies.

(2) The negotiations envisaged by subsections (1) and (2) must where appropriate include operators in the area subject to interim contracts, subsidised service contracts, commercial service contracts, existing negotiated contracts and operators of unscheduled services and non-contracted services.

(3) A negotiated contract contemplated in subsection (1) or (2) shall be for a period of not longer than 12 years.

(4) The contracts contemplated in subsection (1) shall not preclude a contracting authority from inviting tenders for services forming part of the relevant network.

(5) Contracting authorities must take appropriate steps on a timeous basis before expiry of such negotiated contract to ensure that the services are put out to tender in terms of section 42 in such a way as to ensure unbroken service delivery to passengers.

[Date of commencement of s. 41: 31 August 2009<sup>4</sup> and 8 December 2009<sup>5</sup>.]

<sup>4</sup> Proc 54 in GG 32532 of 31 August 2009

<sup>5</sup> Proc R87 in GG 32788 of 8 December 2009

#### **42 Subsidised service contracts**

(1) The Contracting authorities must take steps within the prescribed period and in the prescribed manner before expiry of contracts contemplated in subsection (2) (a), (b) or (c) to put arrangements in place for the services to be put out to tender so that the services can continue without interruption.

(2) If after expiry of-

- (a) a negotiated contract concluded under section 41;
- (b) a subsidised service contract concluded under this section; or
- (c) a negotiated contract, interim contract, current tendered contract or subsidised service contract concluded in terms of the Transition Act,

or any extension thereof, the relevant services may continue to be subsidised, this must be done in terms of a subsidised service contract concluded in terms of this section.

(3) Where a contract referred to in subsection (2) (a), (b) or (c) has expired and no arrangements have been put in place to put the services out to tender, or such arrangements are unsatisfactory or inadequate in the Minister's opinion, the Minister must forthwith enter into negotiations with the contracting authorities, the National

Treasury and the Auditor-General with a view to ensuring compliance with this Act and legislation on financial and procurement issues.

(4) Only a contracting authority may enter into a subsidised service contract with an operator, and only if the services to be operated in terms thereof, have been put out to public tendering and awarded by the entering into of a contract in accordance with prescribed procedures in accordance with other applicable national or provincial laws.

(5) The validity period of a subsidised service contract must not exceed seven years.

(6) The Minister may, in consultation with the MECs-

(a) prescribe requirements for tender and contract documents to be used for subsidised service contracts which must be binding on contracting authorities, unless the Minister agrees that an authority may deviate from the requirements in a specific case; and

(b) provide model tender and contract documents, and publish them in the *Gazette*, for subsidised service contracts as a requirement for contracting authorities, who may not deviate from the model tender and contract documents, unless this is agreed to in writing by the Minister, but those documents may differ for different authorities or situations.

(7) The model tender and contract documents published in terms of the Transition Act shall cease to apply as from the date of commencement of this Act.

[Date of commencement of s. 42: 31 August 2009<sup>6</sup> and 8 December 2009<sup>7</sup>.]

<sup>6</sup> Proc 54 in GG 32532 of 31 August 2009

<sup>7</sup> Proc R87 in GG 32788 of 8 December 2009

### **43 Commercial service contracts**

(1) A contracting authority may enter into a commercial service contract with an operator by placing a notice in the *Provincial Gazette* and in a newspaper generally circulating in the area where the services are to be operated, inviting tenders from operators for the operation of that service.

(2) The validity period of a commercial service contract must not exceed seven years.

(3) The Minister may make regulations-

(a) on procedures and requirements for commercial service contracts; and

(b) providing that all scheduled bus services operated on an uncontracted basis must be converted to commercial service contracts by a date specified in the regulations, and providing procedures and requirements for such conversion.

[Date of commencement of s. 43: 31 August 2009<sup>8</sup> and 8 December 2009<sup>9</sup>.]

<sup>8</sup> Proc 54 in GG 32532 of 31 August 2009

<sup>9</sup> Proc R87 in GG 32788 of 8 December 2009

### **44 Requirements to qualify as tenderer for commercial or subsidised service contracts**

To qualify as a tenderer for a commercial service contract or a subsidised service contract, an operator and, where appropriate, any person or entity exercising ownership control over an operator, or performing services on behalf of, or in the capacity as agent of, an operator, must comply with the requirements prescribed by the Minister.

### **45 Involvement of municipalities in public transport services**

(1) No municipal operator may tender for any commercial service contract or subsidised service contract, unless it is financially ring-fenced in the prescribed manner and it complies with the other requirements prescribed by the Minister.

(2) A municipality may not use its municipal fund to subsidise a municipal operator unless that body is a juristic person separate from the municipality and the subsidies are paid in terms of a subsidised service contract concluded between the municipality and such municipal operator.

#### **46 Existing contracting arrangements**

(1) Where there is an existing interim contract, current tendered contract or negotiated contract as defined in the Transition Act in the area of the relevant contracting authority, that authority may-

- (a) allow the contract to run its course; or
- (b) negotiate with the operator to amend the contract to provide for inclusion of the operator in an integrated public transport network; or
- (c) make a reasonable offer to the operator of alternative services, or of a monetary settlement, which offer must bear relation to the value of the unexpired portion of the contract, if any.

(2) If the parties cannot agree on amendment of the contract or on inclusion of the operator in such a network, or the operator fails or refuses to accept such an offer, the matter must be referred to mediation or arbitration in the prescribed manner to resolve the issue.

(3) The Minister may make regulations providing for the transition of existing contracting arrangements and the transfer of the contracting function in terms of this section or section 41, including the transfer or amendment of existing permits or operating licences to give effect to its provisions in the case of an assignment under section 11 (2).

(4) In applying this section, the contracting authority must give due regard to the rights of the workers employed by the operators in terms of the contract contemplated in subsection (1).

[Date of commencement of s. 46: 31 August 2009<sup>10</sup> and 8 December 2009<sup>11</sup>.]

<sup>10</sup> Proc 54 in GG 32532 of 31 August 2009

<sup>11</sup> Proc R87 in GG 32788 of 8 December 2009

## **CHAPTER 6 REGULATION OF ROAD-BASED PUBLIC TRANSPORT (ss 47-84)**

### **Part 1 Transitional provisions (ss 47-49)**

#### **47 Rationalisation of existing services: general**

(1) All permits issued for a definite period remain valid but lapse when that period expires, provided that if such a permit is still valid on a date calculated as seven years from the date of commencement of this Act, it will lapse on that date.

(2) All permits issued for an indefinite period remain valid, subject to sections 48 and 49, but lapse seven years after the date of commencement of this Act, but the holder may apply within that period for its conversion to an operating licence to the entity that is responsible for receiving applications for operating licences for the relevant services.

(3) Despite subsections (1) and (2), where the services authorised by a permit were not provided continuously for 180 days prior to the date of commencement of this Act, the permit must be cancelled by following the procedure in section 78.

(4) The holder of any permit that lapses or is cancelled in terms of this Part is not entitled to any compensation by virtue of its lapsing.

(5) No operator may receive any subsidy or other financial assistance from any sphere of government, unless that operator's permit or permits, where applicable, have been rationalised in terms of this section and sections 48 and 49.

[Date of commencement of sub-s. (5): to be proclaimed.]

#### **48 Rationalisation of existing scheduled services**

(1) Where a permit authorises scheduled services provided for in a contract between a contracting authority and the permit holder, the contracting authority must request the relevant regulatory entity to-

- (a) cancel the permit and issue an operating licence for the vehicle specific to the contract, where appropriate in consultation with other relevant planning authorities;
- (b) cancel any permit of that holder authorising services on routes in the area on an uncontracted basis, and not carry forward such authorisation to the operating licence contemplated in paragraph (a), unless the authorisation forms part of the contract,

and the holder must submit such permit to the contracting authority in the prescribed manner and in the prescribed time for this purpose, failing which the permit will lapse if not so submitted within that time.

(2) In the case of permits for uncontracted scheduled services, the Minister must make regulations within two years of the date of commencement of this Act, after consulting the National Public Transport Regulator, providing a process for the integration of those services with contracted services, and in the process converting them to commercial service contracts, and such integration and conversion must be done by the National Public Transport Regulator.

(3) No contract may be awarded to an operator for scheduled services unless all permits and operating licences of that operator have been rationalised under subsection (1) or (2).

[Date of commencement of sub-s. (3): to be proclaimed.]

#### **49 Rationalisation of minibus taxi-type services**

(1) Permits issued for minibus taxi-type services remain valid, subject to section 47 (1) and (2) and subsection (3) of this section.

(2) The holder of a permit or operating licence for a vehicle authorising minibus taxi-type services who has not yet done so may apply in the prescribed manner for recapitalisation of the vehicle and may choose either to-

- (a) leave the industry, in which case the Department must cancel the permit or operating licence; or
- (b) acquire a new compliant vehicle that has the same passenger capacity as the vehicle specified in that permit or operating licence, or not more than a 20% variance, in which case the operator shall be entitled to an operating licence for the new vehicle authorising the same services on submission of a valid tax clearance, and such operating licence must specify in detail the route or routes to be operated, which must be those operated by the operator for the period of 180 days prior to the date of application;
- (c) acquire a new, compliant vehicle with more capacity than a vehicle contemplated in paragraph (b) on approval by the planning authority in writing, in which case paragraph (b) applies, and the holder must submit the existing permit or operating licence to the Department for cancellation, provided that the Minister may prescribe that more than one permit or operating licence held by that holder must be surrendered for cancellation to make up for the increase in capacity of the new vehicle.

(3) Any permit or operating licence authorising minibus taxi-type services issued for an indefinite period, or issued for a definite period that has not yet expired, must lapse seven years after the date of commencement of this Act.

## **Part 2** **General provisions (ss 50-79)**

### **50 Regulation of road-based public transport**

(1) No person may operate a road-based public transport service, unless he or she is the holder of an operating licence or a permit, subject to sections 47, 48 and 49, issued for the vehicle concerned in terms of this Act.

(2) An operating licence may authorise the vehicle to which it relates, to operate more than one service or type of service.

(3) Where an application in connection with an operating licence concerns services provided for in an integrated transport plan, the provisions of that plan, where appropriate and where possible, will dictate the decision of the entity considering the application.

### **51 Entities that must issue operating licences**

An operating licence must only be issued on application made in terms of this Act by the National Public Transport Regulator, a Provincial Regulatory Entity or a municipality to which the operating licence function has been assigned, as the case may be, after considering all the factors mandated by this Act.

### **52 Maximum validity period of operating licences**

(1) An operating licence is valid for a maximum period of seven years, but where a negotiated contract has been awarded to an operator under section 41 for more than seven years, such an operating licence must be issued for the period of the contract in terms of section 56.

(2) Operating licences must be granted for a fixed period determined by the entity granting them, where applicable based on the directions of the planning authority contemplated in section 55.

(3) In determining the validity period of operating licences for non-contracted services, the following must be considered, subject to the dictates, if any, of relevant integrated transport plans:

- (a) Current and envisaged trends in utilisation on the route or routes, or, where applicable, in the area, concerned;
- (b) the efficiency of the proposed services in meeting user needs;
- (c) where applicable, the likelihood that in future the service may no longer be required in terms of the integrated transport plan; and
- (d) the likelihood that the service may become the subject of a commercial service contract or a subsidised service contract.

### **53 Exemptions**

(1) An operating licence is not required for-

- (a) a courtesy service where the operator operates less than the prescribed number of vehicles;
- (b) a lift club, subject to section 69;
- (c) farmers carrying their own workers in vehicles of which they are the sole owners;
- (d) municipalities carrying their own workers in vehicles owned by them;
- (e) ambulances carrying patients to places where they will receive medical attention;



- (f) the conveyance by a person who carries on any industry, trade or business, of the person's own employees from a place where they perform work in the course of that industry, trade or business, to another place where they are to perform such work, by means of a vehicle of which the person is the owner;
- (g) the conveyance-
  - (i) of learners and teachers for purposes of sport or recreation or on holiday, sightseeing or educational tours, by means of a vehicle of which the relevant school is the sole owner or which, in terms of an agreement, is set apart for the use of that school for these purposes;
  - (ii) by a university, teachers' training college or similar educational institution of its own students and staff for educational, cultural or sports purposes by means of a motor vehicle of which that educational institution is the owner, or by means of a motor vehicle which, in terms of an agreement, is set apart for the use of that educational institution for these purposes.

(2) The MEC may make regulations providing for information to be recorded or provided to the National Public Transport Regulator, Provincial Regulatory Entity, municipality to which the operating licence function has been assigned or other persons or institutions regarding conveyance in terms of a service contemplated in subsection (1).

(3) Where the conveyance occurs by means of a vehicle used in terms of an agreement referred to in subsection (1) (g), a document in which an authorised employee of the school or educational institution confirms that the passengers being conveyed are enrolled learners or students of, or staff attached to, the institution, must be kept in that vehicle.

#### **54 Application for new operating licence**

(1) A person wishing to undertake an interprovincial service or a tourist transport service must apply to the National Public Transport Regulator for the necessary operating licence.

(2) A person wishing to undertake an intraprovincial service-

- (a) taking place in the area of the municipality to which the operating licence function has been assigned; or
- (b) starting in the area of that municipality and also taking place in the area of another municipality,

must apply to a municipality referred to in paragraph (a) for the necessary operating licence.

(3) A person wishing to undertake a service other than one contemplated in subsection (1) or (2), must apply to the Provincial Regulatory Entity of the relevant province for the necessary operating licence.

(4) Where a transport plan shows a need for additional services, other than tourist transport services, contemplated in subsection (2) on a route or routes in its area, the municipality to which the operating licence has been assigned may invite applications for operating licences to provide those services.

(5) Applications under subsections (1), (2), (3) or (4) must-

- (a) be made on the basis of one application per vehicle;
- (b) be made in the prescribed manner;
- (c) be made by completing and submitting the prescribed form, which must allow for the applicant to submit recommendations or documentation in support of the application, either from the applicant or from any other interested person;

- (d) be accompanied by the prescribed fee, determined by the Minister, which may provide that the fee will be reduced where the same applicant applies for more than one vehicle at the same time;
- (e) specify the vehicle or exact type of vehicle to be used for providing the services concerned; and
- (f) in the case of a scheduled service or minibus taxi-type service, include a detailed description of the route or routes on which the applicant operates or intends to operate and all points where passengers will be picked up and dropped off.

(6) Where the applicant has been accredited as a tourist operator under section 81 and the vehicle in question complies with section 84, the operator is entitled to an operating licence automatically, to be applied for and issued in the prescribed manner.

### **55 Operating licences for public transport services provided for in transport plans**

(1) Before the National Public Transport Regulator or a Provincial Regulatory Entity considers any application for the granting, renewal, amendment or transfer of an operating licence, other than a tourist transport service or charter service, and other than a contracted service contemplated in section 56, it must by notice in the prescribed manner inform all planning authorities in whose areas the services will be operated of the application with the request to give directions with regard to the application based on its integrated transport plan within the period stated in the notice.

(2) The planning authority must in the prescribed format-

- (a) indicate whether there is a need for the service on the route or routes or in the area or areas in terms of its integrated transport plan or not, and, if there is a need for such service, direct the National Public Transport Regulator or a Provincial Regulatory Entity to grant the operating licence and make any recommendations it considers fit regarding conditions to be attached to the operating licence, having due regard to its integrated transport plan, and if its integrated transport plan is not yet finalised or is inadequate, it must take the decision based on due inquiries and investigations carried out by it; and
- (b) submit such response to the National Public Transport Regulator or a Provincial Regulatory Entity, as the case may be, within the prescribed period or the period stipulated in the notice.

(3) Where the public transport requirements for the particular route or routes are adequately served by an existing public transport service of a similar nature, standard or quality provided in terms of a commercial service contract or subsidised service contract or in terms of operating licences as shown by its integrated transport plan, the planning authority must direct the National Public Transport Regulator or a Provincial Regulatory Entity to refuse the application.

(4) The National Public Transport Regulator or a Provincial Regulatory Entity may condone the late submission of a response contemplated in terms of subsection (2).

(5) Subject to subsection (6), the National Public Transport Regulator or a Provincial Regulatory Entity, in disposing of an application, must act in accordance with the relevant integrated transport plan and directions of the planning authority submitted in terms of subsection (2), and must not grant an operating licence contrary to directions of the integrated transport plan and planning authority.

(6) Where the planning authority has failed to respond to the request contemplated in subsection (1), the National Public Transport Regulator or a Provincial Regulatory Entity may dispose of the application without any input from the planning authority, by considering the matters mentioned in section 57.

### **56 Operating licences for contracted services**

(1) Where a contracting authority has concluded a negotiated contract, subsidised service contract or commercial service contract with an operator, the relevant regulatory entity, must issue to the operator an operating licence for each vehicle involved in the contract, or where the operator already has an operating licence for such a vehicle, such entity must amend the operating licences if necessary to accommodate the services in the contract.

(2) The authority conveyed by an operating licence contemplated in subsection (1) must be made specific to the contract and be for the validity period of the contract, but an operating licence may authorise services in addition to those stipulated in the contract.

(3) Where a contract is amended so as to change the authority conveyed by the operating licences, or to extend the duration of a contract, the relevant regulatory entity must amend the relevant operating licences accordingly.

[Date of commencement of s. 56: 31 August 2009<sup>12</sup> and 8 December 2009<sup>13</sup>.]

<sup>12</sup> Proc 54 in GG 32532 of 31 August 2009

<sup>13</sup> Proc R87 in GG 32788 of 8 December 2009

## **57 Disposing of applications with regard to operating licences for non-contracted services**

(1) Where an application is made to the National Public Transport Regulator for the granting, renewal, amendment or transfer of an operating licence in respect of a non-contracted service other than a tourist transport service, it may grant or refuse it after having considered-

- (a) in the case of a service shown in an integrated transport plan, the directions of the planning authority submitted in terms of section 55;
- (b) whether the vehicle or type of vehicle by means of which the service is to be operated, is suitable for that purpose;
- (c) the availability of ranks, terminals or other facilities, based on the recommendations of the relevant planning authority or other information at its disposal;
- (d) the existence of any relevant by-law, regulation, prohibition, limitation or restriction;
- (e) whether the applicant has any previous conviction for an offence relevant to the operation of public transport services, or of a prescribed type; and
- (f) the ability of the applicant to operate the service for which the operating licence is sought, in a manner satisfactory to the public.

(2) Where an application is made to a municipality to which the operating licence function has been assigned for the granting, renewal, amendment or transfer of an operating licence in respect of a non-contracted service, it-

- (a) must refuse the application if granting it would be contrary to the relevant integrated transport plan; or
- (b) if paragraph (a) does not apply, may grant or refuse it after having considered-
  - (i) whether the vehicle or type of vehicle by means of which the service is to be operated, is suitable for that purpose;
  - (ii) the availability of ranks, terminals or other facilities;
  - (iii) the existence of any relevant by-law, regulation, prohibition, limitation or restriction;
  - (iv) whether the applicant has any previous conviction for an offence relevant to the operation of public transport services, or of a prescribed type;
  - (v) the ability of the applicant to operate the service for which the operating licence is sought, in a manner satisfactory to the public;

- (vi) recommendations or documents duly submitted with the application by the applicant or any other interested party.

(3) Where an application is made to a Provincial Regulatory Entity for the granting, renewal, amendment or transfer of an operating licence in respect of a non-contracted service, it-

- (a) must refuse the application, if granting it would be contrary to the directions of the relevant planning authority or authorities based on their integrated transport plan; or
- (b) may grant or refuse it after having considered the matters listed in subsection (2) (b).

(4) The Minister may make regulations prescribing that types of applications specified in the regulations must be submitted to stakeholder forums or other persons or entities for their comments, and that the relevant entity must consider those comments before it takes a decision.

(5) The entity granting an application for the granting, renewal, amendment or transfer of an operating licence may do so subject to any conditions, determined by it, that are not inconsistent with this Act or with relevant provincial laws or transport plans, and must do so where such conditions have been stipulated by the planning authority based in its integrated transport plan.

(6) Such a condition may state a maximum number of passengers that may be carried in the vehicle, even if the capacity of the vehicle is greater.

### **58 Renewal, amendment or transfer of operating licence or permit**

(1) The holder of an operating licence issued by a regulatory entity, may apply to whichever of those entities that issued the licence for renewal, amendment or transfer of the operating licence.

(2) Where an operating licence or permit was issued by a provincial operating licensing board or other competent entity before the date of commencement of this Act, the holder may apply for renewal, amendment or transfer thereof to the relevant entity contemplated in section 54, but, in the case of a permit, an operating licence must be issued if the application is granted.

(3) Where amendment of the operating licence or permit only involves substituting a different vehicle with the same capacity or less, section 73 applies.

(4) A person applying to take transfer of an operating licence or permit must have the written consent of the current holder of the operating licence or permit, or of that holder's executor.

### **59 Publication of decisions**

(1) Regulatory entities must, in the prescribed manner, give notice of receipt of an application for or in connection with an operating licence, except a decision to replace a vehicle under section 73, and in that notice state the prescribed particulars and allow interested persons an opportunity to comment and make representations within the prescribed period.

(2) Such entity must duly consider all comments and representations received that are duly submitted and are relevant in dealing with the application.

(3) Where no relevant and substantial objections are received in respect of an application, it may be disposed of summarily and where such objections are received, the entity must request further information or hold a hearing in the prescribed manner before taking a decision on the matter.

### **60 Special events**

(1) Subject to section 61, no person may undertake a public transport service to or from a special event except-

- (a) in the course of operating a courtesy service or tourist service that complies with this Act;
- (b) under the authority of an operating licence that authorises the relevant transport on the route or in the area in question; or
- (c) under the authority of a temporary operating licence granted and issued in terms of subsection (3).

(2) A holder of an operating licence who is not authorised by subsection (1) (a) or (b) to undertake a service to or from a special event, may apply to the prescribed entity for a temporary operating licence in the prescribed manner.

(3) An application for a temporary operating licence may be granted if that entity is satisfied on reasonable grounds-

- (a) that the existing services available to move passengers to or from the special event are not sufficient to meet the estimated demand;
- (b) that existing services will not be disrupted or prejudiced; and
- (c) that other prescribed criteria have been met.

(4) The onus of proving the matters mentioned in subsection (3) rests on the applicant.

(5) The entity may require the applicant to supplement the application with any information or documents in support thereof.

(6) A temporary operating licence may be granted only for one particular special event and for a period that is not longer than the duration of such event, including time needed for preparing for it before the event and transporting passengers to airports, stations and other transfer facilities after the event.

(7) A temporary operating licence in terms of this section must-

- (a) specify the special event and the date or dates on which it occurs;
- (b) where feasible state the route or routes on which the transport to and from the special event may be provided; and
- (c) where appropriate specify the terminals, ranks or stopping places that may be used.

(8) A temporary operating licence in terms of this section may be issued with a special distinguishing mark which must be affixed to the vehicle to which the licence relates in the prescribed manner for the duration of the public transport to and from the special event.

(9) The Minister must make regulations providing that temporary operating licences in terms of this section may be granted and issued by municipalities or other bodies, institutions or officials specified in the regulations on application, after consulting those municipalities or other bodies or institutions, and may also provide for-

- (a) the manner and form in which-
  - (i) such applications must be made and the fees payable, if any; and
  - (ii) such special operating licences must be issued;
- (b) the level or rank of officials that must process such applications or establish committees for that purpose, in consultation with such municipalities, bodies or institutions;
- (c) documents and information that must be submitted with such applications; and
- (d) other matters related or incidental to the matters contemplated in this subsection.

## **61 Major special events**

(1) The Minister may make regulations to provide or facilitate land transport arrangements for any specific major special event, including but not limited to the following, despite this Act, the Cross-Border Act or the National Road Traffic Act:

- (a) Providing that foreign-registered vehicles brought into the Republic temporarily for the event will be exempt from specified requirements of this Act, the Cross-Border Act or the National Road Traffic Act;
- (b) providing for expedited procedures for obtaining temporary operating licences for the event;
- (c) appointing one or more institutions to receive applications for special operating licences for the event; or
- (d) providing that members of the South African National Defence Force will have the powers of authorised officers under this Act or traffic officers, traffic wardens or inspectors of licences under the National Road Traffic Act, as well as the powers of peace officers as defined in the Criminal Procedure Act, 1977 (Act 51 of 1977).

(2) Despite the Road Accident Fund Act, 1996 (Act 56 of 1996), the Minister may impose different or additional requirements regarding insurance in respect of passengers using public transport or vehicles used for such transport during the event.

## **62 Issue and contents of operating licence**

- (1) An operating licence may only be issued if the applicant-
- (a) has applied in terms of this Act and applicable provincial laws;
  - (b) has furnished a valid tax clearance certificate from the South African Revenue Service certifying that his, her or its tax affairs are in order;
  - (c) has signed a statement to the effect that he or she or it will comply with labour laws in respect of drivers and other staff, as well as sectoral determinations of the Department of Labour;
  - (d) has submitted a current roadworthy certificate, which was issued for the vehicle not earlier than the prescribed point in time, or a duly certified copy of such a certificate, as well as proof that the vehicle is properly licensed and has a national information system model number allocated to it;
  - (e) in the case of renewal, transfer or amendment, has returned the previous licence issued for the same service to the entity issuing it; and
  - (f) has submitted proof of insurance cover as prescribed; and
  - (g) has submitted any other proof, information or document as prescribed or required by the relevant entity.

(2) Any operating licence granted, renewed, amended or transferred in accordance with this Act must be issued in the prescribed manner and form by an authorised official of the entity concerned.

(3) An operating licence must contain the prescribed particulars, and the Minister may prescribe that a tag, electronic card or other device or equipment must be issued with an operating licence and kept in or on the vehicle, as well as an issuing fee for the licence or such tag, card, device or equipment.

## **63 Authority conveyed by operating licence**

An operating licence issued under this Act-

- (a) does not authorise the holder to undertake transport on or over a road if it is unlawful to do so in terms of any other law; and
- (b) does not exempt the holder from the obligation to comply with any requirement or condition imposed by or in terms of any law, licence or permit issued by any other competent authority.

## **64 Persons who may hold operating licences**

(1) An operating licence may only be issued to and held by the person registered, in terms of the National Road Traffic Act, as the owner or operator of the vehicle, as defined in that Act, and specified in the operating licence.

(2) Where an operating licence relates to a contracted service and the operator has subcontracted another operator to operate part of that service, an operating licence may be issued to the subcontracted operator only if-

- (a) the subcontracted operator is the registered owner or operator of the vehicle used for that service on behalf of the operator party to the contract; and
- (b) that vehicle is specified in the operating licence as the vehicle to be so used for operating that service.

## **65 Long-distance services**

(1) If approved by the planning authority, an entity granting an operating licence may authorise the vehicle specified in that licence to be operated for a long-distance service, despite the fact that the vehicle is specified in the operating licence to be used for a service provided for in an integrated transport plan.

(2) The planning authority may not grant such an authorisation where the operation of the long-distance service will or is likely to be detrimental to the operation of the services provided for in that integrated transport plan.

(3) In the case of an application for the granting, renewal or amendment of an operating licence relating to a long-distance service, due regard must be had to the provisions of any integrated transport plan, where they are relevant, and to any applicable provincial laws, and it must be subject to-

- (a) the extent to which the service to be provided is necessary or desirable in the public interest;
- (b) the requirements of the public for the service along the route or routes on which or the area in which the applicant proposes to operate;
- (c) the existing transport facilities available to the public on that route or those routes or in that area; and
- (d) the need to ensure co-ordination of all forms of transport, including transport by rail, to achieve an economically sound balance between the transport modes, with due regard to the public interest.

(4) Operating licences for long-distance services other than charter or tourist transport services must specify the authorised origin and destination points, the ranks or terminals for the picking up and dropping off of passengers and any other points along the route or routes where passengers may be picked up or dropped off.

## **66 Metered taxi services**

(1) In the case of a metered taxi service-

- (a) the entity granting the operating licence may specify an area for picking up passengers;
- (b) if the operating licence or permit specifies such an area, the vehicle may leave that area if, on the return journey, it is to carry the same passengers that it carries on the outward journey or if the vehicle is to return empty;
- (c) the vehicle may pick up passengers outside of that area if the fare is pre-booked and the passengers will return to such area; and
- (d) any particular journey may be operated at a fare not determined by the meter if the fare for that journey has been agreed upon before the journey begins, but the meter must be kept running for the information of passengers.

(2) In the absence of requirements published in terms of the Trade Metrology Act, 1973 (Act 77 of 1973), the Minister must set standards for sealed meters for metered taxis in accordance with standards set by the South African Bureau of Standards in terms of the Standards Act, 1993 (Act 29 of 1993).

(3) The Minister or MEC, in consultation with the relevant planning authority, may determine a fare structure for metered taxi services and the MEC must publish such fare structure in the *Provincial Gazette*.

(4) The Minister or MEC may make regulations providing for-

- (a) a grading system for metered taxis;
- (b) special requirements for drivers of metered taxis, which may include testing of knowledge of the relevant area;
- (c) special markings or other requirements for metered taxi vehicles; and
- (d) any other matter affecting the standard or quality of operation of metered taxis.

## **67 Charter services**

(1) An operating licence may authorise the holder to undertake pre-booked charter services in the areas or zones as specified by the entity granting the operating licence, which may or may not be in addition to other services authorised by that licence.

(2) If the operating licence specifies an area for picking up passengers such a vehicle may-

- (a) leave the area or zone described in the operating licence if, on the return journey, it is to carry the same passengers that it carries on the outward journey or if the vehicle is to return to that area empty; and
- (b) pick up passengers outside that area or zone if the fare is pre-booked and the passengers will return to such area.

(3) Where application is made for an operating licence for vehicle hires with drivers as charter services, the entity granting the operating licence must evaluate whether the services should rather be provided as metered taxi services, and, if it grants the application for a charter service, should attach appropriate conditions.

## **68 Staff services**

(1) The Minister may, in addition to the provisions of this Act, prescribe the circumstances in which an operating licence is required for staff services.

(2) In the case of staff services to be provided on a regular basis, the operating licence must specify the route, routes or area authorised.

## **69 Lift clubs**

(1) The Minister may make regulations on the requirements to qualify for a lift club, or operating such clubs, including, but not limited to-

- (a) the requirement that written confirmation from the employer or other documentation must be kept in the vehicle; and
- (b) the requirement that lift clubs must be registered with planning authorities or other entities; and
- (c) requirements relating to insurance.

(2) Such regulations may relax the requirement that each member of the lift club must take a turn to convey the others, if sufficient safeguards are provided to prevent abuses and protect passengers.

## **70 Tuk-tuks**

(1) Tuk-tuks may be used for public transport services where relevant transport plans allow for this.

(2) Where a tuk-tuk is so used the operating licence must stipulate the urban route, road network or area on or within which it must operate, as shown in the relevant integrated transport plan, and a maximum speed of operation.

## **71 Adapted light delivery vehicles**



Adapted light delivery vehicles may be used for public transport services in a particular area in prescribed circumstances where there is no other appropriate or acceptable public transport, and subject to prescribed conditions.

## **72 Transporting of scholars, students, teachers and lecturers**

(1) Where a public transport service is dedicated to transporting scholars, students, teachers or lecturers, the Minister may prescribe regulations on special requirements for those services, including, but not limited to-

- (a) requirements for supervision of scholars;
- (b) special requirements for drivers;
- (c) requirements for insurance;
- (d) documents that must be kept in the vehicle and special vehicle markings or livery; and
- (e) requirements that drivers of other vehicles must stop those vehicles in the vicinity of vehicles loading or offloading scholars or students.

(2) Such regulations may also be made applicable to services that are exempted under section 53 (1) (g).

## **73 Amendment of operating licence to replace specified vehicle**

(1) Where the holder of an operating licence or permit wishes to replace the specified vehicle with another vehicle, the holder must apply for the replacement, in the manner prescribed, to an authorised official of-

- (a) the entity that issued the operating licence; or
- (b) where the licence or permit was issued before the date of commencement of this Act, to the entity to which application for a new operating licence must be made under this Act,

provided that the nature of the replacing vehicle and the quality and standard of the service are not affected by the replacement.

(2) The authorised official must allow the replacement and issue to the holder an amended operating licence, or in the case of a permit, a new operating licence, subject to sections 47, 48 and 49, if the replacing vehicle-

- (a) falls in the same category as the replaced vehicle, i.e. motor car, minibus, midibus or bus;
- (b) in the case of a bus or midibus, does not exceed the capacity of the replaced vehicle by more than 20 per cent; and
- (c) is otherwise suitable for the operation of the service and has-
  - (i) a national information system model number allocated to it;
  - (ii) been certified as roadworthy; and
  - (iii) is properly licensed in compliance with the National Road Traffic Act.

(3) Where a subcontractor operates any part of the service to which an operating licence relates on behalf of the holder in terms of a contract, the subcontractor may rely on the provisions of this section to replace any vehicle of which the latter is the registered owner and which is specified in that operating licence, in all respects as if the subcontractor were the holder of that operating licence.

## **74 Temporary replacement of vehicle**

(1) (a) The entity that issued an operating licence or an employee authorised by it may, on application by the holder, grant written authorisation, where the vehicle specified in that operating licence or permit has become defective temporarily, for the holder to use another vehicle in place of the defective vehicle, subject to subsections (2), (3) and (6).

(b) Where the operating licence or permit was issued before the date of commencement of this Act, such authorisation must be granted by the entity to which application for a new operating licence must be made in terms of this Act.

(c) Where a vehicle contemplated in paragraph (a) belongs to a subcontractor operating a service on behalf of the holder in terms of a contract, such an authorisation may also be granted to such a subcontractor.

(2) The written authorisation must be in the prescribed form and must specify at least the prescribed particulars.

(3) (a) The passenger capacity of the replacing vehicle must be equal to that of the vehicle specified in the relevant operating licence, but may-

(i) be smaller; or

(ii) exceed that capacity by not more than 20 per cent.

(b) The replacing vehicle must be suitable for the operation of that service and, except insofar as this section provides otherwise, must comply in all other respects with the requirements and conditions that apply in terms of this Act and the National Road Traffic Act with regard to the vehicle.

(4) The written authorisation must be kept in the replacing vehicle to which it relates, together with the operating licence or permit applicable to the replaced vehicle for the duration of the period of replacement.

(5) The replacing vehicle is regarded in all respects as the vehicle operated under the operating licence or permit for the period of replacement.

(6) A second or subsequent application under subsection (1) in respect of the same vehicle may be refused if it appears that the applicant is abusing such written authorisations.

(7) Where vehicles normally used for public transport services in terms of operating licences or permits on a particular route or in a particular area are not available temporarily due to extraordinary circumstances including, but not limited to, natural disasters, unrest or violence, the Minister or an MEC may authorise operators, who need not be the holders of those operating licences or permits, in writing to use other vehicles temporarily on those routes and in those areas, subject to the conditions and for the periods set out in such authorisation.

## **75 Interaction between public transport and cross-border road transport**

(1) Where on trips involving cross-border road transport an operator both picks up and drops off passengers within the Republic, either on the outward or return journey, that operator must be in possession of the necessary operating licence as required by this Act for the vehicle, in addition to any permit required by the Cross-Border Act.

(2) No one may drop off passengers at or near an international border, where it is clear that such passengers intend to cross the border into another state, and no one may pick up passengers at or near such a border where it is clear that those passengers come from another state having crossed such border into the Republic, unless that person is the holder of the necessary permit required by the Cross-Border Act.

(3) In any prosecution in terms of this Act, where an operator has picked up or dropped off passengers within two kilometres of any international border post, that operator will be presumed to be undertaking cross-border road transport, unless the operator proves the contrary in the prescribed manner.

(4) Where the regulatory committee defined in section 1 of the Cross-Border Act is considering an application for a permit where ranks or terminals in the Republic will be used, that committee must allow relevant planning authorities the opportunity, in the prescribed manner, to comment on the use of those facilities.

## **76 Duties of holder of operating licence or permit**

The holder of an operating licence or permit must comply with this Act and the prescribed regulations.

#### **77 No cession, alienation or hiring out of operating licence or permit**

- (1) The authority conferred by an operating licence or permit may not-
- (a) be ceded or otherwise alienated by the holder, except in terms of a transfer under section 58, and no person may be a party to such a cession or alienation; or
  - (b) be hired out by the holder or be hired by any other person.

(2) A transaction concluded in contravention of subsection (1) is invalid and has no legal force.

#### **78 Cancellation of operating licences and permits not in use**

(1) Where an operating licence has not been in use for 180 days or more from the date of issue, the relevant entity must, in writing, call on the holder of such licence to furnish it with reasons to its satisfaction and within the period stated in the notice-

- (a) as to why it failed to operate the service to which that licence relates; and
- (b) why that licence should not be cancelled.

(2) Where the entity is satisfied with the reasons advanced under subsection (1), the holder must be allowed a further period, but not more than 180 days, to commence the operation of that service, and the holder must be informed accordingly in writing.

(3) If the entity is not so satisfied, or where the holder has failed to furnish reasons within the time allowed in terms of subsection (1), the entity must cancel the operating licence and in writing inform the holder and direct the holder to surrender that operating licence, together with the distinguishing marks relating thereto, within seven days after the date of the notice.

(4) Where an operating licence or permit was issued before the date of commencement of this Act, this section may be implemented by the entity to which application for a new operating licence must be made in terms of this Act.

(5) A planning authority or other interested person may request such an entity to take action under this section.

#### **79 Withdrawal, suspension or amendment of operating licence or permit**

(1) Where an operating licence or permit has been granted on the basis of a contract, the contracting authority may request the relevant entity to withdraw the operating licence or permit where the contract has been terminated for any reason, and that entity must do so.

(2) Subject to subsection (3), in the case of an operating licence or permit that has not been granted on the basis of a contract, the relevant entity may, at any time, withdraw, amend or suspend the operating licence for such a period as it may deem fit, if the holder or employee of the holder-

- (a) has been convicted of an offence under this Act or under a law relating to motor vehicles or the regulation of traffic or occupational safety or labour relations, or an offence due to fraud or dishonesty; or
- (b) in the opinion of the entity, has not carried out faithfully the conditions of the operating licence or permit.

(3) Any entity may, at any time, withdraw an operating licence which was granted or issued by it erroneously or on the basis of incorrect or false information supplied to it.

(4) An entity may not under subsection (1), (2) or (3) withdraw or suspend an operating licence or permit unless-

- (a) at least 21 days' written notice of its intention to do so, with reasons, has been given to the holder by registered or certified post, with the request for the holder to comment on such reasons;
- (b) the holder has been given an opportunity, either personally or through a representative, to appear before it and provide evidence or submit representations in regard to the proposed action or has submitted such comments, which have been considered by the entity; and
- (c) where appropriate, the relevant planning authority has been given an opportunity to submit representations and make recommendations or alternative arrangements.

### **Part 3**

#### **Regulation of tourist transport services (ss 80-84)**

##### **80 Tourist transport services: general provisions**

The driver of a vehicle used for tourist transport services must at all times while such services are undertaken comply with requirements imposed by tourism legislation, this Act and other applicable legislation.

##### **81 Accreditation of operators of tourist transport services**

(1) As from a date determined by the Minister, by notice in the *Gazette*, no one may operate tourist transport services unless accredited by the National Public Transport Regulator.

(2) The National Public Transport Regulator must accredit operators of tourist services on application by them if satisfied that they-

- (a) are fit and proper persons or entities to transport tourists in a manner that is safe and will promote South Africa as a tourist destination;
- (b) meet the prescribed technical requirements; and
- (c) have access to acceptable vehicles and maintenance facilities.

(3) The National Public Transport Regulator must consider the prescribed matters in deciding whether to grant or refuse an application for accreditation.

(4) Such accreditation may specify classes or maximum number of vehicles that may be operated by the particular operator.

(5) No such accreditation may be granted unless the National Public Transport Regulator has obtained and considered recommendations from the tourism authority or authorities recognised by the Minister.

(6) Accreditation may be granted without such recommendations where such tourism authority has not supplied them in the time specified in the entity's request or where no such requirement is prescribed.

(7) The National Public Transport Regulator must keep a register of accredited tourist operators which is available for inspection to any interested person on request, on payment of the prescribed fee.

(8) Accredited operators must renew their accreditation every five years in the prescribed manner, failing which their accreditation will lapse.

##### **82 Application for accreditation**

(1) An operator of tourist transport services may apply to the National Public Transport Regulator for accreditation by-

- (a) completing the prescribed form;
- (b) paying the prescribed fee; and
- (c) submitting the form contemplated in paragraph (a) together with the required information or documentation.

(2) The applicant must satisfy the National Public Transport Regulator that he or she is a fit and proper person or entity to provide tourist transport services.

(3) If the National Public Transport Regulator is satisfied that any national tourism body has an acceptable system in place to accredit operators of tourist transport services, the National Public Transport Regulator may accept such accreditation by such a tourism body without requiring the operator to apply in terms of subsection (1), provided that the operator also complies with the prescribed technical requirements.

- (4) When it accredits an operator, the National Public Transport Regulator must-
- (a) include the operator's name in the register contemplated in section 81 (7); and
  - (b) issue to the operator a certificate of accreditation and a token for each vehicle to be operated.

### **83 Cancellation of accreditation**

(1) The National Public Transport Regulator may cancel the accreditation of an operator if the operator-

- (a) in the opinion of the National Public Transport Regulator no longer complies with section 82 (2);
- (b) has provided false or misleading information to the National Public Transport Regulator in the application form for accreditation or at any other time;
- (c) based on three or more inspections or incidents, or on one or more accidents or collisions that have occurred, has failed to maintain vehicles operated by that operator in a satisfactory condition;
- (d) based on three or more incidents, has failed to use or employ suitably qualified drivers or used drivers who do not hold the required professional driving permits in terms of the National Road Traffic Act;
- (e) is the subject of negative complaints against that operator from a planning authority or from passengers or other interested persons that indicate that such cancellation is justified; or
- (f) on failure to comply with any other prescribed requirement.

(2) Before taking a decision to cancel an operator's accreditation, the National Public Transport Regulator must-

- (a) give the operator written notice of the reasons why it intends to cancel it;
- (b) give the operator a reasonable time, which shall be not less than 14 days, to submit representations or comments; and
- (c) consider those representations or comments, if any have been submitted.

(3) On cancellation of an operator's accreditation, the National Public Transport Regulator must remove that operator's name from the register kept in terms of section 81 (7) and such an operator must submit to the National Public Transport Regulator for cancellation his or her certificate of accreditation and all operating licences, tokens, tags, or other equipment issued by that Regulator to that operator within 14 days of cancellation of that operator's accreditation.

### **84 Certification of vehicles for tourist transport services**

(1) Only vehicles that have been certified by the National Public Transport Regulator and display a special token, tag or equipment issued by the National Public Transport Regulator as prescribed may be used for tourist transport services.

(2) Any accredited operator or any entity that owns vehicles and rents them out to tourist operators may apply to the National Public Transport Regulator to certify a vehicle.

(3) The National Public Transport Regulator must certify a vehicle and issue an operating licence for it on proof submitted to it in the prescribed manner that-

- (a) the vehicle is properly registered and licensed on eNaTIS;
- (b) the vehicle is suitable in all respects for the type of tourist service envisaged;
- (c) a valid and current roadworthy certificate has been issued for the vehicle;
- (d) the vehicle and passengers who will be carried are adequately insured with a registered insurer; and
- (e) the vehicle is otherwise acceptable according to the National Public Transport Regulator.

(4) The National Public Transport Regulator may impose conditions.

(5) No vehicle used for tourist transport services may use a rank or terminal without having obtained the written permission of the relevant planning authority, and the operator has paid the fees charged by that authority, of any, for such use.

## **CHAPTER 7 LAW ENFORCEMENT (ss 85-91)**

### **85 Land transport law enforcement**

(1) In addition to the measures provided for in this Act with regard to law enforcement, the MECs and municipalities must take active steps to develop systems to improve land transport law enforcement in their respective jurisdictions.

(2) Despite the provisions of any other law-

- (a) an MEC; or
- (b) a municipality,

referred to in this section as enforcement authorities, may enter into an agreement in terms of which-

- (i) land transport law enforcement functions are undertaken by one enforcement authority in the area of jurisdiction of another;
- (ii) authorised officers of one such authority may be seconded to another authority temporarily; or
- (iii) land transport law enforcement functions are undertaken jointly, or by a public or private sector agency on behalf of the authority,

on terms and conditions set out in the agreement, including conditions as to which authority must bear the costs involved.

### **86 Appointment of inspectors**

(1) Employees of-

- (a) a provincial department, as appointed by the MEC; or
- (b) a municipality to which the operating licence function has been assigned, as appointed by that authority

who are fit and proper persons for the relevant functions, may be appointed as inspectors.

(2) The authority appointing an inspector must issue to him or her a certificate of appointment and official proof of identity in the prescribed form.

(3) The functions of inspectors so appointed are to monitor compliance with this Act in the province or area of the municipality concerned and to assist with the investigation and prevention of offences contemplated in section 90 which have been committed in that province or area, subject to provincial laws, if any, and the directions of the appointing authority.

(4) In performing those functions, an inspector will have all the powers conferred on an authorised officer in terms of this Act.

(5) When performing any function or duty or exercising any power in terms of this Act, an inspector must on demand by any person in relation to whom the power, function or duty is exercised or performed, produce his or her certificate of appointment.

### **87 Impoundment of vehicles**

(1) An authorised officer who is satisfied on reasonable grounds that a motor vehicle is being used by any person for the operation of public transport without the necessary operating licence or permit or contrary to the conditions thereof, may impound the vehicle pending the investigation and prosecution of that person for an offence mentioned in section 90 (1) (a) or (b).

(2) A vehicle impounded under subsection (1) must be delivered to the head of the depot contemplated in subsection (4), who must retain the vehicle in the depot and release it to the person concerned only-

- (a) when the criminal charges against the person have been withdrawn or the person has been acquitted of the offence charged; or
- (b) in the case where the person is convicted of the offence charged, and unless the court has ordered otherwise, on payment to the head of the depot of the amount determined by the MEC, which is an impoundment fee.

(3) The impoundment fee must be increased accordingly, for the second or subsequent impoundment of a vehicle.

(4) The MEC or municipality may, by notice in the *Provincial Gazette*, designate any suitable place defined in the notice to be a depot.

(5) The MEC or municipality may amend or withdraw such notice, as it deems fit.

(6) The MEC or municipality must appoint an authorised person as the head of the depot.

### **88 Presumptions and proof of certain facts**

(1) A document which purports to be an operating licence or permit issued under this Act or a certified copy thereof, must on mere production in any prosecution for an offence mentioned in section 90 (1) be admissible in evidence as proof that it is such an operating licence or permit which had been lawfully issued, or that it is a true copy thereof, as the case may be, and of the truth and accuracy of the particulars thereof.

(2) A document which states that the motor vehicle described therein is registered, under the relevant law, in the name of a person specified therein as the owner, and which purports to have been issued under such a law by an employee of the registering authority for motor vehicles of the place where the vehicle was so registered, is on mere production in a prosecution under this Act, admissible as sufficient proof of that person's registered ownership of the vehicle and of the truth and accuracy of the particulars contained therein.

### **89 Powers of authorised officers**

(1) In addition to the functions and duties imposed on an authorised officer by or in terms of this Act, an authorised officer may-

- (a) cause a motor vehicle to be stopped in the prescribed manner and enter such a vehicle in order to establish if it is used for public transport or monitor compliance with any provision of this Act, or with the terms of any operating licence or permit, and may for those purposes examine or inspect the vehicle and any documentation that may be relevant;
- (b) require from the driver to furnish his or her full name and residential address, and documentary proof thereof, as well as the names and address of the owner of the vehicle, and particulars of the business in connection with which the vehicle is being used;

- (c) require that the driver or other person in charge of the vehicle forthwith produce for inspection any documents or other records that are in or on the vehicle in the possession of the driver or that person that relate to the persons being conveyed in such vehicle;
- (d) require that any person in a motor vehicle suspected on reasonable grounds to be used for public transport, or a person suspected on reasonable grounds to have been in such a vehicle recently, furnish the full name and address of such suspected person and documentary proof thereof and state if such person has paid or has to pay any consideration for conveyance in the vehicle, and furnish the name and address of the person to whom the payment has been made;
- (e) require that the records to be kept in or on the vehicle in terms of this Act, be produced for inspection;
- (f) enter or enter upon any business premises at any reasonable time to monitor compliance with this Act, and-
  - (i) question any person who, in the opinion of the authorised officer, may be able to furnish any information required for that purpose;
  - (ii) require such a person to produce, for examination or inspection, any books, documents or other records, that may be relevant for monitoring purposes;
  - (iii) make extracts therefrom or copies thereof; and
  - (iv) demand an explanation of any entries in such a book, document, or other record;
- (g) require that the driver or other person in charge of a motor vehicle used for public transport, produce any documents whatsoever, that were issued by a competent authority, in terms of this Act, or the Transition Act, with regard to the vehicle or the public transport for which it may be used in terms of this Act, or the Transition Act, as the case may be, and which, in terms of those Acts have to be kept in that vehicle; and
- (h) upon the order of the entity that issued an operating licence or permit or the successor to that entity, attach an operating licence or permit that has expired or lapsed or has been withdrawn temporarily in terms of this Act, and hand it over to that entity.

(2) A person questioned or required to furnish an explanation in terms of subsection (1) (f), may exercise his or her rights in terms of section 35 of the Constitution.

(3) (a) Where an authorised officer finds a vehicle used for public transport to be so defective as to be a danger to persons or property, the authorised officer may order the driver or other person in charge of the motor vehicle to surrender the relevant operating licence or permit, as well as all distinguishing marks relating to the vehicle, and prohibit that driver or person forthwith to use the vehicle for public transport.

(b) The operating licence or permit so surrendered, must be retained by the officer until the holder has satisfied the officer that the defects have been remedied and that the vehicle is in a roadworthy condition, and the onus of proof rests on the holder of the operating licence.

## **90 Offences and penalties**

- (1) A person is guilty of an offence-
  - (a) if that person operates a public transport service in contravention of section 50;
  - (b) if the person operates a public transport service contrary to the terms and conditions of an operating licence or permit;
  - (c) if, being the holder of an operating licence or permit or the agent or employee of such a holder, the person allows someone else to use that operating licence or permit for a vehicle other than the vehicle specified therein;



- (d) if the person applies for or obtains an operating licence knowing that a current operating licence has already been issued with regard to the same vehicle;
  - (e) if the person, with the intent to deceive, forges, alters, defaces, damages or adds to any operating licence or permit other official document issued under this Act;
  - (f) if, knowing that a document is not an operating licence or permit or such other official document or that it has been altered, defaced, damaged or added to, utters or uses the document;
  - (g) if the person furnishes or gives false information in or with regard to any application made in connection with an operating licence, or in the course of appearing in any proceedings, investigation or inquiry relating thereto;
  - (h) if the person impersonates an authorised officer;
  - (i) if the person wilfully obstructs or hinders an authorised officer who is discharging his or her duties;
  - (j) if the person refuses or fails to comply with the lawful order, direction or demand made by an authorised officer in the discharge or performance of any function or duty entrusted to the officer by or in terms of this Act;
  - (k) if, where the person is conveyed as a passenger in the course of public transport, he or she-
    - (i) fails to pay the fare due for the journey when payment is requested by the driver or conductor;
    - (ii) smokes or drinks liquor on that vehicle in contravention of a notice on the vehicle which forbids smoking or drinking;
    - (iii) wilfully acts in a manner that inconveniences a fellow passenger;
    - (iv) disobeys a reasonable instruction issued by the driver or conductor for the purpose of maintaining order or ending a disturbance or controlling any emergency; or
    - (v) wilfully performs any act in or on the vehicle that could cause injury to or endanger the life of any person or cause damage to any property;
  - (l) if the person, being the holder of an operating licence or permit or the driver of a vehicle to which that operating licence or permit relates, fails to comply with any duty or obligation imposed on such a holder or driver by or in terms of this Act;
  - (m) if the person picks up or sets down passengers at or near an international border in contravention of section 75 (2);
  - (n) if the person uses a vehicle for a public transport service in contravention of this Act;
  - (o) if the person operates a tourist transport service without accreditation by the National Public Transport Regulator or operates a tourist transport service after his or her accreditation has been cancelled;
  - (p) if the person uses a vehicle for tourist transport services in contravention of section 84 (1) and (5); or
  - (q) if the person contravenes any other provisions of this Act.
- (2) Where a person is convicted of any one of the offences mentioned in-
- (a) paragraphs (a), (b), (d), (e) or (o) of subsection (1), a term of imprisonment not exceeding two years, or a fine not exceeding R100 000, may be imposed;
  - (b) any other paragraph of that subsection, a term of imprisonment not exceeding three months or a fine not exceeding R10 000 may be imposed.
- (3) Whenever a manager, agent or employee of the holder of an operating licence or permit performs or omits to perform any act which, if the holder had performed or

omitted to perform that act personally, would have constituted an offence in terms of subsection (1), that holder is guilty of that offence if-

- (a) the holder-
  - (i) connived at or knowingly permitted the act or omission concerned; or
  - (ii) did not take all reasonable measures to prevent that act or omission; and
- (b) an act or omission of the nature of the act or omission charged, whether legal or illegal, fell within the scope of the authority or the course of the employment of the manager, agent or employee.

## **91 Extraordinary measures in declared areas**

(1) If in any area in the relevant province the MEC considers that because of violence, unrest or instability in any sector of the public transport industry in the area or between operators in the area, the safety of-

- (a) passengers using the relevant services; or
- (b) residents; or
- (c) any other persons entering the area,

has deteriorated to an unacceptable level, the MEC may, after consulting relevant planning authorities, by notice in the *Provincial Gazette*, define the area and declare it to be an area in respect of which the notification prescribing the extraordinary measures contemplated in subsection (2) may be made.

(2) The MEC may, by notice in the *Provincial Gazette*, give notice that-

- (a) one or more or all the routes or ranks in such a declared area are closed for the operation of any type of public transport service, for the period stated in the notice;
- (b) any operating licence or permit authorising any of the services referred to in paragraph (a) on a closed route or routes or at a closed rank or ranks in the declared area is suspended for the relevant period;
- (c) subject to subsection (6), no person may undertake any of the services referred to in paragraph (a) on a closed route or routes or at a closed rank or ranks in the declared area or in terms of an operating licence or permit suspended as contemplated in paragraph (b) for the relevant period.

(3) Before making the notice in terms of subsection (2), the MEC must cause a notice to be published in the prescribed manner, stating-

- (a) in summary form the nature and purpose of the proposed regulations;
- (b) the route or routes and rank or ranks which are proposed to be closed, or that it is proposed to close all routes and ranks in the declared area;
- (c) the period for which the proposed regulations will be in force;
- (d) that interested or affected parties may request reasons for the proposed regulations;
- (e) that any interested or affected persons are entitled to make representations;
- (f) the time within which representations may be made, which may not be less than 24 hours;
- (g) the address to which representations must be submitted, and
- (h) the manner in which representations must be made.

(4) The MEC must consider any representations received under subsection (3) before making a regulation under subsection (2).

(5) The notification contemplated in terms of subsection (2) may provide that a contravention thereof or a failure to comply therewith constitutes an offence, and may

prescribe penalties in respect thereof which may be a fine, or imprisonment for a period not exceeding six months.

(6) The notification may provide for the issuing of temporary permits to operators of motor vehicles of specified types, to operate services on a closed route or routes or at a closed rank or ranks for the period of their closure in substitution of the forbidden services.

(7) After giving notice as contemplated in subsection (3), the MEC may, by notice in the *Provincial Gazette*, temporarily suspend any operating licence or permit insofar as it authorises public transport in a declared area on a route or routes or at a rank or ranks not closed in terms of the notice contemplated in terms subsection (2), for the period the MEC considers appropriate.

(8) The MEC may in a like manner and at any time amend the notification made in terms of subsection (1).

(9) The Minister may, after consulting the MEC and relevant planning authorities, exercise any of the powers of the MEC in this section.

[Date of commencement of s. 91: 31 August 2009<sup>14</sup> and 8 December 2009<sup>15</sup>.]

<sup>14</sup> Proc 54 in GG 32532 of 31 August 2009

<sup>15</sup> Proc R87 in GG 32788 of 8 December 2009

## **CHAPTER 8 APPEALS (s 92)**

### **92 Appeals to Transport Appeal Tribunal**

(1) The following persons may appeal to the Transport Appeal Tribunal against an act, direction or decision of an entity that has granted or refused an application relating to an operating licence, in the manner and within the time prescribed:

- (a) The aggrieved applicant;
- (b) the holder of any operating licence or permit affected by the decision; or
- (c) any other person interested in or affected by the decision.

(2) In considering an appeal in terms of subsection (1), the Transport Appeal Tribunal is bound by applicable transport plans.

(3) Appeals pending before provincial transport appeal bodies contemplated in section 128 (1) of the Transition Act on the date of commencement of this Act, must be finalised by those bodies as if this Act had not been passed, unless the MEC directs that those appeals must be transferred to the Transport Appeal Tribunal for finalisation.

## **CHAPTER 9 TRANSITIONAL AND FINAL MATTERS (ss 93-96)**

### **93 Transitional provisions**

(1) Where, at any time before the commencement of this Act-

- (a) a person was convicted, in terms of any previous law, of an offence which is an offence in terms of this Act, the person is, where relevant for the purposes of this Act, regarded and treated as a person who had committed a corresponding offence provided for in this Act; and
- (b) any distinguishing mark issued in terms of any previous law for a vehicle in relation to which an operating licence or permit had been issued thereunder, is regarded for purposes of this Act, until such time as that licence or permit lapses, is converted to an operating licence, or is withdrawn or cancelled in terms of this Act, as a distinguishing mark issued under this Act.

(2) Any transport plan prepared or approved in terms of the Transition Act is deemed to be the corresponding plan prepared or approved, as the case may be, in terms of this Act until the latter has been prepared or approved.

(3) Until the National Public Transport Regulator, a Provincial Regulatory Entity or municipality has been established or is empowered to perform its functions under this Act-

- (a) an operating licensing board established in terms of the Transition Act may exercise the powers and perform the duties of such an entity under this Act, but only until a date determined by the Minister, after consultation with the relevant MEC or municipality by notice in the *Gazette*;
- (b) any power exercised or duty or function validly performed by an operating licensing board in terms of the previous Act or a law previous to that is deemed to have been validly exercised or performed; and
- (c) any application to an operating licensing board relating to the granting, amendment, renewal or transfer of an operating licence which has not been disposed of, is deemed to be an application under this Act relating to the appropriate operating licence.

(4) Whenever this Act makes reference to a transport plan, a contracting authority or other entity may proceed with any action, despite the fact that the relevant plan has not been prepared, approved or published in terms of this Act, but such authority or entity must have regard to any available transport planning or other information at its disposal.

(5) Any transport authority established in terms of the Transition Act will cease to be a juristic person independent from the relevant municipality or municipalities, on a date to be determined by the Minister, and those municipalities must amend or restructure their administrations as soon as possible after the determined date, to bring them in line with this Act.

#### **94 Laws repealed or amended**

The laws mentioned in the Schedule are repealed or amended, as specified in the third column thereof.

#### **95 Act binds State**

This Act binds the State.

#### **96 Short title and commencement**

(1) This Act is called the National Land Transport Act, 2009, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

(2) Different dates may be so determined in respect of different provisions of this Act, and dates so determined may differ in respect of different provinces or different municipal areas.

### **Schedule LAWS REPEALED OR AMENDED**

(Section 94)

<b>No. and Year of Law</b>	<b>Short title</b>	<b>Extent of amendment or repeal</b>
Act 11 of 1972	Black Transport Services Amendment Act, 1972	The repeal of the whole.
Act 47 of 1974	Black Transport Services Amendment Act, 1974	The repeal of the whole.

Act 76 of 1982	Black Transport Services Amendment Act, 1982	The repeal of the whole.
Act 77 of 1982	Transport Services for Coloured Persons and Indians Amendment Act, 1982	The repeal of the whole.
Act 39 of 1998	Transport Appeal Tribunal Act, 1998	<b>1</b> The repeal of section 2. <b>2</b> The substitution for the word 'permissions', wherever it occurs, of the expression 'operating licences'.
Act 22 of 2000	National Land Transport Transition Act, 2000	The repeal of the whole.
Act 31 of 2001	National Land Transport Transition Amendment Act, 2001	The repeal of the whole.
Act 26 of 2006	National Land Transport Transition Amendment Act, 2006	The repeal of the whole.

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