

## **Memorandum 2**

### **Explanatory Memorandum on Schedule 3 Demerit points and penalties**

The AARTO draft Regulations, including Schedule 3, are published for comment. The draft regulations were published for comment in October 2019, but the publication did not include Schedule 3 of the Regulations, which deals with the demerit points and penalty units. Many comments were received on various aspects of the legislation and numerous publications by stakeholders were issued in the course of the last few months.

Unfortunately, many of the articles contained conflicting and sometimes incorrect information. To provide the public with the best information and to allow for a proper understanding of the system the following explanation is provided on the AARTO system and the demerit points.

#### **1. THE AARTO SYSTEM – IMPLEMENTATION AND GENERAL INFORMATION**

The Administrative Adjudication of Road Traffic Offences Act, 1998 (AARTO) was accepted by Parliament in 1998. Amendment Acts were approved in 1999, 2000, 2002 and 2019.

The Act was implemented on 1 July 2008 in Tshwane and 1 November 2008 in Johannesburg.

The legislation is currently in force in the Tshwane and Johannesburg Metro area.

The Act is due for a national roll-out on 1 July 2021.

The allocation of demerit points will be introduced in three phases to ensure road users are gradually introduced to the implications of the demerit point system. This will avoid a situation where many vehicles are suspended, and numerous drivers are disqualified shortly after implementation of the system. This will have a huge impact on the economy as well as the social wellbeing of road users.

At the same time, it is necessary to change the behaviour of drivers and create a safer road environment. The phased approach seeks to create this balance.

Phase One will allow for demerit points for speeding, dangerous overtaking, and other hazardous driving behaviour such as failing to stop at traffic lights and stop signs, other road sign infringements, as well as roadworthy offences and infringements for faulty brakes, lamps, etc.

It will also include offences and infringements for failing to drive with a valid driving licence or professional driving permit and failure to have a roadworthy certificate for a vehicle.

Phase Two will be introduced once the effect of the allocation of demerit points have been evaluated by the Road Traffic Infringement Agency.

Demerit points will be allocated to offences and infringements of economic significance and includes the protection of roads and bridges through overload control, cross border road transport permits and operating licences in terms of the national land transport legislation. Demerit points will also be allocated to overloaded vehicles because of tyre and manufacturer specification transgressions, and offences and infringements relating to the transportation of dangerous goods.

Vehicles that do not comply with the requirements for maximum dimensions and projections will also be allocated demerit points in phase two. Failure to pay licence fees will also be added to the list of offences and infringements that carry demerit points.

Phase Three will add offences and infringements relevant to the failure to update address, proxy and other relevant information of owners, operators, drivers, cross-border road transport permit holders and operating licence holders and any other offences and infringements identified during phases one and two that the Minister through the Agency determine warrant the allocation of demerit points.

All offences and infringements prosecuted by means of cameras and parking related offences and infringements that are charged in terms of the provisions of section 73 of the National Road Traffic Act, 1996 (*owner presumption - due to the driver being unknown at the time of offence or infringement*), will carry demerit points for the vehicle of the corporate owner, where such owner fails to nominate the driver in terms of section 17(5) and regulation 5 of the AARTO Act and Regulations. This

will encourage the owners of corporate vehicles to nominate the drivers who commit offences and infringements instead of paying the notices in the corporate body's name and failing to identify the driver who committed the offence or infringement.

Driving without a driving licence and operating a motor vehicle without it being registered and licences are classified as offences. This principle also applies to failure to have an operator card, cross-border road transport permit or operating licence. These documents are extremely important and in terms of section 25 of the AARTO Act are suspended when the maximum of 15 demerit points is exceeded.

Road traffic sign infringements where different user types such as *heavy motor vehicle drivers, light motor vehicle drivers, pedal cyclists and pedestrians* can transgress a road sign, different penalties, and demerit points, if applicable, are set for each user type.

Schedule 3 is linked with the National Road Traffic legislation (NRTA) and will in future also be linked to the National Land Transport legislation (NLTA) and the Cross-border Road Transport legislation (CBRTA). Any future amendments to the NRTA, NLTA or CBRTA or the regulations made in terms of these three acts must be changed in Schedule 3 of AARTO and published simultaneously with the amendments.

## **2. THE ADMINISTRATIVE SYSTEM**

The AARTO system is used for traffic offences where an alleged offender has the option of paying a fine.

In the AARTO system, an offender is referred to as an infringer and a fine is referred to as a penalty.

Section 341-notices and section 56-notices in terms of the Criminal Procedure Act (CPA) are replaced by the AARTO 01, 02, 03 and 03a infringement notices, as well as an AARTO 31 for parking infringements. No section 341-or 56-notice may be issued where AARTO is in force. See section 35 of the Act.

The Road Traffic Infringement Authority (RTIA) has been established to administer the system. The sole purpose of the Authority is to finalise traffic cases and promote

road safety. The Authority employs representation officers who are responsible for all representations for infringements. The 2019-amendment act changes the reference from the Road Traffic Infringement Agency to the Road Traffic Infringement Authority.

The 2019-amendment changes the process and removes the initial option to *elect to appear in court*. A person may submit a representation to request a matter to be withdrawn and provide the reasons for the request. If the representation is rejected by the RTIA, a person may appeal the decision to the Appeals Tribunal. If the appeal is unsuccessful, the person may take the matter to a municipal court to be adjudicated. The process therefore does not remove the option to appear in court, but the option is the last process allowed to ensure that one of the objectives of the act, namely, to alleviate the burden on the courts, is adhered to. Matters such as incorrect service and nomination of drivers are then addressed outside the court system.

Public prosecutors do not attend to representations and reductions of penalties in the AARTO system. A prosecutor only handles matters classified as road traffic offences in Schedule 3 of the AARTO Regulations.

The legislation provides for various administrative processes to finalise a specific case.

The process **prescribed** in the legislation is:

- An infringement notice – AARTO 01, 02 or 03, is issued with a penalty and demerit points.
- A levy payable to the RTIA is also included in the notice.
- If a person pays his/her penalty within the first 32 days after he has received it, he will be entitled to a discount of 50% of the penalty.
- If a person ignores the notice, he/she will receive a courtesy letter – AARTO 12 that again allows him/her to pay the penalty, no discount is allowed at this stage and an administrative fee is added to the amount.
- If a person ignores the courtesy letter, an enforcement order – AARTO 13 is issued. Administrative fees will again be added to the amount to be paid. An

enforcement order does not prescribe and will remain on the National Road Traffic Offences Register until it is addressed by the infringer.

- An eNaTIS block is generated against the infringer. The outstanding penalties are linked to the motor vehicle licence, operator card and the person's driving licence card will be refused until he/she pays the penalty or successfully requests a revocation of the enforcement order.

Offences are adjudicated by the courts in the criminal justice system. The offences are among others, drunken driving, reckless driving, severe overloading, severe speeding and driving while disqualified due to the number of demerit points.

The owner is compelled to keep information on persons driving his/her vehicles.

Section 17(5) of the AARTO Act makes the owner liable if such owner does not obtain the following particulars of any person who drives or is in charge of his vehicle (the vehicle is parked – person who drove the vehicle to that point):

Full names

Residential address

Postal address

A copy of the person's acceptable identification (ID or driving licence card).

Business address

Email address

The owner is also presumed to have driven the vehicle if the driver is not known to the authorities – section 73 of the National Road Traffic Act, 1996 applies.

The original AARTO Act allows for service by registered mail. The 2019Amendment Act also allows for service by electronic mail.

The presumption in section 30 of the Act states that 10 days after posting a notice by registered mail it is presumed a person has received it. This means that a person must provide evidence by means of an affidavit that he/she has not received a notice by way of an affidavit.

Section 18 of the Act is amended in the 2019-amendment to allow the issuing authorities to re-issue a notice that was not served in the 40 days required if a

representation is made in this regard. The notice may be served up to 180 days after the infringement was committed.

Drivers must complete AARTO 27 forms to allow their employers to access to their demerit points. The form is valid for a 12-month period.

Companies must nominate the drivers who are responsible for infringements on an AARTO 07 form. The issuing authority must then withdraw the notice against the company and charge the driver for the infringement. If the nomination is not successful, the notice will be re-issued to the company. A driver who is nominated may not re-nominate and the initial nomination must contain the correct driver information.

Representations are made on AARTO 08 and may not include a request for a reduction of the penalty.

Once AARTO is implemented in the entire country the penalties for infringements will be the same everywhere.

AARTO is aimed at changing driver behaviour to ensure safer roads. It also places a duty on owners of vehicles to control the use of their vehicles.

### 3. THE POINTS DEMERIT SYSTEM

The AARTO Act provides for a system whereby a person, operator or juristic person who is not an operator, pays the penalty and incur points when a traffic infringement is committed.

The demerit points are allocated to the operators and owners of motor vehicles. If a vehicle is suspended it may not be sold or used on a public road. If an operator or juristic person does sell a vehicle or scrap or export such vehicle, the demerit points will remain against the record of the operator/juristic person and be allocated to the next vehicle the company purchases. Vehicles are not punished by the system, the operator/juristic person is held responsible for the use of its vehicle.

Provisions for a *juristic person who is not an operator* was added in 2019. The term refers to companies, close corporations, trusts, etc. that have motor vehicles that are licensed in the juristic person's name, but do not require operator cards. Typically pool vehicles, delivery vehicles, vehicles of representatives, etc. fall within

this category. The licence disc of these vehicles will be suspended if the vehicle accrues more than 15 demerit points.

The offender/infringer receives a penalty, and in addition to the penalty, he/she also receives the demerit points allocated in Schedule 3 to the specific infringement or offence. If the demerit points exceed the maximum points (15 points), a person, operator or juristic person who is not an operator will be disqualified from driving or using the vehicle for a period of time (3 months for every point exceeding 15 points).

- The points for the offences and infringements range between 6 and 1.
- The maximum points for a person or operator card or a licence disc for a juristic person who is not an operator are 15 Points.
- The maximum points for a learner driver are 6 points.
- The time value of each point is three months for disqualification or reduction purposes.

If demerit points are allocated to a person or vehicle record and no further demerit points are accrued in three months after receiving the previous demerit point, a reduction of 1 point on the total number of demerit points will be recorded on the system.

A person's driving licence card and the operator card of a motor vehicle must be handed in for the disqualification period.

Upon a third disqualification, the licences will be cancelled. A person must apply for a new learner's licence and driving licence once the disqualification period is over.