



## Justice Project South Africa (NPC)

Incorporated as a non-profit company under the Companies Act, 2008  
Registration Number 2010/019972/08  
PO Box 695, Henley on Kilp, 1962 | Tel: 087 809 0399 | Fax: 086 647 3293  
Email: info@jp-sa.org | www.aartofacts.co.za | www.jp-sa.org

"Injustice anywhere is a threat to justice everywhere." - Martin Luther King

The Director General  
Department of Transport  
Private Bag X 193  
PRETORIA  
0001

### **Attention: Advocate A Masombuka**

By email to MasombuA@dot.gov.za

26 April 2011

Dear Sir.

### **RE: Government Gazette 34208**

As invited in the publication of the proposed amendments to the AARTO Regulations contained in Government Gazette 34208 of 15 April 2011, Justice Project South Africa wishes to make the following comments and submissions with respect to the proposed amendments.

We note that the invitation to submit written comments on this draft Administrative Adjudication of Road Traffic Offences Regulations, 2011 makes no reference to any further publication stating what the proposed fees as per Regulation 11(1) of this draft are intended to be.

This has caused significant difficulty in understanding Schedule 3 and where the additional R40 amount has come from. This is further dealt with when we get to our comments on that section.

We feel obliged to point out that a number of spelling, grammatical and terminology errors are evident in this draft and we would strongly recommend that the entire Regulations be reviewed by someone who has a good command of the English language as well as the document being properly spell checked.

### **Deletion of previous Regulation 2**

We note that the order of the Regulations has changed and that all of the provisions that were previously contained in Regulation 1 have now been deleted; and that Regulation 2 has now been replaced with the Regulation of issuing documents dealing with the intention to issue a summons under the chapter heading "Adjudication procedure".

The previous Regulation 2 read: "The administrative functions of the Agency that arises as a result of the infringement notices to be issued and served to the infringers, representations to be made by the infringers and submitted to the representation officers for consideration, courtesy letters,

Page 1 of 50



enforcement orders, warrants, service of notices and other administrative functions concerning the recording of information, reception and dispatch of mail, as approved by the Registrar, shall be executed by the Corporation on behalf of the Agency: Provided that the Corporation shall not provide any service to the Agency that entails that it shall execute any discretion or decision on behalf of the Agency.”

Is it the intention of the new Regulations to remove the Road Traffic Management Corporation (RTMC) from the all of the administration of AARTO matters that are to be dealt with by the RTIA?

**Regulation 2(1)(a), (b) and (c)**

We note with interest and relief that despite Director Gerneke of the JMPD’s claims to the effect that it was a *fait accompli* that AARTO 03 infringement notices would no longer be required to be served via registered mail when amendments to the Regulations and/or Act amendment come into play, service via registered mail is to remain the only valid means of service other than personal service – not at the roadside.

This makes perfect sense, due to the nature of in entire administrative process of the Act and Regulations and the strict timelines that are inherent in the AARTO Act and Regulations and it is our belief that this cannot possibly be dispensed with if there is to be a proper and enforceable audit trail with respect to the time limitations imposed by AARTO.

However, we do record that despite the fact that the JMPD has already exhibited their predisposition to ignore this provision, the proposed Regulations still make no specific reference to what will happen if the means of service is not executed as is laid down by the legislated means of service.

We would like to see the inclusion of for further paragraph under Regulation 2(1) stating that ***“Should the prescribed means of service not to be complied with by any issuing authority, the infringement notice will be nullified and the issuing authority will be liable to the Agency for a payment of the relevant fee/s to the Agency with respect to such infringement notice that is unlawfully dispatched.”***

We believe that defined consequences for issuing authorities will bring better balance to the entire AARTO process and deter overtly unlawful behaviour by issuing authorities who have in the past abundantly demonstrated their predisposition to taking “short cuts” and ignoring legislation.

**Regulation 2(2)**

This Regulation states: “Where a person has allegedly committed an offence as prescribed for purposes of the Act and an arrest is not justified under the circumstances...”

Nowhere in the Act or Regulations does it state under what circumstances arrest will be deemed to be justified or not for offences defined by the Regulations.

This leaves the decision of whether to arrest a person who has allegedly committed an offence to the *discretion* of the traffic officer or policeman concerned and this means that inequitable treatment is inherently built in.

We strongly feel that leaving the decision of whether to arrest the perpetrator or not to the *discretion* of the law enforcement officer is an extremely bad idea, given the fact that many law enforcement officers regard themselves as *punishers* as opposed to law enforcers and there are numerous examples of them adopting grossly heavy-handed tactics against alleged offenders, even for the most menial of offences, and infringements for that matter.

Whilst we fully understand that arrest under the circumstances of issue of an AARTO 33 anything up to 40 days after the commission of the offence would be deemed unnecessary and possibly even heavy-handed, it stands to reason that arresting the perpetrator at the time of the commission of the similar or identical offence would result in unequal treatment under the law.

It is extremely unreasonable and inequitable that a person who is arrested, for speeding for example, at the time of the commission of the offence should be subjected to imprisonment under the auspices of the SAPS; which results in an extra punitive measure being taken against the alleged perpetrator, whilst a person who was caught by camera should only be required to appear before a Magistrate without being imprisoned.

SAPS officials treat arrestees in the most appalling and often abusive manner and have been known to violate their constitutional and human rights. Knowingly allowing this situation to prevail can only be defined as irresponsible.

It is our belief that the Regulations should contain a schedule of all offences for which the perpetrator **must** be arrested prescribe offences for which an AARTO 32 should be issued instead.

We also believe that no distinction should be allowable with respect to whether the offence took place in front of a traffic officer or by a camera. If you are going to punish one person more severely than the other then that situation is unacceptable.

We do understand that the Regulations cannot encompass operational procedures as such, however we still believe that a schedule of offences for which the perpetrator may be arrested and those where a simple AARTO 32 must be issued needs to be very clearly defined.

### **Regulation 2(3)**

This Regulation states that “In addition to the matters listed in section 17(1) of the Act, the infringement notice **may** contain the following additional information”

We believe that this Regulation should read “In addition to the matters listed in section 17(1) of the Act, the infringement notice or notice of summons to be issued **must** contain the following additional information, except where it is not available.”



There is no point to issuing an infringement notice or notice of summons to be issued unless the vast majority of the information listed in this subsection is on it. Whilst an email address for the alleged infringer or offender may not be a vital piece of information; things like the identity number of the accused, along with the date, place, time, charge code and description of the infringement or offence and the issuing officer's details are vital elements which absolutely must be contained on the notice.

Section 17(1)(a) of the Act even makes optional the name of the accused by saying "if known". Additionally, it makes no reference to the alleged infringers identifying information like a driving licence or identity document of any kind, nor does it make reference to the date, time, place, vehicle in which the infringement was perpetrated, all of which is vital information with respect to any infringement.

The word "may" intimates that anything listed in this subsection is **optional**, whereas it is most certainly not in most instances.

#### **Regulation 3 and 4**

We note that there have been significant changes to the Regulations with respect to the submission and handling of representations and we applaud these due to them apparently seeking to "tighten" and streamline the process.

Removing the adjudication function from the issuing authority's control and transferring it to the Agency is the most logical and significantly fairer way of dealing with representations due to the fact that the Agency has a significantly lesser vested interest in ensuring that representations are rejected as is happening currently with the JMPD.

We sincerely hope that this means that the separate adjudication processes currently being practiced, with private contractors like TMT Services running the show, including AARTO adjudication functions will be abolished and that the Agency (RTIA) and the Agency alone will be responsible for the adjudication of all adjudication matters.

We note with interest that the former requirement for resubmission of AARTO 08 representation forms if no response has been received within 21 days [Regulation 4(2)(3)] has been removed and that definitive timeframes have now been included in the Regulations.

This is a very welcome amendment, and we hope that this can be achieved since in practice it has been noted that an AARTO 05c and AARTO 09 are very rarely issued within the timeframes now laid down, if at all by TMT Services.

However, once again, the Regulations make absolutely no provision for what will happen if the Agency's representations office does not comply with this provision and therefore there is no consequence to them not doing so.



We would strongly recommend that some form of mechanism be put in place to deal with non-compliance with this provision and that this should be along the lines of:

“Should the Agency fail to issue an AARTO 09 within the prescribed period of 40 days, then the representation in question shall be deemed as having been successful and the infringement notice on which it was made must be cancelled.”

### **Regulation 5**

This Regulation reads: “The Agency must issue and serve a courtesy letter in terms of section 19(1) of the Act on form AARTO 12.”

Section 19(1) of the AARTO Act says “If an infringer has failed to comply with an infringement notice as contemplated in section 17(1)(f) and the agency has been notified of the failure in terms of section 17(2), the agency must issue a courtesy letter and serve it on the infringer.”

Section 17(2) then states “If an infringer fails to comply with an infringement notice within the period contemplated in subsection (1), the issuing authority must give notice of the failure, in the prescribed manner, to the agency for further action in terms of section 19.”

Section 19 of the AARTO Act **does not** stipulate within what timeframe the Agency must be notified, it just states that it must be notified and that is it.

The absence of an **absolute requirement** for the issuing authority to inform the Agency **within a specific timeframe** of the failure of an alleged infringer to comply with the infringement notice has led to the JMPD **not** informing the Agency at all in the vast majority of cases on infringement notices they have issued.

However, in essence, they can argue that they have **not failed** to comply with this requirement, but have simply not informed the Agency as yet.

This Regulation also does not state within what timeframe the Agency itself must issue a courtesy letter and this too detracts from the timelines contemplated by the Act and Regulations.

It was allegedly the intention of AARTO to define a finite start and end date for traffic fines, to encourage better compliance and revenue collection, however the entire process gets jeopardised by it subsequently failing to clearly define these timelines, including all of the “in-between” issues that arise from them.

These “loopholes” must be plugged in order to ensure compliance and we would therefore strongly recommend that the Regulations include the following:

***“5(1) The issuing authority must inform the Agency in the prescribed manner, within 7 days of expiration of the discount period stated on the infringement notice of the failure of an alleged infringer to comply with it.”***



***“5(2) Should the issuing authority fail to inform the Agency in the prescribed manner, within 7 days of expiration of the period stated on the infringement notice of the failure of an alleged infringer to comply with it then the issuing authority must cancel the infringement notice in question and pay the Agency the fee plus the receiving fee that would have resulted from a courtesy letter being issued by the Agency.”***

We would recommend that the current Regulation 5(1) would then become Regulation 5(3). This Regulation should also be amended to read: **“If section 17(2) of the Act has been met, the Agency must issue and serve a courtesy letter in terms of section 19(1) of the Act on form AARTO 12 within 14 days.”**

### **Regulation 6(3)**

This Regulation makes specific reference to the forms of proof of payment that will be accepted by the Agency and omits one of the commonly used means of payment of infringement notices; namely through internet fine collection facilities like PayCity, which is currently the only website that accepts payments for both issuing authorities.

Whilst the provision of a certified copy of a bank statement would most probably reflect a payment made via EFT, it definitely **will not** reflect any payments made on internet sites like PayCity, etc. even if the site used to make payment is the Agency’s own site and payment gateway.

This occurs because multiple infringement notices may be added to the “basket” and paid as a singular credit card transaction.

Provision should be made for presentation of a receipt from approved and appointed internet penalty payment sites.

Furthermore, the requirement that a certified bank statement must be provided with respect to electronic funds transfer (EFT) is unreasonably obstructive in that it will require that a person who has paid will have to go to the additional trouble **and expense** in order to comply with it since commercial banks charge their clients for such statements.

Every other institution in South Africa, including other quasi-governmental institutions like Eskom, City Councils, etc. accept EFT proof of payment documents generated by registered South African Banks and it is unreasonable of the Agency not to do likewise. This form of payment can further be verified by checking the AARTO banking account after it has occurred and this is not a significantly burdensome task.

We would therefore recommend that receipts from internet sites, as well as internet banking proof of payment documents be included in the list of acceptable forms of proof of payment.

### **Regulation 6(5)**

This Regulation deals with application for the revocation of an enforcement order and states “The Agency must acknowledge receipt of such application on form AARTO 05e as contemplated in



Regulation 22(3) and must, within 21 days from the date of receipt of the application, notify the infringer of the result of the application on form AARTO 15 by one of the same methods.”

The existence of an enforcement order is one of the **most serious** situations that can arise with respect to the serious consequences and prejudices for the alleged infringer that it carries.

The fact that an enforcement order can automatically prohibit and prevent the issue of a driving licence, professional driving permit and licence disc/s can have devastating consequences on the person or entity on which it exists. By denying any or all of these, the person or entity involved effectively has their driving licence, professional driving permit or vehicle suspended from renewal or use if it is due for renewal while the enforcement order exists.

The timeframe within which the Agency must notify the infringer of the result of the application on form AARTO 15 should either be shortened significantly, to no more than 24 hours, or the provision for withholding these documents must be removed entirely from the Act and its functionality removed from eNatIS.

It is unreasonable in the extreme that the Agency may be allowed to continue to prejudice the alleged infringer for any period of time, let alone 21 days once an enforcement order has been satisfied.

### **Regulation 7(1)**

This Regulation states: “Subject to section 21 (1) of the Act, the Registrar may issue a warrant, after a period of 14 days has elapsed after expiry of the period contemplated in the Act, on form AARTO 24.”

It is noted that the wording “*which period shall be calculated from the first day after the expiry of a period referred to in section 20(3)(a) of the Act has elapsed,*” has been removed and disposing of this entire provision is not in the interests of providing clarity as to when an enforcement order must be generated.

Once again we reference the strict timeframes that the Act and Regulations imposes on an alleged infringer and have to question why these would be intentionally circumvented by the removal of time limitations from the Regulations.

### **Regulation 7(2)**

This Regulation states “The warrant issued in terms of sub-regulation (1) must be executed after 07h00 and before 21h00, unless otherwise authorized by the Registrar.”

What it does not state is the timeframe within which it must be executed. The RTMC has stated on its website that this will happen 7 days from the issue of the warrant using this timeline:

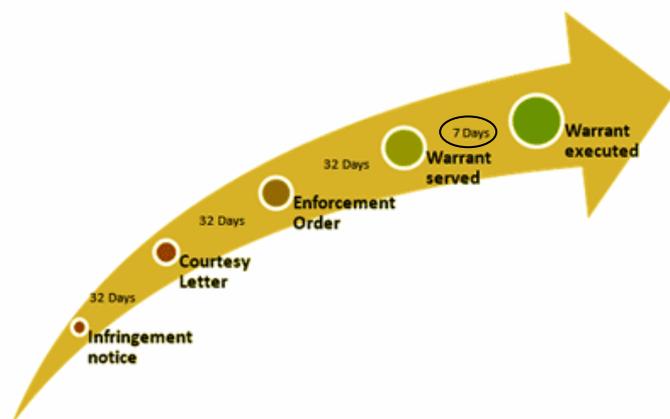


Image from former [www.aartosa.co.za](http://www.aartosa.co.za)

We would like clarity to be provided as to where the RTMC gets its information from that it is conveying to the public since we cannot find the 7 day period mentioned anywhere in the Act or the past or proposed Regulations. Yes, the infringer in question does get 7 days to pay, however this does not mean that the warrant will be executed 7 days after its issue.

It may however be worthwhile to provide some form of clarity as to when the execution of a warrant of execution is contemplated to take place, despite the Act's stated intention to circumvent the laws of prescription which was unnecessary in the first place, given that a 30 year period for debt to government exists under these laws.

#### **Regulation 7(4)**

This Regulation states: "If an infringer pays the penalty, fees and all costs relating to the execution of a warrant, after the warrant has been executed, the Agency must return the documents seized in terms of section 21(1) of the Act and remove any equipment that immobilized the motor vehicle contemplated in section 21 (1 )(e) thereof."

It is all very well that the sub-regulation states that this must be done, however it is unacceptable that it does not state within what timeframe it must be done. Once again we would recommend that this period should be defined and suggest that this should be set as being **within 24 hours**, so as to not unduly continue to prejudice the alleged infringer.

Most of provisions of section 21(1) of the Act are unreasonable in the extreme once a warrant has been executed by the Sheriff since it unduly prejudices the alleged infringer **after** the alleged infringer's "debt" has been settled by the Sheriff seizing movable property from the alleged infringer.

Why it would be deemed as necessary to disable the infringer's vehicle and seize documents when goods are being seized to satisfy the "debt" is completely beyond us.

Furthermore section 21(e) of the primary Act makes mention of disabling the alleged infringer's vehicle but it makes no reference as to **how** this should be done. The Regulations similarly issue no instruction or Regulation of how this should be done.



Different Sheriffs will adopt different methodologies to disable vehicles and this might include physically damaging vehicles, which will be a consequence of the Act and Regulations' failure to clearly define this action.

The seizure of the alleged infringer's driving licence and/or professional driving permit at any time will further prejudice the alleged infringer since he or she will not be able to legally drive **any** motor vehicle and will therefore be faced with the choice of either breaking the law or being unable to earn a living to service their "debts" with the Agency.

A "reasonable person" would most certainly choose to break the law in order to earn a living rather than face another visit by the Sheriff and his "red ants", considering this the lesser of two evils from their own perspective.

### **Regulation 7(5)**

This sub-regulation reads: "If the execution of the warrant produces no movable property to seize and sell, the procedures set out in section 22(1)(b) of the Act must be followed and the issuing authority must prepare a summons in terms of that subsection within 30 days after being notified accordingly by the sheriff."

Clearly the provisions of the previous Regulation would put the infringer in a position that they would not be able to appear in court on the summons in terms of the Criminal Procedure Act because their vehicle would have been disabled and their driving licence seized, unless they were to either further break the law or find another way to get to court.

That is of course unless it is the intention of the Agency to also issue a warrant of arrest at the same time in which case they would be able to secure the accused's attendance in court.

### **Regulation 9(1) and (2)**

Regulation 9(1) reads: "The penalty contemplated in section 29(b) of the Act, which is payable in respect of an infringement mentioned in columns 3 and 4 of Schedule 3, is calculated in accordance with the penalty units set out against it in column 5 of Schedule 3, where each unit has a monetary value as prescribed."

Regulation 9(2) reads: "The rand value payable in respect of a penalty for an infringement mentioned in columns 3 and 4 of Schedule 3, calculated in accordance with sub-regulation (1), is set out against it in column 7 of that Schedule."

The current Regulation 10(2) states: "The penalty contemplated in section 29(b) of the Act, which is payable in respect of an infringement mentioned in columns 3 and 4 of Schedule 3 is calculated in accordance with the penalty units set out against it in column 6 of Schedule 3, where each unit has a monetary value as described in paragraph (a) of Schedule 2."



It is noted that Schedule 2 has been omitted entirely in the draft contained in Government Gazette 34208 and that the fees as are now to be prescribed by the Minister and to be published in the Government Gazette which does not accompany Government Gazette 34208.

The entire schedule of penalties in this draft is incorrectly tabulated in that an additional R40 now appears on each and every penalty amount as a Rand value in column 7. The monetary value prescribed with respect to penalty units in Schedule 2 which now appears to be omitted is R50 per penalty unit.

If one takes the lowest penalty amount according to this new schedule – R290 – and divides it by the penalty units applicable, which is 5, then this would equate to R58 per penalty unit. If one then does this on the highest penalty Rand value of R1540, which has 30 penalty units applicable to it, then a single penalty unit equates to R51.33.

Nowhere in the proposed amendments to the Regulations is it mentioned that there will be variable units applicable to penalty units and nowhere in the proposed Regulations is any mention made of the additional R40 that has now appeared in column 7 of Schedule 3.

It would appear from Regulation 12 of the proposed Regulations that this R40 amount, at full value is intended to be some form of “receiving fee” to be paid to the party that accepts payment but this assumption is being made in a vacuum, given that there is no accompanying Government Gazette that has been made reference to so as to confirm this.

### **Regulation 9(3)**

This Regulation states: “The penalty in the case of an infringer who or which is-

- (a) a juristic person that is not required to be registered as the operator of the vehicle in question;
- (b) the holder of a cross-border road transport permit contemplated in the Cross-border Road Transport Act, 1998 (Act No. 4 of 1998);
- (c) the holder of a foreign driving licence;
- (d) not the holder of a driving licence and is a South African citizen or holds temporary or permanent residency in South Africa; or
- (e) the holder of a learner’s licence,

will be calculated on the basis of three times the units indicated in column 5 of Schedule 3 against the infringement concerned mentioned in columns 3 and 4 of that Schedule, but that infringer will not incur any demerit points.”

We once again note that despite the fact that Schedule 3 makes provision to issue an infringement notice with respect to a juristic person that fails to nominate the driver in control of a vehicle, it is once again being elected to rather make allowance for triple income to be provided to issuing authorities and the Agency alike with respect to juristic persons and this is now being extended to learner drivers and foreign driving licence holders.

### ***Juristic persons and cross-border road transport permit holders***

The provision with respect to juristic persons is nonsensical, due to the fact that by accepting payment of a three times fine penalty value, the Regulations are effectively granting proxies permission to fail to nominate drivers of their vehicles and circumvent the entire reasoning behind a points-demerit system.

Having done so, it then goes on to provide the opportunity for the issuing authority to issue a further infringement notice with respect to charge code 5700 “Owner/ Operator allowed a person to drive without obtaining his/her full particulars - Sect. 17(5) AARTO Act”, which amount of R790 will also presumably be tripled when it is issued to that same juristic person.

Section 17(5) of the AARTO Act reads “The owner or operator of a motor vehicle who permits any person to drive such vehicle or otherwise to exercise any control over such vehicle, without having ascertained the full names, acceptable identification and residential and postal address of such person is guilty of an offence and liable upon conviction to a fine or imprisonment for a period not exceeding one year or to both a fine and such imprisonment.”

Whilst the section does not say “and any person who fails to nominate the driver in control of a vehicle at a given time”, charge code 5700 is pointless if it is not going to be applied in this manner.

If it is the contention of the RTMC and/or The Department of Transport that this provision was not intended to deal with nominations, then it stands to reason that every person who wishes to simply pay fines at whatever monetary value and not have demerit points issued against their driving licences may do so, as long as they simply register their vehicles in the name of a juristic person.

Whilst the triple penalty amount *may possibly* be seen as a deterrent to do so, it is not beyond reason that paying a tripled penalty amount may be regarded as a much better option than having a driving licence suspended, thus reinforcing the belief that “the rich will not be affected by AARTO”.

Additionally, many of the proxies and representatives of these juristic persons do not even have a driving licence on which you may impose the demerit points applicable to charge code 5700, so they too do not risk losing their licences, given the fact that they do not have one to lose in the first place.

Experience has taught us already that the vast majority of companies are simply paying the tripled fine amount and deducting this from their drivers’ salaries at month end in accordance with questionable contracts of employment that they sign with them.

There is no reason whatsoever to believe that this situation will change once the points-demerit system comes into play. In fact, quite the opposite – it will most certainly lead to a greater amount of people registering their vehicles in the name of a juristic person and then simply paying the higher fine amount to ensure that demerit points are not allocated against driving licence holders responsible for these infringements.



With respect to cross-border road transport permit holders, we cannot for one second understand why it would be deemed as acceptable that holders of South African driving licences who are also or work for cross-border road transport permit holders should be allowed to not be nominated as the driver in control of a vehicle involved in committing an infringement.

### ***Foreign driving licence holders***

We note with interest that this proposed amendment has been included now, **after** the JMPD have already been unlawfully fining foreign driving licence holders triple the penalty amount for almost 12 months so far.

This amendment furthermore seems to suggest that the Department of Transport, RTMC, etc., despite claiming to have excellent working relationships with other countries that impose a points-demerit system have no such relationships. If they did, then surely international cooperation under the United Nations “decade of action for road safety” would be possible and demerit points would be able to be applied on foreign driving licences by the likes of the DLTC in the UK, etc. by international cooperation.

The previous provision of disallowing the discount with respect to foreign driving licence holders already advantaged them over South African driving licence holders, when such people are resident in South Africa, despite the fact that such people hold traffic register certificates.

Currently, the JMPD applies this provision to foreign ID holders as well as foreign driving licence holders, because the eNatIS system does not differentiate between the two.

Whilst we acknowledge the fact that there are other countries which do not have the points-demerit system, any foreign driving licence holder wishing to register a vehicle South Africa is required to obtain a traffic register certificate and demerit points could easily be applied on these through eNatIS.

Instead it seems that the decision has been taken to target holders of foreign driving licences as a viable revenue stream, thereby further creating the impression that South Africa is not a foreigner-friendly country whilst once again negating the entire purpose of the points-demerit system.

It is our standpoint that foreign driving licence holders who are not in possession of a traffic register certificate and those who drive on international driving licences and come from countries where there is no points-demerit system in play should *possibly* be charged double the penalty amount and have the discount disallowed, but we fail to see how going overboard with fine amounts can possibly be seen as a solution.

Similarly, we would recommend that all border posts in South Africa linked to the eNatIS system disallow those who have incurred these infringement notices from leaving the country without settling their infringement notices prior to returning home. Of course this would also require the establishment of courts at these border posts so that an alleged infringer may exercise their right to be presumed innocent until proven guilty unless they want to simply admit guilt and pay.

This would be necessary given the fact that it is highly unlikely that the Agency will instruct a Sherriff to proceed outside of South Africa's borders, where he/she would have no jurisdiction to execute such a warrant issued by the Agency.

On the practical side, is it to be understood that each traffic officer is either going to have to have excellent arithmetic skills or is going to be issued with a calculator as standard equipment?

***Persons who do not hold a valid driving licence***

The National Road Traffic Act and Schedule 3 of the AARTO Regulations already make provision for penalising persons who do not hold a valid driving licence however; this has long been a bone of contention from our side as we hold that it is completely illogical for AARTO to target legitimate driving licence holders whilst giving permission to persons who do not have driving licences to drive vehicles – so long as they are prepared to pay a fine – **IF** they get caught.

Charge codes 1702 through 1709 deal with this so-called “major infringement”, but quite frankly this should be classified as an offence if one is in any way serious about tackling road crashes and fatalities in our country. Surely an unlicensed driver is significantly more susceptible to crashing a vehicle than a properly trained and/or licenced driver?

Regulation 9(3)(d) also makes this provision applicable only to South African citizens and residence permit holders. In other words, it excludes foreigners who drive with no valid driving licence at all.

Column 7 of Schedule 3 sets the fine amount for this charge code as being R1290, which is presumably the singular value of the fine and it would appear that this is the sum total of the penalty as tripling it would not be applicable.

The only logical thing to do with this proposed provision is scrap it in its entirety and re-classify this as an offence.

Additionally, it is illogical that a person who has no driving licence or PrDP for the class of vehicle they are operating should be allowed to be issued with an infringement notice and then allowed to continue committing the self-same offence for which they have been cited.

It completely defies logic that AARTO should be targeting only valid driving licence holders whilst effectively allowing unlicensed drivers to operate motor vehicles so long as they pay triple the fine amount.

What is even more disturbing about this provision is that there is **no further consequence** for a person driving a motor vehicle with no valid driving licence. In real world, practical application, this means that anyone wishing to be allowed to drive a motor vehicle or worse a public transport motor vehicle like a minibus taxi need only not bother to get a driving licence and if required, PrDP and they will be able to drive with impunity, so long as they pay fines **if they get caught!**



### ***Learner drivers***

Once again the focus on making as much money as possible is coming into what is *supposed* to be a system that “saves lives”. Fining learner drivers, who are typically people who are yet to earn any salary at all (unemployed), if indeed they can get a job in our country, is draconian and greedy once again.

We have previously commented that learner drivers should not be exempt from incurring demerit points on their learner’s licenses and our standpoint remains the same on this issue.

In fact it is our strong recommendation that the demerit points that may be allocated for a learner driver should be reduced to half of that applicable to a fully licensed driver, as it is in countries like the United Kingdom.

Learner licences, just like a fully-fledged driving licences are registered on eNatIS and there is no reason whatsoever why demerit points cannot be applied to them and even less reason why a tripled penalty amount should be applied.

### ***Common points about triple monetary penalties***

Penalty amounts under AARTO cannot be described as being in insignificant amounts of money under any circumstances. The second that these amounts get tripled; they are migrated from being expensive to being completely **outrageous**.

Functionality in eNatIS may not exist for the imposition of demerit points on such things as learner licences and traffic register certificates but if it does not this can merely be described yet another oversight on the part of the Department of Transport and/or RTMC/RTIA/Tasima in its specification of what eNatIS is supposed to provide with respect to demerit-points.

There is **no reason** why this functionality should and cannot be built in and it seems to us that the easy route out is being chosen instead of opting for an effective system.

The fact that the implementers of AARTO seem to want to have their cake and eat it by raking in tripled penalty amounts and then issuing a further infringement notice under charge code 5700 further goes to show that there is an incredible lust for massive revenue out of AARTO and that the points-demerit system and indeed, road safety has taken a back seat.

By perpetuating this through legislation, the Department of Transport is nullifying the entire intention behind a points-demerit system and facilitating greed and the opportunity for corrupt activities to be legitimised by legislation.

Somewhere along the line the intention of the implementation of the AARTO Act seems to have been completely lost sight of.

We must all remember that the stated intention of the Act has always been that of saving lives; however its real world implementation and continued intent most certainly seems to be one of making money and nothing else.

It is our belief that there are significantly more effective ways and means of achieving the objectives of the Act instead of creating the opportunity for people who have money to avoid losing their driving licences and/or the opportunity for corrupt law enforcement officials to enrich themselves due to the outrageous amounts of money that government wants as a fine, where a bribe of R1000 would be considered a “bargain” by an infringer.

Whilst the effects of the points-demerit system have not been felt yet it must always be remembered that when they are, and losing your driving licence becomes a real possibility, there is going to be a significant move towards becoming classified as a person who cannot lose their driving licence or towards paying bribes.

Having traffic officers “who are ‘unbribeable’ because you do not know them” is a nonsensical argument and **corruption will spiral completely out of control** the second that AARTO is rolled out nationwide and the points-demerit system comes into play.

As the situation stands at the moment, the vast majority of companies pay traffic fines on behalf of employees and then deduct them from their salaries. Whilst a few companies have indeed used the process of an AARTO 07 driver nomination form to correctly nominate the driver, the vast majority still engage in the practice of paying fines and then deducting them from their employees.

Nowhere in the Act or Regulations does it state that it is the absolute responsibility of the registered owner to nominate the driver of their vehicle and there can be no doubt that it should.

We would strongly recommend that a Regulation be included in this latest draft that legislates the following:

*“Any person who is the proxy for a juristic person or the holder of a cross-border operator’s permit who fails to nominate the driver who was in control of a motor vehicle at the time that an infringement for which an AARTO 03 infringement notice was issued shall:*

- (1) Be liable to an additional fine amount equivalent that which appears on the infringement notice issued to the juristic person and*
- (2) Have the demerit points applicable to that infringement notice imposed on their own driving licence*
  - a. except where such proxy does not have a valid driving licence, in which case the penalty amount contemplated in (2) shall be doubled and*
  - b. should the proxy commit this infringement on more than three occasions, criminal charges of defeating the ends of justice will be brought against that proxy.”*

This would effectively give you the much sought after three times penalty that you are chasing, plus an additional R40, without allowing the opportunity for juristic persons to allow drivers of their vehicles to avoid having demerit points applied to their licences.

### **Regulation 10**

Regulation 10(2) states: “The discount amount deductible in respect of an infringement mentioned in columns 3 and 4 of Schedule 3 is set out against it in column 8 of Schedule 3.”

This should read: “The discount amount deductible **from the penalty amount** in respect of an infringement mentioned in columns 3 and 4 of Schedule 3 is set out against it in column 8 of Schedule 3.”

Regulation 10(3) states: “The discounted amount payable in respect of an infringement where payment is made within 32 days after the infringement notice was served, is set out in column 9 of Schedule 3.”

This should read: “The discounted **penalty** amount payable in respect of an infringement where payment is made within 32 days after the infringement notice was served, is set out in column 9 of Schedule 3.”

Regulation 10(4) states: “If a representation contemplated in section 18 of the Act is received by the Agency within the period prescribed in section 17(1)(f) of the Act, and the representations are unsuccessful, the infringer is entitled to the discount contemplated in section 17(1)(d) of the Act if payment of the discounted amount is made within 10 days after the notification of the results of such representation or application has been served on the infringer.”

This should read: “If a representation contemplated in section 18 of the Act is received by the Agency within the period prescribed in section 17(1)(f) of the Act, and the representation **is unsuccessful**, the infringer is entitled to the discount contemplated in section 17(1)(d) of the Act if payment of the discounted amount is made within 10 days after the notification of the results of such representation or application has been served on the infringer.”

Regulation 10(5) states: “If a representation contemplated in section 18 of the Act is received by the Agency within the period prescribed in section 17(1)(f) of the Act, and the representations on the main charge is successful and the infringer admits guilt on the alternative charge or other charges or the representations on the alternative charge or charges is unsuccessful, the infringer is entitled to the discount contemplated in section 17(1)(d) of the Act if payment of the discounted amount is made within 10 days after the notification of the results of such representation or application has been served on the infringer.”

This should read: “If a representation contemplated in section 18 of the Act is received by the Agency within the period prescribed in section 17(1)(f) of the Act, and the representations on the main charge is **successful** and the infringer admits guilt on the alternative charge or other charges or the representations on the alternative charge or charges is **unsuccessful**, the infringer is entitled



to the discount contemplated in section 17(1)(d) of the Act if payment of the discounted amount is made within 10 days after the notification of the results of such representation or application has been served on the infringer.”

Regulation 10(6) states: “If an arrangement for payment of the penalty and fees in instalments are made, such payment will be made in pre determined instalments, in which case the infringer, is not entitled to a discount and the full penalty will be payable.”

This should read: “If an arrangement for payment of the penalty and fees in instalments **is** made, such payment will be made in **pre-determined** instalments, in which case the infringer, is not entitled to a discount and the full **penalty** will be payable.”

It is noted that the 50% discount contemplated is applicable to both, the penalty amount and the R40 fee.

### **Regulation 11**

Regulation 11(1) states: “The Minister may prescribe fees contemplated in section 34(d) of the Act by Notice in the Government Gazette.”

The previous Regulation 12(1) stated: “The fees which may be charged for any document, order or action required to be issued, made or performed as contemplated in section 34 (d) of the Act, are set out in paragraph (c) of Schedule 2.”

Is it now the intent of the Regulations to dispose of Schedule 2 in its entirety since no reference to it is being made in the proposed Regulations? If so, then we have to come back to Regulation 8 and ask how it is that the Rand value unit amount previously described in paragraph (a) is now to be determined since this was a **penalty amount and not a fee** and the new penalties seem to have an extra R40 on each.

In addition, we need to ask where the prescribed fees have been published in the Government Gazette for comment as there is no reference to this anywhere and Schedule 2 is missing entirely from Government Gazette 34208?

### **Regulation 12**

Regulation 12(1) states: “The manner in which payment of any penalty or fee contemplated by the Act may be made is by providing details of the infringement and paying the amount due.”

This is impractical and impossible to achieve. One can only imagine the truncation that will take place on a bank deposit slip where to occur if anyone followed this Regulation by inserting “Removed a vehicle which was involved in an accident from the scene of such accident without the permission of the owner, driver or operator of such vehicle or the person who may lawfully take possession of the vehicle.” instead of 02-4046-000000000-0.

This Regulation should therefore be changed to read: “The manner in which payment of any penalty or fee contemplated by the Act may be made is by providing details of the infringement **notice number** and paying the amount due.”

Regulation 12(5) states: “Post-dated bank guaranteed cheques are not acceptable.”

We point out that Banks do not issue post-dated bank guaranteed cheques and those which are guaranteed by the issuer linking them with a credit card may also not be post-dated in any case.

Regulation 12(6) states: “If the infringer provides an incorrect number on the deposit slip or electronic transfer which results in a courtesy letter being issued, the infringer must pay the extra fees attached to the courtesy letter.”

This Regulation should read: “If the infringer provides an incorrect **infringement notice** number on the deposit slip or electronic transfer which results in a courtesy letter being issued, the infringer must pay the **applicable fee associated with** the courtesy letter, **provided that the infringer shall not forfeit the discount applicable should the infringement notice have been paid within the discount period.**”

Regulation 12(7) states: “Where a payment is made in terms of sub-regulation (1) which amounts to a partial payment, or where a cheque or transfer is dishonoured or not completed, or where application is made to pay in instalments, this will result in demerit points being recorded against the infringer.”

This Regulation intimates that demerit points **will not** be recorded against an infringer who makes payment in full or where a cheque is honoured and this is untrue. It further perpetuates the commonly held belief that early settlement will result in the demerit-points not being applied to the driving licences of “rich people”, like is held by organisations such as COSATU, etc.

We would recommend that this Regulation be amended as follows:

“Demerit-points will, immediately on the payment of an infringement notice, dishonouring of a cheque or application to pay in instalments be recorded against the driving licence of the infringer concerned.”

Regulation 12(8) states: “Where payment is made to an issuing authority that is the issuing authority under whose authority the infringement notice was issued within 32 days from the date on which the infringement notice was served on the infringer, the issuing authority is entitled to the amounts as contemplated in Regulation 11(1).”

Section 32(1) of the AARTO Amendment Act makes reference to the Agency receiving payments and paying the issuing authority, not the other way around when it speaks of apportionment.

This says: “Any penalty received by the agency in terms of this Act must be paid over monthly, after deduction of an amount equal to the discount contemplated in section 17( 1)(d), to the issuing authority under whose authority the infringement notice was issued, and if it was not issued under

the authority of such authority, to the issuing authority within whose area of jurisdiction the infringement was committed.

(2) Any fine received in respect of any conviction under the national and provincial laws relating to road traffic, must be paid over monthly to the issuing authority under whose authority the infringement notice was issued, and if it was not issued under the authority of such authority, to the issuing authority within whose area of jurisdiction the infringement was committed.”

Notwithstanding that compliance with this section of the Act has only been partially true of the TMPD during the initial implementation of the Act, we have not seen any amendments to this section of the Act that suggest that any issuing authority, amongst other parties will now be deemed to be a collection entity for the Agency.

The Regulations therefore clash with the Act in that they provide mechanisms for the issuing authorities to directly collect revenue themselves.

Regulation 11(1) deals with the **fees** prescribed by the Minister in the Government Gazette and this brings into question the additional R40 that has somehow crept into Column 7 of Schedule 3. With the discount applied, this amount is R20 which is presumably the “receiving fee” referenced in proposed Regulation 12(10) and 12(11).

This is not clarified by the proposed Regulation 11 as it only deals with the **fees** and **not** the prescribed penalty Rand value which would then be multiplied by the penalty units in column 5 of Schedule 3.

Regulation 12(9) states: “Where payment is made to an issuing authority that is the issuing authority under whose authority the infringement notice was issued later than 32 days from the date on which the infringement notice was served on the infringer, the issuing authority is entitled to the amounts as contemplated in Regulation 11 (1) and must notify the Agency of the payment and that a courtesy letter should not be issued to such infringer if one has not yet been issued.”

Once again, clarity on this issue is unavailable due to us not having anything to cross-reference with respect to the proposed fees. It can only be assumed that this Regulation once again deals with some form of “receiving fee” as a penalty and a fee are not the same thing.

Regulation 12(10) reads: “Where payment is made to a receiving entity that is not the issuing authority under whose authority the infringement notice was issued, within 32 days from the date on which the infringement notice was served on the infringer, that receiving authority must-

(a) keep the receiving fee calculated as contemplated in Regulation 11 (1); and

(b) deposit the penalty paid, less that receiving fee, into the AARTO bank account for transfer to the issuing authority within whose area of jurisdiction the infringement was committed in terms of section 32 of the Act.”

The main part of this sub-regulation makes reference to a “receiving entity” and then to “that receiving authority”. The receiving entity is either an entity or an authority and the mixed terminology does not clarify this.

Regulation 12(11) Once again makes reference in the main part to a “receiving entity” and then to “that receiving authority”. This too should be rectified. **Only a “receiving entity” is defined in the definitions of the Regulations** and therefore, this common and defined terminology should be used throughout.

#### **Regulation 14**

Regulation 14(2) states, *inter alia*: “The Agency must acknowledge receipt of such arrangement on form AARTO 06 and...”

What it does not state is within what timeframe from receiving an AARTO 04 the Agency must acknowledge receipt of such arrangement on form AARTO 06. It must be borne in mind that the person that would make an application to pay an infringement notice in instalments would be the type of person who is battling financially in the first place.

The AARTO 04 form openly states on it that should an infringer not receive a reply within 21 days, they must resubmit the AARTO 04 form. In doing so it is highly likely that the infringement notice in question all be escalated to another step in the AARTO process, thereby increasing the amount of credit that must be applied for.

On the topic of credit, is the Department of Transport aware of the existence of a piece of legislation called the National Credit Act? Notwithstanding the fact that the Agency is **not** a registered credit provider, it is unlawful for anyone to provide credit facilities to a person who is under debt review, etc.

The Regulations, provisions and mechanisms provided for the facility to pay infringement notices in instalments therefore has an inbuilt lack of due care for the personal circumstances of the infringer who wishes to try and make a good on their “debt” with the Agency and the Agency seems to have an inbuilt mechanism to increase the amount of money that would have to be paid by the alleged infringer by removing the discount.

If this provision is going to remain, then it is going to have to be better designed to not violate other legislation and also not to unduly prejudice a person who wishes to “*take advantage*” of this facility due to being a pensioner, poor or “in debt up to their eyeballs”.

Perhaps one might also want to look at the fact that a fine of R1500 can only be paid over a period of six months. When one takes into account the fact that a significant portion of people who make application to pay in instalments will be people who receive a pension, it is unreasonable of the Regulations to turn around and say that such a person should pay a minimum of R250 a month to the Agency, which amount represents more than 25% of a State pension for a single infringement notice.

It also has to be remembered that in such cases where people are caught by camera, it is often commonplace for people to incur several, if not tens of these infringement notices prior to so much as becoming aware of the fact that the first one was incurred. This is a common problem that leads to untenable amounts of money being “owed” to the issuing authority and it is entirely by design on the part of the issuing authority.

Regulation 14(2)(b) states: “must notify the infringer by registered mail of-

(i) confirmation of the arrangement to pay in instalments on form AARTO 06; and

(ii) the fact that the relevant demerit points have been recorded against his or her name in the NCR in respect of the infringement in question on form AARTO 19.

Once again, a Regulation does not make any reference as to when such documents must be sent to the alleged infringer. There is therefore an open-ended timeframe for the Agency to consider applications to pay in instalments and progression to other stages therefore becomes a real factor.

Furthermore, nowhere is it recorded on what date the first payment must be made with respect to a successful application to pay in instalments. Whilst the Regulations are quite clear that payments must be made on or before the first calendar day of the month, it may be prudent to provide this information on the AARTO 06 form.

Regulation 14 states in its main part “If the infringer fails to pay, or makes an insufficient payment of an instalment or the cheque used for payment of that instalment is dishonoured as contemplated in section 19B(2) of the Act the Agency must notify the infringer on form AARTO 16 that-“

No such section as “19B(2)” of the AARTO Act exists and section 19 of the AARTO Act deals with courtesy letters, which has little or no relevance to payment in instalments. Regulation 19 of the proposed Regulations similarly does not have a “19(B)(2)” in it and Regulation 19 deals with the National Contraventions Register, so that too is irrelevant.

### **Regulation 15**

This Regulation appears to have followed an incorrect sub-section numbering sequence when viewed with the rest of the Regulations.

It is recommended that 15(a) should become 15(1) and that 15(b) should become 15(1), 15(2) etc. It is also recommended that the other sub-regulations thereto should be similarly subjected to a decrease in indent so as to follow the same numbering protocol as the rest of the Regulations.

### **Regulation 16**

Regulation 16(2) states: “The Agency must acknowledge receipt of such an application for a refund on form AARTO 05f.”

Regulation 16(3) then goes on to state: “The Agency must consider the application and either refund the penalties and fees or refuse the refund, and must notify the applicant of the result of the application on form AARTO 26.”

This Regulation and its sub-regulations make no reference to **when** any of these actions must take place, nor do they define any finite period within which a refund must take place.

It is all very well that 32 days is allowed to infringers to pay infringement notices, etc. but the Agency must similarly be held accountable with respect to effecting refunds to persons or entities who have “overpaid” and/or two whom it owes refunds. In the absence of this requirement, the Agency may effectively take as long as they like to refund an affected party.

Similarly, in the event that a party who has overpaid is owed a refund, no mention whatsoever of interest payable is made and this is completely opposed to standard practice. If the Agency is to be exempted from paying interest on outstanding amounts then infringers too must be exempted from paying interest to it.

We strongly feel that defined timeframes must be set for each of the processes in this Regulation and that they should be as follows:

“The Agency must acknowledge receipt of such an application for a refund on form AARTO 05f **within 7 days of receipt thereof.**”

“The Agency must consider the application and either refund the penalties and fees due or refuse the refund, **providing valid reasons therefor**, and must notify the applicant of the result of the application on form AARTO 26 **within 14 days from the date on which an AARTO 05f is issued.**”

Obviously, any affected party who is refused a refund will then still have the option of instituting further legal action against the Agency should they feel that they have been unfairly prejudiced.

### **Regulation 17**

Regulation 17(1) states: “If a payment of a penalty or fee contemplated in these Regulations is dishonoured or not credited to the account of the receiving authority for any reason, the receiving entity concerned must notify the Agency in the manner contemplated and the matter must be dealt with in accordance with sub-regulation (2).”

Once again, an undefined entity called a “receiving authority” has been used where this should read “receiving entity”. This sub-regulation also builds in the opportunity for inefficiency on the part of the receiving entity since it makes reference to “the account” instead of the “banking account” of the receiving entity.

This Regulation should therefore read:

“If a payment of a penalty or fee contemplated in these Regulations is dishonoured or not credited to the **banking** account of the receiving entity, **with respect to a payment due by the infringer** for

any reason, the receiving entity concerned must notify the Agency in the manner contemplated and the matter must be dealt with in accordance with sub-regulation (2).”

Regulation 17(2) then states: “The Agency must, after receipt of the notification contemplated in subregulation(1), notify the infringer by registered mail thereof on form AARTO 18 in the manner contemplated in section 19B(1) of the Act.”

We once again point out that there is no such section as “19B(1)” of the AARTO Act.

### **Regulation 18**

Regulation 18(4) states: “Issuing authorities, registering authorities and driving licence testing centres must retain records of all transactions executed by them in terms of the Act in accordance with the directions of the Agency, and records of payments received and receipts issued must be kept until the time of disposal in terms of Regulation 20(5).”

Regulation 20 deals with personal service and Regulation 20(5) makes **no reference** to any timeframes at all. The relevant Regulation is probably intended to be **Regulation 19(5)**, which makes reference to disposal of documents.

### **Regulation 19**

This Regulation deals with the National Contraventions Register (NCR) and how and when such contraventions as are contemplated by the Act and Regulations must be recorded.

For purposes of absolute clarity on the comments that will follow, the following wording appears in Regulation 19(1):

“Detailed information regarding offences and infringements must be recorded onto the NCR as follows:

- (a) Handwritten infringement notices (form AARTO 01 ), infringement notices in respect of unattended vehicles (form AARTO 31) and notices of summonses to be issued (form AARTO 32) must be captured directly onto the NCR within five days from the date of issuing thereof;
- (b) Electronically generated infringement notices for overload offences, infringements recorded at weigh bridges and cases where a computer was used to record any other offences or infringements at the roadside contemplated in form AARTO 02, must be uploaded onto the NCR within four days from the date of issuing thereof; and
- (c) In cases where offences or infringements have been captured by means of a camera, including speed and other moving violations contemplated in form AARTO 03, such offences and infringements must be recorded onto the NCR by submitting an electronic data file within 20 days from the date on which the offence or infringement was recorded.”

This Regulation highlights the assumption that the eNatIS system being used to drive the AARTO process does not possess the functionality that it should. Surely if an infringement notice or other document is captured on eNatIS, the details pertaining thereto should automatically be recorded in the National Contraventions Register?

It has been and currently is the practice of issuing authorities to not capture AARTO 01 or AARTO 31 notices onto eNatIS, or their own systems in the case of the JMPD, for significantly long periods of time and then to do so at a stage way in excess of the five days that is now contemplated by the Regulations. In the case of the TMPD, they also correct incorrect charge codes at the time that these are captured, thereby “legitimising” incorrect AARTO 01 infringement notices and AARTO 31 notices issued by traffic officers.

Practically speaking, the other forms of infringement notices – i.e. those generated by electronic means such as the AARTO 02 and AARTO 03 notices are already electronically captured and should be able to update the NCR on a live basis.

There is also a distinct clash between the 40 days contemplated by Regulation 2(1)(b) and (c) as well as Regulation 2(b) for the issue of an AARTO 03 infringement notice or AARTO 33 and the 20 days contemplated by Regulation 19(1)(c) in that the recording of the offence or infringement by camera and the physical issue of the relevant document therefor are two separate issues.

The recording of the infringement or offence is understood to be the date on which the photograph therefor was taken and the date of issue of the relevant notice is understood to be the date on which the infringement or offence is captured onto eNatIS and the relevant document printed and sent out for service.

Regulation 19(5) states: “Subject to the written authorisation of the National Archivist as contemplated in section 13(2)(a) of the National Archives and Record Service of South Africa Act, 1996, (Act No. 43 of 1996), the Registrar may dispose of any document contemplated in this Chapter after-

- (a) an electronic image has been made of such document; and
- (b) the Agency has certified the authenticity of the electronic image.”

Surely the National Archivist should be the one who certifies the authenticity of an electronic image, given that such image would be as a direct result of the imaging thereof by the Agency itself.

Due to the confusion that has arisen in the past with respect to the term “subject to” being translated, it is our standpoint that this term should be avoided at all costs and, in this particular case be replaced with “only after”.

This will provide 100% clarity that is not open to the interpretation as has been applied by the Chief State Law Advisor and others with respect to the issue of applying three times penalty amounts ahead of the proclamation of the points-demerit system.

If the same logic that has been applied on that issue is applied to this Regulation, the Registrar will be in the position to dispose of anything he or she deems fit without the written permission of the National Archivist.

### **Regulation 20**

This Regulation deals with personal service.

Regulation 20(7) states: “If the person named in the document cannot be found, the document may be served by -

- (a) delivering it at the infringer's place of residence or place of employment or business to a person on the premises at the time of the delivery, being a person apparently over the age of 16 years; or
- (b) affixing the document to a door of such place if there is no person contemplated in paragraph (a) at such place, and for the purposes of this subregulation, when a building other than a hotel, boarding house, hostel or similar residential building, is occupied by more than one person or family, "place of residence" or "place of business" means the portion of the building which is occupied by the person upon whom service is to be effected.”

Whilst this Regulation mostly resembles the requirements for personal service under the Criminal Procedure Act, it is noted that Regulation 20(7)(b) has no similarity with the CPA and in fact circumvents the entire meaning of the phrase “personal service”.

As it is, the CPA is flagrantly violated by a number of process servers who even go so far as posting summonses issued under section 54 of the CPA.

Most residences and business premises for that matter are surrounded by walls and gates etc. and the process server would therefore not have access to a door to such premises unless a gate then gets translated as being a door. This will result in the process server simply placing the document to be served in the post box or worse yet, throwing it into the premises or even into a dustbin.

In addition, most businesses are occupied by employees during daylight hours whilst most residences are occupied at night and therefore it would make sense for a process server to go to one or the other at the most likely time that a presence of people would be most likely.

It is our standpoint that Regulation 20(7)(b) should be deleted in its entirety as it is wide open to abuse, impractical and is of less value than even posting the document via standard mail. Building in a way to lawfully achieve a lack of performance is ludicrous.

### **Regulation 21**

This Regulation states:

“(1) The manner in which an infringer must provide the information contemplated in section 17(1)(f)(v) of the Act, is by submitting a properly completed nomination form AARTO 07 to the issuing authority.



(2) The issuing authority must acknowledge receipt of the nomination form on form AARTO 05b within 14 days of receiving it after verifying that the form was completed properly and in full.”

This Regulation is completely deficient in that it does not amply deal with the issue of nomination of the driver as it should. It describes only what form should be used to make such nomination and only partially what should happen thereafter.

The opportunity to correct these severe deficiencies must be taken now, so as to correct the deficiencies that have been created by this oversight in the past and therefore we would like to submit that sub-regulation (1) may remain as is and then the following amendments should be included in this Regulation:

- (2) The issuing authority must acknowledge receipt of the nomination form **and inform the person who completed it that the infringement notice has been redirected to the nominated driver using** form AARTO 05b within 14 days of receiving it after verifying that the form was completed properly and in full.
- (3) The issuing authority must cancel the original infringement notice and re-issue a new infringement notice to the driver who has been nominated as prescribed.
- (4) Nomination of the driver that was in control of the vehicle in question at the time at which the alleged infringement or offence was committed with respect to vehicles registered in the name of juristic persons is compulsory.
  - (a) Any juristic person who fails to nominate the driver that was in control of the vehicle in question at the time at which the alleged infringement or offence was committed shall be guilty of an offence and upon conviction will be liable to a fine or imprisonment for a period not exceeding six months, or both.
  - (b) Any holder of a cross-border road transportation permit who fails to nominate the driver that was in control of the vehicle in question at the time at which the alleged infringement or offence was committed shall be guilty of an offence and upon conviction will be liable to a fine or imprisonment for a period not exceeding six months, or both.
- (5) Any person who intentionally falsely nominates another person as the driver of a vehicle alleged to have committed an infringement or offence shall be guilty of an offence and upon conviction will be liable to a fine or imprisonment for a period not exceeding six months, or both.
- (6) Any person who is nominated as the driver of a vehicle alleged to have committed an infringement or offence and falsely denies that he or she was the driver at the time shall be guilty of an offence and upon conviction will be liable to a fine or imprisonment for a period not exceeding six months, or both.

By adding the Regulation 21(4) and 21(4)(a) and (b) as suggested above, Regulation 9(3)(a) and (b) become moot points and those Regulations should be deleted.

This would probably also require the modification of AARTO 03 infringement notices issued to juristic persons and cross-border road transportation permit holders, if not requiring an entirely different form to be drafted which would automatically have an AARTO 07 combined in it.

The second option with respect to notices would be far more desirable in that it would easily inform juristic persons that they are obliged to nominate the driver instead of leaving this to the administrative personnel of the juristic entity to be aware of this requirement.

### **Regulation 23**

This Regulation sets out the mechanisms and quantum applicable to demerit points in almost every respect **except** for the reduction of demerit points with respect to driving licence holders. Since this Regulation and its sub-regulations has so eloquently laid out how demerit points will be diminished with respect to operators etc. it should do likewise for natural persons.

It is very interesting to note that, despite having done so in the past, this Regulation no longer makes reference to the exemption of a juristic person or cross-border permit holder in having demerit points applied to their driving licence which is now covered in Regulation 9.

Regulation 23(7) of the proposed Regulations makes provision only for the return of a suspended driving licence or PrDP and **not for the operator card** as is indicated on the form AARTO 23.

The proposed Regulation 23(7) reads: “An application contemplated in section 25(5) of the Act, to the issuing authority to return a person's driving licence or professional driving permit that was handed in, in terms of section 25(3) of the Act, must be submitted on form AARTO 23.” and this is identical to the previously/currently invalid Regulation insofar as it pertains to operator cards.

### **Regulation 26**

Regulation 26 repeals the two previous versions of the Regulations, which is all well and good except for the fact that in doing so there will be mismatches between the Regulations that have been proclaimed as being in force and their replacements under the 2011 Regulations.

### **Regulation 27**

Regulation 27(1) states: “These regulations are called the Administrative Adjudication of Road Traffic Offences Regulations, 2011, and shall, subject to sub-regulation (2), come into operation on the date determined by the Minister by notice in the Government Gazette.”

Regulation 27(2) states: “Regulation 11(1), 25, Schedule 2 and column 6 of Schedule 3, shall come into operation on a date to be determined by the Minister by notice in the Government Gazette.”



Regulation 11(1) states: “The Minister may prescribe fees contemplated in section 34(d) of the Act by Notice in the Government Gazette.” and this appears to replace Schedule 2 with some form of announcement in the Government Gazette.

Schedule 2 is **entirely missing** from Government Gazette 34208 and therefore cannot be commented on.

It stands to reason that Schedule 2 should most certainly have been included since Schedules 1, 3 and 4 have been included and Schedule 2 deals with a number of important elements including the penalty Rand value factor and the fees applicable to each process.

Column 6 of Schedule 3 defines in it the applicable demerit-points that would be applicable for the corresponding infringement or offence and is inextricably linked to Regulation 23, which is **not** mentioned in Regulation 27 at all.

The absence of specific mention of which specific Regulations shall come into effect as per Regulation 27(1) intimates that all Regulations except for those which are specifically defined in Regulation 27(2) will come into operation on the date determined by the Minister.

It therefore stands to reason that on the date on which these Regulations come into operation, the points-demerit system will similarly come into operation – without any way of determining what quantum of points must be applied to a particular infringement or offence.

#### **Comments with respect to Schedule 1 and forms**

It is noted that significant changes have been made and a number of new forms added to the arsenal, however it would appear that two obvious areas have been overlooked entirely.

For example, section 148 of the National Road Traffic Regulations makes provision for the issue of a notice to discontinue use of a vehicle (NTD), thereby declaring it unroadworthy. One would think that this would be a very important element in the AARTO Regulations, given the fact that an unroadworthy vehicle would constitute a specific interest to the Agency.

It is also noted that the AARTO Act and Regulations make provision only for prosecution and makes no provision whatsoever for warnings to be given to the alleged infringers. Ideally one would like to think that we do not live in a “punisher State”, however it would appear that they are only two legitimate options available to a traffic officer who stops and the offender.

One is to let the infringer go with a verbal warning and the other is to issue them with the citation. Of course the third option is to solicit a bribe and quite frankly this option is taken more often than anyone would like to admit.

Verbal warnings are all well and good, if the same traffic officer was to see the same infringer committing the same infringement at some later stage, however what would happen in a situation where a traffic officer instructed an infringer to go and replace a light bulb that had just blown and

that infringer failed to do so and then used the same excuse of it just having blown when they get stopped by someone else had two weeks later?

It is our strong feeling that the AARTO Regulations should make provision for a recordable warning document to be issued to an infringer in cases where it is believable that the infringement that they have committed may have arisen out of circumstances beyond their control.

Light bulbs for example can blow at any time and it is impossible to prove that this occurred any length of time prior to the offender being stopped or that they were aware that it had happened and to simply issue a citation to that infringer at that time is both unfair and a case of using a sledgehammer to kill an ant.

It is noted that Schedule 1 and all of the prescribed forms content therein make reference to one form and not to separate forms with respect to the issuing authority concerned. Hopefully this means that there will no longer be separate forms for separate issuing authorities and this should prevent some of the previous confusion that has been caused by the existence of a form designed specifically for the JMPD and forms designed for other issuing authorities.

We completely understand that the reason behind the two separate types of form in the past were because the JMPD were doing their own thing with respect to the implementation of AARTO, but it is our understanding that all issuing authorities, including the JMPD will be compelled to use the eNatIS system in future.

### ***AARTO 01 form***

It must be noted that with respect to the service of an AARTO 01 infringement notice, the date of service actually takes place when the traffic officer issues the citation to the alleged infringer. However, should the infringer wish to make payment against an AARTO 01 infringement notice within a short period after receiving it, this is not possible by any means of acceptable payment, due to the fact that the infringement notice will not have been captured against the eNatIS system as yet.

The only way to circumvent this effectively would be to have every infringement for which the offender is stopped at the time issued using a computerised system along with the accompanying AARTO 02 infringement notice being issued, however the practicality and affordability of issuing every single traffic officer with a handheld electronic device has proven to be a pipe dream of epic proportion.

The notes on the reverse of the AARTO 01 make reference to the following: "A juristic person (eg company or organisation) who is not an operator and fails to nominate the driver of the vehicle receives no Demerit Points but pays three times the penalty amount."

Firstly, we believe that we have amply pointed out why it is that a juristic person should be compelled to nominate the driver, however under what circumstances does anyone think that an



AARTO 01 would be issued to a juristic person in the first place since it is designed specifically for personal service to the driver in control of that vehicle at the time?

Interestingly, this particular note makes absolutely no reference to the tripled amounts as contemplated in Regulation 9 of these proposed Regulations with respect to other parties.

### **AARTO 02**

It is noted that this infringement notice does not appear to have a reverse side to it as is shown for an AARTO 01 whereupon notes relating to the infringement are recorded.

### **Notes document**

This document appears to relate to the AARTO 01 infringement notice since it says “I, an authorised officer whose details appear below, hereby confirm by my signature that the original AARTO 01 infringement notice hereof was personally served by me on the identified infringer on the date and at the time and place indicated hereunder and that its content and the options set out in section 17(1)(f) of the Act were explained at the time and that such explanation was to the best of my knowledge understood by the infringer.”

We therefore have to ask if such a document is to exist for an AARTO 02 infringement notice as well. Obviously it should, however, it is also noted that absolutely no reference to any infringement notice number appears on it.

Since no piece of paper has three sides to it, one can only assume that these notes will form part of the reverse side of an infringement notice counterfoil and that the wording will be adjusted to suit the type of infringement notice that has been issued.

### **AARTO 03**

It is noted that nothing much has changed on this form, despite the fact that personal service of this infringement notice is now catered for in the Regulations. This being the fact, an AARTO 03 infringement notice should have provision made on it for the signature of the person on whom it is being served, as well as for the process server to make a return of service.

This will obviously necessitate a separate form to be authored in order to cater for personal service.

On the reverse side, an illegible block appears which presumably still looks like this:

<p>IF UNDELIVERED WITHIN 14 DAYS PLEASE RETURN TO SENDER:</p> <p>AARTO</p> <p>Private Bag X147</p> <p>PRETORIA</p> <p>0001</p> <p>Date of posting :</p>
---



What is not covered anywhere in the Regulations is what will happen if this date of posting remains blank as it has done in both the case of the JMPD and notices issued by the RTMC AARTO unit for the last 11 or so months now.

Surely this is a very important element in determining the date of service where the presumption is held that if an infringement notice has been sent via registered mail and has not been collected prior to ten days elapsing, it will be deemed to have been served 10 days after posting.

What is equally unclear is what this diagram is supposed to depict:

POSTAGE  
LOGO

bar code

The reason that we say this is because of the fact that two different types of barcode that have been observed recently. The first is with respect to a barcode sticker that is generated by the post office and is used for tracking purposes of secure mail items.

The second is a barcode that is simply generated underneath the permit mail mark and is printed by the same printer that prints the infringement notice itself.

This form states under block E of its “important information” section that “A juristic person who is not an operator receives no Demerit Points but pays three times the penalty amount.”

This clause is completely irrelevant and/or deficient and misleading in that:

- (a) The penalty amount that appears on the notice has **already** been multiplied by a factor of three.
- (b) It may lead unsuspecting or unknowing individuals to assume that they must pay three times the penalty value reflected on the face of this document – worst case scenario being R4,620 x 3 which is R13,860.
- (c) We have already extensively covered why a juristic entity **should not** be allowed to circumvent the points-demerit system like this!

We also note that despite **numerous** objections raised by us to the RTMC and RTIA with respect to the wording as shown below, no changes whatsoever have been made to it.

The infringer as identified, while operating the vehicle on a public road at the place and at the time as described above, committed the following infringement(s) as identified by the Charge Code shown in terms of Schedule 3 of the Administrative Adjudication of Road Traffic Offences Regulations, 2008:

The AARTO 33 uses entirely different wording, which is infinitely more appropriate and reads (as amended to fit this set of circumstances) as follows:

“The driver, while operating the identified vehicle on a public road at the place and at the time as described committed an infringement as described below and categorised by the Charge Code shown in terms of Schedule 3 of the Administrative Adjudication of Road Traffic Offences Regulations.”

We also strongly recommend that this form contain the advice **on the infringement notice side of it** to the effect of “If you were not the driver of the vehicle at the time of the alleged infringement, you are advised to complete and submit an AARTO 07 driver nomination form as soon as possible.”

Only once an AARTO 07 form has been processed would the existing wording in fact be valid and therefore it makes sense to change it so as to better describe the contents of the AARTO 03 infringement notice.

#### **AARTO 04**

Clause (b) of part “A” of this form says “I, the particulars of whom are provided under Part C below, hereby apply in terms of section 17(1)(f)(iii) of Act 46 of 1998, to pay the penalty in monthly instalments, particulars of which are provided under Part D at the back.”

Firstly, part D of the form is on the front of this form, not the back as stated. Secondly, part D applies to a motivation by the applicant and makes no reference to the the particulars of monthly instalments.

Clause (c) then goes on to say: “I agree that upon the processing of this application, demerit points will be allocated against the record of my name.” This is not for the infringer to “agree or disagree”, it is something that is contained in the Regulations. This clause should therefore read “**I understand...**”

Clause (d) then goes on to say “I agree that should this application be successful, I am not entitled to any discount and that I have to pay the full penalty amount.” Once again this is not for the infringer to “agree or disagree”, it is something that is contained in the Regulations. This clause should therefore read “**I understand...**”

On the reverse of the form, part E then goes on to detail the amount for which credit is being asked for. It is noted that the infringer is asked to input the number of instalments that are being requested next to the block provided for this, the words “maximum period allowed is 6 months”.

This is misleading since nowhere on the form does it make any reference to Regulation 14(2)(a)(i) or (ii) which sets out the amount of time that will be allowable with respect to payments in instalments. Of course, most people who will be applying for the facility to pay the infringement notice off in instalments will seek the longest possible time in order to do so and minimize their monthly expenditure.

By actively supplying misinformation on this form, the Agency is automatically creating an opportunity for itself to reject the application to pay in instalments and force the applicant to once again waste money on resubmitting an AARTO 04 form via registered mail, the cost of which is currently R18.50 since most people are not able to avail themselves of the discounts given by the south African Post Office to the Agency.

On the reverse side of the AARTO 04 under “IMPORTANT INFORMATION AND INSTRUCTIONS...” point (k) states “Receipt of the application will be acknowledged within 21 days, failing which it must be re-submitted in the manner above.”



Obviously, if the infringer does not receive an acknowledgement within 21 days then the probability that the infringement notice will escalate to the next stage in the AARTO process is extremely high and therefore, the alleged infringer will have to make application to pay off a higher amount than was originally contemplated on AARTO 04 form.

#### **AARTO 05a**

This form has on it the following wording “Your application will be duly considered; where after you will be notified of the decision in this regard within a period not exceeding 21 days.”

It is interesting to see that this appears on the form, however there is no reference made to any timeframe within the Act or the Regulations. The question also has to be asked whether making application on an AARTO 04 form will halt the AARTO “stopwatch” or not?

Unless the infringer is very lucky, the 21 day period will most certainly lead to an infringement notice or courtesy letter progressing to the next stage and this will have serious implications on the outcome of the application to pay in instalments.

#### **AARTO 06**

We would suggest that along with the other information contained in this form, a field should be added stating the date on which the first payment is due. This is purely to provide clarity to the person who has been granted this credit facility.

#### **AARTO 07**

It is noted that the form still contains under its “IMPORTANT INFORMATION...” section, clause (l), which states: “Receipt of the nomination will be acknowledged within 21 days, failing which it must be re-submitted in the manner above.”

Since there is no provision in the proposed Regulations for this, it stands to reason that this clause should be removed.

#### **AARTO 08**

Various and welcome changes have been made to this form however, despite the provisions of Regulation 3 having changed, the form still contains under its “IMPORTANT INFORMATION...” section, clause (l), which states: “Receipt of the representation will be acknowledged within 21 days, failing which it must be re-submitted in the manner above.”

#### **AARTO 10**

Clause (h) under the “important information...” section of this form says “Receipt of the election will be acknowledged within 21 days, falling which it must be resubmitted in the manner above.”

Since there is no provision in the proposed Regulations for this, it stands to reason that this clause should be removed.



## AARTO 12

This form states under block E of its “IMPORTANT INFORMATION” section that “A juristic person who is not an operator receives no Demerit Points but pays three times the penalty amount.”

This point has already been covered on the AARTO 03 comments and we believe that this should be removed from the document.

## AARTO 13

This document states “You have failed to comply with the conditions of an Infringement Notice and Courtesy Letter served on you, the particulars of which are as follows:” and it then goes on to list the infringement notice particulars **only** as depicted below:

INFRINGEMENT PARTICULARS		
You have failed to comply with the conditions of an Infringement Notice and Courtesy Letter served on you, the particulars of which are as follows:		
Infringement Notice number: «Inf_notice_nr»		
Date of infringement: «Date»	Issuing Authority: « Issuing Authority »	
Charge Code: «Main_charge_code»		
Description: «Main_descrip»		
Type: «Class_1»	Penalty: R «Penalty_1»	Demerit Points: «Points_1»

If this document is going to lay claim to the service of an infringement notice **and** a courtesy letter, then it must record the particulars of both, including the recorded dates of service for both documents.

The document then goes on to say: “The Demerit Points above were recorded against your name in the National Contravention Register. You are hereby ordered to pay the total amount due to the Agency within 32 days from the date of this Enforcement Order.”

Firstly, it seems to have been forgotten that it was you who came up with the way to circumvent the points-demerit system by being liable to pay an amount of three times the penalty amount. This means that this statement would be false in the cases of juristic persons, cross-border permit holders, foreign driving licence holders and learner’s licence holders.

Secondly, nowhere on this document does it inform the infringer of the facts that:

- (a) The renewal of a driving licence will be withheld;
- (b) The renewal of a PrDP will be withheld and
- (c) The renewal of all vehicle licence discs will be withheld.

This information is vitally important to let the infringer know, especially in light of escalating action on their part. It must therefore be included on the form and this can be achieved by removing the misinformation in it and replacing it with truthful information that is of vital relevance.

#### **AARTO 14**

Please refer to our comments with respect to the urgency with which this form should be regarded. We strongly feel that the 21 days period must be shortened **significantly** and the clause that says "Receipt of the application will be acknowledged within 21 days, failing which it must be re-submitted in the manner above." **must** be removed.

#### **AARTO 15**

It is bizarre that the AARTO 15 result of application for the revocation form should go into a vast list of reasons why such an application was in fact successful but should conversely supply **no reason** why it would have been rejected.

If one stops for one second and considers how one would feel if one's application was successful and then how one would feel if it was not, it is not difficult to imagine that an explanation for rejection would be sought rather than an explanation of why one was successful.

This entire form needs to be rethought carefully and then re-drafted.

#### **AARTO 16**

This form says under its "IMPORTANT PROVISIONS AND INFORMATION" section: "NOTE: In terms of Regulation 14(10) no vehicle licence disc in respect of any of your vehicles and no driving licence or professional driving permit will be issued to you until this notification has been complied with."

There is **no Regulation 14(10)** in the proposed Regulations and therefore, **no provision** for the regard of a dishonoured payment as being the equivalent of if an enforcement order exists.

If the deletion of this provision is to be maintained then this statement must be taken out of the form and if it is going to be put back into the Regulations, the appropriate Regulation must be quoted instead.

#### **AARTO 17**

This form too makes reference to a non-existent Regulation – 14(11) which under the **current** Regulation 14(11)(b)(iii)(dd) says "such notification is regarded to be equivalent to an enforcement order, issued under section 20 of the Act." when referring to an AARTO 17.

The relevant note that appears on this form is copied below in its entirety:

"NOTE: Should you not pay within 32 days, in terms of Regulation 14(11) no licence disc in respect of any of your vehicles and no driving licence or professional driving permit will be issued to you, until the outstanding amount has been paid. If you fail to comply with this notification, a Warrant will be issued against you for a sheriff to recover the fees due. The fee for the Warrant and the sheriff's fees will also be payable by you to the Agency.



## **AARTO 18**

The AARTO 18 form makes reference to Regulation 16(2), which in the case of the proposed Regulations deals with refunds. Given the fact that the AARTO 18 is supposed to deal with a dishonoured payment, this is nonsensical.

Below is an image capture of the “NOTE” section on that form:

**NOTE: In terms of regulation 16(2) no licence disc in respect of any of your vehicles and no driving licence or professional driving permit will be issued to you until this notification has been complied with. If you fail to make the payment at the date allowed on this notification, an approved sheriff of the court will be instructed to collect the total amount due from you by seizure and sale of your movable property without any further warning to you, if necessary. You will also be reported to a credit bureau and you may only make cash payments in future.**

The **current** Regulation 16(2) does make reference to “and such notification is regarded as equivalent to an enforcement order, issued under section 20 of the Act.” but this is irrelevant in terms of the proposed Regulations as no such corresponding Regulation is mentioned anywhere.

### ***General matters surrounding the AARTO 16, AARTO 17 and AARTO 18 forms***

Regulations 14 and 15 of the proposed Regulations deal with payments in instalments and late payments respectively. Regulation 16 deals with refunds.

Regulation 14 under the proposed Regulations has 4 sub-regulations to it, several of which have further sub-regulations under them and nowhere is it mentioned that a dishonoured or partial payment and the subsequent issue of an AARTO 16 shall be regarded as being equivalent to an enforcement order.

Regulation 15 of the proposed Regulations deals with the late payment of a penalty, fee or instalment and has two main sub-regulations to it, neither of which make mention of the subsequent issue of an AARTO 17 being regarded as being equivalent to an enforcement order.

Regulation 16 deals solely with refunds and has 3 sub-regulations to it, none of which make mention of the subsequent issue of an AARTO 18 being regarded as being equivalent to an enforcement order.

The threats of setting the sheriff on the infringer in these forms are heavy-handed and unnecessary, given the fact that the Act and Regulations make provision for the issue and execution of a warrant and this is all that needs to be said.

Notwithstanding this fact, the statement “If you fail to comply with this notification, a Warrant will be issued against you for a sheriff to recover the fees due.” is false in that the Sheriff will be instructed on a warrant to proceed for the collection of the relevant fees **and** penalty amount, **not** just the fees as stated in this threat.

## **AARTO 19**

This form has on it, the following:



In terms of the Administrative Adjudication of Road Traffic Offences Act (Act No 46 of 1998), you are informed that the following offence as described in Schedule 3 of the Administrative Adjudication of Road Traffic Offences Regulations, 2008, has been recorded in the National Contraventions Register:

Firstly the vast majority of infringements are termed as **infringements**, not offences and therefore stating that “the following offence...” is misinformation. This section also makes reference to the “Administrative Adjudication of Road Traffic Offences Regulations, 2008” which in terms of the proposed Regulations will be a repealed set of Regulations.

This probably also applies to forms previously discussed in our document and needs to be rectified in all forms.

The form then goes on to say:

Unless the above-mentioned amounts have been fully paid, and an enforcement order has been served, no driving licence, operator card, licence disc or roadworthy certificate will be issued to you or in respect of any of your motor vehicles.  
 If you fail to make payment of the outstanding amounts forthwith, a sheriff of the court will be instructed to collect the amount due from you by seizure and sale of your movable property, if necessary. The sheriff's cost will also be collected from you.  
 In terms of section 26(1)(b) of the Act a person is disqualified from driving or operating a motor vehicle should that person's Demerit Points exceed the maximum number of Demerit Points as contemplated in section 29(d) of the Act.

There is a problem with the wording in this box in that it assumes that the penalty has not been paid. It then goes on to make a further grammatical error, which implies that if an enforcement order has been served the infringer **will be** able to get a renewed document as discussed.

It then goes on to further demand payment and threaten the recipient of the AARTO 19 with actions that would result if the penalty and relevant fees have not in fact been paid, once again assuming that they have not.

Intelligence can be built into forms so as to apply the relevant correct wording applicable to the circumstances under which it is being issued and we would strongly recommend that this be adopted to avoid unnecessary further administration and unwarranted queries, which will and do waste time and money.

#### **AARTO 20**

This document is one of the most misused documents in the AARTO stable of forms and it is likewise extremely confusing to those who receive it.

It must be borne in mind that this is intended to be a **receipt of payment** form, however it seems to double up as what would be called a “statement of account” if it were to be used in a commercial application.

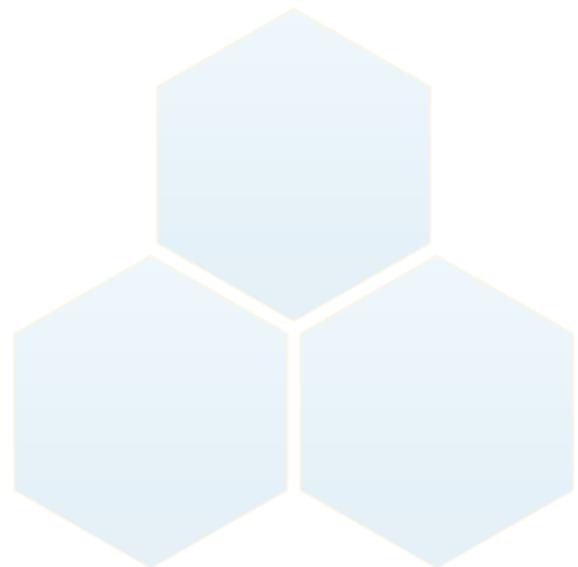
The section below is what causes all of the confusion, due to it not working as intended and this problem appears to be one that is caused by the eNatIS system having deficient or non-existent ERP/accounting capabilities.



PAYMENTS RECEIVED	
Penalty:	R«Penalty_1»
Fee for rejected Representation:	R«Rep_fee»
Fee for Courtesy Letter:	R«Courtesy»
Fee for Enforcement Order:	R«Enf_fee»
Fee for unsuccessful revocation:	R«Rev_fee»
Fee for Warrant:	R«War_fee»
Discount granted:	R«Total»
Total amount paid:	R«Total»
<b>Total amount due:</b>	<b>R«Total»</b>

We would recommend that it be adjusted to look something like this:

PENALTY & FEES PAYMENT RECEIVED	
Penalty Amount (100%):	R
Discount granted:	R
<b>Total penalty payable (subtotal):</b>	<b>R</b>
Fee for rejected Representation:	R
Fee for Enforcement Order	R
Fee for unsuccessful revocation:	R
Fee for Warrant of Execution:	R
<b>Total due:</b>	<b>R</b>
Total received and credited:	(R )
<b>Balance due:</b>	<b>R</b>



The eNatIS system **must be** corrected so as to not provide the incorrect accounting information as it does currently.

**AARTO 21**

This form makes incorrect reference to the Regulations as are proposed.

DISQUALIFICATION
<p>In terms of section 26(1) of the Act, a person is disqualified from driving or operating a motor vehicle should that person's Demerit Points exceed the maximum number of Demerit Points as contemplated in regulation 25. Each Demerit Point above the maximum is multiplied by three to calculate the disqualification period in months. You are in terms of section 25(3)(a) of the Act obliged to forthwith surrender your driving licence, professional driving permit and/or operator card(s), at the Issuing Authority where you reside.</p> <p>Should your driving licence(s), professional driving permit and/or operator card(s) be suspended, you may apply at the Issuing Authority to return the driving licence(s) and/or professional driving permit or the operator card(s) after the disqualification period has expired.</p> <p>In terms of section 27 of the Act, a person's driving licence, professional driving permit and/or operator card(s) will be cancelled, should a person be disqualified to drive or operate a motor vehicle for a third time in respect of Demerit Points incurred above the maximum. Should your driving licence(s), professional driving permit and/or operator card(s) be cancelled, you may re-apply at a driving licence testing centre for a driving licence and/or professional driving permit (PrDP) or at a registering authority for an operator card(s) after the disqualification period has expired.</p> <p><b>NOTE:</b> In terms of section 25(4) of the Act, any person who drives or operates a motor vehicle during his or her disqualification period is guilty of an offence and liable on conviction to a fine or imprisonment or both.</p>



The Regulation that deals with demerit-points under the proposed Regulations is Regulation 23 and Regulation 25 deals with transitional provisions.

This, like many of the incorrectly quoted Regulations in these proposed Regulations came about due to the deletion of the previous (current) Regulation 1 and seemingly, another Regulation somewhere along the line.

## **AARTO 22**

This form is entitled “**NOTIFICATION OF REVOCATION OF SUSPENSIONS AND/OR CANCELLATIONS**”

It is unclear as to when this form is to be used since no mention is made of it in the proposed Regulations and the schedule of AARTO forms refers to section 27 of the AARTO Act which in turn deals with cancellation of documents but not their reinstatement.

The form says right at the top:

**You are hereby informed that the Demerit Points that were recorded against your name on the National Contraventions Register are reduced by the number indicated below.  
If the addition of the Demerit Points resulted in a suspension or cancellation of your driving licence, PrDP or Operator card, this notification serves to record that the suspension or cancellation has been revoked.**

We need to come back to the stated name of this form, being “**NOTIFICATION OF REVOCATION OF SUSPENSIONS AND/OR CANCELLATIONS**” and ask the question as to why paragraph 2 would choose to say “**IF**”. Since the presumed purpose of this form is to inform the recipient that they may now apply for the return of their suspended document; or apply to have a cancelled document issued one would assume that such document would have been suspended or cancelled in the first place.

Obviously, this form does have significant relevance and it should therefore be defined for use in the Regulations.

The form then goes on to say at the bottom:

**NOTE: In terms of section 25(4) of the Act, any person who drives or operates a motor vehicle during his or her disqualification period is guilty of an offence and liable on conviction to a fine or imprisonment or both.**

**In terms of section 26(1) of the Act, a person is disqualified from driving or operating a motor vehicle should that person's Demerit Points exceed the maximum number of Demerit Points as contemplated in section 29(d) of the Act.**

The person concerned would no longer be subject to the disqualification period as such, however would be disqualified from operating a motor vehicle during the period that the relevant document was suspended or cancelled.

Perhaps what this should say is:

**NOTE: You are now allowed to apply for the re-issue of your suspended or cancelled document, but may not operate a motor vehicle until such time as that process has been completed. In the case of a suspended document, you may use the AARTO 23 form to apply for its return and in the case of a cancelled document; you must apply for the new issue of such document.**



## AARTO 23

This form states as follows:

<b>PART A – APPLICATION</b>
I, the particulars of whom are provided under Part B below, hereby apply in terms of section 25(5) of Act 46 of 1998 and Regulation 25(7) for the return of my driving licence card; or professional driving permit; or operator card, the particulars of which are provided under Part C. I have duly signed the Declaration under Part D below.

Regulation 25(5) does not exist under the proposed Regulations.

This is now partially covered by Regulation 23(7) which states “An application contemplated in section 25(5) of the Act, to the issuing authority to return a person's driving licence or professional driving permit that was handed in, in terms of section 25(3) of the Act, must be submitted on form AARTO 23.”

This form is called an “AARTO 23 - APPLICATION FOR RETURN OF SUSPENDED DRIVING LICENCE/ PrDP/**OPERATOR CARD**” and **no provision** is made in the proposed Regulation 23(7) for the return of an operator card. This must obviously be rectified in this Regulation.

## AARTO 24

Clause 3 of the reverse side of the warrant, entitled “instructions to the sheriff” states the following: “Whereas the said infringer failed to comply with the requirements of the Infringement Notice, Courtesy Letter and Enforcement Order served on him or her in terms of the Act; and Whereas the Registrar is satisfied that the mentioned documents were served on the infringer, the penalty and fees have not been paid, there are no pending Representations in the case of minor infringements, the infringer has not elected to be tried in court, and the infringer was at the time of the alleged infringement either the operator, owner or driver of the motor vehicle.”

It must be pointed out that there are instances where a warrant may be issued by the Registrar wherein no Courtesy Letter and Enforcement Order would have been served on the infringer and therefore this entire clause would be untruthful. This would happen in the case of two missed instalments for example.

Clause 5 then goes on to say under its last point:

“seize or deface the licence disc (and operator card, if applicable) of any motor vehicle of which the infringer is the owner (or operator) in terms of section 21(1)(c) (or (d)) of Act No 46 of 1998; or immobilise the motor vehicle of which the infringer is the owner or registered operator in terms of section 21(1)(e) of Act 46 of 1998.”

Should a licence disc and operator card be defaced in any way, the Agency will be incapable of performing the action of returning the documents seized by the Sheriff without instructing the registering authority to reprint (at no charge) the said documents. In practical application, no

licensing authority will do anything for free, so it therefore stands to reason that someone is going to be asked to pay and this will most likely be the person who is trying to reclaim their documents.

Once again we point out that the method of immobilisation of such a vehicle **is not defined** anywhere in the Act or Regulations and therefore this action may result in damages being caused to said vehicle or vehicles. This is a reckless omission as it will most certainly lead to overzealous Sheriffs going overboard to achieve immobilisation.

We also once again point out that once the Sheriff has seized goods from the infringer, the “debt” will have effectively been settled and the seizure and/or destruction of the documents as well as the immobilisation of such vehicles will in fact be additional punishment which is quite frankly unwarranted and vengeful.

The only thing that is in fact missing in these instructions is for the Sheriff to be told to stick out his or her tongue at the person on whom the warrant is being executed and say “take that!”

#### **AARTO 25**

This form makes reference to Regulation 17(1) of Act 46 of 1998, which cannot have existed since it refers to **Act** 46 of 1998 which is an Act, not the Regulations applicable thereto. This should be changed to “Regulation 16(1) of the AARTO Regulations, 2011” with respect to this form.

#### **AARTO 26**

Whilst the AARTO 26 “Notification of result of application for refund of monies” form is specified in the Regulations and on the corresponding Schedule of forms on Schedule 1, **the physical form is absent** from the prescribed forms contained in this set of Regulations. It therefore cannot be commented on at all.

#### **AARTO 27**

Clause (g) of the “INSTRUCTIONS FOR COMPLETING THE FORM” states: “Receipt of the application will be acknowledged within 21 days, falling which it must be re-submitted in the manner above.”

It stands to reason that the person who completes this form will be entered into a continuous loop of having to resubmit this form, given that there is **no mechanism or prescribed form** to acknowledge receipt of the AARTO 27.

#### **AARTO 28**

This form is a little confusing since one has to guess what parameter will fall into the “Projected Demerit Point reduction date”. The reason we say this is that there will be two applicable dates, one for the first reduction of a single demerit-point and another for the date on which the driver’s points will reach zero again, if no further infringements or offences are incurred.



### AARTO 29

The identical source of confusion apparent on the AARTO 28 is applicable on this form.

### AARTO 30

This form is **absent in its entirety** from this document and therefore, this form cannot be commented on.

### AARTO 31

This form does not appear to have changed at all and it is still sufficient for the purpose for which it was intended to fulfil.

### AARTO 32

The purpose of this form is stated as being for purposes of informing an accused that a summons in terms of Section 54 of the Criminal Procedure Act, 1977 will be served on him or her. The question arises why it would even be deemed necessary to have this form, given the fact that the accused in question would already be present and could be issued with a fully-fledged summons in terms of Section 56 of the Criminal Procedure Act, 1977 – there and then.

This being what it may, the following block, although difficult to make out, refers to an offence/**infringement**.

OFFENCE / INFRINGEMENT		
Province :	City/Town :	Suburb :
Date : YYYY / MM / DD	Time :	Street name A :
Route no. :	Between (a) :	Street name B :
GPS co-ordinates:	X :	and (b) :
		Y :

There should be **no circumstances** under which an AARTO 32 would be issued for an **infringement**. The only time that this form would become relevant would be in the case where the accused had committed an **offence**.

The following block then appears:

PARTICULARS
The alleged offender as identified, while operating the motor vehicle on a public road at the place and at the time as described above, committed the indicated alleged offence(s) as identified by the Charge Code shown in terms of Schedule 3 of the Administrative Adjudication of Road Traffic Offences Regulations, and a summons in terms and subject to the provisions of Section 54 of the Criminal Procedure Act 51 of 1977 <b>may be issued and served</b> on the alleged offender as prescribed by that Act.

The purpose of this form is to warn the accused that a summons **will be** served on him or her, not that it **may be** served on him or her. The word “may” intimates that this is an optional event, where in fact it is not in terms of the Act and Regulations.

Only once a summons has been served on the accused in terms of the Criminal Procedure Act may the provisions of Section 23 of the AARTO Act be satisfied.



It is also noted that there is no reverse side of this form specified and therefore the traffic officer concerned will have no record of important information that may be required in court. We would recommend that it should have a similar reverse side as to that which is specified for the AARTO 02 form.

### AARTO 33

It is with great relief that this document is seen to have been added to the list of forms available for issue.

It is noted that this form does not make the same error in its wording of whether summons will (as opposed to may) be issued and served.

OFFENCE PARTICULARS
<p><b>Please note that a vehicle that is registered in your name was photographed while its driver was committing an offence</b></p>
<p>The driver, while operating the identified vehicle on a public road at the place and at the time as described above, committed an offence as described below and categorised by the Charge Code shown in terms of Schedule 3 of the Administrative Adjudication of Road Traffic Offences Regulations. A summons in terms of Section 54 of the Criminal Procedure Act 51 of 1977 will be issued and served on the owner of the vehicle as prescribed by that Act. If found guilty in a court of law, the demerit points shown below will be allocated to the offending driver.</p>

The one thing that this form does not state is that the registered owner should, if he or she was not the driver of the vehicle in question at the time of the offence, make use of the AARTO 07 driver nomination form.

We strongly advise that this be included on this form, along with the advice that the recipient requests a full size image of the alleged offence to establish that the vehicle photographed was in fact their vehicle.

On the reverse side of the AARTO 33, the following appears:

IMPORTANT PROVISIONS AND INFORMATION	
<b>A. Enquiries and Information</b>	<b>B. Allocation of demerit points</b>
<p>Enquiries regarding this notice may be made:</p> <ol style="list-style-type: none"> <li>1. By post, to: <b>AARTO Enquiries, Private Bag X147, Pretoria, 0001.</b></li> <li>2. By telephone: <b>086 122 7881 (0861AARTO1)</b></li> <li>3. By fax: <b>086 662 8861</b></li> <li>4. By email: <b>enquiries@aartosa.co.za</b></li> </ol> <p>General information is available on the AARTO Internet website <b>www.aarto.gov.za</b>.</p> <ol style="list-style-type: none"> <li>5. Information on demerit points may be obtained from the above website or any Issuing or Registering Authority or Driving Licence Testing Centre.</li> </ol>	<p>Depending on the classification of the offence, or on failure to comply with the provisions of the Act, demerit points ranging from 1 to 6 will be allocated to the offender as follows:</p> <ol style="list-style-type: none"> <li>(a) On receipt and recording of payments; or</li> <li>(b) On application to pay in instalments; or</li> <li>(c) If found guilty in court of an offence; or</li> <li>(d) <b>On issuing of an enforcement order; and</b></li> </ol>

Clause (d) of the section relating to the allocation of demerit-points says "On issuing of an enforcement order; and" and then nothing else appears.

We also point out that whilst it is possible that a Public Prosecutor may set an admission of guilt fine for the accused as happens currently, it is highly unlikely that an Enforcement Order will result at any stage if this were to occur.



A severe inequality again comes into play in that any person who is arrested at the time of the commission of an offence which would be typified by the AARTO 33, they get detained in police cells, fingerprinted, made to pay bail (if it is granted), and upon conviction or admission of guilt, incur a permanent criminal record and even run the risk of an immediate suspension of their driving licence in terms of the National Road Traffic Amendment Act.

Recipients of AARTO 33 documents will be subjected to few, if any of these further punishments and will incur only 6 demerit points on their driving licences, regardless of the degree of severity of the offence they commit.

### **Schedule 2**

**Absent in its entirety!**

### **Schedule 3**

It is noted that the charges that have been scheduled in Schedule 3 are now categorised into three types of charges as was intended by the Act and that in the case of offences, instead of displaying the penalty units and penalty Rand value as a zero as was previously the case these are now displayed as “C” for “court” and “NAP” for “No Admission of Penalty”.

Whilst it has always been clearly understood by our organisation that the intent of the classification of charges as offences should mean that these offences must be dealt with by the courts, in a formal trial, it would appear that this understanding has not been entirely shared by the current participants under AARTO, in particular the JMPD.

This having been said, it must be borne in mind that it is a commonplace practice by the courts to allow Public Prosecutors to offer accused parties an “Admission of Guilt fine” which sometimes avoids the other consequences of criminal charges, not least of which is the imposition of a criminal record on the person who admits guilt.

This anomaly however only applies to people who admit guilt as a result of receiving Section 54 or 56 summonses as opposed to being arrested. A person who is arrested at the time of the commission of the offence, and then subsequently pays an admission of guilt fine almost always incurs a criminal record.

Now, whilst we are not saying that we oppose the idea of people not incurring a criminal record for less serious (in the actual damages incurred) offences by paying an admission of guilt fine, we find it grossly inequitable that persons who are physically arrested for identical offences should be subjected to infinitely more serious punishment than those who are not.

To demonstrate the disparity between the two, we wish to use this factual example. We have plenty of evidence to back our claims up, so please do not be tempted to dismiss this as a “made up” scenario”



- (1) Three motorists are caught speeding on a national freeway and all are measured at being speeds in excess of 41km/h over the speed limit.
- (2) One is caught by camera and is sent an AARTO 33 (or the JMPD's current equivalent thereof) under which he negotiates an admission of guilt fine of R2000 with the Public Prosecutor at the JMPD.
- (3) The other two are stopped at the time and are arrested and taken to a police station where they are detained for no less than 15 hours in the same cells as other criminals and are eventually fingerprinted, formally charged and released on R1,000 bail each, with a notification to appear in court the next day.
- (4) On appearing at the court, these two accused are offered a "deal" to pay an admission of guilt fine of R5000 or to stand trial.
- (5) The one, not wishing to waste any more time or money agrees to pay the admission of guilt fine and after doing so is refunded his or her bail and sent on their way.
- (6) The other decides to rather stand trial but is represented by an inexperienced attorney and, after several postponements and several wasted days, a trial is eventually held and the accused is found guilty and sentenced to a R15,000 fine. This accused also pays the fine and has his or her bail refunded and goes on their way.
- (7) The consequences applied to the three individuals for the identical offence are as follows:
  - a. Accused 1 pays a R2,000 admission of guilt fine and that is the end of it.
  - b. Accused 2 pays a R5,000 admission of guilt fine and incurs a criminal record, over and above the 15 hours imprisonment that he or she was subjected to.
  - c. Accused 3 stands trial and after being found guilty incurs a R15,000 fine, a R5,000 attorney's bill, several days of unproductiveness at work and a criminal record, over and above the 15 hours imprisonment that he or she was subjected to.
  - d. The two who incurred criminal records are then further prejudiced as neither of them are able to subsequently gain employment due to possessing criminal records.
- (8) It must be added, that when the points-demerit system comes into play, a further punitive measure of 6 demerit-points will be imposed on each party above.

It is also unfathomable that a person who is found guilty of doing 41km/h over the 120km/h speed limit on a six lane national freeway and one who is found guilty of doing 70km/h over the 40km/h speed limit outside a school should both incur 6 points on their driving licence. Similarly it is unfathomable that a speed of 161km/h and 250km/h should be subject to exactly the same demerit-points and no immediate suspension of their respective driving licences.



But also, according to Schedule 3, a person who is convicted of reckless driving (charge code 5600) or driving under the influence of alcohol (5501 – 5503) will also be subjected to only 6 points.

The classification of offences under Schedule 3 of the AARTO Regulations sets the demerit points that are imposed as 6 points, regardless of the severity of the offence and nowhere is it stated that this is the minimum amount of demerit-points that must be imposed as opposed to the actual amount.

Due to the fact that it could easily be argued that this is the fixed amount of points that must be imposed, we would recommend that it be stated somewhere in the regulations that this is the minimum and that a schedule of demerit points applicable to the severity of the offence in question be defined.

### **Specific comments with respect to charges on Schedule 3**

Whilst we note that a significant amount of new charges have been added to Schedule 3, we note with utter dismay that the seriousness of some moving violations have still been left as infringements.

This is completely unacceptable and it is more than evident that the charges have been compiled by someone or a body of persons who have absolutely no idea of what constitutes dangerous traffic violations and what does not. For example, we submit the following:

#### ***It is okay to disobey a red “robot” (steady disc light signal)!***

We have on several occasions pointed out that disobeying a steady red disc light signal is infinitely more dangerous and likely to result in a serious collision with serious injuries and/or fatalities and yet this is still classified as an infringement, of a relatively minor level with the fines being R540 for a “normal” vehicle and R790 for a vehicle which requires an operator card.

The associated demerit points applicable to these “infringements” are 1 and 2 respectively and this further significantly adds to the widely held misconception that it is quite okay to disobey “robots”.

#### ***It is okay to drive if you don’t have a licence!***

Similarly, the fact that a person does not possess a driving licence still appears to be regarded as a trivial matter in that the penalty for this is R1,290, with 4 demerit points to be imposed on a non-existent licence.

Of course, the newly proposed three times penalty amount stated in the regulations would affect other infringements that are incurred by a person who does not hold a valid driving licence, but since a fine of R1290 is prescribed for this “major infringement” it is logical that the three times penalty would only apply to other infringements and not to the penalty payable in respect to not having a licence!

**WE HOLD THAT - driving a motor vehicle without holding a driving licence is surely an OFFENCE!**

It is also interesting to note that the penalty to be imposed for riding a motorcycle of an engine capacity of 125cc and a GVM of around 249kg (code A1) and driving an articulated truck with a GVM of more than 18,000kg (code EC) is regarded as posing exactly the same amount of danger to other road users in that the penalty amounts are identical.

Surely a motorcyclist on a 125cc (or less) scooter will cause significantly less harm than a heavy duty truck that ploughs into several vehicles on a freeway. It makes no difference whatsoever that the consequences of a fatal collision will result in the driver being charged with culpable homicide. What is important is that this person should not have been driving in the first place.

Surely we should be doing everything that we can to proactively prevent this situation from arising.

Strangely and alarmingly enough, it would appear that a person may further exacerbate the fact that they do not have a driving licence by then operating a vehicle used for public transport as there is also a fine for operating a vehicle without a PrDP.

This is nothing short of reckless behaviour on the part of the authors of these regulations and whilst it may keep the minibus taxi industry happy, it certainly does not please everyone else.

### ***Speed-related charges***

It is noted that the extent of speed offences has been further increased to cater for the amendments made in the National Road Traffic amendment Act and that the categorisation of areas (urban, rural and freeway) has now been included.

However, it is noted that the only speed limit catered for on a freeway is 120km/h whilst urban and rural area roads cater for speed limits of 40, 50, 60, 70, 80, 100 and 110km/h.

The lower speed limits on freeways are not catered for at all, unless one is going to define these freeways as being urban or rural roads, which they are most certainly not. For example, the M1 freeway in central Johannesburg is a freeway and has three different speed limits, depending where you are on it. These are 120, 100 and 80km/h.

If latitude to choose a charge depending on how one feels about it at the time is allowed, then some people will be criminally charged whilst others will merely be fined for doing 31km/h over the speed limit where a 100km/h applies.

The use of mobile speed cameras is a big bone of contention and whilst the authorities refuse to listen to our complaints about the use of this equipment, it is bizarre that enforcement using cameras is incapable of determining that a heavy, articulated vehicle that is travelling at 120km/h on a freeway where the speed limit is 120km/h is in fact travelling at 40km/h over the allowable limit for that class of vehicle.

Very little, if any camera enforcement tackles this huge problem and this too is tantamount to reckless behaviour by the traffic authorities that employ these cameras. If the issue of excessive speed, which is becoming an increasingly big problem, continues to be tackled by camera, then it is

quite clear that the marked increase in incidents of speeding will continue to rise, as this has been caused by this form of revenue generation instead of true and physical enforcement.

### ***Summary of Schedule 3 comments***

Despite numerous previous engagements on our part, particularly with the RTMC, we note and record our objection that little or no notice has been taken of anything we have had to say in the past with respect to the seriousness of a number of moving violations.

Examples abound in Schedule 3 where extremely dangerous and indeed, life-threatening moving violations have been classified as infringements and this is, to our mind, unforgivable.

It is our sincere and firm standpoint that the entire contents of Schedule 3 must be reviewed and that a steering committee or similar body comprised of experienced persons who understand the seriousness of the consequences that can arise from the commission of moving violations should be urgently convened to work on the problem and correct the deficiencies of Schedule 3.

We hold that this should be done **prior** to finalising the latest draft Regulations so as to have “the punishment fit the crime” when these Regulations come into force.

### **Conclusion**

All in all, it looks like the proposed draft Regulations seek to provide better clarity than has previously been the case however, it is notable that several opportunities to correct previously unsound provisions have not been taken.

For example, instead of making it compulsory for the drivers of vehicles involved in incurring camera-based infringement notices to be nominated by the owner, where the vehicle in question is owned by a juristic person, the Regulations still make provision for the tripling of fines instead.

This can only be viewed as a blatant attempt to circumvent the entire purpose of a points-demerit system and engaging in the corrupt activity of taking money to prevent undesired consequences.

If a law enforcement officer were to do this, it would undoubtedly be called “taking a bribe”, yet the Regulations seek to solicit such bribes for both the issuing authority and the Agency themselves by legislating and putting a quantum to them at source.

It is also noted that despite several engagements with the RTMC and some with the Department of Transport on our part, no provision whatsoever for correcting delinquent behaviour as opposed to simply punishing it has so much as been contemplated.

The Department of Transport and RTMC like to make claims that the AARTO Act is intended to “Make Roads Safe”, yet it is quite transparent that its real intention seems to be “**make as much money out of roads not being safe**”. Even if one suspends driving licences for any amount of time, this will not correct the delinquent behaviour that abounds; it will merely punish it to some degree.



An overall road safety strategy cannot be based on enforcement and punishment alone and doing so will unarguably not achieve the desired objectives. This has been vividly demonstrated by the fact that despite the Kwa-Zulu Natal Province having a so-called “zero tolerance” policy towards road traffic offences, it remains the province with the highest number of road fatalities in South Africa.

There should be a way for delinquent drivers to redeem at least some of the points that they incur by some other method other than paying money to the Agency or waiting for three months to go by with respect to each demerit point.

To this end we hereby again strongly recommend that “traffic schools” be established in order to educate delinquent drivers and assist them in redeeming some of the demerit points that they incur. We also remind the Department of Transport of our “Eyewitness Programme” which we instituted in 2009 and which was brushed off by it saying “the Department of Transport welcomes suggestions from the public.”

We reaffirm that education will play the single biggest role in correcting delinquent behaviour and cannot understand why such draconian measures as continuous punishment alone is believed to be the solution.

With respect to the issue of service via registered mail, it is noted that despite the fact that the RTMC and the Department of Transport are well aware of the fact that a service called “secure mail” is being used for the service of AARTO documents, the Regulations continue to call for service via registered mail. Whilst the two are pretty much similar products offered by the South African Post Office, they **are not** the same thing.

Either registered mail should be used or the Regulations should be changed to reflect the true product name of the service offered by the SAPO.

On this point, we once again point out that despite the requirement for the service of AARTO 03 infringement notices via registered mail under the current and proposed Regulations, the RTMC/RTIA and Department of Transport have completely failed in getting the JMPD to comply with this provision. Since 1 June 2010, the JMPD have been sending out (not serving) AARTO 03 infringement notices via standard (permit) mail and in doing so have circumvented the entire AARTO process.

This overtly unlawful behaviour has not so much as been halted, let alone tackled and we believe that this does not bode well for the future of AARTO.

If you are going to continue to allow the JMPD to act in this fashion then there is no reason why any future participants in AARTO will not expect to be allowed exactly the same latitude that you are allowing the JMPD.

We sincerely hope that you will take seriously all of the comments made in this document and will use this opportunity to correct the multiple errors and oversights that are contained in these draft



Regulations. Whilst we acknowledge that we may not have covered everything due to the volume of information contained in this Government Gazette, we do believe that we have covered a significant portion of what should be covered in comments form.

We once again reaffirm our commitment to achieving true road safety results and should the Department of Transport be in any way interested in working with us and us with them, we will welcome the opportunity to contribute in a positive fashion.

You are more than welcome to engage with me by emailing me at [howard@jp-sa.org](mailto:howard@jp-sa.org) or calling me on my cell phone, 082 418 6210.

Yours sincerely towards safer roads and justice for all who use them,

Howard Dembovsky  
National Chairperson  
Justice Project South Africa

