

Traffic and Transport: COVID-19 legislation

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Today's Discussion

- Covid-19 provisions specific to **traffic and transport**
- **How the various pieces of legislation interact:**
Act, Regulations and Directives
- **Offence** clauses and how to ensure the fines issued during the last two months are correct
- **Provisions and amendments** since 27 March 2020
- **Labour and health** provisions need to be complied with as well
- **Practical issues** such as overnight facilities for drivers, food delivery
- **General traffic and transport legislation amendments** that are in the pipeline for 2020



Introduction

- The COVID-19 Pandemic impacted on the way we use our vehicles, manage public transport, deliver goods, cross a border and many other aspects related to transport
- It was sudden and drastic – companies and individuals did not have time to prepare
- Goods that were due for delivery were in tanks and warehouses and the legislation did not adequately cater for specific scenarios to address the situation as it was geared for a more general application – the domino effect of some provisions were only realised after implementation
- Since 18 March 2020 numerous gazettes were published with declarations, rules for authorities, public transport providers, movement of persons and goods and many more
- These provisions were amended on several occasions during the past two months and will continuously be amended until lock-down has passed
- Most companies and authorities play catch-up as provisions are not published for comment and tend to be effective on the date of publication

Act, Regulations and Directives

How Do They Interact

- The Disaster Management Act, 2002 and Regulations promulgated in terms of the act and directives by the Ministers of the various state departments e.g. Transport, Health, etc. govern the Covid-19 Pandemic
- The Minister designated by the President to put steps in place to manage this disaster is the Minister of Cooperative Governance and Traditional Affairs
- The initial set of Regulations was published on 18 March 2020 - Gazette No. 43107 - and covered:
 - General provisions on lock-down of movement, closure of businesses, prohibition of gatherings, testing, quarantine, etc.. are covered in the regulations
 - Regulation 8 specifically addressed alcohol issues. Although the heading indicated that the transportation of alcohol was prohibited, the body of the regulation did not cover it – transporting alcohol only became an offence when the latest set of regulations were published on 29/4
 - Regulation 10(7) allowed Minister of Transport to issue Directives
 - Certain provisions were made offences in terms of regulation 11



Regulations

- The Regulations were amended as listed below and these amendments applied until **29 April 2020**:
 - Amendment: 25 March 2020
Gazette No.43148 – Reg 11C determined public transport is prohibited except for essential services – 50% capacity
 - Amendment: 26 March 2020 Gazette No. 43168 – private vehicles – 60% of capacity
 - Amendment: 2 April 2020 Gazette No. 43199 – Reg 11C was amended again – e-hailing and taxis added and regulation 11G made it an offence not to comply with the capacity requirements
 - Bus and e-hailing service – 50%
 - Taxi – 70%
 - Private vehicle – 60%
 - Amendment: 16 April 2020 Gazette No. 43232 – added to list of goods that may be transported – cargo in ports
 - Amendment: 20 April 2020
Gazette: No.43240 – excluded hot cooked food from being sold
- The Regulations were all repealed when the new set of Regulations was published on 29 April 2020 – the 29 April set is currently still applicable and has not been amended again although the Minister indicated the level three regulations will be available soon

The list of regulations published in March and April were all repealed and replaced on 29 April 2020

- Regulation 2 provides that regulations remain in force for criminal proceedings, investigations and legal proceedings
- Directives remain in force unless repealed and replaced by the relevant Minister
- Alert levels defined in gazette
- Regulation 5
 - Requirement for cloth masks to be worn –
 - Public transport
 - Public buildings, shops, etc.
 - Determination of maximum persons in spaces
 - Requirements for hand sanitation and hygiene
 - Physical distancing
 - Enable employees to work from home if possible
 - Avoid face to face meetings

Regulation 16 – Movement of Persons

- Walk, run or cycle between 6 – 9
- Curfew determination – confined between 20:00 to 05:00 unless there is an emergency or person has permit to perform essential or permitted service
- Permitted services are listed in Table 1 of 29 April 2020 Gazette
- Sale of food for delivery allowed, restaurants and take-away services still not allowed unless food is delivered
- Form 2(b) must be issued to employees who are required to work in terms of an essential or permitted service – If you are the owner of your business' you must also have permit to allow you to move between home and business
- Movement between provinces, metros and districts prohibited unless permit allows it – if employees need to move outside curfew hours, indicate shift hours or reason for movement on permit
- Lock-down of foreigners until evacuation
- Covid-19 compliance officer must be designated for businesses providing an essential or permitted service

Regulation 20	Instructs Minister of Transport to issue directives on public transport
Regulation 21	Closure of borders
Regulation 22 CROSS-	Transport of cargo – permitted as per directives both in SA and cross-border – sleep facilities and border quarantine remain a problem
Regulation 24	Closure of public places and accommodation – drivers and reps who need to travel and other work-related trips very difficult due to the fact that accommodation are not allowed – not addressed yet
Regulation 26	Prohibits sale , dispensing and transport of liquor except for export and hand sanitizer
Regulation 27	Sale of tobacco products is prohibited – transport not addressed in the Gazette
Regulation 31	Offences and penalties – only a few provisions are classified as offences – lock-down, curfew, alcohol, opening of public places and accommodation, tobacco sales



Directives

Directives relating to Licences and Other Traffic Documents

- The Minister of Transport issued several directives covering air, rail, sea, cross-border, public transport and road traffic provisions
- The directives were published in numerous gazettes of which some have been repealed and replaced after the 29 April-Regulation amendment:
 - Directive on extension of validity of driving licences, professional driving permits, temporary permits, roadworthy certificates and vehicle licence discs were published on 30 March 2020. It only covered documents that expired during lock-down and a grace period of 30 days were provided after lock-down to update documents – Gazette 43183 of 30 March 2020
 - Directive of 30/3 was repealed and replaced by Gazette 43270 of 4 May 2020 – The directive instructed driving licence testing centres and testing stations to ensure it complies with sanitary requirements and become operational and extended the grace period for all driving licences, etc. that expired during lock-down for 30 days from date of publication – the documents would then have expired on 3 June 2020 – **New directive published on 20 May 2020 – Gazette No 43339**
 - A Directive from COGTA was also published on 7 May 2020 instructing municipalities to open and issue documentation relating to vehicles and drivers – Gazette 43291 of 7 May 2020 – municipalities have however not opened as they do not comply with labour and health requirements yet and will only open from 1 June 2020

New Amendments Directives on Licences and other Traffic Documents

- The new provisions that the Minister announced were published yesterday and repeal the 4 May-directive – **Gazette 43337 20 - March 2020**
- Determines that all driving licence testing centres, registering authorities, vehicle testing stations and driving schools will open on 1 June 2020
- Before opening, the premises must be disinfected, social distancing must be implemented, sanitizer provided, and the wearing of masks will be compulsory
- Directive also addresses learner’s licences, driving licences, professional driving permits, temporary permits, motor vehicle licence discs and roadworthy certificates - Minister announced on 19 May that documents expiring from **26 March 2020 to 31 May 2020** will be deemed to be valid for a grace period of **90 days** from 1 June 2020
- Motor trade numbers will be extended for 6 months if they expired during 26 March to 31 May period
- Authorities will open with a backlog of about three months of documents that would need to be issued with the normal workload for June – companies must factor that into planning for roadworthy certificates
- Some authorities already closed on 15 March when the initial disaster management provisions were introduced – the dates for the grace extension may not be sufficient to cover all persons and vehicle affected
- Possible issues with arrear licence fee penalties

Directives relating to Public Transport

- The Minister of Transport issued directives for public transport on 25 March 2020 in Gazette 43157
- The directive detailed the provisions for public transport vehicles and contained an offences clause
- This was repealed on 4 May 2020 – No offences clause was added in the 4 May-Directive
- Directive of 4 May 2020 -
 - Public Transport Sedan vehicle is limited to carry not more than 50% of its permissible passenger carrying capacity, sedan vehicle with carrying capacity of 5 persons is allowed to carry two passengers plus a driver(3 persons)
 - E- hailing, meter taxis, shuttle services, chauffeur driven vehicles are permitted to carry not more than 50% of their permissible passenger carrying capacity as follows:
 - vehicle with a permissible carrying capacity of 5 persons is allowed to carry two passengers plus a driver(3 persons)
 - vehicle with a permissible carrying capacity of 7 passengers is allowed to carry three passengers plus a driver(4 persons)
 - vehicle with a permissible carrying capacity of 10 passengers is allowed to carry five passengers plus a driver(6 persons)

Directives relating to Public Transport

- Directive of 4 May 2020 -
 - Mini and Midibus Taxi vehicles must not carry more than 70% of their maximum licensed passenger carrying capacity as follows:
 - A minibus licensed to carry 10 passengers, is limited to carry a maximum of 7 passengers plus a driver;
 - A minibus licensed to carry 15 passengers, is limited to carry the maximum of 10 passengers plus a driver; and
 - A midi -bus permitted to carry a maximum of 22 passengers, is limited to carry a maximum of 15 passengers plus a driver;
 - Bus to be permitted to carry not more than 50% of their permissible passenger carrying capacity which includes both seating and standing passengers.
- The validity period for all public transport operating licences and accreditation certificates for tourist transport services that expired during the lockdown period and deemed to be valid have a grace period of 90 days from the date of publication of these directions to renew their operating licenses and accreditation certificate for tourist transport services.

The list of regulations published in March and April were all repealed and replaced on 29 April 2020

- Intra- provincial, metropolitan areas and districts public transport is permitted to operate from 5h00 to 20h00 with a grace period of hour within which to complete the journey and drop off at 21h00.
- Intra- provincial, metropolitan areas and districts travel by private vehicle is permitted to operate from 5h00 to 20h00 with a grace period of hour within which to complete the journey at 21h00.

▪ **Amended 6 May Gazette 43284:**

Public Transport is permitted to operate from 05h00 to 19h00 and the driver must ensure that the drop off is completed by 19:00 – **DA is challenging this decision. Minister is not opposing decision and will abide by court decision**

- The transportation of persons rendering essentials services or permitted service must be in line with the operating shifts, work time schedules as determined by the responsible head of operations, Manager, Head of the Department or a person with responsible authority within such institution
- The operating shifts or work schedules or timetable should be stamped and signed Hot food delivery services are permitted from 9:00 to 19:00
- No public transport is allowed between **20h00 to 5h00**, save for essential and permitted service utilising charter service arranged by employer (see 6 May amendment above – 19:00)

Directives relating to Other Modes of Transport/ Transport Related Matters

- Air, rail, sea and cross-border transport for passengers were suspended but freight transport are still allowed
 - Gazettes 43103 of 18 March 2020 and Gazettes 43158, 43159, 43160 of 26 March 2020 contain the directives for the various types of transport
- Movement of persons for purpose of moving from one home to another is allowed from 7 May to 7 June 2020
 - Gazette 43320 of 14 May 2020 – initial gazette of 7 May 2020 repealed by 14 May gazette
- Need permit from SAPS
- Attendance of funerals – permit required from SAPS
- Once off movement between provinces from 1 to 7 May – allowed travel through the night despite curfew
- Initial gazette did not cater for travel outside of curfew and some prosecutions were instituted

Offences in Terms of Act, Regulations and Directives

- Offences prosecuted during the period 18 March 2020 to 29 April 2020 had to be prosecuted in terms of the set of Regulations published on 18 March 2020 and the directives issued at the time
- The 29 April-Amendment repealed the original regulations and the new gazette did not include the same offence classifications
- Important as offences charged in terms of the regulations must refer to correct references
- Charges are in terms of section 56 of the Criminal Procedure Act, 1977 – Payment results in a previous conviction in terms of section 57(6)
- Admission of Guilt (AOG) lists issued by Chief Magistrates in some areas – certain areas all offenders were simply arrested, and their fingerprints were taken
- Discussions ongoing on criminality of the offences
- Most court cases will only be heard in later alert levels when the courts are allowed to function again
- Important to keep track of the various gazettes and offences as persons may have been charged for an offence at a time when the action was not actually classified



General Amendments

Draft Legislation Amendments to General Traffic and Transport Laws

- National Road Traffic Amendment Bill was submitted to Parliament on 3 April 2020 – wide range of topics covered but most significant is the zero-alcohol limit
- National Land Transport Amendment Bill – Approved by Parliament and currently on President’s desk – will include new provisions for e-hailing and service providers like Uber and Taxify
- AARTO – Amendment Act was signed in August 2019 and draft set of regulations published for comment in October 2019 – Final set must still be published with Schedule 3 that classifies the offences and infringements and prescribes the penalties and demerit points
- Minister indicated June/July 2020 implementation date – not feasible due to current situation
- Covid-19 will delay the implementation to later in 2020 – Post Offices and other authorities not open at this stage
- The AARTO legislation will also introduce the demerit point system countrywide

Draft Legislation Amendments to General Traffic and Transport Laws

Alta Swanepoel and Associates will be hosting our annual Road Traffic and Transport Legislation Workshop in November 2020

THE NEW DATES ARE:

- STELLENBOSCH 10 NOVEMBER 2020
- DURBAN 12 NOVEMBER 2020
- PRETORIA 25 NOVEMBER 2020

Please contact our office at admin@altaswanepoel.co.za for any further information.

We are also in the process of arranging for webinars on AARTO, once the legislation is finalised. We will inform you in due course when the webinars will take place.

Thank you.

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