
GENERAL NOTICE

NOTICE 395 OF 2009

DEPARTMENT OF TRANSPORT

PUBLICATION FOR COMMENTS: NATIONAL LAND TRANSPORT REGULATIONS, 2009

I, Jeffery Thamsanqa Radebe, Minister of Transport, hereby make the Regulations in the Schedule in terms of section 8 of the National Land Transport Act, 2009 (Act No. 5 of 2009).

Interested persons are invited to submit their written comments on the Regulations within 30 days from the date of publication in the Gazette.

Comments should be posted to the Director – General Department of Transport for the attention of Mr. Trevor Mphahlele or Muzi Simelane at:

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DEPARTMENT OF TRANSPORT

No.....

2009NATIONAL LAND TRANSPORT ACT, 2009 (ACT NO. 5 OF 2009)

NATIONAL LAND TRANSPORT REGULATIONS**SCHEDULE****Arrangements of Regulations**

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Definitions

1. In these regulations, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Act, has that meaning, and the following words and expressions have the meanings assigned to them:

“BRT” means bus rapid transit;

“decal” means a decal issued under regulation 21(6), and includes a distinguishing mark contemplated in the Act;

“existing contract” means an interim contract, current tendered contract, subsidised service contract or commercial service contract concluded under the Transition Act, as defined in that Act;

“interim contract” means a contract other than a current tendered contract for the operation of subsidised scheduled services which expires after the date of commencement of the Transition Act, and which is more fully defined in the Transition Act;

IPTN” means an integrated public transport network;

“ITP” means an integrated transport plan;

“NPTR” means the National Public Transport Regulator;

“OLAS” means the Operating Licence Administration System maintained by the National Department of Transport in conjunction with the Provinces, formerly known as the Land Transport Permit System;

“Passenger Rail Agency” means the Passenger Rail Agency of South Africa, formerly known as the South African Rail Commuter Corporation Limited;

“PLTF” means a provincial land transport framework;

“PRE” means a Provincial Regulatory Entity;

“public road” means a public road as defined in the National Road Traffic Act;

“scholar transport” means the dedicated transporting of scholars, students, teachers and lecturers as contemplated in section 72 of the Act and does not include the transporting of such persons by another public transport service in addition to other passengers; and

“the Act” means the National Land Transport Act, 2009 (Act No. of 2009).

Chapter 1

National Public Transport Regulator

Application to NPTR relating to an operating licence for an interprovincial service

2. (1) An application to the NPTR for the granting, renewal, amendment or transfer of an operating licence for an interprovincial service must be lodged by submitting the completed application form required by the NPTR, together with the information and documents specified in the form and the application fee.

(2) An application form may be submitted by e-mail, and if so submitted must include a scanned version of the required documents.

(3) The NPTR must reject an application where the application form is not fully and properly completed, or to which required documents have not been attached, or where the required fee has not been paid, and may require the applicant to submit the original of any document before accepting the application, if it suspects the validity or authenticity of the document.

(4) The NPTR must notify the following by e-mail or fax of an application received under sub-regulation (1):

(a) The PRE of every province in whose area passengers will be picked up or set down; and

(b) every planning authority in whose area passengers will be picked up or set down; and those PREs and planning authorities must supply their comments or recommendations to the NPTR in the same way within the time specified in the notice, which may not be less than 21 days.

(5) Where a PRE or planning authority fails to respond to such a notice within the specified time, the NPTR may proceed to process and decide upon the application without their input.

(6) A notification in terms of sub-regulation (4) must be in accordance with the form required by the NPTR and contain particulars sufficient to enable the PRE or planning authority to submit a response based on relevant transport plans.

Application to NPTR for conversion of a permit

3. (1) Any holder of a permit authorizing interprovincial services may apply to the NPTR for conversion of that permit to an operating licence, and such application must be lodged by submitting the completed application form required by the NPTR, together with the information and documents specified in the form and the application fee.

(2) Where a permit authorizes both interprovincial and intraprovincial services, an application to convert the permit must be made to the NPTR, which may convert the permit and issue the appropriate operating licence.

(3) Regulation 2 (2) to (6) also applies to such an application, with the necessary changes.

Meetings of NPTR

4. (1) The members of the NPTR contemplated in section 20(2) of the Act must meet often enough to enable them to process applications within no more than 60 days of receipt of the application.

(2) The Minister must appoint a chairperson and deputy chairperson of the NPTR from such members.

(3) The chairperson must preside at meetings, or failing the chairperson the deputy-chairperson.

(4) In the absence of the chairperson and deputy-chairperson, the persons present at the meeting must elect one of their number to chair the meeting.

(5) A quorum at those meetings will be 50 percent of the appointed members, and in the case of a deadlock the person presiding will have a deciding vote in addition to his or her normal vote.

(6) An act or decision at such a meeting will not be invalid because a casual vacancy existed in the NPTR at the time or because a member who participated in the act or decision was disqualified at the time from being a member.

(7) The NPTR must keep at its place of business a file for each operator to whom an operating licence has been issued, both electronic and in hard copy, containing a copy of every operating licence issued to that operator and allow any interested person to obtain a copy thereof on payment of the fee determined by the NPTR.

Powers of NPTR

5. (1) In dealing with any matter before it the NPTR may—
- (a) allow a person affected by or interested in the matter, or the duly authorised representative of that person, to appear before it and—
 - (i) give evidence or make oral representations relevant to the matter;
 - (ii) call witnesses and present evidence on any question concerning a matter relevant to the proceedings;
 - (iii) question a person who testifies as a witness in those proceedings;
 - (b) issue a subpoena on a standard form developed by the NPTR requiring a person to appear before it to give evidence or to produce any book, plan, document or other record, or any article, item or object, in the possession or under the control of the person and have the subpoena handed personally to the person to whom it applies by an inspector, who must thereupon report to the NPTR;
 - (c) order any person present at the place where the proceedings are conducted, to appear before it to give evidence or to produce any book, plan, document or other record, or any article, item or object, which is in that person's possession;
 - (d) question any person appearing as a witness;
 - (e) require that any oral evidence be given under oath or affirmation and, for that purpose, administer an oath to or take down an affirmation from any witness; and
 - (f) refuse to hear any oral evidence or representations from any person unless the person has been sworn in or made an affirmation as a witness.

(2) The NPTR may, by written notice sent to his or her last-recorded address, require any holder to satisfy it within the specified time, that the services authorised by the relevant operating licence or permit are still being provided or being provided sufficiently, or to provide it with other information relating to the operating licence or permit or the services authorised thereby, and the holder must comply with such a notice.

- (3) The NPTR may—
- (a) investigate any matter relating to land transport in the Republic, and submit recommendations thereon to the Minister;
 - (b) at the request of the Minister, investigate and report on any matter within the scope of the Act; and
 - (c) where, based on information that has come to its notice, it suspects that an operator is acting in a manner that is or will lead to unsafe or undesirable operation of public transport by that operator, or that the operator is habitually transgressing the provisions of the Act or other laws, or the terms and conditions of operating licences or permits held by that operator, cause an inquiry to be held into the affairs and operating practices of that operator, with a view to taking

action under section 79 of the Act or recommending appropriate action to a regulatory entity or other body.

Chapter 2

Provincial Regulatory Entities

Application to PRE for operating licence

6. (1) An application to a PRE for the granting, renewal, amendment or transfer of an operating licence must be lodged by submitting the completed standard application form developed by the NPTR, together with the information and documents specified in the form and the application fee.

(2) The PRE must reject a form that is not fully and properly completed, or to which required documents have not been attached, or where the required fee has not been paid.

(3) The PRE must notify every planning authority in whose area passengers will be picked up or set down by e-mail or fax of an application received under sub-regulation (1), and those planning authorities must supply their comments or recommendations to the PRE in the same way within the time specified in the notice, which may not be less than 21 days.

(4) Where a planning authority fails to respond to such a notice within the specified time, the PRE may proceed to process and decide upon the application without their input.

(5) A notification in terms of sub-regulation (3) must be in accordance with a standard form developed by the PRE and contain particulars sufficient to enable the planning authority to submit a response based on its ITP.

Application to PRE for conversion of a permit

7. (1) An application to a PRE for conversion of a permit to an operating licence must be lodged by submitting the completed standard application form developed by the NPTR, together with the information and documents specified in the form and the application fee.

(2) Regulation 6(2) to (5) also applies to such an application, with the necessary changes.

Meetings of PREs

8. (1) The members of PREs contemplated in section 23(2) of the Act must meet often enough to enable them to process applications within no more than 60 days of receipt of the application.

(2) The MEC must appoint a chairperson and deputy chairperson of the PRE from such members.

(3) The chairperson must preside at meetings, or failing the chairperson the deputy-chairperson.

(4) In the absence of the chairperson and deputy-chairperson, the persons present at the meeting must elect one of their number to chair the meeting.

(5) A quorum at those meetings will be 50 percent of the appointed members, and in the case of a deadlock the person presiding will have a deciding vote in addition to his or her normal vote.

(6) An act or decision at such a meeting will not be invalid because a casual vacancy existed in the PRE members at the time or because a member who participated in the act or decision was disqualified at the time from being a member.

(7) Each PRE must keep at its place of business a file for each operator to whom an operating licence has been issued, both electronic and in hard copy, containing a copy of every operating licence issued to that operator and allow any interested person to obtain a copy thereof on payment of the fee determined by the PRE.

Powers of PREs

9. PREs have the powers contemplated in regulation 5, reading in the necessary changes.

Chapter 3 Municipal Regulatory Entities

Application to municipality for operating licence

10. (1) An application to a municipality to which the operating licence function has been assigned for the granting, renewal, amendment or transfer of an operating licence must be lodged by submitting the completed standard application form developed by the NPTR, together with the information and documents specified in the form and the application fee.

(2) The municipality must reject a form that is not fully and properly completed, or to which required documents have not been attached, or where the required fee has not been paid.

Application to municipality for conversion of a permit

11. (1) An application to a municipality to which the operating licence function has been assigned for conversion of a permit to an operating licence must be lodged by submitting the completed standard application form developed by the NPTR, together with the information and documents specified in the form and the application fee.

(2) Regulation 10 also applies to such an application, with the necessary changes.

Meetings of operating licence division of municipalities

12. (1) The members of the division of a municipality to which the operating licence function has been assigned contemplated in section 17(1)(b) of the Act must meet often enough to enable them to process applications relating to operating licences within no more than 60 days of receipt of the application.

(2) The municipality must appoint a chairperson and deputy chairperson of such division from such members.

(3) The chairperson must preside at meetings, or failing the chairperson the deputy-chairperson.

(4) In the absence of the chairperson and deputy-chairperson, the persons present at the meeting must elect one of their number to chair the meeting.

(5) A quorum at those meetings will be 50 percent of the appointed members, and in the case of a deadlock the person presiding will have a deciding vote in addition to his or her normal vote.

(6) An act or decision at such a meeting will not be invalid because a casual vacancy existed in such division at the time or because a member who participated in the act or decision was disqualified at the time from being a member.

(7) Each such municipality must keep at its place of business a file for each operator to whom an operating licence has been issued, both electronic and in hard copy, containing a copy of every operating licence issued to that operator and allow any interested person to obtain a copy thereof on payment of the fee determined by the municipality.

Powers of municipal regulatory entities

13. Municipalities to which the operating licence function has been assigned have the powers contemplated in regulation 5, with the necessary changes.

Chapter 4

Operating licences: general provisions

Conversion of a permit to an operating licence

14. (1) A permit may be converted to an operating licence only if the services authorized by the permit have been provided continuously for a period of 180 days prior to the date on which the application was lodged, and subject to section 47(3) of the Act.

(2) Before granting an application for conversion of a permit to an operating licence, a regulatory entity must-

(a) be satisfied that the services authorized by the permit have been provided for 180 days prior to the date of commencement of the Act, and 180 days prior to the date on which the application was lodged;

- (b) be satisfied by virtue of the applicant's record as an operator that the applicant is still a fit and proper person to provide public transport services;
- (c) be satisfied that the vehicle in question is properly registered and licensed and that a valid roadworthy certificate has been issued for the vehicle as required by the National Road Traffic Act;
- (d) ensure that the operator has taken out insurance as required by regulation 29; and
- (e) be satisfied that the relevant planning authority is aware of the application and the services being provided by the operator.

Applications for recapitalization

15. (1) Where the holder of a permit for a minibus taxi-type service operates a vehicle that has not yet been recapitalized in terms of the procedures determined by the Department, the holder may apply to the relevant regulatory entity for conversion of the permit to an operating licence, and the application must be combined with an application to the Department or its agents for recapitalization of the vehicle, and section 49(2) of the Act applies in such a case.

(2) Where a person holds an operating licence for a minibus taxi-type service and operates a vehicle that has not yet been recapitalized in terms of such procedures, he or she may apply to the Department for recapitalization, and where section 49(2)(b) or (c) of the Act is applicable, may at the same time apply to the relevant regulatory entity for an operating licence for the recapitalized vehicle by submitting the completed form required by the regulatory entity and paying the application fee.

Applications for operating licences for contracted services

16. (1) An application for an operating licence for a contracted service must be lodged with the relevant regulatory entity by submitting the completed application form required by that entity, together with the information and documents specified in the form, which must include a copy of the relevant contract, and the application fee.

(2) The entity must reject a form that is not fully and properly completed, or to which required documents have not been attached, or where the required fee has not been paid.

(3) Where appropriate, that entity may request the contracting authority to supply written confirmation that the contract has been concluded or of any documents or information submitted by the applicant.

Publication of applications

17. (1) Regulatory entities must give notice of applications received in connection with operating licences in the *Gazette*, or in one or more newspapers circulating in the relevant area, or in such other manner as the entity deems fit to comply with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), stating at least the following:

- (a) The name and address of the applicant;
- (b) the nature of the application (granting, renewal, amendment, transfer or conversion);
- (c) the type and passenger capacity of the vehicle or vehicles involved; and
- (d) the route or routes or area or areas of operation.

(2) An application need not be so published where it is an application-

- (a) to amend the particulars of the same vehicle specified in the operating licence;
- (b) to replace the vehicle specified in an operating licence under section 73 of the Act; or
- (c) to amend other particulars of an operating licence that are not considered to be substantial by the entity.

(3) An interested person wishing to submit comments or representations must do so in writing within 21 days of publication of the notice, and the entity must-

- (a) allow a person who submits comments or representations, at their request, to inspect the applicant's application form and supporting documents;
- (b) supply such a person with copies of such form and documents on payment of the fee determined by the regulatory authority;
- (c) allow the applicant to inspect or have copies of such comments and recommendations on payment of the fee so determined;
- (d) make available for scrutiny at its offices any existing operating licences or permits held by the applicant or by any person objecting to the application, and documentation relating thereto; and
- (e) post the notice of the application on a notice in a prominent place at its offices for the period within which comments and representations must be submitted.

Offences to be considered by regulatory entities

18. In considering an application for the granting, renewal, amendment or transfer of an operating licence, or for conversion of a permit, a regulatory entity must consider the following offences:

- (a) An offence created by the Act, the National Road Traffic Act or a provincial road traffic act;
- (b) an offence listed in Schedule 1 to the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- (c) possession of an unlicensed firearm, explosives or a dangerous weapon; and
- (d) any other offence considered relevant by that entity.

Hearings by regulatory entities

19. (1) Where a regulatory entity holds a hearing contemplated in section 59(3) of the Act, it must allow the applicant and any person who has properly submitted comments or representations, or their representatives, to appear in person or submit written submissions to state their views.

(2) The entity must give the applicant and any person who has so submitted comments or representations not less than seven days' notice of the hearing.

(3) Where a person is represented by a representative at the hearing, that representative must, on request of the entity, provide written proof of his or her authorization to act as representative.

(4) The entity must convey its decision in writing to the applicant and all persons who submitted comments and representations.

(5) Where a person will require a translator to be present at the hearing to translate the proceedings into an official language other than English, he or she must give written notice to the entity not less than seven days prior to the hearing.

(6) The entity must be satisfied that all persons present at the hearing are able to understand the proceedings.

Temporary operating licences for special events

20. A person wishing to apply for a temporary operating licence under section 60 of the Act must apply to the regulatory entity to which application must be made for normal operating licences by submitting the completed application form required by that entity with the application fee.

Issuing of operating licences

21. (1) Where a regulatory entity has approved an application for the granting, renewal, amendment or transfer of an operating licence or conversion of a permit, it must notify the applicant once the operating licence is ready for uplifting.

(2) An operating licence may not be uplifted by any person except the applicant, or a representative of the applicant who shows written authorization from the applicant that he or she is authorized to uplift it.

(3) Where the operator has not uplifted the operating licence within 30 days of being notified, the regulatory entity must contact the applicant by telephone, e-mail or fax to remind the operator that the operating licence is ready, and must then cancel the licence if it is still not uplifted within 60 days after the date that the operator was first so notified.

(4) An operating licence must not be issued to an operator until the operator has produced to the regulatory entity-

- (a) proof of registration and licensing of the vehicle, with proof that a valid roadworthy certificate has been issued for the vehicle not earlier than a point in time determined by the regulatory entity;
- (b) a valid tax clearance certificate issued by the South African Revenue Services;
- (c) proof of insurance as prescribed by regulation 29;
- (d) proof of compliance with any other condition imposed by the entity;
- (e) proof or certification of any other matter required by the entity; and
- (f) proof by showing an identity document, passport or other document acceptable to the entity that the person uplifting the licence is the applicant or, in the case of a representative, is that representative, and written proof that the representative is authorized by the applicant to uplift the licence.

(5) In the case of conversion of a permit or renewal, amendment or transfer of an operating licence, the new licence must not be issued to the applicant unless the

replaced permit or operating licence, together with its attendant decal, have been submitted to the entity.

(6) Operating licences must be issued with a decal for display on the vehicle in the manner prescribed in regulation 27.

Particulars to be contained in an operating licence

22. An operating licence must be in the form required by the regulatory entity and at least contain the following particulars:

- (a) The name and address of the operator;
- (b) the registration number, make, vehicle identification number, year of manufacture, type and seating or passenger capacity of the vehicle;
- (c) the type or types of service for which the operating licence has been granted;
- (d) the period for which it has been granted;
- (e) in the case of a contracted service—
 - (i) the type of contract;
 - (ii) the contract reference number;
 - (iii) the names and addresses of the parties to the contract; and
 - (iv) where part of a service in terms of the contract is to be operated by a subcontractor, the name and address of the subcontractor who is the owner of the vehicle;
- (f) in the case of a scheduled service or minibus taxi-type service, a detailed description of the route or routes on which, or, where applicable, the particular area in which, the vehicle is to be used, by specification of street names, road numbers, beacons or land marks: Provided that in the case of a feeder or distribution service, a collection area may be specified;
- (g) the authorised ranks or terminals and other points for picking up and setting down passengers, where applicable;
- (h) in the case of scheduled services where the entity has imposed the use of approved timetables, a reference to those timetables, which must be displayed in the vehicle in a prominent place where passengers can refer to them;
- (i) the conditions imposed, if any; and
- (j) all other particulars that may be required by the regulatory entity or by provincial laws or municipal by-laws.

Duties of holder of an operating licence or permit

- 23.** The holder of an operating licence or permit must—
- (a) comply with the terms of the authorisation conferred by the operating licence or permit and the conditions to which it is subject, and, where the service is one provided for in an ITP, operate the service in accordance with that plan;
 - (b) keep the original operating licence or permit or a duplicate original in the specified vehicle, and, where the vehicle is temporarily replaced under section 74 of the Act, keep the operating licence or permit and the temporary authorisation issued for the replacing vehicle in that vehicle for the duration of the temporary replacement, but the entity issuing the operating licence may direct in writing that

- the annexures to an operating licence or permit do not have to be kept in such vehicle where they are too bulky to allow for this;
- (c) on demand by an authorised officer, produce that operating licence, permit or authorisation;
 - (d) keep the operating licence or permit, any duplicate original thereof and the distinguishing mark that relates thereto in such a condition that the letters and figures thereon are clearly legible and, if they are damaged or cease to be clearly legible, apply for a duplicate within four working days by completing the form required by the regulatory entity and must, where possible, submit the damaged or obscured operating licence, permit or distinguishing mark to the regulatory entity for destruction;
 - (e) cause the operating licence or permit number and the type of service to be painted or displayed on the vehicle in the manner prescribed in regulation 24;
 - (f) display on or in that vehicle the other particulars prescribed in any condition imposed by the regulatory authority including, but not limited to, timetables where the entity has imposed the use of approved timetables, which must be displayed in the vehicle in a prominent place so that passengers can refer to them;
 - (g) display and keep affixed a distinguishing mark on the vehicle with its inscribed face facing the front in a conspicuous place on the inside of the windscreen;
 - (h) apply timeously for renewal of the operating licence or permit in terms of regulation 25;
 - (i) at all times keep the vehicle in a safe and roadworthy condition and have the vehicle examined for roadworthiness not later than the time allowed therefor by the National Road Traffic Act; and
 - (j) return an operating licence or permit that has lapsed or has been withdrawn or cancelled to the entity that issued it within seven days;
 - (k) inform the relevant regulatory entity in writing of the sale or any other change of ownership in the vehicle to which an operating licence or permit relates within seven days after such sale or change has taken place; and
 - (l) comply with the provisions of the Act and with any other requirements imposed by provincial laws and other legislation.

Particulars to be displayed on vehicles

24. (1) The particulars to be painted or displayed on a vehicle in terms of regulation 23(e) must comply with the following as a minimum:

- (a) Height of figures and letters: 40mm.
- (b) Width of figures and letters: 20 mm.
- (c) Breadth of stroke of figures and letters: 5 mm.
- (d) Space between consecutive figures and letters: 5 mm.
- (e) Space between words on the same line: 15mm.

(2) Those particulars must be painted or appear on a magnetic or other sticker in a conspicuous place on the vehicle in a colour that shows up clearly against the background.

Application for renewal of operating licence

25. (1) Where an operating licence was issued for more than 30 days and the holder wishes to renew it, the holder must apply not later than 30 days before expiry of the licence for its renewal.

(2) Where application for renewal was properly made under sub-regulation (1) and the regulatory entity has not issued the licence by the expiry date, the operating licence will remain valid until the entity either issues the renewed licence or notifies the applicant that the application has been refused, and the operator must keep in the vehicle written proof issued by the regulatory entity that such an application has been made.

(3) Subject to the Act, the regulatory entity may not refuse to renew an operating licence unless-

- (a) the applicant, as decided by the entity, is no longer a fit and proper person to provide public transport services for a reason contemplated in section 79(2) of the Act;
- (b) the applicant has failed to provide proof of registration, licensing or roadworthiness of the vehicle as required by the Act;
- (c) a planning authority has directed the entity to refuse the application in terms of section 55(3) of the Act; or
- (d) there is other reason to do so contemplated by the Act.

(4) No permit may be renewed unless it is first converted to an operating licence in terms of the Act and these regulations.

Temporary replacement of vehicle

26. The written authorisation contemplated in section 74(2) of the Act must be in the form determined by the regulatory entity and must at least contain the particulars set out in regulation 22, with the necessary changes.

Decals

27. (1) A decal issued to an operator must be affixed to the lower, inside, left-hand corner of the windscreen of the vehicle to which it relates in such a manner that the print on its face is clearly legible from the outside to a person standing in front of or to the left of the vehicle.

(2) Such a decal must-

- (a) be bar-coded or otherwise made or designed to enable authorised officers to determine summarily by means of e-NaTIS or OLAS whether the vehicle is compliant with the Act and the National Road Traffic Act and is being operated by the relevant operator; and
- (b) show the operating licence number, the name of the operator, the vehicle registration number and the date of expiry of the licence.

(3) No person may operate a vehicle for a public transport service on a public road-

- (a) without such a decal; or

- (b) with a decal, or anything purporting to be a decal, which is not applicable to that vehicle; or
- (c) with such a decal which is in any way obscured or has become illegible, unless it has become obscured or illegible temporarily beyond the control of the operator.

Duplicate operating licence or decal

28. Where an operating licence or decal has been lost or has become obscured or illegible, the operator must apply within four working days for a duplicate by completing the form required by the regulatory entity and must, where possible, submit the damaged or obscured licence or decal to that entity for destruction.

Insurance

29. (1) Operators of public transport services must at all times during the operation of those services have in place adequate insurance with insurers registered and compliant with relevant legislation, for the type and maximum limits and deductibles as required by the regulatory entity, to cover passengers conveyed by the operator and their dependants where a passenger is killed or injured as a result of that conveyance.

(2) Where the operator's insurance lapses or is cancelled for any reason, both the operator and the insurer must notify the regulatory entity in writing within three working days, and failure to do so by the operator will be regarded as grounds for cancellation of the relevant operating licence or permit.

(3) Where the operator's insurance lapses or is cancelled for any reason, both the operator and the insurer must notify the NPTR in writing within three working days, and failure to do so by the operator in the case of a tourist transport service will be regarded as grounds for cancellation of accreditation.

(4) An insurer or operator who fails to comply with sub-regulation (2) or (3) commits an offence.

Courtesy services

30. (1) A person providing courtesy services by means of fewer than three motor cars is exempt from the operating licensing requirements of the Act in terms of section 53(1)(a) of the Act.

(2) Persons operating courtesy services by means of three or more motor cars, or a minibus, midibus or bus, must obtain an operating licence from the entity contemplated in section 51 of the Act.

(3) All persons providing courtesy services that are exempt in terms of sub-regulation (1), must, before operating courtesy services-

- (a) notify the NPTR in writing that they are providing courtesy services, and supply particulars of the relevant vehicles and services as required by the NPTR;
- (b) display a token issued by the NPTR on each vehicle clearly marked "Courtesy service" in the manner contemplated in regulation 24; and
- (c) comply with any directions issued by the NPTR.

Chapter 5

Accreditation of tourist transport operators and related matters

Application for accreditation

31. (1) An application for accreditation as a tourist transport operator under section 82 of the Act must be lodged by completing the application form required by the NPTR and submitting it to the NPTR with the application fee.

(2) The application form must be fully and properly completed and be accompanied by the documents or proof described in the form and required to be attached, which must include copies of all permits and operating licences issued for vehicles operated by the applicant on the date of application.

(3) The NPTR may require the applicant to submit additional information or documentation.

(4) The applicant must nominate, in the application form, a responsible person as contact person between the NPTR and the operator and must, where such person leaves the employment of the operator, nominate another person as contact person in writing within seven days.

Submitting applications to tourism authorities

32. (1) Where the Minister has recognized any tourism authority in terms of section 81(5) of the Act, this must be made known by notice in the *Gazette*.

(2) On receiving an application for accreditation, the NPTR must refer the application to any relevant authority so recognized by submitting a notice to it by e-mail, fax or other method it deems appropriate.

(3) The authority must submit its response to the NPTR by any method approved by the NPTR and stated in the notice, within 14 days of receipt of the notice.

(4) If a tourist authority fails to respond within the time mentioned in sub-regulation (3), the NPTR must proceed to decide the application without that response in terms of section 81(6) of the Act.

(5) It shall not be necessary to submit an application to a tourism authority that has not been recognised by means of a notice published under sub-regulation (1).

Requirements for accreditation

33. (1) The NPTR must consider the following when deciding whether to grant or refuse an application for accreditation:

(a) Whether the applicant complies with section 81(2) of the Act and these regulations, based on the applicant's past record as an operator, *inter alia* as regards safety and compliance with legislation, but without discriminating against operators who are new in the industry;

- (b) whether the vehicles operated by the operator after inspection by suitably qualified officials or agents of the NPTR are roadworthy and acceptable for the type of tourist operations carried on or to be carried on by the applicant;
- (c) after a date to be determined by the Minister and made known by notice in the Gazette, that the applicant or one or more of the applicant's employees have passed the tests or examinations or have attended training courses specified by the NPTR, to ensure that they understand the transport industry, road traffic and transport legislation, and other relevant matters;
- (d) that the applicant has a programme of maintaining and servicing all vehicles operated or to be operated by the applicant, that is acceptable to the NPTR either-
 - (i) by regular servicing by an acceptable garage or service centre in accordance with the specifications of the manufacturer of the vehicle; and
 - (ii) in appropriate cases, by suitably qualified staff of the operator in workshops or other facilities that have been inspected by or on behalf of the NPTR;
- (e) that the operator keeps maintenance and servicing records to the satisfaction of the NPTR, which must be made available to NPTR inspectors on request;
- (f) that the operator has back-up staff and administrative facilities that, in the opinion of the NPTR, are sufficient to run his or her transport business efficiently;
- (g) that the operator has an acceptable record regarding compliance with road traffic and transport legislation, as well as other applicable legislation;
- (h) that the operator has adequate insurance with insurers registered and compliant with relevant legislation, as required by the NPTR and in regulation 29, to cover passengers conveyed by the operator and their dependants where a passenger is killed or injured as a result of that conveyance;
- (i) that the operator's tax affairs are in order as shown by submission of a valid tax clearance certificate; and
- (j) any other matter required by the NPTR.

(2) The applicant must describe the livery and signage being displayed or to be displayed on the applicant's vehicles in the application form, and the NPTR may discuss this with the applicant with a view to seeing that the applicant applies livery and signage that is acceptable and tasteful in relation to the image of the tourist industry and any other matter decided by the NPTR.

(3) Where appropriate, the NPTR must inform the operator of steps that must be taken for the operator to qualify for accreditation, and that accreditation will be refused if the steps are not taken within a specified time.

(4) Where, after evaluating the application, it appears to the NPTR that an applicant does not qualify for accreditation, the NPTR must furnish the operator with the reasons for non-qualification, and may allow the operator a certain time to rectify the situation or submit outstanding requirements as a condition for later accreditation.

(5) Where the NPTR has taken a final decision to refuse an application for accreditation, the operator may re-apply, but only after a period of 180 days has elapsed from the date of the refusal.

(6) The operator must keep his, her or its vehicles, offices, facilities and records open for inspection by an NPTR inspector at all times.

Monitoring of accredited tourist transport operators

34. (1) The NPTR must see that regular technical and operational monitoring of the operations of all accredited tourist transport operators is carried out to ensure compliance with the Act and other applicable legislation, and in particular the matters listed in regulation 33.

(2) The NPTR must be satisfied on an ongoing basis that the operator's vehicles are serviced at the required intervals, by checking by NPTR inspectors of vehicle service records.

(3) The operator must supply the NPTR on request with vehicle maintenance records or proof of servicing of vehicles at any time.

(4) Where appropriate, for example if the operator operates larger vehicles or a large number of vehicles, the operator must have maintenance and repair facilities within the operator's organisation that are satisfactory to the NPTR, staffed with suitably qualified mechanics and support staff.

Application for renewal of accreditation

35. (1) An operator applying for renewal of accreditation under section 81(8) of the Act must lodge the application by completing the application form required by the NPTR and submitting it to the NPTR with the application fee not later than 60 days before that date that the operator's accreditation expires.

(2) The provisions of regulation 31(2) to (4) apply to such an application.

(3) To qualify for renewal of accreditation the operator must comply with regulation 33, the provisions of which apply with the necessary changes.

(4) It shall not be necessary to refer an application for renewal of accreditation to any tourism authority in terms of regulation 32.

(5) In deciding an application for renewal of accreditation, the NPTR must consider the matters listed in regulation 33, either by re-investigating the matters or being satisfied by its agents or inspectors that the operator is complying satisfactorily with all requirements.

Certification of vehicles

36. (1) When accrediting an operator under section 82(4) of the Act, the NPTR must verify the validity and authenticity of the particulars and documents relating to the operator's vehicles as supplied on the application form for accreditation, and if satisfied that the vehicle or vehicles comply with section 84(3) of the Act, must certify each vehicle in the manner set out in sub-regulation (5).

(2) An accredited operator may apply for certification of additional vehicles under section 84 of the Act by providing the vehicle details specified in the application form for accreditation, and submit those details to the NPTR with the application fee, and such an application may be lodged electronically.

(3) The applicant must submit with the application—

- (a) proof of registration and licensing of the vehicle, showing a valid and current roadworthy certificate;
- (b) proof of insurance by means of a letter or certificate issued by the relevant insurer or insurers, or by another means approved by the NPTR; and
- (c) any other document or matter required by the NPTR.

(4) On receipt of such an application for certification, an authorised official of the NPTR must verify the validity and authenticity of the documents and matters submitted under sub-regulation (2) by checking eNaTIS and by other acceptable means and, if satisfied that the vehicle complies with section 84(3) of the Act, must certify the vehicle in the manner set out in sub-regulation (5).

(5) On certification of a vehicle, the NPTR must issue to the operator a certificate and token for the vehicle, and the token must be affixed to the lower, inside, left-hand corner of the windscreen of the vehicle in such a manner that the print on its face is clearly legible from the outside to a person standing in front of or to the left of the vehicle.

(6) Such a token must-

- (a) be bar-coded or otherwise made or designed to enable authorised officers to determine summarily by means of e-NaTIS or OLAS whether the vehicle is compliant with the Act and the National Road Traffic Act and is being operated by the relevant accredited operator;
- (b) be colour coded in relation to the class of vehicle; and
- (c) show the operating licence number, the words "tourist transport service", the vehicle registration number and the date of expiry of the operator's accreditation.

(7) No person may operate a vehicle for tourist transport services on a public road-

- (a) without such a token; or
- (b) with a token, or anything purporting to be such a token, which is not applicable to that vehicle; or
- (c) with a token which is in any way obscured or has become illegible, unless it has become obscured or illegible temporarily beyond the control of the operator.

(8) Where such a token has been lost or has become obscured or illegible, the operator must apply within four working days for a duplicate by completing the form required by the NPTR and must, where possible, submit the damaged or obscured token to the NPTR for destruction.

(9) A certificate or token issued in terms of this regulation may be couriered to the operator, but may not be used until the operator has acknowledged receipt in writing to the NPTR by e-mail or fax.

(10) Where the NPTR has determined that an operator may use a maximum number of vehicles under section 81(4) of the Act, the NPTR may not issue tokens or certificates for vehicles that exceed that number.

Operating licences for tourist transport vehicles

37. (1) Where the NPTR has certified a tourist transport vehicle in terms of section 84 of the Act and regulation 36 for an operator that has been accredited in terms of section 81 of the Act, it must issue an operating licence for that vehicle to operate

tourist transport, which will replace any permit or operating licence already issued for that vehicle.

(2) Before being issued with such an operating licence, the operator must submit to the NPTR the permit or operating licence previously issued for the relevant vehicle to the NPTR, which must cancel it within 24 hours of issuing the new operating licence.

(3) Where on accreditation of the applicant the NPTR has imposed a condition under section 81(4) of the Act that only a certain number of vehicles may be operated or that only vehicles of certain classes may be operated, an operating licence may not be issued in conflict with such a condition.

(4) Such an operating licence must stipulate-

- (a) appropriate conditions imposed by the NPTR, either at the stage of accreditation or at the stage of issuing the operating licence; and
- (b) the area within which the vehicle may be operated, which may be the Republic as a whole.

(5) Such an operating licence may also authorize the operator to undertake charter services, subject to conditions imposed by the NPTR and reflected in the licence.

Cancellation of accreditation

38. (1) Where the NPTR becomes aware that an accredited operator is or has been guilty of conduct contemplated in section 83(1)(a) to (f) of the Act, it must, as appropriate, engage with the operator to discuss the issue or issues and steps to be taken by the operator to comply.

(2) In addition to the reasons mentioned in section 83(1) of the Act, the NPTR may cancel the accreditation of a tourist transport operator if the operator fails to comply with the following requirements:

- (a) Failure to comply with a condition imposed by the NPTR at the stage of accreditation of the operator, or a condition stipulated in an operating licence held by the operator;
- (b) Use of a token by that operator on a vehicle that has not been certified; or
- (c) Where the operator has allowed a person that has not been properly accredited in terms of the Act to use the vehicle for tourist transport services.

Issue of operating licence for tourist transport vehicle

39. (1) If satisfied that the applicant is accredited and that the vehicle complies with the requirements set out in regulation 33(1), the competent official of the NPTR must issue the operating licence to the applicant the same day if the application was lodged before 12:00, or on the following day if it was lodged on or after 12:00.

(2) Such an operating licence may not be issued to the operator until conditions imposed by the NPTR have been met, required proof or documents have been submitted, and the operator has submitted the original permit or operating licence previously issued for the vehicle to the NPTR for cancellation under regulation 37(2).

(3) Such an operating licence may be issued electronically, in which case a printout of the licence must be kept in the vehicle at all times while it is operated for tourist transport services until receipt of the originals.

(4) The NPTR must issue two originals of such an operating licence to the operator, one clearly marked "To be kept in the vehicle" and one clearly marked "File copy" which must be collected by or sent by courier or registered post to the operator.

Call centre

40. (1) The NPTR must establish a call centre where complaints against operators or their drivers, suggestions or other input from interested persons can be received.

(2) Where a complaint against an operator is received, the NPTR must where appropriate forthwith dispatch one or more inspectors to investigate within 48 hours, and take appropriate action to follow up the matter.

(3) Authorised officers investigating accident scenes who become aware of possible offences having been committed by accredited operators or their drivers, must notify the NPTR in writing or by e-mail within 48 hours.

Fees

41. The fees for inspecting information in the register of accredited tourist operators in terms of section 81(7) of the Act shall be determined by the NPTR.

Transitional provisions

42. Where an operator has applied for accreditation in terms of regulation 31, that operator may use any permit or operating licence issued to that operator for the vehicle in question until a new operating licence has been issued under regulation 39(1) and the permit or operating licence has been cancelled in terms of regulation 37(2).

Chapter 6

Contracting for Public Transport Services

Public Transport Integration Committees

43. (1) As soon as possible after the commencement of the Act, each provincial department must establish a Public Transport Integration Committee consisting of representatives of the following:

- (a) The Department;
- (b) the provincial department;
- (c) the Provincial Treasury;
- (d) all district municipalities in the province;

- (e) all local municipalities in the province that are establishing IPTNs;
- (f) if so decided by the MEC, other local municipalities in the province with subsidised public transport services in their areas; and
- (g) the Passenger Rail Agency where rail commuter services are provided in the province.

(2) The Public Transport Integration Committee must be chaired by an official of the provincial department or Department, as decided between them, and the provincial department must provide secretarial services for the Committee.

(3) The purpose of such Committees will be to formulate a strategy to achieve the following as soon as possible, and to implement that strategy:

- (a) In the case of municipalities establishing IPTNs, converting existing contracts on the routes or in the areas of the IPTNs to negotiated contracts, subsidised service contracts or commercial service contracts contemplated in the Act between the municipality and the operator or operators to establish that network;
- (b) converting interim contracts to subsidised service contracts or negotiated contracts contemplated in the Act based on a fixed cost subsidy per kilometer by 1 September 2009 as required by the Division of Revenue Act, 2009;

[**Note:** See the Division of Revenue Bill for the 2009/10 financial year [B.4- 2009] in terms of which the existing bus subsidies will be paid as a conditional grant called the Public Transport Operations Grant.]

- (c) integrating other existing contracts, municipal bus services and other public transport services into the larger public transport system in each area subject to relevant ITPs;
- (d) alignment of rail plan corridors with ITPs;
- (e) involving existing bus and minibuss taxi operators in the new contracts to be concluded;
- (f) developing and implementing integrated ticketing systems and other fare integration strategies; and
- (g) otherwise implementing ITPs and complying with the Act and the relevant Division of Revenue Act.

(4) The Public Transport Integration Committee must also-

- (a) develop guidelines for the design of IPTNs in the province to comply with national norms and standards;
- (b) develop methods for evaluating and prioritizing IPTN corridors and services;
- (c) develop decision-making processes to approve IPTNs;
- (d) approve and ensure implementation of IPTNs;
- (e) develop procedures for ensuring the delivery of services in terms of IPTNs and for monitoring their implementation;
- (f) develop methods for evaluation of subsidised service contracts and negotiated contract based on national guidelines, and to evaluate such contracts;
- (g) advise regulatory authorities on evaluating applications for operating licences in terms of ITPs that include operating licence strategies;
- (h) co-ordinate the development and implementation of a uniform public transport data base, monitoring and reporting system;
- (i) develop methodology and criteria for assessing intermodal efficiency;
- (j) integrate rail corridor planning in terms of the National Rail Plan with ITPs;

- (k) oversee the conversion of ticket-based subsidy to km based subsidy;
- (l) monitor and review the implementation of services identified in IPTNs;
- (m) oversee and make recommendations on the implementation of integrated ticketing systems and roll-out of fare integration strategies;
- (n) evaluate and prioritise IPTN corridors and services requiring subsidies;
- (o) make recommendations on the awarding of subsidised service contracts and negotiated contracts;
- (p) develop a framework for a uniform public transport data base and reporting system;
- (q) ensure the efficient application of available funds through development of a monitoring framework for road and rail based public transport services; and
- (r) monitor modal inefficiencies.

Intermodal planning committees

44. (1) The intermodal planning committees contemplated in section 15 of the Act must at least have the following members:

- (a) One or more officials of the planning and public transport departments of the municipality;
- (b) an official of the provincial department involved in developing the PLTF;
- (c) a representative of the Passenger Rail Agency where there are passenger rail services in the area;
- (d) one or more representatives of operators of scheduled public transport services, minibus taxi-type services and, as decided by the municipality, operators of other public transport services;
- (e) a representative of organized business in the area; and
- (f) a representative of organized labour in the area.

(2) Such a committee must invite the Department to send representatives should they wish to do so.

(3) The municipality must determine procedures for meetings of such committee and frequency of meetings.

Negotiated contracts

45. (1) Where a contracting authority has concluded a negotiated contract in terms of section 47(3) of the Transition Act, that contract shall remain in force until it expires or is terminated in terms of its provisions, but the contracting authority will not thereby be precluded from concluding a negotiated contract under section 41 of the Act in the same area or on the same routes.

(2) Where there is a contract contemplated in section 46(1) of the Act with the province as contracting authority, involving services on BRT routes as part of an IPTN, and such contract has more than three months still to run-

- (a) the municipality establishing the IPTN must enter into negotiations with the relevant provincial department and the operator through the provincial Public Transport Integration Committee with a view to involving the operator in the operating agreements for the proposed IPTN;

- (b) the funds previously allocated for the routes or areas forming part of the services provided in terms of that contract that will be covered by the BRT services must be allocated to the municipality for funding the network contract; and
- (c) the province or municipality, as agreed between them and the Department, may conclude a contract in terms of the Act with the existing operator, or failing agreement with that operator, with another operator or operators, for the remainder of the services, subject to section 11(2) and (3) of the Act.

(3) Sub-regulation (2) shall not prevent the contracting authority from negotiating with the operator as contemplated in that sub-regulation where such an interim contract has three months or less still to run, or, alternatively the contracting authority may allow the interim contract to run its course in terms of section 46(1)(a) of the Act.

(4) Where a municipality is establishing an IPTN contemplated in section 41(1)(a) of the Act, it must make reasonable efforts to involve existing bus and minibus taxi operators in the proposed negotiated contracts, but where negotiations with those operators fail within a reasonable time, the municipality may conclude-

- (a) one or more negotiated contracts with other operators in terms of section 41(1)(a), (b) or (c) of the Act; or
- (b) subsidised service contracts or commercial service contracts with other operators.

Phases in negotiated contracts

46. A negotiated contract concluded in terms of section 41 of the Act may provide for the services to be provided under the contract to be increased or amended in a phased manner during the period of the contract, provided that the total length of the contract shall not exceed 12 years.

Operating licences and permits in relation to contracts

47. (1) Operators who agree to enter into contracts with municipalities to participate in a negotiated contract under section 41 of the Act must surrender all permits and operating licences held by them for services on the routes or in the areas in question to the appropriate regulatory entity for amendment or cancellation, as the case may be.

(2) Where an operator operating an uncontracted service on a route to be operated by a contracted service in terms of an IPTN has unreasonably failed or refused to be part of the contracting arrangements, that operator may not operate on such a route in competition with the relevant contracted services without the written permission of the planning authority, but, if such permission is refused, the planning authority must-

- (a) offer the operator an alternative service in terms of section 39(1)(a) of the Act; or
- (b) make an offer to compensate the operator in a just and equitable manner for the consequent loss of business, if any, on those routes.

(3) Where an operator contemplated in sub-regulation (2) has-

- (a) accepted an offer made under that sub-regulation, that operator must surrender the relevant permits and operating licences to the appropriate regulatory entity for amendment or cancellation, as the case may; or
- (b) has rejected such an offer, the matter must be submitted to mediation or arbitration under regulations 50 to 53 and the planning authority may impose a moratorium on the issuing of new operating licences for uncontracted services on the route or routes in terms of section 39(1)(b) of the Act.

(4) Where a contracting authority has concluded a contract with an operator as part of an IPTN, and that contract is terminated before its expiry date or that operator is unable or unwilling to operate the contracted services during the period of the contract, the contracting authority shall be deemed to be the holder of the relevant operating licences and may operate the services itself for the period that the firstmentioned operator fails or refuses to operate, or while arrangements are being made to procure another operator, but not for more than 180 days.

(5) In a situation contemplated in sub-regulation (4), the contracting authority may, instead of operating the service itself, sub-contract the services to another operator to operate the services for the interim period in which case the sub-contractor must be issued forthwith with operating licences for the vehicles being used for those services for the period deemed fit by the regulatory entity, but not for more than 180 days.

Arrangements for subsidised service contracts

48. Not later than one year before expiry of a contract contemplated in section 42(2) of the Act, the contracting authority must commence arrangements for inviting tenders for subsidised service contracts or commercial service contracts which must, among other things, involve evaluating the services for compliance with the relevant ITP and redesigning them if necessary.

Qualifications of tenderers

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

- (a) Must conduct public transport operations according to business principles with financial ringfencing; and
- (b) must have his, her or its tax affairs in order and be able to furnish a valid tax clearance certificate issued by the South African Revenue Services.

(2) For the purposes of sub-regulation (1)(b), an operator is financially ringfenced if—

- (a) the business of the operator's undertaking is conducted separately from that of another entity or undertaking or any other organisation;
- (b) the operator keeps separate accounting records, in accordance with generally accepted accounting practice and procedures, of its assets, liabilities, income, expenditure, profits and losses;

- (c) the operator's undertaking is financially sustainable in terms of its financial statements; and
- (d) the operator has no unfair advantage as regards access to financial or other support or resources from any organ of state, unless such advantage is part of a scheme which applies generally, approved by the contracting authority, to protect or advance public transport operators disadvantaged by unfair discrimination.

(3) For the duration of a commercial service contract or subsidised service contract, an operator and, where appropriate, any person or entity exercising ownership control over an operator, or performing services on behalf of or in the capacity as agent of, an operator, must—

- (a) keep separate record, in accordance with generally accepted accounting practices and procedures, of his or her or its financial position, performance, flow of funds and change in financial position;
- (b) undergo an annual audit by a person registered in terms of the Auditing Profession Act, 2005 (Act No. 26 of 2005);
- (c) comply with the requirements of sub-regulation (1);
- (d) not enjoy an unfair advantage emanating from an organ of state, but that any advantage emanating from a subsidised service contract is not deemed to be an unfair advantage for the purposes of this section.

(4) For the purpose of this regulation—

- (a) "ownership control" means the ability to exercise or to influence substantially the exercise, of any of the financial and operating policies of an operator so as to obtain a benefit from its activities; and
- (b) "unfair advantage" means, but is not limited to—
 - (i) the receipt by an operator of any direct or indirect benefit, including funds, resources, donations, grants, consideration or other advantage, whether financial or otherwise, which is not available on the same terms and conditions to all other potential operators;
 - (ii) the direct or indirect guarantee or honouring of any of the obligations of the operator, including the arrangement or facilitation of the granting of any such loan;
 - (iii) the direct or indirect provision of a loan bearing no interest, or interest at a substantially lower rate than would be available commercially to a similar operator under similar conditions, or a loan in respect of which interest payments are deferred for a period of more than six months, including the arrangement or facilitation of the granting of any such loan;
 - (iv) allowing an operator to make use, or failing to prevent an operator from making use, of any public resources, including infrastructure, property, facilities, assets, human resources, systems, expertise or intellectual property, or facilitating such action, which would not be available to another similar operator on the same terms and conditions.

Resolving disputes

50. Where a contracting authority and an operator cannot reach agreement under section 46(1) of the Act, the matter must be referred to mediation under

regulation 44 if not urgent, or to arbitration under regulation 45 where the contracting authority has decided that the matter is urgent.

Mediation

51. (1) Either party may start the mediation proceedings by giving the other party not less than seven days' written notice that the matter must proceed to mediation.

(2) The parties must each in writing nominate a mediator who is or has been a judge or practising advocate for not less than ten years, within 14 days after receipt of the notice to proceed to mediation, and if the parties cannot agree on one mediator within a further seven days, the Association of Law Societies of the Republic of South Africa shall be requested to nominate a mediator within fourteen (14) days after the request.

(3) The Parties must commit themselves in every respect to the speedy finalisation and solution of the mediation proceedings.

(4) Either party may furnish the mediator in advance with written documentation and information and must make the same available to the other party.

(5) The mediator must establish and regulate procedures for the mediation so long as the parties continue to agree to participate in the mediation process.

(6) Mediation is a voluntary process, and may be terminated at any time by a party on written notice to the other.

(7) The mediator must give each party the opportunity to present its case by means of written or oral representations and to submit settlement alternatives, and the mediator must aid the parties in reaching a mutually acceptable agreement.

(8) The mediator must record the settlement reached by the parties, if any, and request them to sign the draft settlement within three days after a settlement has been reached and give a copy thereof to each party.

(9) The Parties must pay the costs of the mediator in equal shares, unless the mediator orders one party to pay a larger share or the full amount.

(10) The signed settlement shall be final and binding on both parties.

(11) The mediator shall not have the power to render a binding decision or award in the dispute, nor will he or she be empowered to force any party to settle the dispute.

(12) Any information, documentation and material disclosed or made available to the mediator privately or in caucus will remain confidential and will not be disclosed by the mediator or any party without the prior consent of the party who made available such information, documentation or material.

(13) Mediation will take place on a confidential and "without prejudice" basis, and the parties-

(a) may never subpoena any person who is a party to or who is involved in the mediation, including the mediator, for the purpose of giving evidence as to what took place during mediation; and

(b) must ensure that the confidentiality of the mediation process is assured.

(14) If the parties are unable to reach a settlement within 60 days the mediator must certify this in writing and either party may institute proceedings in the appropriate court for settlement of the dispute.

Arbitration in urgent matters

52. (1) Where there is a dispute contemplated in regulation 9 and the contracting authority notifies the operator in writing that the matter is urgent, the matter must proceed to urgent arbitration in terms of this regulation.

(2) Except as otherwise provided in these regulations, the arbitration proceedings shall be conducted in accordance with the arbitration laws of the Republic and in English.

(3) The arbitration proceedings must be conducted on an informal basis, it being the intention that a decision should be reached as expeditiously and inexpensively as possible, but in any event within 30 days after the date the operator received the notice under sub-regulation (1), subject only to the due observance of the principles of justice.

(4) The parties must each nominate an arbitrator in writing within four days after the operator received the notification referred to in sub-regulation (1), and if they fail to agree on an arbitrator within three days thereafter, or a party fails to nominate an arbitrator, the Bar Council of the area in which the contract was executed must be asked to nominate an arbitrator on an urgent basis, who must be an advocate with at least ten years' experience in practice at the bar and will be appointed in writing by the contracting authority.

(5) Within 10 days after the arbitrator is appointed, each party must submit to the arbitrator a full written statement of his, her or its case which must set out all the evidence, sworn statements, facts, submissions and expert opinion as such party deems necessary to support its contentions in regard to the matters in dispute and simultaneously serve a copy thereof on the other party.

(6) The arbitrator may, on good cause being shown, grant the party an extension of not more than five days to submit such statement of case, and if a party fails to submit a statement of case within that time, the arbitrator may proceed to make an award without it.

(7) Within seven days after receipt of the copy of the other party's statement of case, either party may submit a further supplementary statement to the arbitrator, and must serve a copy thereof on the other party.

(8) If the arbitrator considers that the matter cannot be decided on the papers before him or her, the arbitrator may call for other evidence or for witnesses to testify at a place determined by the arbitrator.

(9) Witnesses must testify in the presence of both parties, who may question such witnesses, and the arbitrator may appoint a commissioner to take evidence of any person within or outside the Republic and forward it to the arbitrator as if it were a commissioner appointed by the court.

(10) Subject to these regulations, the arbitrator shall have discretion and all powers allowed by law to ensure the just, expeditious, economic and final determination of the dispute, including the matter of costs, and without derogating from the generality of the foregoing, shall also have the power-

(a) to order any party to cover the cost of an interpreter;

- (b) to determine the time, place and venue of the hearing and the hours during which it will take place;
- (c) to strike out or dismiss a claim or defence on grounds of failure by a party to comply timeously with any ruling or interim award by the arbitrator, or on grounds of delaying conduct by a party which is likely to cause substantial prejudice to the other party;
- (d) to proceed with the arbitration in the absence of or without hearing a party who is in default or fails to appear or to comply with any ruling or interim award of the arbitrator;
- (e) to make any ruling or give any direction necessary or advisable for the just, expeditious, economic and final determination of all disputed matters raised in the statements of case, including the matter of costs;
- (f) to determine the validity of the contract and the value of the unexpired portion thereof, if any;
- (g) to permit the amendment of a party's statement of case (but not affidavits submitted therewith) and require a party to amend its statement of case so that it is not evasive and, on application of a party, to strike out from the other party's statement averments which are vague, scandalous, vexatious or irrelevant;
- (h) to make rulings or give interim awards on matters of onus, admissibility of evidence and procedure, including ones of an interlocutory or interim nature, and rulings or interim awards relating to costs and the implementation of interim or final awards;
- (i) to make such findings of fact and law as may be required for purposes of the proceedings and the award, including an order as to costs, and including an award whereby a party is restrained from any conduct, either on an interim or final basis;
- (j) before making a final award and on the application of a party, to state any question of law arising in the course of the proceedings as a special case for the opinion of senior counsel, which opinion shall be final and binding on the arbitrator and the parties, and not subject to appeal;
- (k) in determining the procedure for the arbitration, and after hearing the parties, to direct-
 - (i) that the dispute must be determined summarily at an informal hearing attended by both parties;
 - (ii) the summary trial of an issue to decide whether any issue or point has no reasonable prospect of success and should be dismissed or struck out, or as to whether an interim award should be made for a sum indisputably due;
 - (iii) that a party should furnish more particulars or details on any issue;
 - (iv) that a party must produce or make available for inspection to the other party and to the arbitrator any document, property or thing under the control of the first party;
 - (v) that there shall be one or more inspections in loco;
 - (vi) that there should be discovery on oath or otherwise of documents and recordings (subject to valid legal objection), either in regard to

- all relevant matters or in regard to issues determined by the arbitrator;
- (vii) that parties must provide each other with a list of names of witnesses to be called, with a statement of the substance of their evidence and that, save with the leave of the arbitrator, no witness shall be called in respect of whom such name and summary has not been provided;
- (viii) that the hearing should proceed on documents (including written submissions), only, without the presentation of other evidence.
- (11) The arbitrator must do all in his or her power make an award within 30 days after he or she was appointed, or as soon as possible thereafter.
- (12) Any award made by the arbitrator-
- (a) shall be final and binding on the parties;
- (b) shall be carried into effect forthwith by the parties;
- (c) may be made an order of court by a party only if the other party fails to heed the terms of the award, and
- (d) may include an order directing the unsuccessful party to pay the costs of the arbitrator and the expenditure incurred by the successful party.
- (13) Neither party may withdraw from such arbitration once the contracting authority has certified that the matter is urgent under this regulation.

General matters regarding disputes

53. (1) Nothing in these regulations will prevent a party from approaching a court for urgent relief.
- (2) Where applicable, the operator must, notwithstanding any dispute, mediation or arbitration, continue to provide the services in accordance with the contract.

Chapter 7

Transporting of scholars, students etc.

Scholar transport

54. (1) An application for an operating licence for scholar transport must, in addition to the other matters required by the Act or these regulations, be accompanied by the following in addition to the other requirements for an operating licence:
- (a) A letter from the principal or authorized administrative officer of the school or other educational institution approving the operator and the transport, a copy of which must be kept in each vehicle being used for such a service;
- (b) Copies of the professional driving permits of all drivers to be used for the service.
- (2) As from a date to be published by the Minister in the *Gazette*, operators of scholar transport must comply with the following and submit proof thereof to the relevant regulatory authority within the time stipulated in the notice:

- (a) submit drivers being employed for the service for eye or medical tests in addition to the tests required for a professional driving permit;
- (b) ensure that such drivers obtain the following qualifications as prescribed or described in that notice:
 - (i) basic first-aid;
 - (ii) defensive driving; or
 - (iii) advanced driving.
- (c) obtain qualifications as prescribed in customer service or basic business management.
- (d) install a tracking system device in the vehicle as prescribed or required by the regulatory authority;
- (e) have vehicles fitted with soft seats.

(3) A notice under sub-regulation (2) may deal with one or more or all of the matters listed in that sub-regulation.

(4) All vehicles used for scholar transport must-

- (a) be marked in the manner prescribed or required by the relevant regulatory entity to indicate that scholars or students are being carried;
- (b) have a first-aid kit in the vehicle at all times that complies with prescribed requirements or those stipulated by the regulatory entity.

(5) Regulatory entities must keep a separate database of scholar transport operators and vehicles.

(6) All drivers engaged in scholar transport must be issued by the regulatory entity with a special identity card with features designed to ensure that it is impossible to be forged, containing at least the following information:

- (a) full names and identity number of the driver;
- (b) name of the operator;
- (c) full, recent colour photograph of the driver;
- (d) the code indicating the type of vehicle that the driver may drive.

(7) Such identification cards are not transferable, but a duplicate may be issued if the card is lost or stolen.

[**Note:** Should an operator identification card also be required?]

(8) All schools and other educational institutions must provide areas off of public roads where scholars and students may be picked up or set down by motor vehicles.

(9) Where primary or pre-primary school children are being carried in the course of scholar transport, a teacher or other responsible adult must be in the vehicle at all times to supervise them.

(10) Scholars or students may only be loaded or offloaded on public roads in areas that are safe for loading, taking into account the fact that the scholars or students may be crossing the road in question.

(11) Where a marked vehicle carrying scholars or students is loading or offloading passengers on a public road, all other vehicles in its vicinity must slow down or stop to ensure the safety of the scholars or students that may be crossing the road.

[**Note:** Should special or additional insurance be required for scholar transport?]

Chapter 8

General matters

Submission of integrated transport plans to NPTR and PRE

55. Every planning authority must submit electronic and hard copies of its integrated transport plan after approval thereof to the NPTR and relevant PRE within seven days of such approval, as required by section 36(6) of the Act.

Stopping of vehicles

56. An authorised officer may cause a vehicle to be stopped in terms of section 89(1)(a) of the Act in the manner prescribed for the stopping of vehicles by traffic officers in the National Road Traffic Act and its regulations.

Offences

57. (1) A person is guilty of an offence and liable on conviction to a fine or to imprisonment for not more than three months, or to both a fine and imprisonment, who-

- (a) contravenes any provision of these regulations;
- (b) drives a vehicle for scholar transport without a special identity card as required by regulation 48; or
- (c) uses such an identity card that does not apply to him- or herself.

Repeal

58. (1) The Electronic Fare Collection Requirements published under section 5(6)(c) of the Transition Act shall continue to apply until replaced by requirements or regulations made under the Act.

(2) Subject to sub-regulation (1), all regulations made by the Minister under the Transition Act are hereby repealed.

Short title and commencement

59. These regulations are called the National Land Transport Regulations, 2009, and come into operation on the date of their publication in the *Gazette*.
