

RECTIFICATION NOTICE

THE KWAZULU-NATAL ROAD TRAFFIC ACT, 1997 (ACT NO. 7 OF 1997) IN NOTICE NO. 2368 OF 17 APRIL 2000 IS HEREBY REPLACED BY THE FOLLOWING SCHEDULE:

KWAZULU-NATAL ROAD TRAFFIC ACT, 1997: NO. 7 OF 1997

SCHEDULE

Assented to on 1997-09-26

ACT

To consolidate and amend the provisions relating to road traffic and to provide for matters connected therewith. BE IT ENACTED by the Parliament of the Province of KwaZulu-Natal, as follows:

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Definitions

1. (1) In this Act, unless the context otherwise indicates -

"authorised officer" means an inspector of licences, examiner of vehicles, examiner for driving licences or a traffic officer, and includes any other person whom the MEC may from time to time by regulation declare to be an authorised officer;

"bylaw" means a bylaw contemplated in section 26;

"constitution" means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

"Director-General" means the Director-General of the Administration of the Province of KwaZulu-Natal;

"examiner for driving licences" means an examiner for driving licences registered and appointed in terms of Chapter 1;

"examiner of vehicles" means an examiner of vehicles registered and appointed in terms of Chapter I;

"inspector of licences" means an inspector of licences appointed in terms of Chapter I;

"instructor" means any person who for direct or indirect reward -

(a) instructs any other person in the driving of a motor vehicle;

(b) teaches any other person the rules of the road or road traffic signs in order to obtain a learner's or a driving licence;

"MEC" means the member of the Executive Council appointed in terms of section 132(2) of the Constitution to whom the administration of this Act has been assigned;

"National Road Traffic Act, 1996" means the National Road Traffic Act, 1996 (Act No. 93 of 1996), and includes the regulations made under that Act;

"Parliament" means the KwaZulu-Natal Provincial Legislature;

"Premier" means the Premier of the Province elected in terms of section 128 of the Constitution;

"prescribe" means prescribe by regulation;

"province" means the Province of KwaZulu-Natal referred to in section 103 of the Constitution;

"registering authority" means a registering authority appointed under section 2;

"regulation" means a regulation made under this Act;

"testing station" means a testing station registered in terms of section 37 of the National Road Traffic Act, 1996;

"this Act" includes the regulations, and for the purposes of Chapters I, II and III of this Act also includes the National Road Traffic Act, 1996, and the regulations made under that Act;

"traffic officer" means a traffic officer appointed under Chapter I and any member of the Service as defined in section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995), and for the purposes of Chapters-III and IV and sections 22 and 29 of this Act includes a peace officer;

"traffic warden" means a traffic warden appointed under Chapter I;

(2) Any word or expression defined in the National Road Traffic Act, 1996, but not defined in subsection (1), shall, unless the context otherwise indicates, bear the same meaning as the meaning assigned to it in the National Road Traffic Act, 1996.

CHAPTER I

REGISTERING AUTHORITIES AND OFFICERS

Appointment of registering authorities

2. (1) For the purposes of this Act, the MEC shall, by notice in the *Provincial Gazette*, appoint a registering authority for such area

and upon such conditions as he or she may determine from time to time.

(2) The MEC may combine the area of any registering authority or any portion thereof with the area of another registering authority and may divide the area of a registering authority into areas for two or more registering authorities.

(3) Where, from or after a specific date, a registering authority (in this subsection referred to as a new registering authority) becomes the registering authority for an area previously under the jurisdiction of another registering authority (including a registering authority appointed under a repealed ordinance) any reference in this Act or a repealed ordinance to such other registering authority shall, from or after such date, be construed as a reference to such new registering authority.

(4) The powers and duties conferred or imposed upon a registering authority by or under this Act shall be exercised or performed on behalf of that registering authority by such persons as may be authorised thereto by the registering authority.

Appointment of officers

3. (1) For the purposes of this Act -

(a) the MEC may, subject to the laws governing the Public Service and upon such conditions as he or she may determine, appoint for the province as many persons as -

(i) inspectors of licences; (ii) examiners of vehicles; (iii) examiners for learner's and driving licences; (iv) traffic officers; and (v) traffic wardens, as he or she may deem expedient;

(b) a local authority which is a registering authority may, upon such conditions as the MEC may prescribe by notice in the *Provincial Gazette*, appoint for its area so many persons as -

(i) inspectors of licences; (ii) examiners of vehicles; and (iii) examiners for learner's and driving licences, as it may deem expedient;

(c) any local authority or two or more local authorities may jointly, upon such conditions as the MEC may prescribe by notice in the *Provincial Gazette*, appoint for its area or for their areas jointly, as the case may be, so many persons as traffic officers or reserve traffic officers as such authority or authorities may deem expedient, and such officers shall function -

(i) within such area or areas; and

(ii) with the prior approval of the MEC and subject to the conditions of such approval, outside such area or areas:

Provided that the MEC may, by notice in the *Provincial Gazette*, exclude such officers from exercising or performing their duties on any specified public road or portion thereof which is situated within the area of jurisdiction of a local authority;

(d) any local authority may appoint persons as traffic wardens or reserve traffic wardens to exercise or perform within its area such powers and duties of a traffic officer as the MEC may determine: Provided that the MEC may -

(i) make different determinations in respect of different categories of traffic wardens; and

(ii) either generally or specifically, impose conditions with regard to the exercise or performance of such powers and duties;

(e) any person or authority determined by the MEC by notice in the *Provincial Gazette*, may, on such conditions and for such areas as may be determined in the notice, appoint any person as an examiner of vehicles.

(2) No person shall be appointed in terms of subsection (1) as an authorized officer unless he or she has been registered and graded in terms of section 5.

(3) Any person appointed under subsection (1) as an authorised officer, shall upon his or her appointment be issued with a certificate of appointment by the MEC, local authority, person or authority concerned, appointing him or her.

(4) (a) An authorised officer shall not exercise any power or perform any duty unless he or she is in possession of his or her certificate of appointment.

(b) An authorised officer shall produce his or her certificate of appointment at the request of any person having a material interest in the matter concerned.

Application for registration as inspector of licences, examiner of vehicles, examiner for driving licences or traffic officer

4. (1) A person desiring to be registered as -

(a) an inspector of licences;

(b) an examiner of vehicles;

(c) an examiner for driving licences;

(d) a traffic officer;

(e) reserve traffic officer;

(f) traffic warden,

shall apply therefor to the MEC in the prescribed manner.

(2) An application referred to in subsection (1) shall be accompanied by the prescribed fees.

Registration and grading of officers

5. (1) If the MEC is satisfied that an applicant contemplated in section 4 complies with the requirements for competency and registra-

tion as referred to in section 3(2) of the National Road Traffic Act, 1996, prescribed in relation to the specific category of application, he or she shall register and grade such applicant in the prescribed manner.

(2) Any person registered as an authorised officer in any other province shall be deemed to be registered as an authorised officer in this province.

Suspension and withdrawal of registration of officer

6. (1) The MEC may suspend or cancel the registration of a person registered in terms of section 5(1) in the prescribed manner, for such period as he or she may deem fit, if-

(a) in the opinion of the MEC such person is guilty of misconduct in the exercise of his or her powers or the performance of his or her duties; or

(b) in the opinion of the MEC the performance record of such person indicates that he or she is unsuitable for the exercise of the powers or performance of the duties of an officer of the category in which he or she is registered.

(2) The registration of a person referred to in subsection (1) may only be suspended or cancelled after such person had the opportunity to make representations in writing and to show cause, within the period defined by the MEC, which period shall not be less than 21 days, why the registration should not be suspended or cancelled.

(3) Any person affected by the decision of the MEC referred to in subsection (2) may, within 21 days after he or she became aware of the decision, request the MEC to give reasons in writing for his or her decision.

(4) If the registration of any person is suspended or cancelled in terms of this section that person shall forthwith return his or her registration document to the MEC who shall keep such document for the period of suspension, or cancel such document, as the case may be.

Powers and duties of inspector of licences

7. In addition to the powers and duties conferred upon him or her by or under this Act an inspector of licences may, subject to the provisions of this Act or any other law -

(a) by notice in writing as prescribed, direct the owner, operator, driver or person in charge of any vehicle, wherever found, which in his or her opinion does not comply with the requirements for roadworthiness certification provided for in this Act or in any other law, to produce such vehicle for inspection, examination or testing to an appropriately graded testing station for such class of vehicle at a time and place specified in such notice;

(b) in respect of any motor vehicle, demand from the title holder, owner or operator thereof the production of any document required from such person in respect of that motor vehicle in terms of this Act, or any like document issued by a competent authority outside the Republic;

(c) require from any instructor -

(i) where such instructor is engaged in teaching or instructing another person in the driving of a motor vehicle, forthwith; or (ii) where such instructor is not so engaged, within seven days, to produce evidence of his or her registration;

(d) examine any motor vehicle in order to satisfy himself or herself whether it is the motor vehicle in respect of which a document referred to in paragraph (b) was issued;

(e) impound any document referred to in paragraph (b) which appears to be or which the officer suspects to be invalid or which has been or appears to have been unlawfully altered or defaced or which is being put to unlawful use, and where any document is so impounded, the inspector shall issue a receipt in respect thereof to the person concerned;

(f) require the owner, operator, driver or person in charge of any vehicle forthwith to furnish his or her name and address, and give any other particulars required as to his or her identification, and where applicable, immediately to produce a professional driving permit;

(g) demand from any person immediately to produce a licence or any other prescribed authorisation authorising him or her to drive a motor vehicle, and to produce any other document which he or she is required to have, in respect of any motor vehicle in terms of this Act;

(h) impound any licence or document produced to him or her in terms of paragraph (g) which in his or her opinion may afford evidence of a contravention or evasion of any provision of this Act, and where any licence or document is so impounded, the inspector shall issue a receipt in respect thereof to the person concerned;

(i) require any person, whether or not such person is in any vehicle, to furnish his or her name and address and to give any other particulars required as to his or her identification, as well as such information as is within his or her power to furnish and which may lead to the identification of the owner, operator or driver of such vehicle;

(j) require any person to furnish him or her with any information as is within the power of such person to furnish and which may lead to the identification of the driver, owner, operator or person in charge of a vehicle at any time or during any period; or

(k) at any reasonable time, having regard to the circumstances of the case, without prior notice, and in the exercise of any power or the performance of any duty which in terms of this Act he or she is authorised or required to exercise or perform, enter any premises on which he or she has reason to believe that any vehicle is kept.

Powers and duties of examiner of vehicles

8. (1) An examiner of vehicles may inspect, examine and test any vehicle in order to determine whether it is roadworthy and for that purpose may dismantle the vehicle or any part thereof or its equipment or accessories: Provided that he or she shall reassemble any vehicle so dismantled unless he or she is requested by the person in charge of the vehicle not to do so.

(2) An examiner of vehicles may drive any vehicle when necessary in the performance of his or her duties, if, in the case of a motor vehicle, he or she is licensed to drive a motor vehicle of the class concerned:

Provided that in the case of a physically disabled person the examiner of vehicles may request the holder of an appropriate driving licence to drive the vehicle adapted for physically disabled persons subject to his or her instruction and in his or her presence.

Powers and duties of examiner for driving licences

9. (1) An examiner for driving licences shall test any applicant for a learner's licence or driving licence in the manner and in regard to

the matters as prescribed by the National Road Traffic Act, 1996, in order to determine whether such applicant is fit and competent to obtain a learner's or driving licence for the class of vehicle for which he or she applies.

(2) No examiner for driving licences shall test an applicant for a driving licence in terms of the National Road Traffic Act, 1996, unless such examiner himself or herself is licensed to drive a vehicle of the class for which the applicant applies to obtain a driving licence or of the class as prescribed.

Powers and duties of traffic officer

10. In addition to the powers and duties conferred upon him or her elsewhere in this Act, a traffic officer may, subject to the provisions of this Act and any other law -

(a) exercise or perform any of the powers or duties conferred upon an inspector of licences in terms of section 7;

(b) when in uniform, require the driver of any vehicle to stop such vehicle;

(c) inspect, test or cause to be inspected and tested by a person whom he or she considers competent to do so, any part and the functioning of any vehicle, and the equipment thereof, with a view to ascertaining whether such vehicle or the functioning thereof and the equipment comply with the provisions of the National Road Traffic Act, 1996: Provided that no such officer or person instructed by such officer to inspect or test such vehicle shall, in the exercise of the authority hereby conferred upon him or her, dismantle the mechanism or any working parts of any motor vehicle unless he or she is also a qualified motor mechanic or has passed an examination for examiners of vehicles as prescribed, and if he or she has so dismantled such vehicle, he or she shall reassemble the dismantled mechanism or parts unless he or she is requested by the person in charge of the vehicle not to do so;

(d) ascertain the dimensions of the load on, or the mass, axle mass load or axle unit mass load of, any vehicle, or the mass of any combination of vehicles, laden or unladen, and, if necessary for the purpose of ascertaining such mass, require any vehicle or combination of vehicles to proceed to a massmeter or mass-measuring

device, and if the mass of any vehicle or combination of vehicles exceeds the mass allowed in terms of the National Road Traffic Act, 1996, prohibit the operation of such vehicle or

combination of vehicles on a public road until such mass has been reduced or adjusted to comply with this Act: Provided that where the load on a vehicle includes any hazardous substance as contemplated in the Hazardous Substances Act, 1973 (Act No. 15 of 1973), the reduction and handling of the mass shall be undertaken in terms of that Act;

(e) drive any vehicle when necessary in the performance of his or her duties if, in the case of any motor vehicle, he or she is licensed to drive a motor vehicle of the class concerned;

(f) if any person, being the driver or apparently in charge of a vehicle, appears to such officer, by reason of his or her physical or mental condition, howsoever arising, to be incapable for the time being of driving or being in charge of such vehicle, temporarily forbid such person to continue to drive or be in charge of such vehicle and make such arrangements for the safe disposal or placing of the vehicle as in his or her opinion may be necessary or desirable in the circumstances;

(g) regulate and control traffic upon any public road, and give such directions as may, in his or her opinion, be necessary for the safe and efficient regulation of the traffic, which may include the closing of any public road, and, where he or she is of the opinion that the driver of a motor vehicle is hampering or impeding the normal flow of traffic on a public road, direct the driver to remove the vehicle from such road and to follow another route with the vehicle;

(h) require any person to furnish his or her name and address, physical and postal, and give any other particulars which are required for his or her identification or for any process if such officer reasonably suspects such person of having committed an offence under this Act or if in the opinion of such officer he or she is able to give evidence in regard to the commission or suspected commission of any such offence;

(i) in respect of any motor vehicle, demand from the owner, operator or driver thereof to produce any document prescribed in terms of this Act;

(j) impound any document referred to in paragraph (i) produced to him or her and which in his or her opinion may afford evidence of a contravention of or failure to comply with any provision of this Act and where any document is so impounded, the traffic officer shall issue a receipt therefor to the person concerned;

(k) require any professional driver or the operator or owner of any motor vehicle to produce for inspection and to have a copy made of-

(i) any record or document which that person is required in terms of this Act to carry or have in his or her possession or which is required to be affixed to any such motor vehicle; or

(ii) any record which that person is required in terms of this Act to preserve;

(l) at any time enter any motor vehicle of an operator and inspect such vehicle;

(m) at any time enter upon any premises on which he or she has reason to believe that a motor vehicle of an operator is kept or that any record or other document required to be kept in terms of this Act are to be found, and inspect such vehicle, and inspect and copy any such record or document, which he or she finds there;

(n) if he or she has reason to believe that an offence under this Act has been committed in respect of any record or document inspected by him or her, impound that record or document, and where any document is so impounded, the traffic officer shall issue a receipt therefor to the person concerned;

(o) inspect any motor vehicle or part thereof and impound any document issued in connection with the registration and licensing of such motor vehicle which relates to such motor vehicle, where it is found that the engine or chassis number of such motor vehicle differs from the engine or chassis number as specified on the document, and direct that such motor vehicle be taken, forthwith, to any police station specified by such traffic officer for police clearance, and may, after such clearance has been obtained, return the impounded document

to any person who is entitled thereto, or notify the owner of the motor vehicle concerned that such vehicle must be re-registered, as the case may be; and

(p) require from the owner, operator or driver of a motor vehicle registered or deemed to be registered in any prescribed territory, police clearance in respect of such motor vehicle before allowing that motor vehicle to be taken across the borders of the province: Provided that the MEC may exempt any owner, operator or driver in the prescribed manner from having to provide such police clearance.

Failure to comply with instruction or direction of inspector of licences, traffic officer, examiner of vehicles or peace officer

11. (1) No person shall -

(a) fail to comply with any instruction or direction given to him or her by an inspector of licences, traffic officer or examiner of vehicles, or obstruct, hinder or interfere with any inspector of licences, traffic officer or examiner of vehicles in the exercise of any power or the performance of any duty under this Act;

(b) fail to comply with any instruction or direction given to him or her by a peace officer, or obstruct, hinder or interfere with any peace officer in the exercise of any power relating to a provision of this Act assigned to him under section 334 of the Criminal Procedure Act, 1997 (Act No. S1 of 1977);

(c) in order to compel any person referred to in paragraph (a) or (b) to perform or to abstain from performing any act in respect of the exercise of his or her powers or the performance of his or her duties, or on account of such person having performed or abstained from performing such an act, threaten or suggest the use of violence against or restraint upon such person or any of his or her relatives or dependents, or threaten or suggest any injury to the property of such person or of any of his or her relatives or dependents.

(2) Whenever the production of any document which is not required to be affixed to a vehicle or to be kept with him or her in a vehicle by any person is demanded in terms of sections 7(b) or 10(i), the production thereof at any police station or office set aside by a competent authority for use by a traffic officer or peace officer, within a period of seven days after being so demanded, shall be deemed to be sufficient compliance with the demand.

(3) Whenever any document is produced in terms of subsection (2) at any police station or office referred to in that subsection, the officer in charge of such police station or office so set aside shall forthwith notify accordingly the officer who made the demand concerned and shall issue an acknowledgement of production of such document to the person producing it.

(4) Where a document is not produced in terms of subsection (2) and any process is to be handed to or served upon a person in terms of sections 54, 56, 72 or 341 of the Criminal Procedure Act, 1997, an inspector of licences, traffic officer or peace officer may require the imprint of the left thumb of the person to whom the process relates on such process, and such person shall be obliged to furnish such imprint in the manner and at the place or places on that document and copies thereof as directed by the inspector, officer or examiner concerned: Provided that if it is not possible to obtain the left thumb print of such person, the imprint of any other finger may be required, in which case the finger thus used shall be identified in writing by the inspector, officer or examiner concerned under each imprint of such finger.

Impersonating authorised officer or peace officer or inducing any such officer to forsake his or her duty

12. (1) Any person not being an authorised officer or a peace officer shall not by word, conduct or demeanour, pretend that he or she is an authorised officer or a peace officer.

(2) No person shall connive with or induce or attempt to induce any authorised officer or peace officer to omit to carry out his or her duty or to commit an act in conflict with his or her duty.

CHAPTER II

INSTRUCTORS

Instructor to be registered and graded

13. (1) No person shall act as an instructor unless he or she is registered and graded in terms of section 15.

(2) No person shall employ any other person as an instructor, or make use of his or her services as an instructor, unless such person is registered as an instructor in terms of section 15.

Application for registration as instructor

14. (1) A person desiring to be registered as an instructor shall apply therefor to the MEC in the prescribed manner. (2) An application referred to in subsection (1) shall be accompanied by the prescribed fees.

Registration and grading of instructors

15. If the MEC is satisfied that an applicant referred to in section 14 fulfils the competency and grading qualifications as prescribed pertaining to the specific category of application, he or she shall register and grade such applicant in the prescribed manner.

Suspension and cancellation of registration of instructor

16. The MEC may in the prescribed manner suspend for such period as he or she may deem fit, or cancel, the registration of an instructor if such instructor -

(a) in the opinion of the MEC is guilty of misconduct in the exercise of his or her powers or the performance of his or her duties; or

(b) failed to attend an appropriate refresher course at a training centre approved by the MEC within a prescribed period.

CHAPTER III

INSPECTORATE OF TESTING STATIONS AND DRIVING LICENCE TESTING CENTRES

Appointment of inspectorate of testing stations

17. (1) The MEC shall designate a person, authority or organisation as provincial inspectorate of testing stations.

(2) The powers and duties of the said inspectorate of testing stations in relation to the inspection and the control of standards, grading and functioning of testing stations shall be as prescribed.

(3) The MEC may, in order to defray the expenditure incurred by or on behalf of the said inspectorate for the purposes of performing its functions, prescribe fees to be paid in respect of every examination conducted or test carried out regarding the roadworthiness of a motor vehicle.

Appointment of inspectorate of driving licence testing centres

18. (1) The MEC shall designate a person, an authority or an organization as provincial inspectorate of driving licence testing centres.

(2) The powers and duties of the inspectorate in relation to the inspection and the control of standards, grading and functioning of driving licence testing centres shall be as prescribed.

(3) The MEC may, in order to defray the expenditure incurred by or on behalf of the said inspectorate for the purposes of performing its functions, prescribe fees to be paid in respect of inspections carried out in terms of this section.

CHAPTER IV

PARKING FEES

Power of local authority to collect parking fees

19. (1) A local authority may, by resolution and for the purposes mentioned in subsection (3)(a), charge fees in respect of the parking of vehicles on any public road or section thereof within its area of jurisdiction.

(2) The fees referred to in subsection (1) may differ in respect of different public roads or different sections of the same public road.

(3) (a) If a parking meter is installed for the purpose of collecting fees or with a view to controlling traffic it shall be installed in conjunction with a demarcated parking bay or bays and shall bear thereon a legend indicating the days and hours when payment shall be made for parking and the amount payable for a specific period of parking.

(b) If any method other than a parking meter is used to collect the fees referred to in subsection (1), provision shall be made for a sign to be displayed at the parking area concerned indicating the days and hours when payment shall be made for parking, the amount payable for a specific period of parking and the manner of payment for a specific period of parking.

(4) (a) The period of time for which a vehicle may be lawfully parked in a parking bay referred to in subsection (3)(a), shall, unless the contrary is proved, be as measured by the parking meter for such bay.

(b) If any method other than a parking meter is used to collect the fees referred to in subsection (1), the period of time for which a vehicle may be lawfully parked in a parking area referred to in subsection (3)(b), shall, unless the contrary is proved, be as measured by means of the method concerned in respect of the vehicle concerned.

(5) Any local authority may establish upon a public road within the area of its jurisdiction ranks or stands (to be known as special parking places) for the parking of passenger-carrying motor vehicles or any class of such vehicles as prescribed, and may make bylaws for the regulation and control of the use of those special parking places -

(a) to provide for the issue of permits allocating particular special parking places or subdivisions thereof to particular persons or vehicles or categories of vehicles for their exclusive use;

(b) to prohibit the use of any special parking place or subdivision so allocated by any other person or vehicle;

(c) to charge fees in respect of the use of special parking places; and

(d) to provide for matters incidental thereto:

Provided that provision may be made in any permit or in any renewal thereof for the limitation of the hours during which the holder shall have the exclusive use of a particular special parking place and during which the use thereof by any other person or vehicle is prohibited.

(6) In the first allocation of any special parking place or subdivision referred to in subsection (5), the local authority shall as far as possible have regard to the length of time during which the applicant therefor has been engaged in the business of transporting passengers for reward by the class of vehicle concerned.

(7) Bylaws made in terms of subsection (5) shall provide for the annual renewal, subject to the good conduct of the applicant, of the right to use any such special parking place or subdivision thereof.

(8) All fees collected by a local authority by means of a parking meter, or in respect of any parking area or special parking place as contemplated in this section, shall, except with the approval of the MEC concerned in consultation with the MEC of Finance, be used only to defray the cost of, and incidental to, any scheme, work or

undertaking for the improvement or regulation of traffic conditions within the area of such local authority, including the costs of installing and maintaining any such parking meter, parking area or special parking place.

(9) The exercise by a local authority of its powers under this section shall not render the authority subject to any liability in respect of the loss of or damage to any vehicle or the contents or fittings of any such vehicle while such vehicle is in a parking bay, parking area or special parking place.

CHAPTER V

PRESUMPTIONS AND LEGAL PROCEDURE

Presumption in regard to public road, freeway and public road in urban area

20. (1) Where in any prosecution under this Act it is alleged that an offence was committed on a public road, the road concerned shall, until the contrary is proved, be presumed to be a public road.

(2) Where in any prosecution under this Act it is alleged that an offence was committed on a freeway, the road concerned shall, until the contrary is proved, be deemed to be a freeway.

(3) Where in any prosecution under this Act it is alleged that an offence was committed on a public road in an urban area, the road concerned shall, until the contrary is proved, be presumed to be a public road in an urban area.

Presumption that owner drove or parked vehicle

21. (1) Where in any prosecution under this Act, it is material to prove who was the driver of a vehicle, it shall be presumed, until the contrary is proved, that such vehicle was driven by the owner thereof

(2) Whenever a vehicle is parked in contravention of any provision of this Act or a bylaw made thereunder, it shall be presumed, until the contrary is proved, that such vehicle was parked by the owner thereof.

(3) For the purposes of subsections (1) and (2) it shall be presumed, until the contrary is proved, that, where the owner of the vehicle concerned is a corporate body, such vehicle was driven or parked, as contemplated in those subsections, by a director or servant of the corporate body in the exercise of his or her powers or in the performance of his or her duties as such director or servant or in furthering or endeavouring to further the interests of the corporate body.

Presumption in regard to officers

22. In any prosecution under any of the provisions of this Act, the fact that any person purports to act or has purported to act as a traffic officer or an inspector of licences, examiner of vehicles or examiner for driving licences, shall be prima facie evidence of his or her appointment and authority so to act: Provided that the provisions of this section shall not apply with regard to a prosecution on a charge relating to impersonation.

CHAPTER VI

APPEALS

Right of appeal to Premier

23. (1) Any person, provincial department or registering authority who or which is aggrieved -

(a) at the refusal of the MEC to register or grade him, her or it, as the case may be, in any capacity mentioned in the definition of authorised officer, or as driving licence testing centre, or as a testing station, or as an instructor;

(b) with the suspension or cancellation of any such registration or grading; or

(c) at any other decision of the MEC regarding the activities of an operator, may within 21 days after such refusal, suspension or cancellation, or decision in writing lodge an appeal to the Premier against such refusal, suspension or cancellation, or decision, and such person, provincial department or registering authority shall at the same time serve a copy of the appeal on the MEC.

(2) After receipt of the copy of the appeal referred to in subsection (1), the MEC shall forthwith furnish the Premier with his or her reasons for the refusal, suspension or cancellation, or decision to which any such appeal refers.

(3) The Premier may after considering an appeal in terms of subsection (1), give such decision as he or she may deem fit.

(4) An appeal referred to in subsection (1) includes an appeal against any refusal, suspension or cancellation, or decision of the MEC relating to the National Road Traffic Act, 1996.

Right of appeal to MEC

24. (1) Any person who is aggrieved at the refusal of an examiner for driving licences to issue or authorise the issue to him or her of a learner's or driving licence, may, within 21 days after such refusal, in writing appeal to the MEC and, such person shall at the same time serve a copy of the appeal on the examiner concerned.

(2) Any person who is aggrieved at the refusal of an examiner of vehicles or a testing station to issue a roadworthy certificate in respect of a motor vehicle or to authorise the issue of such certificate to him or her, or at the conditions subject to which such certificate was issued to him or her, may, within 21 days after such refusal or after the issue of the certificate subject to the conditions concerned, in writing appeal against any such refusal or conditions concerned to the MEC and such person shall at the same time serve a copy of the appeal on the examiner or the testing station concerned.

(3) After receipt of the copy of the appeal referred to in subsections (1) and (2), the examiner for learner's or driving licences or the examiner of vehicles, as the case may be, shall forthwith furnish the MEC with his or her reasons for the refusal to which such appeal refers.

(4) For the purpose of deciding an appeal in terms of subsection (1), the MEC may appoint any person to examine and test the appellant as to his or her competency to drive the class of motor vehicle concerned and may in addition, require each party to the appeal to furnish such information and evidence as he or she may deem expedient.

(5) For the purpose of deciding an appeal in terms of subsection (2), the MEC may -

(a) where the appeal concerns a roadworthy certificate, cause the motor vehicle concerned to be examined and tested by an examiner of vehicles nominated by him or her; and

(b) require each party to the appeal to furnish such information and evidence as he or she may deem necessary.

(6) The MEC may after considering the appeal concerned give such decision as he or she may deem fit.

(7) An appeal referred to in subsections (1) and (2) includes an appeal against any refusal, suspension or cancellation, or decision by any person in terms of the National Road Traffic Act, 1996.

CHAPTER VII

REGULATIONS AND BYLAWS

Power of MEC to make regulations

25. (1) The MEC may make regulations, not inconsistent with the provisions of this Act or the National Road Traffic Act, 1996, in respect of any matter contemplated, required or permitted to be prescribed under this Act

and generally for the better carrying out of the provisions or objects of this Act or the National Road Traffic Act, 1996, and in particular, but without prejudice to the generality of the foregoing provisions, with respect to -

(a) in the case of a motor vehicle, the colour and character of the registration mark or number to be displayed under this Act and the means to be applied to render any such mark or number easily distinguishable, whether by night or by day, when any such vehicle is operated on a public road;

(b) subject to the regulations made under the National Road Traffic Act, 1996, the stopping with and parking of vehicles on public roads;

(c) the method of determining any fact which is required for the purposes of this Act;

(d) any form, process or token which the MEC may deem expedient for the purposes of this Act and the nature and extent of any information to be furnished for the purpose of any such form;

(e) the issue of a duplicate certificate, licence or other documentation or token issued in terms of this Act if the original has been lost, destroyed or defaced or any particulars thereon have become illegible;

(f) the dress, including insignia, of traffic officers and of traffic wardens appointed in terms of section 3;

(g) the fees that may or are to be charged for any purpose under this Act, or in respect of any registration, application, authori-

sation or examination or the issue of any document or copy of such document, referred to in the National Road Traffic Act, 1996, or the regulations issued under that Act;

(h) the fees that may or are to be charged in respect of the registration and licensing of motor vehicles as contemplated in the National Road Traffic Act, 1996.

(2) The power to make regulations for any purpose referred to in subsection (1), shall include the power to restrict or prohibit any matter or thing in relation to that purpose either absolutely or conditionally.

(3) Any regulation under this section may be made to apply generally throughout the province or within any specified part thereof or to any specified category of vehicle or person.

(4) A regulation made under subsection (1) may provide for penalties for a contravention thereof and also for different penalties in the case of successive or continuous contraventions, but no penalty shall exceed a fine or imprisonment for a period of one year.

(5) Before the MEC makes any regulation under this section, he or she may if he or she deems it expedient, cause a draft of the proposed regulation to be published in the *Provincial Gazette* together with a notice calling upon all interested persons to lodge in writing, and within a period stated in the notice, but not less than four weeks as from the date of publication of the notice, any objections or representations which they would like to raise or to make, with the Director-General for submission to the MEC: Provided that, if the MEC thereafter decides to alter the draft regulations as a result of any objections or representations submitted with regard thereto, it shall not be necessary so to publish such alterations before making the regulations.

Power of local authority to make bylaws

26. (1) Any local authority may within its area of jurisdiction with the concurrence of the MEC make bylaws not inconsistent with the provisions of this Act or the National Road Traffic Act, 1996, in respect of -

(a) the safety of traffic on any public road, the duty of any user of such road and the use of any such road by any vehicle;

(b) subject to the provisions of the Businesses Act, 1991, and any regulation or bylaw made thereunder in relation to the restriction, regulation or control of the carrying on of the business of street vendor, pedlar or

hawker, the stopping with and parking of any vehicle on any public road or portion thereof, including bylaws relating to the installation, regulation, supervision, maintenance and control of parking meters and parking places;

(c) the appointment and licensing of parking attendants and the withdrawal of any such licence;

(d) the driver or conductor of, or other person employed in connection with, a vehicle plying for hire or accepting passengers for hire;

(e) subject to the provisions of the Businesses Act, 1991, and any regulation or bylaw made thereunder in relation to the restriction, regulation or control of the carrying on of the business of street vendor, pedlar or hawker, any public road which is not to be used by any vehicle, either generally or at specific times;

(f) the relative position on the public road of traffic of differing speeds and classes;

(g) the place where and time when a vehicle may not turn so as to face in the opposite direction to that in which it was proceeding or where it may only so turn under specified conditions;

(h) the loading and off-loading of any vehicle on a public road;

(i) the rules as to priority of entry of certain motor vehicles into a main thoroughfare;

(j) the use of a hooter, bell or other warning device and the conditions under which any such warning device may be used within any specified area, whether at all times or during specified periods;

(k) the appointment of an advisory traffic control board consisting of not fewer than three members to advise the local authority on all questions of traffic control;

(l) the use of any public road by traffic in general;

(m) the limitation of the age of drivers of vehicles drawn by animals;

(n) any form or token which a local authority may deem expedient for the purposes of any bylaw, and the nature and extent of any information to be furnished for the purpose of any such form;

(o) the enabling of any local authority in the event of any person failing to do anything required of him under any bylaw to do such act and to recover the expenses thereof from the person so in default;

(p) the mass of any goods which or the number of passengers who or animals which may be conveyed on a pedal cycle;

(q) the regulation, restriction, prohibition or control of the parking upon public roads of vehicles owned, kept or used by dealers or which have been placed in their custody or under their control in the course of any dealer's business carried on by them; and

(r) any other matter in regard to which a local authority may make bylaws under this Act.

(2) The power to make bylaws for any purpose referred to in subsection (1), shall include the power to restrict or prohibit any matter or thing in relation to that purpose, either absolutely or conditionally.

(3) Any bylaw under subsection (1) may be made to apply generally throughout the area of the local authority or within any specified part thereof or to any specified category of vehicle or person.

(4) In so far as any bylaw of a local authority, whether made under this Act or any other law, may be inconsistent with any regulation under this Act or the National Road Traffic Act, 1996, the regulation shall prevail.

(5) Any bylaw made under this section may provide for penalties for a contravention thereof, and may also provide for different penalties in case of successive or continuous breaches, but no penalty shall exceed a fine or imprisonment for a period of six months.

Local authority may determine fees

27. A local authority may, by special resolution, determine the fees to be charged for any purpose contemplated in section 26.

CHAPTER VIII REGISTERS AND RECORDS

Registers or records to be kept

28. (1) The registers or records as may be prescribed shall be kept by -

- (a) an enforcement authority;
- (b) any local authority; and
- (c) any person determined by the MEC by notice in the *Provincial Gazette*.

(2) The prescribed particulars shall be recorded in the prescribed manner in registers and records referred to in subsection (1).

(3) Any authority referred to in subsection (1) shall in the manner and at such intervals as are prescribed furnish the MEC or any person or body designated by the MEC with information recorded in a register or record of such authority, and the MEC shall from the information so furnished compile or cause to be compiled such register as he or she may deem fit.

(4) The MEC may prescribe that any authority shall keep such additional registers or records as he or she may deem expedient.

Copy of entry in register or record to be evidence

29. (1) A document purporting to be an extract from, or a copy of, any register or record kept in terms of this Act and purporting to be certified as such, shall in any court and upon all occasions whatsoever be admissible as evidence and shall be prima facie evidence of the truth of the matters stated in such document without the production of the original register or record or any certificate, licence, other document, microfiche, microfilm or computerised record from or of which such extract or copy was made.

(2) The information contained in a register or record kept for the purposes of this Act shall be furnished to -

- (a) a traffic officer or inspector of licences who requires it for the performance of his or her duties;
- (b) any person authorised thereto by the MEC to demand such furnishing;
- (c) any department of State; or
- (d) a local authority:

Provided that the consent of the MEC or any person authorized thereto by him or her shall be obtained before such information is furnished to an authority referred to in paragraph (d).

(3) Any authority keeping a register or record in terms of section 28 shall at the request of any person and upon payment of the prescribed fees -

(a) confirm whether or not certain information corresponds to the information contained in such register or record, if in the opinion of such authority that person, on reasonable grounds, requires confirmation of such information; or

(b) furnish the information mentioned in paragraph (a) to that person if in the opinion of such authority he or she, on reasonable grounds, requires that such information be furnished to him or her.

Cognisance may be taken of information contained in register or record

30. The MEC may, in exercising a discretion or taking a decision in terms of this Act, take cognisance of the information contained in a register or record contemplated in section 28.

CHAPTER IX

GENERAL PROVISIONS

Parking of medical personnel

31. (1) Notwithstanding anything to the contrary contained in any law, a local authority may exempt in such circumstances and subject to such conditions as it may deem expedient -

(a) a medical practitioner; or

(b) a registered nurse or midwife as defined in section 1 of the Nursing Act, 1978 (Act No. 50 of 1978), from the provisions of any law relating to the parking of a motor vehicle within its area of jurisdiction.

Special provisions relating to parking

32. (1) Notwithstanding anything to the contrary contained in any law, a local authority may exempt in the prescribed circumstances and subject to the prescribed conditions -

(a) any person who, in the opinion of such local authority, has a prescribed physical disability; or

(b) any person who is conveying or assisting a person contemplated in paragraph (a), from the provisions of any law relating to the parking of a motor vehicle within its area of jurisdiction.

(2) A local authority shall in the prescribed circumstances, provide special parking places for the exclusive parking of vehicles driven by persons referred to in subsection (1), and such parking places shall be identified by a road traffic sign.

(3) A local authority shall control the use of the parking places referred to in subsection (2) in the prescribed manner.

(4) The local authority concerned shall issue to a person mentioned in subsection (1) proof of such exemption.

MEC may authorise certain refunds

33. (1) The MEC may, if he or she is satisfied that any amount paid by a person was in excess of the amount properly chargeable

under this Act, authorise a refund of such amount or of any part thereof to such person, subject to Treasury instructions.

(2) The MEC shall not authorise any refund under this section unless the claim therefore is received by the registering authority or the Provincial Administration within three years after the date of the payment concerned.

(3) The MEC may, in his or her discretion and where he or she is satisfied that in the circumstances it will be fair and reasonable to do so, waive all or part of the fees payable by a person under this Act.

Registering authority subject to inspection by Auditor-General

34. The Auditor-General may at any time cause an inspection to be made of the records of a registering authority, and the revenues collected by such authority under this Act.

Inspections for ensuring that provisions of this Act are being given effect to

35. (1) The MEC may authorise any person to carry out any inspection which the MEC deems necessary in order to ensure that the

provisions of this Act are being complied with.

(2) No person shall obstruct or hinder any person in the carrying out of any inspection referred to in subsection (1).

Variation of prescribed form

36. The MEC may, in such circumstances as he or she may deem expedient, authorise a registering or other authority to use, in substitution for a form prescribed for a particular purpose, a form which varies from such prescribed form, and in respect of such authority such varied form shall be deemed to be the prescribed form for that purpose.

Signature upon documents

37. Any person who is unable to sign his or her name shall, whenever his or her signature is required upon any document in terms of this Act, impress in place thereof his or her left thumb print upon the space within which he or she would otherwise have been required to sign his or her name, and if his or her thumb print is not available, he or she shall substitute therefor another of his or her fingerprints, and in such latter event the document so marked shall then be endorsed by the officer in whose presence the print was made, identifying the finger used.

Service of notices

38. (1) Whenever in terms of this Act any notice is authorised or required to be served upon or issued to any person, such notice shall

either be served personally upon the person to whom it is addressed or be sent to him or her by registered post to his or her last known address: Provided that the address furnished by the holder of a driving licence at the time of his or her application for such licence or recorded against his or her name in a register of driving licences, or the address recorded against the registration of a vehicle in a register of motor vehicles as the address of the owner of such vehicle, shall serve as his or her domicile of summons and execution for all purposes arising from or for the purposes of this Act, for the service of notices, post or processes on such person.

(2) Service by registered post in terms of subsection (1) shall be deemed to have been effected on the tenth day after the date stamped upon the receipt for registration issued by the post office which accepted the notice.

(3) A certificate by the officer who issued the notice referred to in subsection (1), or by a person subordinate to such officer, stating the time, place and manner of issuing such notice, shall be evidence that such notice was duly issued, unless and until the contrary is proved.

State bound

39. This Act shall bind the State and any person in the service of the State: Provided that the MEC may, by notice in the *Provincial Gazette*, exempt the State or any department thereof or any such person from any provision of this Act, subject to such conditions as the MEC may determine.

Offences and penalties

40. (1) Any person who contravenes or fails to comply with any provision of this Act or with any direction, condition, demand, deter-

mination, requirement, term or request thereunder, shall be guilty of an offence.

(2) Any person convicted of an offence in terms of subsection (1) read with section 11(1) shall be liable to a fine or to imprisonment for a period not exceeding three years.

(3) Any person convicted of an offence in terms of any other provision of this Act shall be liable to a fine or to imprisonment for a period not exceeding one year.

(4) Notwithstanding anything to the contrary in any law contained, a magistrate's court shall be competent to impose any penalty provided for in this Act.

Apportionment of fees

41. (1) Subject to the provisions of subsection (2) all fees paid in terms of this Act, excluding fees paid to a testing station which is not a registering authority, shall be paid into the Provincial Revenue Fund.

(2) The fees referred to in subsection (1) shall be administered as prescribed.

Apportionment of fines

42. (1) Subject to sections 6 and 8 of the Finance and Financial Adjustments Acts Consolidation Act, 1977 (Act No. 11 of 1977), and section 341(2)(b) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), all fines imposed or moneys estreated as bail in respect of any offence in terms of this Act or the National Road Traffic Act, 1996, shall be paid to the authority that initiated the prosecution.

(2) All fines imposed and moneys estreated as bail in respect of any offence under any bylaw made in terms of this Act shall be paid to the authority to which any such bylaw is applicable.

Delegation

43. (1) The MEC may -

(a) delegate to any other person any power conferred upon him or her by or under this Act; and

(b) authorise any other person to perform any duty assigned to the MEC by or under this Act, and may effect such delegation or grant such authorisation subject to such conditions as he or she may deem fit.

(2) Any delegation effected or authorisation granted under subsection (1) may at any time be withdrawn by the MEC.

Repeal of laws and savings

44. (1) KwaZulu Traffic Act, 1992 (Act No. 18 of 1992), is hereby repealed.

(2) Anything done or deemed to have been done under any provision of an Act by subsection (1), and which could be done under any provision of this Act, shall be deemed to have been done under such provisions of the last mentioned Act.

Incident Management

45. (1) For the purposes of this section "incident" means any occurrence, action of omission which results directly or indirectly in the partial or total impediment to the free flow of vehicular traffic on a road or portion of a road.

(2) The MEC shall endeavour to obtain the agreement of all relevant organizations, institutions and bodies on the methods and procedures to be followed in dealing with an incident.

(3) Different procedures and methods may be determined in respect of different types of incidents, different roads and different sections of a road.

(4) Where an agreement contemplated in subsection (1) has been reached, all parties to such agreement shall make every effort to comply therewith in the event of an incident occurring on a road contemplated in such agreement.

(5) In the event of an incident occurring on any public road within KwaZulu Natal, such incident shall be managed, as far as possible in the circumstances, in compliance with the relevant agreement, if any, applicable to that type of incident and that section of road.

Short title and commencement

46. (1) This Act shall be called the KwaZulu-Natal Road Traffic Act, 1997 (Act No. 7 of 1997), and shall come into operation on a date fixed by the Premier by proclamation in the *Provincial Gazette*.

(2) Different dates may be so fixed in respect of different provisions of this Act, and dates so fixed may differ in respect of different -

(a) persons or goods or categories of persons or goods transported by means of a motor vehicle;

(b) kinds or classes of motor vehicles used in the transportation of persons or goods;

(c) persons or categories of persons; or

(d) areas in the province.

No. 2, 2004

17 November 2004

PROCLAMATION

by the Premier of the KwaZulu-Natal Province

COMMENCEMENT OF CERTAIN SECTIONS OF THE KWAZULU-NATAL ROAD TRAFFIC ACT, 1997

(ACT NO. 7 OF 1997)

UNDER Section 46 of the KwaZulu-Natal Road Traffic Act, 1997 (Act No. 7 of 1997), I hereby fix the date of publication of this proclamation as the date on which -

(a) the definitions of "by-law"; "Director-General"; "MEC"; "National Road Traffic Act, 1996"; "Premier"; "prescribe"; "province"; "regulation" and "this Act" in Section 1(1); and

(b) Sections 1(2); 19 - 22; 25(1)(b) - (h); 25(2) - (5); 26 - 39; 40(1), (2) and (4); 41 and 43 - 46 of the said Act shall come into operation.

Given under my hand at Pietermaritzburg on this 9th day of November, Two Thousand and Four.

J. S. NDEBELE

PREMIER