

AARTO IS BACK

What this means

AARTO has been 25 years in the making and has been applied in parts over that period. In 2022 the High Court ruled that parts of the legislation were unconstitutional and interdicted the roll-out of the Act. In July 2023, however, the Constitutional Court declared that the Act is constitutional and can be applied.

The Department of Transport will be required to revise the draft regulations in line with comments received to date on a range of issues, establish the Appeal Tribunal and ensure it is staffed and funded correctly and revise a timeline for implementation of the demerit system (allegedly 69 municipalities by 31 December 2023, the rest by June 2024).

AARTO legislation was due to take full operational effect in July 2022 (became law in July 2021), with the following specific changes:

- Change the Road Traffic adjudication regime from a Criminal to an Administrative process.
- “Unsuccessful” nomination of a driver – penalties go to Motus, redirects may only happen once.
- Demerit points for individuals, vehicles, and operators.
- New Tribunal to be established to hear cases.
- Administration process in its entirety (paper-based, manual, and cumbersome)
- Range of new costs to business

On 20th July 2023, the Minister of Transport, Sindisiwe Chikunga, briefed the media on the new plan to implement AARTO. The Minister announced that the intention is for full rollout of AARTO to take effect on 1 July 2024, with 43 of the 67 initially targeted municipalities already having operational service outlets.

NEDLAC proposed amendments

The Regulations to the AARTO Act have to be amended in line with the NEDLAC process that was ongoing until the High Court ruling.

The top changes proposed by government via the NEDLAC process are as follows:

- Demerits will be available on the AARTO website on a “real-time” access portal and will be free.
- Vehicles cannot get demerit points, only drivers’ licences and vehicle operator cards.
- Operator cards will be per vehicle and no intention to prevent a fleet from operating.
- Change website notice for demerits from 10 days to 24 hours.

- On expiry of a period of disqualification, a set time-limit will be in place to return a licence card.
- The infringement levies (notice and courtesy letter) will be scrapped in totality.
- There will be 3 redirects permitted and the 3rd redirect will always be required to be a natural person.
- A Fleet Management system for electronic nominations will be developed and released.
- RTIA may hold off on enacting any provision relating to licence disc disqualification for now.
- A vehicle can be sold even if there are fines or demerit points.
- Electronic forms will be available online to move away from manual processes.
- Matters pending at the Tribunal will be stayed until a ruling (in terms of awarded demerit points etc).

Industry engagement

SAVRALA is taking the lead in its negotiations with the RTIA and Road Traffic Management Corporation (RTMC) as well as the public process that will need to be undertaken when the draft amendment regulations are published. NADA will provide full support to SAVRALA.

TOP CONCERNS ON IMPLEMENTATION

- Real-time system-to-system access opened up to dealers and financiers, insurers, and car rental.
- Tribunal operating at full capacity to adjudicate infringements.
- Determination of which municipalities will effect the AARTO legislation and which (such as City of Cape Town has indicated) will not and what the effects of this will be.
- Should the proposed removal of the vehicle or operator licence demerits not take place, a process to “park” vehicles while the points reduce will need to be implemented.
- For clients in dealer operations, real-time client demerit status to be confirmed to determine if a valid (not suspended or cancelled) drivers’ licence is in place for vehicle financing and test-driving matters.
- All entities engaged in the movement of goods with drivers and company fleets will need to assess the demerit status of their drivers (and possibly vehicles) on a real-time basis.
- Staff and Vehicle policies will need to be revised to comply with the AARTO requirements once finalised.
- All costs of implementation and ongoing compliance understood.