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## GENERAL NOTICE

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### NOTICE 189 OF 2013

### DEPARTMENT OF TRANSPORT

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

#### **PUBLICATION FOR PUBLIC COMMENT: DRAFT NATIONAL LAND TRANSPORT AMENDMENT BILL, 2013**

The Minister of Transport hereby publishes the draft National Land Transport Amendment Bill, 2013 for public comment.

Interested persons are invited to submit written comments on the draft Bill within 30 days from the date of publication hereof. Comments should be sent to the following postal or e-mail address, or faxed to the following number, or delivered by hand to:

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## NATIONAL LAND TRANSPORT AMENDMENT BILL, 2013

### GENERAL EXPLANATORY NOTE:

[        ] Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments.

### BILL

**To amend the National Land Transport Act, 2009 to provide ....** *[To be completed when the draft is nearing finality.]*

BE IT ENACTED by the Parliament of the Republic of South Africa as follows:—

#### **Amendment of Table of Contents of Act 5 of 2009**

1. The Table of Contents of the National Land Transport Act, 2009 (Act No. 5 of 2009) (“the principal Act”) is hereby amended:

(a) by the insertion of the following after the reference to section 10:

“10A Accessible and non-motorised transport”

(b) by the deletion of the words “institutional arrangements” in the reference to section 20.

(c) by the deletion of the words “and transport authorities” in the reference to section 45.

(d) by substituting the following for the heading of section 47:

“47. Conversion of permits to operating licences and rationalisation of operating licences **[general]**”

**Amendment of section 1 of Act 5 of 2009**

2. Section 1 of the principal Act is hereby amended–

- (a) by the insertion of the following definition before the definition of “adapted light delivery vehicle”:

**“accessible transport”** means transport that is accessible to all persons in the area, including, but not limited to, targeted categories of passengers, and includes accessibility of pedestrians and cyclists to their intended destinations in a safe and convenient manner, and in relation to infrastructure means the design of facilities that are usable by all people to the greatest extent possible, with or without the need for adaptation or specialised design.”

- (b) by the substitution of the following for the definition of “contracting authority”:

**“contracting authority”** means–

- (a) the Department;  
(b) a province, subject to sections 11(1)(b)(viiA), 11(1)(c)(xxvi), 11(6) and 11(8); and  
(c) a municipality, subject to sections 11(1)(b)(viiA), 11(1)(c)(xxvi), 11(2), [and] 11(5), 11(6) and 11(8);

- (c) by the substitution of the following for the definition of “integrated public transport network”:

**“integrated public transport network”** means a system in a particular area that integrates public transport services between modes, with through-ticketing and other appropriate mechanisms, that may be implemented in a phased manner, to provide users of the system with the optimal solutions to be able to travel from their origins to destinations in a seamless manner with integrated pedestrian access for all passengers, and may in appropriate cities include–

- (a) integrated rapid public transport networks, being high quality networks of car competitive public transport services that are fully integrated regardless of mode, have dedicated right of way if road based, with or without bus rapid transit systems; and  
(b) bus rapid transit systems, which are high volume bus corridors served by an integrated feeder system;”

- (d) by the insertion of the following after the definition of “municipal public transport”:

**“Municipal Regulatory Entity”** means a municipality to which the operating licensing function contemplated in section 11(1)(a)(viii) has been assigned;”

- (e) by the insertion of the following after the definition of “non-contracted service”:

**“non-motorised transport”** means transport by any means other than a motor vehicle except a motorised wheelchair and including, but not limited to, walking, cycling and animal-drawn vehicles;

(f) by the insertion of the following after the definition of “organ of state”:

**“Passenger Rail Agency”** means the Passenger Rail Agency of South Africa established in terms of section 23 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989);“

(g) by the substitution of the following for the definition of “regulatory entity”:

**“regulatory entity”** means the National Public Transport Regulator, a Provincial Regulatory Entity, or a Municipal Regulatory Entity [municipality to which the operating licence function has been assigned];

(h) by the deletion of the definition of “South African Rail Commuter Corporation”;

(i) by the deletion of the definition of “special categories of passengers”;

(j) by the insertion of the following after the definition of “subsidised service contract”:

**“targeted categories of passengers”** means–

(i) persons with disabilities; and

(ii) the elderly, pregnant women, scholars, young children and those who are limited in their movements by children;

### **Amendment of section 5 of Act 5 of 2009**

3. Section 5 of the principal Act is hereby amended by the deletion of the word “and” at the end of paragraph (i) of subsections (4), the addition of the word “and” at the end of paragraph (j) of that subsection and the addition of the following paragraph:

**“(k) promote measures to ensure the safety of pedestrians, and all forms of passengers using public transport through the making of regulations or the publication of guidelines or standards or by other appropriate measures.”**

### **Amendment of section 6 of Act 5 of 2009**

4. Section 6 of the principal Act is hereby amended by the addition of the following subsection:

“(7) Regulatory entities must, in addition to the other information required by this section, include the prescribed information on the following in the Operating Licence Administrative System:

- (a) particulars of operator associations operating in their areas and their members;
- (b) particulars of operators operating in their areas who are not members of those associations, in this section called non-members; and
- (c) where appropriate, particulars of the routes operated by the associations and non-members operating in their areas, the descriptions of which routes must correlate with those in the relevant integrated transport plans.”

#### **Amendment of section 8 of Act 5 of 2009**

5. Section 8 of the principal Act is hereby amended:

- (a) by the substitution of the following paragraph for paragraph (d) of subsection (1):

“(d) a process to be followed for offering alternative services in place of existing services to holders of operating licences or permits under section 39, including–

- (i) identifying operators contemplated in section 41(2); and
- (ii) involving them in the negotiation process contemplated in section 41;”

- (b) by the insertion of the following paragraph in subsection (1) after paragraph (f):

“(fA) requiring the payment of fees for any application made in terms of this Act, or any decal or document issued in terms of this Act;”

- (c) by the substitution of the following paragraph for paragraph (h) of subsection (1):

“(h) colour coding and branding of vehicles used for public transport where national uniformity is required;”

- (d) by the substitution of the following paragraph for paragraph (n) of subsection (1):

“(n) meetings of the National Public Transport Regulator, **[Public]** Provincial Regulatory Entities and Municipal Regulatory Entities

**[municipalities to which the operating licensing function contemplated in section 11(1)(a)(viii) has been assigned];”**

(e) by the substitution of the following paragraph for paragraph (y) of subsection (1):

“(y) requirements and time frames for vehicles and facilities to **[be made accessible to persons with disabilities, including principles for accommodating such persons in the public transport system]** accommodate the needs of targeted categories of passengers, including the provision of minimum standards required in any aspect of the public transport network to achieve that objective and requirements for planning authorities to produce universal access plans for all modes of public transport and safety measures to protect pedestrians and users of public transport;”

(f) by the deletion of the word “and” at the end of paragraph (bb) and the insertion of the following paragraphs after that paragraph:

“(bbA) for the protection of consumers in the sphere of land transport as contemplated by the Consumer Protection Act, 2008 (Act No. 68 of 2008), and subject to section 5(3) and (4) of that Act, including but not limited to the following:

- (i) Requiring the provision of information to passengers by operators, organs of state and other persons;
- (ii) providing tickets to passengers using public transport services and information to be shown on those tickets;
- (iii) preventing the exploitation of passengers who have purchased multi-journey tickets and are not able to use them to their full value; and
- (iv) providing for refunds to passengers where services are not provided at all or in time, or otherwise inadequately;

(bbB) to provide criteria for deciding the issues contemplated in section 11(1)(b)(viiA)(ee); and”

#### **Amendment of section 9 of Act 5 of 2009**

6. Section 9 of the principal Act is hereby amended by the substitution of the following for paragraph (d) of subsection (2):

“(d) produce an annual report on the state of transport affairs in the province in the prescribed manner and containing the prescribed information and submit it to the Minister in the prescribed time.”

#### **Amendment of section 10 of Act 5 of 2009**

7. Section 10 of the principal Act is hereby amended by the insertion of the following paragraph in subsection (1) after paragraph (e):

“(eA) colour coding and branding of vehicles used for public transport in the province, subject to any regulations made by the Minister in terms of section 8(1)(h);”

#### **Insertion of new section 10A in Act 5 of 2009**

8. The following section is hereby inserted in the principal Act after section 10:

##### **“Accessible and non-motorised transport**

“10A The Minister and all MECs and planning authorities must take steps in performing their functions under this Act to promote accessible transport and non-motorised transport.”

#### **Amendment of section 11 of Act 5 of 2009**

9. Section 11 of the principal Act is hereby amended:

(a) by the insertion of the following sub-paragraph after sub-paragraph (vii) of paragraph (b) of subsection (1):

“(viiA) concluding negotiated contracts contemplated in section 41, subsidised service contracts contemplated in section 42 and commercial service contracts contemplated in section 43 with operators for services provided in the province in the areas of municipalities that are not listed in Schedule 1, after consultation with the Minister and the relevant municipality or municipalities, provided that those contracts must be designed in accordance with the integrated transport plans of those municipalities if such plans have been prepared and submitted to the MEC in terms of section 36(1), or designed by the province in collaboration with the municipality where such a plan has not been prepared and submitted, as part of a capacity building programme for

the municipality to conclude or manage the contracts or parts or aspects thereof, where those municipalities lack the necessary capacity, and the Minister—

- (aa) may prescribe a process to be followed in this regard;
- (bb) may provide pro forma agreements between the province and municipality or municipalities;
- (cc) may issue directives in terms of section 5(6) to ensure that the process is initiated and expedited, either generally or in specific areas;
- (dd) must consult with the MEC who must ensure that there is connectivity between services provided in different municipal areas to promote seamless movement of passengers;
- (ee) may add more municipalities to the Schedule by notice in the Gazette, either of the Minister's own accord or at the request of the municipality, where the Minister is satisfied that they have prepared an acceptable integrated transport plan and possess the necessary capacity to enter into contracts without the assistance of the province or have already concluded appropriate contracts with operators or are in the process of doing so, and that there are sufficient subsidised services in the area to justify the inclusion; and
- (ff) may remove municipalities from the Schedule from time to time where they no longer comply with the requirements contemplated in paragraph (ee);

(b) by the substitution of the following sub-paragraph for sub-paragraph (xiv) of paragraph (c) of subsection (1):

“(xiv) ensuring that there is provision for the needs of **[special] targeted** categories of passengers in planning and providing public transport infrastructure, facilities and services **[to meet their needs, in so far as possible by the system provided for mainstream public transport]** in a manner that promotes universal access to the public transport network, including all aspects of the travel chain, and developing a universal access design plan for the network;”

(c) by the substitution of the following sub-paragraph for sub-paragraph (xix) of paragraph (c) of subsection (1):



- “(xix) in relation to the planning functions contemplated in paragraph (iv) provide for [include] service level planning for passenger rail on a corridor network basis in agreement [consultation] with the Passenger Rail Agency or other rail service providers [South African Rail Commuter Corporation];”
- (d) by the substitution of the following sub-paragraph for sub-paragraph (xxii) of paragraph (c) of subsection (1):
- “(xxii) formulating and applying travel demand management measures for its area;”
- (e) by the substitution of the following sub-paragraph for sub-paragraph (xxiv) of paragraph (c) of subsection (1):
- “(xxiv) determining concessionary fares for [special] targeted categories of passengers [in the prescribed manner];”
- (f) by the substitution of the following sub-paragraph for sub-paragraph (xxvi) of paragraph (c) of subsection (1):
- “(xxvi) concluding subsidised service contracts contemplated in section 42, commercial service contracts contemplated in section 43 and negotiated contracts contemplated in section 41(1) with operators for services within their areas, subject to paragraph (b)(viiA) and subsections (6) and (8);”
- (g) by the substitution of the following for subsection (2):
- “(2) The Minister may assign any function contemplated in subsection (1)(a) to a municipality, subject to section 156(4) of the Constitution and sections 9 and 10 of the Systems Act, to achieve the objects of the Constitution and this Act, but in the case of the function contemplated in subsection (1)(a)(xi), only if the municipality is listed in Schedule 1.”
- (h) by the addition of the following subsection:
- “(8) Where a contract contemplated in section 11(1)(a)(xi) was concluded in terms of the Transition Act, in this subsection called “an old order contract”, and is still in force, and the contracting function in relation to that contract has not been assigned to the relevant municipality, the relevant province must engage with the operator concerned and the municipality or municipalities in whose areas the services are provided to strive to ensure that-

- (a) in the case of a municipality listed in Schedule 1, that municipality concludes appropriate new contracts to replace all old order contracts ; and
- (b) in the case of a municipality not listed in Schedule 1, the municipality concludes such new contracts or the province does so as a transitional measure as contemplated in subsection (1)(b)(viiA)."

#### **Amendment of section 13 of Act 5 of 2009**

10. Section 13 of the principal Act is hereby amended by the deletion of the word "and" at the end of paragraph (d) of subsection (1), the addition of the word "and" at the end of paragraph (e) of subsection (1) and the insertion of the following paragraphs after paragraph (e) of that subsection:

- " (f) members of the South African Police Service contemplated in section 5(2) of the South African Police Service Act, 1995 (Act No. 68 of 1995), including members of metropolitan and municipal police services contemplated in Chapter 12 of that Act; and
- (g) traffic officers contemplated in section 3A of the National Road Traffic Act,"

#### **Substitution of section 15 of Act 5 of 2009**

11. The following is hereby substituted for section 15 of the principal Act:

##### **"Intermodal planning committees**

"(1) Every municipality that is establishing an integrated public transport network or has significant passenger rail services in its area must, by not later than the prescribed date, establish an intermodal planning committee consisting of the prescribed technical officials and prescribed representatives of rail operators. **[other public transport modes, users and organised business.]**

(2) The function of an intermodal planning committee is to co-ordinate and integrate public transport, as well as non-motorised and freight transport [between the modes] and to perform other prescribed functions in order to achieve the objects of this Act.

(3) In addition, where there are significant passenger rail services in the area, the intermodal planning committee must facilitate the conclusion of

appropriate service level agreements between the municipality and the Passenger Rail Agency as contemplated in section 11(1)(c)(xix)."

#### **Amendment of section 17 of Act 5 of 2009**

12. Section 17 of the principal Act is hereby amended by the substitution of the following for the introductory portion of subsection (1):

**"17. (1) Every Municipal Regulatory Entity [municipality to which the operating licence function has been assigned under section 11(2)] must—"**

#### **Amendment of section 18 of Act 5 of 2009**

13. Section 18 of the principal Act is hereby amended by the substitution of the following for subsection (1):

**"18. (1) A Municipal Regulatory Entity [municipality to which the operating licensing function has been assigned under section 11(2)] must receive and decide on applications relating to operating licences for services wholly within the area [their areas] of jurisdiction of the municipality concerned, excluding applications that must be made to the National Public Transport Regulator [or a] and excluding applications for intraprovincial services where the services cross the boundary of that municipality, which must be made to the Provincial Regulatory Entity."**

#### **Amendment of section 20 of Act 5 of 2009**

14. Section 20 of the principal Act is hereby amended by the substitution of the following for the introductory portion of subsection (2):

**"(2) The National Public Transport Regulator consists of designated officials of the Department, who are accountable to the head of the Department and who in performing their functions exercise an independent discretion and are appointed either on a full-time or part-time basis, whose specialised knowledge, training or experience, taken collectively, at least covers—"**

**Amendment of section 21 of Act 5 of 2009**

15. Section 21 of the principal Act is hereby amended:

(a) by the substitution of the following for sub-paragraph (i) of paragraph (b) of subsection (1):

“(i) interprovincial transport[, **excluding daily commuter transport to and from the area of a municipality to which the operating licensing function has been assigned under section 11(2), which must be dealt with by that municipality**] .”

(b) by deleting the word “and” at the end of paragraph (c) of subsection (1), the insertion of the word “and” at the end of paragraph (d) thereof, and the addition of the following paragraphs after paragraph (d) thereof:

“(e) advise the Minister on the making of regulations and taking other measures to protect users of public transport by implementing and promoting measures contemplated in the Consumer Protection Act, 2008 (Act No. 68 of 2008 in terms of section 8(1)(bbA));

“(f) invite comments and complaints from interested parties, including the general public, and take appropriate action in response thereto, and advise the Minister on the treatment of all passengers using public transport, including targeted categories of passengers;”

(c) by the addition of the following subsection:

“(7) The National Public Transport Regulator may issue a directive to a Provincial Regulatory Entity, Municipal Regulatory Entity or planning authority which has not or is not fulfilling its obligations under this Act, describing the extent of the failure to fulfil its obligations and stating any steps required to meet those obligations, and that entity or authority must comply with such a directive, or the National Public Transport Regulator may request the Minister to issue such a directive under section 5(6).”

**Amendment of section 23 of Act 5 of 2009**

16. Section 23 of the principal Act is hereby amended by the substitution of the following for subsection (2):

“(2) The Provincial Regulatory Entity must consist of **[dedicated]** persons appointed as officials of the provincial department either on a full-time or part-time basis by virtue of their specialised knowledge, training or experience of public transport or related matters, but who, in performing their duties exercise an independent discretion, and is accountable to the head of the provincial **[government]** department.”

**Amendment of section 24 of Act 5 of 2009**

17. Section 24 of the principal Act is hereby amended by the substitution of the following for paragraph (b) of subsection (1):

“(b) receive and decide on applications relating to operating licences for intra-provincial transport [**where no municipality exists to which the operating licence function has been assigned**], but excluding applications that must be made to the National Public Transport Regulator in terms of section 21 or to a Municipal Regulatory Entity in terms of section 18.”

**Amendment of section 27 of Act 5 of 2009**

18. Section 27 of the principal Act is hereby amended by the substitution of the following for subsection (5):

“(5) The municipal manager [**or chief executive officer**] of such a municipality must submit, annually to its council, for approval estimates of expenditure to be defrayed from the fund, and may make no payment from that fund except in accordance with such estimates or with the prior approval of that council.”

**Amendment of section 36 of Act 5 of 2009**

19. Section 36 of the principal Act is hereby amended by the insertion of the word “and” at the end of paragraph (f) of subsection (4) and the deletion of paragraph (g) of that subsection.

**Substitution of section 39 of Act 5 of 2009**

20. The following is hereby substituted for section 39 of the principal Act:

**“Rationalisation of public transport services**

“(1) When a planning authority in rationalising public transport services in its area concludes, after consulting relevant regulatory entities and taking active steps to apply law enforcement measures to prevent the operation of illegal services on a particular route, and, where appropriate, taking measures under section 78 to cancel operating licences and permits

that are not in use on that route, and based on its integrated transport plan, that there is a surplus of legally operated services by operators on that [a particular] route as a result of which an existing non-contracted public transport service is no longer required, the planning authority may [must], where possible—

(a) offer the operator an alternative service; or

(b) allow the operator to continue providing the service and impose a moratorium on the issuing of new operating licences on that route.

(2) The Minister may make regulations on the procedures to be followed in proceeding under subsection (1) **[or (2)]**.”

#### **Amendment of section 41 of Act 5 of 2009**

21. Section 41 of the principal Act is hereby amended by—

(a) the substitution of the following for the introductory portion of subsection (1):

“(1) Contracting authorities may enter into one or more negotiated contracts or a combination of such contracts with operators in their areas, once only, with a view to—“

(b) by the insertion of the following subsection after subsection (1):

“(1A) Where a negotiated contract is concluded in terms of subsection (1), the contracting authority will not be precluded from—

(i) concluding other such contracts with different operators or in respect of different routes, even if such routes are in the same area;

(ii) providing in such contract 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 duration of the contract does not extend beyond 12 years; or

(iii) concluding contracts of a temporary nature before concluding a negotiated contract in terms of subsection (1), provided that it complies with laws and procedures applying to procurement of the services in relation to such contracts.”

(c) the substitution of the following for subsection (2):

“(2) The negotiations envisaged by subsection[s] (1) **[and (2)]** must where appropriate include operators in the area subject to interim contracts, subsidised service contracts, commercial service contracts, existing negotiated contracts and operators of unscheduled services and non-contracted services **[in the prescribed manner]**, but the contracting authority

shall be relieved of this duty if it has made an offer to such an individual operator or class of operators in the prescribed manner and they have accepted or rejected the offer in writing within 21 days or have failed to respond to the offer within that time.”

(d) the addition of the following subsection:

“(6) Section 42(6) applies with the necessary changes to negotiated contracts contemplated in this section.”

#### **Amendment of section 42 of Act 5 of 2009**

**22.** Section 42 of the principal Act is hereby amended by the substitution of the following for paragraphs (a) and (b) of subsection (6):

- (a) prescribe requirements for tender and contract documents to be used for subsidised service contracts which may [must] be made binding on contracting authorities unless the Minister agrees in writing that an authority may deviate from the requirements in a specific case;
- (b) provide model tender and contract documents, and publish them in the *Gazette*, for subsidised service contracts as a requirement for contracting authorities, who may not deviate from those [the model tender and contract] documents, unless this is agreed to in writing by the Minister, but those documents may differ for different authorities or situations;”

#### **Amendment of section 45 of Act 5 of 2009**

**23.** Section 45 of the principal Act is hereby amended—

(a) by the substitution of the following for subsection (1):

“(1) No municipal operator may tender for any commercial service contract or subsidised service contract, or be party to a negotiated contract contemplated in section 41, unless it is financially ringfenced in the prescribed manner and it complies with the other requirements, if any, prescribed by the Minister, but a municipality may provide public transport services by means of an internal mechanism contemplated in section 76(a) of the Systems Act as part of its integrated public transport network.”

(b) by the deletion of subsection (2) thereof.

**Amendment of section 46 of Act 5 of 2009**

24. Section 46 of the principal Act is hereby amended—

(a) by the substitution of the following for the introductory portion of subsection (1):

“(1) Where there is an existing interim contract, current tendered contract or negotiated contract as defined in the Transition Act in the area of a municipality [the relevant contracting authority], that municipality [authority] may—“

(b) by the deletion of subsection (2).

**Substitution of section 47 of Act 5 of 2009**

25. The following is hereby substituted for section 47 of the principal Act:

**“Conversion of permits to operating licences and of indefinite period operating licences to definite period licences, and rationalisation of operating licences [existing services: general]**

“47. (1) All permits, and operating licences issued before the date of commencement of this Act, issued for a definite period remain valid but lapse when that period expires, provided that if such permit or operating licence is still valid on a date calculated as five [seven] years from the date of commencement of the National Land Transport Amendment Act, 2013 [this Act], it will lapse on that date unless converted in the case of a permit, or renewed in the case of an operating licence, before that date.

(2) All permits and operating licences issued for an indefinite period remain valid, subject to sections 48 and 49, but lapse five [seven] years after the date of commencement of the National Land Transport Amendment Act, 2013 [this Act], but the holder may apply within that period in the case of a permit for its conversion to an operating licence that complies with the provisions of this Act, or, in the case of an operating licence, for its renewal, to the entity that is responsible for receiving applications for operating licences for the relevant services.

(3) Despite subsections (1) and (2), where the services authorised by a permit or operating licence were not provided continuously for 180 days prior to the date of commencement of this Act, the permit or operating licence must be cancelled by following the procedure in section 78.



(4) The holder of any permit or operating licence that lapses or is cancelled in terms of this Part is not entitled to any compensation by virtue of its lapsing.

(5) Where the holder of a permit applies for renewal, amendment or transfer of the permit in terms of section 58, that holder must apply simultaneously for conversion of the permit to an operating licence, and the applications must be dealt with simultaneously.

(6) Regulatory entities must take immediate steps to put in place the necessary administrative processes to convert permits and renew operating licences to implement this section, and the Minister may make regulations providing—

(a) that regulatory entities must notify holders by not later than prescribed dates that the relevant permits and operating licences will expire if not converted or renewed in time;

(b) that operating licences to replace permits for services provided in terms of contracts may include authorisations for all contracts operated by the holder for the vehicle in question, ancillary services to those contracts as well as charter services; and

(c) for other procedural or other administrative arrangements to implement the matters contemplated in this section.”

**[(5) No operator may receive any subsidy or other financial assistance from any sphere of government, unless that operator’s permits, where applicable, have been rationalised in terms of this section and sections 48 and 49.]“**

#### **Amendment of section 48 of Act 5 of 2009**

**26.** Section 48 of the principal Act is hereby amended by the substitution of the following for subsection (2):

“(2) In the case of permits for **[uncontracted scheduled]** non-contracted services specified in integrated transport plans, the Minister **[must]** may make regulations **[within two years of the date of commencement of this Act]**, after consulting the National Public Transport Regulator, providing a process for the integration of those services with contracted services, and in the process converting them to commercial service contracts, and such integration and conversion must be done by the National Public Transport

Regulator and such regulations may differ in respect of different types of services, different areas or peak periods as opposed to off-peak periods.”

#### **Amendment of section 49 of Act 5 of 2009**

27. Section 49 of the principal Act is hereby amended by:

(a) the substitution of the following for subsection (1):

“(1) Permits and operating licences issued for minibus taxi-type services remain valid, subject to section 47(1) and (2) [**and subsection (3) of this section**].

(b) the substitution of the following for paragraph (b) of subsection (2):

“(b) acquire a new [**compliant**] vehicle that complies with the Department’s requirements for recapitalisation and with the National Road Traffic Act, that has the same passenger capacity **as** the vehicle specified in that permit or operating licence, or not more than a 20% variance, in which case the operator shall be entitled to an operating licence for the new vehicle authorising the same services on submission of a valid tax clearance certificate, and such operating licence must specify in detail the route or routes to be operated, which must be those operated by the operator for the period of 180 days prior to the date of application;”

(c) the substitution of the following for paragraph (c) of subsection (2):

“(c) acquire such a new [**compliant**] vehicle with more capacity than a vehicle contemplated in paragraph (b) provided that [**on approval by**] the planning authority approves in writing, in which case paragraph (b) applies, and the holder must submit the existing permit or operating licence to the Department for cancellation, provided further that the Minister may prescribe that more than one permit or operating licence held by that holder must be surrendered for cancellation to make up for the increase in capacity of the new vehicle.”

(d) the deletion of subsection (3).

#### **Substitution of section 51 of Act 5 of 2009**

28. The following is hereby substituted for section 51 of the principal Act:

**“Entities that must issue operating licences**

“51. An operating licence must only be issued on application made in terms of this Act by the National Public Transport Regulator, a Provincial Regulatory Entity or a Municipal Regulatory Entity [municipality to which the operating licence function has been assigned], as the case may be, after considering all of the factors mandated by this Act.”

#### **Amendment of section 53 of Act 5 of 2009**

29. Section 53 of the principal Act is hereby amended—

- (a) by the insertion of the following paragraph after paragraph (b) of subsection (1):

“(bA) a staff service provided by means of a vehicle owned by the employer contemplated in section 68(3);”

- (b) by the addition of the following subsection after subsection (1):

“(1A) The exemptions contemplated in paragraphs (bA), (c), (d), (f) and (g) will not apply where the relevant conveyance is provided for a fare or any other consideration or reward.”

- (c) by the substitution of the following for subsection (2):

“(2) The MEC may make regulations providing for information to be recorded or provided to the National Public Transport Regulator, Provincial Regulatory Entity, a Municipal Regulatory Entity [municipality to which the operating licence function has been assigned] or other persons or institutions regarding conveyance in terms of a service contemplated in subsection (1).”

#### **Amendment of section 54 of Act 5 of 2009**

30. Section 54 of the principal Act is hereby amended by the substitution of the following for subsection (2):

“(2) A person wishing to undertake a [an intraprovincial] service [—

**(a) taking place in the area of the municipality to which the operating function has been assigned; or**

**(b) starting in the area of that municipality and also taking place in the area of another municipality,**

**must apply to a municipality referred to in paragraph (a)] provided wholly within the area of jurisdiction of a Municipal Regulatory Entity must apply to that Entity.**

#### **Amendment of section 57 of Act 5 of 2009**

**31.** Section 57 of the principal Act is hereby amended by the deletion of the word “and” at the end of paragraph (e) of subsection (1) and the addition of the following paragraphs after paragraph (e) of that subsection:

“(eA) recommendations or documents duly submitted with the application by the applicant or any other interested party;

(eB) particulars recorded in terms of section 6(7); and

#### **Amendment of section 58 of Act 5 of 2009**

**32.** Section 58 of the principal Act is hereby amended by the addition of the following subsection:

“(5) The Minister may make regulations providing that where an operator has applied within the prescribed time for renewal of an operating licence or permit, that licence or permit will remain valid for the prescribed period while the application for renewal is being processed, and that a regulatory entity may condone late application for renewal in prescribed circumstances and renew an operating licence or permit that has expired, despite the fact that the operator has applied for renewal after expiry thereof.”

#### **Amendment of section 59 of Act 5 of 2009**

**33.** Section 59 of the principal Act is hereby amended by—

(a) the substitution of the following for the heading thereof:

**“Publication of [decisions] applications”**

(b) the substitution of the following for subsection (1) thereof:

“(1) Regulatory entities must, in the prescribed manner, give notice of receipt of an application for or in connection with an operating licence, except a decision to replace a vehicle under section 73 or for a temporary operating licence contemplated in section 60 or any other application that is prescribed as not requiring such publication, and in that notice state the

prescribed particulars and allow interested persons an opportunity to comment and make representations within the prescribed period.”

#### **Amendment of section 60 of Act 5 of 2009**

**34.** Section 60 of the principal Act is hereby amended:

(a) by the substitution of the following for subsection (2):

“(2) A holder of an operating licence or permit who is not authorised by subsection (1)(a) or (b) to undertake a service to or from a special event and wishes to do so **[may] must** apply to the prescribed entity for a temporary operating licence in the prescribed manner, and need not comply with section 62(1)(b), (c) or (f) in relation to such an application.”

(b) by changing the word “must” to “may” in the first line of subsection (9).

(c) by the addition of the following subsection:

“(10) A regulatory entity may delegate its functions in terms of this section to an official or member of the entity.”

#### **Amendment of section 64 of Act 5 of 2009**

**35.** Section 64 of the principal Act is hereby amended by the substitution of the following subsection for subsection (1):

“(1) An operating licence may only be issued to and held by the person registered, in terms of the National Road Traffic Act, as the owner or operator of the vehicle, as defined in that Act, and specified in the operating licence, but an operating licence may be issued to and held by an operator accredited in terms of section 81, if the vehicle has been certified in terms of section 84, even if another person is so registered as the owner or operator of the vehicle.”

#### **Amendment of section 68 of Act 5 of 2009**

**36.** Section 68 of the principal Act is hereby amended by the addition of the following subsections:

“(3) Where a staff service is provided by means of a vehicle owned by the employer and the employees are not charged any fare, consideration

or reward for the conveyance, an operating licence is not required for the conveyance.

(4) Where a staff service is provided by means of a vehicle in terms of a contract between the employer and an operator, the operator requires an operating licence, but applications relating to such a service need not be published in terms of section 59.”

#### **Amendment of section 73 of Act 5 of 2009**

37. Section 73 of the principal Act is hereby amended by the substitution of the following for the introductory portion of subsection (2):

“(2) The authorised official must allow the replacement and issue to the holder an amended operating licence, or in the case of a permit, a new operating licence, subject to sections 47, 48 and 49, if the replacing vehicle has the same capacity as the replaced vehicle or less capacity, or—”

#### **Amendment of section 75 of Act 5 of 2009**

38. Section 75 of the principal Act is hereby amended by the deletion of subsection (3) thereof.

#### **Amendment of section 79 of Act 5 of 2009**

39. Section 79 of the principal Act is hereby amended by the addition of the words “or permit” after the words “operating licence” in the third line of subsection (2).

#### **Amendment of section 86 of Act 5 of 2009**

40. Section 86 of the principal Act is hereby amended by the substitution of the following for paragraph (b) of subsection (1):

“(b) a Municipal Regulatory Entity [**municipality to which the operating licence function as been assigned**], as appointed by [**that authority**] the municipality concerned.”

**Amendment of section 92 of Act 5 of 2009**

41. Section 92 of the principal Act is hereby amended–

- (a) by the substitution of the following for the introductory portion of subsection (1):

“(1) The following persons may appeal to the Transport Appeal Tribunal against an act, direction or decision of an entity that has granted or refused an application relating to an operating licence or permit, or accreditation of an operator, in the manner and within the time prescribed:”

- (b) by the addition of the following subsection:

“(4) Where the decision contemplated in subsection (1) was taken by a municipality, an appeal may be noted with the Transport Appeal Tribunal despite section 62 of the Systems Act.”

**Amendment of section 93 of Act 5 of 2009**

42. Section 93 of the principal Act is hereby amended by the deletion of the words “after the determined date” in the fourth line of subsection (5).

**Insertion of new section 93A in Act 5 of 2009**

43. The following section is hereby inserted in the principal Act after section 10:

**“Delays and exemptions**

**“93A (1) The Minister may by notice in the Gazette–**

- (a) delay the implementation of a provision of this Act for a transitional period not exceeding five years from the date on which this section comes into operation; or

- (b) where practicalities impede the strict application or implementation of a specific provision of this Act, exempt the National Public Transport Regulator or any province, Provincial Regulatory Entity, municipality or Municipal Regulatory Entity from, or in respect of, such provision for a period and on conditions determined in the notice.

(2) A delay or exemption in terms of subsection (1) may–

- (a) apply to provinces, Provincial Regulatory Entities, municipalities or Municipal Regulatory Entities generally; or

(b) be limited in its application to a particular—

- (i) province or Provincial Regulatory Entity;
- (ii) municipality or Municipal Regulatory Entity; or
- (iii) kind of municipality, which may, for the purposes of this section, be defined in relation to a category or type of municipality or in any other manner.”

#### **Attachment of Schedule to Act 5 of 2009**

44. The following Schedule is hereby attached at the end of the principal Act:

##### **“Schedule 1**

1. The City of Johannesburg Metropolitan Municipality.
2. The City of Cape Town Metropolitan Municipality.
3. The City of Tshwane Metropolitan Municipality.
4. The eThekweni Metropolitan Municipality.
5. The Rustenburg Local Municipality.

#### **Amendment of section 84 of Act 117 of 1998**

45. Section 84 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) is hereby amended by the substitution of the following for paragraph (g) of subsection (1):

- “(g) the planning, management, control and regulation of [passenger transport services] public transport, subject to the National Land Transport Act, 2009 (Act No. 5 of 2009) and any regulations or requirements made under that Act;”.

#### **Insertion of new section 49A in Act 4 of 1998**

46. The following section is hereby inserted in the Cross-Border Act after section 49:



“49A Where a carrier picks up or sets down passengers within two kilometres of any international border post, that operator will be presumed to be undertaking cross-border road transport, unless the operator proves the contrary in the prescribed manner.”

#### **Amendment of section 23 of Act 9 of 1989**

47. Section 23 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989) is hereby amended by the substitution of the following for paragraph (a) of subsection (1) of section 23 thereof:

“(a) ensure that, at the request of the Department of Transport or a municipality listed in Schedule 1 of the National Land Transport Act, 2009 (Act No. 5 of 2009), rail commuter services are provided within, to or from the Republic in the public interest; and”

#### **Short title**

48. This Act is called the National Land Transport Amendment Act, 2013.

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