

Report of the SASS Task Team tasked with the investigation of the feasibility of implementation of The Administrative Adjudication of Road Traffic Offences (AARTO) Act no 46 of 1988)

DATE: Wednesday 20 January 2021 at 15:00

A. Introduction

The SABFS referred the AARTO Act to sheriffs' organizations to determine if its provisions, in so far as they relate to sheriffs, are suitable and feasible enough for implementation by sheriffs. To that extent SASS constituted a Task Team of 5 members to undertake such a task. They are:

Mr. Thaka Seboka (Facilitator)

Mr Fanie Van Wyk

Mr Andy Adimoolum

Mr. Sibusiso Zondi

Mr Harry Van Nieuwenhuizen

B. Background

The AARTO Act was introduced by the SA government as far back as **2010** . Its objectives were, amongst others, to promote road traffic quality by providing a scheme to discourage road traffic contraventions, to facilitate for the adjudication of such contraventions to support the prosecution of offenders and to implement a point's demerit system. For various reasons it was not feasible to implement the Act

In **June 2020** the the Minister of Transport introduced the Bill in parliament with the intention of amending and introducing new changes to the Act. The new Act is intended to come into effect in **July 2021**. In terms of the Act sheriffs are given a role to play in the following manner:

C. PROVISIONS OF AAARTO IN RELATION TO SHERIFFS

(i). Appointment of sheriffs

In terms of **Chapter 12, Sec 12 of the Act**: The Registrar may recommend to the Minister of Justice that such sheriffs or Deputy Sheriffs as may be

necessary to ensure proper performance of the Agency's functions be appointed **in terms of the Sheriffs Act 1986 (Act No. 90 of 1986)**.

(ii) Warrant

In terms of **Sec 21 of the Act**:

- (1) If an infringer on whom a notice contemplated in section 19B (1) or (2) or an enforcement order is served does not comply with the requirements of the notice contemplated in section 19B(1)(a) or (2)(a) or the provisions of the order contemplated in section 20(3)(a), the registrar may, on the prescribed conditions, issue a warrant against the infringer -
 - (a) to seize and sell movable property to defray the penalty and fees due;
 - (b) to seize the driving licence or professional driving permit of the infringer;
 - (c) to deface the licence disc of a motor vehicle of which the infringer is the owner by removing the licence disc;
 - (d) to seize or deface the operator card of a motor vehicle of which the infringer is the registered operator;
 - (e) to immobilise the motor vehicle of which the infringer is the owner or registered operator, and the registrar must update the national contraventions register accordingly.
- (2) The registrar may, upon issuance of a warrant in terms of subsection (1), report the Infringer to a credit bureau.

(iii) Service of documents

In terms of **Chapter 5 relating to General Matters, Sec 30 of the Act** provides that:

Any document required to be served on an Infringer in terms of this Act must be served personally or by registered mail, and it is regarded to have been served on the date the Infringer has signed for the receipt of document.

D. ANALYSIS AND DELIBERATIONS OF THE TASK TEAM

The team firstly welcomed the fact that the AARTO Act assigns the role and responsibility of service of documents to the sheriffs. This accordingly will have a positive impact on the revenue of sheriff's offices. Their view is that whilst the Act goes a long way in assigning a role and giving the responsibilities to

sheriffs, such role must be clear and the responsibilities must comply with the nature and functions of the sheriff.

The team highlighted the following as some of the issues that need further clarity and more detailed deliberations.

(I). Appointment of sheriffs:

Sec 15 (2) of the Magistrates Court Act gives power to a (public body) Local Authorities to appoint any person (it can be independent service providers) to serve (process of court) summonses. Accordingly and in terms of this Act a number of Local Authorities have appointed independent service providers to serve traffic summonses. This has in many occasions, caused confusion between sheriffs and such independent service providers. If such a provision is not stopped it may compromise the status and role of sheriffs. It is the view of the Task Team that the integrity of service of court processes and other documents by sheriffs must be maintained and shouldn't be compromised by the ability of Local Authorities to appoint other officers for service other than sheriffs.

In terms of **Chapter 12 of AARTO ACT, Sec 12** provides that the Registrar may recommend to the Minister of Justice that such sheriffs or Deputy Sheriffs as may be necessary to ensure proper performance of the Agency's functions be appointed **in terms of the Sheriffs Act 1986 (Act No. 90 of 1986)**. The challenge with this provision is that it is not clear as to whether appointment of sheriffs refers to the current existing sheriffs or whether it gives powers to the registrar/minister to appoint new/additional sheriffs to serve summonses and other documents.

Sheriffs are normally appointed for specific jurisdictional areas. Their appointment is more territorial (area based) in terms of magisterial divisions and therefore not generally functional. Accordingly, will sheriffs therefore, in terms of AARTO Act, be appointed nationally or in line with their specified jurisdictional area in terms of their current appointment.

The AARTO Act also provides, in addition to the sheriffs, for the appointment, of Deputy Sheriffs. Accordingly, the Task Team is of the view that Deputies are, by their nature, appointees of sheriff with the endorsement of the SABFS. The possibility exists that appointment of deputies may cause confusion where a deputy employed by a sheriff is appointed over and above an incumbent sheriff.

The Task Team is of the view that that this provision must be reviewed. Once a sheriff has been appointed, it is up to such a sheriff whether to appoint and employ, for purposes of service of documents, any deputy sheriff.

If the provision is not reviewed, the SABFS and the DOJ must review the appointment of Deputy Sheriffs in terms of the Sheriffs Act to address the potential risk that might be posed to the Fidelity Fund.

Sheriff as Peace Officers: In terms of sec 30 of the Criminal Procedure Act sheriffs are classified as Peace Officers. The question becomes whether other sheriffs appointed for purposes of serving court processes in terms of the AARTO Act will be regarded as Peace Officers.

(ii). Warrant

The issuance of a warrant by the registrar (**Sec 21 of the Act**) is contrary to **Rule 36 of The Magistrates Court Act** which provides that the process for the execution of any judgement for the payment of money, for the delivery of property whether movable or immovable, or for ejection **shall be by warrant issued by the clerk of the court and addressed to the sheriff.**

It is important to determine in a practical manner the rightful authority vested with the power to assign the responsibility of the service of documents to the sheriffs since violations and infringements largely occur at local level. Will such authority be at National level or at Local level?

Sec 21 (a) to (e) of the Act also assigns a number of actions which the sheriff must carry out where the infringer is in contravention of the Act or fails to comply. It provides for the following actions to be taken

(a) to seize and sell movable property to defray the penalty and fees due:

(This can only happen in terms of the Rules with the necessary time line compliance, notifications and advertisements.)

(b) to seize the driving licence or professional driving permit of the infringer:

(This equates the role of a sheriff to that of a traffic enforcement officer and might put the life of a sheriff at risk.)

(c) to deface the licence disc of a motor vehicle of which the infringer is the owner by removing the licence disc:

(This equates the role of a sheriff to that of a traffic enforcement officer and might put the life of a sheriff at risk.)

(d) to seize or deface the operator card of a motor vehicle of which the infringer is the registered operator:

(This equates the role of a sheriff to that of a traffic enforcement officer and might put the life of a sheriff at risk.)

(e) to immobilise the motor vehicle of which the infringer is the owner or registered operator, and the registrar must update the national contraventions register accordingly:

(This equates the role of a sheriff to that of a traffic enforcement officer and might put the life of a sheriff at risk. How will the immobilization occur? Who will supply immobilization instruments?)

The Task Team is of the view that seizure of the driving licence, defacing of the licencing disc, seizure or defacing of the operating card and the immobilization of the motor vehicle should be the domain of the Law Enforcement Officers and not of the sheriff.

The task Team is of the further view that clarity needs to be obtained as to the legality of the registrar to withdraw a Warrant before it is satisfied. A Warrant/Writ must be valid until it is executed and the claim satisfied.

(iii). Process of adjudication and service of processes.

The first step in the process of adjudication of the infringement is the issuing of an Infringement Notice. After such a Notice the Infringer is entitled to representation. Once representation has failed the infringer is entitled to a courtesy letter to which he/she must respond to within 28 days. Once he/she has failed, then he /she is entitled to a period of another 28 days before enforcement is ordered. It is only after this elaborate process that a Warrant can then be issued and the matter be ready for trial.

The Task Team is of the view that the process of service must start with the sheriff from the beginning in order to avoid delays and excuses similar to those experienced in the CCMA process where the employer normally disputes receipt of a Notice from the CCMA on behalf of the employee because the sheriff did not serve such a notice from the beginning

Any document required to be served on an Infringer in terms of this Act must be served personally or by registered mail and it is regarded to have been served on the date the Infringer has signed for the receipt of the documents.

It is assumed that at this stage the service is carried out by the Law Enforcement Officers and it is at a stage before it reaches the degree of service by the sheriff. In other words, it is at an “offence level”.

E. PAYMENT OF SHERIFFS FEES

It is important to note that in terms of the **AARTO ACT, sec 21** applies with the necessary changes to a warrant issued in terms of this section, and the infringer is deemed to be the judgment debtor.

A warrant must be executed by a sheriff in the manner prescribed in rules **41 and 42** of the rules of Court promulgated in terms of the **Magistrates' Courts Act, 1944 (Act No. 32 of 1944)**.

Sec 66 provides that whenever a court gives judgement for the payment of money or makes an order for the payment of money in instalments such judgement, in case of failure to pay such money forthwith, or such order in case of failure to pay any instalment at the time and in the manner ordered by the court shall be enforceable by the by execution against moveable property and if there is no found sufficient movable property to satisfy the judgement or order, or the court on good cause shown, so orders, then against the immovable property of the party against whom such judgement has been given or such order has been made.

Sec 67 provides for property that is exempt from execution whereas

Sec 68 provides that the sheriff executing any process of execution against movable property may also seize and take money or bank notes and may take and sell in execution cheques, bills of exchange, promissory notes, bonds, or securities for money belonging to the execution debtor.

The Task Team is of the view that there must be clear specification as to who takes responsibility for the payment of sheriff's fees. It is also of the view that traffic fine offences and infringements are of smaller amounts not justifying the application of this sections. It may be difficult for the sheriff, under these circumstances to earn an income if an agency or authority responsible for payment of fees is not properly provided for.

The Task Team is also of the view that there might be challenges where a vehicle has been bought in terms of a Hire Purchase Agreement.

F. CONCLUSION AND WAY FORWARD

The Task Team is of the view that whilst the department has gone a long way in giving recognition to sheriffs and their role, a number of grey areas still need to be identified, clarified and resolved in order to allow for a seamless role and responsibilities by the sheriffs. In this regard, the Task Team proposes that:

A meeting be held with the RTMC

New training on AARTO be offered to sheriffs

A proper budget be set aside specifically to cater for the services of sheriffs.

A fee structure catering for specific services of the sheriffs be devised. (It will be proposed that the Magistrates Court fee Table C Part 2 should be applicable.)

RTIA officials may also have to be trained in the understanding of the fee structure of sheriffs and their payment.

A resolution be adopted on the role of independent service providers appointed by Local Government authorities to serve traffic summonses. They do not have any Code of Conduct nor do they have any regulatory body to which they account.

That a role by the SABFS be identified and recognised in order to continue to protect the sheriffs as well as the Fidelity Fund.

A proper link between the sheriffs and the ENATIS system be unfolded in order to minimize potential wrong service of summonses to

The issue of security/indemnity be addressed. Will it be that RTIA is exempted from security and if so, what is the position of the sheriff

Will a distinction be made between attachment and removal or will they go together all at the same time.

Will actions falling under Sec 21 (a) to (e) of the Act require a specific writ or will it be automatically given that a sheriff has the power to carry out all these actions?