

Section 6: Legal Scan of Applicable South African Legislation – Driver Licensing and Training

6.1 Introduction

This section includes legislation applicable to driver licensing and training. Applicable legislation includes:

- National Road Traffic Act 93 of 1996; and
- Skills Development Act 97 of 1998.

6.2 Driver Licensing

6.2.1 Motor Vehicles and Motorcycles

To operate a registered and licensed vehicle in South Africa on a public road, a person requires a driver's license. The rationale behind licensing is to make sure the driver understands the rules of the road and knows how to operate a vehicle safely on roads. This leads to safety on the road and the control of drivers. In the case of motor vehicles (defined in **Section 5**) the driver, as well as the vehicle, needs to be licensed.

The legal framework which supports and enforces driver licensing falls under the National Road Traffic Act 93 of 1996.

Fees are determined by the respective provincial transport MECs and differ between provinces. The criteria used in determining licence fees include the cost of maintaining the road network, as well as inflation.

The Act specifies different driver licenses for different vehicle types, viz:

- Motor cycle;
- Light motor car (car); and
- Heavy motor vehicle / trucks.

Previously South African licence codes used to be represented as code 8, code 10 and code 14. However this has changed, and replaced by 8 codes which define which motor vehicle a licensed driver is allowed to drive. Details thereof are included in **Annexure D**.

No driver's licence is required to operate off-road vehicles off of public roads. For off-road vehicles that may be legally operated on public roads, there is no specific driver licence code, and drivers are licensed under other codes.

The legal driving age in South Africa is 18 years. One can only apply for a drivers licence after passing a learner's examination. For a learner driver's license, a test needs to be written and a certain percentage must be reached to pass. In addition, a person needs to be at least 17 years old.

In the application form, when applying for a driver's licence, one must specify which type of license you will be applying for. An eye test is done and fingerprints are taken at registration.

To obtain a driver's license the applicant generally takes practical lessons, which prepare them for the practical exam. The practical test commences within the testing centre grounds of the testing centre and is continued to the public road.

Once the driving test is passed the driver will be issued with a temporary driving licence while the credit card format driving licence is being processed.

Driving a car without a valid drivers licence on public roads is prohibited. A driver is allowed to drive if he/she has a learner license and is accompanied by someone who holds a valid drivers licence.

The traffic wing of the SAPS enforces the laws around licensing of drivers.

6.2.2 Quad Bikes

Quad bikes may not be operated on public roads, and thus drivers of quad bikes do not need to be licensed.

6.2.3 Professional Driving Permit

A professional driving permit (i.e. used for professional / business purposes), in addition to a specific driver's licence (for the relevant vehicle type), is required to drive the following types of vehicles:

- Goods vehicle, weighing over 3 500 kg;
- Breakdown vehicle;
- Bus;
- Minibus weighing more than 3 500 kg designed to carry 12 or more people, including the driver;
- Vehicle used to transport people/passenger for payment/gain;
- Goods vehicle carrying dangerous goods, which weighs more than 3 500 kg;
- Road tank vehicle for petroleum-based flammable liquids; and
- Motor vehicle conveying 12 or more people including the driver.

A professional driving permit is not required to drive a hearse or a tractor.

A driver must have a valid driver's licence for the class of vehicle being driven.

The operator or owner of a motor vehicle for which a professional driving permit is required may not let another person drive that vehicle on a public road, unless that other person is the holder of a professional driving permit of the appropriate category.

Professional driving permits may be obtained from a driver licence centre, provided certain criteria are met by the applicant.

6.2.4 Public Operator

Formal transport of tourists falls under the category of transporting passengers for gain, and a public operating licence is required.

Operating licences are valid for a maximum of five years.

These licences can be obtained from the Provincial Operating Licence Board concerned. To qualify for a taxi operating licence, the applicant needs to be a member of a fully registered taxi association. These taxi associations are registered with the Provincial Transport Registrar.

Thus when transporting passengers for gain (including tourists), three classes of licences are required, viz:

- Appropriate driver's licence;
- Professional driving permit; and
- Public operating licence.

6.3 Driver Behaviour

The behaviour of some drivers and riders operating their vehicles off-road is currently problematic. Examples of unacceptable behaviour include:

- Driving off the trail/track;
- Drinking and driving;
- Speeding;
- Damage to flora and fauna;
- Noise; and
- Littering etc.

The use of the Road Traffic Act, to control unacceptable behaviour off-road was investigated. However, in order for the Road Traffic Act to be used, all trails and tracks would have to be declared public roads, as the Act only applies to public roads.

Designation as a public road does not imply that the road is publicly owned (i.e. there are privately-owned roads that are classified as public roads under the Act). Rather, the classification of a road as public is dependent on the use of the road, and whether or not access to the road is controlled. A simple test as to whether or not the road is public or private is to look at the mix of traffic on the road. If the drivers/riders know one another, the road is most likely private, but if the drivers/riders do not know one another, then the road is probably public.

In terms of access control, having to pay a fee to access the road does not imply that the road is private e.g. toll roads and parking lots, to which access is controlled via a fee, are public, and not private roads. A private road requires controlled access e.g. access to the road is blocked by a gate, sign etc.

Trails and tracks can be defined as public roads under the Road Traffic Act, and if all trails and tracks were to be classified as public roads, the Road Traffic Act could be used to sanction behaviours like drinking & driving etc.

However, although this would provide a legal means of sanctioning driver and rider behaviours, it would create another set of requirements for trails and tracks (e.g. EIA requirements etc.) and would prohibit the riding of quad bikes (which may not be operated on a public road) as well as prohibit drivers and riders without a driver's licence from driving/riding off-road – thus children would no longer be able to ride quad bikes and bikes off-road.

Another way of controlling driver and rider behaviour off-road therefore needs to be found.

6.4 Driver Training

There is currently no compulsory training for off-road vehicle owners, although training is provided by clubs, independent trainers and off-road retailers / manufacturers.

However, off-road driver unit standards in line with the Skills Development Act requirements were developed and presented to the Standards Generating Body (“**SGB**”) for review, and were then submitted by the SGB to SAQA for approval and registration. Final approval is expected towards the end of 2007.

Based on SAQA recommendations, it was requested that these unit standards be added as electives¹ to the qualification “*National Certificate: Professional Driving at NQF Level 3*” and as such the qualification falls under the domain of Transport Education Training Authority (“**TETA**”). However, SAQA will ultimately decide where the unit standards will reside i.e. TETA, THETA or Manufacturing, Engineering and Related Services Education Training Authority (“**MERSETA**”).

Memoranda of Understanding (“**MOUs**”) will need to be put into place between TETA and other Setas (e.g. MERSETA and THETA) allowing the unit standards to be accessible to these bodies as an elective standard. In other words, the unit standards will be recognised as a component of qualifications controlled by these bodies, such as Adventure Guiding, under THETA.

The advantages of making use of unit standards are:

- A public standard for driver training is created i.e. anyone qualified may present the courses;
- Unit standards are equitable throughout South Africa i.e. all accredited facilities and trainers work to the same standards; and
- Unit standards provide the qualified driver with accreditation that will be recognised.

Once the Unit Standards are in place, curriculum and training materials can be prepared and the process of accrediting instructors and facilities can begin.

Two modules have been developed (see **Annexure E**). These initial unit standards are aimed at novice off-road users with a further 3 unit standards planned, viz:

- Level 2 – Advanced off-road driving;
- Level 3 – Towing; and
- Level 4 – Instructor.

¹ Electives are unit standards that learners can choose to do. They are not compulsory unit standards that learners have to do to obtain the qualification.

Recognition of prior learning (“**RPL**”) will also allow for those who have undergone previous courses to be assessed against the desired outcomes of the Unit Standards.

6.5 Gap Analysis and Conclusion

There is no legislation that governs the licensing of drivers driving off-road vehicles off-road. Only if an off-road vehicle is to be driven on public roads, must the driver be licensed. This is the first gap in current legislation.

Another gap is that there is no legislated off-road vehicle driver code, and drivers operating off-road vehicles on public roads are licensed under other codes, most specifically those related to the various classes of motor vehicles (including motorcycles).

Although the use of the Road Traffic Act was investigated to manage unacceptable driver behaviour off-road, this would entail declaring all trails and tracks as public roads. This would then result in an additional range of issues for the sector i.e. all trails and tracks would have to undergo EIA’s, no quad bikes would be allowed, no children would be allowed to ride bikes, quads on trails and tracks etc.

In terms of driver training, there is no legislation that governs the training of off-road vehicle drivers, irrespective of whether the off-road vehicle is driven off-road or on public roads.

The off-road driver competency unit standard, currently with SAQA, concentrates predominantly on competent and safe vehicle operation, with limited (1 out of 14) outcomes relevant to environmental protection.

The environmental protection outcome(s) may need to be strengthened and also be available separately to ensure off-road environmentally sustainable driving competency.

Not all the legal gaps identified here are addressed in the final off-road strategy. The strategy contains more detail about how some gaps have been addressed. The other gaps highlighted here may be addressed through possible future interventions.