

## CHAPTER 13:18

### ROADS ACT

*Acts 6/2001, 22/2001 (s. 4), 14/2002 (s. 20)*

#### ARRANGEMENT OF SECTIONS

##### PART I

###### PRELIMINARY

*Section*

1. Short title.
2. Interpretation.

##### PART II

###### GENERAL RESPONSIBILITIES OF MINISTER AND ROAD AUTHORITIES

3. General functions of Minister in relation to roads.
4. General functions of road authorities.
5. What roads may be constructed and maintained by road authorities.

##### PART III

###### ZIMBABWE NATIONAL ROAD ADMINISTRATION AND ROADS FUND

6. Establishment of Zimbabwe National Road Administration.
7. Functions of Zimbabwe National Road Administration.
8. Establishment and constitution of Zimbabwe National Road Administration Board.
9. Minister may give Board policy directions.
10. Execution of contracts and instruments by Road Administration.
11. Reports of Road Administration.
12. Appointment and functions of chief executive and other staff of Road Administration.
13. Establishment, vesting and objects of Road Fund.
14. Composition of Road Fund.
15. Application of Road Fund.
16. Annual programmes and budgets of road authorities.
17. General criteria for the allocation of grants from Road Fund.
18. Disbursement of grants from Road Fund.
19. Application of moneys received from Road Fund.
20. General powers of Road Administration.
21. Disputes between road authorities and Road Administration.

##### PART IV

###### FUEL LEVY

22. Imposition of fuel levy.
23. Withdrawal, suspension or increase of levy.
24. Recovery of unpaid fuel levies.

##### PART V

###### DEPARTMENT OF ROADS FUND

25. Establishment of Department of Roads Fund.
26. Application of Department of Roads Fund.

##### PART VI

###### DECLARATION, DIVERSION AND CLOSURE OF ROADS BY ROAD AUTHORITIES

27. Interpretation in Part VI.
28. Declaration of roads.
29. Applications for declaration or diversion of roads.
30. Closure of roads.
31. Closure or diversion of carriageway.

32. Minister or local road authority may appoint board of inquiry in regard to any proposed declaration, diversion or closure.
33. Declaration of temporary roads and temporary closure of roads or limitation of traffic.
34. Width of roads.
35. Declaration that land forms part of road.

## PART VII

### CONSTRUCTION AND MAINTENANCE OF ROADS BY ROAD AUTHORITIES

36. Bridges and culverts to be constructed in accordance with approved designs.
37. Cattle grids.
38. Fences intersecting roads: gates.
39. Storm-water from land adjoining roads.
40. Construction of road drains and compensation for damage caused.
41. Road authority may take land and materials.
42. Road authority may sink boreholes or wells.
43. Road authority may make entrances through fences.
44. Reservations in respect of road-making materials.
45. Temporary encampments.

## PART VIII

### UNLAWFUL DIVERSION, CLOSURE, OBSTRUCTION, ENCROACHMENT, DAMAGE TO AND ENTRY UPON ROADS

46. Removal of obstacles and unauthorised structures affecting roads.
47. Offences with respect to diversion, closure, obstruction, encroachment and damage to roads.
48. Trading on roads or in restricted area.
49. Control of entry upon roads.

## PART IX

### PLANNING OF ROADS IN ADVANCE

50. Preliminary reservation of land.
51. Final reservation.
52. Withdrawal or modification of reservation.
53. Road authority's power in regard to unauthorised act.
54. Compensation for loss or deprivation of rights arising from reservation of land for purposes of Part IX.
55. Notice to owners and other persons.

## PART X

### RESTRICTED ROADS

56. Interpretation in Part X.
57. Declaration of restricted roads.
58. Application to be subject to approved scheme, etc.
59. Position in regard to structure or works encroaching upon restricted road.
60. Compensation for loss or deprivation of rights arising from declaration of restricted roads.
61. Portion of road following new course deemed to be restricted road.
62. Notice to owners and other persons.

## PART XI

### GENERAL

63. Minister may require statistics and information.
64. Investigation into affairs of Road Administration.
65. General offences and penalties.
66. Application of certain provisions of this Act.
67. Presumption in relation to roads.
68. Regulations.
69. Amendments to Acts.
70. Repeal of Cap. 13:12 and savings.
71. Construction of references to roads in other enactments.
72. Designation of District Development Fund and rural district councils as road authorities in respect of certain roads.

FIRST SCHEDULE : Provisions Applicable to the Board, Road Fund and Department of Roads Fund.  
SECOND SCHEDULE : Amendments to Acts.

**AN ACT to establish the Zimbabwe National Road Administration and the Road Fund; to provide for the management, control, allocation and disbursement of moneys from the Road Fund; to provide for the imposition and payment of a fuel levy; to provide for the collection of road user charges; to establish the Department of Roads Fund; to provide for the planning, development, construction, rehabilitation and management of the roads network of Zimbabwe; to provide for the regulation of the standards applicable in the planning, design, construction, maintenance and rehabilitation of roads with due regard to safety and environmental considerations; to provide for road authorities and their functions; to provide for the regulation of the erection of structures or the carrying out of works near certain roads, the entry upon roads from certain land and the acquisition of land and materials for road works; to provide for the reclassification of roads; to amend the Road Traffic Act [*Chapter 13:11*], the Vehicle Registration and Licensing Act [*Chapter 13:14*], the Road Motor Transportation Act, 1997; and the Regional, Town and Country Planning Act [*Chapter 29:12*], to repeal the Roads Act [*Chapter 13:12*]; and to provide for matters incidental to or connected with the foregoing.**

[Date of commencement : 1st August, 2001.]

PART I  
PRELIMINARY

**1 Short title**

This Act may be cited as the Roads Act [*Chapter 13:18*].

**2 Interpretation**

In this Act—

- “Board” means the Zimbabwe National Road Administration Board established in terms of section *eight*;
- “cattle grid” means a track constructed through an opening in a fence intersecting a road, with the object of allowing the passage of vehicles and preventing the passage of livestock;
- “Department of Roads” means the department under the Minister which is responsible for the construction and maintenance of regional, primary and secondary roads;
- “Department of Roads Fund” means the Department of Roads Fund established in terms of section *twenty-six*;
- “development works” means new road works or works that result in geometric changes of surface type to a road, or any other road works that enhance the infrastructural asset value of any roads;
- “dip tank” means a structure that is used for the compulsory dipping of livestock;
- “District Development Fund” means the District Development Fund referred to in section 3 of the District Development Fund Act [*Chapter 29:06*];  
[Definition inserted by section 20 of Act 14 of 2002]
- “emergency works” means road works required in consequence of any major accident or natural disaster;
- “fuel” includes diesel, petrol or other crude oil distillate;
- “fuel levy” means a road user fuel levy imposed in terms of section *twenty-two*;
- “heavy vehicle” means a motor vehicle exceeding two thousand three hundred kilograms net mass, but does not include a passenger motor vehicle having seating accommodation for not more than seven passengers;
- “local road authority” means a road authority referred to in paragraph (b) (c) or (d) of the definition of “road authority”;  
[Definition amended by section 20 of act 14 of 2002]
- “maintenance works” includes both periodic and routine maintenance of the road network;
- “Minister” means the Minister of Transport and Communications or any other Minister to whom the President may, from time to time, assign the administration of this Act;
- “periodic maintenance”, in relation to roads, means activities undertaken at intervals of several years to preserve the integrity of a road or in response to measured deterioration in the condition of a road;
- “primary road” means a road not forming part of the Regional Trunk Road Network which links regional roads to urban centres or urban centres to each other, and which has been declared to be a primary road under this Act;
- “regional road” means any road forming part of the Regional Trunk Road Network which has been declared to be a regional road in terms of this Act;

“Regional Trunk Road Network” means roads linking countries within the Southern African region;  
“rehabilitation works” means road works undertaken for the purpose of restoring, without enhancing, the previous infrastructural asset value of any road;

“road” means any road which is—

- (a) a regional, primary, secondary, tertiary or urban road;
- (b) a road or street which is vested in the President by or in terms of any enactment relating to regional, town or country planning;

but does not include any road in the parks and wild life estate as defined in the Parks and Wild Life Act [Chapter 20:14];

“Road Administration” means the Zimbabwe National Road Administration established in terms of section six;

“road authority” means—

- (a) in respect of regional, primary and secondary roads, the Department of Roads;
- (b) in respect of tertiary roads, a rural district council; and
- (c) in respect of urban roads, a municipality, town council, local board or rural district council;

[Paragraph amended by section 20 of Act 14 of 2002]

- (d) in respect of urban or tertiary roads which are not regional, primary or secondary roads and which were constructed, maintained or rehabilitated by the District Development Fund within the area of jurisdiction of any local authority immediately before the date of commencement of this Act, the District Development Fund;

[Paragraph inserted by section 20 of Act 14 of 2002]

“Road Fund” means the Road Fund established by section *thirteen*;

“road user charges” means—

- (a) fuel levies;
- (b) the fees payable for the grant of exemptions in respect of the axle overloading of vehicles and the certification of vehicles as abnormal in terms of the Road Traffic Act [Chapter 13:11];
- (c) the heavy vehicle surcharge levied and collected in terms of the Vehicle Registration and Licensing Act [Chapter 13:14];
- (d) the fees charged and collected in terms of the Vehicle Registration and Licensing Act [Chapter 13:14];

[Paragraph amended by section 20 of Act 14 of 2002]

- (e) the international transit fees payable in terms of the Road Motor Transportation Act [Chapter 13:15];

“road works” includes development works, maintenance works, rehabilitation works and emergency works;

“routine maintenance” means work that is undertaken each year to preserve a road from degradation caused by environmental effects;

“secondary road” means a road which connects regional, primary, tertiary and urban roads, industrial and mining centres, tourist attractions and minor border posts to each other and which has been declared to be a secondary road in terms of this Act;

“tertiary road” means a road which provides access to schools, health centres, dip tanks and other service facilities within a rural district council area or connects and provides access to secondary, primary and regional roads within and outside a rural district council area and which has been declared to be a tertiary road in terms of this Act;

“urban road” means—

- (a) any road within an urban council area, other than a secondary, primary or regional road;
- (b) any road located on urban land in a rural district council, other than a tertiary, secondary, primary or regional road;

which has been declared to be an urban road in terms of this Act.

## PART II

### GENERAL RESPONSIBILITIES OF MINISTER AND ROAD AUTHORITIES

#### 3 General functions of Minister in relation to roads

(1) For the purposes of this Act, the general functions of the Minister shall be—

- (a) to plan, design, construct, maintain, rehabilitate and manage or cause to be constructed, maintained, rehabilitated or managed any road in Zimbabwe at an acceptable level of safety to road users;
- (b) to develop policies to guide the orderly and integrated planning for the optimum development, utilisation and protection of the country’s roads in the national interest at minimum cost;
- (c) to ensure that all parts of the country are accessible through the development of a road network which affords such access;

- (d) to ensure access to all centres of economic and social importance and to neighbouring countries;
  - (e) to ensure —
    - (i) the equitable and efficient allocation of the resources available for investment in the road infrastructure; and
    - (ii) the preservation of resources invested in the road infrastructure;
  - (f) to oversee the proper discharge of the functions of the Department of Roads;
  - (g) to ensure the equitable distribution of the resources of the Road Fund in the national interest.
- (2) In the performance of his functions in terms of subsection (1), it shall be the duty of the Minister—
- (a) to provide overall policy guidelines on the planning, designing, construction, maintenance and funding of roads, thereby ensuring that all roads are recognised as forming part of a single integrated network;
  - (b) to ensure that roads are planned, designed, constructed, maintained, utilised and managed subject to, and in a manner consistent with, national environmental requirements provided for in any enactment and, to this end, to incorporate any such environmental requirements in the policy guidelines referred to in paragraph (a);
  - (c) to encourage participation by road users and other interested persons and organisations from the private sector in the development of any policies and regulations with regard to the responsibility for, and standards and funding of, roads;
  - (d) to secure the provision and maintenance of roads in communities lacking the resources to construct and maintain roads;
  - (e) to ensure that roads are utilised at all times in an efficient manner having special regard to their value and the economic, social and other benefits that may be derived from them;
  - (f) to ensure that Zimbabwe gives effect to any international agreement governing matters provided for in this Act to which Zimbabwe is a party;
  - (g) to secure the resources for developing Zimbabwe's roads at a level commensurate with the reasonable needs of road users;
  - (h) to promote efficiency, economy and safety in the utilisation of roads and to encourage the use of resource-saving practices;
  - (i) to regulate persons contracted by road authorities to plan, design, construct, maintain or rehabilitate any road or provide any other service in connection with roads in the interests of protecting road users and road authorities as consumers of those services;
  - (j) to prescribe standards to be maintained in the planning, designing, construction, maintenance, rehabilitation and management of roads.

#### **4 General functions of road authorities**

Subject to this Act, any enactment for the protection of the environment and any other enactment, a road authority shall—

- (a) be responsible for the planning, design, construction, maintenance, rehabilitation and management of its roads;
- (b) set operational priorities with regard to the construction, upgrading, rehabilitation and maintenance of its roads;
- (c) subject to the law relating to the procurement of goods and services by the State or local authorities, award contracts for the management, planning, designing, construction upgrading, rehabilitation and maintenance of its roads;
- (d) prepare its annual budget for consideration and approval in terms of this Act for the planning, design, construction, upgrading, rehabilitation and maintenance of its roads;
- (e) subject to paragraphs (c) and (d), enter into any contract for the management, planning, design, construction, maintenance, upgrading or rehabilitation of any road under its authority;
- (f) ensure that all technical, environmental and safety standards prescribed in terms of this Act for the planning, design, maintenance, upgrading or rehabilitation of any class of road for which it is responsible are complied with;
- (g) provide, establish, erect and maintain facilities on roads for the convenience and safety of road users;
- (h) charge any fee for any authorisation, approval or permission that it may grant to any person for the provision, construction, erection, establishment, carrying on or operation on, over or underneath any road or anything provided for in section *forty-seven* or *forty-eight*;
- (i) fence any road;
- (j) plant trees, shrubs, other plants and grass and protect or promote any vegetation alongside a road and do any other thing which it considers to be necessary for the convenience of road users or to improve the appearance of a road or to prevent the occurrence of any soil erosion by reason of the existence of a road;
- (k) establish and maintain any information and management system concerning roads;

- (l) liaise and exchange information, knowledge and expertise with other road authorities or other bodies, whether national or international, and to participate in conferences, seminars and workshops concerning any of the functions of a road authority;
- (m) to do anything which is reasonably ancillary to any of its functions in terms of this Act or any other enactment.

## **5 What roads may be constructed and maintained by road authorities**

(1) The Department of Roads shall have power to construct, maintain and rehabilitate any regional, primary or secondary road in accordance with road programmes approved by the Road Administration.

[Subsection amended by section 20 of Act 14 of 2002]

(2) Every local road authority shall, within the area of its jurisdiction, have power to construct, maintain and rehabilitate every urban or tertiary road or road which is not a regional, primary or secondary road in accordance with road programmes approved by the Road Administration.

(3) The Road Administration may—

- (a) in consultation with the Minister, direct a local road authority to maintain or rehabilitate, within such reasonable time as it may fix, any road for which the local road authority concerned is responsible;
- (b) permit a local road authority to maintain or rehabilitate any road for which another local road authority is responsible;
- (c) request a local road authority to maintain or rehabilitate any road for which another local road authority is responsible, subject to the reimbursement of the costs of such maintenance or rehabilitation from the Road Fund, the other local road authority concerned, or both.

(4) The Minister may—

- (a) in consultation with the Road Administration, direct a local road authority to construct, within such reasonable time as he may fix, any urban or tertiary road within its area of jurisdiction;
- (b) permit a local road authority to construct any urban or tertiary road outside its area of jurisdiction.

(5) If a local road authority fails to comply with a direction made under paragraph (a) of subsection (3) or paragraph (a) of subsection (4), the Minister may direct the Department of Roads to undertake the construction, maintenance or rehabilitation of such road and, subject to subsection (7) or (8), recover by action in any competent court the costs incurred by the Department of Roads in this connection from the local road authority concerned.

(6) A certificate by the Minister of the amount due by a local road authority for work done pursuant to subsection (5) shall be *prima facie* evidence to that effect.

(7) The Road Administration shall, from the moneys of the Road Fund, pay the reasonable costs incurred by a local road authority, or by the Department of Roads in default of the local road authority, in giving effect to a direction made under paragraph (a) of subsection (3):

Provided that no reimbursement shall be made in terms of this subsection to a local road authority if the direction was necessitated by any failure on the part of the local road authority to maintain or rehabilitate the road in question under the terms of a road programme approved by the Road Administration and financed from the Road Fund.

(8) The Minister may, from the moneys appropriated for that purpose by Parliament, pay a portion of the costs incurred by a road authority in giving effect to a direction of the Minister made under paragraph (a) of subsection (4) if the road authority can show that it cannot reasonably be expected to bear the whole cost.

## **PART IV**

### **ZIMBABWE NATIONAL ROAD ADMINISTRATION AND ROAD FUND**

## **6 Establishment of Zimbabwe National Road Administration**

There is hereby established a body corporate, to be known as the Zimbabwe National Road Administration, which shall be capable of suing and being sued in its corporate name and, subject to this Act, of performing all acts that bodies corporate may by law perform.

[Section amended by section 20 of Act 14 of 2002]

## **7 Functions of Zimbabwe National Road Administration**

Subject to this Act, the functions of the Road Administration shall be—

- (a) in consultation with the Minister and the Minister responsible for finance, to fix road user charges and to collect such charges or any other revenue of the Road Fund;
- (b) to allocate and disburse to road authorities funds from the Road Fund in accordance with rules prescribed by the Road Administration;
- (c) to audit the use of the funds from the Road Fund by road authorities and to ensure that disbursed funds are utilised for the purpose for which they are intended and in accordance with the rules prescribed by the Road Administration;

- (d) generally to manage the funds of the Road Fund in accordance with the rules and procedures laid down in terms of this Act;
- (e) to monitor the implementation of road maintenance works by road authorities;
- (f) to assist road authorities in making annual or multi-year road maintenance rolling plans and to approve such plans;
- (g) to assist the Minister in setting maintenance, design, construction and technical standards and to monitor adherence to such standards by road authorities; and
- (h) to perform any other function that may be conferred or imposed on the Road Administration in terms of this Act or any other enactment.

## **8 Establishment and constitution of Zimbabwe National Road Administration Board**

(1) The operations of the Road Administration shall, subject to this Act, be controlled and managed by a board to be known as the Zimbabwe National Road Administration Board.

(2) The Board shall consist of twelve members appointed by the Minister for their integrity and their ability and appropriate experience in matters relating to roads, of whom—

[Subsection amended by section 20 of Act 14 of 2002]

- (a) five shall be chosen by the Minister, one from each list of three names nominated by each of the organisations or associations which are considered by the Minister to be representative of—
  - (i) transporters; and
  - (ii) commerce and industry; and
  - (iii) road user organisations; and
  - (iv) professional engineers; and
  - (v) civic society;
 and
- (b) one shall be chosen from a list of three names nominated by each of the organisations or associations which are considered by the Minister to be representative of—
  - (i) farmers engaged in small-scale agriculture; and
  - (ii) farmers engaged in medium-scale agriculture; and
  - (iii) farmers engaged in large-scale agriculture;
 and
- (c) one shall be nominated by an association representing rural district councils; and
- (d) one shall be nominated by an association representing urban councils; and
- (e) one shall be nominated by the Director of the Department of Roads; and
- (f) one shall be nominated by the Minister responsible for local government; and
 

[Paragraph amended by section 20 of Act 14 of 2002]
- (g) one shall be nominated by the Minister responsible for finance;
- (h) one shall be nominated by the Minister responsible for the administration of the District Development Fund Act [*Chapter 29:06*].

[Paragraph inserted by section 20 of Act 14 of 2002]

(3) If any association or organisation fails to submit nominations when so required for the purposes of paragraph (a), (b), (c) or (d), as the case may be, of subsection (2), the Minister shall appoint as members such persons as he thinks fit, and any person so appointed shall be deemed to have been chosen in accordance with paragraph (a), (b), (c) or (d), as the case may be, of subsection (2).

[Subsection amended by section 20 of Act 14 of 2002]

(4) Part I of the First Schedule shall apply to the qualifications of members of the Board, their terms and conditions of office, vacation of office, suspension and dismissal, and to the procedure to be followed by the Board at its meetings.

## **9 Minister may give Board policy directions**

(1) Subject to subsections (2) and (3), the Minister may give the Board such directions of a general character relating to the policy which the Road Administration is to observe in the exercise of its functions as the Minister considers to be requisite in the national interest.

(2) Before giving the Board a direction in terms of subsection (1), the Minister shall inform the Board, in writing, of the proposed direction and the Board shall, within thirty days or such further period as the Minister may allow, submit to the Minister, in writing, its views on the proposal and the possible effects which the proposal may have on the finances and other resources of the Road Fund.

(3) Where the Board maintains in its views submitted to the Minister in terms of subsection (2), that the proposed direction will have a material effect on the finances of the Road Fund, the Minister shall not proceed to give the direction until he has consulted the Minister responsible for finance.

(4) The Board shall, with due expedition, comply with any direction given to it in terms of subsection (1).

(5) When any direction has been given to the Board in terms of subsection (1), the Board shall ensure that any direction and any views it has expressed thereon in terms of subsection (2), are set out in the Road Administration's annual report.

## **10 Execution of contracts and instruments by Road Administration**

Any agreement, contract or instrument approved by the Board may be entered into or executed on behalf of the Road Administration by any persons generally or specially authorised by the Board for that purpose.

## **11 Reports of Road Administration**

(1) In addition to the annual report which the Road Administration is required to submit to the Minister in terms of paragraph 15 of the First Schedule or the Audit and Exchequer Act [*Chapter 22:03*], the Road Administration—

(a) shall submit to the Minister such other reports as the Minister may require; and

(b) may submit to the Minister such other reports as the Road Administration considers advisable; in regard to the operations and property of the Road Administration.

(2) The Minister shall, within six months of the end of the Road Administration's financial year, lay before Parliament the annual report of the Road Administration and any report submitted to him in terms of subsection (1), together with the statement of accounts and auditor's report for that financial year of the Road Fund referred to in paragraphs 21 and 22 of the First Schedule.

[Subsection amended by section 20 of Act 14 of 2002]

## **12 Appointment and functions of chief executive and other staff of Road Administration**

(1) For the better exercise of the functions of the Road Administration, the Board shall appoint, for a fixed term of office and on such other terms and conditions as the Board may fix, a person to be the chief executive of the Road Administration.

(2) Without the authority of the Minister, no person shall be appointed as chief executive and no person shall be qualified to hold office as chief executive if he is not a citizen of Zimbabwe or ordinarily resident in Zimbabwe.

(3) Paragraphs 2 and 4 of the First Schedule shall apply to the appointment by the Board of the chief executive and the vacation of office by the chief executive as they apply to the appointment by the Minister of members of the Board and the vacation of office by members of the Board:

Provided that the appointment of the chief executive shall not terminate on the ground that he has ceased to be a citizen of Zimbabwe or ordinarily resident in Zimbabwe, if the Minister has granted authority under subsection (2).

(4) The chief executive shall, subject to the direction of the Board, be responsible for—

(a) supervising, managing and controlling the affairs of the Road Administration, its staff and the day to day management of the Road Fund; and

(b) carrying out any directions given to him by the Board; and

(c) performing such other functions as the Board may assign to him or as may be conferred or imposed upon him by or under this Act or any other enactment.

(5) An assignment of functions in terms of paragraph (c) of subsection (4)—

(a) may be made generally or specially and subject to such conditions, restrictions, reservations and exceptions as the Board may determine;

(b) may be revoked by the Board at any time;

(c) shall not preclude the Board itself from exercising the functions.

(6) The Board may engage persons otherwise than as employees, to perform services of a specialised, technical or professional nature for the Road Administration.

(7) The chief executive shall be an *ex officio* member of the Board and shall act as its secretary but he shall not have a vote on any question before the Board.

(8) The Board may employ, on such terms and conditions as it may determine, such employees as may be necessary for the conduct of the affairs of the Road Administration and may suspend, discipline or discharge any such persons.

(9) Any remuneration, allowances, pensions and other benefits to which the persons referred to in subsection (1), (6) or (8) are entitled shall be chargeable to the Road Fund.

## **13 Establishment, vesting and objects of Road Fund**

(1) There is hereby established a fund, to be known as the Road Fund.

(2) The Road Fund shall be vested in the Board as trustee.

(3) Subject to this Part, the objects of the Road Fund shall be to provide a stable, adequate, secure and sustainable source of funding for maintenance works in Zimbabwe and to ensure the equitable allocation of its moneys between road authorities for the purpose of maintenance works.

(4) Part II of the First Schedule shall apply to the administration and auditing of the Road Fund.

#### **14 Composition of Road Fund**

The Road Fund shall consist of—

- (a) road user charges; and
- (b) any moneys that may be payable to the Road Fund from moneys appropriated for the purpose by Act of Parliament; and
- (c) any moneys that the Road Fund may obtain, with the approval of the Minister and the Minister responsible for finance, by way of grants or donations; and
- (d) any moneys that may vest in or accrue to the Road Fund, whether in terms of this Act or otherwise.

#### **15 Application of Road Fund**

Subject to this Act, the Road Fund shall be applied to—

- (a) the payment of grants to road authorities for the purpose of meeting the whole or any part of the expenses of implementing routine and periodic road maintenance works programmes prepared by the road authorities in terms of section *sixteen*;
- (b) the payment of grants to road authorities for the purpose of meeting the whole or any part of the expenses of implementing such emergency works as may become necessary;
- (c) such road safety activities and other projects as may be approved by the Board;
- (d) meeting any salaries, allowances and other expenses of the Road Administration:  
Provided that expenditure for this purpose shall not exceed two point five *per centum* of the revenue of the Road Fund in any financial year;
- (e) such other activities as the Board may, with the consent of the Minister, authorise.

#### **16 Annual programmes and budgets of road authorities**

(1) On or before such date prior to the beginning of the financial year as the Minister and the Road Administration may agree, the Minister shall cause to be prepared, and submit to the Road Administration—

- (a) a road development works programme and a road maintenance works programme for implementation by the Department of Roads during that financial year; and
- (b) a budget showing the expenditure which the Department of Roads proposes to incur in the implementation of its programmes during that financial year:

Provided that the Department of Roads shall not make provision for development works before all maintenance works have been adequately provided for.

(2) On or before such date prior to the beginning of the financial year as the Road Administration may direct, every local road authority shall prepare and submit to the Road Administration—

- (a) a road maintenance works programme and a road development works programme for implementation by the local road authority during that financial year; and
- (b) a budget showing the expenditure which the local road authority proposes to incur in the implementation of its programmes during that financial year:

Provided that no local road authority shall make provision for development works before all maintenance works have been adequately provided for.

(3) The Road Administration shall review individually each programme and budget submitted to it by the road authorities and shall consolidate the maintenance works programmes of the road authorities into a single national road maintenance works programme.

(4) After the Board has approved the national road maintenance works programme, it shall cause the programme to be published in the *Gazette* and in such newspapers and other media as it considers appropriate to adequately inform the public of the national road maintenance works programme.

(5) During any financial year, the Minister or any local road authority may prepare and submit for the approval of the Board a supplementary budget relating to expenditure on road works which—

- (a) was not, for good reason, provided for in the annual budget of the road authority concerned prepared and submitted in terms of subsection (1) or (2); or
- (b) was inadequately provided for in the annual budget prepared and submitted in terms of subsection (1) or (2) due to unforeseen circumstances.

(6) A supplementary budget approved by the Board shall be deemed to form part of the annual budget of the road authority concerned for the financial year to which it relates.

(7) A road authority shall furnish the Road Administration with such additional information in regard to any budget submitted under subsection (5) as the Road Administration may require.

(8) With the approval of the Road Administration, a road authority may vary a budget approved under this section:

Provided that no variation may be made which has the effect of increasing the total amount of expenditure provided for in the budget.

## **17 General criteria for the allocation of grants from Road Fund**

(1) The Board shall prescribe criteria for the allocation of grants from the Road Fund for maintenance, rehabilitation or emergency works, and such criteria may be based on any one or more of the following—

- (a) a basic percentage split of the total money available among roads of different classes;
- (b) a formulation which takes into account the class of the road, its length, width, surface type and the traffic levels on the road;
- (c) identified needs based on the condition of the road network.

(2) The Board shall allocate grants in such manner as will ensure an equitable distribution of the available funds between the Department of Roads and the local road authorities, and between the local road authorities themselves, and, where appropriate, may determine priority works to which the grants may be applied in any particular year, taking into account the following—

- (a) the overall policies and priorities of the Government in relation to road works;
- (b) the need to maximise effective utilisation of resources from the Road Fund;
- (c) the resources available from the Road Fund;
- (d) the vehicle licence fees collected by a local authority in terms of the Vehicle Registration and Licensing Act [*Chapter 13:14*];
- (e) the performance by road authorities in the use of moneys from the Road Fund.

(3) In allocating grants from the Road Fund, the Board may—

- (a) allocate them wholly according to the needs of road authorities identified in their programmes submitted in terms of section *sixteen* or partly according to such needs and partly in accordance with paragraph (b) or (c);
- (b) specify the amounts allocated for the maintenance of each class of roads;
- (c) identify according to priority roads requiring maintenance and rehabilitation, taking into account the social and economic needs of the country or of any part of the country where the works are required.

(5) The Board shall make provision in every financial year for meeting the expenses of such emergency works as may become necessary during that financial year.

## **18 Disbursement of grants from Road Fund**

(1) The Board shall, in accordance with the national road maintenance works programme approved by it in terms of subsection (4) of section *sixteen*, pay to every road authority out of the Road Fund—

- (a) in the case of routine maintenance works, a grant for routine maintenance disbursed in advance of the performance of the works in each quarter of the financial year on such conditions as the Board may determine;
- (b) in any other case, on the basis of completed works certified by an independent qualified engineer or other person with such qualifications as are recognised by the Board.

(2) The Road Administration may carry out or cause to be carried out, at random, technical, environmental and financial audits of road works carried out by a road authority from grants disbursed out of the Road Fund.

## **19 Application of moneys received from Road Fund**

(1) All money received by a road authority from the Road Fund shall be accounted for separately by the road authority and shall be applied exclusively to projects specified in the annual road programmes referred to in section *sixteen*.

(2) The books of accounts in respect of moneys received from the Road Fund shall be maintained in such form as the Road Administration may prescribe.

## **20 General powers of Road Administration**

(1) The Road Administration shall have power to—

- (a) direct every road authority to prepare its road works programmes and supporting budgets in accordance with standard procedures established by the Board;
- (b) give to any road authority such directions as it sees fit to ensure compliance by the road authority with the standards prescribed by the Minister in terms of paragraph (j) of subsection (2) of section *three*;
- (c) give to any road authority such directions as it sees fit, in the interests of the better utilisation of the funds from the Road Fund, relating to the planning or implementation, or execution of any road maintenance works;
- (d) disqualify any road authority from receiving any allocation under the Road Fund for such period as the Road Administration may determine, for reasons of failure to—
  - (i) account satisfactorily or in accordance with the rules made by the Road Administration, for any funds disbursed to it in terms of this Act;
  - (ii) adopt cost-effective ways of implementing its road maintenance works;
  - (iii) meet the prescribed technical standards in the maintenance of its roads;

- (iv) generally comply with any rules prescribed by the Road Administration to a degree which the Road Administration considers will defeat the objects of the Road Administration or undermine the efficient administration of the Road Fund;
- (c) make rules on—
  - (i) the standard procedures to be adopted by road authorities in preparing their road works programmes and supporting budgets;
  - (ii) the form and manner in which and the periods within which applications for funds shall be made;
  - (iii) the form and manner in which and the periods within which any returns required by the Road Administration shall be made;
  - (iv) the information and documents to be furnished to the Road Administration in connection with applications for funds;
  - (v) the conditions as to the cost of replacement or depreciation of any capital plant and equipment for maintenance works from the funds provided in terms of this Act;
  - (vi) generally on all matters which are required by this Act to be prescribed by the Road Administration;
- (d) give directions to and prescribe the duties of road authorities in connection with the supervision to be exercised over the execution of maintenance works;
- (e) where any road user charges are collected on behalf of the Road Administration by a road authority or person not employed by the Road Administration, to fix such administrative fee as it may determine shall be payable to, or deductible from the road user charges collected by, such road authority or person;
- (f) visit premises and inspect financial statements books and other documents in order to ensure compliance with any conditions subject to which any money was disbursed in terms of this Act.

(2) The Road Administration may, for public information, cause the rules referred to in paragraph © of subsection (1) to be published in the *Gazette*.

## **21 Disputes between road authorities and Road Administration**

(1) Any road authority or other person aggrieved by any decision, direction, order or action of the Road Administration in terms of this Part may appeal against such decision, direction, order or action to the Administrative Court.

(2) A notice of appeal in terms of this section shall be lodged with the Registrar of the Administrative Court and the Road Administration within thirty days of the date on which notice of the decision, direction, order or action appealed against is given.

(3) On an appeal in terms of this section, the Administrative Court may confirm, vary or set aside the decision, direction, order or action appealed against or give such other decision as in its opinion the Road Administration ought to have given and make such order as to costs as it sees fit.

(4) The Road Administration shall comply with any decision of the Administrative Court made in terms of this section.

(5) The Administrative Court Act [*Chapter 7:01*] shall apply in relation to the composition, procedure and powers of the Administrative Court on an appeal in terms of this section.

## **PART IV**

### **FUEL LEVY**

## **22 Imposition of fuel levy**

(1) The Minister may, in accordance with such recommendation of the Road Administration Board as he may approve, and with the concurrence of the Minister responsible for finance, by statutory instrument, impose a levy on fuel for the purposes of this Act.

(2) In imposing a fuel levy in terms of subsection (1), the Minister shall prescribe, in accordance with such recommendations of the Road Administration Board as he may approve—

- (a) the persons responsible for the payment, collection and remittal of the levy; and
- (b) the manner in which and the times at which the levy shall be paid, collected and remitted; and
- (c) the basis upon which the levy shall be calculated; and
- (d) the date from which it the levy shall be collected:

Provided that such date shall not be earlier than the date of publication of the statutory instrument in the *Gazette*;

- (e) the surcharge or interest, if any, to be paid by the persons referred to in paragraph (a) for failure to pay, collect or remit the levy timeously.

[Paragraph inserted by section 20 of Act 14 of 2002]

(3) The Minister shall, within the next fourteen days on which Parliament sits after he makes a statutory instrument in terms of subsection (1), lay it before Parliament, where it shall be subject to annulment in

pursuance of a resolution of Parliament made within thirty days after the date on which it was laid before it:

Provided that the annulment of the statutory instrument shall not affect the validity of anything done under it in the interval between the date when it came into operation and the date of its annulment.

(4) All amounts remitted or collected by way of the fuel levy shall be paid into the Road Fund.

### **23 Withdrawal, suspension or increase of fuel levy**

Without derogation from section 21 of the Interpretation Act [*Chapter 1:01*], the Minister, in consultation with the Minister responsible for finance and on the advice of the Board, may by statutory instrument—

- (a) withdraw any fuel levy; or
- (b) suspend any fuel levy in whole or in part; or
- (c) increase the rate or incidence of any fuel levy.

[Section amended by section 20 of Act 14 of 2002]

### **24 Recovery of unpaid fuel levies**

A levy and any interest or surcharge connected therewith shall be a debt due to the Road Fund, and any amount of such levy, interest or surcharge that is not paid, collected or remitted may be recovered by the Road Administration from any person required to pay the levy or to collect or remit the levy by proceedings in a court of competent jurisdiction.

## **PART V**

### **DEPARTMENT OF ROADS FUND**

### **25 Establishment of Department of Roads Fund**

(1) There is hereby established a fund, to be known as the Department of Roads Fund, which shall be vested in the Minister as trustee.

(2) The Department of Roads Fund shall consist of—

- (a) grants obtained from the Road Fund; and
- (b) any moneys that may vest in or accrue to the Fund, whether in terms of this Act or otherwise.

(3) Part II of the First Schedule shall apply to the administration and audit of the Department of Roads Fund.

### **26 Application of Department of Roads Fund**

The Department of Roads Fund shall be applied to—

- (a) the implementation of road maintenance works in accordance with the road maintenance works programme and budget prepared and submitted in terms of subsection (1) of section *sixteen*;
- (b) meeting any expenses incurred in administering the Department of Roads Fund:

Provided that no moneys shall be applied towards any expense that is not provided for in a budget approved by the Road Administration under section *sixteen*.

## **PART VI**

### **DECLARATION, DIVERSION AND CLOSURE OF ROADS BY ROAD AUTHORITIES**

### **27 Interpretation in Part VI**

In this Part—

“appropriate authority”, for the purposes of—

- (a) subsection (1) of section *twenty-nine*, subsection (1) of section *thirty*, subsection (1) of section *thirty-three* and paragraph (b) of subsection (1) of section *thirty-five*, means the Minister;
- (b) subsection (2) of section *twenty-nine*, subsection (2) of section *thirty*, subsection (2) of section *thirty-three* and paragraph (a) of subsection (1) of section *thirty-five*, means the local road authority concerned.

### **28 Declaration of roads**

(1) The Minister may, on the recommendation of the Board and after consultation with any local road authority concerned, by notice in the *Gazette* declare—

- (a) any road or portion of a road to be a regional, primary, secondary, tertiary or urban road; or
- (b) any regional, primary or secondary road to be a tertiary or urban road; or
- (c) any tertiary or urban road to be a regional, primary or secondary road.

(2) The Minister may, on the recommendation of a local road authority, by notice in the *Gazette* declare any road or portion of a road other than a regional, primary or secondary road, to be a tertiary or urban road.

### **29 Applications for declaration or diversion of roads**

(1) Any local road authority or person wishing—

- (a) to have reasonable access to any place by means of a regional, primary or secondary road; or
- (b) to have a regional, primary or secondary road diverted;

may apply to the Minister in writing for a declaration of a regional, primary or secondary road or for the diversion of such road, as the case may be.

(2) Any person who, within the area of jurisdiction of a local road authority, wishes—

(a) to have reasonable access to any place; or

(b) to have a road, other than a regional, primary or secondary road, diverted;

may apply to the Minister through the local road authority concerned in writing for a declaration of a tertiary or urban road or the diversion of a road, as the case may be.

(3) An applicant in terms of subsection (1) or (2) shall publish in a newspaper circulating in the area concerned a notice of the application in a form approved by the appropriate authority.

(4) On or after the date of publication of the notice referred to in subsection (3), the appropriate authority shall cause a notice of the application to be published in the *Gazette* calling upon any person who wishes to object to the declaration of the proposed road or the diversion, as the case may be, to lodge his objection with the appropriate authority on or before a date specified in the notice, which shall not be less than one month from the date of publication of the notice in the *Gazette*.

(5) After considering any objections referred to in subsection (4), together with any report of a board appointed in terms of section *thirty-two*, the Minister may, if he thinks fit, subject to such conditions, whether as to the payment by the applicant in terms of subsection (1) or (2) or any other person of all or any compensation or costs involved or otherwise, by notice in the *Gazette*—

(a) declare the proposed regional, primary, secondary, tertiary or urban road to be a regional, primary, secondary, tertiary or urban road; or

(b) declare the road to be diverted;

as the case may be.

[Section amended by section 20 of Act 14 of 2002]

(6) Parts III, V and VIII of the Land Acquisition Act [*Chapter 20:10*], shall apply, *mutatis mutandis*, to the exercise by the appropriate authority of its powers in terms of subsection (5).

Provided that any compensation or costs resulting from a declaration made at the request of a local road authority in terms of this section shall be payable by the road authority concerned.

[Proviso inserted by section 20 of Act 14 of 2002]

(7) Where the appropriate authority, with the agreement of the person concerned, has in terms of subsection (5), fixed as a condition of exercising its powers that any person shall pay all or any of the amount of any compensation or costs involved in the exercise of its power, it may recover the compensation from such person.

### **30 Closure of roads**

(1) Any local road authority or person wishing to have a regional, primary or secondary road closed may apply to the Minister in writing for a declaration for that purpose.

(2) Any person who, within the area of jurisdiction of a local road authority, wishes to have a road, other than a regional, primary or secondary road, closed may apply to the Minister through the local road authority concerned in writing for a declaration for that purpose.

(3) An applicant in terms of subsection (1) or (2) shall publish in a newspaper circulating in the area concerned a notice of the application in a form approved by the appropriate authority.

(4) On or after the date of publication of the notice referred to in subsection (3) the appropriate authority shall cause a notice of the application to be published in the *Gazette* calling upon any person who wishes to object to the proposed closure to lodge his objection with the appropriate authority on or before a specified date which shall be not less than one month from the date of publication of the notice in the *Gazette*.

(5) After the date specified in the notice in terms of subsection (4) the Minister may—

(a) if no objections to the proposed closure have been lodged, may, by notice in the *Gazette*, declare the road to be closed; or

(b) if any objections to the proposed closure have been lodged, shall consider the objections, together with any report of a board appointed in terms of section *thirty-two* and may, if he thinks fit, by notice in the *Gazette*, declare the road to be closed.

### **31 Closure or diversion of carriageway**

(1) In this section—

“carriageway” means that part of a road formed for the use of vehicles.

(2) Notwithstanding anything contained in section *twenty-nine* or *thirty*, the Minister may, if he considers it in the general public interest to do so, by notice in the *Gazette*, close or divert any carriageway which is situated on land forming part of any road, whether or not it gives access to or from a piece of land adjoining such road from or to any other carriageway of that road:

Provided that the Minister shall not close or divert any carriageway in terms of this subsection if the closure or diversion will prevent access to or from a piece of land referred to in this subsection from or to the other carriageway referred to in this subsection.

### **32 Minister or local road authority may appoint board of inquiry in regard to any proposed declaration, diversion or closure**

(1) The appropriate authority may appoint a board, consisting of a chairman and not more than two members who shall be nominated by the appropriate authority, to inquire into and report to the appropriate authority in writing upon any proposed declaration, diversion or closure of any road.

(2) Any board appointed in terms of subsection (1) shall have power to take such evidence on oath as it may think necessary for the performance of its duties, and for that purpose the chairman shall have power to administer oaths.

(3) Any person who after having been duly sworn wilfully gives false evidence before any such board on any matter relevant to the inquiry, knowing such evidence to be false or not knowing or believing it to be true, shall be guilty of perjury.

### **33 Declaration of temporary roads and temporary closure of roads or limitation of traffic**

(1) Notwithstanding anything contained in this Part, on the recommendation of the Road Administration the Minister may—

- (a) subject to subsections (3) and (4), by notice in the *Gazette*, summarily declare a temporary regional, primary or secondary road for a period not exceeding six months; or
- (b) by means of notice boards or signs suitably placed, temporarily—
  - (i) close a regional, primary or secondary road; or
  - (ii) limit the kind or mass of traffic over a regional, primary or secondary road;

for the purpose of altering, improving, protecting or repairing the road.

(2) Notwithstanding anything contained in this Part, a local road authority may—

- (a) subject to subsections (3) and (4), by notice in the *Gazette*, summarily declare a temporary tertiary or urban road for a period not exceeding six months; or
- (b) by means of notice boards or signs suitably placed, temporarily—
  - (i) close a tertiary or urban road; or
  - (ii) limit the kind or mass of traffic over a tertiary or urban road;

for the purpose of altering, improving, protecting or repairing the road.

(3) Before the appropriate authority exercises its powers in terms of paragraph (a) of subsection (1) or paragraph (a) of subsection (2), it shall serve on—

- (a) the owner of the land affected; and
- (b) any other person who is likely to suffer loss or deprivation of rights by such exercise whose whereabouts are ascertainable after diligent inquiry;

notice in writing of his intention to exercise such rights calling upon such owner or person who wishes to claim compensation in terms of Part V of the Land Acquisition Act [*Chapter 20:10*] for loss or deprivation of rights to submit a claim in terms of that Act.

(4) Parts III, V and VIII of the Land Acquisition Act [*Chapter 20:10*], shall apply, *mutatis mutandis*, to the exercise by the appropriate authority of its powers in terms of paragraph (a) of subsection (1) or paragraph (a) of subsection (2):

Provided that—

- (i) it shall not be necessary for a preliminary notice to be published or served in terms of section 5 of that Act;
- (ii) the order in terms of subsection (1) of section 8 of that Act may be issued at any reasonable time after notice is served in terms of paragraph (a) of subsection (3);
- (iii) any reference in that Act to—
  - (a) a preliminary notice shall be construed as a reference to notice in terms of paragraph (a) of subsection (3);
  - (b) the publication in the *Gazette* or service of a preliminary notice shall be construed as a reference to the service of notice in terms of paragraph (a) of subsection (3).

(5) Any notice board or sign—

- (a) referred to in paragraph (b) of subsection (1) or paragraph (b) of subsection (2); and
- (b) purporting to be placed by or on behalf of the appropriate authority;

shall itself, unless the contrary is proved, be sufficient evidence that the closure or limitation set forth thereon has been made or imposed, as the case may be, by or on behalf of the appropriate authority.

(6) A person who fails to comply with a closure or limitation referred to in paragraph (b) of subsection (1) or paragraph (b) of subsection (2) shall be guilty of an offence.

### **34 Width of roads**

(1) Subject to any other enactment to the contrary, all roads shall be deemed, and are hereby declared to be, thirty-one comma five metres in width:

Provided that the Minister may, on the recommendation of the Road Administration or at the request of a local road authority, by notice in the *Gazette*, declare any road or any portion thereof to be of such lesser or greater width as shall be specified in such notice.

(2) Notwithstanding subsection (1) and subject to such safety requirements as may be prescribed in terms of this Act or any other enactment, horses, cattle, donkeys, mules, sheep, pigs and goats may be driven on either side of any unfenced road to a distance of not more than thirty metres from the centre of the road, and in such case no liability for trespass shall arise therefrom if no injury is done by them to any crops:

Provided that where a road lies within a railway strip, if any person drives any horse, cattle, donkey, mule, sheep, pig or goat, or permits such animal to stray, within twenty-five metres of the centre of the railway track except at a crossing, he shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

### **35 Declaration that land forms part of road**

(1) Notwithstanding anything to the contrary contained in any law and subject to subsection (2)—

(a) at the request of the local road authority concerned the Minister may declare by notice in the *Gazette* that the land adjoining a tertiary or urban road or proposed tertiary or urban road shall form part of the road or proposed road; or

[Paragraph amended by section 20 of Act 14 of 2002]

(b) the Minister may declare by notice in the *Gazette* that the land adjoining a regional, primary or secondary road or proposed regional, primary or secondary road shall form part of the road or proposed road;

if, in the opinion of the appropriate authority concerned, such a course is necessary or may become necessary for road purposes.

(2) Parts III, V and VIII of the Land Acquisition Act [*Chapter 20:10*], shall apply, *mutatis mutandis*, to any road authority in respect of any land taken in terms of subsection (1):

Provided that any compensation or costs resulting from a declaration made at the request of a local road authority in terms of this section shall be payable by the road authority concerned.

## **PART VII**

### **CONSTRUCTION AND MAINTENANCE OF ROADS BY ROAD AUTHORITIES**

### **36 Bridges and culverts to be constructed in accordance with approved designs**

(1) A bridge or culvert with a clear span of one comma five metres or more shall be constructed by a local road authority according to a design and specification approved by the Minister.

(2) If a bridge or culvert referred to in subsection (1) is not constructed in accordance with a design or specification approved by the Minister, the Minister may direct the Department of Roads to—

(a) demolish the bridge or culvert; or

(b) rebuild the bridge or culvert; or

(c) make such alterations thereto as he may consider necessary.

(3) Any expenditure incurred by the Minister in the exercise of his powers under subsection (2) may be recovered by the Minister by action in any competent court against the local road authority concerned and the Minister's certificate shall be *prima facie* evidence of the amount due by the local road authority concerned.

### **37 Cattle grids**

(1) A road authority may construct and maintain a cattle grid on any road.

(2) If any injury or damage to persons, animals or other property is caused by the use of any cattle grid on any road, the road authority concerned shall be liable for the injury or damage only if it was due to a failure to maintain the cattle grid in a proper state of repair, and no liability shall lie for any injury or damage caused by the use of a cattle grid which has been maintained in a proper state of repair.

(3) At any point where a fence intersects any road, the road authority responsible for the road may construct a cattle grid which shall be constructed according to a design and specification approved by the Minister.

(4) The obligation to maintain in a proper state of repair any cattle grid constructed by a road authority shall rest with the road authority concerned:

Provided that in the case of a cattle grid which is situated on the boundary between the areas of two local road authorities, the obligation shall rest with both those road authorities.

(5) If a local road authority which is responsible for the maintenance in a proper state of repair of any cattle grid fails or neglects to maintain the cattle grid in a proper state of repair, the Minister may cause the cattle grid to be repaired and may recover the cost of the repair from the road authority concerned.

### **38 Fences intersecting roads; gates**

(1) A gate shall not be considered to be in good order for the purposes of this section unless—

- (a) it is a swing gate having a width of not less than four comma two five metres, as is sufficient to allow the reasonable use of the road and having regard to the traffic thereon; and
- (b) it has a balanced catch or other free fastener; and
- (c) it swings clear of the road and is free from drag; and
- (d) it is fitted with a disc or other device easily visible at night, which disc or other device shall be as prescribed.

(2) No person shall erect a fence which intersects a road unless he has obtained the permission of the road authority concerned, and the road authority may, when granting the permission, impose such conditions as it thinks fit.

(3) If any fence lawfully erected intersects a road, the owner of the fence shall, at his own expense, erect a gate in the fence in such position within the road as the road authority concerned may determine, and shall, at his own expense, at all times keep the gate in good order.

(4) If the road authority is of the opinion that a gate erected in terms of subsection (3) is not in good order, it may direct the owner to repair, alter or reconstruct the gate within such reasonable time as it may fix.

(5) Any person who is aggrieved by a decision of the road authority—

- (a) in refusing to grant permission in terms of subsection (2); or
- (b) in imposing any conditions in terms of subsection (2); or
- (c) in giving any directions in terms of subsection (4);

may appeal to the Minister within thirty days and on such appeal, the Minister may confirm, vary or set aside the decision of the road authority concerned.

(6) If an owner fails to comply with a direction made under subsection (4), the road authority may undertake the repair, alteration or reconstruction of such gate.

(7) Any expenditure incurred by the road authority in the exercise of its powers under subsection (5) may be recovered by the road authority by action in any competent court against the owner concerned and a certificate of the road authority shall be *prima facie* evidence of the amount due by such owner.

(8) Any person other than the owner or occupier of the land so fenced who, without the authority of the owner or occupier, on passing through any gate on any road, whether or not the public or any section of the public has access to the road, fails to close and fasten the gate or cause the gate to be closed and fastened immediately after passing, shall be guilty of an offence:

Provided that, if the gate is on a road to which the public or any section of the public has access, it shall be a sufficient defence to a prosecution under this subsection to prove that the gate was not kept in good order in accordance with subsection (3).

(9) Any person who wilfully closes up, fences across or otherwise obstructs a right of way shall be guilty of an offence.

### **39 Storm-water from land adjoining roads**

(1) If any owner or occupier of any land adjoining any road has, subject to any enactment relating to the protection of the environment, constructed drains or contour ridges for the purpose of protecting his property, he shall not cause or permit, except in the case of flooding or other natural disasters, storm-water to discharge from the drains or contour ridges on to the road or into any existing road drain on the road without the permission of the road authority concerned.

(2) In the event of any application for permission in terms of subsection (1), the road authority concerned shall grant permission if the applicant agrees to pay the expense of any enlargement or alteration of the road drains which is considered necessary by the road authority.

(3) In the event of permission being refused or any dispute as to the necessity for the enlargement or alteration of drains, the matter in dispute shall be referred for decision to the Administrative Court.

### **40 Construction of road drains and compensation for damage caused**

(1) Subject to any enactment relating to the protection of the environment, every road authority shall have power to construct such drains as may be necessary for the purpose of safely leading storm-water, which would otherwise naturally gather or impinge upon a road, to the nearest natural drainage.

(2) If as the result of the construction of any drain the storm-water causes damage to any property, the road authority concerned shall, in addition to any remedy provided for in terms of any enactment relating to the protection of the environment, pay reasonable compensation to the aggrieved owner of the property, and in the event of any dispute as to the cause of the damage or the amount of any compensation, the matter in dispute shall be referred for decision to the Administrative Court.

### **41 Road authority may take land and materials**

(1) In this section—

“demarcated forest” shall have the meaning given to it by the Forest Act [*Chapter 19:05*];

“permanent improvement” includes any dam or reservoir which would be injuriously affected by the taking of the materials, but does not include any fence, aqueduct, pipeline, well or borehole;

“protected private forest” shall have the meaning given to it by the Forest Act [*Chapter 19:05*];

“spoil material” means material which has been produced or which results from repairing or making a road.

(2) In the exercise of its powers in terms of this Act, a road authority and every person duly authorised thereto by a road authority shall, subject to subsections (7), (8) and (9), at all times have the power of making roads and temporary deviations across and of taking materials for making or repairing roads from and of depositing spoil material on any part of any land which is not included in any township which has been approved by the competent authority under any law relating to regional, town or country planning:

Provided that, except with the consent of the owner of the land, no material shall be taken and no spoil material shall be deposited within—

- (a) five hundred metres of the site of the principal homestead on that land, whether the homestead is already erected or actually in the course of erection;
- (b) one hundred metres of any other building or permanent improvement the value of which is ten thousand dollars or more, or any cattle dip tank;
- (c) fifty metres of any area which, in terms of any enactment providing for the protection of the environment, is required to be protected;
- (d) ten metres of any other permanent farm building.

(3) No power conferred by this section shall be exercised without reasonable notice on the owner and occupier, if any, of the land concerned calling upon them, if they wish to claim compensation in terms of Part V of the Land Acquisition Act [*Chapter 20:10*], for loss or deprivation of rights, to submit a claim in terms of section 22 of that Act.

(4) Parts III, V and VIII of the Land Acquisition Act [*Chapter 20:10*], shall apply, *mutatis mutandis*, to the exercise of any right in terms of subsection (2):

Provided that—

- (i) it shall not be necessary for a preliminary notice to be published or served in terms of section 5 of that Act;
- (ii) the order in terms of subsection (1) of section 8 of that Act may be issued at any reasonable time after notice is served in terms of subsection (3) or, where such notice is not served, after the publication of a notice in terms of proviso (ii) to subsection (1) of section 8 of that Act;
- (iii) any reference in that Act to—
  - (a) a preliminary notice shall be construed as a reference to notice in terms of subsection (3) or (6);
  - (b) the publication in the *Gazette* or service of a preliminary notice shall be construed as a reference to the service of notice in terms of subsection (3) or, where such notice is not served, the publication of notice in terms of subsection (6).

(5) Nothing in this section shall give any road authority the power to make roads and temporary deviations across or to take materials for making or repairing roads from or to deposit spoil material on any commonage the title to which is held by a municipal council or town council, or any land within a town ward of a rural district council or an area declared to be a specified area in terms of the Rural District Councils Act [*Chapter 29:13*].

[Subsection amended by section 20 of Act 14 of 2002]

(6) If the whereabouts of the owner to whom notice must be given in terms of subsection (3) cannot be ascertained after diligent inquiry, a notice stating the action proposed to be taken and calling upon the owner to claim compensation as referred to in subsection (3) may be published in the *Gazette*, and the notice shall be deemed to be sufficient notice for the purposes of that subsection.

(7) No road and no temporary deviation shall be made across and no materials shall be taken for making or repairing roads from and no spoil material shall be deposited on any demarcated forest without prior consultation between the road authority and the Forestry Commission or their authorised representatives, and any dispute between them as to the making of the road or the temporary deviation or the taking of materials or the depositing of spoil material shall be determined by the Minister whose decision shall be final.

(8) No road and no temporary deviation shall be made across and no materials shall be taken for making or repairing roads from and no spoil material shall be deposited on any protected private forest without prior consultation between the road authority and the owner of the forest or their authorised representatives, and any dispute between them as to the making of the road or the temporary deviation or the taking of materials or the depositing of spoil material shall be determined by the Minister whose decision shall be final.

(9) If the whereabouts of an owner of a protected private forest who has to be consulted in terms of subsection (8) cannot be ascertained after diligent inquiry, a notice shall be published in the *Gazette* stating the action proposed to be taken and if one month after the publication of the notice the whereabouts of the owner are still unknown, the proposed action may be taken without any consultation with the owner.

[Subsection amended by section 20 of Act 14 of 2002]

#### **42 Road authority may sink boreholes or wells**

A road authority shall, unless the area has been declared a water shortage area under Part V of the Water Act [*Chapter 20:24*], have the right on a road to sink boreholes or wells to acquire water for primary purposes as defined in that Act:

Provided that where the road authority wishes to sink any borehole or well for the purpose of acquiring water for the construction or maintenance of the road, the use of vehicles and machinery employed in connection with the road or any purpose other than a primary purpose, the road authority shall obtain a permit from the catchment council constituted under the Water Act [*Chapter 20:24*] for the area where it proposes to sink any borehole or well.

#### **43 Road authority may make entrances through fences**

For the purpose of taking materials for constructing or repairing any road, any road authority or any person duly authorised thereto by a road authority may make an entrance through any fence, subject to the following conditions—

- (a) that the road authority concerned shall cause to be erected in the entrance a gate fitted with a lock, of which one key shall be given to the occupier or owner of the land, and the gate shall, when not in use be kept locked; and
- (b) that the road authority may at any time cause the gate to be removed and, in that case, shall cause the fence to be re-erected across the entrance.

#### **44 Reservations in respect of road-making materials**

(1) Any person who, on behalf of a road authority, enters upon land from which, in terms of this Act, materials for constructing or repairing roads may be taken may, if he has reason to believe that there is in or upon such land a deposit of any such materials, post a notice on the ground which he proposes to search for the materials and shall give notice to the owner of the land and to any other person or authority having any rights over or in the land of his intention to search the ground.

(2) The notice shall —

- (a) be attached to a post and the upper extremity of the notice shall be not less than one comma five metres above ground level;
- (b) shall state that the land is being examined, the purpose of the examination and the date and time of the posting of the notice.

(3) The posting of a notice in terms of subsection (1) shall have the effect of prohibiting, for a period of not more than fourteen days from the date and hour of the posting of the notice, any activity whatsoever, other than an activity being carried on immediately before the posting of the notice, upon the land falling within such distance, not exceeding three hundred metres from the post carrying the notice, as shall be stated in the notice:

Provided that the road authority may permit such limited use of the land as it may determine, subject to such conditions as it may impose in granting the permission.

(4) If the person searching for the material discovers in or upon the land reserved under subsection (3) any deposit of the materials, he shall erect upon the boundaries of the area of the deposit or that portion of the area which may be required, beacons in the manner prescribed, and shall post upon each beacon a notice in the prescribed form.

(5) The erection of the beacons in terms of subsection (4) shall have the effect of reserving the area of land demarcated by the beacons and of prohibiting any activity whatsoever upon the land reserved, other than an activity being carried on in the area immediately before the erection of the beacons:

Provided that the road authority may permit such limited use of the land or the removal of such quantities of the materials by the owner of the land or any other person having any rights over or in the land affected, as the road authority may determine, subject to such conditions as it may impose in granting the permission.

(6) Particulars of any area of land reserved in terms of subsection (5) shall be sent to the mining commissioner and the natural resources officer of the district in which the land is situated by the road authority making the reservation.

(7) The road authority making any reservation shall notify the owner of and any other person having any rights over or in any land affected by the reservation of the particulars of the reservation, but if the whereabouts of the owner or the identity or whereabouts of the other person are unknown, the erection of the beacons and notices mentioned in subsection (4) shall be deemed to be a sufficient notification for the purposes of this subsection.

(8) Any person who, on land reserved in terms of this section, does any act which he has not been authorised by the road authority concerned to do on the land shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

(9) When the materials on the land so reserved are no longer required, the road authority by whom or on whose behalf the beacons and notices mentioned in subsection (4) were erected shall notify the owner of the land

and any other person who may have been affected by the reservation and shall cause the beacons and notices to be removed, and the reservation of the land shall thereupon be withdrawn.

(10) Notwithstanding anything contained in this Act or any other law, no compensation shall be paid to any person in respect only of the reservation of land in terms of this section unless the road authority concerned has refused to permit, in terms of the proviso to subsection (5), the limited use of the land or has permitted use only subject to conditions and the person concerned shows that he has suffered loss or damage by reason of the refusal or by reason of the conditions imposed.

(11) Any person who, without the permission of the road authority responsible for the erection of any beacon or the posting of any notice under this section, removes or interferes with any beacon or notice shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

#### **45 Temporary encampments**

(1) Subject to subsections (2) and (3) and to any law relating to the protection of the environment, every road authority and every person duly authorised thereto by a road authority shall, in the exercise of the powers conferred upon the road authority in terms of this Act, have the right on any site which the road authority or the duly authorised person considers convenient, to establish temporary encampments for the purposes of—

- (a) the accommodation of persons and animals; and
- (b) the parking, maintenance, installation and storage of vehicles, equipment, machinery, materials and stores, as the case may be; and
- (c) the construction or erection and maintenance of buildings, huts, tents, stores, structures, camps and enclosures.

(2) A temporary encampment may be established in terms of subsection (1) on any site for such period as the road authority considers to be necessary or expedient in the circumstances.

(3) Subsections (3) to (8) of section *forty-one* shall apply, *mutatis mutandis*, in relation to the exercise of powers in terms of subsection (1) as they apply in relation to the power to use land or make roads in terms of subsection (2) of section *forty-one*.

(4) A temporary encampment and any derelict equipment shall be removed within three months of the completion of the work for which the encampment was erected or the equipment was used and the area of the land on which the encampment was erected shall be rehabilitated to the condition in which it was before its erection.

### **PART VIII**

#### **UNLAWFUL DIVERSION, CLOSURE, OBSTRUCTION, ENCROACHMENT, DAMAGE OF AND ENTRY UPON ROADS**

#### **46 Removal of obstacles and unauthorised structures affecting roads**

(1) If any person without the written authority of the road authority concerned given in terms of section *forty-seven*—

- (a) erects, constructs or plants any building, structure, fence, ditch, tree or other obstacle, which encroaches upon any road or detrimentally affects any road; or
- (b) contravenes paragraph (a) or (b) of subsection (2) of section *forty-seven*;

the road authority may, by notice in writing, order the owner of the obstacle to remove it and make good any damage to the road within a reasonable time stated in the notice.

(2) Where any person fails or neglects to comply with the order referred to in subsection (1) within the time stated in the notice, the road authority concerned may cause the obstacle to be removed, and the cost of removal may be recovered from the owner by the road authority in any court of competent jurisdiction.

#### **47 Offences with respect to diversion, closure, obstruction, encroachment and damage of roads**

(1) Any person who diverts or closes any road except in accordance with the procedure provided under this Act for such diversion or closure shall be guilty of an offence.

(2) Subject to subsection (3), any person who—

- (a) leaves or places on or over any road or within fifty metres from the boundary of any road any timber, stones, rubbish or other material ; or

[Paragraph amended by section 20 of Act 14 of 2002]

- (b) leaves or deposits any disused vehicle or machine or a disused part of a vehicle or machine on or over any road or within fifty metres from the boundary of any road; or

[Paragraph amended by section 20 of Act 14 of 2002]

- (c) encroaches on any road by making or erecting any building, fence, ditch or other obstacle or by planting trees or by placing, leaving or keeping on it any structure resting on wheels or in any other manner whatsoever; or

- (d) marks without reasonable cause, digs up, removes or alters in any way the soil, surface or scarping of any road; or
- (e) on, over or below the surface of any road or land in any area within which building is restricted, erects, constructs, lays or establishes any structure or other thing;
- (f) makes any structural alteration on, over or below the surface of a road or land in any area within which building is restricted;
- (g) fills up, alters or obstructs any ditch or drain which is constructed for the purpose of safely leading storm-water from such road; or
- (h) causes or allows any timber, sledge or other heavy thing or material which is not wholly raised above the ground on wheels to be dragged on any road; or
- (i) uses on a wheeled vehicle any locking or other device, not being a skid-pan, calculated to cause the wheels to drag; or
- (j) cuts down, burns, damages or interferes with any tree, shrub or other plant growing on any road; or
- (k) without reasonable cause, uses any vehicle or moves any vehicle which is in such a condition that it causes or is likely to cause damage to a road;

shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment not exceeding one year or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

(3) A road authority may authorise in writing under such conditions as it may determine the doing of any act prohibited under subsection (2) if it is satisfied that no material damage to the road or prejudice to the public can result from it, and, in the case of an authorisation to do anything prohibited by paragraph (e) or (f) of that subsection, it may require that such specifications as may be set out in writing be complied with.

(4) Any person who wilfully or negligently damages any road shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment not exceeding one year or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

(5) A court convicting a person of an offence in terms of subsection (1) may, in addition to imposing a sentence on such a person, order that person to pay to the road authority concerned an amount which, in the opinion of the court, is equal to the amount of the damage caused.

(6) An order in terms of subsection (5) shall have force as if it were a civil judgement and may be enforced in the same manner as a civil judgement.

#### **48 Trading on roads or in restricted area**

(1) Subject to subsection (2) no person shall, without the written permission of the road authority concerned or contrary to the terms and conditions of such written permission, carry on any trade or expose, offer or manufacture for sale any goods on a road or in any area alongside a road within a distance of sixty metres from the boundary of a road or in any area within five hundred metres from any point of intersection.

[Subsection amended by section 20 of Act 14 of 2002]

(2) Subsection (1) shall not apply to any person whose business or undertaking was, immediately before the date of commencement of this Act, carried on in the area referred to in that subsection unless that person has, by notice in writing, been directed by the road authority concerned to discontinue the business or undertaking before a date specified in that notice.

(3) Any person who contravenes this section shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment not exceeding two years or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

#### **49 Control of entry upon roads**

(1) No person shall cause or permit any road, including a private road, to enter upon—

- (a) any road outside the area under the jurisdiction of a rural district council or municipality; or
- (b) any road outside an area for which there is an approved scheme, operative master plan or operative local plan as defined in the Regional, Town and Country Planning Act [*Chapter 29:12*]; or
- (c) any road not referred to in paragraph (a) or (b), the responsibility for which has been assumed by the Minister; or
- (d) any proposed or restricted road referred to in Part IX or X;

except in accordance with the permission in writing of the Minister and subject to such conditions as he may impose in granting such permission.

(2) The Minister may grant any permission mentioned in subsection (1) for which application has been made, and in granting it may stipulate the manner and place in or at which and the conditions subject to which the road may be entered, or he may refuse permission and shall give reasons for his refusal:

Provided that he shall not refuse permission when the entry upon the road is necessary to give access to or exit from a piece of land to which or from which no other reasonable access or exit is available or can be made available at reasonable expense to the applicant.

(3) If any person fails to comply with any of the conditions stipulated by the Minister in terms of subsection (2), the Minister or any person authorised by him may cause to be carried out such work as may be necessary by reason of the failure of the person to comply with any conditions and may recover from the person the expense incurred in doing so.

(4) The Minister may, by notice in writing addressed to the owner or occupier of any land from which any road, including a private road, enters any road, prohibit the entry—

(a) if, in his opinion, entry upon the road is undesirable at the point at which the entry is made; or

(b) if by reason of the regrading or any change in the course of the road entry upon the road is unsuitable at the point at which the entry is made:

Provided that the Minister shall not make any prohibition in terms of this subsection in respect of any entry upon a road which is necessary to give access to or exit from a piece of land to which or from which no other reasonable access or exit is or can be made available.

(5) Any person who suffers any damage by reason of anything done in terms of this section may, subject to subsection (6), claim compensation for the damage.

(6) Parts V and VIII of the Land Acquisition Act [*Chapter 20:10*] shall apply, *mutatis mutandis*, to the payment of compensation in terms of subsection (5):

Provided that any reference in Part V of that Act to the date of the publication of a preliminary notice in the *Gazette* shall be construed as a reference to the date of the exercise by the Minister of his powers in terms of subsection (4).

(7) The Minister may delegate all or any of the powers conferred upon him by this section to the appropriate road authority.

(8) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

## PART IX

### PLANNING OF ROADS IN ADVANCE

#### 50 Preliminary reservation of land

(1) If, during any investigation which is being made for the purpose of determining the course of any proposed road, the road authority concerned has reason to believe that the owner of or any person having any rights over or in land over which the proposed road may run is doing any act or intending to do any act which is calculated to interfere with any such proposed road within a distance of ninety metres on either side of the approximate centre line of such proposed road, road authority may, in writing, request the owner or person to cease doing the act within such period as it shall stipulate or not to do the act.

(2) If the owner or person fails or refuses to comply with a request made in terms of subsection (1), the road authority may, by notice in the *Gazette*, reserve a strip of land to a width of ninety metres on either side of the approximate centre line of the proposed road, against all use, and the notice shall specify each property affected by the reservation and shall specify the manner in which the area or areas reserved shall be demarcated.

(3) Publication of a notice of reservation in terms of subsection (2) shall have the effect of prohibiting any activity whatsoever upon the land reserved for a period of twelve months from the publication of such notice:

Provided that the road authority may permit such limited use of the land concerned as it may determine, subject to such conditions as it may impose.

(4) If no final reservation has, within the period of twelve months mentioned in subsection (3), been made in accordance with section *fifty-one*, no further reservation of any portion of the strip of land reserved by the earlier notice of reservation may, within a period of two years from the date of expiry of the first-mentioned period, be made under this section in respect of the same proposed road.

(5) No person shall be entitled to claim as of right compensation in respect of any loss or damage suffered by reason of the exercise by the road authority of any of the powers conferred upon it by this section.

#### 51 Final reservation

(1) As soon as the course of any proposed road has been determined, the road authority may, by notice in the *Gazette* and in a newspaper circulating in the district concerned, reserve a strip of land thirty-one comma five metres wide along the course and every notice shall include a list of the properties affected by the reservation, such other information as may be prescribed and shall specify the office at which plans showing the reserved strip of land may be inspected.

(2) Publication of a notice in terms of this section shall have the effect of—

(a) reserving the strip of land described in the notice for road purposes;

- (b) prohibiting any activity whatsoever not connected with the construction of the road upon the land so reserved:

Provided that the road authority may permit such limited use of the land as it may determine, subject to such conditions as it may impose in granting that permission;

- (c) cancelling any reservation made in terms of subsection (2) of section *fifty* in respect of land affected by a reservation made in terms of this section.

(3) As soon as possible after any land has been reserved in terms of this section, the road authority concerned shall lodge with the Registrar of Deeds two copies of the engineering survey plans showing the course of the proposed road and with the Director of Physical Planning one copy of the plans.

(4) The Registrar of Deeds shall thereupon cause a note of the reservation to be made in his register against the land affected and an endorsement on the office copy of the title deed, and if at any time the original of the title deed is lodged in his registry for any purpose he shall cause a similar endorsement to be made thereon and a copy of the relative portion of the plan shall be annexed thereto.

(5) The existence of an endorsement shall not debar the registered owner from transferring or otherwise dealing with the land on the title deed whereof the endorsement appears.

(6) The land reserved under this section shall be demarcated in such manner as may be prescribed.

## **52 Withdrawal or modification of reservation**

(1) A road authority may at any time withdraw or modify any reservation made under section *fifty* or *fifty-one* by giving notice of the fact in the *Gazette* and by notifying the Registrar of Deeds and the Director of Physical Planning of the withdrawal or modification.

(2) The Registrar of Deeds shall thereupon cause any note of the reservation made in his register, and any endorsement thereof on the office copy of the title deed and on the original of the title deed, to be cancelled or modified, as the case may be, in accordance with the notice.

## **53 Road authority's power in regard to unauthorised act**

Where on any land reserved in terms of section *fifty* or *fifty-one* any person does any act which he has not been authorised by the road authority concerned to do, the road authority may, by notice in writing, direct the person, at his own expense and within such period as shall be specified in the notice, to restore the land to the condition in which it was immediately before the unauthorised act, and if the person fails to comply with the direction within the period specified, he shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment, and the road authority may cause to be carried out such work as may be necessary to restore the land and may recover from the person concerned any expense incurred in the work..

[Section amended by section 4 of Act 22 of 2001]

## **54 Compensation for loss or deprivation of rights arising from reservation of land for purposes of Part IX**

(1) Any person who suffers loss or deprivation of rights by the exercise of any of the powers conferred upon a road authority by section *fifty* or *fifty-one* may, subject to subsection (2), claim compensation.

(2) Parts V and VIII of the Land Acquisition Act [*Chapter 20:10*] shall apply, *mutatis mutandis*, to the payment of compensation in terms of subsection (1):

Provided that any reference in Part V of that Act to the date of the publication of a preliminary notice in the *Gazette* shall be construed as a reference to the date on which the notice referred to in subsection (1) of section *fifty* or subsection (1) of section *fifty-one*, as the case may be, is published in the *Gazette*.

## **55 Notice to owners and other persons**

Where any notice is published in terms of subsection (2) of section *fifty*, subsection (1) of section *fifty-one* or section *fifty-two*, the road authority shall cause a copy of the notice to be sent by registered post to the owner of and any other person having any rights over or in any land affected by the notice, but if the whereabouts of any owner or the identity or whereabouts of the other person are unknown, the publication of the notice in terms of these provisions shall be deemed to be sufficient notice to the owner or other person for the purposes of this section.

## **PART X**

### **RESTRICTED ROADS**

## **56 Interpretation in Part X**

In this Part—

“restricted road” means a road or proposed road or a portion of a road or proposed road which the Minister has declared to be a restricted road under section *fifty-seven* and in respect of which he has not withdrawn his declaration as such;

“structure” includes—

- (a) any building, pole, power line, petrol pump and machinery and any other object which could in a like manner cause an obstruction;
  - (b) any wall, plantation or hedge if it exceeds one metre in height and is—
    - (i) within a distance of twenty metres from the centre of the road; or
    - (ii) within a distance of thirty metres, measured in any direction, from any corner formed by the junction of two roads or a road crossing a strip of land owned or reserved for the purposes of a railway line or from the outer edges of an entrance to or exit from land adjoining a road;
  - (c) any external alteration or addition to a structure;
- “works” includes—
- (a) any pipe, tube, tunnel, permanent excavation, quarry, irrigation works, borehole or well
  - (b) any addition or alteration to any works.

## 57 Declaration of restricted roads

(1) In this section—

“road” includes a proposed road or a portion of a road or proposed road.

(2) If, in the opinion of the Minister following a recommendation by the Road Administration or a road authority, it is necessary or desirable in the public interest to restrict the erection of any structure or the carrying out of any works on any land adjoining a road, he may, by notice in the *Gazette*, declare that road to be a restricted road.

(3) Upon the publication in terms of subsection (2) of a notice declaring a road to be a restricted road, so much of the land specified in the notice and adjoining the road on one or each side shall form part of the restricted road, and the publication of the notice shall have the effect of prohibiting the erection of any structure and the carrying out of any works any part of which will fall within the limits of the restricted road:

Provided that—

(i) in no case shall—

- (a) any land at a greater distance than seventy metres measured from the centre of the road form part of the restricted road;
- (b) any restricted road be less than seventy-five metres in width;

(ii) the Minister may, in writing, of his own motion or on the application of a road authority or any person desiring to erect the structure or carry out the works, grant authority for the erection of the structure or the carrying out of the works, subject to such conditions as he may impose in granting the authority.

(4) When the Minister has declared a road to be a restricted road, he shall cause so many notices of the declaration as he considers necessary to be erected at conspicuous points along the road to which it relates, and upon the withdrawal of the declaration shall cause those notices to be removed.

(5) Any person who, without the authority of the Minister, removes any such notice shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

(6) The Minister may at any time, by notice in the *Gazette*, declare that, with reference to any restricted road defined in the notice or with reference to any defined portion of the restricted road, any land forming part thereof by virtue of subsection (3) shall cease to form part thereof, but in no case shall the width of the restricted road or any portion thereof be less than seventy-five metres.

## 58 Application to be subject to approved scheme, etc.

An application for the declaration of a restricted road in terms of subsection (2) of section *fifty-seven* shall be made in the prescribed form and if the restricted road to which that application relates is situated within an area for which there is an approved scheme, operative master plan or operative local plan as defined in the Regional, Town and Country Planning Act [*Chapter 29:12*], regard shall be had to that scheme or plan, as the case may be.

## 59 Position in regard to structure or works encroaching upon restricted road

(1) Where a structure or works or any part thereof is situated upon any land forming part of a restricted road, and the structure or works were erected or carried out before the road was declared a restricted road or the erection or carrying out thereof was commenced before the declaration and is still proceeding, a road authority may—

- (a) take over the structure or works or remove it; or
- (b) permit such structure or works to remain or to be completed, as the case may be, on such terms and conditions as the road authority may determine and shall communicate to the owner or to any other person having any rights thereto, and such permission may be granted by the road authority either of its own motion or on the application of the owner or other person.

(2) The road authority concerned shall, subject to subsection (3), pay compensation to any person who suffers loss or deprivation of rights by the exercise of the powers in terms of paragraph (a) of subsection (1):

Provided that no compensation shall be paid in respect of any structure or works referred to in that paragraph if the structure or works were erected or carried out in contravention of any condition imposed in terms of any other law.

(3) Parts V and VIII of the Land Acquisition Act [*Chapter 20:10*] shall apply, *mutatis mutandis*, to the payment of compensation in terms of subsection (2):

Provided that any reference in Part V of that Act to the date of the publication of a preliminary notice in the *Gazette* shall be construed as a reference to the date of the exercise by the road authority of its powers in terms of paragraph (a) of subsection (1).

(4) Where any structure or works for which no authority has been granted under section *fifty-seven* is erected or carried out or any structure or works is erected or carried out in contravention of any condition imposed under any other enactment, the Minister may by notice in writing direct the owner or person having control or possession thereof to remove it or to make such alterations thereto as may be specified in such notice and to carry out such removal or alterations within such period, which shall not be less than thirty days as from the date of such notice, as shall be specified in such notice.

(5) If a person to whom a notice has been given in terms of subsection (4) fails to comply with a direction contained in that notice within the period specified in that notice, the Minister may at any time after the expiration of that period, through the agency of any person authorised by him, enter upon the land where the structure or works to which the notice relates is situated and remove the structure or works or make the alterations specified in the notice.

(6) The Minister may recover the expenses incurred by reason of any action taken in terms of subsection (5) from the person to whom that notice was given.

#### **60 Compensation for loss or deprivation of rights arising from declaration of restricted roads**

(1) Where the Minister has, in terms of subsection (1) of section *fifty-seven*, declared a road or proposed road or portion of a road or proposed road to be a restricted road, any person who suffers loss or deprivation of rights thereby may, subject to subsection (2), claim compensation in addition to any amount claimed under section *fifty-nine*.

(2) Parts V and VIII of the Land Acquisition Act [*Chapter 20:10*] shall apply, *mutatis mutandis*, to the payment of compensation in terms of subsection (1):

Provided that—

- (i) any reference in Part V of that Act to the date of the publication of a preliminary notice in the *Gazette* shall be construed as a reference to the date of the publication in the *Gazette* of the notice referred to in subsection (2) of section *fifty-seven*;
- (ii) the compensation assessed in terms of Part IV of that Act shall not exceed the estimated loss incurred by him, based upon the use to which the land was being put at the time of the publication in the *Gazette* of the notice referred to in subsection (2) of section *fifty-seven*.

#### **61 Portion of road following new course deemed to be restricted road**

Upon the alteration of the course of any portion of a restricted road, that portion which follows the new course shall be deemed to be a restricted road and that portion which is replaced by it and which follows the old course shall cease to be a restricted road:

Provided that if the centre line of that portion which follows the new course is for a distance of more than eight hundred metres continuously more than sixty metres from the centre line of that portion which is replaced by it and which follows the old course, the first-mentioned portion shall not be deemed to be a restricted road.

#### **62 Notice to owners and other persons**

Where any notice is published in terms of subsection (2) or (6) of section *fifty-seven*, the Minister shall cause a copy of the notice to be sent by registered post to the owner of and any other person having any rights over or in any land affected by the notice, but if the whereabouts of any such owner or the identity or whereabouts of any such other person are unknown, the publication of the notice in terms of those provisions shall be deemed to be a sufficient notice to such owner or other person for the purposes of this section.

### **PART XI**

#### **GENERAL**

#### **63 Minister may require statistics and information**

The Minister may direct the Road Administration to furnish him with such information and statistics as he may from time to time require and the Road Administration shall forthwith comply with any such direction.

#### **64 Investigation into affairs of Road Administration**

(1) The Minister may at any time cause an investigation to be made into the affairs of the Road Administration by one or more persons appointed by him in writing.

(2) Any person appointed in terms of subsection (1) shall have the same powers as are conferred upon a commissioner by the Commissions of Inquiry Act [*Chapter 10:07*], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 18 of that Act shall apply, *mutatis mutandis*, in relation to an investigation made in terms of subsection (1) and to any person summoned to give or giving evidence at that investigation.

## **65 General offences and penalties**

Any person who is guilty of an offence under Part VI or VII shall, if no penalty is specially provided therefor, shall be liable to a fine not exceeding level five or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Section amended by section 4 of Act 22 of 2001]

## **66 Application of certain provisions of this Act**

(1) Any regulations made in terms of this Act for the purpose of the prevention of damage to roads shall, subject to subsections (2) and (3), apply to persons and vehicles in the service of the State in their capacity as such.

(2) If the alteration or construction of any works is being carried out by or on behalf of the State or by any body incorporated directly by law and the Minister considers that the application of all or any provisions of this Act or any regulations made in terms of this Act to—

- (a) the area in which such construction or alteration is being carried out; or
- (b) any roads in or giving access to the area referred to in paragraph (a); or
- (c) any vehicles used in the area referred to in paragraph (a) exclusively in connection with such alteration or construction;

will seriously interfere with the efficient carrying out of the works, the Minister may, by notice in the *Gazette*, declare that all or any of those provisions shall not apply—

- (i) within such area as may be specified in the notice or to such roads in such area or giving access to the area as may be so specified; or
- (ii) to any vehicles used in the area referred to in subparagraph (i) or on the roads referred to in that subparagraph exclusively in connection with the alteration or construction.

(3) The Minister may amend or revoke a notice made in terms of subsection (2).

## **67 Presumption in relation to roads**

In any prosecution under this Act, the road on which the offence concerned is alleged to have occurred shall be presumed to be a road as defined in section *two*, unless the contrary is proved.

## **68 Regulations**

(1) The Minister may make regulations providing for all matters which by this Act are required or permitted to be prescribed or which, in his opinion, are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without derogating from the generality of subsection (1), in the exercise of the powers conferred upon him by subsection (1), the Minister may provide for—

- (a) the prevention of damage to roads;
- (b) fines for any offences.

(3) Different regulations may be made for different roads or different classes of roads.

(4) Fines fixed in terms of this section shall not exceed level three.

(5) If a fine is provided for in terms of subsection (3) in any regulations for an offence in terms of the regulations, the penalty provided for by section *sixty-five* shall not apply in respect of such offence.

## **69 Amendments to Acts**

The Acts specified in the Second Schedule are amended to the extent specified in that Schedule.

## **70 Repeal of Cap. 13:12 and savings**

(1) The Roads Act [*Chapter 13:12*] is repealed.

(2) Notwithstanding subsection (1), anything done, or commenced under the Roads Act [*Chapter 13:12*] and which, immediately before the date of commencement of this Act, had or was capable of acquiring legal effect shall be deemed, on or after that date, to have been made, done or commenced under the appropriate provision of this Act and shall continue to have or to be capable of acquiring, as the case may be, the same legal effect.

(3) Any regulations, rules, by-laws, notices, orders or awards which, immediately before the fixed date were in force under the Roads Act [*Chapter 13:12*] shall remain in force as if they were made or granted by the appropriate authority under this Act.

## **71 Construction of references to roads in other enactments**

Any reference in any other enactment to a main road shall be construed, unless inconsistent with the context, as a reference to a regional, primary or secondary road, as may be appropriate, and any reference in any other

enactment to a district road or a branch road shall be construed, unless inconsistent with the context, as a reference to a tertiary road.

## **72 Designation of District Development Fund and rural district councils as road authorities in respect of certain roads**

(1) In relation to any road, other than a regional, primary or secondary road, located within the area of jurisdiction of any local road authority and in respect of which the District Development Fund is not, at the date of commencement of this Act, the road authority, the Minister shall, if a recommendation to that effect is made to him by the Minister responsible for local government after consultation with the affected road authority, by notice in the *Gazette* designate the District Development Fund as the road authority in respect of that road.

(2) If the Minister responsible for local government is satisfied, upon representations made to him by any rural district council concerned, that the rural district council is capable of assuming the responsibilities of a local road authority in respect of any road for which the District Development Fund is the road authority, the Minister shall, on the recommendation of the Minister responsible for local government, by notice in the *Gazette* designate to the rural district council concerned as the road authority in respect of that road.

[Section substituted by section 20 of Act 14 of 2002]

## **FIRST SCHEDULE (SECTIONS 8 (4), 13 (4) AND 25 (3))**

PROVISIONS APPLICABLE TO THE BOARD, ROAD FUND AND DEPARTMENT OF ROADS FUND

### **PART I**

PROVISIONS APPLICABLE TO THE BOARD

#### *Interpretation in Part I*

1. In this Schedule—

“chairman” or “vice-chairman” means the chairman or vice-chairman of the Board;

“committee” means a committee of the Board;

“member” means a member of the Board.

#### *Disqualification for appointment to Board*

2.(1) The Minister shall not appoint a person as a member and no person shall be qualified to hold office if—

(a) he is not a citizen of Zimbabwe or ordinarily resident in Zimbabwe; or

(b) he has been adjudged or otherwise declared insolvent or bankrupt in terms of a law in force in any country, and has not been rehabilitated or discharged; or

(c) he has made an assignment to or arrangement or composition with his creditors in terms of a law in force in any country, and the assignment, arrangement or composition has not been rescinded or set aside; or

(d) he has been sentenced—

(i) in Zimbabwe, in respect of an offence involving dishonesty; or

(ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would have constituted an offence involving dishonesty.

(2) A person who is—

(a) a member of Parliament; or

(b) a member of two or more other statutory bodies;

shall not be appointed as a member, nor shall he be qualified to hold office as a member.

(3) For the purposes of subparagraph (b) of subparagraph (2) —

(a) a person who is appointed to a council, board or other authority which is a statutory body or which is responsible for the administration of the affairs of a statutory body shall be regarded as a member of that statutory body;

(b) “statutory body” means—

(i) any commission established by the Constitution; or

(ii) any body corporate established directly by or under an Act for special purposes specified in that Act, the membership of which consists wholly or mainly of persons appointed by the President, a Vice President, a Minister or any statutory body or by a commission established by the Constitution.

#### *Terms and conditions of office of members*

3.(1) A member shall hold office for such period, not exceeding three years, as the Minister may fix at the time of his appointment.

(2) On the expiry of the period for which a member was been appointed, the member shall continue to hold office until he has been re-appointed or his successor has been appointed:

Provided that a member shall not continue to hold office in terms of this subparagraph for more than six months.

- (3) A person who ceases to be a member shall be eligible for re-appointment.
- (4) Members shall hold office on such terms and conditions as the Minister may fix.

*Vacation of office by members*

- 4.(1) A member shall vacate his office and his office shall become vacant—
  - (a) one month after the date he gives notice in writing to the Minister of his intention to resign his office or after the expiry of such other period of notice as he and the Minister may agree; or
  - (b) on the date he begins to serve a sentence of imprisonment in Zimbabwe or in any other country;
  - (c) if he becomes disqualified in terms of paragraph (a), (b) or (c) of subparagraph (1) of paragraph 2, or in terms of subparagraph (2) of that paragraph, to hold office as a member; or
  - (d) if he is required in terms of subparagraph (2) or (3) to vacate his office as a member.
- (2) The Minister may require a member to vacate his office if—
  - (a) the member has been guilty of conduct which renders him unsuitable to continue to hold office as a member; or
  - (b) the member has failed to comply with any condition of his office fixed in terms of paragraph 3; or
  - (c) the member has ceased to possess any qualification by reason of which he was appointed; or
  - (d) the member is mentally or physically incapable of efficiently performing his duties as a member; or
  - (e) the member contravenes paragraph 11; or
  - (f) the member or his spouse engages in any occupation, service or employment, or holds any asset, which in the Minister's opinion is inconsistent with his duties as a member.

(3) The Minister, on the recommendation of the Board, may require a member to vacate his office if the Minister is satisfied that the member has been absent without the consent of the chairman from three consecutive meetings of the Board of which he has been given at least seven days' notice, and that there was no just cause for the member's absence.

*Suspension of members*

5. The Minister—
  - (a) may suspend from office a member against whom criminal proceedings have been instituted in respect of an offence for which a sentence of imprisonment without the option of a fine may be imposed; and
  - (b) shall suspend from office a member who has been sentenced by a court to imprisonment without the option of a fine, whether or not any portion has been suspended, pending determination of the question whether the member is to vacate his office;

and, while that member is so suspended, he shall not carry out any of his duties or be entitled to any remuneration or allowances as a member.

*Dismissal of Board*

- 6.(1) Subject to subsection (2), if the Minister considers that—
  - (a) the Board has contravened this Act or any other law and has failed to rectify the contravention within a reasonable time after being required to do so by the Minister; or
  - (b) whether through disagreements amongst its members or otherwise, the Board is unable to carry out any of its functions in terms of this Act;

and that it is in the national interest to do so, the Minister may, by written notice to the chairman copied to the chief executive of the Road Administration, dismiss all the members of the Board, and their offices shall become vacant as soon as the chairman receives the notice and the Minister shall table a report on the matter in the House within the next fourteen days on which Parliament sits after the dismissal.

(2) Before dismissing all the members in terms of subsection (1), the Minister shall consult the President and act in accordance with any directions the President may give him.

- (3) A member who has been dismissed in terms of subsection (1) shall be eligible for re-appointment.

*Filling of vacancies on Board*

7.(1) Within three months after a member's death or vacation of office, the Minister shall, subject to paragraph 2, appoint a person to fill the vacancy.

(2) Within one month after dismissing all the appointed members in terms of paragraph 6, the Minister shall, subject to paragraph 2, appoint persons to fill the vacancies.

*Chairman and vice-chairman of Board*

8.(1) At its first meeting the Board shall elect from among the members appointed in terms of subsection (2) of section *eight* a member to be the chairman of the Board and another member to be vice-chairman of the Board.

(2) The chairman and vice-chairman may at any time, by written notice to the Minister, resign their offices as such.

(3) Within three months after being notified of a vacancy in the office of the chairman or vice-chairman, the Board shall, subject to subparagraph (1), elect a member to fill the vacancy.

(4) The vice-chairman shall perform the functions of the chairman whenever the chairman is unable to perform them or the office of chairman is vacant.

#### *Meetings and procedure of Board*

9.(1) The Board shall hold its first meeting on a date and place fixed by the Minister, and thereafter shall meet for the dispatch of business and adjourn, close and otherwise regulate its meetings and procedure as it thinks fit:

Provided that the Board shall meet at least six times in each financial year.

(2) The chairman—

(a) may convene a special meeting of the Board at any time; and

(b) shall convene a special meeting of the Board on the written request of the Minister or not fewer than two members, which meeting shall be convened for a date not sooner than seven days and not later than thirty days after the chairman's receipt of the request.

(3) Written notice of a special meeting convened in terms of subsection (2) shall be sent to each member not later than forty-eight hours before the meeting and shall specify the business for which the meeting has been convened.

(4) No business shall be discussed at a special meeting convened in terms of subparagraph (2) other than—

(a) such business as may be determined by the chairman, where he convened the meeting in terms of subparagraph (a) of subparagraph (2); or

(b) the business specified in the request for the meeting, where the chairman convened the meeting in terms of subparagraph (b) of subparagraph (2).

(5) The chairman or, in his absence, the vice-chairman shall preside at all meetings of the Board:

Provided that, if the chairman and vice-chairman are both absent from any meeting of the Board, the members present may elect one of their number to preside at that meeting as chairman.

(6) The quorum at any meeting of the Board shall be six members.

(7) Subject to subparagraph (11), anything authorised or required to be done by the Board may be decided by a majority vote at any meeting of the Board at which a quorum is present.

(8) With the approval of the other members, the chairman may invite any person to attend a meeting of the Board or of a committee, where the chairman considers that the person has special knowledge or experience in any matter to be considered by the Board concerned or the committee, as the case may be, at that meeting.

(9) A person invited to attend a meeting of the Board or of a committee in terms of subparagraph (8) may take part in the proceedings of the Board or the committee as if he were a member thereof, but shall not have a vote on any question before the Board or committee, as the case may be.

(10) At all meetings of the Board each member present shall have one vote on any question before the Board:

Provided that—

(i) in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to a deliberative vote;

(ii) no member shall take part in the consideration or discussion of, or vote on, any question before the Board which relates to his vacation of office as a member.

(11) The chief executive of the Road Administration shall not take part in the discussion of any question before the Board which involves his tenure of office or conditions of office.

#### *Committees of Board*

10.(1) For the better exercise of its functions, the Board may establish one or more committees in which it may vest such of its functions as it thinks fit:

Provided that the vesting of a function in a committee shall not prevent the Board from itself exercising that function, and the Board concerned may amend or rescind any decision of the committee in the exercise of that function.

(2) On the establishment of a committee the Board may appoint to the committee persons who are not members of the Board.

(3) The chairman of the Board or of a committee may at any reasonable time and place convene a meeting of that committee.

(4) The procedure of each committee shall be as fixed from time to time by the Board.

(5) Subject to this paragraph, subsections (2) to (7) of paragraph 9 shall apply, *mutatis mutandis*, to committees and their members as they apply to the Board and its members.

#### *Members of Board and committees to disclose certain connections and interests*

11.(1) In this paragraph—

“relative”, in relation to a member of the Board or of a committee, means the member’s spouse, child, parent, brother or sister.

(2) Subject to subparagraph (4)—

(a) if a member of the Board or of a committee—

- (i) knowingly acquires or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Board or the committee; or
- (ii) owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the member’s private interests coming or appearing to come into conflict with his functions as a member; or
- (iii) knows or has reason to believe that a relative of his—
  - A. has acquired or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Board or the committee; or
  - B. owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the member’s private interests coming or appearing to come into conflict with his functions as a member;

or

(b) if for any reasons the private interests of a member of the Board or of a committee come into conflict with his functions as a member;

the member shall forthwith disclose the fact to the Board or to the committee, as the case may be.

(3) A member referred to in subparagraph (2) shall take no part in the consideration or discussion of, or vote on, any question before the Board or the committee, as the case may be, which relates to any interest, property or right referred to in that subparagraph.

(4) Any person who contravenes subparagraph (2) or (3) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment not exceeding three months or to both such fine and such imprisonment.

[Subparagraph amended by section 4 of Act 22 of 2001]

*Members to disclose business interests and assets*

12.(1) Before any member, including the chairman, performs any function as a member, he shall disclose in writing to the Minister the full extent of—

- (a) every occupation, service or employment which he or his spouse engages in for remuneration; and
- (b) all assets held by him or his spouse, in excess of such value as the Minister, in consultation with the Minister responsible for finance, may specify.

(2) As soon as possible after he or his spouse —

- (a) commences any occupation, service or employment for remuneration; or
- (b) acquires any asset in excess of such value as the Minister may have specified in terms of subparagraph (b) of subparagraph (1);

a member shall disclose that fact in writing to the Minister.

*Minutes of proceedings of Board and of committees*

13.(1) The Board shall cause minutes of all proceedings of and decisions taken at any meeting of the Board or of a committee to be entered in books kept for the purpose.

(2) Any minutes referred to in subparagraph (1) which purport to be signed, with the authority of the Board or the committee concerned, as the case may be, by the chairman of the meeting to which the minutes relate or by the chairman of the next following meeting, shall be accepted for all purposes as *prima facie* proof of the proceedings of and decisions taken at that meeting.

*Remuneration and allowances of members of Board and of committees*

14. Members of the Board and of committees shall be paid from the Road Fund—

- (a) such remuneration, if any, as the Minister may fix for members of the Board or members of committees, as the case may be, generally; and
- (b) such allowances, if any, as the Minister may fix to meet any reasonable expenses incurred by the member in connection with the business of the Board or the committee, as the case may be.

*Reports of Board*

15.(1) The Board shall, as soon as possible after the 31st December in each year, submit to the Minister an annual report on its activities during that year.

(2) The Minister shall lay the annual report of the Board before Parliament on one of the fourteen days on which Parliament next sits after the report is received by him in terms of subparagraph (1).

## PART II

### PROVISIONS APPLICABLE TO THE ROAD FUND AND DEPARTMENT OF ROADS FUND

#### *Interpretation in Part II*

16. In this Part—

“fund” means the Road Fund or the Department of Roads Fund;

“trustee”, in relation to a fund, means the Board or the Minister, as the case may be.

#### *Bank accounts of funds*

17. The trustee of each fund shall open one or more bank accounts into which all moneys received on behalf of the fund concerned shall be paid, and no money shall be withdrawn therefrom except by means of cheques signed by such persons as are authorised in that behalf by the trustee of the fund concerned:

Provided that no bank account shall be opened by the trustee of the Road Fund at any banking institution other than one approved by the Minister.

#### *Retention of money by funds*

18. At the beginning of each financial year, the trustee of each fund shall cause the fund to retain sufficient moneys to meet the expenditure which the fund concerned proposes to incur during that financial year.

#### *Financial year of funds*

19. The financial year of each fund shall be the period of twelve months ending on the 31st December each year.

#### *Expenditure from funds*

20. The trustee of each fund shall ensure that, in any financial year, expenditure from the fund shall not exceed the annual income of the fund.

#### *Accounts of funds*

21.(1) The trustee of each fund shall ensure that proper accounts of the fund and other records relating to such accounts are kept in respect of all its affairs, including, in the case of the Road Fund, such particular accounts and records as the Minister may direct.

(2) As soon as possible after the end of each financial year, the trustee of—

(a) the Road Fund shall prepare and submit to the Minister a statement of accounts in respect of that financial year or in respect of such other period as the Minister may direct;

(b) the Department of Roads Fund shall prepare and lay before Parliament a statement of accounts in respect of that financial year.

#### *Audit of funds' accounts*

22.(1) Subject to the Audit and Exchequer Act [*Chapter 22:03*], the trustee of each fund shall appoint as auditors one or more persons who are registered as public auditors under the Public Accountants and Auditors Act [*Chapter 27:12*]:

Provided that in the case of the appointment of the auditors of the Road Fund, such appointment shall be approved by the Minister.

(2) The accounts kept by the trustee of each fund in terms of subparagraph (1) of paragraph 21 shall be examined by the auditors appointed in terms of subparagraph (1).

(3) The auditors appointed in terms of subparagraph (1) shall make a report to—

(a) the trustee and the Minister, in the case of the Road Fund; or

(b) the Minister as trustee of the Department of Roads Fund;

on the statement of accounts prepared in terms of subparagraph (2) of paragraph 21, and in their report shall state whether or not, in their opinion, the statement of accounts gives a true and fair view of the fund's financial affairs.

(4) In addition to the report referred to in subparagraph (a) of subparagraph (3), the Minister may require the trustee of the Road Fund to obtain from the auditors appointed in terms of subparagraph (1) such other reports, statements or explanations in connection with the Road Fund's activities, moneys and property as the Minister may consider expedient, and the trustee shall forthwith comply with any such requirement.

(5) If, in the opinion of the auditors appointed in terms of subsection (1)—

(a) they have not obtained any information or explanation they require; or

(b) any accounts or records relating to any accounts have not been properly kept by the trustee of the fund concerned; or

(c) the trustee has not complied with any provision of this Part;

the auditors shall include in their report made in terms of subparagraph (3) or (4), as the case may be, a statement to that effect.

(6) If in terms of the Audit and Exchequer Act [*Chapter 22:03*] the funds' accounts are required to be audited by the Comptroller and Auditor-General, any reference in this paragraph to auditors appointed in terms of subparagraph (1) shall be construed as a reference to the Comptroller and Auditor-General.

*Powers of auditors*

23.(1) An auditor referred to in paragraph 22 shall be entitled at all reasonable times to require to be produced to him all accounts and other records relating to such accounts which are kept by the trustee of the fund concerned or its agents and to require from any employee or agent of the Road Administration, or person employed in the Department of Roads, as the case may be such information and explanation as in the auditor's opinion are necessary for the purpose of his audit.

[Subparagraph amended by Act 14 of 2002]

(2) Any member of the trustee or employee or agent of the trustee who fails without just cause to comply with a requirement of an auditor in terms of subparagraph (1) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment not exceeding three months or to both such fine and such imprisonment.

[Subparagraph amended by section 4 of Act 22 of 2001]

*Internal auditor*

24. Section 19 of the Audit and Exchequer Act [*Chapter 22:03*] shall apply, *mutatis mutandis*, to the appointment of an internal auditor to the trustee of each fund in all respects as if the trustee were a department of the Ministry for which the Minister is responsible.