

BILL

To amend the Road Fund Administration Act, 1999, so as to insert certain new definitions; to effect textual improvements to the provisions on moneys to be deposited in the Road Fund; to amend the provisions on the expenditure that may be incurred from the Road Fund and the maximum amount of expenditure that may be incurred; to extend the provisions on the road user charges that may be imposed; to provide for co-operation with the Minister responsible for Transport in connection with the collection of certain road user charges; to amend the time limit within which budgets must be submitted and provide for the determination of guideline amounts by the Road Fund Administration in connection with budgets; to make further provision for determinations of the amount of funding to be provided to projects, programmes and administrative expenditure and the manner in which funding may be allocated; to make further provision for the inclusion of such determinations in the business plan of the Road Fund Administration; and to provide for matters incidental thereto.

(Introduced by the Minister of Finance)

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

Amendment of section 1 of Act No. 18 of 1999

1. Section 1 of the Road Fund Administration Act, 1999 (hereinafter referred to as the “principal Act”) is hereby amended by the insertion of the following definitions after the definition of “prescribed”:

“ ‘programme’ means the performance of an activity of an annually recurrent nature related to any expenditure contemplated in section 17(1);

’project’ means the performance of an activity related to any expenditure contemplated in section 17(1) and which –

(a) is designed to achieve a defined once-off result during a single specified period; and

(b) may relate to the creation of a new facility or replacement of an existing facility;”.

It is recommended that two new definitions be inserted, viz. that of “programme” and “project”. These are terms that appear a number of times in different

provisions of the Act and it is therefore considered appropriate that a definite meaning be accorded to each. New provisions are proposed in respect of section 20 (see below) to appropriately clarify the differences between the funding determinations for projects as opposed to that for programmes for purposes of giving effect to section 20(4)(a) and (b).

Amendment of section 16 of Act No. 18 of 1999

2. Section 16 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) There is hereby established a fund to be known as the Road Fund into which shall be paid -

- (a) **[all]** any moneys collected in respect of road user charges;
- (b) any moneys appropriated by Parliament in respect of any project or programme or administrative expenditure and which are designated to be paid into the Fund;
- (c) any moneys [accruing to the Fund through] derived from the proceeds of the sale of any assets of the Administration;
- (d) any moneys [paid to the Fund by the Authority in respect of] derived from the proceeds of the sale of any assets of the Authority and which are payable into the Fund in terms of section 19(2) of the Roads Authority Act;
- (e) any capital gains made and interest or dividends earned on investments;
- (f) any donation or grant made in respect of any project or programme or administrative expenditure and which is designated to be paid into the Fund;
- (g) any moneys received in respect of a loan obtained by the Administration;
- (h) any moneys payable in terms of a judgement relating to compensation for the damaging of a road managed by the Roads Authority;
- (i) any fines imposed in respect of any contravention of, or failure to comply with, any provision of a law relating to the overloading of vehicles; and

- (j) subject to the provisions of any law, any moneys which, with the consent of the Minister, **[may accrue to the Fund]** derive from any other source.”.

Paragraphs (b) and (f) of section 16(1) must be amended since not all State budgeted funds and all donor funds will necessarily be deposited in the Fund as implied by the current wide formulation of those paragraphs. It is for instance possible that the RFA is only required to administer such funds but that payments may be made directly to suppliers and contractors. In such cases no funds will be channelled through the Road Fund. The phrase “accrue/accruing to the Fund” should be deleted in paragraphs (c) and (j) as the Fund is neither a legal person nor the owner of the relevant moneys or assets, but merely an account “into” which moneys are to be paid. A few other amendments are proposed in order to improve the technical quality of the text.

Amendment of section 17 of Act No. 18 of 1999

3. Section 17 of the principal Act is hereby amended –

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

“(1) **[The Administration]** Moneys in the Fund shall, subject to subsection (2) and sections 19 and 20, **[and to the extent that it is to the benefit of road users, utilize the moneys available]** only be utilized for:

- (a) **[to defray the cost of]** the management of the national road network as provided for in section 16(1) of the Roads Authority Act, including the administrative expenditure of the Roads Authority and the payment of compensation referred to in section 65 of the Roads Ordinance, 1972;
- (b) **[to defray]** the administrative expenditure of the Administration, including expenditure relating to the management of the road user charging system;
- (c) **[to defray the cost of -]**
- [(i)]** the planning, design, construction and maintenance of any major urban arterial road in any local authority area, as defined in section 1 of the Local Authorities Act, or any settlement area, as defined in section 1 of the Regional Councils Act, not being a road which is part of the national road network; [and]

- (cA) [(ii)] the traffic related maintenance in respect of any road in any such local authority area or settlement area, not being a road which is part of the national road network;
- (d) **[to make contributions towards the cost of]** the operation of any traffic information system established and maintained in terms of the road traffic laws;
- (e) **[to defray the cost of]** traffic law enforcement and adjudication functions performed **[by any competent authority]** for purposes of promoting a safe and efficient road system, including the control of the overloading of vehicles;
- (f) **[subject to the approval of the Minister to make contributions towards the cost of]** the operation of any vehicle testing station or driving testing centre, but subject to the approval of the Minister;
- (g) **[to defray the cost of]** road research studies **[carried out by any person approved by the Administration];**
- (h) **[to defray]** the expenditure referred to in section 15 of the National Road Safety Act, 1972 (Act No. 9 of 1972) by way of transferring to the Central Road Safety Fund, established by that section, such part of a road user charge referred to in section 18(1)(d) of this Act, as may be necessary for the defrayal of that expenditure;
- (i) **[to make payments as the Minister may determine, in respect of]** the capital, interest and incidental costs or charges as the Minister may determine of any loan obtained by the Government of Namibia, before the commencement of this Act, for any purpose related to the management of the national road network referred to in paragraph (a), irrespective of whether the obligation pertaining to such loan has been assigned to the Administration in terms of section 29(2)(a);
- (j) **[to make payments in respect of]** the capital repayments, interest and incidental costs or charges of loans obtained by the **[Fund] Administration;**

- (k) the establishment of a reserve fund for the purposes of the objects contemplated in section 20(4)(b)(ii) and section 22(1)(d);
- (l) **[for the payment of]** any compensation due for any damage arising out of the performance of the functions conferred upon or entrusted to the Administration and the Roads Authority by or under any law, **[except] but excluding**, in the case of the Roads Authority, **[where]** any such damage which is due to a deficiency in any standards referred to in section 16(5) of the Roads Authority Act;
- (m) **[to defray the cost of]** insurance against any claim for damage referred to in paragraph (l); and
- (n) **[for]** any other category of expenditure related to the achievement of the objects of this Act as approved by the Minister, and to the extent that it is to the benefit of road users.".

The reasons for the amendment of the introductory sentence to subsection (1) are:

- (a) *The phrase "to the extent that it is to the benefit of road users" may create an impression that it is a principle for determining the quantum of funding while the intention is that it should only serve as a test to determine whether a particular expenditure, or the part of such expenditure, qualifies to be funded from the Fund. From a structural point of view, any statement that relates to quantum must resort under section 19. Moreover, the list of different kinds of expenditure in section 17(1) is a "final list" which means that nothing may be added (apart from a new item that can be introduced under the Minister's discretion in paragraph (n) and to which the "benefit" test would then apply). This means that it is not necessary to introduce the subsection with a normative principle.*
- (b) *The words "the Administration shall", puts the emphasis on the RFA itself as the party that performs a particular act and this might have contributed to the impression that the RFA should fund all the expenditure listed in paragraphs (a) to (n) of subsection (1). The aim of s. 17(1) should merely be to define the different categories of expenditure that qualify for funding through the road user charging system. More neutral introductory words are proposed (e.g. "Moneys in the Fund shall only be utilized for") which at the same time delimit the funding categories that qualify to be funded.*
- (c) *The amended subsection (1) also obviates any misunderstanding that the word "shall" compels the RFA to pay any of the expenditures listed in the various paragraphs of the subsection.*

The phrases “to defray the cost of “and “to make contributions towards” have been removed in a number of the paragraphs of section 17(1) since they may also create the impression that all expenditures incurred by approved authorities must of necessity be funded from the Fund – something which could be contrary to the provisions of the Act. Paragraph (h) may need to be further amended should a new law be passed on road safety and also if further amendments are effected to the provisions on road user charging instruments in s. 18 of the RFA Act.

Paragraph (j) must be amended because the Fund cannot obtain loans, only the Administration - the Fund is not a legal person.

Paragraph (l) is amended because there was an obvious shortcoming in the text in the sense that it only made mention of the cost of legal liability of the RA while the RFA is also subject to such a possibility and it is necessary to provide for it in the Act in so many words.

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

“(2) The Administration [shall] may, after compliance with such consultation procedures as may be determined by the Minister, determine, to the extent that they are to the benefit of road users, the types [and maximum amounts] of –

(a) projects, programmes and administrative expenditure;

(b) expenditure, in connection with projects, programmes and administrative expenditures;

in respect of which any expenditure may be incurred in terms of paragraph (c), (d), (e), (f), (g) or (n) of subsection (1).”;

The amendments to subsection (2) are necessary in order to –

- (a) *substitute the absolute obligation on the RFA to make determinations due to the word “shall” which appears in the present text, with a discretionary power whether or not to make determinations;*
- (b) *restrict the power of the RFA to the making of “type” of expenditure determinations in this subsection. Section 19 is concerned with the “quantum” of a funding determination, and therefore it is deemed more correct to delete any reference thereto in this subsection and re-enact the measure in section 19 (see the proposed section 19(3));*
- (c) *provide that the road user benefit test should be used as a guiding principle for determining the content of the expenditures under the paragraphs falling under the ambit of section 17(2). In this regard the amendment provides the RFA with the power to determine the types of*

projects and programmes under each expenditure category that qualifies for funding and also the types of expenditure forming part of any project or programme. The latter is necessary where a specific programme, e.g. a traffic law enforcement programme aimed at illegal parking within a local authority area or at any other function performed by traffic officers employed by a local authority and which would benefit such local authority rather than road users in general. The proposed wording will also reinforce the fact that the RFA should not be seen as the sole source of funding for all expenditures by approved authorities that perform the relevant functions or provide the relevant services.

(c) by the substitution for subsection (3) of the following subsection:

“(3) Any moneys [accruing] to be paid into the Fund [by virtue of an appropriation by Parliament or a grant or donation which has been made] –

(a) for a specific purpose, shall be utilized only for that purpose; and

(b) in accordance with such conditions (if any) as may attach [to that appropriation or grant or donation] thereto.”.

The problem with the current section 17(3) is that it is too “narrow” – it only pertains to Parliamentary appropriations, grants or donations, but not to loans (section 16(1)(g)) and moneys accruing by virtue of the consent of the Minister of Finance (section 16(1)(i)).

Amendment of section 18 of Act No. 18 of 1999

4. Section 18 of the principal Act is hereby amended -

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

“18. (1) [Subject to section 19 the] The Administration may from time to time after consultation with the Minister and such parties as the Minister may direct, by notice in the *Gazette*, and in accordance with such principles as may be prescribed, impose any one or more of the following road user charges for the achievement of the objects of this Act, namely:”;

There is no direct nexus between section 18 and section 19. Section 19 does not concern the imposition of road user charges, but the determination of the quantum of funding. Section 18(3)(a) makes it clear that the imposition of road user charges and the setting of the levels of charges follows after funding

determinations were made. This amendment is deemed necessary because the reference to section 19 is an error which may complicate the interpretation of the Act.

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

“(a) A charge on any motor vehicle, whether registered in Namibia or not, **[in respect of]** determined by multiplying [the] its travelling distance in the course of on-road use, **[and which may be]** with a rate based on the mass, length, width or height of **[a]** that vehicle or its loading, **[or]** the number of axles of such vehicle, its manner of propulsion or any combination of such factors;”;

The most important amendment effected to paragraph (a) of section 18(1) is to enable the RFA to impose charges on alternative fuels or any other form of propulsion (see the motivation in the note below paragraph (d) which explains the amendments to paragraph (d) of section 18(1)). The other amendments merely concern technical improvements to the text and do not amend the principle upon which paragraph (a) is presently based (i.e. that a distance-based road user charge may be imposed by the RFA).

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

“(aA) a charge on any motor vehicle, whether registered in Namibia or not, payable on a periodic basis, and which may be based on the mass, length, width or height, of that vehicle or its loading, the number of axles of such vehicle, its manner of propulsion, or, subject to subsection (7), its deemed on-road travelling distance during a specified period or on any combination of such factors;

(aB) a charge on any motor vehicle, in respect of its use of any road designated by the Minister by notice in the Gazette for the purpose of such charge;”;

In order to enable the RFA to impose charges on alternative fuels or any other form of propulsion, provision has been made in both paragraph (a) and paragraph (aA) for the addition of another factor, namely the “manner of propulsion” of a vehicle, on which a charge may be based (see the explanation below paragraph (d) which amends section 18(1)(d) of the Act). The new paragraph (aA) will also enable the RFA to impose charges in circumstances where exact measuring of any factor, specifically travelling distance, is problematic.

Paragraph (aB) has been inserted to provide for the phasing-in of toll road charges in future.

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

“(d) subject to subsection (4)(f) –

- (i) a levy on every litre of petrol and every litre of diesel sold by any undertaking at any point in Namibia; and
- (ii) where deemed practicable and equitable, a levy on any other fuel used by any motor vehicle, whether in combination with petrol or diesel or not,

and which [is] shall [to] be included in any determination of the selling price, of petrol, [or] diesel or such other fuel, as the case may be, under any law relating to petroleum products or such other fuel;”;

The purpose of this amendment is to broaden the scope of levies that may be imposed on fuels other than petrol or diesel. Recent reports in the media speculated on the introduction of LP gas as an alternative fuel for motor vehicles. However, while this provision may enable the Administration to impose a levy on the sale of an alternative fuel (e.g. LP gas), it should be taken into account that such fuels may normally be sold for wider use and that it may not be practical to impose a road user charge by way of a levy at point of sale. For this reason the amendments to paragraph (a) of subsection (1) make provision for charges to be imposed and based on the “manner of propulsion” of a vehicle. It is thought that this will enable the Administration to recover costs from a broader variety of vehicles, e.g. vehicles using an electrical battery (whether charged from an external source or not) or any other form of propulsion not specifically foreseen or mentioned in the legislation.

- (e) by the insertion of the following subsections after subsection (2):

“(2A) Subject to the provisions of this Act, the Administration may, when it is deemed practicable, implement measures, in co-operation with the Minister responsible for Transport, for the simultaneous collection and the apportionment of the registration and licence fee contemplated in subsection (1)(c), on the one hand, and the fee prescribed by that Minister under section 91(2)(xxvi) of the Road Traffic and Transport Act, 1999 (Act No. 22 of 1999), in respect of the vehicle registration and licensing system contemplated in section 20 of that Act, on the other hand.

Section 20 of the Road Traffic and Transport Act, 1999 (Act No. 22 of 1999), (“RTT Act”) empowers the Minister responsible for Transport to prescribe the “system for registration and licensing of vehicles”. Section 91(2)(xxvi) of that Act empowers that Minister to levy fees in connection with any licence contemplated in that Act. No such fees have as yet been levied under the RTT Act since the RFA currently imposes the similarly named (but different) fee in terms of a Government Notice under section 18 of the RFA Act, specifically through the current section 18(1)(c) of Act. Although the new measure is not strictly speaking an absolute necessity because the RFA can make arrangements under section 15(3) with any other party for the performance of the RFA’s functions, it is felt that this measure will establish a clearer basis for the current co-operation between the RFA and the Transport Minister in respect of registration and licence fees. However, it was considered appropriate that a basis for future co-operation be created (and in fact promoted) in the RFA Act because the same terminology is used in connection with the fees as levied under the respective Acts and they should preferably be payable simultaneously. An added advantage of the new subsection (2A) is that it will clearly show that the public must discern between registration and licence fees levied under the RFA Act and registration and licence fees levied under the RTT Act. It is also relevant to note that article 4.5.2 of the SADC Protocol refers to both “vehicle licence fees” and “entry fees” as examples of road user charges, and for that reason the Namibian legislation should continue to contain a reference to such fees.

(2B) Subject to subsection (6), the Administration may, for the purposes of this section, keep such registers and records as it may deem necessary and require any person liable for payment of any road user charge to provide the Administration with such information as may be necessary for the determination, collection and administration of that charge.”;

The new subsection (2B) was drafted in response to the Administration’s request to be empowered to be able to implement its own vehicle registration system should that become necessary. This is also a suitable provision for purposes of imposing MDCs or other charges and the lack of such a provision was an oversight in the Act.

(f) by the insertion of the following subsection after subsection (5):

“(5A) Notwithstanding subsection (5), the Administration may, in consultation with the Minister, in appropriate circumstances, exempt any category of vehicles operated by or on behalf of the State from any road user charge or refund the amount of any road user charge paid in respect of such vehicles, as the case may be.”.

Although contrary to the principles of the road user charging system, there may be circumstances where it would be extremely inappropriate to enforce a road user charge on certain categories of vehicles operated by the public sector. A

case in point is motorised armaments operated by the Defence Force. These considerations necessitate the insertion of a clear authority on exemptions.

Amendment of section 19 of Act No. 18 of 1999

5. (1) Section 19 is hereby amended -
- (a) by the substitution for subparagraph (i) of paragraph (a) of subsection (1) of the following subparagraph:
- “(i) subject to section [17(2)] 19(3), the achievement of an economically efficient road sector; and”;

This amendment is necessary to correct the reference to the “maximum amount” provision that is to be excised from section 17(2) and restated in a new section 19(3).

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

“(3) The Administration may, after compliance with such consultation procedures as may be determined by the Minister, determine the maximum amounts of funding which may be made available in respect of any project or programme or administrative expenditure relating to any expenditure referred to in paragraphs (c), (d), (e), (f), (g) or (n) of section 17(1).”.

As explained in the note on the amendment to section 17(2), it was necessary to excise the “maximum amount” provision from that section because it is, strictly speaking, a provision that affects the determination of the quantum of funding and should rather be refitted into the framework of section 19.

(2) Any reference to the determination of a maximum amount of funding made under subsection (2) of section 17 of the principal Act before its amendment by section 3(b) of this Act, shall be deemed to have been made under subsection (3) of section 19 of the principal Act as inserted by subsection (1)(c) of this section.

The purpose of this provision is to perpetuate the legal force of any maximum amount determinations made before the amendment of the Act comes into effect. Subsection (2) is a transitional measure. It is a substantive provision of the Amendment Act. It will not become part of the main Act.

Amendment of section 20 of Act No. 18 of 1999

6. Section 20 of the principal Act is hereby amended -
- (a) by the substitution for subsection (1) of the following subsection:

“(1) Subject to subsection (2), [At] at least [four] six months before the commencement of each financial year, the Roads Authority and every approved authority which requires funding from the Fund, shall submit to the Administration, in a form determined by the Administration, a budget in respect of the ensuing financial year and each of the four financial years following thereafter.”;

The substitution of the four months time limit by a six months limit is in line with an earlier instruction of the RFA and is aimed at affording the RFA more time to scrutinise new project and programme proposals before the commencement of the next financial year.

- (b) by the substitution for the words preceding paragraph (a) of subsection (2) of the following words:

“(2) A budget referred to in subsection (1), shall be prepared in accordance with the rules and principles referred to in section 19(2) and with due regard to any guideline amounts, not inconsistent with the longer term funding strategies of the Administration as contemplated in section 22(1)(a), as the Administration may determine from time to time, and shall set out, in respect of each of the financial years referred to in subsection (1), particulars of –

The purpose of this amendment is to enable the RFA to, if it wishes, limit the budget proposals submitted to it at any one time. This will hopefully have the effect of obliging the Roads Authority and approved authorities to prioritise their expenditure priorities, on the one hand, and also relieve the Administration from the burden of evaluating unnecessarily many projects and then also having to prioritise them, on the other hand. In addition, the reference to the performance statement may direct attention to this instrument which was intended to promote participation and commitment from the side of the Minister as well as general transparency. Since the Consultants are aware that there is no current performance statement, the words “not inconsistent with” were deliberately chosen because the message that they convey is that the guidelines may still be framed whether there is a current performance statement or not.

- (c) by the substitution for subsection (4) of the following subsection:

“(4) The Administration shall, after evaluation of every budget submitted to it in terms of subsection (1) and after consultation with the Roads Authority and every approved authority concerned, and after evaluation of the Administration’s own funding requirements -

- (a) determine, with due regard to -

- (i) the rules and principles contemplated in section 19(2); and
- (ii) **[the provisions of the procedures agreement] any determination** contemplated in section **[17] 19(3) [of the Roads Authority Act],**

the amount of funding **[to be made available in respect of]** for which every project or programme or administrative expenditure is eligible in accordance with section 19(1);

Section 20(4) has been redrafted so as to remove the insignificant reference to compliance with the RA's performance statement. Secondly, the attention is now also drawn to the fact that any maximum funding amount determination may be an "upper limit". Further, the use of the word "eligible" will hopefully better enhance an appreciation of the difference between section 20(4)(a)'s "in principle" funding determinations and the actual funding allocation determinations of section 20(4)(b). The reference to section 19(1) will re-affirm the application of the economic efficiency principle.

- (b) determine, with due regard to -
 - (i) the funds as contemplated in section 16(1) estimated to be at the disposal of the Fund, including the reserve fund contemplated in section 17(1)(k);
 - (ii) the avoidance of substantial increases in the rates of road user charges in any one year and, in the longer term, the maintenance of a reasonable stability, in real terms, in the rates of road user charges: Provided that this subparagraph shall not prevent the Administration from introducing a road user charge for the first time or increasing a road user charge when another such charge is reduced;

The amendment to section 20(4)(b)(ii) emanates from the drafting instructions provided by the RFA to the Consultants during 2004. Its purpose is to make it clear that the rule that sharp increases of individual charges should be limited should not prevent the RFA from activating a charge (such as mass distance charges provided for in section 18(1)(a)) that has not been imposed yet. Furthermore, provision is also made for the case where the RFA intends to increase the rate of one charge but which will be offset by a simultaneous reduction in another charge.

- (iii) any moneys accruing to the Roads Authority or the approved authority concerned from any source other than under this Act in connection with any project or programme or its administrative expenditure and, to the extent that it may affect the making of an allocation under this paragraph, the value of any assets, equipment, human resources and other relevant resources which are or will in all probability be at its disposal; and
- (iv) the amount required to fund each project or programme referred to in subsection (2)(b),

the manner in which **[the amount of] funding, [referred to in paragraph (a)]** if any, is, subject to subsections (4A) and (4B), to be allocated to each project or programme or administrative expenditure evaluated under paragraph (a) in respect of the ensuing financial year and each of the four financial years following thereafter or, if such funding is to be allocated partly or in whole during any subsequent years, the manner in which it is to be so allocated."; and

The purpose of this amendment is, firstly, to enable the RFA to spread funding over more than five years. It is felt that this amendment will remove what was an unrealistic obligation, especially where there was previously also not any restriction with regard to the number of projects and programmes which could be submitted for funding (see proposed amendment to section 20(2)), and secondly, it will allow for the situation where a given project could have been programmed to start in the final of the five years covered by a business plan (and would then of necessity have had to be partially funded after the five year period). It should serve to alleviate the situation which arises during times when sufficient funds are not available in the short term.

- (d) by the insertion of the following subsections after subsection (4):

“(4A) For the purposes of subsection (4), a determination -

(a) in respect of a programme, shall be the annually recurring amount determined under subsection (4)(a) or (b) in respect of the ensuing financial year and each of the four financial years following thereafter;

(b) in respect of a project shall, in the case of any

determination made under -

- (i) subsection (4)(a), be the total amount for the completion of that project; and
- (ii) subsection (4)(b), be the annual amount or amounts, as the case may be, to be allocated in any year of funding or in any subsequent year or years (if any) for the completion of that project, from the year of commencement of funding to the year of completion.

This amendment intends to provide more clarity on the basic nature of a funding determination and on the differences between funding determinations for projects and those for programmes. There is also a difference between a section 20(4)(a) total “amount of funding” determination for a project and its subsequent section 20(4)(b) “manner of funding” determinations (which show the annual amounts to be allocated for completion of the project). The present text of the Act did not provide this clarity. The basic differences between projects and programmes themselves are now defined in clause 1.

(4B) The Administration may, in making any determination under subsection (4)(a) or (b), make provision for anticipated time-related variations affecting any previously determined amount.”.

This amendment aims to provide for cost variations due to inflation and growth in traffic volumes (or even a decline in traffic volumes).

Amendment of section 21 of Act No. 18 of 1999

7. Section 21 is hereby amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:

- “(a) the determinations made by the Administration under section 20(4) that relate to the ensuing financial year and each of the following four financial years thereafter;”.

An omission in the present text is corrected by specifying that a business plan should also include the manner of funding determinations in respect of the four final years of the full five-year term. The amendment, further, allows for the fact that the timing of the funding determinations of the Administration may differ from the timing of funding applications as submitted to it and that only those funding determinations of the Administration which fall within the relevant five year period are to be included in a business plan (cf. the words “that relate to ...”).