
GENERAL NOTICE

NOTICE 1445 OF 2009



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA DRAFT REGULATIONS CONCERNING PROCEDURES FOR ICASA INSPECTORS

(1) The Independent Communications Authority of South Africa ("the Authority") hereby gives notice, in terms of sections 4(3)(j) and 17F(6) of the ICASA Act, of its intention to prescribe Regulations concerning Procedures for ICASA Inspectors.

(2) A copy of the Draft Regulations is attached hereto.

(3) Interested persons are invited to submit written comments or written representations with regard to the proposed regulations, to be received **by no later than 16h00 on the 27th of November 2009** by post, hand delivery, facsimile transmission, or electronically by e-mail (in Microsoft Word) for the attention of :

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- (4) All written representations submitted to ICASA pursuant to this notice will be made available for inspection by interested persons at the ICASA library and copies of such representations will be obtainable on the payment of the prescribed fee.
- (5) At the request of any person who submits written representations pursuant to this notice, ICASA may determine that such representations or any portion thereof is confidential in terms of section 4D of the ICASA Act 13 of 2000, as amended. If the request for confidentiality is refused, the person making the request will be allowed to withdraw such representations or portion thereof.
- (6) The final regulations will be published in the Government Gazette



PARIS MASHILE
CHAIRPERSON

Date: 26/08/2009

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**DRAFT REGULATIONS CONCERNING PROCEDURES
FOR ICASA INSPECTORS**

Under the powers conferred on the Authority in terms of sections 4(3)(j) and 17F(6) of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000), the Authority adopts the **Draft** Regulations set out in the Schedule -

SCHEDULE**1. Definitions**

In these Regulations, unless stated otherwise or unless the context indicates otherwise, any word or expression defined in the Act or the ECA has the meaning assigned to it by the Act or the ECA, and -

“**the Act**” means the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000);

“**CEO**” means the chief executive officer of the Authority appointed by the Council in terms of section 14 of the Act and, where applicable -

- (a) the person to whom the powers conferred on the Authority by section 32 of the ECA are delegated; or
- (b) the person to whom the power conferred on the Authority to monitor the electronic communications sector and postal sector for offences in terms of the underlying statutes in terms of section 4(3)(b) of the Act is delegated, in terms of section 4(4)(a)(iii) of the Act;

“**the ECA**” means the Electronic Communications Act, 2005 (Act No. 36 of 2005);

“**inspector**” means a person appointed by the Authority in terms of section 17F of the Act and who is, where applicable -

- (a) authorised by the CEO to exercise the power conferred on the Authority to monitor the electronic communications sector and/or the postal sector for compliance with the

- underlying statutes in terms of section 4(3)(b) of the Act; or
- (b) authorised by the CEO to exercise the powers conferred on the Authority by section 32 of the ECA, in terms of section 4(4)(c) of the Act;

“offences” are set out in-

- (a) sections 17H(1) or (3) of the Act;
- (b) section 74 of the ECA;
- (c) sections 62 to 80 of the Postal Services Act; and
- (d) regulations made in terms of the Act or the underlying statutes.

2. Purpose of these Regulations

The purpose of these Regulations is to prescribe the procedures to be followed by inspectors in the exercise of the powers conferred upon -

- (a) inspectors by section 17G of the Act;
- (b) the Authority by section 4(3)(b) of the Act where it appears that an offence has been or is being committed;
- (c) the Authority by section 32 of the ECA.

3. Procedures in respect of the possession of radio apparatus

- (1) For the purposes of section 32(2) of the ECA, an inspector may exercise the powers conferred on inspectors by section 17G(2) of the Act.
- (2) Sections 17G(1), (3), (4), (5), (6) and (7) of the Act apply, with the necessary changes, to any entry of premises by an inspector in terms of section 32(2) of the ECA read with sub-regulation (1) for the purpose of conducting an inspection of radio apparatus.
- (3) Where a person in possession of radio apparatus does not hold a radio frequency spectrum licence in respect of such apparatus and is in contravention of section 32(1) of the ECA, the inspector must take that course of action, as specified in sections 32(3)(a) or (b) of the ECA, as is most practicable in the circumstances to ensure that the apparatus is not continued to be possessed in contravention of section 32(1) of the ECA.

(4) Where radio apparatus of a person described in sub-regulation (3) has been seized in terms of section 32(3)(b) of the ECA and that person does not, for any reason, obtain the requisite radio frequency spectrum licence within six months of the date on which the radio apparatus was seized, the Authority may make application to court for an order directing that the radio apparatus in question -

(a) if type approved by the Authority in terms of sections 35 and 36 of the ECA, be sold by the Authority to a holder of a radio frequency spectrum licence and the proceeds of the sale, less any costs incurred by the Authority in holding the apparatus, be paid to the person from whom such apparatus was seized;

(b) be returned to the person from whom it was seized and either sealed or altered and a permit issued in the manner contemplated in section 32(3)(a) of the ECA;

(c) be declared forfeited to the Authority to be dealt with by the Authority as directed by the court.

4. Procedures to be followed by inspectors where an offence has been or is being committed

(1) Where an inspector, who is authorised to exercise the power conferred on the Authority in terms of section 4(3)(b) of the Act, is of the *prima facie* view that a person has committed or is committing an offence, the inspector must, as soon as possible, prepare a report containing such details as are in the possession of the inspector with regard to the offence in question

(2) The report contemplated in sub-regulation (1) must be submitted to the CEO who must -

(a) determine on the basis of the information provided to him or her whether, in his or her *prima facie* view, an offence has been or is being committed and

(b) where he or she is also of the *prima facie* view that an offence has been or

is being committed, submit the report to the Council; provided that the CEO may, where appropriate having regard to the nature of the offence, elect to submit any such reports to the Council periodically.

- (3) The Council considers any report contemplated in sub-regulation (2)(b) and the views of the CEO and decides whether to file a charge with the appropriate law enforcement agency against the person who allegedly committed or is committing the offence.
- (4) Where the alleged offence or offences by a person as contemplated in sub-regulation (3) is in respect of a contravention, which is also a matter which inspectors may investigate and in respect of which the Authority may make an order, as contemplated in section 17E(2) of the Act, the Council may elect either to refer the matter back to an inspector for investigation in terms of section 17F(5)(c) of the Act, or where applicable, refer the matter to the Complaints and Compliance Committee in terms of section 17C(1)(b) of the Act.
- (5) The Authority and any inspector must provide any assistance that may be required by law enforcement officials in the investigation of charges contemplated in sub-regulation (3).

5. Short Title

These regulations are called the ICASA Inspectors' Procedures Regulations, 2009.

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