

DEPARTMENT OF TRANSPORT

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**THE NATIONAL RAILWAY SAFETY REGULATOR ACT, 2002 (Act
No.16 OF 2002)****DRAFT REGULATIONS REGARDING INFRASTRUCTURE OR
ACTIVITY AFFECTING SAFE RAILWAY OPERATIONS, 2017**

The Minister of Transport, in terms of section 50(3)(a) of the National Railway Safety Regulator Act, 2002 (Act No. 16 of 2002), hereby publish for comments the draft Regulations regarding infrastructure or activity affecting safe railway operations made under section 31 (a),(e),(k) and (m) of the Act.

Interested persons are invited to submit comments on the said draft Regulations to the Acting Director General, Department of Transport, within 60 days from the date of publication of this notice, for the attention of:

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DEPARTMENT OF TRANSPORT**NATIONAL RAILWAY SAFETY REGULATOR ACT, 2002 (ACT NO. 16 OF 2002) AS
AMENDED**

The Minister of Transport has, under section 31 (a),(e),(k) and (m) of the National Railway Safety Regulator Act, 2002 (Act 16 of 2002) intends to make the Regulations set out in the Schedule.

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GENERAL PROVISIONS

1. Definitions

In these Regulations, any word or expression to which a meaning has been assigned in the Act has the meaning so assigned and, unless the context indicates otherwise:

“built-up area” means constructed surroundings that provide the setting for human activity, ranging from large scale civic surroundings to personal places and which may be impacted on by railway operations;

“close proximity” means a distance at which people or a built-up area can affect or be affected by the operations within the railway reserve, which includes the following:

- (a) The area from the boundary of the railway reserve to the closest boundary point of the built up area, development or proposed development,
- (b) developments that share or will share any utilities such as energy, roads, telecommunication, water or amenities with the activities within the railway reserve;

“competent (person)” means having the qualification, knowledge, skills, attitudes and capabilities required to function successfully, effectively and efficiently in a given job;

“encroachment” means unlawful occupation of land within a railway reserve, whether temporarily or permanently;

“fence” means an upright structure that serves to enclose the railway reserve and act as a barrier to prevent or control access to it as well as marking the boundary of the railway reserve made of wire, steel or other similar material;

“**network operator**” means the network operator as defined in the Act.

“**operator**” means an operator as defined in the Act.

“**railway operation**” means railway operation as defined in the Act

“**railway building line**” means the line delimiting the areas measured from the cadastral boundary of the railway reserve within which no building or other structure, except boundary fence may be erected;

“**railway reserve**” means an area of the land and associated vertical clearance along a railway line between the proclaimed boundaries, on which is found railway infrastructure elements including railway running lines, service lines, yards, sidings, stations, freight terminals, depots, other related facilities and parts of station precincts;

“**Regulator**” means the Regulator as defined in the Act;

“**restricted area**” means the part of the land or area within the railway reserve demarcated by the railway building line upon which the carrying out of the activities listed in regulation 5 may affect railway safety;

“**the Act**” means the National Railway Safety Regulator Act, 2002 (Act No.16 of 2002) as amended;

“**urban area**” means a densely populated area with many human-built features characteristic of a town, city or metropolis; and

“**wall**” means a continuous vertical structure that encloses or divides an area of land or encloses an area or separates one area from another.

2. **Purpose of the Regulations**

The purpose of this Regulations is to provide for the management of railway reserves in order to ensure safe railway operations and safety and security to people, property and the environment.

3. **Scope and Application**

These Regulations apply only to operators as defined in section 1 of the Act.

4. **Identification of a railway reserve**

- (1) A railway reserve must be clearly demarcated by the network operator either through fencing, walling or any other means, depending on where it is situated.
- (2) Where the railway reserve is situated in a built up area, the network operator must erect a solid wall or tamper proof fence with a height of not less than 2.5 metres.
- (3) Where the railway reserve is situated outside the urban area, the network operator must erect a tamper resistant or tamper proof fencing with a height of not less than 2 metres.
- (4) In addition to the fencing or walling contemplated in this regulation, the network operator must erect a visible signage written in at least two official languages used by the majority of the residents in the area, warning them about the dangers of entering a railway reserve area, and the fact that unauthorised entry into the railway reserve constitutes a crime.

5. **Activities carried out within the railway reserve**

- (1) A railway reserve is a restricted area which may be accessed with an appropriate authorisation.
- (2) An operator must ensure, that the when activities which include the following, are carried out in the railway reserve, safe railway operations are not compromised:
 - (a) excavation of trenches, pits, earthworks, drilling or piling, other than for routine maintenance purposes;
 - (b) erection of temporary or fixed structures, for whatever purpose;

- (c) use of explosive material for blasting or demolition;
 - (d) removal of a feature or object that is part of railway as defined in the Act, except in the course of maintaining the railway by authorised personnel;
 - (e) construction of an underground passageway for use as a street, railway, conduit for utilities or access for people or vehicles;
 - (f) construction of an overhead structure inclusive of bridges, whether for pedestrian crossing, motor vehicles or railway;
 - (g) permanent removal, cutting of fence or wall erected for the demarcation or protection of the railway reserve; and
 - (h) any other activity that is deemed by the Regulator to pose a threat to safe railway operations and the safety of persons, property and environment.
- (3) Activities contemplated in 5(2) shall be carried out in accordance with the relevant legislative prescripts.

6. Power to impose conditions or restrictions

The Regulator may impose such conditions or restrictions as it deems appropriate on activities to be carried out within the railway reserve to ensure safe railway operations, and the safety and security of persons, property and the environment.

7. Unsafe work or activity

- (1) If a condition or activity is a threat or might be a threat to safe railway operations, the railway safety inspector may issue a directive in terms of section 36 of the Act.
- (2) Any person who contravenes or fails to comply with a directive given in terms of sub-regulation (1) is guilty of an offence in terms of section 45 of the Act, and is liable on conviction to a fine or imprisonment as contemplated in section 45(2) of the Act.

8. Minimum measures to prevent encroachment

- (1) A network operator, or a station operator, as the case may be, shall-
 - (a) ensure that the railway reserve is fenced or walled as contemplated in regulation 4;
 - (b) exercise reasonable means to prevent encroachment to the railway reserve;
 - (c) make provision for crossing facilities to enable persons to cross the railway reserve;
 - (d) erect signs along the fence or wall notifying any person who intends to enter the railway reserve without authorisation about the restricted nature of the railway reserve, as well as the fact that unauthorised entry constitutes an offence;
 - (e) where possible, deploy security personnel or electronic devices to monitor the perimeter of the railway reserve fence or wall;
 - (f) ensure that the perimeter fence or wall in built-up areas and urban areas is monitored regularly to prevent encroachment; and
 - (g) In addition to any other measures, where a railway line, motor vehicles and people or any of the two or more intersect, erect visible written regulatory and advance warning signs, warning the public, motorist or railway users about the dangers of crossing the railway line.

- (2) As soon the operator becomes aware of encroachment leading to occupation of a railway reserve by unauthorised persons, the network operator or station operator must, in addition to any other action required in terms of these Regulations or the Act, institute legal proceedings for the eviction of the encroachers in terms of section 5 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 or any other applicable legislation.

9. Maintenance of railway reserve

- (1) The network operator or station operator, as the case may be, is responsible to maintain the railway reserve in accordance with applicable maintenance standards.

- (2) The network operator or station operator must ensure that all maintenance activities are conducted in a manner that ensures safe railway operations, and does not compromise the safety and security of persons and environment.
- (3) An operator must ensure that:
 - (a) The employees, contractors and sub-contractors use appropriate protective clothing and other relevant railway safety equipment whenever they enter or work in or around the rail reserve and that they are fit for duty;
 - (b) All work is carried out by competent personnel with experienced supervisors;
 - (c) All construction work and network maintenance, other than routine maintenance, is carried out under the guidance of a competent person and in accordance with the Occupational Health and Safety Act: Construction Regulations, 2014 and relevant environmental control legislation; and
 - (d) Vegetation is controlled to ensure clear visibility of objects within the railway reserve.
- (4) The railway reserve maintenance in or around the railway reserve shall be carried out in accordance with the requirements of the relevant railway safety standards and applicable legislation.

10. **Elimination or decommissioning of activities within a railway reserve**

- (1) A network or station operator must give the Regulator a written notice of its intention to cease operation of a railway line or part thereof not later than 30 days before such termination of operations.
- (2) Despite the notice to cease operations contemplated in sub-regulation (1), the network operator or station operator must continue to maintain the railway reserve in accordance with regulation 9 until the decommissioning of the railway line.

11. Provision of bridges and subways

- (1) Where a new railway line traverses a build-up area or urban area with movement of persons and vehicles across the railway line, the network operator or station operator must provide appropriate protection in accordance with applicable legislation, standards and guidelines, to mitigate the risks to persons, property and the environment.
- (2) The provisions of these Regulations apply in addition to the requirements of any environmental control or spatial planning and land use management legislation.

12. Activities in close proximity to a railway reserve

- (1) As soon as the operator becomes aware of any intended development of land in close proximity to a railway reserve, the network operator or station operator, as the case may be, must notify the Regulator about such development and indicate the risks that may be posed by such development to railway safety.
- (2) The Regulator may enter into implementation protocols in terms of section 35 of Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005) with any municipality for the purposes of achieving the object of these Regulations.

13. Public awareness and education

- (1) The operator must-
 - (a) partner with interested and affected parties to provide education and conduct public awareness activities regarding safe railway operations, and
 - (b) create railway safety awareness in relation to railway reserves, including innovations that attract the public beyond the usual users of the railway facilities.
- (2) The operator may be required to prepare and submit a safety improvement plan targeting various aspects of safe railway operations and security affecting

railway reserves, independently or as part of the safety management system contemplated in section 28 of the Act.

- (3) The Regulator and operators or a class of operators may co-ordinate their efforts to increase public awareness and education about safe railway operations and security.

14. Reporting

- (1) In addition to any reports that an operator is required to submit in terms of the Act, the Regulator may require the operator to submit ad hoc reports on any aspect of these Regulations.
- (2) In order to ensure that such reports are standardised, the Regulator may issue guidelines on the format and content of such reports.

15. Inspections

The railway safety inspector may, at any time, in terms of section 33 of the Act, enter any property under the control of an operator and inspect any activity contemplated in these Regulations to ensure compliance with the requirements of the Act or these Regulations.

16. Exemptions

The Chief Executive Officer of the Regulator may, upon a properly motivated application by an operator and subject to such terms and conditions as he/she deems necessary, exempt such operator from any provision of these Regulations, if –

- (a) such operator is required to comply with the provisions of any other law or regulations; provided that the provisions of such other law or regulations, meet all the substantive requirements of these Regulations; or
- (b) based on a risk-based approach, the threat to safe railway operations and security or safety of persons, property and the environment is considered not

to be of such a nature as to warrant strict enforcement of compliance with any relevant requirement.

17. Offences

An operator commits an offence if it hinders or obstructs a railway safety inspector from exercising his or her powers or performing his or her duties in terms of the Act or these Regulations.

18. Penalties

An operator who contravenes any provision of these Regulations, except regulation 7(2), may be liable to pay a fine or penalty as determined by the Minister in terms of the Penalty Fees Regulations made under section 45A of the Act.

19. Appeals

(1) An operator who is aggrieved by a decision made by the Regulator under these Regulations may appeal against that decision to the Board of the Regulator.

(2) The right to appeal shall be exercised in terms of section 44 of the Act.

20. Transitional arrangement

An Operator has one year from the date of commencement of these Regulations to comply with the provisions of these Regulations.

21. Short title

These regulations shall be called Regulations regarding infrastructure or activity affecting safe railway operations, 2017.