

**DEPARTMENT OF TRANSPORT
NOTICE 604 OF 2020**

**THE NATIONAL RAILWAY SAFETY REGULATOR ACT, 2002 (ACT NO.16 OF 2002)
REGULATIONS REGARDING INFRASTRUCTURE OR ACTIVITY AFFECTING SAFE
RAILWAY OPERATIONS, 2020**

I, **Fikile April Mbalula**, Minister of Transport, intends to make, under sections 30, 31 and 50 (1) (a) of the National Railway Safety Regulator Act, 2002 (Act No. 16 of 2002), the Regulations in the Schedule.



MR F A MBALULA, MP

MINISTER OF TRANSPORT

DATE:

ARRANGEMENT OF REGULATIONS

1. Definitions
2. Purpose of Regulations
3. Scope of application
4. Identifying and securing railway reserve
5. Activities carried out within and around railway reserve
6. Minimum measures to prevent encroachment
7. Maintenance of railway reserve
8. Elimination or decommissioning of activities within railway reserve
9. Provision of bridges and subways
10. Activities in proximity to railway reserve
11. Reporting
12. Offences and Penalties
13. Appeals
14. Transitional arrangement
15. Short title and commencement

Definitions

1. In these Regulations, a word or expression to which a meaning has been assigned in the Act bears 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;

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

“fence” means an upright structure, made of wire, steel or other similar material, 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;

“railway reserve” means an area of the land and associated vertical clearance along a railway line between demarcated 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;

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

“urban area” means a densely populated area with 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, encloses an area, or separates one area from another.

Purpose of Regulations

2. The purpose of these 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.

Scope of application

3. These Regulations apply to-
 - (a) an operator as defined in section 1 of the Act; and
 - (b) any other person who conducts activities or developments in proximity to the railway reserve which may have an impact on safe railway operations.

Identifying and securing railway reserve

4.
 - (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 an 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 fencing or walling a railway reserve, the network operator must erect visible signage, written in at least two official languages used by the majority of the residents in the area, warning residents about the dangers of entering a railway reserve area, and the fact that unauthorised entry onto the railway reserve constitutes an offence.
- (5) An operator must conduct a risk assessment to identify high risk areas within the railway reserve, which must be prioritised when implementing these Regulations.
- (6) The network operator must submit details of the fencing or walling installed or constructed prior to the promulgation of these Regulations to the Regulator for assessment and approval.

Activities carried out within and around railway reserve

5. (1) A railway reserve is a restricted area that may only be accessed with appropriate authorisation.
- (2) An operator must ensure that when activities are carried out within and around the railway reserve, safe railway operations are not compromised. These activities include, but are not limited to the following:
- (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 a railway, 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 or cutting of fences or walls erected for the demarcation or protection of the railway reserve; and
 - (h) any other activity that is considered by the Regulator to pose a threat to safe railway operations and the safety of persons, property and environment.
- (3) Activities listed in regulation 5(2) must be carried out in accordance with the relevant legislation.

Minimum measures to prevent encroachment

6. (1) A network operator or station operator, as the case may be, must -
- (a) ensure that the railway reserve is fenced or walled as contemplated in regulation 4;
 - (b) take reasonable measures to prevent encroachment of 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 as the operator becomes aware of an encroachment leading to the occupation of a railway reserve by an unauthorised person, the operator must, in addition to any other action required in terms of these Regulations or the Act, ensure the removal of such prohibited encroachment.

Maintenance of railway reserve

7. (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 and legislations.
- (2) The network operator or station operator, as the case may be, 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 the 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) the relevant work is carried out by a competent person with experienced supervisors;
 - (c) 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) the growth of vegetation is controlled to ensure clear visibility of objects within the railway reserve.
- (4) The railway reserve maintenance in or around the railway reserve must be carried out in accordance with the requirements of the relevant railway safety standards.

Elimination or decommissioning of activities within railway reserve

8. (1) A network operator 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 referred to in sub-regulation (1), the network operator or station operator must continue to maintain the railway reserve in accordance with regulation 7 until the decommissioning of the railway line.

Provision of bridges and subways

9. (1) Where a new railway line traverses a build-up area or urban area where there is movement of persons and vehicles across the railway line, the network operator or station operator, as the case may be, 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.

Activities in proximity to railway reserve

10. (1) A person conducting activities or developments in proximity to a railway reserve which activities may affect the conducting of safe railway operations, must notify the Regulator of such activity prior to conducting such activity or development.
- (2) (a) The Regulator may require such person to conduct a risk assessment of such activities or development and provide a report to the Regulator. and
- (b) The Regulator may require such a person to mitigate the risks posed by such activities or developments to safe railway operations.
- (3) As soon as the network operator or station operator becomes aware of any intended development of land in proximity to a railway reserve, the operator must notify the Regulator about such development and indicate the risks that may be posed by such development to railway safety.

Reporting

11. (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 matter relating to safe railway operations.
- (2) In order to ensure that such reports are standardised, the Regulator may issue guidelines on the format and content of such reports.

Offences and Penalties

12. An operator who fails to comply with any provision of these Regulations commits an offence and is, on conviction liable to pay a fine or penalty determined by the Minister in terms of the Penalty Fees Regulations made under section 45A of the Act.

Appeals

13. (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 provisions of section 44 of the Act apply to such an appeal.

Transitional arrangement

14. (1) The implementation of the requirements as stipulated in these regulations shall be on a prioritised basis in accordance with regulations 4 (5) and 4 (6).

- (2) Any person who is unable to comply with these Regulations within the stipulated time must make submission to the Minister in terms of section 3 of the Act.

Short title and commencement

15. These Regulations are called Regulations regarding Infrastructure or Activity affecting Safe Railway Operations, 2020 and come into effect on the date of publication.

TSEBISO YA MMUSO**LEFAPHA LA DIPALANGWANG****THE NATIONAL RAILWAY SAFETY REGULATOR ACT, 2002 (ACT NO.16 OF 2002)****MELAWANA MABAPI LE MORALO WA MOTHEO KAPA KETSAHALO E AMANG
POLOKEHO MESEBETSING YA SEPORO, 2020**

Nna, **Fikile April Mbalula**, Letona la Dipalangwang ke ikemiseditse ho etsa Melawana Shejuleng, ka tlasa karolo 30, 31 le 50 (1) (a) ya National Railway Safety Regulator Act, 2002 (Act No. 16 of 2002).

**MR F A MBALULA, SETHO SA PALAMENTE****LETONA LA DIPALANGWANG****LETSATSI:**

TLHOPHISO YA MELAWANA

1. Ditlhaloso
2. Maikemisetso a Melawana
3. Tshebetso
4. Pontsho le ho bolokeha ha sebaka sa seporo
5. Diketsahalo tse etswang ka hare le ho potoloha sebaka sa seporo
6. Bonyane ba metjha ho ka thibela tshebediso ya lefatshe e seng molaong
7. Tlhokomelo ya sebaka sa seporo
8. Ho tloswa kapa ho emiswa ha diketsahalo sebakeng sa seporo
9. Nehelano ya marokgo le ditsela tsa mohohoma
10. Diketsahalo tse atometseng sebaka sa seporo
11. Tlaleho
12. Ditlolo tsa molao le Kotlo
13. Boipiletso
14. Tlhophiso tsamaisong
15. Sehlooho se sekgutshwane le qaleho

Ditlhaloso

1. Melawaneng ena, lentswe kapa polelo e nehetsweng moelelo ka hare ho Molao e sebedisa moelelo oo ntle le ha sengolwa se ka hlalosa ka mokgwa o mong,

“sebaka se ahuweng” e hlalosa tikoloho e ahuweng e nehelanang ka diketsahalo tse fapaneng bakeng la batho, jwalo ka sebaka se seholo sa batho ho ya ho sa motho mme se ka angwa ke tshebetso ya seporo;

“ho nkuwa ha lefatshe” e hlalosa ho nkuwa ho seng molaong ha lefatshe sebakeng sa seporo, ho sa natse hore ke nakwana kapa moshwelella;

“fense” e hlalosa moralo wa motheo o tsepameng, o entswe ka terata, setala kapa disebediswa tse ding tse bapileng, o sebetsang ho kwala sebaka sa seporo le ho sebetsa e le ho thibela kapa ho laola phihlello ya teng ha mmoho le ho tshwaya moedi wa sebaka sa seporo;

“sebaka sa seporo” e hlalosa sebaka sa lefatshe le bophahamo ba teng tseleng ya seporo mahareng a meedi e tshwauweng moo motheo wa moralo wa seporo e fumanehang teng ho akga ka hare ditsela tsa seporo, tsas tshebetso, dijarete, bokathoko le qaleho ya seporo, diteishene, dibaka tseo terene e palamisang le ho theola teng, moo di dulang, le dibaka le dikarolo tsa ka hare tsa seteishene;

“Molao” e hlalosa *National Railway Safety Regulator Act, 2002 (Act No.16 of 2002)* ;

“setoropo” e hlalosa sebaka se teteaneng se nang le meaho ya batho toropong, motsesetoropo kapa metsemeholo; le

“lebota” e hlalosa moralo wa motheo o yang ho dimo o kwalang kapa arolang lefatshe, sebaka kapa o arolalong ho tloha ho se seng.

Maikemisetso a Melawana

2. maikemisetso a Melawana ke ho nehelana ka tsamaiso ya dibaka tsa seporo e le ho ka etsa bonnete ba tshireletseho ya tshebetso le polokeho ya batho, thepa le tikoloho.

Tshebetso

3. Melawana ena e sebetsa ho-
 - (a) mosebedisi jwalo ka ha ho hlalositswe karolong 1 ya Molao; le
 - (b) motho e mong le e mong ya etsang mesebetsi kapa metheo e atamelaneng le sebaka sa seporo e ka bang le sekgahla tshebetsona ya seporo.

Pontsho le ho bolokeha ha sebaka sa seporo

4. (1) Mosebedisi wa marangrang o tshwanetse ho bontsha sebaka sa seporo ka ho fensa, lebota kapa ka mokgwa o mong le o mong ho itshetlehile ka hore na ke ho kae.
- (2) Moo sebaka sa seporo se leng sebakeng se ahuweng, mosebedisi wa marangrang o tshwanetse ho aha lebota kapa fense e sa kgoneng ho ka sebetsa e bolelele bo seng ka tlase ho di mitara tse 2.5.

- (3) Moo sebaka sa seporo se leng ka ntle ho motsesetoropo, mosebedisi wa marangrang o tshwanetse ho kenya fense e sa kgoneng ho ka sebetswa e bolelele bo sa feteng di mitara tse 2.
- (4) Ho dimo ha fense kapa lebota sebakeng sa seporo, mosebedisi wa marangrang o tshwanetse ho beha letshwao le bonahalang le ngotsweng bonyane ka dipuo tse pedi tsa semmuso tse sebediswang ke boholo ba batho ba dulang sebakeng seo, le lemosang baahi ka dikotsi tsa ho kena sebakeng sa seporo le hore ho kena sebakeng seo sa seporo ke tlolo ya molao.
- (5) Mosebedisi o tshwanetse ho etsa hlahlobo ya qomatsi ho ka bontsha dibaka tsa qomatsi e hodimo sebakeng sa seporo, mme e be tsa bohlokwa ha ho kenngwa tshebetsong Melawana ena.
- (6) Mosebedisi wa marangrang o tshwanetse ho nehelana ka dintlha tsa fense kapa lebota le kentsweng kapa ahuweng pele ho tsebiso ya Melawana ena ho Mohlahlobi bakeng la hlahlobo le tumello.

Diketsahalo tse etswang ka hare le ho potoloha sebaka sa seporo

5. (1) Sebaka sa seporo ke sebaka se sa kenweng se kenwang feela ka tumello.
- (2) Mosebedisi o tshwanetse ho etsa bonnete hore ha hona le diketsahalo tse etswang sebakeng sa seporo, tshireletseho ya mesebetsi ya seporo ha e sitisehe. Diketsahalo tsena di kenyeletsa tse latelang, le ha di sa fella:
 - (a) Ho tjhekwa ha mekoti, ntle le ka maikemisetso a tlhokomelo e tlwaelehileng;

- (b) ho emiswa ha moralo wa motheo wa nakwana ka maikemisetso a itseng;
 - (c) ho sebedisa diqhomane bakeng la ho thuba;
 - (d) ho tloswa ha seo e leng karolo ya seporo, ntle le ha e le karolo ya tlhokomelo ka motho ya dumelletsweng;
 - (e) kaho ya tsela ka tlasa lefatshe e le ho ka sebediswa e le seterata, seporo, tsamaiso ya disebediswa kapaphihlello ya batho kapa dipalangwang;
 - (f) kaho ya moaho o ka ho dimo o akgang marokgo, e ka ba bakeng la ditso ho ka feta, dipalangwang kapa seporo;
 - (g) ho tlosa kapa ho kgaola difense kapa mabota a ahetsweng ho ka bontsha moedi kapa tshireletso ya sebaka sa seporo; le
 - (h) ketsahalo e nngwe le e nngwe eo Mohlahlobi a enkanng e le tshitiso ho mesebetsi e bolokehileng ya seporo le polokeho ya batho, thepa le tikoloho.
- (3) Diketsahalo tse ngotsweng molawaneng 5(2) ditshwanetse ho etswa ho latela molao o amehang.

Bonyane ba metjha ho ka thibela tshebediso ya lefatshe e seng molao

6. (1) mosebedisi wa marangrang kapa mosebedisi wa seteishene o tshwanetse ho -
- (a) etsa bonnete hore sebaka sa seporo se kentswe fense kapa lebota jwalo ka ha ho hlalositswe molawaneng 4;
 - (b) ho nka metjha ho ka thibela tshebediso ya lefatshe la seporo e seng molaong;
 - (c) ho ka nehelana ka disebediswa tsa ho ka kgontsha batho ho tshela sebaka sa seporo;
 - (d) ho ka beha matshwao a hlalosang ka sebaka sa seporo fenseng kapa leboteng a tsebisang motho e mong le e mong

ya ikemiseditseng ho ka kena sebakeng sa seporo ntle ho tumello, ha mmoho le hore ho kena sebakeng seo ntle le tumello ke tlolo ya molao;

- (e) moo ho kgonahalang, a ka romela basireletsi kapa disebediswa tsa elektroniki ho ka disa fense kapa lebota sebakeng sa seporo;
- (f) ho etsa bonnete ba fense ya moedi kapa lebota sebakeng se ahuweng le metsetoropo e diswa nako le nako ho thibela tshebediso ya lefatshe e seng molaong; mme
- (g) ho dimo ha metjha e meng moo tsela ya seporo, dipalangwang le batho kapa ho tse pedi tseo kapa ho feta, moo di kopanang, ho behwe letshwao le ngotsweng la tlhokomediso ho setjhaba, dipalangwang kapa basebedisi ba tsela ya seporo ka dikotsi tsa ho tshela tsela ya seporo.

- (2) Ha mosebedisi a elellwa tshebediso ya lefatshe e seng molaong e lebisang ho nkuweng ha lefatshe la seporo ka motho ya sa dumellwang, mosebedisi o tshwanetse ho etsa bonnete ba ho tloswa ha tshebediso e seng molaong ya lefatshe, ho latela Molao le melawana.

Tlhokomelo ya sebaka sa seporo

- 7. (1) Mosebetsi wa marangrang kapa mosebedisi wa seteishene o na le maikarabelo a ho hlokomela sebaka sa seporo ho latela maemo a tlhokomelo le molao.
- (2) mosebedisi wa marangrang kapa mosebedisi wa seteishene o tshwanetse ho etsa bonnete hore mesebetsi ya tlhokomelo e etswa ka mokgwa o sireletsang tshebetso ya seporo mme ha o nyehlisi tshireletso le polokeho ya batho le tikoloho.

- (3) Mosebedisi o tshwanetse ho—
- (a) basebeletsi, basebetsi le bao ba basebeletsang ba sebedisa diaparo tse ba sireletsang ha mmoho le disebediswa tse amehang tsa seporo ha ba kena kapa sebetsa kapa ha ba le sebakeng sa seporo le hore ba loketse ho ka ba mosebetsing;
 - (b) mosebetsi o amehang o etswa ke motho ya loketseng ho ka sebetsa ya nang le baokamedi ba nang le tsebo;
 - (c) mosebetsi wa kaho le tlhokomelo ya marangrang, ntle le tlhokomelo e tlwaelehileng, e etswa ka tlasa tataiso ya motho ya loketseng le ho latela Molao wa Tshireletso le Polokeho Mosebetsing: Melawana ya Kaho, 2014 le molao o laolang tikoloho; le
 - (d) kgolo ya dimela e laolwe ho ka etsa bonnete ba ponahalo ya dinto tse ka hare ho sebaka sa seporo.
- (4) Tlhokomelo ya sebaka sa seporo e tshwanetse ho etswa ho latela ditlhoko tsa maemo a polokeho a seporo.

Ho tloswa kapa ho emiswa ha diketsahalo sebakeng sa seporo

8. (1) mosebedisi wa marangrang kapa mosebedisi wa seteishene o tshwanetse ho nehela Molaodi tsebiso e ngotsweng ka maikemisetso a ho emisa tshebetso ya tsela ya seporo kapa karolo ya teng matsatsing a 30 pele ho kemiso ya mosebetsi.
- (2) Ho sa natse kemiso ya mosebetsi o hlaloswang karolwaneng (1), mosebedisi wa marangrang kapa mosebedisi wa seteishene o tshwanetse ho tswelapele ka ho hlokomela sebaka sa seporo ho latela molawana 7 ho fihlela ho emiswa tsela ya seporo.

Nehelano ya marokgo le ditsela tsa mohohoma

9. (1) Moo tsela ya seporo e ntjha e fetang ka hare ho sebaka se ahuweng moo ho nang le batho ba tsamayang le dipalangwang tse fetang tsela ya seporo, mosebedisi wa marangrang kapa mosebedisi wa seteishsene o tshwanetse ho nehelana ka tshireletso ho latela molao, maemo le tataiso, ho ka fokotsa qomatsi ho batho, thepa le tikoloho.
- (2) nehelano ya Melawana ena e sebetsa ho dimo ha ditlhoko tsa taolo ya tikoloho kapa ketso ya maano a sebaka le molao wa taolo ya tshebediso ya lefatshe.

Diketsahalo tse atometseng sebaka sa seporo

10. (1) Motho ya etsang mesebetsi kapa motheo haofi le sebaka sa seporo e amang polokeho ya tshebetso seporo o tshwanetse ho tsebisa Molaodi ka ketsahalo pele e phethahala kapa e thehwa.
- (2) (a) Molaodi a ka hloka hore motho ya jwalo a etse hlahlobo ya qomatsi ya mesebetsi kapa motheo oo le ho nehelana ka tlaleho ho Molaodi. Mme
- (b) Molaodi a ka hloka hore motho ya jwalo a fokotse qomatsi e bakwang ke mesebetsi kapa metheo ho mesebetsi ya seporo.
- (3) hang ha mosebedisi wa marangrang kapa mosebedisi wa seteishene a elellwa maikemisetso a hlabollo ya lefatshe haofi le sebaka sa seporo, mosebedisi o tshwanetse ho tsebisa Molaodi ka hlabollo eo le ho bontsha qomatsi e bang teng polokehong ya seporo.

Tlaleho

11. (1) Ho dimo ha tlaleho e nngwe le e nngwe eo mosebedisi a tshwanetseng ho nehelana ka yona ho latela Molao, Molaodi a ka hloka mosebedisi ho nehelana ka ditlaleho ha ho hlokahala ntlheng e nngwe le enngwe e amanang le polokeho mesebetsing ya seporo.
- (2) Ho etsa bonnete hore ditlaleho tseo di ba maemong a loketseng, Molaodi a nehelana ka tataiso ya mokgwa le dikahare tsa ditlaleho tseo.

Ditlolo tsa molao le kotlo

12. Mosebedisi ya hlolehang ho ikamahanya le karolo e nngwe le e nngwe ya Melawana o tlola molao mme ha a aka fumanwa molato o tla lefiswa faene kapa kotlo e tla hlwauwa ke Letona ho latela Melawana ya Ditefello tsa Kotlo e entsweng ka tlasa karolo 45A ya Molao.

Boipiletso

13. (1) Mosebedisi ya lliswang ke qeto e entsweng ke Molaodi ka tlasa Melawana ena a ka etsa boipiletso kgahlano le qeto ho Lekgotla la Bolaodi.
- (2) Nehelano ya karolo 44 ya Molao e sebetsa boipiletsong bo tjena.

Tlhophiso tsamaisong

14. (1) Ho kenngwa tshebetsong ha ditlhoko jwalo ka ha ho hlalositswe melawaneng ena ho tla ba hwa bohlokwa nako le nako ho latela molawana 4 (5) le 4 (6).
- (2) Motho e mong le e mong ya sa kgoneng ho ikamahanya le Melawana ena nakong e hlalositsweng o tshwanetse ho hlaloesetsa Letona ho latela karolo 3 ya Molao.

Sehlooho se sekgutshwane le qaleho

15. Melawana ena e bitswa Melawana mabapi le moralo wa motheo kapa Ketsahalo e amang Polokeho Mesebetsing ya Seporo, 2020 mme e kena tshebetsong ka letsatsi la phatlalatso.