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**GENERAL NOTICES • ALGEMENE KENNISGEWINGS**

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**CIVILIAN SECRETARIAT FOR THE POLICE SERVICE****NOTICE 985 OF 2022****CRITICAL INFRASTRUCTURE PROTECTION ACT, 2019 (ACT No. 8 OF 2019)****INTERIM CRITICAL INFRASTRUCTURE PROTECTION REGULATIONS, 2022**

I, Bhekokwakhe Hamilton Cele, Minister of Police, in terms of section 27 of the Critical Infrastructure Protection Act, 2019 (Act No. 8 of 2019), hereby publish for public comment the regulations set out in the attached Schedule.

Interested parties are invited to submit written comments on the regulations, no later than 14 days from the date of publication of this notice by:

(i) E-mail to : [Milton.ntwana@csp.gov.za](mailto:Milton.ntwana@csp.gov.za)

(ii) Posting comments to:

Secretary for Police Service

Civilian Secretariat for Police Service

Private Bag X922

**PRETORIA, 0001**

for attention; Mr M. Ntwana

- (iii) Hand delivery at the Civilian Secretariat for Police Service at Van Erkom Building, Van Erkom Arcade, 7<sup>th</sup> Floor, 217 Pretorius Street, **PRETORIA**.



**GENERAL BH CELE, MP**

**MINISTER OF POLICE**

18/03/2022

## SCHEDULE

### 1. Definitions

In these regulations, unless the context indicates otherwise—

- (1) In these regulations, unless the context indicates otherwise—any word or expression bears the meaning assigned to it in the Act;
- (2) In these regulations, unless the context indicates otherwise—any word or expression bears the meaning assigned to it in the Act;
  - (a) **“Critical Infrastructure Protection Regulator”** means the Critical Infrastructure Protection Regulator established in terms of regulation 8, and **“Regulator”** has a corresponding meaning;
  - (b) **“risk categorisation”** means a process in terms of which critical infrastructure is categorised in a low-, medium-, or high risk category for purposes of implementation of physical security measures;
  - (c) **“security policy”** means a framework for the development of organizational physical security standards;
  - (d) **“the Act”** means the Critical Infrastructure Protection Act, 2019 (Act No. 8 of 2019);

### 2. Functioning of Critical Infrastructure Council

- (1) The Critical Infrastructure Council is established in terms of section 4(1) of the Act and must function as an independent and impartial structure to support the Minister in the exercise of his or her functions in terms of the Act.
- (2) The Council must have regard to its functions as set out in section 7 of the Act to achieve the purpose of the Act.
- (3) In order to function effectively and efficiently, the Council may designate one or more members of the Council to form subcommittees to assist the Council in the performance of its functions.

(4) A subcommittee need not reflect the composition of the Council as contemplated in sections 4(2)(b) and 4(2)(c) of the Act.

(5) The object of a sub-committee is to collate information and advise the Council on any matter that may be considered at a meeting of the Council.

(6) A subcommittee may be designated on an *ad hoc* basis for a specific task or designated as a standing subcommittee.

(7) A standing subcommittee which comprises more than one member must select a chairperson from the designated members who shall be responsible to receive and distribute any document or matter referred to the subcommittee.

(8) The Chairperson of the Council may refer any matter submitted to the Council in terms of the Act or these regulations to a subcommittee to deal with that matter in terms of this regulation and report to the Council for consideration at the succeeding meeting.

(9) The chairperson of the sub- committee to whom a matter was referred to by the Chairperson, must convene a meeting of the subcommittee within 30 days after the matter was received, or as soon as directed by the Chairperson.

(10) A sub-committee must consider every matter and all relevant facts and factors pertaining to the matter and may, for this purpose, collate information, research any matter referred to it, cause research to be done or consider any research that had previously been done on the subject matter, meet with any person, or take any other reasonable action in the performance of the task assigned to it.

(11) After considering a matter referred to it, a subcommittee must compile a report on the matter to assist the Council at its next meeting and deliver such report to the Council within such period as determined by the Council.

(12) The Chairperson of the Council must distribute the report contemplated in subregulation (11) to members of the Council at least 7 days before the next meeting of the Council.

### **3. Ordinary meetings of Critical Infrastructure Council in terms of section 8(1) of the Act**

(1) The Chairperson of the Council must, in order to comply with section 8(1) of the Act, ensure that the Council meets quarterly by notifying each member appointed in terms of section 4 of the Act in writing no less than 30 days before the date of such meeting.

(2) The notification referred to in subregulation (1) must include the venue, date and time of such meeting and must be accompanied by the minutes of the previous preceding meeting of the Council, as well as an agenda of the business to be considered at such meeting.

(3) At each meeting of the Council the venue, date and time for the subsequent meeting may be determined by consent, failing which the Chairperson may determine such a venue, date and time after consultation with the members, taking into account any financial implications.

(4) A copy of any—

- (a) application for declaration of infrastructure as critical infrastructure referred to in section 7(1)(a) of the Act;
- (b) proposed guidelines referred to in section 7(1)(b) of the Act;
- (c) assignment of functions by the Minister referred to in section 7(1)(c) of the Act; or
- (d) application referred to in section 17(5) to dispense with publication in terms of section 17(4)(a);

that will be discussed during an ordinary meeting of the Council, must accompany the notification referred to in subregulation (1).

(5) The Chairperson must ensure that the documents referred to in subregulation (4) are adequately sealed or, in the case of electronic documents, protected by means of a unique password in order to protect the confidentiality thereof.

(6) The Council determines its own rules of debate subject to subregulations (7) to (16).

(7) The first act of an ordinary meeting, after being constituted, is to read and confirm by the signature of the Chairperson the minutes of the last preceding ordinary meeting and of any special meeting subsequently held. The meeting may consider the minutes as read, provided that objections or proposed amendments to

the minutes of the last preceding ordinary or special meeting are raised and decided upon before confirmation of the minutes.

(8) The meeting must deal with the business of which notice has been given and any other business which a majority of the total membership of the Council agrees to consider.

(9) Every motion must be seconded and must, if the chairperson requires this, be in writing and a motion that is not seconded falls away.

(10) Except where the Act requires a different procedure, and where consensus cannot be reached, each question must be decided by the majority of votes of the members present and voting, and unless the meeting decides otherwise voting must be by show of hands.

(11) Should the majority of members present abstain from voting, the matter to be decided on must be deferred to the next meeting.

(12) The Chairperson may, in the case of any procedural matter or any matter not contemplated in section 7(1) of the Act, refer such matter by letter or electronic means for consideration by members of the Council.

(13) When a majority of the members of the Council reaches agreement on a matter referred to in subregulation (12) without convening a meeting, such resolution is equivalent to a resolution of the Council and must be recorded in the minutes of the subsequent ordinary meeting.

(14) The views of a member of the Council who is unable to attend a meeting may be submitted to the meeting in writing for consideration but may not count as a vote of such member.

(15) If so decided by the meeting, the number of members voting for or against, or abstaining from, any motion must be recorded in the minutes, and at the request of any member the Chairperson must direct that the vote of such member be likewise recorded.

(16) The ruling of the Chairperson on any question of order or procedure is binding unless immediately challenged by a member, in which event such ruling must be submitted without discussion to the meeting whose decision is final.

(17) The Council may invite persons who are not members to attend meetings on an *ad hoc* basis and allow them to take part in discussions, provided that they are not allowed to vote.

(18) The Chairperson may direct that an ordinary meeting of the Council be conducted on an electronic virtual platform.

**4. Special meeting of the Critical Infrastructure Council in terms of section 8(3) or 8(4) of the Act**

(1) A special meeting of the Council in terms of section 8(3) or 8(4) of the Act may be convened where a matter that is to be discussed at a meeting is of such an urgent nature that it should not be delayed until the subsequent ordinary meeting.

(2) In the event that a special meeting of the Critical Infrastructure Council is required as contemplated in subregulation (1), the Chairperson must notify the members of the Council of the date, time, venue and purpose of such special meeting in writing no less than 7 days or within such reasonable period as the Chairperson may deem fit, before the date of such special meeting.

(3) The notification referred to in subregulation (1) must include the venue, date and time of such special meeting and must be accompanied by an agenda of the business to be considered at such special meeting.

(4) Any matter on the agenda of a special meeting must contain sufficient information to enable the members of the Council to adequately prepare for the special meeting and be accompanied by the documents referred to in subregulation (7).

(5) A member of the Council who is of the opinion that the agenda does not describe the matter in question sufficiently, may request further particulars from the Chairperson within 3 days before the special meeting.

(6) The Chairperson may direct that a special meeting of the Council be conducted on an electronic virtual platform.

(7) A copy of any—

- (a) application for declaration of infrastructure as critical infrastructure referred to in section 7(1)(a) of the Act;
- (b) proposed guidelines referred to in section 7(1)(b) of the Act;
- (c) assignment of functions by the Minister referred to in section 7(1)(c) of the Act; or
- (d) application for a departure from the provisions of section 17(4)(a) of the Act,

that will be discussed during a special meeting of the Council, must accompany the notification referred to in regulation 4(2).

**5. Resolutions of the Critical Infrastructure Council in respect of application for declaration of infrastructure as critical infrastructure**

(1) After consideration of an application for declaration of infrastructure as critical infrastructure referred to in section 7(1)(a) of the Act, the Council must adopt a resolution whether or not to—

- (a) recommend declaration of such infrastructure as critical infrastructure;
- (b) recommend the appropriate risk categorisation for the infrastructure in question; and
- (c) dispense with publication in terms of section 17(5) of the Act where a person in control applies for a deviation from the provisions of section 17(4)(a).

(2) The Council must record any resolution that it is considering to adopt regarding a matter before the Council, subject to the following:

- (a) where all the members of the Council move to adopt a resolution to recommend such matter, the Council must record the reasons for such recommendation;
- (b) where the majority of the members of the Council move to adopt a resolution to recommend such matter, the Council must record reasons for such majority recommendation and allow each of the dissenting members to state his or her reasons for dissenting, which must likewise be recorded;
- (c) where the majority of the members of the Council move to adopt a resolution not to recommend such matter, the Council must record reasons for such majority recommendation and allow each of the dissenting members to state his or her reasons for dissenting, which must likewise be recorded; or
- (d) where all the members of the Council move to adopt a resolution not to recommend such matter, the Council must record reasons for such recommendation.



(3) The Council must, within 14 days of the meeting of the Council, notify the applicant of the resolution adopted by the Council referred to in subregulation (2).

(4) An applicant may, upon receiving a notification referred to in subregulation (3), make representations to the Council regarding any resolution in respect of his or her application for declaration of infrastructure as critical infrastructure.

(5) The representations referred to in subregulation (4) must be lodged with the Chairperson of the Council within 30 days of receipt of the notification referred to in subregulation (3).

(6) The Council must, at a special meeting convened within 30 days after receipt of the representations, consider the representations of the applicant and adopt a final resolution whether or not to—

- (a) recommend declaration of such infrastructure as critical infrastructure;
- (b) recommend the appropriate risk categorisation for the infrastructure in question; and
- (c) dispense with publication in terms of section 17(5) of the Act where a person in control applies for a deviation from the provisions of section 17(4)(a).

(7) The Chairperson must record any final resolution that the Council may adopt regarding a matter before the Council, subject to the following:

- (a) where all the members of the Council move to adopt a final resolution to recommend such matter, the Council must record the reasons for such recommendation;
- (b) where the majority of the members of the Council move to adopt a final resolution to recommend such matter, the Council must record reasons for such majority recommendation and allow each of the dissenting members to state his or her reasons for dissenting, which must be recorded;
- (c) where the majority of the members of the Council move to adopt a final resolution not to recommend such matter, the Council must record reasons for such majority recommendation and allow each of the dissenting members to state his or her reasons for dissenting, which must be recorded; or

(d) where all the members of the Council move to adopt a final resolution not to recommend such matter, the Council must record reasons for such final resolution.

(8) The Chairperson must submit the application to the Minister for consideration accompanied by—

- (a) the final resolution of the Council referred to in subregulation (6)(a),(b) and where applicable (c), together with the reasons referred to in subregulation (7);
- (b) the recommendations of the National Commissioner;
- (c) any written comments made by interested persons in terms of section 17(4)(a)(ii) of the Act;
- (d) any submissions made by the applicant regarding the risk category referred to in section 17(4)(b)(iv) of the Act;
- (e) any resolution of the Council regarding submissions made by the applicant in terms of section 17(5) of the Act;
- (f) any representations made by the applicant in terms of section 17(5); and
- (g) any other representations made by the applicant or any other person in terms of section 19(3)(b).

**6. Resolutions of the Critical Infrastructure Council in respect of proposed guidelines referred to in section 7(1)(b) of the Act**

(1) Where the National Commissioner submits draft standards, guidelines or protocols for approval by the Council, the Council may consult any person who, in the opinion of the Council, is sufficiently qualified and experienced to assist the Council.

(2) Any standard, guideline or protocol approved by the Council must be available on the website of the Civilian Secretariat for the Police Service within 14 days, unless publication thereof may prejudice national security.

**7. Assignment of functions by the Minister referred to in section 7(1)(c) of the Act**

(1) Where the Minister has assigned any function on the Council in terms of section 7(1)(c) of the Act, the Chairperson may, within 14 days, call a special meeting of the Council if he or she is of the opinion that the matter is urgent.

(2) In the event that the Council takes a resolution that the matter cannot be dealt with at such special meeting of the Council, the Council—

(a) may resolve to consult any person within 14 days who, in the opinion of the Council, is sufficiently qualified and experienced to assist the Council to perform such function; and

(b) must inform the Minister of such resolution within 14 days.

(3) The Chairperson must ensure that the Minister is kept abreast of progress in respect of any function assigned to it in terms of section 7(1)(c).

**8. Establishment of Critical Infrastructure Protection Regulator**

(1) The National Commissioner must establish a Critical Infrastructure Protection Regulator within the structures of the South African Police Service to ensure the maintenance of the administrative systems and procedures necessary for the implementation and enforcement of the Act as contemplated in section 9 of the Act.

(2) The National Commissioner must appoint a police official of a rank not less than that of level 14 as the Head of the Regulator.

(3) Where the National Commissioner delegates any function to a police official in the Regulator in terms of section 14(5) of the Act, such police official must perform his or her functions strictly in accordance with any—

(a) limitations and conditions contained in the delegation; and

(b) National Instruction that the National Commissioner may issue from time to time.

## 9. Functions of the Critical Infrastructure Protection Regulator

(1) The Regulator is responsible for support to the National Commissioner in the performance of functions assigned to him or her in terms of the Act, and more specifically to:

- (a) maintain the administrative systems and procedures necessary for the implementation and enforcement of the Act;
- (b) support the Council and the Minister in the administration of the Act; and
- (c) effect cooperation between the South African Police Service, other organs of state and the private sector insofar as it relates to the protection of critical infrastructure.

(2) Unless otherwise provided for in these regulations, the Regulator must develop uniform standards, guidelines and protocols for submission to the National Commissioner.

(3) The uniform standards, guidelines and protocols referred to in subregulation (2) must include—

- (a) the manner in which—
  - (i) infrastructure may be identified, categorised and declared critical infrastructure to supplement any regulations made in terms of the Act;
  - (ii) any physical security assessment of critical infrastructure and potential critical infrastructure is conducted and coordinated between officials of the Regulator and officials from any other government department, including the State Security Agency and the National Disaster Management Centre;
  - (iii) information which may be relevant to critical infrastructure protection is shared between the relevant stakeholders; or
  - (iv) any committee or forum referred to in the Act or these regulations must function and report; and
- (b) structures and mechanisms to facilitate coordination in, and management of, the protection of critical infrastructure such as the Joint Planning Committee.

(4) Subject to subregulation (5) and (6), the Regulator must develop uniform standards, guidelines and protocols referred to in subregulation (3)(a)(i) to (iii),

after consultation with government departments in the Justice, Crime Prevention and Security Cluster, other relevant government departments, the National Intelligence Co-ordinating Committee or any other person or body who has an interest in the protection of critical infrastructure.

(5) Where any uniform standard, guideline or protocol is of a purely internal administrative nature, the Regulator may dispense with the consultation process contemplated in subregulation (2).

(6) Where any uniform standard, guideline or protocol requires to be classified in accordance with the Minimum Information Security Standards, the Head of the Regulator may restrict the consultation with persons or officials in other departments with the relevant security clearance.

(7) The Regulator must specifically support the National Commissioner in the performance of the functions assigned to him or her in terms of section 9(3) of the Act and—

- (a) assist any person who wishes to apply for declaration of infrastructure as critical infrastructure as contemplated in section 17 of the Act, to complete an application for declaration in terms of that section and these regulations;
- (b) receive and process applications referred to in section 17 of the Act for declaration as critical infrastructure;
- (c) process applications referred to in section 18 of the Act;
- (d) conduct or facilitate physical security assessments referred to in section 9(3)(b) and 17(4)(b) of the Act;
- (e) submit a report on any application and accompanying documents to the National Commissioner for approval of the report and submission to the Council;
- (f) evaluate, monitor and review the application and operational effectiveness of directives, policy, guidelines or legislation related to the protection of critical infrastructure, to enable the National Commissioner to advise the Council accordingly;
- (g) ensure that all Joint Planning Committees are aware of directives, policy, guidelines or legislation related to the protection of critical infrastructure;

- (h) evaluate and review physical security assessments, resilience reports and any designation as critical infrastructure, to enable the National Commissioner to advise the Council accordingly;
  - (i) monitor and evaluate the standard of—
    - (i) security at critical infrastructures; and
    - (ii) training at training institutions, to address any identified inadequacies;
  - (j) implement mechanisms to assign responsibility within the South African Police Service relating to the—
    - (i) protection of critical infrastructure in a province, district or other geographical location;
    - (ii) allocation and deployment of resources of the South African Police Service to protect critical infrastructure; and
    - (iii) determination of reporting procedures regarding incidents or occurrences;
  - (k) consider any draft of a security policy or plan submitted to the National Commissioner;
  - (l) submit directives to the National Commissioner for consideration regarding the procedures to be followed at the meetings of any committee or forum where such procedures are not prescribed in terms of these regulations;
  - (m) keep a register of private security service providers eligible to provide a security service at critical infrastructures;
  - (n) compile and submit quarterly reports referred to in section 9(3)(h) to the National Commissioner for submission to the Council; and
  - (o) perform any related tasks as directed by the National Commissioner.
- (8) The reports referred to in subregulation (7)(j) must include particulars of the—
- (a) related activities performed by the South African Police Service during the preceding quarter in the furtherance of its functions, including all physical security assessments and inspections;
  - (b) number of applications for declaration of infrastructure as critical infrastructure received;

- (c) level and extent of Government department participation in the functioning of a committee or forum, including all Joint Planning Committees and liaison forums; and
- (d) level and extent of public-private sector cooperation in the functioning of a committee or forum, including all Joint Planning Committees and liaison forums.

#### **11. Manner of service of notice**

Unless specifically provided for in the Act or these regulations, any notice referred to in these regulations may be served by a police official delivering such notice to the person concerned by hand, mail, courier or electronic mail.

#### **12. Commencement**

These regulations shall be called the Interim Critical Infrastructure Protection Regulations, 2022 and shall come into operation on the date of publication thereof in the *Gazette*.