

**DRAFT REGULATIONS PRESENTED TO PARLIAMENT FOR SCRUTINY
AFTER CONSIDERATION OF PUBLIC COMMENTS RECEIVED UPON
PUBLICATION OF AN INVITATION IN THE GAZETTE FOR PUBLIC COMMENTS
ON THE DRAFT REGULATIONS**

SCHEDULE

1. Definitions

In these regulations, unless the context indicates otherwise any word or expression bears the meaning assigned to it in the Act, and—

- (a) **“applicant”** means a person in control of infrastructure who submits an application for declaration of that infrastructure as critical infrastructure in terms of section 17(1) of the Act;
- (b) **“application”** means an application contemplated in section 17 of the Act to have infrastructure declared as critical infrastructure by the Minister in terms of section 20 of the Act;
- (c) **“Council”** means the Critical Infrastructure Council established in section 4(1) of the Act;
- (d) **“Critical Infrastructure Protection Regulator”** means the South African Police Service Component prescribed in regulation 10, and **“Regulator”** has a corresponding meaning;
- (e) **“the Act”** means the Critical Infrastructure Protection Act, 2019 (Act No. 8 of 2019);

2. Establishment and functions of Critical Infrastructure Council

(1) The Critical Infrastructure Council is established in terms of section 4(1) of the Act and must advise the Minister in an independent and impartial manner in the exercise of his or her functions in terms of the Act.

(2) The Council must have regard to its primary functions as set out more fully in section 7(1) of the Act.

3. Ordinary meetings of Critical Infrastructure Council

(1) The Chairperson of the Critical Infrastructure 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.

(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) request referred to in section 17(5) of the Act to dispense with publication in terms of section 17(4)(a) of the Act;

(c) proposed policies, protocols or standards referred to in section 7(1)(b) of the Act; or

(d) assignment of functions by the Minister referred to in section 7(1)(c) of the Act,

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 (8) to (17).

(7) Seven members of the Council, which must include the chairperson or deputy chairperson, will constitute a quorum at any meeting of the Council as provided for in section 8(5) of the Act.

(8) 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.

(9) 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.

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

(11) 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.

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

(13) 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.

(14) When a majority of the members of the Council reaches agreement on a matter referred to in subregulation (13) 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.

(15) 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.

(16) The number of members voting for or against a motion, as well as the number of members abstaining from voting, 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.

(17) 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 for discussion to the meeting whose decision is final.

(18) The Council may, on an *ad hoc* basis, invite persons or entities who are not members but with a direct interest in a matter before the Council, to attend

meetings and allow them to take part in discussions on the matters in which such a person has an interest, provided that they are not allowed to vote.

(19) 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

(1) The Chairperson of the Council—

(a) must convene a special meeting of the Council in terms of regulation 5(6) where any matter referred to in regulation 5(6), 6(7) or 8(1) must be considered; or

(b) must convene a special meeting of the Council in terms of section 8(3) at the written request of the Minister;

(c) may convene a special meeting of the Council in terms of section 8(3) or 8(4) of the Act where a matter that is to be discussed is of such an urgent nature that it should not be delayed until the next 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, in writing, notify the members of the Council of the date, time, venue and purpose of such special meeting no less than 7 days, or within such reasonable period as the Chairperson may deem fit, prior to 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.

(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 at least 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) request for a departure from the provisions of section 17(4)(a) of the Act;
- (c) proposed policies, protocols or standards referred to in section 7(1)(b) of the Act; or
- (d) assignment of functions by the Minister referred to in section 7(1)(c) of the Act,

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

(8) The provisions of regulation 3(5) to 3(18) apply to special meetings with the changes required by the context.

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 it intends to—

- (a) recommend declaration of such infrastructure as critical infrastructure; and
- (b) recommend an appropriate risk category for the infrastructure in question.

(2) The Council must record the intended recommendation that it is considering to adopt regarding the 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 intended recommendation of 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 the intended recommendation 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; and
- (b) recommend the appropriate risk category for the infrastructure in question, and notify the applicant accordingly.

(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 recommendation based on 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) which must include the reasons recorded for any dissenting vote;

(b) any written comments made by interested persons in terms of section 17(4)(a)(ii) of the Act;

(c) the assessment of the National Commissioner in terms of section 17(4)(b) 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; and

(e) any other representations made by the applicant or any other person in terms of section 19(3)(b) of the Act.

6. Resolutions of the Critical Infrastructure Council to dispense with publication

(1) Where an applicant requests the Council for approval to depart from the procedure of publication of the notice referred to in section 17(4)(a) of the Act, the Council must consider the request to determine whether the applicant showed good cause as contemplated in section 17(5) of the Act and adopt a resolution whether or not it to approve such request.

(2) The Council must record the resolution adopted, subject to the following:

(a) where all the members of the Council move to approve that the procedure in section 17(4)(a) may be departed from, the Council must record the reasons for such resolution;

- (b) where the majority of the members of the Council move to approve that the procedure in section 17(4)(a) may be departed from, the Council must record reasons for such majority resolution 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 approve that the procedure in section 17(4)(a) may be departed from, the Council must record reasons for such intended majority resolution 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 approve that the procedure in section 17(4)(a) may be departed from, the Council must record reasons for such intended resolution.
- (3) Where the Council adopts a resolution in terms of subregulation (2)(a) or (2)(b) it must, within 14 days of the meeting of the Council—
- (a) direct the National Commissioner to depart from the provisions of section 17(4)(a); and
 - (b) notify the person in control accordingly.
- (4) Where the Council intends adopting a resolution in terms of subregulation (2)(c) or (2)(d), it must notify the applicant within 14 days of the meeting of the Council of its intention to deny the request.
- (5) An applicant may, upon receiving a notification referred to in subregulation (4), make representations to the Council regarding his or her request to depart from the procedure referred to in section 17(4)(a) of the Act.
- (6) 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).
- (7) 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 depart from the procedure of publication of the notice referred to in section 17(4)(a) of the Act.
- (8) 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.
- (9) Where the Council adopts a resolution in terms of subregulation (7), it must, within 14 days of the meeting of the Council —
- (a) direct the National Commissioner to either depart from or follow the provisions of section 17(4)(a); and
 - (b) notify the applicant accordingly.

7. Resolutions of the Critical Infrastructure Council in respect of policies, protocols and standards

(1) Where the National Commissioner submits draft uniform standards, guidelines or protocols in terms of section 9(2) of the Act for approval by the Council in terms of section 7(1)(b) of the Act, the Council may consult any person or entity who, in the opinion of the Council, is sufficiently qualified and experienced to assist the Council.

(2) Any guideline in respect of an uniform standard, guideline or protocol approved by the Council in terms of section 7(1)(b) of the Act must be available on the

website of the Civilian Secretariat for the Police Service within 14 days of the resolution, unless publication thereof may prejudice national security.

(3) Where the Council considers guidelines in respect of any policy affecting the functioning of the South African Police Service, the Civilian Secretariat for the Police Service must be consulted.

8. Assignment of functions by the Minister

(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 of receipt of the assignment, 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 of the resolution referred to in subregulation (1) who, in the opinion of the Council, is sufficiently qualified and experienced to assist the Council to perform such function;
- (b) must inform the Minister of such resolution within 14 days after adopting such resolution; and
- (c) report on such matter in the bi-annual report to the Minister contemplated in section 7(6) of the Act.

9. *Ad hoc* committees

(1) In order to function effectively and efficiently, the Council may, from time to time, adopt a resolution to designate suitably qualified and experienced members of the Council to form an *ad hoc* committee with a specific task to assist the Council in the performance of its functions.

(2) A resolution referred to in subregulation (1) must be in writing and clearly state—

- (a) the terms of reference and task of the *ad hoc* committee;
- (b) the name of the convener of the *ad hoc* committee;
- (c) the names of members designated to serve on the *ad hoc* committee; and

(d) the expected timeframe within which the *ad hoc* committee is expected to complete the task assigned to it.

(3) An *ad hoc* committee need not reflect the composition of the Council as contemplated in sections 4(2)(b) and 4(2)(c) of the Act.

(4) The object of an *ad hoc* committee is to research a specific matter or collate information thereon and advise the Council on such matter for consideration at a meeting of the Council.

(5) An *ad hoc* committee must consider all relevant facts and factors pertaining to the matter and may, for this purpose, collate information, research any matter referred to it or consider any research that had previously been done on the subject matter, engage with any person or entity, or take any other reasonable action in the performance of the task assigned to it.

(6) After finalising a task assigned to it, an *ad hoc* committee must compile a report on the matter for submission to the Council for consideration within the timeframe referred to in subregulation (1)(d).

(7) An *ad hoc* committee dissolves after completion of the task outlined in the terms of reference, unless the Council by resolution extends the timeframe referred to in subregulation (1)(d).

(8) The Council is not bound by the report of an *ad hoc* committee.

10. Standing committees

(1) In order to function effectively and efficiently, the Council may, from time to time, adopt a resolution to designate suitably qualified and experienced members of the Council to form a standing committee to assist the Council in the performance of its functions.

(2) A resolution referred to in subregulation (1) must be in writing and clearly state—

- (a) the terms of reference of the standing committee;
- (b) the name of the convener of the standing committee; and
- (c) the names of members designated to serve on the standing committee.

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

(4) The object of a standing committee is to research or investigate matters of an ongoing nature or to collate information on standing matters related to its terms of reference and advise the Council on such matters for consideration at meetings of the Council.

(5) A standing 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 or consider any research that had previously been done on the subject matter, engage with any person or entity, or take any other reasonable action in the performance of the task assigned to it.

(6) A standing committee must, at each meeting of the Council, submit a report on its activities since the preceding meeting to the Council for consideration.

(7) A standing committee dissolves by resolution of the Council.

11. Establishment of Critical Infrastructure Protection Regulator

(1) The National Commissioner must establish a Critical Infrastructure Protection Regulator as a Component 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(1)(a) of the Act.

(2) The National Commissioner must appoint a suitably qualified and experienced 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.

12. 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 National Commissioner 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.

(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 entity that 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 to persons or officials in other departments who has the relevant security clearance.

13. 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.

14. 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*.