**DECLARATION AS CRITICAL INFRASTRUCTUREAND DETERMINATION**

**OF CRITICAL INFRASTRUCTURE COMPLEX**

**Part 1**

**Application for declaration as critical infrastructure and critical infrastructure complex by person in control**

**16.** (1) A person in control of infrastructure may, in the prescribed manner and format, lodge with the National Commissioner an application to have such infrastructure declared as critical infrastructure in terms of this Chapter.

(2) An application for declaration of infrastructure as critical infrastructure must contain the following information—

*(a)* the sector in which the primary functions of such an infrastructure take place;

*(b)* the resources available to the person in control of the infrastructure to—

(i) safeguard such an infrastructure against destruction, disruption, failureor degradation;

(ii) repair or replace such infrastructure, including its equipment, materials or service; or

(iii) ensure that the infrastructure recovers from any destruction, disruption, failure or degradation;

*(c)* the effects or the risk of a destruction, disruption, failure or degradation of such an infrastructure on—

(i) the environment;

(ii) the health or safety of the public or any segment of the public;

(iii) the Republic’s ability to function, deliver basic public services or maintain law and order; and

(iv) any other infrastructure that may negatively affect the functions and functioning of the infrastructure in question;

*(d)* the size and location of any population at risk;

*(e)* historic incidents of—

(i) threats against the infrastructure; and

(ii) destruction, failure or degradation of such infrastructure;

*(f)* the level of risk or threats to which such an infrastructure is exposed or potentially exposed;

*(g)* special characteristics or attributes of such an infrastructure to deal with any threat contemplated in paragraph *(f)*;

*(h)* the extent to which the declaration as critical infrastructure will promote the interests of the public; and

*(i)* any other information which may, from time to time, be determined by the Minister by notice in the Gazette, after consultation with the Critical Infrastructure Council.

(3) In the event that a government department or an organ of state has functional control over the sector in which the activities of the infrastructure falls, the application must further contain—

*(a)* a submission by the head of the government department or head of an organ of state who has functional control over the sector in which the activities of the infrastructure falls to support the application; and

*(b)* particulars of any—

(i) person other than the applicant who has a right or interest in the infrastructure in question;

(ii) agreement with a person contemplated in paragraph (i) regarding the application for declaration as critical infrastructure;

(iii) person other than the applicant who will be responsible for the costs of securing the infrastructure in question;

(iv) agreement with a person contemplated in paragraph (iii) regarding the costs of securing the infrastructure in question; and

*(c)* any other relevant information which is, in the opinion of the applicant, necessary for the proper consideration of the application.

(4) Subject to subsection (5), the National Commissioner must—

*(a)* upon receipt of an application, publish a notice of the application in the Gazette—

(i) stating the name of the applicant and the address of the premises in respect of which the application is made; and

(ii) inviting interested persons to submit written comments in relation to the application;

*(b)* within 30 days of receipt of an application conduct a physical security assessment of the infrastructure in order to—

(i) verify the information in the application;

(ii) assess the risk category in which such infrastructure or parts thereof may be categorised;

(iii) confirm whether the physical security measures proposed by the person in control of the infrastructure comply with the prescribed measures and standards for the protection of the infrastructure;

(iv) provide the person in control of that infrastructure with an opportunity to make written submissions regarding the physical security assessment which is conducted in terms of this subsection; and

*(c)* within 60 days after the physical security assessment has been conducted or the submissions contemplated in paragraph *(b)*(iv) are received, whichever occurs last, submit to the Council for consideration—

(i) the written inspection report together with the application;

(ii) any comments contemplated in paragraph *(a)*(ii); and

(iii) any written submissions in terms of paragraph *(b)*(iv) or, where applicable, subsection (7).

(5) In the event that the applicant shows good cause why the procedure in subsection (4)*(a)* should not be followed, the National Commissioner must refer the request to the Council who may dispense with the publication as referred to in subsection 4*(a)* after considering the factors in subsection (6).

(6) For purposes of subsections (4) and (5), the applicant must show that a departure from the procedure in subsection (4)*(a)* is reasonable and justifiable in the circumstances, taking into account all relevant factors, including—

*(a)* the objects of declaration as critical infrastructure;

*(b)* the nature, purpose and likely effect of the declaration as critical infrastructure;

*(c)* the nature and the extent of the departure from subsection (4)*(a)*;

*(d)* the relation between the departure and its purpose;

*(e)* the importance of the purpose of the departure; and

*(f)* the need to promote an efficient administration and good governance.

(7) In the event that the Council decides that the process contemplated in subsection (4)*(a)*—

(a) must be followed, the Council must direct the National Commissioner to publish the notice contemplated in subsection (4)*(a)* with directions on the information that must be contained in the notice, whereafter the National Commissioner will deal with the application; or

(b) may be departed from, the Council must direct the National Commissioner to depart from the provisions of subsection (4)*(a)* and proceed to deal with the application.

(8) The National Commissioner may request the Head of a Government department which is a security service established under section 199 of the Constitution, to designate a suitably experienced member of that security service to assist with the physical security assessment contemplated in subsection (4)*(b)*, when required.

(9) If the infrastructure relevant to the application consists of multiple structures, services or facilities, the person in control of those infrastructures must apply for declaration in respect of all such infrastructure as critical infrastructure.

**Application for declaration as critical infrastructure and critical infrastructure complex by National Commissioner**

**17.** (1) Where the National Commissioner identifies for possible declaration as critical infrastructure—

*(a)* infrastructure under the control of or occupied by a local or provincial government department, he or she must advise the relevant head of the department in the province to lodge an application in terms of section 16; and

*(b)* government infrastructure, he or she must lodge an application in accordance with subsection (2).

(2) Where the National Commissioner makes an application for the declaration of government infrastructure as critical infrastructure, the application must, subject to subsection (3), be made in the prescribed form and manner and submitted to the Critical Infrastructure Council for consideration.

(3) Before the National Commissioner makes an application referred to in subsection (1)*(b)*, the National Commissioner must—

*(a)* notify the relevant head of a Government department who is the person in control of the infrastructure, in the prescribed form and manner, of the intention of the National Commissioner;

*(b)* afford the person referred to in paragraph *(a)* an opportunity to submit written representations within 60 days on any aspect relating to the intended application of the National Commissioner;

*(c)* consider the representations referred to in paragraph *(b)*; and

*(d)* within seven days of taking a decision on whether or not to proceed with the application, notify the person referred to in paragraph *(a)* in writing of such decision and his or her reasons.

(4) In the event that the National Commissioner decides to proceed with the application, he or she must ensure that the written representations referred to in subsection (3)*(b)* as well as his or her written reasons referred to in subsection (3)(*d*) forms part of the application that is submitted to the Council.

**Consideration of application for declaration as critical infrastructure by Critical Infrastructure Council and recommendation**

**18.** (1) Upon receiving an application for declaration of infrastructure as critical infrastucture, the Critical Infrastructure Council must consider—

*(a)* whether the potential impact of destruction, disruption, failure or degradation of such an infrastructure or the interruption of a service might affect the Republic’s ability to function, deliver basic public services or maintain law and order;

*(b)* the potential risk category of such an infrastructure, taking into account—

(i)the prescribed system of categorising infrastructure in a low-risk, medium-risk or high-risk category;

(ii)the probability of failure, disruption or destruction of the infrastructure in question or threat thereof; and

(iii)the impact and consequence of failure, disruption or destruction of infrastructure or threat thereof.

*(c)* the extent to which the declaration as critical infrastructure will promote the interests of the public; and

*(d)* any other factor which may, from time to time, be determined by the Minister by notice in the Gazette, after consultation with the Critical Infrastructure Council.

(2) The Critical Infrastructure Council must, after considering the application, the report from the National Commissioner and all other facts pertaining to the matter, make recommendations to the Minister regarding—

*(a)* whether or not to declare an infrastructure as critical infrastructure; and

*(b)* any risk categorisation, with reference to the prescribed guidelines, which must be assigned to the infrastructure.

(3) Before the Council makes a recommendation to the Minister to declare or not to declare the infrastructure as critical infrastructure, the Council must—

*(a)* notify the person in control of that critical infrastructure of such intended recommendation and the reasons for such recommendation; and

*(b)* afford the person in control of that infrastructure a period of no less than 30 days to make representations.

(4) The Council must consider any representations received in terms of subsection (3) before making a recommendation to the Minister on whether or not to declare the infrastructure as critical infrastructure.

(5) Subject to subsection (3), the Council must within seven days of its last meeting submit the application and its recommendations to the Minister for a decision within 30 days of receipt thereof.

**Powers of Minister to declare infrastructure as critical infrastructure**

**19.** (1) Subject to subsection (2), the Minister may, on recommendation of the Critical Infrastructure Council—

*(a)* declare infrastructure as critical infrastructure after considering—

(i) the application;

(ii) the recommendation of the Critical Infrastructure Council; and

(iii) any other information which the Minister deems reasonable and appropriate;

*(b)* categorise critical infrastructure or certain parts of such critical infrastructure that is declared in terms of paragraph *(a)* in either a low-risk, medium-risk or high-risk category, as may be prescribed; and

*(c)* impose such conditions as may be prescribed regarding any steps and measures the person in control of the critical infrastructure must implement to safeguard the critical infrastructure in question.

(2) In the event where any infrastructure partly consists of, incorporates or houses, any information and communications infrastructure as contemplated in any legislation on cybersecurity, the Minister must consult with the Cabinet member responsible for State Security before exercising any power contemplated in subsection (1).

(3) The Cabinet member responsible for State Security must—

*(a)* consider whether the information and communications infrastructure referred to in subsection (2) must be dealt with in terms of any legislation on cybersecurity; and

*(b)* inform the Minister, in writing, of his or her decision.

(4) Where the Cabinet member responsible for State Security decides that the information and communication infrastructure referred to in subsection (2) must not be dealt with in terms of any legislation on cybersecurity, the Minister must deal with the application in terms of this Act.

(5) The Minister must notify the Council, the National Commissioner and the person in control of that critical infrastructure of—

*(a)* the declaration of the infrastructure as a critical infrastructure;

*(b)* the risk category of such declaration;

*(c)* the conditions contemplated in subsection (4)(c);

*(d)* any implications of the Income Tax Act, 1962 (Act No. 58 of 1962); and

*(e)* the period within which the person in control of that critical infrastructure must take the steps contemplated in section 24(1).

(6) When infrastructure has been declared as critical infrastructure, the Minister may, in consultation with the person in control of the infrastructure, taking into account the probability of compromising the security of the critical infrastructure in question, determine that the publication of information regarding some security measures which must be implemented at such critical infrastructure, be restricted.

**Extension of time**

**20.** (1) Where the National Commissioner is unable to comply with the timeframe contemplated in section 16(4)*(c)*, the National Commissioner must, in writing, apply to the Council in the prescribed form and manner for an extension not exceeding 30 days or such other period as the Council may determine.

(2) Where the Council is unable to comply with the timeframes as contemplated in section 18(5), the Council must, in writing, request the Minister for an extension not exceeding 30 days or such other period as the Minister may determine.

(3) Where an extension of time is granted as contemplated in this section, the Council must inform the applicant referred to in section 16(1) in writing of such extension.