



Proposed draft amendment to the
Private Security Industry Regulations, 2002 in terms of the
Private Security Industry Regulation Act 56 of 2001

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Introduction

AfriForum NPC is a civil rights organisation that specifically focuses on constitutional rights, the rule of law and constitutional democracy. AfriForum currently has approximately 315 000 members nationwide.

AfriForum regularly assists and strengthens law enforcement and policing in various ways, with a focus on community safety. To this effect, the organisation established a total of 170 neighbourhood, smallholding and farm watches across the country, which work with and assist the South African Police Service (SAPS) in combating crime in communities.

AfriForum is deeply concerned at the alarming rate of crime within South Africa and specifically in rural areas. We firmly believe that any force multiplier in the battle against crime should be welcomed and not deterred.

AfriForum studied the proposed draft amendment to the Private Security Industry Regulations, 2002 and hereby provides its commentary on some aspects and sections, as it deems relevant.

Proposed amendment to draft regulations 13A(1)(j) and (k)

We contend that a mere investigation or enquiry into an alleged offence or violation does not warrant sufficient reason to halt the day-to-day activities and services of a security business pertaining to the issuing of firearms and ammunition to its security officers. The potential abuse of this regulation will have a draconic effect on the industry. Such an investigation or enquiry may continue *ad infinitum* without any perceived end date. Consequently, the relevant security business may lose capabilities and therefore clients, without a proper opportunity to state its case. This creates an unfortunate opportunity for the *audi alteram partem* rule to be corrupted and to have the security business sanctioned – based on an unproven allegation or a complaint, and not because of a guilty verdict.

Proposed amendment to draft regulations 13A(1)(q) and (u)

Crime is a phenomenon that is most effectively exercised by opportunists. Criminals will not be perturbed by the fact that they are envisaging committing a crime in a so-called public place. The fact that this draft considers disarming and/or enforcing additional red tape onto security officers – who are attempting to render an effective security service in these places – will encourage criminals to now target the same places that this draft supposedly aims to protect. Clients of security businesses are not limited to a certain sector or occupation. In South-Africa, crime is running rampant, and the SAPS is out of its crime fighting depth, due to various factors not

relevant for this commentary. On the contrary, the private security industry serves as a last, dependable line of defence. The situation is so dire – even at South-Africa’s correctional service facilities – that private security companies are instead contracted to provide security at these facilities. Promulgating these draft Regulations will therefore only be in the interest of criminals.

Proposed amendment to draft regulations 13A(2)–(6)

The process to apply for a firearm license in South-Africa remains a contentious issue at best. The application process is characterised by several obstacles and challenges, which are once again not relevant for the purposes of this commentary. It is an administrative-laden, strenuous and time-consuming process for security companies to successfully apply for firearm licenses. The draft regulations will in fact further burden an already strained process as a result of additional administrative requirements. It is once again the security businesses – which attempt to adhere to the prescribed legislation – that will suffer most. Additional red tape is simply not the solution to what these regulations aim to achieve.

Proposed amendment to draft regulations 13A(8)(f)–(h)

We contend that the additional yearly assessment requirements are overcomplicated and unnecessarily burdensome. Although already an expensive exercise, the existing evaluations are, in our opinion, sufficiently adequate to monitor the competency and state of mind of security officers who are issued with firearms. The additional requirements will place an additional, heavy financial toll on security businesses. These regulations are again creating red tape that is detrimental only to security businesses that are already doing their utmost to adhere and comply with the relevant legislation pertaining to the sector.

Proposed amendment to draft regulations 13A(10)–(13)

The limitations that are proposed on the utilisation of licensed firearms in certain classes or categories of services are unfathomable. The security businesses are experts in their field and are knowledgeable of the immediate area and the community that they serve, as well as the criminal. Therefore, they should surely be enabled to decide how to render the most effective service, all while making sure that their security officers are properly armed for their own safety, when and where these officers are protecting their clients against relentless, merciless and opportunistic criminals. The draft regulations favour criminals, as these criminals will now simply outgun security officers in the mentioned sectors, because the security businesses will not be allowed to use the most effective firearms unless severe requirements are met. This is nonsensical.

Proposed amendment to draft regulations 13A(16)–(19)

If the financial burden that is already brought about by stringent compliance prerequisites is considered, these proposed regulations will be detrimental to the sector. Again, it is the complying security businesses that will bear the brunt of such micromanaging and unnecessarily invasive requirements. The Private Security Industry Regulatory Authority (PSiRA) is in many instances already unable to properly investigate and sanction perpetrators in the sector. Attention should rather be diverted to this mentioned conundrum instead of indiscriminately punishing the whole sector.

Proposed amendments to draft regulations 13B(17)–(19)

South-Africa is a country that is plagued by civil unrest and public violence. The SAPS's Public Order Police Unit (POPS) is unable to meet all these challenges effectively and is, in most cases, ill-equipped to conform to their constitutional mandate in this regard. Consequently, the community relies heavily on its local private security companies to protect vulnerable institutions like schools and old age homes, as well as critical infrastructure and key point infrastructure, not to mention the businesses and other assets of members of the community where the SAPS is simply unable to assist because of a lack of resources. To properly disperse violent crowds and protect the community in times of civil unrest, non-lethal weaponry is non-negotiable. Such weaponry not only serves as an effective deterrent, but it also prevents unnecessary loss of life. It assists in a situation where a community and its private security and other community structures are overrun, and a position is created where private security and civilians have no other choice but to make use of private defence to safeguard their lives.

Harming innocent civilians should obviously be avoided at all times, but the moment civilians are maliciously endeavouring to intrude on the rights of other innocent civilians, these innocent civilians must be protected and must be able to acquire effective services to do so. Effective services, without unnecessary bloodshed, require weapons and other force-multiplying equipment that are now deemed prohibited in terms of these regulations.

The regulations' requirements in this regard to make use of these so-called "prohibited weapons" are unpractical. Many of these unrests take place without any early warning and the security businesses must be able to act as stated above. It would simply be impossible to adhere to the proposed requirements on short notice.

Proposed amendments to draft regulations 13C(4)(d) and (f)

In any operation or business where humans are involved, mistakes are made, especially with regards to administrative tasks. These mistakes are in many instances unintentional, as it is human to err. However, intentionally false, incorrect or misleading conduct and gross negligence must obviously be punished, but unintentional negligence does not deserve the harsh sanctions that are recommended in these regulations.

Conclusion

The above proposed regulations, in their current forms, are pulsing a spirit of indiscriminate punishment, over-regulation and micromanagement. The private security industry plays an indispensable role in the ongoing fight against crime. To discourage the entire sector with draconic regulations and legislation will have the opposite effect that these regulations claim to affect. It is a capitalising instrument for criminals and an unreasonable heavy burden for legitimate security businesses.

AfriForum respectfully hopes that its input will be considered and that the current text of the proposed regulations should not be accepted without amendment.