

Changes to the Norms & Standards for School Infrastructure

25 July 2022



PURPOSE

To present the amendments to the Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure as published in Gazette No 46443 of 10 June 2022

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1. BACKGROUND

The Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure were promulgated in 2013 (Regulation Gazette No. 10067 of 29 November 2013) promulgated in terms of the South African Schools Act, 1996 (Act No. 84 of 1996).

**South African
Schools Act
(No. 84 of 1996),**

**As amended by
BELA Act, 2011**

Section 5A(1)(a)

**Regulations Relating to
Min Uniform Norms &
Stds for Public School
Infrastructure**

**(No. R.920 of
29 Nov 2013)**

2. OBJECTIVES OF THE REGULATIONS (GOVERNMENT GAZETTE NO. 37081 OF 29 NOV 2013)

The objectives of the regulations as gazetted are:

- a) To provide minimum uniform norms and standards for public school infrastructure.
- b) To ensure that there is compliance with the minimum uniform norms and standards in the design and construction of new schools and additions, alterations and improvements of schools which exist when these regulations are published; and
- c) To provide the timeframes within which school infrastructure backlogs must be eradicated



3. REVIEW OF THE REGULATIONS

- Section 19 (1) of the Regulations stipulates that : “The Department of Basic Education **must periodically review** the Norms and standards contained in these regulations in order to ensure that those norms and standards remain current and serve the needs of the teaching and learning process”,
- Further, in the **court judgement** in the matter between Equal Education and the Minister of Basic Education and others; heard at the High Court of South Africa; Eastern Cape Division; Bisho; (Case No 276/2016), the court ordered that:

COURT JUDGEMENT: Equal Education and the Minister of Basic Education and others: Case No 276/2016

- **Sub-Regulation 4(5)(a)** “ The implementation of the norms and standards contained in these regulations is, where applicable, subject to the resources and cooperation of other government agencies and entities responsible for infrastructure in general in the making available of such infrastructure **as unlawful and invalid**;
- **Sub-Regulation 4(3)(a) read with regulation 4(1)(b)(i) of the Regulations:**
- (I) is **inconsistent with the Constitution and invalid** insofar as it omits to deal with schools which are built partly from mud, asbestos, metal and wood, must within a period of three years from the date of publication of the Regulations, be replaced by structures which accord with the Regulations, the National Building Regulations, SANS 10-400 and Occupational Health and Safety Act 85 of 1993 (“OHSA”); and
- (II) the word “**entirely**” whenever it appears in regulation 4(3)(a) is struck out alternatively, the phrase “**Schools built entirely**” is struck out wherever it appears in regulation 4(3)(a), and is replaced with the words “**classrooms built entirely or substantially**”;



COURT JUDGEMENT: Equal Education and the Minister of Basic Education and others: Case No 276/2016

- **Sub-Regulation 4(3)(b) read with regulation 4(1)(b)(i)** of the Regulations is to be read as requiring that all schools that do not have access to any form of power supply, water supply or sanitation, must within a period of three years from the date of publication of Regulations, comply with the norms and standards described in regulations 10, 11 and 12 of the Regulations;
- **Sub-Regulation 4(2)(b)** of the Regulations is **inconsistent with the Constitution and invalid** insofar as new schools and additions, alterations and improvements which are the subject of the MTEF plans are not subject to the norms and standards set out in the Regulations; and
- **Sub-Regulation 4(2)(b)** of the Regulations is to be read as requiring that all current plans in relation to the schools and projects contemplated in paragraph (a) must, as far as reasonably practicable, be implemented in a manner which is consistent with the Regulations, and that all future planning and prioritisation in respect of these schools must be consistent with the Regulations;
- **Sub-Regulations 4(6)(a) and 4(7)** are **unconstitutional and invalid** to the extent that they do not provide for the plans and reports to be made available to the public;
- The Minister is to amend the Regulations to provide that the plans and reports submitted in terms of regulations 4(6)(a) and 4(7) of the Regulations must be made publicly available within a stipulated period of their having been submitted to the Minister, which period must be reasonable;



4. REVIEW PROCESS

- a) A HEDCOM Sub Committee on Infrastructure formed a task team with Legal Services to amend the norms as per Section 19 (1) as well as the order of the court.
- b) A project plan was developed to guide the task team;
- c) The amendments were circulated for comment and input;
- d) Progress was presented to HEDCOM Sub-Committee meetings;

5. AMENDMENT OF REGULATION 4

The following sub-regulations to Regulation 4 of the Regulations are amended as follows:

- i. all schools and classrooms built entirely or substantially from mud as well as those schools built entirely or substantially from materials such as asbestos, metal and wood must be replaced with structures which comply to the National Building regulations: SANS 10-400 and Occupational Health and Safety Act 85 of 1993;
- ii. all those schools that do not have access to any form of power and water supply or sanitation to comply with the norms and standards prescribed in regulations 10,11 and 12 of the regulations;

AMENDMENTS (Priorities)

- iii. all those schools that do not have sufficient classrooms to accommodate the learners enrolled in the schools;
- iv. all those schools that do not have adequate perimeter fencing to comply with the norms and standards described in regulations 17 of the regulations;
- v. all schools that do not have other minimum education areas for an enabling school environment;”

AMENDMENTS

(2) Sub-Regulation (4) (1) (b) (i) ; (ii) ; (iii); (iv) is amended by the following paragraph:

“All the norms and standards contained in these regulations must be planned, prioritised and phased in in line with the National Development Plan”;

(3) Sub-regulation (4)(5) (a) (b) is amended with the following paragraph,

“ The Department of Basic Education must, facilitate and co-ordinate the responsibilities of the government agencies and entities who have a role in the provision of school infrastructure and related services”;

(4) Sub-regulation (4) (6) and (4) (7) with the following sub-regulation:

“ Each Provincial Department of Education, must annually on a date and in the manner determined by the Minister, provide the Minister with detailed report on progress and plans on the implementation of the norms. These progress reports and plans shall be published on the DBE website and websites of the nine provincial departments for access by the public”;

AMENDMENTS

(5) Amend Regulation (18) (15) as follows:

(15) Where the use of alternative or innovative building technologies are to be considered for the implementation of the norms and standards contained in these regulations, certification of Agrément South Africa or alternatively, all such must be signed off by a competent person, as per the National Building Regulations

AMENDMENTS

Commencement

This regulation are called Amendments to the Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure and come into operation on the date of publication by the Minister in the Government Gazette.

Comments received

- Received a letter dated 29 June 2022 from a collective of seven public interest organisations consisting of :Equal Education Law Centre (“EELC”), Equal Education (“EE”), Legal Resource Centre (“LRC”), SECTION 27, Lawyers for Human Rights (“LHR”), Centre for Child Law (“CCL”) and Children's Institute (“CI”). In the letter they request that:
- The draft amended Norms be published on the DBE’s social media platforms.
- That the time period for public comments be extended to 31 July 2022. (request also from SADTU, FEDSAS and NAPTOSA)
- That the wording of the draft amended Norms be clarified in order to ensure certainty around what provisions are being amended.
- That the draft amendments be published and made available in other languages.

7. PROJECT PLAN

Date	Stakeholders	Progress
April 2021-September 2021	Internal DBE and PED's; HEDCOM Sub-Committees and Branches	Done
Oct 2021	Senior Management	Done
October 2021	National Treasury	Done
November 2021	Broad Management	Done
November 2021	HEDCOM	Done
03 March 2022	CEM	Done
	Consultation with stakeholders	Ongoing
March 2022	Socio-economic Impact Assessment System	Done
10 June 2022	Publication for public comments	Done
10 July 2022 Revised : 31 July 2022	Closing date for public comments	
18 July – 19 August 2022 Revised: 08 August -09 September 2022	Consolidation of the regulation with comments received	
29 August – 30 September 2022 Revised: 19 September – 20 October 2022	Consultations with stakeholders	
September - December 2022 Revised: November 2022 – February 2023	Report back to HEDCOM and CEM	
March 2023	Final publication of revised regulations by the Minister	

Request for extension to 31 July 2022



8. RECOMMENDATION

Committee to note the proposed amendments and the response of the public thus far to amendments to the Regulations Relating to Minimum Uniform Norms and Standards for Public School infrastructure as published in Gazette No 46443 of 10 June 2022.

Every child is a National Asset

Thank you!

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