

GOVERNMENT NOTICE NO. 406 Published on 10-8-2018

THE RAILWAYS (SAFETY ASSESSORS AND AUDITORS) REGULATIONS 2018

ARRANGEMENT OF REGULATIONS

Regulation Title

PART I
PRELIMINARY PROVISION

1. Citation.
2. Interpretation.

PART II
RAILWAY ASSESSORS AND AUDITORS

3. Appointment of assessors and auditors.
4. Minimum qualifications of assessor and auditor.
5. Functions of assessor.
6. Powers of assessor and auditor.
7. Investigations and inquiry.
8. Improvement notices.
9. Prohibition notice.
10. Discontinue use of rolling stock.
11. Offences and penalties.
12. Compound of offences.

GOVERNMENT NOTICE NO. 406 Published on 10-8-2018

THE RAILWAYS ACT
[NO. 10 OF 2017]

—————
REGULATIONS

—————
(Made under section 95)
—————

THE RAILWAYS (SAFETY ASSESSORS AND AUDITORS) REGULATIONS 2018

PART I
PRELIMINARY PROVISIONS

Citation	1. These Regulations may be cited as the Railways (Safety Assessors and Auditors) Regulations, 2018.
Interpretation	2.-(1) In these Regulations, unless the context otherwise requires:
Act. No. 10 of 2017	“Act” means the Railways Act; “assessor” means a person or body appointed by the Regulator to undertake tasks prescribed under regulation 5; “auditor” means a person appointed by the Regulator to verify the specific tasks performed by the assessor; “Corporation” means Tanzania Railways Corporation established under section 4 of the Act; “Minister” means the Minister responsible for railways; “railway property” means railway vehicles and infrastructure; “rail transport services” means services for the purposes of providing passengers, freight or other transport services by rail; “rail infrastructure” means the facilities that are used to operate a rail and includes railway track, associated track structures and works (such as cuttings, tunnels, bridges, stations, platforms, excavations, land fill, track support, earthworks and drainage works), over track structures, under-track structures, service roads,

signaling systems, rolling stock, control system, communications systems notices and signs, electrical power supply systems and associated buildings, workshops, depots, yard, plants, machinery and equipment, but does not include rolling stock or wagon ferries;

“prohibition notice” means a notice issued under regulation 9 that prohibits the Corporation from carrying out a specific activity;

“improvement notice” means a notice issued by the assessor under regulation 8 that directs the Corporation to conduct an activity in a proper manner;

“railway occurrence” means an accident or incident that is reportable under Railways (Accident, Incident Reporting and Investigation) Regulations, 2018.

PART II

RAILWAY ASSESSORS AND AUDITORS

Appointment of assessors and auditors

3.-(1) The Regulator may appoint a qualified officer as it deems appropriate to be an assessor or auditor of railway safety for the purposes of these Regulations.

(2) A person appointed under sub-regulation (1) shall, on his appointment, be furnished with a warrant of his appointment and when exercising any functions and powers conferred on an assessor or auditor by these Regulations shall, upon request by any person affected by his acts, show the warrant to that person.

Minimum qualification of assessor and auditor

4. A person to be appointed as an assessor or auditor under these Regulations shall have the following minimum requirements-

- (a) relevant expertise in railway operations;
- (b) necessary practical experience and the ability to provide an assessment report;
- (c) competence and understanding of internal rules of the Corporation;
- (d) knowledge of railway related standards;
- (e) knowledge of safety management system of the Corporation;
- (f) knowledge on the railways operation system and technology.

Functions of assessors

5.-(1) An assessor shall perform the following functions-

- (a) verify safety standards for railway services and operations;
- (b) monitor competence of safety critical workers of the Corporation;
- (c) provide technical guidance to railway safety;
- (d) monitor compliance of safety plan;
- (e) assess refresher training of safety critical workers;
- (f) approve new rail infrastructure, safety system and rolling stock;
- (g) administer implementation of safety management system of the Corporation;
- (h) monitor and review of safety performance of the Corporation;
- (i) conduct accident and incidents investigation;
- (j) assess infrastructure, equipment and operations of the Corporation;
- (k) review and approve safety plan of the Corporation;
- (l) monitor environmental preservation; and
- (m) assess medical fitness records.

(2) The Regulator shall appoint an auditor who shall verify the specific tasks performed by the assessor.

Powers of assessor and auditor

6.-(1) For the purpose of the exercise of functions of the Regulator under these Regulation, an assessor or auditor may-

- (a) enter, inspect, examine and search at all times, any place, premises or train which he has reasonable cause to believe is railway property;
- (b) take sample of any railway property, measurement, photograph, data or recording which he considers necessary for the purpose of performing his function under the Act and these Regulations;
- (c) summon any person whom he has reasonable cause to believe that has relevant information for the purpose of these Regulations.

Investigations and inquiry

7.-(1) An assessor may investigate or conduct an inquiry of the circumstances of any occurrence which could have caused death, injury or train accident and may determine whether it is necessary to hold a formal investigation.

(2) Investigations and inquiries conducted under this regulation shall comply with procedures prescribed under the Railways (Accidents, Incidents Reporting and Investigation) Regulations, 2018.

(3) The assessor shall, upon completion of the investigation or inquiry under this regulation, submit to the Regulator a written statement or report, together with the findings for further actions.

Improvement notice

8.-(1) Notwithstanding any other provision to the contrary, an assessor may serve an improvement notice to the Corporation in a manner prescribed in Form No. 1 of the Schedule where the Corporation contravenes the provisions of safety or standards regulations.

(2) The improvement notice under this regulation may require the Corporation within the period specified in the notice to undertake remedial rail safety work or to do any other thing to remedy the contravention.

(3) An improvement notice may include directions on the measures to be taken to minimize or eliminate the risk, activities or matters to which the notice relates.

Prohibition notice

9.-(1) Where an assessor believes on reasonable grounds that an activity-

- (a) is occurring in relation to railway operations or railway premises that involves an immediate risk to safety;
- (b) may occur in relation to railway operations or railway premises and if it occurs, will involve an immediate risk to safety; or
- (c) may occur at, on or in the immediate vicinity of rail infrastructure or rolling stock and, if it occurs, it will involve an immediate risk to safety,

he may serve to the Corporation, a notice in a manner prescribed in Form No. 2 of the Schedule prohibiting the carrying on of the activity until the Corporation has certified in writing matters that gave rise to the risk have been

remedied.

(2) The notice under this regulation shall state the activity which an assessor believes involves risk and matters which give rise to the risk.

(3) Prohibition notice served by the assessor may be withdrawn, varied, or revoked by another notice.

(4) Notice of amendment, variations and revocation of a prohibition notice shall not necessarily state the reasons for the amendment.

Discontinue use of rolling stock

10.-(1) The Regulator shall upon inspection of the rolling stock used for the carriage of passengers or goods, is of the opinion that the continuing use of the inspected rolling stock may endanger the safety of the passengers or goods carried by rolling stock, state that opinion, together with reasons to the Minister.

(2) The Minister may, upon receipt of the opinion and reasons of the Regulator in accordance with sub-section (1), direct that the use of rolling stock be discontinued.

(3) Any directives given by the Minister under sub-regulation (2), shall state the grounds on which such a directive is based.

Offences and penalties

11. A person who-

- (a) fails to comply with prohibition or improvement notice or any directive issued under these Regulations;
- (b) furnishes to the assessor or auditor record, statement, declaration, information or explanation containing any particulars which to his knowledge are false or incorrect;
- (c) fails to produce or surrender any documents upon request under these Regulations;
- (d) hinders or obstructs an assessor or auditor in the performance of his duties under these regulations;
- (e) removes, alters or interferes with anything seized or removed by the assessor or auditor; or
- (f) fails to comply with any conditions under these Regulations;

commits an offence and shall, on conviction be liable to a fine of not less than five million shillings and not exceeding ten million shillings or to imprisonment for a term of not less than

two years and not exceeding five years or to both.

Compound
offences

of

12.-(1) Notwithstanding the provisions of these Regulations relating to penalties, where a person admits in writing that he has committed an offence under these Regulations, the Director General or any other person authorised by him in writing may, at any time prior to the commencement of the proceedings by a court of competent jurisdiction compound such offence and order such person to pay sums of money, not exceeding one half of the amount of the fine to which such person would otherwise have been liable to pay if he had been convicted of such offence.

(2) Where an offence is compounded in accordance with sub regulation (1) and proceedings are brought against the offender for the same offence, it shall be a good defence for the offender to prove to the satisfaction of the court that the offence with which the offender is charged has been compounded under sub regulation (1).

(3) Where the person fails to comply with the compounding order issued under this regulation within the prescribed period, the Corporation may-

- (a) in addition to the sum ordered, require the person to pay an interest at the rate prescribed in the regulations; and
- (b) enforce the compounding order in the same manner as a decree of a court for the payment of the amount stated in the order.

SCHEDULE

THE RAILWAYS ACT
(Act No 10 of 2017)

IMPROVEMENT NOTICE

(Made under Regulation 8)

To:

.....

I hereby give you a notice pursuant to the Railways Act No. 10 of 2017, that on expiry of days from the date hereof, I intend to(state measures that are intended to be taken to minimize the risk) unless, before the expiration of such period, cause is shown to my satisfaction that you have undertaken remedial rail safety work or you have done any other thing to remedy the contravention.

The areas that needs improvements are:

- (1)
- (2)
- (3)
- (4)
- (5)

Dated at This day of 20.....

Name of assessor.....

Signature.....

Date

PROHIBITION NOTICE

THE RAILWAYS ACT
(Act No 10 of 2017)

—————
(Made under Regulation 9)
—————

To:

pursuant to the Railways Act, No. 10 of 2017, you are hereby notified that, with effect from the day of.....,..... you are prohibited from undertaking the activity of..... until the Corporation has certified in writing that matters which gave rise to the risk has been remedied.

The grounds for prohibition are:

- (1)
- (2)
- (3)
- (4)
- (5)

Dated at this..... day of 20.....

Name of assessor.....
Signature.....
Date

Dodoma, ISACK A. KAMWELWE
30 July, 2018 *Minister for Works, Transport and Communication*