



ELECTRIC FENCING LEGISLATION

There is still a lot of hype, confusion and misinformation around the “new” Electric Fencing Legislation and the implementation thereof.

The first thing to remember is that Electric Fencing Legislation is nothing new, having been first introduced on the 12th of August 1988 as per Government Gazette No. R.1593 to which ALL electric fences had to be in compliance with, including subsequent amendments, as published from time to time.

The facts are the following:

1. Due to continued non-compliance Government is now enforcing the Legislation.
2. **As per Government Gazette No. 34154, dated the 25th March 2011, ALL electric fence installations, new as well as existing, now require an EFC (Electric Fence System Certificate of Compliance).**
3. **As per said Gazette, as from the 1st of July 2011 all new / repaired* / re-installed / restrung / extended and or upgraded electric fences must be in full compliance regarding installation specifications, including materials used, as per SANS (South African National Standard) 10222-3:2011 Edition 4, Electrical Security Installations, Part 3., including subsequent amendments.** (The Gazette is the Act and the SANS document the specifications / standards. They go hand in hand.)

*** Repaired. Any repairs other than;**

- 3.1. Repairing a broken wire;
- 3.2. Replacing a broken insulator;
- 3.3. Repairing the energizer;
- 3.4. Replacing a lightning arrestor.

That is it. Any other work falls under the ‘new’ legislation and requires Certification.

4. **The implementation date for the compulsory issuing and obtaining of said EFCs was the 1st of October 2012. Due to submissions from the industry, this was postponed to the 1st of December 2012 to allow installation companies sufficient time to get registered.**
5. This certificate must be produced to an Inspector on request.

When should an EFC be issued / obtained?

1. In terms of Legislation an EFC MUST be issued and or obtained under the following circumstances:

1.1. ANY new / repaired / re-installed / restrung / extended and or upgraded electric fencing installations as from the 1st December 2012;

1.1.1. Remember, **ALL** new / repaired / re-installed / restrung / extended and or upgraded electric fences as from the 1st of July 2011 must be in full compliance with the ~~New~~ Legislation.

1.2. ALL properties with electric fencing sold since the 1st of December 2012 are subject to an EFC, irrespective of when the electric fence was installed;

1.2.1. There is a lot of confusion and misinformation around this. The legislation is very clear on this issue; you need an EFC, irrespective when the fence was installed! Do not get caught on this one. Many a client has cried long tears after litigation compelling same after the fact.

Gido has reported extensively on this issue on our Facebook site, quoting numerous case studies. To read about a recent incident and the legal repercussions, please click [here](#), posting dated 17th March 2013.

2. A clause that has had the severest impact on property owners that everybody tends to overlook, or chooses to ignore, is clause 12 (1) of the Legislation.

~~2~~ (1) No person shall design, manufacture, sell, install or use an electric fence or electric fence energizer other than in accordance with the relevant health and safety standard incorporated into these Regulations under section 44 of the Act: Provided that electric fences or electric fence energizers installed in accordance with the Electrical Machinery Regulations, 1988, prior to the coming into force of these Regulations shall be deemed to comply with this regulation.+

The critical sentence being: “Provided that electric fences or electric fence energizers installed in accordance with the Electrical Machinery Regulations, 1988, prior to the coming into force of these Regulations shall be deemed to comply with this regulation.+”

2.1. Quite simply what this means is that with electric fencing Legislation being in existence since 1988, the assumption is that your fence was installed by a reputable company **in compliance with legislation in force from time to time**, and is therefore compliant.

The impact of “deemed” compliance:

1. This “deemed compliance” has already cost some unknowing property owners dearly. There has been an increase in the number of repudiated / rejected insurance claims in recent months due to non-certified and incorrectly certified fences. Claims repudiated / rejected fall into three main categories:
 - 1.1. **Homeowners insurance (Physical structure).** Should the electric fence itself get damaged either through a car going through or into your wall, a tree falling on your fence, a rain / hail storm, or the energizer getting damaged by power surge / lightning, etc. and your fence is NOT certified, your claim MAY not be entertained. **We get calls on a daily basis from clients whose claims have been repudiated.** To read more about this, please click [here](#).
 - 1.2. **Householders insurance (Contents).** If you listed your electric fence as a security measure, it has to be compliant and certified, irrespective of when installed. Again, if your fence is NOT certified, your claim MAY not be entertained. We highly recommend checking this with your insurer. The last thing you want is your insurance company repudiating any burglary / robbery claims.
 - 1.3. **Public liability.** This is crucial in terms of your legal obligations and resultant public liability, specifically in view of current legal action involving some property owners. To read more about it, please click [here](#).

This one is a lot trickier, as you will be held accountable and liable should somebody get shocked and / or hurt and you are unable to provide current and valid Certification.

Remember, this is twofold: criminal charges and civil action. Again, check with your insurer on their policy terms and conditions regarding your public liability. Will they cover you in the event of a civil lawsuit? The last thing you want is criminal charges brought against you and having to pay out hundreds of thousands due to a civil claim should somebody get shocked and / or hurt due to not being certified.

(Civil cases have blossomed in recent months with “staff / visitors, etc.” instituting civil action, claiming that they had been shocked and / or hurt).

Legal Implications:

1. **Fences are going being inspected and evaluated by the DOL (Department of Labour) Inspectorate to ensure compliance with this legislation.**
 - 1.1. Some Gido clients have already had their fences inspected by Inspectors to ensure Compliance.
 - 1.2. Should a fence be found to be non-compliant, the property owner will be forced to remove the fence or ensure that an accredited installer upgrades it to meet compliance requirements within a specified time.
2. **And yes, if it is not legal you can also be charged criminally. To read about a 69 year old woman from Montagu in the Western Cape that got a thirty day prison sentence because her fence was non-compliant and her subsequent appeal, click [here](#).**
3. **To read about current legal action involving a town house complex, Royal Ascot Villas, click [here](#).** This is a specifically interesting matter as the father is now suing the Trustees in their personal capacities. **Legal opinion is that this father is going to succeed and that the Trustees are going to end up having to pay the civil claim out of their own pockets.**
4. **Bear in mind, irrespective of who last worked on the fence, in terms of South African Law and more specifically the OHS (Occupational Health and Safety Amendment Act, No. 181 Of 1993), residential property owners and or the duly elected and authorised representatives, i.e. Trustees / Home Owners Association Directors / Safety Officers, as the case may be, remain legally liable and accountable for their relevant electric fences in their personal capacities, jointly and or severally as the case may be, in terms of public liability.**
5. **It is crucial that you know and understand this, specifically in view of current legal action involving residential property owners / Bodies Corporate / Home Owner Associations.**

Who can issue an EFC?

1. Only a registered Electric Fencing Installer, registered with the Department of Labour, can issue said certification. Note: Electricians CANNOT issue this certification by default, unless registered with the Department of Labour in terms of this Legislation.
2. Thus, anybody can work on the installation of an electric fence, but only a registered Electric Fencing Installer can issue an EFC e.g. Gido. Our installation teams can install, and work on fences as Gido has certified and registered people in management to issue said certification.

EFC Format:

1. **Amendments to the Compliance Certification format are in the final stages of being finalised and will be contained in the latest SANS edition.**
2. **What it is NOT, is a one or two page document. Typically, it is anywhere from 10 – 20 pages, compiled as follow (Residential Premises);**
 - 1.1. The Compliance Certificate itself;
 - 1.2. Either addendum A or B or both, regarding installation entity, material specifications, etc.;
 - 1.3. A copy of the energizer Certification documentation;
 - 1.4. A full and detailed drawing in respect of the installation, noting distances, location, bracket positioning, type of fencing / walling attached to, including full description thereof, taking note of the type and quantity of each and every bracket, etc.
 - 1.5. Legend document covering above detailed drawing;
 - 1.6. **In terms of Legislation, the property owner and or new owners' obligations MUST BE explained to him / her in full.**

(In view of recent lawsuits and civil action claims in the industry, Gido's EFC documentation includes a six page document covering basic electric fence legalities, the property owners' obligations, compulsory monthly maintenance, etc, etc.)

Who receives the EFC?

1. In the event of a new installation / repair / upgrade the owner / person requesting the work, for which he has to sign;
 - 1.1. In the event of a property sale, as per Legislation, the original must be handed to the purchaser on transfer.
 - 1.1.1. In terms of said Legislation, the new property owners legal obligations and accountability must be explained to him / her at the same time.

Validity of an EFC.

1. The validity of an EFC is strictly for two years, where after it has to be renewed.
 - 1.1. It is important to note, should any supplementary work be done after the initial certification, e.g. major repairs / re-installation / restringing / extensions and or upgrades, supplementary certification further to the original certification is required and must be issued in every instance.
 - 1.2. During the two year validity period, the EFC is transferable, subject to;
 - 1.2.1. The original being handed to the purchaser on transfer.
 - 1.2.2. In terms of said Legislation, the new property owners legal obligations and accountability must be explained to him / her at the same time.

When is an EFC not required?

1. The Legislation is quite clear. A certificate is not required, provided the remainder of the electric fencing remains intact, when:
 - 1.1. Repairing a broken wire;
 - 1.2. Replacing a broken insulator;
 - 1.3. Repairing the energizer. Note, repairs to, not replacement of. Should the energizer be replaced, certification, and or supplementary certification, as the case may be, must be issued;
 - 1.4. Replacing a lightning arrestor;
 - 1.5. Other repairs of a minor nature.

The new Legislation in a nutshell:

1. Electric fences must comply with SANS (South African National Standard) 10222-3:2012 Edition 4.1, Electrical Security Installations, Part 3, (Including subsequent amendments as published from time to time.)

It is important to note that this Legislation prescribes minimum specifications to which all electric fences must adhere.

Remember, **ALL** new / repaired / re-installed / restrung / extended and or upgraded electric fences as from the 1st of July 2011 must be in full compliance.

Some of the topics covered in the legislation include the following:

- 1.1. Energizer and placement specifications;
- 1.2. Energizer lightning arrestors. All energizers must be fitted with lightning arrestors and in the case of security energizers, two arrestors must be used per zone (One on the output wire and one on the return wire);
- 1.3. Fence and energizer earthing specifications;
- 1.4. Fence construction, e.g. the placement and positioning of brackets;

There are very specific specifications in terms of minimum height and in the case of free standing fences, barrier fences. These specifications are too numerous and complex to list here. If required, contact Gido for more information.

- 1.5. Specifications regarding the joining of fence wiring / cabling etc.;
- 1.6. Warning signs: specification, type and application;
- 1.7. **All do-it-yourself electric fence installations are outlawed.**
 - 1.7.1. Remember, should an insurer establish that an electric fence was installed by an unregistered installer and the fence has to be fixed or replaced due to damage, such a claim can be rejected on the grounds of defective workmanship.
- 1.8. All Electric Fence System installers must be registered.

2. Although electric fencing installations are governed by Legislation and SANS, ALL installations are first and foremost subject to the **National Building Regulations and Building Standards Act (No. 103 of 1977), with provincial amendments, as promulgated.**
 - 2.1. In terms of the National Building Regulations and Building Standards Act, you may NOT install brackets:
 - 2.1.1. On top of a neighbouring boundary wall, i.e. round bar into a pre-cast post, Profile / T-posts on top of a neighbouring brick wall, etc. (Irrespective who build the wall or thickness thereof. There is case law in terms of this.)
 - 2.1.2. Installed on the inside of a neighbouring boundary wall and angled out towards the neighbouring property.
 - 2.2. This is termed **Encroachment** and is highly illegal.
 - 2.2.1. A neighbour cannot by default give permission for this.
 - 2.2.2. An application can however be made through your local council for relaxation of this Legislation. An application, with the necessary supporting documents, will need to be handed in with the relevant application fee.
 - 2.3. There have been Supreme Court cases in this regard resulting in fences having to be removed with costs.
 - 2.4. The Western Cape actively enforces this Legislation and more and more cases are being inspected with enforcement in Gauteng.
 - 2.5. Yes, there are variations on this topic. The exact line of the boundary wall, additional fences, etc. etc.
 - 2.6. If you are unsure, approach your local building inspector for clarity on this issue.
 - 2.7. Although Gido will not decline the issuing of an **EFC** in terms of Legislation it is termed **“Encroachment” and is illegal.**
 - 2.7.1. Accordingly, you would be required to sign a release indemnity in favour of Gido Electric Fencing cc upon the issuing of the EFC.

General:

1. Non-compliant electric fences not only place homeowners at risk of insurance claim rejection, but the homeowner may also be held legally liable for any injuries inflicted upon others. Any legal liability claim resulting from non-compliance with legislation will be excluded from cover under the homeowners insurance policy.
2. It is thus in your own interests to have your existing electric fence installation certified, rather sooner than later. Yes, it could very well cost you now, but measured against an insurance claim repudiation and or civil claim cost, is it worth the risk not to?
3. Regrettably, out of desperation to save money, some property owners have recently turned to %bakkie brigade+ installers to acquire a quick and %cheap+ Compliance Certificate.
4. Should you follow this route, beware of the pitfalls as this action has now cost some property owners / sellers dearly.
5. As with some purchasers querying the validity of their electrical certifications, many more now query the validity of their electrical fence Compliance Certificates.
6. This is quite simply due to electrical fencing being that much more visible, masses of information on the internet and insurance company requirements.
7. Various insurance companies have recently started repudiating burglary and fence damages claims due to electric fences NOT meeting legislative requirements in terms of their EFCs.
8. All of this has ended in messy litigation with everyone suing everyone else.
 - 8.1. **Since the enforcement of the “new” Electric Fencing Legislation from 1 December 2012, there have been more civil lawsuits than in the entire history of electrical compliances. Our Facebook site is littered with case studies.**
9. Now that you are aware of the facts, KNOW WHAT YOU ARE DOING. Do your homework. Make sure you appoint an accredited and registered installation company who knows what they are doing to certify your fence, or you are going to end up paying dearly for that electric fence.
10. The use of disreputable electric fence installers presents a hazard to property owners by placing them at risk of unforeseen financial expenses in the form of legal costs or insurance claim rejections.
11. **Remember the legislation is there for you, the consumer. It is there to protect you, ensuring that you get an installation that meets the highest standards, protecting you and your family.**

Know who you are dealing with – Know what you are getting

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