

**DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM
NOTICE 917 OF 2017**

EXTENSION OF SECURITY OF TENURE ACT, 1997 (ACT NO. 62 of 1997)

REGULATIONS UNDER THE EXTENSION OF SECURITY OF TENURE ACT: AMENDMENT

The Minister of Rural Development and Land Reform intends, in terms of section 1 read together with section 28 of the Extension of Security of Tenure Act, 1997, to make the regulations in the Schedule.

Interested persons are invited to submit, within 30 days after the publication of this notice, substantiated written comments or representations regarding the proposed regulations to the Minister of Rural Development and Land Reform (for attention: Director General: Rural Development and Land Reform, Private Bag X 833, PRETORIA, 0001; Email: Vuyiswa.Nxasana@drdlr.gov.za or Thami.Mdontswa@drdlr.gov.za

SCHEDULE

Definitions

1. In these regulations "Regulations" mean the Regulations Under the Extension of Security of Tenure Act, 1997 published under Government Notice R1632 in Government Gazette 19587 of 18 December 1998.

Amendment of regulation 2 of the Regulations

2. Regulation 2 of the Regulations is hereby amended by the substitution for subregulation (1) of the following subregulation:

"(1) The prescribed amount for the purposes of paragraph (c) of the definition of "occupier" in section 1 (1) of the Act shall be an income of R13, 625.00 per month."



MINISTER OF RURAL DEVELOPMENT AND LAND REFORM

DATE: 11/10/2017

EXPLANATORY MEMORANDUM: RATIONAL FOR THE PRESCRIBED AMOUNT

1. The Extension of Security of Tenure Act, 1997 (Act No 62 of 1997) ("ESTA") regulates the rights of persons that reside on land that they do not own, but with the consent of the owner or person in charge (occupiers). It sets the conditions upon which these tenure rights may be exercised and the conditions under which the right of persons to reside on the land may be terminated.
2. Section 1 (1) of ESTA defines an occupier as

"a person residing on land which belongs to another person, and who has or [sic] on 4 February 1997 or thereafter had consent or another right in law to do so, but excluding-

 - (a) ...
 - (b) *a person using or intending to use the land in question mainly for industrial, mining, commercial or commercial farming purposes, but including a person who works the land himself or herself and does not employ any person who is not a member of his or her family; and*
 - (c) *a person who has an income in excess of the prescribed amount."*
3. The prescribed amount referred to in the definition of "occupier" in ESTA currently is R5, 000.00. This amount was determined by the Minister of Land Affairs (as the Ministry was then known) and published in the Regulations published in Government Notice R1632 in Government Gazette 19587 of 18 December 1998.
4. Due to a number of challenges experienced in the implementation of ESTA, and in order to align it to the broad goals of the National Development Plan: Vision 2030 (2012) ESTA was evaluated.
5. Various measures were identified to strengthen the security of tenure of those people that reside on land that they do not own, but with the consent of the owner or person in charge. One of those measures is to review the qualifying income in the definition of "occupier" in ESTA.
6. The approach that has been taken in adjusting the qualifying income is the use of the Consumer Price index. The Constitutional Court in the case of *Florence v Government of the Republic of South Africa* (CCT 127/13) [2014] ZACC 22; 2014 (6) SA 456 (CC); 2014 (10) BCLR 1137 (CC) (26 August 2014) approved the use of the Consumer Price Index as the metric to calculate changes over time in the value of money.
7. The proposed qualifying income was calculated by the division of the headline annual average Consumer Price Index of the year in which present qualifying income was determined (i.e. 1998) by the headline annual average Consumer Price Index of 2016, multiply by the present qualifying income.
8. According to Statistics South Africa, the headline annual average Consumer Price Index of 1998 was 44.76667; and for 2016 was 121.9917 (Statistics SA, CPI headline index numbers, Unit: Dec 2012=100). The calculation therefore is as follows:

$$\frac{121.9917}{44.76667} \times R5,000.00 = R13,625.28$$
9. The proposed qualifying income for the purposes of paragraph (c) of the definition of "occupier" in Section 1 (1) of ESTA is therefore R13, 625.00 (rounded off).
10. The proposed regulation will come into effect from the date of publication of the Amended Regulation in the Government Gazette.