

REPUBLIC OF SOUTH AFRICA

STATE OF EMERGENCY BILL

(As amended by the Portfolio Committee on Justice (National Assembly))

(MINISTER OF JUSTICE)

[B 52B—97]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP NOODTOESTAND

(Soos gewysig deur die Portefeuljekomitee oor Justisie (Nasionale Vergadering))

(MINISTER VAN JUSTISIE)

[W 52B—97]

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BILL

To provide for the declaration of a state of emergency; to empower the President to make regulations in pursuance of any such declaration; and to provide for matters connected therewith.

PREAMBLE

WHEREAS section 37 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), provides that a state of emergency may be declared only in terms of an Act of Parliament, and only when the life of the nation is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency and the declaration is necessary to restore peace and order;

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

Declaration of state of emergency

- 1.** (1) Subject to the provisions of section 37 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), the President may by proclamation in the *Gazette* declare a state of emergency in the Republic or in any area within the Republic. 5
- (2) The reasons for the declaration of the state of emergency shall be stated briefly in the proclamation.
- (3) The President may at any time withdraw the proclamation by like proclamation in the *Gazette*. 10

Emergency regulations

- 2.** (1) (a) The President may, in respect of the Republic or of any area in which the state of emergency has been declared and for as long as the proclamation declaring the state of emergency remains of force, by proclamation in the *Gazette* make such regulations as are necessary or expedient to restore peace and order and to make adequate provision for terminating the state of emergency, or to deal with any circumstances which have arisen or are likely to arise as a result of the state of emergency. 15
- (b) In addition to the publication of the regulations in the *Gazette*, the President shall cause the contents of the regulations to be made known to the public by appropriate means. 20
- (2) Without derogating from the generality of the powers conferred by this section, regulations may provide for—
- (a) the empowering of such persons or bodies as may be specified therein to make orders, rules and bylaws for any of the purposes for which the President is authorised by this section to make regulations, and to prescribe penalties for any contravention of or failure to comply with the provisions of such orders, rules or bylaws; 25
- (b) the imposition of such penalties as may be specified therein for any contravention of or failure to comply with the provisions of the regulations or any directions issued or conditions prescribed by or under the regulations, which penalties may include the confiscation of any goods, property or instruments by means of which or in connection with which the offence has been committed. 30
- (3) No provision of this section shall— 35

- (a) authorise the making of any regulations which are inconsistent with this Act or section 37 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996); or
- (b) authorise the making of any regulations whereby—
- (i) provision is made for the imposition of imprisonment for a period exceeding three years; 5
 - (ii) any duty to render military service other than that provided for in the Defence Act, 1957 (Act No. 44 of 1957), is imposed; or
 - (iii) any law relating to the qualifications, nomination, election or tenure of office of members of Parliament or a provincial legislature, the sittings of Parliament or a provincial legislature or the powers, privileges or immunities of Parliament or a provincial legislature or of the members or committees thereof, is amended or suspended. 10
- (4) Regulations governing the detention of persons shall provide for such international humanitarian organisations as may be recognised by the Republic to have access to persons detained under such regulations in order to monitor the circumstances under which such persons are detained. 15
- (5) Whenever any person is detained under any regulation made in pursuance of a state of emergency declared in a particular area, such person shall be detained at any place within that area unless— 20
- (a) no suitable place of detention is available within that area; or
 - (b) the detention of such person at a place outside that area is reasonably necessary to restore peace and order.

Parliamentary supervision

3. (1) A copy of any proclamation declaring a state of emergency and of any regulation, order, rule or bylaw made in pursuance of any such declaration shall be laid upon the Table in the National Assembly by the President as soon as possible after the publication thereof. 25
- (2) In addition to the powers conferred upon the National Assembly by section 37(2)(b) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), the National Assembly may— 30
- (a) disapprove of any such regulation, order, rule or bylaw or of any provision thereof; or
 - (b) make any recommendation to the President in connection with any such proclamation, regulation, order, rule, bylaw or provision. 35

Lapsing of emergency regulations

4. (1) Any regulation, order, rule or bylaw made in pursuance of the declaration of a particular state of emergency, or any provision thereof, shall cease to be of force and effect—
- (a) as from the date on which the proclamation declaring that state of emergency is withdrawn by the President under section 1(3); 40
 - (b) as from the date on which the National Assembly—
 - (i) resolves under section 37(2)(b) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), not to extend the declaration of that state of emergency; or 45
 - (ii) resolves under section 3(2)(a) to disapprove of any such regulation, order, rule, bylaw or provision, to the extent to which it is so disapproved; or
 - (c) as from the date on which the declaration of that state of emergency lapses as contemplated in the said section 37(2)(b), 50
- whichever is the earlier date.
- (2) The provisions of subsection (1) shall not derogate from the validity of anything done in terms of any such regulation, order, rule, bylaw or provision up to the date upon which it so ceased to be of force and effect, or from any right, privilege, obligation or liability acquired, accrued or incurred, as at the said date, under and by virtue of any such regulation, order, rule, bylaw or provision. 55

Repeal of Act 86 of 1995

5. The State of Emergency Act, 1995, is hereby repealed.

Short title

6. This Act shall be called the State of Emergency Act, 1997.

**MEMORANDUM ON THE OBJECTS OF THE STATE OF
EMERGENCY BILL, 1997**

Section 37(1) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), provides that a state of emergency may be declared only in terms of an Act of Parliament when—

- (a) the life of the nation is threatened by war, any invasion, general insurrection, disorder, any natural disaster or any other public emergency; and
- (b) the declaration is necessary to restore the peace and order.

The objects of the Bill are to regulate matters in connection with the declaration of a state of emergency as envisaged by the said Constitution.

The State of Emergency Act, 1995 (Act No. 86 of 1995), contains similar provisions. That Act was, however, enacted under the Interim Constitution (Act No. 200 of 1993). Since it is necessary that our emergency legislation should be in accordance with the provisions of the new Constitution, the Bill provides for the repeal of the said Act.

In the opinion of the State Law Adviser, the Bill must be dealt with in accordance with the procedure prescribed by section 75 of the latter Constitution.

The Department of Constitutional Development was consulted in the preparation of the Bill.