

REPUBLIC OF SOUTH AFRICA

CONVENTIONAL ARMS CONTROL BILL

(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill published in Government Gazette No 21426 of 28 July 2000) (The English text is the official text of the Bill)

(MINISTER OF DEFENCE)

[B 50—2000]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP DIE BEHEER VAN KONVENSIONELE WAPENS

*(Soos ingedien in die Nasionale Vergadering as 'n artikel 75-wetsontwerp; verduidelikende opsomming van Wetsontwerp in Staatskoerant No 21426 van 28 Julie 2000 gepubliseer)
(Die Afrikaanse teks is die amptelike vertaling van die Wetsontwerp)*

(MINISTER VAN VERDEDIGING)

[W 50—2000]

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BILL

To establish the National Conventional Arms Control Committee; to provide for control over conventional arms; and to provide for matters connected therewith.

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

CHAPTER I

DEFINITIONS, COMMITTEE AND SECRETARIAT

Definitions

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1. In this Act, unless the context indicates otherwise—

- (i) **“Committee”** means the National Conventional Arms Control Committee established by section 2; (ix)
- (ii) **“competent authority”** means the Minister or the Committee, or any subcommittee to which or any member of the Committee, a subcommittee or the secretariat to whom a power has been delegated or a duty has been assigned in terms of section 11; (ii) 10
- (iii) **“conventional arms”** includes—
 - (a) weapons, munitions, explosives, bombs, armaments, vessels, vehicles and aircraft designed for use in war, and any other articles of war; and 15
 - (b) any component, equipment, system, processes and technology of whatever nature capable of being used in the design, development, manufacture, upgrading, refurbishment or maintenance of anything contemplated in paragraph (a),
but does not include a weapon of mass destruction as defined in the Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 87 of 1993), or an arm regulated in terms of the Arms and Ammunition Act, 1969 (Act No. 75 of 1969); (x) 20
- (iv) **“convey”**, in relation to conventional arms, means to transport conventional arms through or over the territory of the Republic, its territorial waters or its airspace to any other place or destination outside the Republic, whether or not such conventional arms are off-loaded, and **“conveyance”** must be interpreted accordingly; (xix) 25
- (v) **“Department”** means the Department of Defence; (iii)
- (vi) **“export”**, in relation to conventional arms, includes— 30
 - (a) the entering into a commitment by a person in the Republic to supply another person outside the Republic with conventional arms, whether or not it is done in exchange for currency or any other commodity; and
 - (b) the transfer of conventional arms from the Republic to any place outside the Republic, or causing conventional arms to be so transferred, whether or not it is done in exchange for currency or any other commodity, 35and **“exportation”** must be interpreted accordingly; (xvii)

- (vii) **“import”**, in relation to conventional arms, means to bring conventional arms into any part of the Republic, irrespective of whether such bringing in is in exchange for currency or any other commodity, and **“importation”** must be interpreted accordingly; (viii)
- (viii) **“manufacture”**, in relation to conventional arms, includes the design, development, production and assembly thereof, and **“manufacturing”** must be interpreted accordingly; (xviii) 5
- (ix) **“marketing”**, in relation to conventional arms, includes the promotion of conventional arms, and any negotiations, offer, tender, advertising, shows, exhibitions or giving of information relating to conventional arms, and **“market”** when used as a verb, must be interpreted accordingly; (i) 10
- (x) **“Minister”** means the Minister of Defence; (xi)
- (xi) **“prescribe”** means prescribe by regulation; (xx)
- (xii) **“record”** includes any book, document, account, deed, plan, instrument, trade list, stock list, affidavit, certificate, photograph, map, drawing, computer print-out as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983), microfilm, computer program, computer data or other data; (xii) 15
- (xiii) **“re-export”**, in relation to conventional arms, means to export imported conventional arms, or to cause imported conventional arms to be exported to any place other than that from which the conventional arms were originally imported, whether or not it is carried out in exchange for currency or any other commodity, and **“re-exportation”** must be interpreted accordingly; (vi) 20
- (xiv) **“secretariat”** means the secretariat contemplated in section 8; (xiii)
- (xv) **“Secretary”** means the Secretary for Defence appointed under section 7B of the Defence Act, 1957 (Act No. 44 of 1957); (xiv) 25
- (xvi) **“services”**, in respect of conventional arms, means any services of whatever nature or form to any institution of a foreign country relating to the rendering of—
 - (a) aid;
 - (b) advice; 30
 - (c) assistance;
 - (d) training; or
 - (e) product support,
 and includes clearing services or brokering activities such as acting as an agent for one of the parties in negotiating or arranging contracts, financing, transportation, purchases, sales or transfers, but excludes contractual after sales and warranty services performed under any authorisation granted by the Minister in terms of section 14; (iv) 35
- (xvii) **“subcommittee”** means any subcommittee established under section 7; (xv)
- (xviii) **“technology”** includes any technique, expertise or know-how that can be utilised in the design, development, manufacture, upgrading, refurbishment or maintenance of conventional arms; (xvi) 40
- (xix) **“this Act”** includes any regulation made under section 26; (vii)
- (xx) **“trade”**, in relation to conventional arms, includes any activity relating to the marketing, importation, exportation, conveyance, manufacturing or re-exportation of conventional arms, whether or not such activity is undertaken in exchange for currency or any other commodity. (v) 45

Establishment of National Conventional Arms Control Committee

2. There is hereby established a committee to be known as the National Conventional Arms Control Committee. 50

Objects of Committee

3. The objects of the Committee are to—
- (a) implement government policy regarding conventional arms control and the control of services, in order to establish, apply and ensure a legitimate, effective and transparent conventional arms and services control process and structure in and for the Republic, which—
 - (i) conform to international law;
 - (ii) are binding on the Republic; and
 - (iii) are applicable to the control and regulation of trade in conventional arms and of the rendering of services;
 - (b) protect and promote the Republic's economic and national security interests by facilitating trade in conventional arms and the rendering of services in accordance with the policy referred to in paragraph (a); and
 - (c) foster national and international confidence in the Committee's control procedures over conventional arms trade and the rendering of services.

Functions of Committee

4. (1) The Committee must—
- (a) determine processes and structures necessary for effective conventional arms control and for the regulation and registering of services;
 - (b) establish structures necessary to process, assess and scrutinise any application for authorisation to be issued under this Act;
 - (c) where necessary, liaise with the South African Police Service and the Commissioner for the South African Revenue Service regarding the enforcement of this Act;
 - (d) ensure that the conditions under which an authorisation is issued, are complied with;
 - (e) keep a register in the prescribed form of persons involved in trade in conventional arms or the rendering of services;
 - (f) keep a register of every authorisation issued under this Act; and
 - (g) make regular reports concerning the control and regulation of conventional arms and the rendering of services to the Cabinet and Parliament.
- (2) The Committee may—
- (a) inside or outside the Republic, conduct any investigation into, inspection of or research in connection with, any trade relating to conventional arms or any services rendered;
 - (b) consult with the Minister with regard to any aspect that falls within the powers of the Minister in terms of this Act;
 - (c) evaluate and comment on conventional arms trade and the rendering of services;
 - (d) make recommendations to the Cabinet concerning the rendering of services and the Republic's conventional arms control processes and structures;
 - (e) recommend to the Cabinet and obtain the Cabinet's approval on whether conventional arms control and the regulation and registering of services should be changed with a view to improving them in accordance with its objects referred to in section 3; and
 - (f) direct any subcommittee to make information which it has in its possession available to the Committee, the Cabinet, Parliament or any of its committees.

Composition of Committee

5. (1) (a) The Committee consists of such Ministers, or Ministers and Deputy Ministers, as the President may appoint.
- (b) The President may appoint such other persons to the Committee as the President may deem necessary.

- (2) (a) The President must make the appointment of the members contemplated in subsection (1) known by notice in the *Gazette* and must specify the period for which each member is appointed.
- (b) The President may renew the appointment of a member of the Committee when the period for which the member was appointed expires. 5
- (3) The President must designate one member of the Committee as the chairperson and another as the deputy chairperson.
- (4) A member must vacate office if that member—
- (a) resigns by written notice addressed to the President;
 - (b) is removed from office by the President; or 10
 - (c) is appointed in terms of subsection (1)(a), and ceases to be a Minister or Deputy Minister.
- (5) The resignation of a member of the Committee in terms of subsection (4)(a) only comes into effect after acceptance by the President.
- (6) If a member of the Committee vacates office before the expiry of his or her period of office, the President must, subject to subsection (1), appoint a new member for the unexpired portion of that period. 15

Meetings of Committee

6. (1) The chairperson of the Committee must determine the time and place of a meeting and timeously make it known to the other members of the Committee. 20
- (2) (a) The Committee may determine its own procedure for meetings.
- (b) Four of the members, who must include the chairperson or deputy chairperson of the Committee, constitute a quorum.
- (3) The Committee must cause minutes to be kept of its proceedings.
- (4) The Committee may refer any matter to be considered by it to the Cabinet for a resolution, which resolution must be regarded as being the decision of the Committee. 25
- (5) A decision of the Committee or an act performed under a decision of the Committee, is not invalid merely by reason of a vacancy in the Committee, or of the presence of any person not entitled to sit as a member, at the time when the decision was taken. 30

Subcommittees

7. (1) The Committee may establish one or more subcommittees which must perform such functions as the Committee may direct.
- (2) A subcommittee must consist of one or more members of the Committee designated by the Committee and, if necessary, one or more other persons appointed in terms of subsection (3) for such period as may be determined by the Committee. 35
- (3) The Minister may, with the concurrence of the Committee, appoint members to a subcommittee who are not in the full-time employment of the State, and may grant such persons such allowances and remuneration as the Minister, with the concurrence of the Minister of Finance, may determine in general or in a specific case. 40
- (4) The Committee must designate a chairperson for every subcommittee and, if necessary, a deputy chairperson.
- (5) When a subcommittee has performed its functions contemplated in subsection (1), it must submit a written report with recommendations to the Committee for consideration. 45
- (6) The Committee may at any time dissolve a subcommittee.
- (7) A subcommittee may determine its own procedure for meetings.
- (8) The Committee is not absolved from responsibility for the performance of any function assigned to any subcommittee under subsection (1).
- (9) A decision of a subcommittee or an act performed under a decision of a subcommittee, is not invalid merely by reason of a vacancy in the subcommittee, or of the presence of any person not entitled to sit as a member, at the time when the decision was taken. 50

Secretariat

8. (1) (a) The work incidental to the performance of the functions of the Committee or a subcommittee must be performed by a secretariat consisting of administrative personnel and inspectors.

(b) The members of the secretariat must be designated by the Minister after consultation with the Secretary from among the employees of the Defence Secretariat. 5

(2) The Minister may, with the concurrence of the Committee, appoint a person who is not in the full-time employment of the State to the secretariat on such conditions of service and at such remuneration and service benefits as the Minister, with the concurrence of the Minister of Finance, may determine. 10

Inspectorate

9. (1) The Minister must establish an inspectorate as part of the secretariat.

(2) The object of the inspectorate is to ensure that trade in conventional arms is conducted in compliance with this Act.

(3) Every person appointed as an inspector must be suitably qualified and must possess the necessary expertise to enable him or her to perform the functions of an inspector efficiently. 15

(4) (a) Every person appointed as an inspector must be issued with a document, signed by the Minister, confirming that person's appointment as an inspector.

(b) When performing functions as an inspector, the inspector must show the document referred to in paragraph (a) to any person who requests it. 20

(5) An inspector may use any equipment necessary to perform the functions of an inspector effectively.

Secondment

10. The Minister may, with the concurrence of the Committee and after consultation with the Department of Public Service and Administration, have members of the public service seconded to the secretariat, any subcommittee or any structure that may be created under this Act, in terms of any law regulating such secondment. 25

Delegation

11. (1) (a) With the concurrence of the Committee the Minister may, subject to such conditions as he or she may impose, delegate any power or assign any duty conferred or imposed upon the Minister by or under this Act to any member of the Committee, a subcommittee or the secretariat, except the power— 30

(i) to appoint members to a subcommittee, and to grant them allowances and remuneration as contemplated in section 7(3); and 35

(ii) to make regulations as contemplated in section 26.

(b) The Committee may, subject to such conditions as it may determine, delegate or assign to any subcommittee or member of the secretariat any power or duty conferred or imposed upon the Committee by or under this Act.

(c) A subcommittee may, subject to such conditions as it may determine, delegate or assign to any member of the secretariat any power or duty conferred or imposed upon that subcommittee by or under this Act. 40

(2) The Minister, Committee and subcommittee are not divested of any power or exempted from any duty delegated or assigned by any of them, and may amend or set aside any decision taken by anybody in the exercise of a power or performance of duty so delegated or assigned. 45

Costs and expenses of Committee, and audit

12. (1) The costs and expenses connected with the application of this Act must be defrayed from moneys appropriated by Parliament to the Department for that purpose.

(2) In addition to the audit of the financial statements of the Department in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999), the Auditor-General must audit the registers and processes contemplated in section 4.

CHAPTER II

CONTROL AND INSPECTION

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Control of conventional arms

13. (1) No person may import, export, re-export, convey, manufacture, market or trade any conventional arms unless that person is in possession of a permit authorising such importation, exportation, re-exportation, conveyance, manufacture, marketing or trading, as the case may be, issued by the Minister with the concurrence of the Committee. 10

(2) No person may, in relation to conventional arms, provide a service unless that person is in possession of a permit authorising such service, issued by the Minister with the concurrence of the Committee.

Authorisation

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14. (1) Any person who wishes to obtain a permit contemplated in section 13 must apply to the Minister in the prescribed manner.

(2) The Minister may, with the concurrence of the Committee, issue a permit subject to such conditions as they may decide upon, or refuse to grant an authorisation.

(3) The Minister may, with the concurrence of the Committee, by notice in writing to the person who has been issued a permit under subsection (2), cancel, amend, suspend or withdraw the permit if— 20

- (a) any condition of the permit has not been or is not being complied with;
- (b) the person who has been issued a permit is convicted of an offence under this Act; 25
- (c) it is necessary or expedient for the protection of the security of the Republic;
- (d) it is necessary or expedient for maintaining and promoting international peace; or
- (e) any other valid reason exists therefor.

(4) A permit issued under subsection (2) may prescribe— 30

- (a) the quantity or value of conventional arms which may be exported, re-exported, marketed, imported, conveyed, manufactured or traded thereunder;
- (b) the period within which, the harbour, port or airport through or from which, the person, country or territory from or to which, the route along which and the manner in which the conventional arms in question may be exported, re-exported, marketed, imported, conveyed, manufactured or traded; and 35
- (c) such other conditions as the Minister, with the concurrence of the Committee, may direct.

(5) An application for a permit for the re-exportation of conventional arms must be accompanied by a notification of the person from whom such conventional arms were originally imported, indicating the person's concurrence that such conventional arms may be so re-exported. 40

(6) A permit issued under subsection (2) expires—

- (a) when the particulars of the holder no longer correspond with that person's particulars as entered in a register contemplated in section 4(1)(f); 45
- (b) upon the take-over, deregistration, insolvency or liquidation of the business concern in respect of which the permit was issued; or
- (c) upon the death of the person to whom the permit was issued.

(7) A permit issued under this section may not be transferred. 50

Accountability when conventional arms are exported

15. Where conventional arms are exported, and—
- (a) ownership thereof is transferred, the Committee must satisfy itself that the recipient country has given an undertaking regarding its accountability in respect of the arms in question which must be in accordance with international practice; or 5
 - (b) transfer of ownership does not take place, the Committee must—
 - (i) obtain a statement from the recipient country regarding the intended use of the arms in question; and
 - (ii) satisfy itself that the conventional arms are returned to the Republic in accordance with the statement. 10

Routine inspections

16. (1) An inspector may during normal office hours enter any premises occupied or used by a person to whom an authorisation under section 14 has been granted in order to determine whether the conditions of the authorisation are being complied with. 15
- (2) If the premises are a private dwelling, they may not be entered without the permission of the person so authorised or a warrant issued by a judge or magistrate on good cause shown.

Entry and search of premises with warrant

17. (1) An inspector may, on the authority of a warrant issued in terms of subsection (2), in order to obtain evidence, enter any premises in or from which the inspector has reason to believe that conventional arms are being developed, manufactured, imported, exported, re-exported, traded or marketed in contravention of this Act and— 20
- (a) direct the owner or any other person present at the premises to—
 - (i) deliver any record that pertains to the investigation and which is in the possession or under the control of that owner or other person; 25
 - (ii) furnish such information as he or she has with regard to the matter under investigation; and
 - (iii) render such assistance as the inspector requires in order to enable him or her to perform his or her functions under this Act; 30
 - (b) inspect any record and make copies thereof or excerpts therefrom;
 - (c) open any container and examine any article or material found on the premises and take photographs of it;
 - (d) examine any activity, operation or process carried out on the premises;
 - (e) take samples and measurements of any article or material and have the samples analysed; 35
 - (f) seize any article or material which might be relevant to a prosecution under this Act, remove anything so seized from the premises, and keep it in his or her custody, but the person from whose possession or control any record has been taken, may, at his or her own expense and under supervision of the inspector, make copies thereof or excerpts therefrom; 40
 - (g) attach an identification mark or seal to any article, material or container found on the premises; and
 - (h) question any person found on the premises. 45
- (2) A warrant contemplated in subsection (1)—
- (a) must be issued by a judge of the High Court or magistrate who has jurisdiction in the area where the premises in question are situated; and
 - (b) may only be issued if it appears from information on oath or solemn declaration that there are reasonable grounds for believing that there is evidence available in or upon such premises of any contravention of this Act; 50
 - (c) must specify—

- (i) which of the acts referred to in subsection (1) may be performed by the inspector to whom it is issued; and
 - (ii) the names of the persons who may accompany and assist the inspector.
- (3) The inspector executing a warrant in terms of this section must immediately before commencing the inspection, identify himself or herself to the person in control of the premises, if such person is present, and hand to such person a copy of the warrant or, if such person is not present, affix such copy to a prominent place on the premises. 5
- (4) (a) The inspector may not enter upon or search any premises until he or she has audibly demanded admission to the premises and has notified the purpose of his or her entry, unless he or she is, on reasonable grounds, of the opinion that any article or thing might be destroyed if admission is demanded and such purpose is notified prior to such entry. 10
- (b) If the inspector, on the authority of a warrant issued in terms of subsection (2), enters upon or searches any premises he or she may use such force as may reasonably be necessary to overcome resistance to such entry or search. 15
- (c) Any entry and search in terms of this section may only be executed by day, unless the execution thereof by night is justifiable and necessary.
- (5) A warrant contemplated in this section may be issued on any day and remains in force until the earlier of—
- (a) the date of its execution; 20
 - (b) the date of its cancellation by the person who issued it, or if such person is not available, by any other person with similar authority;
 - (c) one month from the date of its issuance; or
 - (d) the date on which the purpose for which the warrant was issued, ceases to exist. 25

Entry and search of premises without warrant

18. An inspector may without a warrant enter upon any premises, other than a private dwelling, and search for, seize and remove any article or thing referred to in section 17(1) if—
- (a) the person who is competent to do so consents to such entry, search, seizure and removal; or 30
 - (b) there are reasonable grounds to believe that a warrant would be issued in terms of section 17(2) and that the delay in obtaining such warrant would defeat the object of the warrant.

Privileged information and self-incriminating evidence 35

19. (1) If, during the execution of a warrant or during a search in terms of section 17 or 18, a person claims that an article or document found upon or in the premises in question contains privileged information and refuses to allow the inspection of such article or document, the inspector may request the Registrar of the High Court which has jurisdiction or that Registrar's delegate, to attach and remove that article or document for safe custody until a court of competent jurisdiction has made a ruling on the question whether or not the information in question is privileged. 40
- (2) No self-incriminating answer given or statement made by any person to an inspector exercising powers in terms of section 17 or 18 shall be admissible as evidence against that person in criminal proceedings against that person in court, except in criminal proceedings for perjury or in which that person is tried for an offence contemplated in section 25(1)(e), and then only to the extent that the answer or statement is relevant to prove the offence charged. 45

Disposal of items seized by inspector

20. (1) The inspector must deliver anything seized in terms of section 17 or 18 without delay to a police official contemplated in section 30 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), who must deal with and dispose of the seized item as provided for in Chapter 2 of that Act. 50

(2) When a police official acts in terms of section 30(a) or (b) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), in respect of an item contemplated in paragraph (a), he or she must do so after consultation with the inspector.

Furnishing of information

21. (1) Any competent authority may in writing direct any person who renders services or who manufactures, maintains, markets, imports, exports, re-exports, supplies, stores or conveys conventional weapons in the course of his or her business, or trades in or otherwise handles or disposes of any conventional weapons, or in any other way exercises control over conventional weapons, to furnish such competent authority within a specified period, or at specified intervals, with specified information at his or her disposal. 5 10

(2) The information referred to in subsection (1) must be accompanied by the relevant data and other documents, as indicated in the direction, relating to the rendering of services, manufacture, maintenance, marketing, importation, exportation, re-exportation, conveyance, supply or storage of conventional weapons. 15

Duty to furnish reasons, and effect of decision by competent authority

22. (1) Any person whose interests are affected by a decision of a competent authority may, within 30 days after he or she becomes aware of such decision, request the competent authority concerned in writing to furnish reasons for that decision in writing within 30 days after receiving such a request. 20

(2) Within 30 days after having been furnished with reasons in terms of subsection (1), or after the expiration of the period within which reasons should have been furnished by a competent authority, the person concerned may apply to a division of the High Court having jurisdiction, to review the decision.

(3) A decision of a competent authority, or a decision to suspend or revoke an authorisation, may not be suspended or revoked, as the case may be, pending the result of an application under subsection (2). 25

Prohibition of disclosure of certain information

23. (1) No person may disclose any information in relation to the acquisition, supply, marketing, importation, exportation, design, trade, development, manufacture, production, maintenance, repair of or research in connection with conventional arms, where such disclosure would be detrimental to the national interest or security of the Republic or to the commercial interests of the manufacturer, or otherwise without the written authority of a competent authority. 30

(2) Subsection (1) does not prohibit the disclosure of information— 35

- (a) by any person in so far as it is necessary for the performance of that person's functions in connection with the acquisition, supply, marketing, importation, trade, exportation, design, development, manufacture, production, maintenance or repair of conventional arms by, for, on behalf of or for the benefit of the South African National Defence Force or the South African Police Service; 40
- (b) released after due consideration and notification to the person, body, force or service, for publication by the Minister, the Committee or any person authorised thereto by the Minister or the Committee; and
- (c) to the extent necessary in order to comply with a law dealing with access to information. 45

CHAPTER III

GENERAL

State bound

24. This Act binds the State, except in so far as criminal liability is concerned. 50

Offences and penalties

25. (1) A person is guilty of an offence if he or she—
- (a) exports, re-exports, markets, imports, conveys, manufactures or trades in conventional arms in contravention of section 13(1);
 - (b) renders services in contravention of section 13(2);
 - (c) fails to comply with or contravenes any condition stated in an authorisation;
 - (d) exports conventional arms in contravention of a undertaking or statement contemplated in section 15;
 - (e) during a search under section 17 or 18—
 - (i) fails to answer any question put to him or her by an inspector fully and to the best of that person's ability; or
 - (ii) gives false evidence to an inspector, knowing it to be false;
 - (f) furnishes any false information in complying with a direction in terms of section 21 or refuses to submit any information required in terms of that section;
 - (g) contravenes or fails to comply with section 21 or 23(1);
 - (h) hinders or obstructs any inspector in the performance of any function in terms of this Act;
 - (i) makes any false statement regarding a matter regulated in terms of this Act to any competent authority knowing it to be false;
 - (j) pretends to be an official of a competent authority or a person authorised by such competent authority;
 - (k) refuses or fails to comply with any lawful request or order of a competent authority under this Act; or
 - (l) purports to transfer an authorisation granted under this Act.
- (2) Any person convicted of an offence contemplated in subsection (1) is liable—
- (a) in the case of an offence referred to in subsection (1)(a), (b), (c) and (d), to a fine, or to imprisonment for a period not exceeding 15 years, or to both such fine and imprisonment;
 - (b) in the case of an offence referred to in subsection (1)(f) and (g), to a fine, or to imprisonment for a period not exceeding 10 years, or to both such fine and imprisonment; or
 - (c) in the case of an offence referred to in subsection (1)(e) and (h) to (l) to a fine, or to imprisonment for a period not exceeding 5 years, or to both such fine and imprisonment.
- (3) A court convicting any person of an offence referred to in subsection (1)(a) or (c) may, in addition to any other penalty which it may impose, seize any goods, or any other article, or any material or substance in respect of which the offence was committed, and the goods, article, material or substance so seized must be disposed of as the Secretary either generally or in any particular case may order.

Regulations

26. (1) The Minister may, with the concurrence of the Committee, make regulations regarding—
- (a) the procedure to be followed when applying for any permit under this Act and the disclosure of information relating thereto;
 - (b) the conditions under which a permit may be issued and the disclosure of information relating thereto;
 - (c) the keeping of records, minutes, registers and financial statements by any person who is the holder of a permit under this Act;
 - (d) the format of reports to be furnished to the Minister, the Committee, the Cabinet or Parliament in terms of this Act;
 - (e) the application of the provisions of international conventions, protocols, treaties and agreements with regard to conventional arms control and the rendering of services, entered into, acceded to or ratified by the Government of the Republic;
 - (f) the procedure to be followed in connection with the requests for reasons for decisions by a competent authority; and

(g) any matter which may be necessary or expedient to prescribe in order to achieve the objects of this Act.

(2) A regulation may prescribe a penalty of a fine, or of imprisonment for a period not exceeding five years, for any contravention thereof or any failure to comply therewith.

(3) Any regulation which is likely to result in state expenditure or which is likely to affect the Auditor-General, must be made with the concurrence of the Minister of Finance or the Auditor-General, as the case may be. 5

Repeal and savings

27. (1) Sections 3(2)(IA), 4C, 4D and 4E of the Armaments Development and Production Act, 1968 (Act No. 57 of 1968), are hereby repealed. 10

(2) Any permit issued under a law repealed by subsection (1)—

(a) must be regarded as having been issued under section 14 of this Act; and

(b) remains valid until the expiry of that permit or until it is dealt with in terms of this Act, whichever occurs the later.

(3) Any application for a permit which had been submitted before the date of commencement of this Act in terms of a law repealed by subsection (1), must be finalised in terms of that law. 15

(4) Any notice issued by the Minister under any law repealed by subsection (1), remains in force until repealed or replaced under this Act.

Short title and commencement

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28. This Act is called the Conventional Arms Control Act, 2000, and takes effect on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM OF OBJECTS OF THE CONVENTIONAL ARMS CONTROL BILL, 2000

- 1.1 Section 3(2)(IA) of the Armaments Development and Production Act, 1968 (Act No. 57 of 1968), authorises the Armaments Development and Production Corporation of South Africa, Limited, to exercise control over the development, manufacture, acquisition, supply, export or marketing of armaments. In terms of section 4C of that Act, the Minister of Defence has particular powers in relation to the export, marketing, import, conveyance in transit, development and manufacture of armaments. Section 4E of that Act provides for certain offences in connection with those acts.
- 1.2 In August 1995 the Government approved the establishment of the National Conventional Arms Control Committee ("the NCACC") to provide a broad political oversight over the transfer of conventional arms. It was also approved that until such time that the relevant legislation was in place the Minister of Defence, on the advice of the NCACC, permits all transactions relating to the sale and transfer of conventional arms.
2. The object of the Bill is therefore to give effect to the Government's decisions by formally providing for a system of control over transfers of conventional arms and associated services that have evolved since the establishment of the NCACC in 1995.
3. Key proposals in the Bill are the following:
 - 3.1 The Bill establishes the NCACC and set out its objectives.
 - 3.2 The main function of the NCACC is the regulation and control over the transfer of conventional arms.
 - 3.3 Work incidental to the performance of the functions of the NCACC will be performed by a secretariat consisting of administrative personnel and inspectors. Inspectors are empowered to do routine inspections, to enter and search premises with or, under certain circumstances, without a warrant and to seize any article or material that might be relevant to a prosecution under the Bill.
 - 3.4 Provisions of the Armaments Development and Production Act, 1968 (Act No. 57 of 1968), now being covered by the Bill, are repealed.

4. CONSULTATION

The Bill was drafted under the auspices of the NCACC, whose members made inputs. The Department of Foreign Affairs was also consulted.

5. FINANCIAL IMPLICATIONS FOR STATE

Although no additional expenses are envisaged, any expenses which may crop up will be defrayed from the budget of the Department of Defence.

6. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Defence are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.