

R2K NOTE, 12 Dec 2017

An inter-departmental task team was convened in 2016 to start drafting State of Emergency regulations, in terms of the State of Emergency Act (1997) and s37 of the Constitution.

According to task team documents, “the Draft Regulations is a concept master document, to be adapted by the Task Team as the circumstances of the specific emergency will dictate as and when it arises. The Regulations will only thereafter be signed and promulgated by the President.” The attached draft is dated circa Oct 2017.

**STATE OF EMERGENCY ACT, 1997**

**EMERGENCY REGULATIONS**

I, ..... the President of the Republic of South Africa, under section 2(1) of the State of Emergency Act, 1997 (Act No. 64 of 1997), hereby make the regulations contained in the Schedule, with effect from .....20--, within the boundaries of the Republic or any area in which a state of emergency has been declared in terms of section 1(1) of the Act.

Given under my Hand and the Seal of the Republic of South Africa at..... on this..... day of..... Two thousand and .....

**PRESIDENT**

**By order of the President-in-Cabinet**

**MINISTER OF THE CABINET**

## SCHEDULE

### *Definitions*

1. In these Regulations a word or expression to which a meaning has been assigned in the Act, bears the meaning so assigned, unless the context otherwise indicates—

**“Act”** means the State of Emergency Act, 1997 (Act No. 64 of 1997);

**“child”** means any person under the age of 18 years;

**“Constitution”** means the Constitution of the Republic of South Africa, 1996;

**“control officer”** means a person appointed under regulation 8;

**“correctional centre”** means a correctional centre as defined in section 1 of the Correctional Services Act and includes a police cell or lock-up;

**“Correctional Services Act”** means the Correctional Services Act, 1998 (Act No. 111 of 1998);

**“Designated Firearms Officer”** means a police official contemplated in section 124(2)(h) of the Firearms Control Act;

**“disruptive statement”** means any statement that could reasonably be construed or reasonably be understood to demonstrate a clear intention —

- (a) of inciting the public or any person or category of persons to —
  - (i) take part in a gathering in contravention of the Regulation of Gatherings Act, 1993 (Act No. 205 of 1993);
  - (ii) take part in any acts of civil disobedience; or
- (b) of engendering or aggravating feelings of hostility in the public or any person

or category of persons towards —

- (i) any section of the public or person or category of persons;
- (ii) the Government; and
- (iii) the security service and the members thereof.

**“Firearms Control Act”** means the Firearms Control Act, 2000 (Act No. 60 of 2000);

**“Minister”** means the Minister responsible for the administration of justice;

**“place”** means any particular position, point, area or location, whether or not it is a public place, and includes any premises, building, dwelling, flat, room, office, shop, structure, vessel, aircraft, vehicle, street, road, passage, park or recreation ground and any part of a place;

**“print”** means to produce by a mechanical process or by any other method of reproduction, the transfer of text or designs to any medium;

**“Registrar of Firearms”** means the person referred to in section 123 of the Firearms Control Act;

**“security service”** means any of the security services referred to in section 199(1) and (3) of the Constitution and any combination of such services;

**“weapon”** means—

- (a) any explosive material or device;
- (b) any firearm, ammunition or gas weapon; or
- (c) any article, object or instrument that may be employed to cause bodily harm to a person or damage to property, or to render a person temporarily paralysed or unconscious; and

**“writing”** includes any mode of representing or depicting letters, figures, signs or symbols in visible form.

## ***Restoration and maintenance of peace and order***

2. (1) Whenever a member of a security service is reasonably of the opinion that the presence or conduct of any person at any place endangers or may endanger the safety of the public or the restoration or maintenance of peace and order, he or she must in a loud voice in one of the official languages and where possible in a language understood by the person or persons present, order such person to proceed to a place indicated to him or her, or to desist from that conduct and must warn that person that force may be used to ensure the safety of the public and restoration or maintenance of peace and order if the order is not obeyed immediately.

(2) If an order of a member of a security service contemplated in subregulation (1) is not obeyed immediately, that member of a security service may apply or instruct the application of such force as he or she may, under the circumstances, reasonably deem necessary in order to ensure the safety of the public and for the restoration or maintenance of peace and order: Provided that the degree of force so used shall not be greater than is necessary to ensure the safety of the public and to restore or maintain peace and order and such force as may be applied in those instances shall be proportionate to the prevailing circumstances of the case and the object to be obtained.

(3) If a member of a security service is reasonably of the opinion that it is necessary for the safety of the public and the restoration or maintenance of peace and order, he or she may summarily order a person present in a particular place, to leave a particular place immediately and if that person fails to leave that place immediately, that member may detain the person concerned or cause him or her to be detained and may remove him or her from that particular area or place or cause him or her to be so removed: Provided that the member of a security service may release the detained person when he or she is of the reasonable opinion that the safety of the public and the restoration or maintenance of peace and order so allows.

(4) If a member of a security service is reasonably of the opinion that it is necessary for the safety of the public and the restoration or maintenance of peace and order, he or she may summarily disarm or order a person to be disarmed of any weapon.

(5) A receipt must be issued by the member of a security service concerned for any firearm taken from a person disarmed in terms of subregulation (4).

(6) If the release of the weapon or firearm contemplated in subregulations (4) and (5) will not jeopardise the safety of the public and the restoration or maintenance of peace and order the member of a security service concerned or the Registrar of Firearms or Designated Firearms Officer, as the case may be, must return such weapon or firearm to the person who may lawfully possess it unless it has been seized in terms of law: Provided that the provisions of sections 135 and 136 of the Firearms Control Act apply with the necessary changes required by the context in the case of a firearm.

### ***Interference with gathering or demonstration***

3. No person shall by words or conduct convey any threat that any other person or any member of any category of persons will suffer any violence or harm, loss, disadvantage or inconvenience if that person or any member of that category of person attends or takes part, or fails to attend or take part, in any gathering or demonstration: Provided that this prohibition does not include warnings issued by a member of a security service regarding the authorised and lawful consequences of actions taken to ensure the safety of the public or the restoration or maintenance of peace and order.

### ***Arrest and detention of persons***

4. (1) A member of a security service may without a warrant of arrest, arrest or cause to be arrested any person if such a member is on reasonable grounds of the opinion that such person's detention is necessary to ensure the safety of the public and the restoration or maintenance of peace and order: Provided that an order contemplated in subregulation (2) must be obtained as soon as possible after the arrest, but not later than twenty four hours thereafter: Provided further that the provisions of section 37 of the Constitution shall apply.

(2) A person arrested in terms of subregulation (1) may be detained in a correctional centre under a written order signed by any member of a security service who, without notice to any person and without hearing any person, who reasonably believes that such detention is necessary to ensure the safety of the public and for the restoration or maintenance of peace and order: Provided that the provisions of section 37 of the Constitution shall apply.

(3) A person arrested in terms of subregulation (1) and detained in terms of subregulation (2) may be released from detention if his or her detention is no longer necessary to ensure the safety of the public and the restoration or maintenance of peace and order under a written order signed by the Minister or any member of a security force at any time: Provided that the provisions of section 37 of the Constitution shall apply.

(4) A person detained in a correctional centre in terms of this regulation may, if the Minister or any member of a security service or the head of the correctional centre in writing so directs, be removed in custody from that correctional centre for detention in any other correctional centre or for any other purposes mentioned in such directive: Provided that the provisions of section 2(5) of the Act shall apply.

(5) A member of a security service may, with a view of restoring or maintaining peace and order, question any person arrested or detained in terms of this regulation: Provided that the provisions of section 37 of the Constitution shall

apply.

(6) A person detained under this regulation must be detained in accordance with the provisions of the Correctional Services Act applicable to prisoners awaiting trial for an alleged offence.

- (7) A child who is arrested and detained in terms of this regulation must —
- (a) be kept separately from persons over the age of 18 years and boys must be kept separately from girls;
  - (b) have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances; and
  - (c) be treated in a manner and kept in conditions that take account of that child's age.

#### ***Threats of harm, hurt, damage or loss***

5. No person shall—
- (1) by word or conduct threaten to inflict upon any other person or upon any of that person's relatives or dependants any harm, hurt, damage or loss, whether to his, her or their person or property; or
  - (2) prepare, compile, print, publish, transmit, possess or disseminate, or assist in the preparation, compilation, printing, publication, transmission or dissemination of any writing which threatens the infliction upon any other person, or upon any such person's relatives or dependants of any harm, hurt, damage or loss, whether to his, her or their person or property.

#### ***Power of entry, search and seizure***

6. (1) If a member of a security service is of the reasonable opinion that it is urgent and necessary to ensure the safety of the public and the restoration or maintenance of peace and order, he or she may without a warrant, but subject to subregulation (3)—



- (a) enter any place, premises, building, vehicle, vessel or aircraft and thereon or therein take any steps which he is by a provision of these regulations or any other law authorised to take;
- (b) search any person or any place, premises, building, vehicle, vessel or aircraft or any receptacle, object, data, computer program, computer data storage medium or computer system, any electronic programmable device or any other article; or
- (c) seize any vehicle, vessel or aircraft or any receptacle, object or other article which in his or her reasonable opinion—
  - (i) poses a risk to the safety of the public and the restoration or maintenance of peace and order;
  - (ii) is possessed, carried or transported in contravention of the provisions of these regulations; or
  - (iii) is relevant to the commission of any other offence,

Provided that the provisions of section 25(3) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) shall apply with the necessary changes required by the context.

(2) Anything seized under subregulation (1)(c) must be dealt with in accordance with a directive of the Minister or an order of court.

(3) The provisions of sections 25(3), 27 and 29 of the Criminal Procedure Act, 1977, relating to the search or entry of premises and the search of persons by a police official, shall apply with the necessary changes to any search or entry under this regulation by a member of a security service.

***Request for name and address of a person***

7. A member of a security service may in the exercise of any power or while carrying out of any duty conferred or imposed by, under or pursuant to these Regulations, request any person to furnish that member with his or her full name and address and show documentary proof of his or her identity.

### ***Control officer***

8. (1) The President may appoint on such conditions as he or she may deem fit a control officer for any area defined by him or her.

(2) A person appointed under subregulation (1) who is not employed in the public service shall be paid the remuneration as the President may determine with the concurrence of the Minister of Finance.

(3) The control officer must exercise his or her authority and perform his or her functions under these regulations subject to the control and directions of the President who may vary or rescind any decision arrived at by the control officer and may himself or herself in general or in any specific matter exercise any part of such authority and perform any such function.

(4) A control officer must, in the exercise of his or her authority and performance of his or her functions, as far as possible consult with local co-ordinating structures.

### ***Orders by control officer***

9. (1) The control officer may, in order to ensure the safety of the public and restoration or maintenance of peace and order, and without prior notice to any person and without hearing any person but subject to the provisions of section 37(4)(a) of the Constitution, issue an order not inconsistent with these Regulations—

(a) relating to —

- (i) the establishment of a curfew;
- (ii) the control of any services infrastructure and the security and safety of any installation or works connected with such services;
- (iii) subject to the provisions of section 37(4)(a) of the Constitution the control, regulation or prohibition of the announcement, dissemination, distribution, taking or sending of any comment on, or news required for

- dealing with the emergency, disaster or the restoration or maintenance of the peace and order;
- (iv) the activation of emergency operations plans;
  - (v) the coordination of relevant state institutions;
  - (vi) the implementation of public-protective measures, including the controlling of traffic, prohibiting ingress and egress into the affected area and prohibiting the sale of alcohol and firearms;
  - (vii) the establishment of shelters, medical shelters or alternative care sites;
  - (viii) the evacuation of people in designated areas to temporary shelters;
  - (ix) the closing of roads, businesses and properties in the affected area;
  - (x) whether people employed in the affected area should report for duty or not;
  - (xi) the release of personnel by relevant agencies for the rendering of emergency services;
  - (xii) the implementation of all or any of the provisions of a national disaster management plan that are applicable under the prevailing circumstances;
  - (xiii) the control and occupancy of premises within the state of emergency declared area;
  - (xiv) the detention of persons outside the affected area in terms of section 2(5) of the Act;
  - (xv) the prescription of penalties for any failure to comply with the provisions of any order, rule or by-laws;
  - (xvi) the facilitation of response and post-disaster recovery and rehabilitation; or
  - (xvii) any other matter which in his or her reasonable opinion, is necessary or expedient for ensuring the safety of the public or restoration or maintenance of peace and order,
- (b) whereby any person may not without the consent of the control officer —
- (i) bring into a particular area any object or article which may include, but is not limited to, any weapon specified in the order or being in possession thereof in that area;

- (ii) perform any act or carry on any activity specified in the order in a particular area;
- (iii) be outside the boundaries of his or her residential premises in a particular area at any time;
- (iv) put in motion or drive or being in or upon a vehicle that is in motion in a particular area, at any time; or
- (v) enter a particular area if he or she is not normally resident in that area.

(2) An order issued under subregulation (1) –

- (a) shall be of force generally or relate to a person specified in the order or to a category of persons specified in the order or to any person not belonging to a particular category specified in the order;
- (b) shall be of force during a period specified in the order or, if no period is so specified, until the order is withdrawn or until the declaration that a state of emergency exists is withdrawn or expires, whichever occurs first;
- (c) must be in writing;
- (d) must include the time and date they take effect;
- (e) must specify the person or persons to whom the order applies; and
- (f) must specify the reason for that order.

(3) (a) A consent contemplated in subregulation (1)(b) may be granted by the control officer on such conditions as he or she may determine and may not be refused unreasonably.

(b) The consent contemplated in subregulation (1)(b) may not be granted by the control officer if the granting of such consent will prejudice the safety of the public and the restoration or maintenance of peace and order or have the potential to delay the termination of the state of emergency.

(4) In any proceedings before a competent court of law in which it is relevant whether or not the control officer has issued a particular order, a copy of the order certified under the control officer's hand will be accepted as conclusive proof of

the issuing and contents of the order concerned unless the court directs otherwise.

### ***Promulgation of orders***

10. Any order issued under regulation 9 must be promulgated –
- (a) by publishing the order by notice in the *Gazette*;
  - (b) by publishing the order in a newspaper circulating in the area in respect of which the order applies;
  - (c) by making the order known by means of radio or television;
  - (d) by distributing the order in a written form among members of the public and by affixing it on public buildings at prominent public places in the area concerned;
  - (e) where the order is directed to a particular person, by handing or tendering it or causing it to be handed or tendered in a written form to that person; or
  - (f) by oral announcement to any particular person or to members of the public in general in the area concerned in a manner deemed fit by the control officer if, due to the urgency thereof or for any other reason, it can, in the opinion of the control officer, not be published, made known, distributed or announced in accordance with the provisions of paragraph (a), (b), (c), (d) or (e).

### ***Disruptive statements***

11. Subject to the provisions of section 37(4)(a) of the Constitution, any person who —
- (a) possesses, disseminates, distributes, makes, writes, prints or records any disruptive statement; or
  - (b) displays, utters or by means of any apparatus plays or causes to be played any disruptive statement,
- shall be guilty of an offence and may on conviction be sentenced to a fine or imprisonment for a period not exceeding three years, or both.

### ***List of organisations***

12. (1) An international humanitarian organisation may apply in writing with full motivation and in the manner directed by the Director-General: International Relations and Cooperation to him or her to be recognised as an organisation that may have access to a person detained under state of emergency legislation.

- (2) The Director-General: International Relations and Cooperation must —
- (i) consider an application referred to in subregulation (1);
  - (ii) inform the organisation concerned of his or her decision, without having to provide reasons for the decision unless such reasons are requested in terms of applicable law; and
  - (iii) keep a list of recognised organisations.

### ***Information and Communication***

13. (1) After the state of emergency has been declared, the Director-General: Government Communication and Information System must issue directives for a communication strategy regarding—

- (a) the manner in which;
- (b) the process whereby; and
- (c) the functionaries by whom,

the public must be informed and advised about the state of emergency.

(2) The directives referred to in subregulation (1) must provide for the process whereby services or products for the informing and advising of the public as contemplated in subregulation (1) may be sourced.

### ***Cyber matters***

14. The President may issue a rule or bylaw to provide for the manner in which any measure may be taken to temporarily block any computer related resource, communication or activity that incites the endangering of the safety of the public or a disturbance of peace and order.

### **Offence**

15. Any person who—
- (a) contravenes or fails to comply with any order, direction, directive or request under any provision of these Regulations;
  - (b) contravenes any provision of these Regulations;
  - (c) hinders any person in the carrying out of any duty or the exercise of any power or the performance of any function imposed or conferred by, under or pursuant to any provision of these Regulations; or
  - (d) destroys, defaces or falsifies any notice or other writing issued or purporting to have been issued under these Regulations,
- shall be guilty of an offence.

### **Penalties**

16. Any person convicted of an offence under these Regulations shall be liable to a fine or to imprisonment for a period not exceeding three years or both.

### **Short title**

17. These regulations shall be called the State of Emergency Regulations,  
20—.