

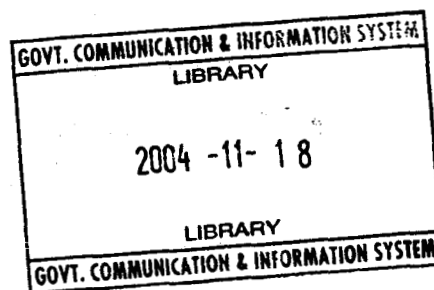
REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO**

**PROTECTION OF
CONSTITUTIONAL DEMOCRACY
AGAINST TERRORIST AND
RELATED ACTIVITIES BILL**

[B 12B—2003 Reprint]

*(As agreed to by the Portfolio Committee on Safety and Security
(National Assembly))*



[B 12E—2003]

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AMENDMENTS AGREED TO

**PROTECTION OF CONSTITUTIONAL DEMOCRACY AGAINST
TERRORIST AND RELATED ACTIVITIES BILL**
[B 12B—2003 Reprint]

PREAMBLE

1. On page 3, in the sixth paragraph, in the fifth line, after “committed” to insert “in accordance with such international law”.

CLAUSE 1

1. On page 5, after line 39, to insert:
 - (iv) **“engages in a terrorist activity”**, with reference to sections 2 and 3, includes—
 - (a) the commission, performance or carrying out of;
 - (b) the facilitation of, participation or assistance in, or contribution to the commission, performance or carrying out of;
 - (c) the performance of an act in preparation for or planning of; or
 - (d) instructing, directly or indirectly, the—
 - (i) commission, performance, carrying out of;
 - (ii) facilitation of, participation or assistance in, or contribution to the commission, performance or carrying out of; or
 - (iii) performance of an act in preparation for or planning of,

a terrorist activity, and the expressions **“to engage in a terrorist activity”**, **“engaging in a terrorist activity”** and **“engagement in a terrorist activity”**, shall be construed accordingly;
2. On page 7, from line 38, to omit the definition of **“property”** and to substitute:
 - (xx) **“property”** means money or any other movable, immovable, corporeal or incorporeal thing, and includes any rights, privileges, claims and securities and any interest therein and all proceeds thereof;
3. On page 8, from line 26, to omit subparagraph (iii) and to substitute:
 - (iii) endangers the life, or violates the physical integrity or physical freedom of, or causes serious bodily injury to or the death of, any person, or any number of persons;
4. On page 8, in line 48, to omit “defense” and to substitute “defence”.
5. On page 8, in line 53, after “insurrection” to insert “in the Republic”.
6. On page 8, in line 61, to omit “a State” and to substitute “the Republic”.

7. On page 9, from line 21, to omit subsection (3) and to substitute:

(3) For the purposes of paragraph (a)(vi) and (vii) of the definition of “**terrorist activity**”, any act which is committed in pursuance of any advocacy, protest, dissent or industrial action and which does not intend the harm contemplated in paragraph (a)(i) to (v) of that definition, shall not be regarded as a terrorist activity within the meaning of that definition.

8. On page 9, in line 31, to omit the first “the”.

9. On page 9, from line 43, to omit paragraph (b) and to substitute:

(b) the court is satisfied that—
 (i) the person believes that there is a reasonable possibility of the existence of that fact; and
 (ii) he or she fails to obtain information to confirm the existence of that fact.

10. On page 9, from line 45, to omit paragraph (c).

CLAUSE 2

1. On page 10, from line 1, to omit subsection (2).

CLAUSE 12

1. On page 13, in line 16, after “report” to insert “as soon as reasonably possible”.
2. On page 13, in line 24, to omit “within three months of” and to substitute “, at”.
3. On page 13, after line 26, to add:

(5) A person required to make a report in terms of subsection (1) concerning a suspicion that any other person intends to commit or has committed an offence referred to in section 4, may continue with and carry out any transaction to which such a suspicion relates, unless directed in terms of subsection (6) not to proceed with such a transaction.

(6) If a police official authorised thereto by the National Commissioner, after consulting with a person required to make a report contemplated in subsection (5), has reasonable grounds to suspect that a transaction referred to in that subsection may constitute an offence contemplated in section 4, that police official may direct that person, in writing, not to proceed with the carrying out of that transaction or any other transaction in respect of the property affected by that transaction for a period as may be determined by that police official, which may not be more than five days.

(7) For the purposes of calculating the period of five days in subsection (6), Saturdays, Sundays and proclaimed public holidays must not be taken into account.

(8) Subsection (6) does not apply to the carrying out of a transaction to which the rules of an exchange licensed in terms of the Stock Exchanges Control Act, 1985, or the Financial Markets Control Act, 1989, apply.

CLAUSE 15

1. On page 14, in line 37, to omit "that".
2. On page 14, in line 37, to omit "South Africa" and to substitute "the Republic".
3. On page 14, in line 38, to omit "that".
4. On page 14, in line 38, to omit "South Africa" and to substitute "the Republic".
5. On page 14, in line 43, after "resident;" to insert "or".

CLAUSE 17

1. On page 15, from line 51, to omit subsection (6) and to substitute:
 - (6) A person charged with committing an offence under section 4 may raise as a defence—
 - (a) the fact that he or she had performed any act in connection with the property in question, or allowed or facilitated the performance of any act in connection with that property, solely for the purpose of preserving the value of that property; or
 - (b) that he or she acted in good faith and reported his or her suspicion in accordance with section 12 of this Act, or section 29 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), as the case may be.
2. On page 15, after line 54, to insert:
 - (7) No action, whether criminal or civil, lies against a person complying in good faith with section 12(1).
 - (8) A person who has made, initiated or contributed to a report in terms of section 12(1) concerning a suspicion that any other person intends to commit or has committed an offence referred to in section 4 is competent, but not compellable, to give evidence in criminal proceedings arising from the report.
 - (9) No evidence concerning the identity of a person who has made, initiated or contributed to a report in terms of section 12(1) concerning a suspicion that any other person intends to commit or has committed an offence referred to in section 4, is admissible as evidence in criminal proceedings unless that person testifies at those proceedings.

CLAUSE 19

1. On page 17, in line 8, to omit "Gazette" and to substitute "*Gazette*".

CLAUSE 25

1. On page 19, in line 27, to omit "Gazette" and to substitute "*Gazette*".

CLAUSE 26

1. On page 19, in line 38, to omit "laid upon the Table" and to substitute "tabled".

CLAUSE 28

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

28. This Act is called the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE

1. On page 21, in the fourth column relating to Act No. 67 of 1962, in the third line, to omit "re-".
2. On page 21, in the fourth column relating to Act No. 87 of 1993, to omit paragraph (a) and to substitute:
 - (a) the substitution for paragraph (h) of the following paragraph:

“(h) refuses or fails to comply to the best of his or her ability with any lawful requirement, request or order of an officer or employee of the Department, an inspector or a person authorized by the Council; [or]”.
3. On page 25, in the fourth column relating to Act No. 38 of 2001, to omit paragraph (a) and to substitute:
 - (a) after the definition of "Director" of the following definition:

“‘entity’ has a corresponding meaning with the definition in section 1 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004; and
4. On page 25, in the fourth column relating to Act No. 38 of 2001, to omit item 4 and to substitute:
 4. The substitution for the heading to Chapter 3 of the following heading:

“CONTROL MEASURES FOR MONEY LAUNDERING [CONTROL MEASURES] AND FINANCING OF TERRORIST AND RELATED ACTIVITIES”.
5. On page 26, in the fourth column, to omit paragraph (a) of item 6 and to substitute:
 - (a) the business has received or is about to receive the proceeds of unlawful activities or property which is connected to an offence relating to the financing of terrorist and related activities:

6. On page 26, in the fourth column, to omit paragraph (b)(ii) of item 6 and to substitute:

(ii) has no apparent business or lawful purpose;

7. On page 27, in the fourth column, to omit paragraph (b) of item 8 and to substitute:

(b) that account or other facility has received or may receive the proceeds of unlawful activities or property which is connected to an offence relating to the financing of terrorist and related activities or is being or may be used for money laundering purposes or for the financing of terrorist or related activities or for the purpose of any transaction contemplated in section 29(1)(b).”.

8. On page 27, in the fourth column, after item 8, to insert:

9. The substitution in section 40(1) for paragraph (b) of the following paragraph:

“(b) an entity outside the Republic performing similar functions to those of the Centre, or an investigating authority outside the Republic which may, at the initiative of the Centre or on written request, obtain information which the Centre reasonably believes is relevant to the identification of the proceeds of unlawful activities or the combating of money laundering or financing of terrorist and related activities or similar offences in the country in which that entity is established;”.