
GENERAL NOTICES • ALGEMENE KENNISGEWINGS

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA**NOTICE 874 OF 2015****NOTICE OF INTENT TO INTRODUCE PRIVATE MEMBER'S BILL AND INVITATION FOR PUBLIC COMMENT ON THE DRAFT PROTECTION OF CRITICAL INFRASTRUCTURE BILL**

In accordance with Rule 241(1)(b) of the Rules of the National Assembly, notice is hereby given that Zakhele Njabulo Mbhele MP intends introducing a private member's bill shortly in the National Assembly to repeal the National Key Points Act, 1980 (Act No 102 of 1980) and related legislation; provide for the establishment, composition, functions and duties, meetings, financing and reporting of the Critical Infrastructure Board; to provide for a register containing the areas declared as critical infrastructure; and to provide for matters connected therewith.

A copy of the draft Protection of Critical Infrastructure Bill and a memorandum setting out its objectives are included in the schedule to this notice in fulfilment of the requirements of Rule 241(1)(c) of the Rules of the National Assembly.

Interested parties and institutions are invited to submit written representations on the draft bill to the Secretary to Parliament within 40 days of the publication of this notice. Representations can be delivered to the Secretary to Parliament, Old Assembly Building, Parliament Street, Cape Town or mailed to the Secretary to Parliament, P O Box 15, Cape Town 8000 or e-mailed to gmgidlana@parliament.gov.za and copied to luyandam@da.org.za.

11 August 2015
Z N Mbhele MP

SCHEDULE

REPUBLIC OF SOUTH AFRICA

PROTECTION OF CRITICAL INFRASTRUCTURE BILL

*(As introduced in the National Assembly (proposed section 76))
(The English text is the official text of the Bill)*

(Zakhele Njabulo Mbhele MP)

[PMB4 - 2015]

BILL

To provide for the establishment, composition, functions and duties, meetings, financing and reporting of the Critical Infrastructure Board; to provide for the suspension and removal of Members of the Board, to provide for the determination and declaration of Critical Infrastructure; to ensure that security measures are implemented at Critical Infrastructure; to provide for a Register containing the areas declared as Critical Infrastructure; to set out the rights and duties of owners of Critical Infrastructure; to provide for the limitation of the liability of the State; to provide for parliamentary oversight over the Board; to create offences and penalties; to provide for transitional provisions; to repeal the National Key Points Act 102 of 1980 and related legislation; and to provide for matters connected therewith.

PREAMBLE

WHEREAS section 198 of the Constitution of the Republic of South Africa, 1996 requires national security to reflect the resolve of South Africans, as individuals and as a nation, to live as equals, to live in peace and harmony, to be free from fear and to seek a better life;

AND WHEREAS that national security must be pursued in compliance with the law, subject to the authority of Parliament and the national executive;

AND RECOGNISING that disruption to Critical Infrastructure can endanger the national security of the Republic;

AND DESIRING to achieve and maintain trustworthy, legitimate and open protection of Critical Infrastructure, in accordance with the Constitution for the continued national security of the Republic,

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

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CHAPTER 1

DEFINITIONS, OBJECTS, APPLICATION AND INTERPRETATION OF ACT

Definitions

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

“**area**” means any soil or water surface, whether with a building, an installation or a structure thereon or not, and includes air space;

“**Board**” means the Critical Infrastructure Board established in terms of section 4(1);

“**Chairperson**” means the Chairperson of the Board;

“**Committee**” means the portfolio committee responsible for police;

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

“**Critical Infrastructure**” means systems and assets, determined and declared as such in terms of section 13;

“**disaster**” means disaster as defined in the Disaster Management Act, 2002 (Act No. 57 of 2002);

“**intelligence**” means all processed, gathered, evaluated, correlated and interpreted security information including activities related thereto;

“**Member**” means a member of the Board;

“**Minister**” means the Minister responsible for police;

“**owner**” in relation to any place or area declared Critical Infrastructure includes —

- (a) the person registered as the owner of the land constituting such place or area;
- (b) the lawful occupiers of the land constituting such place or area;
- (c) an executor, administrator, guardian, trustee, liquidator, curator or other person who controls the estate and assets of that person or represents him or her where the person referred to in paragraph (a) or (b) is either deceased, a minor, insolvent or legally incompetent;
- (d) the head of the department under whose control the place or area is where the State owns or occupies such place or area; or
- (e) any person under whose direct control or management such place or area is, where the person referred to in paragraphs (a) to (d) cannot be identified;

“**place**” means any premises, building, structure, installation, industrial complex or distribution network;

“**Register**” means the Register referred to in section 16;

“**security clearance**” means the security clearance issued in terms of section 2A(6) of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994) by any intelligence structure referred to in that Act;

“**security measures**” include, but are not limited to —

- (a) the employment and hiring of the services of security officers;
- (b) the determination of the number of security officers required for the securing of Critical Infrastructure;
- (c) the instructions relating to the use of firearms, weapons and ammunition at a Critical Infrastructure;
- (d) the management and administration in respect of safeguarding, protection and security;
- (e) the implementation of security standards for Critical Infrastructure;
- (f) egress and access control; or
- (g) the security training standards for security officers responsible for the safeguarding of Critical Infrastructure; and

“**security service**” means security service as contemplated in Chapter 11 of the Constitution.

Objects of Act

2. The objects of this Act are to ensure—

- (a) the adequate protection of Critical Infrastructure within the Republic;
- (b) the creation of procedures for the determination and protection of Critical Infrastructure that are open and transparent; and
- (c) accountable administration of Critical Infrastructure while ensuring that the security of the Republic is maintained.

Application and interpretation of Act

3. (1) This Act applies to all places or areas declared as Critical Infrastructure within the Republic.

(2) In the event of any conflict between this Act and any other law in force at the commencement of this Act, this Act prevails.

CHAPTER 2 CRITICAL INFRASTRUCTURE BOARD

Establishment of Critical Infrastructure Board

4. (1) There is hereby established a juristic person to be known as the Critical Infrastructure Board.

(2) The Board must be impartial and perform its functions without fear, favour or prejudice.

(3) In accordance with section 49 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), the Board is the accounting authority and must comply with the provisions of the Public Finance Management Act, 1999.

Composition and appointment of Board

5. (1) The Members of the Board are appointed by the Minister after consultation with the National Assembly.

(2) The Board must consist of 12 members, comprising of the following persons:

- (a) Two persons from the Crime Intelligence Division of the South African Police Service;
- (b) one person from the Cyber Crimes Unit of the South African Police Service;
- (c) three persons with expertise in State Security;
- (d) three persons from the Intelligence Division of the South African National Defence Force;
- (e) one person with expertise in Public Works;
- (f) a retired judge of the High Court of South Africa or a person with at least 10 years' practical experience as an attorney or advocate; and
- (g) one person with expertise in the financial services industry.

(3) A person referred to in subsections 2(a) to (d) must—

- (a) have at least eight years' experience in intelligence, security or defence;
- (b) have adequate knowledge regarding the protection and identification of Critical Infrastructure; and
- (c) have undergone security clearance.

- (4) A person who—
- (a) has been convicted of a crime relating to dishonesty on or after 17 December 1996;
 - (b) is not a fit and proper person;
 - (c) is not a citizen of the Republic or who holds dual citizenship;
 - (d) has been declared of unsound mind by a competent court of law; or
 - (e) is an unrehabilitated insolvent,
- is disqualified from being appointed as a Member.

(5) The Minister must within 14 days of the appointment of a Member, publish in the *Gazette* the name of the Member he or she appointed.

Appointment of Chairperson

6. (1) The Minister must, on the recommendation of the National Assembly, appoint one Member as the Chairperson.

(2) The National Assembly must recommend to the Minister three persons nominated by the Committee, who meet the criteria to be a Member.

Term of office of Members and Chairperson

7. (1) A Member holds office for a term of three years, which may be extended for one further term of three years.

(2) The Chairperson must hold office for a non-renewable term of five years.

Removal and suspension

8. (1) A Member will immediately cease to hold said office should he or she fail to meet the requirements set out in section 5.

(2) A Member must, after due independent enquiry and within one month thereof, be removed from the Board by the Minister if the Member—

- (a) has been found guilty of misconduct;
- (b) is incapable of performing his or her duties effectively; or
- (c) is absent from two consecutive meetings of the Board without the prior permission of the Chairperson, except on good cause shown.

(3) A Member must be suspended from the Board by the Minister if—

- (a) he or she is charged with any criminal offence relating to dishonesty; or
- (b) an investigation by a government body has been instituted against that Member.

(4) A Member may be removed or suspended from the Board by a majority vote taken in the National Assembly: Provided that the removal or suspension by the National Assembly is not confined to reasons stated in subsections (1) and (2).

(5) In case of a vacancy, the Minister must fill the vacancy within a reasonable period of time, which period may not exceed three months, by following the same process set out in section 5.

Functions and powers of Board

9. (1) The Board must—

- (a) determine and declare areas as Critical Infrastructure in accordance with section 13;
- (b) determine and order security measures for Critical Infrastructure;
- (c) keep the Register contemplated in section 16;

- (d) inform owners of Critical Infrastructure of relevant security measures;
 - (e) coordinate the security of Critical Infrastructure;
 - (f) consider petitions within a reasonable period of time from owners claiming unnecessary inconvenience in the implementation of security measures;
 - (g) submit a report each financial quarter to the Minister for tabling in the National Assembly containing the information required in terms of section 12(1);
 - (h) review the vulnerability of at Critical Infrastructure in accordance with section 15(1);
 - (i) review the security measures at Critical Infrastructure in accordance with section 15(2); and
 - (j) perform any other function related to this Act.
- (2) (a) The Board may delegate any of its powers that relate to the administrative functioning of the Board.
- (b) Any delegation under paragraph (a) does not divest the Board of any power it has delegated.

Meetings of Board

10. (1) The Board must have a minimum of one meeting per financial quarter and must submit its yearly programme to the Minister for tabling in the National Assembly by 1 March every year.
- (2) The Chairperson may convene the Board at any reasonable time at a place determined by him or her by giving 14 days' notice to the Members.
- (3) If the Chairperson is absent from any meeting of the Board, the Members present must elect another Member from among themselves to preside at that meeting.
- (4) Seven Members, which must include—
- (a) a Member referred to in section 5(2)(a) or (b); and
 - (b) a Member referred to in section 5(2)(d),
- constitute a quorum at any meeting of the Board.
- (5) The decision of a majority of the Members present at a meeting of the Board constitutes a decision of the Board.
- (6) In the event of an equality of votes on any matter, the person presiding at the meeting in question has a casting vote in addition to his or her deliberative vote.
- (7) The minutes of each meeting of the Board must reflect the details of all votes cast.
- (8) The Board may determine its own rules and procedures for the conducting of its meetings taking into account the provisions of this section.

Financing of Board

11. (1) Each Member will receive such remuneration, allowances and other benefits as determined by the Minister in concurrence with the Cabinet member responsible for finance.
- (2) Money required for the functioning of the Board and the security measures ordered by the Board must be defrayed from money appropriated by Parliament to the Department of Police for that purpose.

Reporting

12. (1) The Minister must table in the National Assembly an unclassified report each financial quarter on—
- (a) the total number of existing Critical Infrastructure;
 - (b) the name of each Critical Infrastructure;

- (c) details of whether each Critical Infrastructure is state-owned or privately owned and where applicable, which Ministry is responsible for its management; and
 - (d) the name of any new Critical Infrastructure determined in the review period.
- (2) The Minister must table a classified report, to be reviewed by the Committee in closed meeting, on all activities performed in terms of this Act, in particular—
- (a) the declaration and determination of each Critical Infrastructure;
 - (b) the allocation and expenditure of funds in the fulfillment of functions under this Act;
 - (c) the determination of specific security measures for each Critical Infrastructure;
 - (d) the implementation of security measures at each Critical Infrastructure;
 - (e) the number of security officers deployed to each Critical Infrastructure;
 - (f) the security clearances of security officers;
 - (g) the status of reviews in terms of section 15(1) and (2);
 - (h) the status of owner submissions made in terms of section 14(1); and
 - (i) any delegation of powers done in terms of section 9(2).

CHAPTER 3

DETERMINATION AND DECLARATION OF, AND SECURITY MEASURES AT CRITICAL INFRASTRUCTURE AND REVIEW BY BOARD

Determination and declaration of Critical Infrastructure

- 13.** (1) The Board must determine whether a place or area falls within the categories listed in subsection (2).
- (2) Critical Infrastructure must fall within one of the following categories:
- (a) A place or area used for the storage and development of—
 - (i) chemical warfare agents;
 - (ii) biological warfare agents; or
 - (iii) defensive capabilities against the effects of weapons of mass destruction,
as defined in the Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 97 of 1993);
 - (b) computing and telecommunications equipment, software and processing facilities;
 - (c) medical, police, fire and rescue systems that can be called upon to respond to emergencies;
 - (d) energy, which includes—
 - (i) the production and holding facilities for—
 - (aa) natural gas;
 - (bb) crude and refined petroleum;
 - (cc) petroleum-derived fuels; or
 - (dd) the refining and processing facilities for the fuels and pipelines that transport the commodities referred to in items (aa), (bb) and (cc);
 - (ii) generation stations, transmission and distribution networks that create and supply electricity to end users;
 - (iii) any civilian place or area that deals with nuclear research or activities;
or
 - (iv) any place or area used in the enrichment and storage of uranium;

- (e) financial services, which includes—
 - (i) any place or area which enables South Africa to successfully compete in global economic markets; or
 - (ii) retail, commercial organisations, investment institutions, exchange boards, trading houses and reserve systems that support activities of monetary transactions, including its storage for saving purposes, its investment for income purposes, its exchange for payment purposes and its disbursement in the form of loans and other financial instruments;
- (f) any place or area used in the continuity of constitutional democracy;
- (g) the public health service which includes the prevention of disease, health related surveillance, laboratory or personal health care services;
- (h) the physical distribution systems crucial to state security and economic interest including—
 - (i) national airspace systems;
 - (ii) airports;
 - (iii) traffic movement systems;
 - (iv) ports;
 - (v) waterways; or
 - (vi) railway stations; or
- (i) water which includes—
 - (i) sources of water;
 - (ii) reservoirs;
 - (iii) aqueducts;
 - (iv) filtration, cleaning and treatment systems; or
 - (v) waste water systems.

(3) When determining Critical Infrastructure, the Board must indicate the category in which the Critical Infrastructure falls.

(4) Once the Board has determined that a place or area falls within a category listed in subsection (2), the vulnerability of such place or area must be determined by the Board in accordance with subsection (5).

(5) The vulnerability of Critical Infrastructure is determined with due consideration to all intelligence relating to the probability of such place or area being subject to—

- (a) a threat or use of force;
- (b) terrorism or terrorist related activity;
- (c) unlawful and intentional—
 - (i) communication, delivering or making available of information classified top secret, secret or confidential; or
 - (ii) obtaining, collecting, capturing, or copying a record containing information classified top secret, secret or confidential to a foreign state;
- (d) an act that would expose information that would threaten the constitutional order of the Republic;
- (e) sabotage; or
- (f) serious violence directed at overthrowing the constitutional order of the Republic.

(6) In determining a place or area as Critical Infrastructure the Board must, where such a place or area is subject to an action listed in subsection (5), take into consideration whether at any time that place or area is of such importance that its loss, damage, disruption or immobilisation may—

- (a) expose information that would threaten the safety of the Republic; or
- (b) threaten or cause serious detriment the constitutional order of the Republic.

(7) Before a determination of the place or area as Critical Infrastructure, the owner must be notified of the intended determination.

(8) The Board must —

- (a) after considering the factors listed in subsections (1) to (6); and
- (b) after it has notified the owner in terms of subsection (7), determine a place or area as Critical Infrastructure.

(9) Once a place or area has been determined as Critical Infrastructure, the Board must declare it as such and must—

- (a) decide on the security measures necessary to protect such Critical Infrastructure in accordance with section 14;
- (b) order the implementation of such security measures decided upon;
- (c) publish the declaration in the *Gazette*; and
- (d) add such place or area to the Register referred to in section 16(1).

(10) The Minister must ensure that a list of the names and categories of all the places and areas declared as Critical Infrastructure must be made available on the website of the South African Police Service unless he or she, after consultation with the Committee, decides that the publication of the name and category will increase the vulnerability of the place or area to such an extent that national security will be threatened.

Security measures at Critical Infrastructure

14. (1) When deciding on the security measures to be implemented at Critical Infrastructure, the Board must—

- (a) hear submissions from owners who allege that security measures can be implemented in a more convenient way;
- (b) request submissions from the relevant security services; and
- (c) ascertain if the measures can be implemented in a different way to accommodate both the owner and the necessary security measures.

(2) Security measures implemented at the Critical Infrastructure may not materially hamper the functioning of the Critical Infrastructure.

(3) The implementation of security measures must be done in a way that least inconveniences owners.

(4) (a) Notwithstanding the provisions in the Disaster Management Act, 2002 (Act No. 57 of 2002), all emergency services must assist in an emergency at a declared Critical Infrastructure, when so requested in writing by the South African Police Service, State Security Agency, or the South African National Defence Force without a disaster being declared in the *Gazette*.

(b) In the event of a disaster—

- (i) municipal services will not be bound by municipal boundaries; and
- (ii) members of emergency services will not be committing an offence based on the sole fact that they are gaining access to a Critical Infrastructure without the required authorisation.

Review by Board

15. (1) (a) The Board must, at least once in a financial year, review the security measures of all Critical Infrastructure, which excludes places or areas that have been declared as Critical Infrastructure within the same financial year of the review.

(b) The Board may after a review make changes to the security measures.

(2) (a) The Board must, at least once in a financial year, review the vulnerability of all Critical Infrastructure which excludes places or areas that have been declared as Critical Infrastructure within the same financial year of the review.

(b) The Board must decide if a place or area still qualifies as a Critical Infrastructure after it has completed the review referred to in paragraph (a).

(3) (a) If the Board determines that a place or area is no longer Critical Infrastructure, it must within 14 days of such determination publish such determination in the *Gazette*.

(b) The Board must, after the determination referred to in paragraph (a),—

(i) ensure the removal of all security measures ordered by it from the place or area; and

(ii) ensure the removal of the place or area from the Register.

CHAPTER 4 ESTABLISHMENT OF REGISTER

Establishment of Register

16. (1) The Board must establish and keep a register which shall be known as the Register of Critical Infrastructure.

(2) The Board must enter into the Register the title, location, category and any other information of Critical Infrastructure as may be prescribed by the Minister in accordance with regulations.

(3) Access to the contents of the Register is restricted to—

(a) Members;

(b) the Committee; and

(c) persons who have security clearance and have obtained the permission of the Board.

CHAPTER 5 RIGHTS AND DUTIES OF OWNERS AND LIMITATION OF LIABILITY

Rights and duties of owners

17. (1) An owner must cooperate with the Board and security services in respect of security measures decided upon for Critical Infrastructure by the Board.

(2) An owner must not be made to bear any costs for the provision of security measures ordered by the Board unless the owner deems it necessary to bear some or all of the costs.

Limitation of liability

18. The State, the Minister, the Board, an owner, any person who has delegated authority under this Act or any person in the service of the State is not liable for any loss or damage as result of bodily injury, loss of life or damage to property caused by, or arising out of, or in connection with any conduct ordered, performed or executed under this Act, unless the State, the Minister, the Board,

an owner, any person who has delegated authority under this Act or any person in the employ of the State acted with negligence or intent.

CHAPTER 6 PARLIAMENTARY OVERSIGHT

Parliamentary oversight

19. (1) The portfolio committee responsible for police must oversee the Board.
- (2) The Committee must fulfill the following functions:
- (a) Oversee that all places and areas have been properly considered as Critical Infrastructure;
 - (b) oversee that Critical Infrastructure have proper, appropriate and adequate security measures in place;
 - (c) oversee expenditure made in terms of this Act;
 - (d) make recommendations on the suitability of Members; and
 - (e) any other power in line with the objectives of this Act.
- (3) The meetings of the Committee must be open to the public when performing its oversight function except when—
- (a) it is considering the intelligence that the Board used when the Board determined the vulnerability of a place or area;
 - (b) it is considering the security measures ordered by the Board and the implementation thereof at a Critical Infrastructure;
 - (c) it considers reports in terms of section 12(2); or
 - (d) it discusses a place or area which fall under section 13(8).
- (4) Members of the Committee must obtain security clearance in order to exercise the oversight function referred to subsection (3).

CHAPTER 7 GENERAL PROVISIONS

Offences and penalties

20. (1) Any person who in the course of their duties under this Act, intentionally or negligently—
- (a) hinders, obstructs or disobeys any person in the fulfillment of their functions in terms of this Act;
 - (b) unlawfully discloses, in any manner, any information relating to the security measures implemented at a Critical Infrastructure without being legally obliged or entitled to do so, or as may be necessary for the performance of functions under this Act; or
 - (c) commits any act which damages, endangers, disrupts or threatens a Critical Infrastructure,
- is guilty of an offence.
- (2) Any person who, intentionally or negligently—
- (a) hinders, obstructs or disobeys any person in the fulfillment of their functions in terms of this Act;
 - (b) unlawfully discloses, in any manner, any information relating to the security measures implemented at a Critical Infrastructure without being legally obliged or entitled to do so, or as may be necessary for the performance of functions under this Act; or

- (c) commits any act which damages, endangers, disrupts or threatens a Critical Infrastructure,

is guilty of an offence.

(3) Any person found guilty of an offence referred to in subsection (1) or (2) is liable on conviction to—

- (a) a fine not exceeding R1 000 000;
 (b) imprisonment of not less than 10 years but not exceeding 25 years; or
 (c) both such a fine and imprisonment.

Regulations

21. (1) The Minister may, after consultation with the National Assembly, make regulations with regard to—

- (a) the information to be entered into the register referred to in section 16(1);
 (b) the notification procedure to owners;
 (c) the information required from owners to enable the Board to make a determination referred to in section 13(8);
 (d) the employment or the hiring of the services of guards by owners of Critical Infrastructure;
 (e) the requirements to be complied with by persons serving as guards at Critical Infrastructure;
 (f) the nature and duration of the training or further training of persons serving as guards at Critical Infrastructure;
 (g) the powers of guards in respect of—
 (i) the searching of a person;
 (ii) the examination and seizure of articles in the possession of a person;
 (iii) the arrest of a person; and
 (iv) the application of reasonable force, including the use of firearms, in connection with such a person's presence at or in the vicinity of Critical Infrastructure;
 (h) any matter that in terms of this Act may or must be prescribed; and
 (i) any ancillary or incidental administrative or procedural matter that is necessary to prescribe for the proper implementation or administration of this Act.

(2) All regulations made in terms of this Act must be tabled by the Minister in the National Assembly at least 30 days before such regulations are published.

Transitional provisions

22. (1) In this section, unless the context otherwise indicates—

“**National Key Point**” means a place or area that has been declared a National Key Point in terms of the National Key Points Act; and

“**National Key Points Act**” means the National Key Points Act, 1980 (Act No. 102 of 1980).

(2) (a) A National Key Point will be deemed to have been determined as Critical Infrastructure in terms of this Act until the Board has reviewed its status as contemplated in subsection (5).

(b) Any proclamation, regulation, notice, approval, authority, licence, permit, certificate or document issued, made, given or granted in terms of the National Key Points Act, shall be deemed to have been issued, made, given, granted or taken under the corresponding provision of this Act.

(3) The Members must be appointed within three months of the commencement of this Act.

(4) The Minister must, within five days of the Board being fully appointed, provide a list of all National Key Points to the Board.

(5) All National Key Points must, within 275 days of the list being provided to the Board, be reviewed and if found to conform to the requirements set out in section 13, be determined and declared Critical Infrastructure in terms of that section.

(6) Any person appointed in terms of section 6 of the National Key Points Act, who is also an officer or employee appointed in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994) continues to be an employee or officer under the Public Service Act, 1994.

Repeal of laws

23. (1) Subject to section 22, the laws mentioned in Schedule 1 are hereby repealed to the extent set out in the third column thereof.

(2) Any proclamation, regulation, notice, approval, authority, licence, permit, certificate or document issued, made, given or granted and any other action taken under any other provision of a law related to legislation mentioned in subsection (1) is repealed.

Short title and commencement

24. This Act is called the Protection of Critical Infrastructure Act, 2015 and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

Schedule 1

No. and year of law	Short title	Extent of repeal
Act No. 102 of 1980	National Key Points Act, 1980	The whole
Act No. 25 of 2002	Electronic Communications and Transactions Act, 2002	Section 53

MEMORANDUM ON THE OBJECTIVES OF THE PROTECTION OF CRITICAL INFRASTRUCTURE BILL, 2015

1. BACKGROUND

1.1 The Protection of Critical Infrastructure Bill (hereinafter the “Bill”) seeks to repeal the National Key Points Act, 1980 (Act No 102 of 1980) (hereinafter the “Act”) in its entirety. The Act was drafted in 1980 by the apartheid government in response to sabotage and is inappropriate in a constitutional democracy.

1.2 The Act gives far-reaching powers to the Minister of Police without scrutiny. The Act is fundamentally at odds with the values of openness and participation which underpin the Constitution.

1.3 Prompted by the Act’s contradiction with the values found in the Constitution, there is a need for the repeal of the entire Act as it has no place in a constitutional and democratic South Africa.

1.4 The Bill seeks to protect infrastructure critical to the national security of the Republic in a manner consistent with the Constitution in an open and transparent manner.

2. OBJECTS OF THE BILL

2.1 Clauses 1, 2 and 3 deal with definitions of terms, the objects and the application of the Bill.

2.2 Clause 4 provides for the establishment of the Critical Infrastructure Board as a juristic person.

2.3 Clause 5 provides for the composition of the Board to ensure that appropriate expertise is utilised in the determination and declaration of Critical Infrastructure.

2.4 Clause 6 provides for the appointment of the Chairperson by the Minister from 3 persons recommended to the Minister by the National Assembly.

2.5 Clause 7 provides for the term of office of Members of the Board, which is three years and can be extended for one further non-renewable term of three years. It also provides for the term of office of the Chairperson, which is a non-renewable term of five years.

2.6 Clause 8 sets out how Members must be removed to prevent Members who are no longer eligible or appropriate from sitting on the Board. Importantly, dual citizenship is set out as disqualifying criteria to ensure that those Members who have access to the full details of South Africa’s Critical Infrastructure and who are responsible for determining which places or areas are deemed as such are South African citizens alone.

2.7 Clause 9 provides for the functions and duties of the Board, to ensure that the members of the Board operate within the confines of the law and assist in keeping the Board accountable. The functions listed also assist the Board in understanding its mandate.

2.8 Clause 10 sets out how meetings of the Board must take place. This will prevent procedural issues from stopping the functioning of the Board. It also requires that the Board meet at least once in a financial year to create a minimum threshold for the Board.

2.9 Clause 11 provides for the financing of the Board.

2.10 Clause 12 provides how the Board will report to the National Assembly. This ensures for proper democratic accountability of the Board. It also ensures that any improper conduct on the side of Board members is guarded against.

2.11 Clause 13 sets out how the Board must go about determining and declaring Critical Infrastructure. Critical Infrastructure must fall within one of the categories listed. Once it is determined that the place falls within one of the categories, the vulnerability of the place must be determined considering available intelligence and the consequences to national security in the event that such a place or area were to be compromised or lost. Upon the proper consideration of these factors the Board will then declare the place or area as Critical Infrastructure and will then determine the appropriate security measures that must be in place at the Infrastructure. The Board will also have to review Critical Infrastructure each financial year to prevent Critical Infrastructure receiving security measures that are no longer required.

2.12 Clause 14 sets out criteria that the Board must take into account when it determines the security measures necessary at Critical Infrastructure.

2.13 Clause 15 sets out the review function of the Board in relation to Critical Infrastructure.

2.14 Clause 16 creates a register of Critical Infrastructure, so that a reliable and accurate record of Critical Infrastructure is kept.

2.15 Clause 17 contains the rights and duties of owners of places that have been declared Critical Infrastructure.

2.16 Clause 18 sets out the limitation of the liability of the State.

2.17 Clause 19 sets out the oversight function of the National Assembly. The oversight will be done by the Committee in the National Assembly responsible for overseeing the South African Police Service. Further, the oversight will be done in open committee meetings, with closed meetings being allowed only in certain limited circumstances.

2.18 Clause 20 creates offences and penalties.

2.19 Clause 21 makes provision for the Minister to make regulations subject to Parliamentary oversight.

2.20 Clause 22 deals with the transitional arrangements, to ensure that places that have already been declared National Key Points be given the appropriate protection during this time. The clause also requires that the list of National Key Points be given to the Board, so that the Board can determine within 275 days which of those National Key Points meet the requirements of a Critical Infrastructure.

2.21 Clause 23 repeals the National Key Points Act and section 53 of the Electronic Communications and Transactions Act.

3. FINANCIAL IMPLICATIONS FOR THE STATE

The Bill will have financial implications for the State; the costs among others in the following areas:-

- The cost of financing the Board.
- The cost of security measures required by the Board.

4. PARLIAMENTARY PROCEDURE

4.1 It is proposed that the Bill be dealt with in terms of the procedure established by section 76 of the Constitution, since it falls within functional areas listed in Schedule 4 of the Constitution, namely “health services, airports other than international and national airports”, “public transport”, “road traffic regulation”, “pontoon, ferries, jetties, piers and harbours, excluding the regulation of international and national shipping and matters related thereto” and “water and sanitation services limited to potable water supply systems and domestic waste-water and sewerage disposal systems”.

4.2 It is further proposed that it is not necessary to refer the Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.