

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**NOTICE 1219 OF 2022****INVITATION FOR PUBLIC COMMENTS
UNLAWFUL ENTRY ON PREMISES BILL, 2022**

1. The Department of Justice and Constitutional Development invites interested parties to submit written comments on the proposed Unlawful Entry on Premises Bill, 2022 (the Bill).
2. The main purpose of the Bill is to repeal and replace the Trespass Act, No. 6 of 1959 ("the Trespass Act") and to prohibit unlawful entry on premises.
3. The Trespass Act has been identified as a piece of colonial/apartheid era legislation as it was originally designed to combat trespass, publications and conduct engendering hostility between certain population groups. The Trespass Act has therefore lost its relevance in our constitutional democracy.
4. The Bill aims to prohibit unlawful entry on premises, and to provide for matters connected therewith. Among other things, it provides for the offence of unlawful entry and the penalties to be imposed if a person is found to be guilty of the offence; the duty to inform an intruder of unlawful entry; the powers of the police and defences to the offence of unlawful entry.
5. A copy of the Bill is available on the website of the Department at <http://www.justice.gov.za>.
6. The comments on the Bill must be submitted to Ms A Botha, on or before 16 September 2022. The contact details are:
 - (a) Postal address:
The Director-General: Justice and Constitutional Development
Private Bag X 81
Pretoria
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marked for the attention of Ms A Botha; or
 - (b) E-mail address:
AIBotha@justice.gov.za; or
 - (c) Fax nr:
012 406 4632.
7. Further information can be obtained from Ms A Botha at 012 406 4762.

REPUBLIC OF SOUTH AFRICA

UNLAWFUL ENTERING ON PREMISES BILL

(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill published in Government Gazette No. of 2022) (The English text is the official text of the Bill)

(MINISTER OF JUSTICE AND CORRECTIONAL SERVICES)

[B – 2022]

BILL

To prohibit the unlawful entry on premises, and to provide for matters connected therewith.

PARLIAMENT of the Republic of South Africa enacts as follows:—

Definitions

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

"enclosed land" includes any land that is—

- (a) surrounded by a fence;
- (b) surrounded by a natural boundary;
- (c) surrounded by a fence and a natural boundary; or
- (d) posted, in accordance with section 6(1), with signs prohibiting trespass;

"intruder" means a person who unlawfully enters on a premises or part of a premises;

"lawful occupier" means one or more persons who physically occupies a premises and includes the—

- (a) the owner;
- (b) a person or persons who reside on the premises;
- (c) a person or persons who has the responsibility for and control over—
 - (i) the condition of the premises;
 - (ii) the activities carried out on the premises; or
 - (iii) control over persons allowed to enter the premises,

but does not include an employee of the lawful occupier;

"occupied premises" means a premises which is physically occupied by a lawful occupier;

"premises" means any—

- (a) land, including—
 - (i) enclosed land;
 - (ii) land not enclosed or which was previously enclosed, or partially enclosed;
 - (iii) foreshore and land covered by water; and
- (b) anything on the land, including—
 - (i) any building or other permanent or temporary structure;
 - (ii) a ship or vessel, train, railway carriage, vehicle or aircraft, except while in operation;
 - (iii) a trailer, caravan, motorhome or a portable structure designed or used as a residence, for shelter or recreation; and
 - (iv) a sheet of water;

"prescribed" means prescribed by regulation;

"unlawful entry" means entry on a premises or part of a premises without the expressed or implied permission by a lawful occupier and includes—

- (a) where permission is withdrawn to enter a premises;

- (b) where permission is only granted for entry on, or presence in a part of the premises,
and a person fails to leave the premises or part of the premises;
"**unoccupied premises**" means a premises which is not physically occupied by a lawful occupier.

Application of the Act

2. (1) This Act applies throughout the Republic with regards to the unlawful entry on a premises by an intruder, irrespective if the intruder, after unlawful entry, occupies the premises.

(2) This Act is not applicable to—

- (a) any area or place as contemplated in the National Key Points Act, 1980 (Act No. 102 of 1980) or the Critical Infrastructure Protection Act, 2019 (Act No. 8 of 2019), when this Act comes into operation;
- (b) any public place or public vehicle as contemplated in the Control of Access to Public Premises and Vehicles Act, 1985 (Act No. 53 of 1985);
- (c) any labour tenant contemplated in the Land Reform (Labour Tenants), 1996 (Act No. 3 of 1996);
- (d) an occupier contemplated in Extension of Security Tenure Act, 1997 (Act No. 62 of 1997); and
- (e) any designated area or traffic free zone contemplated in the Safety at Sports and Recreational Events Act, 2010 (Act No. 2 of 2010).

Unlawful entry on premises prohibited

3. (1) Every person who unlawfully enters a premises commits the offence of unlawful entry.

(2) A person found on or in a premises who is not a lawful occupier, or employee of a lawful occupier, and who does not have the expressed or implied permission by a lawful occupier is presumed to have unlawfully entered the premises.

(3) A person who has been directed, either orally or in writing, by a lawful occupier or any other authorised person to leave the premises and—

- (a) does not leave the premises as soon as practicable after receiving the direction; or
 - (b) re-enters the premises,
- is guilty of the offence.

(4) It is a defence to a charge under subsections (1) or (2) that the person charged reasonably believed that they had title to or an interest in the premises that entitled them to enter the premises.

(5) There is a presumption that access for lawful purposes to the door of a building on premises by a means apparently provided and used for the purpose of access is not prohibited.

Limited permission

4. (1) Where notice is given that one or more particular activities are permitted, entry on a premises for that activities is permitted and entry on a premises for any other activity is prohibited.

(2) Where entry on a premises is not prohibited under section 3 or by notice that one or more particular activities are permitted under subsection (1), and notice is given that a particular activity is prohibited, that activity and entry for that purpose is prohibited and all other activities and entry for that purposes are not prohibited.

Methods of giving notice

5. (1) A notice may be given—

- (a) orally or in writing; or
- (b) by means of a sign posted at or near an ordinary point of access to the premises so that, in daylight and under normal weather conditions, from the approach to the ordinary point of access, the sign is—
 - (i) clearly visible;
 - (ii) if containing writing, the writing is clearly legible; and
 - (iii) if using graphic representation, the graphic representation is clearly visible.

(2) A sign, posted in accordance with subsection (1)(b)(ii) or (iii), that—

- (a) names an activity and has an oblique line drawn through the name; or
- (b) shows a graphic representation of an activity and has an oblique line drawn through the graphic representation,

is sufficient for the purpose of giving notice that the activity is prohibited.

(3) Notice given under this section may relate to all or a part of a premises and different notices may be given or posted in relation to different parts of a premises.

Offence to remove, alter or deface posted signs

6. (1) No person, other than a lawful occupier or an authorised person, may remove, alter or deface signs posted as referred to in of section 5.

(2) A person who contravenes subsection (1) commits an offence.

Duty to inform intruder of unlawful entry

7. (1) As soon as it comes to the attention of the lawful occupier of premises, or an authorised person, they must request the intruder or intruders, unlawfully on the premises, to leave the premises immediately.

(2) If the intruder or intruders does not leave the premises, or the lawful occupier or a person authorised by them are threatened in any manner, the lawful occupier, or authorised person must, without delay, request assistance from the authorised member of South African Police Service, as contemplated in section

8(1), informing them of unlawful entry, the address of the premises and the approximate number of intruders.

Powers of police

8. (1) (a) For purposes of this section "authorised member" means a suitably qualified and experienced member of the South African Police Service, authorised thereto by the National Commissioner of the South African Police Service to perform, in addition to their normal functions and duties, such functions as are conferred or imposed upon them by this Act, and shall notify all local authorities or any local authority concerned of every such authorisation, and of the name, rank and address of any authorised member concerned.

(b) If an authorised member is or becomes unable to perform or to continue to perform the functions in terms of this Act, the National Commissioner or a person authorised thereto, shall forthwith designate another member of the South African Police Service to act in their stead, either in general or in a particular case, and the member so designated shall be deemed to have been authorised in terms of paragraph (a) for the purposes contemplated in the said paragraph: Provided that after the designation of a member in terms of this paragraph, no further such designation shall be made, except with the approval of the responsible member concerned.

(2) As soon as an authorised member or members are informed of the unlawful entry, they must without delay go to the premises to remove the intruders.

(3) On arrival an authorised member must call upon the intruders to leave the premises, by obtaining their attention and in a loud voice order the participants to disperse and leave the premises within a time specified, taking with them any items brought on the premises and inform them that failure to adhere to the order will result in them being arrested.

(4) If intruders already erected any form of housing on the premises and already occupy the erected housing, the authorised member or members must arrest them for unlawful entry on a premises.

Defences to charge of unlawful entry on premises

9. A person may not be convicted of an offence under this Act if the person's action or inaction, as applicable to the offence, was with—

- (a) the consent of a lawful occupier of the premises or an authorised person;
- (b) other lawful authority; or
- (c) they reasonably believed that they had title to or an interest in the premises that entitled them enter the premises.

Penalties

10. A person who is guilty of an offence under this Act, is on conviction liable to a fine or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Repeal of laws and transitional arrangements

11. (1) The Trespass Act, 1959 (Act No. 6 of 1959) is hereby repealed.

(2) All criminal proceedings relating to the crime of trespass which were instituted prior to the commencement of this Act and which are not concluded before the commencement of this Act must be continued and concluded in all respects as if this Act had not been passed.

(3) An investigation or prosecution or other legal proceedings in respect of conduct which would have constituted trespass which was initiated before the commencement of this Act may be concluded, instituted and continued as if this Act had not been passed.

Short title

12. This Act is called the Unlawful Entering on Premises Act, 2022.