

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
CRITICAL INFRASTRUCTURE
PROTECTION BILL**

[B 22—2017]

*(As agreed to by the Portfolio Committee on Police)
(National Assembly)*

[B 22A—2017]

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AMENDMENTS AGREED TO

CRITICAL INFRASTRUCTURE PROTECTION BILL [B 22—2017]

CLAUSE 1

1. On page 4, on line 28, after “section 20(4)” to insert “and includes a critical infrastructure complex where required by the context”.
2. On page 4, after line 38, to insert the following definition:

“ **“government infrastructure”** for the purposes of section 9(4) and section 19 means infrastructure controlled, owned, occupied or possessed by a government department in the national sphere and in respect of whose operation or administration that department is responsible;”
3. On page 5, on line 2, after “water” to insert “but excludes any information infrastructure as contemplated in any legislation on cybersecurity”
4. On page 5, after line 6, to insert the following definition:

“ **“national security”** has the meaning ascribed to it in section 198 of the Constitution;”
5. On page 5, on line 13, after “any other person” to insert “”, whether by way of a public-private partnership or similar agreement”.
6. On page 5, on line 20, after “post” to insert “”, and “**person in control of an infrastructure**” shall be construed accordingly”.
7. On page 5, after line 23, to insert:

“ **“PSIRA”** means the Private Security Industry Regulatory Authority established in terms of section 2(1) of the Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001);”

CLAUSE 2

1. On page 5, on line 60, after “pertaining to” to insert “security measures applicable to”.
2. On page 6, from line 1, to omit “legislation” and to substitute “Act of Parliament”.

CLAUSE 4

1. On page 6, from line 39, to substitute for clause 4 the following clause 4:

“**4.** (1) A Critical Infrastructure Council is hereby established.
(2) The Minister appoints members of the Critical Infrastructure Council which must consist of the following persons:
(a) the Secretary for the Police Service;
(b) an official at the level of at least Chief Director or an equivalent level, designated by each of the heads of the following institutions—

- (i) Department of Defence;
 - (ii) Department of Home Affairs;
 - (iii) Department of Public Works;
 - (iv) National Disaster Management Centre;
 - (v) South African Local Government Association;
 - (vi) South African Police Service; and
 - (vii) State Security Agency; and
- (c) five members appointed in terms of subsection (8) from the private sector and civil society who are—
- (i) not disqualified in terms of section 5; and
 - (ii) preferably appropriately qualified, knowledgeable and experienced in fields that include critical infrastructure protection, risk management, disaster management or basic public services.

(3) The members of the Council must, when viewed collectively, preferably be persons who are suited to serve in the Council by virtue of their qualifications, expertise and experience in fields that include infrastructure protection, engineering, disaster management or security policy.

(4) In the event that—

- (a) the functions or functioning of infrastructure that forms the subject of an application for declaration as critical infrastructure may affect or be affected by the functional area of responsibility of a government department or an organ of state not referred to in subsection (2)(b), the Chairperson may request the Head of that Government department or the head of that organ of state to designate an appropriately qualified official to assist with such application; or
- (b) the Council is of the opinion that any other person could assist in general or with a specific application for declaration as critical infrastructure, the Council may request the Minister to appoint such person on an *ad hoc* basis to advise or assist the Council.

(5) The Minister must appoint—

- (a) officials referred to in subsection (2)(b) after consultation with the Cabinet member responsible for the institution in question;
- (b) members referred to in subsection (2)(c) in terms of subsection (8); and
- (c) persons referred to in subsection (4)(b) on advice of the Council.

(6) In the event that it is necessary to appoint a member referred to in subsection 2(c), the Minister must request the National Assembly to submit a list of candidates for appointment.

(7) The Speaker must refer the matter to the relevant committee of the National Assembly to—

- (a) publish a notice in the Gazette and in at least two national newspapers circulating in the Republic, inviting applications from interested persons and members of the public to nominate persons;
- (b) compile a shortlist of not less than 20 persons who are not disqualified in terms of section 5(a), (c), (d), (e), or (f), from the applications and nominations referred to in paragraph (a) or persons serving on the Council who qualify for a further appointment in terms of subsection (10);
- (c) submit the list referred to in paragraph (b) to the State Security Agency for consideration and issuing of a top secret security clearance;
- (d) conduct interviews with the persons referred to in paragraph (b) who are not disqualified in terms of section 5(b) for purposes of compiling a list of 10 recommended candidates in order of preference;
- (e) submit the list of names referred to in paragraph (d) to the National Assembly for approval; and

(f) submit the approved list of names contemplated in paragraph (e) together with their résumés to the Minister.

(8) The Minister must appoint five members to the Council from the list referred to in subsection (7)(f) and publish the names of the members in the *Gazette*.

(9) Subject to subsection (12), a member of the Council appointed in terms of subsection (8) holds office for a period not exceeding five years.

(10) Upon the expiry of an appointed member's first term of office as contemplated in subsection (9), the member may be re-appointed for one further term only.

(11) The Secretary for the Police Service is the Chairperson of the Council and the Minister must designate, from the persons contemplated in subsection (2)(c), a member as deputy chairperson.

(12) A member of the Council appointed in terms of subsection (8) must vacate office if that member—

(a) resigns by giving at least 30 days written notice addressed to the Minister; or

(b) is removed from office by the Minister as contemplated in subsection (14).

(13) If a member of the Council appointed in terms subsection (8) resigns or vacates office before the expiry of his or her period of office, the Minister must request the National Assembly to follow the procedure in subsection (7). Provided that the Minister may appoint a new member from the list contemplated in subsection (7)(d) where candidates on that list are still available for appointment.

(14) The Minister may, after due process by the National Assembly, remove a member of the Council appointed in terms of subsection (8) from office on account of—

(a) absence from three consecutive meetings without good cause;

(b) misconduct, incapacity or incompetence;

(c) becoming disqualified as contemplated in section 5; or

(d) any other lawful reason.

(15) The Minister may suspend a member where there are reasonable grounds to do so, until the process contemplated in subsection (14) is finalised.

(16) The Minister may request the Cabinet member responsible for an institution which is represented on the Council, as contemplated in subsection (2)(b), to nominate another representative for appointment to substitute the institution's representative in the Council.

(17) Members of the Council who are appointed in terms of subsection (8) may be paid such remuneration and allowances as the Minister may, with the written concurrence of the Minister of Finance, determine.

(18) The deputy chairperson referred to in subsection (11) must, when the chairperson is absent or unable to perform his or her duties, act in his or her stead and when so acting, exercise or perform any function of the chairperson."

CLAUSE 5

1. On page 8, from line 17, to omit "section 4(3)(c)" and to substitute "section 4(2)(b) and (c)".
2. On page 8, from line 26, to omit paragraph (f) and to insert:

"(f) has been removed from a position or an office of trust; or
(g) is by virtue of any other law, disqualified from being appointed."

CLAUSE 6

1. On page 8, from line 28, to substitute for clause 6 the following clause 6:

“6. The expenses incurred in connection with the exercise of the powers, the carrying out of the duties and the performance of the functions of the Critical Infrastructure Council, including the remuneration and expenses contemplated in section 4(17), must be defrayed from the budget allocation of the Civilian Secretariat for the Police Service established in terms of section 4(1) of the Civilian Secretariat for Police Service Act, 2011 (Act No. 2 of 2011) as voted in terms of the annual Division of Revenue Act.”

CLAUSE 7

1. On page 8, from line 35, to substitute for clause 7, the following clause 7:

“7. (1) The functions of the Critical Infrastructure Council are to—

- (a) subject to subsection (2), consider any application for declaration of infrastructure as critical infrastructure referred to in Chapter 3 and make recommendations on such application to the Minister;
- (b) subject to subsection (3), approve guidelines regarding—
 - (i) the assessment of an application contemplated in sections 18 and 19;
 - (ii) the implementation of the prescribed system for categorisation of critical infrastructure in a low-risk, medium-risk or high-risk category referred to in section 20(7);
 - (iii) policies, protocols and standards regarding any matter necessary to achieve the purpose of this Act; and
 - (iv) the promotion of public-private sector cooperation in the protection of critical infrastructure; and
- (c) perform any other functions which may be assigned to the Council by the Minister.

(2) When making a recommendation to the Minister on an application referred to in subsection (1)(a), the Council must consider the following before making such a recommendation—

- (a) the requirements referred to in section 16(2)(a);
- (b) any factor contemplated in section 17;
- (c) any report or submission that must accompany such application;
- (d) an appropriate risk categorisation of the infrastructure in question in accordance with the prescribed system of categorisation referred to in section 20(7); and
- (e) any conditions for such declaration as contemplated in section 21(1)(c).

(3) When approving guidelines referred to in section (1)(b), the Council must consider the following:

- (a) any submission by the National Commissioner as contemplated in section 9(2);
- (b) any relevant submission by any other person having an interest in the protection of critical infrastructure;
- (c) any budgetary implications related to critical infrastructure protection;
- (d) any other matter that may promote the purpose of this Act or affect the implementation thereof.

(4) The guidelines referred to in subsection (1)(b) must include guidelines regarding—

- (a) the identification and management of risks relating to critical infrastructure;

- (b) the establishment and maintenance of a legitimate, effective and transparent process for identifying and declaring infrastructure as critical infrastructure; and
- (c) the procedures to coordinate the functions and activities of Government departments and the private sector insofar as those functions and activities are performed to achieve the purpose of this Act.

(5) In addition to any function contemplated in this section, the Council may—

- (a) advise the Minister on evaluation, monitoring and reviewing of the implementation of policy, protocols, standards and legislation related to the protection of critical infrastructure; and
- (b) make recommendations to the Minister on any function of the Minister contemplated in section 22 or section 23.

(6) The Council must submit a report to the Minister within three months after the end of each financial year regarding—

- (a) the activities of the Council during the preceding financial year;
- (b) particulars pertaining to the number of declarations as critical infrastructure, including the names of the critical infrastructure;
- (c) particulars pertaining to any limitations or revocation as critical infrastructure;
- (d) the level and extent of public-private sector cooperation; and
- (e) any other matter that may impact on the protection of critical infrastructure or the functioning of the Council.

CLAUSE 8

1. On page 9, from line 26, to substitute for clause 8, the following clause 8:

“**8.** (1) The Critical Infrastructure Council must meet at least quarterly.

(2) The Secretary for the Police Service must ensure that secretarial services are provided to the Critical Infrastructure Council.

(3) The chairperson may at any time convene a special meeting of the Council and must also convene such a meeting at the written request of the Minister.

(4) If at least three members of the Council request a special meeting in writing, the chairperson must convene such a meeting within seven days after receiving the request.

(5) Seven members of the Council, which must include the chairperson or deputy chairperson, will constitute a quorum at any meeting of the Council.

(6) Decisions of the Council must be taken by majority of votes, and in the case of an equality of votes the chairperson has a casting vote in addition to his or her deliberate vote.”

CLAUSE 9

1. On page 9, from line 36, to substitute for clause 9 the following clause 9:

“**9.** (1) The National Commissioner must—

- (a) establish and maintain the administrative systems and procedures necessary for the implementation and enforcement of this Act;
- (b) support the Critical Infrastructure Council and the Minister in the administration of this Act; and
- (c) effect cooperation between the South African Police Service, other organs of state and the private sector insofar as it relates to the protection of critical infrastructure.

(2) The functions of the National Commissioner are to develop uniform standards, guidelines and protocols for approval by the Council regarding—

- (a) the manner in which—
 - (i) infrastructure must be identified, categorised and declared critical infrastructure;
 - (ii) any physical security assessment of critical infrastructure and potential critical infrastructure is conducted and coordinated between Government departments;
 - (iii) information which may be relevant to critical infrastructure protection is shared between the relevant stakeholders;
 - (iv) any prescribed committee or forum must function and report; and
- (b) structures and mechanisms to facilitate coordination in and management of the protection of critical infrastructure.

(3) The National Commissioner must—

- (a) consider applications from a person in control of an infrastructure for declaring that infrastructure as critical infrastructure;
- (b) conduct or facilitate any physical security assessment of critical infrastructure or potential critical infrastructure;
- (c) make recommendations to the Council on the declaration and risk categorisation of such critical infrastructure or potential critical infrastructure;
- (d) evaluate, monitor and review the application and operational effectiveness of policy, guidelines or legislation related to the protection of critical infrastructure, and advise the Council accordingly;
- (e) evaluate and review physical security assessments, resilience reports and any designation as critical infrastructure and advise the Council accordingly;
- (f) consider any draft of a prescribed security policy or plan submitted to his or her office;
- (g) issue directives regarding the procedures to be followed at the meetings of any prescribed committee or forum; and
- (h) compile and submit quarterly reports to the Council, which must at least include—
 - (i) particulars of the related activities of the South African Police Service during the preceding quarter;
 - (ii) particulars of the number of applications for declaration of infrastructure as critical infrastructure;
 - (iii) particulars of the level and extent of Government department participation in the functioning of the committee or forum; and
 - (iv) the level and extent of public-private sector cooperation in the functioning of the committee or forum.

(4) The National Commissioner may, in the prescribed manner, apply for the declaration of government infrastructure as critical infrastructure.”

CLAUSE 10

1. On page 10, on line 46, after “police officials” insert “who are in possession of an appropriate security clearance certificate,”.

CLAUSE 11

1. On page 12, from line 10, to omit“(7)” and to substitute “(8)”.

2. On page 12, from line 15, to insert new subclause (10):

“(10) An inspector, prior to exercising any power in terms of this Chapter, must identify himself or herself to the person in control or the security manager of the critical infrastructure in question and must produce the certificate issued by the National Commissioner referred to in section 10(2).”

CLAUSE 12

1. On page 12, from line 25, to substitute for subclause (4), the following subclause (4):

“(4) The National Commissioner must designate a police official who is a member of a committee or working group, as chairperson thereof.”

2. On page 12, on line 29, after “advice” to insert “or assistance”.
3. On page 12, from line 41, to omit “national critical information infrastructure” and to substitute “information infrastructure”.

CLAUSE 13

1. On page 12, from line 44, to substitute for clause 13, the following clause:

“**13.** (1) The restrictions on entry contemplated in section 25(2) do not apply in respect of a member of the security services established in terms of section 199 of the Constitution, who is required in the performance of his or her functions and the carrying out of his or her duties, to enter any critical infrastructure.

(2) Section 25(2) must not be interpreted so as to restrict powers of entry assigned by law on any functionary in the employ of an organ of state.

(3) Any member or functionary referred to in subsections (1) or (2) must produce proof of his or her appointment and identity to the satisfaction of the person in control of the critical infrastructure or an appointed security manager.”

CLAUSE 15

1. On page 13, from line 27, to omit “an annual”, and to insert ‘a bi-annual’.
2. On page 13, from line 29, to omit “7(g)” and to insert “7(6)”.

CLAUSE 16

1. On page 13, on line 38, before “the National Commissioner” to insert “in the case of government infrastructure,”
2. On page 13, from line 55, to substitute for subclause (4) the following subclause (4):

“(4) The Minister must, in consultation with the Cabinet member responsible for State security, determine the procedure that the National Commissioner and the State Security Agency must follow when dealing with an application contemplated in section 18(4).”

3. On page 14, from line 3, to substitute for subclause (5) the following subclause (5):

“(5) Where an application contemplated in section 18(4) is referred to the Cabinet member responsible for State security in terms of any legislation on cybersecurity, the Cabinet member responsible for State security must, within 60 days or such further period as agreed upon between the Ministers, decide whether the infrastructure in question, or any part thereof must be dealt with in terms of any legislation on cybersecurity or not, and inform the Minister in writing of the decision.”

4. On page 14, from line 8, to substitute for subclause (6) the following subclause (6):

“(6) Where the Cabinet member responsible for State security decides that an application must not be dealt with in terms of legislation on cybersecurity, the Cabinet member responsible for State security must return the application to the Minister, whereafter the application must be dealt with in terms of this Act.”

CLAUSE 17

1. On page 14, on line 20, after “infrastructure” to insert “or parts thereof”.
2. On page 14, from line 40, to omit “promote” and to substitute “affect”.

CLAUSE 18

1. On page 14, from line 46, to substitute for clause 18 the following clause 18:

“**18.** (1) A person in control of an infrastructure may, in the prescribed manner and format, lodge with the National Commissioner an application contemplated in section 16(1) to have such infrastructure declared as critical infrastructure.

(2) The National Commissioner must require of the person in control of that infrastructure to—

(a) submit a report by the head of a government department or head of an organ of state who has functional control over the sector in which the activities of the infrastructure falls regarding the application; and

(b) disclose—

(i) particulars of any person other than the applicant who has a right or interest in the infrastructure in question;

(ii) particulars of any agreement with a person contemplated in paragraph (a) regarding the application for declaration as critical infrastructure;

(iii) particulars of any person other than the applicant who will be responsible for the costs of securing the infrastructure in question;

(iv) particulars of any agreement with a person contemplated in paragraph (iii) regarding the costs of securing the infrastructure in question; or

(v) any other information necessary for the proper consideration of the application.

(3) Subject to subsections (4) and (5), the National Commissioner must—

(a) upon receipt of an application, publish a notice of the application in the Gazette—

(i) stating the name of the applicant and the address of the

- premises in respect of which the application is made;
and
- (ii) inviting interested persons to submit written comments in relation to the application;
- (b) within 30 days of receipt of an application and where applicable, the information contemplated in subsection (2), conduct a physical security assessment of the infrastructure in order to—
- (i) verify the information in the application;
 - (ii) assess the risk category in which such infrastructure or parts thereof may be categorised;
 - (iii) confirm whether the physical security measures proposed by the person in control of the infrastructure in response to the outcome of the physical security assessment, comply with the prescribed measures and standards for the protection of the infrastructure; and
- (c) within 60 days after the physical security assessment has been conducted, submit—
- (i) a written inspection report together with the application made in terms of subsection (1);
 - (ii) any comments contemplated in paragraph (a)(ii); and
 - (iii) any written submissions in terms of subsection (5) or, where applicable, subsection (8), to the Critical Infrastructure Council for consideration.

(4) Where it appears from the application that the infrastructure contemplated in subsection (1) partly consists of, incorporates or houses, any information infrastructure as contemplated in any legislation on cybersecurity, the National Commissioner must follow the procedure contemplated in section 16(4).

(5) In the event that the applicant shows good cause why the procedure in subsection (3)(a) should not be followed, the National Commissioner must refer the request to the Council who may dispense with the publication as referred to in subsection 3(a) after considering the factors in subsection (5).

(6) For purposes of subsection (5), the applicant must show that a departure from the procedure in subsection (3)(a) is reasonable and justifiable in the circumstances and that a departure from the process referred to in subsection (3)(a) is justified, taking into account all relevant factors, including—

- (a) the objects of declaration as critical infrastructure;
- (b) the nature, purpose and likely effect of the declaration as critical infrastructure;
- (c) the nature and the extent of the departure from subsection (3)(a);
- (d) the relation between the departure and its purpose;
- (e) the importance of the purpose of the departure; and
- (f) the need to promote an efficient administration and good governance.

(7) The National Commissioner must provide the person in control of that infrastructure with an opportunity to make written submissions regarding any physical security assessment which is conducted as contemplated in subsection (3)(b).

(8) In the event that the Council decides that the procedure contemplated in subsection (3)(a)—

- (a) must be followed, the Council may direct the National Commissioner to publish the notice contemplated in subsection (3)(a) with directions on the information that must be contained in the notice, whereafter the National Commissioner will deal with the application; or
- (b) may be departed from, the Council may direct the National Commissioner to depart from the provisions of subsection (3)(a) and proceed to deal with the application.

(9) The National Commissioner may request the Head of a Government department which is a security service established under section 199 of the Constitution, to designate a suitably experienced member of that security service to assist with the physical security assessment contemplated in subsection (3)(b), when required.

(10) Where the National Commissioner is unable to comply with the timeframe contemplated in subsection (3)(c), the National Commissioner must, in writing, apply to the Council in the prescribed form and manner for an extension not exceeding 30 days or such other period as the Council may determine.

(11) The Council must at its meeting consider the application, the physical security assessment report and any other documentation referred to in this section.

(12) Subject to section 20(2), the Council must within seven days of its last meeting submit the application and its recommendations to the Minister for a decision within 30 days of receipt thereof.

(13) Where the Council is unable to comply with the timeframes as contemplated in subsection (12), the Council must in writing request the Minister for an extension not exceeding 30 days or such other period as the Minister may determine.

(14) If the infrastructure relevant to the application consists of multiple structures, services or facilities, the person in control of those infrastructures must apply for declaration in respect of all such infrastructure as critical infrastructure.”

(15) Where an extension of time is granted as contemplated in subsection (10) or (13), the Council must inform the person in control of that infrastructure in writing.”

CLAUSE 19

1. On page 15, from line 42, to substitute for clause 19 the following clause 19:

“**19.** (1) Where the National Commissioner identifies for possible declaration—

- (a) infrastructure under the control of or occupied by a provincial government department, he or she must advise the relevant head of the department in the province to lodge an application in terms of section 18; or
- (b) government infrastructure, he or she must lodge an application in accordance with subsection (2)

(2) Where the National Commissioner makes an application for the declaration of government infrastructure as critical infrastructure, the application must, subject to section 18(4) and subsection (4), be made in the prescribed form and manner and submitted to the Critical Infrastructure Council for consideration.

(3) After consideration of the application in terms of subsection (2), the Council must submit the application to the Minister for his or her decision.

(4) Where the National Commissioner intends to make an application referred to in subsection (1)(b), the National Commissioner must—

- (a) notify the relevant head of a Government department who is the person in control of the infrastructure, in the prescribed form and manner, of the intention of the National Commissioner;
- (b) afford the person referred to in paragraph (a) an opportunity to submit written representations within 60 days on any aspect relating to the intended application of the National Commissioner;
- (c) consider the representations referred to in paragraph (b); and

(d) within seven days of taking a decision on whether or not to proceed with the application, notify the person referred to in paragraph (a) in writing of such decision and his or her reasons.

(5) In the event that the National Commissioner decides to proceed with the application, he or she must ensure that the written representations referred to in subsection (4)(b) as well as his or written reasons referred to in subsection 4(d) forms part of the application that is submitted to the Council.”

CLAUSE 20

1. On page 16, from line 12, to omit “30” and to insert “60”.
2. On page 16, on line 23, before “categorise” to insert “subject to subsection (7),”.
3. On page 16, on line 23, after “infrastructure” to insert “or certain parts of such critical infrastructure”.
4. On page 16, from line 32, to omit “category” and to substitute “categorisation”.
5. On page 16, after line 41, to insert the following new subclause (7):

“(7) When considering the categorisation of infrastructure, the Minister must have regard to—

- (a) the prescribed system of categorising infrastructure in a low-risk, medium-risk or high-risk category;
- (b) the probability of failure, disruption or destruction of the infrastructure in question or threat thereof; and
- (c) the impact and consequence of failure, disruption or destruction of infrastructure or threat thereof.”

CLAUSE 21

1. On page 16, from line 46, to omit “category” and to substitute “categorisation”.
2. On page 16, from line 47, to omit “and”.
3. On page 16 from line 49, to omit “.” and to substitute “; and”
4. On page 16, after line 49, to insert the following:

“(d) whether information regarding security measures will be restricted.”

5. On page 16, from line 54, to substitute subclause (4) for the following subclause (4):

“(4) Declaration as critical infrastructure does not exempt a person in control of critical infrastructure from having to comply with the provisions of any other law applicable to the critical infrastructure in question.”

CLAUSE 24

1. On page 19, on line 6, before “security” to insert “person in the employ of the critical infrastructure as”.

2. On page 19, on line 23, after “must” to insert “as far as practically possible”.
3. On page 19, after line 25, to insert the following new subclause (9):

“(9) A person to whom functions are assigned in terms of this Chapter must exercise such powers and perform such duties subject to the Constitution and with due regard to the fundamental rights of every person.”

CLAUSE 25

1. On page 19, from line 30, after “infrastructure;” to omit “and”.
2. On page 19, on line 33, after “upon” to insert “entering or”
3. On page 19, from line 34, after “subsection (5)” to omit the full stop and insert “; and”.
4. On page 19, after line 34, to insert the following new paragraph (c):

“(c) ensure that a notification as contemplated in paragraph (b) is placed at the entrance to that critical infrastructure.”

5. On page 19, on line 52, before “be searched” to insert “subject to subsection (6)”.
6. On page 20, on line 16, after “searched” to insert “subject to subsection (6)”.
7. On page 20, from line 17, to substitute subclause (6) for the following subclause (6):

“(6) (a) Any search of a person’s body conducted under subsections (2)(b)(vi) or (5) must be carried out by a person of the same gender, or as preferred in terms of paragraph (d)(iii), with strict regard to the right to privacy and dignity and must be in accordance with the provisions of this section and any other prescribed directive.

(b) When conducting a search of a person’s body under subsections (2)(b)(vi) and (5), the manner of search is restricted to a pat-down of the person’s outer garments to establish whether that person is in possession or control of a prohibited or dangerous object.

(c) A search of a person’s body under subsections (2)(b)(vi) or (5) may only be performed if—

- (i) a reasonable suspicion exists that such a person did not declare a dangerous or prohibited object in his or her possession or under his or her control; and
- (ii) the manner of or place where the search is performed does not infringe upon the privacy and dignity of the person to be searched.

(d) Before a security manager or security personnel under the direction of the security manager may search a person referred to in paragraph (c)(i), the person to be searched must be—

- (i) informed of the gender of the person who will conduct the search, the manner of search and the place where the search will be performed;
- (ii) provided with an opportunity to express a preference regarding the gender of the member of the security personnel who must conduct the search.”

CLAUSE 26

1. On page 20, from line 29, to substitute clause 26 for the following clause 26:

“**26.** (1) Any person who unlawfully—

- (a) furnishes, disseminates or publishes in any manner whatsoever information relating to the security measures applicable at or in respect of a critical infrastructure other than in accordance with the Protected Disclosures Act, 2000 (Act No. 26 of 2000), Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004) or any other Act of Parliament that provides for the lawful disclosure of information.
- (b) takes or records, or causes to take or record, an analog or digital photographic image, video or film of the security measures at a critical infrastructure or critical infrastructure complex;
- (c) takes or records, or causes to take or record, an analog or digital photographic image, video or film of the security measures at a critical infrastructure or critical infrastructure complex in contravention of the notice contemplated in section 24(8) or 25(8);
- (d) hinders, obstructs or disobeys a person in control of a critical infrastructure in taking any steps required or ordered in terms of this Act in relation to the security of any critical infrastructure;
- (e) hinders, obstructs or disobeys any person while performing a function or in doing anything required to be done in terms of this Act;
- (f) enters or gains access to critical infrastructure without the consent of the security manager or person in control of that critical infrastructure;
- (g) enters or gains access to critical infrastructure in contravention of the notice contemplated in section 24(8) or 25(8);
- (h) damages, endangers or disrupts a critical infrastructure or threatens the safety or security at a critical infrastructure or part thereof;
- (i) threatens to damage critical infrastructure; or
- (j) colludes with or assists another person in the commission, performance or carrying out of an activity referred to in paragraphs (a) to (i),

commits an offence and is, subject to subsection (2) and (3), liable on conviction to a fine or to imprisonment for a period not exceeding three years, or to both a fine and imprisonment.

(2) If the evidence on a charge for any offence in subsection (1)(a) to (j) proves that the activity referred to was carried out with the intention to cause damage or substantial harm to critical infrastructure, a court may, in the case of critical infrastructure categorised as—

- (a) low-risk, impose a fine or imprisonment for a period not exceeding three years or both a fine and imprisonment;
- (b) medium-risk, impose a fine or imprisonment for a period not exceeding five years, or both a fine and imprisonment; or
- (c) high-risk, impose a fine or imprisonment for a period not exceeding seven years, or both a fine and imprisonment.

(3) If the evidence on a charge for any offence in subsection (1)(a) to (j) proves that the activity referred to in fact caused damage, substantial harm or loss of property to the critical infrastructure in question, the court may in the case of critical infrastructure categorised as—

- (a) low-risk, a court may impose a fine or imprisonment for a period not exceeding 10 years, or both a fine and imprisonment;
- (b) medium-risk, a court may impose a fine or imprisonment for a period not exceeding 15 years, or both a fine and imprisonment;

(c) high-risk, a court may impose a fine or imprisonment for a period not exceeding 20 years, or both a fine and imprisonment.

(4) If the evidence on a charge for any offence in subsection (1)(a), (b) or (c), proves that the security measures at the critical infrastructure in question were clearly visible to the public or in the public domain, the court may have regard to such evidence as a mitigating factor in the determination of any penalty that may be imposed in terms of subsection (3).

(5) Any person in control of a critical infrastructure who—

(a) knowingly furnishes false or incorrect information on an application for declaration as critical infrastructure;

(b) refuses or fails to comply with a notice issued in terms of section 11(3) or 11(4);

(c) refuses or fails to take the steps specified in the notice contemplated in section 24(1);

(d) refuses or fails to take the steps specified in the notice contemplated in section 24(1) within the period specified in the notice;

(e) refuses or fails to comply with section 24(8) in circumstances where compliance would not severely threaten the security at the critical infrastructure concerned; or

(f) refuses or fails to comply with section 25(8), commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding five years, or to both a fine and imprisonment or, in the case of a corporate body as contemplated in section 332(2) of the Criminal Procedure Act, 1977, a fine not exceeding R10 million.

(6) Whenever a court convicts any person of an offence in terms of this Act where damage to or loss of property related to a critical infrastructure was caused, the prosecutor must direct the attention of the person in control of that critical infrastructure to the provisions of section 300 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and inform the court accordingly.”

CLAUSE 27

1. On page 22, on line 12, after “infrastructure” to insert “or parts thereof”.
2. On page 22, on line 22, after “security personnel” to insert “, including a security manager”
3. On page 22, from line 25, to substitute for subparagraph (ii) the following subparagraph:
 - “(ii) such standards and training courses as may be determined and recognised by PSIRA that security personnel who render a security service at a critical infrastructure must comply with;”
4. On page 22, on line 48, to omit “notification” and to substitute “scrutiny”.
5. On page 22, from line 51, to omit “within three months after” and to substitute “to coincide with”.

CLAUSE 30

1. On page 23, after line 48, to insert the following subclause (8) and subclause (9):
 - “(8) The Minister must, by notice in the *Gazette* and within a period of 60 days after the coming into operation of this Act, publish a list containing the names of National Key Points or National Key

Point Complexes which are deemed to be critical infrastructure in terms of subsection (1).

(9) In the event that no legislation on cybersecurity is in operation when this Act comes into operation, the Minister must, in consultation with the Cabinet member responsible for State Security, determine interim guidelines on the manner in which an application contemplated in section 18(4) must be dealt with by any person performing a function in terms of this Act.”