

PUBLIC ORDER AND SECURITY AMENDMENT BILL, 2007

MEMORANDUM

This Bill will amend the Public Order and Security Act [Chapter 11:17] (“the Act”) in clauses stipulated below.

Clause 1

This clause sets out the Bill’s short title.

Clause 2

This clause adds or amends various terms in the interpretation section of the Act,.

Clause 3

Under the existing section 25 of the Act, organisers of public gatherings (other than gatherings specified in the Schedule to the Act) are required to give at least seven days’ written notice of their gatherings to a regulating authority - that is, to a senior police officer appointed as the regulating authority for the area concerned. The effect of this amendment to section 4 of the Act is to deem that notice to have been properly given if it is delivered to the most senior officer present in the police station closest in proximity to the place where the gathering is proposed to be held.

Clauses 4 and 5

Under the existing section 26 of the Act a regulating authority has power to prohibit a public gathering if the regulating authority for the area believes on reasonable grounds that the gathering is likely to occasion public disorder. Furthermore, under the existing section 27 of the Act a regulating authority has power to prohibit all public gatherings within any area for up to three months, where the regulating authority believes on reasonable grounds that the powers under sections 25 and 26 will not be sufficient to prevent public disorder being caused by public gatherings. Before prohibiting a gathering the regulating authority must, wherever practicable, give the organiser an opportunity to make representations to him or her, and an appeal against the prohibition lies to the Minister.

The amendments made by this clause will make mandatory the requirement on the part of a regulating authority to give notice to the organiser of an affected public gathering, where the regulating authority receives credible information on oath that disorder may ensue if the gathering proceeds. It will also require the regulating authority to enter into a dialogue with the organiser of gathering (called “the convener”), before issuing any prohibition order (other than an order contemplated by section 27). The purpose of the dialogue is to ensure that the gathering may take place safely, and only if this is not possible will the regulating authority be empowered to issue a prohibition order. An appeal against the prohibition order will no longer lie to the Minister of Home Affairs but to a magistrates court in terms of the new section 27B.

Clause 6

This clause insert two new sections in the Act.

The new section 27A prohibits gatherings in the vicinity of Parliament, a court or any protected place or area declared as such in terms of the Protected Areas and Places Act [Chapter 11:12] unless permission therefor is given by the Speaker, Chief Justice, Judge President or responsible authority of the protected place, as the case may be.

The new section 27B which provides for appeals to a magistrates court by any convener aggrieved by any direction or prohibition notice issued in terms of section 26, or any order temporarily prohibiting of holding of public demonstrations within particular police districts issued in terms of section 27.

Clause 7

This clause substitutes section 29 of the Act with a view to more fully specifying and strictly circumscribing the powers of the Police with respect to the dispersal of disorderly or potentially disorderly gatherings.

Clauses 8 and 9

These clauses make consequential and minor amendments to the Act.

PRESENTED BY THE MINISTER OF HOME AFFAIRS

BILL

To amend the Public Order and Security Act [*Chapter 11:17*]; and to provide for matters connected with or incidental to the foregoing.

ENACTED by the President and the Parliament of Zimbabwe.

1 Short title

This Act may be cited as the Public Order and Security Amendment Act, 2007.

2 Amendment of section 2 of Cap 11:17

Section 2 (“Interpretation”) of the Public Order and Security Act [*Chapter 11:17*] (No. 1 of 2002) (hereinafter called “the principal Act”) is amended—

(a) by the insertion of the following definitions—

““authorised officer” means a police officer appointed in terms of section 23(4) or (5);

“convener” means—

- (a) any person who, of his or her own accord, convenes a gathering; and
- (b) in relation to any organization, any person appointed by such organization in terms of section 23 (1);

“convening notice” means a notice of a gathering referred to in section 25;

“election period” has the meaning given to that term by the Electoral Act [*Chapter 2:13*];

“gathering” means—

- (a) a procession or public demonstration; or
- (b) a public meeting;

“organization” means any association, group or body of persons, whether or not such association, group or body has been incorporated, established or registered in accordance with any law, and includes any branch thereof;

“prohibition notice” means a notice prohibiting a procession or public demonstration referred to in section 26(9);

“private place” means any place that is not a public place;

“responsible officer” means a person appointed in terms of section 24(1) as responsible officer or deputy responsible officer, and includes any person deemed in terms of section 24(3) to be a responsible officer;”;

(b) by the repeal of the definition of “public meeting” and the substitution of—

“public meeting” means any meeting of more than fifteen persons in a public place or meeting which the public or any section of the public is permitted to attend, whether on payment or otherwise, but does not include a meeting of any organ or structure of a political party or other organisation held in—

- (a) any private place, whether or not it is wholly or partly in the open; or
- (b) any public place that is not wholly in the open;”.

3 Amendment of section 4 of Cap 11:17

Section 4 (“Regulating authorities”) of the principal Act is amended by the insertion of the following subsections, the existing section becoming subsection (1)—

“(2) Whenever in this Act a convener is required to give a convening notice to a regulating authority, such notice shall be deemed to have been duly given if delivered to the police officer in charge of a police station closest in proximity to the place where the

gathering is proposed to be held or, in the absence of the police officer in charge, the most senior officer present in that police station.

(3) The police officer referred to in subsection (2) shall immediately notify the regulating authority of a convening notice received under that subsection.”.

4 New sections substituted for sections 23, 24, 25 and 26 of Cap 11:17

Sections 23, 24, 25 and 26 of the principal Act are repealed and substituted by—

“23 Appointment of conveners and authorised officers in the case of processions and public demonstrations

(1) An organization intending to hold a procession or a public demonstration shall appoint—

- (a) a person to be responsible for the arrangements for that procession or a public demonstration and to be present thereat, to give notice in terms of section 25 and to act on its behalf at any consultations or negotiations contemplated in section 26, or in connection with any other procedure contemplated in this Act at which his or her presence is required; and
- (b) a deputy to a person appointed in terms of subparagraph (a).

(2) Such organisation shall forthwith notify in writing the regulating authority concerned of the names and addresses of the persons appointed under subsection (1).

(3) If a person appointed in terms of subsection (1) is or becomes unable to perform or to continue to perform his or her functions in terms of this Part, the organisation shall forthwith appoint another person in his or her stead, and a person so appointed shall be deemed to have been appointed in terms of subsection (1).

(4) The regulating authority or a person authorised thereto by him or her shall authorise one or more suitably qualified and experienced police officers, either in general or in a particular case, to represent the regulating authority at consultations or negotiations contemplated in section 26, and to perform such other functions as are conferred or imposed upon an authorised officer by this Part.

(5) If an authorised officer is or becomes unable to perform or to continue to perform his or her functions in terms of this Part, the regulating authority or a person authorised thereto by him or her shall forthwith designate another police officer to act in his or her stead, either in general or in a particular case, and the officer so designated shall be deemed to have been authorised in terms of subsection (4) for the purposes contemplated in that subsection.

(6) A regulating authority may delegate all or any of his or her functions under this Part to one or more authorised officers, in which event any reference to a “regulating authority” in this Part is a reference to any one or more such officers.

(7) If any consultations, negotiations or proceedings in terms of this Part at which the presence of a convener or an authorised officer is required, are to take place and such convener or officer is not available, such consultations or negotiations or other proceedings may be conducted in the absence of such convener or officer through any proxy appointed by such convener or officer in terms of subsection (3) or (5), as the case may be, and the organisation or regulating authority, as the case may be, shall be

bound by the result of such consultations, negotiations or proceedings as if it or they had agreed thereto.

(8) For the purpose of helping a regulating authority to ascertain that a meeting is not a “public meeting” as defined in section 2 because it is asserted to be a meeting of any organ or structure of a political party or other organisation, the regulating authority may request the political party or other organisation concerned to submit to it from time to time or at such regular intervals as it may require a list of the members of the organs or structures of the political party or organisation who are entitled to attend the meeting concerned.

24 Appointment of responsible officers in the case of public meetings

(1) An organisation intending to hold a public meeting shall appoint—

- (a) a person to be responsible for the arrangements for that public meeting and to be present thereat, to give notice in terms of section 25 and to act on its behalf at any consultations or negotiations contemplated in section 26, or in connection with any other procedure contemplated in this Act at which his or her presence is required; and
- (b) a deputy to a person appointed in terms of subparagraph (a).

(2) Such organisation shall forthwith notify in writing the regulating authority concerned of the names and addresses of the persons appointed under subsection (1).

(3) If a person appointed in terms of subsection (1) is or becomes unable to perform or to continue to perform his or her functions in terms of this Part, the organisation shall forthwith appoint another person in his or her stead, and a person so appointed shall be deemed to have been appointed in terms of subsection (1).

25 Notice of processions, public demonstrations and public meetings

(1) The convener shall not later than—

- (a) seven days before the date on which a procession or public demonstration is to be held, give notice of the procession or public demonstration in writing signed by him or her to the regulating authority for the district in which the procession or public demonstration is to be held;
- (b) five days before the date on which a public meeting is to be held, give notice of the public meeting in writing signed by him or her to the regulating authority for the district in which the public meeting is to be held:

Provided that—

- (i) if the convener is not able to reduce a proposed convening notice to writing a regulating authority shall at his or her request do it for him or her;
- (ii) during an election period the period of notice referred to in paragraph (b) shall be three days.

(2) The convening notice shall contain at least the following information—

- (a) the name, address and telephone and facsimile numbers, if any, of the convener and his or her deputy;

- (b) the name of the organisation on whose behalf the gathering is convened or, if it is not so convened, a statement that it is convened by the convener;
- (c) the purpose of the gathering;
- (d) the time, duration and date of the gathering;
- (e) the place where the gathering is to be held;
- (f) the anticipated number of participants;
- (g) the proposed number and, where possible, the names of the marshals who will be appointed by the convener, and how the marshals will be distinguished from the other participants in the gathering;
- (h) in the case of a procession or public demonstration—
 - (i) the exact and complete route of the procession or public demonstration;
 - (ii) the time when and the place at which participants in the procession or public demonstration are to assemble, and the time when and the place from which the procession or public demonstration is to commence;
 - (iii) the time when and the place where the procession or public demonstration is to end and the participants are to disperse;
 - (iv) the manner in which the participants will be transported to the place of assembly and from the point of dispersal;
 - (v) the number and types of vehicles, if any, which are to form part of the procession;
 - (vi) if a petition or any other document is to be handed over to any person, the place where and the person to whom it is to be handed over.

(3) If a gathering is postponed or delayed, the convener shall forthwith notify the regulating authority thereof, and section 26 shall, with such changes as may be necessary, apply to such postponed or delayed gathering as it applies to gatherings that are not postponed or delayed.

(4) If a gathering is cancelled or called off, the convener shall forthwith notify the regulating authority thereof and the notice given in terms of subsection (1) shall lapse.

(5) Any person who knowingly fails to give notice of a gathering in terms of this section, shall be guilty of an offence and liable to a fine not exceeding level twelve or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

26 Consultations, negotiations, amendment of notices, and conditions with respect to processions, public demonstrations and public meetings to avoid public disorder

(1) If a regulating authority in receipt of a convening notice for a procession or public demonstration is of the opinion that negotiations are not necessary and that the procession or public demonstration may take place as specified in the convening notice or with such amendment of the contents of the notice as may have been agreed upon by him or her and the convener, he or she shall notify the convener in writing accordingly.

(2) If a regulating authority in receipt of a convening notice for a public meeting is of the opinion that negotiations are not necessary and that the public meeting may take place as specified in the convening notice, the public meeting may take place without any further notification, written or verbal, on the part of the regulating authority.

(3) If a regulating authority receives credible information on oath that there is a threat that a proposed procession, public demonstration or public meeting will result in serious disruption of vehicular or pedestrian traffic, injury to participants in the procession, public demonstration or public meeting or other persons, or extensive damage to property or other public disorder, he or she shall forthwith advise the convener of the perceived threat and invite the convener to a consultative meeting a time and venue specified by the regulating authority in order to explore options to prevent the threat., and shall afford an opportunity to the convener to make representation thereon to the regulating authority:

Provided that the time for the meeting shall be specified for a date no later than seven days, in the case of a procession or public demonstration, or five days, in the case of a public meeting, from the date when the regulating authority received the convening notice.

(4) At a meeting held in terms of subsection (3)—

- (a) the regulating authority may invite, or allow to be present, representatives of such public bodies, including local authorities, and civil society groups, as in the opinion of such regulating authority ought to be present at such meeting, in order to discuss any amendment of the contents of the convening notice and such conditions regarding the conduct of the procession, public demonstration or public meeting as he or she may deem necessary.
- (b) discussions shall be held on the contents of the convening notice, amendments thereof or additions thereto and the conditions, if any, to be imposed in respect of the holding of the procession, public demonstration or public meeting so as to meet the objects of this Part.
- (c) the regulating authority shall ensure that such discussions take place in good faith.

(5) If at a meeting held in terms of subsection (3) agreement is reached, procession, public demonstration or public meeting may take place in accordance with the contents of the convening notice, including amendments, if any, to such contents, on which agreement was reached at the meeting;

(6) If at a meeting held in terms of subsection (3) agreement is not reached on the contents of the convening notice or the conditions regarding the conduct of the procession or public demonstration, the regulating authority may, if there are reasonable grounds therefor, of his or her own accord or at the request of an authorised officer impose conditions with regard to the holding of the procession or public demonstration to ensure—

- (a) that vehicular or pedestrian traffic, especially during traffic rush hours, is least impeded; or
- (b) an appropriate distance between participants in the procession or public demonstration and rival processions or public demonstrations; or

- (c) access to property and workplaces; or
- (d) the prevention of injury to persons or damage to property.

(7) The regulating authority shall ensure as soon as possible that a written copy of the convening notice, including any amendment thereof and any condition imposed and the reasons and grounds therefor, is handed to the convener and the authorised member who, and to every party which, attended the meeting referred to in subsection (3):

Provided that if the identity or whereabouts of the convener is unknown, or if in view of the urgency of the case it is not practicable to deliver or tender the said written notice and reasons and grounds to him or her, the notice shall forthwith, notwithstanding any provision to the contrary in any other law contained, be published in one or more of the following manners:

- (i) in a newspaper circulating where the procession or public demonstration is to be held; or
- (ii) by means of the radio or television; or
- (iii) by the distribution thereof among the public and the affixing thereof in public or prominent places where the procession or public demonstration is to be held; or
- (iv) by the announcement thereof orally where the procession or public demonstration is to be held; or
- (v) by affixing it in a prominent place at the address of the convener specified in the notice.

(8) The convener and the regulating authority shall, respectively, ensure that every marshal and every police officer at the procession or public demonstration know the contents of the convening notice, including any amendment or condition, if any.

(9) After considering representations made in the course of a meeting held in terms of subsection (3), if any, the regulating authority may, if he or she on reasonable grounds is convinced that no amendment or condition contemplated in subsection (5) or (6) would prevent the occurrence of any of the circumstances contemplated in subsection (3), issue a prohibition notice, giving the reasons and grounds therefor to the convener.

(10) If the regulating authority decides to issue a prohibition notice, he or she shall in a manner contemplated in the proviso to subsection (7), notify the convener, authorised member and every other person with whom he or she has so met or consulted, of the decision and the reasons and grounds therefor.

(11) Any person who knowingly opposes or fails to comply with a prohibition notice or any directions or conditions under which a procession, public demonstration or public meeting is authorised, shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

26A Exemption of certain gatherings from sections 23, 24, 25 and 26

Sections 23, 24, 25 and 26 shall not apply to gatherings of a class described in the Schedule.”.

5 Amendment of section 27 of Cap. 11:17

Section 27 (“Temporary prohibition of holding of public demonstrations within particular police districts”) of the principal Act is amended—

- (a) in subsection (1) by the deletion of “sections *twenty-five* and *twenty-six* will not be sufficient to prevent public disorder being occasioned by the holding of public demonstrations or any class thereof” and the substitution of “section 26 will not be sufficient to prevent public disorder being occasioned by the holding of processions or public demonstrations or any class thereof”;
- (b) in subsection (2)(a) by the deletion of “public demonstration” and the substitution of “procession or public demonstration”;
- (c) by the repeal of subsection (4);
- (d) in subsection (5) by the deletion of “public demonstration” and the substitution of “procession or public demonstration”;

6 New sections inserted after section 27 of Cap.11:17

The principal Act is amended by the insertion of the following sections after section 27—

“27A Gatherings in vicinity of Parliament, courts and protected places

(1) Subject to subsection (2), all gatherings within a radius of—

- (a) twenty metres of the vicinity of the Parliament;
- (b) one hundred metres of the vicinity of the Supreme Court, High Court, Magistrate Court or any other court;
- (c) one hundred metres of any protected place or area declared as such in terms of the Protected Areas and Places Act [*Chapter 11:12*];

are prohibited.

(2) Subsection (1) does not apply to any gathering for which permission has, on written application to the Speaker of the House of Assembly, the Chief Justice, the Judge President or responsible authority of a place referred to in subsection(1)(c), as the case may be, been granted in writing to the convener thereof:

Provided that the convener shall give prior notice of such gathering in writing, together with the appropriate permission attached thereto, to the regulating authority.

(3) For the avoidance of doubt it is declared that a “gathering” in subsection (1) does not refer to a gathering of any persons who are employed in, or concerned in any business conducted at, Parliament or a court or other place referred to in subsection (1).”.

27B Appeals

(1) Any convener who is aggrieved by—

- (a) any prohibition notice,; or
- (b) the contents of the directions issued in terms of section 25, or conditions under which a gathering is authorised, including any amendment thereof; or
- (c) order issued in terms of section 27;

may appeal against it to the Magistrates Court in the area where the gathering is proposed to be held, and the magistrate may confirm, vary or set aside the prohibition notice, direction, condition or order and give such order or direction in the matter as he or she thinks just:

Provided that the noting of an appeal in terms of this section shall not have the effect of suspending any prohibition order appealed against.

(2) An appeal in terms of subsection (1) shall be dealt with on an urgent basis and in any case before the date of the proposed gathering unless, due to the fault of the convener, the appeal is not lodged timeously.”.

7 New section substituted for section 29 of Cap 11:17

Section 29 of the principal Act is repealed and substituted by—

“29 Powers of Police

(1) If, during the course of a gathering, whether held in compliance with Act or not, and whether consisting of more or less than fifteen persons, a police officer—

- (a) may, if he or she has reasonable grounds to believe that the Police Force will not be able to provide adequate protection for the persons participating in such a gathering, notify the convener and such persons accordingly;
- (b) may prevent people participating in a gathering from proceeding to a different place or deviating from the route specified in the convening notice or any amendment thereof or from disobeying any direction or condition to which the holding of the gathering is subject in terms of this Act;
- (c) may, in the case of a regulating authority not receiving a notice in terms of section 24(1) more than 48 hours before the gathering, restrict the gathering to a place or guide the participants along a route, to ensure—
 - (i) that vehicular or pedestrian traffic, especially during traffic rush hours, is least impeded, or an appropriate distance between participants in the gathering and rival gatherings, or
 - (ii) access to property and workplaces; or
 - (iii) the prevention of injury to persons or damage to property;
- (d) may order any person or group of persons interfering or attempting to interfere with a gathering to cease such conduct and to remain at a distance from such gathering specified by him or her;
- (e) may, when an incident, whether or not it results from the gathering, causes or may cause persons to gather at any public place, by notice in a manner contemplated in the proviso to section 26(7) specify an area considered by him or her to be necessary for—
 - (i) the movement and operation of emergency personnel and vehicles; or
 - (ii) the passage of a gathering; or
 - (iii) the movement of traffic; or
 - (iv) the exclusion of the public from the vicinity; or

(v) the protection of property;

- (f) may take all such steps, including negotiations with the relevant persons, as are in the circumstances reasonable and appropriate to protect persons and property, whether or not they are participating in the gathering or demonstration.

(2) In the circumstances where the holding or continuance of a gathering is unlawful by virtue of any prohibition notice or any direction or order under section 26 or 27, or if, during the course of a lawful gathering, any act is committed that constitutes a danger to persons and property, a police officer of or above the rank of assistant inspector may, and only then, take the following steps—

- (a) call upon the persons participating in the gathering to disperse, and for that purpose he or she shall endeavour to obtain the attention of those persons by such lawful means as he or she deems most suitable; and then,
- (b) in a loud voice order them in English and in ChiShona or SiNdebele, to disperse and to depart from the place of the gathering within a time specified by him or her, which shall be reasonable.

(3) If within the time specified under subsection (2)(b) the persons gathered have not so dispersed or have made no preparations to disperse, the police officer concerned may order the police officers under his or her command to disperse the persons concerned and may for that purpose order the use of force, excluding the use of weapons likely to cause serious bodily injury or death.

(4) The degree of force which may be so used shall not be greater than is necessary for dispersing the persons gathered and shall be proportionate to the circumstances of the case and the object to be attained.

(5) If any person who participates in a gathering or any person who hinders, obstructs or interferes with persons who participate in a gathering or demonstration—

- (a) kills or seriously injures, or attempts to kill or seriously injure, or shows a manifest intention of killing or seriously injuring, any person; or
- (b) destroys or does serious damage to, or attempts to destroy or to do serious damage to, or shows a manifest intention of destroying or doing serious damage to, any immovable property or movable property considered to be valuable;

a police officer of or above the rank of assistant inspector may order the police officers under his or her command to take the necessary steps to prevent the action contemplated in paragraph (a) or (b) and may for that purpose, if he or she finds other methods to be ineffective or inappropriate, order the use of force, including the use of firearms and other weapons.

(6) The degree of force which may be so used for the purposes of subsection (5) shall not be greater than is necessary for the prevention of the actions contemplated in subsection (5)(a) or (b), and the force shall be moderated and be proportionate to the circumstances of the case and the object to be attained.

(7) No statutory or common law principles regarding self-defence, necessity and protection of property, shall be affected by the provisions of this Act.”.

8 Amendment of Schedule to Cap 11:17

The Schedule (“Classes of Public Gatherings to Which Section 24 Does Not Apply”) to the principal Act is amended—

- (a) by the deletion of the title thereto and the substitution of “Classes of Gathering to Which Sections 23, 24, 25 and 26 do not apply”;
- (b) by the deletion of “Public gatherings—” and the substitution of “Gatherings—”;

9 Minor amendments to Cap 11:17

The provisions of the principal Act specified in the first column of the Schedule are amended to the extent specified opposite thereto in the second column of the Schedule.

SCHEDULE (Section 9)

MINOR AND CONSEQUENTIAL AMENDMENTS

<i>Provision</i>	<i>Extent of amendment</i>
Section 28(1) and (2)	By the deletion of “organiser of a public gathering” and the substitution of “the convener of a gathering”
Section 28(2)	By the deletion of “organisers of a public gathering” and the substitution of “the conveners of a gathering”
Section 28(3) (where it occurs for the first time) and (4)	By the deletion of “an organiser of a public gathering” and the substitution of “a convener of a gathering”