

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 606 Cape Town 15 December 2015 No. 39522

THE PRESIDENCY

No. 1241

15 December 2015

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 18 of 2015: Criminal Matters Amendment Act, 2015



AIDS HELPLINE: 0800-123-22 Prevention is the cure

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.
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(English text signed by the President)
(Assented to 13 December 2015)

ACT

To amend the Criminal Procedure Act, 1977, so as to regulate bail in respect of essential infrastructure-related offences; to amend the Criminal Law Amendment Act, 1997, so as to regulate the imposition of discretionary minimum sentences for essential infrastructure-related offences; to create a new offence relating to essential infrastructure; to amend the Prevention of Organised Crime Act, 1998, so as to insert a new offence in Schedule 1 to the Act; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the Bill of Rights in the Constitution of the Republic of South Africa, 1996, guarantees certain rights and enshrines the right to freedom and security of the person;

AND WHEREAS the Constitution places a duty on the State to respect, protect, promote and fulfil the rights in the Bill of Rights;

RECOGNISING the importance of essential infrastructure in providing basic services to the public;

HAVING REGARD to the unacceptably high incidence of crime relating to essential infrastructure in the Republic which poses a risk to, among others, public safety, electricity supply, communications and transportation;

AND RECOGNISING the harmful consequences to the livelihood, well-being, daily operations and economic activity of the public if basic services cannot be provided due to loss, damage or disruption caused by essential infrastructure-related offences;

AND SINCE essential infrastructure-related offences are becoming increasingly more organised and are often committed by armed and dangerous criminal groups;

AND SINCE essential infrastructure-related offences on occasion manifest themselves in offences which of themselves are relatively minor but cause considerable damage to essential infrastructure;

MINDFUL of the negative impact of these offences on South Africa's economy and society and on peace and stability in the country,

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

Definitions

1. In this Act, unless the context indicates otherwise—
- “**basic service**” means a service, provided by the public or private sector, relating to energy, transport, water, sanitation and communication, the interference with which may prejudice the livelihood, well-being, daily operations or economic activity of the public; 5
 - “**essential infrastructure**” means any installation, structure, facility or system, whether publicly or privately owned, the loss or damage of, or the tampering with, which may interfere with the provision or distribution of a basic service to the public; and 10
 - “**tamper**” includes to alter, cut, disturb, interfere with, interrupt, manipulate, obstruct, remove or uproot by any means, method or device, and “**tampering**” shall be construed accordingly. 15

Bail in respect of essential infrastructure-related offences

2. Notwithstanding the provisions of sections 59 and 59A of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), an accused person who is in custody in respect of—
- (a) any offence involving ferrous or non-ferrous metal which formed part of essential infrastructure; or 20
 - (b) an offence referred to in section 3 of this Act,
- may only be released on bail in accordance with the provisions of section 60 of the Criminal Procedure Act, 1977.

Offence relating to essential infrastructure

3. (1) Any person who unlawfully and intentionally— 25
- (a) tampers with, damages or destroys essential infrastructure; or
 - (b) colludes with or assists another person in the commission, performance or carrying out of an activity referred to in paragraph (a),
- and who knows or ought reasonably to have known or suspected that it is essential infrastructure, is guilty of an offence and liable on conviction to a period of imprisonment not exceeding 30 years or, in the case of a corporate body as contemplated in section 332(2) of the Criminal Procedure Act, 1977, a fine not exceeding R100 million. 30
- (2) For the purposes of subsection (1), a person ought reasonably to have known or suspected a fact if the conclusions that he or she ought to have reached are those which 35
- (a) the general knowledge, skill, training and experience that may reasonably be expected of a person in his or her position; and
 - (b) the general knowledge, skill, training and experience that he or she in fact has.

Amendment of Schedule 5 to Act 51 of 1977, as substituted by section 9 of Act 85 of 1997, amended by section 36(1) of Act 12 of 2004 and section 27(1) of Act 33 of 2004 and substituted by section 68 of Act 32 of 2007 40

4. Schedule 5 to the Criminal Procedure Act, 1977, is hereby amended by the addition of the following items: 45
- “Any offence referred to in section 2, 4, 5, 6 or 9 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998).”

Any offence referred to in—
(a) section 54(1) of the International Trade Administration Act, 2002 (Act No. 71 of 2002);
(b) section 32(1)(a), (b), (c), (d), (k) in so far as that paragraph relates to section 21(1), (l), (m) or (o) of the Second-Hand Goods Act, 2009 (Act No. 6 of 2009); or
(c) section 36 or 37 of the General Law Amendment Act, 1955 (Act No. 62 of 1955),
if it is alleged that ferrous or non-ferrous metal which formed part of essential infrastructure, as defined in section 1 of the Criminal Matters Amendment Act, 2015, is involved.

Theft of ferrous or non-ferrous metal which formed part of essential infrastructure, as defined in section 1 of the Criminal Matters Amendment Act, 2015—
(a) if it is alleged that the offence caused or has the potential to cause—
(i) interference with or disruption of any basic service, as defined in section 1 of the aforementioned Act, to the public; or
(ii) damage to such essential infrastructure; or
(b) if it is alleged that the offence was committed by or with the collusion or assistance of—
(i) a law enforcement officer, as defined in section 51(8) of the Criminal Law Amendment Act, 1997 (Act No. 105 of 1997);
(ii) a security officer, as defined in section 1 of the Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001), who was required to protect or safeguard such essential infrastructure;
(iii) an employee of, or contractor appointed by, the owner or the person in charge of such essential infrastructure; or
(iv) a group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy.

An offence referred to in section 3 of the Criminal Matters Amendment Act, 2015.”.

Amendment of section 51 of Act 105 of 1997, as substituted by section 1 of Act 38 of 2007 and section 26 of Act 42 of 2013

5. Section 51 of the Criminal Law Amendment Act, 1997 (Act No. 105 of 1997) is hereby amended—
(a) by the deletion of the word “and” at the end of subsection (2)(b);
(b) by the substitution for the colon at the end of subsection (2)(c) of a semi-colon and the insertion of the word “and” after the semi-colon; and
(c) by the addition of the following paragraph after subsection (2)(c):
“(d) Part V of Schedule 2, in the case of—
(i) a first offender, to imprisonment for a period not less than 3 years;
(ii) a second offender of any such offence, to imprisonment for a period not less than 5 years; and
(iii) a third or subsequent offender of any such offence, to imprisonment for a period not less than 7 years.”.

Amendment of Part II of Schedule 2 to Act 105 of 1997, as amended by section 36(1) of Act 12 of 2004, section 27(1) of Act 33 of 2004 and section 14 of Act 27 of 2006

6. Part II of Schedule 2 to the Criminal Law Amendment Act, 1997, is hereby amended by the addition of the following offences:
“Any offence referred to in section 2, 4, 5 or 6 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), which relates to an offence involving ferrous or non-ferrous metal which formed part of essential infrastructure, as defined in section 1 of the Criminal Matters Amendment Act, 2015.

Theft of ferrous or non-ferrous metal which formed part of essential infrastructure, as defined in section 1 of the Criminal Matters Amendment Act, 2015—

- (a) if it caused—
 - (i) interference with or disruption of any basic service, as defined in section 1 of the aforementioned Act, to the public; or
 - (ii) damage to such essential infrastructure; or
- (b) if the offence was committed by or with the collusion or assistance of—
 - (i) a law enforcement officer as defined in section 51(8);
 - (ii) a security officer, as defined in section 1 of the Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001), who was required to protect or safeguard such essential infrastructure;
 - (iii) an employee of, or contractor appointed by, the owner or the person in charge of such essential infrastructure; or
 - (iv) a group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy.

An offence referred to in section 3 of the Criminal Matters Amendment Act, 2015.”.

Amendment of Part IV of Schedule 2 to Act 105 of 1997, as substituted by section 5(b) of Act 38 of 2007

7. Part IV of Schedule 2 to the Criminal Law Amendment Act, 1997, is hereby amended by the addition of the following offences:

“Any offence referred to in—

- (a) section 54(1) of the International Trade Administration Act, 2002 (Act No. 71 of 2002); or
- (b) section 32(1)(a), (b), (c), (d), (k) in so far as that paragraph relates to section 21(1), (l), (m) or (o) of the Second-Hand Goods Act, 2009 (Act No. 6 of 2009), involving ferrous or non-ferrous metal which formed part of essential infrastructure, as defined in section 1 of the Criminal Matters Amendment Act, 2015.”.

Amendment of Schedule 2 to Act 105 of 1997

8. Schedule 2 to the Criminal Law Amendment Act, 1997, is hereby amended by the addition of Part V:

“PART V

Any offence referred to in section 36 or 37 of the General Law Amendment Act, 1955 (Act No. 62 of 1955), involving ferrous or non-ferrous metal which formed part of essential infrastructure, as defined in section 1 of the Criminal Matters Amendment Act, 2015.

Theft, involving ferrous or non-ferrous metal which formed part of essential infrastructure, as defined in section 1 of the Criminal Matters Amendment Act, 2015, which is not covered in Part II of this Schedule.”.

Amendment of Schedule 1 to Act 121 of 1998, as amended by section 36(1) of Act 12 of 2004 and section 27(1) of Act 33 of 2004, substituted by section 68 of Act 32 of 2007, amended by section 11 of Act 13 of 2013 and section 48 of Act 7 of 2013

9. Schedule 1 to the Prevention of Organised Crime Act, 1998, is hereby amended by the addition of the following item after item 33A:

“33B. Any offence referred to in section 3 of the Criminal Matters Amendment Act, 2015;”.

Short title and commencement

10. This Act is called the Criminal Matters Amendment Act, 2015, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.