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NATIONAL KEY POINTS ACT 102 OF 1980

[ASSENTED TO 1 JULY 1980]

[DATE OF COMMENCEMENT: 25 JULY 1980]

(English text signed by the State President)

as amended by

National Key Points Amendment Act 44 of 1984

National Key Points Amendment Act 47 of 1985

ACT

To provide for National Key Points and the safeguarding thereof and for matters connected therewith.

1 Definitions

In this Act, unless the context otherwise indicates-

'area' means any soil or water surface, whether with a building, installation or structure thereon or not, and includes any place;

'incident' means any occurrence arising out of or relating to terroristic activities, sabotage, espionage or subversion;

'Minister' means the Minister of Defence;

'National Key Point' or **'Key Point'** means any place or area which has under section 2 been declared a National Key Point;

'National Key Points Complex' or **'Key Points Complex'** means those National Key Points declared a National Key Points Complex under section 2A;

[Definition of 'National Key Points Complex' or 'Key Points Complex' inserted by s. 1 (b) of Act 47 of 1985.]

'owner', in relation to a place or area declared a National Key Point under section 2, includes-

- (a) the person registered as the owner of the land constituting such place or area;
- (b) the person who by virtue of any right acquired from a person referred to in paragraph (a), lawfully occupies such place or area;
- (c) Where the person referred to in paragraph (a) or (b) is deceased, a minor, insolvent, insane or otherwise legally incompetent, an executor, administrator, guardian, trustee, liquidator, curator or other person who controls the estate and assets of that person or represents him;
- (d) where the State owns or occupies such place or area, the head of the

department under the control of which the place or area is;

(e) any person under whose control or management such place or area is;

'place' means any premises, building, installation or industrial complex;

'this Act' includes any regulation made thereunder.

2 Declaration of any place or area as a National Key Point

(1) If it appears to the Minister at any time that any place or area is so important that its loss, damage, disruption or immobilization may prejudice the Republic, or whenever he considers it necessary or expedient for the safety of the Republic or in the public interest, he may declare that place or area a National Key Point.

(2) The owner of any place or area so declared a National Key Point shall forthwith be notified by written notice of such declaration.

2A Declaration of National Key Points as a National Key Points Complex

(1) When in the opinion of the Minister it will contribute to the safeguarding of two or more National Key Points if certain steps in respect of their security are taken jointly by their owners, he may declare those Key Points a National Key Points Complex irrespective of whether one of the Key Points adjoins any other irrespective of whether the steps contemplated will be taken at or on any of the Key Points.

(2) The owner of a Key Point included in a Key Points Complex shall forthwith be notified thereof by written notice, as well as of the name and address of each of the other owners of Key Points included in the Key Points Complex.

(3) The inclusion of a Key Point in a Key Points Complex shall not exempt the owner of that Key Point from any obligation in terms of this Act.

[S. 2A inserted by s. 2 of Act 47 of 1985.]

3 Duties of owner in relation to Key Point or Key Points Complex

(1) On receipt of a notice mentioned in section 2 (2), the owner of the National Key Point concerned shall after consultation with the Minister at his own expense take steps to the satisfaction of the Minister in respect of the security of the said Key Point.

(2) If the said owner fails to take the said steps, the Minister may by written notice order him to take, within a period specified in the notice and at his own expense, such steps in respect of the security of the said Key Point as may be specified in the notice.

(3) (a) If the said owner without reasonable cause refuses or fails to take the steps specified in the said notice within the period specified therein he shall be guilty of an offence and liable on conviction to a fine not exceeding R20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(b) If the said owner refuses or fails to take the steps specified in the said notice within the period specified therein, the Minister may take or cause to be taken the said steps irrespective of whether the refusal or failure took place with or without reasonable cause and irrespective of whether the owner was charged or convicted in connection with that refusal or failure, and the Minister may recover the cost thereof from that owner to such extent as the Minister may determine.

(4) (a) The Minister may after consultation with the owners of Key Points included in a Key Points Complex order them by written notice to take, within a

period specified in the notice and at their expense, such joint steps in respect of the security of that Key Points Complex as may be specified in the notice, and to determine within a period specified in the notice on the proportion in which each shall be responsible for the cost thereof.

(b) If the owners are unable to determine within the period specified the said proportion, the Minister may determine that proportion.

(5) If an owner referred to in subsection (4) without reasonable cause refuses or fails to take the steps for which he is responsible within the period specified in the notice, or delays, frustrates or renders them impossible, irrespective of whether any other owner with or without reasonable cause refuses or fails to take the steps for which he is responsible within the period concerned, or delays, frustrates or renders them impossible-

(a) the first-mentioned owner shall be guilty of an offence and liable on conviction to a fine not exceeding R20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment;

(b) the Minister may take or cause to be taken those steps, as well as the steps which any other owner was unable to take as a result of the first-mentioned owner's refusal or failure to take the said steps, irrespective of whether the owner has been charged or convicted in connection with that refusal or failure, and the Minister may recover the cost of those steps from all the owners on whose behalf they were taken in the proportion in which they were responsible for the cost or to such extent as he may determine.

(6) The Minister may at any time amend any period or steps in terms of a notice under this section, and the owner or owners concerned shall forthwith be notified thereof by written notice.

[S. 3 substituted by s. 3 of Act 47 of 1985.]

3A Power of Minister to take over duties of owners

(1) The Minister may at any time, on behalf of and with the consent of the owner of a National Key Point or the owners of National Key Points included in a National Key Points Complex, take or cause to be taken any or all of the steps which in his opinion are or may become necessary in respect of the security of that Key Point or Key Points Complex, and the owner or owners shall be liable for the cost thereof to such extent as the Minister may determine.

(2) When the Minister takes or causes to be taken steps under subsection (1) of this section or section 3 (3) (b) or 3 (5) (b), he may take over the obligations of the owner or owners concerned arising from any contract or contracts with a third party or third parties, with the consent of that third party or those third parties, if in the opinion of the Minister the fulfilment of the contract or contracts will contribute to the security of the Key Point or Key Points Complex concerned.

[S. 3A inserted by s. 4 of Act 47 of 1985.]

3B Special Account for the Safeguarding of National Key Points

(1) There is hereby established an account to be known as the Special Account for the Safeguarding of National Key Points (hereinafter referred to as the account), into which shall be paid-

(a) moneys appropriated by Parliament for the account;

- (b) moneys appropriated by Parliament by an Appropriation Act or any other Act for the requirements of a State department and which the Minister who administers that department, with the concurrence of the Minister of Finance directs to be utilized for the security of a particular Key Point or Key Points Complex;
 - (c) moneys recovered or received from the owner of a Key Point in terms of this Act;
 - (d) moneys received by way of a refund of expenditure incurred on the account;
 - (e) interest derived from the investment of moneys standing to the credit of the account; and
 - (f) moneys which accrue to the account from any other source;
- (2) The moneys in the account shall be utilised to-
- (a) render at the discretion of and on the conditions determined by the Minister financial assistance, including loans at the interest rate contemplated in section 26 of the Exchequer and Audit Act, 1975 (Act 66 of 1975), to an owner in connection with steps taken or to be taken by such owner in respect of the security of a Key Point in terms of this Act;
 - (b) take or cause to be taken the steps contemplated in sections 3 (3) (b), 3 (5) (b) and 3A; and
 - (c) defray expenditure in connection with the safeguarding of Key Points.
- (3) Notwithstanding anything to the contrary in any other law contained, the Minister, with the concurrence of the Minister of Finance, shall designate a person in the service of the State who shall be deemed to be the accounting officer for the account for the purposes of section 15 of the Exchequer and Audit Act, 1975 (Act 66 of 1975).
- (4) A bank account shall be kept for the account at the South African Reserve Bank.
- (5) Moneys standing to the credit of the account which are not required for immediate use or as a reasonable working balance, may be invested in such manner as the Minister may determine with the concurrence of the Minister of Finance.
- (6) Any unexpended balance in the account at the close of any financial year, including accrued interest on investment balances and other receipts, shall be carried forward as a credit in the account to the following financial year.
- (7) The account shall be audited by the Auditor-General.

[S. 3B inserted by s. 4 of Act 47 of 1985.]

4 Furnishing Minister with information

(1) The Minister may with a view to the exercise of a power granted to him by this Act, order any person in writing to furnish him within a specified time with any information at his disposal relating to or in connection with any place or area.

(2) Any person who-

- (a) in response to an order referred to in subsection (1) furnishes information which is false or incorrect in any material respect; or
- (b) makes known any information furnished in terms of subsection (1) to any person, except for the purposes of this Act or as a witness in a court of law during a prosecution in terms of this Act,

shall be guilty of an offence and liable on conviction to a fine not exceeding R10 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

(3) The provisions of subsection (2) shall not prohibit the disclosure of information-

- (a) by any person in so far as it is strictly necessary for the performance of his functions in regard to his employment in connection with, or his ownership of, the place concerned;
- (b) when authorized by the Minister.

5 Performance of functions in terms of this Act

(1) The Minister may on such conditions as he may determine with the concurrence of the Minister of Finance, appoint such persons as he may consider necessary to assist him in the performance of his functions in terms of this Act.

(2) Any member of the South African Defence Force may be compelled to perform functions in terms of this Act as if they are functions which he can be compelled to perform in terms of the Defence Act, 1957 (Act 44 of 1957): Provided that any functions so performed shall be deemed to have been performed in terms of the said Defence Act.

(3) The Minister may designate any officer of any department of State or provincial administration with the concurrence of the Minister or Administrator administering that department or administration, to perform such functions in terms of this Act as the Minister may determine.

6 Appointment of committees and remuneration of members

(1) The Minister may appoint such persons or committees as he may deem fit to report to him or to advise him or to exercise any power conferred on him under this Act, except a power excluded in terms of section 9.

[Sub-s. (1) substituted by s. 5 (a) of Act 47 of 1985.]

(2) There shall be paid to any such person or member of any such committee who is not an officer as defined in section 1 of the Public Service Act, 1984 (Act 111 of 1984), such remuneration and allowances as the Minister may determine with the concurrence of the Minister of Finance.

[Sub-s. (2) substituted by s. 5 (b) of Act 47 of 1985.]

(3) Any such committee shall, subject to the directions of the Minister, determine its own procedure.

7 Indemnity against loss or damage

The State or the Minister or any person in the service of the State shall not be liable for any loss or damage as a result of bodily injury, loss of life or damage to property caused by or arising out of or in connection with any act ordered, performed or executed under this Act.

8 Powers of owner of a National Key Point

The provisions of this Act shall not prevent any owner of any place or area declared a National Key Point from taking or causing to be taken, in addition to any steps required or ordered in terms of this Act, such measures as he may consider necessary for the efficient security of that Key Point and any goods thereon or therein.

9 Delegation of powers

The Minister may on such conditions as he may deem fit, in writing empower any person to exercise on his behalf any of the powers conferred on him by this Act, except a power referred to in section 5, 6 or 11.

10 Offences and penalties

(1) Any person who at, on, in connection with or in respect of any National Key Point performs any act which, if such act would have constituted an offence in terms of the Official Secrets Act, 1956 (Act 16 of 1956), if performed or executed at, on, in connection with or in respect of any prohibited place, as defined in section 1 of that Act, shall be guilty of an offence and liable to the penalties prescribed for that act in that Act.

(2) Any person who-

- (a) hinders, obstructs or thwarts any owner in taking any steps required or ordered in terms of this Act in relation to the efficient security of any National Key Point;
- (b) hinders, obstructs or thwarts any person in doing anything required to be done in terms of this Act;
- (c) furnishes in any manner whatsoever any information relating to the security measures, applicable at or in respect of any National Key Point or in respect of any incident that occurred there, without being legally obliged or entitled to do so, or without the disclosure or publication of the said information being empowered by or on the authority of the Minister, or except as may be strictly necessary for the performance of his functions in regard to his employment in connection with, or his ownership of, or as may be necessary to protect, the place concerned,

shall be guilty of an offence and on conviction liable to a fine not exceeding R10 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

11 Regulations

(1) The Minister may make regulations as to-

- (a) the employment or the hiring of the services of guards by owners of Key Points, the requirements to be complied with by persons serving as guards at Key Points, and the nature and duration of the training or further training of such persons;

[Para. (a) substituted by s. 1 of Act 44 of 1984.]

- (b) the powers of such guards in respect of the searching of persons, examination and seizure of articles in the possession of persons, arrest of persons and the application of reasonable force, including the use of firearms, to persons, in connection with such persons' presence at or in the vicinity of Key Points;
- (c) in general, the powers of such guards in respect of the security of Key Points;
- (d)

[Para. (d) deleted by s. 6 of Act 47 of 1985.]

- (e) in general, anything which in his opinion it is necessary to prescribe so

as to achieve the objects of this Act.

(2) Regulations made under subsection (1) may prescribe penalties for any contravention thereof or failure to comply therewith, not exceeding the penalties prescribed in section 10.

12 Entry upon places and areas

The Minister or any person authorized thereto by him may enter upon any place or area so as to-

- (a) exercise any power granted to him by this Act;
- (b) verify any information furnished in terms of section 4;
- (c) gather information;
- (d) check any steps being or to be taken in terms of this Act.

[S. 12 substituted by s. 7 of Act 47 of 1985.]

13 Certain provisions bind the State

The provisions of sections 2, 3 (1), 3 (2), 3 (4), 3A and 12 and, to such extent as may be determined by the Minister or any person authorized thereto by him, of the regulations made under this Act, shall bind the State.

[S. 13 substituted by s. 2 of Act 44 of 1984 and by s. 8 of Act 47 of 1985.]

14 Short title

This Act shall be called the National Key Points Act, 1980.

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