

**REPUBLIC OF SOUTH AFRICA**

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**PREVENTION OF ILLEGAL EVICTION FROM AND UNLAWFUL OCCUPATION OF  
LAND AMENDMENT BILL**

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*(As introduced in the National Assembly (proposed section 75); Explanatory summary of the Bill  
and prior notice of its introduction published in **Government Gazette No. of** )*

*(The English text is the official text of the Bill)*

(Ms E Powell, MP)

**[B ..... 2022]**

## GENERAL EXPLANATORY NOTE:

[        ]        Words in bold type in square brackets indicate omissions from existing enactments.

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## BILL

**To amend the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998, so as to limit its application, insertion and amendment of certain definitions; to provide for punitive measures for those who incite or promote orchestrated and unlawful invasions; provide explicit criteria that must be satisfied during court proceedings prior to a municipality being ordered to provide alternative accommodation; to provide for the courts to determine the length of time alternative accommodation would need to be provided for an unlawful occupier; to compel the courts to explore the reasons for the land invasion, as well as the maintenance obligations of the occupier's family when considering an eviction order and to provide for matters connected therewith.**

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

1. Section 1 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (hereinafter referred to as the “principal Act”), is hereby amended by the substitution of the following definitions:

““**building or structure**” includes any hut, shack, tent or similar structure or any other form of temporary or permanent dwelling or shelter in which incidences of ordinary residency have been established”

““**Unlawful occupier**” “means a person who occupies land in a building or structure without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land, but excluding:

(a) a person who is an occupier in terms of the Extension of Security of Tenure Act, 1997;

(b) a person whose informal right to land, but for the provisions of this Act, would be protected by the provisions of the Interim Protection of Informal Land Rights Act, 1996 (Act 31 of 1996);

or

(c) a person who has an income in excess of the prescribed amount, as determined by the Minister.”

2. Section 1 of the principal Act is hereby amended by the addition of the following definitions:

“**Reside**” means to occupy and maintain a place of permanent abode”

3. Section 3 of the principal Act is hereby amended by the addition of subsection 3(A) of the following subsection:

“3A(1) No person may cause, directly or indirectly participate in, incite, arrange, organise, nor permit a person to occupy land without the consent of the owner or person in charge of that land.”

“3A(2) Any person who contravenes a provision of subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding R100 000 or to imprisonment not exceeding five years, or to both such fine and such imprisonment”

4. Section 4 of the principal Act is hereby amended by the amendment of subsection (6) of the following subsection:

“4(6) If an unlawful occupier has occupied the land in question for less than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including whether the unlawful occupier can be cared for by family; their financial means; the status of their health, their previous living arrangements; their true reasons for undertaking the unlawful occupation; and, the rights and needs of the elderly, children, disabled persons and households headed by women in the absence of any family member or relative of the unlawful occupier who holds a statutory or common law duty to maintain or provide accommodation to the unlawful occupier in terms of the Maintenance Act 99 of 1998.”

5. Section 4 of the principal Act is hereby amended by the amendment of subsection (7) of the following subsection:

“4(7) If an unlawful occupier has occupied the land in question for more than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including, except where the land is sold in a sale of execution pursuant to a mortgage, whether land has been made available or can reasonably be made available by a municipality, another sphere of government or other organ of state, within its jurisdiction and available resources, or another land owner for the relocation of the unlawful occupier, and including whether the unlawful occupier has other means of accommodation; financial means; the status of their health, their previous living arrangements; their reasons for causing illegal occupation; and, the rights and needs of the elderly, children, disabled persons and households headed by women.”

**6.** Section 4 of the principal Act is hereby amended by the addition of subsection (13) of the following subsection:

“4(13) Where it is reasonable to do so, a court which makes an order for alternative accommodation or land to be made available to the unlawful occupier, must make an order stipulating the length of time the said alternative accommodation or land must be made available to the unlawful occupier by the municipality or any other organ of state.”

**7.** Section 6 of the principal Act is hereby amended by the substitution of subsection (3) of the following subsection:

“6(3) In deciding whether it is just and equitable to grant an order for eviction, the court must have regard to-

- (a) the circumstances, including the reasons, for which the unlawful occupier occupied the land and erected the building or structure;
- (b) the period the unlawful occupier and his or her family have resided on the land in question; and
- (c) the availability to the unlawful occupier of suitable alternative accommodation or land, within the area of its jurisdiction and available resources; and
- (d) the economic and social factors of the unlawful occupier with reference to the existence of duty to maintain and provide accommodation to the unlawful occupier by a family member.”

**8.** Section 6 of the principal Act is hereby amended by the addition of subsection (7) of the following subsection:

“6(7) For the purposes of subsection 6(3)(d), the Court must request a probation officer as contemplated in section 1 of the Probation Services Act, 1991 (Act 116 of 1991), or a maintenance investigator as defined in section 5 of the Maintenance Act 99 of 1998, to submit a report within a reasonable period after the commencement of any eviction proceedings in terms of section 4 and report on:

- (a) where the unlawful occupier resided immediately before the commencement of the unlawful occupation;
- (b) the existing family relationship between the unlawful occupier and his/her direct family members;
- (c) whether any legal duty to financially maintain the unlawful occupier exists and can be imposed on such family member in order to prevent the unlawful occupier from being rendered homeless;
- (d) why any existing duty to maintain the unlawful occupier was not complied with.

**Short title and commencement**

**9.** This Act is called the Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Act, 2022 and comes into operation on a date determined by the President by proclamation in the *Gazette*.