

## PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

## NOTICE 1267 OF 2022

## MS EMMA POWELL, MP

**NOTICE OF INTENTION TO INTRODUCE A PRIVATE MEMBERS BILL AND INVITATION FOR COMMENT ON THE DRAFT BILL, NAMELY THE PREVENTION OF ILLEGAL EVICTION FROM AND UNLAWFUL OCCUPATION OF LAND AMENDMENT BILL, 2022**

Ms Emma Powell, MP, acting in accordance with section 73(2) of the Constitution of the Republic of South Africa, 1996, intends to introduce the Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill, 2022 (“the draft Bill”), in the National Assembly of Parliament. An explanatory summary of the draft Bill is hereby published in accordance with Rule 276(1)(c) of the Rules of the National Assembly.

The issue of orchestrated and illegal land grabs has become a crisis across South Africa, placing immense financial and logistical burdens on all major Metropolitan Municipalities. The announcement of the National State of Disaster, and the concomitant moratorium placed on evictions, also led to a sharp spike in illegal land invasions across South Africa. Furthermore, due to the costs incurred by safeguarding land, municipalities frequently need to provide additional basic services to newly invaded land parcels that have not been provisioned for in statutory budget and planning processes.

The unlawful occupation of land leads to severe dysfunctionality in cities, including obstruction of sewerage infrastructure, safety hazards due to illegal electricity connections, violations to planning and environmental legislation. The shortage of amenities like clinics and schools close to invaded land parcels further places additional pressure on municipalities. Land invasions also deprive law abiding South Africans of their state-subsidised housing opportunities.

Currently, the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No. 19 of 1998) (“PIE Act”) creates a rigid set of definitions and requirements that need to be followed in order for a person to be lawfully evicted, despite their intentions or circumstances during such illegal occupation.

In order for South Africa to create inclusive and well managed cities, the endemic of illegal land invasions must be urgently addressed. Therefore, the application of the PIE Act needs to be restricted in certain instances to prevent those unlawful occupiers, who have entered upon a property in bad faith, from using the PIE Act as a defense or delay tactic at the cost of the owner of the property.

The intention of the draft Bill is thus, *inter alia*, as follows:

- Limit the application of the PIE Act;
- Insert and amend certain definitions to give effect to these limitations;
- Create 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;
- Allow the courts to determine the length of time alternative accommodation would need to be provided for an unlawful occupier;
- Compel the courts to explore the reasons for the invasion, as well as the maintenance obligations of the occupier's family when considering judgement.

The principles that give rise to this draft Bill have already been confirmed in notable court judgments where the courts specifically disapprove of any illegal land invasion.

This draft Bill does not intend to remove any rights of *bona fide* unlawful occupiers in terms of the PIE Act, nor does it intend to in any way negate a person's right to housing in terms of Section 26 of the Constitution. The purpose of the draft Bill is to prevent those who, in bad faith, occupy a property or land without any legal entitlement to do so and rely on the provisions of the PIE Act to either stay on a property for as long as possible or to try and get fast tracked in the queue for low-cost housing projects.

Interested parties and institutions are invited to submit written representations on the proposed content of the draft Bill to the Speaker of the National Assembly within 30 days of the publication of this notice. Representations can be delivered to the Speaker, New Assembly Building, Parliament Street, Cape Town; mailed to the Speaker at PO Box 15, Cape Town 8000; or e-mailed to [speaker@parliament.gov.za](mailto:speaker@parliament.gov.za) and copied to [legislation@da.org.za](mailto:legislation@da.org.za).

Copies of the draft Bill may be obtained from the Democratic Alliance's website at [www.da.org.za/newsroom](http://www.da.org.za/newsroom)

**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.

\_\_\_\_\_        Words underlined with a solid line indicate insertions in 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*.