

DISTRIBUTED BY VERITAS TRUST

**Tel: [263] [4] 794478 Fax & Messages [263] [4] 793592
E-mail: veritas@mango.zw**

**VERITAS MAKES EVERY EFFORT TO ENSURE THE PROVISION OF RELIABLE INFORMATION,
BUT CANNOT TAKE LEGAL RESPONSIBILITY FOR INFORMATION SUPPLIED.**

CHAPTER 11:04

EMERGENCY POWERS ACT

*Acts 48/1960, 24/1962 (s. 2), 14/1966, 22/1967, 2/1968, 4/1968, 25/1969, 2/1986; R.G.Ns.
498/1962, 217/1970, 698/1970; S.I. 542/1979.*

AN ACT to make exceptional provision for the protection of the community in cases where a declaration in terms of subsection (1), or a resolution in terms of subsection (6), of section 31J¹ of the Constitution is in force; and to provide for matters incidental thereto or connected therewith.

[Date of commencement: 2nd December, 1960.]

1 Short title

This Act may be cited as the Emergency Powers Act [*Chapter 11:04*].

2 Interpretation

In this Act—

“essential service” includes—

- (a) any hospital service;
- (b) any transport service;
- (c) any service relating to the generation, supply or distribution of electricity;
- (d) any service relating to the supply and distribution of water;
- (e) any sewerage or sanitary service;
- (f) any service relating to the production, supply, delivery or distribution of food, fuel or coal;
- (g) any fire brigade;
- (h) coal mining;
- (i) communications;

and any other service declared by the President, by statutory instrument, to be an essential service for the purposes of this Act;

“**Minister**” means the Minister of Home Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act.

¹ See extract from Constitution annexed to this document

3 President may make emergency regulations

(1) Where a declaration in terms of subsection (1) of section 31J² of the Constitution has been made and so long as that declaration is in force, it shall be lawful for the President to make such regulations as appear to him to be necessary or expedient for all or any of the following—

- (a) the public safety;
- (b) the maintenance of public order;
- (c) the maintenance of any essential service;
- (d) the preservation of the peace;
- (e) making adequate provision for dealing with any circumstances which—
 - (i) have arisen or, in his opinion, are likely to arise, whether such circumstances relate to the maintenance of any essential or other service or otherwise; and
 - (ii) in his opinion, will interfere with the peace, order and good government;
- (f) making adequate provision for terminating the state of emergency;

in Zimbabwe or any part of Zimbabwe, as the case may be.

(2) Regulations made in terms of subsection (1) may make provision for—

- (a) the summary arrest, detention or restriction of the movement of any person whose arrest, detention or restriction of movement, as the case may be, appears to the Minister to be expedient in the public interest;
- (b) the deportation and exclusion from Zimbabwe of any person who is not a citizen of Zimbabwe;
- (c) the removal from one part of Zimbabwe to some other part of Zimbabwe of any person whose removal appears to the Minister to be expedient in the public interest;
- (d) the regulation and control of persons employed or engaged in any trade, business, occupation, profession, calling or industry in Zimbabwe;
- (e) the taking of possession or control on behalf of the State of any property or undertaking;
- (f) the regulation and control of companies registered in or persons carrying on business in Zimbabwe, including the suspension or discharge of persons employed by any such company or other person or, in the case of a company or association, concerned with the management thereof;
- (g) the acquisition on behalf of the State of any property other than land;
- (h) the entering and search of any premises;
- (i) the assistance to be afforded to persons affected by a natural disaster;
- (j) the payment of compensation and remuneration to persons affected by any regulations or order made in terms of this section;
- (k) the arrest of any person contravening or offending against any regulations or order made in terms of this section;

² See extract from Constitution annexed to this document

- (1) the penalties to be imposed for any contravention of or failure to comply with any regulations or order made in terms of this section.
- (3) Regulations made in terms of subsection (1) may—
 - (a) be published in the same *Gazette* as the declaration in terms of subsection (1) of section 31J of the Constitution;
 - (b) provide for empowering such authorities or persons as may be specified in the regulations to make orders for any of the purposes for which such regulations are authorized by this section to be made and may contain such incidental and supplementary provisions as appear to the President to be necessary or expedient for the purposes of the regulations.
- (4) It is declared that, notwithstanding anything contained in any law—
 - (a) section 21 of the Interpretation Act [*Chapter 1:01*] shall apply in relation to this section;
 - (b) notwithstanding the enumeration of the specific powers in subsection (2), the President may make such regulations in terms of subsection (1) as appear to him to be necessary or expedient, whether or not such regulations relate to any of the matters specified in subsection (2) and whether or not such regulations are inconsistent with subsection (2).
- (5) Regulations made in terms of subsection (1) may provide for the continuation in force thereunder of any notice, order, direction, permit, licence or other thing whatsoever, including, for the removal of doubt, the detention or restriction of movement of any person, which was issued, authorized, done or continued in force under regulations in force immediately before the publication of those regulations.
- (6) Every regulation made in terms of subsection (1) by the President shall be laid before Parliament as soon as may be after it is made.
- (7) If Parliament, within the next twenty-eight days on which it has sat after any regulation made in terms of subsection (1) is laid before it, resolves that the regulation be annulled, the regulation shall thereupon cease to have effect except in regard to things previously done or omitted to be done, without prejudice, however, to the making of another regulation.

4 Effect of other laws

- (1) Any regulation made in terms of subsection (1) of section *three* shall have effect, notwithstanding anything inconsistent therewith in any law.
- (2) So far as appears to the President to be necessary for the purposes of the regulations, regulations may provide for amending any law, for suspending the operation of any law, and for applying any law, with or without modification.

5 Revival of laws

Where any law has been amended, suspended or modified by a regulation made in terms of subsection (1) of section *three*, then, notwithstanding section 17 of the Interpretation Act [*Chapter 1:01*], such law shall, with effect from the expiry or repeal of such regulation, have effect as if such amendment, suspension or modification had never been made.

6 President may make regulations for preventive detention

(1) Where a resolution in terms of subsection (6) of section 31J of the Constitution has been passed and so long as that resolution is in effect it shall be lawful for the President to make such regulations as appear to him to be necessary or expedient for—

- (a) the preventive detention of any person in the interests of defence, public safety or public order;
- (b) empowering any Minister designated in the regulations to issue orders for the preventive detention of any person;
- (c) empowering any police officer or other person in the employment of the State to arrest and detain any person for a period not exceeding fourteen days, pending the issue of an order referred to in paragraph (b);
- (d) the procedure for the review of cases of detained persons by a tribunal established in accordance with paragraph 2 of Schedule 2 to the Constitution to review such cases;
- (e) the treatment and discipline of detained persons and the places where they may be detained;
- (f) the penalties that may be imposed for any contravention of the regulations.

(2) Subsections (3), (4), (5), (6) and (7) of section *three* and sections *four* and *five* shall apply, *mutatis mutandis*, in relation to regulations made in terms of subsection (1).

7 Continuation of regulations in certain circumstances

(1) When a resolution passed in terms of subsection (6) of section 31J of the Constitution becomes or is effective upon the expiry or revocation of a declaration in terms of subsection (1) of that section, any regulations that were made in terms of section *three* and were in force immediately before the revocation or expiry of the declaration shall, to the extent that they relate to the matters referred to in subsection (1) of section *six*, continue in force as if they had been made while a resolution in terms of subsection (6) of section 31J of the Constitution was in effect.

(2) Whenever a declaration in terms of subsection (1) of section 31J of the Constitution becomes or is effective upon the expiry or revocation of a resolution passed in terms of subsection (6) of that section, any regulations that were made in terms of section *six* and were in force immediately before the expiry or revocation of the resolution shall continue in force as if they had been made whilst a declaration in terms of subsection (1) of section 31J of the Constitution was in effect.

EXTRACTS FROM CONSTITUTION OF ZIMBABWE
(as amended at 1st March 2007)

A. DECLARATION OF STATE OF PUBLIC EMERGENCY

31J Public emergencies

(1) The President may at any time, by proclamation in the *Gazette*, declare in relation to the whole of Zimbabwe or any part thereof that—

- (a) a state of public emergency exists; or
- (b) a situation exists which, if allowed to continue, may lead to a state of public emergency.

(2) A declaration under subsection (1), if not sooner revoked, shall cease to have effect at the expiration of a period of fourteen days beginning with the day of publication of the proclamation in the *Gazette* unless, before the expiration of that period, the declaration is approved by resolution of Parliament:

Provided that, if Parliament is dissolved during the period of fourteen days, the declaration, unless sooner revoked, shall cease to have effect at the expiration of a period of thirty days beginning with the day of publication of the proclamation in the *Gazette* unless, before the expiration of that period, the declaration is approved by resolution of Parliament.

[Subsection as amended by section 26 of Act 31 of 1989 - Amendment No. 9]

(3) Where a declaration under subsection (1)—

- (a) is not approved by resolution under subsection (2), the President shall forthwith, after Parliament has considered the resolution and failed to approve it or, if Parliament has not considered the resolution, on the expiration of the appropriate period specified in subsection (2), by proclamation in the *Gazette*, revoke the declaration;
- (b) is approved by resolution under subsection (2), the declaration shall, subject to the provisions of subsection (4), continue in effect for a period of six months beginning with the day of publication of the proclamation in the *Gazette*:

Provided that, where Parliament has in the resolution under subsection (2) specified that the declaration shall continue in effect for a period of less than six months, the President shall, by proclamation in the *Gazette*, make provision that the declaration shall, subject to the provisions of subsection (4), be revoked on the expiration of the period so specified.

[Subsection as amended by section 26 of Act 31 of 1989 - Amendment No. 9]

(4) If Parliament resolves that it considers it expedient that a declaration under subsection (1) should be continued for a further period not exceeding six months, the President shall forthwith, by proclamation in the *Gazette*, extend the declaration for such further period as may be so resolved.

[Subsection as amended by section 26 of Act 31 of 1989 - Amendment No. 9]

(5) Notwithstanding any other provision of this section, Parliament may at any time—

- (a) resolve that a declaration under subsection (1) should be revoked; or
- (b) whether in passing a resolution under subsection (2) or (4) or subsequently, resolve that a declaration under subsection (1) should relate to such lesser area as Parliament may specify;

and the President shall forthwith, by proclamation in the *Gazette*, revoke the declaration or provide that the declaration shall relate to such lesser area, as the case may be.

[Subsection as amended by section 26 of Act 31 of 1989 - Amendment No. 9]

(6) Without prejudice to the provisions of subsections (1) to (5), Parliament may at any time resolve in relation to the whole of Zimbabwe or any part thereof that a situation exists which—

- (a) if allowed to continue, may lead to a state of public emergency; and
- (b) may require the preventive detention of persons in the interests of defence, public safety or public order.

[Subsection as amended by section 26 of Act 31 of 1989 - Amendment No. 9]

(7) A resolution under subsection (6) shall, subject to the provisions of subsection (8) and unless Parliament has specified that it shall have effect for a period of less than one year, have effect for a period of one year beginning with the day on which it is passed.

[Subsection as amended by section 26 of Act 31 of 1989 - Amendment No. 9]

(8) Parliament may continue a resolution under subsection (6) for a further period, not exceeding one year.

[Subsection as amended by section 9 of Act 15 of 1990 - Amendment No. 10]

(9) Notwithstanding any other provision of this section, Parliament may at any time resolve—

- (a) that a resolution under subsection (6) shall cease to have effect; or
- (b) that a resolution under subsection (6) shall relate to such lesser area as Parliament may specify.

[Subsection as amended by section 26 of Act 31 of 1989 - Amendment No. 9]

(10) A declaration under subsection (1) or a resolution under subsection (6) may be continued in accordance with this section notwithstanding that it has previously been continued.

(11) No resolution under subsection (2), (4), (6) or (8) shall be deemed to have been duly passed unless it receives the affirmative votes of more than one-half of the total membership of Parliament.

[Subsection as amended by section 26 of Act 31 of 1989 - Amendment No. 9]

(12) Where Parliament passes a resolution under subsection (6), (8) or (9), the Clerk of Parliament shall forthwith cause to be published in the *Gazette* a notice of such resolution and the effect thereof.

[Subsection as amended by section 26 of Act 31 of 1989 - Amendment No. 9,
and section 15 of Act 14 of 1996 - Amendment No. 14]

(13) ...

[Subsection repealed by section 4 of Act 4 of 1993 - Amendment No. 12]

B. DEROGATION FROM DECLARATION OF RIGHTS DURING STATE OF PUBLIC EMERGENCY

25 Savings in the event of public emergencies

Notwithstanding the foregoing provisions of this Chapter, an Act of Parliament may in accordance with Schedule 2 derogate from certain provisions of the Declaration of Rights in respect of a period of public emergency or a period when a resolution under section 31J(6) is in effect.

[Section as amended by section 20 of Act 23 of 1987]

SCHEDULE 2

(Sections 25, 31J and 113)

SAVINGS IN THE EVENT OF PUBLIC EMERGENCIES

1 Savings in the event of public emergencies

(1) Nothing contained in any law shall be held to be in contravention of section 13, 17, 20, 21, 22 or 23 to the extent that the law in question provides for the taking, during a period of public emergency, of action for the purpose of dealing with any situation arising during that period, and nothing done by any person under the authority of any such law shall be held to be in contravention of any of the said provisions unless it is shown that the action taken exceeded anything which, having due regard to the circumstances prevailing at the time, could reasonably have been thought to be required for the purpose of dealing with the situation.

(2) Nothing contained in any law shall be held to be in contravention of section 13 to the extent that the law in question provides for preventive detention, during a period when a resolution under section 31J(6) is in effect, in the interests of defence, public safety or public order, and nothing done by any person under the authority of any such law shall be held to be in contravention of section 13 unless it is shown that the action taken exceeded anything which, having due regard to the circumstances prevailing at the time, could reasonably have been thought to be required for the purpose of dealing with the situation.

[Subparagraph as amended by section 20 of Act 23 of 1987 - Amendment No. 7]

(3) Where a declaration under section 31J(1) or a resolution under section 31J(6) applies only in relation to a part of Zimbabwe, the law in question shall not provide for the taking of action or for preventive detention, as the case may be, in relation to any place outside that part.

[Subparagraph as amended by section 20 of Act 23 of 1987 - Amendment No. 7]

2 Preventive detention

(1) Where a person is detained under any law providing for preventive detention—

- (a) he shall be informed as soon as reasonably practicable after the commencement of the detention, and in any case not later than seven days thereafter, in a language that he understands of the reasons for his detention and shall be permitted at his own expense to obtain and instruct without delay a legal representative of his own choice and to hold communication with him;
- (b) his case shall be submitted not later than fourteen days (or during a period of public emergency thirty days) after the commencement of the detention for review by a tribunal established under subparagraph (4) and shall be reviewed by such tribunal forthwith; and thereafter his case shall be reviewed by such tribunal at

intervals of thirty days (or during a period of public emergency one hundred and eighty days) from the date on which his case was last reviewed;

- (c) at the hearing of his case by the tribunal he shall be permitted to appear in person or at his own expense by a legal representative of his own choice; and
- (d) if the tribunal orders, either because he satisfies the tribunal that new circumstances have arisen or because the tribunal considers it to be desirable, that his case should be submitted to the tribunal for review before the expiration of thirty days (or during a period of public emergency one hundred and eighty days) from the previous review, the case shall be submitted for review when so ordered by the tribunal.

(2) On any such review, the tribunal may make recommendations concerning the necessity or expedience of continuing the detention to the authority by which it was ordered and that authority shall be obliged to act in accordance with any such recommendation unless, during a period of public emergency, the President otherwise directs; and where the President so directs, the authority shall cause to be published in the *Gazette* a notice that he has so directed.

(3) A person who has been detained under any law providing for preventive detention and who has been released from detention in consequence of a report of a tribunal established under subparagraph (4) that there is, in its opinion, insufficient cause for his detention shall not again be detained by virtue of such law within the period of one hundred and eighty days from his release on the same grounds as those on which he was originally detained.

(4) A tribunal for the purposes of this paragraph shall be established by law and shall consist of—

- (a) a chairman, who shall be a person who is or has been a judge of the Supreme Court or the High Court or is qualified under section 82 to be appointed as such; and
- (b) two other persons, one of whom—
 - (i) is or has been a judge of the Supreme Court or the High Court or is qualified under section 82 to be appointed as such;
 - (ii) has been a magistrate in Zimbabwe for not less than seven years; or
 - (iii) is and has been for not less than seven years, whether continuously or not, qualified to practise as a legal practitioner in Zimbabwe.

[Subparagraph as amended by sections 11 and 13 of Act 25 of 1981 - Amendment No. 2]

(4a) In computing, for the purposes of subparagraph (4)(b)(iii), the period during which any person has been qualified to practise as a legal practitioner in Zimbabwe, any period during which he was qualified to practise as an advocate or attorney in Zimbabwe shall be included.

[Subparagraph as inserted by section 11 of Act 25 of 1981 - Amendment No. 2]

(5) No law providing for preventive detention during a period when a resolution under section 31J(6) is in effect shall authorize the detention of a person for a period longer than fourteen days unless the Minister designated for the purpose has issued an order providing for the preventive detention of that person.

[Subparagraph as amended by section 20 of Act 23 of 1987 - Amendment No. 7]

(6) The reference in subparagraph (1)(b) to a period of fourteen or thirty days in relation to a first review includes a reference to any lesser periods that amount in the aggregate to fourteen or thirty days respectively:

Provided that no two such lesser periods shall be aggregated for this purpose if the period between the expiration of the first and the commencement of the second is more than fourteen or thirty days, as the case may be.

(7) For the purposes of subparagraph (3), a person shall be deemed to have been detained on the same grounds as those on which he was originally detained unless a tribunal established under subparagraph (4) has reported that, in its opinion, there appear *prima facie* to be new and reasonable grounds for the detention, but the giving of any such report shall be without prejudice to the provisions of subparagraphs (1) and (5).