

SEXUAL OFFENCES ACT 23 OF 1957

(Previous short title, 'Immorality Act', substituted by s. 10 of Act 2 of 1988)

[ASSENTED TO 3 APRIL 1957]

[DATE OF COMMENCEMENT: 12 APRIL 1957]

(English text signed by the Governor-General)

as amended by

Immorality Amendment Act 68 of 1967
 Immorality Amendment Act 57 of 1969
 Immorality and Prohibition of Mixed Marriages Amendment Act 72 of 1985
 Immorality Amendment Act 2 of 1988
 Criminal Law Amendment Act 4 of 1992
 General Law Amendment Act 139 of 1992
 General Law Fourth Amendment Act 132 of 1993
 Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007

ACT

To consolidate and amend the laws relating to brothels and unlawful carnal intercourse and other acts in relation thereto.

1 Definitions

In this Act, unless the context otherwise indicates-

'brothel' includes any house or place kept or used for purposes of prostitution or for persons to visit for the purpose of having unlawful carnal intercourse or for any other lewd or indecent purpose;

'coloured person'

[Definition of 'coloured person' deleted by s. 1 (a) of Act 72 of 1985 .]

'court' means the court before which the charge is brought;

[Definition of 'court' substituted by s. 1 of Act 2 of 1988 .]

'female' means a female person 18 years or older;

[Definition of 'female' inserted by s. 68 of Act 32 of 2007 .]

'house' includes a dwelling-house, building, room, out-house, shed or tent or any part thereof;

'owner' includes any person who lets or sub-lets or permits the occupation of any house or place whether in his own right or that of another;

'place' includes any field, enclosure, space, vehicle, or boat or any part thereof;

'police officer' means any member of any police force established under the authority of any law;

'unlawful carnal intercourse' means carnal intercourse otherwise than between husband and wife;

'white person'

[Definition of 'white person' deleted by s. 1 (b) of Act 72 of 1985 .]

2 Keeping a brothel

Any person who keeps a brothel shall be guilty of an offence.

3 Certain persons deemed to keep a brothel

The following persons shall for the purposes of section *two* be deemed to keep a brothel:

- (a) any person who resides in a brothel unless he or she proves that he or she was ignorant of the character of the house or place;
- (b) any person who manages or assists in the management of any brothel;

- (c) any person who knowingly receives the whole or any share of any moneys taken in a brothel;
- (d) any person who, being the tenant or occupier of any house or place, knowingly permits the same to be used as a brothel;
- (e) any person who, being the owner of any house or place, lets the same, or allows the same to be let, or to continue to be let, with the knowledge that such house or place is to be kept or used or is being kept or used as a brothel;
- (f) any person found in a brothel who refuses to disclose the name and identity of the keeper or manager thereof;
[Para. (f) amended by s. 5 of Act 139 of 1992 .]
- (g) any person whose spouse keeps or resides in or manages or assists in the management of a brothel unless such person proves that he or she was ignorant thereof or that he or she lives apart from the said spouse and did not receive the whole or any share of the moneys taken therein.
[Para. (g) substituted by s. 11 of Act 132 of 1993 .]

4 Onus of proof

In prosecutions under this Act the onus of proving that a house or place is to be kept or used or is being kept or used as a brothel to the knowledge of the owner shall be on the prosecution: Provided that-

- (a) if it is established to the satisfaction of the court that, having regard to the locality and accommodation, the rent to be paid or paid for the house or place is exorbitant, the onus shall be on the accused to prove that he was ignorant that such house or place is to be kept or used or was kept or used as a brothel;
- (b) proof of written notice having been given to the owner by a police officer not below the rank of sergeant or by two householders living in the vicinity of the house or place that any house or place is being kept or used as a brothel, shall be conclusive proof of knowledge on his part.

5 Contract to let house or place for a brothel void

Any contract to let any house or place to be kept or used as a brothel shall be null and void.

6 Use of house or place as a brothel voids contract of letting

Any contract of letting and hiring of any house or place which subsequently to the making of such contract becomes a brothel shall as from the date of such event be determined and become null and void: Provided that upon proof by the owner of his ignorance that the house or place was so kept or used he shall be entitled to recover the rent up to the date upon which he became aware that the house or place was being kept or used as a brothel.

7 Summary ejectment when a house or place is used as a brothel

The owner of any house or place kept or used as a brothel shall be entitled to apply to the magistrate of the district in which such house or place is situated for the summary ejectment of any person who may be keeping or using such house or place as a brothel and such magistrate shall be entitled after enquiry to order the summary ejectment of such person.

8 Proceedings upon complaint by householders or police that a house or place is used as a brothel

(1) If it appears to any magistrate on sworn information laid before him by not less than two householders of good repute that any house or place in the vicinity of the dwellings of such householders is being kept or used as a brothel or on similar information upon oath laid before him by any police officer not below the rank of

sergeant, or by a welfare officer employed by a department of State responsible for Health and Welfare, a local authority or a welfare organization registered under the National Welfare Act, 1978 (Act 100 of 1978), the magistrate may-

- (a) issue a warrant for the arrest of the person alleged to be the keeper of such brothel; or
- (b) issue a warrant authorizing any police officer not below the rank of sergeant-
 - (i) to enter at any time and within such period as shall be stated in such warrant, such house or place for the purpose of ascertaining the name and identity of the keeper of such house or place;
 - (ii) to interrogate, and to demand the name and address of any person found in or upon such house or place; and
 - (iii) to demand, search for, and seize any account book, receipt, paper, document or thing likely to afford evidence of the commission by any person of an offence under this Act.

[Sub-s. (1) amended by s. 2 (a) of Act 2 of 1988 .]

(2) Any person found in or upon such house or place who, when called upon to do so by the police officer conducting the search, refuses to furnish his name and address or furnishes a name or address which is false in any material particular or refuses to disclose the name or identity of the keeper of such house or place or to produce any book, receipt, paper, document or thing which he has in his possession or custody or under his control, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding R1 000 and in default of payment to imprisonment for a period not exceeding six months.

[Sub-s. (2) substituted by s. 1 of Act 68 of 1967 and by s. 2 (b) of Act 2 of 1988 .]

(3) The issue of a warrant under paragraph (b) of subsection (1) shall not in any way affect the power of the magistrate to issue at any time a warrant under paragraph (a) of subsection (1) or under any other law.

9

[S. 9 amended by s. 3 of Act 2 of 1988 and repealed by s. 68 of Act 32 of 2007 .]

10 Procuration

Any person who-

- (a) procures or attempts to procure any female to have unlawful carnal intercourse with any person other than the procurer or in any way assists in bringing about such intercourse; or
- (b) inveigles or entices any female to a brothel for the purpose of unlawful carnal intercourse or prostitution or conceals in any such house or place any female so inveigled or enticed; or
- (c) procures or attempts to procure any female to become a common prostitute; or
- (d) procures or attempts to procure any female to become an inmate of a brothel; or
- (e) applies, administers to or causes to be taken by any female any drug, intoxicating liquor, matter or thing with intent to stupefy or overpower her so as thereby to enable any person other than the procurer to have unlawful carnal intercourse with such female,

shall be guilty of an offence.

11

[S. 11 repealed by s. 68 of Act 32 of 2007 .]

12 Detention for purposes of unlawful carnal intercourse

- (1) Any person who takes or detains any female against her will-

- (a) to or in or upon any house or place with intent that she may be unlawfully carnally known by any male, whether a particular male or not; or
- (b) to or in a brothel,

shall be guilty of an offence.

(2)

[Sub-s. (2) repealed by s. 68 of Act 32 of 2007 .]

(3) Any person shall be deemed to detain a female in or upon any house or place or in a brothel if, with intent to compel or induce her to remain in or upon such house or place or in such brothel, such person withholds from her any wearing apparel or other property to the possession of which she is entitled or which has been lent or supplied to her by such person or for the purposes of prostitution; and any such female shall be justified in taking away such wearing apparel as is necessary to enable her to leave such house or place or brothel.

12A Assistance for purposes of unlawful carnal intercourse

(1) Any person who, with intent or while he reasonably ought to have foreseen the possibility that any person, who is 18 years or older, may have unlawful carnal intercourse, or commit an act of indecency, with any other person for reward, performs for reward any act which is calculated to enable such other person to communicate with any such person, who is 18 years or older, shall be guilty of an offence.

[Sub-s. (1) substituted by s. 4 (a) of Act 2 of 1988 and by s. 68 of Act 32 of 2007 .]

(2)

[Sub-s. (2) deleted by s. 4 (b) of Act 2 of 1988 .]

[S. 12A inserted by s. 2 of Act 68 of 1967 .]

13

[S. 13 repealed by s. 68 of Act 32 of 2007 .]

14

[S. 14 substituted by s. 1 of Act 57 of 1969 and by s. 5 of Act 2 of 1988 and repealed by s. 68 of Act 32 of 2007 .]

15

[S. 15 substituted by s. 6 of Act 2 of 1988 and repealed by s. 68 of Act 32 of 2007 .]

16

[S. 16 repealed by s. 2 of Act 72 of 1985 .]

17 Owner or occupier permitting on his premises the defilement of a female or any offence against this Act

Any person who being the owner or occupier of any house or place or having or acting or assisting in the management or control thereof knowingly permits the use of such house or place for the purpose of any offence against any provision of this Act, shall be guilty of an offence.

18

[S. 18 repealed by s. 68 of Act 32 of 2007 .]

18A

[S. 18A inserted by s. 2 of Act 57 of 1969 and repealed by s. 68 of Act 32 of 2007 .]

19 Enticing to commission of immoral acts

(1) Any person who entices, solicits, or importunes in any public place for immoral purposes, shall be guilty of an offence.

(2) Any person 18 years or older who wilfully and openly exhibits himself or herself in an indecent dress or manner at any door or window or within view of any public street or place or in any place to which the public have access, shall be guilty of an offence.

[S. 19 substituted by s. 68 of Act 32 of 2007 .]

20 Persons living on earnings of prostitution or committing or assisting in commission of indecent acts

(1) Any person who-

- (a) knowingly lives wholly or in part on the earnings of prostitution; or
- (b)
- (c) in public or in private in any way assists in bringing about, or receives any consideration for, the commission by any person of any act of indecency with another person,

shall be guilty of an offence.

[Sub-s. (1) amended by s. 7 (a) of Act 2 of 1988 and substituted by s. 68 of Act 32 of 2007 .]

(1A) Any person 18 years or older who-

- (a) has unlawful carnal intercourse, or commits an act of indecency, with any other person for reward; or
- (b) in public commits any act of indecency with another person,

shall be guilty of an offence.

[Sub-s. (1A) inserted by s. 68 of Act 32 of 2007 .]

(2) If it is made to appear to a magistrate by information on oath that there is reason to suspect that any house is used for purposes of prostitution and that any person residing in or frequenting the house is living wholly or in part on the earnings of prostitution, the magistrate may issue a warrant authorizing any police officer not below the rank of sergeant to enter and search the house and to arrest that person.

[Sub-s. (2) substituted by s. 7 (b) of Act 2 of 1988 .]

20A

[S. 20A inserted by s. 3 of Act 57 of 1969 and repealed by s. 68 of Act 32 of 2007 .]

21 Presumptions

(1) Whenever in any prosecution under this Act the question is in issue whether any carnal intercourse between a male and a female was unlawful, such male and female shall be deemed to have been unmarried at the time of such intercourse unless the accused proves the contrary.

(2)

[Sub-s. (2) deleted by s. 3 of Act 72 of 1985 .]

(3) Whenever in any prosecution under this Act a person is proved to reside in a brothel or to live with or to be habitually in the company of a prostitute and has no visible means of subsistence, such person shall, unless he or she satisfies the court to the contrary, be deemed to be knowingly living wholly or in part on the earnings of prostitution.

(4) Whenever in any prosecution for an offence under section 12A it is proved-

- (a) that the accused has performed any act for reward which was calculated to enable any person to communicate with any other person who is a prostitute; or
- (b) that the other person with whom communication was made as a result of such act has had unlawful carnal intercourse, or has committed an act of indecency, with such person for reward,

the accused shall be presumed to have performed such act with intent or while he reasonably ought to have foreseen the possibility that such other person may have unlawful carnal intercourse, or commit an act of indecency, with such person for reward unless the contrary is proved beyond reasonable doubt.

[Sub-s. (4) added by s. 3 of Act 68 of 1967 and substituted by s. 8 of Act 2 of 1988 .]

22 Penalties

Any person who is convicted of an offence under the provisions of this Act for which no special penalty is prescribed, shall be liable-

- (a) in the case of an offence referred to in section 2 or 20 (1) (a) or (1A) (a), to imprisonment for a period not exceeding three years with or without a fine not exceeding R6 000 in addition to such imprisonment;
- (b) and (c).....
- (d) in the case of an offence referred to in section 12A, with a fine, or imprisonment for a period not exceeding five years;
- (e) in the case of an offence referred to in section 10 or 12 (1), to imprisonment for a period not exceeding seven years;
- (f) in the case of an offence referred to in section 17, to imprisonment for a period not exceeding six years with or without a fine not exceeding R12 000 in addition to such imprisonment;
- (g) in the case of an offence referred to in section 19 or 20 (1) (c) or (1A) (b) to a fine not exceeding R4 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[S. 22 substituted by s. 4 of Act 68 of 1967 , amended by s. 4 of Act 57 of 1969 , by s. 4 of Act 72 of 1985 , by s. 9 of Act 2 of 1988 and by s. 2 of Act 4 of 1992 and substituted by s. 68 of Act 32 of 2007 .]

23 Repeal of laws

The laws specified in the Schedule are hereby repealed to the extent set out in the fourth column of that Schedule.

24

[S. 24 repealed by s. 6 of Act 139 of 1992 .]

25 Short title

This Act shall be called the Sexual Offences Act, 1957.

[S. 25 substituted by s. 10 of Act 2 of 1988 .]

Schedule

(Section 23)

PROVINCE OR UNION	NO AND YEAR OF LAW	SHORT TITLE OR SUBJECT OF LAW	EXTENT OF REPEAL
Cape	Act 25 of 1893	The Criminal Law Amendment Act, 1893	So much as is unrepealed
"	Act 36 of 1902	The Betting Houses, Gaming Houses and Brothels Suppression Act, 1902	Sections 22 to 36 inclusive
Transvaal	Ordinance 46 of 1903	The Immorality Ordinance, 1903	So much as is unrepealed
Orange Free State	Ordinance 11 of 1903	The Suppression of Brothels and Immorality Ordinance, 1903	So much as is unrepealed
"	Act 19 of 1908	The Suppression of Brothels and Immorality Amendment Act, 1908	The whole
Natal	Act 31 of 1903	The Criminal Law Amendment Act, 1903	The whole
Union	Act 3 of 1916	The Girls' and Mentally Defective Women Protection Act, 1916	The whole

"	Act 5 of 1927	The Immorality Act, 1927	The whole
"	Act 21 of 1950	The Immorality Amendment Act, 1950	The whole
"	Act 62 of 1955	The General Law Amendment Act, 1955	Section 15

IMMORALITY AMENDMENT ACT 68 OF 1967

[ASSENTED TO 22 MAY 1967]

[DATE OF COMMENCEMENT: 1 JUNE 1967]

(English text signed by the State President)

ACT

To amend the Immorality Act, 1957, so as to amend the special penal provisions relating to persons found in a brothel; to penalise the rendering of assistance for the purpose of unlawful carnal intercourse; to extend the provisions of that Act relating to presumptions; and to amend the general penal provisions of that Act.

1

Amends section 8 of the Immorality Act 23 of 1957 .

2

Inserts section 12A in the Immorality Act 23 of 1957 .

3

Amends section 21 of the Immorality Act 23 of 1957 .

4

Substitutes section 22 of the Immorality Act 23 of 1957 .

5 Short title

This Act shall be called the Immorality Amendment Act, 1967.

IMMORALITY AMENDMENT ACT 57 OF 1969

[ASSENTED TO 9 MAY 1969]

[DATE OF COMMENCEMENT: 21 MAY 1969]

(Afrikaans text signed by the State President)

ACT

To amend the provisions of the Immorality Act, 1957, with regard to the commission of offences with girls or boys; to prohibit the manufacture, sale or

supply of any article which is intended to be used to perform an unnatural sexual act; to make provision in the said Act for a prohibition on the commission at a party of acts between male persons and which are calculated to stimulate sexual passion or to give sexual gratification; and to repeal section 10 of Act 22 of 1898 of Natal.

1

Substitutes section 14 of the Immorality Act 23 of 1957 .

2

Inserts section 18A in the Immorality Act 23 of 1957 .

3

Inserts section 20A in the Immorality Act 23 of 1957 .

4

Amends section 22 of the Immorality Act 23 of 1957 by substituting paragraph (g).

5

Repeals section 10 of the Act 'To amend the law relative to the trial and punishment of the Crimes of Rape and Indecent Assault and Conduct' 22 of 1898 (Natal).

6 Short title

This Act shall be called the Immorality Amendment Act, 1969.

IMMORALITY AMENDMENT ACT 2 OF 1988

[ASSENTED TO 25 FEBRUARY 1988]

[DATE OF COMMENCEMENT: 4 MARCH 1988]

(English text signed by the State President)

ACT

To amend the Immorality Act, 1957, so as to rectify certain obsolete expressions; to increase the maximum fines which may be imposed for certain contraventions in terms of the said Act; to extend the prohibition on a parent or guardian from procuring the defilement of his daughter so that it shall apply in respect of all his children, and to create a presumption in this connection; to make other provision in connection with the offence of assistance for the purposes of unlawful carnal intercourse, and the presumption concomitant therewith; to adapt and extend the provisions relating to sexual offences by a male with youths so that they shall also apply to a female; to extend the prohibition of sexual acts with female idiots or imbeciles so that it shall also apply in respect of male idiots or imbeciles; and to make it an offence for a person to have unlawful carnal intercourse, or to commit an act of indecency, with any other person for reward; and to provide for matters connected therewith.

1

Amends section 1 of the Immorality Act 23 of 1957 by substituting the definition of 'court'.

2

Amends section 8 of the Immorality Act 23 of 1957 , as follows: paragraph *(a)* substitutes in subsection (1) the words preceding paragraph *(a)*; paragraph *(b)* substitutes subsection (2); and paragraph *(c)* substitutes in the Afrikaans text of subsection (3) the word 'landdros' for the word 'magistraat'.

3

Amends section 9 of the Immorality Act 23 of 1957 , as follows: paragraph *(a)* substitutes subsection (1) with subsections (1) and (1A) and paragraph *(b)* substitutes subsection (2).

4

Amends section 12 of the Immorality Act 23 of 1957 , as follows: paragraph *(a)* substitutes subsection (1); and paragraph *(b)* deletes subsection (2).

5 and 6

Substitute respectively sections 14 and 15 of the Immorality Act 23 of 1957 .

7

Amends section 20 of the Immorality Act 23 of 1957 , as follows: paragraph *(a)* inserts paragraph *(aA)* in subsection (1); and paragraph *(b)* substitutes subsection (2).

8

Amends section 21 of the Immorality Act 23 of 1957 by substituting subsection (4).

9

Amends section 22 of the Immorality Act 23 of 1957 , as follows: paragraph *(a)* substitutes paragraph *(a)*; paragraph *(b)* substitutes paragraph *(b)*; paragraph *(c)* substitutes paragraph *(c)*; paragraph *(d)* substitutes paragraph *(f)*; and paragraph *(e)* substitutes paragraph *(g)*.

10

Substitutes section 25 of the Immorality Act 23 of 1957 .

11 Short title

This Act shall be called the Immorality Amendment Act, 1988.