

[This unofficial translation is based on the Thai text from the Government Gazette of 16 July 2005, and was made with assistance from a lawyer. It uses many of the same technical terms as the unofficial translation from the Geneva embassy, but is deliberately more literal and less legalistic for easier comprehension. It may make more sense than the Thai which is often ungrammatical, inconsistent, vague, and obscure. Any errors or improvements, please send to: chang_noi@hotmail.com. On 19 July 2005, the government declared an “extreme” state of emergency under section 11 in the three southern provinces for three months, but waived section 9, section 11(v), and section 11(vi).]

Decree on Government Administration in a State of Emergency, 2005

Bhumibol Adulyadej, Rex

given on 16 July 2005, in the 60th year of the reign

As it is appropriate to revise the law concerning government administration in a state of emergency

this decree has certain provisions that restrict the rights and freedoms of persons under sections 29, 31, 35, 36, 37, 39, 44, 48, 50, and 51 of the Constitution of the Kingdom of Thailand; it can be enacted under powers provided for in law

under the provisions of section 218 of the Constitution of the Kingdom of Thailand, a decree is enacted as follows

Section 1. This decree is called the ‘Decree on Government Administration in a State of Emergency, 2005.’

Section 2. This decree comes into force from the day following its announcement in the Government Gazette.

Section 3. The Act on Government Administration in a State of Emergency, 1952 is repealed.

Section 4. In this decree

a ‘state of emergency’ means a situation which affects or may affect the peace and order of the people, or endanger the security of the state, or may cause the country or some part of it to fall into a critical condition, or have criminal activity associated with terrorism according to the penal code, armed conflict or war, requiring urgent measures to preserve the democratic system of government with the King as head of state according to the Constitution of the Kingdom of Thailand, the independence and integrity of the realm, the interests of the nation, compliance with law, the safety of the people, the conduct of normal life by the people, and the safeguarding of rights, freedoms, peace, order, and public interests, or to avert or remedy damage from public disasters, which arise as an emergency and in extreme form.

a ‘competent officer’ means a person that the Prime Minister appoints to carry out duties under this decree

Section 5. When it is apparent a state of emergency has arisen, and the Prime Minister deems it appropriate to use government officials or police, civilian and military, to jointly prevent, remedy, suppress, and resolve the situation, and to rehabilitate or assist the people, the Prime Minister with the approval of the Cabinet has the power to declare a state of emergency, for enforcement either in the whole Kingdom or certain localities,

according to the necessity of the situation. In case it is not possible to seek the approval of the Cabinet in time, the Prime Minister may announce a state of emergency first and proceed to get approval from the Cabinet within three days. If approval from the Cabinet is not sought within the designated time, or the Cabinet does not give its approval, the declaration of a state of emergency ceases to be in force.

The declaration of a state of emergency under paragraph 1 is in force for the time prescribed by the Prime Minister but no longer than three months from the date of declaration. In the event it is necessary to extend the time, the Prime Minister with the approval of the Cabinet has the power to declare further extensions of no longer than three months at a time.

When a state of emergency ends, or when the Cabinet does not give its approval, or when the time period expires according to paragraph 2, the Prime Minister will announce the lifting of the state of emergency

Section 6. There will be a committee to administer states of emergency composed of: a Deputy Prime Minister designated by the Prime Minister as chairman; the Ministers of Defense, Interior, and Justice as vice-chairmen; the Permanent Secretaries of the Ministries of Defense, Foreign Affairs, Social Development and Human Security, Interior, and Justice, the Director-General of the National Intelligence Agency, Attorney-General, Supreme Commander, Commander-in-Chief of the Royal Thai Army, Commander-in-Chief of the Royal Thai Navy, Commander-in-Chief of the Royal Thai Air Force, Commissioner-General of the Royal Thai Police, Director-General of the Department of Provincial Administration, and the Director-General of the Department of Disaster Prevention and Mitigation as members; and the Secretary-General of the National Security Council as member and secretary; with powers to monitor and review events that occur both inside and outside the country which may give rise to a state of emergency, in order to recommend to the Prime Minister in case there is need to declare a state of emergency under section 5, or an extreme state under section 11, and on the use of appropriate measures under this decree to prevent, remedy, or resolve the state of emergency.

The contents of this section do not affect the use of the Prime Minister's power under section 5 to declare a state of emergency in case there is an urgent necessity which may endanger the country or people.

Section 7. In a locality where a state of emergency is declared under section 5, the powers and duties of the ministers of one or several ministries, or persons acting on their behalf under law, or in place under whatever law, specifically in relation to authorization, permission, command, and enforcement, or assistance in the prevention, remedy, suppression, or resolution of a state of emergency, or rehabilitation and assistance for the people, are transferred temporarily to be powers and duties of the Prime Minister, so that commands and remedies to the situation will be unified, rapid, and efficient.

Designating that the powers and duties of a minister under any law in whole or part become the powers and duties of the Prime Minister according to paragraph 1 will be in accordance with a notification by the Cabinet

The Prime Minister has the power to appoint a person as a competent officer to

perform duties under this decree and to carry out functions according to the law which have been transferred to the Prime Minister under paragraph 1. A person appointed as a competent officer will be deemed a person with power according to law. In this matter, the Prime Minister may designate government agencies or officials under such law to continue exercising their prior powers and duties, but must proceed according to rules prescribed by the Prime Minister.

In cases where the Prime Minister appoints a civilian official, police officer, or military officer with a position no lower than director-general, director-general of police, army chief, or equivalent as a competent officer and designates that person as a chief responsible for remedying the state of emergency in an area and in command of officials and competent officers for this matter, the conduct of duty of relevant government agencies and officials, including competent officers, will follow the orders of that chief responsible, except for the conduct of military duties, which will follow the regulations or rules concerning the use of military forces, but must be conducted in accord with guidelines prescribed by the person appointed as chief responsible.

In cases where it is necessary, the Cabinet may establish a special unit specifically for conduct of duty under this decree on a temporary basis, until the declaration of the state of emergency is lifted.

The Prime Minister may designate a Deputy Prime Minister or another minister or ministers to exercise powers under paragraph 1, 3, or 4 on his behalf, or to be in command of operations of relevant government agencies and competent officers under paragraph 3, chiefs responsible under paragraph 4, and agencies under paragraph 5, and be deemed to be the chief responsible in command of the relevant officials and competent officers.

Section 8. To aid coordination of work in the area declared as a state of emergency to be appropriate and in accord with the nature of the situation and the condition of the people in the area, the Prime Minister or a person designated by him may have the power to appoint a person or group of persons as advisers in the conduct of work by competent officers, or as assistants to competent officers in the conduct of duty under this decree.

A person appointed under paragraph 1 will receive the same protection as the conduct of competent officers, within the scope of duties for which that person is appointed.

Section 9. In case of necessity to remedy and quickly resolve the state of emergency, or to prevent a more extreme situation, the Prime Minister has the power to issue regulations as follows:

- i. to prohibit any person from leaving a dwelling place within a designated period, unless that person has permission from a competent officer or is a person who has been granted exemption;
- ii. to prohibit assembly or gathering in any place, or any action which incites disorder;
- iii. to prohibit the broadcast of news, sale or distribution of books, printed materials, or other communications, with content which may instill fear in people, or with intention

of distorting information or news to create misunderstanding about the state of emergency, thereby affecting the security of the state, or peace and order, or public morality, both in the area declared under the state of emergency or the whole Kingdom;

iv. to prohibit use of communication routes or vehicles, or prescribe conditions for the use of communication routes and vehicles;

v. to prohibit the use of buildings, or entry and stay in any location;

vi. to move people out of a designated area for the safety of such people, or prohibit the entry of any persons into a designated area.

Regulations under paragraph 1 will prescribe the time period for application of the regulation, or conditions for the conduct of competent officers, or will designate a competent officer to prescribe the area and further other details, so that operations do not create undue inconvenience for the people in any way.

Section 10. To help remedy quickly problems in the area where the state of emergency arose, the Prime Minister may grant power to a competent officer who has been appointed as a chief responsible under section 7, paragraph 4, to exercise the power to issue regulations under section 9 on his behalf; but the exercise of this power must be quickly reported to the Prime Minister, and if the Prime Minister has not issued regulations on the same matter within 48 hours from the time the competent officer issued that regulation, that regulation ceases to be in force.

Section 11. In the event that the state of emergency involves terrorism, the use of violence against life or property, or any other event which is believed will lead to violence with impact on the security of the state, the safety of life or property of the state or persons, and there is an urgent necessity to remedy and resolve the problem in an efficient and timely way, the Prime Minister with the approval of the Cabinet has the power to declare that such a state of emergency is an extreme state, and to enforce the provisions in section 5 and section 6 paragraph 2 *mutatis mutandis* (with necessary changes).

When there is a declaration under paragraph 1, apart from powers under sections 7, 8, 9 and 10, the Prime Minister also has the following powers:

i. to issue a notification that a competent officer has the power to arrest and detain persons who are suspected of involvement in actions creating the state of emergency, or of being employed for such, or of publicizing or supporting such actions, or of concealing information about actions which give rise to the state of emergency, to the extent necessary to prevent those persons committing or participating in any action which will give rise to an extreme state, or to create cooperation to resolve an extreme state;

ii. to issue a notification that a competent officer has power to issue orders to summon any person to report to the competent officer, or to give oral testimony, or to submit any documents or evidence relevant to the state of emergency;

iii. to issue a notification that a competent officer has power to issue orders to seize or confiscate weapons, goods, consumer articles, chemicals, or any other materials in case there is any reason for suspicion that these articles have been used or will be used for actions or in support of actions giving rise to the state of emergency;

iv. to issue a notification that a competent officer has power to issue orders to search, dismantle, remove, or destroy any building, structure, or obstruction, where it is necessary for the conduct of duty to resolve an extreme situation quickly, and where delay may mean the situation is not resolved in a timely manner.

v. to issue a notification that a competent officer has power to issue orders to examine letters, books, printed materials, telegraphs, telephone calls or communications by any other method, as well as to order the suppression or suspension of any contact or communication, in order to prevent and resolve an extreme situation; but must proceed according to rules prescribed in the law on the investigation of special cases *mutatis mutandis* (with necessary changes);

vi. to issue a notification prohibiting any action or the ordering of any action, such as is necessary to maintain the security of the state, the safety of the country, or the safety of the people;

vii. to issue a notification that a competent officer has power to issue orders prohibiting any person from leaving the Kingdom when there is any reason to believe that this departure from the Kingdom will affect the security of the state or the safety of the country;

viii. to issue a notification that a competent officer has power to issue orders for an alien to leave the Kingdom in case there is any reason to believe that such person supports actions giving rise to a state of emergency, provided that the immigration law is applied *mutatis mutandis* (with necessary changes);

ix. to issue a notification that the purchase, sale, use, or possession of weapons, articles, pharmaceuticals, consumer products, chemicals, or any equipment that might be used to create disorder or terrorism, must be reported or must receive permission from a competent officer, or must comply with conditions laid down by the Prime Minister;

x. to issue orders to use military forces to help administrative officials or police to resolve an extreme situation or urgently bring a situation under control; provided that, in the conduct of duty, military officers have the same powers and duties as those of a competent officer under this decree; and that military powers and duties will be exercised in any situation within conditions and timing prescribed by the Prime Minister, but not exceeding what is provided under martial law.

When an extreme situation under paragraph 1 is ended, the Prime Minister will quickly make an announcement lifting the declaration under this section.

Section 12. In the arrest and detention of suspects under section 11(i), the competent officer will apply to the court of competent jurisdiction or to the criminal court, to request permission to proceed. When permission is received from the court, the competent officer has the power to arrest and detain any person for no more than 7 days. Persons must be detained in a designated place which is not a police station, detention centre, penal institution, or jail, and not be treated as criminals. In the event it is necessary to detain a person further to help remedy the state of emergency, the competent officer will apply to the court to extend the period of detention for a further 7 days, but no longer than 30 days in total. When the designated time is over, if it is necessary to detain the person further, the process will follow the Criminal Procedure Code.

In proceedings under paragraph 1, the competent officer will submit a report on the arrest and detention of the person to the court which gave approval under paragraph 1, and deposit a copy of this report in the office of the competent officer, so that relatives of the person may request to see the report throughout the period the person is detained.

The application to the court for permission under paragraph 1 will follow the provisions on the issue of a warrant under the Criminal Procedure Code *mutatis mutandis* (with necessary changes).

Section 13. If the articles or equipment notified under section 11(ix) are devices or parts of devices used for communication, the Prime Minister may declare that the measure applies throughout the Kingdom or in additional areas which have not been declared under the state of emergency.

Section 14. Regulations, notifications, and orders issued under sections 5, 7, 8, 9, 11, and 15 will be announced in the Government Gazette on coming into force.

Section 15. A competent officer or person with the same powers and duties as a competent officer under this decree is deemed a competent officer under the Penal Code, and has the powers and duties of an administrative official or police officer under the Criminal Procedure Code, as prescribed by the Prime Minister.

Section 16. Regulations, notifications, orders, or actions under this decree are not subject to the law on administrative procedures, or the law on the establishment of the Administrative Court and procedure for administrative cases.

Section 17. A competent officer or person with the same powers and duties as a competent officer under this decree is not subject to civil, criminal, or disciplinary liability arising from the conduct of duty for the resolution or prevention of illegal actions, provided that their actions are honest, not discriminatory, not beyond what is appropriate to the situation, and not beyond what is necessary; but with no abrogation of the rights of any person who suffers loss to petition for compensation from government according to the law on liability of officials for wrongful acts.

Section 18. Any person who violates a regulation, notification, or order issued under section 9, 10, 11, or 13 is liable to imprisonment not exceeding 2 years, or a fine not exceeding 40,000 baht, or both.

Section 19. The Prime Minister takes care of the execution of this decree

Note: The reasons for the enactment of this decree are as follows. As the law concerning government administration in a state of emergency has been in use for a long time, various provisions cannot be used to remedy and quickly resolve situations which affect the security of the state, which take various forms. In addition, they may not be

used to overcome problems which arise from public disasters, and to rehabilitate the situation of people who have suffered loss. At present there are problems concerning the security of the state which are becoming more extreme to the point they may affect the independence and integrity of the Kingdom, and give rise to disorder in the country, including placing people in danger or inconvenience to the point they may not be able to conduct a normal and happy life. Because such problems may not be overcome by government administration in normal forms, it is appropriate and necessary to designate special measures for government administration in a state of emergency, in order that the state can maintain the security of the state, safety, and the maintenance of the rights and freedoms of all the people by returning quickly to a normal situation. Such emergency situations make it urgently and unavoidably necessary to enact this decree in order to help maintain the security of the country and the safety of the public, and to avert public disasters.