

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
BORDER MANAGEMENT
AUTHORITY BILL**

[B 9—2016]

*(As agreed to by the Portfolio Committee on Home Affairs
(National Assembly))*

[B 9A—2016]

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AMENDMENTS AGREED TO

BORDER MANAGEMENT AUTHORITY BILL
[B 9—2016]

LONG TITLE

1. On page 2, in line 3 of the long title, after “Commissioner”, to insert “and Deputy Commissioners”.
2. On page 2, from line 8 of the long title, after “penalties;”, to insert “to provide for annual reports;”.

PREAMBLE

1. On page 2, in line 4 of the Preamble, to omit “that facilitates secure travel and legitimate trade”.

ARRANGEMENT OF SECTIONS

1. On page 3, in line 9, after “of”, to insert “Border Management”.
2. On page 3, in line 13, after “**COMMISSIONER**”, to insert “**AND DEPUTY COMMISSIONERS**”.
3. On page 3, in line 14, after “Commissioner”, to insert “and Deputy Commissioners”.
4. On page 3, in line 15, after “Commissioner”, to insert “and Deputy Commissioners”.
5. On page 3, in line 16, after “Commissioner”, to insert “and Deputy Commissioners”.
6. On page 3, in line 17, after “Commissioner”, to insert “and Deputy Commissioners”.
7. On page 3, in line 18, after “Commissioner”, to insert “and Deputy Commissioners”.
8. On page 3, in line 28, after “rights”, to omit “of officers”.
9. On page 3, in line 30, to omit “**POWERS OF ENTRY, SEARCH AND SEIZURE**” and to substitute with “**POWERS OF ENTRY, SEARCH, SEIZURE, ARREST AND DETENTION**”.
10. On page 3, in line 31, to omit “Powers of entry, search and seizure with warrant” and to substitute with “Powers of entry, search, seizure, arrest and detention”.
11. On page 3, in line 32, to omit “19. Powers of entry, search and seizure without warrant”.
12. On page 3, in line 35, to omit “Detained or arrested” and to substitute with “Arrested or detained”.

13. On page 4, from line 11, to omit “Designation, determination, appointment, prescription, withdrawal or cancellation of ports, points or places of entry or exit” and to substitute with “Ports, points or places of entry or exit with approval of Minister”.
14. On page 4, in line 13, to omit “Reporting” and to substitute with “Annual report”.

CLAUSE 1

1. On page 4, from line 32, to omit the definition of “airspace” and to substitute with the following definition:

“ **“airspace”** means the area enclosed by the outer limit of the internationally recognised airspace of the Republic;”.
2. On page 4, in line 47, to omit “South African National”.
3. On page 5, from line 2, to omit “of the Republic of South Africa, 1996”.
4. On page 5, in line 5, to omit “an officer referred to in section 14;” and to substitute with “a person referred to in section 14(1);”.
5. On page 5, in line 8, to omit the definition of “Defence Force” and to substitute with the following definition:

“ **“Defence Force”** has the meaning ascribed to it in section 1 of the Defence Act, 2002 (Act No. 42 of 2002);”.
6. On page 5, after line 8, to insert the following definition:

“ **“Deputy Commissioner”** means a person appointed in terms of section 7(2) of this Act;”.
7. On page 5, after line 29, to insert the following definition:

“ **“revenue”** has the meaning ascribed to it in section 1 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997);”.

CLAUSE 2

1. On page 5, in line 41, to omit paragraph (a) and to substitute with the following paragraph:

“(a) the border protection functions exercised by the Defence Force, including those performed in respect of the airspace of the Republic; and”.
2. On page 5, from line 42, to omit paragraph (b).
3. On page 5, in line 44, to omit “(c)” and to substitute with “(b)”.

CLAUSE 4

1. On page 5, in line 53, after “of”, to insert “**Border Management**”.

CLAUSE 5

1. On page 6, from line 5, to omit clause 5 and to substitute with the following clause:

“Functions of Authority

5. The functions of the Authority are to—
 - (a) facilitate and manage the legitimate movement of persons within the border law enforcement area and at ports of entry;
 - (b) facilitate and manage the legitimate movement of goods within the border law enforcement area and at ports of entry;
 - (c) facilitate the collection of revenue within the border law enforcement area and at ports of entry; and
 - (d) cooperate and coordinate its border law enforcement functions with other organs of state, border communities or any other persons.”.

CLAUSE 6

1. On page 6, from line 14, to omit subclause (1) and to substitute with the following subclause:

- “(1) The Authority is composed of—
- (a) a Commissioner;
 - (b) Deputy Commissioners;
 - (c) a border guard comprising officers and commissioned officers; and
 - (d) support staff.”.

CLAUSE 7

1. On page 6, from line 23, to omit clause 7 and to substitute with the following clause:

“Appointment of Commissioner and Deputy Commissioners

7. (1) The President must appoint a Commissioner who—
 - (a) is a fit and proper person;
 - (b) possesses tertiary qualifications appropriate to the post;
 - (c) holds a minimum of 10 years’ appropriate senior management experience;
 - (d) is a South African citizen;
 - (e) has not been convicted and imprisoned without the option of a fine, except for a criminal offence for which the person has been granted amnesty in terms of the Promotion of National Unity and Reconciliation Act, 1995 (Act No. 34 of 1995);
 - (f) has a trustworthy and exemplary character; and
 - (g) is a commissioned officer or must, subsequent to his or her appointment—
 - (i) successfully complete the appropriate prescribed training;
 - (ii) comply with the prescribed security grading requirements; and
 - (iii) successfully undergo an appropriate security clearance process,
 to be appointed as a commissioned officer.
- (2) The President must, after consultation with the Minister, appoint no more than two Deputy Commissioners who meet the criteria set out in subsection (1).

(3) If the Commissioner is absent or unable to perform the functions of office or the office of the Commissioner is vacant, the Minister may designate a Deputy Commissioner as the acting Commissioner.”.

CLAUSE 8

1. On page 6, from line 46, to omit clause 8 and to substitute with the following clause:

“Terms of office of Commissioner and Deputy Commissioners

8. (1) The Commissioner and a Deputy Commissioner hold office for an agreed term not exceeding 5 years: Provided that the term of office may be extended only once at the expiry of such period for a further period not exceeding five years.

(2) The President must notify the Commissioner or a Deputy Commissioner, in writing, at least six calendar months before the expiry of the term referred to in subsection (1), or any subsequent period, whether the President intends extending the Commissioner’s or a Deputy Commissioner’s term of office and, if so, for what period.

(3) Subject to subsection (5), the Commissioner or a Deputy Commissioner must vacate his or her office on attaining the age of 65 years.

(4) If the Commissioner or a Deputy Commissioner attains the age of 65 years after the first day of any month, he or she must be deemed to attain that age on the first day of the next succeeding month.

(5) If the President is of the opinion that it is in the public interest to retain the Commissioner or a Deputy Commissioner in his or her office beyond the age of 65 years, and—

- (a) the Commissioner or a Deputy Commissioner wishes to continue to serve in such office; and
- (b) the mental and physical health of the person concerned enable him or her so to continue,

the President may from time to time direct that the Commissioner or a Deputy Commissioner be so retained, but not for a period which exceeds, or periods which in the aggregate exceed, two years: Provided that the Commissioner’s or a Deputy Commissioner’s term of office shall not exceed 10 years.”.

CLAUSE 9

1. On page 7, from line 13, to omit clause 9 and to substitute with the following clause:

“Removal of Commissioner and Deputy Commissioners from office

9. (1) Subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), the President may remove the Commissioner or a Deputy Commissioner from his or her office—

- (a) for misconduct;
- (b) on account of continued ill-health;
- (c) on account of incapacity to carry out his or her duties of office effectively and efficiently;
- (d) on account that he or she is no longer a fit and proper person to hold the office concerned; or
- (e) on account of a loss of confidence in the Commissioner or a Deputy Commissioner.

(2) The President may suspend the Commissioner or a Deputy Commissioner pending an investigation into the circumstances referred to in subsection (1), which investigation must be instituted and finalised within 60 days of the suspension or as soon as reasonably possible thereafter.

(3) If the Commissioner or a Deputy Commissioner is suspended in terms of subsection (2), he or she must continue to receive his or her remuneration, allowances and any other benefits that he or she is entitled to receive as if he or she was not suspended, pending the outcome of any investigation or inquiry.

(4) (a) The President may allow the Commissioner or a Deputy Commissioner, at the Commissioner's or a Deputy Commissioner's request, to vacate his or her office.

(b) A request referred to in paragraph (a) must be addressed to the President at least six calendar months prior to the date on which the Commissioner or a Deputy Commissioner wishes to vacate his or her office, unless the President grants a shorter period in a specific case.

(c) If the Commissioner or a Deputy Commissioner vacates his or her office in terms of paragraph (a), the Commissioner or a Deputy Commissioner is entitled to such pension as he or she would have been entitled to under the pension law applicable to him or her."

CLAUSE 10

1. On page 7, in line 39, after "**Commissioner**", to insert "**and Deputy Commissioners**".
2. On page 7, in line 41, after "Commissioner", to insert "and Deputy Commissioners".
3. On page 7, in line 44, after "Commissioner", to insert "and Deputy Commissioners".

CLAUSE 11

1. On page 7, in line 45, after "**Commissioner**", to insert "**and Deputy Commissioners**".
2. On page 8, in line 11, after "discipline", to insert "and determining disciplinary measures".
3. On page 8, in line 16, to omit "an annual" and to substitute with "a quarterly".
4. On page 8, after line 27, to insert the following subclause:

“(5) A Deputy Commissioner shall have such duties, functions and powers as delegated to him or her by—

- (a) the Minister, after consultation with the Commissioner; or
(b) the Commissioner.”.

CLAUSE 12

1. On page 8, in line 29, after "to", to insert "a Deputy Commissioner or".

CLAUSE 13

1. On page 8, from line 51, to omit subclause (4) and to substitute with the following subclause:

“(4) An official who refuses to subject himself or herself to a security clearance process, referred to in subsection (3), or who fails such security clearance process, is subject to such disciplinary measures as determined by the Commissioner in terms of section 11(2)(h)(ii).”.

2. On page 9, after line 3, to insert the following subclause:

“(7) An identification card referred to in subsection (6) must be returned to the Commissioner upon termination of employment of an officer or when an officer is suspended.”.

CLAUSE 14

1. On page 9, in line 6, after “Commissioner”, to insert “, a Deputy Commissioner”.
2. On page 9, in line 7, to omit “An officer upon whom a commission has been conferred in terms of subsection (1)” and to substitute with “A commissioned officer”.
3. On page 9, in line 9, to omit “an officer” and to substitute with “a person referred to in subsection (1)”.
4. On page 9, in line 22, after “the”, to insert “commissioned”.
5. On page 9, in line 23, after “the”, to insert “commissioned”.
6. On page 9, after line 24, to insert the following subclause:

“(5) The Minister may, in respect of officers, confer a commission in terms of subsection (1) or cancel a commission in terms of subsection (4) only after consultation with the Commissioner.”.

CLAUSE 15

1. On page 9, in line 26, to omit subclause (1) and to substitute with the following subclause:

“(1) An officer must perform his or her border law enforcement functions in terms of this Act.”.

CLAUSE 16

1. On page 9, from line 46, to omit subclause (2) and to substitute with the following subclause:

“(2) Subject to the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996), a person appointed as an official becomes a member of the Government Employees Pension Fund referred to in section 2 of the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996).”.

CLAUSE 17

1. On page 10, from line 3, to omit clause 17 and to substitute with the following clause:

“Limitation of rights

17. Subject to the Constitution, the rights of officers may, from time to time and to the extent necessary for purposes of border law enforcement and the safety of such officers, be subjected to—

- (a) searches and inspections;
- (b) security clearances;
- (c) screening of communications between officers and any other person within or outside of the Authority; and
- (d) shared accommodation or privation in accordance with the exigencies of training and operations related to border law enforcement functions.”.

CHAPTER 6

1. On page 10, in line 11, to omit “**POWERS OF ENTRY, SEARCH AND SEIZURE**” and substitute with “**POWERS OF ENTRY, SEARCH, SEIZURE, ARREST AND DETENTION**”.

CLAUSE 18

1. On page 10, from line 12, to omit clause 18 and to substitute with the following clause:

“Powers of entry, search, seizure, arrest and detention

18. (1) An officer may, with or without a warrant, within the border law enforcement area or at a port of entry—

- (a) enter any premises;
- (b) search any person, goods, premises or vehicle;
- (c) inspect any goods, documents, premises or vehicle;
- (d) seize anything found in that search or inspection that may be lawfully seized;
- (e) question any person about any matter related to the passage of persons, goods or vehicles through a port of entry or across the border law enforcement area and confirm their responses in a written declaration; and
- (f) arrest or detain any person reasonably suspected of contravening any provision of this Act.

(2) An officer may, without a warrant, exercise any power in terms of subsection (1) if—

- (a) a person who is competent to do so consents to the entry, search, inspection or seizure; or
- (b) the officer on reasonable grounds believes that—
 - (i) a warrant will be issued if applied for; and
 - (ii) the delay in obtaining the warrant is likely to defeat the object of such warrant.”.

CLAUSE 19

1. On page 10, from line 26, to omit clause 19.

CLAUSE 22

1. On page 11, in line 31, to omit “**Detained or arrested**” and to substitute with “**Arrested or detained**”.
2. On page 11, in line 32, to omit “detains or arrests” and to substitute with “arrests or detains”.
3. On page 11, in line 33, after “possible”, to insert “, subject to section 35 of the Constitution,”.

CLAUSE 23

1. On page 11, from line 43, to omit clause 23 and to substitute with the following clause:

“Funds of Authority

- 23.** The funds of the Authority consist of—
- (a) monies appropriated annually by Parliament;
 - (b) any government grants made to it; and
 - (c) any other monies legally acquired by it, subject to Treasury regulations and instructions made in terms of the Public Finance Management Act, excluding revenue collected in terms of section 5(c).”.

CLAUSE 25

1. On page 12, from line 23, to omit subclause (2) and to substitute with the following subclause:

“(2) The Minister is the chairperson of the Inter-Ministerial Consultative Committee and the President must designate the deputy chairperson of the Committee.”.

2. On page 12, from line 25, to omit subclause (3) and to substitute with the following subclause:

- “(3) The Inter-Ministerial Consultative Committee consists of—
- (a) the Minister;
 - (b) the Cabinet members appointed by the President and who are responsible for—
 - (i) Agriculture, Forestry and Fisheries;
 - (ii) Defence and Military Veterans;
 - (iii) Environmental Affairs;
 - (iv) Finance;
 - (v) Health;
 - (vi) Police;
 - (vii) State Security;
 - (viii) Trade and Industry; and
 - (ix) Transport; and
 - (c) any other Cabinet member designated by the President.”.

3. On page 12, after line 40, to insert the following subclause:

“(4) A Cabinet member appointed by the President in terms of subsection (3)(b) may be removed by the President if the President considers it necessary to do so.”.

4. On page 12, in line 41, to omit “(4)” and to substitute with “(5)”.
5. On page 12, in line 43, after “held”, to insert “quarterly or”.
6. On page 12, after line 43, to insert the following subclauses:

“(6) The quorum for a meeting of the Inter-Ministerial Consultative Committee is the majority of its members.

(7) The Inter-Ministerial Consultative Committee may, whenever necessary, invite any Cabinet member, organ of state or any person to attend its meetings.”.

7. On page 12, in line 44, to omit “(5)” and to substitute with “(8)”.

CLAUSE 26

1. On page 12, in line 49, to omit “other” and to substitute with “prescribed”.
2. On page 13, after line 11, to insert the following subclause:

“(7) The Border Technical Committee must refer any dispute that arises at its meetings to the Inter-Ministerial Consultative Committee for resolution.”.

CLAUSE 29

1. On page 13, from line 48, to omit subclause (1) and to substitute with the following subclause:

“(1) The Minister may delegate to the Commissioner, a Deputy Commissioner or any official any function or power conferred, or duty imposed, on the Minister that is permitted to be delegated: Provided that any delegation to a Deputy Commissioner or any official must be made after consultation with the Commissioner.”.

CLAUSE 31

1. On page 14, from line 22, to omit clause 31 and to substitute with the following clause:

“Ports, points or places of entry or exit with approval of Minister

31. (1) Notwithstanding any other legislation, the power to designate, determine, appoint or prescribe any port, point or place of entry or exit for—

(a) the movement of goods; or

(b) the movement of persons,

in and out of the Republic may only be made with the approval of the Minister.

(2) Any withdrawal or cancellation of a designation, determination, appointment or prescription referred to in subsection (1) of any port, point or place of entry or exit may only be done with the approval of the Minister.

(3) The Minister must, prior to an approval in terms of subsection (1) or (2), publish a notice in the *Gazette* for public comments for a period of not less than 30 days.”.

CLAUSE 32

1. On page 14, from line 32, to omit clause 32 and to substitute with the following clause:

“Annual report

32. (1) The Commissioner must prepare and submit to the Minister an annual report within five months of the end of a financial year.

(2) The Minister must table in Parliament a copy of the annual report, referred to in subsection(1), and financial statements, with the audit report on those statements, within one month of receiving such annual report from the Commissioner.”

CLAUSE 36

1. On page 15, in line 17, to omit “functions or duties” and to substitute with “duties, functions and powers”.
2. On page 15, in line 33, to omit “12 months or to both a fine and imprisonment” and to substitute with “two years or to both a fine and imprisonment”.
3. On page 15, from line 35, to omit “fine or a period of imprisonment or to both a fine and imprisonment” and to substitute with “penalty, as prescribed in terms of section 37(4)”.

CLAUSE 37

1. On page 16, after line 5, to insert the following subclause:

“(6) The Minister must, prior to the promulgation of any regulations referred to in subsection (5), table the draft regulations in Parliament for comments for a period of not less than 30 days, while Parliament is in session.

CLAUSE 38

2. On page 16, from line 11, after “remuneration”, to insert “, pension and retirement benefits”.