

REPUBLIC OF SOUTH AFRICA

CORRECTIONAL SERVICES SECOND AMENDMENT BILL

(As introduced)

(MINISTER OF CORRECTIONAL SERVICES)

[B 68-96]

REPUBLIEK VAN SUID-AFRIKA

TWEEDE WYSIGINGSWETSONTWERP OP KORREKTIEWE DIENSTE

(Soos ingedien)

(MINISTER VAN KORREKTIEWE DIENSTE)

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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.

BILL

To amend the Correctional Services Act, 1959, so as to regulate the transformation of the Department of Correctional Services into a non-military institution and, for that purpose, to delete certain definitions and to replace or insert certain others; to abolish the Correctional Services Reserve Force; to make further provision for the early retirement of correctional officials; to make further provision regarding canteens at prisons; and to delete the provisions in respect of infliction of corporal punishment and detention of judgment debtors; and to provide for matters in connection therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Amendment of section 1 of Act 8 of 1959, as amended by section 1 of Act 75 of 1965, section 46 of Act 70 of 1968, section 1 of Act 88 of 1977, section 1 of Act 58 of 1978, section 1 of Act 22 of 1980, Government Notice No. 2302 of 31 October 1980, section 1 of Act 43 of 1981, section 1 of Act 65 of 1982, section 1 of Act 104 of 1983, section 1 of Act 6 of 1985, section 1 of Act 92 of 1990, section 1 of Act 122 of 1991, section 1 of Act 68 of 1993, section 1 of Act 116 of 1993 and section 1 of Act 135 of 1993

1. Section 1 of the Correctional Services Act, 1959 (hereinafter referred to as the principal Act), is hereby amended-

- d. by the deletion of the definitions of "commissioned officer" and "reserve force";
- e. by the substitution for the definition of "correctional official" of the following definition:

" 'correctional official' means a **[member of the Department]** correctional official referred to in section 2(1), 7 or 9 or any person appointed under section **[84C(a)] 84C(1)**;"

- f. by the substitution for the definition of "Public Service" of the following definition:

" 'Public Service' means the public service referred to in section 7 of the Public Service Act, **[1984 (Act No. 111 of 1984)] 1994 (Proclamation No. 103 of 1994)**;" and

- g. by the insertion before the definition of "State patient" of the following definition:

" 'senior official' means a correctional official on or above the post level of senior correctional officer;"

Amendment of section 2 of Act 8 of 1959, as substituted by section 2 of Act 122 of 1991

- 2. Section 2 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) There shall be a department to be styled the Department of Correctional Services, consisting of **[members who shall be known as]** correctional officials and who[–

- a. **have been appointed as commissioned officers under section 4;**
- b. **have been appointed as members, other than commissioned officers, under section 8; and**
- c. **are members of the reserve force in terms of section 9B]**

have been appointed in accordance with section 8 on the post levels as set out in the regulations."

Repeal of section 4 of Act 8 of 1959

- 3. Section 4 of the principal Act is hereby repealed.

Repeal of section 4A of Act 8 of 1959

- 4. Section 4A of the principal Act is hereby repealed.

Repeal of section 4B of Act 8 of 1959

- 5. Section 4B of the principal Act is hereby repealed.

Amendment of section 5 of Act 8 of 1959, as substituted by section 5 of Act 122 of 1991

6. Section 5 of the Principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) (a) A correctional board shall consist of such number of members, who may be **[members and non-members]** correctional officials and persons who are not in the service of the Department, and who, in the latter case, will be able to contribute to that board's functions, as the Minister may think fit.

(b) The Minister shall from time to time designate a **[member of the Department]** correctional official who serves on a correctional board, as chairman of that board."

Amendment of section 5B of Act 8 of 1959, as inserted by section 3 of Act 65 of 1982 and substituted by section 7 of Act 122 of 1991 and amended by section 3 of Act 135 of 1993

7. Section 5B of the Principal Act is hereby amended by the substitution for paragraphs (d) and (e) of subsection (1) of the following paragraphs:

"(d) a member of the South African Police Service of or above the rank of **[brigadier]** director;

(e) a **[member of the Department of]** correctional official on or above the **[rank of brigadier]** post level of director;"

Amendment of section 5C of Act 8 of 1959, as inserted by section 4 of Act 68 of 1993 and amended by section 15 of Act 135 of 1993

8. Section 5C of the Principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

"A parole board shall consist of so many members, who may be **[members or non-members]** correctional officials and persons who are not in the service of the Department, as the Commissioner may determine and of whom-".

Amendment of section 7 of Act 8 of 1959, as substituted by section 5 of Act 68 of 1993

9. Section 7 of the Principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

(1) Apart from **[commissioned officers appointed under section 4(1) and members of the Department appointed under section 8]** correctional officials who hold posts as chaplains, psychologists, social workers or educationists on the fixed establishment

of the Department, the Commissioner may from time to time appoint, as temporary **[correctional officials]** or voluntary **[workers]** correctional officials, one or more ministers of religion, psychologists, social workers, educationists or other suitable persons, to render such services and to perform such functions, in respect of any prisoner or group of prisoners or on behalf of a probationer, as the Commissioner may determine."

Substitution of section 8 of Act 8 of 1959, as amended by section 2 of Act 58 of 1978

10. The following section is hereby substituted for section 8 of the principal Act:

"Appointment and dismissal of correctional officials

8. (1) Every **[member of the Department other than a commissioned officer,]** correctional official shall be appointed by the Commissioner under an agreement in writing incorporating the period and the conditions of his service.

(2) The Commissioner may, subject to the provisions of this Act, suspend, reprimand, discharge or retire any **[such member]** correctional official or reduce him in **[rank]** post level or in seniority in **[rank]** post level.

(3) Any **[member of the Department]** correctional official who in or in connection with his application for employment in the Department wilfully made any false statement, shall be liable to dismissal without notice."

Substitution of section 9 of Act 8 of 1959, as amended by section 2 of Act 4 of 1972 and sections 8 and 32 of Act 122 of 1991

11. The following section is hereby substituted for section 9 of the principal Act:

"Temporary correctional officials

9. (1) Whenever it is necessary for the safe custody or transport of any prisoner or for any other purpose, the Commissioner or, subject to the approval of the Commissioner, any **[member of the Department]** correctional official in charge of any prison, may appoint so many fit and proper persons as may be deemed expedient to act as temporary **[warders]** correctional officials upon such conditions as may be prescribed by regulation.

(2) Any **[commissioned officer]** senior official who has been retired on pension and who thereafter is appointed as a temporary **[warder]** correctional official in terms of subsection (1), may be vested with the powers, functions and responsibilities of a **[commissioned officer]** senior official, and if he is so vested, he shall, subject to the conditions referred to in subsection (1), be deemed to be a **[commissioned officer]** senior official.

(3) Every person, other than a person deemed to be a **[commissioned officer]** senior official in term of subsection (2), shall, while acting as a temporary **[warder]** correctional official, be vested with the same powers, functions and responsibilities, perform the same duties and be subject to the same discipline and authority as a **[member]** correctional official appointed in **[terms of]** accordance with section 8(1).".

Substitution of section 9A of Act 8 of 1959, as inserted by section 3 of Act 75 of 1965 and substituted by section 3 of Act 4 of 1972 and amended by sections 9 and 32 of Act 122 of 1991

12. The following section is hereby substituted for section 9A of the principal Act:

"Remuneration or reimbursement for expenses of correctional officials

9A. (1) All **[members of the Department, temporary]** correctional officials, temporary and voluntary **[workers]** correctional officials referred to in section 84C and temporary **[warders]** correctional officials, other than **[temporary warders]** those who by agreement receive no remuneration for their services, shall be paid salaries or wages and allowances or reimbursement for expenses in accordance with the provisions of the Public Service Act, **[1984 (Act No. 111 of 1984)]** 1994 (Proclamation No. 103 of 1994).

(2) Temporary **[warders]** correctional officials who receive no remuneration for their services, shall not by reason of the fact that they receive no such remuneration be regarded as not being in the service of the State."

Repeal of section 9B of Act 8 of 1959

13. Section 9B of the principal Act is hereby repealed.

Repeal of section 9C of Act 8 of 1959

14. Section 9C of the principal Act is hereby repealed.

Repeal of section 9D of Act 8 of 1959

15. Section 9D of the principal Act is hereby repealed.

Repeal of section 9E of Act 8 of 1959

16. Section 9E of the principal Act is hereby repealed.

Repeal of section 9F of Act 8 of 1959

17. Section 9F of the principal Act is hereby repealed.

Amendment of section 9G of Act 8 of 1959, as inserted by section 6 of Act 68 of

1993 and amended by section 6 of Act 135 of 1993

18. Section 9G of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the proviso and that paragraph of the following words and paragraph:

"Subject to the provisions of this Act, the Commissioner shall decide on the appointment of persons and the promotion and transfer of **[members of the Department]** correctional officials having regard to the personnel requirements of the Department prescribed under this Act: Provided that-

(a) the promotion of a **[commissioned officer of]** senior official on or above the **[rank]** post level of **[brigadier]** director shall be subject to the approval of the Minister;"

Amendment of section 12 of Act 8 of 1959, as amended by section 4 of Act 75 of 1965, section 10 of Act 62 of 1966, section 2 of Act 9 of 1971, section 3 of Act 58 of 1978, section 5 of Act 104 of 1983, section 4 of Act 92 of 1990, section 1 of Act 80 of 1992 and section 7 of Act 135 of 1993

19. Section 12 of the principal Act is hereby amended-

- c. by the addition of the word "or" at the end of paragraph (d) of subsection (3);
- d. by the addition to subsection (3) of the following paragraphs:

"(e) if he was a member of the former Transkeian or Ciskeian Prisons Service on 30 September 1993 and such notification is given at least three months prior to the date on which he attains the age of 50 years, he shall be retired on pension-

- i. on the day on which he attains that age, if he attains the said age on the first day of any month in the year;
- ii. on the first day of the month immediately following the month in which he attains that age, if he attains the said age after the first day of any month in the year; or

(f) if he was a member of the former Transkeian or Ciskeian Prisons Service on 30 September 1993 and such notification is not given at least three months prior to the date on which he attains the age of 50 years, be retired on pension on the first day of the fourth month following the month in which such notification is received."; and

- c. by the substitution for subsection (3) of the following subsection:

"(3) Notwithstanding anything to the contrary in this section contained, a **[member of the Department who has attained the age of fifty years]** correctional official may, with his or her written consent, be retired on pension[: **Provided that any member of the Department who has been retired in terms of his subsection, and**

feels aggrieved at this retirement, shall have the right of appeal to the Minister] if in the opinion of the Commissioner sufficient reason exists for the retirement and it will be to the advantage of the State."

Substitution of section 13 of Act 8 of 1959, as amended by section 6 of Act 104 of 1983 and section 11 of Act 122 of 1991

20. The following section is hereby substituted for section 13 of the principal Act:

"Discharge or reduction in post level of certain correctional officials

13. (1) (a) A **[member of the Department] correctional official** who is not a **[commissioned officer] senior official**, may be discharged from the service of the Department or be reduced in **[rank] post level** or in seniority in **[rank] post level** if, after enquiry in the manner prescribed by regulation, the Commissioner is of opinion that he is unfit to remain in the service of the Department or to retain his **[rank] post level** or seniority in **[rank] post level**, as the case may be.

(b) Notwithstanding the provisions of paragraph (a) the Commissioner may discharge such a **[member] correctional official** from the service of the Department without such an enquiry if-

(i) that **[member] official** is serving a sentence of imprisonment;

(ii) that **[member] official** is convicted of any offence referred to in section 12, 14, 43, 44, 45, 46 or 47;

(iii) within a period of 24 months after the appointment of that **[member] official** it appears to the Commissioner that he is unfit to remain in the service of the Department.

(2) Any such **[member of the Department] correctional official** may, in the manner and within the period prescribed by regulation, appeal to the Minister against any order discharging him or reducing him in **[rank] post level** or in seniority in **[rank] post level**, and in such event the Minister may confirm, set aside or alter such order or make such other order as to him seems just."

Substitution of section 13A of Act 8 of 1959, as inserted by section 5 of Act 92 of 1990 and amended by section 15 of Act 135 of 1990

21. The following section is hereby substituted for section 13A of the principal Act:

"Discharge of certain senior officials

13A. Notwithstanding the provisions of this Act the Commissioner may, and shall if ordered thereto by the **[State] President**, discharge a **[commissioned officer] senior official** from the service of the Department summarily if-

- (a) that **[commissioned officer]** official is serving a sentence of imprisonment; or
- (b) that **[commissioned officer]** official is convicted of any offence referred to in section 12, 14, 43, 44, 45, 46 or 47."

Substitution of heading to Chapter III of Act 8 of 1959

22. The following heading is hereby substituted for the heading to Chapter III of the principal Act:

"DUTIES OF **[MEMBERS OF THE DEPARTMENT]** CORRECTIONAL OFFICIALS IN RELATION TO THE RECEPTION OF PRISONERS AND THE CARRYING OUT OF SENTENCES IN PRISONS".

Amendment of section 27 of Act 8 of 1959, as amended by section 4 of Act 88 of 1977, section 6 of Act 58 of 1978, section 8 of Act 104 of 1983, section 7 of Act 135 of 1991 and section 10 of Act 68 of 1993

23. Section 27 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) and paragraph (a) of the following words and paragraph:

"No **[member of the Department]** correctional official in charge of a prison referred to in subsection (1) shall receive any unconvicted person into his custody except-

(a) in the case of a person accused of an offence, upon production to him of the warrant of commitment of that person to prison or an order in writing signed by a member of the South African Police **[Force]** Service;"

Repeal of section 36 of Act 8 of 1959

24. Section 36 of the principal Act is hereby repealed.

Repeal of section 37 of Act 8 of 1959

25. Section 37 of the principal Act is hereby repealed.

Substitution of section 42A of Act 8 of 1959, as inserted by section 13 of Act 122 of 1991

26. The following section is hereby substituted for section 42A of the principal Act:

"Penalty for interference with correctional officials

42A. Any person who resists or intentionally hinders or obstructs any **[member of the Department or any]** correctional official in the exercise of his powers or the performance of his functions or duties shall be guilty of an offence and liable on

conviction to a fine not exceeding R4 000 or, in default of payment, to imprisonment for a period not exceeding 12 months, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment."

Amendment of Section 44 of Act 8 of 1959, as substituted by section 6 of Act 88 of 1977 and amended by section 10 of Act 104 of 1983, section 16 of Act 92 of 1990 and section 2 of Act 80 of 1992

27. Section 44 of the principal Act is hereby amended by the substitution in subsection (1) for subparagraph (ii) of paragraph (a) of the following subparagraph:

"(ii) is found loitering within one hundred metres of any prison or any other place where prisoners may be for the purpose of imprisonment or labour or within one hundred metres of any burial referred to in section 35(4)(b) and who fails to depart therefrom upon being ordered so to do by any **[member of the Department]** correctional official or a member of the South African Police **[Force]** Service;"

Amendment of section 48 of Act 8 of 1959, as amended by section 1 of Act 54 of 1979 and section 2 of Act 173 of 1993

28. Section 48 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (d) and the words following paragraph (d) of the following paragraph and words:

"(d) in any manner collaborates with a **[member of the Department]** correctional official or any other person, whether under the supervision of such **[member]** correctional official or person or not, to leave the prison without lawful authority or under false pretences,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years **[and, in addition, where the escape or attempt to escape was accompanied by any act of violence, such prisoner may be sentenced to undergo corporal punishment not exceeding seven strokes]**."

Amendment of section 49 of Act 8 of 1959, as amended by section 4 of Act 9 of 1971, section 10 of Act 58 of 1978 and section 15 of Act 135 of 1993

29. Section 49 of the principal Act is hereby amended-

(a) by the substitution for subsection (2) of the following subsection:

"(2) Any person who gives such information or who apprehends, secures and hands over or causes to be handed over to any **[member of the Department]** correctional official or a member of the South African Police **[Force]** Service any such prisoner, and has incurred any expense in connection with the giving of such information or such

apprehension, securing or handing over, may be paid his just and reasonable expenses and in addition such sum as a reward as the Commissioner may determine."; and

(b) by the substitution for subsection (3) of the following subsection:

"(3) No payment of any sum as a reward shall be made under the authority of this section to any **[member of the Department]** correctional official or a member of the South African Police **[Force]** Service, unless, in the opinion of the Commissioner, such exceptional circumstances exist as to justify such payment being made.".

Substitution of heading to section 53 of Act 8 of 1959

30. The following heading is hereby substituted for the heading to section 53 of the principal Act:

"(ii) Trial by **[commissioned officers]** senior officials".

Substitution of section 53 of Act 8 of 1959, as amended by section 17 of Act 75 of 1965, section 4 of Act 4 of 1972, section 11 of Act 58 of 1978, section 4 of Act 22 of 1980 and section 21 of Act 92 of 1990

31. The following section is hereby substituted for section 53 of the principal Act:

"Trial by senior officials of contraventions of Act by certain correctional officials

53. (1) Subject to the provisions of subsections (3) and (8), a **[commissioned officer]** senior official shall have jurisdiction to try at a prison or at a place designated by the Commissioner for the purpose, any **[member of the Department (except a commissioned officer)]** correctional official or any temporary **[warder]** correctional official (except another senior official) for any alleged contravention of or failure to comply with any provision of this Act (except any alleged contravention or non-compliance which is expressly declared or be an offence under this Act), whether such contravention or non-compliance is alleged to have taken place within or outside a prison.

(2) Subject to the provisions of subsection (8) a **[commissioned officer]** senior official shall, upon conviction of such **[member]** correctional official or temporary **[warder]** correctional official in respect of any such contravention or non-compliance, have jurisdiction-

(a) to reprimand him;

(b) to deprive him in respect of any month of not more than two of his off-days; or

(c) to impose a fine not exceeding R200, which fine may be recovered by deduction from his accrued or future **[pay]** salary in such instalments as may be determined by the

Commissioner: Provided that that **[commissioned officer]** senior official may suspend the payment of any fine so imposed, or any part of that fine, for a period not exceeding three years on any condition relating to good conduct or any other matter.

(3) Any such **[member of the Department]** correctional official or temporary **[warder]** correctional official who is alleged to have contravened or failed to comply with any provision of this Act, may be tried by the **[commissioned officer]** senior official under whose **[command]** control that **[member]** official or temporary **[warder]** official is, or by any **[commissioned officer]** senior official deputed generally or specially thereto by the Commissioner.

(4) The trial referred to in subsection (1) shall be conducted in accordance with the provisions of section 58 and the **[commissioned officer]** senior official presiding over any such trial may summon witnesses to give evidence thereat and may administer an oath to or accept an affirmation from any such witness.

(5) Any such **[member]** correctional official or temporary **[warder]** correctional official who has been convicted by a **[commissioned officer]** senior official may in the manner and within the period prescribed by regulation, appeal to the Commissioner against the conviction and sentence, and thereupon the Commissioner may confirm or quash the conviction and sentence or confirm or alter the conviction and set aside, increase, reduce or otherwise alter the sentence as he deems necessary in the interests of justice.

(6) In the event of an appeal under subsection (5), the execution of the sentence imposed in respect of the conviction which is the subject of the appeal, shall be suspended pending the Commissioner's decision on the appeal.

(7) Whenever any such **[member]** correctional official or temporary **[warder]** correctional official has been convicted and sentenced under this section, the Commissioner may, if he thinks fit, direct that the record of the proceedings in the case be submitted to him for review, and may thereupon confirm or quash the conviction and sentence or confirm or alter the conviction and set aside, increase, reduce or otherwise alter the sentence as he deems necessary in the interests of justice.

(8) The Commissioner may, if he deems it necessary, restrict in respect of any **[commissioned officer]** senior official the jurisdiction conferred on a **[commissioned officer]** senior official by any provision of this Act.

(9) In this section, unless the context otherwise indicates-

'any **[member of the Department]** correctional official'; and

'any temporary **[warder]** correctional official',

includes any person who, at the date of any alleged contravention of or failure to comply with any provision of this Act (except any alleged contravention or non-compliance which is expressly declared to be an offence under this Act), whether such contravention or non-compliance is alleged to have taken place within or outside a prison, was such **[a member or such a warder]** an official or temporary official, as the case may be, on a post level below senior correctional officer."

Amendment of section 55 of Act 8 of 1959, as amended by section 49 of Act 70 of 1968, section 13 of Act 58 of 1978, section 4 of Act 65 of 1982, section 32 of Act 97 of 1986, section 22 of Act 92 of 1990 and section 10 of Act 135 of 1993

32. Section 55 of the principal Act is hereby amended-

(a) by the substitution in subsection (6) for subparagraph (iv) of paragraph (d) of the following subparagraph:

"(iv) direct that the senior official be discharged, retired or reduced in post level as from a date fixed by the Minister."; and

(b) by the deletion in subsection (6) of subparagraph (v) of paragraph (d).

Repeal of section 81A of Act 8 of 1959

33. Section 81A of the principal Act is hereby repealed.

Substitution of section 84C of Act 8 of 1959, as inserted by section 28 of Act 122 of 1991

34. The following section is hereby substituted for section 84C of the principal Act:

"Personnel

84C. (1) The Commissioner may appoint as many suitable persons who are not **[members]** in the service of the Department as he may deem necessary, on the conditions prescribed by regulation-

(a) to act as temporary correctional officials **[in respect of probationers]**; or

(b) to act as voluntary **[workers]** correctional officials,

in respect of probationers.

(2) Every person shall, while acting as a temporary correctional official or voluntary **[worker]** correctional official referred to in subsection (1), be vested and charged with the same powers, functions and responsibilities, perform the same duties and be subject to the same discipline and authority as any **[member of the Department]** correctional official appointed in accordance with section 8(1)."

Substitution of section 88 of Act 8 of 1959, as amended by section 5 of Act 4 of 1972

35. The following section is hereby substituted for section 88 of the principal Act:

"Establishment, conduct and exemption from certain moneys, of canteens at prisons

88. (1) Canteens for the exclusive use or benefit of correctional officials, their families and other persons or categories of persons prescribed by regulation, may be established and conducted on such conditions and in such manner as may be prescribed by regulation.

(2) No licence moneys, tax, duty or fee (other than customs or excise duties or value-added tax leviable by law) shall be payable by any person in terms of any law in respect of any canteen established under subsection (1).

(3) The production of an official document bearing the signature of the Minister or of a person authorized by him to sign any such document and indicating that he has certified the canteen shall be conclusive proof that it is a canteen as contemplated in subsection (1).

(4) For the purpose of this section-

(a) 'canteen' includes any mess for correctional officials or any institution of the Department or any premises temporarily or permanently used for providing recreation, refreshment or necessities for the exclusive use or benefit of correctional officials, their families and other persons or categories of persons prescribed by regulation;

(b) any canteen which before the date of commencement of this section was certified by the Minister or any person authorized by him as contemplated in subsection (3), shall be deemed to be a canteen established on the conditions and in the manner referred to in subsection (1)."

Amendment of section 93 of Act 8 of 1959, as amended by section 23 of Act 75 of 1965, section 51 of Act 70 of 1968, section 4 of Act 6 of 1985, section 30 of Act 122 of 1991 and section 25 of Act 68 of 1993

36. Section 93 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) The Commissioner may delegate any of the powers delegated to **[him]** the Commissioner under subsection (1) to any other **[commissioned officer of]** senior official on or above the [rank] post level of [colonel] deputy director designated by **[him]** the Commissioner."

Amendment of section 94 of Act 8 of 1959, as amended by section 37 of Act 80

of 1964, section 24 of Act 75 of 1965, section 17 of Act 101 of 1969, section 8 of Act 92 of 1970, section 17 of Act 62 of 1973, section 6 of Act 43 of 1981, section 20 of Act 104 of 1983, section 46 of Act 97 of 1986, section 28 of Act 92 of 1990, section 31 of Act 122 of 1991, section 26 of Act 68 of 1993 and section 15 of Act 135 of 1993

37. Section 94 of the principal Act is hereby amended-

(a) by the substitution in subsection (1) for subparagraph (i) of paragraph (b) of the following subparagraph:

"(i) the mode of appointment, the conditions of service, the promotion, **[the retention of rank on retirement,]** the supply of uniforms, the prohibition of the disposal of any article of kit or equipment, the conduct, the medical examination and the medical, dental and hospital treatment of **[members of the Department]** correctional officials, including temporary **[warders]** correctional officials and the rates of remuneration or allowances, if any, payable to ministers of religion appointed under section 7;"

(b) by the deletion in subsection (1) of subparagraph (iii) of paragraph (b);

(c) by the substitution in subsection (1) for paragraph (dA) of the following paragraph:

"(dA)

the appointment, conditions of service powers, functions and duties of temporary correctional officials and voluntary **[workers]** correctional officials referred to in section 84C;"

(d) by the substitution in subsection (1) for paragraph (i) of the following paragraph:

"(i) the searching of prisoners and of **[non-commissioned members of the Department and of temporary warders]** correctional officials who are not senior officials and of temporary correctional officials and of all quarters and other places within any prison occupied or frequented by such **[members and temporary warders]** officials and temporary officials and the seizure and examination of any letter or communication addressed to or received by any such **[member or temporary warder]** official or temporary official;" and

(e) by the substitution in subsection (1) for paragraph (p) of the following paragraph:

"(p) the manner in which sentences of imprisonment **[corporal punishment]** or any other sentences and any disciplinary measures imposed under section 54 are to be carried out;"

Substitution of certain expressions in Act 8 of 1959

38. The principal Act is hereby amended-

- (a) by the substitution wherever it appears for the expression "commissioned officer" of the expression "senior official";
- (b) by the substitution wherever it appears for the expression "commissioned officers" of the expression "senior officials";
- (c) by the substitution wherever it appears for the expression "member of the Department" of the expression "correctional official";
- (d) by the substitution wherever it appears for the expression "members of the Department" or "members of Department" of the expression "correctional officials";
- (e) by the substitution wherever it appears for the expression "temporary warder" of the expression "temporary correctional official";
- (f) by the substitution wherever it appears for the expression "temporary warders" of the expression "temporary correctional officials";
- (g) by the substitution wherever it appears for the expression "rank" of the expression "post level";
- (h) by the substitution wherever it appears for the expression "seniority in rank" of the expression "seniority in post level";
- (i) by the substitution wherever it appears in sections 9G(d), 12(8)(b), 13B, 16, 17(1) and (2), 19(1), 26(2), 31, 47(c)(v), 50(2), 82(aa), 87(3) and 89 for the expression "member" of the expression "correctional official";
- (j) by the substitution wherever it appears in sections 23(2) and 55(2)(b), (5),(6)(a) and (d) for the expression "officer" or "an officer" of the expression "senior official";
- (k) by the substitution where it appears in section 94(1)(x) for the expression "officers" of the expression "senior officials".

Repeal of section 23 of Act 58 of 1978

39. Section 23 of the Prisons Amendment Act, 1978, is hereby repealed.

Repeal of section 27 of Act 68 of 1993

40. Section 27 of the Correctional Services Amendment Act, 1993, is hereby repealed.

Short title and commencement

41. This Act shall be called the Correctional Services Second Amendment Act, 1996, and shall come into operation on a date fixed by the President by proclamation in the Gazette.

MEMORANDUM ON THE OBJECTS OF THE CORRECTIONAL SERVICES SECOND AMENDMENT BILL, 1996

1. The objects of Correctional Services Second Amendment Bill, 1996, are to make provision for the consequences of the transformation of the Department of Correctional Services to a non-military institution and to regulate certain functional matters.

2. Due to the fact that demilitarisation took place on 1 April 1996, in accordance with the policy of transformation of the Department, it is necessary to amend the Correctional Services Act, 1959 (Act No. 8 of 1959), "the Act", by replacing all terminology and provisions relating to the military structure with terminology and provisions which correspond with the new policy of the Department.

3. The following functional amendments are also proposed to be effected:

(a) Whereas it is difficult and uneconomical to make use of Reserve Force members in practice and the scope of the application on "white males" only is unconstitutional, the provisions regarding the Correctional Services Reserve Force are repealed.

(b) Section 12 of the Act, relating to the policy which regulates early retirement of correctional officials, is amended to bring the policy in line with internationally accepted labour law principles.

(c) The infliction of corporal punishment and detention of judgment debtors have been declared unconstitutional by the Constitutional Court and the relevant provisions are therefore repealed or deleted.

INSTITUTIONS CONSULTED

South African Police Service

South African National Defence Force

Department of Justice

Department of State Expenditure

Department of Public Service and Administration