

REPUBLIC OF SOUTH AFRICA

DEFENCE LAWS REPEAL AND AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 38197 of 10 November 2014)
(The English text is the official text of the Bill)*

(MINISTER OF DEFENCE AND MILITARY VETERANS)

[B 7—2015]

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BILL

To repeal certain obsolete or redundant defence laws; to amend the Castle Management Act, 1993, so as to omit an unconstitutional provision; and to provide for matters connected therewith.

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

Repeal and amendment of laws

- 1.** (1) The laws specified in Schedule 1 are hereby repealed.
- (2) The law specified in Schedule 2 is hereby amended to the extent set out in the third column of that Schedule. 5

Short title and commencement

- 2.** This Act is called the Defence Laws Repeal and Amendment Act, 2015, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

SCHEDULE 1*(Section 1(1))*

No. and year of law	Short title
Act No.17 of 1929	Defence Endowment Property and Account Amendment Act, 1929
Act No. 43 of 1954	Defence Amendment Act, 1954
Act No. 4 of 1969	Moratorium Amendment Act, 1969
Act No. 5 of 1969	Civil Defence Amendment Act, 1969
Act No. 26 of 1973	Defence Amendment Act, 1973
Act No. 1 of 1976	Defence Amendment Act, 1976
Act No. 27 of 1977	Moratorium Amendment Act, 1977
Act No.48 of 1978	Moratorium Amendment Act, 1978
Act No.17 of 1981	Defence Special Account Amendment Act, 1981
Act No. 71 of 1995	Defence Special Account Amendment Act, 1995
Act No. 99 of 1996	Demobilisation Act, 1996
Act No. 81 of 1998	Defence Special Tribunal Act, 1998
Act No.128 of 1998	Demobilisation Amendment Act, 1998
Act No. 43 of 2001	Demobilisation Amendment Act, 2001
Act No. 44 of 2001	Termination of Integration Intake Act, 2001
Act No. 16 of 2005	Armaments Corporation of South Africa, Limited Amendment Act, 2005

SCHEDULE 2*(Section 1(2))*

No. and year of law	Short title	Extent of amendment
Act No. 207 of 1993	Castle Management Act, 1993	Section 7 of the Castle Management Act, 1993, is hereby amended by the deletion of paragraph <i>(f)</i> .

**MEMORANDUM ON THE OBJECTS OF THE DEFENCE LAWS
REPEAL AND AMENDMENT BILL, 2015**

1. BACKGROUND

1.1. The South African Law Reform Commission (SALRC) has been mandated with the task of revising the South African statute book with a view to identifying and recommending the repeal or amendment of laws that are inconsistent with the equality clause in the Constitution of the Republic of South Africa, 1996 (the Constitution), or redundant and obsolete.

1.2 In Discussion Paper 123 of the SALRC the following is mentioned:

“1.7 Statutory law revision is the review of status to determine whether they need updating or are still relevant and enjoy practical application. The purpose of the review is to modernise and simplify those statutes that need modernising or updating and to reduce the size of the statute book to the benefit of legal professionals and all other parties who make use of it. It also ensures people are not misled by obsolete laws on the statute book which seem to be relevant or ‘live’ law. If legislation features on the statute book and is referred to in text-books, users reasonably enough assume those statutes still serve a purpose.

1.8 Legislation identified for repeal is selected on the basis that it is no longer of practical utility. Usually this is or because these laws no longer have any legal effect on technical grounds, because they are spent, unnecessary or obsolete. But sometimes they are selected because, although strictly speaking they do continue to have legal effect, the purposes for which they were enacted, either no longer exist, or are currently being met by alternative means.”.

1.3 The SALRC identified a number of laws administered by the Department of Defence and Military Veterans that are obsolete or redundant and that need to be repealed. The Bill therefore seeks to repeal those laws.

2. ANALYSIS

2.1 The Bill contains two Schedules.

Schedule 1

2.2 This Schedule lists Acts that may be repealed in their entirety. So, for instance the Bill seeks to repeal some 12 amendment Acts, dating back to 1929. Since these Acts have no independent surviving provisions they may be repealed.

2.3 The Bill also seeks to repeal the Defence Special Tribunal Act, 1998 (Act No. 81 of 1998), the Demobilisation Act, 1996 (Act No. 99 of 1996), the Demobilisation Amendment Act, 1998 (Act No. 128 of 1998), and the Termination of Integration Intake Act, 2001 (Act No. 44 of 2001). In its Discussion Paper 123 the SALRC deals with these Acts under the heading “Time-specific Acts”, as follows:

“(a) Demobilisation Act 99 of 1996

2.58 This Act was enacted to provide for the demobilization of those members of the former non-statutory forces (the Azanian People’s Liberation Army and uMkhonto we Sizwe) who did not enter into agreements for temporary or permanent appointment with the South African Defence Force, as contemplated in section 236(8)(d) of the Interim Constitution, and to provide for a demobilization gratuity to be paid to such member or his or her dependents and to determine the requirements for that gratuity.

2.86 The ‘closing date’, for the purposes of the submission of applications for such gratuities was fixed generally as 31 March 1999

except for those persons who were entitled to be integrated into the South African Defence Force in terms of the Termination of Integration Intake Act of 2001. In the latter case the ‘closing date’ was fixed as 31 December 2002. The particular time-frame and circumstances to which this Act applied have passed and the Act may be repealed.

(b) Demobilisation Amendment Act 128 of 1988

2.87 This Act was enacted to amend the Demobilisation Act of 1996. As the particular time-frame and circumstances to which the Act applied have passed and as it has no independent surviving provisions, this Act may be repealed.

(c) Defence Special Tribunal Act 81 of 1998

2.88 The Defence Special Tribunal Act 81 of 1998 was enacted to enable the Labour Court to act as a special tribunal in the adjudication of disputes connected with the remuneration or other conditions of service of an employee in terms of a law regulating employment, or with any unfair labour practice by virtue of such a law which arose out of the implementation of the transitional arrangement in respect of military institutions or the rationalization of the Department of Defence; to provide for expeditious procedures for the adjudication of those disputes; and to provide for matters connected with any of them. Section 8 of this Act provided further that it would cease to have effect on 31 December 2001 and that proceedings brought before the special tribunal before that date were to be continued and concluded as if the Act had not ceased to have effect. As the particular time-frame and circumstances to which this Act applied have passed, this Act may be repealed.

(d) Termination of Integration Intake Act 44 of 2001

2.89 This Act was enacted to provide for the termination of the intake of members of non-statutory forces (the Azanian People’s Liberation Army or uMkhonto we Sizwe) into the South African National Defence Force for integration purposes; to provide for the integration of the members of the said forces who are likely to be granted amnesty; and to provide for matters connected therewith. This Act amended section 236(8)(d) of the Interim Constitution. It made 31 March 2002 the final date by which the affected members could enter into an agreement for temporary or permanent appointment with the South African National Defence Force. As the particular time-frame and circumstances to which this Act applied have passed, this Act may be also repealed (footnote omitted)”.

Schedule 2

2.4 The Bill also seeks to amend section 7 of the Castle Management Act, 1993 (Act No. 207 of 1993). Section 7 of that Act, in so far as it is applicable, provides as follows:

“7. No person shall be appointed or remain a member of the Board if such person—

- (a) ...
- (b) ...
- (c) ...
- (d) ...
- (e) ...
- (f) has reached the age of 70 years;
- (g) ...
- (h) ...”.

2.5 In paragraph 2.121 of Discussion Paper 123 of the SALRC the following is mentioned in respect of section 7(f) of the Castle Management Act, 1993:

“2.121 Section 7(f) discriminates unfairly on the basis of age in that it implies that persons who are 70 years of age are incapable of dealing with functions and duties of the Castle’s Board. Age is a listed ground of discrimination in section 9 of the Constitution and the discrimination is therefore unfair. The limitation is also unreasonable and unjustifiable in an open and democratic society based on human dignity, equality and freedom as outlined in section 36 of the Constitution¹.”.

It is therefore proposed that section 7 of the Castle Management Act, 1993, be amended by the deletion of paragraph (f).

3. PARTIES CONSULTED

Stakeholders within the Department of Defence (Reserve Force Council, Human Resource Staff Council and the Plenary Defence Staff Council) have been consulted regarding the proposed amendments.

4. FINANCIAL IMPLICATIONS

None.

5. PARLIAMENTARY PROCEDURE

5.1 The Department of Defence and the Office of the Chief State Law Adviser are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no

1. Section 9 of the Constitution reads as follows:

“Equality

9. (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

(5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.”.

Section 36 of the Constitution provides as follows:

“Limitation of rights

36. (1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—

- (a) the nature of the right;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the relation between the limitation and its purpose; and
- (e) less restrictive means to achieve the purpose.

(2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.”.

provision to which the procedure set out in section 74 or 76 of the Constitution applies.

- 5.2 The Department of Defence and the Office of the Chief State Law Adviser are further of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.