

REPUBLIC OF SOUTH AFRICA

SOUTH AFRICAN POLICE SERVICE AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 35070 of 24 February 2012)
(The English text is the official text of the Bill)*

(MINISTER OF POLICE)

[B 7—2012]

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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 South African Police Service Act, 1995, in order to align the provisions relating to the Directorate for Priority Crime Investigation with a judgment of the Constitutional Court; to amend those provisions in order to ensure that the Directorate has the necessary operational independence to fulfil its mandate without undue interference; and to provide for matters connected therewith.

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

Amendment of section 6 of Act 68 of 1995

1. Section 6 of the South African Police Service Act, 1995 (Act No. 68 of 1995) (hereinafter referred to as the principal Act), is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively: 5

“(1) There shall be a National Commissioner of the Service who shall be appointed in accordance with section **[216(2)(a)]** 207(1) of the Constitution of the Republic of South Africa, 1996.

(2) There shall be a Provincial Commissioner of the Service for each province who shall be appointed by the National Commissioner subject to section **[218(1)(b)]** 207(3) of the Constitution of the Republic of South Africa, 1996.”. 10

Amendment of section 11 of Act 68 of 1995

2. Section 11 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection: 15

“(1) The National Commissioner **[may exercise the powers and shall perform the duties and functions necessary to give effect to section 218(1) of the Constitution]** shall exercise control over and manage the police service in accordance with section 207(2) of the Constitution of the Republic of South Africa, 1996.”; and 20

(b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“Without derogating from the generality of subsection (1), the **[powers, duties and functions referred to in that subsection shall include the power, duty and function to]** National Commissioner shall—”. 25

Amendment of section 16 of Act 68 of 1995, as amended by section 2 of Act 57 of 2008

3. Section 16 of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) for paragraph (h) of the following paragraph: 5
- “(h) which a Provincial Commissioner requests the **[National Commissioner]** Head of the Directorate for Priority Crime Investigation, referred to in section 17C(2), to prevent or investigate by employing expertise and making resources available at national level and to which request the **[National Commissioner]** Head of the Directorate for Priority Crime Investigation accedes in accordance with the approved policy guidelines;” 10
- (b) by the substitution for subsection (3) of the following subsection: 15
- “(3) In the event of a dispute between the **[National Commissioner]** Head of the Directorate for Priority Crime Investigation and a Provincial Commissioner regarding the question whether criminal conduct or endeavour thereto should be regarded as organised crime, crime which requires national prevention or investigation or crime which requires specialised skills in the investigation and prevention thereof, the determination by the **[National Commissioner]** Head of the Directorate for Priority Crime Investigation, in accordance with the approved policy guidelines, shall prevail.”; and 20
- (c) by the substitution in subsection (4) for paragraphs (b) and (c) for the following paragraphs, respectively: 25
- “(b) Where an investigation of a crime or alleged crime reveals that the circumstances referred to in subsection (2) are present, the Provincial Commissioner shall report the matter to the **[National Commissioner]** Head of the Directorate for Priority Crime Investigation as soon as possible. 30
- (c) The **[National Commissioner]** Head of the Directorate for Priority Crime Investigation may, in consultation with the Provincial Commissioner concerned, notwithstanding the presence of the circumstances referred to in subsection (2), direct that the investigation or any part thereof, be conducted by the Provincial Commissioner.”. 35

Amendment of section 17B of Act 68 of 1995, as inserted by section 3 of Act 57 of 2008 35

4. Section 17B of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

- “(a) The need to establish a Directorate **[as a Division of]** in the Service to prevent, combat and investigate national priority offences, in particular serious organised crime, serious commercial crime and serious corruption.”. 40

Substitution of section 17C of Act 68 of 1995, as inserted by section 3 of Act 57 of 2008

5. The following section is hereby substituted for section 17C of the principal Act:

“Establishment and composition of Directorate for Priority Crime Investigation 45

17C. (1) The Directorate for Priority Crime Investigation is hereby established as a **[Division of]** Directorate in the Service.

(1A) The Directorate comprises—

- (a) the Office of the Head of the Directorate at national level; and 50
- (b) the Office of the Provincial Directorate in each province.

(2) The Directorate **[comprises]** consists of—

- (a) the Head of the Directorate[,] at national level, who shall manage and direct the Directorate and who shall be a Deputy National Commissioner appointed by the Minister in concurrence with Cabinet; 55

- (aA) the Deputy Head of the Directorate at national level;
 (aB) the Provincial Heads of the Directorate;
 (b) other persons appointed by the **[National Commissioner on the recommendation of the]** Head of the Directorate at national and provincial level on the basis of the required level of experience, training, skills, competence **[or]** and knowledge; 5
 (c) an adequate number of legal officers appointed to the Directorate; **[and]**
 (d) officials from any Government department or institution, seconded to the Directorate in terms of laws governing the public service; and 10
 (e) administrative staff appointed to the Directorate.
[(3) The Minister shall report to Parliament on the appointment of the Head of the Directorate.]”.

Insertion of section 17CA in Act 68 of 1995

6. The following section is hereby inserted in the principal Act after section 17C: 15

“Appointment, remuneration and conditions of service

- 17CA.** (1) The Minister, with the concurrence of Cabinet, shall appoint a South African citizen as Head of the Directorate for a non-renewable fixed term not exceeding seven years.
- (2) The Minister shall report to Parliament on the appointment of the Head of the Directorate within 14 days of the appointment if Parliament is then in session or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session. 20
- (3) The Head of the Directorate, with the concurrence of the Minister, shall appoint a South African citizen as a Deputy Head of the Directorate for a non-renewable fixed term not exceeding seven years. 25
- (4) The Head of the Directorate, with the concurrence of the Minister, shall appoint a South African citizen as a Provincial Head of the Directorate for a non-renewable fixed term not exceeding seven years.
- (5) (a) The remuneration, allowances and other terms and conditions of service and service benefits of the Head of the Directorate shall be determined by the Minister with the concurrence of the Minister of Finance, by notice in the *Gazette*. 30
- (b) The remuneration, allowances and other terms and conditions of service and service benefits of the Deputy Head and Provincial Heads of the Directorate shall be determined by the Minister after consultation with the Head of the Directorate and with the concurrence of the Minister of Finance: Provided that— 35
- (i) the salary of the Head shall not be less than the salary level of the highest paid Deputy National Commissioner of the Service; 40
- (ii) the salary of the Deputy Head shall not be less than 75 per cent of the salary of the Head; and
- (iii) the salary of a Provincial Head shall not be less than 65 per cent of the salary of the Head.
- (6) The Minister must submit the remuneration scale payable to the Head, Deputy Head and Provincial Heads to Parliament for approval, and such remuneration scale may not be reduced except with the concurrence of Parliament. 45
- (7) The Deputy Head of the Directorate shall exercise such powers and perform such functions as the Head of the Directorate in terms of this or any other law may assign to him or her. 50
- (8) A Provincial Head shall exercise such powers or perform such functions as the Head of the Directorate in terms of this or any other law may assign to him or her.
- (9) (a) Whenever the Head of the Directorate is absent or unable to perform his or her functions, the Minister may, with the concurrence of the Cabinet, appoint the Deputy Head as the acting Head of the Directorate. 55

(b) Whenever the office of the Head of the Directorate is vacant, or the Head is for any reason unable to take up the appointment contemplated in subsection (1), the Minister may, with the concurrence of Cabinet, appoint the Deputy Head as the acting Head of the Directorate.

(c) Whenever the Deputy Head is absent or unable to perform his or her functions, the Head of the Directorate may, in consultation with the Minister, appoint a suitably qualified and experienced person as the acting Deputy Head of the Directorate.

(d) If both the Head and the Deputy Head of the Directorate are absent or if both those offices are vacant, the Minister shall, with the concurrence of Cabinet, appoint a suitably qualified and experienced person as the acting Head of the Directorate.

(10) Subject to subsection (12), the Head, Deputy Head and Provincial Heads of the Directorate shall vacate their offices on attaining the age of 60 years.

(11) If the Head or Deputy Head of the Directorate attains the age of 60 years after the first day of any month, he or she shall be deemed to have attained that age on the first day of the next succeeding month.

(12) If the Minister is of the opinion that it is in the public interest to retain the Head or Deputy Head of the Directorate in his or her office beyond the age of 60 years, and—

(a) the Head or Deputy Head of the Directorate 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 Minister may from time to time, with the concurrence of Cabinet, direct that the Head or Deputy Head be so retained, but not for a period which exceeds, or periods which in the aggregate exceed, two years: Provided that the term of office of the Head or Deputy Head of the Directorate shall not exceed seven years.

(13) The Minister may make regulations in respect of the remuneration, allowances and other conditions of service of other members of the Directorate.

(14) The regulations referred to in subsection (13) shall be submitted to Parliament for approval.”.

Amendment of section 17D of Act 68 of 1995, as inserted by section 3 of Act 57 of 2008

7. Section 17D of the principal Act is hereby amended—

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

“(a) national priority offences, which in the opinion of the Head of the Directorate need to be addressed by the Directorate, subject to any policy guidelines issued by the [Ministerial Committee] Minister and approved by Parliament; [and]”;

(b) by the insertion in subsection (1) of the following paragraph after paragraph (a):

“(aA) in particular selected offences contemplated in Chapter 2 and section 34 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004);”;

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

“(b) any other offence or category of offences referred to it from time to time by the National Commissioner, subject to any policy guidelines issued by the [Ministerial Committee] Minister and approved by Parliament.”; and

(d) by the insertion of the following subsection after subsection (1):

“(1A) The Head of the Directorate shall ensure that the Directorate observes the policy guidelines referred to in subsection (1).”.

Insertion of sections 17DA and 17DB in Act 68 of 1995

8. The following sections are hereby inserted in the principal Act after section 17D:

“Loss of confidence in Head of Directorate

17DA. (1) The Head of the Directorate shall not be suspended or removed from office except in accordance with the provisions of subsections (2), (3) and (4). 5

(2) (a) The Minister may provisionally suspend the Head of the Directorate from his or her office, pending an enquiry into his or her fitness to hold such office as the Minister deems fit and, subject to the provisions of this subsection, may thereupon remove him or her from office— 10

- (i) for misconduct;
- (ii) on account of continued ill-health;
- (iii) on account of incapacity to carry out his or her duties of office efficiently; or
- (iv) on account thereof that he or she is no longer a fit and proper person to hold the office concerned. 15

(b) The removal of the Head of the Directorate, the reason therefor and the representations of the Head of the Directorate, if any, shall be communicated in writing to Parliament within 14 days after such removal if Parliament is then in session or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session. 20

(c) The Head of the Directorate provisionally suspended from office shall receive, for the duration of such suspension, no salary or such salary as may be determined by the Minister.

(3) The Minister shall also remove the Head of the Directorate from office if an address from each of the respective Houses of Parliament in the same session, praying for such removal on any of the grounds referred to in subsection(2)(a), is presented to the Minister. 25

(4) The Minister may allow the Head of the Directorate, at his or her request, to vacate his or her office— 30

- (a) on account of continued ill-health; or
- (b) for any other reason which the Minister deems sufficient.

(5) The request in terms of subsection (4) shall be addressed to the Minister at least six calendar months prior to the date on which the Head of the Directorate wishes to vacate his or her office, unless the Minister grants a shorter period in a specific case. 35

Staff of Directorate

17DB. The Head of the Directorate must—

- (a) determine the fixed establishment of the Directorate and the number and grading of posts, after consultation with the Minister and the Minister for the Public Service and Administration; and 40
- (b) appoint the staff of the Directorate: Provided that where a member of the Service is appointed to the Directorate, the Head must do so after consultation with the National Commissioner.”.

Amendment of section 17E of Act 68 of 1995, as inserted by section 3 of Act 57 of 2008 45

9. Section 17E of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) for paragraphs (a) and (c) of the following paragraphs, respectively:

“(a) a security clearance has been issued to that person in terms of section 2A(6) of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994), by [the Head of the Crime Intelligence Division of the Service] any Intelligence Structure referred to in that Act as may from time to time be determined by the Minister; 50

- (c) a temporary security clearance has been issued by **[the Head of the Crime Intelligence Division of the Service]** any Intelligence Structure referred to in the National Strategic Intelligence Act, 1994, determined by the Minister after the person had submitted an application to **[the Head of the Crime Intelligence Division]** such Intelligence Structure to have a security screening investigation conducted.”; 5
- (b) by the substitution for subsection (4) of the following subsection:
 “(4) Whenever the **[Head of the Crime Intelligence Division of the Service]** head of the Intelligence Structure referred to in subsection (2)(a) and (c) acting in terms of section 2A(6) of the National Strategic Intelligence Act, 1994, upon reasonable grounds, degrades, withdraws or refuses a security clearance, the National Commissioner may transfer such person from the Directorate, or if such person cannot be redeployed elsewhere in the Service, discharge him or her, subject to the provisions of section 34.”; and 10 15
- (c) by the addition of the following subsections:
 “(9) (a) A member of the Directorate shall serve impartially and exercise his or her powers or perform his or her functions in good faith.
 (b) Subject to the Constitution of the Republic of South Africa, 1996, and this Act, no organ of state and no member or employee of an organ of state nor any other person shall improperly interfere with, hinder or obstruct a member of the Directorate, in the exercise, carrying out or performance of its, his or her powers, duties and functions.
 (10) The Head of the Directorate, the Deputy Head of the Directorate and any person seconded to or employed in the Directorate, must before commencing with their functions in terms of this Act, take an oath or make an affirmation, which shall be subscribed by them, in the form set out below: 20 25
 ‘I _____
 (full name)
 do hereby swear/solemnly affirm that I will in my capacity as Head of the Directorate/Deputy Head of the Directorate/member of the Directorate/employee at the Directorate/being seconded to the Directorate uphold and protect the Constitution and the fundamental rights entrenched therein and enforce the Law of the Republic without fear, favour or prejudice and, as the circumstances of any particular case may require, in accordance with the Constitution and the Law. (In the case of an oath: So help me God.)’ ”. 30 35

Substitution of section 17F of Act 68 of 1995, as inserted by section 3 of Act 57 of 2008 40

10. Section 17F of the principal Act is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection:
 “(2) The **[National Commissioner]** Head of the Directorate **[shall]** may request the secondment of personnel from any other Government department or institution, whenever **[the Head of the Directorate requests such secondment]** he or she deems it necessary for the effective performance of the functions of the Directorate.”; 45
- (b) by the substitution for subsection (5) of the following subsection:
 “(5) The Director-General of the Government department or Head of the relevant Government institution, referred to in subsection (2), shall upon request by the **[National Commissioner]** Head of the Directorate, identify suitable personnel to be seconded to the Directorate upon such terms and conditions as may be agreed upon between the **[National Commissioner]** Head of the Directorate and the Director-General of the department or Head of the Government institution concerned.”; and 50 55
- (c) by the substitution for subsection (7) of the following subsection:

“(7) (a) If the [National Commissioner] Head of the Directorate so requests, any person seconded in terms of subsection (3) shall retain the powers, duties and functions endowed by any law governing the powers, duties and functions of that department or institution, and that person may exercise such powers, duties and functions under the command of the Head of the Directorate or his or her delegate, but subject to such conditions as may be determined by the Head of the seconding Government department or institution. 5

(b) A person seconded under paragraph (a) shall in the performance of his or her functions act in terms of the laws applicable to the Government department or institution from which he or she is seconded, subject to such conditions as may be agreed upon by the [National Commissioner] Head of the Directorate and the Director-General of the Government Department or Head of the Government institution.”. 10

Substitution of section 17H of Act 68 of 1995, as inserted by section 3 of Act 57 of 2008 15

11. The following section is hereby substituted for section 17H of the principal Act:

“Finances and financial accountability

17H. (1) The expenses incurred in connection with—

- (a) the exercise of the powers, the carrying out of the duties and the performance of the functions of the Directorate; and 20
- (b) the remuneration and other conditions of service of members of the Directorate,

shall be defrayed from monies appropriated by Parliament for this purpose to the departmental vote in terms of the Public Finance Management Act, 1999 (Act No.1 of 1999). 25

(2) The National Commissioner must, after consultation with the Head of the Directorate, prepare the necessary estimate of revenue and expenditure of the Directorate.

(3) The National Commissioner, as the accounting officer of the Service, shall, subject to the Public Finance Management Act, 1999— 30

- (a) be charged with the responsibility of accounting for State monies received or paid out for or on account of the Directorate;
- (b) cause the necessary accounting and other records to be kept; and
- (c) ensure that the annual report on the performance of the Directorate is included as a distinct programme in the annual report of the Service. 35

(4) Monies appropriated by Parliament for this purpose—

- (a) constitute earmarked funds on the departmental vote of the Service; and
- (b) must not be used by the Service for purposes other than those of the Directorate.”. 40

Amendment of section 17I of Act 68 of 1995, as inserted by section 3 of Act 57 of 2008)

12. Section 17I of the principal Act is hereby amended by the substitution for subsections (2) and (3) of the following subsections, respectively: 45

“(2) The Ministerial Committee may determine[—

- (a) **policy guidelines in respect of the functioning of the Directorate;**
- (b) **policy guidelines for the selection of national priority offences by the Head of the Directorate in terms of section 17D(1)(a);**
- (c) **policy guidelines for the referral to the Directorate by the National Commissioner of any offence or category of offences for investigation by the Directorate in terms of section 17D(1)(b);** 50
- (d)] procedures to coordinate the activities of the Directorate and other relevant Government departments or institutions.

(3) (a) The Ministerial Committee **[shall oversee the functioning of the Directorate and]** shall meet as regularly as necessary, but not less than four times annually.

(b) The National Commissioner and the Head of the Directorate shall, upon request of the Ministerial Committee, provide performance and implementation reports to the Ministerial Committee.”. 5

Amendment of section 17J of Act 68 of 1995, as inserted by section 3 of Act 57 of 2008

13. Section 17J of the principal Act is hereby amended—

(a) by the substitution in subsection (1)(a) for subparagraphs (i) and (ii) of the following subparagraphs: 10

“(i) the **[National Commissioner]** Head of the Directorate, as chairperson;

(ii) the Deputy Head of the Directorate, as deputy chairperson;”;

(b) by the insertion in subsection (1)(a) of the following subparagraphs after subparagraph (ii): 15

“(iiA) a Deputy National Commissioner of the South African Police Service designated by the National Commissioner;

(iiB) the Head of the Crime Intelligence Division of the South African Police Service;”;

(c) by the substitution in subsection (1) for paragraph (b) of the following paragraph: 20

“(b) An official at the rank of at least **[an Assistant Commissioner]** a Major General or Chief Director may be designated on a permanent basis to represent any official mentioned above if he or she is not available: 25
Provided that the official listed in paragraph (a) may also attend.”;

(d) by the substitution in subsection (2) for paragraph (a) of the following paragraph: 30

“(a) review, monitor and facilitate the support and assistance of the respective Government departments or institutions to the Directorate as well as secondments to the Directorate, and address problems which arise regarding such support and assistance; and”;

(e) by the deletion in subsection (2) of paragraphs (b) and (c).

Amendment of section 17K of Act 68 of 1995, as inserted by section 3 of Act 57 of 2008 35

14. Section 17K of the principal Act is hereby amended—

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

“(2) The National Commissioner shall include in the annual report to Parliament in terms of section 55(d) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), a report in respect of the **[activities]** performance of the Directorate as a programme of the Service.” 40

(b) by the deletion of subsection (3);

(c) by the substitution for subsection (4) of the following subsection:

“(4) The Minister shall—

(a) determine, with the concurrence of Parliament— 45

(i) policy guidelines for the selection of national priority offences by the Head of the Directorate referred to in section 17D(1)(a);

(ii) policy guidelines for the referral to the Directorate by the National Commissioner of any offence or category of offences for investigation by the Directorate referred to in section 17D(1)(b); 50

(b) submit to Parliament any policy guidelines referred to in section **[17I(2)(a), (b) and (c)]** for **[approval]** concurrence.”;

(d) by the deletion of subsections (5) and (6); and

(e) by the addition of the following subsections:

“(7) The first policy guidelines issued under this Act shall be tabled in Parliament as soon as possible, but not later than six months after the appointment of the Head in terms of this Act.

(8) Any changes to the policy guidelines referred to in subsection (4) must be submitted to Parliament for consideration and approval for implementation.

(9) The Minister shall report to Parliament on the appointment of the Head of the Directorate.”.

Amendment of section 17L of Act 68 of 1995, as inserted by section 3 of Act 57 of 2008

15. Section 17L of the principal Act is hereby amended by the substitution for subsection (7) for the following subsection:

“(7) The retired judge may request and obtain information from the National Director of Public Prosecutions in so far as it may be necessary for the judge to conduct an investigation[: **Provided that the National Director of Public Prosecutions may on reasonable grounds refuse to accede to such request.**]”.

Insertion of section 17M in Act 68 of 1995

16. The following section is hereby inserted in the principal Act after section 17L:

“Command and control of Directorate

17M. Subject to the provisions of this Act, members of the Directorate are members of the South African Police Service with all the powers, duties and functions of other members of the South African Police Service.”.

Transitional arrangements

17. (1) The commencement of the South African Police Service Amendment Act, 2012 (in this section referred to as the Amendment Act), does not affect the validity of any investigation or prosecution conducted, pending or under investigation by the Directorate on or before the commencement of this section.

(2) As from the date of commencement of this Amendment Act, the post of the Head of the Directorate, Deputy Head of the Directorate and Provincial Head of the Directorate must be filled in accordance with section 17CA of the Act as inserted by this Amendment Act, but the current incumbents of the respective posts will continue to hold office until the respective posts are filled in terms of section 17CA.

(3) Subject to the Labour Relations Act, 1995 (Act No. 66 of 1995), the Head of the Directorate may evaluate any member for continued employment in the Directorate to ensure that the Directorate focuses on its mandate, and may redeploy a member to another post in the Service, by agreement with the National Commissioner and after consultation with the member involved.

(4) As from the date of the commencement of this section, but subject to subsections (2) and (3)—

(a) any person who immediately before that date held the office of a member of the South African Police Service in the Directorate, remains in the Directorate; and

(b) the administrative and support personnel in the employ of the Directorate immediately before that date, remain in the employ of the Directorate.

(5) An employee contemplated in subsection (3) may be transferred to the Directorate only with his or her consent.

(6) (a) An employee referred to in subsection (3) who does not consent to be transferred to the Directorate must, within 30 days of the date of the commencement of the Amendment Act, notify the National Commissioner in writing.

(b) In respect of such an employee, the National Commissioner may offer to transfer the employee to a reasonable alternative post or position in the South African Police Service, subject to the Labour Relations Act, 1995.

Amendment of Preamble of Act 68 of 1995

18. The Preamble to the principal Act is hereby amended—

- (a) by the substitution for the words preceding paragraph (a) of the following words:

“**WHEREAS** [section 214 of] the Constitution of the Republic of South Africa, [1993 (Act 200 of 1993)] 1996, requires national legislation to provide for the establishment, powers and functions [**and regulation**] of [a] the South African Police Service [**which shall be structured at both national and provincial levels and shall function under the direction of the national government as well as the various provincial governments**] to function in accordance with national policing policy and the directions of the Cabinet member responsible for policing;

[**AND**] **WHEREAS** there is a need to provide a police service throughout the national territory to—”; and

- (b) by the insertion after paragraph (e) of the following:

“**AND WHEREAS** there is a need to provide for a Directorate in the Service that is dedicated to the prevention, investigation and combating of national priority offences, in particular serious organised and transnational crime, serious commercial crime and serious corruption, and that enjoys adequate independence to enable it to perform its functions”.

Repeal and amendment of laws

19. The laws mentioned in the Schedule are repealed or amended to the extent set out in the third column.

Short title and commencement

20. This Act shall be called the South African Police Service Amendment Act, 2012, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

SCHEDULE

LAWS AMENDED OR REPEALED (Section 19)

Act No. and Year	Title	Total extent of amendment or repeal
1996	The Constitution of the Republic of South Africa	1. Repeal of item 1(c) of Annexure D of Schedule 6 to the Constitution.
Act No 12 of 2004	Prevention and Combating of Corrupt Activities Act	<p>2. Section 34 of the Prevention and Combating of Corrupt Activities Act, 2004 is hereby amended—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) Any person who holds a position of authority and who knows or ought reasonably to have known or suspected that any other person has committed—</p> <p>(a) an offence under Part 1, 2, 3 or 4, or section 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2; or</p> <p>(b) the offence of theft, fraud, extortion, forgery or uttering a forged document, involving an amount of R100 000 or more,</p> <p>must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to [any] the police official in the Directorate for Priority Crime Investigation referred to in section 17C of the South African Police Service Act, 1995.”; and</p> <p>(b) by the substitution for paragraphs (a) and (b) of subsection (3) of the following paragraphs:</p> <p>“(a) Upon receipt of a report referred to in subsection (1), the police official concerned must take down the report in the manner directed by the [National Commissioner] Head of the Directorate for Priority Crime Investigation, appointed in terms of section 17C(2)(a) of the South African Police Service Act, 1995, and forthwith provide the person who made the report with an acknowledgment of receipt of such report.</p> <p>(b) The [National Commissioner] Head of the Directorate for Priority Crime Investigation, must within three months of the commencement of this Act publish the directions contemplated in paragraph (a) in the <i>Gazette</i>, during which period any existing notice issued in terms of the Act shall remain in force.”.</p>

MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN POLICE SERVICE AMENDMENT BILL, 2012

1. BACKGROUND

On 17 March 2011, the Constitutional Court in *Glenister v the President of the RSA and Others* 2011 (7) BCLR 651 (CC) (Glenister case) declared chapter 6A of the South African Police Service Act, 1995 (Act No. 68 of 1995) (the Act), which deals with the Directorate for Priority Crime Investigation to be inconsistent with the Constitution of the Republic of South Africa, 1996, and invalid to the extent that it fails to secure an adequate degree of independence for the Directorate for Priority Crime Investigation (DPCI). The Constitutional Court suspended the declaration of invalidity for a period of 18 months to afford Parliament the opportunity to remedy the defect.

The Constitutional Court in its judgment indicated that the creation of “a separate crime fighting unit within the South African Police Service was not in itself unconstitutional”. The Court posed two questions to be determined: namely whether or not the Constitution requires the State to establish and maintain an independent body to combat corruption and organised crime and whether or not the DPCI meets the requirement of independence. The Court concluded that the Constitution indeed imposes an obligation on the State to establish and maintain an independent body to combat corruption and organised crime. The Court also considered a number of international conventions regarding the independence of the corruption fighting units and held that “the obligations are clear and unequivocal in that they impose on the Republic a duty to create an anti corruption unit that has the necessary independence”.

The Court considered and discussed in detail the legislative provisions that establish the DPCI under the following aspects:

- whether the DPCI has the operational and structural attributes required for an adequately independent anti-corruption unit;
- security of tenure and remuneration; and
- the accountability and oversight by the Ministerial Committee.

2. Objects of Bill

The Bill seeks to give effect to the Constitutional Court’s judgment and its order in the Glenister case to wit to amend the South African Police Service Act in order to align the provisions relating to the Directorate for Priority Crime Investigation with the judgment in the Glenister case.

The provisions of the Bill can be summarised as follows:

Ad Clauses 1 and 2

- 2.1. Clause 1 of the Bill amends section 6 of the Act and seeks to align the provisions in the Act which provide for the appointment of the National Commissioner and Provincial Commissioners to sections 207(1) and 207(3) of the Constitution of the Republic of South Africa, 1996.
- 2.2. Clause 2 of the Bill seeks to amend section 11 of the Act in order to align the functions of the National Commissioner with section 207(2) of the Constitution.

Ad Clause 3

- 2.3. Clause 3 of the Bill seeks to amend section 16 of the Act by providing for:
 - the Head of the Directorate to decide which matters will be investigated on a provincial or national level, in accordance with the approved policy guidelines.

- the determination of the Head of the Directorate made in accordance with approved policy guidelines, to prevail in the event of a dispute between the Head of the Directorate and a Provincial Commissioner regarding the question whether criminal conduct should be regarded as organised crime, crime which requires national prevention or investigation or crime which requires specialised skills in the investigation and prevention thereof.

Ad Clause 4

- 2.4. Clause 4 of the Bill seeks to provide for the amendment of section 17B of the Act by providing for the establishment of a Directorate in the South African Police Service to prevent, combat and investigate national priority offences, in particular serious organised crime, serious commercial crime and serious corruption.

Ad Clause 5

- 2.5. Clause 5 of the Bill seeks to amend section 17C of the Act by providing for the composition and establishment of the Directorate.

Ad Clause 6

- 2.6. Clause 6 of the Bill inserts section 17CA after section 17C of the Act and provides for the appointment, remuneration and conditions of service of the Head of the Directorate, the Deputy Head of the Directorate, the Provincial Heads of the Directorate and the employees of the Directorate.

Ad Clause 7

- 2.7. Clause 7 of the Bill seeks to amend section 17D of the Act by providing that the functions of the Directorate are to prevent, combat and investigate national priority offences and in particular selected offences contemplated in Chapter 2 and section 34 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), which in the opinion of the Head of the Directorate need to be addressed by the Directorate, subject to any policy guidelines issued by the Minister and approved by Parliament. Clause 7 of the Bill also provides that the Head of the Directorate must ensure that the Directorate observes the policy guidelines referred to in section 17D.

Ad Clause 8

- 2.8. Clause 8 of the Bill inserts sections 17DA and 17DB in the Act and provides that:
- where there is loss of confidence in the Head of the Directorate, he or she may not be suspended or removed by the Minister from office unless certain procedures are followed.
 - the Minister may provisionally suspend the Head of the Directorate from his or her office, pending an enquiry into his or her fitness to hold such office as the Minister deems fit on the grounds provided for in the provision.
 - the reason for the removal of the Head of the Directorate from office and representations by the Head of the Directorate shall be referred to Parliament in accordance with the procedure provided for in the Bill.
 - the Minister may allow the Head of the Directorate at his or her request to vacate the office based on the grounds stipulated in Clause 8 of the Bill.

- the Head of the Directorate must determine the fixed establishment of the Directorate and the number and grading of posts, after consultation with the Minister and the Minister for the Public Service and Administration.
- the Head of the Directorate must also appoint the staff of the Directorate, and if a member of the South African Police Service is appointed to the Directorate, the Head must do so after consultation with the National Commissioner of the Service.

Ad Clause 9

2.9. Clause 9 provides for:

- matters relating to the security clearance of members of the Directorate by an Intelligence Structure referred to in the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994).
- a requirement to take an oath or affirmation by the Head of the Directorate, the Deputy Head of the Directorate or any person seconded to or employed in the Directorate.

Ad Clause 10

2.10. Clause 10 of the Bill seeks to amend section 17F of the Act and provides that the Head of the Directorate may request the secondment of personnel from any other Government department or institution, whenever he or she deems it necessary for the effective performance of the functions of the Directorate. The Director-General of the Government department or Head of the relevant Government institution shall, upon request by the Head of the Directorate, identify suitable personnel to be seconded to the Directorate upon such terms and conditions as may be agreed upon between the Head of the Directorate and the Director-General of the Government department or Head of the Government institution concerned. The person seconded shall in the performance of his or her functions act in terms of the laws applicable to the Government department or institution from which he or she is seconded.

Ad Clause 11

2.11. Clause 11 of the Bill provides that:

- the National Commissioner after consultation with the Head of the Directorate shall prepare the necessary estimate of revenue and expenditure of the Directorate.
- the National Commissioner as the accounting officer in respect of the Police Service, including the Directorate, is charged with the responsibility of accounting for State monies received or paid out for or on account of the Directorate.
- monies appropriated by Parliament for the Directorate shall constitute earmarked funds on the departmental vote of the Service and may not be used for purposes other than that of the Directorate.

Ad Clause 12

2.12. Clause 12 of the Bill provides for the amendment of section 17I and provides that the Ministerial Committee may determine procedures to coordinate the activities of the Directorate and other relevant Government departments or institutions. The National Commissioner and the Head of the Directorate shall, upon request of the Ministerial Committee, provide performance and implementation reports to the Ministerial Committee.

Ad Clause 13

- 2.13. Clause 13 of the Bill provides for the amendment of section 17J of the Act, in order to provide that the Head of the Directorate will chair the Operational Committee, that the Deputy Head of the Directorate shall be the Deputy Chairperson and to provide for representation by the Crime Intelligence Division of the Service as well as a Deputy National Commissioner of the Service.

Ad Clause 14

- 2.14. Clause 14 of the Bill seeks to amend section 17K of the Act by providing that:
- the National Commissioner shall include in the annual report to Parliament in terms of section 55(d) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), a report in respect of the performance of the Directorate as a programme of the Service.
 - the Minister shall determine, with the concurrence of Parliament, policy guidelines for the selection of national priority offences by the Head of the Directorate referred to in section 17D(1)(a) of the Act and policy guidelines for the referral to the Directorate by the National Commissioner of any offence or category of offences for investigation by the Directorate referred to in section 17D(1)(b) of the Act.
 - the Minister shall report the appointment of the Head of Directorate to Parliament.

Ad Clause 15

- 2.15. Clause 15 of the Bill seeks to amend section 17L of the Act by providing that the retired judge may request and obtain information from the National Director of Public Prosecutions in so far as it may be necessary for the judge to conduct an investigation.

Ad Clause 16

- 2.16. Clause 16 of the Bill seeks to insert section 17M in the Act in order to provide that members of the Directorate are members of the South African Police Service and, subject to the provisions of the Act, have the same powers, duties and functions as other members.

Ad Clause 17

- 2.17. Clause 17 of the Bill seeks to provide for transitional arrangements.

Ad Clause 18

- 2.18. Clause 18 of the Bill seeks to amend the preamble.

Ad Clause 19

- 2.19. Clause 19 provides for the repeal or amendment of laws.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

The Bill was drafted by a Task Team consisting of officials of the Secretariat of Police and both the South African Police Service and the Department of Justice and Constitutional Development. The Department of Justice and Constitutional Development, the Director-General of State Security and the Department of Public Service and Administration were consulted in the drafting of the Bill.

4. FINANCIAL IMPLICATIONS FOR STATE

The Bill provides for the continuation of the Directorate for Priority Crime Investigation. Provision must be made for the expansion of certain activities of the Directorate, such as the higher status of the Head and the institution of the Deputy Head. In effect the financial burden should be viewed against the constitutional objective of ensuring the required measure of independence of the Directorate.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers are of the opinion that this Bill should be dealt with in terms of the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

5.2 The State Law Advisers are 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.

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