

REPUBLIC OF SOUTH AFRICA

---

**TELECOMMUNICATIONS  
AMENDMENT BILL**

---

*(As introduced)*

---

(MINISTER FOR POSTS, TELECOMMUNICATIONS AND BROADCASTING)

[B 13—97]

---

REPUBLIEK VAN SUID-AFRIKA

---

**WYSIGINGSWETSONTWERP OP  
TELEKOMMUNIKASIE**

---

*(Soos ingedien)*

---

(MINISTER VIR POS-, TELEKOMMUNIKASIE- EN UITSAAIWESE)

[W 13—97]

ISBN 0 621 27137 3

**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 Telecommunications Act, 1996, so as to provide for the selection and transfer of personnel from the Department of Communications to the South African Telecommunications Regulatory Authority and the Universal Service Agency; and to provide for matters connected therewith.**

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 17 of Act 103 of 1996**

- 1.** Section 17 of the Telecommunications Act, 1996 (hereinafter called the principal Act), is hereby amended by the addition of the following subsections: 5
- “(4) Any officer or employee of the Department may be selected by the Authority, in consultation with the Director-General, for transfer to the Authority, and if so selected shall, notwithstanding any provision to the contrary in the Communications Service Act, 1974 (Act No. 66 of 1974), but subject to section 42 of that Act, as from the fixed date or such later date as may be agreed upon between the Director-General and the Authority, cease to be such officer or employee and, without interruption of his or her service, become an employee of the Authority. 10
- (5) Any person so transferred shall, with effect from the date of his or her transfer, be appointed by the Authority on the conditions of service determined by it to a post in the Authority which is similar to that which such person occupied in the Department immediately prior to such transfer: Provided that— 15
- (a) such person’s salary or salary scale shall not be reduced by such appointment;
  - (b) such person shall retain all vacation and sick leave standing to his or her credit with the Department immediately preceding his or her transfer, including all monetary benefits attached thereto; 20
  - (c) such person shall be compensated by the Authority for any loss which he or she may incur as a result of such transfer in respect of unemployment benefit contributions, medical aid contributions or other expenditure on health care that is necessary so as not to place him or her in a less favourable position with

regard to such expenditure than that which applied to him or her immediately prior to his or her transfer, as well as for any other loss arising from any transfer from his or her present headquarters to new headquarters in accordance with the procedure applicable to officers and employees of the Department; and

- (d) such person's conditions of employment in respect of matters not specified in paragraphs (a) to (c) of this subsection shall not be less favourable to him or her than those which applied to him or her immediately prior to the transfer.

(6) Any person transferred from the Department in terms of subsection (4) who immediately prior to such transfer was a member of the Government Employees Pension Fund, shall notwithstanding any provision to the contrary in any law or in the rules of that pension fund, upon such transfer remain a member of that pension fund for all purposes and the Authority shall contribute to the said pension fund in respect of that person to the same extent as an employer is required in terms of the laws on and the rules of that pension fund to contribute to that pension fund in respect of an employee who is a member of that fund.

(7) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), no change of employer shall be deemed to have taken place when an officer or employee of the Department is transferred to the Authority in terms of subsection (4), and the position of such officer or employee in respect of the phasing in of tax levied on a benefit or advantage derived by reason of employment or the holding of any office as contemplated in Schedule 7 to the Income Tax Act, 1962, shall be deemed to remain unchanged.

(8) Any disciplinary steps instituted or contemplated against any person transferred from the Department in terms of subsection (4) in respect of alleged misconduct committed prior to his or her transfer to the Authority, shall be disposed of or instituted, as the case may be, in terms of the laws applicable to him or her immediately before such transfer.

(9) At least one month before the fixed date, the Director-General shall in writing inform every officer and employee of the Department either—

- (a) that he or she has been selected for transfer to the Authority in terms of subsection (4), and of the post that will be occupied by him or her and the date on which the transfer is to take effect; or
- (b) that he or she is to remain with the Department and of the post which he or she will occupy in the Department; or
- (c) that his or her services are to be terminated, as from a specified date, owing to the abolition of his or her post in the Department.

(10) Notwithstanding any provision to the contrary in section 42 or any other section of the Communications Service Act, 1974 (Act No. 66 of 1974), any proposed action of which an officer or employee is notified in terms of subsection (9) shall be deemed to be an act which may form the subject of an appeal to the Minister in terms of the said section 42.

(11) Any such appeal shall be lodged within 14 days of receipt of such notification by the officer or employee.

(12) Any person contemplated in subsection (9)(c) shall be entitled to special severance conditions and benefits not less favourable to him or her than those prescribed under the Public Service Act, 1994 (Proclamation No. 103 of 1994), in respect of a person to whom that Act applies and whose services are terminated because of the abolition of his or her post.

(13) For the purposes of this section the term "fixed date" shall mean the date determined by the Minister by notice in the *Gazette*."

#### **Amendment of section 60 of Act 103 of 1996**

2. Section 60 of the principal Act is hereby amended—

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

“(2) The Head shall—

- (a) employ such other persons;
- (b) accept the secondment, as contemplated in section 16(4) of the

Communications Service Act, 1974 (Act No. 66 of 1974), or the transfer of such persons in the service of the Department, as are necessary to assist him or her with the performance of the functions of the Agency.”;

(b) by the addition to subsection (6) of the following paragraph:

“(d) The provisions of section 17(4) to (13) shall apply, with the necessary changes, to any person transferred from the Department to the Agency.”.

5

**Short title**

3. This Act shall be called the Telecommunications Amendment Act, 1997.

10

## **MEMORANDUM ON THE OBJECTS OF THE TELECOMMUNICATIONS AMENDMENT BILL**

The main object of the Telecommunications Amendment Bill (the Bill) is to provide for the selection of officers and employees within the Department of Communications performing regulatory functions and their transfer to the South African Telecommunications Regulatory Authority (SATRA). The transfer to SATRA of functions of a regulatory nature cannot be arranged without identifying experienced staff for transfer to SATRA to continue to perform these functions. An amendment of section 17 of the Telecommunications Act to cater for such a transfer of staff is required.

The skills to perform these highly technical and other functions have been accumulated over many years and are not freely available on the open market. In order to ensure a smooth transition and not to jeopardise the provision of services to the radio and telecommunication sectors it is absolutely essential that the transfer of functions be carried out in such a way as to ensure that the service levels are not negatively affected. The complexity of the regulatory functions can be judged by the fact that there are 946 000 licensed radio stations (excluding broadcasting) in South Africa which includes 90 000 radio licences which must be maintained and managed.

Under these circumstances the selection and transfer to SATRA of specific members of staff of the Department performing regulatory functions is unavoidable. The existing provisions of the Telecommunications Act do not cater for such a transfer of staff.

The Bill seeks to enable SATRA and the Director-General of the Department of Communications to identify, select and negotiate on the transfer of staff of the Department to SATRA and thereafter to effect the agreed transfer by notifying the staff involved. The Bill also provides for personnel so transferred to retain existing salaries, pension, vacation, sick leave and other benefits. Provision is also made for an appeal to the Minister.

The Bill also seeks to apply the amendments mentioned above, with the necessary changes, to staff transferred from the Department to the Universal Service Agency.

The Department and the State Law Advisers are of the view that the Bill falls to be dealt with in accordance with the procedure established by section 75 of the Constitution.