

REPUBLIC OF SOUTH AFRICA

**DEPARTMENT OF
COMMUNICATIONS
RATIONALISATION BILL**

(As introduced in the National Assembly)

(MINISTER FOR POSTS, TELECOMMUNICATIONS AND BROADCASTING)

[B 23—98]

REPUBLIEK VAN SUID-AFRIKA

**WETSONTWERP OP DIE
RASIONALISERING VAN DIE
DEPARTEMENT VAN
KOMMUNIKASIEWESE**

(Soos ingedien in die Nasionale Vergadering)

(MINISTER VIR POS-, TELEKOMMUNIKASIE- EN UITSAAIWES)

[W 23—98]

ISBN 0 621 27587 5

BILL

To provide for the rationalisation of the Department of Communications; and to provide for matters connected therewith.

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

Definitions

1. In this Act, unless the context indicates otherwise—
- (i) “commencement date” means the date on which this Act comes into operation; 5
 - (ii) “Communications Service Act” means the Communications Service Act, 1974 (Act No. 66 of 1974);
 - (iii) “Department” means the Department of Communications;
 - (iv) “Public Service Act” means the Public Service Act, 1994 (Proclamation No. 103 of 1994). 10

Transfer of staff

2. Subject to section 3, all officers and employees of the Department are transferred to the public service.

Transitional arrangements relating to staff matters 15

3. (1) For the purposes of leave, pension and retirement the service in the Department of any person who becomes an officer or employee in the public service in accordance with section 2, and of any person serving under a special contract referred to in subsection (2), is regarded to have been part of and continuous with his or her service in the public service in terms of the Public Service Act. 20

(2) Any special contract contemplated in section 9(1)(d) of the Communications Service Act which was in force immediately before the commencement date, is regarded to have been entered into under the Public Service Act and continues without interruption in accordance with its terms.

(3) Any post which immediately before the commencement date was classified in the “B” division in terms of the Communications Service Act, is regarded to have been included in the “A” division of the Public Service. 25

(4) Salary scales, wages and allowances, and any decision, recommendation, authorisation or direction of the Staff Management Board established by section 4 of the Communications Service Act, is regarded to have been determined or made under the Public Service Act. 30

(5) Any investigation in progress or any disciplinary steps taken or contemplated, against any officer of the Department in respect of alleged misconduct committed prior to the commencement date, must be disposed of or instituted in terms of the Public Service Act. 35

(6) Any person who immediately before the commencement date occupies the post of Director-General of the Department in terms of a contract entered into under section 10A of the Communications Service Act—

- (a) becomes the head of the Department as from that date and is regarded to have been appointed as such under section 12 of the Public Service Act; and 40

- (b) retains his or her remuneration, benefits and terms and conditions of his or her employment during the remainder of his or her current term of office in the said post or during any period for which his or her term of office in that post is extended.

(7) If an officer is found guilty of misconduct referred to in subsection (5), and the head of the Department decides to impose a fine on him or her, the amount of the fine must not exceed the maximum amount of a fine which could have been imposed in terms of the Communications Service Act prior to the commencement date. 5

(8) No recommendation or direction made or given by the Public Service Commission under any provision of the Public Service Act or any other law, for the purpose of establishing uniformity of the terms and conditions of employment, may result in the person concerned being placed in a less favourable financial position than that which he or she would have been entitled to immediately before the commencement date. 10

Transitional arrangements relating to financial matters 15

4. (1) Money in the Post Office Fund, established by section 12D of the Post Office Act, 1958 (Act No. 44 of 1958), standing to the credit of that fund immediately before the commencement date, must be paid into the National Revenue Fund established by section 213 of the Constitution, 1996 (Act No. 108 of 1996).

(2) The expenditure on the services of the Department must be defrayed from funds made available to the Department in accordance with section 9 of the Exchequer Act, 1975 (Act No. 66 of 1975). 20

(3) Any exemption, condonation, settlement or amendment approved by the Department under section 4(2) of the State Tender Board Act, 1968 (Act No. 86 of 1968), prior to the commencement date is regarded to have been granted, negotiated or made with the prior approval of the Treasury. 25

(4) Any bank account opened by the Department and which is in operation immediately before the commencement date is regarded to have been opened on the written authority of the Treasury and continues to exist until closed in terms of the Exchequer Act, 1975, or any other law. 30

(5) Any licence fee, levy, rate or charge which is in force immediately before the commencement date, and which is prescribed or determined by the Department under any law or in terms of any contract is regarded to have been approved by the Treasury.

(6) In this section “Treasury” means the Minister of Finance or a duly authorised officer in the Department of State Expenditure. 35

Savings

5. No provision of this Act affects any—

(a) existing, accruing or contingent right, liability or obligation of any person flowing from;

(b) penalty, forfeiture or punishment incurred in respect of an offence committed in contravention of or misconduct in terms of; 40

(c) retirement date or any leave, pension or benefits prescribed or accumulated under; and

(d) appointment of any officer or employee made under, any law repealed by this Act if a corresponding law mentioned in Schedule 2 has that effect, and anything done in connection with or in terms of a provision of any law so repealed, is regarded to have been done under a provision of such corresponding law. 45

Amendment and repeal of laws

6. The laws specified in Schedule 1 are amended and repealed to the extent indicated in the third column thereof. 50

Application of certain laws to Department

7. The laws specified in Schedule 2 apply to the Department to the extent indicated in the third column thereof, and all subordinate legislation and notices made or issued

under such laws replace the corresponding subordinate legislation and notices which applied to the Department immediately before the commencement date.

Short title and commencement

8. This Act is called the Department of Communications Rationalisation Act, 1998, and comes into operation on a date fixed by the President by proclamation in the *Gazette*. 5

GENERAL EXPLANATORY NOTE:

Words underlined with a solid line indicate insertions in existing enactments.

SCHEDULE 1**(Section 6)****Laws amended or repealed**

No. and year of law	Short title	Extent of amendment or repeal
Act No. 44 of 1958	Post Office Act, 1958	<p>1. The amendment of section 1 by the deletion of the definitions of “Bank”, “financial year”, “Fund”, “Post Office Appropriation Act”, “Post Office Service Act”, “revenue” and “security”.</p> <p>2. The repeal of sections 2A up to and including 2D and sections 12A up to and including 12T.</p> <p>3. The amendment of section 119B by the deletion of paragraph (a).</p>
Act No. 86 of 1968	State Tender Board Act, 1968	<p>The amendment of section 4—</p> <p>(a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:</p> <p style="padding-left: 40px;">“No exemption, condonation, settlement or amendment which may be to the prejudice of the State shall be granted, negotiated or made under paragraphs (f) and (g) of subsection (1) without the prior approval of the <u>Treasury</u>.”; and</p> <p>(b) by the deletion of paragraphs (a) and (b) of subsection (2).</p>
Act No. 66 of 1974	Communications Service Act, 1974	The repeal of the whole.
Proclamation No. 103 of 1994	Public Service Act, 1994	The insertion in Schedule 1 after “Department of Arts, Culture, Science and Technology” in column 1 and “Director-General: Arts, Culture, Science and Technology” in column 2 of “Department of Communications” and “Director-General: Communications”, respectively.

SCHEDULE 2**(Section 7)****(Laws applicable to Department)**

No. and year of law	Short title	Extent of application
Act No. 66 of 1975	Exchequer Act, 1975	The whole, excluding section 52A
Act No. 65 of 1984	Public Service Commission Act, 1984	The whole
Proclamation No. 103 of 1994	Public Service Act, 1994	The whole

MEMORANDUM ON THE OBJECTS OF THE DEPARTMENT OF COMMUNICATIONS RATIONALISATION BILL

1. BACKGROUND

Since its establishment in 1910, the functions of the Department of Communications comprised the running of the public postal and telecommunications services as well as certain governmental functions consisting mainly of the regulation of the telecommunications industry and all radio activities in the country, both two-way radio communication and broadcasting.

As one of the departments of the central public service, all the Department's revenue from its postal and telecommunications operations went to the Exchequer, and all its expenditures on running and expanding these services were financed from the Exchequer in the annual National Budget. All its staff arrangements were made and controlled by the Public Service Commission. As happened elsewhere, this dispensation became ever more inappropriate to the efficient running of the postal and telecommunications enterprises, which in essence were business undertakings rather than the governmental functions of other departments.

To meet these difficulties, legislative steps were taken in 1968 to separate the finances and staff of the Department from those of the central public service, and to run the postal and telecommunications services on business principles to a much larger extent. Over the years since then the new dispensation paid off well, as evidenced particularly from the major progress made in the provision of a modern telecommunications infrastructure for the country.

The logical next step, that of transferring the running of the postal and telecommunications services to public companies operating under the Companies Act like other companies in the private sector, was taken in 1991. This change left the Department with only its purely governmental functions consisting of the regulation of the postal and telecommunications industries and of the orderly use of the radio spectrum. Parliament's Joint Standing Committee on Finance recommended that the financing of the Department be incorporated into the main Budget, and since the reason for separate financial and staff arrangements for the Department has fallen away, the re-incorporation of the Department into the central public service is now proposed.

2. ANALYSIS

The Bill arranges for the repeal of the sections of the Post Office Act, 1958, which make provision for the separation of the Department's finances from the Exchequer, and in the main gave the Minister and the head of the Department the same powers in respect of the Department's financial affairs as those exercised by the Treasury in respect of other departments of State. The sections to be repealed established a revenue fund for the Department separate from the national revenue fund, and require the Minister responsible for the Department to introduce a budget for the Department in Parliament every year, separate from the main Budget introduced by the Minister of Finance. Among the financial powers granted to the Department was the power to borrow money overseas or locally (in consultation with the Treasury) to finance, *inter alia*, the expansion of the telecommunications system.

The Bill also provides for the repeal of the Communications Service Act, 1974 (formerly the Post Office Service Act), which created a Staff Management Board having the same powers in respect of the Department as those exercised by the Public Service Commission in respect of the departments in the central public service.

The Bill contains a number of transitional provisions and the usual savings to protect existing rights of the staff of the Department and to ensure a smooth transition to the provisions of the Exchequer Act, 1975, and the Public Service Act, 1994.

Over the years of separation of the Department's staff affairs from the rest of the public service, a high degree of uniformity with the public service in salaries and other service conditions was maintained. This automatically resulted from the practical need for obtaining Cabinet approval at all times for general changes in salaries and other service conditions in the Department. However, some divergence between the two sets of service conditions was inevitable. In view of the need for maintaining general

uniformity of service conditions in the public service, future changes in the relative salaries and other service conditions of staff of the Department may be unavoidable. The Bill therefore restricts protection provided for in this regard to a stipulation that the salary of any member of the Department's staff which was in force immediately before the change-over may not be reduced, nor his or her other service conditions that applied on that date be changed to his or her detriment.

Since the Department's staff remained members of the Government pension funds during the whole period of separation from the central public service, no special transitional provisions are necessary in this regard.

The abolition of the classification of certain staff members as "employees", which could up to the present not be effected in the Department by means of amendments to the Communications Service Act, 1974, will automatically take place when the Department's staff become public service staff. The staff of the Department will henceforth also share in the benefits of the recent labour legislation affecting the Public Service.

3. OTHER DEPARTMENTS AND BODIES CONSULTED

Department of State Expenditure
Public Service Commission
Department of Finance
Department of Public Service and Administration

4. PROCEDURE TO BE FOLLOWED

The Department and the State Law Advisers are of the opinion that the Bill must be dealt with in accordance with section 75 of the Constitution since it contains no provisions to which the procedure set out in section 74 or 76 of the Constitution applies.