

REPUBLIC OF SOUTH AFRICA

NATIONAL PROSECUTING AUTHORITY AMENDMENT BILL

*(As presented by the Portfolio Committee on Justice and Constitutional Development
(National Assembly), after consideration of the Directorate of Special Operations Bill [B
39—2000]) (The English text is the official text of the Bill)*

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 39B—2000]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP DIE NASIONALE VERVOLGINGSGESAG

*(Soos voorgelê deur die Portefeuljekomitee oor Justisie en Staatkundige Ontwikkeling
(Nasionale Vergadering), na oorweging van die “Directorate of Special Operations Bill”
[B 39—2000]) (Die Afrikaanse teks is die amptelike vertaling van die Wetsontwerp)*

(MINISTER VIR JUSTISIE EN STAATKUNDIGE ONTWIKKELING)

[W 39B—2000]

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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 National Prosecuting Authority Act, 1998, so as to make provision for the establishment of the Directorate of Special Operations; to make provision for the existing Investigating Directorates to become part of the Directorate of Special Operations; to amend the Interception and Monitoring Prohibition Act, 1992, so as to make provision for applications for directions in terms of that Act by the head of the Directorate of Special Operations; and to provide for matters connected therewith.

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

Substitution of Preamble to Act 32 of 1998

1. The following Preamble is hereby substituted for the Preamble to the National Prosecuting Authority Act, 1998 (hereinafter referred to as the principal Act): 5

“**WHEREAS** section 179 of the Constitution of the Republic of South Africa, 1996 (Act No.108 of 1996), provides for the establishment of a single national prosecuting authority in the Republic structured in terms of an Act of Parliament; the appointment by the President of a National Director of Public Prosecutions as head of the national prosecuting authority; the appointment of Directors of Public Prosecutions and prosecutors as determined by an Act of Parliament; 10

AND WHEREAS the Constitution provides that the Cabinet member responsible for the administration of justice must exercise final responsibility over the prosecuting authority;

AND WHEREAS the Constitution provides that national legislation must ensure that the Directors of Public Prosecutions are appropriately qualified and are responsible for prosecutions in specific jurisdictions; 15

AND WHEREAS the Constitution provides that national legislation must ensure that the prosecuting authority exercises its functions without fear, favour or prejudice; 20

AND WHEREAS the Constitution provides that the National Director of Public Prosecutions must determine, with the concurrence of the Cabinet member responsible for the administration of justice, and after consulting the Directors of

Public Prosecutions, prosecution policy which must be observed in the prosecution process;

AND WHEREAS the Constitution provides that the National Director of Public Prosecutions may intervene in the prosecution process when policy directives are not being complied with, and may review a decision to prosecute or not to prosecute;

[AND WHEREAS the Constitution provides that the Cabinet member responsible for the administration of justice must exercise final responsibility over the prosecuting authority;]

AND WHEREAS the Constitution provides that the prosecuting authority has the power to institute criminal proceedings on behalf of the state, and to carry out any necessary functions incidental to instituting criminal proceedings;

AND WHEREAS the Constitution provides that all other matters concerning the prosecuting authority must be determined by national legislation;

AND WHEREAS the Constitution does not provide that the prevention, combating or investigation of crime is the exclusive function of any single institution;

AND WHEREAS the Constitution does not prohibit Parliament from amplifying the powers and functions of the prosecuting authority in national legislation;

AND IN ORDER TO ENSURE that the prosecuting authority fulfils its constitutional mandate to institute criminal proceedings on behalf of the state and to carry out the necessary functions incidental thereto, to make provision for—

- * the establishment of an Investigating Directorate, with a limited investigative capacity, to prioritise and to investigate particularly serious criminal or unlawful conduct committed in an organised fashion, or certain offences or unlawful conduct, with the object of prosecuting such offences or unlawful conduct in the most efficient and effective manner; and
- * the necessary infrastructure and resources to perform these functions.

Amendment of section 1 of Act 32 of 1998

2. Section 1 of the principal Act is hereby amended—

- (a) by the insertion after the definition of “*Director*” of the following definitions:
 - “ ‘*Directorate of Special Operations*’ means the Directorate of Special Operations established by section 7(1)(a);
 - ‘*head of an Investigating Directorate*’ means the *Deputy National Director* referred to in section 7(3)(a), or an *Investigating Director* referred to in section 7(3)(b), as the case may be;”;
- (b) by the substitution for the definitions of “*Investigating Director*” and “*Investigating Directorate*” of the following definitions:
 - “ ‘*Investigating Director*’—
 - (a) means a Director of Public Prosecutions appointed under section 13(1)(b) 13(1)(aA) or (b)—
 - (i) to the *Directorate of Special Operations*; or
 - (ii) as the head of an Investigating Directorate established in terms of section 7(1A), as the case may be; and
 - (b) in Chapter 5, includes the head of the *Directorate of Special Operations*; ‘*Investigating Directorate*’ means an Investigating Directorate established [under] by or in terms of section 7[(1)];”;
- (c) by the insertion after the definition of “*Investigating Directorate*” of the following definition:
 - “ ‘*investigation*’ in Chapter 5, means an investigation contemplated in section 28(1);”;
- (d) by the insertion after the definition of “*Special Director*” of the following definitions:

“ ‘*special investigator*’ means a special investigator appointed under section 19A;
 ‘*specified offence*’ means any matter which in the opinion of the *head of an Investigating Directorate* falls within the range of matters as contemplated in section 7(1)(a)(aa) or any proclamation issued in terms of section 7(1)(a)(bb) or (1A), and any reference to the commission of a specified offence has a corresponding meaning;”.

Amendment of section 5 of Act 32 of 1998

3. Section 5 of the principal Act is hereby amended by the insertion after paragraph (d) of subsection (2) of the following paragraph:
 “(dA) *special investigators*;”.

Substitution of section 7 of Act 32 of 1998

4. The following section is hereby substituted for section 7 of the principal Act:

“Investigating Directorates

7. (1) (a) There is hereby established in the *Office of the National Director* an Investigating Directorate, to be known as the Directorate of Special Operations, with the aim to—
 (i) investigate, and to carry out any functions incidental to investigations;
 (ii) gather, keep and analyse information; and
 (iii) where appropriate, institute criminal proceedings and carry out any necessary functions incidental to instituting criminal proceedings, relating to—
 (aa) offences or any criminal or unlawful activities committed in an organised fashion; or
 (bb) such other offences or categories of offences as determined by the President by proclamation in the *Gazette*.
 (b) For the purpose of subparagraph (aa), ‘organised fashion’ includes the planned, ongoing, continuous or repeated participation, involvement or engagement in at least two incidents of criminal or unlawful conduct that has the same or similar intents, results, accomplices, victims or methods of commission, or otherwise are related by distinguishing characteristics.
 (1A) The President may, by proclamation in the *Gazette*, establish not more than **[three]** two additional Investigating Directorates in the *Office of the National Director*, in respect of **[specific offences or specified categories of offences]** matters not contemplated in subsection (1)(aa) or (bb).
 (2) Any proclamation issued in terms of this section—
 (a) shall be issued on the recommendation of the *Minister* and the *National Director*;
 (b) may at any time be amended or rescinded by the President on the recommendation of the *Minister* and the *National Director*; and
 (c) must be submitted to Parliament before publication in the *Gazette*.
 (3) The head of—
 (a) the *Directorate of Special Operations*, shall be a *Deputy National Director*, assigned by the *National Director*; and
 (b) **[an]** any other Investigating Directorate, shall be an *Investigating Director*,

and shall perform the powers, duties and functions of the **[Directorate]** Investigating Directorate concerned subject to the control and directions of the National Director.

(4) (a) **[An Investigating Director]** The head of an Investigating Directorate shall be assisted in the exercise of his or her powers and the performance of his or her functions by— 5

(i) in the case of—

(aa) the Directorate of Special Operations, one or more Investigating Directors and one or more Deputy Directors; and

(bb) any other Investigating Directorate, one or more Deputy Directors, **to perform, subject to the control and directions of the Investigating Director, any functions of the Investigating Director**; 10

(ii) prosecutors;

(iiA) in the case of the Directorate of Special Operations, special investigators; 15

(iii) officers of any Department of State seconded to the service of the Investigating Directorate in terms of the laws governing the public service;

(iv) persons in the service of any public or other body who are by arrangement with the body concerned seconded to the service of the Investigating Directorate; and 20

(v) any other person whose services are obtained by the [Investigating Director for the purposes of a particular inquiry] head of the Investigating Directorate, 25

and the persons referred to in subparagraphs (i) to (v) shall perform their powers, duties and functions subject to the control and direction of the head of the Investigating Directorate concerned.

(b) For the purposes of subparagraphs (iv) and (v) of paragraph (a)—

(i) any person or body requested by the **[Investigating Director]** head of an Investigating Directorate in writing to do so, shall from time to time, after consultation with the **[Investigating Director]** head of an Investigating Directorate, furnish him or her with a list of the names of persons, in the employ or under the control of that person or body, who are fit and available to assist the **[Investigating Director]** head of that Investigating Directorate as contemplated in the said subparagraph (iv) or (v), as the case may be; and 30 35

(ii) such a person or body shall, at the request of **[the Investigating Director]**, and after consultation with, the **[Investigating Director]** head of the Investigating Directorate concerned, designate a person or persons mentioned in the list concerned so to assist the **[Investigating Director]** head of the Investigating Directorate.” 40

Amendment of section 11 of Act 32 of 1998

5. Section 11 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 45

“(1) The President may, after consultation with the *Minister* and the *National Director*, appoint not more than **[three]** four persons, as Deputy National Directors of Public Prosecutions.”.

Amendment of section 13 of Act 32 of 1998

6. Section 13 of the principal Act is hereby amended— 50

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

“(aA) may appoint one or more Directors of Public Prosecutions to the Directorate of Special Operations;”; and

(b) by the substitution for paragraph (b) of subsection (1) of the following paragraph: 55

“(b) shall, in respect of **[each]** any Investigating Directorate established in terms of section 7(1A), appoint a Director of Public Prosecutions as the head of such an Investigating Directorate; and”.

Amendment of section 15 of Act 32 of 1998

7. Section 15 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) The *Minister* may, subject to the laws governing the public service and section 16(4) and after consultation with the *National Director*— 5
- (a) in respect of an Office referred to in section 6(1), appoint a Deputy Director of Public Prosecutions as the head of such Office; **[and]**
 - (b) in respect of each office for which a *Director* has been appointed, appoint Deputy Directors of Public Prosecutions; and
 - (c) in respect of the *Office of the National Director* appoint one or more Deputy 10
Directors of Public Prosecutions to exercise certain powers, carry out certain duties and perform certain functions conferred or imposed on or assigned to him or her by the *National Director*.”.

Insertion of Chapter 3A in Act 32 of 1998

8. The following Chapter is hereby inserted in the principal Act: 15

“CHAPTER 3A

Appointment, remuneration and conditions of service of special investigators

Appointment of special investigators

19A. (1) The *National Director* may, on the recommendation of the head 20
of the *Directorate of Special Operations*, appoint any fit and proper person as a special investigator of that Directorate.

(2) The *National Director* must, in the prescribed form, issue an identity document under his or her signature to each person so appointed, which shall serve as proof that such person is a *special investigator*. 25

Security screening of special investigators

19B. (1) Subject to subsection (2), no person may be appointed as a *special investigator* unless—

- (a) information with respect to that person has been gathered in a security screening investigation by the National Intelligence Agency established by section 3 of the Intelligence Services Act, 1994 (Act No. 38 of 1994); and 30
- (b) the *National Director*, after evaluating the gathered information, is satisfied that such person may be appointed as a *special investigator* without the possibility that such person might be a security risk or that he or she might act in any way prejudicial to the objectives of the *Directorate of Special Operations*. 35

(2) If the *National Director* is so satisfied, he or she shall issue a certificate with respect to such person in which it is certified that such person has successfully undergone a security clearance. 40

(3) Any *special investigator* may from time to time, or at such regular intervals as the *National Director* may determine, be subjected to a further security screening as contemplated in subsection (1)(a).

(4) The *National Director* may withdraw a certificate referred to in subsection (2) if he or she obtains information which, after evaluation by him or her, causes him or her to believe that the person in question could be a security risk or could possibly act in any manner prejudicial to the objectives of the *Directorate of Special Operations*. 45

(5) If the certificate referred to in subsection (2) is withdrawn, the *special investigator* concerned shall be unfit to continue to hold such office and the 50

National Director must discharge him or her from the *Directorate of Special Operations*.

Remuneration and conditions of service of special investigators

- 19C.** (1) The remuneration, allowances and other service benefits of *special investigators* are determined by the *Minister*, in consultation with the *National Director* and with the concurrence of the Minister of Finance. 5
- (2) If an officer or employee in the public service is appointed as a *special investigator*, the period of his or her service as a *special investigator* shall be calculated as part of and continuous with his or her employment in the public service, for purposes of leave, pension and any other condition of service. The provisions of any pension law applicable to him or her or, in the event of his or her death, to his or her dependants which are not inconsistent with this section, shall, with the necessary changes, continue so to apply. 10
- (3) No *special investigator* may strike or induce or conspire with any other member of the *Directorate of Special Operations* to strike. 15
- (4) The services of the *Directorate of Special Operations* shall, for the purposes of the application of Chapter IV of the Labour Relations Act, 1995 (Act No. 66 of 1995), be deemed to have been designated as an essential service in terms of section 71 of that Act. 20
- (5) All other conditions of service of *special investigators* are as prescribed in terms of *this Act*.”.

Amendment of section 23 of Act 32 of 1998

9. Section 23 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1): 25
- “(2) In addition to any powers, duties or functions referred to in subsection (1), the head of the *Directorate of Special Operations* may exercise the powers and must perform the duties and functions referred to in sections 7 and 19A(1), and Chapter 5.”.

Substitution of section 26 of Act 32 of 1998 30

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

“Application

- 26.** (1) This Chapter only relates to *Investigating Directorates*. 35
- (2) Nothing in this Chapter or section 7(1), or any proclamation issued in terms of section 7, derogates from any power or duty which relates to the prevention, combating or investigation of any offences and which is bestowed upon the South African Police Service in terms of any law.”.

Substitution of section 27 of Act 32 of 1998

11. The following section is hereby substituted for section 27 of the principal Act:

“Reporting of matters to Investigating Director 40

27. If any person has reasonable grounds to suspect that a *specified offence* has been or is being committed or that an attempt has been or is being made to commit such an offence, he or she may **[lay the matter in question before]** report the matter in question to the **[Investigating Director]** *head of an Investigating Directorate* by means of an affidavit or affirmed declaration specifying— 45
- (a) the nature of the suspicion;
 - (b) the grounds on which the suspicion is based; and
 - (c) all other relevant information known to the declarant.”.

Amendment of section 28 of Act 32 of 1998

12. Section 28 of the principal Act is hereby amended—

(a) by the substitution for subsections (1) to (6) of the following subsections:

“(1) (a) If the *Investigating Director* has reason to suspect that a *specified offence* has been or is being committed or that an attempt has been or is being made to commit such an offence, he or she may **[hold an inquiry]** conduct an investigation on the matter in question, whether or not it has been **[laid before]** reported to him or her in terms of section 27. 5

(b) If the *National Director* refers a matter in relation to the alleged commission or attempted commission of a *specified offence* to the *Investigating Director*, the *Investigating Director* shall **[hold an inquiry]** conduct an investigation, or a preparatory investigation as referred to in subsection (13), on that matter. 10

(c) If the *Investigating Director*, at any time during the **[holding of an inquiry]** conducting of an investigation on a matter referred to in paragraph (a) or (b), considers it desirable to do so in the interest of the administration of justice or in the public interest, he or she may extend the **[inquiry]** investigation so as to include any offence, whether or not it is a *specified offence*, which he or she suspects to be connected with the subject of the **[inquiry]** investigation. 15 20

(d) If the *Investigating Director*, at any time during the conducting of an investigation, is of the opinion that evidence has been disclosed of the commission of an offence which is not being investigated by the *Investigating Directorate* concerned, he or she must without delay inform the *National Commissioner of the South African Police Service* of the particulars of such matter. 25

(2) (a) The *Investigating Director* may, if he or she decides to **[hold an inquiry]** conduct an investigation, at any time prior to or during the **[holding of the inquiry]** conducting of the investigation designate any person referred to in section 7(4)(a) to conduct the **[inquiry]** investigation, or any part thereof, on his or her behalf and to report to him or her. 30

(b) A person so designated shall for the purpose of the **[inquiry]** investigation concerned have the same powers as those which the *Investigating Director* has in terms of this section and section 29 of *this Act*, and the instructions issued by the Treasury under section 39 of the Exchequer Act, 1975 (Act No. 66 of 1975), in respect of commissions of inquiry shall apply with the necessary changes in respect of such a person. 35

(3) All proceedings **[at an inquiry]** contemplated in subsections (6), (8) and (9) shall take place *in camera*.

(4) The procedure to be followed in conducting an **[inquiry]** investigation shall be determined by the *Investigating Director* at his or her discretion, having regard to the circumstances of each case. 40

(5) The proceedings **[and evidence at an inquiry]** contemplated in subsections (6), (8) and (9) shall be recorded in such manner as the *Investigating Director* may deem fit. 45

(6) For the purposes of an **[inquiry]** investigation—

(a) the *Investigating Director* may summon any person who is believed to be able to furnish any information on the subject of the **[inquiry]** investigation or to have in his or her possession or under his or her control any book, document or other object relating to that subject, to appear before the *Investigating Director* at a time and place specified in the summons, to be questioned or to produce that book, document or other object; 50

(b) the *Investigating Director* or a person designated by him or her may question that person, under oath or affirmation administered by the *Investigating Director*, and examine or retain for further examination or for safe custody such a book, document or other object: Provided that any person from whom a book or document has been taken under this section may, as long as it is in the possession of the *Investigating Director*, at his or her request be allowed, at his or her own expense and under the supervision of the *Investigating Director*, to make copies thereof or to take extracts therefrom at any reasonable time.”; 55 60

- (b) by the deletion of subsections (11) and (12); and
- (c) by the substitution for subsection (14) of the following subsection:
 “(14) The provisions of subsections (2) to (10), inclusive, and of sections 27 and 29 shall, with the necessary changes, apply to a preparatory **[examination]** investigation referred to in subsection (13).”.

Amendment of section 29 of Act 32 of 1998

13. Section 29 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
 “(1) The *Investigating Director* or any person authorised thereto by him or her in writing may, subject to this section, for the purposes of an **[inquiry]** investigation at any reasonable time and without prior notice or with such notice as he or she may deem appropriate, enter any premises on or in which anything connected with that **[inquiry]** investigation is or is suspected to be, and may—

 - (a) inspect and search those premises, and there make such enquiries as he or she may deem necessary;
 - (b) examine any object found on or in the premises which has a bearing or might have a bearing on the **[inquiry]** investigation in question, and request from the owner or person in charge of the premises or from any person in whose possession or charge that object is, information regarding that object;
 - (c) make copies of or take extracts from any book or document found on or in the premises which has a bearing or might have a bearing on the **[inquiry]** investigation in question, and request from any person suspected of having the necessary information, an explanation of any entry therein;
 - (d) seize, against the issue of a receipt, anything on or in the premises which has a bearing or might have a bearing on the **[inquiry]** investigation in question, or if he or she wishes to retain it for further examination or for safe custody: Provided that any person from whom a book or document has been taken under this section may, as long as it is in the possession of the *Investigating Director*, at his or her request be allowed, at his or her own expense and under the supervision of the *Investigating Director*, to make copies thereof or to take extracts therefrom at any reasonable time.;

- (b) by the substitution for subsection (5) of the following subsection:
 “(5) A warrant contemplated in subsection (4) may only be issued if it appears to the magistrate, regional magistrate or judge from information on oath or affirmation, stating—

 - (a) the nature of the **[inquiry]** investigation in terms of section 28;
 - (b) **[the suspicion which gave rise to the inquiry]** that there exists a reasonable suspicion that an offence, which might be a specified offence, has been or is being committed, or that an attempt was or had been made to commit such an offence; and
 - (c) the need, in regard to the **[inquiry]** investigation, for a search and seizure in terms of this section,

that there are reasonable grounds for believing that anything referred to in subsection (1) is on or in such premises or suspected to be on or in such premises.”; and

- (c) by the substitution for subsection (11) of the following subsection:
 “(11) If during the execution of a warrant or the conducting of a search in terms of this section, a person claims that any item found on or in the premises concerned contains privileged information and for that reason refuses the inspection or removal of such item, the person executing the warrant or conducting the search shall, if he or she is of the opinion that the item contains information which is relevant to the **[inquiry]** investigation and that such information is necessary for the **[inquiry]** investigation, request the registrar of the High Court which has jurisdiction or his or her delegate, to seize and remove that item for safe custody until a court of law has made a ruling on the question whether the information concerned is privileged or not.”.

Substitution of sections 30 and 31 of Act 32 of 1998

14. The following sections are hereby substituted for sections 30 and 31 of the principal Act:

“Powers and functions of special investigators

30. (1) A *special investigator* may, subject to the control and direction of the head of the *Directorate of Special Operations*, exercise such powers and must perform such duties as are conferred or imposed upon him or her by or under *this Act* or any other law and must obey all lawful directions which he or she may from time to time receive from a person having the authority to give such directions. 5
- (2) A *special investigator* has the powers as provided for in the Criminal Procedure Act, 1977 (Act No. 51 of 1977), which are bestowed upon a peace officer or a police official, relating to— 10
- (a) the investigation of offences;
 - (b) the ascertainment of bodily features of an accused person;
 - (c) the entry and search of premises;
 - (d) the seizure and disposal of articles;
 - (e) arrests;
 - (f) the execution of warrants; and
 - (g) the attendance of an accused person in court. 15 20
- (3) (a) The *Minister* may, in consultation with the Minister for Safety and Security, from time to time by notice in the *Gazette* bestow any power—
- (i) which is conferred under any other law upon any specified person or category of persons; and
 - (ii) which relates to the prevention, investigation or combating of any offence or other criminal or unlawful activity, 25
- upon *special investigators*.
- (b) Any notice referred to in paragraph (a)—
- (i) may from time to time be amended or rescinded by the *Minister* in consultation with the Minister for Safety and Security; and
 - (ii) must be submitted to Parliament before publication in the *Gazette*. 30

Ministerial Coordinating Committee

31. (1) There is hereby established a committee, to be known as the Ministerial Coordinating Committee (hereinafter referred to as the Committee), which may determine— 35
- (a) policy guidelines in respect of the functioning of the *Directorate of Special Operations*;
 - (b) procedures to coordinate the activities of the *Directorate of Special Operations* and other relevant government institutions, including procedures for— 40
 - (i) the communication and transfer of information regarding matters falling within the operational scope of the *Directorate of Special Operations* and such institutions; and
 - (ii) the transfer of investigations to or from the *Directorate of Special Operations* and such institutions; and 45
 - (c) where necessary—
 - (i) the responsibility of the *Directorate of Special Operations* in respect of specific matters; and
 - (ii) the further procedures to be followed for the referral or the assigning of any investigation to the *Directorate of Special Operations*. 50
- (2) The Committee comprises—
- (a) the Cabinet members responsible for—
 - (i) the administration of justice, who is the chairperson thereof; 55
 - (ii) correctional services;

- (iii) defence;
 - (iv) intelligence services; and
 - (v) safety and security; and
 - (b) any other Cabinet member designated from time to time by the President.
- (3) The Committee may conduct its business and proceedings at its meetings as it deems fit.”.

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Amendment of section 36 of Act 32 of 1998

15. Section 36 of the principal Act is hereby amended by the substitution for subsections (3) and (4) of the following subsections:

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“(3) Subject to subsection (3A), the Director-General: Justice shall, subject to the [Exchequer Act, 1975 (Act No. 66 of 1975)] Public Finance Management Act, 1999 (Act No. 1 of 1999)—

(a) be charged with the responsibility of accounting for State monies received or paid out for or on account of the prosecuting authority; and

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(b) cause the necessary accounting and other related records to be kept.

(3A) (a) The Minister must appoint a fit and proper person as the Chief Executive Officer of the Directorate of Special Operations.

(b) The Chief Executive Officer is the accounting officer of the Directorate of Special Operations and shall, subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999)—

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(i) account for money received or paid out for or on behalf of the administration and functioning of the Directorate of Special Operations; and

(ii) cause the necessary accounting and other related records to be kept.

(4) The records referred to in subsection (3)(b) and (3A)(b) shall be audited by the Auditor-General.

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(5) The Director-General: Justice or, in respect of a matter dealt with by the Directorate of Special Operations, the Chief Executive Officer, may, on the recommendation of the National Director and with the concurrence of the Minister of Finance, order that the expenses or any part of the expenses incurred by any person in the course of or in connection with an investigation contemplated in section 28(1) be paid from State funds to that person.”.

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Amendment of section 38 of Act 32 of 1998

16. Section 38 of the principal Act is hereby amended by the addition of the following subsections:

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“(3) Where the engagement of a person contemplated in subsection (1) will not result in financial implications for the State—

(a) the National Director; or

(b) a Deputy National Director or a Director, in consultation with the National Director,

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may, on behalf of the State, engage, under an agreement in writing, such person to perform the services contemplated in subsection (1) without consulting the Minister as contemplated in that subsection.

(4) For purposes of this section, ‘services’ include the conducting of a prosecution under the control and direction of the National Director, a Deputy National Director or a Director, as the case may be.”.

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Substitution of section 40 of Act 32 of 1998

17. The following section is hereby substituted for section 40 of the principal Act:

“Regulations

- 40.** (1) The *Minister* may, subject to subsection (2), make regulations prescribing—
- (a) matters required or permitted by *this Act* to be prescribed;
 - (b) the steps to be taken to ensure compliance with the code of conduct referred to in section 22(6); or
 - (c) matters necessary or convenient to be prescribed for carrying out or giving effect to *this Act*.
- (2) The *Minister* may, in consultation with the *National Director*, make regulations regarding the *Directorate of Special Operations*, prescribing—
- (a) the employment, training, promotion, posting, transfer, leave of absence, resignation, discharge, retirement, dismissal, suspension or reduction in rank or grade of *special investigators* and the personnel management of those *special investigators* in general;
 - (b) the standards of physical and mental fitness and the medical examination of *special investigators*, and the medical, dental and hospital treatment of such *special investigators* and their families;
 - (c) the provision of medical, dental and hospital treatment of *special investigators* who have retired on pension and their families, and of the families of *special investigators* who have died;
 - (d) the numerical establishment of the *Directorate of Special Operations*, the conditions of service of the *special investigators* thereof, the salaries, salary scales, wages and allowances of *special investigators* and the systems relating to the administration and determination thereof and the various structures, grades, ranks and designations in the *Directorate of Special Operations*;
 - (e) the establishment and maintenance of training institutions or centres for *special investigators*, and the instruction, training, discipline and control of such *special investigators* at such institutions or centres;
 - (f) all matters relating to misconduct and discipline in the *Directorate of Special Operations*;
 - (g) the deductions to be made from the salaries, wages or allowances of *special investigators*;
 - (h) procedures to be followed in respect of cases of alleged or presumed medical unfitness;
 - (i) procedures to be followed in respect of cases of alleged or presumed inefficiency;
 - (j) the recovery from a *special investigator* of any deficiency, loss, damage or expense which he or she has unlawfully caused to the State;
 - (k) the control of funds collected or received by *special investigators* for the benefit of *special investigators* or former *special investigators*, or their dependants;
 - (l) the general management and maintenance of the *Directorate of Special Operations*;
 - (m) the regulation of labour relations and the creation of accompanying structures;
 - (n) a code of conduct to be adhered to by *special investigators*;
 - (o) the establishment of procedures regarding the presentation, consideration and adjudication of grievances of *special investigators*;
 - (p) the establishment and functioning of a structure to which any person may report any complaint or any alleged improper conduct on the part of a *special investigator* of the *Directorate of Special Operations*;
 - (q) any matter required or permitted in terms of *this Act* to be prescribed; or

- (r) generally, all matters which are necessary or expedient to prescribe in order to promote the efficient functioning of the *Directorate of Special Operations*.
- (3) Any regulation made in terms of this section—
- (a) which may result in the expenditure of State monies shall be made in consultation with the Minister of Finance;
- (b) may provide that a contravention thereof shall be an offence; and
- (c) must be submitted to Parliament before publication in the *Gazette*.”.

Insertion of section 40A in Act 32 of 1998

18. The following section is hereby inserted in the principal Act: 10

“Unauthorised access to or modification of computer material

40A. (1) Without derogating from the generality of subsection (2)—

- (a) ‘access to a computer’ includes access by whatever means to any program or data contained in the random access memory of a computer or stored by any computer on any storage medium, whether such storage medium is physically attached to the computer or not, where such storage medium belongs to or is under the control of the *prosecuting authority*; 15
 - (b) ‘contents of any computer’ includes the physical components of any computer as well as any program or data contained in the random access memory of a computer or stored by any computer on any storage medium, whether such storage medium is physically attached to the computer or not, where such storage medium belongs to or is under the control of the *prosecuting authority*; 20
 - (c) ‘modification’ includes both a modification of a temporary or permanent nature; and 25
 - (d) ‘unauthorised access’ includes access by a person who is authorised to use the computer but is not authorised to gain access to a certain program or to certain data held in such computer or is unauthorised, at the time when the access is gained, to gain access to such computer, program or data. 30
- (2) Any person is guilty of an offence if he or she wilfully—
- (a) gains, or allows or causes any other person to gain, unauthorised access to any computer which belongs to or is under the control of the *prosecuting authority* or to any program or data held in such a computer, or in a computer to which only certain or all members of the *prosecuting authority* have access in their capacity as members; or 35
 - (b) causes a computer which belongs to or is under the control of the *prosecuting authority* or to which only certain or all members of the *prosecuting authority* have access in their capacity as members, to perform a function while such person is not authorised to cause such computer to perform such function; or 40
 - (c) performs any act which causes an unauthorised modification of the contents of any computer which belongs to or is under the control of the *prosecuting authority* or to which only certain or all members of the *prosecuting authority* have access in their capacity as members with the intention to— 45
 - (i) impair the operation of any computer or of any program in any computer or of the operating system of any computer or the reliability of data held in such computer; or 50
 - (ii) prevent or hinder access to any program or data held in any computer.

- (3) Any act or event for which proof is required for a conviction of an offence in terms of this section and which was committed or took place outside the Republic is deemed to have been committed or to have taken place in the Republic if—
- (a) the accused was in the Republic at the time when he or she performed the act or any part thereof; or
 - (b) the computer, by means of which the act was done, or which was affected in a manner contemplated in subsection (2) by the act, was in the Republic at the time when the accused performed the act or any part thereof; or
 - (c) the accused was a South African citizen or domiciled in the Republic at the time of the commission of the offence.”.

Substitution of section 41 of Act 32 of 1998

19. The following section is hereby substituted for section 41 of the principal Act:

“Offences and penalties 15

- 41.** (1) Any person who contravenes the provisions of section 32(1)(b) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding **[two]** 10 years or to both such fine and such imprisonment.
- (2) Any person convicted of an offence referred to in section 28(10) or 29(12) **[or 30(2)]** shall be liable to a fine or to imprisonment for a period not exceeding **[five]** 15 years or to both such fine and such imprisonment.
- (3) Any person who is convicted of an offence in terms of a regulation made under section 40, shall be liable to a fine or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.
- (4) Any person who is convicted of an offence referred to in section 40A(2), shall be liable to a fine or to imprisonment for a period not exceeding 25 years or to both such fine and such imprisonment.
- (5) Any person who, in connection with any activity carried on by him or her, in a fraudulent manner takes, assumes, uses or publishes any name, description, title or symbol indicating or conveying or purporting to indicate or convey or which is calculated or is likely to lead other persons to believe or to infer that such activity is carried on under or by virtue of the provisions of *this Act* or under the patronage of the *prosecuting authority*, or is in any manner associated or connected with the *prosecuting authority*, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 25 years or to both such fine and such imprisonment.
- (6) Notwithstanding any other law, no person shall without the permission of the *National Director* or a person authorised in writing by the *National Director* disclose to any other person—
- (a) any information which came to his or her knowledge in the performance of his or her functions in terms of *this Act* or any other law;
 - (b) the contents of any book or document or any other item in the possession of the *prosecuting authority*; or
 - (c) the record of any evidence given at an investigation as contemplated in section 28(1),
- except—
- (i) for the purpose of performing his or her functions in terms of *this Act* or any other law; or
 - (ii) when required to do so by order of a court of law.
- (7) Any person who contravenes subsection (6) shall be guilty of an

offence and liable on conviction to a fine or to imprisonment for a period |
not exceeding 15 years or to both such fine and such imprisonment.”.

Insertion of section 43A in Act 32 of 1998

20. The following section is hereby inserted in the principal Act:

“Transitional arrangement relating to Investigating Directorates 5

43A. (1) Any *Investigating Directorate* (in this section referred to as a former Investigating Directorate) which had been established prior to the amendment of section 7 by the National Prosecuting Authority Amendment Act, 2000, shall, as from the date of the commencement of that Act, cease to exist as a separate Investigating Directorate and become part of the *Directorate of Special Operations*. 10

(2) Any proclamation which had been issued under section 7 in respect of a former *Investigating Directorate*, prior to the amendment of section 7 by the National Prosecuting Authority Amendment Act, 2000, shall, as from the date of the commencement of that Act, be deemed to have been issued under section 7(1) in respect of the *Directorate of Special Operations*. 15

(3) Subject to the provisions of *this Act*, the *Investigating Director* and staff of any former Investigating Directorate shall remain in office and continue their functions under *this Act* in the Directorate of Special Operations. 20

(4) As from the date of the commencement of the National Prosecuting Authority Amendment Act, 2000, all pending matters pertaining to any former Investigating Directorate shall be dealt with as if that Act had at all times been in force.”.

Insertion of index in Act 32 of 1998 25

21. The following index is hereby inserted in the principal Act after the enactment clause:

“CHAPTER 1

Introductory provisions

1. Definitions 30

CHAPTER 2

Structure and composition of single national prosecuting authority

2. Single national prosecuting authority
3. Structure of prosecuting authority
4. Composition of prosecuting authority 35
5. Office of National Director of Public Prosecutions
6. Offices of prosecuting authority at seats of High Courts
7. Investigating Directorates

CHAPTER 3

Appointment, remuneration and conditions of service of members of the 40 Prosecuting Authority

8. Prosecuting authority to be representative
9. Qualifications for appointment as National Director, Deputy National Director or Director
10. Appointment of National Director 45
11. Appointment of Deputy National Directors
12. Term of office of National Director and Deputy National Directors
13. Appointment of Directors and Acting Directors

14.	Term of office of Director	
15.	Appointment of Deputy Directors	
16.	Appointment of prosecutors	
17.	Conditions of service of National Director, Deputy National Directors and Directors	5
18.	Remuneration of Deputy Directors and prosecutors	
19.	Conditions of service of Deputy Directors and prosecutors, except remuneration	

CHAPTER 3A

Appointment, remuneration and conditions of service of special investigators	10
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19A.	Appointment of special investigators	
19B.	Security screening of special investigators	
19C.	Remuneration and conditions of service of special investigators	

CHAPTER 4

Powers, duties and functions of members of the Prosecuting Authority	15
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20.	Power to institute and conduct criminal proceedings	
21.	Prosecution policy and issuing of policy directives	
22.	Powers, duties and functions of National Director	
23.	Powers, duties and functions of Deputy National Directors	
24.	Powers, duties and functions of Directors and Deputy Directors	20
25.	Powers, duties and functions of prosecutors	

CHAPTER 5

Powers, duties and functions relating to Investigating Directorates

26.	Application	
27.	Reporting of matters to Investigating Director	25
28.	Investigations by Investigating Director	
29.	Entering upon premises by Investigating Director	
30.	Powers and functions of special investigators	
31.	Ministerial Coordinating Committee	

CHAPTER 6 30

General provisions

32.	Impartiality of, and oath or affirmation by members of prosecuting authority	
33.	Minister's final responsibility over prosecuting authority	
34.	Reports by Directors	
35.	Accountability to Parliament	35
36.	Expenditure of prosecuting authority	
37.	Administrative staff	
38.	Engagement of persons to perform services in specific cases	
39.	Disclosure of interest and non-performance of other paid work	
40.	Regulations	40
40A.	Unauthorised access to or modification of computer material	
41.	Offences and penalties	
42.	Limitation of liability	

CHAPTER 7

Transitional arrangements	45
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43.	Transitional arrangements	
43A.	Transitional arrangement relating to Investigating Directorates	
44.	Amendment or repeal of laws	

45. Interpretation of certain references in laws
 46. Short title and commencement

Schedule—Laws amended or repealed by section 44”.

Amendment of section 1 of Act 127 of 1992, as amended by section 32 of Act 38 of 1994, section 1 of Act 77 of 1995 and section 13 of Act 34 of 1998 5

22. Section 1 of the Interception and Monitoring Prohibition Act, 1992, is hereby amended—

- (a) by the insertion after the definition of “Agency” of the following definition:
“ ‘Directorate’ means the Directorate of Special Operations referred to in section 1 of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998);”; and 10
 (b) by the addition to the definition of “serious offence” of the following paragraph:
“(c) any specified offence as defined in section 1 of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998);”. 15

Amendment of section 3 of Act 127 of 1992, as amended by section 32 of Act 38 of 1994, section 4 of Act 18 of 1996 and section 15 of Act 34 of 1998

23. Section 3 of the Interception and Monitoring Prohibition Act, 1992, is hereby amended by the addition in subsection (2) of the following paragraph:

- “(d) for the purposes of the matters referred to in subsection (1)(b) or subsection (4), be made by the head of the Directorate, or by an Investigating Director authorised in writing by the head of the Directorate to make such an application.”. 20

Amendment of section 4 of Act 127 of 1992, as amended by section 32 of Act 38 of 1994, section 4 of Act 18 of 1996 and section 16 of Act 34 of 1998 25

24. Section 4 of the Interception and Monitoring Prohibition Act, 1992, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
“(1) If a direction has been issued in terms of section 3, any member of the Force as defined in section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995), or a member, excluding a member of a visiting force, as defined in section 1 of the Defence Act, 1957 (Act No. 44 of 1957), a member of the Directorate or a member of the Agency or the Service may execute that direction, provided that the member concerned has been authorized by the officer or member who made the application in terms of section 3(2) to execute that direction or to assist with the execution of the direction concerned.”; and 30
 (b) by the addition to paragraph (b) of subsection (2) of the following subparagraph:
“(iv) the head of the Directorate or an Investigating Director of the Directorate,”. 35 40

Amendment of section 5 of Act 127 of 1992, as amended by section 32 of Act 38 of 1994, section 4 of Act 18 of 1996 and section 17 of Act 34 of 1998

25. Section 5 of the Interception and Monitoring Prohibition Act, 1992, is hereby amended by the substitution for subsection (2) of the following subsection: 45

- “(2) If a person, body or organization has made a facility, device or telecommunications line available for the purposes mentioned in subsection (1)(b), the remuneration agreed upon by the person or organization and the National Commissioner of the South African Police Service, the Chief of the South African National Defence Force, the head of the Directorate or the Director-General of the Agency or the Service, as the case may be, shall be paid to that person, body or organization.”. 50

Short title and commencement

26. This is the National Prosecuting Authority Amendment Act, 2000, and comes into operation on a date fixed by the President by proclamation in the ***Gazette***.

MEMORANDUM ON THE OBJECTS OF THE NATIONAL PROSECUTING AUTHORITY AMENDMENT BILL

1. BACKGROUND

1.1 In his opening address in Parliament on 25 June 1999, the President announced “that a special and adequately staffed and equipped investigation unit will be established urgently to deal with all national priority crimes, including police corruption”. At the same time the President directed the Ministers of Safety and Security, Defence, Intelligence, Justice, Home Affairs and Finance to finalise all outstanding matters which relate to the activation of this specialised investigation unit.

1.2 A ministerial task team, supported by officials from the departments concerned, immediately after this announcement commenced an investigation into the establishment of a special investigation unit. On 9 July 1999 the Minister for Justice and Constitutional Development (the Minister) and the Minister of Safety and Security announced the creation of the Directorate of Special Operations. In September 1999 the Directorate was officially launched in Guguletu.

1.3 Draft legislation providing for the formal establishment of the Directorate of Special Operations was subsequently introduced into Parliament as the *Directorate of Special Operations Bill* [B 39—2000], which was referred to the Portfolio Committee on Justice and Constitutional Development (National Assembly) for consideration. The Portfolio Committee invited comments and held public hearings on the Bill. During the Committee’s deliberations on the Bill, a clear view emerged that it would be more appropriate to incorporate the provisions relating to the Directorate of Special Operations in the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), as opposed to enacting separate legislation for the Directorate. The reasons for this are, among others, the following:

- * The Directorate of Special Operations is functioning under the control and direction of the National Director of Public Prosecutions.
- * The prosecuting authority already has investigative capacity in the Investigating Directorates established in terms of section 7 of the National Prosecuting Authority Act, 1998. It will be in the interests of both sound administration and enhancing the efficient prosecution of matters dealt with by the existing Investigating Directorates and the Directorate of Special Operations, to merge the Investigating Directorates with the Directorate of Special Operations.
- * The enactment of separate legislation in respect of the Directorate of Special Operations would have necessitated the duplication of substantial parts of the National Prosecuting Authority Act, 1998, which might in turn lead to legal uncertainty and administrative difficulties.
- * The National Prosecuting Authority Act, 1998, already establishes clear lines of authority and accountability relating to the members of the prosecuting authority, the National Director of Public Prosecutions, the Minister and Parliament.

1.4 The Portfolio Committee therefore presented the *National Prosecuting Authority Amendment Bill* [B 39B—2000].

2. CONTENTS OF THE BILL

2.1 The Bill amends the National Prosecuting Authority Act, 1998 (the principal Act) in order to make provision for the establishment of the Directorate of Special Operations as an Investigating Directorate of the National Prosecuting Authority. The aims of the Directorate of Special Operations are to—

- * investigate, and to carry out any functions incidental to investigations;
- * gather, keep and analyse information; and
- * where appropriate, institute criminal proceedings and carry out any necessary functions incidental to instituting criminal proceedings,

relating to—

- * offences or any criminal or unlawful activities committed in an organised fashion; or
- * such other offences or categories of offences as determined by the President by proclamation in the *Gazette*.

2.2 The Directorate of Special Operations will be headed by a Deputy National Director of Public Prosecutions, who must exercise his or her powers, duties and functions subject to the control and direction of the National Director of Public Prosecutions. In addition to the existing staff of an Investigating Directorate, provision is made for the appointment of special investigators to the Directorate of Special Operations. (Clause 4)

2.3 The existing Investigating Directorates will become part of the Directorate of Special Operations and the proclamations issued in respect of such Investigating Directorates will be deemed to have been issued in respect of the Directorate of Special Operations. (Clause 20)

2.4 A new Chapter 3A is inserted into the principal Act in order to make provision for the appointment, remuneration and conditions of service of special investigators. Special investigators may be appointed by the National Director of Public Prosecutions, but only after they have successfully undergone a security clearance. The remuneration, allowances and other service benefits of special investigators are determined by the Minister, in consultation with the National Director of Public Prosecutions and with the concurrence of the Minister of Finance. The Minister may, by regulation, prescribe all other conditions of service of special investigators. (Clauses 8 and 17)

2.5 Special investigators will perform their powers and duties subject to control and direction of the head of the Directorate of Special Operations, and will have the same powers as a peace officer or a police official in respect of certain matters contemplated in the Criminal Procedure Act, 1977 (Act No. 51 of 1977). The Minister may also, by notice in the *Gazette*, confer specific powers on special investigators. (Clause 14)

2.6 Provision is made for the establishment of a Ministerial Coordinating Committee, comprising the Ministers responsible for—

- * the administration of justice, who is the chairperson thereof;
- * correctional services;
- * defence;
- * intelligence services;
- * safety and security; and
- * any other Minister designated from time to time by the President.

The principal function of the Committee is to coordinate the activities of the Directorate of Special Operations and those of other government institutions involved in the investigation of crime. (Clause 14)

2.7 Provision is made that the Minister must appoint a fit and proper person as the Chief Executive Officer of the Directorate, who will be the accounting officer thereof. (Clause 15)

2.8 The Bill inserts a new section 40A into the principal Act. This new section creates certain offences relating to unlawful access to, tampering with, or modification of, computers belonging to the National Prosecuting Authority, including the programmes of, or data held in, such computers. (Clause 18)

2.9 The Bill also amends the Interception and Monitoring Prohibition Act, 1992 (Act No. 127 of 1992), in order to make provision for applications for directions in terms of that Act by the head of the Directorate of Special Operations.

3. OTHER DEPARTMENTS/BODIES CONSULTED

All government departments falling under the auspices of the Inter-Ministerial Security Committee were consulted regarding the Directorate of Special Operations Bill [B 39—2000]. The Bill in question, namely the National Prosecuting Authority Amendment Bill [B 39B—2000], emanates from the comments furnished to, public hearings of, and deliberations by, the Portfolio Committee on Justice and Constitutional Development (National Assembly).

4. FINANCIAL IMPLICATIONS FOR THE STATE

The Departmental Medium Term Expenditure Framework allocations, as approved by Cabinet on 24 November 1999 in respect of the Directorate, for the period 2000-2003 are R150 million for 2000/2001; R200 million for 2001/2002; and R250 million for 2002/2003.

5. IMPLICATIONS FOR PROVINCES

None.

6. PARLIAMENTARY PROCEDURE

The Directorate of Special Operations Bill [B 39—2000] has been classified as a section 75 Bill.