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THE PRESIDENCY

No. 84

30 January 2009

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 57 of 2008: South African Police Service Amendment Act, 2008.



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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.

(English text signed by the President.)
(Assented to 27 January 2009.)

ACT

To amend the South African Police Service Act, 1995, in order to—

- enhance the capacity of the South African Police Service to prevent, combat and investigate national priority crimes and other crimes, by establishing a separate Division in the South African Police Service, the Directorate for Priority Crime Investigation;
- provide for the transfer of powers, investigations, assets, budget and liabilities of the Directorate of Special Operations, established in terms of the National Prosecuting Authority Act, 1998, to the South African Police Service;
- provide for the appointment of the Head of the Directorate for Priority Crime Investigation;
- ensure a multi-disciplinary and integrated approach in the prevention, combating and investigation of the above crimes by providing for the secondment of personnel from other Government departments or institutions to the Directorate for Priority Crime Investigation;
- provide for the security screening of and integrity measures for personnel of the Directorate for Priority Crime Investigation;
- provide for the designation by the President of a Ministerial Committee to oversee the functioning of the Directorate for Priority Crime Investigation;
- provide for the establishment of an Operational Committee comprising senior officials to facilitate, review, monitor and improve inter-departmental co-operation;
- provide for Parliamentary oversight in respect of the activities of the Directorate for Priority Crime Investigation;
- provide for the establishment of a mechanism to deal with complaints of a serious nature pertaining to the Directorate for Priority Crime Investigation;
- provide for transitional arrangements, including the selection of personnel, to implement the Act; and
- provide for matters connected thereto.

PARLIAMENT of the Republic of South Africa enacts as follows:—

Amendment of section 5 of Act 68 of 1995

1. Section 5 of the South African Police Service Act, 1995 (hereinafter referred to as the principal Act), is hereby amended— 5

- (a) by the substitution in subsection (2) for paragraphs (b) and (c) of the following paragraphs: 5
- “(b) members appointed in terms of section 28(2) of this Act; **[and]**
(c) persons who become members of the Reserve under section 48(2) of this Act; and” 10
- (b) by the addition in subsection (2) of the following paragraph:
“(d) members appointed to the Directorate for Priority Crime Investigation established by section 17C.”

Amendment of section 16 of Act 68 of 1995

2. Section 16 of the principal Act is hereby amended— 15

- (a) by the substitution in subsection (2) for paragraph (a) of the following paragraph:
“(a) by a person, group of persons or syndicate acting in—
 (i) an organised fashion; or
 (ii) a manner which could result in substantial financial gain for the person, group of persons or syndicate involved.” 20
- (b) by the deletion in subsection (2) of the word “and” at the end of paragraph (i);
- (c) by the insertion in subsection (2) of the following paragraph after paragraph (i):
“(iA) in respect of the commission of any alleged offence mentioned in the Schedule; or” 25
- (d) by the substitution in subsection (2) for paragraph (j) of the following paragraph:
“(j) in respect of which the prevention or investigation by members under the command of a Provincial Commissioner will detrimentally affect or hamper the prevention or investigation of circumstances referred to in paragraphs (a) to [(i)] (iA).” 30
- (e) by the insertion after subsection (2) of the following subsection:
“(2A) For the purpose of subparagraph (a)(i), ‘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.” 35

Insertion of Chapter 6A in Act 68 of 1995 40

3. The following Chapter is hereby inserted in the principal Act after Chapter 6:

“CHAPTER 6A

DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

Definitions

- 17A.** In this Chapter, unless the context otherwise indicates— 45
- ‘**Directorate**’ means the Directorate for Priority Crime Investigation, established by section 17C;
- ‘**Ministerial Committee**’ means the Committee referred to in section 17I(1);
- ‘**national priority offence**’ means organised crime, crime that requires national prevention or investigation, or crime which requires specialised skills in the prevention and investigation thereof, as referred to in section 16(1); and 50
- ‘**Operational Committee**’ means the Operational Committee established by section 17J. 55

Application of Chapter

17B. In the application of this Chapter the following should be recognised and taken into account:

- (a) The need to establish a Directorate as a Division of the Service to prevent, combat and investigate national priority offences, in particular serious organised crime, serious commercial crime and serious corruption. 5
- (b) The need to ensure that the Directorate—
 - (i) implements, where appropriate, a multi-disciplinary approach and an integrated methodology involving the co-operation of all relevant Government departments and institutions; 10
 - (ii) has the necessary independence to perform its functions;
 - (iii) is equipped with the appropriate human and financial resources to perform its functions;
 - (iv) is staffed through the transfer, appointment, or secondment of personnel whose integrity is beyond reproach. 15

Establishment and composition of Directorate

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

- (2) The Directorate comprises— 20
 - (a) the Head of the Directorate, who shall be a Deputy National Commissioner appointed by the Minister in concurrence with Cabinet;
 - (b) persons appointed by the National Commissioner on the recommendation of the Head of the Directorate on the basis of the required level of experience, training, skills, competence or knowledge; 25
 - (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.
- (3) The Minister shall report to Parliament on the appointment of the Head of the Directorate. 30

Functions of Directorate

17D. (1) The functions of the Directorate are to prevent, combat and investigate—

- (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; and 35
 - (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.
- (2) If, during the course of an investigation by the Directorate, evidence of any other crime is detected and the Head of the Directorate considers it in the interests of justice, or in the public interest, he or she may extend the investigation so as to include any offence which he or she suspects to be connected with the subject of the investigation. 40
- (3) The Head of the Directorate may, if he or she has reason to suspect that a national priority offence has been or is being committed, request the National Director of Public Prosecutions to designate a Director of Public Prosecutions to exercise the powers of section 28 of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998). 45

Security screening and integrity measures

17E. (1) Any person who is considered for appointment in, or secondment to, the Directorate, shall be subject to a security screening investigation in terms of and in accordance with section 2A of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994).

(2) No person may be appointed to the Directorate unless—

- (a) a security clearance has been issued to that person in terms of section 2A(6) of the National Strategic Intelligence Act, 1994, by the Head of the Crime Intelligence Division of the Service;
- (b) a security clearance on the required level and which is still valid has been issued to the person in question in terms of section 2A(6) of the National Strategic Intelligence Act, 1994; or
- (c) a temporary security clearance has been issued by the Head of the Crime Intelligence Division of the Service after the person had submitted an application to the Head of the Crime Intelligence Division to have a security screening investigation conducted.

(3) Any appointment on the basis of a temporary security clearance shall be subject to the finalisation of the security screening investigation and the issuing of a security clearance in terms of section 2A(6) of the National Strategic Intelligence Act, 1994.

(4) Whenever the Head of the Crime Intelligence Division of the Service 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.

(5) A member of the Directorate may from time to time, or at such regular intervals as the Head of the Directorate may determine, be subjected to a further security screening investigation.

(6) If, upon information at the disposal of the Head of the Directorate, he or she reasonably believes that the person concerned poses a security risk, he or she may require the member to undergo a further security screening investigation.

(7) (a) Any member of the Directorate must, in the prescribed manner and at the prescribed intervals, disclose his or her prescribed financial and other interests and those of his or her immediate family members.

(b) For the purpose of paragraph (a), 'immediate family member' refers to the spouse, civil partner or permanent life partner of that member, and includes dependent children of, and dependent family members living in the same household with that member.

(8) (a) The Minister may prescribe measures for integrity testing of members of the Directorate, which may include random entrapment, testing for the abuse of alcohol or drugs, or the use of the polygraph or similar instrument to ascertain, confirm or examine in a scientific manner the truthfulness of a statement made by a person.

(b) The necessary samples required for any test referred to in paragraph (a), may be taken, but any sample taken from the body of a member may only be taken by a registered medical practitioner or a registered nurse.

(c) The Minister shall prescribe measures to ensure the confidentiality of information obtained through integrity testing, if such measures are prescribed in terms of paragraph (a).

Multi-disciplinary approach

17E. (1) Government departments or institutions shall, when required to do so, take reasonable steps to assist the Directorate in the achievement of its objectives.

(2) The National Commissioner shall request the secondment of personnel from any other Government department or institution, whenever the Head of the Directorate requests such secondment.

(3) The Directorate shall be assisted in the performance of its functions by personnel seconded by relevant Government departments or institutions, which may include personnel from the South African Revenue Service, the Financial Intelligence Centre and the Department of Home Affairs.

(4) The National Director of Public Prosecutions must ensure that a dedicated component of prosecutors is available to assist and co-operate with members of the Directorate in conducting its investigations.

(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, identify suitable personnel to be seconded to the Directorate upon such terms and conditions as may be agreed upon between the National Commissioner and the Director-General of the department or Head of the Government institution concerned.

(6) Without derogating from the functions of the Service in respect of crime intelligence, as provided for in the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994), the Directorate shall be supported by the Crime Intelligence Division of the Service to gather, correlate, evaluate, co-ordinate and use crime intelligence in the performance of its functions.

(7)(a) If the National Commissioner 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.

(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 and the Director-General of the Government Department or Head of the Government institution.

Conditions of service

17G. The remuneration, allowances and other conditions of service of members of the Directorate shall be regulated in terms of section 24.

Finances and financial accountability

17H. (1) Expenditure in connection with the administration and functioning of the Directorate must be paid 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).

(2) The National Commissioner is the accounting officer for the monies referred to subsection (1).

Coordination by Cabinet

17I. (1) The President shall for purposes of subsections (2) and (3) designate a Ministerial Committee which shall include—

- (a) at least the Ministers for—
- (i) Safety and Security;
 - (ii) Finance;
 - (iii) Home Affairs;

- (iv) Intelligence; and
(v) Justice; as well as
- (b) any other Minister designated from time to time by the President.
- (2) The Ministerial Committee may determine—
- (a) policy guidelines in respect of the functioning of the Directorate; 5
(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); 10
(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. 15
(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.

Operational Committee

- 17J.** (1) (a) There is hereby established a committee, to be known as the Operational Committee, which comprises— 20
- (i) the National Commissioner, as chairperson;
(ii) the Head of the Directorate, as deputy chairperson;
(iii) the National Director of Public Prosecutions;
(iv) the Directors-General of Finance, Justice and Constitutional Development, the National Intelligence Agency and Home Affairs; 25
(v) the Commissioner of the South African Revenue Service;
(vi) the Head of the Financial Intelligence Centre; and
(vii) such other persons as the Operational Committee may require from time to time, for the duration determined by the Operational Committee. 30
- (b) An official at the rank of at least an Assistant Commissioner or Chief Director may be designated on a permanent basis to represent any official mentioned above if he or she is not available: Provided that the official listed in paragraph (a) may also attend. 35
- (2) The Operational Committee shall—
- (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; 40
(b) perform such functions as from time to time may be directed by the Ministerial Committee;
(c) report to the Ministerial Committee on interdepartmental assistance to and co-operation with the Directorate; and
(d) meet as regularly as required to fulfill its functions, but not less than four times annually. 45

Parliamentary oversight

- 17K.** (1) Parliament shall effectively oversee the functioning of the Directorate and the committees established in terms of this Chapter.
- (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 of the Directorate. 50

(3) In addition to the annual report mentioned in subsection (2), the Head of the Directorate shall at any time when requested to do so by Parliament, submit a report on the activities of the Directorate.

(4) The Minister shall submit to Parliament any policy guidelines referred to in section 17I(2)(a), (b) and (c) for approval.

(5) Policy guidelines referred to in section 17I(2)(a), (b) and (c) submitted for approval to Parliament that are not approved within three months of submission shall be deemed to be approved.

(6) The Minister shall, not later than three years after the commencement of this section, submit a report to Parliament on whether any legislative amendments are required to improve the functioning of the Directorate.

Complaints mechanism

17L. (1) (a) The Minister shall, after consultation with the Minister of Justice and the Chief Justice, appoint a retired judge in order to investigate complaints referred to in subsection (4).

(b) For purposes of paragraph (a) 'retired judge' shall mean a judge discharged from active service as referred to in the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001).

(2) The performance of the functions provided for in respect of the retired judge does not derogate from the powers of the Independent Complaints Directorate referred to in section 50 to investigate complaints in respect of any member, including members in the Directorate for Priority Crime Investigation.

(3) The retired judge shall not investigate complaints about intelligence matters falling under the jurisdiction of the Inspector-General of Intelligence.

(4) The retired judge may receive complaints in the prescribed form and manner from—

(a) any member of the public who can provide evidence of a serious and unlawful infringement of his or her rights caused by an investigation by the Directorate; or

(b) any member of the Directorate who can provide evidence of any improper influence or interference, whether of a political or any other nature, exerted upon him or her regarding the conducting of an investigation.

(5) The retired judge may upon receipt of a complaint investigate such complaint or refer it to be dealt with by, amongst others, the Secretariat, the Independent Complaints Directorate, the National Commissioner, the Head of the Directorate, the relevant Provincial Commissioner, the National Director of Public Prosecutions, the Inspector-General of Intelligence, or any institution mentioned in chapter 9 of the Constitution of the Republic of South Africa, 1996.

(6) The retired judge shall report the outcome of any investigation undertaken by him or her or any referral to the Minister.

(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.

(8) To the extent that it is reasonably necessary for the performance of the functions of the retired judge, he or she—

(a) may obtain information and documents under the control of the Service;

(b) may enter any building or premises under the control of the Service in order to obtain such information and documents; and

(c) shall be entitled to all reasonable assistance by a member.

(9) The judge shall annually report to Parliament on the performance of his or her functions.

(10) The Head of the Directorate may request the retired judge to investigate complaints or allegations relating to investigations by the Directorate or alleged interference with such investigations.

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(11) Any person who makes a complaint in terms of this section shall not be entitled to use this section to establish whether there is an investigation against him or her, nor be entitled to any delay, interference or termination of such investigation on the basis that such complaint has been made.

(12) The Minister shall ensure that the retired judge has sufficient personnel and resources to fulfill his or her functions.” 5

Amendment of section 24 of Act 68 of 1995

4. Section 24 of the principal Act is hereby amended by the insertion in subsection (1) after subparagraph (ee) of the following subparagraph:

“(eeA) the following issues which are related to the Directorate for Priority Crime Investigation established in terms of section 17C: 10

- (i) The manner and intervals for disclosure of financial and other interests as required in terms of section 17E(7)(a);
- (ii) the measures for integrity testing of members of the Directorate for Priority Crime Investigation as contemplated in section 17E(8)(a); 15
- (iii) the measures to ensure the confidentiality of information obtained as contemplated in section 17E(8)(c);
- (iv) the form and manner in which complaints referred to in section 17L(4) must be made to the retired judge.”. 15

Insertion of Schedule in Act 68 of 1995 20

5. The following Schedule is hereby inserted into the principal Act after section 73:

“Schedule

(Section 16(2)(iA))

- 1 High treason: 25
- 2 any offence referred to in paragraph (a) of the definition of ‘specified offence’ of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004);
- 3 sedition;
- 4 any offence referred to in Schedule 1 to the Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act No. 27 of 2002); 30
- 5 any offence referred to in Chapters 2, 3 and 4 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998);
- 6 any offence referred to in section 13(f) of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992); 35
- 7 any offence referred to in the Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 87 of 1993);
- 8 any offence relating to the dealing in or smuggling of ammunition, firearms, explosives or armament and the unlawful possession of such firearms, explosives or armament; 40
- 9 any offence contemplated in Chapter 2 and section 34 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004);
- 10 any offence referred to in the Regulation of Foreign Military Assistance Act, 1998 (Act No. 15 of 1998), or the Prohibition of Mercenary Activities and the Regulation of Certain Activities in Country of Armed Conflict Act, 2006 (Act No. 27 of 2006); 45
- 11 any offence referred to in the National Conventional Arms Control Act, 2002 (Act No. 41 of 2002);
- 12 any offence the punishment wherefor may be imprisonment for life.”. 50

Transfer of powers, investigations, assets, budget and liabilities**6. (1) In this section—**

- (a) any word or expression in respect of which a specific meaning has been assigned by the South African Police Service Act, 1995 (Act No. 68 of 1995), has the same meaning; 5
- (b) any word or expression in respect of which a specific meaning has been assigned by the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), has the same meaning; and
- (c) “fixed date” means a date to be determined by the President by proclamation in the *Gazette*. 10

(2) As from the fixed date—

- (a) all powers exercised and functions performed by special investigators immediately before the fixed date, shall be exercised and performed by the Directorate for Priority Crime Investigation;
- (b) investigations of the Directorate of Special Operations shall be dealt with as if this Act had at all times been in force; 15
- (c) the allocated budget and assets and liabilities of the Directorate of Special Operations as agreed upon between the accounting officers of the South African Police Service and the Directorate of Special Operations, respectively, must be transferred to the South African Police Service in accordance with section 42 of the Public Finance Management Act, 1999 (Act No. 1 of 1999). 20

(3) The Registrar of Deeds must make the necessary entries and endorsements for the transfer of any property in terms of this section.

(4) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), no change of employer must be regarded as having taken place when the special investigators and administrative and support personnel transferred in terms of section 43A(2)(a) and (b) of the National Prosecuting Authority Act, 1998 take up employment at the South African Police Service. 25

(5) For so long as the remuneration, allowances and other conditions of service of those transferred to the South African Police Service under section 43A(3) of the National Prosecuting Authority Act, 1998, are more favourable than those determined under section 17G of this Act, section 43A(4) of the National Prosecuting Authority Act, 1998, prevails. 30

(6) This Act does not affect the validity of any investigation or prosecution conducted, pending, or under investigation by the Directorate of Special Operations on or before the fixed date. 35

Selection of personnel

7. (1) The National Commissioner shall appoint a selection panel which shall include a representative of the National Prosecuting Authority to select for appointment in the Directorate from the following persons: 40

- (a) Former special investigators of the Directorate of Special Operations, contemplated in section 7(4)(a)(iiA) of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), transferred to the South African Police Service in terms of section 43A(2)(a) of the National Prosecuting Authority Act, 1998; 45
- (b) members who, immediately before the commencement of the South African Police Service Amendment Act, 2008, served in the Organised Crime Component of the Service;
- (c) members who, immediately before the commencement of the South African Police Service Amendment Act, 2008, served in the Commercial Crime Component of the Service; 50
- (d) any other member of the Service; and
- (e) any administrative and support personnel employed at the fixed date by the Directorate of Special Operations and the South African Police Service. 55

(2) The Head of the Directorate for Priority Crime Investigation shall advise the National Commissioner on the selection criteria to be applied in the selection process.

(3) Criteria shall be determined with reference, amongst others, to experience, training, skills, competence or knowledge.

(4) The selection and appointment of members in the Directorate for Priority Crime Investigation shall be subject to the South African Police Service Act, 1995 or the Public Service Act, 1994, whichever is applicable.

Joint audit and implementation teams

8. (1) The National Director of Public Prosecutions and the National Commissioner shall nominate senior officials of the Directorate of Special Operations and senior officials of the South African Police Service respectively to perform joint audits in respect of personnel, budgets, finances, information management and equipment of the Directorate of Special Operations in order to implement this Act. 5

(2) The officials referred to in subsection (1) shall facilitate the implementation of this Act as soon as possible. 10

(3) The National Director of Public Prosecutions and the National Commissioner shall report to Parliament on a quarterly basis on the progress made with the implementation of the Act.

Short title and commencement

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9. This Act is called the South African Police Service Amendment Act, 2008, and comes into operation on a date determined by the President by proclamation in the *Gazette*.