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OFFICE OF THE PRESIDENT

KANTOOR VAN DIE PRESIDENT

No. 1116. 4 September 1998

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

No. 37 of 1998: National Strategic Intelligence Amendment Act, 1998.

No. 1116. 4 September 1998

Hierby word bekend gemaak dat die President sy goedkeuring gegee het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 37 van 1998: Wysigingswet op Nasionale Strategiese Intelligensie, 1998.

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.

ACT

To amend the National Strategic Intelligence Act, 1994, so as to amend certain definitions; to define a certain expression; to substitute obsolete references; to provide for the transmitting of departmental intelligence to Nicoc and the institution by the South African Secret Service of counter-intelligence measures outside the Republic; to include the member of Cabinet responsible for intelligence services as a member of Nicoc and to redefine the functions of Nicoc and of the Co-ordinator for Intelligence in view of that new member; to define the functions of that member of Cabinet in relation to the National Intelligence Structures; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 39 of 1994

1. Section 1 of the National Strategic Intelligence Act, 1994 (in this Act referred to as the principal Act), is hereby amended— 5

- (a) by the substitution for the definition of ‘‘Agency’’ of the following definition:
 - ‘‘ ‘Agency’ means the National Intelligence Agency established by section 3(1) of the Intelligence Services Act, 1994 (Act No. 38 of 1994);’’
- (b) by the substitution for the definition of ‘‘Cabinet’’ of the following definition: 10
 - ‘‘ ‘Cabinet’ means the Cabinet of the Republic of South Africa referred to in section [88] 91(1) of the Constitution;’’;
- (c) by the substitution for the definition of ‘‘Constitution’’ of the following definition:
 - ‘‘Constitution’ means the Constitution of the Republic of South Africa, [1993 (Act No. 200 of 1993)] 1996 (Act No. 108 of 1996);’’; 15
- (d) by the deletion of the definition of ‘‘Co-ordinator for Intelligence’’;
- (e) by the insertion after the definition of ‘‘foreign military intelligence’’ of the following definition:

- “ ‘Minister’ means the President or the member of Cabinet designated by the President to assume the responsibility for intelligence services as contemplated in section 209(2) of the Constitution;”;
- (f) by the substitution for paragraphs (b) and (c) of the definition of “National Intelligence Structures” of the following paragraphs: 5
- “(b) the **[Intelligence Division]** intelligence division of the National Defence Force, established under the Defence Act, 1957 (Act No. 44 of 1957);
- (c) the **[National Investigation Service]** intelligence division of the South African Police Service;”;
- (g) by the substitution for the definition of “South African Police Service” of the following definition: 10
- “ ‘South African Police Service’ means the South African Police Service established by section 5(1) of the South African Police Service Act, 1995 (Act No. 68 of 1995);”. 15

Amendment of section 2 of Act 39 of 1994

2. Section 2 of the principal Act is hereby amended—
- (a) by the substitution for paragraph (c) of subsection (1) of the following paragraph: 20
- “(c) to gather departmental intelligence at the request of any interested department of State, and, without delay to evaluate and transmit such intelligence and any other intelligence at the disposal of the Agency and which constitutes departmental intelligence, to the department concerned and to Nicoc.”;
- (b) by the substitution for subparagraph (ii) of paragraph (a) of subsection (2) of the following subparagraph: 25
- “(ii) supply intelligence relating to **[national strategic intelligence]** any such threat to Nicoc;”;
- (c) by the substitution for paragraphs (b) and (c) of subsection (2) of the following paragraphs: 30
- “(b) to institute—
- (i) counter-intelligence measures within the Service; and
- (ii) in consultation with the Agency, counter-intelligence measures outside the Republic; and
- (c) to gather departmental intelligence at the request of any interested department of State, and, without delay to evaluate and transmit such intelligence and any other intelligence at the disposal of the Service and which constitutes departmental intelligence, to the department concerned and to Nicoc.”;
- (d) by the substitution for paragraph (a) of subsection (3) of the following paragraph: 40
- “(a) to gather, correlate, evaluate and use crime intelligence in support of the **[functions]** objects of the South African Police Service as contemplated in section **[215]** 205(3) of the Constitution; and”;
- (e) by the substitution in paragraph (b) of subsection (4) for the words “referred to in section 227(1)(e)” of the words “as contemplated in section 201(2)(a)”. 45

Amendment of section 3 of Act 39 of 1994

3. Section 3 of the principal Act is hereby amended—
- (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph: 50
- “(a) other than the National Defence Force when employed for service **[referred to in section 227(1)(a), (b) or (e)]** as contemplated in section 201(2) of the Constitution or when discharging the counter-intelligence responsibilities entrusted to its **[Intelligence Division]** intelligence division; and”;
- (b) by the substitution in paragraph (i) of subsection (1) for the words “Intelligence Division” of the words “intelligence division”; and 55
- (c) by the substitution for subsection (2) of the following subsection:

“(2) Notwithstanding subsection (1), the National Defence Force through its [**Intelligence Division**] intelligence division may—

(a) whenever the President on the advice of the Minister of Defence is of the opinion that conditions are such that the said Force has to prepare itself for possible employment for service [**referred to in section 227(1)(e)**] as contemplated in section 201(2)(a) of the Constitution; and

(b) upon having been authorised by [**the Co-ordinator for Intelligence**] Nicoc acting with the concurrence of [**Nicoc and**] the Cabinet,

gather domestic military intelligence in a covert manner within the geographical area and the time-scales specified in such authorisation.”.

Substitution of section 4 of Act 39 of 1994

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

“Establishment of National Intelligence Co-ordinating Committee

4. (1) There is hereby established a National Intelligence Co-ordinating Committee, which shall consist of—

(a) the Minister;

(b) the Co-ordinator for Intelligence appointed under section 5(1), who shall be the chairperson;

(c) the Director-General of the Agency;

(d) the Director-General of the Service;

(e) the chief of the intelligence division of the National Defence Force; and

(f) the head of the service of the South African Police Service under which its intelligence division falls,

or the alternates of the persons mentioned in paragraphs (b) to (f), and such members of departments of State who are co-opted by Nicoc on a permanent or an *ad hoc* basis.

(2) The functions of Nicoc shall be—

(a) to co-ordinate the intelligence supplied by the members of the National Intelligence Structures to Nicoc and interpret such intelligence for use by the State and the Cabinet for the purposes of—

(i) the detection and identification of any threat or potential threat to the national security of the Republic;

(ii) the protection and promotion of the national interests of the Republic;

(b) for the purposes of the functions contemplated in paragraph (a)—

(i) to co-ordinate and prioritise intelligence activities within the National Intelligence Structures;

(ii) to prepare and interpret intelligence estimates;

(c) to produce and disseminate intelligence which may have an influence on any state policy with regard to matters referred to in paragraph (a) for consideration by the Cabinet;

(d) after consultation with the departments of the State entrusted with the maintenance of the security of the Republic, to co-ordinate the flow of national strategic intelligence between such departments;

(e) at the request of any Department of State, to co-ordinate the gathering of intelligence and without delay to evaluate and transmit such intelligence and any other intelligence at the disposal of the National Intelligence Structures and which constitutes departmental intelligence, to the department concerned; and

(f) to make recommendations to the Cabinet on intelligence priorities.

(3) The Agency shall provide logistical, technical and administrative support to Nicoc.”.

Substitution of section 5 of Act 39 of 1994

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

“Co-ordinator for Intelligence

5. (1) The President shall appoint a person as Co-ordinator for Intelligence, who shall, subject to the directions and supervision of the Minister— 5
 (a) manage and administer the functions of Nicoc referred to in section 4(2); and
 (b) establish such structures and committees as are necessary for the efficient functioning of Nicoc. 10
 (2) The National Intelligence Structures shall, at the request of the Co-ordinator for Intelligence, render such assistance as is necessary for the performance of his or her functions contemplated in subsection (1).”.

Insertion of section 5A in Act 39 of 1994

6. The following section is hereby inserted after section 5 of the principal Act: 15

“Functions of Minister

5A. (1) The Minister shall, subject to subsection (2), do everything necessary for the efficient functioning, control and supervision of the co-ordination of intelligence supplied by the National Intelligence Structures. 20
 (2) The Minister shall perform a function contemplated in subsection (1) which affects a function of the National Defence Force or the South African Police Service in consultation with the Minister responsible for that Force or Service, as the case may be.
 (3) The Minister shall be responsible to Cabinet for the co-ordination of intelligence supplied by the National Intelligence Structures.”. 25

Substitution of section 6 of Act 39 of 1994

7. The following section is hereby substituted for section 6 of the principal Act:

“Regulations

6. (1) The Minister may, subject to subsection (2), make such regulations as are necessary for the effective administration of this Act. 30
 (2) Any such regulation which may affect a function of the National Defence Force or the South African Police Service shall be made in consultation with the Minister responsible for that Force or Service, as the case may be.”. 35

Short title and commencement

8. This Act is the National Strategic Intelligence Amendment Act, 1998, and takes effect on a date determined by the President by proclamation in the *Gazette*.