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FOR THE REPUBLIC OF SOUTH AFRICA

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KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 1929.

15 Julie 1992

No. 1929.

15 July 1992

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

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

No. 142 van 1992: Wysigingswet op die Rekening vir Geheime Dienste, 1992.

No. 142 of 1992: Secret Services Account Amendment Act, 1992.

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 Secret Services Account Act, 1978, so as to define certain expressions; to delete the provision for the transfer of moneys to the Foreign Affairs Special Account, the Special Defence Account, the Information Service of South Africa Special Account and the South African Police Special Account; to authorize the carrying of balances by the Secret Services Account; to provide for the establishment, appointment of members and functions of the Secret Services Evaluation Committee; to make further provision for the approval of secret services; to provide for the issuing of directions regarding the application of financial control over the handling and utilization of moneys made available from the Secret Services Account; to provide for the disposal of balances in certain accounts; and to amend the short and long titles of the said Act; to provide for the repeal or consequential amendment of certain other laws; and to provide for matters connected therewith.

(English text signed by the State President.)
(Assented to 2 July 1992.)

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

Substitution of section 1 of Act 56 of 1978

1. The following sections are hereby substituted for section 1 of the Secret Services Account Act, 1978 (hereinafter referred to as the principal Act):

“Definitions**1. In this Act, unless the context otherwise indicates—**

- ‘account’ means the Secret Services Account established by section 1A;
- 10 ‘chairman’ means the chairman of the committee designated in terms of section 3A(1) or (5)(b);
- ‘committee’ means the Secret Services Evaluation Committee established by section 3A(1);
- 15 ‘member’ means a member of the committee appointed in terms of section 3A(1) or (5)(a);
- ‘recommendation’ means a recommendation referred to in section 3A(6) by the committee;
- ‘responsible Minister’, in relation to any matter referred to in this Act, means the Minister responsible for the Department of State under which that matter falls; and
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'secret service' means that part of the functions of a Department of State which, in the opinion of the responsible Minister, is of such a nature that it is in the national interest that the performance thereof is not directly or indirectly made known, and which is funded from the account under section 2(3).

Establishment of Secret Services Account

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[1] 1A. There is hereby established an account to be known as the Secret Services Account [(hereinafter referred to as the account)], which shall be credited with the moneys appropriated by Parliament for the account."

Substitution of section 2 of Act 56 of 1978, as amended by section 10 of Act 108 of 1979 and section 6 of Act 74 of 1985

2. The following section is hereby substituted for section 2 of the principal Act:

"Administration of, and utilization of moneys in, account

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2. (1) The [Secretary to the Treasury] Director-General: State Expenditure shall, subject to the provisions of this Act, be responsible for the administration of the account: Provided that the accounting officer of a Department of State to which any moneys have been made available [in terms of] under subsection (3), shall be accountable for the moneys so made available.

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(2) (a) The Minister of [Finance] State Expenditure may at the request of the responsible Minister [concerned] transfer so much money as may be agreed upon between them from the account to the [Foreign Affairs Special Account established by section 1 of the Foreign Affairs Special Account Act, 1967 (Act No. 38 of 1967), the Security Services Special Account established by section 1 of the Security Services Special Account Act, 1969 (Act No. 81 of 1969) [, the Special Defence Account established by section 1 of the Defence Special Account Act, 1974 (Act No. 6 of 1974), the Information Service of South Africa Special Account established by section 1 of the Information Service of South Africa Special Account Act, 1979 (Act No. 108 of 1979), or the South African Police Special Account established by section 1 of the South African Police Special Account Act, 1985].

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(b) Any moneys so transferred shall be deemed to have been appropriated by Parliament for the account in question and shall be utilized as contemplated in section 2 of the Security Services Special Account Act, 1969.

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(3) (a) The Minister of [Finance] State Expenditure may, at the request of any other Minister, and in such manner and subject to such conditions as he may after consultation with such other Minister determine, make available to a Department of State for which such other Minister is responsible, moneys in the account for utilization for secret services [of a secret nature determined from time to time by the Minister of Finance and such other Minister as being in the national interest, and for expenses incidental to such services].

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(b) Subject to the provisions of sections 3A(8) or (9) and 3B, any moneys so made available shall be utilized for secret services and for expenses in connection therewith."

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Insertion of section 2A in Act 56 of 1978

3. The following section is hereby inserted in the principal Act after section 2:

“Transfer of unexpended balances in account

2A. Notwithstanding anything to the contrary in any law contained, unexpended balances in the account at the end of a financial year shall be transferred as a credit in the account to the following financial year.”

Insertion of sections 3A and 3B in Act 56 of 1978

4. The following sections are hereby inserted in the principal Act after section 3:

“Establishment and functions of Secret Services Evaluation Committee

3A. (1) There is hereby established a committee to be known as the Secret Services Evaluation Committee consisting of not less than three but not more than five persons appointed by the State President, of whom one shall be designated by him as the chairman, and of whom at least one shall not be a holder of office in the Executive Authority of the Republic.

(2) A member of the committee—

- (a) shall remain in office at the State President's pleasure, but may resign by notice in writing to the State President; and
(b) may receive such remuneration and allowances (if any) as the State President may determine.

(3) The committee shall—

- (a) meet at such time and place; and
(b) follow such procedure, as the chairman may determine.

(4) The work associated with the functions of the committee shall be performed by an officer or officers in the Public Service designated by the State President for that purpose.

(5) The State President may—

- (a) appoint a person to act in the place of a member of the committee; or
(b) designate a member to act in the place of the chairman, for such period as the State President may determine.

(6) The committee shall—

- (a) evaluate all intended secret services in order to determine whether the object thereof and the *modus operandi* to achieve it are in the national interest; and
(b) review all secret services annually with the said object in order to determine whether they may be continued, and make a recommendation that an intended secret service may be carried out or a secret service be continued if the committee unanimously so decides.

(7) In evaluating an intended secret service or a secret service, the committee may request from the Department of State in question such documents and information as it may deem fit in order to properly perform its functions.

(8) (a) No intended secret service shall be carried out or secret service be continued after a year unless a recommendation by the committee has been made therefor: Provided that a responsible Minister may, with the concurrence of the State President, approve that an intended secret service or a secret service which cannot be delayed or suspended without serious prejudice to the national interest, may be carried out or be continued on condition that the matter in question is submitted to the committee for its recommendation at its next ensuing meeting: Provided further that an intended secret service may be carried out or a secret service be continued notwithstanding the fact that the committee has withheld its recommendation in respect thereof, if the State President approves the carrying out or continuation thereof.

(b) If the committee withholds its recommendation in respect of a secret service referred to in the first proviso to paragraph (a) after the matter has been submitted to it, such service shall be discontin-

ued as soon as practicable, unless and in so far as the State President approves the continuation thereof.

5 (9) If the committee cannot reach unanimity in relation to a recommendation, it shall submit the matter in question to the State President as soon as practicable for consideration, and his decision shall be final.

Approval for and directions regarding secret services

10 3B. (1) Notwithstanding anything to the contrary contained in this Act, no intended secret service shall be carried out unless the responsible Minister has granted his prior approval therefor and indicated to which conditions or instructions (if any) such carrying out shall be subject.

15 (2) The Director-General: State Expenditure shall, after consultation with the Auditor-General, issue directions regarding the application of financial control over the handling and utilization of moneys made available from the account.”

Substitution of section 4 of Act 56 of 1978

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

20 “Short title and commencement

4. This Act shall be called the Secret Services [Account] Act, 1978, and shall come into operation on 1 April 1978.”

Substitution of long title of Act 56 of 1978

25 6. The following long title is hereby substituted for the long title of the principal Act:

“ACT

To provide for the establishment of an account for secret services, for the evaluation of and control over secret services and for matters connected therewith.”

30 Repeal and amendment of laws, and savings and disposal of balances

7. (1) Subject to the provisions of subsections (2) and (3), the laws mentioned in the Schedule are hereby repealed or amended to the extent indicated in the third column thereof.

35 (2) Anything done under a law repealed by subsection (1) and which could be done under a provision of this Act, shall be deemed to have been done under the last-mentioned provision.

(3) Notwithstanding the provisions of section 1A, the balances in the accounts which are abolished as a result of the repeal by subsection (1) of the laws by which they were established, shall be transferred to the account.

40 Short title and commencement

8. This Act shall be called the Secret Services Account Amendment Act, 1992, and shall come into operation on 1 April 1993.

Schedule

LAWS REPEALED OR AMENDED (SECTION 7)

No. and year of law	Short title	Extent of repeal or amendment
Act No. 38 of 1967	Foreign Affairs Special Account Act, 1967	The repeal of the whole.
Act No. 81 of 1969	Security Services Special Account Act, 1969	<p>(a) The substitution for section 2 of the following section:</p> <p>“Payments from the account</p> <p>2. The moneys in the account shall be utilized for [such services of a confidential nature and such expenses connected with the Bureau for State Security] the defraying of expenses in connection with—</p> <p><u>(a) the performance of the function and the duty of the National Intelligence Service as referred to in section 2 of the Security Intelligence and State Security Council Act, 1972 (Act No. 64 of 1972);</u></p> <p>and</p> <p><u>(b) the organization of, the exercising of the powers and the performance of the duties and functions of any member of, the exercising of the powers of the responsible Minister in relation to the superintendence and control of, and the action by and functioning of, the National Intelligence Service as referred to in the Bureau for State Security Act, 1978 (Act No. 104 of 1978),</u></p> <p>and matters in connection therewith [as] which the [Prime] said Minister may from time to time approve as being in the national interest, and shall be paid out subject to the directions of the [Prime] said Minister.”;</p> <p>(b) the substitution for section 3 of the following section:</p> <p>“Control of expenditure</p> <p>3. Subject to the provisions of section 2, the account shall be under the control of the [officer in charge of the Bureau for State Security] <u>Director-General: National Intelligence Service</u>, who shall cause proper records to be kept of all moneys received or expended.”;</p> <p>and</p> <p>(c) the substitution for section 5 of the following section:</p> <p>“Investment of balances</p> <p>5. Moneys standing to the credit of the account which are not required for immediate use or as a reasonable working balance, may be invested in such manner as may be determined by the [Prime] Minister responsible for the <u>National Intelligence Service</u> in consultation with the Minister of [Finance] <u>State Expenditure.</u>”.</p>

SECRET SERVICES ACCOUNT AMENDMENT ACT, 1992

Act No. 142, 1992

No. and year of law	Short title	Extent of repeal or amendment
Act No. 6 of 1974	Defence Special Account Act, 1974	<p>(a) The substitution, wherever it may appear in the Act, for the expression—</p> <ul style="list-style-type: none"> (i) "Minister of Finance" of the expression "Minister of State Expenditure"; (ii) "Exchequer and Audit Act," of the expression "Exchequer Act,"; and (iii) "Public Debt Commissioners" of the expression "Public Investment Commissioners"; <p>(b) the substitution in section 2 for paragraph (c) of subsection (1) of the following paragraph:</p> <p>"(c) The provisions of the Armaments Development and Production Act, 1968, shall, subject to the provisions of section 5 of this Act, apply in respect of the expenditure incurred by the Corporation from the account and the administration of and accounting for the moneys paid therefrom by it, to the exclusion of the provisions of the Exchequer [and Audit] Act, 1975, [except] but, in so far as the auditing by the Auditor-General in terms of the said section 5 is concerned, the provisions of sections [42(7) and 45(1), (1A) and (2) thereof] 5(9) and 6(1), (2) and (3)(a) of the Auditor-General Act, 1989 (Act No. 52 of 1989), shall apply.";</p> <p>(c) the substitution in section 2 for paragraph (a) of subsection (2) of the following paragraph:</p> <p>"(a) with the approval of the Minister of [Finance] State Expenditure be utilized to defray the expenditure incurred in connection with such special defence activities in connection with the functions contained in the Defence Act, 1957 (Act No. 44 of 1957), and purchases of the South African Defence Force and the Corporation as the Minister of Defence may from time to time approve;" and</p> <p>(d) the substitution in section 2 for the proviso to subsection (4) of the following proviso:</p> <p>"Provided that the Director-General: [Finance] State Expenditure or any person in the Department of [Finance] State Expenditure designated by him, may authorize a person or persons employed by the South African Defence Force or the Corporation to sign warrant vouchers necessary for the said payments."</p>

SECRET SERVICES ACCOUNT AMENDMENT ACT, 1992

Act No. 142, 1992

No. and year of law	Short title	Extent of repeal or amendment
Act No. 108 of 1979	Information Service of South Africa Special Account Act, 1979	The repeal of the whole.
Act No. 74 of 1985	South African Police Special Account Act, 1985	The repeal of the whole.
Act No. 52 of 1989	Auditor-General Act, 1989	<p>The substitution in section 6 for the words and subparagraphs preceding the proviso to paragraph (a) of subsection (3) of the following words and subparagraphs:</p> <p>“The Auditor-General shall for the purposes of subsection (1) report on an account established by—</p> <p>[(i) The Foreign Affairs Special Account Act, 1967 (Act No. 38 of 1967);]</p> <p>(ii) the Security Services Special Account Act, 1969 (Act No. 81 of 1969);</p> <p>(iii) the Defence Special Account Act, 1974 (Act No. 6 of 1974);</p> <p>(iv) the Secret Services [Account] Act, 1978 (Act No. 56 of 1978)];</p> <p>(v) the Information Service of South Africa Special Account Act, 1979 (Act No. 108 of 1979); and</p> <p>(vi) the South African Police Special Account Act, 1985 (Act No. 74 of 1985),</p> <p>with due regard to the special nature of the accounts, and shall limit such report to the extent which the Minister of [Finance] State Expenditure, in consultation with the State President and the Auditor-General, may determine.”</p>