

REPUBLIC OF SOUTH AFRICA

NATIONAL PROSECUTING AUTHORITY AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 31037 of 8 May 2008)
(The English text is the official text of the Bill)*

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 23—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.

BILL

To amend the National Prosecuting Authority Act, 1998, so as to repeal the provisions relating to 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:—

Amendment of section 1 of Act 32 of 1998, as amended by section 2 of Act 61 of 2000

1. Section 1 of the National Prosecuting Authority Act, 1998 (hereafter referred to as the principal Act), is amended— 5
- (a) by the deletion of the definition of “*Directorate of Special Operations*”;
 - (b) by the substitution for the definition of “*head of an Investigating Directorate*” of the following definition:
 - “ ‘*head of an Investigating Directorate*’ means [**the Deputy National Director referred to in section 7(3)(a), or**] an *Investigating Director* 10 referred to in section 7(3)(b)[, **as the case may be**];”;
 - (c) by the substitution for the definition of “*Investigating Director*” of the following definition:
 - “ ‘*Investigating Director*’ [—
 - (a)] means a Director of Public Prosecutions appointed under section 15 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** 20
 - (b) **in Chapter 5, includes the head of the Directorate of Special Operations**];”;
 - (d) by the deletion of the definition of “*special investigator*”; and
 - (e) by the substitution for the definition of “*specified offence*” of the following definition: 25
 - “ ‘*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)] section 7(1A), and any reference to the commission of a specified offence has a corresponding meaning;”.

Amendment of section 5 of Act 32 of 1998, as amended by section 3 of Act 61 of 2000

2. Section 5 of the principal Act is amended by the deletion in subsection (2) of paragraph (dA).

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Substitution of section 7 of Act 32 of 1998, as substituted by section 4 of Act 61 of 2000

3. The following section is 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 two [additional] Investigating Directorates in the *Office of the National Director*, in respect of [matters not contemplated in subsection (1)(aa) or (bb)] such offences or criminal or unlawful activities as set out in the proclamation.

(2) Any proclamation issued in terms of this section—

- (a) shall be issued on the recommendation of the *Minister, the Cabinet member responsible for policing* and the *National Director*;
- (b) may at any time be amended or rescinded by the President on the recommendation of the *Minister, the Cabinet member responsible for policing* 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) any other] an Investigating Directorate, shall be an Investigating Director, and shall perform the powers, duties and functions of the Investigating Directorate concerned subject to the control and directions of the National Director.

(4) (a) 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—

(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;

(ii) prosecutors;

- [(iiA) in the case of the *Directorate of Special Operations, special investigators*];
- (iii) officers of any Department of State seconded to the service of the *Investigating Directorate* in terms of the laws governing the public service; 5
 - (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
 - (v) any other person whose services are obtained by the head of the *Investigating Directorate*, 10
- 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 *head of an Investigating Directorate* in writing to do so, shall from time to time, after consultation with the *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 head of that *Investigating Directorate* as contemplated in the said 15
subparagraph (iv) or (v), as the case may be; and 20
 - (ii) such a person or body shall, at the request of, and after consultation with, the head of the *Investigating Directorate* concerned, designate a person or persons mentioned in the list concerned so to assist the head of the *Investigating Directorate*.”. 25

Amendment of section 11 of Act 32 of 1998, as amended by section 5 of Act 61 of 2000

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

“(1) The President may, after consultation with the *Minister* and the *National Director*, appoint **[not more than four persons, as]** one or more Deputy National Directors of Public Prosecutions.”. 30

Amendment of section 13 of Act 32 of 1998, as amended by section 6 of Act 61 of 2000

5. Section 13 of the principal Act is amended by the deletion in subsection (1) of paragraph (aA). 35

Repeal of Chapter 3A of Act 32 of 1998

6. Chapter 3A of the principal Act is repealed.

Amendment of section 23 of Act 32 of 1998, as amended by section 9 of Act 61 of 2000 40

7. Section 23 of the principal Act is amended by the deletion of subsection (2).

Amendment of section 26 of Act 32 of 1998, as substituted by section 10 of Act 61 of 2000

8. Section 26 of the principal Act is amended by the substitution for subsection (2) of the following subsection: 45

“(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.”. 50

Repeal of sections 30 and 31 of Act 32 of 1998 50

9. Sections 30 and 31 of the principal Act are repealed.

Amendment of section 36 of Act 32 of 1998, as amended by section 15 of Act 61 of 2000

10. Section 36 of the principal Act is amended—

(a) by the substitution for subsection (3) of the following subsection:

“(3) **[Subject to subsection (3A), the]** The Director-General: Justice shall, subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999)— 5

(a) be charged with the responsibility of accounting for State monies received or paid out for or on account of the prosecuting authority; and 10

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

(b) by the deletion of subsection (3A); and

(c) by the substitution for subsection (4) of the following subsection:

“(4) The records referred to in subsection (3)(b) **[and (3A)(b)]** shall be audited by the Auditor-General.”. 15

Amendment of section 40 of Act 32 of 1998, as substituted by section 17 of Act 61 of 2000

11. Section 40 of the principal Act is amended by the deletion of subsection (2).

Amendment of section 43 of Act 32 of 1998

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12. Section 43 of the principal Act is amended by the deletion of subsection (7).

Repeal of section 43A of Act 32 of 1998

13. Section 43A of the principal Act is repealed.

Amendment of Preamble to Act 32 of 1998, as substituted by section 1 of Act 61 of 2000

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14. The Preamble to the principal Act is amended by the deletion of the ninth, tenth and eleventh paragraphs.

Short title and commencement

15. This Act is called the National Prosecuting Authority Amendment Act, 2008, and comes into operation on a date determined by the President by proclamation in the *Gazette*. 30

MEMORANDUM ON THE OBJECTS OF THE NATIONAL PROSECUTING AUTHORITY AMENDMENT BILL, 2008

1. BACKGROUND AND OBJECTS

1.1 The Bill emanates from the decision to relocate the investigative capacity of the Directorate of Special Operations (DSO) in the South African Police Service (SAPS). The principal aim of the Bill is to repeal the provisions of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998) (the Act), that deal with the establishment and functioning of the DSO. The relocation of the investigative capacity of the DSO will be dealt with in the South African Police Service Amendment Bill, 2008, which will be introduced in Parliament by the Minister of Safety and Security. This latter Bill makes provision for the establishment of a new “Directorate of Priority Crime Investigation” in the SAPS, and provides for the inclusion of the investigative component of the DSO in that Directorate.

1.2 Section 7 of the Act established the DSO as an Investigating Directorate in the Office of the National Director of Public Prosecutions, comprising a Deputy National Director of Public Prosecutions (as the head thereof), a number of prosecutors and a number of special investigators. In terms of section 30 of the Act, the special investigators have certain powers and functions which correspond broadly with those of police officials, including (for example) powers relating to the investigation of offences, entry and search of premises, seizure of articles, arrests and execution of warrants. Since this special investigator component constitutes the investigative capacity of the DSO, it is being transferred to the SAPS in terms of the relocation referred to in paragraph 1.1 above.

1.3 The provisions of the Bill are therefore largely aimed at removing the provisions relating to the DSO from the Act.

2. PROVISIONS OF BILL

2.1 Clause 1 seeks to amend the definitions of “Investigating Director” and “specified offence”, and seeks to delete the definitions of “Directorate of Special Operations” and “special investigator”.

2.2 Clauses 2, 3, 5, 7, 10, 11, 12 and 13 contain consequential amendments emanating from the proposed transfer of the DSO.

2.3 Clause 6 seeks to repeal Chapter 3A (sections 19A, 19B and 19C) of the Act. Chapter 3A deals with the appointment, security screening and conditions of service of special investigators.

2.4 Clause 10 seeks to repeal sections 30 and 31 of the Act. Those sections relate to the powers and functions of special investigators (section 30) and the Ministerial Coordinating Committee (section 31). It is envisaged that a similar coordinating mechanism would be provided for in the South African Police Service Amendment Bill, 2008, in respect of the “Directorate of Priority Crime Investigation”.

2.5 Clause 14 seeks to amend the Preamble to the Act, by deleting those paragraphs that were inserted when the Act was amended (in 2000) in order to provide for the establishment of the DSO.

2.6 The transitional arrangements in respect of the transfer of the special investigator component to the SAPS are contained in the South African Police Service Amendment Bill, 2008.

3. CONSULTATION

The National Prosecuting Authority and the South African Police Service were consulted in the process of preparing the draft legislation.

4. IMPLICATION FOR PROVINCES

None.

5. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

The special investigator component of the DSO will be transferred to the South African Police Service, in accordance with the South African Police Service Amendment Bill, 2008.

6. FINANCIAL IMPLICATIONS FOR STATE

The budget and assets of the DSO will be transferred to the SAPS.

7. PARLIAMENTARY PROCEDURE

7.1 The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that this Bill should be dealt with in terms of the procedure established by section 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

7.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.