

REPUBLIC OF SOUTH AFRICA

GENERAL INTELLIGENCE LAW AMENDMENT BILL

(As introduced in the National Assembly as a section 75 Bill: explanatory summary of Bill... published in Government Gazette No. 21084 of 14 April 2000) (The English text is the official text of the Bill and the Afrikaans text is the official translation)

(MINISTER FOR INTELLIGENCE)

[B 36-2000]

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GENERAL EXPLANATORY NOTE:

- [] Words in bold type insquare brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments.
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BILL

To amend the Intelligence Services Act, 1994, so as to provide for a retirement age for members; to regulate labour relations and strikes; to restrict former members of the National Intelligence Agency or South African Secret Service from using their skills to the detriment of the Agency or Service; to provide for the disposal of lawfully obtained material; and to delete certain obsolete references and provisions; to amend the National Strategic Intelligence Act, 1994, so as to further provide for the power of the Minister to make regulations; 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 38 of 1994 as amended by section 35 of Act 47 of 1997

1. Section 1 of the Intelligence Services Act, 1994 (hereinafter referred to as the 5 principal Act), is hereby amended by—

- (a) the deletion of the definition of “Deputy President”;
- (b) the substitution for the definition of “Minister” of the following definition:
“ ‘Minister’ means the Minister [designated by the President] as defined in section 1 of the National Strategic Intelligence Act, 1994 (Act 10 No. 39 of 1994);”;
- (c) the deletion of the definition of “misconduct”; and
- (d) the insertion after the definition of “Service” of the following definition:
“ ‘strike’ means a strike as defined in section 213 of the Labour Relations Act, 1995 (Act No. 66 of 1995);”.

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Amendment of section 3 of Act 38 of 1994

2. Section 3 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The Minister shall for the purpose of the Agency and the Service—

- (a) create Deputy Directors-General posts;
 - (b) establish chief directorates, directorates and divisions; and
 - (c) prescribe the functions and post structures:
- Provided that the establishment of Deputy Directors-General posts shall be effected in consultation with the President.”.

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Insertion of section 3A in Act 38 of 1994

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

“Appointment, promotion, discharge, reduction in rank and transfer of members

3A. (1) The Minister may, subject to the provisions of this Act, appoint 5
any person, with the exclusion of the Director-General, as a member, and
any ‘member may in accordance with the said provisions be promoted,
discharged, reduced in rank or grade or transferred: Provided that such
appointment, promotion, discharge, reduction in rank or transfer in respect
of a Deputy Director-General shall be effected in consultation with the 10
President.

(2) Any prescribed document purporting to have been signed by the
Minister and certifying that any person has been appointed as a member
shall be *prima facie* proof that such person has been so appointed.”.

Amendment of section 4 of Act 38 of 1994

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4. Section 4 of the principal Act is hereby amended—

(a) by the substitution for subsections (1) and (2) of the following subsections,
respectively:

“(1) The Director-General concerned shall, subject to the directions of
the **[President]** ~~Minister~~ and the provisions of this Act, exercise 20
command, superintendence and control of the Agency or the Service, as
the case may be.

(2) The Director-General may, subject to the directions of the
[President] ~~Minister~~ and the provisions of this Act, make such rules and
issue such directions as he or she may deem expedient for the efficient 25
command, superintendence and control of the Agency or Service, as the
case may be.”; and

(b) by the deletion of subsection (4).

Amendment of section 5 of Act 38 of 1994

5. Section 5 of the principal Act is hereby amended—

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

“(b) A direction referred to in paragraph (a) may be executed by a
member of the Agency or the Service, as the case may be, provided that
such member has been authorised thereto by another member of such 35
Agency or Service holding a post of at least **[chief]** ~~general~~ manager;”
and

(b) by the insertion after paragraph (b) of the following paragraph:

“(c) A member who executes a direction or assists in the execution
thereof shall not later than the expiry of the direction referred to in 40
paragraph (a) return an article, document or other material that was taken
into possession in terms of subparagraph (iv) of subsection (2) or cause
it to be returned to the premises in question unless the judge referred to
in subsection (2) is of the opinion that by returning the said article,
document or material the security of the Republic will be prejudiced, and 45
accordingly directs that it be disposed of otherwise.”.

Substitution of section 7 of Act 38 of 1994

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

“Retirement age for members

7. A member shall have the right to retire from the Agency or the Service, as the case may be, on the date when he or she attains the age of 60 years or, if such a date is after the first day of a month, on the first day of the following month.”.

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Amendment of section 8 of Act 38 of 1994

7. Section 8 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) Subject to **[section 3(1)(a), (b), (c), (d), (e) and (f),]** subsection (2), no person may be appointed as a member [before] **unless—**

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(a) information with respect to that person has been gathered in the prescribed manner in a security screening investigation by the Agency or the Service, as the case may be; and

(b) **[the Deputy President or]** the Minister after evaluating the **[collected]** gathered information, is reasonably of the opinion that such person may be appointed as a member without the possibility that such person might be a security risk or that he or she might act in any way prejudicial to security interests of the Republic.”; and

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(b) by the substitution in subsection (3) for paragraph (b) of the following paragraph:

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“(b) **[the Deputy President or]** the Minister obtains information regarding a person who became a member **[in terms of section 3(1)(a), (b), (c), (d), (e) or (f)]** which causes him or her to be reasonably of the opinion that that person could be a security risk or could possibly act in any matter prejudicial to security interests of the Republic.”.

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Amendment of section 9 of Act 381994

8. The following section is hereby substituted for section 9 of the principal Act:

“Discharge of members on account of long absence without leave

9.(1) Any member who absents himself or herself from his or her official duties without the permission of the Director-General concerned for a period exceeding 30 calendar days shall be deemed to have been discharged from the Agency or the Service, as the case may be, on account of misconduct with effect from the date immediately following upon the last day on which he or she was present at his or her place of duty: Provided that if—

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(a) any member absents himself or herself from his or her official duties without such permission and accepts other employment, he or she shall be deemed to have been so discharged even if he or she has not yet so absented himself or herself for a period not exceeding 30 calendar days;

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(b) a member deemed to have been so discharged, again reports for duty, the Director-General concerned may, notwithstanding anything to the contrary contained in any law but, subject to the approval of the Minister, reinstate him or her in his or her former post or appoint him or her to any other post or appointment in the Agency or the Service, as the case may be, on such conditions as the Director-General concerned may deem fit, and in that event the period of his or her absence from his or her official duties shall be deemed to have been absence on vacation leave without pay, or leave on such other conditions as the Director-General concerned may determine;

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(c) the Director-General refuses to reinstate the member, the latter may appeal to the Minister, stating the reasons why he or she should be reinstated.”.

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Amendment of section 12 of Act 38 of 1994

9. Section 12 of the principal Act is hereby amended by the substitution for item (aa) of subsection (1)(a)(ii) of the following item:

“(aa) upon such a transfer a member’s salary and salary scale shall not be reduced without his or her consent, except in **[accordance with the provisions of Chapter III] the case of misconduct or inefficiency;**”.

Substitution of section 13 of Act 38 of 1994

10. The following section is hereby substituted for section 13 of the principal Act:

“Delegation of powers

13. (1) The **[Deputy Minister or] Minister may in writing** on such conditions as he or she may deem fit delegate any power conferred upon him or her by this Act, excluding any power conferred upon him or her by section 3(2), 6(1), [8(3)(b)(i) and (ii)] 9, 10(2), 11(2), 12(1)(a)(ii) and (b), [15(9), 16, 17(4)] 19(3)(a) and (4), **19A(2), 21, 22A(2), 24(1), 25(2), 29, 30(2), (3) and (4) or 32(4), to the Director-General** or any other member of the Agency or the Service, as the case may be, and any such power exercised in terms of such a delegation shall be deemed to have been exercised by such **[Deputy President or] Minister**.

(2) **The Director-General may delegate any power conferred upon** him or her by or under this Act to any other member of the Agency or the Service, as the case may be, and any power exercised in terms of such a delegation shall be deemed to have been exercised by that Director-General.”.

Repeal of section 15 of Act 38 of 1944

11. Section 15 of the principal Act is hereby repealed.

Repeal of section 16 of Act 38 of 1994

12. Section 16 of the principal Act is hereby repealed.

Repeal of section 17 of Act 38

13. Section 17 of the principal Act is hereby repealed.

Insertion of section 19A in Act 38 of 1994

14. The following section is hereby inserted after section 19 of the principal Act:

“Labour Relations

19A. (1) No member of the Agency or the Service shall strike or induce or conspire with any other member of the Agency or Service to strike.

(2) **The Minister shall in the prescribed manner make provision for internal mechanisms with a view to fair labour practices and proper consultation on conditions of service within the Agency and the Service.**

(3) **A regulation made under this section with reference to members may not be published in the Gazette but shall be notified to members in such manner as the Minister may determine.”.**

Substitution of section 22 of Act 38 of 1994

15. The following section is hereby substituted for section 22 of the principal Act:

“Offences

22. (1) **Any person who—**
(a) not being a member **[who]—**

- (i) by words, conduct or demeanour pretends that he or she is such a member;
- (ii) persuades any member to omit to carry out his or her duty or to do any act in conflict with his or her duty; or
- (iii) is an accomplice to the commission of any act whereby any lawful order given to a member or any regulation may be evaded; 5
- (b) **[subpoenaed in terms of section 15 to appear as a witness at an enquiry who fails to attend at the time and place mentioned in the subpoena, or having attended, refuses to answer all questions lawfully put out to him or her]** fails to comply with a requirement in terms of section 19(3)(b); 10
- (c) **[subpoenaed in terms of section 15 to appear as a witness at an enquiry and at any such enquiry makes any false statement on oath knowing it to be false]** not being the person to whom a decoration or medal was awarded, wears it or, without the written permission of the Director-General concerned, makes use of any decoration or medal established or introduced under this Act, or of its bar, clasp or ribbon, or anything so closely resembling any such decoration, medal, bar, clasp or ribbon as to be calculated to deceive; 15
- (d) [who unlawfully and intentionally violates a provision of the regulations mentioned in the second proviso to section 16;] without the approval of the Minister, in connection with any activity carried on by him or her takes, assumes, uses or in any manner publishes any name, description, title or symbol indicating or conveying or purporting to indicate or is calculated or is likely to lead other persons to believe or infer that such activity is carried on or under or by virtue of this Act or under the patronage of the Agency or the Service, as the case may be, or is in any manner associated or connected with the Agency or the Service; 20
- (e) who enters upon or is on or in any premises in contravention of any prohibition or restriction under section 24, 25
- [(f) **who, not being the person to whom a decoration or medal was awarded, wears it or, without the written permission of the Director-General concerned, makes use of any decoration or medal established or introduced under this Act, or of its bar, clasp or ribbon, or anything so closely resembling any such decoration, medal, bar, clasp or ribbon as to be calculated to deceive;** 30
- (g) **who, without the approval of the Deputy President or the Minister, in connection with any activity carried on by him or her takes, assumes, uses or in any manner publishes any name, description, title or symbol indicating or conveying or purporting to indicate or convey or is calculated or is likely to lead other persons to believe or infer that such activity is carried on under or by virtue of the provisions of this Act or under the patronage of the Agency or the Service, as the case may be, or is in any manner associated or connected with the Agency or the Service;** 35
- shall be guilty of an offence. 40
- (2) Any person convicted of an offence under this Act shall be liable, in the case of a contravention of— 45
- (a) subsection (1)(a) **[or (b)]**, to a fine, or to imprisonment for a period not exceeding six months; 50
- (b) subsection (1) **[(c)] (b) or (c), to [the penalties prescribed by law for perjury] a fine, or to imprisonment for a period not exceeding one year;** 55
- (c) subsection (1)(d) **[(e) or (f)]**, to a fine, or to imprisonment for a period not exceeding **[one] two** years; 60
- (d) subsection (1) **[(g)] (e)**, to a fine, or to imprisonment for a period not exceeding **[two] 15** years; or
- (e) **[subsection 1(h)] section 22A**, to a fine or to imprisonment for a period not exceeding 15 years.”. 60

Insertion of section 22A in Act 38 of 1994

16. The following section is hereby inserted after section 22 of the principal Act:

“Restrictions on former members

22A. (1) Subject to subsection (2), no former member may, for a period
determined by the Minister from time to time— 5
(a) use in the Republic or elsewhere any skills acquired as a result of his
or her employment by the Agency or Service to the detriment of the
Agency or Service; or
(b) in any way communicate in the Republic or elsewhere with— 10
(i) another member or representative or associate of the Agency or
Service; or
(ii) any other person or institution that co-operates with the Agency
or Service in respect of matters which affect the security of the
Republic,
if such communication is likely to be detrimental to the security of the 15
Republic.
(2) The Minister shall, subject to subsection (1), and by notice in the
Gazette, prescribe how former members must conduct themselves without
harming the interests of the Agency or the Service, as the case may be, and
the security of the Republic.”. 20

Amendment of section 28 of Act 38 of 1994

17. Section 28 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The provisions of the [Police Act, 1958 (Act No. 7 of 1958),] South African
Police Service Act, 1995 (Act No. 68 of 1995), relating to the establishment or 25
function of a service or training in, the Police Reserve, shall not apply to any
member of the Agency or the Service.”.

Amendment of section 29 of Act 38 of 1994

18. Section 29 of the principal Act is hereby amended by—

- (a) the substitution for paragraph (f) of subsection (1) of the following paragraph: 30
“(f) [the definition of **offences** against duty and discipline and,
generally, the control and, discipline of the Agency and the
Service] all matters relating to misconduct and discipline within the
Agency or the Service;”;
- (b) the deletion of paragraphs (k), (l), (m), (n), (p), (q) and (r) of subsection (1); 35
- (c) the substitution for paragraph (i) of subsection(1) of the following paragraph:
“(i) [the charging of members with misconduct] procedures to be
followed in respect of cases of alleged or presumed medical
unfitness;”;
- (d) the substitution for paragraph (j) of subsection (1) of the following paragraph: 40
“(j) [appeals in terms of this Act] procedure to be followed in respect
of cases of alleged or presumed inefficiency;”;
- (e) the substitution of paragraph (u) of subsection (1) for the following paragraph:
“(u) [the regulation of labour relations and the creation of accompa-
nying structures] all matters relating to representivity and equity, 45
as far as is possible in accordance with the Employment Equity Act,
1998 (Act No. 55 of 1998).; and
- (f) the deletion of subsection (3).

Repeal of section 31 of Act 38 of 1994

19. Section 31 of the principal Act is hereby repealed. 50

Deletion of expression “the Deputy President or” in Act 38 of 1994

20. The principal Act is hereby amended by the deletion of the expression “the Deputy President or” wherever it occurs.

Amendment of section 1 of Act 39 of 1994

21. Section 1 of the National Strategic Intelligence Act, 1994, is hereby amended by the insertion after the definition of “Nicoc” of the following definition:

“ ‘prescribed’ means prescribed by regulation;”.

Amendment of section 4 of Act 39 of 1994

22. Section 4 of the National Strategic Intelligence Act, 1994 is hereby amended by the substitution in subsection (1) for paragraph (f) of the following paragraph: 10

“(f) the [head of the service of the South African Police Service under which its intelligence division falls] head of the intelligence division of the South African Police Service.”.

Amendment of section 6 of Act 39 of 1994

23. Section 6 of the National Strategic Intelligence Act 1994, is hereby amended— 15
(a) by the substitution for subsection (1) of the following subsection:

“(1) The Minister may, subject to the provisions of subsection (2), make such regulations as [are] to any matter which is necessary or expedient to be prescribed in order that the purpose of [effective administration of] this Act may be achieved.”.

(b) by the insertion after subsection (2) of the following subsection: 20

“(2A) A regulation made in terms of this section may not be published in the *Gazette* but shall be notified to persons to whom it applies in such manner as the Minister may determine.”.

Insertion of section 6A in Act 39 of 1994

24. The following section is hereby inserted after section 6 of the National Strategic Intelligence Act, 1994:

“Regulation of information security

6A. (1) The Minister may, subject to subsection (2), prescribe minimum standards for information security in order to protect sensitive information 30
under the control of the State ‘and statutory bodies.

(2) A regulation made in terms of subsection (1) shall be made in consultation with the Minister of Defence and the Minister of Safety and Security.

(3) Any regulation made under subsection (1) may provide that any person who contravenes a provision or fails to comply therewith shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding twelve months. 35

(4) A regulation made under this section may not be published in the *Gazette* but shall be notified to persons to whom it applies in such a manner as the Minister may determine.”.

Short title and commencement

25. This Act is the General Intelligence Law 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 GENERAL INTELLIGENCE LAW AMENDMENT BILL, 2000

The Intelligence Services Act, 1994 (Act No. 38 of 1994), establishes the National Intelligence Agency and the South African Secret Service.

The Intelligence Services are excluded from the application of labour legislation applicable to the Public Service and the private sector. It is therefore imperative to apply labour legislation to guide the Intelligence Services in the formulation of their own legislation and internal policies.

Accordingly, Intelligence legislation has to be amended to give effect to the changes brought about by labour legislation.

The Bill creates internal mechanisms with a view to fair labour practices and proper consultation on the conditions of service within the Intelligence Services.

The Bill regulates the activities of former members of the Intelligence Services, and empowers the Minister to make regulations, which will determine how former members must conduct themselves without harming the interests of the Intelligence Services and national security.

The National Strategic Intelligence Act, 1994 (Act No. 39 of 1994), is amended to give the Minister the power to make regulations which will deal with the protection of sensitive information belonging to the state, which is in the possession of all government departments and parastatals. This is in keeping with the Minimum Information Security Standards policy approved by Cabinet in 1997.

The objects of the Bill are—

- (i) to align the Intelligence Services legislation with the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), hereinafter referred to as “the Constitution”;
- (ii) to align the disciplinary code and the conditions of service of the Intelligence Services with the new labour law trends;
- (iii) to make provision for the regulation of strikes in the intelligence Services,
- (iv) to create consultation forums to deal with conditions of service and grievances; and
- (v) to regulate the activities of former members of the Intelligence Services.

OTHER DEPARTMENTS AND BODIES CONSULTED

**National Intelligence Agency;
South African Secret Service;
The Presidency;
Joint Standing Committee on Intelligence;
Department of Justice;
Cheadle Thompson and Haysom Attorneys, Notaries and Conveyancers; and
SAPS intelligence division.**

PARLIAMENTARY PROCEDURE

The State Law Advisors are of the opinion that the Bill must be dealt with in accordance with the procedure prescribed 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.