

REPUBLIC OF SOUTH AFRICA

**SOUTH AFRICAN POLICE
SERVICE AMENDMENT BILL**

(As introduced in the National Assembly)

(MINISTER FOR SAFETY AND SECURITY)

[B 39—98]

REPUBLIEK VAN SUID-AFRIKA

**WYSIGINGSWETSONTWERP OP
DIE SUID-AFRIKAANSE
POLISIEDIENS**

(Soos ingedien in die Nasionale Vergadering)

(MINISTER VIR VEILIGHEID EN SEKURITEIT)

[W 39—98]

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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 South African Police Service Act, 1995, so as to provide a framework for the establishment, functions and control of municipal police services; 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 68 of 1995, as amended by section 1 of Act 41 of 1997

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

- (a) the deletion of the definition of “metropolitan police service”;
- (b) the substitution for the definition of “municipal police service” of the following definition:
 - “ ‘municipal police service’ means a municipal police service established under [section 64(1)(a)] section 64A;”; and 10
- (c) the insertion after the definition of “national public order policing unit” of the following definition:
 - “ ‘national standards’ means national standards determined under section 64L(1);”. 15

Substitution of section 64 of Act 68 of 1995 15

2. The following section is hereby substituted for section 64 of the principal Act:

“Interpretation

64. This Chapter shall not be interpreted so as to derogate from the powers of the Minister of Transport or the member of the Executive Council responsible for transport and traffic matters, nor shall it be interpreted as conferring any power on any functionary to interfere with the exercise of their powers by the Minister of Transport or the member of the Executive Council responsible for transport and traffic matters.” 20

Insertion of sections 64A to 64Q in Act 68 of 1995

3. The following sections are hereby inserted in the principal Act after section 64:

“Establishment **of** municipal police service

64A. (1) Any municipality may in the prescribed manner apply to the member of the Executive Council for the establishment of a municipal police service for its area of jurisdiction. 5

(2) The member of the Executive Council may, subject to subsection (3) and such conditions as he or she may determine, approve an application for the establishment of a municipal police service if—

(a) the application complies with the prescribed requirements; 10
(b) the municipality has the resources at its disposal to provide for a municipal police service which complies with national standards on a 24-hour basis;

(c) traffic policing services by the municipality will not be prejudicially affected by the establishment of a municipal police service; 15

(d) proper provision has been made by the municipality to ensure civilian supervision of the municipal police service; and

(e) the establishment of the municipal police service will improve effective policing in that part of the province.

(3) The member of the Executive Council may approve the application only— 20

(a) after consultation with the National Commissioner;

(b) after consultation with the metropolitan council if the municipality falls in the area of jurisdiction of a metropolitan council; and

(c) with the approval of the member or members of the Executive Council responsible for local government, finance, transport and traffic matters, or where no such member or members have been appointed, the Premier or the member or members of the Executive Council to whom those responsibilities have been assigned by the Premier. 25

(4) If the application for the establishment of a municipal police service is approved by the member of the Executive Council, the member shall establish the municipal police service by notice in the *Gazette*. 30

(5) The establishment of a municipal police service shall not derogate from the functions of the Service or the powers and duties of a member in terms of any law. 35

(6) All expenditure incurred by or in connection with the establishment, maintenance and functioning of a municipal police service shall be for the account of the municipality in question.

Chief Executive Officer of municipality

64B. The chief executive officer of a municipality shall be responsible to the municipal council for the functioning of the municipal police service. 40

Executive head of municipal police service

64C. (1) Subject to section 64D, a municipal council shall appoint a member of the municipal police service as the executive head thereof. 45

(2) The executive head shall, subject to this Act, national standards and the directives of the chief executive officer of the municipality, exercise control over the municipal police service, and shall—

(a) be responsible for maintaining an impartial, accountable, transparent and efficient municipal police service; 50

(b) subject to the applicable laws, be responsible for the recruitment, appointment, promotion and transfer of members of the municipal police service;

(c) be responsible for the discipline of the municipal police service;

(d) either personally or through a member or members of the municipal police service designated by him or her for that purpose, represent the 55

- municipal police service on every local policing co-ordinating committee established in terms of section 64K within the area of jurisdiction of the municipality;
- (e) either personally or through a member or members of the municipal police service designated by him or her for that purpose, represent the municipal police service on every community police forum or subforum established in terms of section 19 within the area of jurisdiction of the municipality;
- (f) before the end of each financial year, develop a plan which sets out the priorities and objectives of the municipal police service for the following financial year: Provided that such plan in so far as it relates to the prevention of crime, shall be developed in co-operation with the Service; and
- (g) perform such duties as may from time to time be imposed upon him or her by the chief executive officer of the municipality.

First executive head of municipal police service

64D. When a municipal police service is established under section 64A, the municipal council in question shall appoint a fit and proper person as first executive head of the municipal police service.

Functions of municipal police service

- 64E.** The functions of a municipal police service are—
- (a) traffic policing, subject to any legislation relating to road traffic;
- (b) the policing of municipal by-laws and regulations which are the responsibility of the municipality in question; and
- (c) the prevention of crime.

Powers of member of municipal police service

- 64F.** (1) Subject to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), and with due regard to the fundamental rights of every person, a member of a municipal police service may exercise such powers and shall perform such duties as are by law conferred upon or assigned to a member of a municipal police service.
- (2) The Minister may from time to time prescribe that any power conferred upon a member of the Service by this Act or any other law, may be exercised by a member of a municipal police service: Provided that where the power includes the power to seize an article, the member of the municipal police service shall forthwith deliver the article to a member.
- (3) Every member of a municipal police service is a peace officer and may exercise the powers conferred upon a peace officer by law within the area of jurisdiction of the municipality in question: Provided that a member may exercise such powers outside the area of jurisdiction if it is done—
- (a) in pursuit of a person whom the member reasonably suspects of having committed an offence, and if the pursuit commenced within the area of jurisdiction of the municipality; or
- (b) in terms of an agreement between the municipal council and another municipal council in terms of section 10C(7) of the Local Government Transition Act, 1993 (Act No. 209 of 1993).

Proof of appointment

64G. A document in the prescribed form certifying that a person has been appointed as a member of the municipal police service, shall be *prima facie* proof of such appointment.

Procedure after arrest by member of municipal police service

64H. A person arrested with or without warrant by a member of a municipal police service shall as soon as possible be brought to a police station under the control of the Service or, in the case of an arrest by warrant, to any other place which is expressly mentioned in the warrant, to be dealt with in terms of section 50 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977). 5

Legal proceedings against municipal police service

641. (1) Any legal proceedings against a municipal police service or member of a municipal police service in respect of any alleged act performed under or in terms of this Act or any other law, or an alleged failure to do anything which should have been done in terms of this Act or any other law, shall be instituted against the municipal council in question. 10

(2) For the purposes of this section—
 (a) section 57 shall not be applicable; and 15
 (b) the Limitation of Legal Proceedings (Provincial and Local Authorities) Act, 1970 (Act No. 94 of 1970), shall be applicable.

Civilian supervision of municipal police services

64J. (1) A municipal council shall appoint a committee consisting of members of the council and such other persons as may be determined by the municipal council to ensure civilian supervision of the municipal police service. 2 0

(2) The committee contemplated in subsection (1) shall—
 (a) at the request of the municipal council in question, advise the council on matters relating to the municipal police service; 25
 (b) advise the chief executive officer with regard to the performance of his or her functions in respect of the municipal police service;
 (c) perform such functions as the member of the Executive Council, the municipal council or the chief executive officer may consider necessary or expedient to ensure civilian supervision of the municipal police service; 30
 (d) promote accountability and transparency in the municipal police service;
 (e) monitor the implementation of policy and directives issued by the chief executive officer and report to the municipal council or chief executive officer thereon; 35
 (f) perform such functions as may from time to time be assigned to the committee by the municipal council or the chief executive officer; a n d
 (g) evaluate the functioning of the municipal police service and report to the municipal council or chief executive officer thereon. 40

Policing co-ordinating committees

64K. (1) In order to co-ordinate policing in the province, the Provincial Commissioner shall establish at least one of the following committees: 45
 (a) local policing co-ordinating committees;
 (b) area policing co-ordinating committees;
 (c) provincial policing co-ordinating committees,

(2) The Provincial Commissioner, or a person designated by him or her for that purpose, shall act as chairperson at a meeting of a policing co-ordinating committee. 50

(3) Every policing co-ordinating committee shall determine its own procedure and cause minutes to be kept of its proceedings.

(4) The Minister may, with the concurrence of the Minister of Transport, make regulations to ensure the proper functioning of policing co-ordinating committees. 55

Powers and duties of National Commissioner in respect of municipal police service

64L. (1) The National Commissioner may determine national standards of policing for municipal police services and, in addition to the training prescribed for traffic officers in terms of the Road Traffic Act, 1989 (Act No. 29 of 1989), determine national standards with regard to the training of members of municipal police services. 5

(2) (a) A draft of the national standards contemplated in subsection (1) shall be published in the Gazette, together with a notice inviting all interested persons to submit comments regarding the proposed national standards in writing, within a period stated in the notice and which shall not be less than 60 days from the date of publication. 10

(b) If the National Commissioner decides to amend the national standards as a result of comments received, it shall not be necessary to publish the national standards again before promulgation. 15

(3) In order to ensure that national standards are maintained, the National Commissioner—

(a) may request and obtain information and documents under the control of the municipal police service or municipality in question;

(b) may enter any building or premises under the control of the municipal police service or municipality in question; and 20

(c) shall be entitled to all reasonable assistance by any member of the municipal police service and any employee of the municipality in question.

(4) If a municipal police service has failed to maintain national standards, the National Commissioner shall report the failure to the Minister. 25

Minister's power in respect of municipal police service

64M. (1) Upon receipt of a report contemplated in section 64L, the Minister may request the member of the Executive Council concerned to intervene under section 139 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), and shall provide the member with a copy of that report. 30

(2) (a) If the member of the Executive Council fails to intervene as requested, the Minister may intervene under section 100 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), in which case section 64N(4) to (7) shall apply with the necessary changes. 35

(b) For the purposes of this subsection, any reference in section 64N(4) to (7) to—

(a) the member of the Executive Council, shall be deemed to be a reference to the Minister; 40

(b) the member of the Executive Council responsible for local government, shall be deemed to be a reference to the Minister for Provincial Affairs and Constitutional Development;

(c) the member of the Executive Council responsible for transport and traffic matters, shall be deemed to be a reference to the Minister of Transport; 45

(d) the Premier, shall be deemed to be a reference to the President;

(e) an official of the provincial government, shall be deemed to be a reference to an official of the national government; and

(f) to section 139(2) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), shall be deemed to be a reference to section 100(2). 50

Member of Executive Council's power in respect of municipal police service

641? (1) In order to ensure that the conditions, if any, subject to which municipal police service was established, are complied with and the national standards are maintained, the member of the Executive Council or a member of the provincial secretariat designated in writing for that purpose by the member—

- (a) may request and obtain information and documents under the control of the municipal police service or municipality in question;
- (b) may enter any building or premises under the control of the municipal police service or municipality in question; and
- (c) shall be entitled to all reasonable assistance by any member of the municipal police service and any employee of the municipality in question.

(2) If the member of the Executive Council is satisfied that a municipal police service has failed to comply with the conditions or national standards, he or she may, by notice in writing, inform the municipal council in question of such failure and request the council to ensure that the municipal police service complies with the conditions or national standards within a period specified in the notice.

(3) The member of the Executive Council may, from time to time, upon the request of the municipal council extend the period contemplated in subsection (2).

(4) If the municipal council fails to comply with the notice contemplated in subsection (2) within the period specified in the notice or within the extended period contemplated in subsection (3), the member of the Executive Council may, after consultation with the member or members of the Executive Council responsible for local government, transport and traffic matters or where no such member or members have been appointed, the Premier or such member or members of the Executive Council to whom the responsibilities have been assigned by the Premier—

- (a) appoint an official of the provincial government as administrator of the municipal police service in question and charge such official with the responsibility to ensure that the municipal police service complies with the conditions and national standards; and
- (b) take such other steps as he or she may deem necessary to ensure compliance with the conditions and national standards.

(5) The administrator appointed under subsection (4)(a) may, subject to section 139(2) of the Constitution of the Republic of South Africa, 1996 (Act No, 108 of 1996), and subject to the directions of the member of the Executive Council, exercise all the powers and perform all the duties of the executive head of the municipal police service.

(6) If the member of the Executive Council is satisfied that the municipal police service complies with the conditions and national standards, he or she may terminate the appointment of the administrator.

(7) All expenditure incurred by or in connection with the intervention by the member of the Executive Council shall be for the account of the municipality in question.

Certain other sections of this Act to apply to municipal police service

640. The Minister may prescribe which other provisions of this Act shall apply to a municipal police service and the extent to which they shall apply.

Regulations in respect of municipal police service

64P. (1) The Minister may, subject to subsection (2), make regulations regarding the effective functioning of municipal police services.

(2) (a) A draft of the regulations contemplated in subsection (1) shall be published in the *Gazette*, together with a notice inviting all interested persons to submit *comments* regarding the proposed regulations in writing, within a period stated in the notice and which shall not be less than 60 days from the date of publication.

(b) If the Minister decides to amend the regulations as a result of comments received, it shall not be necessary to publish the regulations again before promulgation.

Saving and transitional arrangements in respect of existing municipal police service

64Q. (1) (a) When the South African Police Service Amendment Act 1998, takes effect, the Durban City Police, established under section 8301 the Durban Extended Powers Consolidated Ordinance, 1976 (Natal Ordinance No. 18 of 1976), shall be deemed to have been established under section 64A, and shall continue to so exist until 30 September 1999.

(b) If an application for its establishment under section 64A is lodged on or before 30 September 1999, the Durban City Police shall continue to so exist until the application is either approved or disapproved.

(c) A person who is a member of the Durban City Police when the South African Police Service Amendment Act, 1998, takes effect shall not be disqualified from membership for the period contemplated in this subsection by virtue of any disqualification under or in terms of this Act.

(2) (a) Every person who, on the date of the establishment of a municipal police service under section 64A for a particular municipality, is registered as a traffic officer in terms of any law and who is employed by that municipality may be appointed as a member of the municipal police service even though the person may not comply with the training requirements for appointment as a member of the municipal police service.

(b) A person appointed as contemplated in paragraph (a) shall cease to be a member of the municipal police service with effect from 1 October 2003, unless he or she has successfully completed a training course which complies with the requirements determined by the National Commissioner.

(3) (a) After the South African Police Service Amendment Act, 1998, has taken effect, no municipal service may include the word "police" in its name unless the service has been established as a municipal police service under section 64A.

(b) Before 1 January 1999, a municipal council shall change the name of any service other than a municipal police service which is in existence when the South African Police Service Amendment Act, 1998, takes effect and which includes the word "police" in its name: Provided that the National Commissioner may from time to time, upon good cause shown, extend that date for a total period of 24 months."

Amendment of section 75 of Act 68 of 1995

4, Section 75 of the principal Act is hereby amended by the deletion of subsections (5) and (6).

Repeal of law

5. Section 83 of the Durban Extended Powers Consolidated Ordinance, 1976 (Natal 50 Ordinance No. 19 of 1976), is hereby repealed.

Short title and commencement

6. This Act is called the South African Police Service Amendment Act, 1998, and takes effect on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN POLICE SERVICE AMENDMENT BILL, 1998

BACKGROUND

1. Section 221(3) of the interim Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), required that provision be made in the South African Police Service Act, 1995 (Act No. 68 of 1995) ("the Act"), for the establishment of municipal police services. Section 64(1)(b) of the Act was consequently enacted to provide guidelines for the establishment of municipal police services.

2. Chapter 11 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) ("the Constitution"), deals with Security Services and sections 205 to 208 deal specifically with the Police. In terms of section 206(7) of the Constitution national legislation must provide a framework for the establishment, functions and control of municipal police services. In view thereof, it is necessary to amend the Act to provide for such a framework.

3. A workshop for interested parties was conducted by the Department of Constitutional Development during November 1995. There a resolution was adopted that a National Task Group on Municipal Police Services be formed which would report on critical factors regarding municipal police services. It was further resolved that the National Task Group should consist of representatives of the Department of Justice, Department of Safety and Security, Department of Constitutional Development, the Local Authority Security Association, Organised Local Government Interim Committee, Institute of Traffic Officers, Institute of Town Clerks of Southern Africa and relevant NGOs. At a meeting in June 1996 between the Minister for Safety and Security ("the Minister"), the Minister of Transport and the Minister for Provincial Affairs and Constitutional Development it was decided that the Department for Safety and Security ("the Department") should be the convenor of the National Task Group.

4. The Department and the National Task Group drafted and published a draft Bill for comments in the *Government Gazette*. In the light of comments received, certain amendments were made to the draft Bill. The draft Bill is supported by the members of the National Task Group and other interested parties.

OBJECTS OF BILL

1. The main objective of the Bill is to amend the Act so as to provide a framework for the establishment and functioning of municipal police services.

2. The objects of the various clauses of the Bill are briefly as follows:

2.1 Clause 1

Clause 1 seeks to amend section 1 of the Act by the deletion of the definition of "metropolitan police service" and the substitution for the definition of "municipal police service" of a new definition. These amendments are necessary to comply with the provisions of the Constitution.

2.2 Clause 2

Clause 2 seeks to substitute section 64 of the Act. The new section 64 determines the manner in which the Chapter relating to municipal police services should be interpreted, especially in respect of the role of the Minister *vis-à-vis* the Minister of Transport and members of the Executive Council responsible for transport and traffic matters.

2.3 Clause 3

Clause 3 seeks to insert sections 64A to Q in the Act.

2.3.1 Proposed section 64A

Section 64A provides for the establishment of municipal police services and sets out the procedure to be followed by a municipality when applying for the establishment of a municipal police service and the requirements which have to be met. This section further determines that any expenditure by or in connection with the establishment, maintenance and operation of a municipal police service shall be for the account of the municipal council in question.

2.3.2 Proposed section 64B

It is proposed in section 64B that the chief executive officer of a municipality be responsible to the municipal council for the functioning of the municipal police service.

2.3.3 Proposed sections 64C and 64D

Sections 64C and 64D seek to make provision for the appointment and duties of the executive head of a municipal police service.

2.3.4 Proposed section 64E

Section 64E seeks to set out the functions of a municipal police service, namely traffic policing, the policing of municipal by-laws and regulations and the prevention of crime.

2.3.5 Proposed section 64F

In section 64F it is proposed that the Minister may prescribe that certain powers which are conferred upon a member of the South African Police Service by the Act or any other law, may be exercised by a member of a municipal police service. It is also proposed that a member of a municipal police service shall be a peace officer and may, within the area of jurisdiction of the municipality in question, exercise any power conferred upon a peace officer by any law.

2.3.6 Proposed section 64G

It is proposed in section 64G that a document be prescribed to serve as proof that a person has been appointed as a member of a municipal police service.

2.3.7 Proposed section 64H

Section 64H seeks to regulate the procedure after an arrest by a member of a municipal police service. It is proposed that a person who had been so arrested be taken to a police station under the control of the South African Police Service to be dealt with in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

2.3.8 Proposed section 64I

It is proposed in section 64I that legal proceedings in respect of any alleged act performed by any member of a municipal police service shall be instituted against the municipal council in question, and that section 57 of the Act shall not be applicable to such legal proceedings, but that the provisions of the Limitation of Legal Proceedings (Provincial and Local Authorities) Act, 1970 (Act No. 94 of 1970), shall be applicable.

2.3.9 Proposed section 64J

Section 64J seeks to ensure civilian supervision over a municipal police service.

2.3.10 Proposed section 64K

In section 64K provision is made for the establishment of policing co-ordinating committees on local, area and provincial level in order to co-ordinate all law enforcement activities in the area in question.

2.3.11 Proposed sections 64L and 64M

Section 64L sets out the powers of the National Commissioner. It is proposed that the National Commissioner may determine national standards, *inter alia* with regard to the training of members of municipal police services in addition to the training prescribed for traffic officers in terms of the National Road Traffic Act, 1989 (Act No. 29 of 1989). This section is aimed at providing a uniform framework by laying down a number of minimum national standards with regard to the establishment, functioning and control of municipal police services which will apply throughout the whole of the national territory of the Republic of South Africa. Section 64M sets out the powers of the Minister. It is proposed that the Minister may request the member of the Executive Council concerned to intervene under section 139 of the Constitution if a municipality does not maintain national standards or, if the member fails to so intervene, to intervene himself or herself under section 100 of the Constitution.

2.3.12 Proposed section 64N

Section 64N sets out the powers of the member of the Executive Council in respect of a municipal police service, and seeks to provide mechanisms that will ensure compliance with standards and enable a provincial government to perform its functions with regard to the supervision of local government.

2.3.13 Proposed section 64O

Section 64O seeks to empower the Minister to prescribe which provisions of the Act shall apply to municipal police services and the extent to which they shall apply.

2.3.14 Proposed section 64P

It is proposed in section 64P that the Minister may make regulations regarding the establishment and effective functioning of municipal police services. It also proposes that these regulations should be published in the *Government Gazette* for comment before implementation to ensure that interested parties have had an opportunity to comment on the regulations.

2.3.15 Proposed section 64Q

Section 64Q contains transitional arrangements and seeks to provide for the Durban City Police's continued existence until 1 October 1999, before which date it must apply to be established as a municipal police service under the Act. It is also proposed that traffic officers of a municipality may automatically become members of the municipal police service of that municipality. Lastly it is proposed that the word "police" may not be included in the name of any municipal service other than a municipal police service established under the Act.

2.4 Clause 4

Clause 4 seeks to amend section 75 of the Act by the deletion of subsections (5) and (6) thereof. The subsections contain transitional provisions regarding bodies which perform policing services and which are no longer needed in the light of the amendments proposed in clause 3.

2.5 Clause 5

It is proposed that section 83 of the Durban Extended Powers Consolidated Ordinance, 1976 (Natal Ordinance No. 19 of 1976), which provides for the establishment of Durban City Police, be repealed.

3. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Safety and Security are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76(1) or (2) of the Constitution since it falls within a functional area listed in Schedule 4 of the Constitution, namely "Police to the extent that the provisions of Chapter 11 of the Constitution confer upon the provincial legislatures legislative competence".

4. CONSULTATION

The following bodies were consulted:

- * Boksburg Transitional Council
- * Breërivier District Council
- * Cape Metropolitan Council
- * Centurion Town Council
- * Co-ordinating Traffic Committee
- * Department of Justice
- * Department of Transport
- * Department of Constitutional Development
- * Durban Metropolitan Council
- * Free State Provincial Administration: Local Government Management & Housing
- * Free State Provincial Administration: Department of Local Government Management
- * Gauteng Association of Local Authorities (GALA)—Public Safety Working Group
- * Gauteng Provincial Legislature
- * Greater Germiston Council
- * Institute of Town Clerks of Southern Africa
- * Institute of Traffic Officers of SA
- * Local Authority Security Association
- * Members of the Executive Council for Safety and Security
- * Newcastle Community Policing Forum
- * Organised Local Government Interim Committee
- * Potchefstroom City Council
- * Portfolio Committee on Safety and Security
- * Provincial Commissioner: Free State
- * Provincial Commissioner: Gauteng
- * Provincial Commissioner: Northern Cape
- * Select Committee for Security and Justice: National Council of Provinces
- * South African Local Government Association (SALGA)
- * SA Institute of Race Relations
- * Western Cape Local Authority Association.