



REPUBLIEK VAN SUID-AFRIKA

# STAATSKOERANT

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KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 1612.

13 Julie 1990

No. 1612.

13 July 1990

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. 110 van 1990: Polisiewysigingswet, 1990.

No. 110 of 1990: Police Amendment Act, 1990.

## POLICE AMENDMENT ACT, 1990

Act No. 110, 1990

## GENERAL EXPLANATORY NOTE:

- [**                    **]** Words in bold type in square brackets indicate omissions from existing enactments.
- \_\_\_\_\_ Words underlined with solid line indicate insertions in existing enactments.

# ACT

To amend the Police Act, 1958, so as to further regulate the accommodation of members of municipal police units in the South African Police; to regulate certain powers of search and seizure; to make further provision for the evaluation of the fitness of members of the said Police to remain therein; to further prohibit the misuse of uniforms of the said Police; and to further regulate exemption from tolls; to amend the Police Third Amendment Act, 1989, so as to provide for the validity of appointment in the said Police of members of municipal police units; and to provide for matters connected therewith.

*(English text signed by the State President.)*  
*(Assented to 28 June 1990.)*

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

Amendment of section 1 of Act 7 of 1958, as amended by section 1 of Act 53 of 1961, section 1 of Act 64 of 1964, section 1 of Act 74 of 1967, section 1 of Act 94 of 5 1972, section 1 of Act 34 of 1973, section 1 of Act 64 of 1979, section 1 of Act 68 of 1984, section 1 of Act 36 of 1989, section 1 of Act 75 of 1989 and section 1 of Act 76 of 1989

1. Section 1 of the Police Act, 1958 (hereinafter referred to as the principal Act), is hereby amended—
- 10 (a) by the substitution in subsection (1) for paragraph (b) of the definition of “member of the Force” of the following paragraph:  
 “(b) for the purpose of sections 4 (3), 9, 10, 11, 12, 14, 15, 17, 17B, 18, 20, 21, 22, 25, 26, 26A, 27, 27B, 28, 31, 32*bis*, 33 (excluding paragraphs **[(b)bis]** (eA) and (v) of subsection (1), and subsection (2) thereof), 34D and 34E, a member of a municipal police unit;”;
- 15 (b) by the insertion in subsection (1) of the following definition after the definition of “regulation”:  
 ““senior member” a member of a municipal police unit of or above the rank of inspector;”;
- 20 (c) by the substitution in subsection (1) for paragraph (b) of the definition of “the Force” of the following paragraph:  
 “(b) for the purposes of sections 12, 14, 17, 17B, 22, 24, 25, 26, 27B, 33 (excluding paragraphs **[(b)bis]** (eA) and (v) of subsection (1), and subsection (2) thereof), 34D and 34E, any municipal police unit;”;

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(d) by the addition to subsection (1) of the following definition:

“‘uniform’ means clothes prescribed by the Commissioner as a uniform for members of the Force, and published by him by notice in the Gazette.”

5 Amendment of section 4 of Act 7 of 1958, as amended by section 3 of Act 74 of 1967, section 2 of Act 68 of 1984, section 2 of Act 36 of 1989 and section 2 of Act 75 of 1989

2. Section 4 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:

10 “(2) (a) Any power vested in the Commissioner under this Act (excluding section 6 (4A) (cA)) may be delegated in writing by the Commissioner to any member of the Force or other person in the employment of the Force or the board or body established under this Act, who shall exercise that power subject to the directions of the Commissioner.”

15 Amendment of section 6 of Act 7 of 1958, as amended by section 4 of Act 64 of 1964, section 1 of Act 74 of 1965, section 3 of Act 34 of 1973, section 2 of Act 64 of 1979, section 1 of Act 50 of 1980, section 1 of Act 24 of 1983 and section 3 of Act 36 of 1989

3. Section 6 of the principal Act is hereby amended—

(a) by the substitution for paragraph (b) of subsection (4) of the following paragraph:

20 “(b) Whenever a woman is searched under paragraph (a) or section 6 (4A) (cA), the search shall be made by a woman only, with strict regard to decency, and if there is no woman who is a member of the Force, available for such search, the search may be made by any woman specially designated for the purpose by a member of the Force.”;

(b) by the insertion after paragraph (c) of subsection (4A) of the following paragraph:

25 “(cA) Notwithstanding anything to the contrary in any law contained, but without prejudice to the provisions of subsection (4) or the provisions of the common law, any member of the Force may, in the performance of the functions referred to in section 5 (d), if directed thereto by any commissioned officer acting with the written approval of the Commissioner in which the date, estimated duration, place and purpose of the proposed action are mentioned, if the Commissioner deems it necessary for the purposes of the performance of the functions of the South African Police, search without warrant any person or vehicle at any public place or any receptacle or object of whatever nature in, on or attached to the vehicle, and seize any article referred to in section 20 of the Criminal Procedure Act, 1977, found by him upon such person or in, on or attached to the vehicle or in the receptacle: Provided that a member of the Force executing a search shall, after such execution, upon demand of any person whose rights in respect of any search or article seized have been affected, hand to him a copy of the written approval of the Commissioner.”; and

45 (c) by the substitution for paragraph (d) of subsection (4A) of the following paragraph:

50 “(d) The provisions of the Criminal Procedure Act, 1977, with regard to the disposal of an article referred to in section 20 of that Act and seized under the provisions of that Act, shall *mutatis mutandis* apply in respect of an article seized under paragraph (a) or (cA).”

Amendment of section 9 of Act 7 of 1958, as amended by section 1 of Act 43 of 1958, section 4 of Act 53 of 1961, section 7 of Act 64 of 1964, section 3 of Act 94 of 1972, section 4 of Act 34 of 1973, section 1 of Act 90 of 1977, section 4 of Act 64 of 1979, section 3 of Act 68 of 1984 and section 2 of Act 8 of 1988

55 4. Section 9 of the principal Act is hereby amended—

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(a) by the substitution for subsections (2), (4) and (5) of the following subsections, respectively:

5 “(2) Notwithstanding anything contained in subsection (1), any member of the Force who is not a commissioned officer or a senior member may be tried for a contravention of any provision of this Act by any commissioned officer or a senior member under whose command he is serving or who has been generally or specially deputed thereto, and may on conviction by such officer or senior member be reprimanded or sentenced to a fine not exceeding R100, which shall be recovered by stoppages from the salary or wages of the member so convicted.

10 (4) Any commissioned officer or senior member who sentences any member of the Force under this section, shall forthwith transmit the record of the proceedings in the case to the divisional commissioner of the division in which that member is serving or any other commissioned officer of or above the rank of lieutenant-colonel designated by the Commissioner, and such divisional commissioner or other officer may quash the conviction or confirm or reduce the sentence.

15 (5) No conviction or sentence by a commissioned officer or a senior member shall have any force or effect unless it has been confirmed and, where a sentence is reduced, the amount of the fine to be paid by the person convicted has been determined by the divisional commissioner or other commissioned officer of or above the rank of lieutenant-colonel concerned.”;

(b) by the substitution in subsection (6) for the words preceding paragraph (a) of the following words:

25 “Any member of the Force who has been convicted and sentenced by a commissioned officer or a senior member under this section, may, subject to the provisions of the regulations, appeal to the Commissioner against the conviction and sentence, and thereupon the Commissioner may—”;

30 (c) by the substitution for subsections (8) and (9) of the following subsections, respectively:

“(8) The Commissioner may, if he thinks fit, restrict in respect of any officer or senior member the jurisdiction conferred by this section.

35 (9) Whenever any member of the Force has been convicted and sentenced by a commissioned officer or a senior member under this section, the Commissioner may, if he thinks fit, direct that the record of the proceedings in the case be submitted to him for review, and may thereupon act in respect of the conviction and sentence as provided by subsection (6).”; and

40 (d) by the substitution in subsection (10) for the proviso of the following proviso:

“Provided that the commissioned officer or senior member before whom the original trial took place under subsection (2) shall not conduct the trial so directed by the Commissioner.”.

45 Substitution of section 10 of Act 7 of 1958, as amended by section 8 of Act 64 of 1964, section 4 of Act 74 of 1967, section 5 of Act 64 of 1979, section 4 of Act 68 of 1984, section 30 of Act 97 of 1986, section 3 of Act 8 of 1988 and section 5 of Act 36 of 1989

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

“Procedure in case of alleged misconduct of commissioned officers or senior members

50 10. (1) The Commissioner or any other commissioned officer acting under his authority may, in the manner prescribed by regulation, charge any commissioned officer or senior member with misconduct.

(2) If a commissioned officer or senior member has been so charged with misconduct, the Minister or the Commissioner may appoint a board of enquiry to investigate the charge in question.

55 [(2A)] (3) A board of enquiry shall consist of one or more persons, who—

(a) in the case of a board appointed by the Minister, shall be commissioned officers of a rank equal to or higher than that of the officer or senior member charged or magistrates;

60 (b) in the case of a board appointed by the Commissioner, shall be such commissioned officers.

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5 **[(5)] (4)** Where an officer or a senior member is charged with misconduct which constitutes an offence in respect of which he has been convicted by a court of law, a certified copy of the record of the trial in question shall, on its mere production by any person, be admissible in evidence before the board of enquiry investigating the charge, and a certified copy of the charge and conviction in question shall, on its mere production by any person to such board, be *prima facie* proof of the commission of such offence by such officer or senior member.

10 **[(6)] (5)** After considering the evidence adduced at the enquiry and affording the commissioned officer or senior member charged or his legal adviser an opportunity of addressing the board of enquiry, the board shall find the said officer or senior member guilty or not guilty of the misconduct with which he has been charged and inform him of its finding: Provided that, if the officer or senior member charged admits that he is guilty of the misconduct in question, he may, if the Commissioner has prior to the commencement of the enquiry by the board granted permission thereto, be found guilty without any evidence having been adduced.

20 **[(6A)] (6)** A commissioned officer or senior member found guilty of misconduct may, within such period and in such manner as may be prescribed by regulation, appeal to the Minister against the finding of the board of enquiry and make representations in writing to the Minister in regard to any recommendation made by the board or the Commissioner under subsection **[(6B)] (7)**.

25 **[(6B)] (7)** After a board of enquiry has found a commissioned officer or senior member guilty of misconduct—

- (a) the board shall make recommendations to the Minister in regard to any punishment which may be imposed upon the commissioned officer or senior member under subsection **[(6C)] (8)**; and
- 30 (b) the Commissioner may make recommendations to the Minister in regard to any finding or recommendation of the board:

Provided that the commissioned officer or senior member concerned shall, for the purposes of his representations referred to in subsection **[(6A)] (6)**, be notified of the recommendations of the board and the Commissioner.

35 **[(6C)] (8)** The Minister may, after considering the record of the proceedings before the board of enquiry, the recommendations of the board and the Commissioner, the grounds of appeal of and any representations made by the commissioned officer or senior member charged, and the reply of the board and the Commissioner thereto—

- 40 (a) if he is of the opinion that for any reason there was a failure of justice, set aside the finding of the board; or
- (b) direct that no further action be taken in connection with the matter; or
- 45 (c) direct that the matter be re-submitted to him for disposal in terms of this section after the expiry of such period, not exceeding 12 months, as he may specify; or
- (d) direct that the commissioned officer or senior member concerned be cautioned or reprimanded; or
- 50 (e) direct that a fine not exceeding R300 be imposed upon the commissioned officer or senior member concerned, which may be recovered by way of deductions from the salary or allowances of the commissioned officer or senior member concerned; or
- 55 (f) direct that the salary of the commissioned officer or senior member concerned be reduced to a lower notch on the scale applicable to his rank; or
- (g) take any of the steps referred to in section 3 (1B) (b) or refer the matter to the State President, who may thereupon order the Minister under that section to take any of the said steps; or
- 60 (h) make such other order as to him seems just.

**[(7)] (9)** For the purposes of this section 'misconduct' means—

- (a) any contravention of this Act; or
- (b) the commission of any other offence."

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**Substitution of section 11 of Act 7 of 1958, as amended by section 6 of Act 64 of 1979 and section 6 of Act 68 of 1984**

6. The following section is hereby substituted for section 11 of the principal Act:

“Witnesses before commissioned officers or senior members or boards of enquiry

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11. (1) (a) For the purposes of a trial by a commissioned officer or a senior member referred to in section 9 (2) or an enquiry by a board of enquiry appointed in terms of this Act, the officer or senior member or board concerned may—

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(i) in the manner prescribed by regulation subpoena any person to appear as a witness at the time and place specified in the subpoena before the officer or senior member or board concerned in order to answer questions or to produce a document or thing under his control; and

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(ii) call any person present at the trial or enquiry as a witness and administer an oath or affirmation to him or admonish him to tell the truth.

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(b) At such trial or enquiry the provisions of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), relating to witnesses and evidence which are applicable in connection with criminal proceedings in a magistrate's court, except paragraph (a) of the proviso to section 217 (1), shall *mutatis mutandis* apply.

(c) A witness at such trial or enquiry who—

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(i) having been duly subpoenaed under paragraph (a) (i), fails to appear at the time and place specified in the subpoena or fails to remain in attendance at the trial or enquiry concerned until he has been lawfully excused from further attendance;

(ii) refuses to take an oath or to make an affirmation administered to him under paragraph (a) (ii);

30

(iii) refuses or fails to answer satisfactorily all questions which have lawfully been put to him; or

(iv) refuses or fails to produce a document or thing which he has been lawfully required to produce,

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shall, unless he proves sufficient cause for that failure or refusal, be guilty of an offence and liable on conviction to a fine not exceeding R100 or imprisonment for a period not exceeding three months.

(2) Any such witness who—

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(a) at any such enquiry or trial, having taken an oath, having made an affirmation or having been admonished as contemplated in subsection (1) (a) (ii), makes any false statement knowing it to be false, shall be guilty of an offence and liable on conviction to the penalties which may be imposed under the law for the crime of perjury; or

45

(b) does anything in relation to any such enquiry or trial which if done in relation to a court of law would have constituted contempt of court, shall be guilty of an offence and liable on conviction to the penalties which may be imposed under the law for the offence of contempt of court.”

**Amendment of section 17 of Act 7 of 1958, as amended by section 6 of Act 53 of 1961, section 10 of Act 64 of 1964, section 8 of Act 64 of 1979 and section 4 of Act 8 of 1988**

7. Section 17 of the principal Act is hereby amended by the substitution in subsection (1A) for paragraph (b) of the following paragraph:

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“(b) within a period of ~~[12]~~ 24 months, exclusive of any period of training, after the member's enrolment as a member of the Force, if it appears to the Commissioner that, on account of unfitness for his duties or incapacity to carry them out efficiently or on account of any conduct which is prejudicial to the good order, efficient administration, control or discipline of the Force, the member is unfit to remain in the Force.”

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Substitution of section 26 of Act 7 of 1958, as amended by section 7 of Act 53 of 1961, section 16 of Act 64 of 1964, section 6 of Act 90 of 1977 and section 13 of Act 36 of 1989

8. The following section is hereby substituted for section 26 of the principal Act:

**“Wearing of uniforms, badges or buttons of the Force**

- 5           26. Any person who wears any uniform or distinctive badge or button  
of the Force or wears anything [so closely resembling any such uniform,  
badge or button as to be calculated to deceive] materially resembling any  
such uniform, badge or button or wears anything with the intention that  
10           it should be regarded as such uniform, badge or button, shall, unless—  
(a) he is a member of the Force entitled by reason of his appointment,  
rank or designation to wear such uniform, badge or button; or  
(b) he has been granted permission by the Commissioner [or any other  
commissioned officer of or above the rank of Lieutenant-Colonel  
authorized thereto by the Commissioner] to wear such uniform,  
15           badge or button,  
be guilty of an offence.”.

Amendment of section 28 of Act 7 of 1958, as amended by section 18 of Act 64 of 1964 and section 9 of Act 90 of 1977

9. Section 28 of the principal Act is hereby amended—

- 20           (a) by the substitution for subsection (1) of the following subsection:  
          “(1) Subject to the provisions of subsection 3 any member of the Force  
who in exercise of his powers or the performance of his duties or functions  
finds it necessary to enter, pass through or go over any wharf, landing  
25           place, ferry, bridge, toll-bar, gate or door at or in respect of which any toll,  
fee or due may be lawfully demanded, shall be exempted from the payment  
of such toll, fee or due in respect of himself, every person under his arrest  
and any animal, means of transport or article of equipment which he may  
require in the exercise of such powers or the performance of such duties or  
30           functions: Provided that if such member is not in uniform, he shall, upon a  
request by any person who may demand such toll, fee or due, disclose his  
identity by producing to such person his certificate of appointment referred  
to in sub-section (3) of section four.”; and  
(b) by the addition of the following subsection:  
          “(3) The Commissioner may, if, with regard to the nature of the powers  
35           or the exercise of duties or functions of a member of the Force the  
Commissioner deems it necessary, order that the provisions of subsection  
(1) are not applicable to such member, in which event toll money, moneys  
or fees as provided for in subsection (1), shall be payable.”.

Amendment of section 4 of Act 76 of 1989

40           10. Section 4 of the Police Third Amendment Act, 1989, is hereby amended by the  
substitution in subsection (4) for the words preceding the proviso of the following  
words:

- “Subject to the provisions of this section a person who immediately prior to the  
date of commencement of this Act is, by virtue of an appointment under section  
45           34 of the said Black Local Authorities Act, 1982, in the employment of a local  
authority as defined in that Act, or purports to have been so appointed, shall,  
with recognition of his period of service by virtue of such appointment, be  
deemed to be appointed under section 17D of the principal Act, as inserted by  
section 2 of this Act, in the South African Police to serve as a member of the  
50           municipal police unit established for the area of that local authority, on such  
conditions of service as may under the principal Act be prescribed for members  
of municipal police units, and at such salary, wage or allowances as may be so  
determined for those members.”.

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**Short title and commencement**

- 11. (1)** This Act shall be called the Police Amendment Act, 1990, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.  
**(2)** Different dates may be so fixed in respect of different provisions of this Act.