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GOVERNMENT GAZETTE

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DEPARTMENT OF THE PRIME MINISTER

DEPARTEMENT VAN DIE EERSTE MINISTER

No. 1270.

13 June 1979.

No. 1270.

13 Junie 1979.

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

No. 64 of 1979: Police Amendment Act, 1979.

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

No. 64 van 1979: Polisiewysigingswet, 1979.

Act No. 64, 1979

POLICE AMENDMENT ACT, 1979.

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 functions of the South African Police; to make new provision in connection with contraventions of the provisions of the said Act and the procedure in case of alleged misconduct of commissioned officers; to repeal the provisions of the said Act relating to places for imprisonment of certain offenders; to authorize the Commissioner of the South African Police to dismiss certain members of the said Police in certain circumstances; to prohibit the publication of certain statements; to further regulate the appointment of special constables; to make new provision in respect of the Police Reserve, and the remuneration of the members of the said Police; and to effect certain textual changes; and to provide for matters connected therewith.

*(Afrikaans text signed by the Acting State President.)
(Assented to 6 June 1979.)*

BE IT ENACTED by the State President, the Senate and the House of Assembly 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 1972 and section 1 of Act 34 of 1973.

1. Section 1 of the Police Act, 1958 (hereinafter referred to as the principal Act), is hereby amended by the substitution for the definition of "member of the Force" of the following definition: 5
 "member of the Force" means any commissioned officer, warrant-officer, non-commissioned officer or constable serving in the South African Police in accordance with this Act and includes, except for the purposes of any 10 provision of this Act in respect of which the Commissioner may subject to the directions of the Minister otherwise prescribe, any member of the Police Reserve or the Reserve Police Force while **[employed]** serving in the Force and any temporary member while **[so]** 15 employed in the Force;".

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 and section 3 of Act 34 of 1973.

2. Section 6 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (4) of the following paragraph:

"(a) Notwithstanding anything to the contrary in any 20 law contained, any member of the Force may, in the performance of the functions referred to in section 5, search without warrant any person, premises, other place, vehicle, vessel or aircraft, or any receptacle of whatever nature, at any place in 25 the Republic within a distance of **[one mile]** ten kilometres of any border between the Republic and any foreign State or territory and seize anything found by him upon such person or upon or at or in such premises, other place, vehicle, vessel, aircraft 30 or receptacle."

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Amendment of section 7 of Act 7 of 1958, as amended by section 5 of Act 64 of 1964.

3. Section 7 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The State President may in the event of war or other emergency, employ the Force or any part thereof to assist in the defence of the Republic, whether within or outside the Republic, [but in South Africa] and may place the Force or any part thereof, while so employed, under the orders and directions of such person as the State President may for that purpose appoint.”

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 and section 1 of Act 90 of 1977.

4. Section 9 of the principal Act is hereby amended— 10

(a) by the substitution for subsection (6) of the following subsection:

“(6) Any member of the Force who has been convicted and sentenced by a commissioned officer 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—

(a) confirm the conviction and sentence; or

(b) make such finding or impose such sentence as, in his opinion, should have been made or imposed at the trial of such member; or

(c) allow the appeal if he is of opinion that the conviction should be set aside on the ground of a wrong decision on any question of law or that on any ground there was a failure of justice; or

(d) make such other order as justice may require.”;

(b) by the substitution for subsection (9) of the following subsection:

“(9) Whenever any member of the Force has been convicted and sentenced by a commissioned officer 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 [confirm the sentence or make such finding or impose such sentence which, in his opinion, should have been made or imposed at the trial of such member] act in respect of the conviction and sentence as provided by subsection (6).”; and

(c) by the addition of the following subsection: 40

“(10) Whenever the Commissioner sets aside a conviction and sentence under subsection (6) or (9) on the ground that there has been any technical irregularity or defect in the procedure, proceedings under subsection (2) in respect of the same offence to which the conviction and sentence referred shall, if the Commissioner so directs, again be instituted either on the original charge, suitably amended where necessary, or upon any other charge, as if the member of the Force concerned had not previously been tried and convicted under subsection (2): Provided that the commissioned officer before whom the original trial took place under subsection (2) shall not conduct the trial so directed by the Commissioner.”

Amendment of section 10 of Act 7 of 1958, as amended by section 8 of Act 64 of 1964 and section 4 of Act 74 of 1967.

5. Section 10 of the principal Act is hereby amended— 55

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

“(4) At the investigation of any charge under this section, the provisions of the law relating to evidence and witnesses as applicable in connection with criminal proceedings in a magistrate's court, except [the first proviso to subsection (1) of section two hundred and forty-four of the Criminal Procedure Act, 1955 (Act

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No. 56 of 1955] paragraph (a) of the proviso to section 217 (1) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall apply.”;

(b) by the substitution for the proviso to subsection (6) of the following proviso: 5

“Provided that if the officer charged admits, pursuant to a request under subsection (1) or to the board, that he is guilty of the misconduct in question, he may, if the Commissioner approves, be found guilty without any evidence having been adduced.”; and 10

(c) by the substitution for subsection (6C) of the following subsection:

“(6C) The Minister may, after considering the record of the proceedings before the board of enquiry, the recommendations of the board and the Commissioner 15 and the grounds of appeal of and any representations made by the officer charged—

(a) set aside the finding of the board; or

[(a)] (b) direct that no further action be taken in the matter; or 20

[(b)] (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

[(c)] (d) direct that the officer concerned be cautioned or 25 reprimanded; or

[(d)] (e) impose a fine not exceeding R100 which may be recovered by way of stoppages from the salary or allowances of the officer concerned; or

[(e)] (f) direct that the salary of the officer concerned be 30 reduced to a lower notch on the scale applicable to his rank; or

[(f)] (g) direct that the matter be referred to the State President, who may thereupon take any steps referred to in section 3; or 35

(h) make such other order as to him seems just.”.

Amendment of section 11 of Act 7 of 1958.

6. Section 11 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Any such witness who—

(a) at any such enquiry or trial makes on oath any false 40 statement knowing it to be false, shall be guilty of an offence and liable on conviction to the penalties prescribed by law for the crime of perjury; or

(b) does anything in relation to any such enquiry or trial which if done in relation to a court of law would have 45 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.”.

Repeal of section 13 of Act 7 of 1958.

7. Section 13 of the principal Act is hereby repealed. 50

Amendment of section 17 of Act 7 of 1958, as amended by section 6 of Act 53 of 1961 and section 10 of Act 64 of 1964.

8. Section 17 of the principal Act is hereby amended—

(a) by the insertion of the following subsection after subsection (1):

“(1A) Notwithstanding the provisions of subsection 55 (1), the Commissioner may discharge any such member from the Force in the absence of any such enquiry—

(a) if the member undergoes imprisonment on account of a sentence of imprisonment without the option of a fine; or

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- (b) within a period of 12 months 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, the member is unfit to remain in the Force." ; and
- (b) by the substitution for subsection (2) of the following subsection:
- "(2) Any **[such]** member mentioned in subsection (1) or (1A) may in the manner prescribed by the regulations appeal to the Minister against an order discharging or dismissing him or reducing him in rank, and in such event the Minister may confirm, alter or set aside such order or make such other order as to him seems just."

Insertion of section 27B in Act 7 of 1958.

9. The following section is hereby inserted in the principal Act after section 27A:

27B. (1) Any person who publishes any untrue matter in relation to any action by the Force or any part of the Force, or any member of the Force in relation to the performance of his functions as such a member, without having reasonable grounds (the onus of proof of which shall rest on such person) for believing that that statement is true, shall be guilty of an offence and on conviction liable to a fine not exceeding R10 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(2) No prosecution shall be instituted in respect of an offence referred to in subsection (1) except upon the written authority of the attorney-general concerned."

Amendment of section 34 of Act 7 of 1958, as amended by section 9 of Act 53 of 1961, section 20 of Act 64 of 1964 and section 6 of Act 74 of 1967.

10. Section 34 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Whenever there are not in any locality sufficient ordinary members of the Force available to perform police duties or any particular police duty therein, or to convey any person in lawful custody from such locality to any other place, **[the Minister or, if authorized thereto by the Minister either generally or in any particular case]** any commissioned officer, magistrate, additional magistrate, assistant magistrate, Commissioner, Additional Commissioner or Assistant Commissioner in that locality may appoint as temporary members to act as such, so many fit and proper persons as may be necessary for the performance of any such duty as aforesaid."

Amendment of section 34A of Act 7 of 1958, as inserted by section 21 of Act 64 of 1964, substituted by section 1 of Act 15 of 1975 and amended by section 1 of Act 34 of 1976 and section 10 of Act 90 of 1977.

11. Section 34A of the principal Act is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection:
- "(2) (a) Every member of the Police Reserve referred to in subsection (1) **[(a) or] (b) or (bA)** shall in writing notify an officer designated by the Commissioner, of his name and residential address within three months after he has become a member.
- (b) Every member of the Police Reserve shall in writing notify the said officer of any change of his residential address within 14 days of such change.
- (c) In any prosecution of any **[such]** member of the Police Reserve for a contravention of any provision of paragraph (a) or (b), the member concerned shall be deemed not to have notified the said officer of his name and residential address or of any change of his residential address, unless **[he—**
- (i) produces an acknowledgement by the said officer of his notice of his name and address or of any change of his address, as circumstances may require; or

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- (ii) adduces other] proof to the satisfaction of the court is adduced that [he has in fact notified the said officer of his name and address or of any change of his address, as circumstances may require] the member concerned did in fact comply with such provision or took all reasonable steps to comply therewith.”;
- (b) by the substitution for subsection (3) of the following subsection: 10
 “(3) The Minister or any commissioned officer acting under his authority may, from time to time, by notice in writing, sent by post or delivered, order any member of the Police Reserve, other than a member who has attained the age of 65 years, to report for training or service to the officer in charge of such police station or institution as may be specified in such notice, and at such time and for such period as may be so specified: Provided that the Minister or any such commissioned officer may exempt any such member from any obligation imposed upon him in terms of this section or may [notwithstanding the provisions of section 17, discharge or dismiss any such member from the Force] grant him an extension of time to comply therewith.”;
- (c) by the insertion of the following subsection after subsection (3): 25
 “(3A) The Minister or any commissioned officer acting under his authority may, notwithstanding the provisions of section 17, discharge or dismiss any member of the Police Reserve from that reserve.”;
- (d) by the substitution for subsection (4) of the following subsection: 30
 “(4) No member of the Police Reserve referred to in subsection (1) (a), [or] (b) or (bA) shall be compelled to serve in the Force in a rank inferior to the rank in which he served in the Force at the termination of his permanent service.”;
- (e) by the substitution for subsection (5) of the following subsection: 40
 “(5) The period referred to in subsection (3) shall, subject to the provisions of [subsections] subsection (11), [and (12)] not exceed [thirty] 90 days per year, and in the aggregate not 150 days in the case of any person who becomes a member of the Police Reserve before 1 July 1979, or 180 days in the case of any person who becomes a member of the Police Reserve on or after 1 July 1979: Provided that where any member of the Police Reserve has on or after 1 July 1979 rendered more than two years continuous service in a permanent capacity in the Force, his obligation so to serve shall be reduced by 30 days in respect of every completed year of such continuous service.”;
- (f) by the substitution for subsection (6) of the following subsection: 55
 “(6) The provisions of subsection (3) shall not apply—
 (a) to a member of the Police Reserve referred to in subsection (1) (a), [or] (b) or (bA) after the expiration of a period of five years as from the date on which he terminated his service in a permanent capacity in the Force or the date on which he was discharged or dismissed from the Force or was retired on pension from such service; or
 (b) to a member of the Police Reserve referred to in subsection (1) (c) after the expiration of the periods or period determined by subsection (11) [or (12)] or if he was allotted to the Force for training and 65

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service before 1 July 1977 and served in the Force for a single period of 24 months.”;

(g) by the substitution for subsection (11) of the following subsection:

“(11) Subject to the provisions of **[subsections]** 5
subsection 7, **[and (12)]** the continuous service which
any person shall be liable to render in the Force in terms
of subsection (10), shall—

(a) in the case of any person allotted to the Force for training and service before 1 July 1977, be 10
completed in not more than five periods and shall not exceed **[(a)]** 12 months during the first period of service and **[(b)]** 30 days during every later period of service; and

(b) in the case of any person allotted to the Force for training and service on or after 1 July 1977, be 15
completed in not more than five periods and shall not exceed 24 months during the first period of service and 90 days during every later period of service and in the aggregate 180 days during such 20
later periods of service.”;

(h) by the deletion of subsection (12); and

(i) by the addition of the following subsection:

“(14) The provisions of the Moratorium Act, 1963
(Act No. 25 of 1963); shall *mutatis mutandis* apply also 25
with reference to any member of the Police Reserve mentioned in subsection (1) (a), (b) or (bA) who renders continuous service in the Force as such, as if such continuous service is the continuous service which is rendered in terms of subsection (10) by a member of the 30
Police Reserve mentioned in subsection (1) (c).”.

Amendment of section 34D of Act 7 of 1958, as inserted by section 8 of Act 94 of 1972.

12. Section 34D of the principal Act is hereby amended by the insertion of the following subsection after subsection (1):

“(1A) Notwithstanding the provisions of subsection (1) and of any other law, the Commissioner may, after 35
consultation with and on the recommendation of the Public Service Commission and with the approval of the Treasury, pay to any member of the Force a higher salary, wage or allowance than the salary, wage or allowance so payable to 40
him.”.

Short title.

13. This Act shall be called the Police Amendment Act, 1979.