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THE PRESIDENCY

No. 874 07 August 2020

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

Act No. 6 of 2020: Defence Amendment Act, 2020

IHHOVISI LIKAMONGAMELI

No. 874 07 August 2020

Ngalokhu kwaziswa ukuthi uMongameli usewuvumile loMthetho nosewuzoshicilelwa umphakathi:—

Ino. 6 ka 2020: uMthetho wezokuVikela, ka-2020

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(English text signed by the President)
(Assented to 5 August 2020)

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate deletions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

ACT

To amend the Defence Act, 2002, so as to include the Chief of Staff in the Military Command of the Defence Force; to clarify the process regarding the implementation by the Chief of the Defence Force of the delegation of powers and assignment of duties to members by the Secretary for Defence as head and accounting officer of the Department; to provide for the employment of the Defence Force outside the Republic; to simplify matters regarding identification cards issued to military police officials; to make a technical correction to the reference to the Armaments Corporation of South Africa, Limited in section 18; to provide for the security vetting of contractors and service providers of the Department; to regulate the minutes of meetings of the Council of Defence; to clarify that a person does not need the consent of an employer in order to enrol as, or to remain, a member of the Reserve Force; to regulate anew the termination of service of members of the Regular Force; to amend the requirements for legal representation of members; to regulate the display of military decorations, medals and insignia; to regulate the use of military uniforms, distinctive marks and crests; to amend certain powers of the Minister to make regulations; to provide for the prohibition of access to military property or areas; and to provide for matters incidental thereto.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 4A of Act 42 of 2002, as inserted by section 2 of Act 22 of 2010

1. Section 4A of the Defence Act, 2002 (Act No. 42 of 2002) (hereinafter referred to as the principal Act), is hereby amended by the addition of the following paragraph: 5
 “(j) the Chief of Staff.”.

Amendment of section 8 of Act 42 of 2002

2. Section 8 of the principal Act is hereby amended by the substitution for paragraph (e) of the following paragraph: 10
 “(e) must provide the Chief of the Defence Force with **[comprehensive instructions requiring]** specific guidelines in order to enable the Chief of the Defence Force to issue orders and directives and to give commands to any specified member regarding the exercise of any power delegated or the performance of any duty assigned to that member by the Secretary for Defence as head and accounting officer of the Department **[of Defence]**.”. 15

(English text signed by the President)
(Assented to 5 August 2020)

INCAZELO EFINGQIWE:

[] Amagama akubakaki abayisikwele amele okukhishiwe emthethweni osebenzayo.

Amagama adwetshelwe ngomugqa amele okufakiwe emthethweni osebenzayo.

UMTHETHO

Ukuchibiyela uMthetho wokuVikela, ka-2002, ukwengeza uMphathi oMkhulu wabaSebenzi eMbuthweni wezokuVikela; ukucacisa uhlelo olumaqondana nosungulwa uMphathi oMkhulu woMbutho wezokuVikela kokuthunyelwa kwamandla kanye nokwaba imisebenzi emalangeneni unobhala woMbutho njengenhloko kanye nesikhulu sezezimali eMnyangweni; ukuhlinzekela ukuqashela uMbutho wezokuVikela ngaphandle kweRiphabhulikhi; Ukwenza lula izindaba ezimayelana nokubona akhishelwa izikhulu ezingamaphoyisa ombutho ezokuvikela; Ukwenza ukulungiswa ngokobuchepheshe Emihlobisweni Yenkampani yaseNingizimu Afrika, Okunqunyelwe isigaba se-18 kuphela; ukuhlinzekela ukubhekiswa kosonkontileka kanye nabahlinzeki bamasevisi oMnyango, ukulawula amaminithi omhlangano oMkhandlu wezokuVikela; ukucacisa ukuthi Umuntu akadingi invume yomqashi ukuthi abhalise, noma ahlale, abe yilunga loMbutho oGciniwe; ukulawula ukuqedwa komsebenzi wamalunga oMbutho oweJwayelekile; ukuchibiyela izimfuneko zokumeleleka kwamalunga; ukuvezwa kwemihlobiso yombutho wezempi, izindondo kanye namabheji; ukulawula ukusetshenziswa komfaniswano wombutho wezempi, omaka abahlukile kanye namakhresti; ukuchibiyela amandla athile kaNgqongqoshe okwenza imithethozimiso; ukuhlinzeka izindaba eziyizigameko.

UZOMISWA yiPhalamende leRiphabhulikhi yaseNingizimu Afrika, ngendlela elandelalayo:—

Ukuchibiyelwa kwesigaba sesi-4A soMthetho wama-42 ka-2002 njengokuba sifakwe yesigaba sesi-2 soMthetho wama-22 ka-2010

1. Isigaba sesi-4A soMthetho wezokuVikela, ka-2002 (uMthetho No. 42 ka-2002) 5
(lapha esibizwa ngoMthethongqangi), uchibiyelwe lapha ngendima elandelayo:
“(j) Isikhulu Esiphezulu Sabasebenzi.”.

Ukuchitshiyelwa kwesigaba sesi-8 soMthetho wama-42 ka-2002

2. Isigaba sesi-8 soMthethongqangi sichibiyelwe lapha ngokufaka endaweni 10
yendima (e) indima elandelayo:
“(e) Kufanele anike uMkhuzi woMbutho wezokuVikela [imiyalelo eneminini-
ngwane edingekayo] imihlahlandlela ethile ukuze akwazi ukunika amalungu
imisebenzi namagunya afanele nokunikeza imiyalelo nokukhishwa kwezi-
yalezo ezibhekiswe malungana nokusetshenziswa kwanoma yimaphi 15
amandla okwenza imisebenzi ethize ayinikwa nguNobhala wezokuVikela
njengenhloko nomphathi wezemali zoMnyango [wezokuVikela];”.

Amendment of section 18 of Act 42 of 2002

3. Section 18 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) In addition to the employment of the Defence Force by the President as contemplated in section 201(2) of the Constitution, the President or the Minister may authorise the employment of the Defence Force for service inside the Republic or **[in international waters]** outside the Republic in accordance with international law, in order to—”.

Amendment of section 30 of Act 42 of 2002

4. Section 30 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Chief of the Defence Force or any person designated by him or her may appoint any member of the Defence Force as a military police official and issue all such members with **[a prescribed]** an identification card.”.

Amendment of section 36 of Act 42 of 2002

5. Section 36 of the principal Act is hereby amended—

(a) by the substitution for paragraph (c) of the following paragraph:

“(c) the **[Armaments Development and Production Corporation of South Africa, Limited, established in terms of section 2 of the Armaments Development and Production Act, 1968 (Act No. 57 of 1968).]** Armaments Corporation of South Africa, Limited referred to in section 2 of the Armaments Corporation of South Africa, Limited Act, 2003 (Act No. 51 of 2003); and.”;

(b) by the addition of the following paragraph after paragraph (c):

“(d) contractors and service providers of the Department.”.

Amendment of section 44 of Act 42 of 2002

6. Section 44 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Minutes must be kept of the proceedings and decisions taken at every meeting of the Council of Defence and must at least—

(a) note the matters arising from the previous meeting of the Council;

(b) record all the decisions of the meeting;

(c) be allocated a security classification; and

(d) be signed by the Minister and retained in accordance with the National Archives and Record Service of South Africa Act, 1996 (Act No. 43 of 1996).”.

Amendment of section 53 of Act 42 of 2002, as amended by section 4(a) of Act 22 of 2010

7. Section 53 of the principal Act is hereby amended—

(a) by the insertion after subsection (1A) of the following subsection: 40

“(1B) No person requires the consent of an employer in order to enrol as, or to remain, a member of the Reserve Force.”; and

(b) by the substitution for subsection (8) of the following subsection:

“(8) Every member of the Reserve Force must be provided with the basic **[prescribed]** required uniform, distinctive marks, badges and accoutrements at State expense and must maintain these during his or her period of service.”.

Ukuchitshiyelwa isigaba se-18 soMthetho wama-42 ka-2002

3. Isigaba se-18 soMthethongqangi sichibiyelwe lapha ngokufaka endaweni yesigatshana (1) amaga angaphambi kwendima (a) amagama alandelayo:

“(1) Ngaphezu kokuqashwa koMbutho wezokuVikela nguMongameli njengoha kubekwe kwisigaba 201(2) soMthethosisekelo, uMongameli noma uNgqongqoshe angakugunyaza ukuqashwa koMbutho wezokuVikela ukuba usebenze ngaphakathi eRiphabhlikhi noma **[emanzini amaZwe oMhlaba]** ngaphandle kweRiphabhulikhi ngokuhambisana nomthetho wamazwe, ukuze—”.

Ukuchitshiyelwa kwesigaba sama-30 soMthetho wama-42 ka-2002

4. Isigaba sama-30 soMthethongqangi sichibiyelwe lapha ngokufaka endaweni yesigatshana (1) isigatshana esilandelayo:

“(1) UMkhuzi woMbutho wezokuVikela noma yimuphi umuntu okhethwe uye, naye angaqasha noma iliphi elinye ilungu lombutho wezokuVikela njengesikhulu samasotsha bese enika onke lawomalungu ikhadi **[elivumelekile]** elisaPasi.”.

Ukuchitshiyelwa kwesigaba sama-36 soMthetho sama-42 ka-2002

5. Isigaba sama-66 soMthethongqangi sichibiyelwe lapha—

(a) ngokufaka endaweni yendima (c) indima elandelayo:

“(c) **[NeNkampani yoKwakha nokuKhiqiza Izikhali eNingizimu Afrika (Armaments Developments and Production Corporation of South Africa Ltd.) eyasungulwa ngokwesigaba 2 soMthetho ka 1968 woKwakhiwa nokuKhiqizwa kweziKhali, 1968 (Umthetho No. 57 wezi-1968).]** Inkampani Yokuhlobisa yase-Ningizimu Afrika, Ngokukaliwe okukhulunywe ngayo esigabeni sesi-2 se-Armaments Corporation of South Africa, uMthetho Okalelekile, ka-2003 (uMthetho No. 51 ka-2003); kanye.”;

(b) ukwengezwa kwendima elandelayo emuva kwendima (c):

“(d) osonkontileka kanye nabahlinzeki bamasevisi eMnyangweni.”.

Ukuchitshiyelwa kwesigaba sama-44 soMthetho wama-42 ka-2002

6. Isigaba sama-44 soMthethongqangi sichibiyelwe lapha ngokufaka endaweni yesigatshana (3) isigatshana esilandelayo:

“(3) Amaminithi kumele agcinwe yemininingwane kanye nezinqumo ezithathwe kuyo yonke imihlangano yoMkhandlu yokuVikela futhi okungenani kumele—

(a) ibhale izinto eziphakanyiswe emhlanganweni owedlule woMkhandlu;

(b) irekhode zonke izinqumo zomhlangano;

(c) wabe ukwahlukaniswa kwezokuphepha; futhi

(d) unikwe uNgqongqoshe futhi ugcinwe ngokuhambisana ne-National Archives and Record Service of South Africa Act, ka-1996 (uMthetho No. 43 ka-1996).”.

Ukuchitshiyelwa kwesigaba sama-53 soMthetho wama-42 ka-2002, njengokuba uchibiyelwe yesigaba sesi-4(a) soMthetho wama-22 ka-2010

7. Isigaba sama-53 soMthethongqangi sichibiyelwe lapha—

(a) ngokufaka emuva kwesigatshana (1A) isigatshana esilandelayo:

“(1B) Akekho okudingeka ukuthi athole imvume yomqashi ukuthi abhalise, ahlale, eyilunga loMbutho wamaRisevu ka.”; kanye

(b) ngokufaka endaweni yesigatshana (8) isigatshana esilandelayo:

“(8) Wonke amalungu oMbutho wamaRizevu kufanele anikezwe ngezindleko zoMbuso umfaniswano oyisisekelo **[obekiwe]** odingekayo, izimpawu ezigqamisayo, amabheji kanye nokunye okusetshenziswa ngamasosha okungezona izimpahla futhi kufanele likugcine lokhu ngesikhathi salo sokusebenza.”.

Amendment of section 59 of Act 42 of 2002

8. Section 59 of the principal Act is hereby amended—

(a) by the substitution for subsections (1), (2) and (3) of the following subsections, respectively:

- “(1) The service of a member of the Regular Force is terminated— 5
- (a) upon the expiration of three months after the date on which **[such]** 5
the member lodged his or her resignation or upon the expiration of
[such] any shorter period **[as may be]** approved by the Chief of the
Defence Force;
- (b) on the termination of any fixed term contract concluded between the 10
member and the Department or on the expiration of any extended
period of such contract;
- (c) if **[he or she]** the member has reached the prescribed age of 15
retirement or, where applicable, if **[he or she]** the member exercises
his or her right to retire on pension in accordance with the
provisions of the applicable pension laws;
- (d) if **[he or she]** the member is sentenced to a term of imprisonment by 20
a competent civilian criminal court or a military court without the
option of a fine or if a sentence involving discharge or dismissal is
imposed upon him or her under the Code; **[or]** 20
- (e) if the Surgeon-General or any person authorised thereto by him or 25
her, issues a certificate to the effect that due to medical or
psychological reasons, **[such]** the member is permanently unfit to
serve in the Defence Force;
- (f) if the member is transferred to another state department or a body or 25
institution established by or under any law and which obtains its
funds directly, entirely or in part, from the National Revenue Fund
contemplated in section 213 of the Constitution or a Provincial
Revenue Fund contemplated in section 226 of the Constitution;
- (g) if the member accepts a nomination for election as a member of 30
Parliament, a provincial legislature or a municipal council;
- (h) if the member becomes a member of Parliament, a provincial 30
legislature or a municipal council; or
- (i) if the President permanently appoints the member under any law to 35
a position to which the Act does not apply. 35
- (2) The service of a member of the Regular Force may be terminated
[in accordance with any applicable regulations]—
- (a) as a result of the abolition of **[such member’s]** the post of that 40
member or any reduction or adjustment in the post structure of the
Department **[of Defence]**; 40
- (b) if for reasons other than the **[member’s own]** unfitness or 45
incapacity of the member, such discharge is likely to promote
efficiency or increased cost-effectiveness in the Department **[of
Defence]**;
- (c) on account of unfitness for his or her duties, **[or]** inability or 45
incapability to carry **[them]** out his or her duties efficiently,
**[irrespective of whether such unfitness or inability is caused by
such member’s ill-health not amounting to a condition referred
to]** for a reason other than that contemplated in subsection (1)(e);
- (d) if, after serving a period of probation in terms of this Act, his or her 50
appointment is not confirmed; 50

Ukuchitshiyelwa kwesigaba sama-59 soMthetho wama-42 ka-2002**8. Isigaba sama-59 soMthethongqangi sichibiyelwe lapha—**

- (a) ngokufaka endaweni yesigatshana (1), (2) kanye (3) izigatshana ezilandelayo, ngokulandelana:

“(1) Ukusebenza kwelungu loMbutho oseMbuthweni ngokuPhelele 5
iyapheliswa—

(a) ekupheleni kwezinyanga ezintathu ngemuva kosuku ilungu [elinje] 5
elafaka ngalo ukwesula kwalo noma ekupheleni kwesikhathi
esifushane kunaleso [esingahle] sivunyelwa nguMkhuzi
woMbutho wezokuVikela. 10

(b) ekupheleni kwanoma iyiphi inkontileka yesikhathi esibekiwe
ehlanganiswe phakathi kwelungu kanye noMnyango noma
ekupheleni kwanoma yisiphi isikhathi eseluliwe senkontileka enje;
(c) uma ilunga selifike ebudaleni obubekiwe bokuthatha umhlalaphansi
noma, lapho kusebenza khona, uma ilunga lisebenzisa ilungelo 15
lakhe lokuthatha umhlalaphansi wempesheni ngokwezimisonqubo
zempesheni esebenzayo;

(d) uma ilunga ligwetshe isikhathi ejele yinkantolo yezakhamuzi
yamacala efanele noma inkantolo yombutho wezempi ngaphandle
kokuvunyelwa ukukhetha ukukhokha inhlawulo noma uma 20
isigwebo esibandakanya ukudedelwa noma ukuxoshwa sibekwa
kulo ngaphansi koMthethonqubo;

(e) uma uDokotela onguMhlinzi Jikelele noma yinoma yimuphi
umuntu onikezwe igunya ukuba enze njalo ekhipha isitifiketi esithi
ngenxa yezizathu zezemithi noma zezengqondo, ilungu [elinje] 25
alikulungele ukusebenza eMbuthweni wezokuVikela;

(f) uma ilunga lishintshelwe komunye umnyango wombuso noma
uhlaka noma izikhungo esisungulwe noma ngaphansi kwanoma
yimuphi umthetho futhi lapho lithola izimali zalo ngqo, zonke noma
ingxenye yazo, eSikhwameni seMali sikaZwelonke okukhulunywe 30
ngaso esigabeni sama-213 soMthethosisekelo noma iSikhwama
seZimali sesiFundazwe okukhulunywe ngaso esigabeni sama-226
soMthethosisekelo;

(g) uma ilunga lamukela ukukhethwa okhethweni njengelunga
lePhalamende, isishayamthetho sesiFundazwe noma umkhandlu 35
kamasipala;

(h) uma ilunga liba yilunga lePhalamende, isishayamthetho sesi-
Fundazwe noma umkhandlu kamasipala; noma

(i) Uma uMongameli eqoka ilunga ngokonophela ngaphansi
kwanoma yimuphi umthetho esikhundleni lapho uMthetho ungase- 40
benzi khona.

(2) Umsebenzi welungu loMbutho wezokuVikela ingaqedwa [ngoku-
landela imithetho efanele]—

(a) ngenxa yomphumela wokuqedwa kwesikhundla [selungu elinje] 45
noma ngenxa yokwehliswa noma ukwehliswa noma ukuguqulwa
ekwakhekeni kwesikhundla soMnyango [wezokuVikela] salelo
lunga;

(b) uma ngokwezizathu ezingezona [ukungakulungeni kwelungu] 50
noma ukwehluleka kwelungu ukudedelwa okunje kungahle
kugququzele ukusebenza kangcono noma ukonga eMnyangweni
[wezokuVikela];

(c) ngenxa yokungakulungeli ukusebenza kwalo, [noma] ukwehluleka
noma ukungakwazi ukukwenza kahle ukwenza imisebenzi yakhe
ngokufanele, [kunganakiwe noma ukungakulungeli noma 55
ukwehluleka okunje kudalwa yimpilo engeyinhle yelungu
engafikeli esimweni okubhekiswe kuso] ngesizathu okungezona
ezibalwe esigabeni esingaphansi (1)(e);

(d) uma, ngemuva kokusebenza isikhathi sokuhlolwa ngokwalo-
Mthetho. ukuqashwa kwalo kungaqiniswa;

- (e) if **[his or her]** the continued employment of that member constitutes a security risk to the State or if the required security clearance for his or her appointment in a post is refused or withdrawn;
- (f) if the member, while serving, has been convicted by a competent civilian criminal court or a military court of an offence which, in view of its gravity and the nature of the sentence imposed, renders the continued employment of that member in the Regular Force undesirable; 5
- (g) if, before or since the member has been appointed, he or she has been convicted by a competent civilian criminal court or a military court on more than one occasion of offences which, considered individually, would not justify or did not lead to the dismissal of the member on account of misconduct, but considered collectively renders the continued employment of that member in the Regular Force undesirable; 10 15
- (h) if, due to recurrent convictions of that member by military courts, the member is considered not to be amenable to military discipline;
- (i) if the member has been convicted on five or more charges of contravening section 14(a) of the Code during a period of 24 months of continuous service; 20
- (j) if any condition of the conditional appointment of the member is not fulfilled;
- (k) by reason of any material misrepresentation of his or her position with regard to a condition for the appointment of the member to any rank or post in the Defence Force; 25
- (l) if at any time during the formative or specialised training of the member in the corps or mustering in which he or she has been appointed, it becomes apparent that the member is unsuitable for such training and is not regarded as suitable to be remustered for employment in any other corps or mustering in the Defence Force; 30
- (m) if the member, after he or she has been lawfully instructed to submit himself or herself to a compulsory immunisation of the members of the Defence Force, refuses to do so;
- (n) if the member is charged but has not yet been convicted in a competent civilian criminal court or a military court and the continued employment of the member in the Regular Force is rendered undesirable with reference to— 35
- (i) the gravity of the charges or allegations against him or her;
 - (ii) the publicity that the charges or allegations is given in the public and social media; 40
 - (iii) the prejudice or potential prejudice for the reputation of the Defence Force as a result of such publicity;
 - (iv) the impact of the charges or allegations on the confidence or respect of the public in the Defence Force; and 45
 - (v) the constitutional imperative for the Defence Force to be structured and managed as a disciplined military force; and
- (o) if, for just cause, the relationship of trust or respect between the member and the Defence Force has deteriorated to such an extent that it renders his or her continued employment in the Regular Force untenable or undesirable. 50
- (3) The service of a member of the Regular Force who absents himself or herself from official duty without the permission of his or her commanding officer for a continuous period exceeding [30] 10 calendar days must be regarded as having been [dismissed if he or she is an officer, or discharged if he or she is of another rank,] terminated on account of misconduct, with effect from the day immediately following his or her last day of attendance at his or her place of duty or the last day of his or her official leave, but the Chief of the Defence Force may, on good cause shown, authorise the reinstatement of [such] that member on [such] the conditions [as] that he or she may determine.”; 55 60

- (e) uma ukuqashwa [kwalo] okuqhubekayo kwalelo lungu kuyingozi yezokuphepha eMbusweni noma uma ukuvunyelwa kwezokuphepha okudingekayo ukusebenza ngokuthile, ngokuqashwa kwalo esikhundleni kwenqatshwa noma kuhoxiswa;
- (f) uma ilungu, ngesikhathi lisebenza, ligwetshwe yinkantolo yamacala yomphakathi noma inkantolo yezempi ngecala, ngokubheka isisindo kanye ngendlela isigwebo esibekwe ngakhona, sivumela ukuqhubeka nokusebenza kwalelo lungu loMbutho oSebenza ngokweJwayelekile; 5
- (g) uma ngaphambilini noma njengokuba ilungu seliqokiwe, ligwetshwe yinkantolo yomphakathi efanele noma inkantolo yezokuvikela ngamacala angaphezu kwelilodwa, okuthi uma ebhekwa ngalinye, awakuvumeli noma awaholelanga ekutheni kumiswe ilungu ngenxa yokungaziphathi kahle, kodwa ukuqhubeka nokuqasha kwalelo lungu eMbuthweni oSebenza ngokweJwayelekile; 10
- (h) uma, ngenxa yokugwetshwa kwelungu yizinkantolo zombutho wezempi, ilungu litholwe ukuthi alikwazi ukujeziswa umbutho wezempi; 15
- (i) uma ilungu ligwetshwe ngamacala amahlanu noma ngaphezulu okungahambisani nesigaba se-14(a) eKhodi yisikhathi sezinyanga ezingama-24 zokusebenza okuqhubekayo; 20
- (j) uma noma yisiphi isimo sokuqokwa kwelungu ngemibandela singagcinwanga;
- (k) ngesizathu sanoma yikuphi ukungameleleki ngokufanele kwesikhundla sakhe maqondana nokuqokwa kwelungu lanoma iyiphi irenki noma isikhala eMbuthweni Wezempi; 25
- (l) uma noma yisiphi isikhathi uqeqesho oluthile lwelungu egatsheni noma inhlangothi aqokelwe kuyo, kucaca ukuthi ilungu alilufanele uqeqesho olunjalo futhi alikufanele ukubuyiselwa kwamanye amagatsha noma izinhlangano eMbuthweni wezokuVikela; 30
- (m) uma ilungu, emuva kokuthi eyalelwe ngokomthetho ukuthi azihambise emgomeni oyimpoqo wamalunga oMbutho wezokuVikela, engavumi ukwenza njalo;
- (n) uma ilungu elethweswe icala kodwa lingakajeziswa enkantolo yabantu efanele noma inkantolo yombutho wezempi kanye nokuqhubeka nokusebenza kwelungu eMbuthweni oSebenza ngokweJwayelekile lingasafuneki ngokubuka— 35
- (i) isisindo secala noma izinsolo abhekene nazo;
- (ii) ukusakazeka kwamacala noma izinsolo emphakathini kanye nasezinkundleni zokuxhumana; 40
- (iii) ubandlululo noma ubandlululo olungaba khona ngesithunzi soMbutho wezokuVikela ngenxa yokusakazeka okunjalo;
- (iv) umthelela yamacala noma izinsolo ekuthembekeni noma ukuhlonipheka emphakathini koMbutho wezokuVikela; kanye 45
- (v) nokubaluleka ngokomthethosisekelo ukuthi uMbutho wezokuVikela ukuthi wakheke futhi uphathwe njengombutho wezempi ofundisekile; kanye
- (o) uma, ngezinjongo zobulungiswa, ubudlelwane bokwethembeka kanye nokuhlonipha phakathi kwelungu loMbutho wezokuVikela behle ngendlela yokuthi kuholela ekutheni ukuqhubeka nokusebenza kwakhe eMbuthweni oSebenza ngokweJwayelekile kunge- 50
- sekwa noma kungasafuneki.
- (3) Ilungu elisebenzayo loMbutho oSebenza ngokweJwayelekile [oseMbuthweni ngokuPhelele] elingabikho ngokwalo emsebenzini osemthethweni ngaphandle kwemvume yomphathisikhundla owengamele isikhathi esedlula izinsuku [ezi-30] eziyi-10 zekhalenda, kufanele [lithathwe njengelixoshiwe uma ngabe lingumphathisikhundla noma lidedelwe uma lingelesinye isikhundla,] limiswe ngenxa yokuziphatha kabi ukusuka osukwini olulandela masishane osukwini lalo lokuacina lokuba khona endaweni yalo yokusebenza, kepha 60
- uMphathi oMkhulu wezokuVikela ekukhonjisweni kwezizathu ezizwakalayo, angagunyaza ukubuyiselwa kwelungu [elinje] ngokwezimiselo angahle azinqume.”;

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- (b) by the substitution for subsection (6) of the following subsection:
 “(6) A member contemplated in subsection (1)(a), **[or] (d), (f), or (g)** who has undergone or who was undergoing education or training at State expense, remains liable for the repayment of such money as is repayable in terms of a contractual agreement **[pertaining to such] in respect of that education or training.**”; and 5
- (c) by the addition of the following subsection after subsection (6):
 “(7) (a) The officer commanding of a member may apply to the Chief of the Defence Force for the termination of the services of that member on any of the grounds in subsection (2). 10
 (b) The application contemplated in paragraph (a) must—
 (i) be in writing;
 (ii) contain the prescribed information; and
 (iii) comply with the prescribed procedure and directives. 15
 (c) The Chief of the Defence Force must, after ascertaining that the prescribed procedure has been complied with, consider the application and may—
 (i) decide to terminate the services of the member;
 (ii) decide not to terminate the services of the member; or
 (iii) refer the application back to the officer commanding for further investigation in the prescribed manner before he or she makes a final decision. 20
 (d) The Chief of the Defence Force must inform the officer commanding and the member in writing within seven days of his or her final decision and must provide reasons for the decision. 25
 (e) A termination of services in terms of subsection (2) becomes effective on the last day of the month following the month in which the member was notified in terms of paragraph (d).
 (f) The Minister may prescribe any procedure, act, incidental matter or form that— 30
 (i) complies with the *audi alterem partem* rule;
 (ii) is not already provided for or required in terms of any other law; and
 (iii) is necessary or required in respect of a termination of service under this section.” 35

Amendment of section 60 of Act 42 of 2002 35

9. Section 60 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (d) of the following paragraph:

“(d) acted **[negligently] in a grossly negligent manner, recklessly or wilfully;**”.

Amendment of section 74 of Act 42 of 2002

10. Section 74 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words: 40

“The Minister **must**, with the approval of the President, **[must] make [such] the necessary rules [and regulations as may be necessary in the case] in respect of every decoration or medal, for—;**”.

Substitution of section 76 of Act 42 of 2002 45

11. Section 76 of the principal Act is hereby substituted for the following section:

“Display of decorations and medals

76. The Chief of the Defence Force must determine the manner in, and the apparel on, which decorations and medals may be displayed in public by the following categories of persons: 50

- (a) Serving members of the Defence Force;
 (b) former members of the Defence Force;

- (b) ngokuffaka endaweni yesigatshana (6) isigatshana esilandelayo:
 “(6) Ilungu, okubhekiswe kulo esigabeni esingaphansi (1)(a) [noma (d), (f), noma u-(g)] elingahle lihe lathola noma labe lithola ukufundiswa noma ukuqeqeshwa ngezindleko zoMbuso liyohlala lilindeleke ukuba likhokhe izindleko zezimalinjengoba kumele zikhokhwe ngokwesivumelwano senkontileka [ephathelene] maqondana nokufundiswa nokuqeqeshwa okunje.”; kanye 5
- (c) ukwengezwa kwesigatshana esilandelayo emuva kwesigatshana (6):
 “(7) (a) Isikhulu esijuba ilunga singafaka isicelo eSikhulwini esiPhezulu soMbutho wezokuVikela ukuthi kumiswe imisebenzi yalelo lungu ngaphansi kwanoma yiziphi izizathu ezingaphansi ezisesigatshaneni (2). 10
 (b) Isicelo okukhulunywe ngaso endimeni (a) kumele—
 (i) sibhalwe;
 (ii) sibe neminingwane enqunyiwe; kanye
 (iii) sihambisane nenqubo kanye nemiyalelo okunqunyiwe. 15
 (c) Isikhulu esiPhezulu soMbutho wezokuVikela, emuva kokuqinisekisa ukuthi inqubo enqunyiwe ilandeliwe, kumele sithathe isicelo futhi—
 (i) singanquma ukumisa imisebenzi yilunga;
 (ii) singanquma ukungayimisi imisebenzi yilunga; noma 20
 (iii) singabuyisela isicelo emuva esikhulwini esijubayo ukuthi senze olunye uphenyo ngendlela enqunyiwe ngaphambi kokuthi sithathe isinqumo sokugcina.
 (d) Isikhulu esiPhezulu soMbutho wezokuVikela kumele sazise isikhulu esijubayo kanye nelunga ngokubhala ezinsukwini eziyisikho- 25
 mbisa, ngesinqumo sakhe sokugcina futhi kumele sihlinzeke izizathu zesinqumo.
 (e) Ukumisa imisebenzi ngemigomo yesigaba (2) kusebenza ngosuku lokugcina lwenyanga elandela inyanga ilunga elaziswe ngayo ngokwemigomo yendima (d). 30
 (f) UNgqongqoshe enganquma noma iyiphi inqubo, udaba olunge-
 nze noma ifomu—
 (i) elihambisana nomthetho *we-audi alterem partem*;
 (ii) engahlinzekwanga noma engadingeki ngokwemigomo yanoma yimuphi umthetho; 35
 (iii) efunekayo noma edingekayo maqondana nokumiswa komsebenzi ngaphansi kwalesi sigaba.”.

Ukuchibiyelwa kwesigaba sama-60 soMthetho wama-42 KA-2002

9. Isigaba sama-60 soMthethongqangi sichibiyelwe lapha umthethosisekelo esigatshaneni (2) indima (d) indima elandelayo: 40
 “(d) liziphathe [budedengu] ngobukhulu ubudedengu ngoba lithanda;”.

Ukuchibiyelwa kwesigaba sama-74 soMthetho wama-42 ka-2002

10. Isigaba sama-74 soMthethongqangi sichibiyelwe lapha ngokufaka endaweni yamagama angaphambi kwendima (a) amagama alandelayo: 45
 “UNgqongqoshe kumele, ngemvume kaMongameli, [kumele] enze imithetho efanele [nezimiso angahle akubone kudingeka kuleso naleso simo] maqondana nakho konke ukuhlonishwa noma indondo—;”.

Ukufaka endaweni yesigaba sama-76 soMthetho wama-42 ka-2002

11. Isigaba sama-76 soMthethongqangi lapha sichibiyelwe isigaba esilandelayo:

“Ukukhonjiswa kwemihlobiso kanye nemiklomelo 50

76. Isikhulu esiPhezulu soMbutho wezokuVikela kumele sinqume indlela, kanye nesembathiso, nemihlobiso kanye nezindondo okungaboniswa emphakathini ngezindlela ezilandelayo zezinhlobo zabantu:

- (a) Amalunga asebenza eMbuthweni wezokuVikela;
 (b) ababengamalunga oMbutho wezokuVikela; 55

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- (c) civilians who are the next of kin of deceased former members of the Defence Force; and
 (d) other civilian recipients of decorations and medals.”.

Substitution of section 78 of Act 42 of 2002

12. Section 78 of the principal Act is hereby substituted for the following section: 5

“Display of insignia

78. The Chief of the Defence Force must determine the flags, honours, awards and other insignia that units of the Defence Force may display on parade.”.

Amendment of section 82 of Act 42 of 2002 10

13. Section 82 of the principal Act is hereby amended—

- (a) by the deletion of paragraph (i) of subsection (1); and
 (b) by the substitution for paragraphs (j) and (k) of subsection (1) of the following paragraphs, respectively: 15
- “(j) the establishment of— 15
- (i) health and fitness standards for—
 - (aa) the enlistment and induction of commissioned and non-commissioned members;
 - (bb) the retention, separation and retirement of members;
 - (cc) aviation, including but not limited to South African Air Force pilots and crew; 20
 - (dd) South African Navy divers and submariners, parabats, and special forces, as well as any other occupation speciality that requires a health or fitness standard; and 25
 - (ee) compulsory immunisation of members; 25
 - (ii) physical profiles; and
 - (iii) medical, psychological and other associated health profession assessments;
- (k) [the] provision for medical, dental and hospital treatment of retired members of the Regular Force and their dependants, including military health establishments and other health establishments, and, if applicable, the establishment, management and control of one or more funds for such purposes;” and 30
- (c) by the insertion in subsection (1) after paragraph (m) of the following paragraph: 35
- “(mA) the addition of voluntary extra insurance cover and additional premiums by members and employees to their existing compulsory insurance referred to in paragraph (m);”.

Substitution of heading to section 83 of Act 42 of 2002

14. The following heading is hereby substituted for the heading to section 83 of the principal Act: 40

“Protection of moveable defence assets and records.”.

- (c) izakhamizi ezisondelene nababengamalunga oMbutho wezokuVikeka abangasekho emhlabeni; kanye
- (d) nezinye izakhamuzi ezingabamukeli bemihlobiso kanye nezi-ndondo.”.

Ukufaka endaweni yesigaba sama-78 soMthetho wama-42 ka-2002

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12. Isigaba sama-78 soMthethongqangi kufakwe endaweni yaso isigaba esilandelayo:

“Ukuvezwa kwebheji

78. Isikhulu esiPhezulu soMbutho wezokuVikela kumele sinqume ukuthi amafulegi, izindondo zokuhlonipha, izindondo kanye namanye amabheji koMbutho wezokuVikela kungakhonjiswa embukisweni.”.

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Ukuchibiyelwa kwesigaba sama-82 soMthetho wama-42 ka-2002

13. Isigaba sama-82 soMthethongqangi sichibiyelwe lapha—

- (a) ngokususa indima (i) yesigatshana (1); kanye
- (b) ngokufaka endaweni yendima (j) kanye no (k) isigatshana (1) izigatshana ezilandelayo, ngokulandelana:

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“(j) ukusungulwa—**(i) izindlela zezempilo kanye nokuzivocavoca—**

(aa) ukubalwa kanye nokufakwa kwamalunga abiziwe kanye nangabiziwe;

(bb) ukugcinwa, ukuhlukaniswa kanye nokuthatha umhlalaphansi kwamalunga;

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(cc) ukundiza, okuhlanganisa kodwa okungagcini kuba-shayeli bezindiza bezoMbutho wokuVikela waseMoyeni eNingizimu Afrika;

(dd) uMbutho wezokuVikela wamatshizi eNingizimu Afrika kanye nabemikhumbi ehamba phansi kwamanzi, amapharabhathi, kanye nabamandla ahlukile, kanye nanoma yibuphi obunye ubuchwepheshe obudinga izinga lezempilo kanye nokuzivocavoca; kanye

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(ee) nokugoma okuyimpoqo kwamalunga;

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(ii) ubunjalo ngokubukeka; kanye

(iii) ukuhlolwa komzimba, okwengqondo kanye nacho konke okuhambisana nokuhlolwa kwezempilo;

(k) **[ukunikezwa kokwelashwa]** umhlinzeko wokwelashwa kwezemithi, ezamazinyo nokwasesibhedlela kwamalungu oMbutho oseMbuthweni ngokuPhelele asethathe umhlalaphansinabondliwa yiwo, okuhlanganisa izakhiwo zezempilo embuthweni wezokuVikela kanye nezinye izakhiwo zezempilo, kanye, uma kusebenza lokho. okusungulwa, ukuphathwa kwesikhwama semali esisodwa noma ngaphezulu ngokwezinhloso zalokhu;”;

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(c) ukufakwa esigatshaneni (1), emuva kwendima (m) indima elandelayo:

“(mA) ukwengezwa komshwayilense ongeyona impoqo kanye nemali ekhokhwa ngenyanga amalubnga kanye nabasebenzi emishwayilenseni yabo eyimpoqo okukhulunywe ngayo endimeni (m);”.

Ukufaka endaweni yesihloko esigabeni sama-83 soMthetho ka-2002

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14. Isihloko esilandelayo sifakwe endaweni yesihloko esigabeni sama-83 soMthethongqangi:

“Ukuvikelwa kwempahla ethuthekayo yezokuvikela kanye namarekhodi.”.

Insertion of section 83A in Act 42 of 2002

15. The following section is hereby inserted in the principal Act, after section 83:

“Prohibition of access to military property or areas

83A. (1) The Minister may prescribe measures to regulate access to any military camp, barracks, dockyard, installation, premises, areas or property, or to any airbase or any land or area of water which is used either temporarily or permanently by the Defence Force or which is under the control of the Defence Force, including a building, premises or area or any part thereof which is also being used or is occupied by, or is the property of any other person.

(2) Any person who fails to comply with any prohibition, restriction or condition prescribed under subsection (1) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 15 years.

(3) For the purposes of this section, or any measure prescribed under it, any land or premises on or in which armaments are developed, manufactured, serviced, repaired or maintained, must be regarded as land or premises used by, or under the control of, the Defence Force.”

Amendment of section 103 of Act 42 of 2002

16. Section 103 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) When any member of the Defence Force has been absent without leave for **[more than 30 days]** a continuous period exceeding 10 calendar days and is still absent, a board of inquiry must be convened by the commanding officer of the absent member to inquire into such absence.”

Amendment of section 104 of Act 42 of 2002, as amended by Act 22 of 2010

17. Section 104 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) Any person who, without the written authority of the Chief of the Defence Force, possesses or wears **[prescribed] any [uniforms] uniform or part thereof,** distinctive **[marks or crests] mark or crest that has been determined by the Chief of the Defence Force as official attire in the Defence Force,** or performs any prohibited act while wearing such uniform or with such uniform, distinctive **[marks or crests] mark or crest,** is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years.”

Short title and commencement

18. This Act is called the Defence Amendment Act, 2020, and comes into effect on a date fixed by the President by proclamation in the *Gazette*.

Ukufakwa kwesigaba sama-83A soMthetho wama-42 ka-2002

15. Isigaba esilandelayo sifakwe kuMthethongqangi, emuva kwesigaba sama-83:

“Ukuvinjelwa kokungena empahleni noma ezindaweni zezombutho wezokuvikela

83A. (1) UNgqongqoshe enganquma izindlela zokulawula ukungenwa kukhempu, ezindlini, amadokodo, izakhiwo, izindawo noma impahla kombutho wezokuvikela, noma indawo yezindiza zombutho wezokuvikela noma nanoma yimuphi umhlaba noma indawo yamanzi esetshenziswa ngokwesikhashana noma unomphela uMbutho wezokuVikela noma ephethwe uMbutho wezokuVikela, okuhlanganisa isakhiwo, amagece kanye nendawo noma nanoma ikuphi okuyingxenywe yakhona kusetshe-nziswa noma kuhlala, noma kuyimpahla yanoma yimuphi omunye Umuntu. 5

(2) Noma ngabe imuphi umuntu ongaphumeleli ukulandela ukuvinjelwa noma isimo esinqunywe ngaphansi kwesigatshana (1) unecala futhi uzojeziswa ngokuthi akhokhe inhlawulo noma aboshwe isikhathi esingadluli iminyaka eyi-15. 10

(3) Ngezinhloso zalesi sigaba, nanoma iyiphi indlela enqunywe ngaphansi kwaso, noma yimuphi umhlaba noma amagece lapho imihlo-biso yenziwa, ikhiqizwa, isewiswa, ilungiswa noma igcinwa khona, kumele kuthathwe njengomhlaba noma amagece asetshenziswa, noma aphethwe, uMbutho wezokuVikela.”. 20

Ukuchibiyelwa kwesigaba se-103 soMthetho Wama-42 ka-2002

16. Isigaba se-103 soMthethongqangi sichibiyelwe lapha ngokufaka endaweni yesigatshanyana (1) isigatshana esilandelayo: 25

“(1) Lapho noma yiliphi ilungu belingekho ngaphandle kwelivu isikhathi [esingaphezu kwezinsuku ezi-30] esiqhubekayo esedlula izinsuku eziyi-10 zekhalenda futhi alikabikho, ibhodi lokuhlola kufanele lihlanganiswe ngumphathisikhundla owengamele ilungu elingekho ukuba liphenye ngokungabikho okunje.”. 30

Ukuchibiyelwa kwesigaba se-104 soMthetho Wama-42 wezi-2002, njengokuba sichibiyelwe uMthetho wama-22 wezi-2010

17. Isigaba se-104 soMthethongqangi sichibiyelwe ngokufaka endaweni yesigatshanyana (5) isigatshana esilandelayo:

“(5) Noma yimuphi umuntu othi, ngaphandle kwemvume ebhaliwe yesiKhulu esiPhezulu soMbutho wezokuVikela, abe nomfaniswano noma ogqoka noma iyiphi imifaniswano [ebekiwe] noma ingxenywe yawo, [izimpawu ezigqamisayo] uphawu olugqamisayo noma [izinto ezihambisana nezikhali] into ehambisana nezikhali noma [iz]impahla okunqunywe yisiKhulu esiPhezulu soMbutho wezokuVikela njengomfaniswano osemthethweni eMbuthweni wezokuVikela, noma owenza noma yisiphi isenzo esingavunyelwe ngenkathi egqoke umfaniswano onje, noma ngomfaniswano onje, [izimpawu ezigqamisayo nezinto ezihambisana] uphawu olugqamisayo nento ehambisana nezikhali noma [iz]impahla e[zi]nje unecala futhi ekulahlweni yicala kungenzeka akhokhiswe inhlawulo noma aqunywe ejele isikhathi esingadluli irninyaka emihlanu.”. 35 40 45

Isihloko esifushane kanye nokuqaliswa

18. Lo Mthetho ubizwa ngoMthetho wezokuVikela, ka-2020, futhi uzoqala ukusebenza ngosuku olubekwe nguMongameli ngesimemezelo kuSomqulu.