

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

NO. 1047

02 OCTOBER 2020

OFFICE OF THE PUBLIC PROTECTOR



PUBLIC PROTECTOR
SOUTH AFRICA

**PUBLIC PROTECTOR ACT NO. 23 OF 1994
AMENDMENT RULES RELATING TO INVESTIGATIONS BY THE PUBLIC PROTECTOR AND
MATTERS INCIDENTAL THERETO, 2020**

I, Advocate Busisiwe Mkhwebane the Public Protector of South Africa in terms of section 7(11) of the Public Protector Act No 23 of 1994, hereby amend the Rules relating to Investigations by the Public Protector and Matters Incidental thereto, 2018 issued in Government Notice No 945 published in Government Gazette No 41903 of 14 September 2018, as set out in the Schedule.

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from the existing Rules.

_____ Words underlined with a solid line indicate insertions in the existing Rules.

SCHEDULE**Amendment of the arrangement of the Rules**

1. The heading of Chapter 7 of the Rules in the index and the body of the Rules is amended as follows:

“CHAPTER 7

“COMPLIANCE WITH INFORMATION REQUESTS AND [TIMELINES] TIMEFRAMES OF PUBLIC PROTECTOR.”

Definitions

2. In this Schedule a word or expression bears the same meaning assigned to it in the Rules relating to Investigations by the Public Protector and Matters Incidental thereto, 2018 issued in Government Notice No 945 published in Government Gazette No 41903 of 14 September 2018, and unless the context otherwise indicates-
3. The definition of “complainant” in Rule 1 is amended as follows:
“**complainant**” means—
 - (a) any person who lodges a complaint with the Public Protector as provided for in these Rules; **and a person affected by any act or omission of a state institution that is under investigation by the Public Protector.**”
4. The following definition is hereby inserted in Rule 1:
“**Service Standards**” means the Public Protector South Africa Investigations Service Standards as determined by the Public Protector and published on the Public Protector South Africa website as a framework of the public commitments on the timeframes and quality standards that can be expected when using the Public Protector’s services.”

Amendment of Rule 3 of the Rules

5. Rule 3(2) of the Rules is amended by the substitution for paragraphs (a) and (b) with the following paragraphs:
 - (a) The Public Protector may transfer a complaint for [an] investigation from the office where it was lodged to any other office, if he or she deems it fit.
 - (b) The Public Protector shall in writing inform the complainant of any transfer in terms of sub-rule (a), within **[14 days of the transfer]** the timeframe specified in the Public Protector Service Standards but not later than 14 days after receipt.”

Amendment of Rule 5 of the Rules

6. Rule 5(3) of the Rules is amended by the substitution of paragraph (d) with the following paragraph:

“(d) information regarding other steps that he or she has taken in an attempt to **[resolve the complaint with the state institution concerned]** pursue and exhaust the internal remedies or channels of complaint with the state institution concerned which they could be reasonably expected to use prior to lodging a complaint with the Public Protector.”

Amendment of Rule 6 of the Rules

7. Rule 6 of the Rules is amended by the substitution of sub-rule(3) with the following paragraph:

“(3) The Public Protector shall acknowledge receipt of the complaint within the timeframe specified in the Public Protector Service Standards but not later than seven days after receipt thereof, in any manner he or she deems fit.”

Amendment of Rule 7 of the Rules

8. Rule 7(3) of the Rules is amended as follows:

“The Public Protector shall **[not disclose]** exercise reasonable care and judgment in the disclosure of information about the identity or personal circumstances of the complainant, or information that could lead to the identification of the complainant, **[without the written permission of the complainant]** if—

- (a) the complainant requested that his or her personal particulars be kept confidential;
- (b) the information is protected by the Protected Disclosures Act, 2000 (Act No. 26 of 2000), or any other legislation; or
- (c) the Public Protector is of the opinion that confidentiality is required to prevent imminent risk or serious harm to any person.”

9. Rule 7(4) of the Rules is amended as follows:

“The Public Protector **[shall]** may, when **[the permission of the complainant is required in terms of sub-rule (3)]**, the complainant has requested that their personal information be kept confidential and the Public Protector is of the view that these particulars are necessary in order to resolve the complaint, [in writing inform the complainant if there is a risk that the complaint cannot be investigated or resolved without such consent]-

- (a) endeavour to de-identify the information as envisaged in the Protection of Personal Information Act No 4 of 2013; or
- (b) refer the matter or any part thereof in terms of section 6 (4)(c)(ii) of the Act to an appropriate public body or authority that may be able to assist the complainant, without redacting personal information, with or without any recommendation he or she deems expedient; or
- (c) decline to investigate the complaint.”

10. Rule 7 of the Rules be amended with the addition of the following sub-rule (5)

“(5) The Public Protector shall inform the complainant within 7 days of his or her decision taken in terms of sub-rule(4) above.”

Amendment of Rule 9 of the Rules

11. Rule 9(1) of the Rules is amended as follows:

“9. (1) The Public Protector shall, within **[a reasonable period]** the timeframes specified in the Public Protector Service Standards, but not later than [30] 14 days after

receipt of the complaint, in writing inform the complainant whether or not he or she has accepted the complaint.”

12. Rule 9(3) of the Rules is amended as follows:

“9(3) If the Public Protector accepts the complaint, he or she shall within the timeframes specified in the Public Protector Service Standards, but not later than [30] 14 days after receipt of the complaint—

- (a) decide how the complaint will be dealt with, with reference to the options provided for in section 6 of the Act; and
- (b) if the matter has been assigned to an investigator, inform the complainant of the investigator’s name and contact particulars.”

Amendment of Rule 11 of the Rules

13. Rule 11(1)(b) of the Rules is amended with the insertion of the following paragraphs as sub-rule (b)(ii) and (iii) after sub-rule(b)(i), with the existing sub- rule(b)(ii) becoming sub-rule b(iv) and so on:

“(ii) if the Public Protector is of the view that the complainant has not yet exhausted the internal remedies or channels of complaint with the state institution concerned which he/she could be reasonably expected to use prior to lodging a complaint with the Public Protector.”

“(iii) If the complainant requested that his or her personal particulars be kept confidential and the Public Protector is of the view that disclosure of the complainant’s particulars is in its view necessary to resolve the complaint.

Amendment of Rule 16 of the Rules

14. Rule 16(1) of the Rules is amended as follows:

“16(1) The parties **[to a dispute]** involved in an investigation may obtain legal assistance for the purposes of the investigation to be conducted in terms of section 7 of the Act, but are obliged to personally provide any information, documents, or evidence requested from them by the Public Protector.”

Amendment of Rule 20 of the Rules

15. Rule 20(2) of the Rules is amended as follows:

“(2) The Public Protector shall, **[if he or she decides to conduct a preliminary investigation]** decide how the complaint will be dealt with and inform the complainant within the timeframes specified in the Public Protector Service Standards, but not later than 21 days [after the decision] after receipt of the complaint.”

Deletion of Rule 21 of the Rules

16. Rule 21 is hereby deleted, with the following Rule 22, becoming Rule 21 and rest of the Rules being re-numbered accordingly.

Amendment of Rule 23/norw Rule 22 of the Rules

17. The existing Rule 23 (re-numbered to Rule 22(1)) of the Rules is amended by the substitution of paragraph (c) for the following paragraph:

- “(c) responding in accordance with the **[timelines]** timeframes, accurately and fully to the enquiries of the Public Protector in every complaint;...”

Amendment of rule 29/now Rule 28 of the Rules

18. The existing Rule 29 (re-numbered to Rule 28) of the Rules is amended by the substitution for sub-rule(1) of the following paragraph:

“(1) The Public Protector shall give the parties **[to a dispute]** involved in the investigation and other person whose attendance before the Public Protector is required, notice of the intended proceedings by means of –

- (a) a subpoena in terms of section 7(5) of the Act; or
- (b) a notification on a form which substantially corresponds with the form provided for in Annexure E to these Rules.”

19. The existing Rule 29 (re-numbered to Rule 28) is amended by the substitution for sub-rule(2) of the following paragraph:

“(2) The notice referred to in sub-rule (1) shall be issued at least **[14]** 7 days before the date of such proceedings, unless the parties and persons concerned agree to a shorter period.”

Amendment of Rule 32/now Rule 31 of the Rules

20. The existing Rule 32 (re-numbered to Rule 31) is amended by the substitution of sub-rule(2) for the following paragraph

“(2) Subject to section 7(9)(b)(ii) of the Act, **[party to a dispute]** parties involved in the investigation may, with the permission of the Public Protector and through the Public Protector put questions to any witness at proceedings pertaining to an investigation.”

Amendment of Rule 36/now Rule 35 of the Rules

21. The existing Rule 36 (re-numbered to Rule 35) is amended as follows:

“35 (1) The Public Protector may of her/ his own accord or on the request in writing by a party or any other person, join [, **substitute**] or add any number of persons or state institutions as parties in the proceedings—

- (a) if the outcome of the complaints depends on substantially the same question of law or fact; or
- (b) if such parties so joined **[or substituted]** have a substantial interest in the subject matter of the proceedings,
and may give appropriate directions as to further procedures for the proceedings.

(2) A request to join [, **substitute**] or add a person or institution as a party in the proceedings must contain the following:

- (a) The grounds for the application;
- (b) full particulars of the person or state institution concerned; and
- (c) any additional documents determined by the Public Protector.

[(3) (a) The Public Protector may, on request of any party to the proceedings, and if it is in her or his opinion necessary, allow that an existing party be substituted for another.

(b) The Public Protector may give appropriate directions as to the further procedure in the proceedings.]

[(4)] (3) The Public Protector shall on receipt of a request for the joining [, **substitution] or adding of any number of persons or state institutions as parties, in writing inform all**

affected parties and persons of the request and give those parties or persons the opportunity to make representations on the issue.

[(5)] (4) The joining [, **substitution**] or adding of persons or state institutions in the proceedings in terms of these Rules does not affect any steps already taken in these proceedings, except if the Public Protector determines otherwise.”

Amendment of Rule 44/now Rule 43 of the Rules

22. The existing Rule 44 (re-numbered to Rule 43) of the Rules is amended by the substitution for sub-rule 1 of the following paragraph:

“The Public Protector shall, if remedial action has to be taken in terms of section 182(1)(c) of the Constitution by a state institution, determine a [**time frame**] timeframe within which the state institution must provide him or her with an action plan on how and within what [**timelines**] timeframes the remedial action will be implemented.”

Short title and commencement

23. These Rules are called the *Amendment Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2020*, and shall come into operation on2020.