



**Legislation updated to: 30 April 2015**

## **SOUTH AFRICAN POLICE SERVICE ACT 68 OF 1995**

[ASSENTED TO 28 SEPTEMBER 1995]

[DATE OF COMMENCEMENT: 15 OCTOBER 1995]

*(Afrikaans text signed by the President)*

### **as amended by**

South African Police Service Amendment Act 41 of 1997  
Public Service Laws Amendment Act 47 of 1997  
South African Police Service Amendment Act 83 of 1998  
Institution of Legal Proceedings against certain Organs of State Act 40 of 2002  
South African Police Service Amendment Act 57 of 2008  
Criminal Law (Forensic Procedures) Amendment Act 6 of 2010  
Independent Police Investigative Directorate Act 1 of 2011  
Civilian Secretariat for Police Service Act 2 of 2011  
South African Police Service Amendment Act 10 of 2012  
Criminal Law (Forensic Procedures) Amendment Act 37 of 2013

### **Regulations under this Act**

**[NB:** The Act was amended by the substitution for the words 'Secretary for Safety of [sic] Security', wherever they occurred in the Act, of the words 'Secretary for the Police Service' by s. 35 of the Civilian Secretariat for Police Service Act 2 of 2011.]

### **ACT**

**To provide for the establishment, organisation, regulation and control of the South African Police Service; and to provide for matters in connection therewith.**

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## Preamble

WHEREAS the Constitution of the Republic of South Africa, 1996, requires national legislation to provide for the establishment, powers and functions of the South African Police Service to function in accordance with national policing policy and the directions of the Cabinet member responsible for policing;

WHEREAS there is a need to provide a police service throughout the national territory to-

- (a) ensure the safety and security of all persons and property in the national territory;
- (b) uphold and safeguard the fundamental rights of every person as guaranteed by Chapter 3 of the Constitution;
- (c) ensure co-operation between the Service and the communities it serves in the combating of crime;
- (d) reflect respect for victims of crime and an understanding of their needs; and
- (e) ensure effective civilian supervision over the Service;

AND WHEREAS there is a need to provide for a Directorate in the Service that is dedicated to the prevention, investigation and combating of national priority offences, in particular serious organised and transnational crime, serious commercial crime and serious corruption, and that enjoys adequate independence to enable it to perform its functions

[Preamble amended by s. 20 of Act 10 of 2012.]

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

## CHAPTER 1 INTERPRETATION (s 1)

### 1 Definitions

In this Act, unless the context otherwise indicates-

- '**board**' means the Board of Commissioners established by section 10 (1);
- '**certificate of appointment**' means the document referred to in section 30;
- '**commissioned officer**' means a commissioned officer appointed under section 33 (1);
- '**director**' means the Independent Complaints Directorate established by section 50 (1);
- '**employee organisation**' means an organisation consisting *inter alia* of members or employees of the Service formally associated together and organised in a staff association,

trade association or trade union, for the purpose of regulating relations between themselves and the Service;

**'equipment'** includes any article supplied by the Service for use by a member in the performance of his or her duties;

**'executive co-ordinating committee'** means the executive co-ordinating committee established by section 4 (1);

**'Executive Director'** means the Executive Director appointed in terms of section 51;

**'fixed establishment'** means the posts which have been created for the normal and regular requirements of the Service;

**'member'** means any member of the Service referred to in section 5 (2), and including-

- (a) except for the purposes of any provision of this Act in respect of which the National Commissioner may otherwise prescribe, any member of the Reserve while such member is on duty in the Service;
- (b) any temporary member while employed in the Service;
- (c) any person appointed in terms of any other law to serve in the Service and in respect of whom the Minister has prescribed that he or she be deemed to be a member of the Service for the purposes of this Act; and
- (d) any person designated under section 29 as a member;

**'member of the Executive Council'** means the member of the Executive Council referred to in section 217 (1) of the Constitution;

**'metropolitan police service'** .....

[Definition of 'metropolitan police service' deleted by s. 1 (a) of Act 83 of 1998.]

**'Minister'** means the Minister for Safety and Security;

**'municipal police service'** means a municipal police service established under section 64A;

[Definition of 'municipal police service' substituted by s. 1 (b) of Act 83 of 1998.]

**'National Commissioner'** means the National Commissioner referred to in section 6 (1);

**'National Orders and Instructions'** means National Orders and Instructions issued under section 25 (1) or which continue to apply in terms of section 72 (4) (a);

**'national public order policing unit'** means the national public order policing unit established in terms of section 17 (1);

**'national standards'** means national standards determined under section 64L (1);

[Definition of 'national standards' inserted by s. 1 (c) of Act 83 of 1998.]

**'Parliamentary Committees'** means the Standing Committees of the National Assembly and the Senate responsible for safety and security affairs;

**'prescribe'** means prescribe by regulation;

**'Provincial Commissioner'** means the Provincial Commissioner of a province referred to in section 6 (2);

**'Rationalisation Proclamation'** means the South African Police Service Rationalisation Proclamation, 1995, published by Proclamation 5, 1995, dated 27 January 1995;

**'regulation'** means a regulation made under this Act or which continues to apply in terms of section 72 (4) (a);

**'Reserve'** means the Reserve Police Service referred to in section 48;

**'secretariat'** means the Secretariat for Police established under section 2 (1);

[Definition of 'secretariat' substituted by s. 35 of Act 2 of 2011 and by s. 36 (1) of Act 1 of 2011.]

**'Secretary'** means the Secretary of Police appointed under section 2 (2);



[Definition of 'secretary' substituted by s. 35 of Act 2 of 2011 and by s. 36 (1) of Act 1 of 2011.]

**'Service'** means the South African Police Service established by section 5 (1);

**'stores'** means any movable property of the State which is kept in stock for distribution in the Service;

**'strike'** means a strike within the meaning of the Labour Relations Act, 1995 (Act 66 of 1995);

[Definition of 'strike' substituted by s. 1 of Act 41 of 1997.]

**'this Act'** includes the regulations;

**'uniform'** means a uniform as prescribed.

## CHAPTER 2 MINISTERIAL SERVICES (ss 2-4)

### 2 .....

(1) (a) The Minister shall establish a secretariat to be called the Secretariat for Police.

(b) A provincial government may establish a provincial secretariat to be called the Provincial Secretariat for Police: Provided that the date on which a provincial secretariat will come into operation shall be determined by a provincial government in consultation with the Minister.

[Sub-s. (1) substituted by s. 36 (1) of Act 1 of 2011.]

[S. 2 repealed by s. 35 of Act 2 of 2011.]

### 3 Functions of secretariat

(1) The secretariat shall-

- (a) advise the Minister in the exercise of his or her powers and the performance of his or her duties and functions;
- (b) perform such functions as the Minister may consider necessary or expedient to ensure civilian oversight of the Service;
- (c) promote democratic accountability and transparency in the Service;
- (d) promote and facilitate participation by the Service in the Reconstruction and Development Programme;
- (e) provide the Minister with legal services and advice on constitutional matters;
- (f) provide the Minister with communication, support and administrative services;
- (g) monitor the implementation of policy and directions issued by the Minister and report to the Minister thereon;
- (h) conduct research into any policing matter in accordance with the instructions of the Minister and report to the Minister thereon;
- (i) perform such functions as may from time to time be assigned to the secretariat by the Minister; and
- (j) evaluate the functioning of the Service and report to the Minister thereon.

(2) To the extent that it is reasonably necessary for the performance of the functions of the secretariat, any member of its personnel-

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

(3) The Minister may make regulations regarding the establishing and proper functioning of secretariats: Provided that regulations with regard to provincial secretariats shall be made in consultation with the executive co-ordinating committee.

(4) A document in the prescribed form, certifying that a person is a member of the personnel of the secretariat, shall serve as *prima facie* proof that such person is such a member.

(5) Subsections (1), (2) and (4) shall apply *mutatis mutandis* to a Provincial Secretariat for Safety and Security.

#### **4 Executive co-ordinating committee**

(1) The executive co-ordinating committee contemplated in section 220 (1) of the Constitution is hereby established.

(2) The Minister shall convene the first meeting of the executive co-ordinating committee.

(3) The Minister or his or her nominee shall preside at meetings of the executive co-ordinating committee and the executive co-ordinating committee shall determine its own procedure.

### **CHAPTER 3 ESTABLISHMENT AND COMPOSITION OF SERVICE (s 5)**

#### **5 Establishment and composition of Service**

(1) The South African Police Service contemplated in section 214 (1) of the Constitution is hereby established.

(2) The Service shall consist of-

- (a) all persons who immediately before the commencement of this Act were members-
  - (i) of a force which, by virtue of section 236 (7) (a) of the Constitution, is deemed to constitute part of the Service;
  - (ii) appointed under the Rationalisation Proclamation;
  - (iii) of the Reserve by virtue of section 12 (2) (k) of the Rationalisation Proclamation;
- (b) members appointed in terms of section 28 (2) of this Act;  
[Para. (b) substituted by s. 1 (a) of Act 57 of 2008.]
- (c) persons who become members of the Reserve under section 48 (2) of this Act; and  
[Para. (c) substituted by s. 1 (a) of Act 57 of 2008.]
- (d) members appointed to the Directorate for Priority Crime Investigation established by section 17C.  
[Para. (d) added by s. 1 (b) of Act 57 of 2008.]

### **CHAPTER 4 COMMISSIONERS (ss 6-10)**

#### **6 Appointment of National and Provincial Commissioners**

(1) There shall be a National Commissioner of the Service who shall be appointed in accordance with section 207 (1) of the Constitution of the Republic of South Africa, 1996.

[Sub-s. (1) substituted by s. 1 of Act 10 of 2012.]

(2) There shall be a Provincial Commissioner of the Service for each province who shall be appointed by the National Commissioner subject to section 207 (3) of the Constitution of the Republic of South Africa, 1996.

[Sub-s. (2) substituted by s. 1 of Act 10 of 2012.]

## **7 Terms of office of National and Provincial Commissioners**

(1) Subject to this Act, the person who is appointed as National or Provincial Commissioner shall occupy that office for a period of five years from the date of his or her appointment or such shorter period as may be determined at the time of his or her appointment by-

- (a) the President, in relation to the National Commissioner; or
- (b) the National Commissioner in consultation with the member of the Executive Council, in relation to a Provincial Commissioner.

(2) The term of office referred to in subsection (1) may be extended at the expiry thereof for a period or successive periods not exceeding five years at a time, as may, subject to subsection (3), be determined by-

- (a) the President, in relation to the National Commissioner; or
- (b) the National Commissioner in consultation with the member of the Executive Council concerned, in relation to the Provincial Commissioner.

(3) The President or the National Commissioner, as the case may be, shall notify the Commissioner concerned in writing at least two calendar months before the expiry of the period contemplated in subsection (1), or any subsequent extended period contemplated in subsection (2), whether he or she intends extending his or her term of office or not and, if so, for what period.

(4) When the National or Provincial Commissioner receives notice of the extension of his or her term of office in accordance with subsection (3), he or she shall notify the President or the National Commissioner, as the case may be, in writing within one calendar month from the date of receipt of such notice of his or her acceptance or not of such extended term of office.

(5) If the National or Provincial Commissioner notifies the President or the National Commissioner, as the case may be, in accordance with subsection (4) of his or her acceptance of such extended term of office, his or her term of office shall be extended accordingly.

## **8 Loss of confidence in National or Provincial Commissioner**

(1) If the National Commissioner has lost the confidence of the Cabinet, the President may establish a board of inquiry consisting of a judge of the Supreme Court as chairperson, and two other suitable persons, to-

- (a) inquire into the circumstances that led to the loss of confidence;
- (b) compile a report; and
- (c) make recommendations.

(2) (a) If a Provincial Commissioner has lost the confidence of the Executive Council, the member of the Executive Council may notify the Minister of such occurrence and the reasons therefor.

(b) The Minister shall, if he or she deems it necessary and appropriate, refer the notice contemplated in paragraph (a) to the National Commissioner.

(c) The National Commissioner shall, upon receipt of the notice, establish a board of inquiry consisting of not more than three persons, of which the chairperson shall, subject to paragraph (d), be a person who, for at least 10 years after having qualified as an advocate or an attorney, practised as such, to-

- (i) inquire into the circumstances that led to the loss of confidence;
- (ii) compile a report; and
- (iii) make recommendations.

(d) The National Commissioner may appoint any other person suitably qualified in law as chairperson of the board of inquiry.

(3) (a) The President or National Commissioner, as the case may be, may, after hearing the Commissioner concerned, pending the outcome of the inquiry referred to in subsection (1) or (2) (c), suspend him or her from office.

(b) A Commissioner who is suspended from office under paragraph (a), shall, during the period of such suspension, be entitled to any salary, allowance, privilege or benefit to which he or she is otherwise entitled as a member, unless the President or the National Commissioner, as the case may be, determines otherwise.

(4) If a board of inquiry is established under subsection (1) or (2) (c), the Commissioner concerned shall be notified thereof in writing, and thereupon he or she may-

- (a) be assisted or represented by another person or legal representative;
- (b) make written representations to the board;
- (c) be present at the inquiry;
- (d) give evidence thereat;
- (e) cross-examine witnesses not called by him or her;
- (f) be heard;
- (g) call witnesses; and
- (h) have access to documents relevant to the inquiry.

(5) The board of inquiry shall determine its own procedure.

(6) (a) At the conclusion of the inquiry, the board shall submit its report to-

- (i) (aa) the President, in the event of an inquiry under subsection (1); or
- (bb) the National Commissioner, the member of the Executive Council and the standing committee of the provincial legislature responsible for safety and security affairs, in the event of an inquiry under subsection (2);
- (ii) the Commissioner concerned; and
- (iii) the Parliamentary Committees.

(b) The report referred to in paragraph (a) may recommend that-

- (i) no action be taken in the matter;
- (ii) the Commissioner concerned be transferred to another post or be employed additional to the fixed establishment;
- (iii) his or her salary or rank or both his or her salary and rank be reduced;
- (iv) action be taken against him or her in accordance with subparagraphs (ii) and (iii);
- (v) he or she be removed from office; or
- (vi) any other appropriate steps (including the postponement of any decision by the President or the National Commissioner, as the case may be, for a period not exceeding 12 calendar months) be taken.

(7) The President or the National Commissioner, as the case may be, may, upon receipt of a recommendation contemplated in subsection (6), remove the Commissioner concerned from office, or take any other appropriate action: Provided that, if the President or the National Commissioner, as the case may be, postpones his or her decision for a period, he or she shall, at the end of such period, request the same board of inquiry, or a similar board established for

that purpose, to compile a new report and to make a new recommendation after having considered the conduct of the Commissioner concerned during such period.

(8) If a Provincial Commissioner has lost the confidence of the National Commissioner, the provisions of subsections (2) (c) and (d), (3), (4), (5), (6) and (7) shall apply *mutatis mutandis*.

(9) In the event of a Commissioner being removed from office following on an inquiry in accordance with a finding of a loss of confidence in such a Commissioner, or in accordance with a finding of a loss of confidence referred to in section 9 (3), his or her term of office shall be deemed to have expired on the date immediately preceding the date on which such removal from office takes effect.

## **9 Misconduct by or incapacity of National or Provincial Commissioner**

(1) Subject to this section, subsections (1) to (8) of section 8 shall apply *mutatis mutandis* to any inquiry into allegations of misconduct by the National or Provincial Commissioner, or into his or her fitness for office or capacity for executing his or her official duties efficiently.

(2) The board of inquiry established by virtue of subsection (1) shall make a finding in respect of the alleged misconduct or alleged unfitness for office or incapacity of executing official duties efficiently, as the case may be, and make recommendations as contemplated in section 8 (6) (b).

(3) If the National Commissioner has lost the confidence of the Cabinet or a Provincial Commissioner has lost the confidence of the Executive Council or the National Commissioner, as the case may be, following on an inquiry in terms of this section, the provisions of section 8 (7) shall apply *mutatis mutandis*.

## **10 Board of Commissioners**

(1) The Board of Commissioners consisting of the National and Provincial Commissioners is hereby established.

(2) The functions of the board shall be to promote co-operation and co-ordination in the Service.

(3) The board shall be presided over by the National Commissioner or his or her nominee and the board shall determine its own procedure.

## **CHAPTER 5 POWERS, DUTIES AND FUNCTIONS (ss 11-15)**

### **11 National Commissioner**

(1) The National Commissioner shall exercise control over and manage the police service in accordance with section 207 (2) of the Constitution of the Republic of South Africa, 1996.

[Sub-s. (1) substituted by s. 2 (a) of Act 10 of 2012.]

(2) Without derogating from the generality of subsection (1), the National Commissioner shall-

- (a) develop a plan before the end of each financial year, setting out the priorities and objectives of policing for the following financial year;
- (b) determine the fixed establishment of the Service and the number and grading of posts;
- (c) determine the distribution of the numerical strength of the Service after consultation with the board;

- (d) organise or reorganise the Service at national level into various components, units or groups;
- (e) establish and maintain training institutions or centres for the training of students and other members;
- (f) establish and maintain bureaus, depots, quarters, workshops or any other institution of any nature whatsoever, which may be expedient for the general management, control and maintenance of the Service; and
- (g) perform any legal act or act in any legal capacity on behalf of the Service.

[Sub-s. (2) amended by s. 2 (b) of Act 10 of 2012.]

## 12 Provincial Commissioners

(1) Subject to this Act, a Provincial Commissioner shall have command of and control over the Service under his or her jurisdiction in the province and may exercise the powers and shall perform the duties and functions necessary to give effect to section 219 of the Constitution.

(2) A Provincial Commissioner may-

- (a) subject to a determination under section 11 (2) (b), delimit any area in the province and determine the boundaries thereof until the province has been divided into as many areas as may be necessary for the purposes of the organisation of the Service under his or her jurisdiction; and

[Para. (a) substituted by s. 2 of Act 41 of 1997.]

- (b) establish and maintain police stations and units in the province and determine the boundaries of station or unit areas.

(3) A Provincial Commissioner shall determine the distribution of the strength of the Service under his or her jurisdiction in the province among the different areas, station areas, offices and units.

## 13 Members

(1) Subject to the Constitution and with due regard to the fundamental rights of every person, a member may exercise such powers and shall perform such duties and functions as are by law conferred on or assigned to a police official.

(2) Where a member becomes aware that a prescribed offence has been committed, he or she shall inform his or her commanding officer thereof as soon as possible.

(3) (a) A member who is obliged to perform an official duty, shall, with due regard to his or her powers, duties and functions, perform such duty in a manner that is reasonable in the circumstances.

(b) Where a member who performs an official duty is authorised by law to use force, he or she may use only the minimum force which is reasonable in the circumstances.

(4) Every member shall be competent to serve or execute any summons, warrant or other process whether directed to him or her or to any other member.

(5) Any member may in general or in any particular instance be required to act as prosecutor, or in any other respect to appear on behalf of the State in any criminal matter before any magistrate's court, any magistrate holding a preparatory examination, a court of a special justice of the peace or any other lower court in the Republic.

(6) Any member may, where it is reasonably necessary for the purposes of control over the illegal movement of people or goods across the borders of the Republic, without warrant search any person, premises, other place, vehicle, vessel or aircraft, or any receptacle of whatever nature, at any place in the Republic within 10 kilometres or any reasonable distance

from any border between the Republic and any foreign state, or in the territorial waters of the Republic, or inside the Republic within 10 kilometres or any reasonable distance from such territorial waters, or at any airport as defined in section 1 of the Aviation Act, 1962 (Act 74 of 1962), or within any reasonable distance from such airport and seize anything found in the possession of such person or upon or at or in such premises, other place, vehicle, vessel, aircraft or receptacle and which may lawfully be seized.

[Sub-s. (6) substituted by s. 3 (a) of Act 41 of 1997.]

(7) (a) The National or Provincial Commissioner may, where it is reasonable in the circumstances in order to restore public order or to ensure the safety of the public in a particular area, in writing authorise that the particular area or any part thereof be cordoned off.

(b) The written authorisation referred to in paragraph (a) shall specify the period, which shall not exceed 24 hours, during which the said area may be cordoned off, the area or part thereof to be cordoned off and the object of the proposed action.

(c) Upon receipt of the written authorisation referred to in paragraph (a), any member may cordon off the area concerned or part thereof, and may, where it is reasonably necessary in order to achieve the object specified in the written authorisation, without warrant, search any person, premises or vehicle, or any receptacle or object of whatever nature, in that area or part thereof and seize any article referred to in section 20 of the Criminal Procedure Act, 1977 (Act 51 of 1977), found by him or her in the possession of such person or in that area or part thereof: Provided that a member executing a search under this paragraph shall, upon demand of any person whose rights are or have been affected by the search or seizure, exhibit to him or her a copy of the written authorisation.

(8) (a) The National or Provincial Commissioner may, where it is reasonable in the circumstances in order to exercise a power or perform a function referred to in section 215 of the Constitution, in writing authorise a member under his or her command, to set up a roadblock or roadblocks on any public road in a particular area or to set up a checkpoint or checkpoints at any public place in a particular area.

(b) The written authorisation referred to in paragraph (a) shall specify the date, approximate duration, place and object of the proposed action.

(c) Any member authorised under paragraph (a) may set up a roadblock or roadblocks or cause a roadblock or roadblocks to be set up on any public road in the area so specified or set up a checkpoint or checkpoints or cause a checkpoint or checkpoints to be set up at any public place in the area so specified.

(d) Notwithstanding the provisions of paragraph (a), any member who has reasonable grounds to suspect that-

- (i) an offence mentioned in Schedule 1 to the Criminal Procedure Act, 1977, has been committed and that a person who has been involved in the commission thereof is, or is about to be, travelling in a motor vehicle in a particular area;
- (ii) a person who is a witness to such an offence is absconding and is, or is about to be, travelling in a motor vehicle in a particular area and that a warrant for his or her arrest has been issued under section 184 of the Criminal Procedure Act, 1977, or that such a warrant will be issued if the information at the disposal of the member is brought to the attention of the magistrate, regional magistrate or judge referred to in that section, but that the delay in obtaining such warrant will defeat the object of the roadblock;
- (iii) a person who is reasonably suspected of intending to commit an offence referred to in subparagraph (i) and who may be prevented from committing such an offence by the setting up of a roadblock is, or is about to be, travelling in a motor vehicle in a particular area;

- (iv) a person who is a fugitive after having escaped from lawful custody is, or is about to be, travelling in a motor vehicle in a particular area; or
- (v) any object which-
  - (aa) is concerned in;
  - (bb) may afford evidence of; or
  - (cc) is intended to be used in,

the commission of an offence referred to in subparagraph (i), whether within the Republic or elsewhere, and which is, or is about to be, transported in a motor vehicle in a particular area and that a search warrant will be issued to him or her under section 21 (1) (a) of the Criminal Procedure Act, 1977, if he or she had reason to believe that the object will be transported in a specific vehicle and he or she had applied for such warrant,

and that the delay that will be caused by first obtaining an authorisation referred to in paragraph (a), will defeat the object of the roadblock, may set up a roadblock on any public road or roads in that area for the purpose of establishing whether a motor vehicle is carrying such a person or object.

[Para. (d) amended by s. 3 (b) of Act 41 of 1997.]

(e) For the purposes of exercising the powers conferred by paragraph (c) or (d), a member shall display, set up or erect on or next to the road or at the public place such sign, barrier or object as is reasonable in the circumstances to bring the order to stop to the attention of the driver of a vehicle approaching the roadblock so as to ensure that the vehicle will come to a stop or to the attention of a person approaching the checkpoint.

(f) Any driver of a vehicle who approaches a roadblock or any person who approaches a checkpoint and who refuses or fails to stop in accordance with an order to stop displayed as contemplated in paragraph (e), shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

(g) Any member may, without warrant-

- (i) in the event of a roadblock or checkpoint that is set up in accordance with paragraph (c), search any person or vehicle stopped at such roadblock or checkpoint and any receptacle or object of whatever nature in the possession of such person or in, on or attached to such vehicle and seize any article referred to in section 20 of the Criminal Procedure Act, 1977, found by him or her in the possession of such person or in, on or attached to such receptacle or vehicle: Provided that a member executing a search under this subparagraph shall, upon demand of any person whose rights are or have been affected by the search or seizure, exhibit to him or her a copy of the written authorisation by the Commissioner concerned; and
- (ii) in the event of a roadblock that is set up in accordance with paragraph (d), search any person or vehicle stopped at such roadblock and any receptacle or object of whatever nature in, on or attached to such vehicle and seize any article referred to in section 20 of the Criminal Procedure Act, 1977, found by him or her in, on or attached to such receptacle or vehicle: Provided that a member executing a search under this subparagraph shall, upon demand of any person whose rights are or have been affected by the search or seizure, inform him or her of the reason for the setting up of the roadblock.

(h) For the purposes of this subsection 'checkpoint' includes any barrier set up under an authorisation referred to in paragraph (a) in order to control the movement of persons.



(9) The provisions of sections 29 to 36 of the Criminal Procedure Act, 1977, shall apply *mutatis mutandis* in respect of a search conducted under subsections (6), (7) and (8) and any object seized during such a search.

(10) The National or Provincial Commissioner may, in the exercise of any power or the performance of any function referred to in section 215 of the Constitution, publish or cause to be published, or in any other manner display or cause to be displayed any information, photograph or sketch of any person.

(11) (a) A member may, for the purposes of investigating any offence or alleged offence, cordon off the scene of such offence or alleged offence and any adjacent area which is reasonable in the circumstances to cordon off in order to conduct an effective investigation at the scene of the offence or alleged offence.

(b) A member may, where it is reasonable in the circumstances in order to conduct such investigation, prevent any person from entering or leaving an area so cordoned off.

(12) (a) If the National Commissioner deems it necessary for the purposes of performing the functions of the Service, he or she may, with the approval of the Minister, direct any member to perform service at any place outside the Republic.

(b) A member in respect of whom a direction has been issued under paragraph (a), shall perform service in accordance with such direction and shall, while so performing service, remain, unless the Minister in a particular case otherwise directs, subject to the provisions of this Act as if performing service within the Republic.

(13) Subject to the Constitution-

(a) this section shall not be construed as derogating from any power conferred upon a member by or under this Act or any other law, including the common law; and

(b) the powers conferred upon a member by this section shall not be limited by any other law, including the common law.

## **14 Employment of Service in preservation of life, health or property**

The National or Provincial Commissioner may employ members for service in the preservation of life, health or property.

## **15 Delegation**

(1) (a) Subject to section 15 of the Exchequer Act, 1975 (Act 66 of 1975), any power conferred on the National or Provincial Commissioner by this Act or any other law, excluding the power contemplated in section 13 (7) (a), may be delegated in writing by any such Commissioner to any member or other person in the employment of the Service, or a board or body established by or under this Act or a law referred to in section 217 (3) of the Constitution, who or which shall exercise such power subject to the directions of the Commissioner concerned.

(b) Paragraph (a) shall apply *mutatis mutandis* in respect of any power delegated by the National Commissioner to a Provincial Commissioner under that paragraph.

(2) The delegation of any power by the National or Provincial Commissioner under subsection (1) may be withdrawn by such a Commissioner and any decision taken by anyone under such delegated power may be withdrawn or amended by such Commissioner, and shall, until it is so withdrawn or amended, be deemed to have been taken by the National or Provincial Commissioner concerned: Provided that any such withdrawal or amendment shall not affect any right, privilege, obligation or liability acquired, accrued or incurred as a result of such decision.

**CHAPTER 5A**  
**STORAGE AND USE OF FINGERPRINTS, BODY-PRINTS AND PHOTOGRAPHIC IMAGES**  
**OF PERSONS (ss 15A-15D)**

[Chapter 5A inserted by s. 6 of Act 6 of 2010.]

**15A Storage and use of fingerprints, body-prints and photographic images**

(1) The National Commissioner must ensure that fingerprints, body-prints or photographic images taken under-

- (a) section 36B (1), section 36C (1) or section 37 of the Criminal Procedure Act, 1977 (Act 51 of 1977);
- (b) section 113 of the Firearms Control Act, 2000 (Act 60 of 2000);
- (c) section 9 of the Explosives Act, 2003 (Act 15 of 2003); or
- (d) any Order of the Department of Correctional Services,

are stored, maintained, administered, and readily available, whether in computerised or other form, and shall be located within the Division of the Service responsible for criminal records.

(2) The National Commissioner must ensure that the fingerprints and photographic images of persons whose names must be included in the National Register for Sex Offenders, as determined under section 50 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007), are taken and dealt with in accordance with subsection (1).

(3) The provisions of this Chapter apply *mutatis mutandis* to the fingerprints, body-prints or photographic images stored, maintained and administered by the Division of the Service responsible for criminal records prior to the coming into operation of this Act and nothing in this Chapter shall affect the use of such prints and photographic images for the purposes set out in subsections (4) and (5).

(4) Subject to subsection (5), the fingerprints, body-prints or photographic images referred to in subsections (1), (2) and (3) shall only be used for purposes related to the detection of crime, the investigation of an offence, the identification of missing persons, the identification of unidentified human remains or the conducting of a prosecution.

(5) Subsection (4) does not prohibit the use by the police officer commanding the Division of the Service responsible for criminal records or his or her delegate, of any fingerprints stored in terms of this section, for the purpose of establishing if a person has been convicted of an offence.

(6) Any person who, with regard to any fingerprints, body-prints or photographic images referred to in this Chapter-

- (a) uses or who allows the use of those fingerprints, body-prints or photographic images for any purpose that is not related to the detection of crime, the investigation of an offence, the identification of missing persons, the identification of unidentified human remains or the conducting of a prosecution; or
- (b) tampers with or manipulates the process or the fingerprints, bodyprints or images in question; or
- (c) falsely claims such fingerprints, body-prints or images to have been taken from a specific person whilst knowing them to have been taken from another person or source,

is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 15 years.

[S. 15A inserted by s. 6 of Act 6 of 2010.]

## **15B Comparative search against other databases**

(1) Any fingerprints or photographic images stored in terms of this Chapter, may for purposes related to the detection of crime, the investigation of an offence, the identification of missing persons, the identification of unidentified human remains or the conducting of a prosecution, be checked against the databases of the Department of Home Affairs, the Department of Transport or any department of state in the national sphere of government, irrespective of whether the photographic images or prints stored on these respective databases were collected before or after the coming into operation of this section.

(2) Any person who conducts a comparative search, as contemplated in subsection (1), for any purpose that is not related to the circumstances set out in that subsection, is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 15 years.

(3) Any person who in respect of the taking of fingerprints, body-prints or photographic images-

- (a) tampers with or manipulates the process;
- (b) falsely claims it to have been taken from a specific person whilst knowing it to have been taken from another person or source,

is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 15 years.

[S. 15B inserted by s. 6 of Act 6 of 2010.]

## **15C National instructions relating to collection, storage, maintenance, administration and use of fingerprints, body-prints and photographic images**

(1) The National Commissioner must in consultation with the Minister, within six months of the commencement of this section issue national instructions regarding all matters which are reasonably necessary or expedient to be provided for in relation to this Chapter and which must be followed by all police officials, including the following:

- (a) The collection of fingerprints, body-prints and the taking of photographic images;
- (b) the storage, maintenance and administration of the fingerprints, body-prints and photographic images collected in terms of this Chapter;
- (c) the use of the information made available in terms of this Chapter; and
- (d) the manner in which statistics must be kept by the Division of the Service responsible for criminal records in relation to all information collected, stored and analysed in terms of this Chapter, which shall include the recording and maintaining of statistics on all exhibits collected at crime scenes.

(2) The National Commissioner must develop training courses with reference to the national instructions referred to in subsection (1) and ensure that adequate training takes place within the Service.

[S. 15C inserted by s. 6 of Act 6 of 2010.]

## **15D Security measures on integrity of information on database**

(1) The National Commissioner must secure the integrity of information on the database provided for in this Chapter by taking appropriate, reasonable technical and organisational measures to prevent-

- (a) loss of, damage to or unauthorised destruction of information on the database; and
- (b) unlawful access to or processing of information on the database.

(2) In order to give effect to subsection (1), the National Commissioner must take reasonable measures to-

- (a) identify all reasonable foreseeable internal and external risks to information on the database under his or her control;
- (b) establish and maintain appropriate safeguards against the risks identified;
- (c) regularly verify that the safeguards are effectively implemented; and
- (d) ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.

(3) The National Commissioner must have due regard to generally accepted information security practices and procedures which may apply to the Service generally or be required in terms of specific laws and regulations relating to security of information applicable to the Service.

(4) The National Commissioner and the Directors-General of the Departments of Transport, Home Affairs and Correctional Services must, under the chairpersonship of the National Commissioner, within six months of the commencement of this section develop standard operating procedures regarding-

- (a) access to the databases; and
- (b) the implementation of safety measures to protect the integrity of information contained on the relevant databases.

(5) Other databases may only be accessed in terms of standard operating procedures referred to in subsection (4).

[S. 15D inserted by s. 6 of Act 6 of 2010.]

## CHAPTER 5B

### ESTABLISHMENT, ADMINISTRATION AND MAINTENANCE OF NATIONAL FORENSIC DNA DATABASE OF SOUTH AFRICA (ss 15E-15AD)

[Chapter 5B inserted by s. 6 of Act 37 of 2013.]

#### 15E Interpretation

For the purposes of this Chapter, unless the context indicates otherwise-

- (a) **'authorised officer'** means the police officer commanding the Division responsible for forensic services within the Service or his or her delegate;
- (b) **'authorised person'**, with reference to buccal samples, means a police official or a member of the Independent Police Investigative Directorate, referred to in the Independent Police Investigative Directorate Act, who is not the crime scene examiner of the particular case and who has successfully completed the training prescribed by the Minister of Health under the National Health Act, in respect of the taking of a buccal sample;
- (c) **'Board'** means the National Forensic Oversight and Ethics Board established under section 15V;
- (d) **'bodily sample'** means an intimate or buccal sample taken from a person;
- (e) **'buccal sample'** means a sample of cellular material taken from the inside of a person's mouth;
- (f) **'child'** means a person under the age of 18 years;
- (g) **'comparative search'** means the comparing by the authorised officer of forensic DNA profiles derived from bodily samples, taken under any power conferred by Chapter 3 of the Criminal Procedure Act, against forensic DNA profiles contained in the different indices of the NFDD referred to in this Chapter;
- (h) **'crime scene sample'** means physical evidence which is retrieved from the crime scene or any other place where evidence of the crime may be found, and may

include physical evidence collected from the body of a person, including a sample taken from a nail or from under the nail of a person;

- (i) **'Criminal Procedure Act'** means the Criminal Procedure Act, 1977 (Act 51 of 1977);
- (j) **'DNA'** means deoxyribonucleic acid which is a bio-chemical molecule found in the cells and that makes each species unique;
- (k) **'Executive Director'** means the person appointed in terms of section 6 of the Independent Police Investigative Directorate Act;
- (l) **'forensic DNA analysis'** means the analysis of sections of the DNA of a bodily sample or crime scene sample to determine the forensic DNA profile: Provided that it does not relate to any analysis pertaining to medical tests or for health purposes or mental characteristic of a person or to determine any physical information of the person other than the sex of that person;
- (m) **'forensic DNA profile'** means the results obtained from forensic DNA analysis on bodily samples taken from a person or a crime scene, providing a unique string of alpha numeric characters to provide identity reference: Provided that it does not contain any information on the health or medical condition or any information on the predisposition or physical information of that person other than the sex of that person;
- (n) **'Independent Police Investigative Directorate Act'** means the Independent Police Investigative Directorate Act, 2011 (Act 1 of 2011);
- (o) **'intimate sample'** means a sample of blood or pubic hair or a sample taken from the genitals or anal orifice area of the body of a person, excluding a buccal sample;
- (p) **'National Health Act'** means the National Health Act, 2003 (Act 61 of 2003); and
- (q) **'NFDD'** means the National Forensic DNA Database of South Africa, established in terms of section 15G.

[S. 15E inserted by s. 6 of Act 37 of 2013.]

## 15F Objective of Chapter

The objective of this Chapter is to establish and maintain a national forensic DNA database in order to perform comparative searches for the following purposes:

- (a) To serve as a criminal investigative tool in the fight against crime;
- (b) to identify persons who might have been involved in the commission of offences, including those committed before the coming into operation of this Chapter;
- (c) to prove the innocence or guilt of an accused person in the defence or prosecution of that person;
- (d) to exonerate a person convicted of an offence; or
- (e) to assist with the identification of missing persons or unidentified human remains.

[S. 15F inserted by s. 6 of Act 37 of 2013.]

## 15G Establishment of national forensic DNA database

(1) A national forensic DNA database within the Service, to be known as the National Forensic DNA Database of South Africa (NFDD), is hereby established.

- (2) The authorised officer, as the custodian of the NFDD, must ensure that the-
- (a) analysis, custody and disposal of DNA samples at a forensic DNA analysis laboratory; and
  - (b) administration and maintenance of the NFDD,

are managed independently of each other.

(3) The NFDD must consist of the following indices which contain forensic DNA profiles:

- (a) A Crime Scene Index;
- (b) an Arrestee Index;
- (c) a Convicted Offender Index;
- (d) an Investigative Index;
- (e) an Elimination Index; and
- (f) a Missing Persons and Unidentified Human Remains Index.

(4) Sub-indices for children must be created under the relevant indices referred to in subsection (3).

(5) The indices must not contain the following information:

- (a) The appearance of the person, other than indicating the sex of that person;
- (b) medical information of the person;
- (c) historical information relating to the person; and
- (d) behavioural information of the person.

(6) Nothing in this Chapter affects the use and storage of such forensic DNA profiles derived from samples taken in accordance with this Act for-

- (a) comparative searches against forensic DNA profiles derived prior to the coming into operation of this Chapter; and
- (b) the use of the results of the comparative searches as evidence in a court of law.

[S. 15G inserted by s. 6 of Act 37 of 2013.]

### **15H Crime Scene Index**

(1) The Crime Scene Index must contain the relevant forensic DNA profiles derived by means of forensic DNA analysis, from samples that are found and collected, including at a crime scene-

- (a) at any place where an offence was or is reasonably suspected of having been committed;
- (b) on or in the body of the victim or suspect which may be used to identify DNA left by that person who was in contact with that person during the commission of the offence; or
- (c) on anything worn or carried by the victim or suspect at the time when an offence was, or is reasonably suspected of having been committed.

(2) The authorised officer must ensure the safe and secure storage of crime scene samples, which samples must be kept indefinitely.

[S. 15H inserted by s. 6 of Act 37 of 2013.]

### **15I Arrestee Index**

(1) The Arrestee Index must contain forensic DNA profiles, derived by means of forensic DNA analysis, from a bodily sample taken under any power conferred by Chapter 3 of the Criminal Procedure Act where an arrestee's forensic DNA profile does not form part of any other Index.

(2) The forensic DNA profile in the Arrestee Index must be removed by the authorised officer immediately upon application, in the prescribed manner, when a-

- (a) child is diverted in accordance with Chapter 8 of the Child Justice Act, 2008 (Act 75 of 2008);
- (b) decision was made not to prosecute a person;
- (c) person is discharged at a preparatory examination; or
- (d) person is acquitted at his or her trial:

Provided that there is no other outstanding criminal investigation against the person.

(3) The application referred to in subsection (2) must be submitted to the authorised officer and a copy thereof provided to the Board.

(4) If no application for removal of a forensic DNA profile, contemplated in subsection (2) is received, the profile of the relevant person must be removed immediately after the authorised officer has been notified in accordance with subsection (5) or (6), but may not be retained for longer than-

- (a) three years, in the case of an adult; or
- (b) twelve months, in the case of a child.

(5) The Clerk of the Court or Registrar of the High Court must notify the authorised officer of an acquittal, conviction, setting aside or finding of a preliminary investigation within 60 days from the date of the verdict or outcome of the matter.

(6) In respect of a decision not to prosecute or the diversion of a child in accordance with Chapter 8 of the Child Justice Act, the prosecutor who made the decision must notify the authorised officer within 60 days from the date of the decision.

(7) If an application contemplated in subsection (2) is received by the authorised officer before a notification referred to in subsection (5) or (6) has been received, the authorised officer must enquire from the relevant authority in that regard.

(8) The authorised officer must notify the relevant person referred to in subsection (2) of the removal of his or her forensic DNA profile from the Arrestee Index.

(9) The authorised officer must inform the Board quarterly of any removal of a forensic DNA profile from the Arrestee Index in terms of subsections (2) and (4).

[S. 15I inserted by s. 6 of Act 37 of 2013.]

## **15J Convicted Offender Index**

(1) The Convicted Offender Index must contain forensic DNA profiles, derived by means of forensic DNA analysis, from a bodily sample-

- (a) that was entered into the Arrestee Index, but an arrestee has subsequent to the entering of his or her forensic DNA profile on the Arrestee Index been convicted of an offence; or
- (b) that was taken from a person convicted of an offence either before or after the coming into operation of this Chapter.

(2) Upon the conviction of a child, the child's forensic DNA profile must be retained on a database referred to in this Chapter, subject to the provisions relating to expungement of a conviction or sentence of a child as provided for in section 87 of the Child Justice Act, 2008 (Act 75 of 2008).

(3) The forensic DNA profile in the Convicted Offender Index must be removed by the authorised officer immediately upon application in the prescribed manner when-

- (a) a person's conviction is set aside on appeal or review; or
- (b) the relevant notice in terms of section 15I (5) has been received:

Provided that section 15I (4), (7), (8) and (9) are applicable with the necessary changes to the removal of forensic DNA profiles from the Convicted Offender Index.

(4) The forensic DNA profile of a convicted offender who has been pardoned in terms of section 84 (2) (j) of the Constitution of the Republic of South Africa, 1996, or whose criminal record has been expunged in terms of sections 271B to 271D of the Criminal Procedure Act, must be removed by the authorised officer from the Convicted Offender Index within three years of being notified of the pardon or expungement by the Director-General: Justice and Constitutional Development.

(5) In the case of a child, the forensic DNA profile on the Convicted Offender Index must be removed within 12 months if no application for expungement referred to in subsection (2), or pardon, referred to in subsection (3) has been received from or on behalf of such child.

(6) Subject to subsections (2), (3), (4) and (5) the forensic DNA profiles in the Convicted Offender Index must be stored on the NFDD and be retained indefinitely.

[S. 15J inserted by s. 6 of Act 37 of 2013.]

### **15K Investigative Index**

(1) (a) An Investigative Index must contain forensic DNA profiles, derived by means of forensic DNA analysis from a bodily sample taken from a person with his or her informed consent or authorised in accordance with section 36E (2) of the Criminal Procedure Act.

(b) If the person referred to in paragraph (a) is a child, the sample may be taken with the informed consent of the child's parent or guardian.

(2) For the purposes of this section, 'informed consent' means that the person consents, in writing, to the taking of a buccal sample, after a police official has informed him or her-

- (a) of the manner in which the buccal sample will be taken;
- (b) that he or she is under no obligation to give a buccal sample;
- (c) that the sample or the forensic DNA profile derived from it may produce evidence that might be used in a court of law;
- (d) that the buccal sample taken under this section, and the forensic DNA profile derived from it, may only be used for purposes referred to in section 15F; and
- (e) that any profile derived from a sample taken under this section will be removed and that the person will be notified within three months after the authorised officer is notified that the case is finalised.

(3) A profile in the Investigative Index must-

- (a) be stored on the NFDD; and
- (b) be removed within three months after the authorised officer is notified that the case is finalised and the relevant person must be notified, within the same period of such removal.

[S. 15K inserted by s. 6 of Act 37 of 2013.]

### **15L Elimination Index**

(1) The Elimination Index must contain forensic DNA profiles, derived by means of forensic DNA analysis, from a buccal sample taken from-

- (a) a police official, or any other person, who as part of his or her official duties attends or processes a crime scene;
- (b) a police official or any other person, who may be handling or processing or examining crime scene samples or bodily samples under this Chapter;



- (c) any person directly involved in the servicing or calibration of equipment or in laboratories used in the forensic DNA analysis process;
- (d) any person who enters an examination area in a forensic DNA laboratory, or processes, handles or examines crime scene samples or bodily samples, under this Chapter; and
- (e) where possible, any person directly involved in the manufacturing of consumables, equipment, utensils or reagents.

(2) From the commencement of this Chapter, all new recruits to the Service must be required to submit a buccal sample for purposes of forensic DNA profiles derived therefrom to be included in the Elimination Index.

(3) The forensic DNA profiles in the Elimination Index must be stored on the NFDD and be retained, unless the profile has been migrated to another Index or is no longer required.

(4) A person referred to in subsection (1) may apply, in the prescribed manner, to have his or her profile removed from the Elimination Index when it is no longer required.

(5) Nothing in this section prohibits the forensic DNA profile derived from a sample taken from any person mentioned in subsection (1) or (2) to be subjected to a comparative search for purposes referred to in section 15F.

[S. 15L inserted by s. 6 of Act 37 of 2013.]

### 15M Missing Persons and Unidentified Human Remains Index

(1) The Missing Persons and Unidentified Human Remains Index must contain forensic DNA profiles, derived by means of forensic DNA analysis, from-

- (a) any bodily sample of a missing or unidentified person; or
- (b) any bodily sample or crime scene sample taken from unidentified human remains.

(2) Familial searches may be conducted in respect of forensic DNA profiles referred to in subsection (1).

(3) Forensic DNA profiles referred to in subsection (1) must be stored until the purpose for which they have been stored have [sic] been achieved, and must then be removed.

(4) A request to conduct a familial search must be submitted to the authorised officer and a copy thereof provided to the Board.

(5) The Board must be notified of any request for the use of familial searches and the outcome thereof.

(6) The Minister must ensure that a policy relating to familial searches is developed.

(7) (a) For the purposes of this section, '**familial searches**' means a technique whereby a forensic DNA profile derived from a sample-

- (i) of a missing person; or
- (ii) obtained from a family member of a missing person,

is deliberately searched against the Missing Persons and Unidentified Human Remains Index and the Crime Scene Index of the NFDD to obtain a list of forensic DNA profiles that are almost similar to the forensic DNA profile derived from a sample referred to in subparagraph (i) or (ii).

(b) The Service may use the results of the familial searches referred to in paragraph (a) as an investigative lead, by a specially trained police official, to-

- (i) interview family members of the near matches; or
- (ii) identify unidentified human remains.

(c) The results of familial searches must be dealt with in a sensitive manner.

[S. 15M inserted by s. 6 of Act 37 of 2013.]

## **15N Comparative forensic DNA search and communication of information**

(1) The authorised officer must perform comparative searches on forensic DNA profiles that are entered onto the NFDD for the purposes referred to in section 15F, and communicate the outcome of the comparative search as contemplated in subsection (2).

(2) No person may disclose any information which he or she had obtained in the exercise of any powers or the performance of any duties in terms of this Chapter, except-

- (a) to a person who of necessity requires it for the performance of his or her functions in terms of this Chapter or any other Act or as provided for in section 15O;
- (b) if he or she is a person who of necessity supplies it in the performance of his or her functions in terms of this Act or any other Act;
- (c) in respect of information which is required in terms of any law or as evidence in any court of law;
- (d) to any competent authority which requires it for the institution of any criminal proceedings, including a preliminary investigation or an inquest;
- (e) to an accused person, or where the person is a child to his or her parent or guardian, or his or her legal representative, for criminal defence purposes; or
- (f) to a person convicted of an offence, or his or her legal representative, for exoneration purposes.

[S. 15N inserted by s. 6 of Act 37 of 2013.]

## **15O Foreign and international law enforcement agencies**

(1) The authorised officer may, subject to the provisions of this Act and any other applicable law, upon receipt of a forensic DNA profile from a foreign state or a recognised international law enforcement organisation, court or tribunal, compare the forensic DNA profile with any of the Indices in the NFDD, except the Investigative Index, for the purposes set out in section 15F.

(2) The authorised officer may for the purposes referred to in section 15F, communicate a forensic DNA profile contained in the Crime Scene Index and the Missing Persons and Unidentified Human Remains Index to a foreign state or a recognised international law enforcement organisation, court or tribunal.

(3) Subsections (1) and (2) may only be utilised for investigative purposes and should forensic DNA results be required for purposes of evidence in a court of law, the processes referred to in the International Cooperation in Criminal Matters Act, 1998 (Act 75 of 1996), must be utilised.

(4) The communication of the outcome of the comparative search contemplated in subsection (1) or the profile contemplated in subsection (2) may only be done subject to the international obligations of the Republic.

(5) Any request in terms of this section and the outcome thereof must be reported to the Board.

[S. 15O inserted by s. 6 of Act 37 of 2013.]

## **15P Compliance with Quality Management System**

(1) The authorised officer must develop and recommend standards for quality management, including standards for testing the proficiency of forensic science laboratories and forensic analysts conducting forensic DNA analysis.

- (2) The standards referred to in subsection (1) must-
- (a) comply with the South African National Accreditation System established under section 3 of the Accreditation for Conformity Assessment, Calibration and Good Laboratory Practice Act, 2006 (Act 19 of 2006), and standards set by the International Organization for Standardization;
  - (b) specify criteria for quality management and proficiency tests applied to the various types of forensic DNA analysis; and
  - (c) include a system for grading proficiency testing performance to determine whether a laboratory or forensic analyst is performing acceptably.

[S. 15P inserted by s. 6 of Act 37 of 2013.]

### **15Q Analysis, retention, storage, destruction and disposal of samples**

(1) Bodily samples and crime scene samples received at the forensic laboratory must be analysed and loaded on the NFDD within 30 days, unless there is a compelling reason in terms of priorities why such samples cannot be analysed and loaded within that period.

(2) The authorised officer must report to the Board any compelling reason contemplated in subsection (1) when it occurs.

(3) If a sample is not analysed within the period referred to in subsection (1) such non-compliance will not have any effect on the investigation or prosecution concerned.

(4) The authorised officer must institute disciplinary action for any failure to analyse and load the samples on the NFDD within the period referred to in subsection (1) without a compelling reason.

(5) Any bodily sample taken from a person from the commencement of this Chapter and which is not a crime scene sample must be destroyed and disposed of within three months after a forensic DNA profile is obtained and loaded on the NFDD.

(6) Records of the destruction of bodily samples must be kept by the authorised officer in the prescribed manner and must be reported to the Board annually.

[S. 15Q inserted by s. 6 of Act 37 of 2013.]

### **15R Infrastructure**

The National Commissioner or his or her delegate must acquire and maintain adequate information technology infrastructure and systems to support the efficient analysis of DNA samples, the performance of comparative searches against the NFDD and the administrative maintenance of the NFDD.

[S. 15R inserted by s. 6 of Act 37 of 2013.]

### **15S Offences and penalties**

(1) Any person who, with regard to any bodily sample, crime scene sample or a forensic DNA profile derived therefrom-

- (a) uses or allows the use of those samples or forensic DNA profiles derived therefrom for any purpose other than those referred to in this Chapter; or
- (b) tampers with or manipulates the process or the samples or forensic DNA profiles;
- (c) falsely claims such samples or forensic DNA profiles derived therefrom to have been taken from a specific person whilst knowing them to have been taken from another person or source;
- (d) discloses information in contravention of section 15N (2); or
- (e) unlawfully loses, damages or destroys information on the NFDD,

is guilty of an offence and liable in the case of a natural person, to imprisonment for a period not exceeding 15 years, and in the case of a juristic person, to a fine.

(2) Any person who causes the unlawful loss of, damage to or unauthorised destruction of information on the NFDD is guilty of an offence and liable in the case of a natural person, to imprisonment for a period not exceeding 15 years, and in the case of a juristic person, to a fine.

[S. 15S inserted by s. 6 of Act 37 of 2013.]

### **15T Awareness and training programs**

(1) The Secretary of Police must ensure that guidelines relating to awareness programs contemplated in subsections (2) and (3) are developed and their implementation monitored and assessed on a regular basis.

(2) The National Commissioner and the Executive Director must develop awareness and training programs for the Service and the Independent Police Investigative Directorate respectively, on the regulations referred to in section 15AD in order to support the implementation and their application of this Chapter.

(3) The National Commissioner must develop awareness programs to make the public aware of the provisions of this Chapter and in particular their rights relating to the taking of DNA samples, the keeping and destruction of DNA samples and powers of the Board to receive and assess complaints relating to DNA.

[S. 15T inserted by s. 6 of Act 37 of 2013.]

### **15U Access to and security of NFDD**

(1) The National Commissioner must secure the integrity of information on the NFDD by taking appropriate, reasonable technical and organisational measures to prevent-

- (a) loss of, damage to or unauthorised destruction of information on the NFDD; and
- (b) unlawful access to, communication or processing of information on the NFDD.

(2) In order to give effect to subsection (1), the National Commissioner must take reasonable measures to-

- (a) identify all reasonable foreseeable internal and external risks to information on the NFDD under his or her control;
- (b) establish and maintain appropriate safeguards against the risks identified;
- (c) regularly verify that the safeguards are effectively implemented; and
- (d) ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.

(3) The National Commissioner must have due regard to generally accepted information security practices and procedures which may apply to the Service generally or be required in terms of specific laws and regulations relating to security of information applicable to the Service.

(4) The National Commissioner, after consultation with the Board, must within six months of the commencement of this Chapter develop standard operating procedures regarding-

- (a) access to the NFDD; and
- (b) the implementation of safety measures to protect the integrity of information contained on the NFDD.

(5) The National Commissioner must report to the National Assembly and the Board-

- (a) any breach of the access and security measures referred to in this section as and when such breach occurs;
- (b) any loss of, damage to or unauthorised destruction of information on the NFDD; and
- (c) steps taken to address such breach and to prevent the recurrence thereof.

(6) The Secretary of Police must monitor and oversee the security measures instituted by the National Commissioner.

[S. 15U inserted by s. 6 of Act 37 of 2013.]

## **15V Establishment and composition of National Forensic Oversight and Ethics Board**

(1) A National Forensic Oversight and Ethics Board is hereby established.

(2) The Board must consist of not more than ten persons appointed by the Minister on a part-time basis for a period not exceeding five years of whom-

- (a) five persons must be from outside the public sector with knowledge and experience in forensic science, human rights law or ethics relating to forensic science; and
- (b) four persons must be from the public sector on the level of at least a Chief Director, namely-
  - (i) the Secretary of Police or his or her representative;
  - (ii) a representative of the Department of Health who has knowledge in the field of DNA;
  - (iii) a representative from the Department of Justice and Constitutional Development who has a sound knowledge of constitutional law; and
  - (iv) a representative of the Department of Correctional Services.

(3) The members of the Board, referred to in subsection (2) (a), must be appointed by the Minister after inviting nominations from the public.

(4) The Minister must appoint-

- (a) the chairperson of the Board who must be a retired judge or a senior advocate with knowledge and experience in the field of human rights; and
- (b) a deputy chairperson from the remaining members of the Board.

(5) The Minister must report to the National Assembly on the-

- (a) appointment of the Board, including the names of the members of the Board and a synopsis of their expertise and suitability to serve on the Board; and
- (b) removal or resignation of members from the Board,

within 14 days of the appointment, removal or resignation, if Parliament is in session or, if Parliament is not in session, within 14 days after the commencement of its next ensuing session.

(6) The deputy chairperson must exercise all the powers and perform all the duties of the chairperson whenever the chairperson is unable to do so.

(7) The term of appointment of a member of the Board may, before the expiry thereof, be renewed for an additional term.

(8) In the case of a vacancy, the Minister must fill the vacancy within a reasonable period of time, which period must not exceed six months.

[S. 15V inserted by s. 6 of Act 37 of 2013.]

## **15W Disqualification, removal and resignation from Board**

(1) A person is disqualified from being appointed or continuing to serve as a member of the Board if he or she-

- (a) is not a citizen of the Republic;
- (b) is an unrehabilitated insolvent;
- (c) has been declared by a court to be mentally ill or unfit; or
- (d) has been convicted of a criminal offence.

(2) The Minister may, after due enquiry, remove a member from the Board on account of-

- (a) misconduct;
- (b) incapacity;
- (c) incompetence;
- (d) absence from three consecutive meetings of the Board without the prior permission of the Board, except on good cause shown;
- (e) ill health;
- (f) conflict of interest;
- (g) unethical conduct; or
- (h) disqualification as contemplated in subsection (1).

(3) A member may resign by giving 30 days written notice of his or her resignation to the Minister.

(4) A member of the Board may be suspended from the Board by the Minister pending the consideration of the removal of such member from the Board.

[S. 15W inserted by s. 6 of Act 37 of 2013.]

## **15X Meetings of Board**

(1) The first meeting of the Board must be convened by the Minister and thereafter the meetings of the Board must be held at least quarterly.

(2) The Board may determine its own governance rules and procedures.

[S. 15X inserted by s. 6 of Act 37 of 2013.]

## **15Y Funding, secretariat and remuneration of members of Board**

(1) The Board must be funded from the budget allocation of the Civilian Secretariat for Police.

(2) The Minister must, in terms of the Public Service Act, 1994 (Proclamation 103 of 1994), appoint a full-time secretariat to provide administrative support to the Board.

(3) The Minister may, in consultation with the Minister of Finance, determine the remuneration or payment of expenses for members of the Board, who are not appointed in terms of the Public Service Act, 1994, or the Human Rights Commission Act, 1994 (Act 54 of 1994).

[S. 15Y inserted by s. 6 of Act 37 of 2013.]

## **15Z Functions of Board**

(1) The Board must-

- (a) monitor the implementation of this Chapter;
- (b) make proposals to the Minister-

- (i) on the improvement of practices regarding the overall operations of the NFDD;
  - (ii) the ethical, legal and social implications of the use of forensic DNA; and
  - (iii) on the training and the development of criteria for the use of familial searches;
- (c) provide oversight over the processes relating to-
- (i) the collection, retention, storage, destruction and disposal of DNA samples;
  - (ii) the retention and removal of forensic DNA profiles, as provided for in this Act;
  - (iii) familial searches;
  - (iv) any breach in respect of the taking, transporting, analysis, storing, use and communication of DNA samples and forensic DNA profiles, including security breaches; and
  - (v) security and quality management systems;
- (d) handle complaints by-
- (i) receiving and assessing complaints about alleged-
    - (aa) violations relating to the abuse of DNA samples and forensic DNA profiles;
    - (bb) security breaches,
 and reporting to complainants in respect thereof;
  - (ii) gathering such information which will assist the Board in discharging its duties and carrying out its functions under this section;
  - (iii) attempting to resolve complaints by means of dispute resolution mechanisms such as mediation and conciliation;
  - (iv) referring complaints to relevant authorities where applicable; and
  - (v) reporting to the Minister the outcome of every complaint;
- (e) consider all reports submitted to it in terms of this Chapter; and
- (f) consider any other matter related to this Chapter.

(2) The Board may gather such information which will assist it in discharging its duties and carrying out its functions under this Chapter.

(3) A copy of the report contemplated in section 15AC (5) must be submitted to the National Commissioner to follow up and address the issues contained therein.

(4) The National Commissioner must report to the Board within 90 days of receipt of the report contemplated in section 15AC (5) on the steps taken to rectify the issues contained therein.

(5) The Board may establish committees to deal with specific matters as and when required.

(6) The Board must submit a report on the execution of its functions to any authority established by law regulating the protection of personal information.

[S. 15Z inserted by s. 6 of Act 37 of 2013.]

### **15AA Procedure for handling of complaints**

(1) The Board may, either as a result of a complaint lodged with it or of its own accord consider a complaint.

(2) The Board must refer a complaint contemplated in subsection (1) to a committee of the Board for assessment in the prescribed manner.

(3) The committee must, after its assessment of the complaint, report to the Board on the outcome of such assessment including recommendations relating thereto.

(4) In the case where a criminal act is alleged to have been committed by a person subject to an assessment, the Board must refer the matter to the relevant authorities for further action.

(5) The Board must ensure that recommendations regarding disciplinary matters are referred to-

- (a) the National Commissioner;
- (b) the Executive Director; or
- (c) any other relevant authority.

(6) The relevant authority referred to in subsections (4) and (5) must report the outcome of such further action to the Board.

[S. 15AA inserted by s. 6 of Act 37 of 2013.]

### **15AB Disciplinary recommendations**

(1) The National Commissioner or the Executive Director must, with regard to recommendations on disciplinary matters referred to him or her in terms of section 15AA (5)-

- (a) within 30 days of receipt thereof, initiate disciplinary proceedings in terms of the recommendations made by the Board; and
- (b) immediately on finalisation of the disciplinary matter inform the Minister in writing of the outcome thereof and provide a copy thereof to the Board.

(2) The National Commissioner or the Executive Director must finalise disciplinary proceedings relating to DNA within 60 days from the initiation thereof and must report to the Board and the Minister the reasons for not finalising the proceedings within that period.

(3) If the disciplinary proceedings are not instituted and finalised within the periods referred to in subsections (1) and (2), it would not invalidate the proceedings.

[S. 15AB inserted by s. 6 of Act 37 of 2013.]

### **15AC Parliamentary oversight**

(1) The National Commissioner must provide, as part of the annual report of the Service to the National Assembly in terms of section 55 (d) of the Public Finance Management Act, 1999 (Act 1 of 1999), a report-

- (a) in respect of the performance of the NFDD;
- (b) relating to the use of forensic DNA evidence in the investigation of crime; and
- (c) relating to disciplinary proceedings concerning forensic DNA matters.

(2) The Minister must not later than five years after the commencement of this Chapter, submit a report to the National Assembly on whether any legislative amendments are required to improve the functioning of the NFDD and the use of forensic DNA evidence in the combating of crime.

(3) After the initial period of five years referred to in subsection (2), the Minister must every three years submit a report referred to in subsection (2) to the National Assembly.

(4) The Executive Director must submit a report, as part of the Independent Police Investigative Directorate's annual report, to the National Assembly in terms of section 55 (d) of the Public Finance Management Act, 1999 (Act 1 of 1999), on the performance of the functions of the Directorate in terms of this Chapter, including disciplinary proceedings concerning forensic DNA matters.



(5) The Board must annually submit a report to the National Assembly on its functions in terms of this Chapter.

[S. 15AC inserted by s. 6 of Act 37 of 2013.]

## **15AD Regulations**

(1) The Minister must make regulations regarding all matters which are reasonably necessary or expedient to be provided for and which must be followed by all police officials or members of the Independent Police Investigative Directorate, referred to in the Independent Police Investigative Directorate Act, in order to achieve the objects of this Chapter, including the following:

- (a) The requirements for the suitability of areas to be designated in terms of section 36A (5) (b) of the Criminal Procedure Act;
  - (b) the manner in which to secure a crime scene for the purposes of collecting crime scene samples;
  - (c) the manner in which to safely preserve and ensure timely transfer of collected samples to the forensic science laboratories;
  - (d) the manner in which to request access to information stored on the NFDD;
  - (e) the manner in which DNA samples must be destroyed;
  - (f) the manner in which complaints must be lodged to, and assessed by, the Board;
  - (g) the application process for access to the forensic DNA profile and crime scene sample for exoneration purposes;
  - (h) the process to be followed by the Minister in the appointment, suspension and removal of members of the Board;
  - (i) the process to be followed with regard to the destruction of DNA samples and the removal of forensic DNA profiles derived therefrom;
  - (j) the requirements for the taking of buccal samples in a designated area; and
  - (k) the development of strict protocols and training relating to familial searches.
- (2) The Minister may make regulations regarding-
- (a) any matter which is required or permitted by this Chapter to be prescribed; and
  - (b) any administrative or procedural matter necessary or expedient to give effect to the provisions of this Chapter.

(3) A regulation made under subsection (1) may prescribe a fine or a period of imprisonment for a maximum of five years for any contravention thereof or failure to comply therewith.

(4) The regulations contemplated in subsection (1) must be tabled in Parliament for notification within six months after the commencement of this Chapter.

[S. 15AD inserted by s. 6 of Act 37 of 2013.]

## **CHAPTER 6 ORGANISED CRIME AND PUBLIC ORDER POLICING UNIT (ss 16-17)**

### **16 National prevention and investigation of crime**

(1) Circumstances amounting to criminal conduct or an endeavour thereto, as set out in subsection (2), shall be regarded as organised crime, crime which requires national prevention or investigation, or crime which requires specialised skills in the prevention and investigation thereof.

(2) Circumstances contemplated in subsection (1) comprise criminal conduct or endeavour thereto-

- (a) by a person, group of persons or syndicate acting in-
  - (i) an organised fashion; or
  - (ii) a manner which could result in substantial financial gain for the person, group of persons or syndicate involved.  
[Para. (a) substituted by s. 2 (a) of Act 57 of 2008.]
- (b)
  - (i) by a person or persons in positions of trust and making use of specialised or exclusive knowledge;
  - (ii) in respect of the revenue or expenditure of the national government; or
  - (iii) in respect of the national economy or the integrity of currencies;
- (c) which takes on such proportions or is of such a nature that the prevention or investigation thereof at national level would be in the national interest;
- (d) in respect of unwrought precious metals or unpolished diamonds;
- (e) in respect of the hunting, importation, exportation, possession, buying and selling of endangered species or any products thereof as may be prescribed;
- (f) in more than one province or outside the borders of the Republic by the same perpetrator or perpetrators, and in respect of which the prevention or investigation at national level would be in the national interest;
- (g) in respect of which the prevention or investigation requires the application of specialised skills and where expedience requires that it be prevented or investigated at national level;
- (h) which a Provincial Commissioner requests the National Head of the Directorate for Priority Crime Investigation, referred to in section 17C (2), to prevent or investigate by employing expertise and making resources available at national level and to which request the National Head of the Directorate for Priority Crime Investigation accedes in accordance with the approved policy guidelines;<sup>1</sup>  
[Para. (h) substituted by s. 3 (a) of Act 10 of 2012.]
- (i) in respect of which the investigation in the Republic by the Service is requested by an international police agency or the police of a foreign country;
- (iA) in respect of the commission of any alleged offence mentioned in the Schedule; or  
[Para. (iA) inserted by s. 2 (c) of Act 57 of 2008.]
- (j) in respect of which the prevention or investigation by members under the command of a Provincial Commissioner will detrimentally affect or hamper the prevention or investigation of circumstances referred to in paragraphs (a) to (iA).  
[Para. (j) substituted by s. 2 (d) of Act 57 of 2008.]

(2A) For the purpose of subparagraph (a) (i), **'organised fashion'** includes the planned, ongoing, continuous or repeated participation, involvement or engagement in at least two incidents of criminal or unlawful conduct that has the same or similar intents, results, accomplices, victims or methods of commission, or otherwise are related by distinguishing characteristics.

[Sub-s. (2A) inserted by s. 2 (e) of Act 57 of 2008.]

(3) In the event of a dispute between the National Head of the Directorate for Priority Crime Investigation and the National Commissioner or the National Head for Priority Crime

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<sup>1</sup> In *Helen Suzman Foundation v President of the Republic of South Africa and Others; Glenister v President of the Republic of South Africa and Others* (CCT 07/14, CCT 09/14) [2014] ZACC 32 of 27 November 2014 the Constitutional Court declared the words 'in accordance with the approved policy guidelines' in s. 16 (2) (h) inconsistent with the Constitution and therefore invalid, and deleted them from the date of the order

Investigation and a Provincial Commissioner regarding the question whether criminal conduct or endeavour thereto falls within the mandate of the Directorate, the determination by the National Head of the Directorate for Priority Crime Investigation in accordance with the approved policy guidelines,<sup>2</sup> shall prevail.

[Sub-s. (3) substituted by s. 3 (b) of Act 10 of 2012.]

(4) (a) Notwithstanding the provisions of subsections (1), (2) and (3), the Provincial Commissioner shall be responsible for the prevention and investigation of all crimes or alleged crimes committed in the province concerned.

(b) Where an investigation of a crime or alleged crime reveals that the circumstances referred to in subsection (2) are present, the Provincial Commissioner shall report the matter to the National Head of the Directorate for Priority Crime Investigation as soon as possible.

[Para. (b) substituted by s. 3 (c) of Act 10 of 2012.]

(c) The National Head of the Directorate for Priority Crime Investigation may, after consultation with the Provincial Commissioner concerned, notwithstanding the presence of the circumstances referred to in subsection (2), direct that the investigation or any part thereof, be conducted by the Provincial Commissioner.

[Para. (c) substituted by s. 3 (c) of Act 10 of 2012.]

(5) All members of the Service shall cooperate with one another in accordance with the principles provided for in Chapter 3 of the Constitution of the Republic of South Africa, 1996.

[Sub-s. (5) added by s. 3 (d) of Act 10 of 2012.]

## 17 National public order policing unit

(1) The National Commissioner shall, subject to section 218 (1) (k) of the Constitution, establish and maintain a national public order policing unit.

(2) The National Commissioner may deploy the national public order policing unit, or any part thereof, at the request and in support of a Provincial Commissioner, taking into account-

- (a) the reason for the request;
- (b) the personnel and equipment available to the unit; and
- (c) any other circumstances anywhere in the national territory which may have an influence on the maintenance of public order and which may require the deployment of the unit or any part thereof elsewhere.

(3) Where the national public order policing unit or any part thereof is deployed under subsection (2), the unit shall perform its functions subject to the directions of the Provincial Commissioner concerned: Provided that the mere fact of such deployment does not preclude the President from exercising his or her powers under subsection (5) in relation to the area where the unit is so deployed.

(4) The National Commissioner may withdraw the national public order policing unit or any part thereof deployed under subsection (2), taking into account-

- (a) the prevailing circumstances where the unit or part thereof is so deployed;
- (b) the personnel and equipment available to the unit; and
- (c) any other circumstances anywhere in the national territory which may have an influence on the maintenance of public order and which may require the deployment of the unit or any part thereof elsewhere:

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<sup>2</sup> In *Helen Suzman Foundation v President of the Republic of South Africa and Others; Glenister v President of the Republic of South Africa and Others* (CCT 07/14, CCT 09/14) [2014] ZACC 32 of 27 November 2014 the Constitutional Court declared the words 'in accordance with the approved policy guidelines' in s. 16 (3) inconsistent with the Constitution and therefore invalid, and deleted them from the date of the order

Provided that the National Commissioner shall, at the request of the Provincial Commissioner, withdraw the unit or any part thereof so deployed.

(5) The President may, in consultation with the Cabinet, direct the National Commissioner to deploy the national public order policing unit in circumstances where a Provincial Commissioner is unable to maintain public order and the deployment of the unit is necessary to restore public order.

(6) The National Commissioner shall, upon receiving a direction under subsection (5), deploy the national public order policing unit or such part thereof as may be necessary to restore public order to the area concerned, and may from time to time if he or she deems it necessary, deploy additional members of the unit in the area concerned or, subject to subsection (7), withdraw members of the unit from the area concerned if their continued presence is no longer required to restore or maintain public order in the area concerned or in any part thereof.

(7) Where the national public order policing unit or any part thereof is deployed under subsection (5) and public order has been restored in the area concerned, the unit or part thereof shall continue to maintain public order in such area until the President, in consultation with the Cabinet, directs the National Commissioner to withdraw the unit.

## **CHAPTER 6A** **DIRECTORATE FOR PRIORITY CRIME INVESTIGATION (ss 17A-17L)**

[Chapter 6A inserted by s. 3 of Act 57 of 2008.]

### **17A Definitions**

In this Chapter, unless the context otherwise indicates-

**'Directorate'** means the Directorate for Priority Crime Investigation, established by section 17C;

**'Ministerial Committee'** means the Committee referred to in section 17I (1);

**'national priority offence'** means organised crime, crime that requires national prevention or investigation, or crime which requires specialised skills in the prevention and investigation thereof, as referred to in section 16 (1); and

**'Operational Committee'** means the Operational Committee established by section 17J.

[S. 17A inserted by s. 3 of Act 57 of 2008.]

### **17AA Applicability of this Chapter**

The provisions of Chapter 6A in respect of the mandate of the Directorate apply to the exclusion of any section within this Act.

[S. 17AA inserted by s. 4 of Act 10 of 2012.]

### **17B Application of Chapter**

In the application of this Chapter the following should be recognised and taken into account:

(a) The need to establish a Directorate in the Service to prevent, combat and investigate national priority offences, in particular serious organised crime, serious commercial crime and serious corruption.

[Para. (a) substituted by s. 5 of Act 10 of 2012.]

(b) The need to ensure that the Directorate-

(i) implements, where appropriate, a multi-disciplinary approach and an integrated methodology involving the co-operation of all relevant Government departments and institutions;

- (ii) has the necessary independence to perform its functions;
- (iii) is equipped with the appropriate human and financial resources to perform its functions;
- (iv) is staffed through the transfer, appointment, or secondment of personnel whose integrity is beyond reproach.

[S. 17B inserted by s. 3 of Act 57 of 2008.]

### **17C Establishment and composition of Directorate for Priority Crime Investigation**

(1) The Directorate for Priority Crime Investigation is hereby established as a Directorate in the Service.

(1A) The Directorate comprises-

- (a) the Office of the National Head of the Directorate at national level; and
- (b) the Office of the Provincial Directorate in each province.

(2) The Directorate consists of-

- (a) the National Head of the Directorate at national level, who shall manage and direct the Directorate and who shall be appointed by the Minister in concurrence with Cabinet;
- (aA) the Deputy National Head of the Directorate at national level;
- (aB) the Provincial Heads of the Directorate;
- (b) other persons appointed by the National Head of the Directorate at national and provincial level on the basis of the required level of experience, training, skills, competence and knowledge;
- (c) an adequate number of legal officers appointed to the Directorate;
- (d) officials from any Government department or institution, seconded to the Directorate in terms of laws governing the public service; and
- (e) administrative staff appointed to the Directorate.

(3) The National Head of the Directorate shall manage and control all members of the Directorate in accordance with the provisions of the Constitution of the Republic of South Africa, 1996, Chapter 6A of this Act and any other applicable legislation.

[S. 17C inserted by s. 3 of Act 57 of 2008 and substituted by s. 6 of Act 10 of 2012.]

### **17CA Appointment, remuneration and conditions of service**

(1) The Minister, with the concurrence of Cabinet, shall appoint a person who is-

- (a) a South African citizen; and
- (b) a fit and proper person,

with due regard to his or her experience, conscientiousness and integrity, to be entrusted with the responsibilities of the office concerned, as the National Head of the Directorate for a non-renewable fixed term of not shorter than seven years and not exceeding 10 years.

(2) The period referred to in subsection (1) is to be determined at the time of appointment.

(3) The Minister shall report to Parliament on the appointment of the National Head of the Directorate within 14 days of the appointment if Parliament is then in session or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session.

(4) The Minister in consultation with the National Head of the Directorate and with the concurrence of Cabinet, shall appoint a person who is-

- (a) a South African citizen; and

(b) a fit and proper person,

with due regard to his or her experience, conscientiousness and integrity, to be entrusted with the responsibilities of the office concerned, as a Deputy National Head of the Directorate for a non-renewable fixed term of not shorter than seven years and not exceeding 10 years.

(5) The period referred to in subsection (4) is to be determined at the time of appointment.

(6) The Minister in consultation with the National Head of the Directorate and with the concurrence of Cabinet, shall appoint a person who is-

(a) a South African citizen; and

(b) a fit and proper person,

with due regard to his or her experience, conscientiousness and integrity, to be entrusted with the responsibilities of the office concerned, as a Provincial Head of the Directorate for a non-renewable fixed term of not shorter than seven years and not exceeding 10 years.

(7) The period referred to in subsection (6) is to be determined at the time of appointment.

(8) (a) The remuneration, allowances and other terms and conditions of service and service benefits of the National Head of the Directorate shall be determined by the Minister with the concurrence of the Minister of Finance, by notice in the *Gazette*.

(b) The remuneration, allowances and other terms and conditions of service and service benefits of the Deputy National Head and Provincial Heads of the Directorate shall be determined by the Minister after consultation with the National Head of the Directorate and with the concurrence of the Minister of Finance: Provided that-

(i) the salary of the National Head of the Directorate shall not be less than the salary level of the highest paid Deputy National Commissioner of the Service;

(ii) the salary of the Deputy National Head of the Directorate shall not be less than the salary level of the highest paid Divisional Commissioner; and

(iii) the salary of a Provincial Head of the Directorate shall not be less than the salary level of the highest paid Deputy Provincial Commissioner.

(9) The Minister shall submit the remuneration scale payable to the National Head, Deputy National Head and Provincial Heads of the Directorate to Parliament for approval, and such remuneration scale may not be reduced except with the concurrence of Parliament.

(10) The Deputy National Head of the Directorate shall exercise such powers and perform such functions as the National Head of the Directorate may in terms of this Act or any other law assign to him or her.

(11) A Provincial Head of the Directorate shall exercise such powers or perform such functions as the National Head of the Directorate may, in terms of this Act, or any other law assign to him or her.

(12) (a) Whenever the National Head of the Directorate is absent or unable to perform his or her functions, the Minister shall appoint the Deputy National Head of the Directorate as the acting National Head of the Directorate.

(b) Whenever the office of the National Head of the Directorate is vacant, or the National Head of the Directorate is for any reason unable to take up the appointment contemplated in subsection (1), the Minister shall appoint the Deputy National Head of the Directorate as the acting National Head of the Directorate.

(c) If both the National Head of the Directorate and the Deputy National Head of the Directorate are absent, the Minister shall appoint a suitably qualified and experienced person as the acting National Head of the Directorate.

(d) Whenever the Deputy National Head of the Directorate is absent or unable to perform his or her functions, the National Head of the Directorate shall appoint a suitably qualified and experienced person as the acting Deputy National Head of the Directorate.

(e) Whenever the office of the Deputy National Head of the Directorate is vacant the Head of the Directorate shall appoint a suitably qualified person as the Acting Deputy National Head of the Directorate.

(13) In the event of a vacancy in the office of the National Head of the Directorate, the Deputy National Head of the Directorate or a Provincial Head of the Directorate, such vacancy shall be filled in terms of this section within six months from the date when such vacancy arose.

(14) If the National Head or Deputy National Head of the Directorate, as may be applicable, attains the age of 60 years after the first day of any month, he or she shall be deemed to have attained that age on the first day of the next succeeding month.

(15)<sup>3</sup> The Minister shall with the consent of the National Head or Deputy National Head of the Directorate, retain the National Head, or the Deputy National Head of the Directorate, as may be applicable, in his or her office beyond the age of 60 years for such period which shall not-

- (a) exceed the period determined in section 17CA; and
- (b) exceed two years, except with the approval of Parliament granted by resolution.

(16)<sup>4</sup> The National Head or Deputy National Head of the Directorate may only be retained as contemplated in subsection (15) if-

- (a) he or she wishes to continue to serve in such office; and
- (b) the mental and physical health of the person concerned enables him or her so to continue.

(17) The Minister shall make regulations under section 24 of this Act and if such regulations or any amendment thereto affect the Directorate, the regulations shall be submitted to Parliament for approval-

- (a) at least one month before promulgation, if Parliament is in session; or
- (b) if Parliament is not in session, within one month after the next ensuing session.

(18) The regulations referred to in section 17G of this Act shall be submitted to Parliament for approval.

(19) Any disciplinary action against a Deputy National Head, Provincial Head, member or employee in the service of the Directorate, as may be applicable, shall be considered and finalised within the Directorate's structures subject to the relevant prescripts.

(20) No Deputy National Head of the Directorate, Provincial Head of the Directorate, member or administrative staff of the Directorate may be-

- (a) transferred; or
- (b) dismissed,

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<sup>3</sup> In *Helen Suzman Foundation v President of the Republic of South Africa and Others; Glenister v President of the Republic of South Africa and Others* (CCT 07/14, CCT 09/14) [2014] ZACC 32 of 27 November 2014 the Constitutional Court declared s. 17CA (15) inconsistent with the Constitution and therefore invalid, and deleted it from the date of the order

<sup>4</sup> In *Helen Suzman Foundation v President of the Republic of South Africa and Others; Glenister v President of the Republic of South Africa and Others* (CCT 07/14, CCT 09/14) [2014] ZACC 32 of 27 November 2014 the Constitutional Court declared s. 17CA (16) inconsistent with the Constitution and therefore invalid, and deleted it from the date of the order

from the Directorate, except after approval by the National Head of the Directorate.

(21) The National Commissioner may only in consultation with the National Head of the Directorate involve members of the Directorate in national joint operations and in circumstances that would be of assistance to the Directorate in the execution of its mandate and functions in terms of this Act.

(22) The National Head of the Directorate shall not be involved in management functions of the Service, except as required in terms of Chapter 6A of this Act and shall be accountable to the Minister.

[S. 17CA inserted by s. 7 of Act 10 of 2012.]

## 17D Functions of Directorate

(1) The functions of the Directorate are to prevent, combat and investigate-

(a) national priority offences, which in the opinion of the National Head of the Directorate need to be addressed by the Directorate, subject to any policy guidelines issued by the Minister and approved by Parliament;<sup>5</sup>

[Para. (a) substituted by s. 8 (a) of Act 10 of 2012.]

(aA) selected offences not limited to<sup>6</sup> offences referred to in Chapter 2 and section 34 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004); and

[Para. (aA) inserted by s. 8 (b) of Act 10 of 2012.]

(b)<sup>7</sup> any other offence or category of offences referred to it from time to time by the National Commissioner, subject to any policy guidelines issued by the Minister and approved by Parliament.

[Para. (b) substituted by s. 8 (c) of Act 10 of 2012.]

(1A)<sup>8</sup> The National Head of the Directorate shall ensure that the Directorate observe the policy guidelines referred to in subsection (1).

[Sub-s. (1A) inserted by s. 8 (d) of Act 10 of 2012.]

(2) If, during the course of an investigation by the Directorate, evidence of any other crime is detected and the Head of the Directorate considers it in the interests of justice, or in the public interest, he or she may extend the investigation so as to include any offence which he or she suspects to be connected with the subject of the investigation.

(3) The National Head of the Directorate may, if he or she has reason to suspect that a national priority offence has or is being committed, request the National Director of Public Prosecutions to designate a Director of Public Prosecutions to exercise the powers of section 28 of the National Prosecuting Authority Act, 1998 (Act 32 of 1998).

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<sup>5</sup> In *Helen Suzman Foundation v President of the Republic of South Africa and Others; Glenister v President of the Republic of South Africa and Others* (CCT 07/14, CCT 09/14) [2014] ZACC 32 of 27 November 2014 the Constitutional Court declared the words 'subject to any policy guidelines issued by the Minister and approved by Parliament' in s. 17D (1) (a) inconsistent with the Constitution and therefore invalid, and deleted them from the date of the order

<sup>6</sup> In *Helen Suzman Foundation v President of the Republic of South Africa and Others; Glenister v President of the Republic of South Africa and Others* (CCT 07/14, CCT 09/14) [2014] ZACC 32 of 27 November 2014 the Constitutional Court declared the words 'selected offences not limited to' and 'and' in s. 17D (1) (aA) inconsistent with the Constitution and therefore invalid, and deleted them from the date of the order

<sup>7</sup> In *Helen Suzman Foundation v President of the Republic of South Africa and Others; Glenister v President of the Republic of South Africa and Others* (CCT 07/14, CCT 09/14) [2014] ZACC 32 of 27 November 2014 the Constitutional Court declared s. 17D (1) (b) inconsistent with the Constitution and therefore invalid, and deleted it from the date of the order

<sup>8</sup> In *Helen Suzman Foundation v President of the Republic of South Africa and Others; Glenister v President of the Republic of South Africa and Others* (CCT 07/14, CCT 09/14) [2014] ZACC 32 of 27 November 2014 the Constitutional Court declared s. 17D (1A) inconsistent with the Constitution and therefore invalid, and deleted it from the date of the order



[Sub-s. (3) substituted by s. 8 (e) of Act 10 of 2012.]  
[S. 17D inserted by s. 3 of Act 57 of 2008.]

## **17DA Removal from office of National Head of Directorate**

(1) The National Head of the Directorate shall not be suspended or removed from office except in accordance with the provisions of subsections (2),<sup>9</sup> (3) and (4).

(2)<sup>10</sup> (a) The Minister may provisionally suspend the National Head of the Directorate from his or her office, pending an inquiry into his or her fitness to hold such office as the Minister deems fit and, subject to the provisions of this subsection, may thereupon remove him or her from office-

- (i) for misconduct;
- (ii) on account of continued ill-health;
- (iii) on account of incapacity to carry out his or her duties of office efficiently; or
- (iv) on account thereof that he or she is no longer a fit and proper person to hold the office concerned.

(b) The removal of the National Head of the Directorate, the reason therefor and the representations of the National Head of the Directorate, if any, shall be communicated in writing to Parliament within 14 days after such removal if Parliament is then in session or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session.

(c) The National Head of the Directorate provisionally suspended from office shall during the period of such suspension be entitled to such salary, allowance, privilege or benefit to which he or she is otherwise entitled, unless the Minister determines otherwise.

(d) An inquiry referred to in this subsection-

- (i) shall perform its functions subject to the provisions of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000), in particular to ensure procedurally fair administrative action; and
- (ii) shall be led by a judge or retired judge: Provided that the Minister shall make the appointment after consultation with the Minister of Justice and Constitutional Development and the Chief Justice.

(e) The National Head of the Directorate shall be informed of any allegations against him or her and shall be granted an opportunity to make submissions to the inquiry upon being informed of such allegations.

(3) (a) The National Head of the Directorate may be removed from office on the ground of misconduct, incapacity or incompetence on a finding to that effect by a Committee of the National Assembly.

(b) The adoption by the National Assembly of a resolution calling for that person's removal from office.

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<sup>9</sup> In *Helen Suzman Foundation v President of the Republic of South Africa and Others; Glenister v President of the Republic of South Africa and Others* (CCT 07/14, CCT 09/14) [2014] ZACC 32 of 27 November 2014 the Constitutional Court declared the '(2)' in s. 17DA (1) inconsistent with the Constitution and therefore invalid, and deleted it from the date of the order

<sup>10</sup> In *Helen Suzman Foundation v President of the Republic of South Africa and Others; Glenister v President of the Republic of South Africa and Others* (CCT 07/14, CCT 09/14) [2014] ZACC 32 of 27 November 2014 the Constitutional Court declared s. 17DA (2) inconsistent with the Constitution and therefore invalid, and deleted it from the date of the order

(4) A resolution of the National Assembly concerning the removal from office of the National Head of the Directorate shall be adopted with a supporting vote of at least two thirds of the members of the National Assembly.

(5) The Minister-

- (a) may suspend the National Head of the Directorate from office at any time after the start of the proceedings of a Committee of the National Assembly for the removal of that person; and
- (b) shall remove the National Head of the Directorate from office upon adoption by the National Assembly of the resolution calling for the National Head of the Directorate's removal.

(6) The Minister may allow the National Head of the Directorate, at his or her request, to vacate his or her office-

- (a) on account of continued ill-health; or
- (b) for any other reason which the Minister deems sufficient.

(7) The request in terms of subsection (6) shall be addressed to the Minister at least six calendar months prior to the date on which the National Head of the Directorate wishes to vacate his or her office, unless the Minister grants a shorter period in a specific case.

[S. 17DA inserted by s. 9 of Act 10 of 2012.]

### **17DB Staff of Directorate**

The National Head of the Directorate shall-

- (a) determine the fixed establishment of the Directorate and the number and grading of posts, in consultation with the Minister and the Minister for the Public Service and Administration; and
- (b) appoint the staff of the Directorate: Provided that where a member of the Service is appointed to the Directorate, the National Head of the Directorate shall do so after consultation with the National Commissioner.

[S. 17DB inserted by s. 9 of Act 10 of 2012.]

### **17E Security screening and integrity measures**

(1) Any person who is considered for appointment in, or secondment to, the Directorate, shall be subject to a security screening investigation in terms of and in accordance with section 2A of the National Strategic Intelligence Act, 1994 (Act 39 of 1994).

(2) No person may be appointed to the Directorate unless-

- (a) a security clearance has been issued to that person in terms of section 2A (6) of the National Strategic Intelligence Act, 1994 (Act 39 of 1994), by any Intelligence Structure referred to in that Act as may from time to time be determined by the Minister;

[Para. (a) substituted by s. 10 (a) of Act 10 of 2012.]

- (b) a security clearance on the required level and which is still valid has been issued to the person in question in terms of section 2A (6) of the National Strategic Intelligence Act, 1994; or

- (c) a temporary security clearance has been issued by any Intelligence Structure referred to in the National Strategic Intelligence Act, 1994, determined by the Minister after the person had submitted an application to such Intelligence Structure to have a security screening investigation conducted.

[Para. (c) substituted by s. 10 (a) of Act 10 of 2012.]

(3) Any appointment on the basis of a temporary security clearance shall be subject to the finalisation of the security screening investigation and the issuing of a security clearance in terms of section 2A (6) of the National Strategic Intelligence Act, 1994.

(4) Whenever the head of the Intelligence Structure referred to in subsection (2) (a) and (c) acting in terms of section 2A (6) of the National Strategic Intelligence Act, 1994, upon reasonable grounds, degrades, withdraws or refuses a security clearance, of a member of the Directorate, the National Commissioner may on request of the National Head of the Directorate transfer such person from the Directorate, or if such person cannot be redeployed elsewhere in the Service, discharge him or her, subject to the provisions of section 34.

[Sub-s. (4) substituted by s. 10 (b) of Act 10 of 2012.]

(5) A member of the Directorate may from time to time, or at such regular intervals as the Head of the Directorate may determine, be subjected to a further security screening investigation.

(6) If, upon information at the disposal of the Head of the Directorate, he or she reasonably believes that the person concerned poses a security risk, he or she may require the member to undergo a further security screening investigation.

(7) (a) Any member of the Directorate must, in the prescribed manner and at the prescribed intervals, disclose his or her prescribed financial and other interests and those of his or her immediate family members.

(b) For the purpose of paragraph (a), 'immediate family member' refers to the spouse, civil partner or permanent life partner of that member, and includes dependent children of, and dependent family members living in the same household with that member.

(8) (a) The Minister may prescribe measures for integrity testing of members of the Directorate, which may include random entrapment, testing for the abuse of alcohol or drugs, or the use of the polygraph or similar instrument to ascertain, confirm or examine in a scientific manner the truthfulness of a statement made by a person.

(b) The necessary samples required for any test referred to in paragraph (a), may be taken, but any sample taken from the body of a member may only be taken by a registered medical practitioner or a registered nurse.

(c) The Minister shall prescribe measures to ensure the confidentiality of information obtained through integrity testing, if such measures are prescribed in terms of paragraph (a).

(9) (a) A member of the Directorate shall serve impartially and exercise his or her powers or perform his or her functions in good faith.

(b) Subject to the Constitution of the Republic of South Africa, 1996, and this Act, no organ of state and no member or employee of an organ of state nor any other person shall improperly interfere with, hinder or obstruct a member of the Directorate, in the exercise, carrying out or performance of his or her powers, duties and functions.

[Sub-s. (9) added by s. 10 (c) of Act 10 of 2012.]

(10) The National Head of the Directorate, the Deputy National Head of the Directorate and any person seconded to or employed in the Directorate, shall before commencing with their functions in terms of this Act, take an oath or make an affirmation, which shall be subscribed by them, in the form set out below:

'I \_\_\_\_\_  
(full name)

do hereby swear/solemnly affirm that I will in my capacity as National Head of the Directorate/Deputy National Head of the Directorate/member of the Directorate/ employee at the Directorate/being seconded to the Directorate uphold and protect the Constitution and the

fundamental rights entrenched therein and enforce the Law of the Republic without fear, favour or prejudice and, as the circumstances of any particular case may require, in accordance with the Constitution and the Law. (In the case of an oath: So help me God.)'.

[Sub-s. (10) added by s. 10 (c) of Act 10 of 2012.]

(11) Without derogating from the provisions of section 67 of this Act, any person, including any member of the Service, who resists or wilfully hinders or obstructs or unduly influences the National Head, Deputy National Head, Provincial Head or any member of the Directorate in the exercising of his or her functions shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

[Sub-s. (11) added by s. 10 (c) of Act 10 of 2012.]

[S. 17E inserted by s. 3 of Act 57 of 2008.]

## **17F Multi-disciplinary approach**

(1) Government departments or institutions shall, when required to do so, take reasonable steps to assist the Directorate in the achievement of its objectives.

(2) The National Head of the Directorate may request the secondment of personnel from any other Government department or institution, whenever he or she deems it necessary for the effective performance of the functions of the Directorate.

[Sub-s. (2) substituted by s. 11 (a) of Act 10 of 2012.]

(3) The Directorate shall be assisted in the performance of its functions by personnel seconded by relevant Government departments or institutions, which may include personnel from the South African Revenue Service, the Financial Intelligence Centre and the Department of Home Affairs.

(4) The National Director of Public Prosecutions must ensure that a dedicated component of prosecutors is available to assist and co-operate with members of the Directorate in conducting its investigations.

(5) The Director-General of the Government department or Head of the relevant Government institution, referred to in subsection (2), shall upon request by the National Head of the Directorate, identify suitable personnel to be seconded to the Directorate upon such terms and conditions as may be agreed upon between the National Head of the Directorate and the Director-General of the department or Head of the Government institution concerned.

[Sub-s. (5) substituted by s. 11 (b) of Act 10 of 2012.]

(6) Without derogating from the functions of the Service in respect of crime intelligence, as provided for in the National Strategic Intelligence Act, 1994 (Act 39 of 1994), the Directorate shall be supported by the Crime Intelligence Division of the Service to gather, correlate, evaluate, co-ordinate and use crime intelligence in the performance of its functions.

(6A) The Head of the Crime Intelligence Division of the Service shall upon a request of the National Head of the Directorate make available crime intelligence capacity to assist the Directorate in a specific investigation.

[Sub-s. (6A) inserted by s. 11 (c) of Act 10 of 2012.]

(7) (a) If the National Head of the Directorate so requests, any person seconded in terms of subsection (3) shall retain the powers, duties and functions endowed by any law governing the powers, duties and functions of that department or institution, and that person may exercise such powers, duties and functions under the command of the National Head of the Directorate or his or her delegate, but subject to such conditions as may be determined by the Head of the seconding Government department or institution.

(b) A person seconded under paragraph (a) shall in the performance of his or her functions act in terms of the laws applicable to the Government department or institution from which he or she is seconded, subject to such conditions as may be agreed upon by the National Head of

the Directorate and the Director-General of the Government Department or Head of the Government institution.

[Sub-s. (7) substituted by s. 11 (d) of Act 10 of 2012.]

[S. 17F inserted by s. 3 of Act 57 of 2008.]

### **17G Conditions of service**

The remuneration, allowances and other conditions of service of members of the Directorate shall be regulated in terms of section 24.

[S. 17G inserted by s. 3 of Act 57 of 2008.]

### **17H Finances and financial accountability**

(1) The expenses incurred in connection with-

- (a) the exercise of the powers, the carrying out of the duties and the performance of the functions of the Directorate; and
- (b) the remuneration and other conditions of service of members of the Directorate,

shall be defrayed from monies appropriated by Parliament for this purpose to the departmental vote in terms of the Public Finance Management Act, 1999 (Act 1 of 1999).

(2) In order to give effect to subsection (5), the National Head of the Directorate shall prepare and provide the National Commissioner with the necessary estimate of revenue and expenditure of the Directorate for incorporation on the estimate and expenditure of the Service.

(3) Whenever the National Commissioner and the National Head of the Directorate are unable to agree on estimate of revenue and expenditure of the Directorate, the Minister shall mediate between the parties.

(4) The National Commissioner, as the accounting officer of the Service, shall, subject to the Public Finance Management Act, 1999 (Act 1 of 1999), and subsection (2)-

- (a) be charged with the responsibility of accounting for State monies received or paid out for or on account of the Directorate;
- (b) involve the National Head of the Directorate in all consultations relating to the estimate of revenue and expenditure of the Directorate including any consultations with the National Treasury relating to the revenue and expenditure of the Directorate;
- (c) cause the necessary accounting and other records to be kept; and
- (d) ensure that the annual report on the performance of the Directorate is included as a distinct programme in the annual report of the Service.

(5) Monies appropriated by Parliament for the purpose envisaged in subsection (1)-

- (a) shall be regarded as specifically and exclusively appropriated for that purpose; and
- (b) may only be utilised for that purpose.

(6) The National Head of the Directorate shall have control over the monies appropriated by Parliament envisaged in subsection (1) in respect of the expenses of the Directorate.

[S. 17H inserted by s. 3 of Act 57 of 2008 and substituted by s. 12 of Act 10 of 2012.]

### **17I Coordination by Cabinet**

(1) The President shall for purposes of subsections (2) and (3) designate a Ministerial Committee which shall include-

- (a) at least the Ministers of-
  - (i) Police;

- (ii) Finance;
  - (iii) Home Affairs;
  - (iv) State Security; and
  - (v) Justice and Constitutional Development;
- (b) any other Minister designated from time to time by the President.

[Sub-s. (1) substituted by s. 13 of Act 10 of 2012.]

(2) The Ministerial Committee may determine procedures to coordinate the activities of the Directorate and other relevant Government departments or institutions.

[Sub-s. (2) substituted by s. 13 of Act 10 of 2012.]

(3) (a) The Ministerial Committee shall meet as regularly as necessary and shall report to Parliament on its activities as part of the annual report of the Directorate.

(aA) The Ministerial Committee shall at any time, upon being requested to do so, report to Parliament.

[Sub-s. (3) substituted by s. 13 of Act 10 of 2012.]

[S. 17I inserted by s. 3 of Act 57 of 2008.]

## 17J Operational Committee

(1) (a) There is hereby established a committee, to be known as the Operational Committee, which comprises-

- (i) the National Head of the Directorate, as chairperson;  
[Sub-para. (i) substituted by s. 14 (a) of Act 10 of 2012.]
- (ii) the Deputy National Head of the Directorate, as deputy chairperson;  
[Sub-para. (ii) substituted by s. 14 (a) of Act 10 of 2012.]
- (iiA) a Deputy National Commissioner of the South African Police Service designated by the National Commissioner;  
[Sub-para. (iiA) inserted by s. 14 (b) of Act 10 of 2012.]
- (iiB) the Head of the Crime Intelligence Division of the South African Police Service;  
[Sub-para. (iiB) inserted by s. 14 (b) of Act 10 of 2012.]
- (iii) the National Director of Public Prosecutions;
- (iv) the Directors-General of Finance, Justice and Constitutional Development, the National Intelligence Agency and Home Affairs;
- (v) the Commissioner of the South African Revenue Service;
- (vi) the Head of the Financial Intelligence Centre; and
- (vii) such other persons as the Operational Committee may require from time to time, for the duration determined by the Operational Committee.

(b) An official at the level of at least a Chief Director may be designated on a permanent basis to represent any official mentioned above if he or she is not available: Provided that the official listed in paragraph (a) may also attend.

[Para. (b) substituted by s. 14 (c) of Act 10 of 2012.]

(2) The Operational Committee shall-

- (a) review, monitor and facilitate the support and assistance of the respective Government departments or institutions to the Directorate as well as secondments to the Directorate, and address problems which arise regarding such support and assistance; and

[Para. (a) substituted by s. 14 (d) of Act 10 of 2012.]

(b) and (c) .....

[Paras. (b) and (c) deleted by s. 14 (e) of Act 10 of 2012.]

- (d) meet as regularly as required to fulfil its functions, but not less than four times annually.

[S. 17J inserted by s. 3 of Act 57 of 2008.]

## 17K Parliamentary oversight

(1) Parliament shall effectively oversee the functioning of the Directorate and the committees established in terms of this Chapter.

(2) The National Commissioner shall include in the annual report to Parliament in terms of section 40 (d) of the Public Finance Management Act, 1999 (Act 1 of 1999), a report in respect of the performance of the Directorate compiled by the National Head of the Directorate as a separate programme.

[Sub-s. (2) substituted by s. 15 (a) of Act 10 of 2012.]

(2A) The budget report to Parliament shall include a full breakdown of the specific and exclusive budget of the Directorate.

[Sub-s. (2A) inserted by s. 15 (b) of Act 10 of 2012.]

(2B) The National Head of the Directorate shall make a presentation to Parliament on the budget of the Directorate.

[Sub-s. (2B) inserted by s. 15 (b) of Act 10 of 2012.]

(3) .....

[Sub-s. (3) deleted by s. 15 (c) of Act 10 of 2012.]

(4)<sup>11</sup> The Minister shall-

- (a) determine, with the concurrence of Parliament-
- (i) policy guidelines for the selection of national priority offences by the National Head of the Directorate referred to in section 17D (1) (a);
  - (ii) policy guidelines for the referral to the Directorate by the National Commissioner of any offence or category of offences for investigation by the Directorate referred to in section 17D (1) (b);
- (b) submit to Parliament any policy guidelines referred to in this section for concurrence.

[Sub-s. (4) substituted by s. 15 (d) of Act 10 of 2012.]

(5) and (6) .....

[Sub-ss. (5) and (6) deleted by s. 15 (e) of Act 10 of 2012.]

(7)<sup>12</sup> The first policy guidelines issued under this Act shall be tabled in Parliament not later than six months after the commencement of the South African Police Service Amendment Act, 2012.

[Sub-s. (7) added by s. 15 (f) of Act 10 of 2012.]

(8)<sup>13</sup> Any changes to the policy guidelines referred to in subsection (4) shall be submitted to Parliament for consideration and approval for implementation.

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<sup>11</sup> In *Helen Suzman Foundation v President of the Republic of South Africa and Others; Glenister v President of the Republic of South Africa and Others* (CCT 07/14, CCT 09/14) [2014] ZACC 32 of 27 November 2014 the Constitutional Court declared s. 17K (4) inconsistent with the Constitution and therefore invalid, and deleted it from the date of the order

<sup>12</sup> In *Helen Suzman Foundation v President of the Republic of South Africa and Others; Glenister v President of the Republic of South Africa and Others* (CCT 07/14, CCT 09/14) [2014] ZACC 32 of 27 November 2014 the Constitutional Court declared s. 17K (7) inconsistent with the Constitution and therefore invalid, and deleted it from the date of the order

<sup>13</sup> In *Helen Suzman Foundation v President of the Republic of South Africa and Others; Glenister v President of the Republic of South Africa and Others* (CCT 07/14, CCT 09/14) [2014] ZACC 32 of 27 November 2014 the

[Sub-s. (8) added by s. 15 (f) of Act 10 of 2012.]

(9) The Minister shall report to Parliament on the appointment of the National Head of the Directorate.

[Sub-s. (9) added by s. 15 (f) of Act 10 of 2012.]

[S. 17K inserted by s. 3 of Act 57 of 2008.]

## 17L Complaints mechanism

(1) (a) The Minister shall, after consultation with the Minister of Justice and the Chief Justice, appoint a retired judge in order to investigate complaints referred to in subsection (4).

(b) For purposes of paragraph (a) '**retired judge**' shall mean a judge discharged from active service as referred to in the Judges' Remuneration and Conditions of Employment Act, 2001 (Act 47 of 2001).

(2) The performance of the functions provided for in respect of the retired judge does not derogate from the powers of the Independent Complaints Directorate referred to in section 50 to investigate complaints in respect of any member, including members in the Directorate for Priority Crime Investigation.

(3) The retired judge shall not investigate complaints about intelligence matters falling under the jurisdiction of the Inspector-General of Intelligence.

(4) The retired judge may receive complaints in the prescribed form and manner from-

- (a) any member of the public who can provide evidence of a serious and unlawful infringement of his or her rights caused by an investigation by the Directorate; or
- (b) any member of the Directorate who can provide evidence of any improper influence or interference, whether of a political or any other nature, exerted upon him or her regarding the conducting of an investigation.

(5) The retired judge may upon receipt of a complaint investigate such complaint or refer it to be dealt with by, amongst others, the Secretariat, the Independent Complaints Directorate, the National Commissioner, the Head of the Directorate, the relevant Provincial Commissioner, the National Director of Public Prosecutions, the Inspector-General of Intelligence, or any institution mentioned in chapter 9 of the Constitution of the Republic of South Africa, 1996.

(6) The retired judge shall report the outcome of any investigation undertaken by him or her or any referral to the Minister.

(7) The retired judge may request and obtain information from the National Director of Public Prosecutions in so far as it may be necessary for the judge to conduct an investigation.

[Sub-s. (7) substituted by s. 16 (a) of Act 10 of 2012.]

(7A) The retired judge may request information from any member of the Service for purposes of any investigation by that judge and the refusal to comply with such a request shall be a criminal offence for which a person, upon conviction, may be sentenced to a fine or imprisonment or to both a fine and imprisonment of two years.

[Sub-s. (7A) inserted by s. 16 (b) of Act 10 of 2012.]

(8) To the extent that it is reasonably necessary for the performance of the functions of the retired judge, he or she-

- (a) may obtain information and documents under the control of the Service;
- (b) may enter any building or premises under the control of the Service in order to obtain such information and documents; and

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Constitutional Court declared s. 17K (8) inconsistent with the Constitution and therefore invalid, and deleted it from the date of the order



(c) shall be entitled to all reasonable assistance by a member.

(9) The judge shall annually report to Parliament on the performance of his or her functions.

(10) The Head of the Directorate may request the retired judge to investigate complaints or allegations relating to investigations by the Directorate or alleged interference with such investigations.

(11) Any person who makes a complaint in terms of this section shall not be entitled to use this section to establish whether there is an investigation against him or her, nor be entitled to any delay, interference or termination of such investigation on the basis that such complaint has been made.

(12) The Minister shall ensure that the retired judge has sufficient personnel and resources to fulfil his or her functions.

(13) An annual operational budget shall be prepared by the Secretary in consultation with the retired judge and provided for under the budget for the Secretariat for the specific and exclusive use of the official duties of the retired judge and may not be used for any other purpose.

[Sub-s. (13) added by s. 16 (c) of Act 10 of 2012.]

(14) Subsection (11) shall not be construed to inhibit the retired judge to investigate any matter which relates to an ongoing investigation.

[Sub-s. (14) added by s. 16 (c) of Act 10 of 2012.]

(15) The Secretary, in consultation with the retired judge, shall develop and implement a plan to promote awareness amongst the public and members of the Directorate on the functions and role of the complaints mechanism.

[Sub-s. (15) added by s. 16 (c) of Act 10 of 2012.]

(16) Any interference with the retired judge in the performance of his or her functions and duties shall be a criminal offence for which a person upon conviction may be sentenced to a fine or imprisonment of two years or to both such fine or imprisonment.

[Sub-s. (16) added by s. 16 (c) of Act 10 of 2012.]

[S. 17L inserted by s. 3 of Act 57 of 2008.]

## **CHAPTER 7**

### **COMMUNITY POLICE FORUMS AND BOARDS (ss 18-23)**

#### **18 Objects of community police forums and boards**

(1) The Service shall, in order to achieve the objects contemplated in section 215 of the Constitution, liaise with the community through community police forums and area and provincial community police boards, in accordance with sections 19, 20 and 21, with a view to-

- (a) establishing and maintaining a partnership between the community and the Service;
- (b) promoting communication between the Service and the community;
- (c) promoting co-operation between the Service and the community in fulfilling the needs of the community regarding policing;
- (d) improving the rendering of police services to the community at national, provincial, area and local levels;
- (e) improving transparency in the Service and accountability of the Service to the community; and
- (f) promoting joint problem identification and problem-solving by the Service and the community.

(2) This Chapter shall not preclude liaison by the Service with the community by means other than through community police forums and boards.

### **19 Establishment of community police forums**

(1) A Provincial Commissioner shall, subject to the directions of the member of the Executive Council, be responsible for establishing community police forums at police stations in the province which shall, subject to subsection (3), be broadly representative of the local community.

(2) A community police forum may establish community police sub-forums.

(3) Subject to section 23 (1) (b), the station commissioner and the members designated by him or her from time to time for that purpose, shall be members of the community police forum and sub-forums established at the police station concerned.

### **20 Establishment of area community police boards**

(1) A Provincial Commissioner shall, subject to the directions of the member of the Executive Council, be responsible for establishing area community police boards in all areas within the province.

(2) An area community police board shall, subject to subsection (3), consist of representatives of community police forums in the area concerned designated for that purpose by such community police forums.

(3) Subject to section 23 (1) (b), the area commissioner and the members designated by him or her from time to time for that purpose, shall be members of the area community police board concerned.

### **21 Establishment of provincial community police boards**

(1) A Provincial Commissioner shall, subject to the directions of the member of the Executive Council, be responsible for establishing a provincial community police board.

(2) A provincial community police board shall, subject to subsection (3), consist of representatives of area community police boards designated for that purpose by the area community police boards in the province concerned.

(3) Subject to section 23 (1) (b), the Provincial Commissioner and the members designated by him or her from time to time for that purpose, shall be members of the provincial community police board concerned.

### **22 Functions of community police forums and boards**

(1) A provincial or area community police board or a community police forum or subforum shall perform the functions it deems necessary and appropriate to achieve the objects contemplated in section 18, which may include the functions contemplated in section 221 (2) of the Constitution.

(2) The Minister shall, in consultation with the executive co-ordinating committee, make regulations to ensure the proper functioning of community police forums and sub-forums and community police boards.

### **23 Procedural matters**

(1) Every provincial or area community police board and community police forum or sub-forum shall-

(a) elect one of its members as chairperson and another one as vice-chairperson;

- (b) determine the number of members to be designated by the provincial, area or station commissioner concerned to serve as members of the board, forum or subforum concerned: Provided that that number shall not be less than one in addition to the provincial, area or station commissioner concerned;
- (c) determine its own procedure and cause minutes to be kept of its proceedings; and
- (d) whenever it deems it necessary, co-opt other members or experts or community leaders to the board or forum in an advisory capacity.

(2) Members of community police forums or boards shall render their services on a voluntary basis and shall have no claim to compensation solely for services rendered to such forums and boards.

(3) The majority of the members of the board, forum or sub-forum concerned shall constitute a quorum at a meeting thereof.

(4) If the chairperson of a board or forum referred to in this section is absent from a meeting, the vice-chairperson shall act as chairperson, and if both the chairperson and vice-chairperson are so absent, the members present shall elect one of their number to preside at that meeting.

## CHAPTER 8 REGULATIONS (ss 24-26)

### 24 Regulations

- (1) The Minister may make regulations regarding-
- (a) the exercising of policing powers and the performance by members of their duties and functions;
  - (b) the recruitment, appointment, promotion and transfer of members;
  - (c) the training, conduct and conditions of service of members;
  - (d) the general management, control and maintenance of the Service;
  - (e) returns, registers, records, documents, forms and correspondence in the Service;
  - (f) labour relations, including matters regarding suspension, dismissal and grievances;
  - (g)
    - (i) the institution and conduct of disciplinary proceedings or inquiries;
    - (ii) conduct by members that will constitute misconduct;
    - (iii) the provisions, if any, of the Criminal Procedure Act, 1977 (Act 51 of 1977), that shall apply *mutatis mutandis* to disciplinary proceedings or inquiries under this Act;
    - (iv) the attendance by a member or any witness, of such disciplinary proceedings or inquiries;
    - (v) the circumstances under which such disciplinary proceedings or inquiries may be conducted or proceeded with in the absence of the member accused of misconduct or affected by such an inquiry;
    - (vi) the hearing and submission of evidence at such disciplinary proceedings or inquiries;
    - (vii) competent findings and sanctions in respect of such disciplinary proceedings or inquiries;
    - (viii) review and appeal in respect of such disciplinary proceedings or inquiries;
  - (h) the issue of a code of conduct for the Service and the upholding thereof;

- (i) the establishment of different categories of personnel, components, ranks, designations and appointments in the Service;
- (j)
  - (i) the standards of physical and mental fitness required, and the medical examination, of members;
  - (ii) the medical, dental and hospital treatment of members and their families;
- (k)
  - (i) the establishment, management and control of a scheme to provide for the medical, dental and hospital treatment, the provision of medicines and other medical requirements and the transportation during their indisposition of-
    - (aa) members and members of their families;
    - (bb) members who have retired or who retire on pension, and members of their families; and
    - (cc) the families of deceased members;
  - (ii) the categories of members, or other persons who shall or may become members of such a scheme;
  - (iii) the portion of the costs of such treatment, medicines, medical requirements and transportation which shall be payable under such a scheme by any member or category of members of such a scheme;
  - (iv) the termination of membership of such a scheme;
  - (v) the rights, privileges and obligations of members of such a scheme;
  - (vi) the vesting in such a scheme of assets, rights, liabilities or obligations or the disposal in any way of the assets of such a scheme; and
  - (vii) generally, all matters reasonably necessary for the regulation and operation of such a scheme;
- (l) the resignation or reduction in rank of members;
- (m) the grading of posts and the remuneration structure, including allowances or benefits of members;
- (n) the establishment and maintenance of training institutions or centres for members and the instruction, training, discipline and control of members at such institutions or centres;
- (o) the management of and access to laboratories established for the purposes of the analysis of forensic evidence as well as fees payable for services rendered in that regard;
- (p) the attendance by members of instructional or training courses at institutions or centres other than those established and maintained in terms of this Act;
- (q) the establishment and control of funds of clubs referred to in section 62 (3);
- (r) the deductions to be made from the salaries, wages or allowances of members;
- (s) the provisioning of the Service, including the provision of stores and equipment required for the Service, and the care, safe custody and maintenance thereof;
- (t) the design, award, use, care, loss, forfeiture and restoration of any decoration or medal instituted, constituted or created under this Act, and its bar, clasp or ribbon;
- (u) the design of an official flag and coat of arms for the Service;
- (v) the dress and clothing of members, and the control over or disposal of a uniform or part thereof;
- (w) the utilisation by the Service of property-
  - (i) forfeited to the State;
  - (ii) abandoned, lost or taken charge of by a member; or

- (iii) unclaimed and found or taken charge of by a member;
  - (x) the retention of rank on retirement from the Service and the award of honorary ranks;
  - (y) the occupation by members of quarters, whether owned or rented by the State or placed at its disposal;
  - (z) the participation in sport and recreational activities by members;
  - (aa) the fair distribution of and access to police services and resources in respect of all communities;
  - (bb) the command, control, powers, duties and functions of persons, other than members, employed by the Service;
  - (cc) the proper functioning of the directorate, including the referral to the directorate of complaints received by the police;
  - (dd) any board or body established or constituted by or under this Act, including-
    - (i) the procedure thereof; and
    - (ii) the attendance by witnesses of the proceedings thereof;
  - (ee) the development of the plan contemplated in section 11 (2) (a) and the monitoring of the implementation thereof;
  - (eeA) the following issues which are related to the Directorate for Priority Crime Investigation established in terms of section 17C:
    - (i) The manner and intervals for disclosure of financial and other interests as required in terms of section 17E (7) (a);
    - (ii) the measures for integrity testing of members of the Directorate for Priority Crime Investigation as contemplated in section 17E (8) (a);
    - (iii) the measures to ensure the confidentiality of information obtained as contemplated in section 17E (8) (c);
    - (iv) the form and manner in which complaints referred to in section 17L (4) must be made to the retired judge;
- [Para. (eeA) inserted by s. 4 of Act 57 of 2008.]
- (ff) all matters which may or shall be prescribed in accordance with this Act; and
  - (gg) all matters generally which are necessary or expedient for the achievement of the objects of this Act.

(2) Different regulations may be made regarding different categories of members or personnel.

(3) Any regulation under subsection (1) (cc) shall be made in consultation with the Executive Director.

(4) Any regulation which affects State revenue or expenditure shall be made with the concurrence of the Minister of Finance.

(5) Any regulation made under subsection (1) may prescribe penalties for any contravention thereof or failure to comply therewith, of a fine, or imprisonment for a period not exceeding 12 months or both such fine and such imprisonment.

[Sub-s. (5) added by s. 4 of Act 41 of 1997.]

## **25 National orders and instructions**

(1) The National Commissioner may issue national orders and instructions regarding all matters which-

- (a) fall within his or her responsibility in terms of the Constitution or this Act;

- (b) are necessary or expedient to ensure the maintenance of an impartial, accountable, transparent and efficient police service; or
- (c) are necessary or expedient to provide for the establishment and maintenance of uniform standards of policing at all levels required by law.

(2) National orders and instructions issued under subsection (1) shall be known and issued as National Orders and Instructions and shall be applicable to all members.

(3) The National Commissioner may issue different National Orders and Instructions in respect of different categories of members.

## **26 Provincial orders and instructions**

(1) Provincial Commissioners may issue orders and instructions which are not inconsistent with this Act or the National Orders and Instructions.

(2) Orders and instructions issued under subsection (1) shall be known and issued as the Provincial Orders and Instructions of the province concerned and shall be applicable to members under the command of the Provincial Commissioner concerned only.

(3) If any Provincial Order or Instruction is inconsistent with a National Order or Instruction, the National Order or Instruction shall prevail.

## **CHAPTER 9 APPOINTMENTS, TERMS AND CONDITIONS OF SERVICE AND TERMINATION OF SERVICE (ss 27-49)**

### **27 Filling of posts**

(1) Subject to Chapter 6A and subsection (2), the filling of any post in the Service, whether by appointment, promotion or transfer, shall be done in accordance with this Act.

[Sub-s. (1) substituted by s. 17 of Act 10 of 2012.]

(2) Subsection (1) shall not preclude compliance with measures designed to achieve the objects contemplated in sections 8 (3) (a) and 212 (2) of the Constitution.

### **28 Recruitment and appointment**

(1) The National Commissioner shall determine a uniform recruitment procedure for the Service and the National Head of the Directorate shall determine a uniform recruitment procedure for the Directorate for Priority Crime Investigation.

[Sub-s. (1) substituted by s. 18 of Act 10 of 2012.]

(2) Subject to section 27, the National Commissioner may appoint a person to a post in the fixed establishment of the Service.

(3) Any commissioned officer, magistrate, additional magistrate or assistant magistrate may, if sufficient permanent members are not available at a particular locality to perform a specific police duty, appoint such fit and proper persons as may be necessary as temporary members to perform such duty on such terms and conditions as may be prescribed.

### **29 Designation as member**

(1) The Minister may by notice in the *Gazette* designate categories of personnel employed on a permanent basis in the Service and who are not members, as members.

(2) Personnel designated as members under subsection (1), shall be deemed to be members appointed to posts in the fixed establishment of the Service under section 28 (2) with effect from a date determined by the Minister in the notice concerned: Provided that a

person who is a member of a category of personnel so designated who does not, within one month of such designation, consent thereto and, if applicable, consent as required by section 212 (7) (b) of the Constitution, to having the retirement age applicable to him or her on 1 October 1993 changed as a result of such designation, shall not be affected by such notice.

### **30 Proof of appointment**

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

### **31 Salary and benefits**

(1) A member shall have the right to the salary and benefits determined in his or her case by or under this Act or any other law.

(2) The salary or salary scale of a member shall not be reduced without his or her consent, except in accordance with section 8 (7) or following on disciplinary proceedings under section 40 or an inquiry under section 34 (1) (b).

### **32 Training**

The National Commissioner shall determine the training that members shall undergo.

### **33 Commissioned officers**

(1) The President may from time to time by commission appoint officers or temporary officers of the Service.

(2) A Deed of Commission, bearing the signatures of the President and the Minister, or replicas thereof, shall be proof of appointment as commissioned officer.

(3) The commission of a commissioned officer shall terminate and be deemed to be cancelled upon-

- (a) the discharge of such officer following on disciplinary proceedings under section 40 or an inquiry under section 34 (1) (b), (c) or (d);
- (b) the reduction in rank of such officer to a rank of non-commissioned officer following on disciplinary proceedings under section 40 or an inquiry under section 34 (1) (b);
- (c) a direction by the Minister in terms of subsection (5); or
- (d) the transfer of such officer to another department under section 14 or 15 of the Public Service Act, 1994 (Proclamation R103 of 1994).

(4) Subject to section 49, a commissioned officer may at any time in writing and, with or without prior notice, resign from the Service.

(5) Any commissioned officer who leaves the Service because of his or her discharge, retirement or resignation, shall retain the commission and rank he or she held immediately prior to his or her discharge, retirement or resignation, unless the Minister, on the recommendation of the National Commissioner, otherwise directs.

### **34 Inquiries**

(1) The National Commissioner may designate a member, a category of members or any other person or category of persons who may, in general or in a specific case, inquire into-

- (a) the fitness of a member to remain in the Service on account of indisposition, ill-health, disease or injury;

- (b) the fitness or ability of a member to perform his or her duties or to carry them out efficiently;
- (c) the fitness of a member to remain in the Service if his or her continued employment constitutes a security risk for the State;
- (d) the fitness of a member to remain in the Service in the light of a misrepresentation made by such member regarding a matter in relation to his or her appointment;
- (e) the absence of a member from duty without leave for more than one calendar month;
- (f) an injury alleged to have been sustained by a member or other employee of the Service in an accident arising out of or in the course of his or her duty, or a disease or indisposition alleged to have been contracted in the course of his or her duty, or any subsequent incapacitation alleged to be due to the same injury, disease or indisposition, or an indisposition alleged to have resulted from vaccination in accordance with this Act;
- (g) the death of a member or other employee of the Service alleged to have been caused as a result of circumstances referred to in paragraph (f);
- (h) the absence from duty of a member or other employee of the Service owing to illness, indisposition or injury alleged to have resulted from misconduct or serious and deliberate failure on his or her part to take reasonable precautions;
- (i) the suitability, value and purchase of any property or equipment required for use in the Service or the suitability for further service of any part of property or equipment already in use in the Service;
- (j) any deficiency in or damage to or loss of State property or any property in possession of or under the control of the State or a club referred to in section 62 (3) or for which the State is responsible, or any property of a member or other employee of the Service which is alleged to have occurred in connection with the performance of his or her duties or functions in the Service, as well as the liability of any person and the desirability to hold any person liable for such deficiency, damage or loss;
- (k) any deficiency, loss, damage or expense occasioned to the State or a club referred to in section 62 (3) as a result of the conduct of a member or other employee of the Service and any money or unpaid debts due by such member or employee to the State or such club as well as the liability of any person and the desirability to hold any person liable for such deficiency, loss, damage or expense; or
- (l) any other matter which the National Commissioner considers to be in the interest of the Service.

(2) The National Commissioner may designate a member, a category of members or any other person or category of persons who may, in general or in a specific case, obtain and lead evidence for the purposes of an inquiry contemplated in subsection (1).

[Sub-s. (2) substituted by s. 5 of Act 41 of 1997.]

(3) The Minister may prescribe-

- (a) the procedure applicable to an inquiry contemplated in subsection (1); and
- (b) the circumstances under which such an inquiry may be converted or deemed to have been converted into disciplinary proceedings.

### **35 Discharge of members on account of redundancy, interest of Service or appointment to public office**

The National Commissioner may, subject to the provisions of the Government Service Pension Act, 1973 (Act 57 of 1973), discharge a member-



- (a) because of the abolition of his or her post, or the reduction in the numerical strength, the reorganisation or the readjustment of the Service;
- (b) if, for reasons other than the unfitness or incapacity of such member, his or her discharge will promote efficiency or economy in the Service, or will otherwise be in the interest of the Service; or
- (c) if the President or a Premier appoints him or her in the public interest under any law to an office to which the provisions of this Act or the Public Service Act, 1994 (promulgated under Proclamation 103 of 1994), do not apply.

[Para. (c) substituted by s. 35 (1) of Act 47 of 1997.]

### 36 Discharge on account of sentence imposed

(1) A member who is convicted of an offence and is sentenced to a term of imprisonment without the option of a fine, shall be deemed to have been discharged from the Service with effect from the date following the date of such sentence: Provided that, if such term of imprisonment is wholly suspended, the member concerned shall not be deemed to have been so discharged.

(2) A person referred to in subsection (1), whose-

- (a) conviction is set aside following an appeal or review and is not replaced by a conviction for another offence;
- (b) conviction is set aside on appeal or review, but is replaced by a conviction for another offence, whether by the court of appeal or review or the court of first instance, and a sentence to a term of imprisonment without the option of a fine is not imposed upon him or her following on the conviction for such other offence; or
- (c) sentence to a term of imprisonment without the option of a fine is set aside following an appeal or review and is replaced with a sentence other than a sentence to a term of imprisonment without the option of a fine,

may, within a period of 30 days after his or her conviction has been set aside or his or her sentence has been replaced by a sentence other than a sentence to a term of imprisonment without the option of a fine, apply to the National Commissioner to be reinstated as a member.

(3) In the event of an application by a person whose conviction has been set aside as contemplated in subsection (2) (a), the National Commissioner shall reinstate such person as a member with effect from the date upon which he or she is deemed to have been so discharged.

(4) In the event of any application by a person whose conviction has been set aside or whose sentence has been replaced as contemplated in subsection (2) (b) and (c), the National Commissioner may-

- (a) reinstate such person as a member with effect from the date upon which he or she is deemed to have been so discharged; or
- (b) cause an inquiry to be instituted in accordance with section 34 into the suitability of reinstating such person as a member.

(5) For the purposes of this section, a sentence to imprisonment until the rising of the court shall not be deemed to be a sentence to imprisonment without the option of a fine.

(6) This section shall not be construed as precluding any administrative action, investigation or inquiry in terms of any other provision of this Act with respect to the member concerned, and any lawful decision or action taken in consequence thereof.

### 37 Discharge of members failing to complete basic training

Notwithstanding the provisions of this Act, but subject to the Constitution, the National Commissioner may, in the absence of an inquiry, discharge from the Service a member who fails to complete his or her basic training successfully within a period of 24 months after his or her appointment in the Service.

### **38 Missing members and employees**

(1) If a member or other employee of the Service is reported missing, such member or employee shall for all purposes be deemed to be still employed by the Service until-

- (a) the National or Provincial Commissioner otherwise determines;
- (b) he or she again reports for duty; or
- (c) a competent court issues an order whereby the death of such member or employee is presumed.

(2) The salary or wages and allowances accruing to a member or employee during his or her absence contemplated in subsection (1) shall, subject to subsection (4), be paid-

- (a) to his or her spouse; or
- (b) if he or she has no spouse, to his or her dependants; or
- (c) to any other person who, in the opinion of the Commissioner concerned, is competent to receive and administer such salary or wages and allowances on behalf of the member or employee or his or her spouse or such other dependants.

(3) Payment of any salary or wages and allowances in terms of subsection (2) shall for all purposes be deemed to be payment thereof to the member or employee concerned.

(4) Notwithstanding subsection (2), the National or Provincial Commissioner may from time to time direct that only a portion of the salary or wages and allowances of a member or employee be paid in terms of the said subsection or that no portion thereof be so paid.

### **39 Secondment of members**

(1) The services of a member may be placed at the disposal of any other department of State or any authority established by or under any law.

(2) If a member is seconded under subsection (1), such member shall be deemed to be serving in the Service and shall retain all powers and privileges as a member, subject to such conditions as may be agreed upon by the National Commissioner and the department of State or authority concerned.

(3) A member seconded under subsection (1) shall, in the performance of his or her functions, act in terms of the laws applicable to the department of State or authority to which he or she is seconded, subject to such conditions as may be agreed upon by the National Commissioner and the department of State or authority concerned.

(4) The National Commissioner shall determine uniform standards and procedures regarding the secondment of members.

### **40 Disciplinary proceedings**

Disciplinary proceedings may be instituted in the prescribed manner against a member on account of misconduct, whether such misconduct was committed within or outside the borders of the Republic.

### **41 Strikes**

(1) No member shall strike, induce any other member to strike or conspire with another person to strike.

(2) If the National or Provincial Commissioner has reason to believe that a member is striking or conspiring with another person to strike, the Commissioner concerned may, in a manner which is reasonable in the circumstances, issue an ultimatum to the member concerned to terminate or desist from carrying out such conduct within the period specified in such ultimatum.

(3) In the event that the member refuses or fails to comply with the ultimatum referred to in subsection (2), or if the National or Provincial Commissioner could not reasonably be expected to issue such an ultimatum to a member personally, the Commissioner concerned may, without a hearing, summarily discharge such member from the Service: Provided that-

- (a) such member shall as soon as practicable after the date of such discharge, be notified in writing of such discharge and the reasons therefor;
- (b) such member may, within 30 days after the date of receipt of such notice, make written representations to the Minister regarding the revocation of the discharge; and
- (c) the Minister may, after having considered any representations, reinstate such member from the date of such discharge.

(4) A discharge from the Service under subsection (3) shall not be invalid solely by reason of such member not receiving notice of the ultimatum referred to in subsection 20 (2).

#### **42 Conduct sheets**

(1) The National or Provincial Commissioner shall cause a conduct sheet to be maintained in respect of every member under his or her command.

(2) The National Commissioner shall determine the manner and form in which conduct sheets shall be maintained and when entries recorded thereon may be deleted.

#### **43 Suspension while in detention or imprisoned**

(1) Subject to section 36, a member who is in detention or is serving a term of imprisonment shall be deemed to be suspended from the Service for the period during which he or she is so detained or is serving such term of imprisonment.

(2) A member referred to in subsection (1) shall, unless the National or Provincial Commissioner otherwise directs, not be entitled for the applicable period to any salary, wages, allowances, privileges or benefits to which he or she would otherwise be entitled as a member.

(3) Where a member-

- (a) is detained pending the outcome of criminal proceedings against him or her and such member is subsequently found not guilty on all charges or is convicted but such conviction is subsequently set aside; or
- (b) serves a term of imprisonment which is subsequently set aside,

such member may make representations to the National or Provincial Commissioner that any salary, wages, allowances, privileges or benefits forfeited by him or her under subsection (2), be restored to him or her.

(4) The National or Provincial Commissioner may, in the circumstances contemplated in subsection (3), *mero motu* or after consideration of any representations received from a member, determine that any forfeited salary, wages, allowances, privileges or benefits be restored to such member.

#### 44 Rewards and recognitions

(1) The National or Provincial Commissioner may, after consultation with the Minister or member of the Executive Council, make an appropriate award to any member or other person for meritorious service in the interest of the Service.

(2) The President may institute, constitute and create decorations and medals, as well as bars, clasps and ribbons in respect of such decorations and medals, which may be awarded by the President, the Minister or the member of the Executive Council, subject to such conditions as the President may determine, to any member or other person who has rendered exceptional service to the Service.

#### 45 Retirement

(1) (a) Subject to subsection (7), a member may retire from the Service, and shall be so retired on the date when he or she attains the age of 60 years.

(b) If a member attains the age of 60 years after the first day of the month, he or she shall be deemed to have attained it on the first day of the following month.

(2) A member who is at least 50 years of age may, at any time before attaining the age of 60 years, give written notification to the Minister of his or her wish to retire from the Service, and shall be allowed so to retire if a sufficient reason therefor exists and the retirement will be to the advantage of the Service.

(3) (a) Subject to paragraph (b), a member who in terms of section 212 (7) (b) of the Constitution or any other law has the right to retire at an earlier age than that contemplated in subsection (1) (a), shall give written notification to the National Commissioner of his or her wish to be so retired and he or she shall-

- (i) if that notification is given to the National Commissioner at least three calendar months prior to the date on which he or she attains the retirement age applicable to him or her, be so retired on the date on which he or she attains that age or, if he or she attains it after the first day of the month, on the first day of the following month; or
- (ii) if that notification is not given to the National Commissioner at least three calendar months prior to the date on which he or she attains the said age, be so retired on the first day of the fourth month after the month in which the notification is received.

(b) (i) Subject to subsection (4), the National or Provincial Commissioner shall give written notification of his or her wish to be retired from the Service at least six calendar months prior to the date on which he or she attains the retirement age applicable to him or her, and if he or she has so given notification, paragraph (a) (i) shall apply *mutatis mutandis*.

(ii) If the National or Provincial Commissioner has not given written notification at least six calendar months prior to the date on which he or she attains the said age, he or she shall be so retired on the first day of the seventh month following the month in which that notification is received.

(4) Notwithstanding the provisions of this section, the National or Provincial Commissioner may retire from the Service and he or she shall be so retired at the expiry of the term contemplated in section 7, or any extended term contemplated in that section, as the case may be, and he or she shall be deemed to have been so retired in terms of section 35 (a).

(5) Subject to subsections (1) and (3) (b)-

- (a) the President may at the request of the National Commissioner allow him or her to retire from the Service before the expiry of the term contemplated in section 7 or

any extended term contemplated in that section if a reason exists which the President deems sufficient; and

- (b) the National Commissioner may at the request of the Provincial Commissioner allow him or her to retire from the Service before the expiry of the term contemplated in section 7 or any extended term contemplated in that section if a reason exists which the National Commissioner deems sufficient.

(6) If the National or Provincial Commissioner is allowed to retire under subsection (5), he or she shall be deemed to have been retired in terms of subsection (2), and shall be entitled to such pension as he or she would have been entitled to if he or she had retired from the Service under the latter subsection.

(7) (a) Notwithstanding the provisions of subsection (1) (a), a member may be retained, with his or her consent, in his or her post beyond the age of 60 years with the approval of the Minister or member of the Executive Council for further periods which shall not, except with the approval by resolution of Parliament, exceed the aggregate of five years.

(b) A member shall only be retained under paragraph (a) if it is-

- (i) reasonable; and
- (ii) in the interest of the Service; or
- (iii) generally in the public interest.

(8) Pension benefits shall be paid to a retired member by the institution responsible for the administration of the pension fund to which that member was a contributor, subject to any law regulating the payment of such benefits.

(9) A benefit payable by the Service in terms of any law shall be paid to the person entitled to such benefit within a period of 90 days after the date on which the National Commissioner received the written notification of such member's termination of service, for any reason, in such a form and with such documents as the National Commissioner may determine for the purposes of this section or, if he or she receives such notification and documents 90 days before the date on which a benefit is payable to the person concerned in terms of such law, on the date on which such benefit is so payable.

(10) Nothing in this section contained shall be construed as derogating from section 212 (7) of the Constitution.

#### **46 Political activities of members**

(1) No member shall-

- (a) publicly display or express support for or associate himself or herself with a political party, organisation, movement or body;
- (b) hold any post or office in a political party, organisation, movement or body;
- (c) wear any insignia or identification mark in respect of any political party, organisation, movement or body; or
- (d) in any other manner further or prejudice party-political interests.

(2) Subsection (1) shall not be construed as prohibiting a member from-

- (a) joining a political party, organisation, movement or body of his or her choice;
- (b) attending a meeting of a political party, organisation, movement or body: Provided that no member shall attend such a meeting in uniform; or
- (c) exercising his or her right to vote.

#### **47 Obedience**

(1) Subject to subsection (2), a member shall obey any order or instruction given to him or her by a superior or a person who is competent to do so: Provided that a member shall not obey a patently unlawful order or instruction.

(2) Where it is reasonable in the circumstances, a member may demand that an order or instruction referred to in subsection (1) be recorded in writing before obeying it.

(3) A member may, after having obeyed an order or instruction referred to in subsection (1), demand that such an order or instruction be recorded in writing.

#### **48 Reserve Police Service**

(1) The National Commissioner may determine the requirements for recruitment, resignation, training, ranks, promotion, duties and nature of service, discipline, uniform, equipment and conditions of service of members of the Reserve Police Service and any other matter which he or she deems necessary in order to establish and maintain different categories of members of the Reserve Police Service.

(2) The National Commissioner may appoint a person as a member of the Reserve in the prescribed manner.

(3) The National or Provincial Commissioner may in the prescribed manner order any member of the Reserve to report for service, and any such member who refuses or fails to comply with such order shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months: Provided that the Minister may by regulation exclude categories of members of the Reserve from the application of this subsection.

(4) The National or Provincial Commissioner may, subject to the Constitution, at any time discharge a member of the Reserve from the Service.

(5) During a period contemplated in section 49, the National or Provincial Commissioner may refuse to accept the resignation of a member of the Reserve, unless he or she produces evidence that he or she has enlisted for military service in a recognised unit of the South African National Defence Force.

(6) A member of the Reserve shall be deemed to be in the employ of the Service while on duty, notwithstanding the fact that such member may not be remunerated by the Service.

#### **49 Limitation on right to resign**

(1) No member may, during a period in which a state of national defence, declared under section 82 (4) (b) (i) of the Constitution, or a state of emergency, proclaimed in accordance with section 34 (1) of the Constitution, is in force, resign from the Service without the written permission of the National Commissioner.

(2) The National Commissioner may, in circumstances other than those mentioned in subsection (1), where the maintenance of public order in the Republic or any part thereof so requires, order that no member may resign from the Service without his or her written permission during a period of time specified in the order, which period may not exceed 30 days.

### **CHAPTER 10**

#### **50 to 54 inclusive .....**

[Chapter 10 amended by s. 35 (1) of Act 47 of 1997 and repealed by s. 36 (2) of Act 1 of 2011.]

## **CHAPTER 11 GENERAL PROVISIONS (ss 55-63)**

### **55 Non-liability for acts under irregular warrant**

(1) Any member who acts under a warrant or process which is bad in law on account of a defect in the substance or form thereof shall, if he or she has no knowledge that such warrant or process is bad in law and whether or not such defect is apparent on the face of the warrant or process, be exempt from liability in respect of such act as if the warrant or process were valid in law.

(2) (a) Any member who is authorised to arrest a person under a warrant of arrest and who, in the reasonable belief that he or she is arresting such person arrests another, shall be exempt from liability in respect of such wrongful arrest.

(b) Any member who is called upon to assist in making an arrest as contemplated in paragraph (a) or who is required to detain a person so arrested, and who reasonably believes that the said person is the person whose arrest has been authorised by the warrant of arrest, shall likewise be exempt from liability in respect of such assistance or detention.

### **56 Limitation of liability of State and members**

Whenever any person is conveyed in or makes use of any vehicle, aircraft or vessel, being the property or under the control of the State in the Service, the State or any member shall not be liable to such person or his or her spouse, parent, child or other dependant for any loss or damage resulting from any bodily injury, loss of life or loss of or damage to property caused by or arising out of or in any way connected with the conveyance in or the use of such vehicle, aircraft or vessel, unless such person is so conveyed or makes use thereof in or in the interest of the performance of the functions of the State: Provided that the provisions of this section shall not affect the liability of a member who wilfully causes the said loss or damage.

### **57 .....**

[S. 57 repealed by s. 2 (1) of Act 40 of 2002.]

### **58 Salary or allowance not to be assigned or attached**

No member shall, without the approval of the National or Provincial Commissioner, assign the whole or any part of any salary, wages or allowance payable to him or her under this Act, nor shall the whole or any part of any such salary, wages or allowance be capable of being seized or attached under or in consequence of any judgment or order of any court of law, other than a garnishee order.

### **59 Prohibition on certain dealings**

(1) No member shall, without the permission of the person under whose command he or she serves, lend any means of transport or equipment which he or she is required to keep and possess, or sell, pledge or otherwise dispose of any such property, irrespective of whether it is the property of the State or his or her own property.

(2) Every sale, pledge, loan or other disposition of any property contrary to subsection (1), shall be null and void.

### **60 Property of Service not liable to seizure or attachment**

Property which in terms of this Act may not be sold, pledged, lent or otherwise disposed of, shall not be capable of being seized or attached, under or in consequence of any judgment or order of any court of law.

## **61 Exemption from tolls, fees and fees of office**

(1) Subject to subsection (3), any member who, in the exercise of his or her powers or the performance of his or her duties or functions finds it necessary to enter, pass through or go over any wharf, landing place, ferry, bridge, toll-bar, gate or door at or in respect of which any toll, fee or fee of office may be lawfully demanded, shall be exempted from the payment of such toll, fee or fee of office in respect of himself or herself, every person under his or her arrest and any animal, means of transport or property which he or she may require in the exercise of such powers or the performance of such duties or functions: Provided that if such member is not in uniform, he or she shall, upon a request by any person who may demand such toll, fee or fee of office, disclose his or her identity by exhibiting to such person his or her certificate of appointment.

(2) Any person who may demand any such toll, fee or fee of office, and who subjects any such member, person, animal, means of transport or property to unreasonable delay or detention in respect of the entry to, passage through or going over any such wharf, landing place, ferry, bridge, toll-bar, gate or door, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months.

(3) The National or Provincial Commissioner may, if he or she deems it necessary, with regard to the nature of the powers, duties or functions of a member, order that subsection (1) is not applicable to such member, in which event any toll, fee or fee of office contemplated in subsection (1), shall be payable.

## **62 Police clubs exempt from licence duties and other fees**

(1) No licence money, tax, duty or fee (other than customs, excise or value-added tax) shall be payable by any person under any law or by-law in respect of a certified club of the Service or in respect of any article on sale at such a club.

(2) The production of an official document bearing the signature of the Minister or member of the Executive Council or any person authorised by the Minister or member of the Executive Council to sign such document, and indicating that he or she has certified the club as a club of the Service, shall, for the purposes of this section, be conclusive proof that it is such a club.

(3) For the purposes of this section 'club' includes any mess or institution of the Service or any premises temporarily or permanently used for providing recreation, refreshment or articles of necessity mainly for members or retired members or other persons employed by the Service or for the families of such members, retired members or employees or such other persons employed in any work in or in connection with any such mess, institution or premises.

## **63 Payment by public for police services**

(1) The National Commissioner shall, with due regard to sections 215, 218 and 219 of the Constitution, determine whether a particular function, duty or service falls within the scope of the normal and generally accepted responsibilities of the Service and, if such function, duty or service does not fall within such scope, it shall, subject to subsection (2), be performed only on such conditions as may be prescribed in consultation with the Treasury.

(2) Notwithstanding the provisions of subsection (1), the National Commissioner may authorise that any function, duty or service be performed free of charge on behalf of any deserving charity or in any case considered to be of general, cultural or educational interest.

## **CHAPTER 12 MUNICIPAL AND METROPOLITAN POLICE SERVICES (ss 64-64Q)**

## **64 Interpretation**



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

[S. 64 substituted by s. 2 of Act 83 of 1998.]

#### **64A Establishment of municipal police service**

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

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

- (a) the application complies with the prescribed requirements;
- (b) the municipality has the resources at its disposal to provide for a municipal police service which complies with national standards on a 24-hour basis;
- (c) traffic policing services by the municipality will not be prejudicially affected by the establishment of a municipal police service;
- (d) proper provision has been made by the municipality to ensure civilian supervision of the municipal police service; and
- (e) the establishment of the municipal police service will improve effective policing in that part of the province.

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

- (a) after consultation with the National Commissioner;
- (b) after consultation with the metropolitan council if the municipality falls in the area of jurisdiction of a metropolitan council; and
- (c) with the approval of the member or members of the Executive Council responsible for local government, finance, transport and traffic matters, or where no such member or members have been appointed, the Premier or the member or members of the Executive Council to whom those responsibilities have been assigned by the Premier.

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

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

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

[S. 64A inserted by s. 3 of Act 83 of 1998.]

#### **64B Chief Executive Officer of municipality**

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

[S. 64B inserted by s. 3 of Act 83 of 1998.]

#### **64C Executive head of municipal police service**

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

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

- (a) be responsible for maintaining an impartial, accountable, transparent and efficient municipal police service;
- (b) subject to the applicable laws, be responsible for the recruitment, appointment, promotion and transfer of members of the municipal police service;
- (c) ensure that traffic policing services by the municipality are not prejudicially affected by the establishment of the municipal police service;
- (d) be responsible for the discipline of the municipal police service;
- (e) either personally or through a member or members of the municipal police service designated by him or her for that purpose, represent the municipal police service on every local policing co-ordinating committee established in terms of section 64K within the area of jurisdiction of the municipality;
- (f) either personally or through a member or members of the municipal police service designated by him or her for that purpose, represent the municipal police service on every community police forum or subforum established in terms of section 19 within the area of jurisdiction of the municipality;
- (g) before the end of each financial year, develop a plan which sets out the priorities and objectives of the municipal police service for the following financial year: Provided that such plan in so far as it relates to the prevention of crime, shall be developed in co-operation with the Service; and
- (h) perform such duties as may from time to time be imposed upon him or her by the chief executive officer of the municipality.

[S. 64C inserted by s. 3 of Act 83 of 1998.]

#### **64D First executive head of municipal police service**

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

[S. 64D inserted by s. 3 of Act 83 of 1998.]

#### **64E Functions of municipal police service**

The functions of a municipal police service are-

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

[S. 64E inserted by s. 3 of Act 83 of 1998.]

#### **64F Powers of member of municipal police service**

(1) Subject to the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), and with due regard to the fundamental rights of every person, a member of a municipal police service may exercise such powers and shall perform such duties as are by law conferred upon or assigned to a member of a municipal police service.

(2) The Minister may from time to time prescribe that any power conferred upon a member of the Service by this Act or any other law, may be exercised by a member of a municipal police service: Provided that where the power includes the power to seize an article, the member of the municipal police service shall forthwith deliver the article to a member.

(3) Every member of a municipal police service is a peace officer and may exercise the powers conferred upon a peace officer by law within the area of jurisdiction of the municipality in question: Provided that a member may exercise such powers outside the area of jurisdiction if it is done-

- (a) in pursuit of a person whom the member reasonably suspects of having committed an offence, and if the pursuit commenced within the area of jurisdiction of the municipality; or
- (b) in terms of an agreement between the municipal council and another municipal council in terms of section 10C (7) of the Local Government Transition Act, 1993 (Act 209 of 1993).

[S. 64F inserted by s. 3 of Act 83 of 1998.]

### **64G Proof of appointment**

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

[S. 64G inserted by s. 3 of Act 83 of 1998.]

### **64H Procedure after arrest by member of municipal police service**

A person arrested with or without warrant by a member of a municipal police service shall as soon as possible be brought to a police station under the control of the Service or, in the case of an arrest by warrant, to any other place which is expressly mentioned in the warrant, to be dealt with in terms of section 50 of the Criminal Procedure Act, 1977 (Act 51 of 1977).

[S. 64H inserted by s. 3 of Act 83 of 1998.]

### **64I Legal proceedings against municipal police service**

(1) Any legal proceedings against a municipal police service or member of a municipal police service for the recovery of a debt as defined in the Institution of Legal Proceedings against certain Organs of State Act, 2002, shall be instituted against the municipal council in question.

[Sub-s. (1) substituted by s. 2 (1) of Act 40 of 2002.]

(2) .....

[Sub-s. (2) deleted by s. 2 (1) of Act 40 of 2002.]

[S. 64I inserted by s. 3 of Act 83 of 1998.]

### **64J Civilian oversight of municipal police services**

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

(2) The committee contemplated in subsection (1) shall-

- (a) at the request of the municipal council in question, advise the council on matters relating to the municipal police service;
- (b) advise the chief executive officer with regard to the performance of his or her functions in respect of the municipal police service;
- (c) perform such functions as the member of the Executive Council, the municipal council or the chief executive officer may consider necessary or expedient to ensure civilian oversight of the municipal police service;

- (d) promote accountability and transparency in the municipal police service;
- (e) monitor the implementation of policy and directives issued by the chief executive officer and report to the municipal council or chief executive officer thereon;
- (f) perform such functions as may from time to time be assigned to the committee by the municipal council or the chief executive officer; and
- (g) evaluate the functioning of the municipal police service and report to the municipal council or chief executive officer thereon.

[S. 64J inserted by s. 3 of Act 83 of 1998.]

#### **64K Policing co-ordinating committees**

(1) In order to co-ordinate policing in the province, the Provincial Commissioner shall, after consultation with the member of the Executive Council, establish at least one of the following committees:

- (a) local policing co-ordinating committees;
- (b) area policing co-ordinating committees;
- (c) provincial policing co-ordinating committees.

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

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

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

[S. 64K inserted by s. 3 of Act 83 of 1998.]

#### **64L Powers and duties of National Commissioner in respect of municipal police service**

(1) The National Commissioner may determine national standards of policing for municipal police services and, in addition to the training prescribed for traffic officers in terms of the Road Traffic Act, 1989 (Act 29 of 1989), determine national standards with regard to the training of members of municipal police services.

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

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

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

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

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

[S. 64L inserted by s. 3 of Act 83 of 1998.]

#### **64M Minister's power in respect of municipal police service**

(1) Upon receipt of a report contemplated in section 64L, the Minister may request the member of the Executive Council concerned to intervene as contemplated in section 139 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), and shall provide the member with a copy of that report.

(2) (a) If the member of the Executive Council fails to intervene as requested, the Minister may intervene as contemplated in section 100 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), in which case section 64N (4) to (7) shall apply with the necessary changes.

- (b) For the purposes of this subsection, any reference in section 64N (4) to (7) to-
  - (a) the member of the Executive Council, shall be deemed to be a reference to the Minister;
  - (b) the member of the Executive Council responsible for local government, shall be deemed to be a reference to the Minister for Provincial Affairs and Constitutional Development;
  - (c) the member of the Executive Council responsible for transport and traffic matters, shall be deemed to be a reference to the Minister of Transport;
  - (d) the Premier, shall be deemed to be a reference to the President;
  - (e) an official of the provincial government, shall be deemed to be a reference to an official of the national government; and
  - (f) to section 139 (2) of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), shall be deemed to be a reference to section 100 (2).

[S. 64M inserted by s. 3 of Act 83 of 1998.]

#### **64N Member of Executive Council's power in respect of municipal police service**

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

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

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

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

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

member or members of the Executive Council to whom the responsibilities have been assigned by the Premier-

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

(5) The administrator appointed under subsection (4) (a) may, subject to section 139 (2) of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), and subject to the directions of the member of the Executive Council, exercise all the powers and perform all the duties of the executive head of the municipal police service.

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

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

[S. 64N inserted by s. 3 of Act 83 of 1998.]

#### **64O Certain other sections of this Act to apply to municipal police service**

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

[S. 64O inserted by s. 3 of Act 83 of 1998.]

#### **64P Regulations in respect of municipal police service**

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

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

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

[S. 64P inserted by s. 3 of Act 83 of 1998.]

#### **64Q Saving and transitional arrangements in respect of existing municipal police service**

(1) (a) When the South African Police Service Amendment Act, 1998, takes effect, the Durban City Police, established under section 83 of the Durban Extended Powers Consolidated Ordinance, 1976 (Natal Ordinance 18 of 1976), shall be deemed to have been established under section 64A, and shall continue to so exist until 30 September 1999.

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

(c) Any person who was a member of the Durban City Police immediately before the South African Police Service Amendment Act, 1998, took effect, shall continue to be a member of the Durban City Police and become a member of the municipal police service if the establishment thereof is approved as contemplated in paragraph (b), even if that person does not comply with the training requirements for appointment as a member of a municipal police

service established under this Act: Provided that the person shall cease to be a member with effect from 1 October 2003, unless he or she complies with the training requirements for appointment.

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

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

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

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

[S. 64Q inserted by s. 3 of Act 83 of 1998.]

## **CHAPTER 13 OFFENCES (ss 65-71)**

### **65 Receipt or possession of certain property**

Any person who receives or has in his or her possession any property which in terms of this Act may not be sold, pledged, lent or otherwise disposed of, knowing the same to have been sold, pledged, lent or otherwise disposed of in contravention of this Act, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months.

### **66 Wearing and use of uniforms, badges, etc of Service**

(1) Any person who wears any uniform or distinctive badge or button of the Service or wears anything materially resembling any such uniform, badge or button or wears anything with the intention that it should be regarded as such uniform, badge or button, shall, unless-

- (a) he or she is a member entitled by reason of his or her appointment, rank or designation to wear such uniform, badge or button; or
- (b) he or she has been granted permission by the National or Provincial Commissioner to wear such uniform, badge or button,

be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

(2) Any person who wears, or without the written permission of the National Commissioner, makes use of any decoration or medal instituted, constituted or created under this Act, or its bar, clasp or ribbon, or anything so closely resembling any such decoration, medal, bar, clasp or ribbon as to be calculated to deceive, shall, unless he or she is the person to whom such decoration or medal was awarded, be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

## 67 Interference with members

(1) Any person who-

- (a) resists or wilfully hinders or obstructs a member in the exercise of his or her powers or the performance of his or her duties or functions or, in the exercise of his or her powers or the performance of his or her duties or functions by a member wilfully interferes with such member or his or her uniform or equipment or any part thereof; or
- (b) in order to compel a member to perform or to abstain from performing any act in respect of the exercise of his or her powers or the performance of his or her duties or functions, or on account of such member having done or abstained from doing such an act, threatens or suggests the use of violence against, or restraint upon such member or any of his or her relatives or dependants, or threatens or suggests any injury to the property of such member or of any of his or her relatives or dependants,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months.

(2) Any person who-

- (a) conspires with or induces or attempts to induce any member not to perform his or her duty or any act in conflict with his or her duty; or
- (b) is a party to, assists or incites the commission of any act whereby any lawful order given to a member may be evaded,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

(3) Any person who induces or attempts to induce a member to commit misconduct shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

(4) In the event of a criminal prosecution of any member or a representative of an employee organisation on account of a contravention of subsection (2) or (3), it shall constitute a defence if the sole purpose of such person's conduct was to-

- (a) further or cause a strike by members; or
- (b) further the activities of a *bona fide* employee organisation.

## 68 False representations

(1) Any person who pretends that he or she is a member shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

(2) Any person who by means of a false certificate or any false representation obtains an appointment in the Service, or, having been dismissed from the Service, receives, by concealing the dismissal, any salary, wages, allowance, gratuity or pension, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

(3) Any person who, in connection with any activity carried on by him or her takes, assumes, uses or in any manner publishes any name, description, title or symbol indicating or conveying or purporting to indicate or convey or which is calculated or is likely to lead other persons to believe or infer that such activity is carried on under or in terms of the provisions of this Act or under the patronage of the Service, or is in any manner associated or connected with the Service, without the approval of the National Commissioner, shall be guilty of an



offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

## 69 Prohibition on publication of photographs or sketches of certain persons in custody

(1) For the purposes of this section-

**'photograph'** includes any picture, visually perceptible image, depiction or any other similar representation of the person concerned; and

**'publish'**, in relation to a photograph or sketch, includes to exhibit, show, televise, represent or reproduce.

(2) No person may, without the written permission of the National or Provincial Commissioner, publish a photograph or sketch of a person-

- (a) who is suspected of having committed an offence and who is in custody pending a decision to institute criminal proceedings against him or her;
- (b) who is in custody pending the commencement of criminal proceedings in which he or she is an accused; or
- (c) who is or may reasonably be expected to be a witness in criminal proceedings and who is in custody pending the commencement of his or her testimony in such proceedings.

(3) Any person who publishes a photograph or sketch in contravention of subsection (2), shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months.

[S. 69 substituted by s. 6 of Act 41 of 1997.]

## 70 Unauthorised disclosure of information

Any member who wilfully discloses information in circumstances in which he or she knows, or could reasonably be expected to know, that such a disclosure will or may prejudicially affect the exercise or the performance by the Service of the powers or the functions referred to in section 215 of the Constitution, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

## 71 Unauthorised access to or modification of computer material

(1) Without derogating from the generality of subsection (2)-

**'access to a computer'** includes access by whatever means to any program or data contained in the random access memory of a computer or stored by any computer on any storage medium, whether such storage medium is physically attached to the computer or not, where such storage medium belongs to or is under the control of the Service;

**'contents of any computer'** includes the physical components of any computer as well as any program or data contained in the random access memory of a computer or stored by any computer on any storage medium, whether such storage medium is physically attached to the computer or not, where such storage medium belongs to or is under the control of the Service;

**'modification'** includes both a modification of a temporary or permanent nature; and

**'unauthorised access'** includes access by a person who is authorised to use the computer but is not authorised to gain access to a certain program or to certain data held in such computer or is unauthorised, at the time when the access is gained, to gain access to such computer, program or data.

(2) Any person who wilfully gains unauthorised access to any computer which belongs to or is under the control of the Service or to any program or data held in such a computer, or in a computer to which only certain or all members have restricted or unrestricted access in their capacity as members, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

(3) Any person who wilfully causes a computer which belongs to or is under the control of the Service or to which only certain or all members have restricted or unrestricted access in their capacity as members, to perform a function while such person is not authorised to cause such computer to perform such function, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

(4) Any person who wilfully performs an act which causes an unauthorised modification of the contents of any computer which belongs to or is under the control of the Service or to which only certain or all members have restricted or unrestricted access in their capacity as members with the intention to-

(a) impair the operation of any computer or of any program in any computer or of the operating system of any computer or the reliability of data held in such computer; or

(b) prevent or hinder access to any program or data held in any computer,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years.

(5) Any act or event for which proof is required for a conviction of an offence in terms of this section which was committed or took place outside the Republic shall be deemed to have been committed or have taken place in the Republic: Provided that-

(a) the accused was in the Republic at the time he or she performed the act or any part thereof by means of which he or she gained or attempted to gain unauthorised access to the computer, caused the computer to perform a function or modified or attempted to modify its contents;

(b) the computer, by means of or with regard to which the offence was committed, was in the Republic at the time the accused performed the act or any part thereof by means of which he or she gained or attempted to gain unauthorised access to it, caused it to perform a function or modified or attempted to modify its contents; or

(c) the accused was a South African citizen at the time of the commission of the offence.

## CHAPTER 14 REPEAL AND TRANSITIONAL PROVISIONS (s 72)

### 72 Repeal and transitional provisions

(1) (a) Subject to this section, the Rationalisation Proclamation is hereby repealed, excluding-

- (i) sections 8 (1), 9 (1) to (8), 10, 12 (1) and (2) (a) to (j), 13 and 14 thereof; and
- (ii) any other provision of that Proclamation in so far as it relates to the interpretation or execution of a provision mentioned in subparagraph (i).

(b) Sections 11, 12 and 15 of this Act shall, where applicable, be subject to section 9 (1) to (8) of the Rationalisation Proclamation until the National Commissioner has certified that the assignment of the functions referred to in section 219 of the Constitution by the National Commissioner to all Provincial Commissioners as contemplated in section 9 (4) (a) of the Rationalisation Proclamation, has been completed, whereupon sections 11, 12 and 15 of this

Act shall be applicable to the National and Provincial Commissioner in relation to the Province concerned.

(c) The Minister may make regulations regarding all matters which are necessary or expedient for the purposes of this subsection.

(d) Any person who, immediately before the commencement of this Act, was a member of a force contemplated in section 5 (2) (a) (i), and who has not been appointed to a post in or additional to the fixed establishment or otherwise dealt with in accordance with section 14 of the Rationalisation Proclamation, shall serve in a pre-rationalised post until he or she is appointed to a post in or additional to the fixed establishment or is otherwise dealt with in accordance with that section.

(e) Any person referred to in paragraph (d) who has been or is appointed to a post in or additional to the fixed establishment or is otherwise dealt with in terms of the Rationalisation Proclamation, shall be deemed to have been so appointed or dealt with under the corresponding provision of this Act.

(2) In the application of the provisions mentioned in subsection (1) (a), and unless the context otherwise indicates or if clearly inappropriate, any reference therein to the Rationalisation Proclamation or to the Police Act, 1958 (Act 7 of 1958), or to any repealed provision thereof, shall be construed as a reference to this Act, or to the corresponding provision thereof, as the case may be.

(3) Any reference in any law to a Commissioner of a police force shall, except where such post has not yet been abolished, and unless clearly inappropriate, be construed as a reference to the National Commissioner or, in regard to any matter in respect of which a Provincial Commissioner is lawfully responsible, and subject to section 219 of the Constitution, to the Provincial Commissioner concerned.

(4) (a) Anything done, including any regulation made or standing order or instruction issued or other administrative measure taken or any contract entered into or any obligation incurred under the Rationalisation Proclamation or any law repealed by this Act or the Rationalisation Proclamation which could be done under this Act and in force immediately before the commencement of this Act, shall be deemed to have been so done, made, issued, taken, entered into or incurred, as the case may be, under this Act until amended, abolished, withdrawn or repealed under this Act.

(b) Any reference in any regulation, standing order or administrative measure to a regional commissioner or a district commissioner shall, unless clearly inappropriate, be construed as a reference to a Provincial Commissioner or an area commissioner, respectively.

(5) and (6) .....

[Sub-ss. (5) and (6) deleted by s. 4 of Act 83 of 1998.]

## **CHAPTER 15** **SHORT TITLE AND COMMENCEMENT (s 73)**

### **73 Short title and commencement**

This Act shall be called the South African Police Service Act, 1995, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

#### **Schedule**

(Section 16 (2) (iA))

[Schedule added by s. 5 of Act 57 of 2008.]

1 High treason;

2 any offence referred to in paragraph (a) of the definition of 'specified offence' of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act 33 of 2004);

3 sedition;

4 any offence referred to in Schedule 1 to the Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act 27 of 2002);

5 any offence referred to in Chapters 2, 3 and 4 of the Prevention of Organised Crime Act, 1998 (Act 121 of 1998);

6 any offence referred to in section 13 (f) of the Drugs and Drug Trafficking Act, 1992 (Act 140 of 1992);

7 any offence referred to in the Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act 87 of 1993);

8 any offence relating to the dealing in or smuggling of ammunition, firearms, explosives or armament and the unlawful possession of such firearms, explosives or armament;

9 any offence contemplated in Chapter 2 and section 34 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004);

10 any offence referred to in the Regulation of Foreign Military Assistance Act, 1998 (Act 15 of 1998), or the Prohibition of Mercenary Activities and the Regulation of Certain Activities in Country of Armed Conflict Act, 2006 (Act 27 of 2006);

11 any offence referred to in the National Conventional Arms Control Act, 2002 (Act 41 of 2002);

12 any offence the punishment wherefor may be imprisonment for life.

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