

REPUBLIC OF SOUTH AFRICA

DEFENCE SPECIAL ACCOUNT AMENDMENT BILL

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill
published in Government Gazette No. 27590 of 17 May 2005)
(The English text is the official text of the Bill)*

(MINISTER OF DEFENCE)

[B 15—2005]

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GENERAL EXPLANATORY NOTE:

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

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

BILL

To amend the Defence Special Account Act, 1974, so as to bring it in line with certain Acts of Parliament; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 6 of 1974, as substituted by section 21 of Act 102 of 1976 and amended by section 1 of Act 17 of 1981, section 10 of Act 113 of 1984 and section 1 of Act 71 of 1995 5

1. Section 1 of the Defence Special Account Act, 1974 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the deletion of paragraph (b); and

(b) by the substitution for paragraph (cA) of the following paragraph:

“(cA) the proceeds derived from the sale, in accordance with the provisions of any law, of [armaments] defence matériel, as defined in section 1 of the [Armaments Development and Production Act, 1968 (Act No. 57 of 1968)] Armaments Corporation of South Africa, Limited Act, 2003 (Act No. 51 of 2003), which have been purchased in accordance with the provisions of section 2(2)(a) of this Act;” 10
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Repeal of section 1A of Act 6 of 1974

2. Section 1A of the principal Act is hereby repealed.

Amendment of section 2 of Act 6 of 1974, as substituted by section 2 of Act 17 of 1981 and amended by section 5 of Act 96 of 1982, section 7 of Act 142 of 1992 and section 3 of Act 71 of 1995 20

3. Section 2 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) Subject to the provisions of this Act, the moneys in the account shall be State moneys for the purposes of the [Exchequer Act, 1975 (Act No. 66 of 1975)] Public Finance Management Act, 1999 (Act No. 1 of 1999), and the accounting officer of the Department of Defence shall be charged with the responsibility of administering and accounting for the moneys in the account received by him or her and moneys paid from the 25

account by him or her in connection with the special defence activities and purchases of the Department of Defence referred to in paragraph (a) of subsection (2) and the expenditure referred to in paragraph (b) of that subsection.”;

- (b) by the substitution in subsection (1) for paragraph (c) of the following paragraph: 5

“(c) The provisions of the [**Armaments Development and Production Act, 1968**] Armaments Corporation of South Africa, Limited Act, 2003 (Act No. 51 of 2003), shall, subject to the provisions of section 5 of this Act, apply in respect of the expenditure incurred by the Corporation from the account and the administration of and accounting for the moneys paid therefrom by it, to the exclusion of the provisions of the [**Exchequer Act, 1975**] Public Finance Management Act, 1999, but, in so far as the auditing by the Auditor-General in terms of the said section 5 is concerned, the provisions of [**sections 5(9) and 6(1), (2) and (3)(a) of the Auditor-General Act, 1989 (Act No. 52 of 1989)**] the Public Audit Act, 2004 (Act No. 25 of 2004), shall apply.”; 10 15

- (c) by the substitution for subsection (2) of the following subsection:

“(2) The moneys in the account shall—

(a) [**with the approval of the Minister of Finance**] be utilized to defray the expenditure incurred in connection with such special defence activities in connection with the functions contained in the Defence Act, [**1957 (Act No. 44 of 1957)**] 2002 (Act No. 42 of 2002), and purchases of the Department of Defence and the Corporation as the Minister of Defence may from time to time approve; 20 25

(b) if the account has been credited with moneys referred to in section 1(b), also be utilized to defray any expenditure which would normally have been defrayed by the Department of Defence out of moneys appropriated by [**the Appropriation or other Act in question**] Parliament.”; and 30

- (d) by the substitution for subsection (4) of the following subsection:

“(4) Notwithstanding anything to the contrary in any law contained, the banking account for moneys in the account shall be kept in the Paymaster-General’s Account of the National Treasury, and the payments referred to in subsection (3) [**as well as payments resulting from commitments entered into under section 1A,**] shall be made from the latter account: Provided that the Director-General: [**State Expenditure**] National Treasury or any person in the [**Department of State Expenditure**] National Treasury designated by him or her, may authorize a person or persons employed by the Department of Defence in the Defence Secretariat or the Corporation to sign warrant vouchers necessary for the said payments.”. 35 40

Substitution of section 3 of Act 6 of 1974, as amended by section 7 of Act 142 of 1992

4. The following section is hereby substituted for section 3 of the principal Act: 45

“Investment of balances

3. Any moneys standing to the credit of the account which are not required for immediate use or as a reasonable working balance, shall be invested with the [**Public Investment Commissioners**] corporation established by section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984), and may be withdrawn when required for use.”. 50

Short title and commencement

5. This Act is called the Defence Special Account Amendment Act, 2005, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE DEFENCE SPECIAL ACCOUNT AMENDMENT BILL, 2005

1. BACKGROUND TO AND OBJECTS OF BILL

The Defence Special Account Act, 1974 (Act No. 6 of 1974) (“the principal Act”), refers to certain Acts of Parliament which have been substituted by the Public Audit Act, 2004 (Act No. 25 of 2004), the Public Finance Management Act, 1999 (Act No. 1 of 1999), the Armaments Corporation of South Africa, Limited Act, 2003 (Act No. 51 of 2003) and the Defence Act, 2002 (Act No. 42 of 2002). The principal Act also refers to certain procedures which are no longer applicable, e.g. the procedure for the accounting officer of the Department of Defence to enter into commitments for expenditure from the Defence Special Account, referred to in section 1A(1) of the principal Act, is no longer necessary under the Public Finance Management Act, 1999. The Defence Special Account Amendment Bill, 2005, seeks to bring the principal Act in line with current legislation by replacing or removing the said obsolete references and procedures.

2. CONSULTATION

The proposed amendments were agreed to and done in consultation with National Treasury.

3. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

None.

4. FINANCIAL IMPLICATIONS FOR STATE

None.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the Department of Defence are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.