**SUMMARY OF SECTION 59 OF THE DEFENCE AMENDMENT BILL, 2017**

Lefapha la Boiphemelo . Umnyango wezokuVikela . Kgoro ya Tshireletso . iSebe the lezoKhuselo . Department of Defence . Muhasho wa Tsiriledzo

UmNyango WezokuVikela . Ndzawulo ya swa Vusireheleri . Lehapha la Tshireletso . Departement van Verdediging . LiTiko leTekuvike

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| **SER NO** | **REFERENCE** | **SUBJECT** | **ORIGIN** | **NATURE OF AMENDMENT** |
| **SECTION 59(1)(termination by operation of law)** |
|  | Sec 59(1)(*a*). | After expiry of 3 months after approved resignation. | Sec 59(1)(*a*) D/A, 2002.**Current law**. | Minor. |
|  | Sec 59(1)(*b*). | Termination of fixed term contract, or extension. | Sec 59(1)(*b*).D/A, 2002. **Current law**. | None. Retained as is. |
|  | Sec 59(1)(*c*). | Reaching of retirement age. | Sec 59(1)(*c*). D/A, 2002.**Current law**. | Minor. |
|  | Sec 59(1)(*d*). | Imprisonment imposed by military or civ court without option of a fine. | Sec 59(1)(*d*). D/A, 2002.**Current law**. | Minor.  |
|  | Sec 59(1)(*e*). | Certificate by SG based on medical or psychological reasons. | Sec 59(1)(*e*). D/A, 2002 | Minor. |
|  | Sec 59(1)(*f*). | Transfer to another state dep, body or institution established ito any other law. | GR Ch III (Reg 19(1)(h) and GR Ch IV Reg 21(1)(h).**Current law**. | New insertion in Bill. **Conflict of interest**. |
|  | Sec 59(1)(*g*). | Acceptance of nomi-nation as member of Parliament, provincial legislature or municipal council. | GR Ch III (Reg 19(1)(j) and GR Ch IV Reg 21(1)(i).**Current law**. | New insertion in Bill.**Conflict of interest**. |
|  | Sec 59(1)(*h*). | Member becomes a member of Parliament, provincial legislature or municipal council | New. | New insertion in Bill. |
|  | Sec 59(1)(*i*). | Member permanently appointed in a position ito other law. | GR Ch III (Reg 19(1)(i) and GR Ch IV Reg 21(1)(j).**Current law**. | New insertion in Bill.**Conflict of interest**. |

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| **SECTION 59(2)(administrative decision)** |
|  | Sec 59(2)(*a*). | Abolition of post, reduction or adjustment in post structure of DOD. | Sec 59(2)(*a*).D/A, 2002.**Current law**. | Minor. |
|  | Sec 59(2)(*b*). | Promote efficiency or increased cost-effectiveness of DOD. (Excl reasons of unfitness or incapacity). | Sec 59(2)(*b*).D/A, 2002.**Current law**. | Minor.**Discipline, funds.** |
|  | Sec 59(2)(*c*). | Unfitness for duties, inability to execute duties efficiently. (Excl medical reasons ito Sec 59(1)(e).  | Sec 59(2)(*c*).D/A, 2002.**Current law**. | Minor. **Work related incompetence**. |
|  | Sec 59(2)(*d*). | Appointment not confirmed after serving probation. | Sec 59(2)(*d*).D/A, 2002.**Current law**. | None. Retained as is. |
|  | Sec 59(2)(*e*). | Continued employment of member constitutes a security risk or if security clearance for post is refused or withdrawn. | Sec 59(2)(*e*).D/A, 2002.**Current law** | Minor.**Eg conducted armed robbery**. |
|  | Sec 59(2)(*f*). | Continued employment of member undesirable after conviction by civilian or military court, due to gravity of offence and nature of sentence. | GR Ch III (Reg 19(1)(a)(ii) and GR Ch IV Reg 21(1)(a)(ii).**Current law**. | New insertion in Bill.Minor.**Discipline.****Not used for trivial purpo-ses. Will also depend on nature of offences. Holistic approach.** |
|  | Sec 59(2)(*g*). | Multiple convictions on separate occasions. Collective effect renders continued employment undesirable. | GR Ch III (Reg 19(1)(a)(iii) and GR Ch IV Reg 21(1)(a)(ii).**Current law**. | New insertion in Bill.Minor. |
|  | Sec 59(2)(*h*). | Not amenable to military discipline due to recurrent convictions. | GR Ch III (Reg 19(1)(a)(iv) and GR Ch IV Reg 21(1)(a)(iv).**Current law**. | New insertion in Bill.Minor. |
|  | Sec 59(2)(*i*). | Convicted on 5 charges of Sec 14 (a)(Absence without leave) during a period of 24 months’s continuous service. | GR Ch III (Reg 19(1)(l) and GR Ch IV Reg 21(1)(m).**Current law**. | New insertion in Bill.Minor.**Discipline.****Civ companies will also not allow.** |
|  | Sec 59(2)(*j*). | If any condition of a conditional appointment is not fulfilled.  | GR Ch III (Reg 19(1)(b).**Current law**. | New insertion in Bill.Minor. |
|  | Sec 59(2)(*k*). | Material misrepresentation of position iro a condition of appointment to any rank or post. | GR Ch III (Reg 19(1)(d) and GR Ch IV Reg 21(1)(d).**Current law**. | New insertion in Bill.Minor.**Eg false degree certify-cate**. |
|  | Sec 59(2)(*l*). | Unsuitable for formative or specialised training, or remustering. | GR Ch III (Reg 19(1)(f)) and GR Ch IV Reg 21(1)(f).**Current law**. | New insertion in Bill.Minor.**Eg too skinny (pilots), or overweight.** |
|  | Sec 59(2)(*m*). | Refusal to obey instruction for compulsory immunisa-tion. | GR Ch III (Reg 19(1)(g) and GR Ch IV Reg 21(1)(g).**Current law**. | New insertion in Bill.Minor. |
|  | Sec 59(2)(*n*). | Member is charged but not yet convicted in a civilian or military criminal court and continued employment is rendered undesirable, due to gravity of charges, publicity of charges or allegations, prejudice ot potential prejudice to DOD, impact on confidence of public in Defence Force, constitutional imperative for DOD to be structured and managed as a disciplined military force.  | **New law**. | New insertion in Bill.**Discipline.****Society’s interests.****Cannot wait so long for finalisation and payment of benefits during that period.** |
|  | Sec 59(2)(*o*). | Deteriorated relationship of trust or respect between DOD to such extent that continued employment is untenable or undesirable. | **New law**. | New insertion in Bill.**Eg Art 8 of SAPS Act 68 of 1995 (loss of confidence by Commissioner and Prov Comm.)** |
| **SECTION 59(3)(operation of law)** |
|  | Sec 59(3) | Continuous unlawful absence from official duty for a period exceeding 10 calendar days. | Sec 59(3) D/A, 2002.**Current law.** | Major.**Legal certainty. Different Court judgements.** |
| **SECTION 59(4)(personnel list)** |
|  | Sec 59(4) | Retention of names on DOD personnel list. | Sec 59(4) D/A, 2002.**Current law**. | None. Retained as is. |
| **SECTION 59(5)(C SANDF consent for discharge)** |
|  | Sec 59(5) | Consent of C SANDF for discharge while employed in defence of RSA or pending disciplinary proceedings). | Sec 59(5) | None.Retained as is. |
| **SECTION 59(6)** |
|  | Sec 59(6) | Repayment of education or training at State expense ito contract. | Sec 59(6) D/A, 2002.**Current law**. | Minor. |
| **Section 59(7)(new)** |
| 27. | Sec 59(7) | Officer commanding of a member may in writing apply to C SANDF for termination of service of member on any grounds ito Sect 59(2).Due process to be followed, i.e. *audi alteram partem*-rule.C SANDF must duly consider written application and provide reasons if decides to terminate services.  | **New**. | Major.New insertion in Bill.**Provides for due process.****Drafting of Regs currently in process.** |
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| **GENERAL ARGUMENTS IRO SEC 59** |
| 1. Sec 200(1) SA Constitution 1996. Defence Force must be structured and managed as a disciplined military force.2. Defence Act, 42 of 2002. Sec 14(*l*). C SANDF has the legal obligation to manage the Defence Force as a disciplined military force.3. Uniqueness of the military. The military is **unique** and cannot be equated to any other state department. By its nature, a soldier is expected to sacrifice his or her life in protection of the country, if necessary.4. The SANDF functions within a unique, structure and strict obedience to lawful orders and professional respect for those in command is required within such structure. The SANDF cannot fulfil its constitutional mandate without the requisite capacity, competence discipline and professionalism. 5. The above requires certain characteristics of the military, of which **discipline** **is a critical cornerstone**. Public interests also demand and require a disciplined military force. 6. In view of above the above, the SANDF requires a comprehensive legal regime to provide that the service of a SANDF member may be terminated when the continued service of such member is irrational, unrealistic, improper and an embarrassment to the SANDF.7. SLA certification. SAL has certified that the Bill does not infringe any Constitutional provisions. The Department has specifically requested the SLA to also pronounce on the legality/constitutionality of Section 59, which they have done. The SLA only required the inclusion of the *audi alteram* partem rule which has been done in Section 59(7)(*f*). 8. Limited new law introduced. Most of the current provisions of section 59 as proposed are **current law which had already been passed in 2002** with the promulgation of the new Defence Act, 42 of 2002. The proposed Section 59 is therefore a combination of the current Section 59 as it stands in law, as well as the incorporation of most of the termination Regulations of the Regulations for the SANDF and the Reserve.9. The only new critical new termination provisions are:1. Section 59(2)(*n*). (Charged but not yet convicted member).
2. Section 59(2)(o). (Relationship of trust and respect);
3. Section 59(7). OC may apply for termination of services of a member plus providing for due process procedures related thereto and empowering the Minister to further prescribe any procedure, act, incidental matter or form related to Section 59.
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