**DIRCO’S RESPONSES TO THE PORTFOLIO COMMITTEE’S REPORT**

**30 MAY 2018**

| **General issue/Theme/Bill clauses** | **Stakeholder(s)** | **Submission summary and issues raised** | **Committee’s response on emerging issues** | **Department’s response** |
| --- | --- | --- | --- | --- |
| 1. Objective: create an administrative and management framework; a single Foreign Service | HE Ambassador S. Francis Moloi | In the Memorandum of Objectives, the Bill does not state its Objectives of establishing a Foreign Service System in clear and unambiguous terms. What is needed is for government to take a clear policy decision to bring all international relations work under one roof. | Policy issues | The Memorandum of Objectives are for information purposes.  With the introduction of the Bill clause 2(1)(a) of the Bill provides clearly for the establishment of a single Foreign Service.  **On Conflict of Laws:**  - It is not uncommon for sectoral legislation to regulate the conditions of service of their own members, see, for example, clause 29(1)(d) of the Intelligence Services Act, 1994.  - Conditions of service are addressed in clauses 9 & 12  - Clause 9 makes it clear that all policies and codes are subject to collective agreements applicable to the Foreign Service  - Clause 12 doesn’t expressly subject regulations to collective agreements, but DIRCO has no objection to clarifying this in the text: proposes text similar to that included in Clause 9(1).  **On duplication of powers**  **Response:** Issue not unique to the FSB, see, for example, section 3(2) of the Defense Act, 2002.  DIRCO’s proposal to avoid conflict is to add a clause as follows:    *“(1) Subject to the provisions of this Act, the conditions of service of members of the Foreign Service must be governed by the law governing that employee’s conditions of service.*  *(2)  Where this Act conflicts with provisions of the Public Service Act, 1994, or any other legislation, and it is not possible to read the conflicting provisions as complimentary to one another, this Act shall prevail.”*  **On variation of conditions of service for employees deployed to foreign missions:**  - It is not uncommon for sectoral legislation to regulate the conditions of service of their own members, see, for example, section 29(1)(d) of the Intelligence Services Act, 1994.  -Bill makes it possible for the Minister of DIRCO to make regulations in relation to conditions of service, subject to consultations and subject to collective agreements.  DIRCO proposes to include the following text on consultation in clause 12:  *The Minister may make regulations after consultation with any other relevant national department*  Clause 4 of the Bill addresses the hierarchy by bringing all members of the Foreign Service located at missions under the control of the Head of Mission  In accordance with the Cabinet approved Measures and Guidelines for the Enhanced Coordination of South Africa’s International Engagements, DIRCO is responsible for South Africa’s overall foreign relations (see p 16)  The Measures & Guidelines provides for the different and complimentary roles of DIRCO and other departments regarding international relations  Clause 7 would make such a structure possible, if required. |
| Public Service Co-ordinating Bargaining Council (PSCBC) | -Conflict of laws created because the Bill purports to establish a new process for determining future conditions of service outside the Labour Relations Act;  -Creates duplication of powers between Ministers of Public Service and DIRCO on conditions of service  -Purports to amend various conditions of service for employees deployed to foreign missions. |
| COSATU | -welcomes the objectives of the Bill. |
| SAIIA | Bill is welcome and timely. Responds to the Department’s Strategic Plan 2012-2017, and Chapter 7 of the National Development Plan. |
| Pretoria public seminar | A single Foreign Service is needed to address hierarchy and accountability issues at the Missions |
| Canada | Adheres to a “one pen policy” where in the Missions only the Head of Mission has overall responsibility and accountability |
| Association of South African Former Ambassadors | In support of the Bill, as Public Service is territorial and DIRCO has an extra-territorial mandate. |
| African Centre for the Constructive Resolution of Disputes (ACCORD) | The Bill will go a long way towards codifying and streamlining the administration and management of Foreign Service. Reference is made to paragraph 2.2 of the Explanatory Memorandum to the Bill, in that: attention be given to the role that officials of other departments play in the missions, and where they must play a leading role. The Bill gives an impression that only DIRCO will lead all matters relating to international relations. |
| Departments of: Labour, Transport, SA Tourism, Health, Science and Technology, Public Service, Higher Education, SARS, Defence, COGTA, Justice, SAPS, Defence, Public Works, Home Affairs | All stakeholders agree on a need for a single Foreign Service.  Labour also proposed a creation of a structure or advisory committee of officials from other departments to advise DG of DIRCO in administrating the Service. |
| 2. Nature of Foreign Service South Africa requires. | Pretoria Public seminar  Association of former Ambassadors | -Professionalisation of Foreign Service, knowledge of national interest | Policy issues | Clause 3 provides for “prescribed requirements” that Members of the Foreign Service must meet to be eligible. The specific requirements will be described in Regulations.  The Bill aims to address the concern raised directly.  The appointment of Heads of Mission is a power assigned to the President in terms of the Constitution.  The Minister can, however, prescribe the requirements that needs to be met by all before they can become part of the Foreign Service. (clause 3) This can include specific training requirements, etc. The Department is open to suggestions in this regard.  Misconduct and criminal activity is addressed both in the clause on recall and the clause on offences.  DIRCO agrees that consultation is a very important aspect of the Bill and proposes that the matter be addressed through existing structures which will be given more powers in Regulations pursuant to Clause 7 to include inter-Ministerial consultations when required.  The Bill does make reference to collective agreements. It is not clear what the basis of this concern is as the Bill clearly doesn’t remove DIRCO from the collective bargaining process.  This is one of the objectives of the Bill  One of the objectives of the Bill is to professionalize the service.  SOEs do not have representatives at the Missions. Currently, only employees of government are eligible to be transferred to Missions.  Secondments are regulated by Government’s secondment policy. It should be noted that seconded employees report within the establishment of the organisation to which they have been seconded. They are not members of the Foreign Service, although they are still employees of the sending Department. |
| Ambassador S. Francis Moloi | -Efficient, non-partisan, career-oriented, professional Foreign Service in line with section 195 of the Constitution.  - How can the practice of populating ambassadorial positions in South African missions with non-career, non-professional and partisan “appointees” or “deployees” be consistent with the obligation to ensure that the Foreign Service of South Africa is career-oriented, professional and non-partisan?  -What could be the rationale, justification, if any, for non-compliance with a clear constitutional obligation requiring a career-oriented, professional and non-partisan foreign service?  -When Ambassadorial appointments are made contrary to the letter and spirit of the Constitution, would the Executive (the President to be precise) not be acting contrary to her/his responsibility to “uphold, defend and respect the Constitution as the supreme law of the Republic”?  -deeply alarmed at several incidences where officials have been implicated in criminal activity overseas and then sought to hide behind diplomatic immunity. |
| COSATU | - concerned with the extent the Bill delegates powers to the Minister to determine various policies and regulations, in particular labour relations, codes and directives relating to conditions of service.  -It is the PSCBC which collectively negotiates public service labour relations and conditions of service. There is no reference to this in the Bill. There is no provision for collective engagements between the department and unions to negotiate such policies.  -Bill is needed to enhance professionalism and accountability of the country’s Foreign Service. |
| Professor Jo-Ansie van Wyk | Amend Preamble: To provide for the management, administration, ‘accountability’ and functioning of ‘a professional South African the Foreign Service ‘and the international representation of’ the Republic of South Africa ‘at home and abroad’; to provide for the operational requirements that are suitable and supportive of the operations of the ‘a professional South African’ Foreign Service in a global environment; and to provide for matters incidental thereto. |
| Department of Transport  SA Tourism  SARS | A need for covering officers posted by SoEs, and those seconded to international organisations to have a reporting line to the Head of Mission in the country of accreditation. |
| **1:** Definitions  “employee”- a person appointed to the Department or to any other national department in terms of the Public Service Act, 1994 (Proclamation103 of 1994), including members of the Foreign Service as contemplated in section 2. | Mr Russell Pillay | Broaden definition of “**employee**” to include Locally Recruited Personnel (LRPs) as follows:  ‘employee’- a person appointed to the Department or any other national department in terms of the Public Service Act, 1994 (Proclamation 103 of 1994), including members of the Foreign Service as contemplated in section 2 and locally Recruited Personnel. |  | LRP’s cannot be included in the definition of employees in the Bill. LRPs are regulated by the legislation of the country where they are appointed. They are not subject to South African labour legislation.  The position of LRPs could be regulated in more detail in the regulations  DIRCO proposes to include reference to section 84 in the definition of Heads of Mission in clause 1.  Special Advisers to Ministers are appointed in terms of DPSA regulations.  A revised definition of Employee is proposed that will address this concern as follows:  *“****employee****”, for the purpose of this Act, means a person appointed to the Department or to any other national department in terms of the Public Service Act, 1994 (Proclamation 103 of 1994), or any other applicable legislation, and includes members of the Foreign Service in section 2”*  DIRCO agrees with this proposal.  DIRCO agrees with this proposal  DIRCO agrees with this proposal.  DIRCO agrees with this proposal.  DIRCO agrees, and proposes the following text in a new clause:  *“(1) Subject to the provisions of this Act, the conditions of service of members of the Foreign Service must be governed by the law governing that employee’s conditions of service.*  *(2)  Where this Act conflicts with provisions of the Public Service Act, 1994, or any other legislation, and it is not possible to read the conflicting provisions as complimentary to one another, this Act shall prevail.”*  Secondments can be dealt with in regulations pursuant to clause 12(1)(f) of the Bill  SA Tourism has a specific arrangement. Their circumstances are different from that of National Departments.  In terms of the Vienna Conventions, an embassy is located in one specific place and the Conventions also regulate the staff at that embassy and no commercial activities can be conducted from the Embassy premises. |
| Professor Jo-Ansie van Wyk | -include definition of the appointments by the President cited in Section 84(i) of the Constitution of the Republic of South Africa, Act 108 of 1996.  -include definition of the Special Advisor(s) on International Relations and Cooperation of the President and Minister. |
| PSCBC | Considering the definitions in section 1 of the “Foreign Services” as envisaged in the Foreign Service Bill vs “Employee” in the Public Service Act, there may be a conflict in employment provisions between the two |
| Department of Defence | - “employee’- not clear whether definition covers civil servants not appointed in terms of Public Service Act 1994 |
| National Treasury  Department of Defence | -include definition of ‘prescribed’ to clarify clauses 9&12 of the Bill |
| Department of Public Works (DPW) | -include definition of ‘acquire’ in the context of new proposal on clause 8 as follows: ‘acquire’ in relation to an immovable asset, means acquisition through construction, purchase, lease and acceptance of a gift outside the Republic, for use by the Foreign Service.  -Include definition of ‘immovable asset’ in the context of the new proposal on clause 8 as follows: ‘immovable asset’ means land, or rights in such land or immovable structure.  -Include definition of “GIAMA”, being the Government Immovable Assets Management Act, 2007 (Act No.19 of 2007). |
| Department of Public Service and Administration (DPSA) | -Insert a clause on conflict of laws, specifying which legislation (the Bill or the PSA) will prevail in cases of conflict. |
| South African Revenue Service  Department of Defence  South African Police Service  South African Tourism  Department of Labour | -consider the definition of ‘national departments’ in the Bill to cover officials sent on posting to represent South Africa in international organisations. |
| SA Tourism | -Consider cases where it would be ideal for transferred officials not to be physically accommodated in the embassy. |
| **2: Foreign Service**  *(b)* The Department is responsible for conducting and coordinating the international  relations and cooperation of the Republic at bilateral, regional and multilateral levels  through the Foreign Service abroad and through interactions with foreign representatives  in the Republic, in accordance with the foreign policy of the Republic.  (2) The Foreign Service consists of all South African Missions and of those persons  who serve in a position in the South African Missions and who are accredited to a  foreign state for the period of time that they hold that position, regardless of whether  they are ordinarily employed by the Department or by any other national department or  appointed on a contractual basis for a fixed period.  2(3)(d) Foreign Service ‘must ‘render consular services to South African national in the Republic and abroad’  (3) The Foreign Service is managed and administered by the Department and to this  end the Department must—  *(a)* administer all foreign representations in the Republic;  *(b)* lead the coordination and alignment of the Republic’s international relations  between all three spheres of government; | Pretoria public seminar  Association of former Ambassadors  Best practice: Canada | -Professionalisation of Foreign Service was regarded as a key element. Members of Foreign Service should undergo qualifying exams; have competencies requisite, language proficiency, knowledge of national interest; good conduct. | Policy issues  (Responsibility of Committee not legislation)  Vienna Convention on Consular Relations 1969: Article 5 refers to ‘consular functions’. | Clause 3 provides for members to meet “prescribed requirements” that will be prescribed in regulations  The reference to “regional” is important within the context of the Department’s foreign policy objectives.  Honorary consuls are a specific group of persons that are governed under the Vienna Convention on Consular Relations that resorts under the Diplomatic Immunities and Privileges Act. They are not necessarily nationals of the appointing country and have specific duties that are not necessarily diplomatic in nature.  These proposal falls outside the scope of the Bill as currently envisaged.  Special Envoys are also regarded as “representatives” that will be covered under the definition of Head of Mission.  Parliamentary oversight is already in place. The Minister is open for further engagement to ensure that the Portfolio Committee is briefed on a regular basis. There is however no need for the inclusion of a provision in this respect thereof in the Bill itself.  The Bill refers to foreign policy, which encapsulates the national interest.  The Bill does not contain any detail on foreign policy, which remains in the policy sphere.  The clause provides for the appointment of all members of the Foreign Service, including HoM which may or may not be contractual appointments.  Officials and other persons that represent South Africa on an ad hoc basis or who are employed by international organisations are not members of the Foreign Service. Depending on their status they are regulated by other policies / rules.  DIRCO proposes to resolve this issue by inserting a new clause to regulate conflict as follows:  *(1) Subject to the provisions of this Act, the conditions of service of members of the Foreign Service must be governed by the law governing that employee’s conditions of service.*  *(2)  Where this Act conflicts with provisions of the Public Service Act, 1994, or any other legislation, and it is not possible to read the conflicting provisions as complimentary to one another, this Act shall prevail.”*  The regulation of LRPs will be dealt with in codes and directives, provided for in clause 9.  The Association of Former Ambassadors, like all consultative mechanisms, could be establihsed by the Minister in terms of clause 7.  South Africa’s mediators in international conflicts are not part of DIRCO’s establishment, and their role is regulated by international conventions.  DIRCO proposes new text for clause 2(3)(d) as follows:  *“ render consular services to South African citizens in distress abroad and consular notarial services in line with the Guidelines for the Provision of Consular Services.”*  This matter will be addressed by the proposal by DIRCO on the redrafting of consular services. Refer to above.  The Department adhere to all legislation pertaining to equity, which include this aspect.  LRPs of South African nationality are currently employed at South African Missions if they meet the requirements of a particular post.  It is important for a coherent foreign service that there should be consultation before officials of partner departments are placed abroad. This will ensure that the interest of South Africa is best served. As the Minister will have overall responsibility for the conduct of international relations, it flows that the Department will have the final say in the placement of all members of the Foregin Service.  See above. |
| ACCORD | -Clause2(1)(b): clause is ambiguous when referring to “..conducting and coordinating the international relations at bilateral and multilateral levels..”. Redraft to either refer to “bilateral and multilateral levels”, or alternatively, “regional, continent and international levels”.  -Clause 2(2): Bill has excluded Honorary Consuls as part of what a Foreign Service should consist of. |
| SAIIA | -Clause 2(2): definition of Foreign Service be expanded to include officials at DIRCO or other department that are South African-based. It should also include officials from time to time travelling to South African missions abroad, or to international conferences, or conducting consultations with missions on policy or operational matters.  -Foreign Service be expanded to include “Special Envoys”. However, these commissions should be time-bound.  -Parliamentary oversight on special envoys be provided for. |
| HE Ambassador S. Francis Moloi | -Section 2(1)(a) of the Bill should spell out the core function of the Foreign Service which is to “pursue the national interest” of the Republic which is language that is more precise and clearly states the essence of what the Foreign Service of South Africa is expected to do.  -It is suggested that the last few words in Section 2(1)(b) which state that “in accordance with the foreign policy of the Republic” should be taken out so that the Bill avoids language that should rather remain in the “policy field”.  -Section 2 (2) implies that HOMs could be appointed from outside the ranks of the career corps. While clause 3(1) of the Bill appears to limit membership of the Foreign Service to “only citizens of the Republic, employed by the Department or by another national department”.  - Section 2(2) on the other hand opens the door for “officials” who might be appointed “on a contractual basis for a fixed period” which would ordinarily refer to “political appointees” who might come from other department or completely from outside of government such a business, academia, the unemployed and NGOs. |
| Professor Jo-Ansie van Wyk | Amend by adding the following at the end of Clause 2(2): “The Foreign Service also consists of those persons who represent South Africa on an ad hoc or permanent basis at international organisations, international conferences, mediation and negotiations; those persons referred to in Section 84(i) of the Constitution, and the President of the Republic’s Special Advisor on International Relations”. |
| PSCBC | -Clause 2(2) creates a conflict because employees in Foreign Service are therefore bound by the provision of the Bill and the Public Service Act or any other legislation under which they may be appointed. |
| Mr Russell Pillay | -Clause 2(3) (a-f) -consider definition for “support services” to mean “the administrative and technical assistance rendered by locally recruited personnel to the Foreign Service in a South African mission, and excludes the exercise of public powers. |
| Professor Jo-Ansie van Wyk | -An amendment to Section 2(3) of the Bill to include reference to, and the mandate of, the South African Council on International Relations and the South African Association of Former Ambassadors, High Commissioners and Chief Representatives.  Section 2 should also include reference to South Africa’s mediators in international conflicts. |
| Department of Home Affairs | -The term “consular services” may be misunderstood to mean that DIRCO will be now responsible for key DHA competencies; such as the issuing of passports.  - The term ‘services’ be amended.  DIRCO has no mandate to execute ‘consular services’ in the Republic  . |
| Mr Martin J Bauwens | -It is surprising that the Bill confers on DIRCO consular services powers in the Republic. This would include issuance of documents like passports, birth/death certificates, including collection of outstanding income tax. This would mean amending legislation (otherwise it is contrary to section 238 of the Constitution), giving the mandate to Home Affairs. SARS also has responsibility to collect income tax locally. |
| Department of Labour | -Increase the number of officials of minority groups and women  -consider employing South Africans in the diaspora as Locally Recruited Personnel (LRPs).  -DIRCO should have unfettered discretion to place officials of particular expertise where needed.  Currently departments decide whether there is a need to post in country X. |
| COGTA | -With regard to clause 2(3)(b), COGTA will provide support to local government to ensure alignment with South Africa’s Foreign Policy and relevant frameworks. |
| Department of Home Affairs  Department of Defence  SAPS | Close consultations needed on priorities of other departments for purposes of posting relevant personnel. |
| **3. Requirements for members of the Foreign Service**  **3.** (1) Except for the appointment of locally recruited personnel to serve at a South African Mission or in cases where the Minister has granted an exemption based on  operational requirements, only citizens of the Republic, employed by the Department or by another national department who meet the prescribed requirements, are eligible to become a member of the Foreign Service.  (2) “A member of the Foreign Service may not take up a position at a South African Mission until such time as he or she has met the prescribed requirements for such transfer and has obtained a security clearance as issued by a competent authority: Provided that transfer must be approved by the Director-General.” | DPSA | -Pursuant to the Public Service Act, permanent residents, and not only citizens, should qualify for Foreign Service. There is a court judgement confirming this situation. | Perhaps at the category of Heads of Mission, it should be only natural citizens.  Departments should also ensure such officers are vetted accordingly to address this issue.  “Requirements” should clearly state what one should have to be in Foreign Service. Currently the clause has not adequately detailed what a person must do or have to qualify. | The nationality requirement is not a requirement for employment in DIRCO, but rather a requirement for becoming a member of the Foreign Service and being posted abroad. This is a requirement for obtaining security clearance as well, and security clearance is a requirement for being posted abroad. This requirement is therefore over and above the requirements for being appointed to a national government department.  LRPs are not governed by South African law. As indicated, the issue will be dealt with in terms of clause 9.  As dealt with above.  Heads of Mission can be appointed on a contractual basis from outside the public service and will form part of the foreign service per clause 2(2).  Security clearance does include a criminal record check.  Training requirements will be addressed in regulations.  These requirements are all included in Departmental policy and could possibly be included in regulations, or in codes and directives as provided for in the Bill.  To include it in legislation itself would make it very inflexible and difficult to amend if required.  Foreign Service members and all other DIRCO staff, like all government employees, must sumbit their financial disclosures on an annual basis in accordance with DPSA requirements.  This question was dealt with above. |
| Canada | Citizens and people with dual citizenship are eligible for Foreign Service. However, only citizens considered for HOM position. |
| SAIIA | -Clause 3(1)- should spell out rules and guidelines that govern appointment of LRPs. Especially as their employment is governed by laws of South Africa.  -Clause 3(1)- there is no justification for inclusion of non-citizens as members of the Foreign Service. Issuance of a diplomatic passport to a non-citizen exposes the Republic to security risks. Therefore, strongly advises against the inclusion of this exemption. |
| HE Ambassador S. Francis Moloi | -Section 3 (1) of the Bill appears to limit membership of the Foreign Service to “only citizens of the Republic, employed by the Department or by another national department”, Section 2(2) on the other hand opens the door for “officials” who might be appointed “on a contractual basis for a fixed period” which would ordinarily refer to “political appointees” who might come from other department or completely from outside of government such a business, academia, the unemployed and NGOs. |
| ACCORD | -Clause 3(1) suggests that anyone outside of Government may not be part of the “foreign service”. This could be inconsistent with Section 84(2) of the Constitution of South Africa 1996, assigning specific powers to the President of the Republic.  -Bill silent on people who join the “foreign service” as “Heads of Mission”, who at the time of their appointment may have not been in service of government as anticipated in clause 3(1). |
| SAIIA | -Clause 3(2)- “prescribed requirements” should specifically mention that taking up of position should be subject to the successful completion of relevant training requirements, in addition to a security and criminal clearance. Does security clearance not cover criminal clearance? |
| HE Ambassador S. Francis Moloi | -Section 3(2) should provide for Minimum and maximum periods for the tour of duty of members of the Foreign Service abroad maybe 4 years). The Bill should also provide for the minimum and maximum periods that officials may spend at head Office (maybe 2 years) after their first posting before being eligible to apply for the next posting should that meet all the relevant requirements. |
| Professor Jo-Ansie van Wyk | -Include the following to clause 3:  - “The Department shall keep a National Foreign Service Interest Register which shall be submitted to Parliament. Members of the Foreign Service shall declare all their interests in the National Foreign Service Interest Register.    -The appointment of those persons cited in Section 84(i) shall be approved by Parliament subsequent to making presentations to Parliament [similar to the process of the appointment of the Public Protector].    -The President and Minister’s Advisor(s) on International Relations shall be required to report to Parliament on a quarterly basis”  . |
| Defence  DTI  DHA  NT | Clause 3(2)- Bill should clarify that partner departments will still be the ones to identify officials to be transferred to the Missions, and DIRCO to approve them for transfer. |
| **4: Head of Mission**  **4.** (1) The Head of Mission is responsible for the management and administration of the Mission and all members of the Foreign Service located at the Mission, including the  locally recruited personnel in the Mission.  (2) The Head of Mission must act on the instructions and under the authority of the  Director-General. | HE Ambassador S. Francis Moloi | -Clause 4(1) & (2) does not provide in categorical terms that HOMs should be career-oriented, professional and non-partisan. Appointment of Heads of Mission should be provided in line with the constitutional concerns that have been raised.  -Furthermore, the Memorandum is incorrect in its description of Clause 4.  - It is submitted that the Presidency, the Department, and the “ruling party” reconsider the issue of appointment of “political appointees” into the Foreign Service, particularly at the Heads of Mission level.  -It is suggested that this should be reconsidered to ensure that the Foreign Service be career-oriented, profession and non-partisan. | It is a prerogative of the President. However, it could describe a criterion for a HOM; such as a mix of career diplomats(professionalism) and political appointees as policy  Explanatory memorandum is not in sync with clause.  Issues of constitutionality | Dealt with above.  The DG, as the Accounting Officer of DIRCO, is the official mandated to give direction to HoM. Such direction will be based on the instructions from the Minister to the DG. |
| ACCORD | -Clause 4(2) is too restrictive on the authority of the Head of Mission.  -Amend to include the Minister as the instructing authority together with the Director General which would be consistent with clause 9 (5) and possibly align with clause 10 (1) (a), or  - specify if the instruction and authority of the Director-General is only limited to, and applicable to matters anticipated in clause 4 (1). |
| Professor Jo-Ansie van Wyk | -Include an addition “Parliament shall approve the appointment of Heads of Missions”. |
| COSATU | -The memorandum of the Bill speaks to the criteria and requirements for the appointment of Heads of Mission. The Bill is silent upon what are these criteria and requirements.  -The Bill needs to be amended to require that Heads of Mission present their credentials and visions to the Portfolio Committee for engagement before departing for their deployment. |
| **5: Recall of member of Foreign Service**  A member of the Foreign Service may also be recalled to the Republic after consultation with the member concerned –   1. on such conditions as the Minister or President may determine; or 2. at the request of the member concerned”   5(1) […] such a member is found guilty of misconduct in terms of the disciplinary code applicable to that member | SAIIA | -Clause 5(5)(a)- amend the clause to provide that recall will be “in line with South African labour legislation after due process and in consultation with relevant departments”, especially the sending department should the Foreign Service officer not be attached to DIRCO. | 3 types of recall | A distinction must be made between recall for disciplinary reasons and recall for reasons under international law.  DIRCO proposes a new addition to the Bill in this regard as follows:  *“(6)(a) A member of the Foreign Service must be recalled to the Republic:*  *(i) when the Republic ceases to have diplomatic or consular representation in the foreign State where the member was transferred;*  *(ii) if the member is declared persona non grata by the State where that member was transferred; or*  *(iii) At the request of the State where that member was transferred.*  *(b) A member of the Foreign Service may be recalled to the Republic where such circumstances arise that would warrant the recall of that member in the interest of the Republic: Provided that the recall is reasonable and that written reasons are provided to the member.”*  A guilty finding on misconduct charges may have an impact on the ability of a person to obtain security clearance, which will prevent transfer to a mission.  The Bill does not amend existing procedures  The Bill does not exclude existing procedures.  This matter is regulated by law.  The practice is that partner departments are consulted, although in instances where recall is in terms of international law, South Africa cannot object to the recall.  The Bill does not change existing practices. |
| Professor Jo-Ansie van Wyk | -Include in the clause- “A member found guilty of misconduct shall not be appointed as a South African representative abroad”. |
| COSATU | The recall procedures and policies need to be amended to state that the Foreign Service labour relations, policies, codes and directives will be engaged upon with employees and their union representatives at the PSCBC and internally in DIRCO. |
| PSCBC | -Due consideration must be given to the provisions of PSCBC Resolution 1 of 2003 outlining the disciplinary process of the public service for employees employed on level 1-12 and the SMS handbook for discipline of senior managers.  -Consideration must also be given to the practical implementation of such clause such as the continued payment of allowances and other as to not act prejudicial to an employee while being investigated or recalled. |
| Defence, DTI, DHA, SAPS, Health | Partner departments have expressed concerns about DIRCO’s ability to unilaterally recall officials that may fall under the authority of other departments. |
| DoD, SAPS, SARS, SA Tourism | Suggested that the Bill provide that officials from partner departments may be subjected to their own disciplinary codes and process. |
| **6: Diplomatic Academy**  6(1) ‘The Diplomatic Academy, under the control and management of the Department, is responsible for-   1. providing training, or causing training to be provided to employees and to members of the Foreign Service; 2. [conducting such examinations…] 3. Issuing of diplomas or cause diplomas or certificates to be issued to persons who have passed such examinations.   (4) provides that accreditation and recognition of qualifications is subject to: NQF Act, SDA Act, any other legislation intended to enhance skills and qualifications in the public service. | ACCORD | -Clause 6(2) be expanded to read “institutions of Higher Learning, think tanks, civil society, experts in the Republic and elsewhere to achieve this objective”. |  | It is submitted that the proposed additions are already covered by the term “experts” in the current draft of the text.  The Diplomatic Academy falls under the control of one of the Branches of DIRCO. As such, it is lead by an official at DDG level.  Since the Diplomatic Academy falls within the Department, it is not clear that the proposed Board of Advisers will be a feasible solution. The policy direction of the Diplomatic Academy will be determined by the Department, in accordance with the Department’s policies.  Clause 7 provides that the Minister may establish such mechanisms as may be needed. Cooperation with local government is currently regulated through the CFIR, which could be regulated under clause 7.  It is the intention that DIRCO will provide diplomatic training to all members of the Foreign Service. Its training will therefore be focused on diplomacy and foreign policy. The Diplomatic Academy will not replace existing training done by partner departments, but will add to it.  The reference is incorrect – should refer to the Intergovernmental Relations Framework Act and reference is made hereto in clause 7(2).  The training that is done by the Diplomatic Academy is separate from the types of education governed by the NQF Act. The Diplomatic Academy’s training is regulated by SAQA, similar to the National School of Government. |
| Professor Jo-Ansie van Wyk | -Include the following to clause 6:  “The Diplomacy Academy shall be led by a person appointed by Parliament after a public call for nominations.    -The Minister shall lead and appoint, but approved by Parliament, a Board of Advisors for a period of five years. A Board of Advisors, consisting of representatives of civil society, Parliament, South African Council on International Relations and the South African Association of Former Ambassadors, High Commissioners and Chief Representatives, the Director-General, the head of the Academy, and at least one international Advisor, shall oversee and assist the Diplomatic Academy.    -The Board of Advisors shall report to Parliament on an annual basis. |
| Department of Defence  Department of Higher Education  South African Police Service | Whether DIRCO will now conduct all training, and what will be the status of training done by partner departments. |
| Department of Labour | -Provision be made for linkages with the 2005 International Relations Framework Act 2005. |
| Department of Higher Education | The Bill encroaches into sections 5&7 of the NQF Act-creating a single integrated national framework for learning achievements. Chapter 6C establishes QCTO as a quality council responsible for skills development qualifications. Chapter 26J gives the Minister of Higher Education powers of make regulations on skills qualifications, recognition and registration of skills development. |
| **7: Establishment of coordination and other mechanisms**  (1) The Minister may establish such consultative, coordination and other  mechanisms as may be necessary for the effective execution of this Act.  (2) The Minister may, by notice in the *Gazette*, issue guidelines regarding the  coordination and alignment of activities relating to international relations between the three spheres of government, subject to the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005). | Mr Martin J Bauwens | -It empowers Minister to “issue guidelines regarding the coordination...”. The imposition of “guidelines” by the Minister of DIRCO acting alone, might be inconsistent with s 41 (1)(g) of the Constitution, which provides that all spheres of government must exercise their powers and perform their function in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere. | Policy issues | It should be noted that, according to clause 7(2), any guidelines will be subject to the Intergovernmental Relations Framework Act, 2005.  It should further be noted that international relations is an exclusively national competency in accordance with the Constitution.  Since no specific proposals were made, it is difficult for DIRCO to respond to this comment.  Currently, DIRCO convenes the CFIR (Consultative Forum for International Relations), which includes national, provincial and municipal stakeholders. This clause will make it possible to formally constitute CFIR as a consultative mechanism in accordance with the Act.  International relations is a national competency in accordance with the Constitution.  The matter is addressed above.  International relations is a national competency according to the Constitution. Local government does not have a specific legal mandate in relation to international relations.  This is a DIRCO competency that shall be given effect to by DIRCO. Local government has no legal mandate in relation to international relations. |
| ACCORD | -certain inconsistencies in the Bill can be addressed by strengthening the wording within this clause. |
| SAIIA | -Agree with the principles that are embodied in this section and would urge that it is effected as soon as possible after the Bill’s enactment.  -However, such a coordinating mechanism should include not only other national departments, but also provincial administrations and municipal authorities.  -Noted with concern that, per the Memorandum on the Objects of the Foreign Service Bill, provincial and municipal authorities were not among the organisations and institutions consulted in the drafting of the Bill. |
| Professor Jo-Ansie van Wyk | -Include to the clause:  “The Minister shall establish an inter-governmental forum, consisting of those persons responsible for local and provincial government’s international relations and cooperation. The forum shall meet regularly and report to Parliament annually”. |
| COGTA | -Proposes that the Minister of COGTA shall be consulted in this process in so far as it impacts local government.  -With regard to clause 7(2) – following consultations, Minister of COGTA shall give effect to these guidelines through existing structures. |
| **8: Assets**  Notwithstanding the  provisions of the Government Immovable Assets Management Act, 2007 (Act No. 19 of 2007), or any other law, all immovable property utilised by the Foreign Service outside the Republic, any right in respect of such property and the management and accountability thereof must vest in the Minister.  Notwithstanding any other law, the Minister may on such terms and conditions as he or she may deem fit –  a) Acquire and dispose of; and  b) Lease, rent, maintain or construct structures or installations on or refurbish any immovable property belonging to the Department for the use of the South African Missions or for any other purpose he or she may deem necessary for the efficient functioning of the Foreign Service.” | SAIIA | -Clause 8(1)(a)- remit too wide. Make direct reference to clause 9 (1) as follows, “that a determination involving expenditure from revenue shall be made in consultation with the Minister of Finance”. This would suggest that any proposed disposal or acquisition of foreign assets should be tabled in the annual budget of DIRCO. | -The clause refers to ‘Assets’, but only deals with **immovable assets** in the Missions abroad. However, management of movable assets have also been a major challenge.  -DIRCO has to take full responsibility of properties under the watch of Missions abroad. However, this has to be done in line with Public Works through GIAMA.  -This would address the issue of a number of derelict properties abroad, under DIRCO’s watch, however under the responsibility of DPW. The Bill has to give direction on this matter. | DIRCO agrees with the proposed change of the chapeau of the clause.  DIRCO proposes inclusion of definitions for “acquire”, “immovable asset” and “GIAMA”.  DIRCO proposes the following wording:   1. *Notwithstanding the provisions of section 4(1)(a) of GIAMA, the Minister is the custodian of all Immovable Assets outside the Republic acquired for use by the Foreign Service* 2. *The Minister must act as caretaker of the assets under her custodianship and must acquire and manage such assets as contemplated in section 13(1) and (2) of GIAMA.* 3. *Notwithstanding the provisions of sections 2(b)(i) and 13(3)(b) of GIAMA, the Minister may dispose of assets under her custodianship in accordance with this Act.* |
| Professor Jo-Ansie van Wyk | -Include the following to clause: “The Minister shall conduct a regular audit of assets.  -All assets shall be reported in an Asset Register”. |
| Department of Home Affairs | -Wanted a resolution regarding its assets (as revenue from visa fees) to be fully accounted for by DIRCO. |
| Department of Public Works  National Treasury | -DIRCO’s custodianship of RSA properties abroad is not in dispute and is recognised in terms of GIAMA.  -However, the wording of Clause 8(1) creates the impression that DIRCO’s control of the foreign property portfolio falls outside the ambit of GIAMA,  -and that the principles of immovable asset management contained in the Act and the standards and best practice guidelines issued in terms thereof, would therefore not apply to the management of such properties.  -The Minister can only be a ‘custodian’; any right over such properties vest in the State.  - Acquiring, managing, disposal of such properties has to be in accordance with GIAMA. Minister must act as a caretaker of assets under her custodianship as stipulated under section 13 (1&2) of GIAMA. The current wording of the clause is in conflict with GIAMA.  -Therefore the words ‘Notwithstanding the provisions of GIAMA be reviewed;  ‘Notwithstanding any other law be reviewed’;  -‘custodian’ be used not ‘vest’. |
| **9:Policies, codes and directives** | Professor Jo-Ansie van Wyk | -Reference to public participation in the foreign (service?) process should be included here. | ‘Policies’ could be confused with departmental policies. | DIRCO proposes that the chapeau of the clause be changed to “Codes and directives”  Policies are already negotiated at the PSCBC, the Bill does not aim to change the labour relations regime  Clause 9(5) makes provision for consultation |
| COSATU | -Bill be amended to state that the Foreign Service labour relations, policies, codes and directives will be engaged upon with employees and their union representatives at the PSCBC and internally in DIRCO. |
| PSCBC | -Clause is a duplication of the Public Service Act, especially sections 2(2); 3(3) and 41. |
| Department of Home Affairs  SAPS, DoD, NT, DPSA, Labour, Health, Science and Technology, SARS, DTI | -There is a need for DIRCO to seek input from affected departments when drawing up codes and directives affecting the working conditions of the Foreign Service. |
| **10: Delegation of powers**  ‘The Minister may-  b) Delegate to the Director-General any power conferred on the Minister by this Act, except the powers contemplated in sections 9 and 12; or  c) Authorise the Director-General to perform any duty imposed on the Minister by this Act.’ |  |  | Clause 9 is on policies, codes and directives- Minister may delegate these powers to DG from time to time. | DIRCO proposes a technical change to clause 10(1)(a) as follows:   1. *delegate to the Director-General any power conferred on the Minister by this Act, except the powers contemplated in section 12; or* |
| **11: Offences**  “Any person or member of the Foreign Service or employee of the Department, who in a wilful or negligent manner, contravenes or fails to comply with the provisions of this Act or its regulations, is guilty of an offence and liable on conviction to a fine not exceeding R50 000 or imprisonment for a period not exceeding one year.” | HE Ambassador S. Francis Moloi | -Section 11(2) is just too broad and could create a “class of criminals” by insisting that audit findings even when they are minor become punishable which doesn’t take into account the kind of work and environment foreign service personnel work under. | The Committee felt that the fine was too low, taking into consideration the sensitivity of the mandate for Foreign Service. Best practice from other countries be compared regarding fines. | Dirco is open to other proposals.  The text as currently drafted intends to apply to any person, whether a member of the foreign service or not.  As addressed above in request for proposals |
| Department of Defence | -The wording ‘any person’ includes ‘members of the Foreign Service and employees of DIRCO’. Is the intention to apply it to other persons other than those in the Missions and falling under the nomenclature of members of the Foreign Service? These words should be deleted. |
| SAIIA | -Clause 11(2): -A decision regarding the size of a penalty should be directly linked to the nature of the offence. Any imposition of penalties should be the outcome of due process followed in the preceding clause 11(1) and commensurate to the liability for the state. |
| **12:** Regulations  12 (1) The Minister may make regulations regarding: | All the participating departments | -Proposed a requirement that DIRCO Minister consult affected Ministers before regulations are promulgated.  Expressed a need for consultations with affected Ministers. | The essence of consultation is echoed here.  Consultation with other stakeholders is important when drawing up all that is envisaged under “Regulations” | DIRCO proposes to include the following additional sub-clause:  *“The Minister may make regulations after consultation with any other relevant national department.”*  In principle, DIRCO has no objection to this language, similar language is included in DIRCO’s proposed new clause to deal with conflicts between different pieces of legislation.  In our view, this interpretation is highly unlikely.  These clauses are necessary here, as they are now tailored to the Foreign Service, as opposed to the public service.  Immovable assets are regulated by clause 8, which, in the new proposed draft, makes specific reference to GIAMA. |
| National Treasury | -Proposed this amendment:  ‘The provisions of other legislation governing the employment of members of the Foreign Service apply to the members insofar as they are not contrary to the provisions of this Act’. |
| Mr Martin Bauwens | - The language is particularly broad, it allows the Minister of DIRCO to regulate matters (issuance of visas, collection of taxes) which are to be processed within or by the Foreign Service, but fall under the competence of another Minister. |
| PSCBC | -Clause 12(1) and (3) are a duplication of section 3(5) of the Public Service Act and is it necessary to have them here? |
| Department of Public Works | -Clause 12(1)(g) should recognise that there are in place principles of immovable asset management in GIAMA, and the standards and best practice guidelines issued in terms of GIAMA on how to conduct any activity under GIAMA. |