**REPUBLIC OF SOUTH AFRICA**

**INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE AMENDMENT BILL**

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*As introduced in the National Assembly (proposed section 75 Bill; explanatory summary of Bill published in Government Gazette No \_\_\_ of \_\_\_\_ 2018)*

*(The English text is the offıcial text of the Bill)*

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**(MINISTER OF POLICE)**

**[B —2018]**

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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.

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**BILL**

**To amend the Independent Police Investigative Directorate Act, 2011, so as to align the provisions relating to the Independent Police Investigative Directorate with a judgment of the Constitutional Court; to amend those provisions in order to ensure that the Directorate has the necessary structural and operational independence to fulfil its mandate without undue interference; and to provide for matters connected therewith.**

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

**Substitution of section 6 of Act 1 of 2011**

1. The following section is hereby substituted for section 6 of the Independent Police Investigative Directorate Act, 2011 (hereinafter referred to as the "principal Act"):

''**Appointment of Executive Director**

 **6.** (1) *(a)* The Minister must nominate a suitably qualified person for appointment to the office of Executive Director to head the Directorate in accordance with a procedure as provided for in this section.

 *(b)* The Minister must, by notice in the *Gazette* and in at least two national newspapers, publish an invitation for applications for appointment to the office of Executive Director.

*(c)* The Executive Director must—

(i) be a South African citizen;

(ii) be a fit and proper person;

(iii) be a suitably qualified person;

(iv) not be a member or former member of the police service of the Republic contemplated in section 199(1) of the Constitution; and

(v) have knowledge and experience in the administration of justice, public administration and public finance management for a cumulative period of at least 10 years.

*(d)* The Minister may appoint a panel of technical experts to assist in the evaluation and nomination process of a suitably qualified person for appointment to the office of Executive Director.

*(e)* The panel of technical experts contemplated in paragraph *(d)* must consist of a chairperson with extensive knowledge and experience in the field of human rights law and four other persons who are appropriately qualified, knowledgeable or experienced in the criminal justice and security environment.

(2) The Minister must refer the nomination in terms of subsection (1) to the relevant Parliamentary Committee which must, within a period of 30 parliamentary working days of the nomination, confirm or reject such nomination.

(3) If the relevant Parliamentary Committee is not satisfied that the person nominated by the Minister for appointment as the Executive Director complies with subsection (1)*(c)*, the relevant Parliamentary Committee may request the Minister to review his or her nomination.

(4) *(a)* Should the relevant Parliamentary Committee confirm the nomination contemplated in subsection (1), the Minister must appoint the nominated person as the Executive Director for a non-renewable fixed term of not less than seven years and not exceeding a period of 10 years.

*(b)* The period referred to in paragraph *(a)* is to be determined at the time of the appointment of the Executive Director.

*(c)* The Minister must, after the relevant Parliamentary Committee’s confirmation of the nomination in terms of subsection (2), take steps to formalise the appointment of the Executive Director which must include the following—

(i) a letter of appointment;

(ii) an employment contract; and

(iii) the signature of a performance agreement within three months from the date of appointment.

 (5) The Minister must assess the Executive Director bi-annually in terms of the performance agreement and must submit a report to Parliament within one month of such assessment.''.

**Insertion of sections 6A and 6B in Act 1 of 2011**

 **2.** The following sections are hereby inserted in the principal Act after section 6:

''**Remuneration and conditions of service of Executive Director**

**6A.** (1) The remuneration and other terms and conditions of employment of the Executive Director must from time to time be determined by the Minister in consultation with the Minister of Finance: Provided that such remuneration must—

*(a)* not be lower than that of the National Commissioner of Police; and

*(b)* not be reduced, and the terms and conditions of employment must not be adversely altered during his or her term of office, or be lower than that of the National Commissioner of Police.

(2) The Executive Director must not perform remunerative work outside of his or her official duties.

(3) The Minister may allow the Executive Director, 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 fit.

(4) The Executive Director must address the request contemplated in subsection (2) to the Minister, at least six calendar months prior to the date on which the Executive Director wishes to vacate his or her office, unless the Minister grants a shorter period in a specific case.

(5) The Minister must, during the six month period contemplated in subsection (4), take steps to ensure that the office of the Executive Director is filled when the anticipated vacancy occurs.

(6) In the event of a vacancy, the Minister must, in consultation with the relevant Parliamentary Committee, appoint a suitably qualified and competent person within the establishment of the Directorate to act in the vacant Executive Director post until such time that a person is appointed to the office of the Executive Director in terms of section 6.

**Suspension and removal from office of Executive Director**

**6B.** (1) The Executive Director may not be suspended or removed from office except in accordance with the provisions of this section.

(2) The Executive Director may be removed from office, subject to the outcome of the disciplinary inquiry contemplated in subsection (3), on allegations—

*(a)* of misconduct;

*(b)* of incapacity;

*(c)* of incompetence; or

*(d)* that he or she is no longer a fit and proper person to hold the office concerned.

(3) The Minister must refer any complaints relating to the allegations contemplated in subsection (2) to the relevant Parliamentary Committee in writing, within 14 days after such complaint came to the Minister’s attention, and the relevant Parliamentary Committee must institute a disciplinary inquiry to investigate the veracity of the allegations made against the Executive Director and to determine the fitness of the Executive Director to hold office.

(4) The Minister must, within 14 days, notify the Executive Director of any allegations against him or her in writing and invite the Executive Director to make written representations within 14 days of receipt of the notification.

(5) Where the Minister, after having considered any written representations made by the Executive Director in respect of any allegations lodged against him or her, considers that the Executive Director should be provisionally suspended, pending the outcome of the disciplinary inquiry contemplated in subsection (3), the Minister must notify the Executive Director of the aforesaid and invite the Executive Director to submit written representations, if any, within 14 days of receipt of the notification, as to why he or she should not be suspended.

(6) The Minister must consider the complaint and any written representations submitted by the Executive Director within 30 days of receipt thereof and a recommendation to suspend the Executive Director, together with the Executive Director’s written representations, must be communicated to the relevant Parliamentary Committee which must make a determination as to whether the Executive Director should be provisionally suspended pending the outcome of the disciplinary inquiry contemplated in subsection (3).

(7) *(a)* In the event that the relevant Parliamentary Committee, after having considered the Minister’s recommendation and reasons therefore, determines that the Executive Director must be suspended, the Minister must provisionally suspend the Executive Director pending the outcome of the disciplinary inquiry contemplated in subsection (3).

 *(b)* Should the Executive Director be provisionally suspended from office, he or she must, during the period of such suspension, be entitled to such salary; allowances, privileges or benefits to which he or she is otherwise entitled, unless the Minister determines otherwise, which determination must not have an effect on the Executive Director’s salary.

(8) The disciplinary inquiry instituted by the relevant Parliamentary Committee in terms of subsection (3) must be led by the chairperson of the relevant Parliamentary Committee which must determine its own procedure for the inquiry.

(9) The Executive Director may—

*(a)* be assisted and represented by a legal representative;

*(b)* be present at the disciplinary inquiry;

*(c)* make an opening statement;

*(d)* cross-examine witnesses not called by him or her;

*(e)* give evidence thereat;

*(f)* call witnesses;

*(g)* have access to documents relevant to the disciplinary inquiry;

*(h)* make written representations at the conclusion of the hearing; and

*(i)* may present mitigating factors.

(10) Within 30 days of the conclusion of the disciplinary inquiry, the relevant Parliamentary Committee must compile and submit a report, together with its findings and recommendations, to the National Assembly for consideration and adoption.

(11) The Executive Director may only be suspended or removed from office upon the adoption of a resolution by the National Assembly calling for the Executive Director’s removal from office.

(12) A resolution of the National Assembly, concerning the Executive Director’s suspension or removal from office, must be adopted with a supporting vote of at least two thirds of the members of the National Assembly.

(13) The Minister must suspend or remove the Executive Director from office upon the National Assembly’s adoption of a resolution calling for the Executive Director’s removal from office.''.

**Short title and commencement**

 **3.** This Act is called the Independent Police Investigative Directorate Amendment Act, 2018 and comes into operation on a date to be determined by the President by proclamation in the *Gazette*.