

**MINISTRY: JUSTICE AND CORRECTIONAL SERVICES**

**REPUBLIC OF SOUTH AFRICA**

**NATIONAL ASSEMBLY**

**QUESTION FOR WRITTEN REPLY**

**PARLIAMENTARY QUESTION NO: 1802**

**DATE OF QUESTION: 13 MAY 2022**

**DATE OF SUBMISSION: 27 MAY 2022**

**Mr B N Herron (Good) to ask the Minister of Justice and Correctional Services:**

1. Whether the declaration (details furnished) gazetted on 19 October 2018 is intended to be a determination which empowers a municipality to establish a criminal investigation unit outside of a municipal police service; if not, why not; if so, (a) which sections and (b) in what regard;
2. Whether members of a municipal investigation unit, that is not established as a municipal police service in terms of the SA Police Service Act, Act 68 of 1995, are peace officers and conferred with the powers in terms of the specified determination; if not, what is the intention of the specified determination; if so, may the City of Cape Town’s Special Investigating Unit that is also known as the Safety and Security Investigating Unit, rely upon the determination for the exercise of the peace officer powers?

**NW2131E**

**REPLY:**

1. In terms of section 334 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) (the CPA):

 "**(1) *(a)* The Minister may by notice in the *Gazette* declare that any person who, by virtue of his office, falls within any category defined in the notice, shall, within an area specified in the notice, be a peace officer for the purpose of exercising, with reference to any provision of this Act or any offence or any class of offences likewise specified, the powers defined in the notice.**

***(b)* The powers referred to in paragraph *(a)* may include any power which is not**

**conferred upon a peace officer by this Act.**

 **(2) *(a)* No person who is a peace officer by virtue of a notice issued under**

**subsection (1) shall exercise any power conferred upon him under that subsection unless he is at the time of exercising such power in possession of a certificate of appointment issued by his employer, which certificate shall be produced on demand.**

 ***(b)* A power exercised contrary to the provisions of paragraph (*a*) shall have no**

**legal force or effect.**

 **(3) The Minister may by notice in the *Gazette* prescribe-**

***(a)* the conditions which shall be complied with before a certificate of**

**appointment may validly be issued under subsection (2)(*a*);**

***(b)* any matter which shall appear in or on such certificate of appointment in addition to any matter which the employer may include in such certificate.**

**(4) Where the employer of any person who becomes a peace officer under the**

**provisions of this section would be liable for damages arising out of any act or omission by such person in the discharge of any power conferred upon him under this section, the State shall not be liable for such damages unless the State is the employer of that person, in which event the department of State, including a provincial administration, in whose service such person is, shall be so liable.".**

1. In terms of Part 5(a) of the Schedule to Government Notice No. R. 209 of 19 February 2002 (the Notice), law enforcement officers appointed by municipalities, were in terms of section 334 of the CPA, declared peace officers within the area of a local authority to exercise certain law enforcement functions. Government Notice No. 1114 of 19 October 2018 (hereinafter referred to as "Annexure A"), provide anew for the appointment of law enforcement officers appointed by municipalities as peace officers in terms of section 334 of the CPA and repeal Part 5(a) of the Schedule to the Notice.
2. Paragraph *(a)* of Annexure A states that the Cabinet member responsible for the administration of justice (the Minister), has in terms of section 334(1)*(a)* of the CPA declared "every person who, by virtue of his or her office, falls within a category defined in Column 1 of the Schedule to this notice, shall, within the area specified in Column 2 of the Schedule, be a peace officer for the purpose of exercising, with reference to the offences specified in Column 3 of the Schedule, the powers defined in Column 4 of the Schedule". A "Law Enforcement Officer appointed by a municipality" is listed in Column 1 of the Schedule to Annexure A. Annexure A does not clarify the meaning of a "Law Enforcement Officer appointed by a municipality".
3. To determine whether Annexure A empowers a municipality to establish a criminal investigation unit outside of a municipal police service, it is necessary to consider the expression "Law Enforcement Officer appointed by a municipality" in Annexure A in the following context:
	1. The appointment of peace officers in terms of section 334 of the CPA, is subordinate legislation and cannot be used to override or amend any other Act of Parliament. The designation of peace officers must therefore take place within the confines of the Constitution, the empowering provision and other applicable legislation.
	2. 4.2. Section 199(1) of the Constitution of the Republic of South Africa, 1996 (the Constitution), provides that the security services of the Republic consist of a single defence force, a single police service and any intelligence services established in terms of the Constitution. Section 199(3) of the Constitution provides that security services, other than those established in terms of the Constitution, may be established only in terms of national legislation. Section 205 of the Constitution provides that national legislation must establish the powers and functions of the police service and must enable the police service to discharge its responsibilities effectively, taking into account the requirements of the provinces. Section 206(7) of the Constitution provides that national legislation must provide a framework for the establishment, powers, functions and control of municipal police services.
	3. It is submitted that sections 64 – 64Q (Chapter 12) of the South African Police Service Act, 1995 (Act No. 68 of 1995) (the SAPS Act), gives effect to the aforementioned provisions of the Constitution.[[1]](#footnote-1) Section 64A of the SAPS Act provides that a municipality may apply to the member of the Executive Council for the establishment of a municipal police service for its area of jurisdiction. The Cabinet member responsible for policing (the Minister of Police), has, under section 64P of the SAPS Act made regulations to facilitate such applications.[[2]](#footnote-2) Section 64E provides that the functions of a municipal police service are traffic policing, subject to any legislation relating to road traffic; the policing of municipal by-laws and regulations which are the responsibility of the municipality in question; and the prevention of crime. In terms of section 64F a member of a municipal police service exercises such powers and perform such duties as are by law conferred upon or assigned to a member of a municipal police service; exercises such powers conferred upon a member of the South African Police Service (the SAPS), as may prescribe by the Minister of Police; and is a peace officer and may exercise the powers conferred upon a peace officer by law within the area of jurisdiction of the municipality. Sections 64F further provides that where the exercise of power includes the power to seize an article, the member of the municipal police service shall forthwith deliver the article to a member of the SAPS. Section 64H provides that a person arrested by a member of a municipal police service must be brought to a police station under the control of the SAPS.
	4. The use of the expression "Law Enforcement Officer appointed by a municipality" as opposed to " member of a municipal police service" is linked to section 64 of the SAPS Act, which provides that Chapter 12 of the SAPS Act must not be interpreted so as to derogate from the powers of the Member of the Executive Council responsible for transport and traffic matters. In terms of section 3A of the National Road Traffic Act, 1996 (Act No. 93 of 1996) (the NRT Act), a local authority may appoint persons as traffic officers or reserve traffic officers or traffic wardens or reserve traffic wardens to exercise or perform within its area such powers and duties of a traffic officer. Many local authorities have traffic officers and traffic wardens who are not members of their municipal police service. Although the powers of traffic officers and traffic wardens are provided for in section 3I and other provisions of the NRT Act, enforcement mechanisms are reliant on the powers conferred upon them as peace officers in terms of section 334 of the CPA.
4. In light of the aforementioned, the expression "Law Enforcement Officer appointed by a municipality" cannot be relied upon to extend the scope of Annexure A, which was used to cater for traffic officers and traffic wardens who are not members of municipal police services, as explained in paragraph 4.4. above. Annexure A must be interpreted in the confines of section 334 of the CPA and other applicable legislation which refutes any interpretation that Annexure A empowers a municipality to establish a criminal investigation unit outside the ambit of Chapter 12 of the SAPS Act. Sections 64E, 64F and 64H (discussed in paragraph 4.3. above), clearly do not afford a municipal police service the power to investigate offences and neither does Annexure A. Members of a municipal investigation unit, that has not been established as a municipal police service in terms of Chapter 12 of the SAPS Act, cannot be regarded as peace officers for the purpose of exercising, with reference to the offences specified in Column 3, the powers specified in Column 4 of the Schedule to Annexure A.
1. Various laws confer powers, that are similar to the powers of police officials, on functionaries in a regulatory context - (see among others, Chapter 7 of the National Environmental Management Act, 1998 (Act No. 107 of 1998), sections 26 and 28 of the Medicines and Related Substances Act, 1965 (Act No. 101 OF 1965), etc. [↑](#footnote-ref-1)
2. Government Notice No. R. 710 of 11 June 1999 as amended by Government Notice No. R. 854 of 9 July 1999. Regulation 1, among others, provides that "a detailed exposition of the organisational structure of the said municipal police service, indicating the number of persons which the municipal council contemplates to appoint as members thereof and setting out the number of such members who will primarily be utilised to -

(i) render traffic policing services;

(ii) enforce municipal by-laws and regulations; and

(iii) render crime prevention services". [↑](#footnote-ref-2)