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**MINISTRY: JUSTICE AND CORRECTIONAL SERVICES**

**REPUBLIC OF SOUTH AFRICA**

**NATIONAL ASSEMBLY**

**QUESTION FOR WRITTEN REPLY**

**PARLIAMENTARY QUESTION NO: 1803**

**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. With regard to a declaration (details furnished) gazetted on 19 October 2018, (a)(i) what is the definition of his department for a law enforcement officer and (ii) on which legislative provisions does his department rely in this regard and (b)(i) what is the definition of his department for a learner law enforcement officer and (ii) on which legislative provisions does his department rely in this regard;
2. Whether the powers conferred on law enforcement officers appointed by a municipality in terms of the specified determination is also conferred on learner law enforcement officers by the declaration he gazetted, whom are appointed by a municipality; if not, why not; if so, what are the relevant details?

**NW2132E**

**REPLY:**

1. **Ad Question 1**
	1. Government Notice No. 1114 of 19 October 2018 (hereinafter referred to as "**Annexure A**"), provides for the appointment of a "law enforcement officer appointed by municipalities" as peace officers in terms of section 334 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) (the CPA). The meaning of the expression "law enforcement officer appointed by a municipality" in Annexure A, is to a large extent already discussed in paragraph 4 of the written reply to Question 1802, where it is indicated that the expression must be interpreted as a member of a municipal police service and a traffic officer or reserve traffic officer or traffic warden or reserve traffic warden appointed by a municipality.
	2. A summary of paragraph 4 of the written reply to Question 1802 is provided below:
		1. The designation of peace officers must take place within the confines of section 334 of the CPA and other applicable legislation.
		2. The Constitution of the Republic of South Africa, 1996 (the Constitution), provides that the:
2. Security services of the Republic consist of a single defence force, a single police service and any intelligence services;
3. Security services, other than those established in terms of the Constitution, may be established only in terms of national legislation;
4. 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; and
5. National legislation must provide a framework for the establishment, powers, functions and control of municipal police services.
	* 1. 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 and provides for the following:
6. A municipality may apply to the member of the Executive Council for the establishment of a municipal police service for its area of jurisdiction;
7. the functions of a municipal police service, which are traffic policing, policing of municipal by-laws and regulations which are the responsibility of the municipality in question, and the prevention of crime; and
8. a member of a municipal police service:
9. may exercise such powers and perform such duties as are by law conferred upon or assigned to a member of a municipal police service; and
10. is a peace officer and may exercise the powers conferred upon a peace officer by law within the area of jurisdiction of the municipality.
	* 1. Although sections 64F, 64H, 64I and 64Q of the SAPS Act and regulations 8, 10 and 11 of the Regulations made under section 64P of the SAPS Act, refer to "member of the Service", the expression "law enforcement officer appointed by a municipality" 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. The National Road Traffic Act, 1996 (Act No. 93 of 1996) (the NRT Act), provides that 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 the NRT Act, enforcement mechanisms are reliant on the powers conferred upon them as peace officer in terms of section 334 of the CPA.
	1. Annexure A does not make provision for "learner law enforcement officers". As the Cabinet member responsible for the administration of justice, I have, in terms of section 334(3)*(a)* of the CPA, prescribed that:
11. A certificate of appointment referred to in section 334(2)*(a)* of the CPA, must be issued to a person referred to in Column 1 of the Schedule to Annexure A, only if the employer of that person has been furnished with a certificate of competency issued by the National Commissioner of the South African Police Service;
12. It must be stated in the certificate of competency contemplated in paragraph (a) that, in the opinion of the National Commissioner of the South African Police Service, such person is competent to exercise the powers stated in Column 4 of the Schedule to Annexure A; and
13. for the purposes of the issuing of a certificate of competency by the National Commissioner of the South African Police Service, must consider the training received by the applicant with regard to the powers to be exercised in Column 4 of the Schedule to Annexure A.
14. ***Ad Question 2***

See paragraph 1.3, above.