REPUBLIC OF SOUTH AFRICA

POSTAL SERVICES AMENDMENT BILL

(As amended by the Portfolio Committee on Communications (National Assembly))
(The English text is the official text of the Bill)

(MINISTER OF COMMUNICATIONS)

[B 22B—2006]

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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.

BILL

To amend the Postal Services Act, 1998, so as to define an expression and to amend and delete certain definitions; to provide for ministerial policies and policy directions; to make the issuing of new licences subject to policy directions issued by the Minister; to provide for the extension of the exclusivity of the postal company by the Minister; to make fees and charges for reserved postal services subject to approval by the Minister; and to effect certain textual corrections; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 124 of 1998, as amended by section 1 of Act 33 of 2001

1. Section 1 of the Postal Services Act, 1998 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the substitution for the definition of ''Director-General'' of the following definition:

'' **'Director-General'** means the **[officer occupying the post with that designation on the fixed establishment]** Director-General of the Department **[or who acts in that post]**;'';

(b) by the insertion of the following definition after the definition of ''Director-General'':

'' **'ICT'** means information, communications and technology;'';

(c) by the deletion of the definition of ''officer'';

(d) by the deletion of the definition of ''postmaster''; and

(e) by the substitution for the definition of ''Regulator'' of the following definition:

'' **'Regulator'** means the **[Postal Regulator established by section 3(1)]** Independent Communications Authority of South Africa established in terms of section 3 of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000);''.

Substitution of heading to Chapter II of Act 124 of 1998

2. The following heading is hereby substituted for the heading to Chapter II of the principal Act:

''**[POSTAL]** MINISTERIAL POLICY DIRECTIONS AND FUNCTIONS OF REGULATOR''.

Insertion of section 2A in Act 124 of 1998

3. The following section is hereby inserted in the principal Act after section 2:

"Ministerial policies and policy directions

2A. (1) The Minister may make policies on matters of national policy applicable to the ICT sector, including the postal industry, consistent with the objects of this Act and any other policy which may be necessary for the application of this Act.

(2) The Minister may, subject to subsections (3) and (5), issue to the Regulator policy directions consistent with the objects of this Act in relation to—

(a) the undertaking of an inquiry in terms of section 4B of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000), on any matter within the Regulator's jurisdiction and the submission of reports to the Minister in respect of such matter;

(b) the determination of priorities for the development of postal services particularly with a view to accelerating universal access to postal and other essential services that can be provided using the postal and related ICT infrastructure;

(c) the consideration of any matter within the Regulator's jurisdiction reasonably placed before it by the Minister for urgent consideration.

(3) No policy made by the Minister in terms of subsection (1) or policy direction issued by the Minister in terms of subsection (2) may be made or issued regarding the granting, amendment, transfer, renewal, suspension or revocation of a licence, except as permitted in terms of this Act.

(4) The Regulator, in exercising its powers and performing its duties in terms of this Act and the related legislation, must consider policies made by the Minister in terms of subsection (1) and policy directions issued by the Minister in terms of subsection (2).

(5) When issuing a policy direction under subsection (2) the Minister must—

(a) consult the Regulator;

(b) in order to obtain the views of interested persons, publish the text of such policy direction by notice in the *Gazette*—

(i) declaring his or her intention to issue the policy direction; and

(ii) inviting interested persons to submit written submissions in relation to the policy direction in the manner and within the period specified in such notice, which period may not be less than 30 days from the date of the notice; and

(c) publish the final version of the policy direction in the *Gazette*.

(6) Subsection (5) does not apply in respect of any amendment by the Minister of a policy direction contemplated in subsection (2) as a result of representations received and reviewed by him or her after consultation or publication in terms of subsection (5).

(7) Subject to subsection (8), a policy direction issued in terms of subsection (2) may be amended, withdrawn or substituted by the Minister.

(8) Except in the case of an amendment contemplated in subsection (6), subsections (3) and (5) apply, with the necessary changes, to any such amendment or substitution of a policy direction in terms of subsection (7).

(9) The Regulator may make recommendations to the Minister on policy matters in accordance with the objects of this Act.''.

Amendment of section 8 of Act 124 of 1998

4. Section 8 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph *(c)* of the following paragraph:

"*(c)* promote the interests of users of postal **[services]** and other services provided through postal and related ICT infrastructure, in respect of the cost of reserved services, the continuity of **[postal]** those services and the quality thereof;";

(b) by the substitution in subsection (1) for paragraphs *(e)* and *(f)* of the following paragraphs, respectively:

"*(e)* promote and encourage the expansion of postal services and infrastructure, including ICT;

(f) promote **[a]** universal access to postal **[service that will ensure]** and other services contemplated in paragraph *(c)* so as to facilitate equal access for all citizens to a **[basic letter]** service that, in addition to a basic letter service, is—

(i) **[that is]** reasonably accessible to all people in the country regardless of physical location, with special attention to the needs of persons with disabilities;

(ii) at a uniform rate of postage;

(iii) at an affordable price; and

(iv) **[that offers a]** reliable **[service]**;"; and

(c) by the deletion of subsections (2) and (3).

Amendment of section 16 of Act 124 of 1998, as amended by section 1 of Act 33 of 2001 and section 24 of Act 3 of 2006

5. Section 16 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

"(2) The Regulator may only accept and consider an application for a licence to provide a reserved postal service in accordance with a policy direction issued by the Minister in terms of section 2A."; and

(b) by the substitution for the proviso to subsection (8) of the following proviso:

": Provided that nothing contained in this subsection may be regarded as limiting the powers vested in the **[Regulator]** Minister by subsection (2) and that any such period must be reviewed by the Minister every **[three]** five years or such shorter period as the Minister may determine.".

Amendment of section 30 of Act 124 of 1998, as amended by section 24 of Act 3 of 2006

6. Section 30 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) **[The]** Subject to the approval of the Minister, the Regulator, in consultation with the postal company or, where applicable, any other licensee, may determine the fees and charges payable in respect of the provision of a postal service by the postal company or, where applicable, by such other licensee.".

Substitution of section 59 of Act 124 of 1998

7. The following section is hereby substituted for section 59 of the principal Act:

"Electronic mail and addresses

59. Subject to the **[Telecommunications Act, 1996 (Act No. 103 of 1996)]** Electronic Communications Act, 2005 (Act No. 36 of 2005), the Postal Company may carry electronic mail, including the Internet, and provide electronic addresses.".

Repeal of section 65 of Act 124 of 1998

8. Section 65 of the principal Act is hereby repealed.

Amendment of section 80 of Act 124 of 1998, as amended by section 8 of Act 33 of 2001 and section 24 of Act 3 of 2006

9. Section 80 of the principal Act is hereby amended by the substitution in subsection (3) for the words preceding paragraph *(a)* of the following words:

''The Complaints and Compliance Committee established **[by]** in terms of section 17A of the **[Electronic]** Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000), must investigate and consider—''.

Substitution of certain words in Act 124 of 1998

10. The principal Act is hereby amended by the substitution for the word ''officer'', wherever it occurs, of the expression ''employee of the postal company''.

Short title

11. This Act is called the Postal Services Amendment Act, 2006.

MEMORANDUM ON THE OBJECTS OF THE POSTAL SERVICES AMENDMENT BILL, 2006

1. BACKGROUND

The main purpose of the Bill is to bring the Postal Services Act, 1998 (Act No. 124 of 1998) (the Act), in line with the Electronic Communications Act, 2005 (Act No. 36 of 2005), and the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000). Even though the Independent Communications Authority of South Africa Amendment Act, 2006, made a number of changes to the Act additional amendments are necessary.

2. OBJECTS OF BILL

The following summarises the proposed amendments:

2.1 Clause 1

This clause seeks to amend section 1 of the Act by amending certain definitions used in the Act and by inserting or deleting other definitions.

2.1.1 The definition of ''Director-General'' is amended to align it with the definition in related legislation.

2.1.2 A definition for ''ICT'' is proposed since the term is introduced in clause 3. The definition is similar to the definition of ICT in the Electronic Communications Act, 2005.

2.1.3 The Bill seeks to delete the definition of ''officer'' and to refer in the Act to employees of the postal company (see paragraph 2.10).

2.1.4 The definition of ''postmaster'' is deleted since it is no longer used in the Act.

2.1.5 The definition of ''Regulator'' is amended to ensure that it refers to ICASA in accordance with the Independent Communications Authority of South Africa Amendment Act, 2006.

2.2 Clause 2

This clause seeks to amend the heading of Chapter II in order to bring it in line with the other amendments to the Act.

2.3 Clause 3

This clause seeks to confirm the power of the Minister to make policy and policy directions for the postal industry. The wording is similar to that of section 3 of the Electronic Communications Act, 2005, in order to ensure consistency.

2.4 Clause 4

This clause seeks to amend section 8(1) of the Act by providing for the alignment of the provision of postal services to the rest of the ICT sector and the inclusion of access to other non-postal but essential services to the definition of universal postal service.

This clause also seeks to repeal subsections (2) and (3) of section 8 of the Act since these subsections became redundant as a result of the amendments effected by the Independent Communications Authority of South Africa Amendment Act, 2006.

2.5 Clause 5

This clause seeks to amend section 16(2) of the Act in order to ensure that ICASA may only accept and consider applications for new licences in the reserved service in accordance with policy directions issued by the Minister. This amendment is in line with similar provisions pertaining to electronic communications in the Electronic Communications Act, 2005.

This clause further seeks to amend subsection (8) by replacing the word ‘‘Regulator’’ with ‘‘Minister’’, as was the position before the Act was amended by the Independent Communications Authority of South Africa Amendment Act, 2006. The Minister must have the authority to extend the exclusivity period of SAPO as long as SAPO needs to address postal services in under-serviced areas in order to achieve universal postal services. The amendment of this subsection brings it in line with the proposed section 16(2). This clause further seeks to amend the review period from three years to a period of up to five years.

2.6 Clause 6

This clause seeks to reinstate the wording of section 30(1) of the Act as it was prior to the amendment thereof by the Independent Communications Authority of South Africa Amendment Act, 2006. This clause will ensure that ICASA determines the fees and charges payable in respect of the provision of postal services by SAPO, but at the same time ensures that it is subject to the approval of the Minister. This is necessary since the Minister still carries the responsibility to ensure that under-serviced areas are serviced and that a universal postal service is ensured by the provision of reserved services by SAPO.

2.7 Clause 7

This clause seeks to amend section 59 of the Act by replacing the reference to the now repealed ‘‘Telecommunications Act, 1996’’ with the ‘‘Electronic Communications Act, 2005’’.

2.8 Clause 8

This clause seeks to repeal section 65 of the principal Act since a similar provision now appears in section 17H(1)*(g)* of the Independent Communications Authority of South Africa Act, 2000.

2.9 Clause 9

This clause seeks to effect a textual correction in section 80 of the Act by replacing ‘‘Electronic’’ with ‘‘Independent’’.

2.10 Clause 10

This clause seeks to amend the Act by the substitution for the word ‘‘officer’’ wherever it occurs of the expression ‘‘employee of the postal company’’. This clause is necessary as a result of the proposal in paragraph 2.1.3 that the definition of ‘‘officer’’ be deleted. The continued use of the word ‘‘officer’’ as including ‘‘any person employed by the postal company or in connection with any business of the postal company’’ is too wide and may cause confusion.

3. CONSULTATION

The following bodies and persons were consulted:
- South African Post Office
- Postal Regulator
- Organised Civil Society
- Non-Governmental Organisations
- Communications Workers Union
- Local Government Councillors
- South African Express Parcel Association
- Courier Operators
- Members of the public through public hearings
- Traditional leaders

4. IMPLICATIONS FOR PROVINCES

None.

5. FINANCIAL IMPLICATIONS FOR STATE

Financial implications have been catered for in the MTEF.

6. PARLIAMENTARY PROCEDURE

6.1 The State Law Advisers and the Department of Communications are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

6.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)*(a)* of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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