

REPUBLIC OF SOUTH AFRICA

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# CIVILIAN SECRETARIAT FOR POLICE SERVICE BILL

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*(As introduced in the National Assembly (proposed section 76); explanatory summary of  
Bill published in Gazette No. 33357 of 5 July 2010)  
(The English text is the official text of the Bill)*

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(MINISTER OF POLICE)

**[B 16—2010]**

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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 provide for the establishment of a Civilian Secretariat for the Police Service in the Republic; to define the objects, functions and powers of the Secretariat, and for this purpose to align the operations of the Secretariat in the national and provincial spheres of government and reorganise the Secretariat into an effective and efficient organ of state; to regulate the appointment, duties and functions, powers and removal from office of the Secretary for the Police Service and heads of provincial secretariats; to provide for the establishment of a senior management forum and a Ministerial Executive Committee; to provide for co-operation between the Secretariat and the Independent Police Investigative Directorate; to provide for intervention into the affairs of provincial secretariats by the Secretariat; and to provide for matters connected therewith.**

## PREAMBLE

**WHEREAS** every person has the right to life and the right to security of the person, which includes, among other things, the right to be free from all forms of violence from either public or private sources;

**AND WHEREAS** the Constitution places a duty on the State to respect, protect, promote and fulfil the fundamental rights in the Bill of Rights;

**AND WHEREAS** the adequate protection, promotion and fulfilment of such rights are fundamental to the well-being and social and economic development of every person;

**AND WHEREAS** the Constitution provides for the police service to combat and investigate crime, to maintain public order, to protect and secure the inhabitants and their property, and to uphold and enforce the law throughout the territory of the Republic;

**AND WHEREAS** there is a need to promote democratic accountability, transparency and openness within the police service and to ensure co-operation between the police service and the communities it serves;

**AND HAVING REGARD** to section 208 of the Constitution, which stipulates that a civilian secretariat for the police service must be established by national legislation to function under the direction of the Cabinet member responsible for policing,

**B**E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa,  
as follows:—

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**CHAPTER 1****INTERPRETATION AND APPLICATION****Definitions**

1. In this Act, unless the context indicates otherwise—
- “**Committee**” means the Ministerial Executive Committee established under section 25(1); 25
- “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
- “**Department**” means the national Department of Police;
- “**Directorate**” means the Independent Police Investigative Directorate established in terms of section 2 of the Independent Police Investigative Directorate Act, 2010; 30
- “**Executive Director**” means the Executive Director appointed in terms of section 5(1) of the Independent Police Investigative Directorate Act, 2010;
- “**forum**” means the senior management forum established under section 21;
- “**head of a provincial department**” means the head of a department responsible for safety and security in a province; 35
- “**head of a provincial secretariat**” means the head of a provincial secretariat appointed in terms of section 16(1);
- “**member**” means a member as defined in section 1 of the South African Police Service Act;
- “**MEC**” means the Member of the Executive Council of a province responsible for policing; 40
- “**Minister**” means the member of the Cabinet responsible for policing;
- “**organ of state**” means an organ of state as defined in section 239 of the Constitution;
- “**police official**” means the police official as defined in section 1 of the South African Police Service Act; 45

- “**police service**” means the South African Police Service established in terms of section 5(1) of the South African Police Service Act;
- “**prescribe**” means prescribe by regulation;
- “**provincial department**” means the department responsible for safety and security services in a province; 5
- “**regulation**” means a regulation made under this Act;
- “**Secretariat**” means the Civilian Secretariat for the Police Service established in terms of section 3(1);
- “**Secretary**” means the Secretary for the Police Service appointed in terms of section 6(1); 10
- “**South African Police Service Act**” means the South African Police Service Act, 1995 (Act No. 68 of 1995);
- “**this Act**” includes the Schedule, regulations and any rules, directives or instructions made under it.

## **Application of Act** 15

2. The provisions of this Act apply in respect of civilian oversight for the police service and other organs of state in the national and provincial spheres of government.

## **CHAPTER 2**

### **CIVILIAN SECRETARIAT FOR POLICE SERVICE**

#### **Establishment of Secretariat** 20

3. (1) The Civilian Secretariat for the Police Service contemplated in section 208 of the Constitution is hereby established.
- (2) The Secretariat established in terms of subsection (1) must exercise its powers and perform its functions without fear, favour or prejudice in the interest of maintaining effective and efficient policing and a high standard of professional ethics in the police service. 25
- (3) Provincial secretariats contemplated in sections 13 and 14 must assist the Secretariat to achieve its objects, and perform functions and exercise powers of the Secretariat in the provincial sphere of government in accordance with the principles of co-operative government and intergovernmental relations contained in Chapter 3 of the Constitution. 30

#### **Objects of Secretariat**

4. The objects of the Secretariat are to—
- (a) give strategic advice to the Minister in respect of developing and implementing policies; 35
  - (b) provide administrative support services to the Minister to ensure South Africa’s engagement with relevant international obligations;
  - (c) liaise and communicate with stakeholders;
  - (d) implement a partnership strategy to mobilise roleplayers and stakeholders to strengthen service delivery by the police service to ensure the safety and security of communities; 40
  - (e) implement, promote and align the operations of the Secretariat in the national and provincial spheres of government;
  - (f) co-ordinate the functions and powers of the Secretariat in the national and provincial spheres of government; 45
  - (g) promote co-operation between the Secretariat, the police service and the Directorate; and
  - (h) exercise civilian oversight over the police service.

## Functions of Secretariat

5. (1) The Secretariat must, in order to achieve its objects—
- (a) monitor the conduct of members and, where necessary, recommend corrective measures;
  - (b) monitor the utilisation of the budget of the police service to ensure compliance with any policy directives or instructions of the Minister and the Public Finance Management Act, 1999 (Act No. 1 of 1999), and Treasury regulations; 5
  - (c) assess and evaluate the performance of the police service;
  - (d) monitor and evaluate compliance with the Domestic Violence Act, 1998 (Act No. 116 of 1998); 10
  - (e) consider such recommendations, suggestions and requests concerning police and policing matters as it may receive from any source;
  - (f) conduct or cause to be conducted any research as it may deem necessary;
  - (g) enter into either memoranda of understanding or agreements or both, in consultation with the Minister, with civilian oversight groups and other parties and engage such groups and parties to strengthen co-operation between the various roleplayers; 15
  - (h) advise and support the Minister in the exercise of his or her powers and the performance of his or her functions; and 20
  - (i) provide the Minister with regular reports with regard to—
    - (i) the performance of the police service; and
    - (ii) implementation of and compliance by the police service with policy directives issued or instructions made by the Minister.
- (2) The Secretariat must, for the purpose of subsection (1), establish competencies and capabilities in its operations in order to— 25
- (a) (i) conduct research into any policing matter and report to the Secretary thereon;
  - (ii) provide policy advice to the Minister through the Secretary;
  - (iii) make available recent, relevant and evidence-based research to the Minister and to Parliament; 30
  - (iv) create a resource centre as an information hub and information dissemination source; and
  - (v) develop a civil society reference group to engage policies and best practices; 35
  - (b) (i) conduct quality assessment of the police service and monitor and evaluate its performance;
  - (ii) identify problem areas for early interventions;
  - (iii) review police practices and develop best practice models;
  - (iv) develop plans for improved service delivery and police effectiveness; 40
  - and
  - (v) develop frameworks, strategies and plans to ensure improved police accountability; and
  - (c) (i) facilitate and implement intergovernmental co-operation on safety;
  - (ii) conduct ongoing interaction with citizens in the manner contemplated by this Act; 45
  - (iii) enhance the quality and accessibility of safety programmes through improved participation by the community;
  - (iv) encourage national dialogue on safety and crime prevention;
  - (v) facilitate activist and interventionist models in communities; 50
  - (vi) co-ordinate efforts to deal with challenges and blockages within the police service; and
  - (vii) maximise capacity and expertise in the Secretariat.

## CHAPTER 3

### SECRETARY FOR POLICE SERVICE

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#### Appointment of Secretary

6. (1) The Minister must, subject to the laws governing the public service, appoint a person as Secretary for the Police Service.

(2) The Secretary is appointed for a term of five years, which is renewable for one additional term only, subject to terms and conditions of service under the laws governing the public service.

(3) The Secretary must be a citizen of the Republic and be a fit and proper person with appropriate knowledge, experience or qualifications. 5

(4) The Secretary must not be a member or former member of the police service of the Republic contemplated in section 199(1) of the Constitution.

### Duties and functions

7. (1) The Secretary—
- (a) is responsible for the performance of the functions of the Secretariat and, for this purpose, is the—
    - (i) head of the Secretariat; and
    - (ii) adviser to the Minister on police and policing policy matters;
  - (b) takes all decisions relating to the functions of the Secretariat referred to in section 5; 15
  - (c) performs any function assigned to the Secretariat in terms of this Act or any other Act or memoranda of understanding or agreement referred to in section 5(1)(g);
  - (d) monitors and evaluates the activities and performance of the Secretariat; and
  - (e) ensure the effectiveness and efficiency of the Secretariat. 20
- (2) As head of the Secretariat, the Secretary is responsible for the—
- (a) administration and management of the budget of the Secretariat;
  - (b) proper and diligent implementation of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
  - (c) the development and organisation of an efficient administration within the Secretariat; and 25
  - (d) the appointment and deployment of personnel to achieve maximum operational results.
- (3) As adviser to the Minister, the Secretary must—
- (a) oversee, and advise the Minister on, the implementation of policy directives or instructions issued or made by the Minister; 30
  - (b) provide the Minister with the necessary support service to ensure compliance with relevant international obligations;
  - (c) monitor utilisation of the budget of the police service to ensure compliance with any policy directives or instructions of the Minister; 35
  - (d) present legislation in Parliament as determined by the Minister; and
  - (e) perform such functions as the Minister may consider necessary or expedient to ensure police civilian oversight.
- (4) The Secretary must, in consultation with the Minister and subject to the laws governing the public service, appoint employees, either full-time or part-time, to the Secretariat to assist the Secretary to perform the functions or exercise the powers of the Secretariat, or both, as may be necessary. 40

### Powers

8. The Secretary may do all that is reasonably necessary or expedient to perform the functions of the Secretariat properly, including— 45
- (a) entering any building or premises under the control of the police service;
  - (b) requesting and obtaining information and documents relating to any matter under the control of the police service;
  - (c) requesting, and be entitled to, all reasonable assistance by a member;
  - (d) obtaining the services of any person, including any state department, 50  
functionary or institution, to perform any specific act or function;
  - (e) performing any specific act or function within its competence on behalf of any other person, including any state department, functionary or institution; and
  - (f) performing legal acts, or instituting or defending any legal action in the name of the Secretariat. 55

**Assignment of powers and functions**

- 9.** (1) Subject to subsection (2), the Secretary may—
- (a) delegate to any person in the employ of the Secretariat any power conferred upon the Secretary by or under this Act, excluding the power referred to in this subsection or in section 8(f); and 5
  - (b) authorise any person in the employ of the Secretariat to perform any duty assigned to the Secretary by or under this Act, on such terms and conditions as the Secretary may determine.
- (2) A delegation or authorisation in terms of subsection (1)—
- (a) must be in writing; and 10
  - (b) may at any time be amended or revoked by the Secretary.

**Removal from office**

- 10.** The Minister may, in consultation with the President, remove the Secretary from office if the Minister has lost confidence in the Secretary on account of—
- (a) misconduct; 15
  - (b) ill health; or
  - (c) inability to perform the duties of that office effectively.

**Vacancy**

- 11.** (1) When the Secretary is absent or otherwise unable to perform the functions of office, or during a vacancy in the office of Secretary, the Minister may designate another person to act as Secretary until the Secretary returns to perform the functions of office or the vacancy is filled. 20
- (2) A person may not be acting Secretary for a period longer than 90 days at a time.

**Reporting**

- 12.** (1) The Secretary must submit quarterly reports to the Minister and the parliamentary committees responsible for police on the activities of the Secretariat. 25
- (2) The Secretary must submit an annual report on the activities of the Secretariat to the Minister, which must be tabled in Parliament by the Minister.

**CHAPTER 4****PROVINCIAL SECRETARIATS 30****Constitution of provincial secretariats**

- 13.** Subject to section 14, each MEC must constitute a provincial secretariat for that province, to support and align the mandate of that provincial secretariat with the mandate of the Secretariat: Provided that the date on which a provincial secretariat comes into operation, will be determined by the MEC in consultation with the Minister. 35

**Functions of provincial secretariats**

- 14.** (1) In order to support the objects of the Secretariat referred to in section 4 and subject to the principles of co-operative governance and intergovernmental relations contained in Chapter 3 of the Constitution, each provincial secretariat must—
- (a) align its plans and operations at the provincial sphere of government with the plans, policies and operations of the Secretariat; and 40
  - (b) integrate its strategies and systems at the provincial sphere of government with the strategies and systems of the Secretariat.
- (2) The provincial secretariat must, for purposes of subsection (1), establish competencies and capabilities in its operations, to— 45
- (a) (i) monitor and evaluate the implementation of policing policy in the province;
  - (ii) evaluate and investigate police conduct in the province;
  - (iii) develop and evaluate safety models and monitoring tools to ensure alignment with the functions of the Secretariat; 50

- (iv) assist the Secretariat with any monitoring and evaluation projects; and
- (b) (i) promote community police relations;
- (ii) establish and promote partnerships; and
- (iii) manage the enhancement of community safety structures with the province.

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### **Appointment of heads of provincial secretariats**

**15.** (1) The MEC must, in consultation with the Minister and subject to the laws governing the public service, appoint the head of a provincial secretariat in the province.

(2) The head of a provincial secretariat is appointed for a five-year term which is renewable for one additional term only, subject to terms and conditions of service under the laws governing the public service.

(3) The head of a provincial secretariat must be a citizen of the Republic and be a fit and proper person, with appropriate knowledge, experience or qualifications.

### **Duties and functions**

**16.** (1) The head of a provincial secretariat— 15

- (a) is responsible for the performance of the functions of a provincial secretariat as contemplated in section 14 or such duties and functions assigned to the head of a provincial secretariat by the Secretary in terms of section 9;
- (b) is responsible for the resources and the employees of a provincial secretariat in the province; 20
- (c) must take all decisions necessary or expedient for performance of the functions of a provincial secretariat referred to in section 14 or otherwise assigned to him or her by the Secretary in terms of section 9 or by the MEC of the province concerned;
- (d) must ensure that national policing policies and directives or instructions issued or made by the Minister are implemented by the police service in the province and report to the head of a provincial department and the MEC thereon; 25
- (e) must evaluate and review practices, methodologies and performance of the police service in the province and report to the head of a provincial department and the MEC thereon; and 30
- (f) must perform such functions as the head of a provincial department or the MEC may consider necessary or expedient to ensure civilian oversight over police in the province.

### **Removal from office** 35

**17.** (1) If an MEC has lost confidence in the head of a provincial secretariat, that MEC may, in consultation with the Minister, institute appropriate proceedings for the removal or transfer of, or disciplinary action against, that head of provincial secretariat, in accordance with the laws governing public service.

(2) Despite the provisions of subsection (1), the MEC may, in consultation with the Minister, remove the head of the provincial secretariat from office on account of—

- (a) misconduct;
- (b) ill health; or
- (c) inability to perform the duties of that office effectively.

### **Vacancies** 45

**18.** (1) When the head of a provincial secretariat is absent or otherwise unable to perform the functions of office, or during a vacancy in the office of the head of a provincial secretariat, the MEC may, in consultation with the Minister, designate another person to act as head of the provincial secretariat until the provincial secretariat returns to perform the functions of office or the vacancy is filled. 50

(2) A person may not be acting head of a provincial secretariat for a period longer than 90 days at a time.

## Reporting and referrals

- 19.** (1) The head of a provincial secretariat in each province must, through the head of a provincial department, submit to the MEC and the Secretary quarterly reports on the activities of a provincial secretariat in the province, and on any matter as or when required by the Secretary. 5
- (2) The head of a provincial department must submit regular reports to the MEC and the relevant committee in the provincial legislature.
- (3) The head of a provincial department in each province must—
- (a) through the MEC, table an annual report in the provincial legislature on the activities of a provincial secretariat in the province; and 10
  - (b) submit a copy of the annual report tabled in terms of paragraph (a) to the Secretary.

## CHAPTER 5

### CO-OPERATIVE FRAMEWORK

#### *Part 1* 15

#### *Secretary and heads of provincial departments*

#### **Secretary and heads of provincial departments**

- 20.** (1) The Secretary and heads of provincial departments must meet at least on a quarterly basis to—
- (a) ensure alignment between the provincial secretariats and the Secretariat of their respective— 20
    - (i) annual strategic and performance plans; and
    - (ii) priorities, objectives and strategies;
  - (b) identify any other matter of strategic importance within each province;
  - (c) discuss performance of services by the police service in the province in order to detect failures and to initiate preventative or corrective action when necessary; 25
  - (d) raise matters of national interest;
  - (e) ensure regular reporting on matters specific to the performance of the police service in the province; and 30
  - (f) prepare for meetings of the Ministerial Executive Committee, the relevant Cabinet cluster committee or any other forum.
- (2) The Secretary convenes, determines the agenda for and presides at the meetings referred to in subsection (1), and his or her office is responsible for providing administrative and other support services to the meetings. 35

#### *Part 2*

#### *Senior management forum*

#### **Establishment of forum**

- 21.** There is hereby established a forum to be known as the senior management forum.

#### **Composition and functions of forum** 40

- 22.** (1) The forum established in terms of section 21 consists of—
- (a) the Secretary, who is the chairperson of the forum;
  - (b) the heads of provincial secretariats;
  - (c) senior management staff from the Secretariat; and
  - (d) senior management staff from each provincial secretariat. 45
- (2) The forum meets at least bi-monthly to—
- (a) report on the activities of a provincial secretariat in each province; and
  - (b) facilitate interaction and co-operation amongst the provincial secretariats.
- (3) The office of the Secretariat is responsible for providing administrative and other support services to the meetings. 50

**Part 3*****Intervention by Secretariat*****Intervention by Secretariat**

- 23.** (1) Notwithstanding the provisions of this Chapter, the Secretariat may, on the instructions of the Minister, intervene in the affairs of a provincial secretariat— 5
- (a) when that provincial secretariat is unable to perform its functions effectively; or
  - (b) when that provincial secretariat cannot fulfil its obligations in terms of this Act,
- and take appropriate steps to ensure proper fulfilment of its functions in terms of this Act. 10
- (2) The Secretariat may only intervene in the affairs of a provincial secretariat after the Minister approves an intervention contemplated in subsection (1).
- (3) Subject to subsection (4), the intervention contemplated in subsection (1) may not extend for a period longer than 90 days at a time. 15
- (4) The Secretariat must, while the intervention continues, report regularly to the Minister, and make appropriate recommendations should the intervention continue for a period longer than 90 days.

**Intervention by Secretariat on instruction by Minister**

- 24.** The Minister may instruct the Secretariat to intervene in the affairs of a province if circumstances of a sensitive nature require an intervention by the Secretariat. 20

**Part 4*****Ministerial Executive Committee*****Establishment of Ministerial Executive Committee**

- 25.** There is hereby established a Committee to be known as the Ministerial Executive Committee, as contemplated in section 206(8) of the Constitution. 25

**Composition of Committee**

- 26.** The Committee consists of—
- (a) the Minister, who is the chairperson of the Committee;
  - (b) the MEC from each province; and 30
  - (c) any other member the Minister may consider necessary.

**Functions of Committee**

- 27.** (1) The functions of the Committee are to—
- (a) facilitate close co-operation between the national and provincial spheres of government; 35
  - (b) discuss matters of common interest or those emanating from reports of the Secretariat; and
  - (c) discuss any other policing matter relevant to the functions of the MEC from each province.
- (2) The Secretary or his or her office is responsible for— 40
- (a) providing administrative and other support services to the Committee; and
  - (b) liaising and consulting with heads of provincial departments to ensure provincial issues are part of the agenda of the Committee.

**Meetings**

**28.** (1) The Minister convenes and determines the agenda for meetings of the Committee.

(2) Suggestions for inclusion in the agenda for a meeting may be submitted to the Minister in terms of a framework determined by the Minister. 5

**Part 5*****Co-operation with Independent Police Investigative Directorate*****Co-operation with Independent Police Investigative Directorate**

**29.** (1) The Secretariat must consider reports received from the Executive Director in terms section 10(1) of the Independent Police Investigative Directorate Act, 2010. 10

(2) The Secretariat must oversee the implementation of the recommendations made to the police service and provide the Minister with regular feedback on an ongoing basis on steps taken by it to ensure compliance thereof.

(3) The Secretariat and the Directorate must meet on a regular basis, but not less than four times a year, on issues of common interest. 15

**CHAPTER 6****MISCELLANEOUS****Regulations**

**30.** (1) The Minister may, after consultation with the Secretary, make regulations regarding— 20

- (a) any matter which in terms of this Act may or must be prescribed;
- (b) any action in order to promote compliance with this Act; and
- (c) any ancillary or incidental matter that it is necessary to prescribe for the proper implementation or administration of this Act.

(2) Regulations with regard to the implementation of this Act must be submitted to the Minister by the Secretary within three months of the commencement of this Act. 25

**Transitional provisions**

**31.** (1) A Civilian Secretariat for the police service in existence immediately before the commencement of this Act continues as the Civilian Secretariat for the police service contemplated in section 3(1). 30

(2) Any provincial secretariat structure in existence at the provincial sphere of government immediately before the commencement of this Act continues subject to section 13.

(3) Any person who immediately before the commencement of this Act served in the post of Secretary or head of a provincial secretariat, as the case may be— 35

- (a) must be regarded as having been appointed in terms of section 6(1) or section 15(1); and
- (b) continues to serve in that capacity under the terms and conditions of service of his or her existing appointment for the remainder of the period of service in terms of such appointment. 40

(4) Subject to subsection (1), any personnel who immediately before the commencement of this Act served in any post in the Secretariat—

- (a) must be regarded as having been appointed in terms of section 7(4); and
- (b) continue to serve in that capacity under the terms and conditions of service of his or her appointment for the remainder of the period of service in terms of such appointment. 45

(5) Any assessment, evaluation or project instituted by the Secretariat in terms of the South African Police Service Act which was pending, continues as if this Act had not been passed.

(6) Decisions of the Secretariat in force immediately before the commencement of this Act remain in force until amended, replaced or rescinded by the Secretariat. 50

**Amendment and repeal of laws**

**32.** The laws mentioned in the Schedule are hereby amended and repealed to the extent set out in third column of that Schedule.

**Short title and commencement**

**33.** This Act is called the Civilian Secretariat for Police Service Act, 2010, and takes effect on a date fixed by the President by proclamation in the *Gazette*. 5

## SCHEDULE

*Laws amended and repealed (section 32)*

Number and year of law	Short title	Extent of repeal or amendment
Act 68 of 1995	South African Police Service Act	<p><b>Amendment of section 1 of Act 68 of 1995, as amended by section 1 of Act 41 of 1997 and section 1 of Act 83 of 1998</b></p> <p>1. Section 1 of the South African Police Service Act is hereby amended—</p> <p>(a) by the substitution for the definition of “<b>secretariat</b>” of the following definition:  “<b>secretariat</b>” means the [<b>Secretariat for Safety and Security established under section 2(1)</b>] <u>Civilian Secretariat for the Police Service established in terms of section 3(1) of the Civilian Secretariat for Police Service Act, 2010;</u>”;</p> <p>(b) by the substitution for the definition of “<b>Secretary</b>” of the following definition:  “<b>Secretary</b>” means the Secretary [<b>for Safety and Security appointed under section 2(2)</b>] <u>for the Police Service appointed in terms of section 7(1) of the Civilian Secretariat for Police Service Act, 2010;</u>”.</p> <p><b>Repeal of section 2 of Act 68 of 1995</b></p> <p>2. Section 2 of the Act is hereby repealed.</p> <p>3. The substitution for the words “<b>Secretary for Safety of Security</b>”, wherever they occur in the Act, of the words “<b>Secretary for the Police Service</b>”.</p>

Number and year of law	Short title	Extent of repeal or amendment
Act 60 of 2000	Firearms Control Act, 2000	<p><b>Amendment of section 1 of Act 60 of 2000, as amended by section 1 of Act 43 of 2003 and Act 28 of 2006</b></p> <p><b>1.</b> Section 1 of the Firearms Control Act, 2000, is hereby amended by the substitution for the definition of: <b>“Secretary for Safety of Security”</b> of the following definition:</p> <p><b>“Secretary for the Police Service”</b> means the Secretary for the Police Service appointed in terms of section 7(1) of the Civilian Secretariat for Police Service Act, 2010;”.</p> <p><b>2.</b> The substitution for the words <b>“Secretary for Safety of Security”</b>, wherever they occur in the Act, of the words <b>“Secretary for the Police Service”</b>.</p>

## **MEMORANDUM ON THE OBJECTS OF THE CIVILIAN SECRETARIAT FOR POLICE SERVICE BILL, 2010**

### **1. BACKGROUND**

- 1.1 The Civilian Secretariat for Police Service Bill, 2010 (“the Bill”), seeks to establish a Civilian Secretariat for the Police Service (“the Secretariat”) as required by section 208 of the Constitution of the Republic of South Africa, 1996 (“the Constitution”), to provide it with the necessary powers and functions to exercise and perform civilian oversight over the South African Police Service (“the Service”) and to repeal the provisions relating to the Secretariat of Safety and Security in the South African Police Service Act, 1995 (Act No. 68 of 1995) (“the SAPS Act”).
- 1.2 The Bill responds to the imperative of section 208 of the Constitution that obliges Parliament to establish a civilian secretariat for the police service by national legislation to function under the direction of the Cabinet member responsible for policing. Accordingly, the Secretariat will conduct civilian oversight over the Service by monitoring, assessing and evaluating the performance of the Service and reporting thereon to the Minister of Police (“the Minister”), and in addition provide the Minister with policy advice and support in the exercise of his or her powers and the performance of his or her functions. The Secretariat will also implement a partnership strategy to mobilise role-players, including organisations of civil society.
- 1.3 The Secretariat will be structured to function independently from the Service and report directly to the Minister. The current Secretariat for Safety and Security is regulated in terms of Chapter 2 of the SAPS Act. Chapter 2 provides for the establishment and functions of the Secretariat and the establishment of the Executive Co-ordinating Committee as respectively contemplated in sections 214, 215 and 220(1) of the Interim Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993) (“the Interim Constitution”). The SAPS Act pre-dates the Constitution and this necessitates the realignment of the Secretariat in line with section 208 of the Constitution.
- 1.4 The Bill reinforces the independence of the Secretariat, takes cognisance of the political roles and responsibilities of the Minister and the Members of Executive Councils (“MECs”) responsible for policing in the provinces and makes provision for the alignment of operations of the Secretariat in the national and provincial spheres of government in order to allow for effective and optimised civilian oversight of the Service.
- 1.5 Furthermore, the Bill provides for a co-operative framework between the Secretary for the Police Service (“the Secretary”) and the heads of provincial departments responsible for policing. The purpose of the co-operative framework is to, amongst others, ensure that annual strategic and performance plans, priorities and objectives of the Secretariat and provincial secretariats are aligned and co-ordinated.
- 1.6 Furthermore, the Bill provides for the establishment, composition and functions of a senior management forum and intervention by the Secretariat in the affairs of provincial secretariats on instruction of the Minister, and promotes co-operation between the Secretariat and the Independent Police Investigative Directorate, which is to be established by the envisaged Independent Police Investigative Directorate Act.
- 1.7 Lastly, the Bill provides for the establishment, composition, functions and meetings of the Ministerial Executive Committee contemplated in section 206(8) of the Constitution to facilitate close co-operation at executive level on policing matters between the national and provincial spheres of government.

## **2. OBJECTS OF THE BILL**

### 2.1 The Bill seeks—

- (a) to provide for the establishment of a Civilian Secretariat for the Police Service in the Republic;
- (b) to define the functions and powers of the Secretariat;
- (c) to outline the objects of the Secretariat, which include—
  - (i) giving strategic advice to the Minister in developing and implementing policies;
  - (ii) implementing a partnership strategy to mobilise role-players to strengthen service delivery by the police service;
  - (iii) providing support services to the Minister to ensure implementation of or giving effect to relevant international obligations; and
  - (iv) aligning the operations of the Secretariat in the national and provincial spheres of government and reorganise the Secretariat into an effective and efficient organ of state.
- (d) to regulate the appointment, duties and functions, powers and the removal from office of the Secretary for the Police Service and the heads of provincial secretariats;
- (e) to provide for the establishment, composition and functions of a Senior management forum and the Ministerial Executive Committee;
- (f) to provide for co-operation with the Independent Police Investigative Directorate;
- (g) to provide for intervention into the affairs of provincial secretariats by the Secretariat on instruction of the Minister;
- (h) to repeal the existing provisions relating to Ministerial Services contained in Chapter 2 of the SAPS Act; and
- (i) to provide for transitional arrangements and other matters.

## **3. DEPARTMENTS OR BODIES CONSULTED**

- 3.1 The heads of provincial departments responsible for policing were consulted on a continuous basis during the course of drafting the Bill. Comments and inputs from each of the provinces were considered and incorporated into the Bill.
- 3.2 Thereafter, the Secretariat made a written submission and presentation to MINMEC on more than one occasion, whereby an approval was granted for the drafting of the Bill in accordance with the policy prescripts.
- 3.3 Furthermore, Police Unions, POPCRU and SAPU, the national Board of the Community Police Forum and civil society organisations involved in policing matters were also consulted. All these organisations gave their unanimous support in favour of the Bill.
- 3.4 The Secretariat is currently consulting with the National Treasury and the Department of Public Service and Administration on the restructuring process that the Secretariat will undergo once the Bill is enacted by Parliament.

## **4. FINANCIAL IMPLICATIONS FOR STATE**

- 4.1 The establishment of the Secretariat and provincial secretariats will have minimal financial implications for the State. The appointment of staff in terms of the revised organisational structure, including the heads of the provincial secretariats, will be costed and budgeted for.
- 4.2 Any new assets, as well as identification cards, stationery and signage will require new or additional funding.

## **5. PARLIAMENTARY PROCEDURE**

- 5.1 The State Law Advisers and the Ministry of Police are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 76 of the Constitution of the Republic of South Africa since it falls within a functional area listed in Schedule 4 to the Constitution, namely “police”.
- 5.2 Furthermore, 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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