

REPUBLIC OF SOUTH AFRICA

CIVILIAN SECRETARIAT FOR POLICE SERVICE BILL

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

(MINISTER OF POLICE)

[B 16B—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.

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 Civilian Secretariat, and for this purpose to align the operations of the Civilian Secretariat in the national and provincial spheres of government and reorganise the Civilian 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 Civilian Secretariat and the Independent Police Investigative Directorate; to provide for co-operation between the Civilian Secretariat and the South African Police Service; to provide for intervention into the affairs of provincial secretariats by the Civilian 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,

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

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SCHEDULE**CHAPTER 1****INTERPRETATION, APPLICATION AND OBJECTS OF ACT 25****Definitions**

1. In this Act, unless the context indicates otherwise—
 “**Civilian Secretariat**” means the national Civilian Secretariat for the Police Service established in terms of section 4(1) of this Act;
 “**Committee**” means the Ministerial Executive Committee established under section 27(1); 30
 “**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 3 of the Independent Police Investigative Directorate Act, 2010; 35
 “**Executive Director**” means the Executive Director appointed in terms of section 6(1) of the Independent Police Investigative Directorate Act, 2010;
 “**forum**” means the senior management forum established under section 24;
 “**head of a provincial department**” means the head of a department responsible for safety and security in a province; 40
 “**head of a provincial secretariat**” means the head of a provincial secretariat appointed in terms of section 18(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 in the province;
- “**Minister**” means the member of the Cabinet responsible for policing;
- “**organ of state**” means an organ of state concerned with matters relating to the police service; 5
- “**police official**” means the police official as defined in section 1 of the South African Police Service Act;
- “**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; 10
- “**provincial department**” means the department responsible for safety and security services in a province falling under the relevant MEC;
- “**provincial secretariat**” means a provincial secretariat established in terms of section 16;
- “**regulation**” means a regulation made under this Act; 15
- “**Secretariat**” means the Civilian Secretariat for the Police Service established in terms of section 4(1);
- “**Secretary**” means the Secretary for the Police Service appointed in terms of section 7(1);
- “**South African Police Service Act**” means the South African Police Service Act, 1995 (Act No. 68 of 1995); and 20
- “**this Act**” includes the Schedule, regulations and any rules, directives or instructions made under it.

Application of Act

2. All organs of state must accord such assistance as may be reasonably required to ensure the effective functioning of the Civilian Secretariat in terms of this Act. 25

Objects of Act

3. The objects of this Act are to—
- (a) give effect to section 208 of the Constitution by establishing the Civilian Secretariat to function under the direction of the Minister; 30
 - (b) provide for civilian oversight of the police service;
 - (c) provide for the functions and powers of the Civilian Secretariat;
 - (d) provide for the establishment, composition and functions of the ministerial executive committee as required by section 206(8) of the Constitution;
 - (e) provide for the establishment, composition and functions of the senior management forum; 35
 - (f) provide for co-operation with the Independent Police Investigative Directorate and the South African Police Service; and
 - (g) provide for intervention by the Civilian Secretariat into the affairs of a provincial secretariat. 40

CHAPTER 2

CIVILIAN SECRETARIAT FOR POLICE SERVICE

Establishment of Civilian Secretariat

4. (1) The Civilian Secretariat for the Police Service contemplated in section 208 of the Constitution is hereby established. 45
- (2) The Civilian Secretariat is hereby established as a designated department at the national level.
- (3) The Secretary is the accounting officer of the Civilian Secretariat and must comply with the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999).
- (4) The Civilian 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. 50
- (5) Provincial secretariats contemplated in sections 16 and 17 must assist the Civilian Secretariat to achieve its objects, and perform functions and exercise powers of the 55

Civilian 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.

(6) The Civilian Secretariat is financed from monies appropriated by Parliament.

Objects of Civilian Secretariat 5

5. The objects of the Civilian Secretariat are to—
- (a) exercise civilian oversight over the police service;
 - (b) give strategic advice to the Minister in respect of developing and implementing policies;
 - (c) provide administrative support services to the Minister to ensure South Africa's engagement with relevant international obligations; 10
 - (d) liaise and communicate with stakeholders;
 - (e) 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; 15
 - (f) implement, promote and align the operations of the Civilian Secretariat in the national and provincial spheres of government;
 - (g) co-ordinate the functions and powers of the Civilian Secretariat in the national and provincial spheres of government;
 - (h) promote co-operation between the Civilian Secretariat, the police service and the Directorate; and 20
 - (i) provide guidance to community police fora and associated structures and facilitate their proper functioning.

Functions of Civilian Secretariat

6. (1) The Civilian Secretariat must, in order to achieve its objects— 25
- (a) monitor the performance of the police service and regularly assess the extent to which the police service has adequate policies and effective systems and to 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; 30
 - (c) monitor and evaluate compliance with the Domestic Violence Act, 1998 (Act No. 116 of 1998);
 - (d) make recommendations to the police service on disciplinary procedures and measures with regard to non-compliance with the Domestic Violence Act, 1998; 35
 - (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; 40
 - (h) advise and support the Minister in the exercise of his or her powers and the performance of his or her functions;
 - (i) provide the Minister with regular reports with regard to— 45
 - (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; and
 - (j) assess and monitor the police service's ability to receive and deal with complaints against its members. 50
- (2) The Civilian Secretariat must, for the purpose of subsection (1), establish competencies and capabilities in its operations in order to—
- (a) (i) conduct research into any policing matter and report to the Secretary thereon;
 - (ii) provide policy advice to the Minister through the Secretary; 55
 - (iii) make available recent, relevant and evidence-based research to the Minister and to Parliament;
 - (iv) create a resource information centre; and
 - (v) develop at least one civil society reference group;

- (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) recommend steps for improved service delivery and police effectiveness; 5
- (v) develop frameworks and strategies 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; 10
- (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 pro-active and interventionist models in communities;
- (vi) co-ordinate efforts to deal with challenges faced by the police service as requested by the Minister; 15
- (vii) develop frameworks and strategies to ensure uniformity, accountability and enhancement of community police fora and associated structures; and
- (viii) maximise capacity and expertise in the Civilian Secretariat. 20

CHAPTER 3

SECRETARY FOR POLICE SERVICE

Appointment of Secretary

7. (1) The Minister must, subject to the laws governing the public service, appoint a person as Secretary for the Police Service. 25

(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. 30

(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

8. (1) The Secretary—

(a) is responsible for the performance of the functions of the Civilian Secretariat and, for this purpose, is the— 35

(i) head and accounting officer of the Civilian Secretariat; and”.

(ii) adviser to the Minister on police and policing policy matters;

(b) takes all decisions relating to the functions of the Civilian Secretariat referred to in section 6; 40

(c) performs any function assigned to the Civilian Secretariat in terms of this Act or any other Act or memoranda of understanding or agreement referred to in section 6(1)(g);

(d) monitors and evaluates the activities and performance of the Civilian Secretariat; and 45

(e) ensure the effectiveness and efficiency of the Civilian Secretariat.

(2) As head and accounting officer of the Civilian Secretariat, the Secretary is responsible for the—

(a) administration and management of the budget of the Civilian Secretariat;

(b) proper and diligent implementation of the Public Finance Management Act, 1999 (Act No. 1 of 1999); 50

(c) development and organisation of an efficient administration within the Civilian Secretariat;

(d) establishment of the staff component in accordance with the laws governing the public service; and 55

(e) appointment of such staff as may be necessary to enable the Civilian Secretariat to perform its functions in terms of this Act.

- (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;
 - (b) provide the Minister with the necessary support service to ensure compliance with relevant international obligations; 5
 - (c) monitor utilisation of the budget of the police service to ensure compliance with any policy directives or instructions of the Minister;
 - (d) present legislation in Parliament as determined by the Minister;
 - (e) perform such functions as the Minister may consider necessary or expedient to ensure police civilian oversight; and 10
 - (f) any other function assigned to the Secretary as may be determined by the Minister.
- (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 Civilian Secretariat to assist the Secretary to perform the functions or exercise the powers of the Civilian Secretariat, or both, as may be necessary. 15
- (5) The provisions of this section, in so far as it relates to the Secretary as accounting officer of the Civilian Secretariat, will only come into operation when the Civilian Secretariat becomes a designated department.

Powers 20

- 9.** The Secretary may do all that is reasonably necessary or expedient to perform the functions of the Civilian Secretariat properly, including—
- (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; 25
 - (c) requesting, and be entitled to, all reasonable assistance by a member;
 - (d) obtaining the assistance of any state department, functionary or institution, to perform any specific act or function within the competency of the Civilian Secretariat;
 - (e) performing any specific act or function within its competence on behalf of any other person, including any state department, functionary or institution; and 30
 - (f) performing legal acts, or instituting or defending any legal action in the name of the Civilian Secretariat.

Delegation of powers and assignment of duties

- 10.** (1) Subject to subsection (2), the Secretary may— 35
- (a) delegate to any person in the employ of the Civilian Secretariat any power conferred upon the Secretary by or under this Act, excluding the power referred to in this subsection or in section 9(f); and
 - (b) authorise any person in the employ of the Civilian Secretariat to perform any duty assigned to the Secretary by or under this Act, on such terms and conditions as the Secretary may determine. 40
- (2) A delegation or authorisation in terms of subsection (1)—
- (a) must be in writing; and
 - (b) may at any time be amended or revoked by the Secretary.

Removal from office 45

- 11.** The Minister may remove the Secretary from office on account of—
- (a) misconduct;
 - (b) ill health; or
 - (c) inability to perform the duties of that office effectively.

Vacancy 50

- 12.** (1) When the Secretary is 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.

(2) In the case of a vacancy, the Minister must fill the vacancy within a reasonable period of time, which period must not exceed one year.

Reporting

13. The Secretary must submit quarterly reports to the Minister and the parliamentary committees responsible for police on the activities of the Civilian Secretariat. 5

Finances and accountability

14. (1) The Secretary—

- (a) must, subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999)—
 - (i) be charged with the responsibility of accounting for money received or paid out for or on account of the office of the Civilian Secretariat; 10
 - (ii) cause the necessary accounting and other related records to be kept; and
- (b) may exercise such powers and perform such duties as may from time to time be conferred upon or assigned to him or her, and in respect thereof be accountable to the Minister. 15

(2) The records referred to in subsection (1)(a) must be audited by the Auditor-General.

Annual report

15. (1) The Secretary must prepare and submit to the Minister an annual report in a form prescribed by the Minister within five months after the end of the financial year. 20

(2) The annual report referred to in subsection (1) must include the following documents:

- (a) The audited financial statements prepared in terms of this Act;
- (b) the Auditor-General's report; and 25
- (c) a detailed report on the activities of the Civilian Secretariat undertaken during the year to which the audit relates.

(3) The Minister must table in Parliament a copy of the annual report, financial statements and the audit report on those statements within one month after receipt thereof if Parliament is then in session, or if Parliament is not then in session, within one month after the commencement of its next ensuing session. 30

(4) The Secretary must publish the annual report, financial statements and the audit report on those statements.

CHAPTER 4

PROVINCIAL SECRETARIATS 35

Constitution of provincial secretariats

16. Subject to section 17, each MEC must constitute a provincial secretariat for that province, within 18 months after the commencement of this Act, to support and align the mandate of that provincial secretariat with the mandate of the Civilian Secretariat: Provided that the date on which a provincial secretariat comes into operation, will be determined by the MEC in consultation with the Minister. 40

Functions of provincial secretariats

17. (1) In order to support the objects of the Civilian Secretariat referred to in section 5 and subject to the principles of co-operative governance and intergovernmental relations contained in Chapter 3 of the Constitution, each provincial secretariat must— 45

- (a) align its plans and operations at the provincial sphere of government with the plans, policies and operations of the Civilian Secretariat; and
- (b) integrate its strategies and systems at the provincial sphere of government with the strategies and systems of the Civilian Secretariat.

- (2) The provincial secretariat must, for purposes of subsection (1), establish competencies and capabilities in its operations, to—
- (a) (i) monitor and evaluate the implementation of policing policy in the province;
 - (ii) evaluate and monitor police conduct in the province; 5
 - (iii) develop and evaluate safety models and monitoring tools to ensure alignment with the functions of the Civilian Secretariat;
 - (iv) assist the Civilian Secretariat with any monitoring and evaluation projects; and
 - (b) (i) promote community police relations; 10
 - (ii) establish and promote partnerships; and
 - (iii) manage the enhancement of community safety structures with the province.

Appointment of heads of provincial secretariats

- 18.** (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. 15
- (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. 20
- (4) The head of a provincial secretariat 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

- 19.** The head of a provincial secretariat— 25
- (a) is responsible for the performance of the functions of a provincial secretariat as contemplated in section 17 or such duties and functions assigned to the head of a provincial secretariat by the Secretary in terms of section 10;
 - (b) is responsible for the resources and the employees of a provincial secretariat in the province; 30
 - (c) must take all decisions necessary or expedient for performance of the functions of a provincial secretariat referred to in section 17 or otherwise assigned to him or her by the Secretary in terms of section 10 or by the MEC of the province concerned;
 - (d) must monitor that national policing policies and directives issued or made by the Minister are implemented by the police service in the province and reports thereon are submitted to the head of a provincial department, the MEC and the Secretary; 35
 - (e) must evaluate and review practices, methodologies and performance of the police service in the province, submit reports thereon to the head of a provincial department and the MEC and submit copies thereof to the Secretary; and 40
 - (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. 45

Removal from office

- 20.** The MEC may, after consultation with the Minister, remove the head of the provincial secretariat from office on account of—
- (a) misconduct;
 - (b) ill health; or 50
 - (c) inability to perform the duties of that office effectively.

Vacancies

- 21.** (1) When the head of a provincial secretariat is unable to perform the functions of office, or during a vacancy in the office of the head of a provincial secretariat, the MEC may, after consultation with the Minister, designate another person to act as head of the 55

provincial secretariat until the head of a provincial secretariat returns to perform the functions of office or the vacancy is filled.

(2) In the case of a vacancy, the MEC must fill the vacancy within a reasonable period of time, which period must not exceed six months.

Reporting and referrals 5

22. (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.

(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

(b) submit a copy of the annual report tabled in terms of paragraph (a) to the Secretary. 15

CHAPTER 5

CO-OPERATIVE FRAMEWORK

Part 1

Secretary and heads of provincial departments 20

Secretary and heads of provincial departments

23. (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 Civilian Secretariat of their respective— 25

(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 the police service in the province in order to identify best practices, to detect failures and to recommend preventative or corrective action when necessary; 30

(d) ensure regular reporting on matters specific to the performance of the police service in the province; and

(e) prepare for meetings of the Ministerial Executive Committee, the relevant Cabinet cluster committee or any other forum. 35

(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.

(3) The Secretary may invite any person as he or she may consider necessary to attend the meetings referred to in subsection (1). 40

Part 2

Senior management forum

Establishment of forum

24. There is hereby established a forum to be known as the senior management forum.

Composition and functions of forum 45

25. (1) The forum established in terms of section 24 consists of—

(a) the Secretary, who is the chairperson of the forum;

(b) the heads of provincial secretariats;

- (c) senior management staff from the Civilian Secretariat; and
- (d) senior management staff from each provincial secretariat.
- (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. 5
- (3) The Secretary convenes, determines the agenda for and presides at the meetings referred to in subsection (2), and his or her office is responsible for providing administrative and other support services to the meetings.
- (4) The Secretary may invite any person as he or she may consider necessary to attend meetings referred to in subsection (2). 10

Part 3

Intervention by Civilian Secretariat

Intervention by Civilian Secretariat

- 26.** (1) Notwithstanding the provisions of this Chapter, the Minister may, after consultation with the relevant MEC, instruct the Civilian Secretariat to intervene in the affairs of a provincial secretariat— 15
- (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, 20
- and take appropriate steps to ensure proper fulfilment of its functions in terms of this Act.
- (2) The instruction of the Minister contemplated in subsection (1) may only be granted after the Minister has approved the scope and plan for such intervention.
- (3) Subject to subsection (4), the intervention contemplated in subsection (1) may not extend for a period longer than 90 days at a time. 25
- (4) The Civilian 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.
- (5) The Minister must regularly inform the relevant MEC on the progress of the intervention referred to in subsection (4). 30
- (6) Nothing in this Part precludes the Minister from instructing the Civilian Secretariat to perform such functions contemplated by this Act in a province.

Part 4

Ministerial Executive Committee 35

Establishment of Ministerial Executive Committee

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

Composition of Committee

- 28.** The Committee consists of— 40
- (a) the Minister, who is the chairperson of the Committee;
 - (b) the MEC from each province; and
 - (c) any other member the Minister may consider necessary.

Functions of Committee

- 29.** (1) The functions of the Committee are to— 45
- (a) facilitate close co-operation between the national and provincial spheres of government;
 - (b) discuss matters of common interest or those emanating from reports of the Civilian Secretariat; and
 - (c) discuss any other policing matter relevant to the functions of the MEC from each province. 50

- (2) The Secretary or his or her office is responsible for—
- (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 5

30. (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.

Part 5 10

Co-operation with Independent Police Investigative Directorate

Co-operation with Independent Police Investigative Directorate

31. (1) The Civilian Secretariat must consider reports received from the Executive Director in terms section 9(1) of the Independent Police Investigative Directorate Act, 2010. 15

(2) The Civilian Secretariat must monitor the implementation by the police service of the recommendations made by the Directorate and provide the Minister with regular reports on steps taken by it to ensure compliance, and a copy thereof must be sent to the Executive Director.

(3) The Secretary and the Executive Director must ensure the necessary co-operation 20 for the proper functioning of the Consultative Forum contemplated in Chapter 4 of the Independent Police Investigative Directorate Act, 2010.

Part 6

Co-operation with South African Police Service

Co-operation with South African Police Service 25

32. The members must provide their full co-operation to the Civilian Secretariat and where so required to a provincial secretariat, including but not limited to—

- (a) assisting the Civilian Secretariat with the necessary information and records in the manner prescribed to perform its monitoring function in relation to oversight of the police service in terms of this Act; 30
- (b) assisting the Civilian Secretariat to monitor and evaluate compliance with the Domestic Violence Act, 1998 (Act No. 116 of 1998); and
- (c) any other information or documentation as may be required by the Civilian Secretariat in order to fulfil its functions in terms of this Act.

CHAPTER 6 35

REGULATIONS, TRANSITIONAL PROVISIONS, AMENDMENT AND REPEAL OF LAWS, SHORT TITLE AND COMMENCEMENT

Regulations

33. (1) The Minister may, after consultation with the Secretary, make regulations regarding— 40

- (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. 45

(3) The regulations referred to in subsection (1) must be submitted to Parliament for notification purposes before promulgation.

Transitional provisions

34. (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 4(1).

(2) Any provincial secretariat structure in existence at the provincial sphere of government immediately before the commencement of this Act continues subject to section 16.

(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—

(a) must be regarded as having been appointed in terms of section 7(1) or section 18(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.

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

(a) must be regarded as having been appointed in terms of sections 8(2)(e) and 8(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.

(5) Any assessment, evaluation or project instituted by the Civilian 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 Civilian Secretariat in force immediately before the commencement of this Act remain in force until amended, replaced or rescinded by the Civilian Secretariat.

(7) The reports of the Secretary in terms of section 13 must include progress made in respect of the establishment of provincial secretariats until such time as provincial secretariats are established and functioning in the provinces.

Amendment and repeal of laws

35. 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

36. (1) This Act is called the Civilian Secretariat for Police Service Act, 2010, and takes effect on a date determined by the President by proclamation in the *Gazette*.

(2) The provisions of sections 4(2) and (3), and 14 shall come into operation on a date determined by the President by proclamation in the *Gazette*.

(3) Different dates may be determined under subsection (2) in respect of different provisions of this Act.

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>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</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 “secretariat” of the following definition: “secretariat” means the [Secretariat for Safety and Security established under section 2(1)] <u>Civilian Secretariat for the Police Service established in terms of section 4(1) of the Civilian Secretariat for Police Service Act, 2010;</u>”;</p> <p>(b) by the substitution for the definition of “Secretary” of the following definition: “Secretary” means the Secretary [for Safety and Security appointed under section 2(2)] <u>for the Police Service appointed in terms of section 7(1) of the Civilian Secretariat for Police Service Act, 2010;</u>”.</p> <p>Repeal of section 2 of Act 68 of 1995</p> <p>2. Section 2 of the Act is hereby repealed.</p> <p>3. The substitution for the words “Secretary for Safety of Security”, wherever they occur in the Act, of the words “Secretary for the Police Service”.</p>

Number and year of law	Short title	Extent of repeal or amendment	
Act 60 of 2000	Firearms Control Act, 2000	<p data-bbox="804 277 1230 365">Amendment of section 1 of Act 60 of 2000, as amended by section 1 of Act 43 of 2003 and Act 28 of 2006</p> <p data-bbox="804 389 1230 539">1. Section 1 of the Firearms Control Act, 2000, is hereby amended by the substitution for the definition of: “Secretary for Safety of Security” of the following definition: “Secretary for the Police Service” 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 data-bbox="804 723 1230 873">2. The substitution for the words “Secretary for Safety of Security”, wherever they occur in the Act, of the words “Secretary for the Police Service”.</p>	5 10 15 20

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. The Bill also provides for co-operation between the Civilian Secretariat and members of the South African Police Service.
- 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 co-operation with members of the South African Police Service;
- (h) to provide for intervention into the affairs of provincial secretariats by the Secretariat on instruction of the Minister;
- (i) to repeal the existing provisions relating to Ministerial Services contained in Chapter 2 of the SAPS Act; and
- (j) 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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