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REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO**

**NATIONAL PROSECUTING
AUTHORITY
AMENDMENT BILL**

[B 23—2008]

*(As agreed to by the Portfolio Committee on Justice and Constitutional
Development (National Assembly))*

[B 23A—2008]

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AMENDMENTS AGREED TO

NATIONAL PROSECUTING AUTHORITY AMENDMENT BILL [B 23—2008]

CLAUSE 1

1. On page 2, to omit all the words from line 14 up to and including line 22, and to substitute:
 - “ *Investigating Director*—
 - (a) means a Director of Public Prosecutions appointed under section 13(1)[(aA) or] (b)—
 - (i) to the Directorate of Special Operations; or
 - (ii) as the head of an *Investigating Directorate* established in terms of section 7(1)(1A), as the case may be; and
 - (b) in Chapter 5, includes [the head of the Directorate of Special Operations] any Director referred to in section 13(1), designated by the National Director to conduct an investigation in terms of section 28 in response to a request in terms of section 17D(3) of the South African Police Service Act, 1995 (Act No. 68 of 1995), by the Head of the Directorate for Priority Crime Investigation;”;

CLAUSE 3

1. On page 3, in line 10, to omit “[1(a) There” and to substitute “(1) [(a) There”
2. On page 3, in line 30, to omit “(1A)”.

CLAUSE 4

1. Clause rejected.

NEW CLAUSE

1. That the following be a New Clause:

Amendment of section 28 of Act 32 of 1998, as substituted by section 12(a) of Act 61 of 2000

8. Section 28 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a) The *Investigating Director* may, if he or she decides to conduct an *investigation*, at any time prior to or during the conducting of the *investigation* designate any person referred to in section 7(4)(a) or, in the case of an investigation requested by the Head of the Directorate for Priority Crime Investigation in terms of section 17D(3) of the South African Police Service Act, 1995 (Act No. 68 of 1995), by the Head of the Directorate for Priority Crime Investigation;”

CLAUSE 10

1. On page 5, in line 13, to omit "and".
2. On page 5, in line 16, to omit "Auditor-General.'" and to substitute "Auditor-General.;" and".
3. On page 5, after line 16, to insert:
 - (d) by the substitution for subsection (5) of the following subsection:

"(5) The Director-General: Justice [or, in respect of a matter dealt with by the Directorate of Special Operations, the Chief Executive Officer,] may, on the recommendation of the *National Director* and with the concurrence of the Minister of Finance, order that the expenses or any part of the expenses incurred by any person in the course of or in connection with an *investigation* contemplated in section 28 (1) be paid from State funds to that person."

CLAUSE 13

1. Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Substitution of section 43A of Act 32 of 1998

13. The following section is substituted for section 43A of the principal Act:

"Transitional arrangements relating to Directorate of Special Operations**43A. (1) In this section—**

- (a) any word or expression in respect of which a specific meaning has been assigned by the South African Police Service Act, 1995 (Act No. 68 of 1995), has the same meaning; and
- (b) 'fixed date' means a date to be determined by the President by proclamation.

(2) As from the fixed date—

- (a) any person who immediately before the fixed date holds the office of *Special Investigator* is transferred to the South African Police Service and becomes a member of the South African Police Service; and
- (b) such administrative and support personnel employed by the *Directorate of Special Operations* as may be agreed upon between the *National Director* and the National Commissioner, may be transferred to the South African Police Service.

(3) (a) An employee contemplated in subsection (2) may be transferred to the South African Police Service only with his or her consent.

(b) The remuneration and other terms and conditions of employment of employees transferred in terms of subsection (2) may not be less favourable than those that applied immediately before their transfer.

(c) The transfer contemplated in subsection (2) does not interrupt the employees' continuity of employment and the employees remain entitled to all rights and benefits, including pension benefits and privileges to which they were entitled to immediately before transfer.

(4) (a) An employee referred to in subsection (2) who does not wish to be transferred to the South African Police Service must, before the fixed date, notify the *National Director* thereof in writing.

(b) In respect of such an employee, the National Director may—

- (i) after consultation with the *Minister* and the Cabinet members responsible for the public service and for finance, offer to transfer the employee to a reasonable alternative post or position in any government department in accordance with section 14 of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and subsection (3)(b) and (c); or
- (ii) after consultation with the *Minister*, offer to transfer the employee to a reasonable alternative post or position in the *prosecuting authority*, other than any post of *special investigator*, in accordance with subsection (3)(b) and (c); or
- (iii) offer the employee a severance package determined by the *Minister* in consultation with the Cabinet members for the public service and for finance.

(c) If the employee refuses to accept the offer made in paragraph (b) within 30 days of it being made, the employee's employment automatically terminates.

(d) The Labour Relations Act, 1995 (Act No. 66 of 1995), does not apply to a termination effected in terms of this section.

(e) Any dispute arising from the interpretation or application of this section must be referred to the Public Service Coordinating Bargaining Council for conciliation and arbitration.

(5) Any decisions made, directions issued and any proceedings instituted by the employer immediately before the fixed date in respect of an employee referred to in subsection (2), remains applicable to him or her and must be implemented or finalised as if the National Prosecuting Authority Amendment Act, 2008, has not been passed.

(6) Any member of the *prosecuting authority* who was employed in the *Directorate of Special Operations* immediately before the fixed date, shall continue to be employed in the *Office of the National Director*, and shall exercise, carry out and perform his or her powers, duties and functions as conferred, imposed or assigned to him or her by the *National Director* and subject to the control and directions of the *National Director* or a person authorised thereto by the *National Director*.

(7) The National Prosecuting Authority Amendment Act, 2008, does not affect the validity of any investigation performed by the *Directorate of Special Operations* before the fixed date, including any functions incidental to such investigations or the institution of any criminal proceedings.

(8) Investigations by the *Directorate of Special Operations* that are pending immediately before the fixed date, must be transferred to and continued by the Directorate for Priority Crime Investigation, in accordance with a procedure determined by the *Minister* in consultation with the Cabinet member for police, and after consultation with the *National Director* and the National Commissioner.

(9) As from the fixed date any liability incurred by the *Directorate of Special Operations* as a result of any investigation by that Directorate, shall pass to the *prosecuting authority*, unless the *Minister* in consultation with the Cabinet member for police, in a specific instance determines otherwise."