

REPUBLIC OF SOUTH AFRICA

SOUTH AFRICAN POLICE SERVICE AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 76); explanatory
summary of Bill and prior notice of its introduction published in Government Gazette
No. of 2020)*

(The English text is the official text of the Bill)

(MINISTER OF POLICE)

[B —2020]

GENERAL EXPLANATORY NOTE:

[] Words in bold type and in square brackets indicate omissions (proposed deletions) from existing enactments.

_____ Words, underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the South African Police Service Act, 1995, so as to insert, delete and amend certain definitions; to provide for the purpose of the South African Police Service Act, 1995; to delete provisions related to the Civilian Secretariat for Police Service; to provide for the establishment of the South African Police Service as the single police service contemplated in section 199(1) of the Constitution; to strengthen the provisions in the Act relating to establishment, powers, functions and control of municipal police services as provided for in section 206(7) of the Constitution; to provide for a Management Forum, as opposed to a Board of Commissioners; to further regulate the functions of the National and Provincial Commissioners; to provide that the use of force must be reasonably necessary and proportional in the circumstances and for the use of deadly force; to provide for service outside the Republic by members of the Service and members of the Directorate for Priority Crime Investigation; to provide for the inclusion of municipal police recruits in the requirement to submit a DNA sample for the purpose of a DNA profile to be included in the Elimination Index; to provide for the deployment of the national public order

policing capacity by the National Commissioner at the direction of the Minister in consultation with Cabinet, as opposed to the President; to provide for deviations from National Instructions by the Directorate for Priority Crime Investigation; to provide for textual corrections; to provide for service arrangements regarding the performance of services of personnel for the Directorate for Priority Crime Investigation; to provide that the retired judge may initiate investigations on behalf of a complainant or which emerge from other related investigations; to provide for the appointment of an office manager for the office of the retired judge; to provide that the retired judge may summons persons to appear before him or her; to provide for the establishment of specialised units by the National Commissioner; to provide for the establishment of the Intelligence Division of the Service; to provide for the repeal of most of the provisions relating to community policing forums and boards in the principal Act and the enactment of new provisions regulating community policing forums, district community policing boards and provincial community policing boards as well as the establishment of a National Community Policing Board in the Civilian Secretariat for Police Service Act, 2011; to further regulate the filling of posts in the Service; to provide for integrity testing of new members of the service and lifestyle audits of all members; to provide that members will be deemed to be dismissed after a period of absence of thirty calendar days; to provide for the establishment by the National Commissioner of a disciplinary system which will be managed by dedicated, appropriately qualified and trained disciplinary units of presiding and disciplinary officers; to provide for the seizure or attachment of property of the Service; to provide for the appointment of a Chief of a municipal police service;

to provide for the use of force by the municipal police service; to provide for the establishment of a municipal public order policing capacity; to provide for the establishment of a national policing co-ordinating committee; to improve measures relating to property of the Service; to provide for offences relating to the unlawful possession and use of blue lamps; to provide for an offence in respect of hoaxes and the spreading of false information; to provide for an offence relating to members who are involved in investigations whilst having a conflict of interest; to amend the Regulation of Gatherings Act, 1993, in order to provide for the use of force and deadly force by a member of the Service and to address a Constitutional Court judgment; to provide for criteria for membership of community policing forums and community policing boards and for the exclusion from membership therefrom; to provide for the oversight and support of community policing forums; to provide for the establishment and functioning of neighbourhood patrolling and neighbourhood watch associations in the Civilian Secretariat for Police Service Act, 2011; and to provide for matters connected therewith.

PARLIAMENT of the Republic of South Africa therefore enacts as follows:—

Amendment of section 1 of Act 68 of 1995, as amended by section 1 of Act 41 of 1997, section 1 of Act 83 of 1998, section 36 of Act 1 of 2011 and section 35 of Act 2 of 2011

1. Section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995) (hereinafter referred to as the "principal Act"), is hereby amended—

(a) by the deletion of the definition of "board";

- (b) by the insertion after the definition of "certificate of appointment" of the following definitions in their respective alphabetical order:

" **Chief** means a Head of a metropolitan or municipal police service;

'**Civilian Secretariat**' means the national Civilian Secretariat for the Police Service, established in terms of section 4(1) of the Civilian Secretariat for Police Service Act, and 'Secretariat' has a corresponding meaning;

'**Civilian Secretariat for Police Service Act**' means the Civilian Secretariat for Police Service Act, 2011 (Act No. 2 of 2011);"

- (c) by the insertion after the definition of "commissioned officer" of the following definitions in their respective alphabetical order:

" **Constitution** means the Constitution of the Republic of South Africa, 1996;

'**Directorate**' means the Directorate for Priority Crime Investigation established in terms of section 17C;

'**district**' means irrespective of what it is called at any given time, the area of responsibility for a number of police stations grouped together for purposes of coordination, as determined from time to time by Provincial Commissioner in terms of section 12(2)(a);"

- (d) by the deletion of the definition "directorate";
- (e) by the substitution for the definition of "Executive Director" of the following definition:

" **Executive Director** means the Executive Director appointed in terms of section [51] 6(1) of the Independent Police Investigative Directorate Act;"

(f) by the insertion after the definition of "Executive Director" of the following definition:

" **'Firearms Control Act'** means the Firearms Control Act, 2000 (Act No. 60 of 2000)";

(g) by the insertion after the definition of "fixed establishment" of the following definitions in their respective alphabetical order:

" **'Independent Police Investigative Directorate'** means the Independent Police Investigative Directorate established in terms of section 3 of the Independent Police Investigative Directorate Act;

'Independent Police Investigative Directorate Act' means the Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011);

'integrity test' means a personality test designed to verify whether a candidate is honest and dependable;

'lifestyle audit' means a comparison of known income of a person with his or her standard of living to determine whether —

(a) there are gaps and indicators that a person is living above his or her means; or

(b) the person is abusing power or influence for personal gain at that time or a later stage;"

(h) by the substitution for the definition of "member of the Executive Council" of the following definition:

" **'member of the Executive Council'** means the member of the Executive Council **[referred to in section 217(1) of the Constitution]** of a province responsible for policing in the province;"

(i) by the substitution for the definition of "Minister" of the following definition:

" **'Minister'** means the Minister [**for Safety and Security**] of Police";

(j) by the insertion after the definition of "municipal police service" of the following definition:

" **'municipal public order policing capacity'** means a public order policing capacity established by a municipal police service";

(k) by the substitution for the definition of "National Commissioner" of the following definition:

" **'National Commissioner'** means the National Commissioner appointed in terms of section 207 (1) of the Constitution, and referred to in section 6(1)";

(l) by the substitution for the definition of "National Orders and Instructions" of the following definition:

" **'National [Orders and] Instructions'** means National **[Orders and]** Instructions issued under section 25(1) or which continue to apply in terms of section 72(4)(a)";

(m) by the substitution for the definition of "national public order policing unit" of the following definition:

" **'national public order policing [unit] capacity'** means the national public order policing **[unit] capacity** established in terms of section 17(1)";

(n) by the insertion after the definition of "national public order policing unit" of the following definitions in their respective alphabetical order:

" **'National Road Traffic Act'** means the National Road Traffic Act, 1996 (Act No. 93 of 1996);

'National Strategic Intelligence Act' means the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994);";

- (o) by the substitution for the definition of "Parliamentary Committees" of the following definition:

" **'Parliamentary Committees'** means the Standing Committees of the National Assembly and the **[Senate]** National Council of Provinces respectively responsible for **[safety]** police, justice and security affairs;";

- (p) by the substitution for the definition of "Provincial Commissioner" of the following definition:

" **'Provincial Commissioner'** means the Provincial Commissioner of a province, appointed in terms of section 207(3) of the Constitution, and referred to in section 6(2);";

- (q) by the insertion after the definition of "Provincial Commissioner" of the following definitions in their respective alphabetical order:

" **'provincial secretariat'** means a provincial secretariat constituted in terms of section 16 of the Civilian Secretariat for Police Service Act;

'Public Finance Management Act' means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

'Public Service Act' means the Public Service Act, 1994 (Proclamation No. 103 of 1994);";

- (r) by the deletion of the definition of "secretariat"; and
- (s) by the substitution for the definition of "Secretary" of the following definition:

" **'Secretary'** means the Secretary **[of]** for the Police Service appointed under section **[2(2)]** 7(1) of the Civilian Secretariat for Police Service Act;"

Insertion of Chapter 1A in Act 68 of 1995

2. The following Chapter is hereby inserted after Chapter 1 of the principal Act:

"CHAPTER 1A PURPOSE OF ACT

Purpose of Act

- 1A.** The purpose of this Act is to—
- (a) provide for a professional Service in terms of integrity, accountability and legitimacy;
 - (b) uphold and protect the rule of law and ensure good discipline and ethos associated with a professional Service; and to
 - (c) address the need for a dedicated capability to provide the quality and type of crime analysis and analytical products that would allow the Service to respond, both tactically and strategically, to crime challenges in the most effective and efficient manner.

Respect for public, in particular women, children and disabled persons

1B. Members of the Service, in the execution of their duties and in the performance of their functions, shall deal with the public with dignity and respect the rights of the public, especially the rights of women, children and persons with disabilities."

Substitution of heading to Chapter 2 of Act 68 of 1995

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

"[MINISTERIAL SERVICES] NATIONAL POLICING POLICY".

Repeal of sections 2, 3 and 4 of Act 68 of 1995

4. Sections 2, 3 and 4 of the principal Act are hereby repealed.

Insertion of section 4A in Act 68 of 1995

5. The following section is hereby inserted in the principal Act after section 4:

"Policing policy

4A. (1) The Minister must, after consulting the provincial

governments and taking into account the policing needs and priorities of the provinces as determined by the provincial executives, in terms of section 206(1) of the Constitution, determine the national policing policy.

(2) The national policing policy may make provision for different policies in respect of different provinces after taking into account the policing needs and priorities of these provinces."

Amendment of section 5 of Act 68 of 1995, as amended by section 1 of Act 57 of 2008

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

(a) by the substitution for subsection (1) of the following subsection:

"(1) The South African Police Service is hereby established as the single police service contemplated in section **[214(1)]** 199(1) of the Constitution **[is hereby established]**.";

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

"(2) The Service shall consist of—

(a) all persons who immediately before the commencement of **[this Act]** the South African Police Service Amendment Act, 2020, were members of the Service or the Reserve[—

(i) of a force which, by virtue of section 236 (7)(a) of the Constitution, is deemed to constitute part of the service;

(ii) appointed under the Rationalisation Proclamation;

(iii) of the Reserve by virtue of section 12(2)(k) of the Rationalisation Proclamation];

- (b) members appointed in terms of section 28(2) **[of this Act]**;
- (c) persons who become members of the Reserve under section 48(2) **[of this Act]**; and
- (d) members appointed to the Directorate **[for Priority Crime Investigation established by section 17C]**."; and

(c) by the addition of the following subsection:

"(3) Members referred to in—

(a) subsection (2)(a), (b) and (d), excluding members of the Reserve, serve full-time until—

- (i) reaching their age of retirement;
- (ii) expiry of their contracted term of service; or
- (iii) otherwise discharged from the Service in accordance with the law; and

(b) subsection (2)(c), serve on a part-time basis for such periods during which they are required to report for duty in the Service, unless their appointment is terminated in accordance with the law."

Amendment of section 6 of Act 68 of 1995, as substituted by section 1 of Act 10 of 2012

7. Section 6 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) There shall be a National Commissioner of the Service who shall be appointed in accordance with section 207(1) of the Constitution **[of the Republic of South Africa, 1996]**.";

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

"(2) There shall be a Provincial Commissioner of the Service for each province who shall be appointed by the National Commissioner subject to section 207(3) of the Constitution **[of the Republic of South Africa, 1996]**."

Amendment of section 8 of Act 68 of 1995

8. Section 8 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"If the National Commissioner has lost the confidence of the Cabinet, the President may establish a board of inquiry consisting of a judge or retired judge of the **[Supreme] High** Court as chairperson, and two other suitable persons, to—";.

Substitution of section 10 of Act 68 of 1995

9. The following section is hereby substituted for section 10 of the principal Act:

"[Board of Commissioners] Management Forum

10. (1) The **[Board of Commissioners]** Management Forum consisting of the National Commissioner, **[and]** Provincial Commissioners and other senior members of the management of the Service as determined from time to time by the National Commissioner, is hereby established.

(2) The functions of the **[board]** Management Forum shall be to promote co-operation and co-ordination in the Service.

(3) The **[board]** Management Forum shall be presided over by the National Commissioner or his or her nominee and the **[board]** Management Forum shall determine its own procedure."

Amendment of section 11 of Act 68 of 1995, as amended by section 2 of Act 10 of 2012

10. Section 11 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) The National Commissioner shall exercise control over and manage the police service in accordance with the national policing policy and the directions of the Minister as determined in section 207(2) of the Constitution [of the Republic of South Africa, 1996].";

(b) by the insertion after subsection (1) of the following subsections:

"(1A) Subject to the directions of the Minister of Police, the National Commissioner shall be responsible for—

- (a) the maintenance of an impartial, accountable, transparent and efficient Service;
- (b) the preservation of national security as defined in section 1 of the National Strategic Intelligence Act and in relation to the functions of the Service in terms of section 205(3) of the Constitution;
- (c) subject to the provisions of Chapter 6A, the investigation and prevention of organised crime or crime which requires national investigation and prevention or specialised skills;
- (d) international police liaison;
- (e) the keeping and provision of crime intelligence data, criminal records and statistics;
- (f) the education, training and development of members of the Service;
- (g) subject to Chapter 6A, the recruitment, appointment, promotion and transfer of all members of the Service;
- (h) the provision of forensic services;
- (i) such functions relating to the illegal movement of persons and goods at border control as may be assigned to the Service by law;
- (j) the establishment and maintenance of a national public order policing capacity to be deployed in support of and at the request of the Provincial Commissioner;
- (k) national protection services;

- (l) determining the boundaries of station areas aligned to official demarcated municipal boundaries;
- (m) the establishment of a specialised tactical capability for medium to high risk operations which require specialised skills; and
- (n) the implementation in the Service of an integrated policing model, involving—
 - (i) adherence to basic principles of policing;
 - (ii) compliance with democratic principles;
 - (iii) a community oriented focus;
 - (iv) the optimal use of information; and
 - (v) embracing innovation and digital policing.

(1B) Resource allocation must, subject to the availability of funds, be based on the principles of rationality, justice, fairness and equitableness, with the objective to contribute towards greater police efficiency and effectiveness.

(1C) In the process of allocating the budget for a province, the National Commissioner must consider the principles in subsection (1B), after consultation with the member of the Executive Council, who shall provide input to the National Commissioner within 30 calendar days from the date of request.

(1D) Any directions referred to in section 207(2) of the Constitution, issued by the Minister to the National Commissioner, must be made in writing and a report on such

directions must be tabled in Parliament by the Minister, in the annual report of the Service.";

(1E) "Directions" means directions in order to implement the national policing policy referred to in section 207(2) of the Constitution, the Strategic Plan and the Annual Performance Plan of the Service and not operational instructions;

and

- (c) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

"Without derogating from the generality of subsection (1) and (1A), the National Commissioner shall—".

Amendment of section 12 of Act 68 of 1995, as amended by section 2 of Act 41 of 1997

11. Section 12 of the principal Act is hereby amended:

- (a) by the substitution for subsection (1) of the following subsection:

"(1) Subject to this Act, and the directions of the National Commissioner a Provincial Commissioner shall have command of and control over the Service under his or her jurisdiction in the province and may exercise the powers and shall perform the duties and functions necessary to give effect to **[section 219 of the Constitution]** subsection (1A).";

- (b) by the insertion after subsection (1) of the following subsection:

"(1A) Subject to section 11A, a Provincial Commissioner must, within the province in respect of which he or she is appointed, be responsible for—

(a) the investigation and prevention of crime;

(b) the development of community-policing services;

(c) the maintenance of public order;

(d) the provision, in general, of all other visible policing services,

including—

(i) the establishment and maintenance of police stations;

(ii) crime reaction units; and

(iii) patrolling services; and

(e) a capacity for the prevention, combating and investigation of crime or to react against crime in regard to provincial institutions and personnel.";

(c) by the substitution for subsections (2) and (3) of the following subsections, respectively:

"(2) A Provincial Commissioner may—

(a) subject to a determination under section 11(2) (b), delimit any

[area] district in the province and determine the boundaries thereof until the province has been divided into as many **[areas] districts** as may be necessary for the purposes of the

organisation of the Service under his or her jurisdiction; and

(b) establish and maintain police stations and units in the province

[and determine the boundaries of station or unit areas].

(3) A Provincial Commissioner shall determine the distribution of the strength of the Service under his or her **[jurisdiction]** command in the province among the different **[areas]** districts, station areas, offices and units."; and

(d) by the addition of the following subsections:

"(4) Provincial Commissioners shall, by taking into account the needs and priorities of the province, contribute to the plan referred to in section 11(2)(a), developed by the National Commissioner.

(5) The contribution of the Provincial Commissioner, referred to in subsection (4) shall be submitted to the member of the Executive Council during the third quarter of each financial year, in order for the member of the Executive Council to make an input towards the contribution.

(6) The final approved plan referred to in section 11(2)(a), shall be presented to the member of the Executive Council by the Provincial Commissioner."

Amendment of section 13 of Act 68 of 1995, as amended by section 3 of Act 41 of 1997

12. Section 13 of the principal Act is hereby amended—

(a) by the substitution in subsection (3) for paragraph (b) of the following paragraph:

"(b) Where a member who performs an official duty is authorised by law to use force, he or she may—

(i) use only the minimum force which is **[reasonable]** reasonably necessary and proportional in the circumstances;

(ii) use deadly force only, subject to such force being reasonably necessary and proportional in the circumstances, if there is a threat of serious bodily harm to a member or any other person;
and

(iii) not use deadly force to protect property only.";

(b) by the addition to subsection (3) of the following paragraphs:

"(c) Whenever any member makes an official report to the Service on the use of force by another member or members of the Service during the execution of their duties, no self-incriminating answer given or statement made by the member making such report, will be admissible as evidence against that member in criminal proceedings instituted against that member in any court, except in criminal proceedings for perjury.

(d) Firearms that are fully automatic, as defined in the Firearms Control Act, may not be used for purposes of law enforcement during a gathering or demonstration.";

(c) by the substitution for subsection (6) of the following subsection:

"(6) Any member may, where it is reasonably necessary for the purposes of control over the illegal movement of people or goods across the borders of the Republic, without a warrant search any person, premises, other place, vehicle, vessel or aircraft, or

any receptacle of whatever nature, at any place in the Republic within 10 kilometres or any reasonable distance from any border between the Republic and any foreign state, or in the territorial waters of the Republic, or inside the Republic within 10 kilometres or any reasonable distance from such territorial waters, or at any airport as defined in section 1 of the **[Aviation Act, 1962 (Act No. 74 of 1962)]** Civil Aviation Act, 2009 (Act No. 13 of 2009), or within any reasonable distance from such airport and seize anything found in the possession of such person or upon or at or in such premises, other place, vehicle, vessel, aircraft or receptacle and which may lawfully be seized.";

(d) by the substitution of subsection (7) of the following subsection:

“(7) Upon receipt of the written authorisation referred to in paragraph (a), any member may cordon off the area concerned or part thereof, and may, where it is reasonably necessary in order to achieve the object specified in the written authorisation, without warrant, search any person, premises, except any private home and/or any person inside such private home, or vehicle, or any receptacle or object of whatever nature, in that area or part thereof and seize any article referred to in section 20 of the Criminal Procedure Act, 1977 (Act 51 of 1977), found by him or her in the possession of such person or in that area or part thereof: Provided that a member executing a search under this paragraph shall, upon demand of any person whose rights are or have been affected by the search or seizure, exhibit to him or her a copy of the written authorisation; Provided further that the provisions of section 21 with the exceptions provided for in section 22 of the Criminal Procedure Act 51 of 1977 shall apply to the search in terms of

this subsection of any private home and/or any person inside such private home within the cordoned off area, and the seizure of any article contemplated in this subsection found in any such private home or in the possession of any person inside such private home.";

- (e) by the substitution in subsection (8) for paragraphs (a) and (b) of the following paragraphs, respectively:

"(a) The National or Provincial Commissioner may, where it is reasonable in the circumstances in order to **[exercise a power or perform a function referred to in section 215]** achieve the objects referred to in section 205(3) of the Constitution, in writing authorise a member under his or her command~~[,] to~~

(i) set up a roadblock or roadblocks on any public road in a particular area or to set up a checkpoint or checkpoints at any public place in a particular area; or

(ii) whilst taking into account the safe operation of railway services, search any train.

(b) The written authorisation referred to in paragraph (a) shall specify the date, approximate duration, place **[and]**, object and police official in charge of the proposed action.";

- (f) by the substitution for subsection (10) of the following subsection:

"(10) The National or Provincial Commissioner may, in the exercise of any power or the performance of any function referred to in section **[215]** 205(3) of the Constitution, publish or cause to be published, or in any other manner display or cause to be displayed any information, photograph or sketch of any person.";

(g) by the substitution for subsection (12) of the following subsection:

"(12) (a) If the National Commissioner deems it necessary—

(i) for the purposes of performing the functions of the Service[,] or

(ii) to give effect to an international obligation,

he or she may, with the approval of the Minister, direct any member to perform service at any place outside the Republic.

(aA) If the National Head of the Directorate, considers it necessary for the purposes of performing the functions of the Directorate, he or she may, with the approval of the Minister, direct any member of the Directorate to perform service at any place outside the Republic.

(b) A member in respect of whom a direction has been issued under paragraph (a) or (aA), shall perform service in accordance with such direction and shall, while so performing service, remain, unless the Minister in a particular case otherwise directs, subject to the provisions of this Act as if performing service within the Republic.

(c) Whenever a member, including a member of the Directorate, performs a service outside the Republic, as contemplated in paragraphs (a) and (aA) such member—

(i) remains subject to all disciplinary measures otherwise applicable to the member and the member may be disciplined in terms of such measure within or outside the borders of the Republic; and

(ii) is subject to be prosecuted, and if convicted, may be sentenced in any court in the Republic in respect of any offence allegedly committed by such member in the host country in which such member is performing or has performed such service, if a similar offence exists in the Republic, and if—

(aa) it is provided in any international instrument to which the Republic is a State Party, that the Republic retains exclusive criminal and civil jurisdiction in respect of the member;

(bb) immunity, whether diplomatic or otherwise, is not granted to the member in terms of any international instrument; or

(cc) the member has not been convicted or acquitted on the relevant charge in any court in the host country where the member is performing or has performed any service, as contemplated in paragraphs (a) and (aA); and

(d) Any court in the Republic which is competent in respect of a similar offence referred to in paragraph (c)(ii), should it have been committed in the Republic, is competent to adjudicate upon an offence committed in the host country, by a member, including a member of the Directorate, who has served, or is serving outside the Republic, in the circumstances referred to in paragraphs (a) and (aA)."; and

(h) by the addition of the following subsection:

"(14) Notwithstanding any other provision in any other Act, whenever a member considers it necessary to perform a

search and seizure in order to prevent or investigate a crime, the provisions provided for in Chapter 2 of the Criminal Procedure Act, 1977, may be used."

Amendment of section 15 of Act 68 of 1995

13. Section 15 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

"(a) Subject to section **[15] 44** of the **[Exchequer Act, 1975 (Act No. 66 of 1975)]** Public Finance Management Act, any power conferred on the National or Provincial Commissioner, or the National Head of the Directorate by this Act or any other law, excluding the power contemplated in section 13(7)(a), may be delegated in writing by any such Commissioner or National Head to any member or other person in the employment of the Service, or a board or body established by or under this Act **[or a law referred to in section 217(3) of the Constitution]**, who or which shall exercise such power subject to the directions of the Commissioner or National Head concerned."

Amendment of section 15A of Act 68 of 1995, as inserted by section 6 of Act 6 of 2010

14. Section 15A of the principal Act is hereby amended—
(a) by the substitution for subsection (4) of the following subsection:

"(4) Subject to subsection (5), the fingerprints, body-prints or photographic images referred to in subsections (1), (2) and (3) shall only be used for purposes related to the detection of crime, the investigation of an offence, the identification of missing persons, the identification of unidentified human remains, the performance of a vetting investigation referred to in section 2A of the National Strategic Intelligence Act, the performance of integrity testing and lifestyle audits referred to in section 28A, or the conducting of a prosecution."; and

(b) by the substitution in subsection (6) for paragraph (a) of the following paragraph:

"(a) uses or who allows the use of those fingerprints, body-prints or photographic images for any purpose that is not related to the detection of crime, the investigation of an offence, the identification of missing persons, the identification of unidentified human remains, the performance of a vetting investigation referred to in section 2A of the National Strategic Intelligence Act, the performance of integrity testing and lifestyle audits referred to in section 28A, or the conducting of a prosecution; **[or]**".

Amendment of section 15L of Act 68 of 1995, as inserted by section 6 of Act 37 of 2013

15. Section 15L of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) From the commencement of this Chapter, all new recruits to the Service and any municipal police service must be required to submit a buccal sample for purposes of forensic DNA profiles derived therefrom to be included in the Elimination Index."

Amendment of section 16 of Act 68 of 1995, as amended by section 2 of Act 57 of 2008 and section 3 of Act 10 of 2012

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

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

"(h) which a Provincial Commissioner requests the National Head of the Directorate **[for Priority Crime Investigation]**, referred to in section 17C(2), to prevent or investigate by employing expertise and making resources available at national level and to which request the National Head of the Directorate **[for Priority Crime Investigation]** accedes **[in accordance with the approved policy guidelines];**" and

(b) by the substitution for subsection (3) of the following subsection:

"(3) In the event of a dispute between the National Head of the Directorate **[for Priority Crime Investigation]** and the National Commissioner or the National Head **[for Priority Crime Investigation]** of the Directorate and a Provincial Commissioner regarding the question whether criminal conduct or endeavour thereto falls within the mandate of the Directorate, the determination by the

National Head of the Directorate **[for Priority Crime Investigation in accordance with the approved policy guidelines]**, shall prevail."

Amendment of section 17 of Act 68 of 1995

17. Section 17 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

"[National public] Public order policing [unit] capacity";

(b) by the substitution for subsections (1) and (2) of the following subsections, respectively:

"(1) The National Commissioner shall**[, subject to section 218(1)(k) of the Constitution,]** establish and maintain a national public order policing **[unit] capacity**.

(2) The National Commissioner may deploy the national public order policing **[unit] capacity**, or any part thereof, at the request and in support of a Provincial Commissioner, taking into account—

(a) the reason for the request, including the nature of the threat;

(aa) the location and associated attributes of natural and man-made features thereof;

(b) the personnel and equipment available to the **[unit] national public order policing capacity in the area where assistance is required; and**

(c) any other circumstances anywhere in the national territory which may have an influence on the maintenance of public order and

which may require the deployment of the **[unit]** national public order policing capacity or any part thereof elsewhere.";

(c) by the insertion after subsection (2) of the following subsection:

"(2A) The deployment of the national public order policing capacity in a province will not derogate from the responsibility of the Provincial Commissioner to maintain public order in the relevant province."

(d) by the substitution for subsection (3) of the following subsection:

"(3) Where the national public order policing **[unit]** capacity or any part thereof is deployed under subsection (2), the **[unit]** capacity shall perform its functions subject to the directions of the Provincial Commissioner concerned: Provided that the mere fact of such deployment does not preclude the **[President]** Minister from exercising his or her powers under subsection (5) in relation to the area where the **[unit]** capacity is so deployed.";

(e) by the insertion after subsection (3) of the following subsection:

"(3A) Where the national public order policing capacity or any part thereof is deployed under subsection (2), such deployment shall be subject to the general or specific directives of the National Commissioner, relating to such deployment."

(3B) The national public order policing capacity, when deployed in a Province under subsection (2), shall operate under national command and control."

(f) by the substitution for subsections (4), (5), (6) and (7) of the following subsections, respectively:

"(4) The National Commissioner may withdraw the national public order policing **[unit]** capacity or any part thereof deployed under subsection (2), taking into account—

- (a) the prevailing circumstances where the **[unit]** national public order policing capacity or part thereof is so deployed and the extent to which public order has been restored;
- (aA) the location and associated attributes of natural and man-made features thereof;
- (b) the personnel and equipment available to the **[unit]** national public order policing capacity in the area where assistance is required; and
- (c) any other circumstances anywhere in the national territory which may have an influence on the maintenance of public order and which may require the deployment of the **[unit]** national public order policing capacity or any part thereof elsewhere:

Provided that the National Commissioner shall forthwith, at the written request of the Provincial Commissioner, withdraw the deployment of the **[unit]** national public order policing capacity or any part thereof so deployed, upon consideration of the reasons provided for such request, by the Provincial Commissioner.

(5) The **[President]** Minister may, in consultation with the Cabinet, direct the National Commissioner to deploy the national public order policing **[unit]** capacity in circumstances where a Provincial Commissioner is unable to maintain public order and the

deployment of the **[unit]** national public order policing capacity is necessary to restore public order.

(6) The National Commissioner shall, **[upon receiving a direction under]** subject to subsection (5), deploy the national public order policing **[unit]** capacity or such part thereof as may be necessary to restore public order to the area concerned, and may from time to time if he or she deems it necessary, deploy additional members of the **[unit]** national public order policing capacity in the area concerned or, subject to subsection (7), withdraw members of the **[unit]** national public order policing capacity from the area concerned if their continued presence is no longer required to restore or maintain public order in the area concerned or in any part thereof.

(7) Where the national public order policing **[unit]** capacity or any part thereof is deployed under subsection (5) and public order has been restored in the area concerned, the **[unit]** national public order policing capacity or part thereof shall continue to maintain public order in such area until the **[President]** Minister, in consultation with the Cabinet, directs the National Commissioner to withdraw the **[unit]** national public order policing capacity."; and

(g) by the addition of the following subsection:

"(8) The National Commissioner shall on a quarterly basis submit a written report to Parliament and submit a copy of the report to the Civilian Secretariat and the Independent Police Investigative Directorate on the—

- (a) number of deployments of the national public order policing capacity in terms of this section;
- (b) reasons for such deployment;
- (c) location of the deployments;
- (d) any deaths that has occurred during the deployment and the circumstances thereof;
- (e) the number of arrests that emanated from the deployment;
- (f) the number and nature of complaints filed with the Service against members as a result of the deployment; and
- (g) the steps taken in terms of disciplinary actions against members as a result of the complaints."

Amendment of section 17A of Act 68 of 1995, as inserted by section 3 of Act 57 of 2008

18. Section 17A of the principal Act is hereby amended by the deletion of the definition of "Directorate".

Amendment of section 17C of Act 68 of 1995, as inserted by section 3 of Act 57 of 2008 and substituted by section 6 of Act 10 of 2012

19. Section 17C of the principal Act is hereby amended by the addition of the following subsections:

"(4) Where the particular circumstances of the Directorate require a deviation from any Standing Order, National Instruction, or directive

made by the National Commissioner in respect of the Service, the National Head of the Directorate may, in writing, request a deviation from the prescripts of such a Standing Order, National Instruction, or directive in respect of personnel of the Directorate.

(5) The National Commissioner shall ensure that prescripts applicable to all members of the Service, take into account the operational needs and structures of the Directorate and, to that effect, must—

(a) consider any request by the National Head of the Directorate referred to in subsection (4) in good faith; and

(b) consult with the National Head of the Directorate before National Instructions relating to the Directorate are made."

Amendment of section 17CA of Act 68 of 1995, as inserted by section 7 of Act 10 of 2012

20. Section 17CA of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words following paragraph (b) of the following words:

"with due regard to his or her experience, academic qualifications, conscientiousness and integrity, to be entrusted with the responsibilities of the office concerned, as the National Head of the Directorate for a non-renewable fixed term of not shorter than seven years and not exceeding 10 years.";

(b) by the substitution in subsection (4) for the words following paragraph (b) of the following words:

"with due regard to his or her experience, academic qualifications, conscientiousness and integrity, to be entrusted with the responsibilities of the office concerned, as a Deputy National Head of the Directorate for a non-renewable fixed term of not shorter than seven years and not exceeding 10 years.";

- (c) by the substitution in subsection (6) for the words following paragraph (b) of the following words:

"with due regard to his or her experience, academic qualifications, conscientiousness and integrity, to be entrusted with the responsibilities of the office concerned, as a Provincial Head of the Directorate for a non-renewable fixed term of not shorter than seven years and not exceeding 10 years.";

- (d) by the substitution in subsection (12) for paragraph (e) of the following paragraph:

"(e) Whenever the office of a Deputy National Head of the Directorate is vacant the National Head of the Directorate shall appoint a suitably qualified person as an Acting Deputy National Head of the Directorate.";

- (e) by the deletion of subsections (15) and (16); and

- (f) by the substitution for subsection (19) of the following subsection:

"(19) Any disciplinary action against a Deputy National Head, Provincial Head, member or employee in the service of the Directorate, as may be applicable, shall be considered and finalised within the Directorate's structures subject to the relevant prescripts; Provided that, where the circumstances so require, the services of any

person within or outside the Service may be utilised for the disciplinary action."

Amendment of section 17D of Act 68 of 1995, as inserted by section 3 of Act 57 of 2008 and amended by section 8 of Act 10 of 2012

21. Section 17D of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) The functions of the Directorate are to prevent, combat and investigate~~—~~

(a)] national priority offences, which in the opinion of the National Head of the Directorate need to be addressed by the Directorate[, subject to any policy guidelines issued by the Minister and approved by Parliament;

(aA) selected offences not limited to] and offences referred to in Chapter 2 and section 34 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004)[; **and**

(b) any other offence or category of offences referred to it from time to time by the National Commissioner, subject to any policy guidelines issued by the Minister and approved by Parliament].";

(b) by the deletion of subsection (1A); and

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

"(2) If, during the course of an investigation by the Directorate, evidence of any other crime is detected and the National

Head of the Directorate considers it in the interests of justice, or in the public interest, he or she may extend the investigation so as to include any offence which he or she suspects to be connected with the subject of the investigation."

Amendment of section 17DA Act 68 of 1995, as inserted by section 9 of Act 10 of 2012

22. Section 17DA of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) The National Head of the Directorate shall not be suspended or removed from office except in accordance with the provisions of subsections **[(2),]** (3) and (4)."; and

(b) by the deletion of subsection (2).

Amendment of section 17E of Act 68 of 1995, as inserted by section 3 of Act 57 of 2008 and amended by section 10 of Act 10 of 2012

23. Section 17E of the principal Act is hereby amended by—

(a) the deletion of paragraph (c) of subsection (2);

(b) the deletion of subsection (3);

(c) the substitution for subsections (4), (5) and (6) of the following subsections, respectively:

"(4) Whenever the head of the Intelligence Structure referred to in subsection (2) (a) **[and (c)]** acting in terms of section 2A (6) of the

National Strategic Intelligence Act, 1994, upon reasonable grounds, degrades, withdraws or refuses a security clearance, of a member of the Directorate, the member is deemed to be unfit for further employment in the Service and the head of the relevant Intelligence Structure may request the National Commissioner **[may on request of]** and the National Head of the Directorate **[transfer such person from the Directorate, or if such person cannot be redeployed elsewhere in the Service,]** to discharge him or her[, **subject to the provisions of section 34**].

(5) A member of the Directorate may from time to time, or at such regular intervals as the National Head of the Directorate may determine, be subjected to a further security screening investigation.

(6) If, upon information at the disposal of the National Head of the Directorate, he or she reasonably believes that the person concerned poses a security risk, he or she may require the member to undergo a further security screening investigation."

Amendment of section 17F of Act 68 of 1995, as inserted by section 3 of Act 57 of 2008 and amended by section 11 of Act 10 of 2012

24. Section 17F of the principal Act is hereby amended by—

(a) the substitution for subsections (2) and (3) of the following subsections, respectively:

"(2) The National Head of the Directorate may request the secondment of personnel or a service arrangement regarding the performance of services of personnel from any other Government

department or Government institution, whenever he or she deems it necessary for the effective performance of the functions of the Directorate.

(3) The Directorate shall be assisted in the performance of its functions by personnel seconded or made available on a service arrangement by relevant Government departments or Government institutions, which may include personnel from the South African Revenue Service, the Financial Intelligence Centre and the Department of Home Affairs.";

(b) by the substitution for subsection (6) of the following subsection:

"(6) Without derogating from the functions of the Service in respect of crime intelligence, as provided for in the National Strategic Intelligence Act, **[1994 (Act No. 39 of 1994),]** the Directorate shall be supported by the **[Crime]** Intelligence Division of the Service, referred to in section 17O, to gather, correlate, evaluate, co-ordinate and use crime intelligence in the performance of its functions."; and

(c) by the substitution for subsection (6A) of the following subsection:

"(6A) The Head of the **[Crime]** Intelligence Division of the Service shall upon a request of the National Head of the Directorate make available crime intelligence capacity to assist the Directorate in a specific investigation.".

Amendment of section 17J of Act 68 of 1995, as inserted by section 3 of Act 57 of 2008

25. Section 17J of the principal Act is hereby amended by the substitution in subsection (1)(a) for subparagraph (iiB) of the following subparagraph:

"(iiB) the **[Head]** Divisional Commissioner of the **[Crime]** Intelligence Division of the **[South African Police]** Service;"

Amendment of section 17K of Act 68 of 1995, as inserted by section 3 of Act 57 of 2008 and amended by section 15 of Act 10 of 2012

26. Section 17K of the principal Act is hereby amended by the deletion of subsections (4), (7) and (8).

Amendment of section 17L of Act 68 of 1995, as amended by section 3 of Act 57 of 2008 and amended by section 16 of Act 10 of 2012

27. Section 17L of the principal Act is hereby amended—
(a) by the substitution for subsection (2) of the following subsection:

"(2) The performance of the functions provided for in respect of the retired judge does not derogate from the powers of the Independent **[Complaints]** Police Investigative Directorate **[referred to in section 50]** to investigate complaints in respect of any member, including members in the Directorate **[for Priority Crime Investigation]**.";

(b) by the insertion after subsection (4) of the following subsection:

"(4A) The retired judge may *mero motu*, where allegations referred to in subsection (4)—
(a) are made on behalf of a complainant; or
(b) emerge from other related investigations with which the retired judge is involved,
investigate such allegations.";

(c) by the substitution for subsection (5) of the following subsection:

"(5) The retired judge may upon receipt of a complaint investigate such complaint or refer it to be dealt with by, amongst others, the Civilian Secretariat, the Independent **[Complaints]** Police Investigative Directorate, the National Commissioner, the Head of the Directorate, the relevant Provincial Commissioner, the National Director of Public Prosecutions, the Inspector-General of Intelligence, or any institution mentioned in chapter 9 of the Constitution **[of the Republic of South Africa, 1996]**.";

(d) by the insertion after subsection (6) of the following subsections:

"(6A) The retired judge must identify a suitably qualified and experienced person as office manager in the office of the retired judge, who—
(a) is responsible for all administrative, financial and clerical functions of the office of the retired judge;
(b) is accountable to the Secretary for all the monies received by the office of the retired judge; and
(c) is under control and authority of the retired judge.

(6B) The person contemplated in subsection (6A) must be appointed by the Secretary.

(6C) The appointment and other conditions of service, including salary and allowances of the office manager in the office of the retired judge are regulated in terms of the Public Service Act.

(6D) The retired judge must refer any matter relating to misconduct and incapacity of the office manager in the office of the retired judge to the Civilian Secretariat.

(6E) The office manager in the office of the retired judge must appoint staff as may be necessary to enable the retired judge to perform his or her functions in terms of this Act.

(6F) The staff component must be established in accordance with the Public Service Act.

(6G) The conditions of service, including salaries and allowances of the staff component, are regulated in terms of the Public Service Act.

(6H) (a) The office manager in the office of the retired judge must appoint one or more persons with legal, investigative or any other expertise as assistants when required by the retired judge, to assist the retired judge with any specialised aspect of his or her functions or investigation.

(b) The assistants referred to in paragraph (a) must be appointed for a fixed period or until the completion of a specific task.

(c) The remuneration of the assistants referred to in paragraph (a) must be determined in accordance with the Public Service Act.

(d) The assistants referred to in paragraph (a) must perform such functions as authorised and directed by the retired judge."

(e) by the substitution in subsection (8) for paragraph (b) of the following paragraph:

"(b) may enter any building or premises under the control of the Service, in order to obtain such information and documents;
[and]";

(f) by the insertion in subsection (8) after paragraph (b) of the following paragraph:

"(bA) may summons any complainant, any member of the public or any member of the Service to appear before him or her and to produce information or documents under the control of such person;"

(g) by the insertion after subsection (8) of the following subsection:

"(8A) Any person who fails or refuses to comply with a summons issued by the retired judge in terms of this section is guilty of an offence, and upon conviction liable to a fine or to imprisonment for a period not exceeding two years."; and

(h) by the substitution for subsection (10) of the following subsection:

"(10) The National Head of the Directorate may request the retired judge to investigate complaints or allegations relating to

investigations by the Directorate or alleged interference with such investigations."

Insertion of Chapters 6B and 6C in Act 68 of 1995

28. The following Chapters are hereby inserted after Chapter 6A of the principal Act:

"CHAPTER 6B SPECIALISED UNITS

Establishment of specialised units

17M. Subject to Chapter 6A, the National Commissioner shall, after consultation with the Management Forum —

(a) establish specialised units with the objective of the prevention, combating and investigation of organised crime, crime which requires national prevention or investigation, or crime which requires specialised skills in the prevention and investigation thereof, as referred to in section 16(1), read with section 16(2), as well as corruption and cybercrime, and which crimes are not being investigated by the Directorate referred to in Chapter 6A;

(b) establish a unit referred to in paragraph (a) to ensure that crimes referred to in paragraph (a) are investigated on national level, where required;

- (c) ensure that a unit established in terms of this section has the capability, capacity and competence to fulfil their required purpose; and
- (d) ensure the deployment of a unit in a province after consulting the provincial government and taking into account the policing needs and priorities of the province.

CHAPTER 6C

POLICE SERVICE INTELLIGENCE (ss17N – 17V)

Definitions in Chapter

17N. In this Chapter, unless the context indicates otherwise—

- (a) **'police service intelligence'** includes—
- (i) 'counter-intelligence'; as defined in section 1 of National Strategic Intelligence Act, within the Service, as determined by section 2(3) of the National Strategic Intelligence Act;
- (ii) 'crime intelligence'; as defined in section 1 of the National Strategic Intelligence Act; and
- (iii) 'departmental intelligence' as defined in section 1 of the National Strategic Intelligence Act.”;
- (b) **'Intelligence Division'** means the Intelligence Division of the Service contemplated in section 17O;

Intelligence Division of Service

17O. (1) The Crime Intelligence Division in existence in the Service immediately before the commencement of the South African Police Service Amendment Act, 2020, continues as the Intelligence Division.

(2) The Divisional Commissioner for the Crime Intelligence Division of the Service, immediately before the commencement of the South African Police Service Amendment Act, 2020, continues to serve as the Divisional Commissioner of the Intelligence Division, until his or her retirement or his or her services are terminated in terms of this Act.

Reporting line of Divisional Commissioner of the Intelligence Division

17P. The Divisional Commissioner of the Intelligence Division, in addition to any reporting function in terms of the National Strategic Intelligence Act, reports to the National Commissioner and may, in circumstances where he or she deems it necessary in the interest of justice, the public interest or the security of the Republic, report particular matters directly to the Minister.

Application of strategic and operational intelligence

17Q. (1) The Intelligence Division shall, subject to the National Strategic Intelligence Act, gather, correlate, evaluate and use—

(a) crime intelligence and departmental intelligence for purposes of—

- (i) ensuring national security; and
- (ii) assisting in the execution of policing policy; and
- (b) operational intelligence for purposes of—
 - (i) the prevention, combating and investigation of crime;
 - (ii) the maintenance of public order;
 - (iii) protecting and ensuring the inhabitants of the Republic and their property;
 - (iv) upholding and enforcing the law;
 - (v) collating and verifying crime information to inform, amongst others, targeted police patrols, local operational planning and efforts to improve and strengthen crime investigation, reduction and prevention;
 - (vi) generating the kind of information needed to better understand the type of crime, violence, threats and vulnerabilities that disparate communities face supported by a community-centred approach to policing; and
 - (vii) ensuring the security of National Key Points¹ and critical infrastructure.
- (2) The Intelligence Division shall be managed from a national level—
 - (a) to support the Service, in general, to gather, correlate, evaluate, co-ordinate and use crime intelligence in pursuance of its objects; and

¹ The National Key Points Act, 1980 (Act No. 102 of 1980) is still in force, but will be repealed by the Critical Infrastructure Protections Act, 2019 (Act No. 8 of 2019), which Act, in terms of section 32 thereof comes into operation on a date determined by the President by proclamation in the Gazette. Should that Act come into operation during the promotion of this Bill, it will be inserted in the text of the Bill.

- (b) to support the Directorate, referred to in Chapter 6A in the manner referred to in section 17F(6) and (6A); and
- (c) to perform the functions referred to in sections 2(3), 2A and 3 of the National Strategic Intelligence Act.

Co-operation with other intelligence services

17R. The Intelligence Division shall co-operate with any other intelligence service or body created by or under any other law, subject to the National Strategic Intelligence Act.

Counter-intelligence by Intelligence Division

- 17S. The Intelligence Division shall—
- (a) conduct and institute counter-intelligence measures and activities within the Service; and
- (b) conduct vetting investigations of and issue security clearances to—
- (i) members employed in the Directorate in terms of and in accordance with section 2A of the National Strategic Intelligence Act, when determined by the Minister under section 17E(2)(a) as the relevant Intelligence Structure to do so; and
- (ii) other members of the Service and persons as determined in section 2A(1) of the National Strategic Intelligence Act.

who require a security clearance due to their access to classified information, or the sensitivity of the functions performed by such members.

Determination of security classification

17T. (1) A member, employee or person contemplated in subsection 17U(b) may not be enrolled, appointed or promoted, receive a commission or be retained as a member or employee, unless such member or employee has been issued with the appropriate security clearance by the Intelligence Division.

(2) No member, employee or person contemplated in section 17U(b) may claim an automatic right by virtue of enrolment, appointment, promotion, receipt of commission or retention to obtain, retain or be issued with a security clearance or any grade of security clearance.

(3) The Divisional Commissioner of the Intelligence Division shall determine whether any security clearance or a specific grade of security clearance must be issued to any member, employee or person contemplated in section 17U(b).

(4) The grade of security clearance issued to a member, employee or person in terms of subsection (3)—

(a) shall be specified in a certificate, issued by the Divisional

Commissioner of the Intelligence Division which certificate must be prima facie proof of the grade of security clearance so issued;

(b) remains in force until the next determination is made under subsection (3) or until the clearance lapses or is downgraded or withdrawn in terms of this Act; and

(c) is subject to periodic revision by the Intelligence Division.

Discharge of members when security clearance is degraded, withdrawn or refused

17U. (1) If the security clearance of a member is degraded, withdrawn or refused, the member is deemed unfit for further employment in the Service and the National Commissioner may discharge such a member if the member indicates that he will not appeal or no appeal has been lodged within the period provided for in section 17V(4).

(2) Any member in respect of whom a security clearance has been degraded, withdrawn or refused, may appeal to the Minister in accordance with section 17V(4) against such decision.

(3) The National Commissioner may transfer a member who is deployed in circumstances where the member cannot function without a security clearance, to another unit whilst an appeal against the degrading, withdrawal or refusal of such member's security clearance is pending or in the period within which the member is allowed to appeal.

(4) The National Head of the Directorate may transfer a member of the Directorate who is deployed in circumstances where the member cannot function without a security clearance, to another unit within the Directorate whilst an appeal, in terms of subsection (2), against the

degrading, withdrawal or refusal of such member's security clearance is pending, or in the period within which the member is allowed to appeal.

(5) Where a member's appeal in terms of subsection (2) has been unsuccessful the member shall be deemed to be unfit for further employment in the Service and—

(a) the National Commissioner, in the case of a member of the Service, who is not a member of the Directorate; or

(b) the National Head of the Directorate, in the case of a member of the Directorate,

may discharge him or her.

Notification of granted or refused security clearance

17V. (1) The Divisional Commissioner of the Intelligence Division shall give notice, in writing, to every member, employee or person in respect of whom a determination has been made in terms of section 17T(4).

(2) (a) Subject to paragraph (b), the Divisional Commissioner of the Intelligence Division or an officer authorised by him or her in writing shall, in writing, furnish every member, employee or person whose security clearance or particular grade of security clearance has been degraded, withdrawn or refused, in terms of section 17U, with the grounds and reasons for such refusal, degrading or withdrawal.

(b) No person may reveal any counter-intelligence measure taken, any source of information or the identity of any person involved in the collection or giving of information with regard to a vetting

investigation and evaluation, or allude to it in a manner which will enable a person to identify it.

(3) No security clearance or specific grade of security clearance may be degraded, withdrawn or refused, without the member, employee or person who will be affected thereby being afforded reasonable opportunity to present information regarding such matter.

(4) Within 60 calendar days after having received the reasons contemplated in subsection (2)(a), the member, employee or person concerned may lodge an appeal to the Minister against the refusal, degrading or withdrawal of security clearance and must set out the grounds for the appeal.

(5) After considering the grounds of appeal and the reasons for a decision, the Minister shall as soon as practicable confirm, set aside or vary the decision, or substitute any other decision for the decision of the Head of Police Intelligence or an officer authorised by such Head.

(6) The Minister must inform the member of the outcome of the appeal and provide the reasons for a decision to set aside or vary the decision of the Head of Police Intelligence.

Substitution of heading to Chapter 7 of Act 68 of 1995

29. The following heading is hereby substituted for the heading to Chapter 7 of the principal Act:

"COMMUNITY [POLICE] POLICING FORUMS AND BOARDS".

Amendment of section 18 of Act 68 of 1995

30. Section 18 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

"[Objects of] Liaising with community through community [police] policing forums and boards";

(b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"The Service shall, in order to achieve the objects contemplated in section **[215]** 205(3) of the Constitution, liaise with the community through community **[police]** policing forums, [and area and] as well as national, provincial and district community [police] policing boards, in accordance with sections **[19, 20 and 21,]** 6B, 6C, 6D, 6E and 6H of the Civilian Secretariat for Police Service Act, with a view to—";

(c) by the substitution in subsection (1) for paragraphs (d) and (e) of the following paragraphs, respectively:

"(d) improving the rendering of police services to the community at national, provincial, **[area]** district and local levels;

(e) improving transparency in and oversight over, the Service and accountability of the Service to the community; and";

(d) by the insertion after subsection (1) of the following subsections:

"(1A) The members designated by the station commander, district commanders and the Provincial Commissioner, from time to time for that purpose, shall be *ex officio* members of the community policing forum, sub-forum and district and provincial board

established at the police station, district or provincial boards respectively, in terms of the Civilian Secretariat for Police Service Act, and must attend meetings of the respective forums and boards diligently.

(1B) The monthly reports by provincial and district community policing boards and forums which are submitted in terms of section 6H(2) of the Civilian Secretariat for Police Service Act, shall be considered and all reasonable steps shall be taken to address concerns expressed in these reports."

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

"(2) This Chapter shall not preclude liaison by the Service with the community by means other than through community **[police]** policing forums and boards."; and

(f) by the addition of the following subsection:

"(3) Subject to availability, police stations and districts shall provide transport and office space to community policing forums."

Repeal of sections 19, 20, 21, 22 and 23 of Act 68 of 1995

31. Sections 19, 20, 21, 22 and 23 of the principal Act are hereby repealed.

Amendment of section 24 of Act 68 of 1995

32. Section 24 of the principal Act is hereby amended by—

(a) the insertion in subsection (1) of the following paragraphs:

“(aA) in respect of Deputy National Commissioners and Divisional

Commissioners:

- (i) their roles, functions, duties and obligations;
- (ii) requirements for their appointment; and
- (iii) the institution and conduct of disciplinary proceedings or inquiries against them;

(kA) injuries and diseases sustained or contracted by members in the course of their employment, or death as a result of such injury or disease, to supplement, where required the provisions of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act 130 of 1993);

(b) the substitution for paragraph (c) of subsection 1 of the following paragraph:

“(cc) **[the proper functioning of the directorate, including]** the referral to the **[directorate]** Independent Police Investigative Directorate of complaints received by the police;

(c) the substitution for subsection (3) of the following subsection:

“(3) Any regulation under subsection (1) (cc) shall be made **[in] after** consultation with the Executive Director.”.

Amendment of section 25 of Act 68 of 1995

33. Section 25 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

"National [orders and instructions] Instructions";

- (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"The National Commissioner may issue **[national orders and instructions]** National Instructions regarding all matters which—"; and

- (c) by the substitution for subsections (2) and (3) of the following subsections, respectively:

"(2) National **[orders and instructions]** Instructions issued under subsection (1) shall be known and issued as National **[Orders and]** Instructions and shall be applicable to all members.

(3) The National Commissioner may issue different National **[Orders and]** Instructions in respect of different categories of members."

Amendment of section 26 of Act 68 of 1995

34. Section 26 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading:

"Provincial [orders and instructions] Instructions"; and

- (b) by the substitution for subsections (1), (2) and (3) of the following subsections, respectively:

"(1) Provincial Commissioners may issue **[orders and]** instructions which are not inconsistent with this Act or the National **[Orders and]** Instructions.

(2) **[Orders and instructions]** Instructions issued under subsection (1) shall be known and issued as the Provincial

[Orders and] Instructions of the province concerned and shall be applicable to members under the command of the Provincial Commissioner concerned only.

(3) If any Provincial **[Order or]** Instruction is inconsistent with a National **[Order or]** Instruction, the National **[Order or]** Instruction shall prevail."

Substitution of section 27 of Act 68 of 1995, as amended by section 17 of Act 10 of 2012

35. The following section is hereby substituted for section 27 of the principal Act:

"Filling of posts

27. The filling of any post in the Service, whether by appointment, promotion or transfer, shall promote the basic values and principles governing public administration."

Amendment of section 28 of Act 68 of 1995, as amended by section 18 of Act 10 of 2012

36. Section 28 of the principal Act is hereby amended—
(a) by the insertion after subsection (1) of the following subsections:

"(1A) Any deviation from the prescribed process which stipulates the—

(a) scope and requirements of a post;

(b) need to advertise the post;

(c) qualifications and requirements for the applications for a post;

(d) requirement that a person may not apply for a post if the person has a criminal record; and

(e) requirement for a properly constituted panel to assess candidates for a post,

must be based on a justifiable reason which must be recorded in writing.

(1B) All posts must be filled following a transparent, competitive and merit-based process to ensure the best-suited person is appointed."; and

(b) by the addition of the following subsections:

"(4) No person may be appointed as a member of the Service if that person is not a citizen of the Republic.

(5) The Minister must, in consultation with the Minister of Home Affairs, prescribe a process in order for the Department of Home Affairs to verify that a member or potential member of the Service is a citizen of the Republic and to report the outcome of such verification process to the Service."

Insertion of sections 28A, 28B and 28C in Act 68 of 1995

37. The following sections are hereby inserted in the principal Act after section 28:

"Integrity testing and lifestyle audits

28A. (1) Every person that is newly recruited or considered for appointment to the Service as a police official, after the commencement of the South African Police Service Amendment Act, 2020, shall be subjected to a prescribed integrity test before appointment in the Service.

(2) The integrity test referred to in subsection (1) may entail the use of fingerprints, a buccal sample analysed for a DNA profile, as defined in section 15E, a polygraph, financial disclosures, disclosure of income and expenses, membership of entities such as boards, directorships and institutions, and determination of contracts with the State.

(3) No person contemplated in subsection (1) may be appointed in the Service unless an integrity test has been successfully completed in respect of the person.

(4) A lifestyle audit, as prescribed, may be performed in respect of any member, in respect of whom there are reasonable grounds to suspect that the person is living above his or her income.

(5) The lifestyle audit referred to in subsection (4) may entail the use of financial disclosures, including the disclosure of income and

expenses, membership of entities such as boards, directorships and institutions, and determination of contracts with the State.

(6) Any member may be subjected to drug testing in the prescribed manner.

(7) Integrity testing of prospective members must be performed by the Division in the service responsible for Human Resources.

(8) Life-style audits of members must be performed by the Intelligence Division.

(9) A comparative search may be made into any official database in the Service in respect of the person whose integrity test or lifestyle audit is being performed.

Taking and use of fingerprints of members

28B. (1) The National Commissioner must ensure that fingerprints of members are taken and stored in computerised or other form on a database maintained within the Service.

(2) The National Commissioner may direct that fingerprints of members be taken from time to time during their employment to enhance a professional police service based on the principles of integrity and accountability, which may include, but is not limited to, establishing whether a member has been convicted of an offence.

(3) Any person who, with regard to any fingerprints taken of a member—

(a) uses or allows the use of those fingerprints that is not related to the purposes set out in subsection (2);

(b) tampers with or manipulates the process or the fingerprints in question;

or

(c) falsely purports that fingerprints are from a specific member whilst knowing them to have been taken from another person,

is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 15 years.

(4) The database contemplated in subsection (1) will be kept and maintained separately from the criminal database, as the Personnel Database, within the Division responsible for keeping and processing fingerprints.

(5) Fingerprints of members stored on a database contemplated in subsection (1) may be checked against any database held by any national department, including the Service, irrespective of whether the fingerprints stored on these respective databases were collected before or after the coming into operation of this section.

Security measures on integrity of information on database

28C. (1) The National Commissioner must secure the integrity of fingerprints of members kept on the database provided for in section 28B(1) by taking appropriate, reasonable, technical and organisational measures to prevent—

(a) loss of, damage to, or unauthorised destruction of information on the database; and

(b) unlawful access to or processing of information on the database.

(2) In order to give effect to subsection (1), the National Commissioner must take reasonable measures to—

(a) identify all reasonable foreseeable internal and external risks to information on the database under his or her control;

(b) establish and maintain appropriate safeguards against the risks identified;

(c) regularly verify that the safeguards are effectively implemented; and

(d) ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.

(3) The National Commissioner must have due regard to generally accepted information security practices and procedures which may apply to the Service generally or be required in terms of any law relating to security of information applicable to the Service.

(4) The National Commissioner must ensure that the fingerprints of a member kept on the database as contemplated in section 28B(1) must be destroyed within a period of 90 days after termination, for whatever reason, of his or her employment as a member."

Amendment of section 29 of Act 68 of 1995

38. Section 29 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) The Minister may, by notice in the *Gazette*, designate—

(a) categories of personnel employed on a permanent basis in the Service and who are not members, as members;

(b) employees appointed on a permanent basis in the Service in terms of the Public Service Act, as members of the Service with different terms and conditions of service; and

(c) members of the Service appointed under this Act as public service members in terms of the Public Service Act, as members of the Service with different terms and conditions of service."

(b) by the insertion after subsection (1) of the following subsection:

"(1A) The Minister may determine whether any person referred to in subsection (1) (a), (b) or (c) shall have the powers vested in a member of the Service."; and

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

"(2) Personnel designated as members under subsection (1), shall be deemed to be members appointed to posts in the fixed establishment of the Service under section 28(2) with effect from a date determined by the Minister in the notice concerned: Provided that a person who is a member of a category of personnel so designated who does not, within one month of such designation, consent **[thereto and, if applicable, consent as required by section 212 (7)(b) of the Constitution,]** to having the retirement age

applicable to him or her [on 1 October 1993] changed as a result of such designation, shall not be affected by such notice."

Substitution of section 32 of Act 68 of 1995

39. The following section is hereby substituted for section 32 of the principal Act:

"Training

32. (1) The National Commissioner shall determine the criteria for education, training and development that members under his or her command shall undergo.

(2) The National Head of the Directorate shall determine the criteria for education, training and development that members of the Directorate must undergo.

(3) The National Commissioner shall determine the criteria for education, training and development of police trainees and lateral appointees."

Amendment of section 33 of Act 68 of 1995

40. Section 33 of the principal Act is hereby amended—

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

"(2) A Deed of Commission, appointment certificate issued by the National Commissioner, or a President's Minute, bearing the signatures of the President and the Minister, or **[replicas]** certified copies thereof, shall be proof of appointment as commissioned officer.";

(b) by the substitution in subsection (3) for paragraph (a) of the following paragraph:

"(a) the **[discharge]** dismissal of such officer following on disciplinary proceedings under section 40 or an inquiry under section 34(1)(b), (c) or (d).";

(c) by the deletion in subsection (3) of the word "or" at the end of paragraph (c);

(d) by the deletion in subsection (3) of the full stop at the end of paragraph (d) and the insertion of a semi-colon;

(e) by the addition to subsection (3) of the following paragraphs:

"(e) the removal from office of the National Commissioner, Deputy National Commissioner, or Provincial or Divisional Commissioner based on misconduct as referred to in section 9;
or

(f) the removal from office of the National Head of the Directorate referred to in Chapter 6A on the basis of misconduct in terms of section 17DA(3)(a).";

(f) by the substitution for subsection (5) of the following subsection:

"(5) Any commissioned officer who leaves the Service because of his or her discharge in terms of section 35, retirement or resignation, shall retain the commission and rank he or she held

immediately prior to his or her discharge, retirement or resignation, unless the Minister, on the recommendation of the National Commissioner, otherwise directs."; and

(g) by the addition of the following subsection:

"(6) Notwithstanding the provisions of subsection (5), any commissioned officer who leaves the Service because of his discharge, retirement or resignation, shall, upon re-enlistment in the Service—

(a) forfeit the commission or rank he or she held immediately prior to his or her discharge, retirement or resignation, if such officer is re-enlisted in the rank of non-commissioned officer; or

(b) retain the commission if such officer is re-enlisted at the level of commissioned officer, but he or she shall hold the new rank applicable to the post enlisted to."

Amendment of section 34 of Act 68 of 1995, as amended by section 5 of Act 41 of 1997

41. Section 34 of the principal Act is hereby amended by the insertion after subsection (2) of the following subsection:

"(2A) (a) A member who absents himself or herself from his or her official duties without permission of his or her commander for a period exceeding 30 calendar days, is deemed to have been dismissed from the Service on account of misconduct with effect from the date immediately succeeding his or her last day of attendance at his or her place of duty.

(b) A member, contemplated in paragraph (a), who assumes other employment, is deemed to have been dismissed in terms of paragraph (a), irrespective of whether the period of one calendar month has expired or not.

(c) If a member who is deemed to have been dismissed in terms of paragraph (a), reports for duty at any time after the expiry of the period referred to in paragraph (a), the National Commissioner may, on good cause shown, approve the reinstatement of that member in the Service in his or her former or any other post or position, and in such a case the period of his or her absence from official duty will be deemed to be absence on vacation leave, without pay or leave, on such other conditions as the National Commissioner may determine.

(d) Notwithstanding the provisions of paragraph (c), the National Commissioner may follow the procedure contemplated in subsection (2)."

Amendment of section 35 of Act 68 of 1995, as amended by section 35 of Act 47 of 1997

42. Section 35 of the principal Act is hereby amended—

(a) by the substitution for the words preceding paragraph (a) of the following words:

"The National Commissioner may, subject to the provisions of the
[Government Service Pension Act, 1973 (Act No. 57 of 1973)]

Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996), discharge a member—"; and

(b) by the substitution for paragraph (c) of the following paragraph:

"(c) if the President or a Premier appoints him or her in the public interest under any law to an office to which the provisions of this Act or the Public Service Act[, **1994 (promulgated under Proclamation 103 of 1994)**,] do not apply."

Amendment of section 36 of Act 68 of 1995

43. Section 36 of the principal Act is hereby amended—

(a) by the deletion of subsection (3); and

(b) by the addition of the following subsection:

"(7) An application made by a member in terms of subsection (2) shall be considered and finalised within 60 days from the date of receipt thereof by the National Commissioner and if the application for reinstatement is not—

(a) approved, motivated reasons for such non-approval must be provided by the National Commissioner; or

(b) finalised by the National Commissioner within 60 days, the member shall be deemed to have been re-employed from the date upon which he or she is deemed to have been so discharged."

Repeal of section 37 of Act 68 of 1995

44. Section 37 of the principal Act is hereby repealed.

Substitution of section 40 of Act 68 of 1995

45. The following section is hereby substituted for section 40 of the principal Act:

"Discipline

40. (1) Disciplinary proceedings may be instituted in the prescribed manner against a member on account of misconduct, whether such misconduct was committed within or outside the borders of the Republic.

(2) The National Commissioner shall establish a disciplinary system within the Service which involves dedicated, properly qualified and trained units to perform functions related to presiding officers and disciplinary officers."

Amendment of section 43 of Act 68 of 1995

46. Section 43 of the principal Act is hereby amended—

(a) by the substitution for subsections (2) and (3) of the following subsections, respectively:

"(1) **[Subject to section 36, a] A member who is [in detention or is serving a term of imprisonment] being detained**, shall be deemed to be suspended from the Service for the period during which he or she is so detained **[or is serving such term of imprisonment]**.

(2) A member referred to in subsection (1) shall, unless the National, Divisional or Provincial Commissioner otherwise directs, not be entitled for the applicable period to any salary, wages, allowances, privileges or benefits to which he or she would otherwise be entitled as a member."; and

(b) by the substitution in subsection (3) for the words following paragraph (b) of the following words:

"such member may make representations to the National, Divisional or Provincial Commissioner that any salary, wages, allowances, privileges or benefits forfeited by him or her under section 36(1) or subsection (2), be restored to him or her."

Amendment of section 45 of Act 68 of 1995

47. Section 45 of the principal Act is hereby amended—

(a) by the substitution in paragraph (a) of subsection (3) for the words preceding subparagraph (i) of the following words:

"Subject to paragraph (b), a member who₁ in terms of **[section 212 (7) (b) of the Constitution or]** any **[other]** law₁ has the right to retire at an earlier age than that contemplated in subsection (1)(a), shall give

written notification to the National Commissioner of his or her wish to be so retired and he or she shall—"; and

(b) by the deletion of subsection (10).

Amendment of section 49 of Act 68 of 1995

48. Section 49 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) No member may, during a period in which a state of national defence, declared under section **[82(4)(b)(i)]** 203(1) of the Constitution, or a state of emergency, **[proclaimed]** declared in accordance with section **[34(1)]**37(1) of the Constitution, is in force, resign from the Service without the written permission of the National Commissioner."

Substitution of section 60 of Act 68 of 1995

49. The following section is hereby substituted for section 60 of the principal Act:

"Seizure or attachment of property of Service

60. Property of the Service may only be seized or attached in consequence of a judgment or order of a court of law."

Amendment of section 63 of Act 68 of 1995

50. Section 63 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The National Commissioner shall, with due regard to sections **[215, 218 and 219 of the Constitution]** 11 and 12, determine whether a particular function, duty or service falls within the scope of the normal and generally accepted responsibilities of the Service and, if such function, duty or service does not fall within such scope, it shall, subject to subsection (2), be performed only on such conditions as may be prescribed in consultation with the National Treasury".

Amendment of section 64 of Act 68 of 1995, as substituted by section 2 of Act 83 of 1998

51. The following section is hereby substituted for section 64 of the principal Act:

"Interpretation

64. This Chapter shall not be interpreted so as to derogate from the powers of the Minister of Transport, the Minister responsible for local government or the **[member]** members of the Executive Council responsible for transport, **[and]** traffic matters and local government, nor shall it be interpreted as conferring any power on any functionary to interfere with the

exercise of their powers by the Minister of Transport, the Minister responsible for local government or the **[member]** members of the Executive Council responsible for transport, **[and]** traffic matters and local government, respectively.".

Amendment of section 64A of Act 68 of 1995, as inserted by section 3 of Act 83 of 1998

52. Section 64A of the principal Act is hereby amended—

(a) by the substitution in subsection (3) for paragraph (a) of the following paragraph:

"(a) **[after]** in consultation with the National Commissioner, taking into account the factors mentioned in paragraph (d);";

(b) by the deletion in subsection (3) of the word "and" at the end of paragraph (b);

(c) by the insertion in subsection (3) after paragraph (c) of the word "and";

(d) by the addition to subsection (3) of the following paragraph:

"(d) after considering the feasibility of establishing a municipal police service for that specific geographical area, taking into account the need and resources of that specific local community and whether such establishment will contribute to effective policing in that part of the country."; and

(e) by the insertion after subsection (3) of the following subsection:

"(3A) Whenever the National Commissioner and the member of the Executive Council are unable to agree on an application

for the establishment of a municipal police service, the Minister shall mediate between the parties."

Substitution of section 64B of Act 68 of 1995, as inserted by section 3 of Act 83 of 1998

53. The following section is hereby substituted for section 64B of the principal Act:

"[Chief Executive Officer of municipality] Municipal manager

64B. The [chief executive officer] municipal manager of a municipality shall be responsible to the municipal council for the functioning of the municipal police service, taking into consideration national policing priorities and efforts."

Amendment of section 64C of Act 68 of 1995, as inserted by section 3 of Act 83 of 1998

- 54.** Section 64C of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading:

"[Executive head] Chief of municipal police service";
 - (b) by the substitution for subsection (1) of the following subsection:

"(1) Subject to section 64D, a municipal council, after consultation with the National Commissioner, shall appoint a member of the municipal police service as the **[executive head] Chief** thereof.";

- (c) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

"The **[executive head] Chief** shall, subject to this Act, national standards determined by the National Commissioner, and the directives of the **[chief executive officer of the municipality] municipal manager**, exercise control over the municipal police service, and shall—";

- (d) by the substitution in subsection (2) for paragraph (f) of the following paragraph:

"(f) **[either personally or through]** ensure that a member or members of the municipal police service designated by him or her for that purpose, represent the municipal police service on every community **[police] policing** forum or sub-forum established in terms of section 19 within the area of jurisdiction of the municipality;" and

- (e) by the addition of the following subsection:

"(3) The Chief shall report to the Provincial Commissioner in order to ensure co-ordination of operational activities, in relation to national and provincial priorities."

Substitution of section 64D of Act 68 of 1995, as inserted by section 3 of Act 83 of 1998

55. The following section is hereby substituted for section 64D of the principal Act:

"First Chief of municipal police service

64D. When a municipal police service is established under section 64A, the municipal council in question, after consultation with the National Commissioner, shall appoint a fit and proper person with due regard to his or her experience, conscientiousness and integrity to be entrusted with the responsibilities of the office concerned, as the Chief."

Amendment of section 64E of Act 68 of 1995, as inserted by section 3 of Act 83 of 1998

56. Section 64E of the principal Act is hereby amended—

- (a) by the deletion of the word "and" at the end of paragraph (b);
- (b) by the substitution for paragraph (c) of the following paragraph:

"(c) the prevention of crime, which does not include the investigation of crime; and"; and

- (c) by the addition of the following paragraph:

"(d) the enforcement of the Regulation of Gatherings Act, 1993 (Act No. 205 of 1993)—

- (i) as first responders, in consultation with the local station commissioner, with reference to the definition of "Police" in section 1 of the Regulation of Gatherings Act, 1993, until members of the Service arrive at the scene of a gathering or demonstration, from which moment the municipal police service shall be responsible for law enforcement in respect thereof under the command and control of the most senior member of the Service trained to deal with public order policing who shall take charge of the scene; or
- (ii) upon the request of a station commander within the area of jurisdiction of the municipal police service and under the command and control of the member of the Service who is in control of the crowd management scene."

Insertion of sections 64EA and 64EB in Act 68 of 1995

57. The following sections are hereby inserted in the principal Act after section 64E:

"Establishment of public order policing capacity for municipal police services

64EA. (1) A municipal police service may establish a public order policing capacity to perform the functions provided for in section 64E(d).

(2) A municipal public order policing capacity may assist the national public order policing capacity, deployed under section 17(2), (3) and (4): Provided that such assistance must be provided under the command and control of the most senior commander of the national public order policing capacity.

Performance of powers, duties and functions by municipal police members

64EB. Section 13(3) is applicable to all members of a municipal police service."

Law enforcement officers and inspectors

64EC. Law enforcement officers and inspectors employed by a municipal council and who are appointed as peace officers by the Minister of Justice and Constitutional Development in terms of section 334 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), must within three months from the commencement of the South African Police Service Amendment Act, 2020, be integrated into a municipal police service, and shall serve as members of the municipal police service."

Amendment of section 64K of Act 68 of 1995, as inserted by section 3 of Act 83 of 1998

58. Section 64K of the principal Act is hereby amended:

- (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

"(b) **[area]** district policing co-ordinating committees;"

- (b) by the insertion after subsection (1) of the following subsections:

"(1A) The National Commissioner must, after consultation with the Department responsible for local government and the Department of Transport, establish a national policing co-ordinating committee, the objects of which are to—

(a) share information and access systems;

(b) identify common challenges, seek solutions and implement national plans to address identified problems; and

(c) exchange knowledge and sharing good practices between the Service and other structures in the Department of Police and municipal police services.

(1B) The national policing co-ordinating committee referred to in subsection (1A) must be constituted of senior representatives from at least the—

(a) Service;

(b) South African Local Government Association, as recognised in terms of section 2 of the Organised Local Government Act, 1997 (Act No. 52 of 1997);

(c) municipal police services;

(d) Road Traffic Management Corporation, established in terms of section 3 of the Road Traffic Management Corporation Act, 1999 (Act No. 20 of 1999);

(e) Road Traffic Infringement Agency, established in terms of section 3(1) of the Administrative Adjudication of Road Traffic Offences Act, 1998 (Act No. 46 of 1998);

(f) Civilian Secretariat;

(g) Independent Police Investigative Directorate; and

(h) Department for responsible for local government.";

(c) by the substitution for subsections (2), (3) and (4) of the following subsections, respectively:

"(2) The National Commissioner, or a person designated by him or her for that purpose, shall act as chairperson at a meeting of the national policing co-ordinating committee referred to in subsection (1A) and the Provincial Commissioner, or a person designated by him or her for that purpose, shall act as chairperson at a meeting of a policing co-ordinating committee referred to in subsection (1)(a) to (c).

(3) **[Every]** The policing co-ordinating committee shall determine its own procedure, through the development and adoption of a constitution, and cause minutes to be kept of its proceedings.

(4) The Minister may, with the concurrence of the Minister of Transport and the Minister of Local Government, make regulations to ensure the proper functioning of the policing co-ordinating committee."; and

(d) by the addition of the following subsection:

"(5) The policing co-ordinating committee must, after each meeting, submit a report on such meeting to the National Commissioner and the Minister."

Amendment of section 64L of Act 68 of 1995, as inserted by section 3 of Act 83 of 1998

59. Section 64L of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) The National Commissioner may determine national standards of policing for municipal police services and, in addition to the training prescribed for traffic officers in terms of the **[Road Traffic Act, 1989 (Act No. 29 of 1989)]** National Road Traffic Act, determine national standards with regard to the training of members of municipal police services.";

(b) by the substitution for subsection (4) of the following subsection:

"(4) If a municipal police service has failed to maintain national standards, the National Commissioner shall report the failure to the Minister and the relevant member of the Executive Council, and issue a notice of non-compliance to the relevant metropolitan council.";
and

(c) by the addition of the following subsection:

"(5) The Minister may, in consultation with the relevant member of the Executive Council, upon consideration of the report of the National Commissioner referred to in subsection (4) and after

consideration of any representations from the municipal police service, repeal the establishment of the relevant municipal police service if the non-compliance cannot be rectified within a period determined by the Minister and the member of the Executive Council."

Amendment of section 64M of Act 68 of 1995, as inserted by section 3 of Act 83 of 1998

60. Section 64M of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) Upon receipt of a report contemplated in section 64L, the Minister may request the member of the Executive Council concerned to intervene as contemplated in section 139 of the Constitution **[of the Republic of South Africa, 1996 (Act 108 of 1996)]** and shall provide the member with a copy of that report."; and

(b) by the substitution in subsection (2) for paragraph (b) of the following paragraph:

"(b) For the purposes of this subsection, any reference in section 64N(4) to (7) to—

[(a)(i)] the member of the Executive Council, shall be deemed to be a reference to the Minister;

[(b)(ii)] the member of the Executive Council responsible for local government, shall be deemed to be a reference to the Minister **[for Provincial Affairs and Constitutional**

Development] responsible for Co-operative Governance and Traditional Affairs;

[(c)](iii) the member of the Executive Council responsible for transport and traffic matters, shall be deemed to be a reference to the Minister of Transport;

[(d)](iv) the Premier, shall be deemed to be a reference to the President;

[(e)](v) an official of the provincial government, shall be deemed to be a reference to an official of the national government; and

[(f)](vi) to section 139 (2) of the Constitution **[of the Republic of South Africa, 1996 (Act 108 of 1996)]**, shall be deemed to be a reference to section 100 (2).".

Amendment of section 64O of Act 68 of 1995, as inserted by section 3 of Act 83 of 1998

61. The following section is hereby substituted for section 64O of the principal Act:

"Certain other sections of [this] Act to apply to municipal police service

64O. The Minister may prescribe which other provisions of this Act shall apply to a municipal police service and the extent to which they shall apply and must take reasonable steps to ensure compliance therewith.".

Amendment of section 65 of Act 68 of 1995

62. The following section is hereby substituted for section 65 of the principal Act:

"Receipt or possession of certain property

65. Any person who receives or has in his or her possession any property which in terms of this Act may not be sold, pledged, lent or otherwise disposed of, knowing the same to have been sold, pledged, lent or otherwise disposed of in contravention of this Act, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding **[12 months]** five years, or to both such fine and such imprisonment.".

Insertion of section 65A in Act 68 of 1995

63. The following section is hereby inserted in the principal Act after section 65:

"Disposal of property and equipment

65A. (1) No property or equipment of the Service, whether issued to a member or not, may be sold, pledged, lent or otherwise disposed of, or used to facilitate a criminal offence, including—

(a) any uniform or part thereof, including bullet-resistant jackets;

(b) blue lamps used on or in vehicles;

(c) radios, computers laptops or other electronic equipment; and

(d) medals, rank signs and insignia.

(2) Any person who contravenes subsection (1), shall be guilty of an offence and liable upon conviction to a fine or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment."

Amendment of section 66 of Act 68 of 1995

64. Section 66 of the principal Act is hereby amended—

(a) by the substitution for subsections (1) and (2) of the following subsections, respectively:

"(1) Any person who wears any uniform or distinctive badge or button of the Service or wears anything materially resembling or presenting any such uniform, badge or button or wears anything with the intention that it should be regarded as such uniform, badge or button, shall, unless—

(a) he or she is a member entitled by reason of his or her appointment, rank or designation to wear such uniform, badge or button; or

(b) he or she has been granted permission by the National or Provincial Commissioner to wear such uniform, badge or button,

be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding **[six months]** five years, or to both such fine and such imprisonment.

(2) Any person who wears, or without the written permission of the National Commissioner, makes use of any decoration or medal instituted, constituted or created under this Act, or its bar, clasp or ribbon, or anything so closely resembling any such decoration, medal, bar, clasp or ribbon as to be calculated to deceive, shall, unless he or she is the person to whom such decoration or medal was awarded, be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding **[six months]** five years, or to both such fine and such imprisonment."; and

(b) by the addition of the following subsection:

"(3) The National Commissioner or a Provincial Commissioner may serve a notice in the prescribed form and manner on any business, including a business registered under the Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001), which uses any insignia, emblem, title or symbol whether on a uniform, a vehicle or otherwise which might reasonably be confused as that used by the Service, to refrain from using the same within a period of 30 days, and any such business which fails to comply with such order is guilty of an offence and if convicted, liable to a fine not exceeding R100,000 or imprisonment."

Amendment of section 67 of Act 68 of 1995

65. Section 67 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words following paragraph (b) of the following words:

"shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding **[12] 24** months."; and

- (b) by the substitution in subsection (2) for the words following paragraph (b) of the following words:

"shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding **[two years] 24 months**".

Amendment of section 68 of Act 68 of 1995

66. Section 68 of the principal Act is hereby amended—

- (a) by the substitution for subsections (2) and (3) of the following subsections, respectively:

"(2) Any person who by means of a false certificate or any false representation obtains an appointment in the Service, or, having been dismissed from the Service, receives, by concealing the dismissal, any salary, wages, allowance, gratuity or pension, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding **[six months] five years**.

(3) Any person who, in connection with any activity carried on by him or her takes, assumes, uses or in any manner publishes any name, description, title or symbol indicating or conveying

or purporting to indicate or convey or which is calculated or is likely to lead other persons to believe or infer that such activity is carried on under or in terms of the provisions of this Act or under the patronage of the Service, or is in any manner associated or connected with the Service, without the approval of the National Commissioner, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding **[six months]** five years."; and

(b) by the addition of the following subsection:

"(4) Any person who is not a police official, military police official or a traffic official and who—

(a) has in his or her possession in a vehicle, a lamp which is capable of emitting blue light which may cause confusion with a vehicle operated by a police official, military police official or a traffic official; or

(b) operates a motor vehicle fitted with a lamp emitting blue light on a public road,

is guilty of an offence and liable upon conviction to a fine or to imprisonment for a period not exceeding five years."

Substitution of section 70 of Act 68 of 1995

67. The following section is hereby substituted for section 70 of the principal Act:

"Unauthorised disclosure or receipt of information

70. (1) Any member or person employed by the Service, or a reservist, who unlawfully and intentionally discloses information—

(a) on a pending investigation in order to warn a suspect or possible suspect of such investigation or imminent arrest;

(b) regarding planned actions or planned operations of the Service in order to forewarn any persons who may be affected by such action or operation; or

(c) in circumstances in which he or she knows, or could reasonably be expected to know, that such a disclosure will or may prejudicially affect the exercise or the performance by the Service of the powers or the functions referred to in section 205(3) of the Constitution,

shall be guilty of an offence and liable upon conviction to a fine or to imprisonment for a period not exceeding ten years."

(2) Any person who receives any information knowing it to be information referred to in paragraphs (a) to (c) of subsection (1), shall be guilty of an offence and liable upon conviction to a fine or to imprisonment for a period not exceeding ten years.

Amendment of section 71 of Act 68 of 1995

68. Section 71 of the principal Act is hereby amended—

- (a) by the substitution for subsections (2) and (3) of the following subsections, respectively:

"(2) Any person who wilfully gains unauthorised access to any computer which belongs to or is under the control of the Service or to any program or data held in such a computer, or in a computer to which only certain or all members have restricted or unrestricted access in their capacity as members, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding **[two]** five years.

(3) Any person who wilfully causes a computer which belongs to or is under the control of the Service or to which only certain or all members have restricted or unrestricted access in their capacity as members, to perform a function while such person is not authorised to cause such computer to perform such function, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding **[two]** five years."; and

(b) by the substitution in subsection (4) for the words following paragraph (b) of the following words:

"shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding **[five]** 10 years.".

Insertion of sections 71A and 71B in Act 68 of 1995

69. The following sections are hereby inserted in the principal Act after section 71:

"Hoaxes, untrue and false information

71A. (1) Any person who—

(a) makes false reports to the Service;

(b) spreads untruthful information; or

(c) publishes or conveys information or hoaxes in any form, including in electronic form,

knowing such report or information to be false and which causes the unnecessary and wasteful use of resources of the Service, is guilty of an offence and shall be liable upon conviction to a fine or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

(2) A court which has convicted a person for a contravention of subsection (1) may in addition to any fine or sentence of imprisonment also order the accused to remunerate the Service for any unnecessary and wasteful use of resources proven during a trial.

Conflict and disclosure of interest

71B. (1) No member may conduct an investigation, or render assistance with an investigation, in respect of a matter in which he or she has a financial or any other interest which may preclude him or her from exercising or performing his or her powers, duties and functions in an objective manner.

(2) If, during an investigation, it appears to a member that a matter concerns a financial or other interest of that member as referred to in subsection (1), that member must—

(a) immediately and fully disclose the fact and nature of that interest to the National Head of the Directorate referred to in Chapter 6A, or the National Commissioner; and

(b) withdraw from any further involvement in that investigation.

(3) Any member who fails to make a disclosure in accordance with subsection (2)(a), or fails to withdraw in terms of subsection (2)(b), as the case may be, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years."

Amendment of section 72 of Act 68 of 1995, as amended by section 4 of Act 83 of 1998

70. Section 72 of the principal Act is hereby amended—

(a) by the substitution in substitution (1) for paragraph (b) of the following paragraph:

"(b) Sections 11, 12 and 15 of this Act shall, where applicable, be subject to section 9(1) to (8) of the Rationalisation Proclamation until the National Commissioner has certified that the assignment of the functions referred to in section 219 of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), by the National Commissioner to all Provincial Commissioners as contemplated in section 9(4)(a) of the Rationalisation Proclamation, has been completed, whereupon sections 11, 12 and 15 of this Act

shall be applicable to the National and Provincial Commissioner in relation to the Province concerned.";

- (b) by the substitution in subsection (1) for paragraph (d) of the following paragraph:

"(d) Any person who, immediately before the commencement of this Act, was a member of a force **[contemplated in section 5(2)(a)(i)]**, rationalised through the Rationalisation Proclamation and who has not been appointed to a post in or additional to the fixed establishment or otherwise dealt with in accordance with section 14 of the Rationalisation Proclamation, shall serve in a pre-rationalised post until he or she is appointed to a post in or additional to the fixed establishment or is otherwise dealt with in accordance with that section.";

- (c) by the substitution for subsection (3) of the following subsection:

"(3) Any reference in any law to a Commissioner of a police force shall, except where such post has not yet been abolished, and unless clearly inappropriate, be construed as a reference to the National Commissioner or, in regard to any matter in respect of which a Provincial Commissioner is lawfully responsible, and subject to section 219 of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), read with Item 24 of Schedule 6 of the Constitution and Annexure D to that Schedule, to the Provincial Commissioner concerned.";

- (d) by the substitution in subsection (4) for paragraph (b) of the following paragraph:

"(b) Any reference in any regulation, standing order or administrative measure to a regional commissioner or a district commissioner shall, unless clearly inappropriate, be construed as a reference to a Provincial Commissioner or **[an area commissioner]** a district commander, respectively."; and

(e) by the addition of the following subsections:

"(5) The Crime Intelligence Division in existence in the Service immediately prior to the commencement of the South African Police Service Amendment Act, 2020, continues as the Intelligence Division of the Service.

(6) Personnel designated as members by means of a notice in the *Gazette* in terms of section 29, prior to the commencement of the South African Police Service Amendment Act, 2020, shall be deemed to be members appointed to posts in the fixed establishment of the Service in terms of section 28(2) with effect from the date determined by the Minister in the notice."

Amendment of Preamble of Act 68 of 1995, as amended by section 20 of Act 10 of 2012

71. The Preamble of the principal Act is hereby amended—

(a) by the insertion before the first paragraph of the following paragraph:

"**WHEREAS** the Constitution of the Republic of South Africa, 1996, in section 205(1), requires a national police service which must be

structured to function in the national, provincial, and where appropriate, local spheres of government;";

(b) by the substitution for the first paragraph of the following paragraph:

"**AND WHEREAS** the Constitution of the Republic of South Africa, 1996, in section 205(2), requires national legislation to [provide for the establishment,] establish the powers and functions of the [South African Police Service] police service and must enable the police service to discharge its responsibilities effectively, taking into account the requirements of the provinces and to function in accordance with national policing policy and the directions of the Cabinet member responsible for policing;";

(c) by the insertion after the first paragraph of the following paragraph:

"**AND WHEREAS** section 205(3) of the Constitution of the Republic of South Africa, 1996 provides that the objects of the police service are to—

(a) prevent, combat and investigate crime;

(b) maintain public order;

(c) protect and secure the inhabitants of the Republic and their property; and

(d) uphold and enforce the law;"; and

(d) by the substitution for the second paragraph of the following paragraph:

"**AND WHEREAS** there is a need to provide a police service throughout the national territory to—

(a) ensure the safety and security of all persons and property in the **[national territory] Republic;**

- (b) uphold and safeguard the fundamental rights of every person as guaranteed by Chapter [3] 2 of the Constitution of the Republic of South Africa, 1996, in particular, but not limited to the rights to life, dignity, equality before the law, and freedom and security of the person;
- (c) respect the public and ensure co-operation between the Service and the communities it serves in the combating of crime; and
- (d) reflect respect for victims of crime and an understanding of their needs; **[and]**
- [(e) ensure effective civilian supervision over the Service:]".**

Amendment of arrangement of sections of Act 68 of 1995

72. The arrangement of sections of the principal Act is hereby amended—

- (a) by the insertion after the item relating to section 1 of the following item:

"CHAPTER 1A

PURPOSE OF ACT

1A. Purpose of Act

1B. Respect for public, in particular women, children and disabled persons";

- (b) by the substitution for the heading to Chapter 2 of the following heading:

"[MINISTERIAL SERVICES] NATIONAL POLICING POLICY";

- (c) by the deletion of the items relating to sections 2, 3 and 4;

- (d) by the insertion after the item relating to section 1A of the following item:

"4A. Policing policy";

- (e) by the substitution for the item relating to section 10 of the following item:

"10. [Board of Commissioners] Management Forum";

- (f) by the substitution for the item relating to section 17 of the following item:

"17. [National public] Public order policing [unit] capacity";

- (g) by the insertion after the item relating to section 17L of the following items:

"CHAPTER 6B

SPECIALISED UNITS

17M. Establishment of specialised units

CHAPTER 6C

POLICE INTELLIGENCE

17N. Definitions in Chapter

17O. Intelligence Division of Service

17P. Reporting line of Head of Intelligence

17Q. Application of strategic and operational intelligence

17R. Co-operation with other intelligence services

17S. Counter-intelligence by Intelligence Division

17T. Determination of security classification

17U. Discharge of members when security clearance is degraded,
withdrawn or refused

17V. Notification of granted or refused security clearance";

- (h) by the substitution for the heading to Chapter 7 of the following heading:

"COMMUNITY [POLICE] POLICING FORUMS AND BOARDS";

- (i) by the substitution for the item relating to section 18 of the following item:

"18. **[Objects of]** Liaising with community though community
[police] policing forums and boards";

(j) the deletion of the items related to sections 19 to 23;

(k) by the substitution for the item relating to section 25 of the following item:

"25. National **[orders and instructions]** Instructions";

(l) by the substitution for the item relating to section 26 of the following item:

"26. Provincial **[orders and instructions]** Instructions";

(m) by the insertion after the item relating to section 28 of the following items:

"28A. Integrity testing and lifestyle audits

28B. Taking and use of fingerprints of members

28C. Security measures on integrity of information on database";

(n) by the substitution for the item relating to section 40 of the following item:

"40. **[Disciplinary proceedings]** Discipline";

(o) by the substitution for the item relating to section 60 of the following item:

"60. **[Property of Service not liable to seizure or attachment]**
Seizure or attachment of property of Service";

(p) by the substitution for the item relating to section 64B of the following item:

"64B. **[Chief Executive Officer of municipality]** Municipal Manager";

(q) by the substitution for the item relating to section 64C of the following item:

"64C. **[Executive head]** Chief of municipal police service";

(r) by the substitution for the item relating to section 64D of the following item:

"64D. First **[executive head]** Chief of municipal police service";

(s) by the insertion after the item relating to section 64E of the following items:

"64EA. Establishment of public order policing capacity for municipal
 police services

64EB. Performance of powers, duties and functions by municipal police members";

64EC Law enforcement officers and inspectors

(t) by the substitution for the item relating to section 64O of the following item:

"Certain other sections of **[this]** Act to apply to municipal police service";

(u) by the insertion after the item relating to section 65 of the following item:

65A. Disposal of property and equipment";

(v) by the insertion after the item relating to section 71 of the following items:

71A. Hoaxes, untrue and false information

71B. Conflict and disclosure of interest".

Substitution for "Constitution of the Republic of South Africa, 1996" and "Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)" in Act 68 of 1995

73. The principal Act is hereby amended by the substitution for the words "Constitution of the Republic of South Africa, 1996", and "Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)", wherever they occur, of the word "Constitution".

Amendment of section 1 of Act 205 of 1993

74. Section 1 of the Regulation of Gatherings Act, 1993, is hereby amended by the substitution for the definition of "Police" of the following definition:

" **'Police'** means the South African Police Service established by section 5(1) of the South African Police Service Act, 1995, and includes any body of persons established or enrolled under any law and exercising or performing the powers, duties and functions of a police service, **[but does not include any body of traffic officers]** and who have undergone training in terms of national standards related to law enforcement during a gathering or demonstration, as determined by the National Commissioner for the training of municipal police officers in terms of section 64L of the South African Police Service Act, 1995;"

Amendment of section 2 of Act 205 of 1993

75. Section 2 of the Regulation of Gatherings Act, 1993, is hereby amended by—

(a) the substitution for subsection (1) of the following subsection—

(1) The convener of **[a]** the following type of gathering shall give notice in writing signed by him or her of the intended gathering in accordance with the provisions of this section:

(a) Any gathering of more than 15 persons in or on a public road as defined in the National Road Traffic Act, 1996 (Act 93 of 1996);

(b) any gathering of more than 50 persons in or at or any other public place or premises wholly or partly open to the air; or

(c) any gathering where the presence of the police or traffic officers is

required in order to maintain public order or to regulate traffic.[:

Provided that if]”;

(b) the insertion of the following new subsections:

“(1A) If the convener is not able to reduce a proposed notice to writing the responsible officer shall at his or her request do it for him.

(1B) Notice in terms of this section is not required in respect of a spontaneous gathering.

(c) the substitution for subsection (2) of the following subsection—

“(2) The convener shall not later than **[seven]** four days before the date on which the gathering is to be held, give notice of the gathering to the responsible officer concerned: Provided that if it is not reasonably possible for the convener to give such notice earlier than **[seven]** four days before such date, he shall give such notice at the earliest opportunity, but not less than 48 hours from the time when the assembly is to be held. : Provided further that if such notice is given less than 48 hours before the commencement of the gathering, the responsible officer may by notice to the convener prohibit the gathering, if upon information at the disposal of the responsible officer, the gathering may lead to the disruption of traffic and endangering the lives of the public or members of the police.

(d) the insertion of the following new subsections—

“(2A) Depending on the envisaged scale and potential disruptive impact of an assembly notice can be given thereof in terms of subsection (2) at any time longer than the required period of 4 days to allow for proper planning and coordination of the assembly.

(2B) The notification required is to allow the state authorities to facilitate the exercise of the right to freedom of peaceful assembly and take measures to protect public safety and order and the rights and freedoms of others and the convener of an assembly must appreciate that the larger the event and the impact thereof would be, the more complicated arrangements would be as well as a longer period for preparations.

- (e) the substitution for paragraph (i) of subsection (3) of the following paragraph—
- (i) if notice is given later than **[seven]** four days before the date on which the gathering is to be held, the reason why it was not given timeously;”.
- (f) the substitution for subsection (4) of the following subsection—
- (4) If a **[local authority]** municipality does not exist or is not functioning in the area where a gathering is to be held, the convener shall give notice as contemplated in this section to the magistrate of the district within which that gathering is to be held or to commence, and such magistrate shall thereafter fulfil the functions, exercise the powers and discharge the duties conferred or imposed by this Act on a responsible officer in respect of such gathering.

Amendment of section 9 of Act 205 of 1993

76. Section 9 of the Regulation of Gatherings Act, 1993, is hereby amended—

- (a) by the substitution in subsection (2) for paragraphs (d) and (e) of the following paragraphs, respectively:

"(d) If any person who participates in a gathering or demonstration or any person who hinders, obstructs or interferes with persons who participate in a gathering or demonstration[—

(i)] kills or seriously injures, or attempts to kill or seriously injure, or shows a manifest intention of killing or seriously injuring, any person [; or

(ii) destroys or does serious damage to, or attempts to destroy or to do serious damage to, or shows a manifest intention of destroying or doing serious damage to, any immovable property or movable property considered to be valuable],

such a member of the Police of or above the rank of warrant officer may order the members of the Police under his or her command to take the necessary steps to prevent the **[action] actions mentioned in this subparagraph [contemplated in subparagraphs (i) and (ii)]** and may for that purpose, if he or she finds other methods to be ineffective or inappropriate, order the use of force, including the use of firearms and other weapons.

(e) The degree of force which may be so used shall not be greater than is necessary for the prevention of the actions contemplated in **[subparagraphs] paragraph (d)[(i) and (ii)]**, and the force shall be moderated and be proportionate to the circumstances of the case and the object to be attained.";

(b) by the insertion after subsection (2) of the following subsection:

"(2A) Any member of the Police who uses force in terms of this section, may—

(a) use only the minimum force which is reasonably necessary and proportional in the circumstances;

(b) use deadly force, subject to such force being reasonably necessary and proportional in the circumstances, only if there is a threat of serious bodily harm to the member or any other person; and

(c) not use deadly force to protect property only.";

(c) by the substitution for subsection (3) of the following subsection:

"(3) No common law principles regarding self-defence, necessity and protection of property, which are consistent with the Constitution of the Republic of South Africa, 1996, shall be affected by the provisions of this Act."; and

(d) by the addition of the following subsections:

"(4) Firearms that are fully automatic, as defined in the Firearms Control Act, 2000 (Act No. 60 of 2000), may not be used for purposes of law enforcement during a gathering or demonstration.;

(5) Any member of the police must, subject to the situation being faced, use a gradual response in law enforcement in respect of a gathering and use force only if non-violent means are ineffective or without any prospect of achieving the result of protecting the public or the members of the police."

Amendment of section 11 of Act 205 of 1993

77. Section 11 of the Regulation of Gatherings Act, 1993, is hereby amended by the substitution for paragraph (c) of subsection (2) of the following

paragraph—

“(c) that he or she or **[it]** the organization took all reasonable steps within his, her or its power, including the giving of notice of the gathering, or demonstration where required, in accordance with section 3, to prevent the act or omission in question: Provided that proof that he or it forbade an act of the kind in question shall not by itself be regarded as sufficient proof that he or it took all reasonable steps to prevent the act in question.”.

Amendment of section 12 of Act 205 of 1993

78. Section 12 of the Regulation of Gatherings Act, 1993, is hereby amended—

- (a) by the deletion in subsection (1) of paragraph (a);
- (b) by the substitution in subsection (1) for the words following paragraph (k) of the following words:

"shall be guilty of an offence and on conviction liable[—].

[(i)] in the case of a contravention referred to in paragraphs **[(a)]** (b) to (j), to a fine or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment[; **and**

(ii) in the case of a contravention referred to in paragraph (k), to a fine or to imprisonment for a period not exceeding three years]."; and

- (c) by the deletion of subsection (2).

Amendment of section 75 of Act 93 of 1996

79. Section 75 of the National Road Traffic Act, 1996, is hereby amended by the insertion after subsection (2B) of the following subsection:

"(2C) Whenever the Minister, in terms of this section, has made a regulation regarding *curricula* for traffic officers, the National Commissioner of the South African Police Service and the national policing co-ordinating committee, referred to in section 64K(1A) of the South African Police Service Act, 1995 (Act No. 68 of 1995), shall be consulted before such *curricula* are published in the *Gazette*."

Amendment Section 1 of Act 2 of 2011

80. Section 1 of the Civilian Secretariat for Police Service Act, 2011, is hereby amended by the insertion after the definition of "directorate" of the following definition:

" '**district**', means a district as defined in the South African Police Service Act;"

Insertion of Chapter 2A in Act 2 of 2011

81. The following Chapter is hereby inserted after Chapter 2 of the Civilian Secretariat for Police Service Act, 2011:

"CHAPTER 2A
NEIGHBOURHOOD PATROLLING AND NEIGHBOURHOOD WATCH
ASSOCIATIONS, COMMUNITY POLICING FORUMS, DISTRICT, PROVINCIAL
AND NATIONAL COMMUNITY POLICING BOARDS

**Establishment and functioning of neighbourhood patrolling and
neighbourhood watch associations**

6A. (1) Members of a community residing in a particular neighbourhood may establish a voluntary neighbourhood patrolling or neighbourhood watch association to address crime and safety issues in a neighbourhood in the manner and for the purpose contemplated in this section.

(2) Members of a community who establish a neighbourhood patrolling or neighbourhood watch association shall appoint a co-ordinator to—

- (a) liaise with the police station for that particular neighbourhood;
- (b) provide particulars of persons and vehicles used in neighbourhood patrolling or neighbourhood watch association's activities to the police station in which jurisdiction it will function;
- (c) co-ordinate and record any observations or patrols performed by members of the neighbourhood patrolling or neighbourhood watch association; and

(d) perform any other administrative functions that the members of that neighbourhood patrolling or neighbourhood watch association may assign on that neighbourhood patroller or neighbourhood watch coordinator.

(3) The functions of a neighbourhood patrolling or neighbourhood watch association are to—

(a) monitor a particular neighbourhood through observation and patrols;

and

(b) subject to subsection (4), report to the nearest police station any activity in respect of which there is a reasonable suspicion that the person involved in such activity committed or intends to commit an offence.

(4) Any report contemplated in subsection (3)(b) shall be made to the neighbourhood patrolling or neighbourhood watch association coordinator referred to in subsection (2) who must liaise with the Community Service Centre of the police station for that particular neighbourhood.

(5) No member of a neighbourhood patrolling or neighbourhood watch association may perform—

(a) a security service as contemplated in the Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001); or

(b) any policing function assigned to a member by this or any other Act of Parliament.

(6) This section shall not be interpreted so as to—

(a) assign any policing function to any member of a neighbourhood patrolling or neighbourhood watch association; or

(b) derogate from any right which a member of a neighbourhood patrolling or neighbourhood watch association may have in law.

(7) No neighbourhood patrolling or neighbourhood watch association, or any member thereof, may expect or receive any remuneration from the members of the neighbourhood patrolling or neighbourhood watch association for the functions that they perform in terms of this Act.

(8) The Minister may prescribe a Code of Conduct for neighbourhood patrolling and neighbourhood watch associations.

(9) Neighbourhood patrolling and neighbourhood watch associations shall be registered with community policing forums.

Establishment of community policing forums

6B. (1) The MEC shall be responsible for establishing community policing forums at police stations in the province which shall be broadly representative of the local community.

(2) The station commander and the members designated by him or her from time to time for that purpose, shall be *ex officio* members of the community policing forum and sub-forums established at the police station concerned.

Establishment of district community policing boards

6C. (1) The MEC shall be responsible for establishing district community policing boards in all districts within the province.

(2) The term of office for members of the district community policing board is five years.

(3) A district community policing board shall, subject to subsection (5), consist of representatives of community policing forums in the district concerned designated through a process of nominations for that purpose by such community policing forums.

(4) Any municipality which falls within the jurisdictional area of a district shall be represented in the district board, by a member or members of the municipal police services involved, as contemplated in section 64C(2)(f), or another appropriate representative where there is no municipal police service in the municipality.

(5) The district commander and the members designated by him or her from time to time for that purpose shall be *ex officio* members of the district community policing board concerned.

(6) The Provincial Commissioner shall ensure that the district commander appoint a member of the Service to serve on district community policing boards."

Establishment of provincial community policing boards

6D. (1) The MEC shall be responsible for establishing a provincial community policing board.

(2) A provincial community policing board shall, subject to subsection (3), consist of representatives of district community policing boards designated for that purpose through a process of elections by the district community policing boards in the province concerned.

(3) The Provincial Commissioner and the members designated by him or her from time to time for that purpose, shall be *ex officio* members of the provincial community policing board concerned.

(4) The term of office of a member of a provincial community policing board shall be five years.

(5) A Provincial Commissioner, and representatives from the provincial Department and the provincial secretariat, shall be *ex officio* members of the concerned provincial community policing board.

Establishment of National Community Policing Board

6E. (1) A National Community Policing Board is hereby established.

(2) The National Commissioner and the Secretary serve *ex officio* on the National Community Policing Board.

(3) Each provincial community policing board shall nominate a representative to serve on the National Community Policing Board.

(4) The term of office for nominated members shall be five years.

(5) The National Commissioner and the Secretary must nominate officials to serve on the National Community Policing Board.

(6) The Secretary shall be the chairperson of the National Community Policing Board.

Criteria for membership of community policing forums, district and provincial community policing boards and National Community Policing Board

6F. (1) Members shall reside in the community, district or province to be eligible to serve on the relevant community policing forum or community policing board.

(2) At provincial level, members that are eligible to serve on the board, shall work and reside in the province.

(3) Community policing forums and community policing boards are non-party-political structures, and a member shall serve as a community member and not as a party-political representative to advance partisan interests.

Persons precluded from membership of community policing forums, district and provincial policing boards and National Community Policing Board

6G. (1) Government officials serving in the defence force, the State Security Agency, traffic departments, members of the police service or a

municipal police service are precluded from membership in their private capacity of any community policing forum or board.

(2) No person with a criminal record may serve as a member of a community policing forum, district, Provincial or National Community Policing Board.

Functions of community policing forums and community policing boards

6H. (1) The National Community Policing Board and every provincial or district community policing board, or a community policing forum or sub-forum, shall perform the functions it deems necessary and appropriate to achieve the objects contemplated in section 18(1) of the South African Police Service Act and to—

- (a) monitor the effectiveness and efficiency of the police service at the local, district, provincial and national levels and evaluate the provision of policing services;
- (b) advise on policing needs and priorities on the local, district, provincial and national levels;
- (c) ensure effective communication and foster closer cooperation between the police and communities;
- (d) improve relations by promoting and building cooperative relations and partnerships between the police and communities;
- (e) propose crime prevention projects that will improve the safety of communities in line with the policing priorities of a local community;

- (f) participate and mobilise communities in crime prevention programmes and initiatives;
- (g) promote joint problem solving between the police service and communities;
- (h) work in collaboration with other safety structures;
- (i) ensure sustained community support and participation in community policing forums;
- (j) build sustainable forums for community engagement, partnership and participation;
- (k) comply with governance requirements, as may be prescribed, including holding monthly executive meetings, production of minutes and issuing of financial statements; and
- (l) hold community meetings and ensure effective communication with the community.
- (m) involve other community structures which has an interest in crime-related issues, such as the broader drug problem in communities and integration of parolees into the community.

(2) Every provincial and district community policing board and every community policing forum and sub-forum shall report on a monthly basis to the relevant station or district commander, the Provincial Commissioner, the provincial secretariat, and the MEC on the performance of its functions and any shortcomings that needs to be addressed by the police service.

Procedural matters

6I. (1) Every provincial and district community policing board and community policing forum and sub-forum shall—

(a) elect one of its members as chairperson and another one as vice-chairperson;

(b) determine its own procedure and cause minutes to be kept of its proceedings; and

(c) whenever it deems it necessary, co-opt other members or experts, or community leaders, to the board or forum in an advisory capacity.

(2) Members of community policing forums and community policing boards shall render their services on a voluntary basis and shall have no claim to compensation solely for services rendered to such forums or boards.

(3) The Minister shall prescribe—

(a) the composition and roles of members of the community policing forums and community policing boards;

(b) the establishment of sub-forums and boards; and

(c) adequate representation on community policing forums and boards representative of demographics and of women, youth and other vulnerable groups.

(4) The Minister shall, in consultation with the Committee, make regulations to ensure the proper functioning of community policing forums, sub-forums and community policing boards."

82. The following section is hereby inserted in the Civilian Secretariat for Police Service Act, 2011, after section 17:

"Oversight over and support of community policing forums and community policing boards

17A. (1) Each provincial secretariat shall—

- (a) exercise oversight over the establishment and functioning of community policing forums and voluntary neighbourhood patrolling and neighbourhood watch associations;
- (b) ensure compliance by the community policing forums with set standards and regulations made in terms of section 61(3) and (4), and compliance with the code of conduct determined by the Minister for voluntary neighbourhood patrolling and neighbourhood watch associations in terms of section 6A(8); and
- (c) provide financial support and capacity building where required.

(2) The provincial secretariats shall, in consultation with the MEC, facilitate the allocation of funds and resources for the effective functioning of community policing forums and community policing boards.

(3) The resources and budget allocated shall be informed by the tasks, activities and programmes that the community policing forums and community policing boards are required to undertake.

(4) The Minister shall prescribe a funding model, and payment management system aligned to the Public Finance Management Act, 1999 (Act No. 1 of 1999), and any other legal requirements which shall—

(a) lay down requirements and criteria for eligibility of funding of projects of the community policing forums and community policing boards; and

(b) a verification system in terms of reports and documentation required for consideration of funding of the activities of the community policing forums or community policing boards.

(5) Notwithstanding the provisions of section 61(2), the Minister may, in consultation with the MEC and the Minister of Finance, determine stipends which may be paid in respect of prescribed functions performed by community policing forum and community policing board members in respect of prescribed functions."

Amendment of section 34 of Act 2 of 2011

83. Section 34 of the Civilian Secretariat for Police Service Act, 2011, is hereby amended by the addition of the following subsection:

"(8) The community policing forums and community policing boards already established in terms of the South African Police Service Act, shall, when the South African Police Service Amendment Act, 2020, comes into operation, be regarded as having been established in terms of the provisions of Chapter 2A of this Act: Provided that this section shall not

derogate from the powers of the MEC in respect of existing community policing forums and community policing boards in accordance with this Act."

Amendment of long title of Act 2 of 2011

84. The Civilian Secretariat for Police Service Act, 2011, is hereby amended by the substitution for the long title of the following long title:

"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; to provide for the establishment and functions of neighbourhood patrolling and neighbourhood watch associations and of community policing forums and community policing boards; and to provide for matters connected therewith."

Amendment of arrangement of sections of Act 2 of 2011

85. The arrangement of sections of the Civilian Secretariat for Police Service Act, 2011, is hereby amended—

(a) by the insertion after the item relating to section 6 of the following items:

"CHAPTER 2A

**NEIGHBOURHOOD PATROLLING AND NEIGHBOURHOOD WATCH
ASSOCIATIONS, COMMUNITY POLICING FORUMS, DISTRICT, PROVINCIAL
AND NATIONAL COMMUNITY POLICING BOARDS**

- 6A.** Establishment and functioning of neighbourhood patrolling and neighbourhood watch associations
- 6B.** Establishment of community policing forums
- 6C.** Establishment of district community policing boards
- 6D.** Establishment of provincial community policing boards
- 6E.** Establishment of National Community Policing Board
- 6F.** Criteria for membership of community policing forums, district and provincial community policing boards and National Community Policing Board
- 6G.** Persons precluded from membership of community policing forums, district and provincial policing boards and National Community Policing Board
- 6H.** Functions of community policing forums and community policing boards
- 6I.** Procedural matters"; and

(b) by the insertion after the item relating to section 17 of the following item:

"17A. Oversight over and support of community policing forums and community policing boards".

Short title and commencement

86. This Act shall be called the South African Police Service Amendment Act, 2020, and shall come into operation on a date determined by the President by Proclamation in the *Gazette*.