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NATIONAL PROSECUTING AUTHORITY ACT 32 OF 1998

[ASSENTED TO 24 JUNE 1998]

[DATE OF COMMENCEMENT: 16 OCTOBER 1998]
(Unless otherwise indicated)

(English text signed by the President)

as amended by

Judicial Matters Second Amendment Act 122 of 1998
National Prosecuting Authority Amendment Act 61 of 2000
Judicial Matters Amendment Act 42 of 2001
Criminal Law (Sentencing) Amendment Act 38 of 2007
National Prosecuting Authority Amendment Act 56 of 2008

Regulations under this Act

NATIONAL PROSECUTING AUTHORITY REGULATIONS (GN R1583 in GG 14021 of 12 June 1992)

REGULATIONS FOR CONDITIONS OF SERVICE OF SPECIAL INVESTIGATORS IN THE DIRECTORATE OF SPECIAL OPERATIONS (GN R108 in GG 22027 of 2 February 2001)

REGULATIONS ON THE LEGAL QUALIFICATIONS FOR PROSECUTORS, 2001 (GN R423 in GG 22284 of 18 May 2001) (with effect from 18 May 2001)

ACT

To regulate matters incidental to the establishment by the Constitution of the Republic of South Africa, 1996, of a single national prosecuting authority; and to provide for matters connected therewith.

Preamble

[NB: The Preamble has been amended by s. 14 of the National Prosecuting Authority Amendment Act 56 of 2008, a provision which will be put into operation by proclamation.]

WHEREAS section 179 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), provides for the establishment of a single national prosecuting authority in the Republic structured in terms of an Act of Parliament; the appointment by the President of a National Director of Public Prosecutions as head of the national prosecuting authority; the appointment of Directors of Public Prosecutions and prosecutors as determined by an Act of Parliament;

AND WHEREAS the Constitution provides that the Cabinet member responsible for the administration of justice must exercise final responsibility over the prosecuting authority;

AND WHEREAS the Constitution provides that national legislation must ensure that the Directors of Public Prosecutions are appropriately qualified and are

responsible for prosecutions in specific jurisdictions;

AND WHEREAS the Constitution provides that national legislation must ensure that the prosecuting authority exercises its functions without fear, favour or prejudice;

AND WHEREAS the Constitution provides that the National Director of Public Prosecutions must determine, with the concurrence of the Cabinet member responsible for the administration of justice, and after consulting the Directors of Public Prosecutions, prosecution policy which must be observed in the prosecution process;

AND WHEREAS the Constitution provides that the National Director of Public Prosecutions may intervene in the prosecution process when policy directives are not being complied with, and may review a decision to prosecute or not to prosecute;

AND WHEREAS the Constitution provides that the prosecuting authority has the power to institute criminal proceedings on behalf of the state, and to carry out any necessary functions incidental to instituting criminal proceedings;

AND WHEREAS the Constitution provides that all other matters concerning the prosecuting authority must be determined by national legislation;

AND WHEREAS the Constitution does not provide that the prevention, combating or investigation of crime is the exclusive function of any single institution;

[NB: The ninth paragraph has been deleted by s. 14 of the National Prosecuting Authority Amendment Act 56 of 2008, a provision which will be put into operation by proclamation.]

AND WHEREAS the Constitution does not prohibit Parliament from amplifying the powers and functions of the prosecuting authority in national legislation;

[NB: The tenth paragraph has been deleted by s. 14 of the National Prosecuting Authority Amendment Act 56 of 2008, a provision which will be put into operation by proclamation.]

AND IN ORDER TO ENSURE that the prosecuting authority fulfils its constitutional mandate to institute criminal proceedings on behalf of the state and to carry out the necessary functions incidental thereto, to make provision for-

- * the establishment of an Investigating Directorate, with a limited investigative capacity, to prioritise and to investigate particularly serious criminal or unlawful conduct committed in an organised fashion, or certain offences or unlawful conduct, with the object of prosecuting such offences or unlawful conduct in the most efficient and effective manner; and
- * the necessary infrastructure and resources to perform these functions,

[NB: The eleventh paragraph has been deleted by s. 14 of the National Prosecuting Authority Amendment Act 56 of 2008, a provision which will be put into operation by proclamation.]

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

[Preamble substituted by s. 1 of Act 61 of 2000.]

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[Index inserted by s. 21 of Act 61 of 2000.]

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CHAPTER 1
INTRODUCTORY PROVISIONS (s 1)

1 Definitions

[NB: The definitions of 'Directorate of Special Operations' and 'special investigator' have been deleted; and the definitions of 'head of an Investigating Directorate', 'Investigating Director' and 'specified offence' have been substituted by s. 1 of the National Prosecuting Authority Amendment Act 56 of 2008, a provision which will be put into operation by proclamation. See PENDLEX.]

In this Act, unless the context otherwise indicates-

'Constitution' means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);

'Deputy Director' means a Deputy Director of Public Prosecutions appointed under section 15 (1);

'Deputy National Director' means a Deputy National Director of Public Prosecutions appointed under section 11 (1);

'Director' means a Director of Public Prosecutions appointed under section 13 (1);

'Directorate of Special Operations' means the Directorate of Special Operations established by section 7 (1) (a);

[Definition of 'Directorate of Special Operations' inserted by s. 2 (a) of Act 61 of 2000.]

'head of an Investigating Directorate' means the Deputy National Director referred to in section 7 (3) (a), or an Investigating Director referred to in section 7 (3) (b), as the case may be;

[Definition of 'Head of an Investigating Directorate' inserted by s. 2 (a) of Act 61 of 2000.]

'Investigating Director'-

- (a) means a Director of Public Prosecutions appointed under section 13 (1) (aA) or (b)-
- (i) to the Directorate of Special Operations; or
 - (ii) as the head of an Investigating Directorate established in terms of section 7 (1A),
- as the case may be; and
- (b) in Chapter 5, includes the head of the Directorate of Special Operations;

[Definition of 'Investigating Director' substituted by s. 2 (b) of Act 61 of 2000.]

'Investigating Directorate' means an Investigating Directorate established by or in terms of section 7;

[Definition of 'Investigating Directorate' substituted by s. 2 (b) of Act 61 of 2000.]

'investigation' in Chapter 5, means an investigation contemplated in section 28 (1);

[Definition of 'investigation' inserted by s. 2 (c) of Act 61 of 2000.]

'Minister' means the Cabinet member responsible for the administration of justice;

'National Director' means the National Director of Public Prosecutions appointed in terms of section 179 (1) (a) of the Constitution;

'Office of the National Director' means the Office of the National Director of Public Prosecutions established by section 5;

'prescribed' means prescribed by regulation made under section 40;

'prosecuting authority' means the single national prosecuting authority referred to in section 2;

'prosecutor' means a prosecutor referred to in section 16 (1);

'Public Service Act' means the Public Service Act, 1994 (Proclamation 103 of 1994);

'Republic' means the Republic of South Africa, referred to in section 1 of the *Constitution*;

'Special Director' means a Director of Public Prosecutions appointed under section 13 (1) (c);

'special investigator' means a special investigator appointed under section 19A;

[Definition of 'special investigator' inserted by s. 2 (d) of Act 61 of 2000.]

'specified offence' means any matter which in the opinion of the head of an Investigating Directorate falls within the range of matters as contemplated in section 7 (1) (a) (aa) or any proclamation issued in terms of section 7 (1) (a) (bb) or (1A), and any reference to the commission of a specified offence has a corresponding meaning;

[Definition of 'specified offence' inserted by s. 2 (d) of Act 61 of 2000.]

'this Act' includes the regulations.

CHAPTER 2 STRUCTURE AND COMPOSITION OF SINGLE NATIONAL PROSECUTING AUTHORITY (ss 2-7)

2 Single national prosecuting authority

There is a single national prosecuting authority established in terms of section 179 of the *Constitution*, as determined in *this Act*.

3 Structure of prosecuting authority

The structure of the single *prosecuting authority* consists of-

- (a) the *Office of the National Director*;
- (b) the offices of the *prosecuting authority* at the High Courts, established by section 6 (1).

4 Composition of national prosecuting authority

The *prosecuting authority* comprises the-

- (a) *National Director*;
- (b) *Deputy National Directors*;
- (c) *Directors*;
- (d) *Deputy Directors*; and
- (e) *prosecutors*.

5 Office of National Director of Public Prosecutions

(1) There is hereby established the National Office of the *prosecuting authority*, to be known as the Office of the National Director of Public Prosecutions.

(2) The *Office of the National Director* shall consist of the-

- (a) *National Director*, who shall be the head of the Office and control the Office;
- (b) *Deputy National Directors*;
- (c) *Investigating Directors* and *Special Directors*;
- (d) other members of the *prosecuting authority* appointed at or assigned to the Office; and
- (dA) special investigators;

[Para. (dA) inserted by s. 3 of Act 61 of 2000.]

[NB: Para. (dA) has been deleted by s. 2 of the National Prosecuting Authority Amendment Act 56 of 2008, a provision which will be put into operation by proclamation.]

- (e) members of the administrative staff of the Office.

(3) The seat of the *Office of the National Director* shall be determined by the President.

6 Offices of prosecuting authority at seats of High Courts

(1) There is hereby established an Office for the *prosecuting authority* at the seat of each High Court in the *Republic*.

(2) An Office established by this section shall consist of-

- (a) the head of the Office, who shall be either a *Director* or a *Deputy Director*, and who shall control the Office;
- (b) *Deputy Directors*;
- (c) *prosecutors*;
- (d) persons contemplated in section 38 (1); and
- (e) the administrative staff of the Office.

(3) If a *Deputy Director* is appointed as the head of an Office established by subsection (1), he or she shall exercise his or her functions subject to the control and directions of a *Director* designated in writing by the *National Director*.

7 Investigating Directorates

(1) (a) There is hereby established in the Office of the National Director an Investigating Directorate, to be known as the Directorate of Special Operations, with the aim to-

- (i) investigate, and to carry out any functions incidental to investigations;
- (ii) gather, keep and analyse information; and
- (iii) where appropriate, institute criminal proceedings and carry out any necessary functions incidental to instituting criminal proceedings, relating to-
 - (aa) offences or any criminal or unlawful activities committed in an organised fashion; or
 - (bb) such other offences or categories of offences as determined by the President by proclamation in the *Gazette*.

(b) For the purpose of subparagraph (aa), 'organised fashion' includes the planned, ongoing, continuous or repeated participation, involvement or engagement in at least two incidents of criminal or unlawful conduct that has the same or similar intents, results, accomplices, victims or methods of commission, or otherwise are related by distinguishing characteristics.

(1A) The President may, by proclamation in the *Gazette*, establish not more than two additional Investigating Directorates in the Office of the National Director, in respect of matters not contemplated in subsection (1) (aa) or (bb).

(2) Any proclamation issued in terms of this section-

- (a) shall be issued on the recommendation of the Minister and the National Director;
- (b) may at any time be amended or rescinded by the President on the recommendation of the *Minister* and the National Director; and
- (c) must be submitted to Parliament before publication in the *Gazette*.

(3) The head of-

- (a) the Directorate of Special Operations, shall be a Deputy National Director, assigned by the National Director; and
- (b) any other Investigating Directorate, shall be an Investigating Director, and shall perform the powers, duties and functions of the *Investigating Directorate* concerned subject to the control and directions of the National Director.

(4) (a) The head of an Investigating Directorate shall be assisted in the exercise of his or her powers and the performance of his or her functions by-

- (i) in the case of-
 - (aa) the Directorate of Special Operations, one or more Investigating

Directors and one or more Deputy Directors; and
(bb) any other Investigating Directorate, one or more Deputy Directors;

- (ii) *prosecutors*;
- (iiA) in the case of the *Directorate of Special Operations, special investigators*;
- (iii) officers of any Department of State seconded to the service of the *Investigating Directorate* in terms of the laws governing the public service;
- (iv) persons in the service of any public or other body who are by arrangement with the body concerned seconded to the service of the *Investigating Directorate*; and
- (v) any other person whose services are obtained by the head of the *Investigating Directorate*,

and the persons referred to in subparagraphs (i) to (v) shall perform their powers, duties and functions subject to the control and direction of the head of the *Investigating Directorate* concerned.

(b) For the purposes of subparagraphs (iv) and (v) of paragraph (a)-

- (i) any person or body requested by the *head of an Investigating Directorate* in writing to do so, shall from time to time, after consultation with the head of an Investigating Directorate, furnish him or her with a list of the names of persons, in the employ or under the control of that person or body, who are fit and available to assist the head of that Investigating Directorate as contemplated in the said subparagraph (iv) or (v), as the case may be; and
- (ii) such a person or body shall, at the request of, and after consultation with, the head of the *Investigating Directorate* concerned, designate a person or persons mentioned in the list concerned so to assist the head of the Investigating Directorate.

[S. 7 substituted by s. 4 of Act 61 of 2000.]

[NB: S. 7 has been substituted by s. 3 of the National Prosecuting Authority Amendment Act 56 of 2008, a provision which will be put into operation by proclamation. See PENDLEX.]

CHAPTER 3

APPOINTMENT, REMUNERATION AND CONDITIONS OF SERVICE OF MEMBERS OF THE PROSECUTING AUTHORITY (ss 8-19)

8 Prosecuting authority to be representative

The need for the *prosecuting authority* to reflect broadly the racial and gender composition of South Africa must be considered when members of the *prosecuting authority* are appointed.

9 Qualifications for appointment as National Director, Deputy National Director or Director

(1) Any person to be appointed as *National Director, Deputy National Director* or *Director* must-

- (a) possess legal qualifications that would entitle him or her to practise in all courts in the *Republic*; and

- (b) be 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.

(2) Any person to be appointed as the *National Director* must be a South African citizen.

[Date of commencement of s. 9: 1 August 1998.]

10 Appointment of National Director

The President must, in accordance with section 179 of the *Constitution*, appoint the National Director.

[Date of commencement of s. 10: 1 August 1998.]

11 Appointment of Deputy National Directors

(1) The President may, after consultation with the *Minister* and the National Director, appoint not more than four persons, as Deputy National Directors of Public Prosecutions.

[Sub-s. (1) substituted by s. 5 of Act 61 of 2000.]

(2) (a) Whenever the *National Director* is absent or unable to perform his or her functions, the *National Director* may appoint any *Deputy National Director* as acting *National Director*.

(b) Whenever the office of *National Director* is vacant, or the *National Director* is for any reason unable to make the appointment contemplated in paragraph (a), the President may, after consultation with the *Minister*, appoint any *Deputy National Director* as acting *National Director*.

(3) Whenever a *Deputy National Director* is absent or unable to perform his or her functions, or an office of *Deputy National Director* is vacant, the *National Director* may, in consultation with the *Minister*, designate any other *Deputy National Director* or any *Director* to act as such *Deputy National Director*.

12 Term of office of National Director and Deputy National Directors

(1) The *National Director* shall hold office for a non-renewable term of 10 years, but must vacate his or her office on attaining the age of 65 years.

(2) A *Deputy National Director* shall vacate his or her office at the age of 65.

(3) If the *National Director* or a *Deputy National Director* attains the age of 65 years after the first day of any month, he or she shall be deemed to attain that age on the first day of the next succeeding month.

(4) If the President is of the opinion that it is in the public interest to retain a *National Director* or a *Deputy National Director* in his or her office beyond the age of 65 years, and-

(a) the *National Director* or *Deputy National Director* wishes to continue to serve in such office; and

(b) the mental and physical health of the person concerned enable him or her so to continue,

the President may from time to time direct that he or she be so retained, but not for a period which exceeds, or periods which in the aggregate exceed, two years: Provided that a *National Director's* term of office shall not exceed 10 years.

(5) The *National Director* or a *Deputy National Director* shall not be suspended or removed from office except in accordance with the provisions of subsections (6), (7) and (8).

(6) (a) The President may provisionally suspend the *National Director* or a *Deputy National Director* from his or her office, pending such enquiry into his or her fitness to hold such office as the President deems fit and, subject to the provisions of this subsection, may thereupon remove him or her from office-

- (i) for misconduct;
- (ii) on account of continued ill-health;
- (iii) on account of incapacity to carry out his or her duties of office efficiently; or
- (iv) on account thereof that he or she is no longer a fit and proper person to hold the office concerned.

(b) The removal of the *National Director* or a *Deputy National Director*, the reason therefor and the representations of the *National Director* or *Deputy National Director* (if any) shall be communicated by message to Parliament within 14 days after such removal if Parliament is then in session or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session.

(c) Parliament shall, within 30 days after the message referred to in paragraph (b) has been tabled in Parliament, or as soon thereafter as is reasonably possible, pass a resolution as to whether or not the restoration to his or her office of the *National Director* or *Deputy National Director* so removed, is recommended.

(d) The President shall restore the *National Director* or *Deputy National Director* to his or her office if Parliament so resolves.

(e) The *National Director* or a *Deputy National Director* provisionally suspended from office shall receive, for the duration of such suspension, no salary or such salary as may be determined by the President.

(7) The President shall also remove the *National Director* or a *Deputy National Director* from office if an address from each of the respective Houses of Parliament in the same session praying for such removal on any of the grounds referred to in subsection (6) (a), is presented to the President.

(8) (a) The President may allow the *National Director* or a *Deputy National Director* at his or her request, to vacate his or her office-

- (i) on account of continued ill-health; or
- (ii) for any other reason which the President deems sufficient.

(b) The request in terms of paragraph (a) (ii) shall be addressed to the President at least six calendar months prior to the date on which he or she wishes to vacate his or her office, unless the President grants a shorter period in a specific case.

(c) If the *National Director* or a *Deputy National Director*-

- (i) vacates his or her office in terms of paragraph (a) (i), he or she shall be entitled to such pension as he or she would have been entitled to under the pension law applicable to him or her if his or her services had been terminated on the ground of continued ill-health occasioned without him or her being instrumental thereto; or
- (ii) vacates his or her office in terms of paragraph (a) (ii), he or she shall be deemed to have been retired in terms of section 16 (4) of the *Public Service Act*, and he or she shall be entitled to such pension as he or she would have been entitled to under the pension law applicable to him or her if he or she had been so retired.

(9) If the *National Director* or a *Deputy National Director*, immediately prior to his or her appointment as such, was an officer or employee in the public service, and is appointed under an Act of Parliament with his or her consent to an office to which the provisions of *this Act* or the *Public Service Act* do not apply, he or she shall, as

from the date on which he or she is so appointed, cease to be the *National Director*, or a *Deputy National Director* and if at that date he or she has not reached the age at which he or she would in terms of the *Public Service Act* have had the right to retire, he or she shall be deemed to have retired on that date and shall, subject to the said provisions, be entitled to such pension as he or she would have been entitled to under the pension law applicable to him or her had he or she been compelled to retire from the public service owing to the abolition of his or her post.

[Date of commencement of s. 12: 1 August 1998.]

13 Appointment of Directors and Acting Directors

(1) The President, after consultation with the *Minister* and the *National Director*-

- (a) may, subject to section 6 (2), appoint a Director of Public Prosecutions in respect of an Office of the *prosecuting authority* established by section 6 (1);
- (aA) may appoint one or more Directors of Public Prosecutions to the Directorate of Special Operations;

[Para. (aA) inserted by s. 6 (a) of Act 61 of 2000.]

[NB: Para. (aA) has been deleted by s. 4 of the National Prosecuting Authority Amendment Act 56 of 2008, a provision which will be put into operation by proclamation.]

- (b) shall, in respect of any Investigating Directorate established in terms of section 7 (1A), appoint a Director of Public Prosecutions as the head of such an *Investigating Directorate*; and

[Para. (b) substituted by s. 6 (b) of Act 61 of 2000.]

- (c) may appoint one or more Directors of Public Prosecutions (hereinafter referred to as Special Directors) to exercise certain powers, carry out certain duties and perform certain functions conferred or imposed on or assigned to him or her by the President by proclamation in the *Gazette*.

(2) If a vacancy occurs in the office of a *Director* the President shall, subject to section 9, as soon as possible, appoint another person to that office.

(3) The *Minister* may from time to time, but subject to the laws governing the public service and after consultation with the *National Director*, from the ranks of the *Deputy Directors* or persons who qualify to be appointed as *Deputy Director* as contemplated in section 15 (2), appoint an acting *Director* to discharge the duties of a *Director* whenever the *Director* concerned is for any reason unable to perform the duties of his or her office, or while the appointment of a person to the office of *Director* is pending.

14 Term of office of Director

(1) Subject to subsection (2), a *Director* shall vacate his or her office on attaining the age of 65 years.

(2) A *Special Director* may be appointed for such fixed term as the President may determine at the time of such appointment, and the President may from time to time extend such term.

(3) The provisions of section 12 (3), (4), (6), (7), (8) and (9), in respect of the vacation of office and discharge of the *National Director*, shall apply, with the

necessary changes, with regard to the vacation of office and discharge of a *Director*.

15 Appointment of Deputy Directors

(1) The *Minister* may, subject to the laws governing the public service and section 16 (4) and after consultation with the National Director-

- (a) in respect of an Office referred to in section 6 (1), appoint a Deputy Director of Public Prosecutions as the head of such Office;
- (b) in respect of each office for which a Director has been appointed, appoint Deputy Directors of Public Prosecutions; and
- (c) in respect of the Office of the National Director appoint one or more Deputy Directors of Public Prosecutions to exercise certain powers, carry out certain duties and perform certain functions conferred or imposed on or assigned to him or her by the National Director.

[Sub-s. (1) substituted by s. 7 of Act 61 of 2000.]

(2) A person shall only be appointed as a *Deputy Director* if he or she-

- (a) has the right to appear in a High Court as contemplated in sections 2 and 3 (4) of the Right of Appearance in Courts Act, 1995 (Act 62 of 1995); and
- (b) possesses such experience as, in the opinion of the *Minister*, renders him or her suitable for appointment as a *Deputy Director*.

(3) If a vacancy occurs in the office of a *Deputy Director*, the *Minister* shall, after consultation with the *National Director*, as soon as possible appoint another person to that office.

16 Appointment of prosecutors

(1) *Prosecutors* shall be appointed on the recommendation of the *National Director* or a member of the *prosecuting authority* designated for that purpose by the *National Director*, and subject to the laws governing the public service.

(2) *Prosecutors* may be appointed to-

- (a) the *Office of the National Director*;
- (b) Offices established by section 6 (1);
- (c) *Investigating Directorates*; and
- (d) lower courts in the *Republic*.

(3) The *Minister* may from time to time, in consultation with the *National Director* and after consultation with the *Directors*, prescribe the appropriate legal qualifications for the appointment of a person as *prosecutor* in a lower court.

(4) In so far as any law governing the public service pertaining to *Deputy Directors* and *prosecutors* may be inconsistent with *this Act*, the provisions of *this Act* shall apply.

17 Conditions of service of National Director, Deputy National Directors and Directors

(1) The remuneration, allowances and other terms and conditions of service and service benefits of the *National Director*, a *Deputy National Director* and a *Director* shall be determined by the President: Provided that-

- (a) the salary of the *National Director* shall not be less than the salary of a judge of a High Court, as determined by the President under section 2 (1) of the Judges' Remuneration and Conditions of Employment Act,

1989 (Act 88 of 1989);

- (b) the salary of a *Deputy National Director* shall not be less than 85 per cent of the salary of the *National Director*; and
- (c) the salary of a *Director* shall not be less than 80 per cent of the salary of the *National Director*.

(2) If an officer or employee in the public service is appointed as the *National Director*, a *Deputy National Director* or a *Director*, the period of his or her service as *National Director*, *Deputy National Director* or *Director* shall be reckoned as part of and continuous with his or her employment in the public service, for purposes of leave, pension and any other conditions of service, and the provisions of any pension law applicable to him or her as such officer or employee, or in the event of his or her death, to his or her dependants and which are not inconsistent with this section, shall, with the necessary changes, continue so to apply.

(3) The *National Director* is entitled to pension provisioning and pension benefits determined and calculated under all circumstances, as if he or she is employed as a Director-General in the public service.

(4) The President may, whenever in his or her opinion it is necessary and after consultation with the *Minister* and the *National Director*, transfer and appoint any *Director* to any Office contemplated in section 6 (1) or *Investigating Directorate*, or as a *Special Director*.

[Date of commencement of s. 17: 1 August 1998.]

18 Remuneration of Deputy Directors and prosecutors

(1) Subject to the provisions of this section, any *Deputy Director* or *prosecutor* shall be paid a salary in accordance with the scale determined from time to time for his or her rank and grade by the *Minister* after consultation with the *National Director* and the Minister for the Public Service and Administration, and with the concurrence of the Minister of Finance, by notice in the *Gazette*.

(2) Different categories of salaries and salary scales may be determined in respect of different categories of *Deputy Directors* and *prosecutors*.

(3) A notice in terms of subsection (1) or any provision thereof may commence with effect from a date which may not be more than one year before the date of publication thereof.

(4) The first notice in terms of subsection (1) shall be issued as soon as possible after the commencement of *this Act*, and thereafter such a notice shall be issued if circumstances, including any revision and adjustment of salaries and allowances of the *National Director* and magistrates since the latest revision and adjustment of salaries of *Deputy Directors* or *prosecutors*, so justify.

(5) (a) A notice issued in terms of subsection (1) shall be tabled in Parliament within 14 days after publication thereof, if Parliament is then in session or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session.

(b) If Parliament by resolution disapproves such a notice or any provision thereof, that notice or that provision, as the case may be, shall lapse to the extent to which it is so disapproved with effect from the date on which it is so disapproved.

(c) The lapsing of such a notice or provision shall not affect-

- (i) the validity of anything done under the notice or provision up to the date on which it so lapsed; or
- (ii) any right, privilege, obligation or liability acquired, accrued or incurred as at that date under or by virtue of the notice or provision.

(6) The salary payable to a *Deputy Director* or a *prosecutor* shall not be reduced except by an Act of Parliament: Provided that a disapproval contemplated in subsection (5) (b) shall, for the purposes of this subsection, not be deemed to result in a reduction of such salary.

19 Conditions of service of Deputy Directors and prosecutors, except remuneration

Subject to the provisions of *this Act*, the other conditions of service of a *Deputy Director* or a *prosecutor* shall be determined in terms of the provisions of the *Public Service Act*.

CHAPTER 3A APPOINTMENT, REMUNERATION AND CONDITIONS OF SERVICE OF SPECIAL INVESTIGATORS (19A-19C)

[Chapter 3A inserted by s. 8 of Act 61 of 2000.]

[NB: Chapter. 3A has been repealed by s. 5 of the National Prosecuting Authority Amendment Act 56 of 2008, a provision which will be put into operation by proclamation.]

19A Appointment of special investigators

(1) The *National Director* may, on the recommendation of the head of the Directorate of Special Operations, appoint any fit and proper person as a special investigator of that Directorate.

(2) The *National Director* must, in the prescribed form, issue an identity document under his or her signature to each person so appointed, which shall serve as proof that such person is a special investigator.

[S. 19A inserted by s. 8 of Act 61 of 2000.]

[NB: S. 19A has been repealed by s. 5 of the National Prosecuting Authority Amendment Act 56 of 2008, a provision which will be put into operation by proclamation.]

19B Security screening of special investigators

(1) Subject to subsection (2), no person may be appointed as a *special investigator* unless-

- (a) information with respect to that person has been gathered in a security screening investigation by the National Intelligence Agency established by section 3 of the Intelligence Services Act, 1994 (Act 38 of 1994); and
- (b) the *National Director*, after evaluating the gathered information, is satisfied that such person may be appointed as a *special investigator* without the possibility that such person might be a security risk or that he or she might act in any way prejudicial to the objectives of the *Directorate of Special Operations*.

(2) If the *National Director* is so satisfied, he or she shall issue a certificate with respect to such person in which it is certified that such person has successfully undergone a security clearance.

(3) Any *special investigator* may from time to time, or at such regular intervals as the National Director may determine, be subjected to a further security screening as contemplated in subsection (1) (a).

(4) The *National Director* may withdraw a certificate referred to in subsection

(2) if he or she obtains information which, after evaluation by him or her, causes him or her to believe that the person in question could be a security risk or could possibly act in any manner prejudicial to the objectives of the *Directorate of Special Operations*.

(5) If the certificate referred to in subsection (2) is withdrawn, the *special investigator* concerned shall be unfit to continue to hold such office and the *National Director* must discharge him or her from the *Directorate of Special Operations*.

[S. 19B inserted by s. 8 of Act 61 of 2000.]

[NB: S. 19B has been repealed by s. 5 of the National Prosecuting Authority Amendment Act 56 of 2008, a provision which will be put into operation by proclamation.]

19C Remuneration and conditions of service of special investigators

(1) The remuneration, allowances and other service benefits of *special investigators* are determined by the Minister, in consultation with the *National Director* and with the concurrence of the Minister of Finance.

(2) If an officer or employee in the public service is appointed as a *special investigator*, the period of his or her service as a *special investigator* shall be calculated as part of and continuous with his or her employment in the public service, for purposes of leave, pension and any other condition of service. The provisions of any pension law applicable to him or her or, in the event of his or her death, to his or her dependants which are not inconsistent with this section, shall, with the necessary changes, continue so to apply.

(3) No *special investigator* may strike or induce or conspire with any other member of the *Directorate of Special Operations* to strike.

(4) The services of the *Directorate of Special Operations* shall, for the purposes of the application of Chapter IV of the Labour Relations Act, 1995 (Act 66 of 1995), be deemed to have been designated as an essential service in terms of section 71 of that Act.

(5) All other conditions of service of *special investigators* are as prescribed in terms of *this Act*.

[S. 19C inserted by s. 8 of Act 61 of 2000.]

[NB: S. 19C has been repealed by s. 5 of the National Prosecuting Authority Amendment Act 56 of 2008, a provision which will be put into operation by proclamation.]

CHAPTER 4 POWERS, DUTIES AND FUNCTIONS OF MEMBERS OF THE PROSECUTING AUTHORITY (ss 20-25)

20 Power to institute and conduct criminal proceedings

(1) The power, as contemplated in section 179 (2) and all other relevant sections of the *Constitution*, to-

- (a) institute and conduct criminal proceedings on behalf of the State;
- (b) carry out any necessary functions incidental to instituting and conducting such criminal proceedings; and
- (c) discontinue criminal proceedings,

vests in the *prosecuting authority* and shall, for all purposes, be exercised on behalf of the *Republic*.

(2) Any *Deputy National Director* shall exercise the powers referred to in subsection (1) subject to the control and directions of the *National Director*.

(3) Subject to the provisions of the *Constitution* and *this Act*, any *Director* shall, subject to the control and directions of the *National Director*, exercise the powers referred to in subsection (1) in respect of-

- (a) the area of jurisdiction for which he or she has been appointed; and
- (b) any offences which have not been expressly excluded from his or her jurisdiction, either generally or in a specific case, by the *National Director*.

(4) Subject to the provisions of *this Act*, any *Deputy Director* shall, subject to the control and directions of the *Director* concerned, exercise the powers referred to in subsection (1) in respect of-

- (a) the area of jurisdiction for which he or she has been appointed; and
- (b) such offences and in such courts, as he or she has been authorised in writing by the *National Director* or a person designated by the *National Director*.

(5) Any *prosecutor* shall be competent to exercise any of the powers referred to in subsection (1) to the extent that he or she has been authorised thereto in writing by the *National Director*, or by a person designated by the *National Director*.

(6) A written authorisation referred to in subsection (5) shall set out-

- (a) the area of jurisdiction;
- (b) the offences; and
- (c) the court or courts,

in respect of which such powers may be exercised.

(7) No member of the *prosecuting authority* who has been suspended from his or her office under *this Act* or any other law shall be competent to exercise any of the powers referred to in subsection (1) for the duration of such suspension.

21 Prosecution policy and issuing of policy directives

(1) The *National Director* shall, in accordance with section 179 (5) (a) and (b) and any other relevant section of the *Constitution*-

- (a) with the concurrence of the *Minister* and after consulting the *Directors*, determine prosecution policy; and
- (b) issue policy directives,

which must be observed in the prosecution process, and shall exercise such powers and perform such functions in respect of the prosecution policy, as determined in *this Act* or any other law.

(2) The prosecution policy or amendments to such policy must be included in the report referred to in section 35 (2) (a): Provided that the first prosecution policy issued under *this Act* shall be tabled in Parliament as soon as possible, but not later than six months after the appointment of the first *National Director*.

(3) The prosecution policy must determine the circumstances under which prosecutions shall be instituted in the High Court as a court of first instance in respect of offences referred to in Schedule 2 to the Criminal Law Amendment Act, 1997 (Act 105 of 1997).

[Sub-s. (3) added by s. 7 of Act 38 of 2007.]

(4) The *National Director* must issue policy directives pursuant to the policy contemplated in subsection (3), regarding the institution of prosecutions in respect of offences referred to in Schedule 2 to the Criminal Law Amendment Act, 1997.

[Sub-s. (4) added by s. 7 of Act 38 of 2007.]

(5) The prosecution policy and the policy directives contemplated in subsections (3) and (4) above, must be issued within three months of the date of the commencement of the Criminal Law (Sentencing) Amendment Act, 2007.

[Sub-s. (5) added by s. 7 of Act 38 of 2007.]

22 Powers, duties and functions of National Director

(1) The *National Director*, as the head of the *prosecuting authority*, shall have authority over the exercising of all the powers, and the performance of all the duties and functions conferred or imposed on or assigned to any member of the *prosecuting authority* by the *Constitution*, *this Act* or any other law.

(2) In accordance with section 179 of the *Constitution*, the *National Director*-

- (a) must determine prosecution policy and issue policy directives as contemplated in section 21;
- (b) may intervene in any prosecution process when policy directives are not complied with; and
- (c) may review a decision to prosecute or not to prosecute, after consulting the relevant *Director* and after taking representations, within the period specified by the *National Director*, of the accused person, the complainant and any other person or party whom the *National Director* considers to be relevant.

(3) Where the *National Director* or a *Deputy National Director* authorised thereto in writing by the *National Director* deems it in the interest of the administration of justice that an offence committed as a whole or partially within the area of jurisdiction of one *Director* be investigated and tried within the area of jurisdiction of another *Director*, he or she may, subject to the provisions of section 111 of the Criminal Procedure Act, 1977 (Act 51 of 1977), in writing direct that the investigation and criminal proceedings in respect of such offence be conducted and commenced within the area of jurisdiction of such other *Director*.

(4) In addition to any other powers, duties and functions conferred or imposed on or assigned to the *National Director* by section 179 or any other provision of the *Constitution*, *this Act* or any other law, the *National Director*, as the head of the *prosecuting authority*-

- (a) with a view to exercising his or her powers in terms of subsection (2), may-
 - (i) conduct any investigation he or she may deem necessary in respect of a prosecution or a prosecution process, or directives, directions or guidelines given or issued by a *Director* in terms of *this Act*, or a case or matter relating to such a prosecution or a prosecution process, or directives, directions or guidelines;
 - (ii) direct the submission of and receive reports or interim reports from a *Director* in respect of a case, a matter, a prosecution or a prosecution process or directions or guidelines given or issued by a *Director* in terms of *this Act*; and
 - (iii) advise the *Minister* on all matters relating to the administration of criminal justice;
- (b) shall maintain close liaison with the *Deputy National Directors*, the *Directors*, the *prosecutors*, the legal professions and legal institutions in order to foster common policies and practices and to promote co-

operation in relation to the handling of complaints in respect of the *prosecuting authority*;

- (c) may consider such recommendations, suggestions and requests concerning the *prosecuting authority* as he or she may receive from any source;
- (d) shall assist the *Directors* and *prosecutors* in achieving the effective and fair administration of criminal justice;
- (e) shall assist the *Deputy National Directors*, *Directors* and *prosecutors* in representing their professional interests;
- (f) shall bring the United Nations Guidelines on the Role of Prosecutors to the attention of the *Directors* and *prosecutors* and promote their respect for and compliance with the above-mentioned principles within the framework of national legislation;
- (g) shall prepare a comprehensive report in respect of the operations of the *prosecuting authority*, which shall include reporting on-
 - (i) the activities of the *National Director*, *Deputy National Directors*, *Directors* and the *prosecuting authority* as a whole;
 - (ii) the personnel position of the *prosecuting authority*;
 - (iii) the financial implications in respect of the administration and operation of the *prosecuting authority*;
 - (iv) any recommendations or suggestions in respect of the *prosecuting authority*;
 - (v) information relating to training programmes for *prosecutors*; and
 - (vi) any other information which the *National Director* deems necessary;
- (h) may have the administrative work connected with the exercise of his or her powers, the performance of his or her functions or the carrying out of his or her duties, carried out by persons referred to in section 37 of *this Act*; and
- (i) may make recommendations to the *Minister* with regard to the *prosecuting authority* or the administration of justice as a whole.

(5) The *National Director* shall, after consultation with the *Deputy National Directors* and the *Directors*, advise the *Minister* on creating a structure, by regulation, in terms of which any person may report to such structure any complaint or any alleged improper conduct or any conduct which has resulted in any impropriety or prejudice on the part of a member of the *prosecuting authority*, and determining the powers and functions of such structure.

(6) (a) The *National Director* shall, in consultation with the *Minister* and after consultation with the *Deputy National Directors* and the *Directors*, frame a code of conduct which shall be complied with by members of the *prosecuting authority*.

(b) The code of conduct may from time to time be amended, and must be published in the **Gazette** for general information.

(7) The *National Director* shall develop, in consultation with the *Minister* or a person authorised thereto by the *Minister*, and the *Directors*, training programmes for *prosecutors*.

(8) The *National Director* or a person designated by him or her in writing may-

- (a) if no other member of the *prosecuting authority* is available, authorise in writing any suitable person to act as a prosecutor for the purpose of

postponing any criminal case or cases;

- (b) authorise any competent person in the employ of the public service or any local authority to conduct prosecutions, subject to the control and directions of the *National Director* or a person designated by him or her, in respect of such statutory offences, including municipal laws, as the *National Director*, in consultation with the *Minister*, may determine.

(9) The *National Director* or any *Deputy National Director* designated by the *National Director* shall have the power to institute and conduct a prosecution in any court in the *Republic* in person.

23 Powers, duties and functions of Deputy National Directors

(1) Any *Deputy National Director* may exercise or perform any of the powers, duties and functions of the *National Director* which he or she has been authorised by the *National Director* to exercise or perform.

(2) In addition to any powers, duties or functions referred to in subsection (1), the head of the *Directorate of Special Operations* may exercise the powers and must perform the duties and functions referred to in sections 7 and 19A (1), and Chapter 5.

[Sub-s. (2) added by s. 9 of Act 61 of 2000.]

[NB: Sub-s. (2) has been deleted by s. 6 of the National Prosecuting Authority Amendment Act 56 of 2008, a provision which will be put into operation by proclamation.]

24 Powers, duties and functions of Directors and Deputy Directors

(1) Subject to the provisions of section 179 and any other relevant section of the *Constitution*, *this Act* or any other law, a *Director* referred to in section 13 (1) (a) has, in respect of the area for which he or she has been appointed, the power to-

- (a) institute and conduct criminal proceedings and to carry out functions incidental thereto as contemplated in section 20 (3);
- (b) supervise, direct and co-ordinate the work and activities of all *Deputy Directors* and *prosecutors* in the Office of which he or she is the head;
- (c) supervise, direct and co-ordinate specific investigations; and
- (d) carry out all duties and perform all functions, and exercise all powers conferred or imposed on or assigned to him or her under any law which is in accordance with the provisions of *this Act*.

(2) In addition to the powers, duties and functions conferred or imposed on or assigned to an *Investigating Director*, such an *Investigating Director* or any person authorized thereto by him or her in writing may, for the purposes of criminal prosecution-

- (a) institute an action in any court in the *Republic*; and
- (b) prosecute an appeal in any court in the *Republic* emanating from criminal proceedings instituted by the *Investigating Director* or the person authorized thereto by him or her:

Provided that an *Investigating Director* or the person authorized thereto by him or her shall exercise the powers referred to in this subsection only after consultation with the *Director* of the area of jurisdiction concerned.

(3) A *Special Director* shall exercise the powers, carry out the duties and perform the functions conferred or imposed on or assigned to him or her by the President, subject to the directions of the *National Director*: Provided that if such

powers, duties and functions include any of the powers, duties and functions referred to in section 20 (1), they shall be exercised, carried out and performed in consultation with the *Director* of the area of jurisdiction concerned.

(4) In addition to any other powers, duties and functions conferred or imposed on or assigned to him or her by section 179 of the Constitution, *this Act* or any other law, a *Director* referred to in section 13 (1)-

- (a) shall, at the request of the *National Director*, submit reports to the *National Director* or assist the *National Director* in connection with a matter referred to in section 22 (4) (a) (ii);
- (b) shall submit annual reports to the *National Director* pertaining to matters referred to in section 22 (4) (g);
- (c) may, in the case of a *Director* referred to in section 13 (1) (a), give written directions or furnish guidelines to-
 - (i) the Provincial Commissioner of the police service referred to in section 207 (3) of the *Constitution* within his or her area of jurisdiction; or
 - (ii) any other person who within his or her area of jurisdiction-
 - (aa) conducts investigations in relation to offences; or
 - (bb) other than a private prosecutor, institutes or carries on prosecutions for offences; and
- (d) shall, subject to the directions of the *National Director*, be responsible for the day to day management of the *Deputy Directors* and *prosecutors* under his or her control.

(5) Without limiting the generality of subsection (4) (c) and subject to the directions of the *National Director*, directions or guidelines under that subsection may be given or furnished in relation to particular cases and may determine that certain offences or classes of offences must be referred to the *Director* concerned for decisions on the institution or conducting of prosecutions in respect of such offences or classes of offences.

(6) The *Director* shall give to the *National Director* a copy of each direction given or guideline furnished under subsection (4) (c).

(7) Where a *Director*-

- (a) is considering the institution or conducting of a prosecution for an offence; and
- (b) is of the opinion that a matter connected with or arising out of the offence requires further investigation,

the *Director* may request the Provincial Commissioner of the police service referred to in subsection (4) (c) (i) for assistance in the investigation of that matter and where the *Director* so requests, the Provincial Commissioner concerned shall, so far as practicable, comply with the request.

(8) The powers conferred upon a *Director* under section 20 (1) shall include the authority to prosecute in any court any appeal arising from any criminal proceedings.

(9) (a) Subject to section 20 (4) and the control and directions of a *Director*, a *Deputy Director* at the Office of a *Director* referred to in section 13 (1), has all the powers, duties and functions of a *Director*.

(b) A power, duty or function which is exercised, carried out or performed by a *Deputy Director* is construed, for the purposes of *this Act*, to have been exercised, carried out or performed by the *Director* concerned.

25 Powers, duties and functions of prosecutors

- (1) A *prosecutor* shall exercise the powers, carry out the duties and perform the functions conferred or imposed on or assigned to him or her-
- (a) under *this Act* and any other law of the *Republic*; and
 - (b) by the head of the Office or *Investigating Directorate* where he or she is employed or a person designated by such head; or
 - (c) if he or she is employed as a *prosecutor* in a lower court, by the *Director* in whose area of jurisdiction such court is situated or a person designated by such *Director*.
- (2) Notwithstanding the provisions of the Right of Appearance in Courts Act, 1995 (Act 62 of 1995), or any other law, any *prosecutor* who-
- (a) has obtained such legal qualifications as the *Minister* after consultation with the *National Director* may prescribe; and
 - (b) has at least three years' experience as a *prosecutor* of a magistrates' court of a regional division,
- shall, subject to section 20 (6), have the right to appear in any court in the *Republic*.

CHAPTER 5 POWERS, DUTIES AND FUNCTIONS RELATING TO INVESTIGATING DIRECTORATES (ss 26-31)

26 Application

- (1) This Chapter only relates to *Investigating Directorates*.
- (2) Nothing in this Chapter or section 7 (1), or any proclamation issued in terms of section 7, derogates from any power or duty which relates to the prevention, combating or investigation of any offences and which is bestowed upon the South African Police Service in terms of any law.
- [NB: Sub-s. (2) has been deleted by s. 7 of the National Prosecuting Authority Amendment Act 56 of 2008, a provision which will be put into operation by proclamation.]

[S. 26 substituted by s. 10 of Act 61 of 2000.]

27 Reporting of matters to Investigating Director

If any person has reasonable grounds to suspect that a *specified offence* has been or is being committed or that an attempt has been or is being made to commit such an offence, he or she may report the matter in question to the *head of an Investigating Directorate* by means of an affidavit or affirmed declaration specifying-

- (a) the nature of the suspicion;
- (b) the grounds on which the suspicion is based; and
- (c) all other relevant information known to the declarant.

[S. 27 substituted by s. 11 of Act 61 of 2000.]

28 Inquiries by Investigating Director

(1) (a) If the *Investigating Director* has reason to suspect that a *specified offence* has been or is being committed or that an attempt has been or is being made to commit such an offence, he or she may conduct an *investigation* on the matter in question, whether or not it has been reported to him or her in terms of section 27.

(b) If the *National Director* refers a matter in relation to the alleged

commission or attempted commission of a *specified offence* to the *Investigating Director*, the *Investigating Director* shall conduct an investigation, or a preparatory investigation as referred to in subsection (13), on that matter.

(c) If the *Investigating Director*, at any time during the conducting of an investigation on a matter referred to in paragraph (a) or (b), considers it desirable to do so in the interest of the administration of justice or in the public interest, he or she may extend the *investigation* so as to include any offence, whether or not it is a *specified offence*, which he or she suspects to be connected with the subject of the *investigation*.

(d) If the *Investigating Director*, at any time during the conducting of an *investigation*, is of the opinion that evidence has been disclosed of the commission of an offence which is not being investigated by the *Investigating Directorate* concerned, he or she must without delay inform the National Commissioner of the South African Police Service of the particulars of such matter.

[Sub-s. (1) substituted by s. 12 (a) of Act 61 of 2000.]

(2) (a) The *Investigating Director* may, if he or she decides to conduct an *investigation*, at any time prior to or during the conducting of the *investigation* designate any person referred to in section 7 (4) (a) to conduct the *investigation*, or any part thereof, on his or her behalf and to report to him or her.

[NB: Para. (a) has been substituted by s. 8 of the National Prosecuting Authority Amendment Act 56 of 2008, a provision which will be put into operation by proclamation. See PENDLEX.]

(b) A person so designated shall for the purpose of the *investigation* concerned have the same powers as those which the *Investigating Director* has in terms of this section and section 29 of this Act, and the instructions issued by the Treasury under section 39 of the Exchequer Act, 1975 (Act 66 of 1975), in respect of commissions of inquiry shall apply with the necessary changes in respect of such a person.

[Sub-s. (2) substituted by s. 12 (a) of Act 61 of 2000.]

(3) All proceedings contemplated in subsections (6), (8) and (9) shall take place *in camera*.

[Sub-s. (3) substituted by s. 12 (a) of Act 61 of 2000.]

(4) The procedure to be followed in conducting an *investigation* shall be determined by the *Investigating Director* at his or her discretion, having regard to the circumstances of each case.

[Sub-s. (4) substituted by s. 12 (a) of Act 61 of 2000.]

(5) The proceedings contemplated in subsections (6), (8) and (9) shall be recorded in such manner as the *Investigating Director* may deem fit.

[Sub-s. (5) substituted by s. 12 (a) of Act 61 of 2000.]

(6) For the purposes of an *investigation*-

(a) the *Investigating Director* may summon any person who is believed to be able to furnish any information on the subject of the *investigation* or to have in his or her possession or under his or her control any book, document or other object relating to that subject, to appear before the *Investigating Director* at a time and place specified in the summons, to be questioned or to produce that book, document or other object;

- (b) the *Investigating Director* or a person designated by him or her may question that person, under oath or affirmation administered by the *Investigating Director*, and examine or retain for further examination or for safe custody such a book, document or other object: Provided that any person from whom a book or document has been taken under this section may, as long as it is in the possession of the *Investigating Director*, at his or her request be allowed, at his or her own expense and under the supervision of the *Investigating Director*, to make copies thereof or to take extracts therefrom at any reasonable time.

[Sub-s. (6) substituted by s. 12 (a) of Act 61 of 2000.]

(7) A summons referred to in subsection (6) shall-

- (a) be in the prescribed form;
- (b) contain particulars of the matter in connection with which the person concerned is required to appear before the *Investigating Director*;
- (c) be signed by the *Investigating Director* or a person authorized by him or her; and
- (d) be served in the prescribed manner.

(8) (a) The law regarding privilege as applicable to a witness summoned to give evidence in a criminal case in a magistrate's court shall apply in relation to the questioning of a person in terms of subsection (6): Provided that such a person shall not be entitled to refuse to answer any question upon the ground that the answer would tend to expose him or her to a criminal charge.

(b) No evidence regarding any questions and answers contemplated in paragraph (a) shall be admissible in any criminal proceedings, except in criminal proceedings where the person concerned stands trial on a charge contemplated in subsection (10) (b) or (c), or in section 319 (3) of the Criminal Procedure Act, 1955 (Act 56 of 1955).

(9) A person appearing before the *Investigating Director* by virtue of subsection (6)-

- (a) may be assisted at his or her examination by an advocate or an attorney;
- (b) shall be entitled to such witness fees as he or she would be entitled to if he or she were a witness for the State in criminal proceedings in a magistrate's court.

(10) Any person who has been summoned to appear before the *Investigating Director* and who-

- (a) without sufficient cause fails to appear at the time and place specified in the summons or to remain in attendance until he or she is excused by the *Investigating Director* from further attendance;
- (b) at his or her appearance before the *Investigating Director*-
 - (i) fails to produce a book, document or other object in his or her possession or under his or her control which he or she has been summoned to produce;
 - (ii) refuses to be sworn or to make an affirmation after he or she has been asked by the *Investigating Director* to do so;
- (c) having been sworn or having made an affirmation-
 - (i) fails to answer fully and to the best of his or her ability any question lawfully put to him or her;

- (ii) gives false evidence knowing that evidence to be false or not knowing or not believing it to be true,

shall be guilty of an offence.

(11) and (12)

[Sub-ss. (11) and (12) deleted by s. 12 (b) of Act 61 of 2000.]

(13) If the *Investigating Director* considers it necessary to hear evidence in order to enable him or her to determine if there are reasonable grounds to conduct an investigation in terms of subsection (1) (a), the *Investigating Director* may hold a preparatory investigation.

(14) The provisions of subsections (2) to (10), inclusive, and of sections 27 and 29 shall, with the necessary changes, apply to a preparatory investigation referred to in subsection (13).

[Sub-s. (14) substituted by s. 12 (c) of Act 61 of 2000.]

29 Entering upon premises by Investigating Director

(1) The *Investigating Director* or any person authorised thereto by him or her in writing may, subject to this section, for the purposes of an *investigation* at any reasonable time and without prior notice or with such notice as he or she may deem appropriate, enter any premises on or in which anything connected with that *investigation* is or is suspected to be, and may-

- (a) inspect and search those premises, and there make such enquiries as he or she may deem necessary;
- (b) examine any object found on or in the premises which has a bearing or might have a bearing on the *investigation* in question, and request from the owner or person in charge of the premises or from any person in whose possession or charge that object is, information regarding that object;
- (c) make copies of or take extracts from any book or document found on or in the premises which has a bearing or might have a bearing on the *investigation* in question, and request from any person suspected of having the necessary information, an explanation of any entry therein;
- (d) seize, against the issue of a receipt, anything on or in the premises which has a bearing or might have a bearing on the *investigation* in question, or if he or she wishes to retain it for further examination or for safe custody: Provided that any person from whom a book or document has been taken under this section may, as long as it is in the possession of the *Investigating Director*, at his or her request be allowed, at his or her own expense and under the supervision of the *Investigating Director*, to make copies thereof or to take extracts therefrom at any reasonable time.

[Sub-s. (1) substituted by s. 13 (a) of Act 61 of 2000.]

(2) Any entry upon or search of any premises in terms of this section shall be conducted with strict regard to decency and order, including-

- (a) a person's right to, respect for and the protection of his or her dignity;
- (b) the right of a person to freedom and security; and
- (c) the right of a person to his or her personal privacy.

(3) No evidence regarding any questions and answers contemplated in

subsection (1) shall be admissible in any subsequent criminal proceedings against a person from whom information in terms of that subsection is acquired if the answers incriminate him or her, except in criminal proceedings where the person concerned stands trial on a charge contemplated in subsection (12).

(4) Subject to subsection (10), the premises referred to in subsection (1) may only be entered, and the acts referred to in subsection (1) may only be performed, by virtue of a warrant issued in chambers by a magistrate, regional magistrate or judge of the area of jurisdiction within which the premises is situated: Provided that such a warrant may be issued by a judge in respect of premises situated in another area of jurisdiction, if he or she deems it justified.

(5) A warrant contemplated in subsection (4) may only be issued if it appears to the magistrate, regional magistrate or judge from information on oath or affirmation, stating-

- (a) the nature of the *investigation* in terms of section 28;
- (b) that there exists a reasonable suspicion that an offence, which might be a *specified offence*, has been or is being committed, or that an attempt was or had been made to commit such an offence; and
- (c) the need, in regard to the *investigation*, for a search and seizure in terms of this section,

that there are reasonable grounds for believing that anything referred to in subsection (1) is on or in such premises or suspected to be on or in such premises.

[Sub-s. (5) substituted by s. 13 (b) of Act 61 of 2000.]

(6) A warrant issued in terms of this section may be issued on any day and shall be of force until-

- (a) it has been executed;
- (b) it is cancelled by the person who issued it or, if such person is not available, by any person with like authority; or
- (c) the expiry of three months from the day of its issue,

whichever may occur first.

(7) (a) Any person who acts on authority of a warrant issued in terms of this section may use such force as may be reasonably necessary to overcome any resistance against the entry and search of the premises, including the breaking of any door or window of such premises: Provided that such person shall first audibly demand admission to the premises and state the purpose for which he or she seeks to enter such premises.

(b) The proviso to paragraph (a) shall not apply where the person concerned is on reasonable grounds of the opinion that any object, book or document which is the subject of the search may be destroyed, tampered with or disposed of if the provisions of the said proviso are first complied with.

(8) A warrant issued in terms of this section shall be executed by day unless the person who issues the warrant authorises the execution thereof by night at times which shall be reasonable in the circumstances.

(9) Any person executing a warrant in terms of this section shall immediately before commencing with the execution-

- (a) identify himself or herself to the person in control of the premises, if such person is present, and hand to such person a copy of the warrant or, if such person is not present, affix such copy to a prominent place on the premises;
- (b) supply such person at his or her request with particulars regarding his

or her authority to execute such a warrant.

(10) (a) The *Investigating Director* or any person referred to in section 7 (4) (a) may without a warrant enter upon any premises and perform the acts referred to in subsection (1)-

- (i) if the person who is competent to do so consents to such entry, search, seizure and removal; or
- (ii) if he or she upon reasonable grounds believes that-
 - (aa) the required warrant will be issued to him or her in terms of subsection (4) if he or she were to apply for such warrant; and
 - (bb) the delay caused by the obtaining of any such warrant would defeat the object of the entry, search, seizure and removal.

(b) Any entry and search in terms of paragraph (a) shall be executed by day, unless the execution thereof by night is justifiable and necessary, and the person exercising the powers referred to in the said paragraph shall identify himself or herself at the request of the owner or the person in control of the premises.

(11) If during the execution of a warrant or the conducting of a search in terms of this section, a person claims that any item found on or in the premises concerned contains privileged information and for that reason refuses the inspection or removal of such item, the person executing the warrant or conducting the search shall, if he or she is of the opinion that the item contains information which is relevant to the *investigation* and that such information is necessary for the *investigation*, request the registrar of the High Court which has jurisdiction or his or her delegate, to seize and remove that item for safe custody until a court of law has made a ruling on the question whether the information concerned is privileged or not.

[Sub-s. (11) substituted by s. 13 (c) of Act 61 of 2000.]

(12) Any person who-

- (a) obstructs or hinders the *Investigating Director* or any other person in the performance of his or her functions in terms of this section;
- (b) when he or she is asked in terms of subsection (1) for information or an explanation relating to a matter within his or her knowledge, refuses or fails to give that information or explanation or gives information or an explanation which is false or misleading, knowing it to be false or misleading,

shall be guilty of an offence.

30 Powers and functions of special investigators

(1) A *special investigator* may, subject to the control and direction of the head of the *Directorate of Special Operations*, exercise such powers and must perform such duties as are conferred or imposed upon him or her by or under *this Act* or any other law and must obey all lawful directions which he or she may from time to time receive from a person having the authority to give such directions.

(2) A *special investigator* has the powers as provided for in the Criminal Procedure Act, 1977 (Act 51 of 1977), which are bestowed upon a peace officer or a police official, relating to-

- (a) the investigation of offences;
- (b) the ascertainment of bodily features of an accused person;
- (c) the entry and search of premises;
- (d) the seizure and disposal of articles;

- (e) arrests;
- (f) the execution of warrants; and
- (g) the attendance of an accused person in court.

(3) (a) The *Minister* may, in consultation with the Minister for Safety and Security, from time to time by notice in the *Gazette* bestow any power-

- (i) which is conferred under any other law upon any specified person or category of persons; and
- (ii) which relates to the prevention, investigation or combating of any offence or other criminal or unlawful activity,

upon *special investigators*.

(b) Any notice referred to in paragraph (a)-

- (i) may from time to time be amended or rescinded by the *Minister* in consultation with the Minister for Safety and Security; and
- (ii) must be submitted to Parliament before publication in the *Gazette*.

[S. 30 substituted by s. 14 of Act 61 of 2000.]

[NB: S. 30 has been repealed by s. 9 of the National Prosecuting Authority Amendment Act 56 of 2008, a provision which will be put into operation by proclamation.]

31 Ministerial Coordinating Committee

(1) There is hereby established a committee, to be known as the Ministerial Coordinating Committee (hereinafter referred to as the Committee), which may determine-

- (a) policy guidelines in respect of the functioning of the *Directorate of Special Operations*;
- (b) procedures to coordinate the activities of the *Directorate of Special Operations* and other relevant government institutions, including procedures for-
 - (i) the communication and transfer of information regarding matters falling within the operational scope of the *Directorate of Special Operations* and such institutions; and
 - (ii) the transfer of investigations to or from the *Directorate of Special Operations* and such institutions; and
- (c) where necessary-
 - (i) the responsibility of the *Directorate of Special Operations* in respect of specific matters; and
 - (ii) the further procedures to be followed for the referral or the assigning of any investigation to the *Directorate of Special Operations*.

(2) The Committee comprises-

- (a) the Cabinet members responsible for-
 - (i) the administration of justice, who is the chairperson thereof;
 - (ii) correctional services;
 - (iii) defence;
 - (iv) intelligence services; and
 - (v) safety and security; and

(b) any other Cabinet member designated from time to time by the President.

(3) The Committee may conduct its business and proceedings at its meetings as it deems fit.

[S. 31 substituted by s. 14 of Act 61 of 2000.]

[NB: S. 31 has been repealed by s. 9 of the National Prosecuting Authority Amendment Act 56 of 2008, a provision which will be put into operation by proclamation.]

CHAPTER 6 GENERAL PROVISIONS (ss 32-42)

32 Impartiality of, and oath or affirmation by members of prosecuting authority

(1) (a) A member of the *prosecuting authority* shall serve impartially and exercise, carry out or perform his or her powers, duties and functions in good faith and without fear, favour or prejudice and subject only to the *Constitution* and the law.

(b) Subject to the *Constitution* and *this Act*, no organ of state and no member or employee of an organ of state nor any other person shall improperly interfere with, hinder or obstruct the *prosecuting authority* or any member thereof in the exercise, carrying out or performance of its, his or her powers, duties and functions.

(2) (a) A *National Director* and any person referred to in section 4 must, before commencing to exercise, carry out or perform his or her powers, duties or functions in terms of *this Act*, take an oath or make an affirmation, which shall be subscribed by him or her, in the form set out below, namely-

'I

(full name)

do hereby swear/solemnly affirm that I will in my capacity as *National Director/Deputy National Director* of Public Prosecutions/*Director/Deputy Director* of Public Prosecutions/*prosecutor*, uphold and protect the *Constitution* and the fundamental rights entrenched therein and enforce the Law of the *Republic* without fear, favour or prejudice and, as the circumstances of any particular case may require, in accordance with the *Constitution* and the Law. (In the case of an oath: So help me God.)'

(b) Such an oath or affirmation shall-

- (i) in the case of the *National Director*, or a *Deputy National Director*, *Director* or *Deputy Director*, be taken or made before the most senior available judge of the High Court within which area of jurisdiction the Office of the *National Director*, *Director* or *Deputy Director*, as the case may be, is situated; or
- (ii) in the case of a *prosecutor*, be taken or made before the *Director* in whose Office the *prosecutor* concerned has been appointed or before the most senior judge or magistrate at the court where the *prosecutor* is stationed,

who shall at the bottom thereof endorse a statement of the fact that it was taken or made before him or her and of the date on which it was so taken or made and append his or her signature thereto.

33 Minister's final responsibility over prosecuting authority

(1) The *Minister* shall, for purposes of section 179 of the *Constitution, this Act* or any other law concerning the *prosecuting authority*, exercise final responsibility over the *prosecuting authority* in accordance with the provisions of *this Act*.

(2) To enable the *Minister* to exercise his or her final responsibility over the *prosecuting authority*, as contemplated in section 179 of the *Constitution*, the *National Director* shall, at the request of the *Minister*-

- (a) furnish the *Minister* with information or a report with regard to any case, matter or subject dealt with by the *National Director* or a *Director* in the exercise of their powers, the carrying out of their duties and the performance of their functions;
- (b) provide the *Minister* with reasons for any decision taken by a *Director* in the exercise of his or her powers, the carrying out of his or her duties or the performance of his or her functions;
- (c) furnish the *Minister* with information with regard to the prosecution policy referred to in section 21 (1) (a);
- (d) furnish the *Minister* with information with regard to the policy directives referred to in section 21 (1) (b);
- (e) submit the reports contemplated in section 34 to the *Minister*; and
- (f) arrange meetings between the *Minister* and members of the *prosecuting authority*.

34 Reports by Directors

(1) A *Director* must annually, not later than the first day of March, submit to the *National Director* a report on all his or her activities during the previous year.

(2) The *National Director* may at any time request a *Director* to submit a report with regard to a specific activity relating to his or her powers, duties or functions.

(3) A *Director* may, at any time, submit a report to the *National Director* with regard to any matter relating to the *prosecuting authority*, if he or she deems it necessary.

35 Accountability to Parliament

(1) The *prosecuting authority* shall be accountable to Parliament in respect of its powers, functions and duties under *this Act*, including decisions regarding the institution of prosecutions.

(2) (a) The *National Director* must submit annually, not later than the first day of June, to the *Minister* a report referred to in section 22 (4) (g), which report must be tabled in Parliament by the *Minister* within 14 days, if Parliament is then in session, or if Parliament is not then in session, within 14 days after the commencement of its next ensuing session.

(b) The *National Director* may, at any time, submit a report to the *Minister* or Parliament with regard to any matter relating to the *prosecuting authority*, if he or she deems it necessary.

36 Expenditure of prosecuting authority

(1) The expenses incurred in connection with-

- (a) the exercise of the powers, the carrying out of the duties and the performance of the functions of the *prosecuting authority*; and
- (b) the remuneration and other conditions of service of members of the *prosecuting authority*,

shall be defrayed out of monies appropriated by Parliament for that purpose.

(2) The Department of Justice must, in consultation with the *National Director*, prepare the necessary estimate of revenue and expenditure of the *prosecuting authority*.

(3) Subject to subsection (3A), the Director-General: Justice shall, subject to the Public Finance Management Act, 1999 (Act 1 of 1999)-

- (a) be charged with the responsibility of accounting for State monies received or paid out for or on account of the prosecuting authority; and
- (b) cause the necessary accounting and other related records to be kept.

[Sub-s. (3) substituted by s. 15 of Act 61 of 2000.]

[NB: Sub-s. (3) has been substituted by s. 10 (a) of the National Prosecuting Authority Amendment Act 56 of 2008, a provision which will be put into operation by proclamation. See PENDLEX.]

(3A) (a) The Minister must appoint a fit and proper person as the Chief Executive Officer of the *Directorate of Special Operations*.

(b) The Chief Executive Officer is the accounting officer of the *Directorate of Special Operations* and shall, subject to the Public Finance Management Act, 1999 (Act 1 of 1999)-

- (i) account for money received or paid out for or on behalf of the administration and functioning of the *Directorate of Special Operations*; and
- (ii) cause the necessary accounting and other related records to be kept.

[Sub-s. (3A) inserted by s. 15 of Act 61 of 2000.]

[NB: Sub-s. (3A) has been deleted by s. 10 (b) of the National Prosecuting Authority Amendment Act 56 of 2008, a provision which will be put into operation by proclamation.]

(4) The records referred to in subsection (3) (b) and (3A) (b) shall be audited by the Auditor-General.

[Sub-s. (4) substituted by s. 15 of Act 61 of 2000.]

[NB: Sub-s. (4) has been substituted by s. 10 (c) of the National Prosecuting Authority Amendment Act 56 of 2008, a provision which will be put into operation by proclamation. See PENDLEX.]

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

[Sub-s. (5) added by s. 15 of Act 61 of 2000.]

[NB: Sub-s. (5) has been substituted by s. 10 (d) of the National Prosecuting Authority Amendment Act 56 of 2008, a provision which will be put into operation by proclamation. See PENDLEX.]

37 Administrative staff

The administrative staff of-

- (a) the *Office of the National Director*;

- (b) the Offices of the *Directors*, including *Investigating Directorates*; and
- (c) the Offices of *prosecutors* as determined by the *National Director*, in consultation with the *Director* concerned,

shall be persons appointed or employed under the *Public Service Act*.

38 Engagement of persons to perform services in specific cases

(1) The *National Director* may in consultation with the *Minister*, and a *Deputy National Director* or a *Director* may, in consultation with the *Minister* and the *National Director*, on behalf of the State, engage, under agreements in writing, persons having suitable qualifications and experience to perform services in specific cases.

(2) The terms and conditions of service of a person engaged by the *National Director*, a *Deputy National Director* or a *Director* under subsection (1) shall be as determined from time to time by the *Minister* in concurrence with the Minister of Finance.

(3) Where the engagement of a person contemplated in subsection (1) will not result in financial implications for the State-

- (a) the *National Director*; or
- (b) a *Deputy National Director* or a *Director*, in consultation with the *National Director*,

may, on behalf of the State, engage, under an agreement in writing, such person to perform the services contemplated in subsection (1) without consulting the *Minister* as contemplated in that subsection.

[Sub-s. (3) added by s. 16 of Act 61 of 2000.]

(4) For purposes of this section, 'services' include the conducting of a prosecution under the control and direction of the *National Director*, a *Deputy National Director* or a *Director*, as the case may be.

[Sub-s. (4) added by s. 16 of Act 61 of 2000.]

[Date of commencement of s. 38: 23 April 1999.]

39 Disclosure of interest and non-performance of other paid work

(1) The *National Director*, a *Deputy National Director* and a *Director* shall give written notice to the *Minister* of all direct or indirect pecuniary interests that they have or acquire in any business whether in the *Republic* or elsewhere or in any body corporate carrying on any such business.

(2) The *National Director*, a *Deputy National Director* and a *Director* shall not, without the consent of the President, perform any paid work outside his or her duties of office.

40 Regulations

(1) The *Minister* may, subject to subsection (2), make regulations prescribing-

- (a) matters required or permitted by *this Act* to be prescribed;
- (b) the steps to be taken to ensure compliance with the code of conduct referred to in section 22 (6); or
- (c) matters necessary or convenient to be prescribed for carrying out or giving effect to *this Act*.

[NB: Sub-s. (1) has been amended by s. 11 (a) of the National Prosecuting

Authority Amendment Act 56 of 2008, a provision which will be put into operation by proclamation. See PENDLEX.]

(2) The *Minister* may, after consultation with the *National Director*, make regulations regarding the *Directorate of Special Operations*, prescribing-

- (a) the employment, training, promotion, posting, transfer, leave of absence, resignation, discharge, retirement, dismissal, suspension or reduction in rank or grade of *special investigators* and the personnel management of those *special investigators* in general;
- (b) the standards of physical and mental fitness and the medical examination of *special investigators*, and the medical, dental and hospital treatment of such *special investigators* and their families;
- (c) the provision of medical, dental and hospital treatment of *special investigators* who have retired on pension and their families, and of the families of *special investigators* who have died;
- (d) the numerical establishment of the *Directorate of Special Operations*, the conditions of service of the *special investigators* thereof, the salaries, salary scales, wages and allowances of special investigators and the systems relating to the administration and determination thereof and the various structures, grades, ranks and designations in the *Directorate of Special Operations*;
- (e) the establishment and maintenance of training institutions or centres for *special investigators*, and the instruction, training, discipline and control of such *special investigators* at such institutions or centres;
- (f) all matters relating to misconduct and discipline in the *Directorate of Special Operations*;
- (g) the deductions to be made from the salaries, wages or allowances of *special investigators*;
- (h) procedures to be followed in respect of cases of alleged or presumed medical unfitness;
- (i) procedures to be followed in respect of cases of alleged or presumed inefficiency;
- (j) the recovery from a *special investigator* of any deficiency, loss, damage or expense which he or she has unlawfully caused to the State;
- (k) the control of funds collected or received by *special investigators* for the benefit of *special investigators* or former *special investigators*, or their dependants;
- (l) the general management and maintenance of the *Directorate of Special Operations*;
- (m) the regulation of labour relations and the creation of accompanying structures;
- (n) a code of conduct to be adhered to by *special investigators*;
- (o) the establishment of procedures regarding the presentation, consideration and adjudication of grievances of *special investigators*;
- (p) the establishment and functioning of a structure to which any person may report any complaint or any alleged improper conduct on the part of a *special investigator* of the *Directorate of Special Operations*;

- (q) any matter required or permitted in terms of *this Act* to be prescribed; or
- (r) generally, all matters which are necessary or expedient to prescribe in order to promote the efficient functioning of the *Directorate of Special Operations*.

[Sub-s. (2) amended by s. 17 of Act 42 of 2001.]

[NB: Sub-s. (2) has been deleted by s. 11 (b) of the National Prosecuting Authority Amendment Act 56 of 2008, a provision which will be put into operation by proclamation.]

(3) Any regulation made in terms of this section-

- (a) which may result in the expenditure of State monies shall be made in consultation with the Minister of Finance;
- (b) may provide that a contravention thereof shall be an offence; and
- (c) must be submitted to Parliament before publication in the

Gazette.

[S. 40 substituted by s. 17 of Act 61 of 2000.]

40A Unauthorised access to or modification of computer material

(1) Without derogating from the generality of subsection (2)-

- (a) **'access to a computer'** includes access by whatever means to any program or data contained in the random access memory of a computer or stored by any computer on any storage medium, whether such storage medium is physically attached to the computer or not, where such storage medium belongs to or is under the control of the *prosecuting authority*;
- (b) **'contents of any computer'** includes the physical components of any computer as well as any program or data contained in the random access memory of a computer or stored by any computer on any storage medium, whether such storage medium is physically attached to the computer or not, where such storage medium belongs to or is under the control of the *prosecuting authority*;
- (c) **'modification'** includes both a modification of a temporary or permanent nature; and
- (d) **'unauthorised access'** includes access by a person who is authorised to use the computer but is not authorised to gain access to a certain program or to certain data held in such computer or is unauthorised, at the time when the access is gained, to gain access to such computer, program or data.

(2) Any person is guilty of an offence if he or she wilfully-

- (a) gains, or allows or causes any other person to gain, unauthorised access to any computer which belongs to or is under the control of the *prosecuting authority* or to any program or data held in such a computer, or in a computer to which only certain or all members of the *prosecuting authority* have access in their capacity as members; or
- (b) causes a computer which belongs to or is under the control of the *prosecuting authority* or to which only certain or all members of the *prosecuting authority* have access in their capacity as members, to perform a function while such person is not authorised to cause such

computer to perform such function; or

- (c) performs any act which causes an unauthorised modification of the contents of any computer which belongs to or is under the control of the *prosecuting authority* or to which only certain or all members of the *prosecuting authority* have access in their capacity as members with the intention to-
 - (i) impair the operation of any computer or of any program in any computer or of the operating system of any computer or the reliability of data held in such computer; or
 - (ii) prevent or hinder access to any program or data held in any computer.

(3) Any act or event for which proof is required for a conviction of an offence in terms of this section and which was committed or took place outside the Republic is deemed to have been committed or to have taken place in the Republic if-

- (a) the accused was in the Republic at the time when he or she performed the act or any part thereof; or
- (b) the computer, by means of which the act was done, or which was affected in a manner contemplated in subsection (2) by the act, was in the Republic at the time when the accused performed the act or any part thereof; or
- (c) the accused was a South African citizen or domiciled in the Republic at the time of the commission of the offence.

[S. 40A inserted by s. 18 of Act 61 of 2000.]

41 Offences and penalties

(1) Any person who contravenes the provisions of section 32 (1) (b) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

(2) Any person convicted of an offence referred to in section 28 (10) or 29 (12) shall be liable to a fine or to imprisonment for a period not exceeding 15 years or to both such fine and such imprisonment.

(3) Any person who is convicted of an offence in terms of a regulation made under section 40, shall be liable to a fine or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(4) Any person who is convicted of an offence referred to in section 40A(2), shall be liable to a fine or to imprisonment for a period not exceeding 25 years or to both such fine and such imprisonment.

(5) Any person who, in connection with any activity carried on by him or her, in a fraudulent manner takes, assumes, uses or 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 to infer that such activity is carried on under or by virtue of the provisions of *this Act* or under the patronage of the *prosecuting authority*, or is in any manner associated or connected with the *prosecuting authority*, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 25 years or to both such fine and such imprisonment.

(6) Notwithstanding any other law, no person shall without the permission of the *National Director* or a person authorised in writing by the *National Director* disclose to any other person-

- (a) any information which came to his or her knowledge in the

performance of his or her functions in terms of this Act or any other law;

- (b) the contents of any book or document or any other item in the possession of the *prosecuting authority*; or
- (c) the record of any evidence given at an investigation as contemplated in section 28 (1),

except-

- (i) for the purpose of performing his or her functions in terms of *this Act* or any other law; or
- (ii) when required to do so by order of a court of law.

(7) Any person who contravenes subsection (6) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 15 years or to both such fine and such imprisonment.

[S. 41 substituted by s. 19 of Act 61 of 2000.]

42 Limitation of liability

No person shall be liable in respect of anything done in good faith under *this Act*.

CHAPTER 7 TRANSITIONAL ARRANGEMENTS (ss 43-46)

43 Transitional arrangements

(1) (a) Anyone holding office as an attorney-general in terms of the Attorney-General Act, 1992 (Act 92 of 1992), shall, subject to paragraph (b), be deemed to have been appointed as a *Director* in terms of *this Act*, and shall continue to function in terms of the laws applicable to his or her Office.

(b) The President shall, as soon as reasonably possible after the commencement of this section, appoint each attorney-general referred to in paragraph (a) as a *Director* at the Office that, and for such term as the President, after consultation with the attorney-general concerned, may determine, but such term shall not extend beyond the date on which the attorney-general concerned will attain the age of 65 years.

(c) The provisions of section 12 (4) shall apply with the necessary changes in respect of a *Director* referred to in paragraph (b): Provided that the reference in section 12 (4) to the age of 65 years shall be construed as a reference to the date on which the *Director's* term of office as contemplated in paragraph (b) expires.

(d) If the term of office of a *Director* appointed under paragraph (b) expires before he or she has attained the age of 65 years, he or she shall be entitled to pension benefits determined and calculated under all circumstances as if he or she was employed as a Director-General in the public service, who served as a Director-General for five years.

(2) Anyone holding office as an attorney-general in terms of a law other than the Attorney-General Act, 1992, or holding an appointment as acting attorney-general, shall be deemed to have been appointed as an acting *Director* under *this Act* at the office where he or she holds such office or appointment, and shall continue to function in that capacity until otherwise determined under *this Act* or any other law.

(3) (a) Any person who immediately before the commencement of this section was employed by the State as a deputy attorney-general shall continue in such employment and shall be deemed to have been appointed as a *Deputy Director*

in terms of section 15 (1).

(b) Any person who immediately before the commencement of this section was employed by the State as a state advocate or prosecutor and who has been delegated in terms of any law to institute criminal proceedings and to conduct any prosecution in criminal proceedings on behalf of the State-

- (i) shall continue in such employment as a *prosecutor*; and
- (ii) shall be deemed to have been authorised to exercise the powers referred to in section 20 (1): Provided that no *prosecutor* shall, by virtue of this section, have more powers than he or she would have had under the delegation concerned.

(4) Criminal proceedings which have been instituted before the commencement of *this Act*, must be disposed of as if the decision to institute and prosecute in such criminal proceedings had been taken by a member of the *prosecuting authority* appointed in terms of *this Act*.

(5) Any attorney-general, deputy attorney-general, state advocate or prosecutor who continues in office in terms of this section must, within three months after the commencement of *this Act*, take the oath or make the affirmation referred to in section 32 (2).

(6) As from the date of the commencement of this section, all offices of attorneys-general at the High Courts contemplated in item 16 (4) (a) of Schedule 6 to the *Constitution*, shall become offices of the *prosecuting authority* as referred to in section 6 (1) of *this Act*.

(7) (a) As from the date of the commencement of this section-

- (i) the Office for Serious Economic Offences established by section 2 of the Investigation of Serious Economic Offences Act, 1991 (Act 117 of 1991), shall become an *Investigating Directorate*, which shall be deemed to have been established by the President under section 7 and which shall be known as the Investigating Directorate: Serious Economic Offences;
- (ii) subject to the provisions of *this Act*, the Director and staff of the Office for Serious Economic Offences referred to in section 3 of the Investigation of Serious Economic Offences Act, 1991, shall remain in office and continue their functions under *this Act*; and
- (iii) all pending matters pertaining to the Office for Serious Economic Offences shall be dealt with as if *this Act* had at all times been in force.

(b) Notwithstanding the repeal of the Investigation of Serious Economic Offences Act, 1991, the regulations made under section 10 of that Act shall remain in force pending the repeal or amendment thereof under section 40 of *this Act*.

(c) The President may, on the request of the *National Director* and by proclamation in the *Gazette*, further specify the categories of offences in respect of which the Investigating Directorate: Serious Economic Offences must exercise its functions.

[NB: Sub-s. (7) has been deleted by s. 12 of the National Prosecuting Authority Amendment Act 56 of 2008, a provision which will be put into operation by proclamation.]

(8) Subject to the *Constitution* and *this Act*, all measures which immediately before the commencement of this section were in operation and applied to attorneys-general, deputy attorneys-general, state advocates and prosecutors, including measures regarding remuneration, pension and pension benefits, leave gratuity and any other term and condition of service, shall continue in operation and to apply to the said attorneys-general, deputy attorneys-general, state advocates and prosecutors until amended or repealed by *this Act*: Provided that no such measure

shall, except in accordance with an applicable law or agreement, be changed in a manner which affects such attorneys-general, deputy attorneys-general, state advocates and prosecutors to their detriment.

(9) Notwithstanding the commencement of *this Act*, all measures regulating the institution and conducting of prosecutions in any court shall remain in force until repealed or amended under *this Act* or by any competent authority.

43A Transitional arrangements relating to Directorate of Special Operations

(1) In this section-

- (a) any word or expression in respect of which a specific meaning has been assigned by the South African Police Service Act, 1995 (Act 68 of 1995), has the same meaning; and
- (b) '**fixed date**' means a date to be determined by the President by proclamation.

(2) Prior to a date determined by the *National Director*, any person employed by the *Directorate of Special Operations* must inform the *National Director* whether they consent to be transferred to the South African Police Service.

(3) As from the fixed date-

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

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

(b) The remuneration and other terms and conditions of employment of employees transferred in terms of subsection (3) may not be less favourable than those that applied immediately before their transfer.

(c) The transfer contemplated in subsection (3) does not interrupt the employees' continuity of employment and the employees remain entitled to all rights and benefits, including pension benefits and privileges to which they were entitled to immediately before transfer.

(5) (a) An employee referred to in subsection (3) who does not consent to be transferred to the South African Police Service must, prior to the date referred to in subsection (2), notify the *National Director* thereof in writing.

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

- (i) after consultation with the *Minister* and the Cabinet members responsible for the public service and for finance, offer to transfer the employee to a reasonable alternative post or position in any government department or state institution in accordance with subsection (4) (b) and (c) and section 14 of the Public Service Act, 1994 (Proclamation 103 of 1994), shall, unless the context indicates otherwise, apply to such a transfer; or
- (ii) after consultation with the *Minister*, offer to transfer the employee to a reasonable alternative post or position in the *prosecuting authority*, other than any post of *special investigator*, in accordance with subsection (4) (b) and (c).

(c) If the employee does not accept the offer made in paragraph (b) within 30 days of it being made, the employee's employment automatically terminates on the fixed date.

(d) An employee whose employment is terminated in terms of paragraph (c) is entitled to a severance package determined by the *Minister* in consultation with the Cabinet members for the public service and for finance.

(e) The severance package provided for in paragraph (d) may not be less favourable than the severance package provided for in the Determination on the Introduction of an Employee-Initiated Severance Package for the Public Service determined in terms section 3 of the Public Service Act, 1994.

(f) Any dispute arising from the interpretation or application of this section in so far as employees are concerned must be referred to the Labour Court for determination.

(6) Any decisions made, directions issued and any proceedings instituted by the employer immediately before the fixed date in respect of an employee referred to in subsection (3), remains [sic] applicable to him or her and must be implemented or finalised as if the National Prosecuting Authority Amendment Act, 2008, has not been passed.

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

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

(9) (a) *Investigations* by the *Directorate of Special Operations* that are pending immediately before the fixed date must, on that date, be transferred to and continued by the Directorate for Priority Crime Investigation in accordance with a mechanism to ensure that the *investigations* are not prejudiced by the transfer.

(b) The *Minister*, in consultation with the Cabinet member for police and after consultation with the *National Director* and the National Commissioner, must determine the mechanism referred to in paragraph (a).

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

(11) (a) Any *investigation* that has been instituted under section 28 by the *Directorate for Special Operations*, and all steps taken as a result of such an *investigation*, shall be deemed to have been instituted or taken in consequence of the application of section 17D (3) of the South African Police Service Act, 1995.

(b) The Head of the Directorate for Priority Crime Investigation may, at any time after the fixed date, withdraw such a request.

(c) The *National Director* must designate a *Director* in respect of each *investigation* referred to in paragraph (a), who must assist the Directorate of Priority Crime Investigation in carrying out such an *investigation*.

[S. 43A added by s. 20 of Act 61 of 2000 and substituted by s. 13 of Act 56 of 2008.]

44 Amendment or repeal of laws

The laws mentioned in the Schedule are hereby amended or repealed to the extent indicated in the third column thereof.

45 Interpretation of certain references in laws

Any reference in any law to-

- (a) an attorney-general shall, unless the context indicates otherwise, be construed as a reference to the *National Director*; and
- (b) an attorney-general or deputy attorney-general in respect of the area of jurisdiction of a High Court, shall be construed as a reference to a *Director* or *Deputy Director* appointed in terms of *this Act*, for the area of jurisdiction of that Court.

[S. 45 substituted by s. 13 of Act 122 of 1998.]

46 Short title and commencement

This Act shall be called the National Prosecuting Authority Act, 1998, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Schedule LAWS AMENDED OR REPEALED BY SECTION 44

Number and year of law	Title	Extent of amendment or repeal
Act 51 of 1977	Criminal Procedure Act, 1977	<p>(a) Repeal of sections 2 and 5.</p> <p>(b) Amendment of section 111 by the deletion of subsection (1) and the substitution for subsections (2), (3) and (4) of the following subsections:</p> <p style="padding-left: 40px;">'(1) (a) The direction of the National Director of Public Prosecutions contemplated in section 179 (1) (a) of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), shall state the name of the accused, the relevant offence, the place at which (if known) and the Director in whose area of jurisdiction the relevant investigation and criminal proceedings shall be conducted and commenced.</p> <p style="padding-left: 40px;">(b) A copy of the direction shall be served on the accused, and the original thereof shall, save as is provided in subsection (3) be handed in at the court in which the proceedings are to commence.</p> <p style="padding-left: 40px;">(2) The court in which the proceedings commence shall have jurisdiction to act with regard to the offence in question as if the offence had been committed within the area of jurisdiction of such court.</p> <p style="padding-left: 40px;">(3) Where the National Director issues a direction contemplated in subsection (1) after an accused has already appeared in a court, the original of such direction shall be handed in at the relevant proceedings and attached to the record of the proceedings, and the court in question shall-</p> <p style="padding-left: 80px;">(a) cause the accused to be brought before it, and when the accused is before it, adjourn the proceedings to a time and a date and to the court</p>

		designated by the Director in whose area of jurisdiction the said criminal proceedings shall commence, whereupon such time and date and court shall be deemed to be the time and date and court appointed for the trial of the accused or to which the proceedings pending against the accused are adjourned; <i>(b)</i> forward a copy of the record of the proceedings to the court in which the accused is to appear, and that court shall receive such copy and continue with the proceedings against the accused as if such proceedings had commenced before it.'.
Act 117 of 1991	Investigation of Serious Economic Offences Act, 1991	The whole
Act 92 of 1992	Attorney-General Act, 1992	The whole

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