

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



# Government Gazette

REPUBLIC OF SOUTH AFRICA

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## THE PRESIDENCY

No. 729

14 September 2012

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**Act No. 10 of 2012: South African Police Service Amendment Act, 2012**



**AIDS HELPLINE: 0800-123-22 Prevention is the cure**

**GENERAL EXPLANATORY NOTE:**

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments.

*(English text signed by the President)*  
*(Assented to 13 September 2012)*

## ACT

To amend the South African Police Service Act, 1995, in order to align the provisions relating to the Directorate for Priority Crime Investigation with a judgment of the Constitutional Court; to amend those provisions in order to ensure that the Directorate has the necessary structural and operational independence to fulfil its mandate without undue interference; and to provide for matters connected therewith.

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

**Amendment of section 6 of Act 68 of 1995**

1. Section 6 of the South African Police Service Act, 1995 (Act No. 68 of 1995) (hereinafter referred to as the principal Act), is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively: 5

“(1) There shall be a National Commissioner of the Service who shall be appointed in accordance with section **[216(2)(a)]** 207(1) of the Constitution of the Republic of South Africa, 1996.

(2) There shall be a Provincial Commissioner of the Service for each province who shall be appointed by the National Commissioner subject to section **[218(1)(b)]** 207(3) of the Constitution of the Republic of South Africa, 1996.” 10

**Amendment of section 11 of Act 68 of 1995**

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

(a) by the substitution for subsection (1) of the following subsection: 15

“(1) The National Commissioner **[may exercise the powers and shall perform the duties and functions necessary to give effect to section 218(1) of the Constitution]** shall exercise control over and manage the police service in accordance with section 207(2) of the Constitution of the Republic of South Africa, 1996.”; and 20

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

“(2) Without derogating from the generality of subsection (1), the **[powers, duties and functions referred to in that subsection shall include the power, duty and function to]** National Commissioner shall—” 25

**Amendment of section 16 of Act 68 of 1995, as amended by section 2 of Act 57 of 2008**

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

- (a) by the substitution in subsection (2) for paragraph (h) of the following paragraph: 5
- “(h) which a Provincial Commissioner requests the National **[Commissioner]** Head of the Directorate for Priority Crime Investigation, referred to in section 17C(2), to prevent or investigate by employing expertise and making resources available at national level and to which request the National **[Commissioner]** Head of the Directorate for Priority Crime Investigation accedes in accordance with the approved policy guidelines;” 10
- (b) by the substitution for subsection (3) of the following subsection: 15
- “(3) In the event of a dispute between the National **[Commissioner]** Head of the Directorate for Priority Crime Investigation and the National Commissioner or the National Head for Priority Crime Investigation and a Provincial Commissioner regarding the question whether criminal conduct or endeavour thereto **[should be regarded as organised crime, crime which requires national prevention or investigation or crime which requires specialised skills in the investigation and prevention thereof]** falls within the mandate of the Directorate, the determination by the National **[Commissioner]** Head of the Directorate for Priority Crime Investigation in accordance with the approved policy guidelines, shall prevail.”; 20
- (c) by the substitution in subsection (4) for paragraphs (b) and (c) of the following paragraphs, respectively: 25
- “(b) Where an investigation of a crime or alleged crime reveals that the circumstances referred to in subsection (2) are present, the Provincial Commissioner shall report the matter to the National **[Commissioner]** Head of the Directorate for Priority Crime Investigation as soon as possible. 30
- (c) The National **[Commissioner]** Head of the Directorate for Priority Crime Investigation may, **[in]** after consultation with the Provincial Commissioner concerned, notwithstanding the presence of the circumstances referred to in subsection (2), direct that the investigation or any part thereof, be conducted by the Provincial Commissioner; and 35
- (d) by the addition of the following subsection: 40
- “(5) All members of the Service shall cooperate with one another in accordance with the principles provided for in Chapter 3 of the Constitution of the Republic of South Africa, 1996.”.



(11) A Provincial Head of the Directorate shall exercise such powers or perform such functions as the National Head of the Directorate may, in terms of this Act, or any other law assign to him or her.

(12) (a) Whenever the National Head of the Directorate is absent or unable to perform his or her functions, the Minister shall appoint the Deputy National Head of the Directorate as the acting National Head of the Directorate.

(b) Whenever the office of the National Head of the Directorate is vacant, or the National Head of the Directorate is for any reason unable to take up the appointment contemplated in subsection (1), the Minister shall appoint the Deputy National Head of the Directorate as the acting National Head of the Directorate.

(c) If both the National Head of the Directorate and the Deputy National Head of the Directorate are absent, the Minister shall appoint a suitably qualified and experienced person as the acting National Head of the Directorate.

(d) Whenever the Deputy National Head of the Directorate is absent or unable to perform his or her functions, the National Head of the Directorate shall appoint a suitably qualified and experienced person as the acting Deputy National Head of the Directorate.

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

(13) In the event of a vacancy in the office of the National Head of the Directorate, the Deputy National Head of the Directorate or a Provincial Head of the Directorate, such vacancy shall be filled in terms of this section within six months from the date when such vacancy arose.

(14) If the National Head or Deputy National Head of the Directorate, as may be applicable, attains the age of 60 years after the first day of any month, he or she shall be deemed to have attained that age on the first day of the next succeeding month.

(15) The Minister shall with the consent of the National Head or Deputy National Head of the Directorate, retain the National Head, or the Deputy National Head of the Directorate, as may be applicable, in his or her office beyond the age of 60 years for such period which shall not—

- (a) exceed the period determined in section 17(CA); and
- (b) exceed two years, except with the approval of Parliament granted by resolution.

(16) The National Head or Deputy National Head of the Directorate may only be retained as contemplated in subsection (15) if—

- (a) he or she wishes to continue to serve in such office; and
- (b) the mental and physical health of the person concerned enables him or her so to continue.

(17) The Minister shall make regulations under section 24 of this Act and if such regulations or any amendment thereto affect the Directorate, the regulations shall be submitted to Parliament for approval—

- (a) at least one month before promulgation, if Parliament is in session; or
- (b) if Parliament is not in session, within one month after the next ensuing session.

(18) The regulations referred to in section 17G of this Act shall be submitted to Parliament for approval.

(19) Any disciplinary action against a Deputy National Head, Provincial Head, member or employee in the service of the Directorate, as may be applicable, shall be considered and finalised within the Directorate's structures subject to the relevant prescripts.



**Insertion of section 17CA in Act 68 of 1995**

7. The following section is hereby inserted in the principal Act after section 17C:

**"Appointment, remuneration and conditions of service**

**17CA.** (1) The Minister, with the concurrence of Cabinet, shall appoint a person who is—

- (a) a South African citizen; and
- (b) a fit and proper person,

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

(2) The period referred to in subsection (1) is to be determined at the time of appointment.

(3) The Minister shall report to Parliament on the appointment of the National Head of the Directorate within 14 days of the appointment 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.

(4) The Minister in consultation with the National Head of the Directorate and with the concurrence of Cabinet, shall appoint a person who is—

- (a) a South African citizen; and
- (b) a fit and proper person,

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

(5) The period referred to in subsection (4) is to be determined at the time of appointment.

(6) The Minister in consultation with the National Head of the Directorate and with the concurrence of Cabinet, shall appoint a person who is—

- (a) a South African citizen; and
- (b) a fit and proper person,

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

(7) The period referred to in subsection (6) is to be determined at the time of appointment.

(8) (a) The remuneration, allowances and other terms and conditions of service and service benefits of the National Head of the Directorate shall be determined by the Minister with the concurrence of the Minister of Finance, by notice in the *Gazette*.

(b) The remuneration, allowances and other terms and conditions of service and service benefits of the Deputy National Head and Provincial Heads of the Directorate shall be determined by the Minister after consultation with the National Head of the Directorate and with the concurrence of the Minister of Finance: Provided that—

- (i) the salary of the National Head of the Directorate shall not be less than the salary level of the highest paid Deputy National Commissioner of the Service;
- (ii) the salary of the Deputy National Head of the Directorate shall not be less than the salary level of the highest paid Divisional Commissioner; and
- (iii) the salary of a Provincial Head of the Directorate shall not be less than the salary level of the highest paid Deputy Provincial Commissioner.

(9) The Minister shall submit the remuneration scale payable to the National Head, Deputy National Head and Provincial Heads of the Directorate to Parliament for approval, and such remuneration scale may not be reduced except with the concurrence of Parliament.

(10) The Deputy National Head of the Directorate shall exercise such powers and perform such functions as the National Head of the Directorate may in terms of this Act or any other law assign to him or her.