

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA
NOTICE 300 OF 2018



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

COMMITTEES

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PORTFOLIO COMMITTEE ON POLICE

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE AMENDMENT BILL

NOTICE OF INTENTION TO INTRODUCE THE INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE AMENDMENT BILL, 2018, A COMMITTEE BILL, INTO PARLIAMENT AND INVITATION FOR PUBLIC COMMENT THEREON

The Portfolio Committee on Police, acting in accordance with section 73(2) of the Constitution of the Republic of South Africa, 1996, intends to introduce the Independent Police Investigative Directorate Amendment, 2018 in Parliament during the second/third quarter of 2018. A draft Bill is hereby published in accordance with Rule 276(1)(c) of the Rules of the National Assembly (9th Edition).

The Constitutional Court declared the following provisions invalid to the extent that they authorise the Minister of Police to suspend, take disciplinary steps pursuant to suspension, or remove from office the Executive Director of the Independent Police Investigative Directorate ("IPID"):

- section 6(3)(a) and 6(6) of the Independent Police Investigative Directorate Act, 2011;
- sections 16A(1), 16B, 17(1) and 17(2) of the Public Service Act, Proclamation 103 of 1994 ("Public Service Act"); and
- regulation 13 of the Independent Police Investigative Directorate Regulations for the Operation of the IPID ("IPID Regulations").

Parliament was directed by Constitutional Court to cure the defects in the legislation within 24 months from the date of the order. The Bill seeks to amend the Independent Police Directorate Act, 2011 in order to give effect to the Constitutional Court order in the matter of *Robert McBride v Minister of Police and Minister of Public Service and Administration*, through giving Parliament an oversight role in relation to the suspension, discipline or removal of the Executive Director of IPID.

Interested persons are invited to submit written comments before the closing date of 22 June 2018 at 16h00. Comments received after the closing date will not be considered.

Should you require the Memorandum on the objects of the Bill in any of the official languages, please contact the Committee Secretary (details below).

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Kindly direct all enquiries and written submissions to the Committee Secretary, Mr P Gwebu:

By email: pgwebu@parliament.gov.za

By post/hand delivered: W/S 3/327
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By telephone: 021 403 8257 or 083 709 8395.

Issued by Mr Francois Beukman, MP

Chairperson: Portfolio Committee on Police

REPUBLIC OF SOUTH AFRICA

**INDEPENDENT POLICE INVESTIGATIVE
DIRECTORATE AMENDMENT BILL**

*(As introduced in the National Assembly (proposed section 75); initiated by the Portfolio Committee on Police; Bill and prior notice of introduction thereof published in Government Gazette No. XXX of2018)
(The English text is the official text of the Bill)*

(PORTFOLIO COMMITTEE ON POLICE)

[B 2018]

GENERAL EXPLANATORY NOTE:

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

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

BILL

To amend the Independent Police Investigative Directorate Act, 2011, so as to provide for Parliamentary oversight in relation to the suspension, discipline or removal of the Executive Director; and to provide for related matters.

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

Amendment of section 6 of Act 1 of 2011

1. Section 6 of the Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011) (hereinafter referred to as the principal Act), is hereby amended by the repeal of subsection (6).

Insertion of section 6A into Act 1 of 2011

2. The following section is hereby inserted after section 6 of the principal Act:

“Removal from office of Executive Director

6A. (1) The Executive Director may only be removed from office on the ground of misconduct, incapacity or incompetence—

- (a) on a finding to that effect by a Committee of the National Assembly; and
(b) the adoption by the National Assembly of a resolution calling for that person's removal from office.

(2) The National Assembly may adopt a resolution contemplated in subsection (1)(b) with a supporting vote of at least two thirds of its members.

(3) The Minister—

(a) may suspend the Executive Director from office at any time after the start of the proceedings of a Committee of the National Assembly for the removal of that person; and

(b) must remove the Executive Director from office upon adoption by the National Assembly of a resolution calling for the Executive Director's removal.

(4) The Minister may allow the Executive Director, at his or her request, to vacate his or her office—

(a) on account of continued ill-health; or

(b) for any other reason which the Minister deems sufficient.

(5) The Executive Director must address the request contemplated in subsection (4) to the Minister, at least six calendar months prior to the date on which the Executive Director wishes to vacate his or her office, unless the Minister grants a shorter period in a specific case.”

Short title and commencement

3. This Act is called the Independent Police Investigative Directorate Amendment Act, 2018, and comes into operation on a date to be determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE AMENDMENT ACT, 2018

1. INTRODUCTION

The Constitutional Court in the matter of *McBride v Minister of Police and Another* [2016] ZACC 30 found certain legislative provisions invalid to the extent that these provisions authorised the Minister of Police to suspend the Executive Director of the Independent Police Investigative Directorate, to take any disciplinary steps pursuant to such suspension, or to remove the Executive Director of the Independent Police Investigative Directorate from office. These provisions are—

- 1.1. section 6(3)(a) and 6(6) of the Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011);
- 1.2. sections 16A(1), 16B, 17(1) and 17(2) of the Public Service Act, 1994 (Proclamation No. 103 of 1994); and
- 1.3. regulation 13 of the Independent Police Investigative Directorate Regulations for the Operation of the Independent Police Investigative Directorate (GN R98 of Government Gazette 35018 of 10 February 2012).

The Constitutional Court further provided a reading in for section 6(6) of the the Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011) with reference to subsections 17DA(3) to 17DA(7) of the South African Police Service Act, 1995 (Act No. 68 of 1995).

The Constitutional Court directed Parliament to correct these defects in the legislation within 24 months from the date of the order, which was handed down on 6 September 2016. This Bill intends to correct these defects identified by the Constitutional Court.

2. OBJECTS OF THE BILL

The purpose of the Bill is to amend the Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011) in order to provide for Parliamentary oversight in relation to the suspension, discipline or removal of the Executive Director.

3. CONTENTS OF THE BILL

- 3.1 Clause 1 amends section 6 of the Act by the repeal of subsection (6) which deals with the removal of the Executive Director.
- 3.2 Clause 2 inserts section 6A into the Act. This section sets out the process to be followed to remove the Executive Director. The process is now made subject to parliamentary scrutiny.
- 3.3 Clause 3 is the short title of the Amendment Bill.

4. FINANCIAL IMPLICATIONS FOR THE STATE

- 4.1 There will be no financial implications in connection with the Bill.

5. DEPARTMENTS, BODIES OR PERSONS CONSULTED

- 5.1 The Civilian Secretariat for Police Service and the Independent Police Investigative Directorate were consulted.

6. PARLIAMENTARY PROCEDURE

- 6.1 The Committee proposes that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution as its provisions do not in a substantial manner deal with any functional area of concurrent national and provincial legislative competence listed under Schedule 4 to the Constitution, nor do they deal with any other matter contained in sections 76(3), (4) or (5).
- 6.2 The Committee is of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.