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**(English text signed by the President)**  
**(Assented to 5 August 2020)**  
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**GENERAL EXPLANATORY NOTE:**

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

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

# ACT

To amend the Defence Act, 2002, so as to include the Chief of Staff in the Military Command of the Defence Force; to clarify the process regarding the implementation by the Chief of the Defence Force of the delegation of powers and assignment of duties to members by the Secretary for Defence as head and accounting officer of the Department; to provide for the employment of the Defence Force outside the Republic; to simplify matters regarding identification cards issued to military police officials; to make a technical correction to the reference to the Armaments Corporation of South Africa, Limited in section 18; to provide for the security vetting of contractors and service providers of the Department; to regulate the minutes of meetings of the Council of Defence; to clarify that a person does not need the consent of an employer in order to enrol as, or to remain, a member of the Reserve Force; to regulate anew the termination of service of members of the Regular Force; to amend the requirements for legal representation of members; to regulate the display of military decorations, medals and insignia; to regulate the use of military uniforms, distinctive marks and crests; to amend certain powers of the Minister to make regulations; to provide for the prohibition of access to military property or areas; and to provide for matters incidental thereto.

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

**Amendment of section 4A of Act 42 of 2002, as inserted by section 2 of Act 22 of 2010**

1. Section 4A of the Defence Act, 2002 (Act No. 42 of 2002) (hereinafter referred to as the principal Act), is hereby amended by the addition of the following paragraph: 5  
     “(j) the Chief of Staff.”.

**Amendment of section 8 of Act 42 of 2002**

2. Section 8 of the principal Act is hereby amended by the substitution for paragraph (e) of the following paragraph: 10  
     “(e) must provide the Chief of the Defence Force with **[comprehensive instructions requiring]** specific guidelines in order to enable the Chief of the Defence Force to issue orders and directives and to give commands to any specified member regarding the exercise of any power delegated or the performance of any duty assigned to that member by the Secretary for 15  
     Defence as head and accounting officer of the Department **[of Defence]**.”.

**Amendment of section 18 of Act 42 of 2002**

3. Section 18 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) In addition to the employment of the Defence Force by the President as contemplated in section 201(2) of the Constitution, the President or the Minister may authorise the employment of the Defence Force for service inside the Republic or **[in international waters]** outside the Republic in accordance with international law, in order to—”.

**Amendment of section 30 of Act 42 of 2002**

4. Section 30 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Chief of the Defence Force or any person designated by him or her may appoint any member of the Defence Force as a military police official and issue all such members with **[a prescribed]** an identification card.”.

**Amendment of section 36 of Act 42 of 2002**

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

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

“(c) the **[Armaments Development and Production Corporation of South Africa, Limited, established in terms of section 2 of the Armaments Development and Production Act, 1968 (Act No. 57 of 1968).]** Armaments Corporation of South Africa, Limited referred to in section 2 of the Armaments Corporation of South Africa, Limited Act, 2003 (Act No. 51 of 2003); and.”;

(b) by the addition of the following paragraph after paragraph (c):

“(d) contractors and service providers of the Department.”.

**Amendment of section 44 of Act 42 of 2002**

6. Section 44 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Minutes must be kept of the proceedings and decisions taken at every meeting of the Council of Defence and must at least—

- (a) note the matters arising from the previous meeting of the Council;
- (b) record all the decisions of the meeting;
- (c) be allocated a security classification; and
- (d) be signed by the Minister and retained in accordance with the National Archives and Record Service of South Africa Act, 1996 (Act No. 43 of 1996).”.

**Amendment of section 53 of Act 42 of 2002, as amended by section 4(a) of Act 22 of 2010**

7. Section 53 of the principal Act is hereby amended—

(a) by the insertion after subsection (1A) of the following subsection:

“(1B) No person requires the consent of an employer in order to enrol as, or to remain, a member of the Reserve Force.”; and

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

“(8) Every member of the Reserve Force must be provided with the basic **[prescribed]** required uniform, distinctive marks, badges and accoutrements at State expense and must maintain these during his or her period of service.”.

**Amendment of section 59 of Act 42 of 2002**

8. Section 59 of the principal Act is hereby amended—

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

- “(1) The service of a member of the Regular Force is terminated— 5
- (a) upon the expiration of three months after the date on which **[such]** the member lodged his or her resignation or upon the expiration of **[such]** any shorter period **[as may be]** approved by the Chief of the Defence Force;
  - (b) on the termination of any fixed term contract concluded between the member and the Department or on the expiration of any extended period of such contract; 10
  - (c) if **[he or she]** the member has reached the prescribed age of retirement or, where applicable, if **[he or she]** the member exercises his or her right to retire on pension in accordance with the provisions of the applicable pension laws; 15
  - (d) if **[he or she]** the member is sentenced to a term of imprisonment by a competent civilian criminal court or a military court without the option of a fine or if a sentence involving discharge or dismissal is imposed upon him or her under the Code; **[or]** 20
  - (e) if the Surgeon-General or any person authorised thereto by him or her, issues a certificate to the effect that due to medical or psychological reasons, **[such]** the member is permanently unfit to serve in the Defence Force;
  - (f) if the member is transferred to another state department or a body or institution established by or under any law and which obtains its funds directly, entirely or in part, from the National Revenue Fund contemplated in section 213 of the Constitution or a Provincial Revenue Fund contemplated in section 226 of the Constitution; 25
  - (g) if the member accepts a nomination for election as a member of Parliament, a provincial legislature or a municipal council; 30
  - (h) if the member becomes a member of Parliament, a provincial legislature or a municipal council; or
  - (i) if the President permanently appoints the member under any law to a position to which the Act does not apply. 35
- (2) The service of a member of the Regular Force may be terminated **[in accordance with any applicable regulations]**—
- (a) as a result of the abolition of **[such member’s]** the post of that member or any reduction or adjustment in the post structure of the Department **[of Defence]**; 40
  - (b) if for reasons other than the **[member’s own]** unfitness or incapacity of the member, such discharge is likely to promote efficiency or increased cost-effectiveness in the Department **[of Defence]**;
  - (c) on account of unfitness for his or her duties, **[or]** inability or incapability to carry [them] out his or her duties efficiently, **[irrespective of whether such unfitness or inability is caused by such member’s ill-health not amounting to a condition referred to]** for a reason other than that contemplated in subsection (1)(e); 45
  - (d) if, after serving a period of probation in terms of this Act, his or her appointment is not confirmed; 50

- (e) if **[his or her]** the continued employment of that member constitutes a security risk to the State or if the required security clearance for his or her appointment in a post is refused or withdrawn;
- (f) if the member, while serving, has been convicted by a competent civilian criminal court or a military court of an offence which, in view of its gravity and the nature of the sentence imposed, renders the continued employment of that member in the Regular Force undesirable; 5
- (g) if, before or since the member has been appointed, he or she has been convicted by a competent civilian criminal court or a military court on more than one occasion of offences which, considered individually, would not justify or did not lead to the dismissal of the member on account of misconduct, but considered collectively renders the continued employment of that member in the Regular Force undesirable; 10
- (h) if, due to recurrent convictions of that member by military courts, the member is considered not to be amenable to military discipline;
- (i) if the member has been convicted on five or more charges of contravening section 14(a) of the Code during a period of 24 months of continuous service; 20
- (j) if any condition of the conditional appointment of the member is not fulfilled;
- (k) by reason of any material misrepresentation of his or her position with regard to a condition for the appointment of the member to any rank or post in the Defence Force; 25
- (l) if at any time during the formative or specialised training of the member in the corps or mustering in which he or she has been appointed, it becomes apparent that the member is unsuitable for such training and is not regarded as suitable to be remustered for employment in any other corps or mustering in the Defence Force; 30
- (m) if the member, after he or she has been lawfully instructed to submit himself or herself to a compulsory immunisation of the members of the Defence Force, refuses to do so;
- (n) if the member is charged but has not yet been convicted in a competent civilian criminal court or a military court and the continued employment of the member in the Regular Force is rendered undesirable with reference to— 35
  - (i) the gravity of the charges or allegations against him or her;
  - (ii) the publicity that the charges or allegations is given in the public and social media; 40
  - (iii) the prejudice or potential prejudice for the reputation of the Defence Force as a result of such publicity;
  - (iv) the impact of the charges or allegations on the confidence or respect of the public in the Defence Force; and 45
  - (v) the constitutional imperative for the Defence Force to be structured and managed as a disciplined military force; and
- (o) if, for just cause, the relationship of trust or respect between the member and the Defence Force has deteriorated to such an extent that it renders his or her continued employment in the Regular Force untenable or undesirable. 50

(3) The service of a member of the Regular Force who absents himself or herself from official duty without the permission of his or her commanding officer for a continuous period exceeding [30] 10 calendar days must be regarded as having been **[dismissed if he or she is an officer, or discharged if he or she is of another rank,]** terminated on account of misconduct, with effect from the day immediately following his or her last day of attendance at his or her place of duty or the last day of his or her official leave, but the Chief of the Defence Force may, on good cause shown, authorise the reinstatement of **[such] that** member on **[such] the** conditions **[as] that** he or she may determine.”; 60

- (b) by the substitution for subsection (6) of the following subsection:
  - “(6) A member contemplated in subsection (1)(a), **[or]** (d), (f), or (g) who has undergone or who was undergoing education or training at State expense, remains liable for the repayment of such money as is repayable in terms of a contractual agreement **[pertaining to such]** in respect of that education or training.”; and
- (c) by the addition of the following subsection after subsection (6):
  - “(7) (a) The officer commanding of a member may apply to the Chief of the Defence Force for the termination of the services of that member on any of the grounds in subsection (2).
  - (b) The application contemplated in paragraph (a) must—
    - (i) be in writing;
    - (ii) contain the prescribed information; and
    - (iii) comply with the prescribed procedure and directives.
  - (c) The Chief of the Defence Force must, after ascertaining that the prescribed procedure has been complied with, consider the application and may—
    - (i) decide to terminate the services of the member;
    - (ii) decide not to terminate the services of the member; or
    - (iii) refer the application back to the officer commanding for further investigation in the prescribed manner before he or she makes a final decision.
  - (d) The Chief of the Defence Force must inform the officer commanding and the member in writing within seven days of his or her final decision and must provide reasons for the decision.
  - (e) A termination of services in terms of subsection (2) becomes effective on the last day of the month following the month in which the member was notified in terms of paragraph (d).
  - (f) The Minister may prescribe any procedure, act, incidental matter or form that—
    - (i) complies with the *audi alterem partem* rule;
    - (ii) is not already provided for or required in terms of any other law; and
    - (iii) is necessary or required in respect of a termination of service under this section.”.

**Amendment of section 60 of Act 42 of 2002** 35

9. Section 60 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (d) of the following paragraph:

“(d) acted **[negligently]** in a grossly negligent manner, recklessly or wilfully;”.

**Amendment of section 74 of Act 42 of 2002**

10. Section 74 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words: 40

“The Minister must, with the approval of the President, **[must]** make **[such]** the necessary rules **[and regulations as may be necessary in the case]** in respect of every decoration or medal, for—;”.

**Substitution of section 76 of Act 42 of 2002** 45

11. Section 76 of the principal Act is hereby substituted for the following section:

**“Display of decorations and medals**

76. The Chief of the Defence Force must determine the manner in, and the apparel on, which decorations and medals may be displayed in public by the following categories of persons: 50

- (a) Serving members of the Defence Force;
- (b) former members of the Defence Force;

- (c) civilians who are the next of kin of deceased former members of the Defence Force; and
- (d) other civilian recipients of decorations and medals.”.

**Substitution of section 78 of Act 42 of 2002**

12. Section 78 of the principal Act is hereby substituted for the following section: 5

**“Display of insignia**

78. The Chief of the Defence Force must determine the flags, honours, awards and other insignia that units of the Defence Force may display on parade.”.

**Amendment of section 82 of Act 42 of 2002** 10

13. Section 82 of the principal Act is hereby amended—

- (a) by the deletion of paragraph (i) of subsection (1); and
- (b) by the substitution for paragraphs (j) and (k) of subsection (1) of the following paragraphs, respectively:

“(j) the establishment of— 15

- (i) health and fitness standards for—
  - (aa) the enlistment and induction of commissioned and non-commissioned members;
  - (bb) the retention, separation and retirement of members;
  - (cc) aviation, including but not limited to South African Air Force pilots and crew; 20
  - (dd) South African Navy divers and submariners, parabats, and special forces, as well as any other occupation speciality that requires a health or fitness standard; and
  - (ee) compulsory immunisation of members; 25
- (ii) physical profiles; and
- (iii) medical, psychological and other associated health profession assessments;

(k) [the] provision for medical, dental and hospital treatment of retired members of the Regular Force and their dependants, including military health establishments and other health establishments, and, if applicable, the establishment, management and control of one or more funds for such purposes;” and 30

- (c) by the insertion in subsection (1) after paragraph (m) of the following paragraph: 35

“(mA) the addition of voluntary extra insurance cover and additional premiums by members and employees to their existing compulsory insurance referred to in paragraph (m);”.

**Substitution of heading to section 83 of Act 42 of 2002**

14. The following heading is hereby substituted for the heading to section 83 of the principal Act: 40

**“Protection of moveable defence assets and records.”.**

**Insertion of section 83A in Act 42 of 2002**

15. The following section is hereby inserted in the principal Act, after section 83:

**“Prohibition of access to military property or areas**

**83A.** (1) The Minister may prescribe measures to regulate access to any military camp, barracks, dockyard, installation, premises, areas or property, or to any airbase or any land or area of water which is used either temporarily or permanently by the Defence Force or which is under the control of the Defence Force, including a building, premises or area or any part thereof which is also being used or is occupied by, or is the property of any other person. 5 10

(2) Any person who fails to comply with any prohibition, restriction or condition prescribed under subsection (1) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 15 years. 15

(3) For the purposes of this section, or any measure prescribed under it, any land or premises on or in which armaments are developed, manufactured, serviced, repaired or maintained, must be regarded as land or premises used by, or under the control of, the Defence Force.”. 20

**Amendment of section 103 of Act 42 of 2002**

16. Section 103 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 20

“(1) When any member of the Defence Force has been absent without leave for **[more than 30 days]** a continuous period exceeding 10 calendar days and is still absent, a board of inquiry must be convened by the commanding officer of the absent member to inquire into such absence.”. 25

**Amendment of section 104 of Act 42 of 2002, as amended by Act 22 of 2010**

17. Section 104 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) Any person who, without the written authority of the Chief of the Defence Force, possesses or wears **[prescribed]** any **[uniforms]** uniform or part thereof, distinctive **[marks or crests]** mark or crest that has been determined by the Chief of the Defence Force as official attire in the Defence Force, or performs any prohibited act while wearing such uniform or with such uniform, distinctive **[marks or crests]** mark or crest, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years.”. 30 35

**Short title and commencement**

18. This Act is called the Defence Amendment Act, 2020, and comes into effect on a date fixed by the President by proclamation in the *Gazette*.