



DISCUSSION PAPER

**STATUTORY LAW REVISION
(LEGISLATION ADMINISTERED BY THE
DEPARTMENT OF POLICE)**

PROJECT 25

30 SEPTEMBER 2017

South African Law Reform Commission

The South African Law Reform Commission (SALRC) was established by the South African Law Reform Commission Act, 1973 (Act No. 19 of 1973).

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Preface

This discussion paper has been prepared to elicit responses on the preliminary findings of SALRC and on the proposals contained herein. The SALRC liaised with the Department of Police (“the DOP”) during various phases of the investigation that led to the drafting of this discussion paper, and acknowledges the valuable assistance it has received, particularly from officials in the Legal Services of the DOP. This discussion paper has been developed to provide the basis for further deliberations by the SALRC, a process that will culminate in a final report on this specific statutory investigation. The views, conclusions and recommendations contained in the discussion paper should not be regarded as the final opinion of the SALRC. The discussion paper includes the Police General Laws and Related Matters Amendment and Repeal Bill (“the draft Bill”) which is published in full herein. This will provide background information so that people or organisations who wish to respond will be able to make well-informed comments and representations to the SALRC.

The SALRC will assume that unless comments or representations are marked “confidential”, respondents grant the SALRC permission to quote from their comments and to refer to respondents by name. Respondents should be aware that the SALRC may, in terms of the Promotion of Access to Information Act, 2000, (Act No. 2 of 2000) be required to release information contained in representations or comments submitted to the SALRC. Respondents are requested to submit their written comments or representations to the SALRC by **30 September 2017** using the addresses (email or post) on page ii of this discussion paper. Any enquiries should be addressed to Ms Aura Mngqibisa, the researcher to whom this investigation is allocated. Her contact details appear on page ii.

This consultation paper is available on the internet at

<http://salawreform.justice.gov.za/dpapers.htm>

The draft Bill is contained in Annexure A of the discussion paper, and includes Schedule 1 (Acts to be amended to the extent set out in the fourth column of that schedule) and Schedule 2 (Acts to be repealed to the extent set out in the fourth column of that schedule). Annexure B lists the 42 statutes administered by the DOP.

Preliminary proposals and questions for comments

The SALRC has been tasked with revising the South African statute book and identifying legislation or legislative provisions that are inconsistent with section 9 of the Constitution (commonly known as the “equality clause”), or which are redundant or obsolete. The SALRC would then recommend such legislation or legislative provisions for amendment or repeal. Pursuant to this mandate the SALRC has established that the South African statute book contains roughly 2800 Acts, and of these, the SALRC has identified 42 Acts that are administered by the DOP (see Annexure B). After a careful analysis of the Acts administered by the DOP, the SALRC proposes that the provisions of Acts listed in Schedules 1 and 2 be amended or repealed, for reasons set out in Chapter 2 of this discussion paper.

Furthermore, it is possible that certain statutes or statutory provisions have not been identified for amendment or repeal in this consultation paper, but nonetheless require amendment or repeal. The SALRC requests all interested parties to identify such statutes and bring them to the attention of the SALRC. We would appreciate receiving comments or representations on this discussion paper from interested parties no later than **30 September 2017**.

The words “Act”, “Statute” and “Legislation” are used interchangeably throughout this discussion paper.

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CHAPTER 1

BACKGROUND AND SCOPE OF PROJECT 25

A Introduction

1 The objects of the South African Law Reform Commission

1.1 The objects of the SALRC are set out in the South African Law Reform Commission, of 1973 as follows: to do research with reference to all branches of the law of the Republic, and to study and to investigate all such branches of the law in order to make recommendations for the development, improvement, modernization or reform thereof, including the -

- (a) repeal of obsolete or unnecessary provisions;
- (b) removal of anomalies;
- (c) bringing about of uniformity in the law in force in the various parts of the Republic; and
- (d) consolidation or codification of any branch of the law.

1.2 Thus the SALRC is an advisory statutory body, whose aim is the renewal and improvement of the law of South Africa on a continuous basis.

2 History of the investigation

1.3 Shortly after its establishment in 1973, the SALRC (which was then the SALC) began revising all pre-Union legislation, as part of its Project 7. This investigation resulted in the repeal of approximately 1 200 laws, ordinances, and proclamations of the former colonies and republics. In 1981, the SALRC finalised a report on the repeal of post-Union statutes as part of its Project 25 on statute law, which aims to establish a simplified, coherent, and generally accessible statute book. This report resulted in Parliament adopting the Repeal of Laws Act 94 of 1981, which repealed approximately 790 post-Union statutes.

1.4 Immediately after the advent of constitutional democracy in South Africa in 1994, the legislation enacted prior to that year remained in force. However, many pre-1994 provisions do not comply with the country's new Constitution. This discrepancy is exacerbated by the fact that some of the older provisions were enacted to promote and sustain the policy of apartheid.

1.5 In 2003, Cabinet approved that the Minister of Justice and Constitutional Development should coordinate and mandate the SALRC to review provisions in the legislative framework that would result in discrimination as defined by section 9 of the Constitution. Section 9 prohibits unfair discrimination on the basis of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, or birth.

1.6 In 2004, the SALRC included in its law reform programme an investigation on statutory law, with the aim of revising all statutes from 1910 to date. Whereas previous investigations had focused on identifying obsolete and redundant provisions for repeal, the new investigation would emphasise compliance with the Constitution. Redundant and obsolete provisions that are identified during this investigation are also recommended for repeal, but the constitutional inquiry has focused mainly on identifying statutory provisions that blatantly violate the provisions of section 9 (the Equality Clause) of the Constitution.

1.7 A 2004 provisional audit by the SALRC of national legislation that has remained on the statute book since 1910 established that roughly 2 800 individual statutes existed at that time. These comprised principal Acts, amendment Acts, private Acts, additional or supplementary Acts, and partially repealed Acts. A substantial number of Acts on the statute book no longer serve any useful purpose and many others have retained unconstitutional provisions. This situation has already resulted in expensive and sometimes protracted litigation.

B WHAT IS STATUTORY LAW REVISION?

1.8 Statutory law revision ordinarily focuses on the identification and repeal of statutes that are no longer useful in practice. As the Law Reform Commission for England and Wales explains, the purpose of statute revision is to modernise and simplify statutes that need updating, and to reduce the size of the statute book to the benefit of legal professionals and

other people who use it.¹ Revision lessens the chance of people being misled by redundant laws that still appear in the statute book and seem to be relevant or “live” law. If statutory provisions appear in the statute book and are referred to in legal textbooks, readers may reasonably assume they still serve a purpose.

1.9 As in other jurisdictions, and as will become evident in this review, once legislation is deemed no longer to apply the question arises whether it should remain in the statute book or be repealed.² Usually such legislation no longer has any legal effect and is considered obsolete, redundant, or spent. A statutory provision may be identified for repeal because the grounds for which it was passed have lapsed or is presently remedied by another measure or provision.

1.10 In the context of this investigation, the statutory law revision primarily targets statutory provisions that are obviously at odds with the Constitution, particularly section 9.

1.11 The Law Commission for England and Wales lists the following guidelines for identifying statutory provisions that are candidates for repeal:³

- (a) references to bodies, organisations, etc. that have been dissolved or wound up or which have otherwise ceased to serve any purpose;
- (b) references to issues that are no longer relevant as a result of changes in social or economic conditions (e.g. legislation about tithes or tin mines);
- (c) references to Acts that have been superseded by more modern (or EU) legislation or by international Convention;
- (d) references to statutory provisions (i.e. sections, schedules, orders, etc.) that have been repealed;
- (e) repealing provisions e.g. “Section 33 is repealed/shall cease to have effect”;
- (f) commencement provisions once the whole of an Act is in force;

¹ See the *Background Notes on Statute Law Repeals* compiled by the Law Commission for England and Wales, par 1 accessed from http://lawcommission.justice.gov.uk/docs/background_notes.pdf on 28 May 2008 (hereinafter referred to as Law Commission for England and Wales *Background Notes on Statute Law Repeals*).

² See Law Commission for England and Wales *Background Notes on Statute Law Repeals*, par 6.

³ See Law Commission for England and Wales *Background Notes on Statute Law Repeals*, par 7.

- (g) transitional or savings provisions that are spent;
- (h) provisions that are self-evidently spent - e.g. a one-off statutory obligation to do something becomes spent once the required act has duly been done; and
- (i) powers that have never been exercised over a period of many years or where any previous exercise is now spent.

1.12 The Law Commission of India notes that in England the terms “expired”, “spent”, “repealed in general terms”, “virtually repealed”, “superseded”, and “obsolete” were defined in memoranda to Statute Law Revision Bills as follows:⁴

- (a) Expired – that is, enactments which having been originally limited to endure only for a specified period by a distinct provision, have not been either perpetuated or kept in force by continuance, or which have merely had as their object the continuance of previous temporary enactments for periods now gone by effluxion of time.
- (b) Spent – that is, enactments spent or exhausted in operation by the accomplishment of the purposes for which they were passed, either at the moment of their first taking effect or on the happening of some event or on the doing of some act authorised or required.
- (c) Repealed in general terms – that is, repealed by the operation of an enactment expressed only in general terms, as distinguished from an enactment specifying the Acts which it is to operate.
- (d) Virtually repealed – where an earlier enactment is inconsistent with, or is rendered nugatory by, a later one.
- (e) Superseded – where a later enactment effects the same purposes as an earlier one by repetition of its terms or otherwise.
- (f) Obsolete – where the state of things contemplated by the enactment has ceased to exist, or the enactment is of such a nature as to be no longer capable of being put in force, regard being had to the alteration of political or social circumstances.

⁴

Law Commission of India *Ninety-Sixth Report on Repeal of Certain Obsolete Central Acts* March 1984; p 3 of Chapter 2 (p 6 of 21) accessed from <http://lawcommissionofindia.nic.in/51-100/Report96.pdf> on 15 October 2015.

1.13 Statutory provisions usually become redundant as time passes.⁵ Generally, the redundancy of legislation is not signalled by a single occurrence; rather, legislation is simply overtaken by social and economic changes. Inevitably some provisions fade away more quickly than others. Relatively short-lived provisions include commencement and transitional provisions and those that confer powers to be exercised during the period between the passing of a law and its implementation (in some jurisdictions known as “pump-priming” provisions). Provisions that provide for delegated legislation-making powers might also become unnecessary over time, or a committee or board established by a statute might no longer be required.

1.14 Substantial revision of statutory law is possible in South Africa because of the general savings provisions of section 12(2) of the South African Interpretation Act. The South African Interpretation Act 33 of 1957⁶ mirrors section 16(1) of the Interpretation Act of 1978 of England and Wales.⁷ Section 12(2) of the South African Interpretation Act provides that where a law repeals any other law, then unless the contrary intention appears, the repeal shall not:

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any law so repealed or anything duly done or suffered under the law so repealed; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, forfeiture or punishment as is in this subsection mentioned,

⁵ See Law Commission for England and Wales *Background Notes on Statute Law Repeals*, par 9 and 10.

⁶ With the exception of few minor changes, the South African Interpretation Act 5 of 1910 repeated the provisions of the United Kingdom Interpretation Act of 1889 (Interpretation Act 1889 (UK) 52 & 53 Vict c 63).

⁷ See Law Commission for England and Wales *Background Notes on Statute Law Repeals the Background*, par 8.

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing law had not been passed.

1.15 The methodology adopted in this investigation is to review the statute book by department. The SALRC identifies a department, reviews the national legislation administered by that department for constitutionality and redundancy, sets out the preliminary findings and proposals in a consultation paper, and consults with that department to verify the SALRC's preliminary findings and proposals. The next step that the SALRC undertakes is the development of a discussion paper in respect of the legislation of each department. Once the discussion paper has been approved by the Commission, it is published for general information and comment. Finally, the SALRC develops a report in respect of each department, which reflects the comments on the consultation paper and contains a draft Bill proposing amending / repeal legislation.

C THE INITIAL INVESTIGATION

1.16 In the early 2000s, the SALRC and the German Agency for Technical Cooperation commissioned the Centre for Applied Legal Studies at the University of the Witwatersrand to conduct a preliminary study on law reform. The study examined the feasibility, scope, and operational structure of a revision of the South African statute book for constitutionality, redundancy, and obsolescence. The Centre for Applied Legal Studies pursued four main avenues of research in this study, which was conducted in 2001 and the findings of which were submitted to the SALRC in April 2001.⁸ These four steps are outlined here.

1. A series of interviews was conducted with key role-players drawn from the three governmental tiers, Chapter 9 institutions, the legal profession, academia, and civil society. These interviews revealed a high level of support for a law reform project.

⁸ "Feasibility and Implementation Study on the Revision of the Statute Book" prepared by the Law and Transformation Programme of the Centre for Applied Legal Studies of the University of the Witwatersrand April 2001. Available on request from pvanwyk@justice.gov.za and the [SALRC library](#).

2. All Constitutional Court judgments up to 2001 were analysed. The results were compiled as schedules summarising the nature and outcome of these cases, and the statutes impugned. The three most problematic categories of legislative provisions were identified, and the Constitutional Court's jurisprudence in each category was analysed. The three most problematic categories were reverse onus provisions, discriminatory provisions, and provisions that infringe on the separation of powers. Guidelines summarising the Constitutional Court's jurisprudence were compiled for each category.
3. Sixteen national statutes were tested against the guidelines. The results were compared with the results of a control audit that tested the same statutes against the entire Bill of Rights, excluding socio-economic rights. Comparison of the outcomes showed that a targeted revision of the statute book in accordance with the guidelines had produced highly effective results.
4. A survey of law reform in five other countries (United Kingdom, Germany, Norway, Switzerland, and France) was conducted. Apart from France, all these countries had conducted or were conducting statutory revision exercises. The motivation for the revision and the outcomes of the exercises differed by country.

1.17 The SALRC finalised the following reports, proposing reform of discriminatory areas of the law or the repeal of specific discriminatory provisions:

- (a) the Recognition of Customary Marriages (August 1998);
- (b) the Review of the Marriage Act 25 of 1961 (May 2001);
- (c) the Application of the Bill of Rights to Criminal Procedure, Criminal Law, the Law of Evidence and Sentencing (May 2001);
- (d) Traditional Courts (January 2003);
- (e) the Recognition of Muslim marriages (July 2003);
- (f) the Repeal of the Black Administration Act 38 of 1927 (March 2004);
- (g) Customary Law of Succession (March 2004); and
- (h) Domestic Partnerships (March 2006).

D SCOPE OF THE PROJECT

1.18 The constitutional validity aspect of this project focuses on statutes or provisions in statutes that are clearly inconsistent with the right to equality entrenched in section 9 of the Constitution. In practical terms, this leg of the investigation is limited to statutes or provisions in statutes that –

- (a) differentiate between people or categories of people in a manner that is not rationally connected to a legitimate government purpose; or
- (b) unfairly discriminate against people or categories of people on one or more grounds listed in section 9(3) of the Constitution; or
- (c) unfairly discriminate on grounds which impair, or have the potential to impair, a person's fundamental dignity as a human being.

1.19 Consequently, a law or a provision in a law which appears on the face of it to be neutral and non-discriminatory, but which has or could have discriminatory effect or consequences, has been left to the judicial process. This investigation focuses on the constitutionality of provisions in statutes of South African law, with special attention paid to consonance with section 9 of the Constitution. The investigation also attends to obsolescence or redundancy of provisions. In 2003, Cabinet directed that the highest priority be given to reviewing provisions that would result in discrimination as defined in section 9 of the Constitution, which prohibits unfair discrimination on the basis of race, gender, sex, pregnancy, marital status, ethnic and social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, or birth. The SALRC agreed that the project should proceed by scrutinising and revising national legislation that discriminates unfairly.⁹ However, as explained in the preceding sections of this chapter, even the section 9 inquiry was limited, because it dealt primarily with statutory provisions that were blatantly in conflict with section 9 of the Constitution. This delimitation arose mainly from considerations of time and capacity. Nonetheless, during the investigation certain other anomalies and obvious inconsistencies with the Constitution were identified. The SALRC has made recommendations on how to address these issues.

⁹ Cathi Albertyn prepared a 'Summary of Equality jurisprudence and Guidelines for assessing the SA Statute Book for Constitutionality against section 9 of the 1996 Constitution', specifically for the SALRC in February 2006 available on request from pvanwyk@justice.gov.za and the SALRC library.

1.20 The Commission has approved the following finalised reports as part of Project 25:

- (a) Legislation administered by the Department of Transport, in October 2009;
- (b) Legislation administered by the Department of Labour, in October 2011;
- (c) Legislation administered by National Treasury (non-tax legislation), in October 2011;
- (d) Legislation administered by the Department of Energy, in October 2011;
- (e) Legislation administered by the Department of Mineral Resources, in December 2011;
- (f) Legislation administered by the Department of Public Works, in December 2011;
- (g) Legislation administered by the Department of Rural Development and Land Reform, in December 2011;
- (h) Legislation administered by the Department of Human Settlements, in December 2011;
- (i) Legislation administered by the Department of Defence and Military Veterans, in July 2014;
- (j) Legislation administered by the Department of International Relations and Cooperation, in December 2014;
- (k) Legislation administered by the Department of Cooperative Governance Traditional Affairs, in June 2015;
- (l) Legislation administered by the Department of Tourism, in June 2015; and
- (m) Statutory Law Revision: Report on legislation administered by Departments of Basic Education and Higher Education and Training, August 2015;
- (n) Legislation administered by the Department of Communications, September 2016;
- (o) Legislation administered by the Department of Environmental Affairs, September 2016;
- (p) Legislation administered by the Department of Higher Education and Training, December 2014;
- (q) Legislation administered by the Department of Home Affairs, December 2016;
- (r) Legislation administered by the Department of Justice and Constitutional Development, (One), December 2015;
- (s) Legislation administered by the Department of the Department of Justice and Constitutional Development, (Two), June 2015;
- (t) Legislation administered by the Department of the Department of Justice and Constitutional Development, (Three), May 2016;
- (u) Legislation administered by the Department of Science and Technology, December 2015; and

- (v) Legislation administered by the Department of Water Affairs, September 2016.

E CONSULTATION WITH STAKEHOLDERS

1.21 In 2004, Cabinet endorsed the proposal that government departments should be asked to participate in and contribute to this investigation. In certain instances, legal researchers cannot decide whether to recommend a provision for repeal unless they have access to factual information that might be considered “inside” knowledge – of the type usually accessible only within a specific department or organisation. Examples include savings or transitional provisions that are instituted to preserve the status quo until an office-holder ceases to hold office or until a loan has been repaid. In such cases, the consultation paper drafted by the SALRC invited the department or organisation being consulted to supply the necessary information. The aim of the publication of consultation papers in this investigation is likewise to determine whether departments and stakeholders agree with and support the proposed findings and the proposals for legislative amendment or repeal. The SALRC relies on the assistance of departments and stakeholders. This process should ensure that all relevant provisions are identified during the review, and are dealt with responsively and without creating unintended negative consequences.

1.22 On 30 June 2016 the SALRC submitted a consultation paper to the Department of Police for comments. Comments were received from the Department of Police on 20 September 2016 and have been included in the discussion paper.

CHAPTER 2

EVALUATION OF LEGISLATION ADMINISTERED BY THE DEPARTMENT OF POLICE

A Introduction

2.1 The South African Police Service is established by section 5 of the South African Police Service Act, 1995 (Act No. 68 of 1995) as contemplated in section 205(2) of the Constitution. The South African Police Service was designated as the Department of Police by Proclamation 48 of 2009 which was published in Government *Gazette* No. 32387.

2.2 The work of DOP is supported by two Departments which are accountable to the Minister of Police. These Departments are the Civilian Secretariat for Police and the Independent Police Investigative Directorate.

2.3 The Civilian Secretariat for Police serves as technical advisor to the Minister of Police to evince a transversal civilian oversight capability on the governance, service delivery and the resourcing of the South African Police Service. The Secretariat performs advisory functions on various matters including but not limited to, departmental policy and strategy, legislation and police performance.

2.4 The Independent Police Investigative Directorate serves to ensure an independent oversight over the South African Police Service and to conduct independent and impartial investigations of identified criminal offences allegedly committed by members of the South African Police Service and to make appropriate recommendations where necessary.

2.5 Police is in terms of Schedule 4 Part A of the Constitution, a functional area of concurrent national and provincial legislative competence, and in terms of section 41(1)(h) of the Constitution all spheres of government and organs of state must co-operate with, consult and support one another.

B General remarks

2.6 Having regard to the scope of project 25 and within the context of this discussion paper it is important to note the following:

- (a) The SALRC has a limited review mandate to conduct this statutory investigation and it remains important to understand that this discussion paper forms part of a narrowly focused and text-based statutory review process as indicated in Chapter 1 above;
- (b) The DOP which was then the Department of Safety and Security participated in the SALRC audit of legislation that was conducted in 2003 and 2005. The DOP provided the SALRC with a list of legislation that it administers and which is the focus of review in this discussion paper; and
- (c) While a statute administered by the DOP may appear to be free from provisions that violate section 9 of the Constitution that may not necessarily be an indication that the execution of such a statute is in line with section 9 of the Constitution.

C Evaluation of legislation

2.7 The SALRC has prepared the proposed draft Bill which if enacted will amend certain legislation or legislative provisions administered by the DOP and which have been identified as unconstitutional, redundant or obsolete. This Chapter contains the reasons for the amendment and repeal of the provisions that are reflected in Schedule 1 and 2, respectively, to Annexure A.

1 Civilian Secretariat for Police, 2011 (Act No. 2 of 2011)

2.8 The Act provides for the establishment of a Civilian Secretariat for Police Service in the Republic; to define the objects, functions and powers of the Civilian Secretariat and for this purpose to align the operations of the Civilian Secretariat in the National and Provincial spheres of government and re-organize the Civilian Secretariat into an effective and efficient organ of state; to regulate the appointment, duties and functions, powers and removal from office of the Secretary of the Police Service and heads of provincial secretariats, to provide for the establishment of a senior management forum and a Ministerial Executive Committee; to provide for co-operation between the Civilian Secretariat and the Independent Police

Investigative Directorate; to provide for co-operation between the Civilian Secretariat and the South African Police Service; to provide for intervention into the affairs of provincial secretariats by the Civilian Secretariat and to provide for matters connected therewith.

2.9 This Act has been reviewed and no provision of the Act has been found to be unconstitutional, obsolete or redundant and therefore the SALRC recommends that the Act be retained to ensure that its objectives are achieved.

2 Dangerous Weapons Amendment Act, 1990 (Act No. 29 of 1990)

2.10 This Act amends the Dangerous Weapons Act, 1968 (Act No. 71 of 1968) so as to further define certain expressions, extend the powers of the Minister of Police to restrict or prohibit the possession of dangerous weapons; to include firearms and to increase the fines in respect of offences and to provide for incidental matters.

2.11 The Dangerous Weapons Act of 1968 has been repealed by the Dangerous Weapons Act, 2013 (Act No. 15 of 2013). The Dangerous Weapons Amendment Act of 1990 has therefore become redundant and for that reason the SALRC recommends that the amendment Act be repealed. The DOP agrees with the SALRC recommendation.

3 Dangerous Weapons Amendment Act, 1993 (Act No. 156 of 1993)

2.12 The purpose of this Act is to amend the Dangerous Weapons Act of 1968 so as to add a certain definition, increase certain penalties and to provide for matters connected therewith.

2.13 The Dangerous Weapons Act of 1968 has been repealed by the Dangerous Weapons Act, 2013 (Act No. 15 of 2013). The Dangerous Weapons Amendment Act of 1993 has therefore become redundant and for that reason the SALRC recommends that the amendment Act be repealed. The DOP agrees with the SALRC recommendation.

4 Dangerous Weapons Act, 2013 (Act No. 15 of 2013)

2.14 The Act provides for certain prohibitions in respect of the possession of dangerous weapons and repeal the Dangerous Weapons Acts in operation in the areas of the erstwhile South Africa, Transkei, Bophuthatswana, Venda and Ciskei, as those areas were constituted immediately before 27 April 1994. Further this Act amends the Regulation of Gatherings Act, 1993 (Act No. 205 of 1993), and the Firearms Control Act, 2000 (Act No. 60 of 2000) and also provide for matters connected therewith.

2.15 This Act has been reviewed and no provision of this Act has been found to be unconstitutional, obsolete or redundant. The SALRC recommends that the Act be retained to ensure that its objectives are achieved. The DOP agrees with the SALRC recommendation.

5 Explosives Act, 1956 (Act No. 26 of 1956)

2.16 This Act provides for the consolidation of the laws relating to the manufacture, storage, sale, transport, importation, exportation and the use of explosives.

2.17 This Act is repealed by the Explosives Act, 2003 (Act No. 15 of 2003). The Explosives Act of 2003 is not yet in operation. The DOP advised the SALRC that the delay in coming into operation of this Act is due to the fact that the Act itself is complex in nature and for ease of implementation, the DOP took a decision to first finalize Regulations prescribed by the Act. The DOP has further advised that the drafting of the Regulations has been finalized.

2.18 This Act has been reviewed and pending the coming into operation of the Explosives Act of 2003, the SALRC makes the following recommendations:

- (a) That section 1 of the Act be amended so as to re-define "Minister" to mean "minister responsible for police"; and
- (b) That section 2(5) be amended so as to substitute "Commissioner of the South African Police Service" for "National Commissioner of the Police Service" as contemplated in section 207(1) of the Constitution. The DOP agrees with the SALRC recommendations.

6 Explosives Amendment Act, 1962 (Act No. 79 of 1962)

2.19 This Act amends the Explosives Act of 1956. The Act has been reviewed and no provision of the Act was found to be unconstitutional, obsolete or redundant. The SALRC recommends that since the principal Act is still in force the amendment Act must be retained for legal certainty. The DOP agrees with the SALRC recommendation.

7 Explosives Amendment Act, 1963 (Act No. 21 of 1963)

2.20 This Act amends the Explosives Act of 1956. This Act has been reviewed and no provision of the Act was found to be unconstitutional, obsolete or redundant and therefore the SALRC recommends that since the principal Act is still in force the amendment Act must be retained for legal certainty. The DOP agrees with the SALRC recommendation.

8 Explosives Amendment Act, 1965 (Act No. 20 of 1965)

2.21 The Act amends the Explosives Act of 1956. The SALRC has reviewed this Act and no provision of the Act was identified as unconstitutional, obsolete or redundant and therefore the SALRC recommends that as the principal Act is still in force the amendment Act must be retained for legal certainty. The DOP agrees with the SALRC recommendation.

9 Explosive Amendment Act, 1967 (Act No. 12 of 1967)

2.22 This Act amends the Explosives Act of 1956. The Act has been reviewed and no provision of the Act was identified as unconstitutional, obsolete or redundant and therefore the SALRC recommends that as the principal Act is still in force the amendment Act must be retained for legal certainty. The DOP agrees with the SALRC recommendation.

10. Explosives Amendment Act, 1972 (Act No. 74 of 1972)

2.23 The Act amends the Explosives Act of 1956, by the substitution for the expression "one thousand pounds in weight" in section 6 of the expression "500 kilograms" and for the expression "one mile" in section 13 of the expression "2 kilometres"; to apply the said Act to the territory of South-West Africa; to repeal the Explosives Ordinance, 1962, and Government Notice No. 52 of 1968, of the territory of South-West Africa; and to provide for incidental matters.

2.24 This Act has been reviewed and no provision of the Act was identified as unconstitutional, obsolete or redundant and therefore the SALRC recommends that as the principal Act is still in force the amendment Act must be retained for legal certainty. The DOP agrees with the SALRC recommendation.

11. Explosives Amendment Act, 1975 (Act No. 35 of 1975)

2.25 The Act amends the Explosives Act of 1956, so as to empower the Secretary for Commerce to designate an officer in his Department to exercise the powers conferred on him in terms of section 2(5); to empower the chief inspector of explosives to prescribe conditions in respect of permissions granted by him under section 4 (1A); and to alter the requirements regarding the use of explosives manufactured under such permissions; to repeal sections 12 to 16 inclusive, and sections 18 to 21 inclusive; to provide for the licensing by the Chief inspector of explosives of factories for the manufacture of magazines, for the storage of explosives; to make further provision regarding the making of regulations; and to provide for incidental matters.

2.26 This Act has been reviewed and no provision of the Act was identified as unconstitutional, obsolete or redundant and therefore the SALRC recommends that as the principal Act is still in force the amendment Act must be retained for legal certainty. The DOP agrees with the SALRC recommendation.

12 Explosives Amendment Act, 1977 (Act No. 101 of 1977)

2.27 The Act amends the Explosives Act of 1956, in order to penalize persons falsely holding themselves out to be inspectors of explosives and persons who make threats or communicate false information regarding explosions or alleged explosions or attempts or alleged attempts thereto.

2.28 This Act has been reviewed and no provision of the Act was identified as unconstitutional, obsolete or redundant and therefore the SALRC recommends that as the principal Act is still in force the amendment Act must be retained for legal certainty. The DOP agrees with the SALRC recommendation.

13 Explosives Amendment Act, 1981 (Act No. 5 of 1981)

2.29 The Act amends the Explosives Act of 1956, so as to assign the administration of the said Act to the Minister of Police; to increase certain penalties; to empower regional courts to impose certain penalties; and to extend the powers of the Minister to grant exemption from the provisions of the said Act and to provide for incidental matters.

2.30 This Act has been reviewed and pending the coming into operation of the Explosives Act of 2003, the SALRC recommends that section 2 of the Act be amended so as to substitute "Commissioner of the South African Police" with "National Commissioner of the South African Police Service" as contemplated in section 207 (1) of the Constitution. The DOP agrees with the SALRC recommendation.

14 Explosives Amendment Act, 1983 (Act No. 18 of 1983)

2.31 The Act amends the Explosives Act of 1956, so as to prohibit the possession of petrol bombs and similar devices under certain circumstances. This Act has been reviewed and no provision of the Act was identified as unconstitutional, obsolete or redundant and therefore the SALRC recommends that as the principal Act is still in force the amendment Act must be retained for legal certainty. The DOP agrees with the SALRC recommendation.

15 Explosives Amendment Act, 1993 (Act No. 178 of 1993)

2.32 The Act amends the Explosives Act of 1956, so as to re-define “Minister”, to increase certain penalties and to provide for matters connected therewith. This Act has been reviewed and pending the coming into operation of the Explosives Act of 2003, the SALRC recommends that section 1 of the Act be amended so as to re-define “Minister” to mean “minister responsible for police”. The DOP agrees with the SALRC recommendation.

16 Explosives Amendment Act, 1997 (Act No. 83 of 1997)

2.33 The Act amends the Explosives Act of 1956, so as to give effect to the Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991, and for that purpose to impose a prohibition on certain acts relating to plastic explosives which are not marked with detection agents and to require certain persons to furnish the Chief Inspector of explosives with information in regard to plastic explosives and to provide for incidental matters.

2.34 This Act has been reviewed and no provision of the Act has been found to be unconstitutional, obsolete or redundant and therefore the SALRC recommends that as the principal Act is still in force the amendment Act must be retained for legal certainty. The DOP agrees with the SALRC recommendation.

17 Firearms Control Act, 2000 (Act No. 60 of 2000)

2.35 The Act provides for the establishment of a comprehensive and an effective system of firearms control; and also provides for matters connected therewith.

2.36 The Act has been reviewed and the SALRC recommends that section 1 of the Act be amended so as to re-define Minister to mean “minister responsible for police”.

2.37 Further that the following repealed Acts must be substituted as follows:

- (a) “Defence Force Act, 1957 (Act No. 44 of 1957)” be substituted with “Defence Force Act, 2002 (Act No. 42 of 2002)” in section 95(a)(i) and (b) (i); and

- (b) “Armaments Development and Production Act, 1968 (Act No. 57 of 1968)” be substituted with “Armaments Corporation of South Africa, Limited Act, 2003 (Act No. 51 of 2003)” in section 96(2).

2.38 The DOP agrees with the SALRC recommendations.

18 Firearms Control Amendment Act, 2003 (Act No. 43 of 2003)

2.39 The Act amends the Firearms Control Act of 2000, so as to change certain technical expressions and to delete or amend certain definitions. The Act further provides for the deletion and insertion of certain lexical expressions, apprenticeship to a gunsmith, empowers the Minister to prescribe measures in terms of which the public may be notified that certain premises are declared firearm-free zones, to provide in the transitional provisions for the continuation of an existing registration certificate to trade as a gunsmith and to provide for matters connected therewith.

2.40 This Act has been reviewed and no provision of the amendment Act was found to be unconstitutional, obsolete or redundant. The SALRC therefore recommends that as the principal Act is still in force the amendment Act must be retained for legal certainty. The DOP agrees with the SALRC recommendation.

19 Firearms Control Amendment Act, 2006 (Act No. 28 of 2006)

2.41 The Act aims to amend the Firearms Control Act of 2000, so as to amend, delete and insert certain definitions; to provide for the control of muzzle loading firearms; to provide for the control of a certain device; to provide for the Registrar to determine the sufficiency of the set of fingerprints an applicant must from time to time provide; to provide for a written notification in respect of the substitution of a responsible person; to provide for a procedure to cancel an accreditation; to provide for the renewal of a competency certificate; to delete the restriction on magazine capacity of a semi-automatic shotgun for use by a dedicated hunter or sports person; to provide for a license to possess a firearm for professional hunting; to provide that prohibited and restricted firearms may only be collected if made inoperable; to provide for the cancellation of a temporary permit to possess a firearm; to extend the validity period of licenses and permits; to subject the export of firearms and

ammunition to the relevant provisions of the National Conventional Arms Control Act of 2002; to provide for non-automatic disqualification to possess a firearm in the event of the payment of an admission of guilt fine; to provide for the holding of an inquiry contemplated in section 102 in the absence of the person concerned under certain circumstances; to amend the procedure for the cancellation of certain licenses, permits, authorizations and competency certificates; to provide for the establishment of an informal consultative forum, and to provide for compliance with the provisions of the National Heritage Resources Act, 1999 (Act No. 25 of 1999), in instances where firearms are to be destroyed and to provide for matters connected therewith.

2.42 This Act has been reviewed and no provision of the Act was found to be unconstitutional, obsolete or redundant. The SALRC recommends that as the principal Act is still in force the amendment Act must be retained for legal certainty. The DOP agrees with the SALRC recommendation.

20 Game Theft Act, 1991 (Act No. 105 of 1991)

2.43 The Act regulates the ownership of game in certain instances; to combat the theft and wrongful and unlawful hunting, catching and taking into possession of game; and to provide for matters connected therewith.

2.44 This Act has been reviewed and no provision of the Act was found to be unconstitutional, obsolete or redundant. The SALRC recommends that the Act be retained to ensure that its objectives are achieved. The DOP agrees with the SALRC recommendation.

21 Independent Police Investigative Directorate, 2011 (Act No. 1 of 2011)

2.45 The Act makes provision for the establishment of an independent Police Investigative Directorate, to regulate the functions of the Directorate and to provide for the establishment of a Management Committee and Consultative Forum and their respective functions. Further, the Act provides for the appointment and powers of investigators, reporting obligations and cooperation by members of the South African Police Service and Municipal Police Services, transitional arrangements, the repeal and amendment of certain laws and to provide for matters connected therewith.

2.46 This Act has been reviewed and section 6(6) was identified as unconstitutional in that it does not provide safeguard measures to protect the Head of Independent Police Investigative Directorate (“the IPID”) from being unilateral removed from office by the Minister of Police. While the appointment of the Head of the IPID is subject to approval by Parliament, the removal from office of the Head of IPID does not involve parliament but instead the Minister of Police may in terms of section 6(6) unilaterally remove the Head of IPID. This results to a lack of protection of security of tenure for the Head of IPID. The SALRC recommends that section 6(6) be amended by the insertion of the words “with the approval of the relevant Parliamentary Committee” so as to ensure that the Head of IPID’s security of tenure is protected.

2.47 The SALRC’s view with regard to the unconstitutionality of section 6(6) is confirmed in the High Court judgement of **McBride vs Minister of Police and Another (McBride’s case)**¹⁰.

2.48 The Applicant in this case was the Executive Director of the IPID who was charged by the Minister of Police with misconduct for improperly altering or causing to be altered a report containing recommendations to the effect that Dramat and Sibiya (former senior officials of the Directorate for Priority Crimes Investigation) be criminally charged for illegal renditions allegedly committed between November 2010 and January 2011. The Minister of Police initiated suspension proceedings against the Applicant for the alleged misconduct and at the same time placed the Applicant on precautionary suspension. In doing so the Minister of Police *inter alia*, relied on section 6(6)(a) of the Independent Police Investigative Directorate Act of 2011 (“the IPID Act”) which provides that the Minister of Police may remove the Executive Director of the IPID from office on account of misconduct.

2.49 The Applicant sought an order that declares the following provisions constitutionally invalid:

- (a) Sections 6(3)(a) and 6(6) of the IPID Act;
- (b) Regulation 13 of the IPID Regulations, 2012;
- (c) Sections 16A(1), 16B, 17(1) and (2) of the Public Service Act of 1994, (to the extent applicable to the Executive Director of the IPID);
- (d) Paragraphs 2.5, 2.6, 2.7(1)-(5) of Chapter 7 of the SMS Handbook; and
- (e) Paragraphs 18 and 19 of the SMS Handbook.

¹⁰ McBride v Minister of Police and Another (CCT255/15) [2016] ZACC 30; 2016 (2) SACR 585 (CC); 2016 (11) BCLR 1398 (CC) (6 September 2016)

2.50 Further, the Applicant sought an order suspending the effect of the declaration of invalidity of the impugned provisions to allow Parliament to remedy the constitutional defect, as well as an order putting in place an interim arrangement governing any disciplinary action against him during the period of the suspended constitutional invalidity. Lastly, the Applicant sought to review and set aside the Minister's decision to suspend him from the position of Executive Director of the IPID and also the Minister's decision to institute disciplinary proceedings against him.

2.51 The Court made the following order which, *inter alia*, provides that -

- (a) sections 6(3)(a) and 6(6) of the IPID Act, sections 16A (1), 16B, 17(1) and (2) of the Public service Act of 1994, and regulation 13 of the IPID Regulations, 2012 are declared unconstitutional and unlawful to the extent that they purport to authorize the Minister of Police to suspend, take disciplinary action against the Executive Director of the IPID or to remove from office the Executive Director of the IPID;
- (b) the declaration of invalidity is suspended for a period of 12 months from the date of the order (4 December 2015) to enable Parliament to correct the constitutional defect;
- (c) pending the correction of the constitutional defect, or the expiry of 12 months, whichever occurs first, section 6(6) of the IPID Act is to be read as providing as follows:

“Subsection 17DA (3) 17DA (7) of the SAPS Act apply to the suspension and removal of the Executive Director of IPID, with such changes as may be required by the context.”
- (d) sections 16A(1), 16B, 17(1) and (2) of the Public Service Act of 1994 and Regulation 13 of the IPID Regulations, 2012, do not apply to the Executive Director of the IPID; and
- (e) the Minister's decisions to suspend the Executive Director of the IPID from his position and institute a disciplinary inquiry against him are unlawful and invalid and set aside.

2.52 The High Court order which is outlined above was confirmed by the Constitutional Court on 6 September 2016ⁱ and the summary of the constitutional court confirmation order is as follows:

- (a) Sections 6(3)(a) and 6(6) of the IPID Act and sections 16A(1), 16B, 17(1) and 17(2) of the Public Service Act of 1994 and regulation 13 of the IPID Regulations for the Operation of the Independent Police Investigative

Directorate , 2012 were declared invalid to the extent that they authorise the Minister of Police to suspend, take any disciplinary steps pursuant to suspension, or remove from office the Executive Director of the Independent Police Investigative Directorate;

- (b) Parliament was directed to cure the defects in the legislation within 24 months from the date of this order.
- (c) Pending the legislative correction of the defect(s) by Parliament section 6(6) of the IPID Act must be read as providing that subsections 17DA(3) to 17DA(7) of the SAPS Act of 1995 apply to the suspension and removal of the Executive Director of IPID, with changes as may be required by the context;
- (d) Sections 16A(1), 16B, 17(1) and 17(2) of the Public Service Act of 1994 and regulation 13 of the IPID Regulations were declared inconsistent with section 206(6) of the Constitution and shall not apply to the Executive Director of the Independent Police Investigative Directorate;
- (e) The decision of the Minister of Police to suspend Mr Robert McBride from his position as Executive Director of the IPID was declared invalid and set aside; and
- (f) The decision of the Minister of Police to institute the disciplinary inquiry against Mr Robert McBride was declared invalid and set aside.

2.53 The SALRC recommends that section 6(3)(a) of the IPID Act be amended to align it with the Robert Mc Bride case and that section 6(6) be repealed and new section inserted to involve Parliament in the process of removing an Executive Director of the IPID from office. The DOP agrees with the SALRC recommendations.

22 Intimidation Act, 1982 (Act No. 72 of 1982)

2.54 The Act is aimed at prohibiting certain forms of intimidation and to provide for matters connected therewith.

2.55 The Act has been reviewed and no provision of the Act was identified as unconstitutional, obsolete or redundant and therefore the SALRC recommends that the Act

be retained in order to achieve its objectives. The DOP agrees with the SALRC recommendation.

23 Internal Security and Intimidation Amendment Act, 1991 (Act No. 138 of 1991)

2.56 The Act amends the Internal Security Act, 1982 (Act No.74 of 1982), so as to delete or substitute certain definitions; to regulate anew the declaration of organizations as unlawful; to extend the time limit for the institution of certain proceedings; to make different provision in relation to the detention of certain persons for interrogation; to authorize the Minister of Justice to withdraw or amend certain notices; to increase the maximum for certain offences; to adjust the provision relating to a certain authority required from the attorney-general; to delete certain obsolete provisions; and to repeal provisions relating to the prohibition of certain publications, a certain restriction on the registration of newspapers, the keeping of a certain consolidated list of names, the placing of certain restrictions upon or in respect of certain persons, the detention of certain persons for certain purposes, certain disqualifications for membership of a House of Parliament and for the practicing of certain legal professions, the appointment of inspectors of detainees, certain temporary operative powers of detention and an offence in connection with communism; to amend the Newspaper and Imprint Registration Act, 1971, so as to provide for the lapsing of the registration of a newspaper under certain circumstances; to amend the Intimidation Act, 1982, so as to create certain new offences; and to increase the maximum sentence for certain offences; to repeal certain obsolete laws; and to provide for matters connected therewith.

2.57 The Internal Security Act of 1982 which is the subject of amendment in this Act has been repealed by the Protection of Constitutional Democracy Against Terrorist and Related Activities, 2004 (Act No. 33 of 2004). Therefore, the SALRC recommends that the Internal Security and Intimidation Amendment Act of 1991 be repealed as it has become redundant.

24 National Key Points Act, 1980 (Act No. 102 of 1980)

2.58 This Act provides for National Key Points and the safeguarding thereof and for matters connected therewith.

2.59 The Act has been reviewed and the SALRC recommends as follows:

- (a) Section 1 of the Act be amended so as to re-define “Minister” to mean “minister responsible for police”;
- (b) Sections 2(1) and 2A(1) be amended so as to curb the wide discretionary powers conferred on the Minister on the declaration of an area or place as a National Key Point or part of a National Key Points Complex. The SALRC recommends that the process envisaged in the afore-mentioned sections should involve the relevant Parliamentary Committee;
- (c) Section 3(4)(a) be amended so as to curb the wide discretionary powers conferred on the Minister to determine the cost which each party in a National Key Points Complex is responsible for. The SALRC recommends that the Minister of Finance be consulted in the determination of such cost. Further the SALRC recommends that paragraph (b) must be repealed by implication of the amendment of paragraph (a);
- (d) Section 3A(1) be amended to remain in alignment with the proposed amendment to section 3(4)(a) with regard to the issue of determination of cost to be paid by parties in a National Key Points Complex;
- (e) Section 5(2) be amended so as to substitute “South African Defence Force” with “South African Police Service” and further in the same sub-section, substitute the Act: Defence Act, 1957 (Act No. 44 of 1957)” with “South African Police Service Act, 1995 (Act No. 68 of 1995)” and further substitute the Act: “Defence Act” in the same subsection with “South African Police Service Act”. The reason for the substitutions is that the NKPA was administered by the Department of Defence prior to being administered by the DOP;
- (f) Section 6(2) be amended so as to substitute “Public Service Act, 1957 (Act No. 54 of 1957)” with “Public Service Act, 1994 (Proclamation 103 of 1994)”;
- (g) Section 10(1) be amended so as to substitute “Official Secrets Act, 1956 (Act No. 16 of 1956) with the Act: Protection of Information Act, 1982 (Act No. 84 of 1982).

2.60 The DOP agrees with the SALRC recommendations.

2.61 In the process of reviewing this Act the judgement in the case of **Right2Know Campaign and Another v Minister of Police and Another**¹¹ was considered. The point of contention in this case was whether South Africans have a right to know the places and areas that have been declared as national key points in terms of the National Key Points Act of 1980 (“the NKP Act”). A request by the Second Applicant (The South African History Archive) to the Second Respondent (National Deputy Information Officer of the South African Police Service) in terms of section 18(1) of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)(PAIA) for disclosure of the national key points was refused. An internal appeal as envisaged in section 74 of PAIA to the Minister of Police was dismissed.

2.62 The Court deliberated on the question of whether the identity of the national key points must be kept secret, in other words if there is such a necessity and in that regard, the Court expressed the following view:

“Nothing in the NKP Act provides for that idea (a need for secrecy) [own emphasis]. If that had been the purpose of the NKP Act, it would be startling that no mention was made, especially when express provisions exist to inhibit dissemination of information about the security measures in place. Disclosure of information about security is conduct criminalised by section 10...”

2.63 The Court further pointed out that section 10 of the NKP Act deals expressly with confidentiality of the security measures per se, not the secrecy of the status of the place as a national key point. Further that no offence exists in the Act to penalize the disclosure of the identity of a place as having been declared a national key point.

2.64 The Court also noted that if the Act prescribes criminal sanctions in section 10 for various acts related to national key points and the people of South Africa do not know these national key points, people are mostly likely to be unable to avoid the transgressions contemplated in terms of section 10 of the Act. Foreseeability is one of the central tenets underlying the common-law understanding of legality. The contention of M & G Media Limited, who joined in this Application as *Amicus Curiae*, that to save the constitutionality of section 10 of the NKP Act, at the very least, the national key points must be publicly known was upheld by the Court. The decision to refuse the Applicant’s request in terms of PAIA was declared unlawful and unconstitutional. The Court further ordered that the Applicants

11 **Right2Know Campaign and Another v Minister of Police and Another** (2013/32512) [2014] ZAGPJHC 343; [2015] 1 ALL SA 367 (GP)

must within 30 (thirty) days of the granting of the order be granted the records indicating what places or areas have been declared a "National Key Point" or "National Key Points Complex" under section 2 and 2A of the NKP Act.

2.65 The result of this court decision is that the identity of the national key points is no longer a secret. Section 10 was by virtue of this decision saved from being declared unconstitutional.

25 National Key Points Amendment Act, 1984 (Act No. 44 of 1984)

2.66 The Act provides for the Minister to make regulations relating to the employment or hiring of services of guards by the owners of Key Points, the requirements to be complied with by persons serving as guards at such Key Points, and the nature and duration of the training or further training of such persons and to provide that the regulations made under section 11 shall bind the State to the extent determined by the Minister or any person authorized thereto by him.

2.67 This Act has been reviewed and no provision of the Act has been found to be unconstitutional, obsolete or redundant and therefore the SALRC recommends that since the principal Act is still in force the amendment Act be retained for legal certainty.

26 National Key Points Amendment Act, 1985 (Act No. 47 of 1985)

2.68 The Act amends the National Key Points Act of 1980, so as to provide for two or more National Key Points to be declared a National Key Points Complex with a view to joint steps being taken in respect of the security of those Key Points by the owners thereof; to empower the Minister of Defence in certain circumstances to take or cause to be taken the necessary steps in respect of the security of Key Points and to recover the costs thereof from the owners; to state the duties of the owners of National Key Points more clearly; to provide for the establishment of a Special Account for the Safeguarding of National Key Points; to provide for the appointment of persons to advise the Minister of Defence and to assist him in the exercise of his powers under the Act; to state the powers of entry of places and areas under the Act more clearly; to validate certain acts of the Minister of Defense; and

to effect a certain correction in the Afrikaans text; and to provide for matters connected therewith.

2.69 This Act has been reviewed and no provision of the Act has been found to be unconstitutional, obsolete or redundant and therefore the SALRC recommends that as the principal Act is still in force the amendment Act must be retained for legal certainty. The DOP agrees with the SALRC recommendation.

27 Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001)

2.70 The Act provides for the regulation of the security industry and for that purpose to establish a regulatory authority; and to provide for matters concerned therewith.

2.71 This Act has been reviewed and the SALRC recommends that section 1 of the Act be amended so as to re-define Minister to mean “minister responsible for police”. The DOP agrees with the SALRC recommendation.

28 Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004)

2.72 The Act provides for measures to prevent and combat terrorist and related activities; to provide for an offence of terrorism and other offences associated or connected with terrorist activities; to provide for Convention offences; to give effect to international instruments dealing with terrorist and related activities; to provide for a mechanism to comply with United Nations Security Council Resolutions, which are binding on member States, in respect of terrorist and related activities; to provide for measures to prevent and combat the financing of terrorist and related activities; to provide for investigative measures in respect of terrorist and related activities; and to provide for matters connected therewith.

2.73 In section 1 the definition of “Convention offence” still refers to the Civil Aviation Offences Act, 1972 (Act No. 10 of 1972) which has been repealed by the Civil Aviation Act, 2009 (Act No. 13 of 2009). The SALRC recommends that the outdated reference to sections 2(1) and (2) of the Civil Aviation Offences Act, 1972 (Act No. 10 of 1972) be corrected to read sections 133 and 134 of the Civil Aviation Act, 2009 (Act No. 13 of 2009). The DOP agrees with the SALRC recommendation.

2.74 Section 12(8) still refers to the repealed Stock Exchanges Control Act, 1985 (Act No. 1 of 1985) and the Financial Markets Control Act, 1989 (Act No. 55 of 1989) which were repealed by section 117 of the Securities Act, 2004 (Act No. 36 of 2004), which was in turn repealed in its entirety by section 111 of the Financial Markets Act, 2012 (Act No. 19 of 2012). The SALRC recommends that section 12(8) be amended so as to delete references to the Stock Exchanges Control Act, 1985, Financial Markets Control Act, 1989 and the Securities Act, 2004 which have been repealed. The DOP agrees with the SALRC recommendation.

2.75 The SALRC would like to bring to the attention of the DOP the anomaly that is created by reference in this Act to the Explosives Act of 2003 (Act No. 15 of 2003) which is not yet in operation. The DOP advised the SALRC in 2014 that the Explosives Act of 2003 was not put into operation pending the finalization of the Regulations prescribed by the Act and which deals with technical matters provided for in the Act. The SALRC recommends that the DOP notes this anomaly and correct it. The DOP agrees with the SALRC recommendation.

29 Tear-Gas Act, 1964 (Act No. 16 of 1964)

2.76 To provide for the control of the manufacture, importation and possession of tear-gas and articles used or intended to be used for releasing tear-gas and for other incidental matters.

2.77 This Act has been reviewed and the SALRC recommends that section 1 of the Act be amended so as to re-define the word "Minister" to mean minister responsible for police. The DOP agrees with the SALRC recommendation.

30 Transfer of the South African Railways Police Force to the South African Police Act, 1986 (Act No. 83 of 1986)

2.78 The Act provides for the dissolution of the South African Railways Police Force; the transfer of members of the South African Railways Police Force to the South African Police; and for matters incidental thereto.

2.79 The Act deals with transitional measures relating to the transfer of the South African Railways Police Force to the South African Police Service which transfer has already occurred. Matters incidental thereto" (transfer of benefits, employees, loan agreements, decorations and medals etc) have been catered for in subsequent legislation such as the Interim Constitution (236(7)), the rationalization proclamation (Proclamation for the Rationalization of the SAPS – No. 16239 R5, 1995) and the South African Police Services Act 68 of 1995.

2.80 The SALRC has not found any cogent reason for the continued existence of this Act in light of legislation that appears to have superseded it. To this end, the SALRC recommends that this Act be repealed. The DOP agrees with the SALRC recommendation.

31 Transfer of the South African Railways Police Force to the South African Police Service Amendment Act, 1989 (Act No. 14 of 1989)

2.81 The Act amends the Transfer of the South African Railways Police Force to the South African Police Act, 1986, so as to provide for the protection of orders, decorations, medals, bars, clasps and ribbons awarded to members of the South African Railways Police Force before their transfer to the South African Police.

2.82 This Act has been reviewed and the SALRC recommends that the amendment Act be repealed for it amends the Transfer of the South African Railways Police Force to the South African Police Act, 1986 (Act No. 83 of 1986) which has been recommended for repeal in paragraph 2.80.

32 Second-Hands Goods Act, 2009 (Act No. 6 of 2009)

2.83 The Act deals with pawnbrokers in order to combat trade in stolen goods, to promote ethical standards in the second-hands goods trade and to provide for matters connected therewith.

2.84 The Act has been reviewed. The SALRC recommends that section 1 of the Act be amended so as to substitute the repealed Companies Act, 1973 (Act No. 61 of 1973) with

the “Companies Act, 2008 (Act No. 71 of 2008)”. The DOP agrees with the SALRC recommendation.

2.85 Further, it is recommended that section 1 be amended so as to re-define “Minister” to mean minister responsible for police. The DOP agrees with the SALRC recommendation.

33 Regulation of Gatherings Act, 1993 (Act No. 205 of 1993)

2.86 The purpose of the Act is to regulate the holding of public gatherings and demonstration at certain places and to provide for matters connected therewith.

2.87 The Act has been reviewed and no provision of the Act was found to be unconstitutional. The SALRC, however, recommends that –

- (a) section 1 be amended to re-define “Minister” to mean minister responsible for police” and “Local authority” to mean any local authority as defined in section 1 of the Promotion of Local Government Affairs Act, 1983 (Act No. 91 of 1983) within whose area of jurisdiction a gathering takes place or is to take place, but does not include a council board of Africa, where authority African regional services or a joint services in respect of the area jurisdiction of another local authority Local authority body established in terms of any law which applies in an area which forms part of the national territory referred to in section 1 of the Constitution of the Republic of South,1993 (Act No. 200 of 1993), and in areas only a regional body, established in terms of a law, has jurisdiction, that regional authority body;
- (b) section 7(2)(c) be amended to substitute the words “Director-General” for “Magistrate”. The powers conferred on the Director-General to approve or disapprove a demonstration or gathering conflicts with the doctrine of separation of powers. The power to approve a demonstration or gathering falls within the parameters of the judiciary.
- (c) section 13(1) be amended to substitute the Act: Arms and Ammunition Act, 1969 (Act No. 75 of 1969) with the “Fire Arms Control Act, 2000 (Act No. 60 of 2000)”; and also substitute the Act: Trespass Act, 1955 (Act No. 6 of 1955) the “Trespass Act, 1959 (Act No. 29 of 1989)”; and

2.88 The DOP agrees to the recommendations except the proposed amendment to section 13 (1) as contained in sub- paragraph (c) above. In this regard the DOP stated as follows:

“The Bill proposes that section 13 of the Gatherings Act, 1993 (Act No. 205 of 1993) should be amended by replacing the reference to the Trespass Act, 1959 (Act No. 6 of 1959) with the “Trespass Act, 1989 (Act No. 29 of 1989)”. This is incorrect since the Trespass Act, 1959 is still in operation and furthermore, Act 29 of 1989 refers to the Road Traffic, not the Trespass Act.”

2.89 The DOP further stated that-

“In view of the above the Service proposes that the reference to the Trespass Act, 1959, remains as is currently in the Regulations of Gatherings Act.”

2.90 The SALRC agrees with the comment of the DOP in relation to sub paragraph (c).

34 South African Police Service Act, 1995 (Act No. 68 of 1995)

2.91 The Act provides for the establishment, organisation, regulation and control of the South African Police Service and for matters in connection therewith.

2.92 The Act has been reviewed and the SALRC recommends that –

- (a) Section 1 of the Act must be amended so as to re-define the word ‘Minister’ to mean “minister responsible for police”; and
- (b) The DOP takes note of the anomaly created by reference to the Explosives Act of 2003 in section 15A(1)(c) of the Act and to correct it. The Explosive Act of 2003 is not yet in operation.

2.93 The DOP agrees with the SALRC recommendation.

35 South African Police Service Amendment Act, 1997 (Act No. 41 of 1997)

2.94 The Act amends the South African Police Service Act, 1995, so as to substitute the definition of “strike”; to make certain textual alteration; to extend to airports the powers of

members of the Service in respect of search and seizure for the purposes of control over the illegal movement of people or goods across the borders of the Republic; to provide that a regulation may prescribe penalties; and to regulate the prohibition of publication of photographs and sketches of certain persons who are in custody, anew; and to provide for matters connected therewith.

2.95 The amendment Act has been reviewed and no provision of the Act was found to be unconstitutional, obsolete or redundant and therefore the SALRC recommends that as the principal Act is still in force the amendment Act must be retained for legal certainty. The DOP agrees with the SALRC recommendation.

36 South African Police Service Amendment Act, 1998 (Act No. 83 of 1998)

2.96 The Act amends the South African Police Service Act, 1995, so as to provide a framework for the establishment, functions and control of municipal framework for the establishment, functions and control of municipal police services; and to provide for matters connected therein.

2.97 The amendment Act has been reviewed and no provision of the Act was found to be unconstitutional, obsolete or redundant and therefore the SALRC recommends that as the principal Act is still in force the amendment Act must be retained for legal certainty. The DOP agrees with the SALRC recommendation.

37 South African Police Service Amendment Act, 2008 (Act No. 57 of 2008)

2.98 The Amendment Act aims to combat and investigate national priority crimes and other crimes by establishing a separate Division in the South African Police Service, the Directorate for Priority Crime Investigation; to provide for the transfer of powers, investigations, assets, budget and liabilities of the Directorate of Special Operations, established in terms of the National Prosecuting Authority Act, 1998; to amend the South African Police Service Act, to provide for the appointment of the Head of the Directorate for Priority Crime Investigation; to ensure a multi-disciplinary and integrated approach in the prevention, combating and investigation of the above-mentioned crimes by providing for the secondment of personnel from other Government departments or institutions to the

Directorate for Priority Crime Investigation; provide for the security screening of and integrity measures for personnel of the Directorate for Priority Crime Investigation; to provide for the designation by the President of a ministerial committee to oversee the functioning of the Directorate for Priority Crime Investigation; to provide for the establishment of an Operational Committee comprising senior officials to facilitate, review, monitor and improve inter-departmental co-operation; to provide for a parliamentary oversight in respect of activities of the Directorate for Priority Crime Investigation; to provide for the establishment of a mechanism to deal with complaints of investigation; to provide for transitional arrangements, including the selection of personnel to implement the Act; and to provide for matters connected thereto.

2.99 The amendment Act has been reviewed and the SALRC is of the view that the Act does not provide for measures to secure the operational independence of the DPCI and this issue of lack of operational independence of the DPCI has now been dealt with in the case of *Glenister v President of the Republic of South Africa and Others (Glenister 2)*¹² wherein the South African Police Service Amendment Act, 2012 (Act No. 10 of 2012) which was enacted for purposes of rectifying this issue was dealt with in detail and the court held that the South African Police Service Amendment Act, 2012 (Act No. 10 of 2012) should be amended to ensure the structural independence of the DCPI. The SALRC recommends that this Act be retained to achieve its objectives. The DOP agrees with the SALRC recommendation.

38 South African Police Service Amendment Act, 2012 (Act No. 10 of 2012)

2.100 The Act amends the South African Police Service Act, 1995, in order to align the provisions relating to the Directorate for Priority Crime Investigation (DPCI) 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 matters connected therewith.

12 *Glenister v President of the Republic of South Africa and Others* [2011] (3) 347 (CC) (*Glenister 2*).

2.101 The South African Police Service Amendment Act of 2012 has been reviewed and the SALRC found that section 16 and chapter 6A of the SAPS Amendment Act of 2012 is unconstitutional for failing to secure the independence for the DPCI. As mentioned in the discussion under South African Police Service Amendment Act, 2008 (Act No. 57 of 2008) this issue has been sufficiently addressed and remedied by the Constitutional Court judgement in the **Helen Suzman Foundation v President of the Republic of South Africa and Others; In Re: Glenister v President of South Africa and others.**¹³ The Applicants in this case sought an order declaring section 16 and chapter 6A of the SAPS Amendment Act of 2012 inconsistent with the Constitution and invalid to the extent that they fail to secure an adequate degree of independence for the DPCI.

2.102 After having considered arguments from both sides in the Application the Court found that s 16 as well as sections 17A, 17CA, 17D, 17DA and 17K (4) to (9) as contained in Chapter 6A of the SAPS Amendment Act of 2012 do not pass constitutional muster for the following reasons:

- (a) The appointment process of the Head lacks adequate criteria for such appointment and vests an unacceptable degree of political control in the Minister and Cabinet, which is also in conflict with the standard of international best practice;
- (b) The power vested in the Minister to extend the tenure of the Head and Deputy Head is intrinsically inimical to the requirement of adequate independence;
- (c) The suspension and removal '*process*' not only vests an inappropriate degree of control in the Minister, but also allows for two separate and distinct processes, determined on the basis of arbitrary criteria, each able to find application without any reference to the other; and
- (d) There is an unacceptable degree of political oversight in the jurisdiction of the DOPCI, and the relevant provisions are themselves so vague that not even those responsible for their implementation are able to agree on how they should be applied.

2.103 As a result the Court made the following order:

That section 16 as well as sections 17A, 17CA, 17D, 17DA and 17K(4) to (9) as contained in Chapter 6A of the SAPS Amendment Act of 2012 are inconsistent

13 Helen Suzman Foundation v President of the Republic Of South Africa and Others; Glenister v President of the Republic of South Africa and Others (CCT 07/14, CCT 09/14 [2014] ZACC 32; 2015 (1) BCLR 1 (CC); 2015 (2) SA 1 (CC) (27 November 2014); and

with Constitution and invalid to the extent that they fail to secure an adequate degree of independence for the Directorate for Priority Crime Investigation. The declaration of constitutional invalidity was suspended for 12 months in order to allow Parliament to remedy the constitutional defects. Further, the aforementioned portion of the court order was referred to the Constitutional Court, in terms of section 8(1)(a) of the Constitutional Court Complementary Act, 1995 (Act No. 13 of 1995) for confirmation.

2.104 The Application for the confirmation of the above order was heard by the Constitutional Court¹⁴ on 19 August 2014 and decided, *inter alia*, as follows:

- (1) The order of constitutional invalidity discussed above was confirmed to the extent, that the following provisions of the South African Police Service Act 68 of 1995 as amended are inconsistent with the Constitution and are declared invalid and deleted from the date of the order:
 - (a) The words “in accordance with the approved policy guidelines” as contained in section 16(2)(h) and (3).
 - (b) Section 17CA(15) and (16).
 - (c) The words “subject to any policy guidelines by the Minister and approved by Parliament” in section 17D(1)(a).
 - (d) The words “selected offences not limited to” and “and” in section 17D(1)(aA).
 - (e) Section 17D(1)(b).
 - (f) Section 17D(1A).
 - (g) The “(2)” in section 17DA(1) and the whole of section 17DA(2).
 - (h) Section 17K(4), (7) and (8).
- (2) All other provisions of sections 16 to 17K of the South African Police Service Act 68 of 1995 as amended remain in force.

2.105 The SALRC recommends that this Act be amended to ensure compliance with this judgment. The DOP agrees with the SALRC recommendation. Amendments to this Act are reflected in the draft Bill.

¹⁴ *Glenister v President of the Republic of South Africa and Others* [2011] (3) 347 (CC) (Glenister 2).

39 Stock Theft Act, 1959 (Act No. 57 of 1959)

2.106 The Act consolidates and amends the laws relating to the theft of stock and produce and provides also for related matters. The Act has been reviewed and the SALRC recommends as follows:

- (a) Section 1 of the Act be amended so as to define the word “Minister” to mean minister responsible for police; and
- (b) Section 7(1)(a) of the Act be amended as the section still refers to outdated references like “official witness”, in the Code of Zulu Law as referred to in section 24 of the Black Administration Act, 1927 (Act 38 of 1927). The Code of Zulu Law was repealed by section 53(1) of the KwaZulu-Natal Traditional Leadership and Governance Act, 2005 (Act No. 5 of 2005).

2.107 The DOP agrees with the SALRC recommendation.

40 Stock Theft Amendment Act, 1986 (Act No. 32 of 1986)

2.108 The Act amends the Stock Theft Act, 1959, so as to increase the maximum amounts of fines which may be imposed under the Act.

2.109 The amendment Act has been reviewed and no provision of the Act was found to be unconstitutional, obsolete or redundant and therefore the SALRC recommends that as the principal Act is still in force the amendment Act must be retained for legal certainty. The DOP agrees with the SALRC recommendation.

41 Stock Theft Amendment Act, 1990 (Act No. 28 of 1990)

2.110 The Act amends the Stock Theft Act, 1959, so as to make further provision for the furnishing of particulars on the document of identification; to extend the period for which certain documents should be retained; to make further provision for the furnishing of particulars on the removal certificate; to increase certain fines; and to increase the amount of compensation for damage to or loss of stock or produce; and to provide for matters connected therewith.

2.111 The amendment Act has been reviewed and no provision of the Act was found to be unconstitutional, obsolete or redundant and therefore the SALRC recommends that as the principal Act is still in force the amendment Act must be retained for legal certainty. The DOP agrees with the SALRC recommendation.

42 Control of access to Public Premises and Vehicles Act, 1985 (Act No. 53 of 1985)

2.112 The Act provides for the safeguarding of certain public premises and vehicles and for the protection of the people therein or thereon, and for matters connected therewith.

2.113 This Act has been reviewed and the SALRC has no provision of the Act has been found to be unconstitutional. The SALRC however recommends that section 1 be amended so as to re-define –

(a) “local authority” to mean any local authority established in terms of any law which applies in an area which form part of the national territory referred to in section 1 of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), and in areas where only a regional authority body, established in terms of a law, has jurisdiction, that regional authority body; and

(b) “Minister” to mean minister responsible for police.

2.114 The DOP agrees with the SALRC recommendation.

ANNEXURE “A”

POLICE GENERAL LAWS AND RELATED MATTERS AMENDMENT AND REPEAL BILL

GENERAL EXPLANATORY NOTE:

[] Unless otherwise indicated words in bold type in square brackets indicate omissions from existing enactments.

_____ Unless otherwise indicated words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend and repeal certain laws of the Republic pertaining to South African Police Service, Independent Police Investigative Directorate matters containing redundant or obsolete provisions; and to provide for matters connected therewith

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

1 Amendment of laws

1.1 The laws specified in Schedule 1 are hereby amended to the extent set out in the fourth column of that Schedule; and

2.1 The laws specified in Schedule 2 are repealed to the extent set out in the fourth column of that Schedule.

2 Short title and commencement

This Act is called the Police General Laws and Related Matters Amendment and Repeal Act, and comes into operation on a date determined by the President by Proclamation in the *Gazette*.

SCHEDULE 1

Item	No. and year of Act	Title of Act	Extent of Amendment
1.	26 of 1956	Explosives Act	<p>1. Section 1 of the Explosives Act is hereby amended by the substitution for the definition of “Minister” of the following definition:</p> <p style="padding-left: 40px;">“Minister” means the [Minister of Law and Order] <u>“Minister responsible for police”</u>.”</p> <p>2. Section 2 of the Explosives Act is hereby amended by the substitution for subsection (5) of the following subsection:</p> <p style="padding-left: 40px;">“(5) The <u>National</u> Commissioner of the South African Police Service or any member of the South African Police Service designated by him, may depute other persons to act as inspectors in certain localities and for certain purposes, and in so far as any such person is authorized so to act, he shall have the same powers and be subject to the same duties as are conferred and imposed upon inspectors by this Act and the regulations, but he shall have no jurisdiction to try any persons for breaches of regulations or special rules.”.</p>
2.	57 of 1959	Stock Theft Act	1. Section 1 of the Stock Theft Act is

			<p>hereby amended by the substitution for the definition “Minister” of the following definition:</p> <p>“Minister” means the [Minister of Justice] Minister of Justice and Correctional Service.”.</p> <p>2. Section 7 of the Stock Theft Act is hereby amended by the substitution in paragraph (a) for subsection (1) of the following paragraph:</p> <p>“(a) the employer, chief, headman or sub-headman of the person concerned or the deputy of such chief or [“official witness” as defined in Chapter 1 of the Code of Zulu Law, as referred to in section 24 of the Black Administration Act, 1927 (Act 38 of 1927)] <u>any person in a position of Traditional Leadership Authority as contemplated in the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003) or any applicable provincial Traditional Leadership and Governance Act.</u>”.</p>
3	102 of 1980	National Key Points Act	<p>1. Section 1 of the National Key Points Act is hereby amended by the substitution for the definition “Minister” of the following definition:</p> <p>“Minister” means the</p>

			<p>[Minister of Defence] <u>minister responsible for</u> <u>police.”.</u></p> <p>2. Section 2 of the National Key Points Act is hereby amended by the insertion for subsection (1) of the following subsection:</p> <p>“(1) If it appears to the Minister at any time that any place [or] is so important that its loss, damage, disruption or immobilization may prejudice the Republic, or whenever he considers it necessary or expedient for the safety of the Republic or in the public interest, he may [declare] <u>submit a recommendation to the relevant Parliamentary Committee for approval to declare such place or area as a National Key Area.</u></p> <p>(b) <u>The relevant Parliamentary Committee must, within a period of 30 parliamentary working days either confirm or reject the recommendation.”.</u></p> <p>3. Section 2A of the National Key Points Act is hereby amended by the substitution for subsection (1) of the following subsection:</p> <p>“(1) When in the opinion of</p>
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			<p>the Minister it will contribute to the safeguarding of two or more National Key Points if certain steps in respect of their security are taken jointly by their owners, he may [declare] <u>submit a recommendation to the relevant Parliamentary Committee for approval to declare</u> those Key Points a National Key Points Complex irrespective of whether one of the Key Points adjoins any other and irrespective of whether the steps contemplated will be taken at or on any of the Key Points.</p> <p><u>(2) The relevant Parliamentary Committee must, within a period of 30 parliamentary working days either confirm or reject the recommendation.”.</u></p> <p>4. Section 3 of the National Key Points Act is Act is hereby amended by the substitution in paragraph (a) for subsection (4) of the following subsection:</p> <p>“(4) The Minister may after consultation with the owner of Key Points included in a Key Points Complex order them by written notice to</p>
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			<p>take, within a period specified in the notice and at their expense, such joint steps in respect of the security of that Key Points Complex as may be specified in the notice, and to determine, <u>after consultation with the Minister of Finance</u>, within a period specified in the notice on the proportion in which each shall be responsible for the cost thereof.”.</p> <p>5. Section 3A of the National Key Points Act is hereby amended by the substitution for subsection (1) of the following subsection:</p> <p>“(1) The Minister may at any time, on behalf and with the consent of the owner of a National Key Point or the owners of National Key Points included in a National Key Points Complex, take or cause to be taken any or all of the steps which in his opinion are or may become necessary in respect of the security of that Key Point or Key Points Complex, and the owner or owners shall be liable for the cost [thereof to such extent as</p>
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			<p>the Minister may determine] <u>determined in terms of section 2(4)(a).</u>”.</p> <p>6. Section 5 of the National Key Points Act is hereby amended by the substitution for subsection (2) of the following subsection:</p> <p>“(2) Any member of the [South African Defence Force] <u>South African Police Service</u> may be compelled to perform functions in terms of this Act as if they are functions which he can be compelled to perform in terms of the [Defence Act, 1957 (Act No. 44 of 1957)] <u>South African Police Service Act, 1995 (Act No. 68 of 1995)</u>: Provided that any functions so performed shall be deemed to have been performed in terms of the said [Defence Act.] <u>Police Act</u>”.</p> <p>7. Section 6 of the National Key Points Act is hereby amended by the substitution for subsection (2) of the following subsection:</p> <p>“(2) There shall be paid to any such person or member of any such committee who is not an officer as defined in section 1 [of the Public</p>
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			<p>Service Act, 1984 (Act No. 111 of 1984)], <u>Public Service Act, 1994 (Proclamation 103 of 1994)</u></p> <p>such remuneration and allowances as the Minister may determine with the concurrence of the Minister of Finance.”.</p> <p>8. Section 10 of the National Key Points Act is hereby amended by the substitution for subsection (1) of the following subsection:</p> <p>“(1) Any person who at, on, in connection with or in respect of any National Key Point performs any act which, if such act would have constituted an offence in terms of the [Official Secrets Act, 1956 (Act No. 16 of 1956)] <u>Protection of Information Act, 1982 (Act No. 84 of 1982)</u>, if performed or executed at, on, in connection with or in respect of any prohibited place, as defined in section 1 of that Act, shall be guilty of an offence and liable to the penalties prescribed for that act in that Act.”.</p>
4.	5 of 1981	Explosives Amendment Act	Section 2 of the Explosives Act is hereby amended by the substitution for

			<p>subsection (5) of the following subsection:</p> <p>"(5) The <u>National</u> Commissioner of the South African Police Service or any member of the South African Police designated by him may depute other persons to act as inspectors in certain localities and for certain purposes, and in so far as any such person is authorized so to act, he shall have the same 15 powers and be subject to the same duties as are conferred and imposed upon inspectors by this Act and the regulations, but he shall have no jurisdiction to try any persons for breaches of regulations or special rules."</p>
5	53 of 1985	Control of Access to Public Premises and Vehicles,	<p>1. Section 1 of the Control of Access to Public Premises and Vehicles Act is hereby amended by the substitution for the definition of "local Authority" as follows:</p> <p>"local authority" means-</p> <p>[(a) any institution or body contemplated in section 84 (1) (f) of the Provincial Government Act, 1961 (Act No. 32 of 1961);</p> <p>(b) a community council established under section 20 (1) of the Community</p>

			<p>Councils Act, 1977 (Act No. 125 of 1977);</p> <p>(c) a town council or village council established under section 2 (a) or (b) of the Black Local Authorities Act, 1982 (Act No. 102 of 1982); 25</p> <p>(d) a development board specified under section 3 (1) of the Black Communities Development Act, 1984] <u>any local authority established in terms of any law which applies in an area which form part of the national territory referred to in section 1 of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), and in areas where only a regional authority, established in terms of a law, has jurisdiction, regional authority that (Act No.4 of 1984)."</u>; and</p> <p>2. Section 1 of the Control of Access to Public Premises and Vehicles Act is hereby amended by the substitution for the definition of Minister as follows:</p> <p>“"Minister" means the Minister [of Law and Order] <u>responsible for police.</u>".</p>
6.	178 of 1993	Explosives	Section 1 of the Explosives Act is

		Amendment Act	hereby amended by the substitution for the definition “Minister” of the following definition: “Minister” means the Minister [of Law and Order] <u>responsible for police.</u> ”.
7.	205 of 1993	Regulation of Gatherings Act	1. Section 1 of the Regulation of Gatherings Act is hereby amended by the substitution for the definitions of the following definition: “Minister” means the [Minister of Safety and Security] <u>“minister responsible for police.”</u> ; and (b) <u>“local authority” means any local authority as defined in section 1 of the Promotion of Local Government Affairs Act, 1983 (Act No. 91 of 1983 within whose area of jurisdiction a gathering takes place or is to take place, but does not include a council board of Africa, where authority African regional services or a joint services in respect of the area jurisdiction of another local authority Local authority body established in terms of any law which applies in an area which</u>

			<p><u>forms part of the national territory referred to in section 1 of the Constitution of the Republic of South, 1993 (Act No. 200 of 1993), and in areas only a regional body, established in terms of a law, has jurisdiction, that regional authority body;"</u>.</p> <p>2. Section 7 of the Regulation of Gatherings Act is hereby amended by the substitution in paragraph (c) for subsection (2) of the following paragraph:</p> <p>“(c) within the area contemplated in subsection (1)(b)(ii), to a demonstration or gathering within such area for which permission has, on application to the [Director-General: Office of the State President] <u>Director-General: Office of the President.”</u>.</p> <p>3. Section 13 of the Regulation of Gatherings Act is hereby amended by the substitution in subsection 1 of the following subsection:</p> <p>“(1) The provisions of this Act shall not be so construed as to detract from –</p> <p>(i) Control of Access to Public Premises and</p>
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			<p>Vehicles Act, 1985 (Act No. 53 of 1985); or</p> <p>(ii) Dangerous Weapons Act, 2013; or</p> <p>(iii) [Arms and Ammunition Act, 1969 (Act No. 75 of 1969)]; <u>Fire Arms Control Act, 2000 (Act No. 60 of 2006)</u>, or</p> <p>(v) Criminal Procedure Act, 1977 (Act No. 51 of 1977)." .</p>
8.	68 of 1995	South African Police Service Act	<p>1. Section 1 of the South African Police Service Act is hereby amended by the substitution for the definition "Minister" of the following definition:</p> <p style="padding-left: 40px;">"Minister" means the [Minister of Safety and Security] <u>"Minister responsible for police."</u></p> <p>2. Section 16 of the South African Police Service Act is hereby amended by the substitution in paragraph (h) for subsection (2) of the following paragraph:</p> <p style="padding-left: 40px;">"(h) which a Provincial Commissioner requests the National Head of the Directorate for Priority Crime investigation, referred to in section 17C(2), to prevent or investigate by employing expertise and making resources available at national level and to</p>

			<p>which request the National Head of the Directorate for Priority Crime Investigation accedes [approved policy guidelines].”.</p> <p>3. Section 16 of the of the South African Police Service Act is hereby amended by the substitution in subsection (3) of the following subsection:</p> <p>“(3) In the event of a dispute between the National Head of the Directorate for Priority Crime Investigation and the National Commissioner or the National Head for Priority Crime Investigation and a Provincial Commissioner regarding the question whether criminal conduct or endeavour thereto falls within the mandate of the Directorate, the determination by the National Head of the Directorate for Priority Crime Investigation [in accordance with the approved policy guidelines], shall prevail.”.</p> <p>4. Section 17D of the South African Police Service Act is hereby amended by the substitution in paragraph (a) for subsection (1) of the following paragraph:</p> <p>“(a) national priority offences, which in the opinion of the National Head of the Directorate</p>
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			<p>need to be addressed by the Directorate, [subject to any policy guidelines issued by the Minister and approved by Parliament.]].</p> <p>5. Section 17D of the South African Police Service Act is hereby amended by the substitution in paragraph (Aa) for subsection (1) of the following paragraph:</p> <p>“(Aa) [selected offences not limited to] offences referred to in Chapter 2 and section 34 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004); [and].”</p> <p>6. Section 17DA of the of the South African Police Service Act is hereby amended by the substitution in subsection (1) of the following subsection:</p> <p>“(1) The National Head of the Directorate shall not be suspended or removed from office except in accordance with the provisions of subsections [(2)], (3) and (4).”.</p>
9.	60 of 2000	Firearms Control Act	<p>1. Section 1 of the Firearms Controls Act is hereby amended by the substitution for the definition “Minister” of the following definition:</p> <p>“Minister” means the [Minister</p>

			<p>of Safety and Security] <u>“Minister responsible for police.”</u></p> <p>2. Section 95 of the Firearms Controls Act is hereby amended by the substitution in paragraph (i) for subsection (a) of the following paragraph:</p> <p>“(i) the South African National Defence Force, contemplated in section 95(a)(i) of the [Defence Act, 1957 (Act 44 of 1957)]; <u>Defence Force Act, 2002 (Act No. 42 of 2002).</u>”.</p> <p>3. Section 95 of the Firearms Controls Act is hereby amended by the substitution in paragraph (i) for subsection (b) of the following paragraph:</p> <p>“(i) in relation to the South African National Defence Force, means any member of the South African National Defence Force contemplated in section [5] 1(xi) of the [Defence Act, 1957 (Act 44 of 1957)], <u>Defence Force Act 2000 (Act No. 42 of 2002)</u> and includes any member of the Reserve contemplated in section <u>1(xxiii)</u> [6 of the Defence Act, 1957] of the <u>Defence Force Act, 2002 (Act No. 42 of 2002).</u>”; and</p>
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			<p>4. Section 95 of the Firearms Controls Act is hereby amended by the substitution for subsection (2) of the following subsection:</p> <p>“(2) Any firearms and ammunition which form the subject of a notice contemplated in section [4C of the Armaments Development and Production Act, 1968 (Act 57 of 1968)] <u>Armaments Corporation of South Africa, Limited Act, 2003 (Act No. 51 of 2003)</u>, are exempted from the provisions of this Act.”..</p>
10.	56 of 2001	Private Security Industry Regulation Act	<p>Section 1 of the Private Security Industry Regulation Act is hereby amended by the substitution for the definition “Minister” of the following definition:</p> <p>“Minister” means the [Minister of Safety and Security] <u>“Minister responsible for police”.</u>..</p>

11	33 of 2004	Protection of Democracy against Terrorist and Related Activities Act	<p>1. Section 1 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act is hereby amended by the substitution for the definition “Minister” of the following definition:</p> <p style="padding-left: 40px;">“Minister” means the [Safety and Security] <u>“Minister responsible for police”</u>.”.</p> <p>2. Section 12 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act is hereby amended by the substitution for subsection (8) of the following subsection:</p> <p style="padding-left: 40px;">“(8) Subsection (6) does not apply to the carrying out of a transaction to which the rules of an exchange licensed in terms of the [Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), or the Financial Markets Control Act, 1989 (Act No. 55 of 1989)] <u>Financial Markets Act, 2012 (Act No. 12 of 2012)</u>, apply.”.</p>
12	6 of 2009	Second-Hands Goods Act	<p>1. The Second-Hands Goods Act is hereby amended by the substitution for the definition “Minister” of the following definition:</p> <p style="padding-left: 40px;">“Minister” means the [Safety and Security] <u>“Minister</u></p>

			<p><u>responsible for police”.</u></p> <p>2. Section 1 of the Second-Hands Goods Act is hereby amended by the substitution for the definition of company of the following definition:</p> <p>“company” means a company within the meaning of the [Companies Act, 1973 (Act No. 61 of 1973)] <u>Companies Act, 2008 (Act No. 71 of 2008).</u>”.</p>
13	1 of 2011	Independent Police Investigative Directorate, Act	<p>1. Section 6 of the Independent Police Investigative Directorate Act is hereby amended by substitution in paragraph (a) for subsection (3) of the following paragraph:</p> <p>“(a) the successful candidate is appointed to the office of the Executive Director subject to the laws governing the public service, <u>except with regard to the suspension, disciplinary action or removal from office of the Executive Director, and</u> with effect from the date agreed upon by such person and the Minister.”.</p> <p><u>Removal from office of Executive Director of the Independent Police Investigative Directorate</u></p> <p>2. The Independent Police Investigative Directorate Act is hereby amended by</p>

			<p>the insertion of section 6A as follows:</p> <p><u>“(1) The Executive Director shall not be suspended or removed from office except in accordance with the provisions of subsections (2), (3) and (4).”</u> ∴</p> <p>“(2) (a) <u>The Minister may provisionally suspend the Executive Director from office, pending an inquiry into his or her fitness to hold such office, as the Minister may deem fit and, subject to the provisions of this subsection, the Minister may thereafter remove the Executive Director from office on account of-</u></p> <p style="padding-left: 40px;"><u>(i) for misconduct;</u> <u>(ii) ill-health; or</u> <u>(iii) incapacity to carry out his or her duties efficiently.</u></p> <p>(b) <u>The Executive Director provisionally suspended from office shall during the period of such suspension be entitled to such salary, allowance,</u></p>
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			<p><u>privilege or benefit to which he or she is otherwise entitled;</u></p> <p><u>(c) An enquiry referred to in subsection 2(a) shall-</u></p> <p><u>(i) be led by a judge or retired judge:</u> <u>Provided that the Minister shall make the appointment after consultation with the Minister of Justice and Correctional Services;</u> <u>and</u></p> <p><u>(ii) shall perform its functions subject to the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), in particular to ensure procedurally fair administrative action;</u> <u>and</u></p> <p><u>(d) The Executive Director shall be informed of any allegations against him or her and shall be granted an opportunity to make submissions to the inquiry upon being informed of such allegations.</u></p> <p>(3) <u>The Minister shall within 14 days</u></p>
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			<p><u>of the removal of the Executive of the Independent Investigative Directorate communicate to Parliament the removal, the reason therefor and representations, made by the Executive Director of the Independent Investigative Directorate, if any, and 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.</u></p> <p>(4) <u>The Minister may allow the Executive Director of the Independent Investigative Directorate, at his or her request, to vacate his or her office-</u></p> <p><u>(a) on account of continued ill-health; or</u></p> <p><u>(b) for any other reason which the Minister deems sufficient.</u></p> <p>(5) <u>The request in terms of subsection (4) shall be addressed to the Minister at least six calendar months prior to the date on which the Executive Director of the Investigative Directorate wishes to vacate his or her office, unless the Minister grants a shorter period in a specific case.”.</u></p>
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SCHEDULE 2

Item	No. and year of law	Title and subject	Extent of Repeal
1.	102 of 1980	National Key Points Act	Section 3(4)(b)
2.	83 of 1986	Transfer of the South African Railways Police Force to the South African Police Act	The Whole
3.	29 of 1990	Dangerous Weapons Amendment Act	The Whole
4.	156 of 1993	Dangerous Weapons Amendment Act	The Whole
5.	138 of 1991	Internal Security and Intimidation Amendment Act	The Whole
6.	68 of 1995	South African Police Service Act	Sections 17CA(15 and (16), 17D(1)(b), 17D(1A), 17DA(2), 17DA (2) and 17K(4), (7) and (8),
7.	1 of 2011	Independent Police Investigative Directorate	Section 6(6)

ANNEXURE “B”**STATUTES ADMINISTERED BY THE DEPARTMENT OF POLICE**

1	Explosives Act, 1956 (Act No 26 of 1956)
2.	Stock Theft Act, 1959 (Act No. 57 of 1959)
3	Explosives Amendment Act, 1962 (Act No. 79 of 1962)
4	Explosives Amendment Act, 1963 (Act No. 21 of 1963)
5.	Tear-Gas Act, 1964 (Act No. 16 of 1964)
6	Explosives Amendment, 1965 (Act No. 20 of 1965)
7	Explosives Amendment Act, 1967 (Act No. 12 of 1967)
8	Explosives Amendment Act, 1972 (Act No. 74 of 1972)
9.	Explosives Amendment Act, 1975 (Act No. 35 of 1975)
10.	Explosives Amendment Act, 1977 (Act No. 101 of 1977)
11.	National Key Points Act, 1980 (Act No. 102 of 1980)
12.	Explosives Amendment Act, 1981 (Act No. 5 of 1981)
13.	Intimidation Act, 1982 (Act No. 72 of 1982)
14.	Explosives Amendment Act, 1983 (Act No. 18 of 1983)
15.	National Key Points Act, 1984 (Act No. 44 of 1984)
16.	National Key Points Amendment Act, 1985 (Act No. 47 of 1985)
17.	Control of Access to Public Premises and Vehicles, 1985 (Act No. 53 of 1985)
18.	Stock Theft Amendment Act, 1986 (Act No. 32 of 1986)
19.	Transfer of the South African Railways Police Act, 1986 (Act No. 83 of 1986)
20.	Transfer of the South African Railways Police Amendment Act, 1989 (Act No. 14 of 1989)
21.	Stock Theft Amendment Act, 1990 (Act No. 28 of 1990)
22.	Dangerous Weapons Amendment Act, 1990 (Act No. 29 of 1990)
23.	Game Theft Act, 1991 (Act No. 105 of 1991)
24	Internal Security and Intimidation Act, 1991 (Act No. 138 of 1991)
25	Dangerous Weapons Amendment Act, 1993 (Act No. 156 of 1993)
26.	Explosives Amendment Act, 1993 (Act No. 178 of 1993)
27.	Regulation of Gatherings Act, 1993 (Act No. 205 of 1993)
28.	South African Police Service Act, 1995 (Act No. 68 of 1995)

29.	South African Police Service Amendment Act, 1997 (Act No. 41 of 1997)
30.	Explosives Amendment Act, 1997 (Act No. 101 of 1997)
31.	South African Police Service Amendment Act, 1998 (Act No. 83 of 1998)
32.	Firearms control Act, 2000 (Act No. 60 of 2000)
33.	Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001)
34.	Firearms Control Amendment Act, 2003 (Act No. 43 of 2003)
35.	Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004)
36.	Firearms Control Amendment Act, 2006 (Act No. 28 of 2006)
37.	South African Police Service Amendment Act, 2008 (Act No. 57 of 2008)
38.	Second-Hand Goods Act, 2009 (Act No. 6 of 2009)
39.	Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011)
40.	Civilian Secretariat for Police Act, 2011 (Act No. 2 of 2011)
41.	South African Police Service Amendment Act, 2012 (Act No. 10 of 2012)
42	Dangerous Weapons Act, 2013 (Act No. 3 of 2013)
