

SECRET SERVICES ACT 56 OF 1978

(Previous short title, 'Secret Services Account Act', substituted by s. 5 of Act 142 of 1992)

[ASSENTED TO 26 APRIL 1978]

[DATE OF COMMENCEMENT: 1 APRIL 1978]

(Afrikaans text signed by the State President)

as amended by

Finance Act 101 of 1979

Information Service of South Africa Special Account Act 108 of 1979

South African Police Special Account Act 74 of 1985

Secret Services Account Amendment Act 142 of 1992

Secret Services Amendment Act 5 of 1993

Intelligence Services Act 38 of 1994

ACT

To provide for the establishment of an account for secret services, for the evaluation of and control over secret services and for matters connected therewith.

[Long title substituted by s. 6 of Act 142 of 1992.]

1 Definitions

In this Act, unless the context otherwise indicates-

'account' means the Secret Services Account established by section 1A;

'chairman' means the chairman of the committee designated in terms of section 3A (1) or 5 (b);

'committee' means the Secret Services Evaluation Committee established by section 3A (1);

'member' means a member of the committee appointed in terms of section 3A (1) or 5 (a);

'recommendation' means a recommendation referred to in section 3A (6) by the committee;

'responsible Executive Deputy President or Minister', in relation to any matter referred to in this Act, means the Executive Deputy President or Minister responsible for the Department of State under which that matter falls;

[Definition of 'responsible Executive Deputy President or Minister', formerly definition of 'responsible Minister', substituted by s. 32 (1) of Act 38 of 1994.]

'secret service' means that part of the functions of a Department of State which, in the opinion of the President or the responsible Executive Deputy President or Minister, is of such a nature that it is in the national interest that the performance thereof is not directly or indirectly made known, and which is funded from the account under section 2 (3).

[Definition of 'secret service' amended by s. 32 (1) of Act 38 of 1994.]

[S. 1 substituted by s. 1 of Act 142 of 1992.]

1A Establishment of Secret Services Account

There is hereby established an account to be known as the Secret Services Account, which shall be credited with the moneys appropriated by Parliament for the account.

[S. 1A inserted by s. 1 of Act 142 of 1992.]

2 Administration of, and utilization of moneys in, account

(1) The Director-General: State Expenditure shall, subject to the provisions of this Act, be responsible for the administration of the account: Provided that the accounting officer of a Department of State to which any moneys have been made available under subsection (3), shall be accountable for the moneys so made available.

(2) (a) The Minister of State Expenditure may at the request of the President or the responsible Executive Deputy President or Minister transfer so much money as may be agreed upon between them from the account to the Security Services Special Account established by section 1 of the Security Services Special Account Act, 1969 (Act 81 of 1969).

[Para. (a) amended by s. 32 (1) of Act 38 of 1994.]

(b) Any moneys so transferred shall be deemed to have been appropriated by Parliament for the account in question and shall be utilized as contemplated in section 2 of the Security Services Special Account Act, 1969.

(3) (a) The Minister of State Expenditure may, at the request of any other Minister, and in such manner and subject to such conditions as he may after consultation with such other Minister determine, make available to a Department of State for which such other Minister is responsible, moneys in the account for utilization for secret services.

(b) Subject to the provisions of sections 3A (8) or (9) and 3B, any moneys so made available shall be utilized for secret services and for expenses in connection therewith.

[S. 2 amended by s. 10 of Act 108 of 1979 and by s. 6 of Act 74 of 1985 and substituted by s. 2 of Act 142 of 1992.]

2A Transfer of unexpended balances in account

Notwithstanding anything to the contrary in any law contained, unexpended balances in the account at the end of a financial year shall be transferred as a credit in the account to the following financial year.

[S. 2A inserted by s. 3 of Act 142 of 1992.]

3 Audit

The account as well as the accounts kept in respect of moneys transferred to a Department of State in terms of section 2 (3), shall be audited by the Auditor-General.

[S. 3 substituted by s. 20 of Act 101 of 1979.]

3A Establishment and functions of Secret Services Evaluation Committee

(1) There is hereby established a committee to be known as the Secret Services Evaluation Committee consisting of not less than three but not more than five persons appointed by the State President, of whom one shall be designated by him as the chairman, and of whom at least one shall not be a holder of office in the Executive Authority of the Republic and shall be appointed after consultation with the leaders of the opposition parties in Parliament.

[Sub-s. (1) substituted by s. 1 of Act 5 of 1993.]

(2) A member of the committee-

- (a) shall remain in office at the State President's pleasure, but may resign by notice in writing to the State President; and
- (b) may receive such remuneration and allowances (if any) as the State President may determine.

(3) The committee shall-

- (a) meet at such time and place; and
- (b) follow such procedure,

as the chairman may determine.

(4) The work associated with the functions of the committee shall be performed by an officer or officers in the Public Service designated by the State President for that purpose.

(5) The State President may-

- (a) appoint a person to act in the place of a member of the committee; or
- (b) designate a member to act in the place of the chairman,

for such period as the State President may determine.

(6) The committee shall-

- (a) evaluate all intended secret services in order to determine whether the object thereof and the *modus operandi* to achieve it are in the national interest; and
- (b) review all secret services annually with the said object in order to determine whether they may be continued,

and make a recommendation that an intended secret service may be carried out or a secret service may be continued if the committee unanimously so decides.

(7) In evaluating an intended secret service or a secret service, the committee may request from the Department of State in question such documents and information as it may deem fit in order to properly perform its functions.

(8) (a) No intended secret service shall be carried out or secret service be continued after a year unless a recommendation by the committee has been made therefor: Provided that the President or the responsible Executive Deputy President or Minister may, with the concurrence of the State President, approve that an intended secret service or a secret service which cannot be delayed or suspended without serious prejudice to the national interest, may be carried out or be continued on condition that the matter in question is submitted to the committee for its recommendation at its next ensuing meeting: Provided further that an intended secret service may be carried out or a secret service be continued notwithstanding the fact that the committee has withheld its recommendation in respect thereof, if the State President approves the carrying out or continuation thereof.

[Para. (a) amended by s. 32 (1) of Act 38 of 1994.]

(b) If the committee withholds its recommendation in respect of a secret service referred to in the first proviso to paragraph (a) after the matter has been submitted to it, such service shall be discontinued as soon as practicable, unless and in so far as the State President approves the continuation thereof.

(9) If the committee cannot reach unanimity in relation to a recommendation, it shall submit the matter in question to the State President as soon as practicable for consideration, and his decision shall be final.

[S. 3A inserted by s. 4 of Act 142 of 1992.]

3B Approval for and directions regarding secret services

(1) Notwithstanding anything to the contrary contained in this Act, no intended secret service shall be carried out unless the President or the responsible Executive Deputy President or Minister has granted his prior approval therefor and indicated to which conditions or instructions (if any) such carrying out shall be subject.

[Sub-s. (1) amended by s. 32 (1) of Act 38 of 1994.]

(2) The Director-General: State Expenditure shall, after consultation with the Auditor-General, issue directions regarding the application of financial control over the handling and utilization of moneys made available from the account.

[S. 3B inserted by s. 4 of Act 142 of 1992.]

4 Short title and commencement

This Act shall be called the Secret Services Act, 1978, and shall come into operation on 1 April 1978.

[S. 4 substituted by s. 5 of Act 142 of 1992.]