

AUDIT MATTERS RATIONALISATION AND AMENDMENT ACT

OFFICE OF THE PRESIDENT

No. 1473. 21 September 1995

NO. 53 OF 1995: AUDIT MATTERS RATIONALISATION AND AMENDMENT ACT, 1995.

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

GENERAL EXPLANATORY NOTE:

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

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

ACT

To provide for the rationalisation of the Office of the Auditor-General and for the abolition of the audit offices of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei; to amend the Audit Arrangements Act, 1992, so as to facilitate such rationalisation and to substitute outdated words and expressions; and to provide for matters connected therewith.

(Afrikaans text signed by the President.) (Assented to 21 September 1995.)

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

Definitions

1. In this Act, unless the context indicates otherwise-

(i) "Audit Arrangements Act" means the Audit Arrangements Act, 1992 (Act No. 122 of 1992); (vi)

(ii) "Audit Commission" means the Audit Commission established by section 12 of the Audit Arrangements Act; (v)

(iii) "audit office" means an office of an auditor-general or a department of an auditor-general or any other institution or body by which any functions with regard to an auditor-general are performed in terms of the following laws:

(a) The Transkei Public Service Act, 1978 (Act No. 43 of 1978, Transkei);

(b) The Bophuthatswana Public Service Act, 1972 (Act No. 4 of 1972, Bophuthatswana);

(c) The Venda Public Service Act, 1986 (Act No. 8 of 1986, Venda);

(d) The Ciskei Public Service Act, 1981 (Act No. 2 of 1981, Ciskei); (iv)

(iv) "Auditor-General" means the Auditor-General as defined in section 1 of the Auditor-General Act, 1995 (Act No. 12 of 1995); (iii)

(v) "Board" means the Staff Management Board established by section 18 of the Audit Arrangements Act; (vii)

(vi) "effective date", with regard to a particular audit office, means the date determined in respect of such office in terms of section 2(1); (i)

(vii) "Office" means the Office of the Auditor-General established by section 3 of the Audit Arrangements Act; (ii)

(viii) "Public Service Commission" means the Public Service Commission established by section 209 of the Constitution. (viii)

Determination of effective dates and abolition of audit offices

2. (1) The Auditor-General shall, in respect of each of the laws mentioned in the Schedule and in respect of each audit office, determine an effective date in consultation with the Public Service Commission and shall, not later than 30 days before such date, announce the date by notice in the Gazette: Provided that no person shall be adversely affected by the determination of different effective dates for the different audit offices.

(2) The audit offices are hereby abolished with effect from the relevant effective dates.

(3) All posts approved by a public service commission or similar institution established by or under any law and which exist for an audit office immediately before the relevant effective date shall from that date be incorporated into the establishment of the Office: Provided that an adapted establishment for the Office shall be approved by the Board not later than 12 months after the last effective date.

Transfer of assets

3. All movable property of the State which is applied exclusively for the purposes of an audit office immediately before the relevant effective date shall, with effect from that date, become the property of the Office.

Election by staff of audit offices

4. (1) Subject to this Act, every person in the service of an audit office who elects in writing before the relevant effective date to serve in the Office shall, with effect from that effective date, be deemed to be duly appointed in the Office in terms of the Audit Arrangements Act: Provided that no such person who, prior to the relevant effective date was employed in a permanent or temporary capacity or on probation, as the case may be, shall, in terms of this section, be deemed to be employed in the Office in any other capacity.

(2) The following provisions shall apply in respect of a person contemplated in subsection (1):

(a) subject to any law relating to unfitness or incapacity of such a person to carry out his or her duties efficiently, the pensionable salary and pensionable salary scale of any such person and verified on behalf of the Auditor-General as having been validly granted to such person, shall not be reduced without his or her consent, except in accordance with an Act of Parliament;

(b) vacation and sick leave verified on behalf of the Auditor-General and standing to the credit of any such person with an audit office as at the relevant effective date shall with effect from that date stand to his or her credit in the Office;

(c) pensionable service performed by any such person in the service of an audit office as at the relevant effective date and verified on behalf of the Auditor-General shall be deemed to be pensionable service performed by such person in the service of the Office;

(d) such a person shall not as a consequence of such election, be entitled to retire later than he or she would have been able to, had he or she remained in the service of that audit office;

(e) such a person may, notwithstanding anything to the contrary in any law or in the rules of the pension fund in question, remain a member of the pension fund to which he or she belonged whilst in the service of the audit office in question;

(f) any disciplinary steps instituted but not completed before the relevant effective date or pending or which could have been instituted against such person on that date and arising out of alleged misconduct committed whilst that person was in the service of an audit office shall be continued and concluded as if the person concerned had been in the service of the Office at the time of the alleged misconduct;

(g) any investigation or action instituted or being considered or which could have been instituted before the relevant effective date against such a person in terms of the provisions of any law in respect of alleged incompetence or inability shall be continued and concluded as if the person concerned had been in the service of the Office when the alleged incompetence or inability became apparent.

(3) The Public Service Act, 1994, shall continue to apply to persons in the service of an audit office who do not make the election contemplated in subsection (1).

Rationalisation of Office

5. (1) The Board shall, in order to effect the rationalisation of the Office, in addition to any powers assigned to it in terms of the Audit Arrangements Act, have the power to make recommendations, give directions and conduct enquiries in order to establish uniformity as regards the terms and conditions of employment of the persons employed by the Office.

(2) In order to exercise the powers granted to it by subsection (1), the Board may-

(a) determine classes, groups and job descriptions of posts; and

(b) determine the terms and conditions of employment generally which shall apply uniformly to each such class or group of posts.

(3) In determining the terms and conditions of employment generally applicable to a class or group of persons employed by the Office, the Board shall properly take into account the percentage of persons in a particular class or group to which a particular term or condition of service is applicable.

(4) When uniformity of the terms and conditions of employment of a class or group has been established on the recommendation or by direction of the Board, no person belonging to such a class or group shall, subject to subsections (5) and (6), have the right to retain a term or condition of employment which is more favourable than such uniform term or condition of employment.

(5) If a contract entered into between a person contemplated in section 4(1) and an institution referred to in section 236(1) of the Constitution before the relevant effective date contains special terms and conditions of employment applicable only to that person, which are more favourable than the applicable uniform terms and conditions of employment in the Office, the Board may not recommend or direct that such special terms and conditions of employment be changed without the consent of the person concerned, notwithstanding subsection (4).

(6) Notwithstanding subsection (4), the Board may recommend or direct that a person or class or group of persons retain in full or in part a particular term or condition of employment that is more favourable than the uniform term or condition of employment applicable to the relevant class or group of personnel of the Office if there are special circumstances which justify such dispensation: Provided that any such retention of a more favourable term or condition of employment shall not continue for more than twelve months after the date of such recommendation or direction.

Transitional provisions

6. (1) Unless it would in any particular case obviously be inappropriate, having regard to the objects of this Act, with effect from the relevant effective date any reference in any law to an auditor-general shall be construed as a reference to the Auditor-General.

(2) Any audit that was to be carried out by an auditor-general in terms of a law mentioned in the Schedule shall, as from the relevant effective date, be carried out by the Auditor-General.

(3) Any audit, enquiry, investigation or other pending proceedings commenced in terms of any law repealed by section 7 shall be continued and concluded as if it or they had been commenced after the repeal of that law.

(4) Any irrecoverable portion of the expenditure related to the employment of a person who elects to serve in the Office in terms of section 4(1), as determined by the Auditor-General in consultation with the Audit Commission, shall be defrayed from a vote designated by the Director-General: State Expenditure.

Repeal of laws

7. The laws mentioned in the Schedule are hereby repealed with effect from the relevant effective dates to the extent indicated in the third column of the Schedule.

Application of Act 122 of 1992 throughout Republic

8. The Audit Arrangements Act shall apply uniformly throughout the Republic.

Amendment of section 1 of Act 122 of 1992

9. Section 1 of the Audit Arrangements Act is hereby amended-

(a) by the substitution for the definition of "Commission" of the following definition:

" 'Commission' means the [**Commission for Administration**] Public Service Commission established by section [2(1)] 209 of the [**Commission for Administration Act, 1984 (Act No. 65 of 1984)**] Constitution ;";

(b) by the substitution for the definition of "department" of the following definition:

" 'department' means a department contemplated in section [6(1)] 7(2) of the Public Service Act;";

(c) by the substitution for the definition of "Public Service Act" of the following definition:

" 'Public Service Act' means the Public Service Act, [1984 (Act No. 111 of 1984)] 1994;".

Amendment of section 2 of Act 122 of 1992

10. Section 2 of the Audit Arrangements Act is hereby amended by the addition to subsection (4) of the following proviso:

" : Provided that this subsection shall not apply to a person who indicates in writing that he or she accepts the conditions of service determined by or under this Act."

Amendment of section 5 of Act 122 of 1992

11. Section 5 of the Audit Arrangements Act is hereby amended by the substitution in subsection (3) for the expression "the South African Reserve Bank" of the expression "an institution registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990)".

Amendment of section 12 of Act 122 of 1992

12. Section 12 of the Audit Arrangements Act is hereby amended by the substitution in paragraphs (a) and (b) of subsection (2) and in subsection (3) for the expression "State President" of the word "President".

Amendment of section 13 of Act 122 of 1992

13. Section 13 of the Audit Arrangements Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

"(b) he or she is not a member of Parliament and becomes the subject of a condition contemplated in section [54(a), (b) or (c) of the Republic of South Africa Constitution Act, 1983 (Act No. 110 of 1983)] 42(1)(b), (c) or (d) of the Constitution; or"

Amendment of section 16 of Act 122 of 1992

14. Section 16 of the Audit Arrangements Act is hereby amended-

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

"(a) may determine its own procedure including the procedure with regard to the establishment of an executive committee, if necessary;"

(b) by the substitution in paragraph (b) of subsection (2) for the expression "Republic of South Africa Constitution Act, 1983 (Act No. 110 of 1983)" of the word "Constitution"; and

(c) by the substitution in subsection (3) for the word "eight" of the word "seven".

Amendment of section 18 of Act 122 of 1992

15. Section 18 of the Audit Arrangements Act is hereby amended-

(a) by the substitution for subsection (2) of the following subsection:

"(2) The members of the Board shall be appointed by the Auditor-General in consultation with the Audit Commission: Provided that at least two thirds of the members shall be persons who are officers in the Office."; and

(b) by the deletion of subsections (4) and (5).

Amendment of section 19 of Act 122 of 1992

16. Section 19 of the Audit Arrangements Act is hereby amended-

(a) by the addition in subsection (12) of the following paragraph:

"(e) regarding measures contemplated in section 8(3)(a) of the Constitution and measures to promote a staff composition for the Office which is broadly representative of the South African community, notwithstanding section 26."; and

(b) by the substitution in subsection (14) for the expression "three highest post levels" of the expression "two highest job grades".

Repeal of sections 20, 23, 34, 35, 36, 37, 45 and 49 of Act 122 of 1992

17. Sections 20, 23, 34, 35, 36, 37, 45 and 49 of the Audit Arrangements Act are hereby repealed.

Amendment of section 25 of Act 122 of 1992

18. Section 25 of the Audit Arrangements Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

"(b) has been convicted of an offence involving dishonesty **[and sentenced to imprisonment without the option of a fine and has not been granted an unconditional pardon in respect thereof]**; or".

Amendment of section 31 of Act 122 of 1992

19. Section 31 of the Audit Arrangements Act is hereby amended by the substitution in subsection (1)(a) for the expression " 15(1)(a)" of the expression " 16(1)(a)".

Substitution of section 33 of Act 122 of 1992

20. The following section is hereby substituted for section 33 of the Audit Arrangements Act:

"Inefficiency, misconduct and grievances

33. Any allegation of inefficiency or misconduct on the part of an officer or employee or any grievance held or request made by an officer or employee shall be dealt with in terms of the Labour Relations Act, 1956 (Act No. 28 of 1956)."

Amendment of section 50 of Act 122 of 1992

21. Section 50 of the Audit Arrangements Act is hereby amended-

(a) by the substitution in subsection (1) for the word "shall" of the word "may";

(b) by the substitution in paragraph (a) of subsection (1) for the expression "7(1)(a)(i)" of the expression "8(1)(a)(i)"; and

(c) by the addition of the following subsection:

"(3) The Office may, on the recommendation of the Board and with the approval of the Auditor-General in consultation with the Audit Commission, establish any other pension fund or funds for its officers and employees in terms of the Pension Funds Act, 1956 (Act No. 24 of 1956)."

Substitution of section 51 of Act 122 of 1992

22. The following section is hereby substituted for section 51 of the Audit Arrangements Act:

"Medical benefits

51. Notwithstanding anything to the contrary contained in any other law, an officer or employee who is still in the service of the Office or retires or has retired on pension, shall in respect of membership of a medical aid association not be dealt with **[as if he is]** less favourably than an officer or employee in the Public Service: Provided that the Office may on the recommendation of the Board with the approval of the Auditor-General establish any other medical aid scheme for its officers and employees under the Medical Schemes Act, 1967 (Act No. 72 of 1967)."

Amendment of section 54 of Act 122 of 1992

23. Section 54 of the Audit Arrangements Act is hereby amended by the substitution in subsection (1) for paragraph (k) of the following paragraph:

"(k) the establishment, composition, functions and procedures of **[the Advisory Committee of the Office]** a negotiating forum;".

Short title

24. This Act shall be called the Audit Matters Rationalisation and Amendment Act, 1995.

SCHEDULE

LAWS REPEALED

Number and year of law	Short title	Extent of repeal
Act No. 66 of 1975	Exchequer and Audit Act, 1975	Chapter IV as in force in the areas of the former Republics of Transkei and Venda
Act No. 111 of 1977	Finance Act, 1977	Section 27 as in force in the area of the former Republic of Venda
Act No. 7 of 1979 (Venda)	Venda Exchequer and Audit Adjustment Act, 1979	The whole
Act No. 101 of 1979	Finance Act, 1979	Section 18 as in force in the area of the former Republic of Venda
Act No. 28 of 1985 (Ciskei)	Exchequer and Audit Act, 1985	Part V
Act No. 3 of 1986 (Transkei)	Exchequer and Audit Amendment Act, 1986	The whole
Act No. 5 of 1986 (Transkei)	Second Exchequer and Audit Amendment Act, 1986	The whole
Act No. 21 of 1987 (Transkei)	General Law Amendment Act, 1987	Section 2
Act No. 13 of 1988 (Transkei)	General Law Amendment Act, 1988	Section 8
Act No. 32 of 1992 (Bophuthatswana)	Audit Act, 1992	The whole