



REPUBLIEK VAN SUID-AFRIKA

STAATSKOERANT

GOVERNMENT GAZETTE

OF THE REPUBLIC OF SOUTH AFRICA

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KANTOOR VAN DIE PRESIDENT

No. 2003. 23 November 1994

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet, wat hierby ter algemene inligting gepubliseer word:

No. 29 van 1994: Vyfde Wysigingswet op die Grondwet van die Republiek van Suid-Afrika, 1994.

OFFICE OF THE PRESIDENT

No. 2003. 23 November 1994

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

No. 29 of 1994: Constitution of the Republic of South Africa Fifth Amendment Act, 1994.

ALGEMENE VERDUIDELIKENDE NOTA:

- []** Woorde in vet druk tussen vierkantige hake dui skappings uit bestaande verordenings aan.
- _____** Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

WET

Tot wysiging van die Grondwet van die Republiek van Suid-Afrika, 1993, ten einde die pensioen en pensioenvoordele van die President verder te reël; verdere voorsiening te maak met betrekking tot die ampseed of plegtige verklaring deur 'n Waarnemende President; voorsiening te maak vir die aanstelling van waarnemende regters van die Konstitusionele Hof; die tydperke waarbinne die eerste Openbare Beskermer en die eerste lede van die Menseregtekommissie aangestel moet word, te verleng; die rasionalisering van die onderskeie polisiemagte in 'n enkele polisie diens te vergemaklik; voorsiening te maak vir die aanstelling van die Nasionale en Provinsiale Kommissarisse van die Suid-Afrikaanse Polisie diens en die Raad van Kommissarisse voor die aanvang van die rasionaliseringsproses; en sekere tekstuele regstellings te maak; en om vir bykomstige aangeleenthede voorsiening te maak.

(Engelse teks deur die President geteken.)
(Goedgekeur op 17 November 1994.)

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Vervanging van artikel 79 van Wet 200 van 1993

1. Artikel 79 van die Grondwet van die Republiek van Suid-Afrika, 1993 (hierna die Grondwet genoem), word hierby deur die volgende artikel vervang: 5

“Besoldiging en pensioen van President

79. Daar word aan die President, afgesien van enige voorreg wat hy of sy mag geniet, uit en ten laste van die Nasionale Inkomstefonds die besoldiging en toelaes, en by sy of haar aftrede, of aan sy of haar weduwee of wewenaar of afhanklike of genomineerde (met inbegrip 10 van sy of haar boedel) soos hy of sy mag verkies, by sy of haar afsterwe, die pensioen en pensioenvoordele, betaal wat van tyd tot tyd by besluit van die Parlement bepaal word.”.

Wysiging van artikel 86 van Wet 200 van 1993

2. Artikel 86 van die Grondwet word hierby gewysig deur na subartikel (3) die 15 volgende subartikel in te voeg:

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 amend the Constitution of the Republic of South Africa, 1993, so as to further regulate the pension and pension benefits of the President; to make further provision in relation to the oath of office or solemn affirmation by an Acting President; to make provision for the appointment of acting judges of the Constitutional Court; to extend the periods within which the first Public Protector and the first members of the Human Rights Commission are to be appointed; to facilitate the rationalisation of the various police forces into a single police service; to make provision for the appointment of the National and Provincial Commissioners of the South African Police Service and the Board of Commissioners prior to the commencement of the rationalisation process; and to rectify certain textual inconsistencies; and to provide for matters incidental thereto.

(English text signed by the President.)
(Assented to 17 November 1994.)

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

Substitution of section 79 of Act 200 of 1993

1. The following section is hereby substituted for section 79 of the Constitution of the Republic of South Africa, 1993 (hereafter referred to as the Constitution):

“Remuneration and pension of President

79. There shall be paid to the President out of and as a charge on the National Revenue Fund and apart from any privilege which he or she may enjoy, such remuneration and allowances, and upon his or her retirement, or to his or her widow or widower or dependent or nominee (including his or her estate) as he or she may elect, on his or her death, such pension and pension benefits, as may be determined from time to time by resolution of Parliament.”.

Amendment of section 86 of Act 200 of 1993

2. Section 86 of the Constitution is hereby amended by the insertion after subsection (3) of the following subsection:

“(3A) (a) Die persoon wat as Waarnemende President aangestel is, moet, behoudens paragraaf (b), voordat hy of sy formeel die amp aanvaar, ’n eed of plegtige verklaring met die strekking in Bylae 3 uiteengesit voor die Hoofregter of ’n regter van die Hooggeregshof deur die Hoofregter vir dié doel aangewys, aflê en onderteken.

(b) ’n Eed of plegtige verklaring afgelê en onderteken deur ’n persoon wat as Waarnemende President aangestel is, word vir doeleindes van enige daaropvolgende aanstelling van daardie persoon as Waarnemende President gedurende die ampstermyn van ’n bepaalde President, geag ’n eed of plegtige verklaring te wees wat deur daardie persoon ook ten opsigte van sodanige daaropvolgende aanstelling afgelê en onderteken is.”

Wysiging van artikel 99 van Wet 200 van 1993

3. Artikel 99 van die Grondwet word hierby gewysig deur die volgende subartikels by te voeg:

“(8) Wanneer die President van die Konstitusionele Hof afwesig is of nie sy of haar werksaamhede kan verrig nie, of indien die amp van President van die Konstitusionele Hof vakant raak, kan die President in oorleg met die Kabinet en na oorleg met die Hoofregter en, indien hy of sy beskikbaar is, die President van die Konstitusionele Hof, ’n regter van die Konstitusionele Hof as Waarnemende President van die Konstitusionele Hof aanstel vir die tydperk van afwesigheid of onvermoë van die President van die Konstitusionele Hof of totdat die vakature gevul is.

(9) Wanneer ’n regter van die Konstitusionele Hof afwesig is of nie sy of haar werksaamhede kan verrig nie, of indien ’n vakature in die geledere van die regters van die Konstitusionele Hof ontstaan, kan die President, op aanbeveling van die Minister verantwoordelik vir die regspleging gemaak in oorleg met die President van die Konstitusionele Hof en die Hoofregter, enige persoon wat ingevolge subartikel (2) bevoeg is, as ’n waarnemende regter van die Konstitusionele Hof aanstel vir die tydperk van afwesigheid of onvermoë van die betrokke regter of totdat die vakature gevul is: Met dien verstande dat te alle tye nie minder nie as vier regters van die Konstitusionele Hof, met inbegrip van waarnemende regters, regters moet wees wat uit die geledere van die regters van die Hooggeregshof aangestel is.

(10) ’n Persoon kan as Waarnemende President of waarnemende regter van die Konstitusionele Hof aangestel word ongeag of hy of sy by ’n vorige geleentheid as Waarnemende President of waarnemende regter van die Konstitusionele Hof aangestel was: Met dien verstande dat geen persoon as ’n waarnemende regter waarneem vir ’n tydperk van meer as ses maande nie.

(11) Enige aanstelling kragtens hierdie artikel, word geag ook gedoen te wees ten opsigte van enige tydperk waartydens die aangestelde persoon hom of haar noodsaaklikerwys besig hou in verband met die afhandeling van verrigtinge waaraan hy of sy as regter van die Konstitusionele Hof deelgeneem het en wat, by afloop van die tydperk waarvoor hy of sy aangestel is, nog nie afgehandel is nie.”

Wysiging van artikel 110 van Wet 200 van 1993, soos gewysig deur artikel 7 van Wet 13 van 1994

4. Artikel 110 van die Grondwet word hierby gewysig deur subartikel (3) deur die volgende subartikel te vervang:

“(3) Die eerste aanstelling van ’n persoon benoem as Openbare Beskermer na die inwerkingtreding van hierdie Grondwet, moet gedoen word [binne 120 dae] so spoedig moontlik na die eerste sitting van die Senaat kragtens hierdie Grondwet.”

Wysiging van artikel 115 van Wet 200 van 1993, soos gewysig deur artikel 8 van Wet 13 van 1994

5. Artikel 115 van die Grondwet word hierby gewysig deur subartikel (4) deur die volgende subartikel te vervang:

CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA
FIFTH AMENDMENT ACT, 1994

Act No. 29, 1994

“(3A) (a) The person appointed as Acting President shall, subject to paragraph (b), before formally assuming office make and subscribe an oath or solemn affirmation in the terms set out in Schedule 3 before the Chief Justice or a judge of the Supreme Court designated by the Chief Justice for this purpose.

(b) An oath or solemn affirmation made and subscribed by a person appointed as Acting President shall for purposes of any subsequent appointment of that person as Acting President during the term of office of a particular President, be deemed to be an oath or solemn declaration made and subscribed by that person also in respect of such subsequent appointment.”.

Amendment of section 99 of Act 200 of 1993

3. Section 99 of the Constitution is hereby amended by the addition of the following subsections:

“(8) Whenever the President of the Constitutional Court is absent or unable to perform his or her functions, or if the office of President of the Constitutional Court becomes vacant, the President may in consultation with the Cabinet and after consultation with the Chief Justice and, if he or she is available, the President of the Constitutional Court, appoint a judge of the Constitutional Court as Acting President of the Constitutional Court for the period of absence or inability of the President of the Constitutional Court or until the vacancy is filled.

(9) Whenever a judge of the Constitutional Court is absent or unable to perform his or her functions, or if a vacancy among the judges of the Constitutional Court arises, the President may, on the recommendation of the Minister responsible for the administration of justice made in consultation with the President of the Constitutional Court and the Chief Justice, appoint any person qualified in terms of subsection (2), as an acting judge of the Constitutional Court for the period of absence or inability of the judge concerned or until the vacancy is filled: Provided that at all times at least four judges of the Constitutional Court, including acting judges, shall be judges who have been appointed from among the judges of the Supreme Court.

(10) A person may be appointed as Acting President or acting judge of the Constitutional Court irrespective of whether he or she was appointed on a previous occasion as Acting President or acting judge of the Constitutional Court: Provided that no person shall act as an acting judge for a period exceeding six months.

(11) Any appointment made under this section shall be deemed to have been made also in respect of any period during which the person appointed is necessarily engaged in connection with the disposal of any proceedings in which he or she has participated as a judge of the Constitutional Court and which have not yet been disposed of at the expiry of the period for which he or she was appointed.”.

45 Amendment of section 110 of Act 200 of 1993, as amended by section 7 of Act 13 of 1994

4. Section 110 of the Constitution is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The first appointment of a person as the Public Protector after the commencement of this Constitution shall be made **[within 120 days of]** as soon as possible after the first sitting of the Senate under this Constitution.”.

Amendment of section 115 of Act 200 of 1993, as amended by section 8 of Act 13 of 1993

55 5. Section 115 of the Constitution is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) Die eerste lede van die Kommissie na die inwerkingtreding van hierdie Grondwet, moet aangestel word **[binne 120 dae]** so spoedig moontlik na die eerste sitting van die Senaat kragtens hierdie Grondwet.”.

Wysiging van artikel 218 van Wet 200 van 1993

6. Artikel 218 van die Grondwet word hierby gewysig deur subparagraaf (i) van paragraaf (n) van subartikel (1) deur die volgende subparagraaf te vervang: 5
- “(i) wat nodig is om die oogmerke bedoel in artikel **[217] 215** te bereik; en”.

Wysiging van artikel 219 van Wet 200 van 1993

7. Artikel 219 van die Grondwet word hierby gewysig deur paragraaf (b) van subartikel (2) deur die volgende paragraaf te vervang: 10
- “(b) die werwing van lede van die Diens wat verantwoordelik is vir die werksaamhede in subartikel (1) uiteengesit**[, en die bevordering van sodanige lede tot die rang van kolonel of hoër];**”.

Wysiging van artikel 237 van Wet 200 van 1993

8. Artikel 237 van die Grondwet word hierby gewysig deur die volgende paragraaf na paragraaf (a) van subartikel (2) in te voeg: 15
- “(aA) In afwagting van die aanneming van die Parlementswet beoog in artikel 214—
- (i) kan die Nasionale Kommissaris en Provinsiale Kommissarisse van die Suid-Afrikaanse Polisiediens beoog in artikel 214(2)(a) aangestel word; 20
 - (ii) word 'n vergadering van die Nasionale Kommissaris en die Provinsiale Kommissarisse of hul benoemdes geag 'n vergadering van die Raad van Kommissarisse beoog in artikel 220(2) te wees en word 'n besluit op so 'n vergadering, geneem, geag 'n besluit van die Raad te wees; 25
 - (iii) kan die bestaande polisiemagte, wat ingevolge artikel 236(7) geag word die Suid-Afrikaanse Polisiediens bedoel in artikel 214 uit te maak, ooreenkomstig hierdie artikel gerasionaliseer word; en
 - (iv) kan proklamasies ingevolge subartikel (3) uitgereik word ter reëling van sodanige rasionalisering.”. 30

Wysiging van artikel 245 van Wet 200 van 1993

9. Artikel 245 van die Grondwet word hierby gewysig deur in paragraaf (b) van subartikel (3) die uitdrukking “paragraaf (b)” deur die uitdrukking “paragraaf (a)” te vervang.

Kort titel en inwerkingtreding

10. (1) Hierdie Wet heet die Vyfde Wysigingswet op die Grondwet van die Republiek van Suid-Afrika, 1994. 35
- (2) Artikels 4 en 5 word geag in werking te getree het op 16 September 1994.

CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA
FIFTH AMENDMENT ACT, 1994

Act No. 29, 1994

“(4) The first members of the Commission after the commencement of this Constitution shall be appointed **[within 120 days of]** as soon as possible after the first sitting of the Senate under this Constitution.”.

Amendment of section 218 of Act 200 of 1993

- 5 **6.** Section 218 of the Constitution is hereby amended by the substitution for subparagraph (i) of paragraph (n) of subsection (1) of the following subparagraph:

“**(i)** are necessary to achieve the objectives referred to in section **[217]** 215; and”.

10 **Amendment of section 219 of Act 200 of 1993**

7. Section 219 of the Constitution is hereby amended by the substitution for paragraph (b) of subsection (2) of the following paragraph:

15 “(b) the recruitment of members of the Service responsible for the functions set out in subsection (1) **[, and the promotion of any such members to the rank of colonel or above];**”.

Amendment of section 237 of Act 200 of 1993

8. Section 237 of the Constitution is hereby amended by the insertion after paragraph (a) of subsection (2) of the following paragraph:

20 “(aA) In anticipation of the adoption of the Act of Parliament contemplated in section 214—
 (i) the National Commissioner and Provincial Commissioners of the South African Police Service contemplated in section 214(2)(a) may be appointed;
25 (ii) a meeting of the National Commissioner and the Provincial Commissioners or their nominees shall be deemed to be a meeting of the Board of Commissioners contemplated in section 220(2) and any decision taken at such a meeting shall be deemed to be a decision of the Board;
 (iii) the existing police forces, deemed in terms of section 236(7) to constitute the South African Police Service contemplated in section 214, may be rationalised in accordance with this section; and
30 (iv) proclamations to regulate such rationalisation may be issued in terms of subsection (3).”.

Amendment of section 245 of Act 200 of 1993

- 35 **9.** Section 245 of the Constitution is hereby amended by the substitution in paragraph (b) of subsection (3) for the expression “paragraph (b)” of the expression “paragraph (a)”.

Short title

- 40 **10.** (1) This Act shall be called the Constitution of the Republic of South Africa Fifth Amendment Act, 1994.
 (2) Sections 4 and 5 shall be deemed to have come into operation on 16 September 1994.

