



REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

Vol. 382

CAPE TOWN, 25 APRIL 1997

No. 17961

KAAPSTAD, 25 APRIL 1997

PRESIDENT'S OFFICE

KANTOOR VAN DIE PRESIDENT

No. 640.

25 April 1997

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

No. 12 of 1997: Telecommunications Amendment Act, 1997.

No. 640.

25 April 1997

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

No. 12 van 1997: Wysigingswet op Telekommunikasie, 1997.

Act No. 12, 1997

TELECOMMUNICATIONS AMENDMENT ACT, 1997

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 Telecommunications Act, 1996, so as to provide for the selection and transfer of personnel from the Department of Communications to the South African Telecommunications Regulatory Authority and the Universal Service Agency; and to provide for matters connected therewith.

(Afrikaans text signed by the President.)
(Assented to 23 April 1997.)

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

Amendment of section 17 of Act 103 of 1996

1. Section 17 of the Telecommunications Act, 1996 (hereinafter called the principal Act), is hereby amended by the addition of the following subsections:

“(4) Any officer or employee of the Department may be selected by the Authority, in consultation with the Director-General, for transfer to the Authority, and if so selected shall, notwithstanding any provision to the contrary in the Communications Service Act, 1974 (Act No. 66 of 1974), but subject to section 42 of that Act, as from the fixed date or such later date as may be agreed upon between the Director-General and the Authority, cease to be such officer or employee and, without interruption of his or her service, become an employee of the Authority.

(5) Any person so transferred shall, with effect from the date of his or her transfer, be appointed by the Authority on the conditions of service determined by it to a post in the Authority which is similar to that which such person occupied in the Department immediately prior to such transfer: Provided that—

(a) such person's salary or salary scale shall not be reduced by such appointment;
(b) such person shall retain all vacation and sick leave standing to his or her credit with the Department immediately preceding his or her transfer, including all monetary benefits attached thereto;

(c) such person shall be compensated by the Authority for any loss which he or she may incur as a result of such transfer in respect of unemployment benefit contributions, medical aid contributions or other expenditure on health care that is necessary so as not to place him or her in a less favourable position with

ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordeninge aan.

Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordeninge aan.

WET

Tot wysiging van die Wet op Telekommunikasie, 1996, ten einde voorsiening te maak vir die keuring en oorplasing van personeel vanaf die Departement van Kommunikasiewese na die Suid-Afrikaanse Telekommunikasiereguleringsowerheid en die Universele Diens-agentskap; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

*(Afrikaanse teks deur die President geteken.)
(Goedgekeur op 23 April 1997.)*

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

Wysiging van Artikel 17 van Wet 103 van 1996

1. Artikel 17 van die Wet op Telekommunikasie, 1996 (hieronder die Hoofwet genoem), word hierby gewysig deur die volgende subartikels by te voeg:

“(4) Enige beampte of werknemer van die Departement kan in oorleg met die Direkteur-generaal deur die Owerheid gekies word vir oorplasing na die Owerheid, en indien aldus gekies, hou hy of sy, ondanks enige andersluidende bepaling in die Kommunikasiewesedienswet, 1974 (Wet No. 66 van 1974), maar behoudens artikel 42 van daardie Wet, vanaf die vasgestelde datum of die later datum waarop die Direkteur-generaal en die Owerheid ooreenkom, op om so 'n beampte of werknemer te wees en word hy of sy sonder onderbreking van sy of haar diens 'n werknemer van die Owerheid.

(5) Enige persoon aldus oorgeplaas, word met ingang van die datum van sy of haar oorplasing deur die Owerheid op die diensvoorwaardes wat die Owerheid bepaal, aangestel in 'n pos in die Owerheid wat soortgelyk is aan die pos in die Departement wat sodanige persoon onmiddellik voor sy of haar oorplasing beklee het: Met dien verstande dat—

- (a) sodanige persoon se salaris of salarisskaal nie deur daardie aanstelling verminder word nie;
- (b) sodanige persoon alle vakansie- en siekteverlof behou wat onmiddellik voor sy of haar oorplasing tot sy of haar krediet by die Departement staan, met inbegrip van alle geldelike voordele wat daaraan gekoppel word;
- (c) sodanige persoon deur die Owerheid vergoed word vir enige uitgawe wat hy of sy as gevolg van sodanige aanstelling mag aangaan ten opsigte van bydraes vir werkloosheidsvoordele, mediese hulpfondsbydraes of ander uitgawes aan gesondheidsorg wat nodig is ten einde hom of haar nie in 'n

regard to such expenditure than that which applied to him or her immediately prior to his or her transfer, as well as for any other loss arising from any transfer from his or her present headquarters to new headquarters in accordance with the procedure applicable to officers and employees of the Department; and

(d) such person's conditions of employment in respect of matters not specified in paragraphs (a) to (c) of this subsection shall not be less favourable to him or her than those which applied to him or her immediately prior to the transfer.

(6) Any person transferred from the Department in terms of subsection (4) who immediately prior to such transfer was a member of the Government Employees Pension Fund, shall notwithstanding any provision to the contrary in any law or in the rules of that pension fund, upon such transfer remain a member of that pension fund for all purposes and the Authority shall contribute to the said pension fund in respect of that person to the same extent as an employer is required in terms of the laws on and the rules of that pension fund to contribute to that pension fund in respect of an employee who is a member of that fund.

(7) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), no change of employer shall be deemed to have taken place when an officer or employee of the Department is transferred to the Authority in terms of subsection (4), and the position of such officer or employee in respect of the phasing in of tax levied on a benefit or advantage derived by reason of employment or the holding of any office as contemplated in Schedule 7 to the Income Tax Act, 1962, shall be deemed to remain unchanged.

(8) Any disciplinary steps instituted or contemplated against any person transferred from the Department in terms of subsection (4) in respect of alleged misconduct committed prior to his or her transfer to the Authority, shall be disposed of or instituted, as the case may be, in terms of the laws applicable to him or her immediately before such transfer.

(9) At least one month before the fixed date, the Director-General shall in writing inform every officer and employee of the Department either—

(a) that he or she has been selected for transfer to the Authority in terms of subsection (4), and of the post that will be occupied by him or her and the date on which the transfer is to take effect; or

(b) that he or she is to remain with the Department and of the post which he or she will occupy in the Department; or

(c) that his or her services are to be terminated, as from a specified date, owing to the abolition of his or her post in the Department.

(10) Notwithstanding any provision to the contrary in section 42 or any other section of the Communications Service Act, 1974 (Act No. 66 of 1974), any proposed action of which an officer or employee is notified in terms of subsection (9) shall be deemed to be an act which may form the subject of an appeal to the Minister in terms of the said section 42.

(11) Any such appeal shall be lodged within 14 days of receipt of such notification by the officer or employee.

(12) Any person contemplated in subsection (9)(c) shall be entitled to special severance conditions and benefits not less favourable to him or her than those prescribed under the Public Service Act, 1994 (Proclamation No. 103 of 1994), in respect of a person to whom that Act applies and whose services are terminated because of the abolition of his or her post.

(13) For the purposes of this section the term "fixed date" shall mean the date determined by the Minister by notice in the *Gazette*.

Amendment of section 60 of Act 103 of 1996

2. Section 60 of the principal Act is hereby amended—

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

"(2) The Head shall—

(a) employ such other persons;

(b) accept the secondment, as contemplated in section 16(4) of the

5 minder gunstige posisie ten opsigte van sodanige onkoste te plaas as dié
 waarin hy of sy onmiddellik voor sy of haar aanstelling was nie, asook vir
 enige ander uitgawe voortspruitend uit 'n oorplasing vanaf sy of haar
 bestaande hoofkwartier na 'n nuwe hoofkwartier, ooreenkomstig die prose-
 dure wat van toepassing is op beamptes en werknemers van die Departement;
 en

10 (d) sodanige persoon se diensvoorwaardes ten opsigte van aangeleenthede wat
 nie in paragrawe (a) tot (c) van hierdie subartikel gespesifiseer is nie, nie vir
 hom of haar minder gunstig mag wees as dié wat onmiddellik voor die
 oorplasing vir hom of haar gegeld het nie.

15 (6) Enige persoon wat ingevolge subartikel (4) vanaf die Departement oorge-
 plaas is en wat onmiddellik voor sodanige oorplasing 'n lid was van die
 Regeringswerknemerspensioenfonds, ondanks enige andersluidende bepaling
 in enige wet of in die reëls van daardie pensioenfonds, by sodanige oorplasing vir
 20 alle doeleindes 'n lid van daardie pensioenfonds en die Owerheid dra in dieselfde
 mate ten opsigte van daardie persoon tot genoemde pensioenfonds by as wat 'n
 werkgewer ingevolge die wette op en reëls van daardie pensioenfonds ten opsigte
 van 'n werknemer wat 'n lid is van daardie pensioenfonds moet bydra.

20 (7) Vir die doeleindes van die Inkomstebelastingwet, 1962 (Wet No. 58 van
 1962), word daar geag dat geen verandering van werkgewer plaasgevind het
 wanneer 'n beampte of werknemer van die Departement ingevolge subartikel (4)
 na die Owerheid oorgeplaas word nie, en die posisie van sodanige beampte of
 werknemer ten opsigte van die infasering van belasting gehef op 'n voordeel of
 25 gewin ontvang vanweë diens of bekleding van 'n amp soos beoog in Bylae 7 by
 die Inkomstebelastingwet, 1962, word geag onveranderd te bly.

30 (8) Enige dissiplinêre stappe ingestel of beoog teen enige persoon wat
 ingevolge subartikel (4) vanaf die Departement oorgeplaas is ten opsigte van
 beweerde wangedrag gepleeg voor sy of haar oorplasing na die Owerheid, word
 ingestel of afgehandel, na gelang van die geval, ingevolge die wette wat op hom
 of haar van toepassing was onmiddellik voor sodanige oorplasing.

(9) Ten minste een maand voor die vasgestelde datum stel die Direkteur-
 generaal elke beampte en werknemer van die Departement skriftelik in kennis
 35 óf—

(a) dat hy of sy gekies is vir oorplasing na die Owerheid ingevolge subartikel (4),
 en van die pos wat deur hom of haar beklee sal word en die datum waarop
 die oorplasing sal geskied; óf

(b) dat hy of sy by die Departement aanbly en van die pos wat hy of sy in die
 Departement sal beklee; óf

40 (c) dat sy of haar dienste vanaf 'n vermelde datum weens die afskaffing van sy
 of haar pos in die Departement beëindig word.

(10) Ondanks enige andersluidende bepaling in artikel 42 of enige ander artikel
 van die Kommunikasiewesedienswet, 1974 (Wet No. 66 van 1974), word enige
 voorgestelde optrede waarvan 'n beampte of werknemer ingevolge subartikel (9)
 in kennis gestel word, geag 'n handeling te wees wat die onderwerp kan uitmaak
 45 van 'n appèl na die Minister ingevolge genoemde artikel 42.

(11) Enige sodanige appèl moet binne 14 dae vanaf ontvangs deur die beampte
 of werknemer van sodanige kennisgewing aangeteken word.

50 (12) Enige persoon beoog in subartikel (9)(c) is geregtig op spesiale skeidings-
 voorwaardes en -voordele wat nie vir hom of haar minder gunstig is nie as dié wat
 ingevolge die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994), voorgeskryf
 word ten opsigte van 'n persoon op wie daardie Wet van toepassing is en wie se
 dienste beëindig word weens die afskaffing van sy of haar pos.

55 (13) By die toepassing van hierdie artikel beteken die uitdrukking “vasgestelde
 datum” die datum wat deur die Minister by kennisgewing in die *Staatskoerant*
bepaal is.”

Wysiging van artikel 60 van Wet 103 van 1996

2. Artikel 60 van die Hoofwet word hierby gewysig—

(a) deur subartikel (2) deur die volgende subartikel te vervang:

“(2) Die Hoof—

60 (a) neem [sodanige] die ander persone in diens;

(b) aanvaar die sekondering soos beoog in artikel 16(4) van die

Act No. 12, 1997

TELECOMMUNICATIONS AMENDMENT ACT, 1997

Communications Service Act, 1974 (Act No. 66 of 1974), or the transfer of such persons in the service of the Department, as are necessary to assist him or her with the performance of the functions of the Agency.”;

(b) by the addition to subsection (6) of the following paragraph:

“(d) The provisions of section 17(4) to (13) shall apply, with the necessary changes, to any person transferred from the Department to the Agency.”

Short title

3. This Act shall be called the Telecommunications Amendment Act, 1997.

[Kommunikasiedienswet] Kommunikasiewesedienswet, 1974
(Wet No. 66 van 1974), of die oorplasing van die persone in diens
van die Departement,

wat nodig is om hom of haar met die verrigting van die werksaamhede
van die Agentskap by te staan.”;

5

(b) deur in subartikel (6) die volgende paragraaf by te voeg:

“(d) Die bepalings van artikel 17(4) tot (13) geld, met die nodige
veranderings, ten opsigte van enige persoon wat vanaf die Departement
na die Agentskap oorgeplaas word.”.

10 Kort titel

3. Hierdie Wet heet die Wysigingswet op Telekommunikasie, 1997.

[Kommunikasiedienswet] Kommunikasiedienswet, 1997

(Wet No. 12 van 1997) of the repeal of the provisions in force

van die Departement

wat nodig is om hantoor te stel met die verspreiding van die werksaamhede

van die Aankoms op te staan.

(b) deur in subartikel (d) die volgende paraat by te voeg:

(d) Die bepalings van artikel 17(4) tot (13) geld met die nodige

veranderinge, ten opsigte van enige persoon wat aan die Departement

as die Aankoms oorgeleë is.

10. Kort titel

3. Hierdie Wet het die Wysigingswet op Telekommunikasie, 1997.