



# Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA  
REPUBLIEK VAN SUID-AFRIKA

Vol. 456

Cape Town, 5 June 2003  
Kaapstad, 5 Junie 2003

**No. 25064**



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## GOVERNMENT NOTICE

## GOEWERMENSKENNISGEWING

## NOTICE 762 OF 2003

PARLIAMENT OF THE REPUBLIC OF  
SOUTH AFRICAPUBLICATION OF DRAFT **PUBLIC AUDIT BILL**

A draft **Public Audit Bill**, 2003, as presented to the Speaker of the National Assembly by the Audit Commission, is hereby published for public comment. Interested persons and institutions are invited to submit written comments on the draft legislation **before 25 June 2003**, to the following person:

**Mr L. Pakati**

*Street address:*  
Room 1216  
Parliament Towers Building  
Parliament  
Cape Town 8001

*Postal address:*  
PO Box 15,  
Cape Town 8000  
*Fax:* (021) 403 3942  
*e-mail:* [lpakati@parliament.gov.za](mailto:lpakati@parliament.gov.za)

**S. MFENYANA,**  
Secretary to Parliament

Date: 5 June 2003

## KENNISGEWING 762 VAN 2003

PARLEMENT VAN DIE REPUBLIEK VAN  
SUID-AFRIKAPUBLIKASIE VAN KONSEP- **PUBLIC AUDIT BILL**

'n Konsep **Public Audit Bill**, 2003, soos aan die Speaker van die Nasionale Vergadering voorgelê deur die Ouditkommissie, word hierby vir kommentaar gepubliseer. Belanghebbende persone en instansies word genooi om **voor 25 Junie 2003** skriftelike kommentaar oor die konsepwetgewing aan die volgende persoon voor te lê:

**Mnr L. Pakati**

*Straatadres:*  
Kamer 1216  
Parliament Towers-gebou  
Parlement  
Kaapstad 8001

*Posadres:*  
Posbus 15,  
Kaapstad 8000  
*Faks:* (021) 403 3942  
*e-pos:* [lpakati@parliament.gov.za](mailto:lpakati@parliament.gov.za)

**S. MFENYANA,**  
Sekretaris van die Parlement

Datum: 5 Junie 2003

# BILL

**To give effect to the provisions of the Constitution establishing and assigning functions to an Auditor-General; to provide for the auditing of institutions in the public sector; to provide for an Audit Commission; to repeal certain obsolete legislation; and to provide for matters connected therewith.**

## PREAMBLE

**WHEREAS** the Constitution establishes the Auditor-General as a State Institution Supporting Constitutional Democracy; and

**WHEREAS** the Constitution further—

- establishes the Auditor-General as the external auditor of all national and provincial state departments and municipalities, and any other institutions or accounting entities required by national or provincial legislation to be audited by the Auditor-General;
- recognises the independence of the Auditor-General, subject only to the Constitution and the law;
- requires the Auditor-General to be impartial and to perform his or her powers and functions without fear, favour or prejudice;
- prohibits any person or organ of state from interfering with the functioning of the Auditor-General;
- requires the Auditor-General to submit audit reports to any legislature that has a direct interest in the audit, and to any other authority prescribed by national legislation, and that all reports be made public; and
- provides for the granting of additional powers and functions to the Auditor-General as prescribed by national legislation,

**B**E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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**SCHEDULE****REPEAL OF LEGISLATION**

## CHAPTER 1

## INTERPRETATION AND OBJECTS OF ACT

## Definitions

1. (1) In this Act, unless the context indicates otherwise—
  - “**audit**” means the examination or investigation, in accordance with any applicable audit standards, of those aspects to be reported on in terms of section 20 or 28; 5
  - “**auditee**” means an institution or accounting entity referred to in section 4 that is or is to be audited by the Auditor-General, and includes any group of such institutions or accounting entities whose financial statements are or are to be consolidated in terms of legislation; 10
  - “**audit fees**” means an amount recoverable by the Auditor-General from an auditee or other institution for the performance of an audit or other functions in terms of this Act, and includes any costs arising as a consequence of an audit or investigation carried out by the Auditor-General or an authorised auditor; 15
  - “**Audit Commission**” means the Audit Commission referred to in section 47;
  - “**Auditor-General**”—
    - (a) as an institution, means the institution contemplated in section 181(1)(e) of the Constitution; and
    - (b) as an individual, means the individual appointed as Auditor-General or acting as such; 20
  - “**authorised auditor**” means a person authorised in terms of section 12 to perform or to assist in the performance of an audit referred to in section 11;
  - “**delegation**”, in relation to a duty, includes an instruction or request to perform or to assist in performing the duty; 25
  - “**Deputy Auditor-General**” means the person appointed in terms of section 31, and includes a person acting as the Deputy Auditor-General;
  - “**constitutional institution**” has the meaning assigned to it in section 1 of the Public Finance Management Act;
  - “**fruitless and wasteful expenditure**”, in relation to expenditure of the Auditor-General, means expenditure incurred by the Auditor-General that was made in vain and would have been avoided had reasonable care been exercised; 30
  - “**irregular expenditure**”, in relation to expenditure of the Auditor-General, means expenditure incurred by the Auditor-General in contravention of, or that is not in accordance with, a requirement of this Act or any other legislation applicable to the Auditor-General; 35
  - “**legislature**” means Parliament, a provincial legislature or a municipal council;
  - “**Municipal Finance Management Act**” means the Local Government: Municipal Finance Management Act, 2003 (Act No. .... of 2003);
  - “**municipality**” means a municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998); 40
  - “**municipal entity**” has the meaning assigned to it in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), and includes the governing body of a multi-jurisdictional municipal service district referred to in section 87 of that Act; 45
  - “**national department**” has the meaning assigned to it in section 1 of the Public Finance Management Act;
  - “**National Treasury**” means the National Treasury established in terms of section 5 of the Public Finance Management Act;
  - “**provincial department**” has the meaning assigned to it in section 1 of the Public Finance Management Act; 50
  - “**provincial treasury**” has the meaning assigned to it in section 1 of the Public Finance Management Act;
  - “**Public Accountants’ and Auditors’ Act**” means the Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991); 55
  - “**public entity**” has the meaning assigned to it in section 1 of the Public Finance Management Act;
  - “**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);



**“relevant legislature”** means a legislature that has a direct interest in an audit;  
**“supreme audit institution”** means the institution which, however designated, constituted or organised, exercises by virtue of the law of a country, the highest public auditing function of that country.

(2) In this Act, a word or expression derived from a word or expression defined in subsection (1) has a corresponding meaning unless the context indicates that another meaning is intended. 5

### **Objects of this Act**

2. The objects of this Act are—

- (a) to give effect to the provisions of the Constitution establishing and assigning 10 supreme auditing functions to an Auditor-General;
- (b) to provide for the auditing of institutions and accounting entities in the public sector; and
- (c) to provide for the continuation of the Audit Commission—
  - (i) to assist and protect the Auditor-General in order to ensure the 15 independence, impartiality, dignity and effectiveness of the Auditor-General; and
  - (ii) to advise the National Assembly.

## **CHAPTER 2**

### **AUDITOR-GENERAL**

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#### *Part 1: Status and functions*

### **Constitutional and legal status**

3. The Auditor-General—

- (a) is the supreme audit institution of the Republic;
- (b) has full legal capacity, is independent and is subject only to the Constitution 25 and the law, including this Act;
- (c) must be impartial and must exercise the powers and perform the functions of office without fear, favour or prejudice; and
- (d) is accountable to the National Assembly.

### **Constitutional functions**

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4. (1) The Auditor-General must audit and report on the accounts, financial statements and financial management of—

- (a) all national and provincial departments;
- (b) all constitutional institutions;
- (c) the administration of Parliament and of each provincial legislature; 35
- (d) all municipalities;
- (e) all municipal entities; and
- (f) any other institution or accounting entity required by other national or by provincial legislation to be audited by the Auditor-General.

(2) The Auditor-General must audit and report on the consolidated financial 40 statements of—

- (a) the national government as required by section 8 of the Public Finance Management Act;
- (b) all provincial governments as required by section 19 of the Public Finance Management Act; and 45
- (c) a parent municipality and all municipal entities under its sole control as required by section ..... of the Municipal Finance Management Act.

(3) The Auditor-General may audit and report on the accounts, financial statements and financial management of—

- (a) any public entity listed in the Public Finance Management Act; and 50
- (b) any other institution not mentioned in subsection (1) and which is—
  - (i) funded from the National Revenue Fund or a Provincial Revenue Fund or by a municipality; or



- (ii) authorised in terms of any legislation to receive money for a public purpose.

(4) In the event of any conflict between a provision of this section and any other legislation existing when this section takes effect, the provision of this section prevails. Draft legislation which amends this section may be introduced in Parliament only after the Auditor-General has been consulted. 5

### Other functions

5. (1) The Auditor-General may—

- (a) at an agreed fee, and without compromising the role of the Auditor-General as an independent auditor, provide— 10
    - (i) any service to an institution or accounting entity referred to in section 4(1), (2) or (3) or other body, which is commonly performed by a supreme audit institution or an external auditor; or
    - (ii) advice and support to a legislature or its committees outside the scope of the Auditor-General's normal audit and reporting functions; 15
  - (b) comment on any responses by an auditee to audit findings in an audit report, or responses to a report of any legislature arising from its review of an audit report;
  - (c) carry out an appropriate investigation or special audit of any institution referred to in section 4(1) or (3), if the Auditor-General considers it to be in the public interest or upon the receipt of a credible complaint; 20
  - (d) co-operate with persons, institutions and associations, nationally and internationally;
  - (e) appoint advisory and other structures outside the administration of the Auditor-General to provide specialised advice to the Auditor-General; and 25
  - (f) do any other thing necessary to fulfil the role of Auditor-General effectively.
- (2) The Auditor-General may, in the public interest, report on any matter within the functions of the Auditor-General and submit such a report to the relevant legislature and to any other organ of state with a direct interest in the matter.

## *Part 2: Appointment and conditions of employment* 30

### Appointment

6. (1) Whenever it becomes necessary to appoint a person as Auditor-General, the Speaker must initiate the process in the National Assembly for the recommendation of a person to the President for appointment as Auditor-General as set out in section 193 of the Constitution. 35
- (2) When making an appointment, the President must determine the term for which the appointment is made, subject to section 189 of the Constitution.

### Conditions of employment

7. (1) The Audit Commission must consult the person recommended in terms of section 193 of the Constitution for appointment as Auditor-General and make recommendations to the President for the determination of the conditions of employment of that person, including an appropriate salary, allowances and other benefits. 40
- (2) The salary, allowances and other benefits of a person appointed as Auditor-General must— 45
- (a) take into account the knowledge and experience of the prospective incumbent;
  - (b) be substantially the same as those of the top echelon of the judiciary; and
  - (c) be paid from the funds of the Auditor-General.
- (3) The conditions of employment determined in terms of subsection (1) may not be altered by the President during the incumbent's term of office without the incumbent's written consent or to the incumbent's detriment. 50
- (4) A person appointed as Auditor-General—
- (a) must perform the functions of office full-time; and
  - (b) may not perform any other remunerative work.

**Vacation of office**

8. (1) A person appointed as Auditor-General ceases to be the Auditor-General—
- (a) when that person's term of office expires; or
  - (b) if that person—
    - (i) resigns, subject to subsection (2); or 5
    - (ii) is removed from office in terms of section 194 of the Constitution.
- (2) A person appointed as Auditor-General may resign—
- (a) on account of ill health or for any other reason which the President considers sufficient; and
  - (b) by giving at least three month's written notice to the President, but the 10 President may accept a shorter period.

**Acting Auditor-General**

9. The Deputy Auditor-General assumes the role of acting Auditor-General if—
- (a) the Auditor-General is unable to perform the functions of office;
  - (b) the Auditor-General is absent; or 15
  - (c) the appointment of a person as Auditor-General is pending.

**Part 3: Accountability****Annual report to Parliament**

10. The Auditor-General must annually report to the National Assembly on his or her activities and the performance of his or her functions, including on— 20
- (a) the Auditor-General's overall control of the administration of the Auditor-General in terms of section 30(2);
  - (b) the standards for audits determined in terms of section 13(1);
  - (c) the categories of services provided in terms of section 5(1)(a)(i) and the 25 institutions and accounting entities to which such services have been provided; and
  - (d) any instances of co-operation in terms of section 5(1)(d). 25

**CHAPTER 3****AUDITS****Part 1: Audits by Auditor-General 30****Application of this Part**

11. This Part applies to all audits of institutions and accounting entities which the Auditor-General—
- (a) must perform in terms of section 4(1) or (2); or
  - (b) opts to perform in terms of section 4(3). 35

**Authorised auditors**

12. (1) The Auditor-General may authorise one or more persons to perform or to assist in the performance of an audit referred to in section 11.
- (2) Such a person must be—
- (a) a member of the staff of the Auditor-General who— 40
    - (i) is registered as an accountant and auditor in terms of the Public Accountants' and Auditors' Act; or
    - (ii) is not so registered but has the qualifications, experience and competence referred to in subsection (3)(a);
  - (b) a private practitioner who— 45
    - (i) is registered as an accountant and auditor in terms of the Public Accountants' and Auditors' Act and is engaged in public practice as an accountant and auditor; or
    - (ii) is not so registered but has the qualifications, experience and competence referred to in subsection (3)(a); or 50

- (c) a person with non-accountancy qualifications, experience and competence to the extent that a person with such qualifications, experience and competence is necessary for any particular audit.
- (3) The Auditor-General must—
  - (a) determine the minimum qualifications, experience and competence for authorised auditors referred to in subsection (2)(a) (ii) and (b) (ii) for appointment as authorised auditors; and 5
  - (b) after consulting the Audit Commission, issue a code of conduct for authorised auditors, prescribing—
    - (i) standards of professional conduct for the performance of an audit or their other functions, taking into consideration the manner in which the accountancy and audit profession is regulated in this regard; 10
    - (ii) any disciplinary steps for misconduct; and
    - (iii) any other relevant matter;
  - (c) determine the manner in which an audit referred to in section 11 must be performed; and 15
  - (d) determine the manner in which any powers conferred on authorised auditors in terms of this Act may be exercised, and limitations on the exercise of any of those powers. 20
- (4) Authorised auditors exercise their functions and powers—
  - (a) in accordance with the code of conduct referred to in subsection (3); and
  - (b) subject to any directives issued by the Auditor-General.
- (5) The code of conduct for authorised auditors referred to in subsection (3) is subject to any code of professional conduct prescribed by any legislation applicable to public practitioners in the accountancy and auditing profession, and in the event of any inconsistency between the code of conduct referred to in subsection (3) and such code of professional conduct, the latter code prevails. 25

#### Standards for audits

- 13. (1) The Auditor-General, after consulting the Audit Commission, must determine — 30
  - (a) the standards to be applied in performing audits referred to in section 11 ;
  - (b) the nature and scope of such audits; and
  - (c) procedures for the handling of complaints.
- (2) In setting standards the Auditor-General must take into account all relevant factors, including— 35
  - (a) best auditing practices, both locally and internationally; and
  - (b) the capacity of the Auditor-General and the accounting profession to comply with those standards.
- (3) The Auditor-General may—
  - (a) make different determinations on the matters mentioned in subsection (1) for different categories of audits; or 40
  - (b) issue specific directives on those matters in any specific case.

#### Submission of financial statements

- 14. (1) Financial statements submitted to the Auditor-General for auditing by an auditee which is subject to the Public Finance Management Act or the Municipal Finance Management Act, must be submitted within the period, be in a format, contain the information and otherwise comply with the requirements determined by those Acts. 45
- (2) Financial statements submitted by an auditee which is not subject to the Public Finance Management Act or the Municipal Finance Management Act, must be submitted within the period, be in a format, contain the information and otherwise comply with any requirements determined by the Auditor-General. 50

#### General auditing powers

- 15. (1) When performing an audit referred to in section 11, the Auditor-General or an authorised auditor has at all reasonable times full and unrestricted access to—
  - (a) any document, book or written or electronic record or information of the auditee or which reflects or may elucidate the business, financial results, financial position or performance of the auditee; 55

- (b) any of the assets of or under the control of the auditee; or
- (c) any staff member or representative of the auditee.
- (2) Auditor-General or an authorised auditor may for the purpose of an audit—
  - (a) enter any premises or vehicle of or under the control of an auditee, including any premises or vehicle where—
    - (i) a document, book or written or electronic record or information, or any assets, referred to in subsection (1) are kept; or
    - (ii) a staff member or representative of the auditee performs work for the auditee;
  - (b) direct a person to produce, or to deliver at a specified place and time and in a specified format—
    - (i) any such document, book or written or electronic record or information, including any confidential, secret or classified document, book, record or information of whatever nature; or
    - (ii) any such asset;
  - (c) inspect, and question any person about, any such document, book or written or electronic record or information, or any such asset;
  - (d) copy, or make extracts from, any such document, book or written or electronic record or information, at the expense of the auditee, or remove such document, book, record or written or electronic information to make copies or extracts;
  - (e) direct a person to disclose, either orally or in writing, any information that may be relevant for the audit, including any confidential, secret or classified information, and question any person about such information; or
  - (f) direct—
    - (i) a person to disclose information or to give answers to questions in terms of this subsection in writing or under oath or affirmation; or
    - (ii) that any such information or answers be recorded.

#### Searches of premises, vehicles and persons

16. (1) When performing an audit, the Auditor-General or an authorised auditor designated by the Auditor-General may, under the authority of a warrant or, subject to subsection (2), without a warrant—
- (a) enter any premises or vehicle on reasonable suspicion that a document, book or written or electronic record or information, or an asset, referred to in section 15(1)(a) or (b) which the Auditor-General or such authorised auditor needs to inspect for the audit is hidden or kept on those premises or in that vehicle;
  - (b) search the premises or vehicle, or any person on the premises or in the vehicle, for such document, book or written or electronic record or information or asset; and
  - (c) seize such document, book or written or electronic record or information or asset for the purpose of completing the audit.
- (2) The Auditor-General or such authorised auditor may in terms of subsection (1) enter and search any premises or vehicle, or search any person, without a warrant, but only if—
- (a) the person in control of the premises or vehicle consents to the entry and search of the premises or vehicle or the person to be search consents to the search, as the case may be; or
  - (b) there are reasonable grounds to believe that a warrant would on application be issued, but that the delay that may be caused by applying for a warrant would defeat the object of the entry or search.
- (3) The person conducting the search must provide proof of identify to the person in charge of the premises or vehicle. If a warrant has been obtained, a copy of the warrant must be handed to the person in charge of the premises or vehicle or affixed to the premises or vehicle at a prominent place.
- (4) The Auditor-General or such an authorised auditor is entitled to assistance from the South African Police Service or other law enforcement agency or investigating authority to enforce the provisions of this section.
- (5) The entering and search of premises or a vehicle, and the search of a person, in terms of this section must be conducted with strict regard to decency, order and any affected person's constitutional rights.

**Accompanying assistants**

17. When exercising the powers referred to in sections 15 and 16, the Auditor-General or an authorised auditor may be accompanied by such assistants and other persons as are reasonably required for the exercise of those powers.

**Protection of information**

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18. (1) The Auditor-General must take precautionary steps to guard against the disclosure of secret or classified information obtained in terms of section 15(1) or (2) or 16.

(2) Steps taken in terms of subsection (1) may not prevent the disclosure of any audit finding by the Auditor-General or an authorised auditor on any unauthorised expenditure, irregular expenditure or fruitless and wasteful expenditure within the meaning of the Public Finance Management Act or the Municipal Finance Management Act, or on any other irregular or criminal conduct relating to the financial affairs of an auditee, but any such disclosure may not include facts the disclosure of which would harm the national interest.

(3) The Auditor-General, an authorised auditor or an assistant or other person referred to in section 17, is competent but may not be compelled to disclose information obtained in the course of official duties in any proceedings in which the Auditor-General is not a party, before—

(a) a court in a civil matter; or

(b) any other body or institution established in terms of legislation.

(4) Subsection (3) does not apply in any proceedings before—

(a) a legislature or an internal committee of a legislature; or

(b) a court in a criminal matter.

**Auditees to render assistance**

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19. (1) An auditee must—

(a) render all reasonable assistance to the Auditor-General or the authorised auditor performing the audit to enable the Auditor-General or authorised auditor to complete the audit within the applicable timeframes;

(b) accede free of charge to all reasonable requests of the Auditor-General or the authorised auditor to facilitate the expeditious completion of the audit, including—

(i) the provision of suitable office accommodation and parking on the auditee's premises;

(ii) logistical support required for the proper carrying out of the audit; and

(iii) access to office equipment.

**Audit reports**

20. (1) The Auditor-General must in respect of each audit referred to in section 11 prepare a report on the audit.

(2) An audit report must reflect such opinions and statements as may be required by any legislation applicable to the institution or accounting entity which is the subject of the audit, but must reflect at least an opinion or conclusion on each of the following matters:

(a) The fairness of the financial statements of the institution or accounting entity and their compliance with any applicable financial reporting framework or any applicable legislation;

(b) The institution or accounting entity's compliance with legislation applicable to financial matters, financial management and other related matters; and

(c) The reported information relating to the performance of the institution or accounting entity against predetermined objectives.

(3) In addition, the Auditor-General may report on whether the institution's resources were procured economically and utilised efficiently and effectively.



**Submission of audit reports**

21. (1) The Auditor-General must submit an audit report in accordance with any legislation applicable to the institution or accounting entity which is the subject of the audit.

(2) The Auditor-General must submit all audit reports to the relevant legislature. 5

(3) Audit reports must be tabled in the relevant legislature within a reasonable time. If an audit report is not tabled in a legislature within one month after its first sitting after the report has been submitted by the Auditor-General, the Auditor-General must promptly publish the report.

(4) Despite any other legislation, the Auditor-General may in the public interest 10 submit an audit report to—

(a) any legislature whether or not that legislature is a relevant legislature; or

(b) any organ of state.

**Audit reports on confidential, secret or classified accounts**

22. (1) When the Auditor-General reports on an account established by the Security 15 Services Special Account Act, 1969 (Act No. 81 of 1969), the Defence Special Account Act, 1974 (Act No. 6 of 1974), or the Secret Services Act, 1978 (Act No. 56 of 1978), or any other confidential special account established by any other Act of Parliament, the Auditor-General—

(a) must have due regard for the special nature of the account; and 20

(b) may after consulting the President, the Cabinet member responsible for finance and the Cabinet member responsible for the account, limit the audit report on such account to the necessary extent.

(2) Subsection (1) does not prevent the disclosure of any audit finding by the Auditor-General or an authorised auditor on any unauthorised expenditure, irregular 25 expenditure or fruitless and wasteful expenditure within the meaning of the Public Finance Management Act, or on any other irregular or criminal conduct relating to the financial affairs of such an account, but any such disclosure may not include facts the disclosure of which would harm the national interest.

**Audit fees**

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23. (1) The Auditor-General determines the basis for the calculation of audit fees to be recovered from auditees in respect of audits referred to in section 11, after having consulted the Audit Commission and the National Treasury.

(2) An auditee must settle the account for audit fees within 30 days from the date of invoice, failing which the Auditor-General must promptly take legal steps to recover the 35 amount, unless it is not in the financial interest of the Auditor-General to do so.

(3) The Auditor-General may charge interest on any audit account not paid within 30 days of the date of the account at the rate prescribed in terms of section 1(2) of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975).

(4) If an auditee defaults on the payment of audit fees, the Auditor-General must 40 promptly notify the National Treasury.

(5) The National Treasury or the relevant provincial treasury, as may be appropriate, may, after consulting the Auditor-General, direct that audit fees recoverable from an auditee which is not a national or provincial department, be defrayed from a vote on the 45 national or a provincial budget identified by the relevant treasury.

(6) If the cost of auditing an auditee for any financial year exceeds one percent of the total current and capital expenditure of such auditee for that financial year, such excess must be defrayed from the National Treasury vote.

**Part 2: Audits of institutions by auditors in private practice****Application of this Part**

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24. This Part applies to audits of institutions referred to in section 4(3) where the Auditor-General has opted not to perform the audit.

**Appointment of auditors**

25. (1) If the Auditor-General has opted not to perform the audit of an institution referred to in section 4(3), the institution must appoint as its auditor a person registered in terms of the Public Accountants' and Auditors' Act as an accountant and auditor, and engaged in public practice as such. 5

(2) Before appointing an auditor in terms of subsection (1), the institution must give notice of such appointment to the Auditor-General, including information on the extent to which the auditor would provide other services than audit services during the duration of the appointment, and any other information required by the Auditor-General.

(3) If the Auditor-General within 14 days of receiving a notice in terms of subsection (1) rejects the institution's appointment, the institution must in terms of that subsection appoint another person as its auditor. 10

**Discharge of auditors**

26. (1) An institution referred to in section 4(3) may discharge an auditor appointed by it in terms of section 25(1)(a) before the expiry of that auditor's term of appointment, but only with the consent of the Auditor-General. 15

(2) If such an institution intends discharging an auditor in terms of subsection (1), it must—

- (a) give the auditor notice, in writing, setting out the reasons for the discharge; and 20
- (b) give the auditor an opportunity to make representations, in writing, to the Auditor-General within 20 days of receipt of the notice.

(3) The Auditor-General must report any discharge of an auditor in terms of subsection (1) to the relevant legislature.

**Duties and powers of auditors**

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27. (1) An auditor appointed in terms of section 25(1) (a) must perform the functions of office as auditor in terms of section 20 of the Public Accountants' and Auditors' Act.

(2) In performing those functions as the auditor of an institution, the auditor has the powers assigned to the Auditor-General in terms of section 15.

(3) An auditor may consult the Auditor-General or a person designated by the Auditor-General concerning any matter relating to the auditing of the institution concerned. 30

(4) An auditor—

- (a) must be given notice of every meeting of the institution's audit committee, if the institution has such a committee; and 35
- (b) may attend, and participate in, any meeting of such an audit committee at the expense of the institution.

(5) The Auditor-General or a person designated by the Auditor-General may request information regarding the audit from an auditor appointed in terms of section 25(1)(a).

**Audit reports**

40

28. (1) The report of an auditor appointed in terms of section 25(1)(a) must state separately in respect of each of the following matters whether in the auditor's opinion—

- (a) the financial statements of the institution or accounting entity fairly present, in all material respects, the financial position at a specific date and results of its operations and cash flow for the period which ended on that date; 45
- (b) the transactions that were audited were in all material respects in accordance with the functions of the institution;
- (c) the information relating to the performance of the institution against predetermined objectives is fair in all material respects; and
- (d) if required by the Auditor-General, whether the institution's resources were procured economically and utilised efficiently and effectively. 50

(2) The auditor must submit copies of the audit report—

- (a) to the institution;
- (b) if the institution has an executive authority within the meaning of the Public Finance Management Act, to that executive authority for tabling in the relevant legislature; 55



- (c) to the Auditor-General; and
- (d) to the National Treasury or the relevant provincial treasury, as may be appropriate.
- (3) The auditor—
  - (a) must report the results of any investigation carried out in terms of section 27(2)(c)—
    - (i) in the case of a public entity listed in the Public Finance Management Act, to the executive authority of the entity within the meaning of the Public Finance Management Act; or
    - (ii) in any other case, to the National Treasury or the relevant provincial treasury; and
  - (b) when reporting in terms of paragraph (a), must draw attention to any other matters within the auditor's investigation which, in the auditor's opinion, should be disclosed.

### ***Part 3: Investigations and special audits by Auditor-General*** 15

#### **Carrying out of investigations and special audits**

29. (1) The Auditor-General may designate an authorised auditor to carry out an investigation or special audit referred to in section 5(1)(b).
- (2) The provisions of Part 1 of this Chapter, read with any changes as may be required by the context, apply to any investigation or special audit referred to in subsection (1). 20
- (3) If the Auditor-General issues a special report on an investigation or special audit in terms of this section, the Auditor-General must submit the special report to—
- (a) the institution or accounting entity which is the subject of the investigation or special audit;
  - (b) if the institution has an executive authority within the meaning of the Public Finance Management Act, to that executive authority; 25
  - (c) the National Treasury or the relevant provincial treasury, as may be appropriate; and
  - (d) the relevant legislature, for tabling in the relevant legislature.
- (4) The Auditor-General may charge the institution or accounting entity concerned a reasonable fee for carrying out an investigation or special audit in terms of this section. 30

## **CHAPTER 4**

### **ADMINISTRATION OF AUDITOR-GENERAL**

#### **Administration**

30. (1) The Auditor-General has an administration consisting of— 35
- (a) the Deputy Auditor-General; and
  - (b) any other staff members referred to in section 34.
- (2) The Auditor-General is in overall control of and accountable for the administration.

### ***Part 1: Deputy Auditor-General*** 40

#### **Appointment of Deputy Auditor-General**

31. (1) The Auditor-General, after consulting the Audit Commission, must appoint a person with appropriate qualifications and experience as the Deputy Auditor-General.
- (2) The person appointed as the Deputy Auditor-General holds office—
- (a) for an agreed term not exceeding five years, but which is renewable for one further period of no longer than five years; and 45
  - (b) on terms and conditions determined by the Auditor-General, which must include performance standards.

#### **Responsibilities of Deputy Auditor-General**

32. (1) The Deputy Auditor-General is the head of the administration who must perform the functions of office in accordance with the directions of the Auditor-General. 50

- (2) As administrative head, the Deputy Auditor-General—
- (a) is responsible for the management of the administration, including—
    - (i) the formation and development of an efficient staff;
    - (ii) the organisation, control and management of all staff; and
    - (iii) the maintenance of discipline; 5
  - (b) must comply with section 42;
  - (c) must carry out the decisions of the Auditor-General;
  - (d) must perform such duties and may exercise such powers as the Auditor-General may delegate to the Deputy Auditor-General; and
  - (e) must report to the Auditor-General on aspects of management and the exercise of responsibilities, duties and powers, at such frequency and in such manner, as the Auditor-General may require. 10
- (3) The Deputy Auditor-General must exercise the responsibilities, duties and powers of office subject to the directions of the Auditor-General.

#### **Acting Deputy Auditor-General** 15

33. (1) Whenever the Deputy Auditor-General is for any reason absent or unable to exercise the responsibilities, duties and powers of office, or whenever there is a vacancy in the office of Deputy Auditor-General, the Auditor-General must appoint another staff member as acting Deputy Auditor-General for a period not exceeding six months.

- (2) Whilst acting as Deputy Auditor-General, such staff member— 20
- (a) has the responsibilities, duties and powers of the Deputy Auditor-General; and
  - (b) is employed subject to such terms and conditions of employment as the Auditor-General may determine.

#### **Part 2: Other staff**

#### **Appointments** 25

34. (1) The Deputy Auditor-General—
- (a) within the financial, administrative and other limits set by the Auditor-General, must determine a staff establishment necessary for the work of the Auditor-General; and
  - (b) may appoint persons in posts on the staff establishment. 30
- (2) All appointments to senior and other posts identified by the Auditor-General may be made only with the approval of the Auditor-General.
- (3) Persons appointed as employees are employed subject to the terms and conditions of employment determined by the Auditor-General, subject to section 35. Terms and conditions of employment must be consistent with the basic values and principles set out in section 195 of the Constitution. 35
- (4) Persons seconded to the administration or appointed on contract to perform specific tasks, must carry out their duties under the control and directions of the Deputy Auditor-General in accordance with the secondment or contract.

#### **Human resource management** 40

35. Human resource management and related issues, including terms and conditions of employment, must be dealt with in accordance with generally accepted human resource practice and applicable labour legislation through appropriate management, consultative, and where applicable, negotiation processes.

#### **Part 3: Financial administration** 45

#### **Funds**

36. (1) The funds of the Auditor-General consists of money—
- (a) earned as fees for audits or services rendered by the Auditor-General in terms of this Act or any other legislation;
  - (b) appropriated by Parliament for the purposes of the Auditor-General; 50
  - (c) earned on investments;
  - (d) obtained by the alienation or letting of movable or immovable property;
  - (e) accruing to the Auditor-General from any other source; and

(f) otherwise becoming available to the Auditor-General.

(2) The Auditor-General may accept a donation or bequest, but must disclose any donations or bequests in the annual report of the Auditor-General. All material donations or bequests must be itemised.

#### **Bank accounts**

5

37. (1) The Auditor-General must open one or more accounts with an institution or institutions registered in terms of the Banks Act, 1990 (Act No. 94 of 1990).

(2) All money received by or on behalf of the Auditor-General must promptly be deposited into such account or accounts.

(3) Only the Deputy Auditor-General or a staff member authorised by the Deputy Auditor-General, in writing, may withdraw or authorise the withdrawal of money from such a bank account. 10

#### **Budget and business plan**

38. (1) The affairs of the Auditor-General must be conducted in accordance with a budget and business plan prepared by the Auditor-General for each financial year. The budget must include estimates of revenue and expenditure for the financial year to which it relates, and the basis on which audit fees for the financial year are to be calculated. 15

(2) The Auditor-General must at least six months before the start of a financial year submit the budget and business plan for that year to—

- (a) the Audit Commission; 20
- (b) the National Treasury, for planning of and preparing the national annual budget; and
- (c) the Speaker, for parliamentary oversight in terms of section 55(2)(b)(ii) of the Constitution.

(3) The Audit Commission must consider the budget and business plan and within two months of receipt of the budget and business plan submit its recommendations to— 25

- (a) the Speaker for purposes of the proceedings referred to in subsection (2)(c); and
- (b) the National Treasury.

(4) The Auditor-General may at the end of a financial year retain, for working capital and general reserve requirements, any surplus for the year not exceeding an amount equal to 10% of the Auditor-General's total operating expenditure during that year, and any excess must be paid into the National Revenue Fund. 30

#### **Auditing of Auditor-General's accounts, financial statements and financial management**

35

39. (1) The Audit Commission must annually appoint an independent external auditor to audit the accounts, financial statements and financial management of the Auditor-General, and the Auditor-General's performance information.

(2) A person appointed as external auditor in terms of subsection (1)—

- (a) must be registered as an accountant and auditor in terms of the Public Accountants' and Auditors' Act and engaged in public practice as accountant and auditor; 40
- (b) may not be a staff member in the administration of the Auditor-General; and
- (c) may not be a person who was engaged as an authorised auditor during the two years before the appointment. 45

#### **Annual report and financial statements**

40. (1) The Deputy Auditor-General must for each financial year prepare an annual report and financial statements which—

- (a) fairly present the state of affairs of the Auditor-General, including the Auditor-General's business, financial results, performance against predetermined objectives and financial position as at the end of the financial year; and 50
- (b) include particulars of—
  - (i) any material losses through criminal conduct, any irregular expenditure, and any fruitless and wasteful expenditure that occurred during the financial year; 55

- (ii) any criminal or disciplinary steps taken as a consequence of such losses or irregular expenditure or fruitless and wasteful expenditure;
  - (iii) any losses recovered or written off;
  - (iv) any other matters that the external auditor considers necessary.
- (2) The financial statements must be in accordance with at least South African Generally Accepted Accounting Practice. 5
- (3) The Deputy Auditor-General must within two months after the end of a financial year submit the financial statements for that year to the external auditor appointed in terms of section 39.
- (3) The external auditor must— 10
  - (a) audit those statements; and
  - (b) submit an audit report on those statements to the Auditor-General within two months of receipt of the statements for auditing.
- (4) The Auditor-General must submit the annual report, the financial statements and the audit report on those statements to the Audit Commission and the National Assembly within six months after the financial year to which they relate. 15
- (5) If the Auditor-General fails to comply with subsection (4), the Auditor-General must promptly submit a written explanation setting out the reasons for the delay to the National Assembly.

#### **Financial year** 20

41. The financial year of the Auditor-General is 1 April to 31 March the next year.

#### **Financial responsibilities of Deputy Auditor-General**

- 42. (1) The Deputy Auditor-General is the accounting officer in the administration of the Auditor-General.
- (2) As accounting officer, the Deputy Auditor-General is responsible for— 25
  - (a) managing the financial administration of the Auditor-General;
  - (b) all income and expenditure of the Auditor-General; and
  - (c) all assets and the discharge of all liabilities of the Auditor-General.
- (3) The Deputy Auditor-General must, for the purposes of subsection (2), take all reasonable steps to ensure— 30
  - (a) that full, true and effective records of all income and expenditure and of all assets, liabilities, and of all financial transactions of the Auditor-General are kept;
  - (b) that the Auditor-General has and maintains—
    - (i) effective, efficient and transparent systems of financial and risk management and internal control; 35
    - (ii) a system of internal audit under the control and direction of an audit committee;
    - (iii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective; and 40
    - (iv) a system for properly evaluating all major capital projects prior to a final decision on the project.
  - (c) that the resources of the Auditor-General are used effectively, efficiently, economically and transparently;
  - (d) that all money due to the Auditor-General is collected; 45
  - (e) that irregular expenditure, fruitless and wasteful expenditure and losses resulting from criminal conduct are prevented;
  - (f) that available working capital is managed efficiently and economically;
  - (g) that the assets of the Auditor-General are effectively managed, safeguarded and maintained, and that liabilities are properly managed; 50
  - (h) that any tax, levy, duty, pension, medical aid scheme and other statutory commitments of the Auditor-General are complied with;
  - (i) that all contractual obligations of the Auditor-General are complied with and that all money owing is paid within the agreed period;
  - (j) that any irregular or fruitless and wasteful expenditure in the administration is immediately reported to the Auditor-General, in writing; 55
  - (k) that disciplinary, or when appropriate, criminal proceedings, are instituted against any staff member who has allegedly committed an act of financial

- misconduct in terms of section 45, an offence in terms of section 63 or a criminal act resulting in a loss for the Auditor-General;
- (l) that all relevant financial considerations, including issues of propriety, regularity and value for money, are considered when decisions affecting the Auditor-General's funds are made, and, when necessary, that those considerations are brought to the attention of the Auditor-General; and 5
- (m) that staff members comply with the provisions of this Act.
- (4) If the Deputy Auditor-General is unable to comply with any of his or her responsibilities as accounting officer, the Deputy Auditor-General must promptly report the inability, together with reasons, to the Auditor-General. 10
- (5) The Deputy Auditor-General must—
- (a) take effective and appropriate steps to prevent any overspending of the budget referred to in section 38 or any expenditure not in accordance with the budget; and
- (b) report to the Auditor-General and the Audit Commission on any actual or impending— 15
- (i) under collection of revenue due;
- (ii) shortfalls in budgeted revenue; and
- (iii) overspending of the budget or expenditure not in accordance with the budget. 20
- (6) The Deputy Auditor-General has such additional responsibilities as accounting officer as the Auditor-General may determine from time to time.

#### Financial responsibilities of other staff members

43. Each member of the staff of the Auditor-General exercising financial management responsibilities must take all reasonable steps within his or her area of responsibility to ensure— 25
- (a) that the system of financial management and internal control established for the administration is carried out diligently;
- (b) that the financial and other resources of the Auditor-General are utilised effectively, efficiently, economically and transparently; 30
- (c) that any irregular or fruitless and wasteful expenditure, and losses resulting from criminal conduct, are prevented;
- (d) that all revenue due to the Auditor-General is collected;
- (e) that the provisions of this Act to the extent applicable to that staff member, including any delegations by the Auditor-General or the Deputy Auditor-General, are complied with; and 35
- (f) that the assets of the Auditor-General are effectively managed, safeguarded and maintained, and that liabilities are properly managed.

#### Irregular and fruitless and wasteful expenditure

44. (1) Without limiting liability in terms of the common law or other legislation— 40
- (a) the Deputy Auditor-General is liable for an irregular expenditure or a fruitless and wasteful expenditure deliberately or negligently incurred or authorised by the Deputy Auditor-General, subject to subsection (2); and
- (b) a staff member who deliberately or negligently incurred or authorised an irregular expenditure or a fruitless and wasteful expenditure is liable for that expenditure. 45
- (2) If the Deputy Auditor-General becomes aware that the Auditor-General has taken a decision which, if implemented, is likely to result in irregular or fruitless and wasteful expenditure, the Deputy Auditor-General is not liable for any ensuing irregular or fruitless and wasteful expenditure provided that the Deputy Auditor-General has informed the Auditor-General, in writing, that the expenditure is likely to be irregular or fruitless and wasteful expenditure. 50
- (3) The Deputy Auditor-General must promptly inform the Auditor-General, in writing, of—
- (a) any irregular or fruitless and wasteful expenditure incurred in the administration of the Auditor-General; 55
- (b) whether any person is responsible or under investigation for such irregular or fruitless and wasteful expenditure; and



- (c) the steps that have been taken—
  - (i) to recover or rectify such expenditure; and
  - (ii) to prevent a recurrence of such expenditure.

#### **Financial misconduct by staff members**

- 45.** (1) The Deputy Auditor-General commits an act of financial misconduct if the Deputy Auditor-General deliberately or negligently— 5
- (a) fails to comply with a requirement of section 40(1) or (3) or 42; or
  - (b) makes or permits, or instructs any other person to make, an irregular expenditure or a fruitless and wasteful expenditure.
- (2) A member of the staff of the Auditor-General commits an act of financial misconduct if that staff member deliberately or negligently— 10
- (a) fails to carry out a duty delegated to that staff member in terms of section 60;
  - (b) contravenes or fails to comply with a requirement of section 43 or a condition of any delegation of a power or duty in terms of section 60; or
  - (c) makes or permits, or instructs any other person to make, an irregular expenditure or a fruitless and wasteful expenditure. 15
- (3) Financial misconduct is a ground for dismissal or suspension of, or other appropriate sanction against, a staff member in the administration despite any other legislation.

#### **Applicable legal regime for disciplinary proceedings** 20

**46.** A charge of financial misconduct against the Deputy Auditor-General or another staff member, must be investigated, heard and disposed of in terms of that person's conditions of employment and any applicable provisions of the code of conduct referred to in section 12(3)(b).

### **CHAPTER 5** 25

#### **AUDIT COMMISSION**

##### *Part 1: Continued existence and functions*

#### **Continued existence**

- 47.** (1) The Audit Commission established by section 12 of the Audit Arrangements Act, 1992 (Act No. 122 of 1992), continues to exist despite the repeal of that Act by section 64 of this Act. 30
- (2) The Auditor-General must provide administrative and logistical assistance to the Audit Commission.
- (3) As from the repeal of the Audit Arrangements Act, 1992, the Audit Commission functions in terms of this Act. 35

#### **Functions**

- 48.** (1) The Audit Commission is a consultative and advisory body, and for this purpose must—
- (a) advise the National Assembly on any matter referred to it by the Assembly concerning the implementation of this Act; 40
  - (b) annually appoint an independent external auditor to audit the accounts and financial statements of the Auditor-General, financial management in the administration of the Auditor-General and the Auditor-General's performance information;
  - (c) examine the annual report and financial statements of the Auditor-General referred to it in terms of section 40(4), including the audit report on those statements, and within two months of receipt of those reports and statements, report thereon to the National Assembly; 45
  - (d) within two months of receipt of the annual budget and business plan of the Auditor-General, submit any recommendations it may have on the plan to the Speaker and the National Treasury in terms of section 38(3); 50

- (e) report to the National Assembly on the adequacy of any quality assurance review processes within the administration of the Auditor-General;
  - (f) make recommendations to the President in terms of section 7 on the conditions of employment of the Auditor-General; and
  - (g) advise the Auditor-General on any matter which the Auditor-General may or must refer to it in terms of this Act, including on—
    - (i) standards for auditing in terms of section 13;
    - (ii) the appointment of a Deputy Auditor-General in terms of section 31; and
    - (iii) the basis for calculating audit fees in terms of section 23.
- (2) The Audit Commission may contract for the services of consultants and other persons that may be reasonably required for the performance of its functions. Expenditure incurred in terms of this subsection must be defrayed from the funds of the Auditor-General.

### **Annual report**

49. The Audit Commission must annually submit to the National Assembly a report on the Commission's activities and the performance of its functions. The Commission must submit its report when the Auditor-General's annual report is submitted to the National Assembly in terms of section 40(4).

## ***Part 2: Composition and membership***

### **Composition**

50. (1) The Audit Commission consists of—
- (a) eight members of Parliament—
    - (i) one of whom must be the Chairperson of the Standing Committee on Public Accounts; and
    - (ii) at least two of whom must be permanent delegates of the National Council of Provinces; and
  - (b) three other persons of stature and good character.
- (2) The members of the Audit Commission are appointed by the President subject to section 51.

### **Appointments**

51. (1) The members referred to in section 50(1)(a)—
- (a) must be members of Parliament nominated by the Speaker of the National Assembly and the Chairperson of the National Council of Provinces, acting jointly and after having consulted the political parties represented in Parliament; and
  - (b) may not be a member of or occupy a position in the national or a provincial executive.
- (2) The members referred to in section 50(1)(b)—
- (a) must be appointed after consultation with the governing body of any profession to which that person may belong;
  - (b) may not be a member of or occupy a position in—
    - (i) the national or a provincial legislature or executive, including the public service or any organ of state under the control of that executive; or
    - (ii) a municipal council or the administration of a municipality.
- (3) When nominating or appointing a person in terms of subsection (1) or (2), the person's knowledge of and experience in auditing, state finance and administrative affairs must be taken into account.

### **Term of office**

52. Members of the Audit Commission are appointed for terms not exceeding five years at a time as may be determined in each case at the time of the appointment, subject to section 56.



**Chairperson**

53. (1) Whenever necessary, the President, after consulting the Speaker of the National Assembly and the Chairperson of the National Council of Provinces, must appoint one of the members referred to in section 50(1)(a) as the chairperson of the Audit Commission. 5

(2) The Chairperson is appointed for a period as may be determined by the President which may not extend beyond his or her term as a member of the Commission.

**Conditions of service**

54. (1) A member of the Audit Commission must be remunerated from the funds of the Auditor-General at the same hourly audit rate as a partner of an audit firm doing work on behalf of the Auditor-General. 10

(2) The functions of a member of the Audit Commission are hereby declared compatible with the functions of a member of the National Assembly for the purposes of section 47(1)(a) (ii) of the Constitution.

**Conduct of members** 15

55. A member of the Audit Commission must act with fidelity, honesty, integrity, and in the best interests of the Auditor-General.

**Termination of membership**

56. (1) A person ceases to be a member of the Audit Commission if that person—

(a) ceases to be a member of Parliament, in the case of a member referred to in section 50(1)(a); 20

(b) resigns; or

(c) fails to attend three consecutive formally scheduled meetings of the Commission or any of its subcommittees, unless valid reasons are provided as stipulated in the Charter. 25

(2) A member may resign by giving at least two month's written notice to the President, but the President may accept a shorter period in a specific case.

(3) If the National Assembly or a provincial legislature is dissolved, the members of the Audit Commission who are members of the Assembly or the National Council of Provinces continue in office as members of the Commission despite subsection (1)(a) until new appointments are made in terms of section 51. 30

**Part 3: Operating procedures****Meetings**

57. (1) The Chairperson of the Audit Commission decides when and where the Commission meets, but a majority of the members may request the Chairperson in writing to convene a meeting at a time and place set out in the request. 35

(2) The Chairperson presides at meetings of the Audit Commission, but if absent from a meeting, the members present must elect another member to preside at the meeting.

**Procedures**

58. The Audit Commission must adopt a Charter determining its own procedures subject to the other provisions of this Act. 40

**Quorum and decisions**

59. (1) A majority of the members of the Audit Commission serving at any relevant time constitutes a quorum for a meeting of the Commission.

(2) A matter before the Audit Commission is decided by the votes of a majority of the members present at the meeting. 45

(3) If on any matter before the Audit Commission there is an equality of votes, the member presiding at the meeting must exercise a casting vote in addition to that person's vote as a member.

## CHAPTER 6

## GENERAL

## Delegation of powers and duties

- 60.** (1) The Auditor-General may delegate any power and duty assigned to the Auditor-General in terms of this Act or any other legislation to— 5
- (a) the Deputy Auditor-General;
  - (b) any other member of the staff of the Auditor-General; or
  - (c) an authorised auditor.
- (2) The Deputy Auditor-General may delegate to another staff member— 10
- (a) any power and duty assigned to the Deputy Auditor-General in terms of this Act; or
  - (b) any power or duty reasonably necessary to assist the Deputy Auditor-General in complying with a duty assigned in terms of this Act to the Deputy Auditor-General as accounting officer to take reasonable steps to ensure the achievement of a specific result. 15
- (3) A delegation in terms of subsection (1) or (2)— 20
- (a) must be in writing;
  - (b) is subject to any limitations, conditions and directions the Auditor-General or Deputy Auditor-General may impose;
  - (c) may include the power to sub-delegate; 25
  - (d) does not divest the Auditor-General or Deputy Auditor-General of the responsibility concerning the exercise of the delegated power or the delegated duty;
  - (e) does not prevent the exercise of the delegated power or delegated duty by the Auditor-General or Deputy Auditor-General; or 25
  - (f) may be withdrawn at any time.
- (4) The Auditor-General or Deputy Auditor-General may confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.

Limitation of liability 30

**61.** The Auditor-General, the Deputy Auditor-General, any other staff member or any authorised auditor exercising a power or carrying out a duty in terms of this Act, is not liable in respect of any loss or damage resulting from the exercise of that power or the carrying out of that duty in good faith.

Disclosure of information 35

**62.** No authorised auditor, person assisting an authorised auditor or a member of the staff of the Auditor-General may, without the permission of the Auditor-General, disclose information obtained in the course of an audit or the carrying out of duties in terms of this Act otherwise than in an audit report or in accordance with section 18(4).

Offences and penalties 40

- 63.** (1) A person is guilty of an offence if that person— 45
- (a) hinders or interferes with the Auditor-General or any person exercising a power or carrying out a duty in terms of this Act;
  - (b) refuses or fails to comply with a request of the Auditor-General or an authorised auditor in terms of section 15; 45
  - (c) furnishes false or misleading information when complying with a request of the Auditor-General or an authorised auditor; or
  - (d) contravenes section 62.
- (2) The Deputy Auditor-General, as accounting officer, is guilty of an offence if he or she— 50
- (a) deliberately or in a grossly negligent way—
    - (i) contravenes or fails to comply with a provision of section 40 or 42;
    - (ii) fails to take steps to prevent irregular or fruitless and wasteful expenditure; or

- (iii) fails to take steps to prevent corruptive practices in the management of the assets of the Auditor-General or the receipt of money;
- (b) deliberately misleads or withholds information from the Auditor-General's external auditor on any bank accounts of the Auditor-General or on money received or spent; or 5
- (c) deliberately provides false or misleading information in—
  - (i) Auditor-General's financial statements submitted to the Auditor-General's external auditor in terms of section 40; or
  - (ii) the Auditor-General's annual report.
- (3) A member of the staff of the Auditor-General to whom a power or duty was delegated in terms of section 60, is guilty of an offence if that official deliberately or in a grossly negligent way contravenes or fails to comply with a condition of the delegation. 10
- (4) Any person convicted of an offence in terms of this Act, is liable to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment. 15

### Repeal of legislation

64. The legislation mentioned in the second column of the table in the Schedule is hereby repealed to the extent mentioned in the third column, subject to section 65.

### Transitional provision

- 65. (1) As from the date of repeal of the legislation referred to in section 64—
  - (a) the person who was the Auditor-General immediately before the repeal of such legislation, remains the Auditor-General for the unexpired part of the term for which that person was appointed;
  - (b) the person who was the Deputy Auditor-General immediately before the repeal of such legislation, remains the Deputy Auditor-General for the unexpired part of the term for which that person was appointed; 25
  - (c) a person who was an employee of the Office of the Auditor-General immediately before the repeal of such legislation, becomes an employee of the Auditor-General; and 30
  - (d) all the funds, assets, liabilities, rights and obligations of the Office of the Auditor-General, including any balance in the Audit Revenue Fund, becomes the funds, assets, liabilities, rights and obligations of the Auditor-General.
- (2) The repeal of the legislation referred to in section 64 does not affect the conditions of employment of a person referred to in subsection (1)(a), (b) or (c), including any accumulated pension, leave or other benefits to which such a person was entitled immediately before the repeal of that Act, and such a person remains subject to the same conditions of employment applicable to that person immediately before the repeal of that Act without a break in those conditions of employment. 35
- (3) Any person who immediately before the repeal of the Audit Arrangements Act, 1992 (Act No. 122 of 1992), was— 40
  - (a) a member of the Audit Commission, remains a member of the Commission for the unexpired part of the term for which that person was appointed as a member; and
  - (b) the chairperson of the Commission, remains the chairperson of the Commission for the unexpired part of the term for which that person was appointed as the chairperson. 45
- (4) Anything done in terms of legislation repealed by section 64 and which could have been done or must be done in terms of a provision of this Act must be regarded as having been done in terms of the provision of this Act. 50

### Short title and commencement

66. This Act is called the Public Audit Act, 2003, and takes effect on a date determined by the President by proclamation.

**SCHEDULE****REPEAL OF LEGISLATION****(Section 92)**

<b>No. and year of Act</b>	<b>Short title of Act</b>	<b>Extent of repeal</b>
Act No. 12 of 1995	Auditor-General Act, 1995	The repeal of the whole
Act No. 122 of 1992	Audit Arrangements Act, 1992	The repeal of the whole
Act No 1 of 1999	Public Finance Management Act, 1999	Sections 58, 59, 60, 61 and 62 are hereby repealed

## **MEMORANDUM ON THE OBJECTS OF THE PUBLIC AUDIT BILL**

### **Purpose of Bill**

1. The Constitution requires the auditing of all public sector departments, municipalities, and publicly funded entities. In Chapter 9, the Constitution recognises the Auditor-General as an Institution Supporting Constitutional Democracy through auditing and reporting, and envisages, in section 188(4), the prescription, by national legislation, of additional powers and functions for the Auditor-General. This Bill seeks to give effect to the provisions of the Constitution establishing and assigning functions to an Auditor-General by prescribing such additional powers and functions as well as ancillary matters necessary to enable the Auditor-General to perform his or her functions effectively. The Bill therefore seeks to provide for the auditing of institutions in the public sector; seeks harmonisation with existing public financial management legislation; seeks to provide for the continuation an Audit Commission; and to provide for matters connected therewith. The Bill also seeks to repeal the existing Auditor-General Act, 1995 (Act No. 12 of 1995), the Audit Arrangements Act, 1992 (Act No. 122 of 1992) and certain sections of the PFMA (Act No. 1 of 1999).

### **Financial implications for State**

2. None are foreseen.

### **Consultation**

3. The Audit Commission, National Treasury and the State Law Advisers were consulted in the drafting of the Bill.

### **Parliamentary procedure**

4. The Office of the Auditor-General is of the opinion that this Bill should be dealt with in accordance with the procedure established by section 75 of the Constitution.

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