

- 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 20

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 30

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)—
- (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; 20
 - (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—
- (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 20

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)

| No. and year of Act | Short title of Act | Extent of repeal |
|----------------------------|--|---|
| 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.