

# Municipal Police

## Towards a safer environment

Visible policing has long been considered as indispensable in the fight against crime and lawlessness. Quick-fix solutions, such as rent-a-cop schemes, were put forward as the answer. With the passing of the South African Police Services Amendment Act 83 of 1998, the legal framework has been created for the establishment of municipal police services. The Act, which came into operation on 1 January 1999, gives effect to section 206(7) of the Constitution which requires that national legislation must provide for a framework for the establishment, powers, function and control of municipal police services. The establishment of municipal police services can rightly be seen as giving effect to some of the objectives of local government stated in section 152(1) of the Constitution - the promotion of a safe and healthy environment and the provision of services in a sustainable manner.

The Act intends to govern all aspects of municipal policing. A municipality may thus not establish a municipal service with the word "police" in its name, unless it has been established in terms of this Act.

### Background

The interim Constitution of 1993 made provision for municipal police services. When the South African Police Services Act 68 of 1995 was enacted, it contained one short section setting out the broad framework for the establishment of municipal and metropolitan police services. The national Minister of Safety and Security and the National Commissioner of the South African Police Service were the principal decision-makers with no role for the provinces.

A National Task Group on Municipal Police Services was formed at the end of 1995 to report on key issues relating to municipal police services. The Task Group consisted of representatives of the Departments of Justice, Safety and Security, Constitutional Development, the Local Authority Security Association, Organised Local Government Interim Committee, the Institute of Traffic Officers, the Institute of Town Clerks of

Southern Africa and some NGOs. The Department of Safety and Security and the Task Group drafted a Bill that was published for comment. After a process of consultation and debate, the Bill was finally adopted as the South African Police Service Amendment Act 83 of 1998.

This Amendment Act should be seen in light of the Draft White Paper on Safety and Security, published in May 1998, which proposed that local government, because it is the closest to the people, should actively participate in social crime prevention initiatives and redirect the provision of services to facilitate crime prevention. It is thus said that crime prevention programmes are most likely to be effective if they are developed in the areas where crime occurs.

### Functions

The functions of a municipal police service are -

- traffic policing;
- the policing of municipal by-laws and regulations; and
- the prevention of crime.

A municipal police service is thus more than a municipality's traffic department or law enforcement agencies. While traffic policing remains an important function of a municipal police service, the new function of crime prevention allows municipalities to play a much more active role in making their cities and towns safe. By establishing a municipal police service, a municipality can focus on co-ordinating a wide range of crime prevention strategies. These include: providing visible policing, co-ordinating local policing initiatives, including crime prevention strategies in planning and services provision, and experimenting with innovative crime prevention strategies.

### Powers of a municipal police service

The powers of members of a municipal police service are conferred by law or may be assigned by the Minister of Safety and

Security. These include powers of arrest and, by assignment, powers of seizure.

Every municipal police officer is a peace officer and may thus exercise the powers of a peace officer within the area of the municipality. The most important power of a municipal police officer is that, by virtue of being a peace officer, he or she has the power of effecting an arrest. An arrest may be effected only within the boundaries of the municipalities. However, where a municipal police officer is pursuing a person who is reasonably suspected of having committed an offence, and the pursuit began within the area of the municipality, then the officer may arrest

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that person outside the municipal area. A municipal police officer may also exercise his or her powers in another municipality where it is done in terms of an agreement with the other municipality. Upon arrest, the powers of a municipal police officer are limited. The arresting officer must, as soon as possible, bring the arrested person to a police station under the control of the South African Police Service.

Additional powers may be given to municipal police officers by the Minister of Safety and Security. If such a power includes the power to seize an article, the officer must forth-

with deliver the seized article to a member of the South African Police Service. In terms of regulations promulgated on 11 June 1999 (*Government Gazette* no 20142, see page 10), extensive powers of search and seizure under a number of statutes have been granted to municipal police officers. Under the Criminal Procedure Act 51 of 1977, such officers have the power to search and seize with or without a search warrant. They may enter premises for the purpose of interrogating a person who is reasonably suspected of having information about an offence. Where they may lawfully search a person or premises, they may use such force as is necessary to

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overcome any resistance against the search. They may also take finger-prints, administer breathalyser tests and cause blood samples to be taken. Under the Drugs and Drug Trafficking Act 140 of 1992 municipal police officers have extensive search and seizure powers with regard to drugs. In terms of the South African Police Services Act 68 of 1995 municipal police officers may set up roadblocks. They also have extensive arrest powers under the Domestic Violence Act 116 of 1998.

## Establishment

A municipality may apply to the provincial Member of the Executive Council (MEC) for Safety and Security for the establishment of a municipal police service for its area.

Before the MEC may give approval, a municipality must be able to show that the following requirements have been met:

- it has the resources to provide for a municipal police service which complies with national standards on a 24-hour basis;
- its traffic policing services will not be prejudicially affected by the establishment of the police service;
- it has made proper provision to ensure civilian supervision of the police service;
- the establishment of the police service will improve effective policing in that part of the province.

The regulations of 11 June 1999, issued by the Minister of Safety and Security, describe in detail the information that an application must contain with reference to the above requirements.

Before approving an application, the MEC must consult with the National Commissioner of the South African Police Service and the metropolitan council if the municipality falls within a metropolitan area. (The latter requirement will fall away under the new Municipal Structures Act 117 of 1998 as metropolitan substructures

as independent municipalities disappear. See *LGL Bulletin* 1999 (1)10).

Furthermore, the MEC must get the approval of the MECs for local government, finance, transport and traffic matters. Again, the regulations of 11 June 1999 issued by the Minister of Safety and Security prescribe in detail the application procedure and time frames within which an application should be dealt with by the province and the National Commissioner.

As the municipality has to carry all expenditure with regard to the establishment, maintenance and functioning of a police service, the availability of financial resources will be an essential precondition for approval. The MEC may also determine the conditions under which approval will be granted.

## Structure

As with all other services, the chief executive officer (CEO) of a municipality is responsible to the municipal council for the functioning of the municipal police service. The council must, however, appoint a fit and proper person as executive head of its police service. This person exercises control over the police service subject to national standards and the directives of the CEO.

## Executive head

In particular the executive head is responsible for -

- maintaining an impartial, accountable, transparent and efficient municipal police service;
- the recruitment, appointment, promotion and transfer of police service members;
- the discipline of the police service; and
- ensuring that the municipality's traffic policing services are not prejudicially affected by the establishment of the police service.

An important duty of the executive head is to develop an annual plan that sets out the priorities and objectives of the police service. In so far as the plan deals with crime

prevention, it must be developed in co-operation with the national Police Service. The annual plan must be ready before the end of the previous financial year. The regulations issued on 11 June 1999 also describe in detail the requirements that the annual plan must meet, and the process that should be followed for its approval.

The executive head also plays an important role in liaising with the community through structures established for this purpose. He or she represents the municipal police service on every local policing co-ordinating committee or community police forum in the municipality. While a local policing co-ordinated committee may be established by a Provincial Commissioner of the South African Police Service after consultation with the MEC for Safety and Security, a community police forum, representative of the local community, must be established at every police station. The establishment, composition, functions and duties of policing co-ordinating committees are set out in the regulations of 11 June 1999.

## Municipal Council

The Council is responsible for the overall functioning of the police service. Any legal proceedings instituted against the police service or a member of the service, must be instituted against the council. The time period in which an action must be instituted is not governed by the South African Police Services Act, but by the Limitation of Legal Proceedings (Provincial and Local Authorities) Act 94 of 1970. Whereas the South African Police Services requires that an action be instituted within a 12 month period, in the case of a municipal police service, the period is 24 months.

## Civilian control

One of the requirements for approval for the establishment of a municipal police service, as indicated above, is that proper provision is made to ensure civilian supervision of the police service. A municipal council must appoint a committee whose

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task it is to ensure civilian oversight of its police service. The committee must consist of councillors and other persons determined by the council. It is suggested that such persons should not be in the employ of the municipality, but should represent the broader community of the municipality.

The committee performs important tasks. Firstly, it must advise the council, at the council's request, on any matter relating to the police service. It must also advise the CEO with regard to the performance of his or her functions in respect of the police service. Secondly, it must promote accountability and transparency in the police service. This it can do by monitoring the implementation of policy and directives issued by the CEO, evaluating the functioning of the police service, and reporting on these activities to the council or CEO. Thirdly, the MEC, the council or the CEO may add further functions that they consider necessary or expedient to ensure civilian oversight of the police service. The council or CEO may also assign further functions to the Committee.

### **National standards and supervision**

The national government plays an important role in the day-to-day functioning of municipal police services by issuing regulations and setting national standards for municipal police services, and monitoring whether they are complied with. These standards may include, in addition to the training prescribed for traffic officers, training requirements for municipal police officers.

#### **Regulations**

The Minister of Safety and Security may make regulations regarding the effective functioning of municipal police services. Draft regulations must be published in the *Government Gazette* for comment for a period of at least 60 days. The first draft regulations were published for comment in February this year. After receiving feedback, the first set of regulations dealing with the requirements for the appointment of members of municipal police services were promulgated on 11 June 1999 (*Government Gazette* no 20142).

#### **Requirements for appointment as a municipal police officer**

The requirements for appointment as a

member of a municipal police service include having obtained a senior certificate or equivalent qualification, having no previous criminal convictions, and being proficient in English. However, the National Commissioner may, upon the recommendations of the executive head, waive these requirements in the interest of the effective functioning of a municipal police service.

### **Determining national standards**

When determining national standards, the National Commissioner of the South African Police Service must first publish a draft in the *Government Gazette*, inviting all interested parties to submit, within a period of not less than 60 days, comments regarding the proposed national standards. This provides municipalities with a valuable opportunity to participate in formulating national standards. The first draft national standards have been published for comment on 11 June 1999 (See page 10). After considering any submission, the

Commissioner may promulgate national standards in the *Government Gazette*.

### **National Training Standards**

In the *Government Gazette* of 11 June (no 20142) the National Commissioner set out the National Standards regarding the training of members of a municipal police force. In order to qualify for appointment as a member of a municipal police service a person must have successfully completed the following:

- the training required for registration as a traffic officer as prescribed in terms of the Road Traffic Act 29 of 1989 and be registered as a traffic officer; and
- training at a training institution accredited by the SAPS in nineteen modules which

include criminal law and procedure, the use of force, selected fire-arm skills, prevention of police corruption and departmental forms.

A person may be exempted from any of the modules that he or she has covered in his or her prior learning. Such exemptions will be made in terms of the prescribed evaluation measurements set in accordance with the approved learning programme of the National Commissioner.

Emphasis is also placed on continuous in-service training every year. A member must receive at least two days (16 hours) refresher training in selected fire-arm

skills, practical survival and physical education. Amendment to the law and procedure relating to the exercise of policing powers and the performance of duties must be brought to the attention of every member during regular mustering or staff meetings at least once per month.

### **Supervisory powers of the National Commissioner**

The National Commissioner must ensure that national standards are maintained. To this end he or she may request and obtain information and documents from a municipal police service or the municipality. Furthermore, the National Commissioner may enter any building or premises under the control of the municipal police service or municipality. Overall, in executing this duty, the National Commissioner is entitled to all reasonable assistance from the municipal police service and any employee of the municipality.

Where a municipal police service has failed to maintain national standards, the National Commissioner must report this to the national Minister of Safety and Security. The national Minister may then request the relevant MEC to intervene in the municipality in terms of the provisions of section 139 of the Constitution on the basis that the municipality has not fulfilled an executive obligation which, in this case, is the maintenance of national standards. For a full explanation of the provisions of section 139, see page 11. If the MEC fails to intervene as requested, the national Minister of Safety and Security may intervene directly in the municipality by issuing a directive to the municipality to comply with national standards.

### **Provincial supervision**

The first line of supervision is likely to be the provincial government. Supervision relates to two aspects of municipal policing. The first is whether or not the municipality has complied with the conditions set out for the establishment of the municipal police service, while the second is the maintenance of national standards.

#### **MEC's monitoring powers**

In order to execute the supervisory duty, the MEC has similar powers as the National Commissioner. He or she, or an official of the provincial secretariat designated by the MEC in writing, may request and obtain information and documents under the control of the municipal police service of a municipality. He or she may also enter any building or premises under the control of the municipal police service or municipality, and is entitled to all rea-

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reasonable assistance from the municipal police service and any employee of the municipality.

### **MEC's powers of intervention**

If the MEC is satisfied that the municipal police service has failed to comply with the conditions of establishment or national standards, he or she may, by written notice, inform the municipal council of the failure and direct that the municipal police service complies with the conditions or national standards within a set period of time. If the municipal council fails to comply with this notice, the MEC may, after consulting with other relevant MECs, appoint a provincial government official as administrator of the municipal police service.

The responsibility of the administrator is to ensure that the municipal police service complies with the conditions or national standards. The administrator then exercises all powers and performs all duties of the executive head of the municipal police service. If the MEC is satisfied the failure has been remedied, he or she may terminate the appointment of the administrator. It is important to note that the municipality carries the cost of all expenditures incurred by the MEC in connection with the intervention.

The procedure of intervention, prescribed by the Act, should be applied in the light of the general provisions of section 139 of the Constitution, as outlined on page 11. The procedural safeguards contained in that provision should thus be complied with.

### **Transitional arrangements**

The Act contains a number of important transitional arrangements that allow for continuity between existing municipal police services and the establishment of new services and meeting the new training requirements.

### **Durban City Police**

The position of the only existing municipal police service, the Durban City Police, is dealt with specifically in the Act. This police service will continue to exist until 30 September 1999 and if an application for the establishment of a municipal police service is lodged before that date, the Durban

City Police will continue to exist until the application is either approved or disapproved.

### **Existing traffic officers**

When a municipal police service is established, existing traffic officers may be appointed as members of the municipal police service even though they do not comply with the training requirements set out in the national regulations. Such persons have, however, four years within which they must successfully complete a training course that complies with the requirements determined by the National Commissioner.

### **Renaming services**

Municipalities should have changed the name of any municipal service that includes the word "police" by 1 January 1999, unless it was a municipal police service when this Act came into operation.

### **Evaluation**

The vital role that local authorities can and must play in making South Africa's cities and towns safer places to work in and live in, is undeniable. The

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question that has to be asked is whether or not municipalities will be able to afford this service. While municipalities must carry the full burden of any municipal police service, the national government sets national standards and imposes regulations for the effective functioning of municipal police services. Should there be over-regulation which makes it difficult for a medium to small municipality to meet the criteria for establishment and the cost of training, the local component of the overall national crime prevention strategy may not come off the ground. It is thus critical that national standards determined by the National Commissioner and the regulations promulgated by the Minister of Safety and Security are reasonable in the light of the resources of the wide array of municipalities which make up local government.

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# National Standards for a Municipal Police Service

## An invitation for comment

On 11 June 1999, the National Task Group on proposed Municipal Police Services, appointed by the Minister of Safety and Security, published draft National Standards (Government Gazette no 20142) for general information. Comment from interested parties is required by 5 August 1999. The Standards deal with two matters: the aspects of the internal organisation of policing and the exercise of powers of search, seizure and arrest.

### Departmental Forms

Every municipal police service must maintain a high level of documentation of its policing activities. For example, every municipal police officer must carry a pocket book in which daily events are recorded, and every municipal police service office must maintain an occurrence book. These requirements are similar to those of the SAPS standing orders. The use of standardised departmental forms, the National Standards say, is "essential to facilitate the exchange of information between the South African Police Service and municipal police services". This also ensures uniformity in the organisation of police services.

The departmental forms that a municipal police services must use, include the following:

#### Pocket book

While a member is on duty he or she must record in a pocket book all occurrences which are noteworthy. The book would then reflect the extent of the member's work and the measure of his or her diligence. After effecting an arrest, for example, a member must enter detailed information, including

whether the arrestee has been informed of his or her constitutional rights upon arrest. All information about crime prevention actions must also be recorded. The officer in charge of a municipal police service office must inspect the pocket books of all members under his or her command on a weekly basis.

#### Occurrence book

An occurrence book must be kept in every municipal police service office where all noteworthy occurrences in that office are recorded. The commander of the office must inspect the book on a daily basis.

Other forms that must be used are:

- Arrest statement;
- Computer circulation of stolen, lost or found property;
- Property Acknowledgement of Receipt;
- Search register;
- Application for a warrant to search and seize;
- Circulation of particulars of persons; and
- Circulation of missing/unidentified persons.

Municipalities must obtain these printed forms from the Government Printer by placing a request with the Head: Logistics South African Police Service. They are, however, directly responsible for payment to the Government Printer.

#### Definition of powers

The National Standards contain a very useful outline of the powers of search and seizure, but reflect no more than what the law, including the Constitution, requires. The Standards are thus not standards from which any municipal police service can deviate. Therefore, comment on these Standards would serve little purpose. These Standards are nevertheless very useful because they set out the relevant legal rules in a clear and understandable manner.

#### Crime scenes

The National Standards lay down gen-

eral guidelines for actions to be taken on the scene of a crime, to ensure that this valuable source of evidence is secured. The emphasis is on guidelines - setting out the best practices of a professional police service.

#### Comment

The effect of these National Standards will be that there will be uniformity between the various police services in the country with respect to their internal organisation and the application of the important powers of arrest, search and seizure. The National Standards are only minimum standards and any municipal police service may require higher standards. Of course, the question remains as to whether or not any but the larger metropolitan councils will be able to meet these requirements.

An important aspect of policing that has been omitted from the National Standards is the use of firearms. While the law on the use of deadly force is at present unsettled, urgent attention should be given to provide proper guidelines in this vital area.

**Comments should be addressed, before 5 August, to:**  
**The Chairperson**  
**National Task Group**  
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