

POST OFFICE ACT

NO. 44 OF 1958

**[ASSENTED TO 26 SEPTEMBER, 1958][DATE OF
COMMENCEMENT: 3 OCTOBER 1958]**

(English text signed by the Governor-General)

as amended by

Finance Act, No. 80 of 1959

Finance Act, No. 76 of 1961

Post Office Amendment Act, No. 50 of 1962

Publications and Entertainments Act, No. 26 of 1963

General Law Amendment Act, No. 37 of 1963

Gambling Act, No. 51 of 1965

Expropriation Act, No. 55 of 1965

Post Office Amendment Act, No. 80 of 1965

Second Finance Act, No. 58 of 1966

Post Office Re-adjustment Act, No. 67 of 1968

Finance Act, No. 102 of 1969

Finance Act, No. 25 of 1970

General Law Amendment Act, No. 80 of 1971

Post Office Amendment Act, No. 101 of 1972

Post Office Amendment Act, No. 56 of 1973

Post Office Amendment Act, No. 13 of 1974

Publications Act, No. 42 of 1974

Post Office Service Act, No. 66 of 1974

Second General Law Amendment Act, No. 94 of 1974

Expropriation Act, No. 63 of 1975

Post Office Amendment Act, No. 113 of 1976

Post Office Amendment Act, No. 1 of 1978

Finance Act, No. 21 of 1980

Post Office Amendment Act, No. 75 of 1981

Broadcasting Amendment Act, No. 61 of 1982

Post Office Amendment Act, No. 80 of 1982

Post Office Amendment Act, No. 27 of 1983

Post Office Amendment Act, No. 37 of 1984

Corporation for Public Deposits Act, No. 46 of 1984

Post Office Amendment Act, No. 7 of 1986

Auditor-General Act, No. 52 of 1989

Radio Amendment Act, No. 24 of 1990

Post Office Amendment Act, No. 85 of 1991

Posts and Telecommunications Acts Amendment Act, No. 101
of 1992

Interception and Monitoring Prohibition Act, No. 127 of 1992

General Law Third Amendment Act, No. 129 of 1993

Post Office Amendment Act, No. 171 of 1993

Post Office Second Amendment Act, No. 176 of 1993

Post Office Amendment Act, No. 35 of 1995

Former States Posts and Telecommunications Reorganisation
Act, No. 5 of 1996

General Law Amendment Act, No. 49 of 1996

Abolition of Restrictions on the Jurisdiction of Courts Act, No. 88 of 1996

Post Office Amendment Act, No. 11 of 1997

ACT

To consolidate the laws relating to the Post Office and matters incidental thereto.

PRELIMINARY

1. Definitions.—In this Act, unless the context otherwise indicates—

“Bank” means the South African Reserve Bank referred to in the definition of “Bank” in section 1 of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989), or any other bank as defined in section 1 of the Banks Act, 1990 (Act No. 94 of 1990);

[Definition of “Bank” inserted by s. 1 (a) of Act No. 113 of 1976 and substituted by s. 1 (a) of Act No. 85 of 1991 and by s. 1 of Act No. 35 of 1995.]

“chief actuary” means the chief actuary as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990);

[Definition of “chief actuary” inserted by s. 1 (b) of Act No. 85 of 1991.]

“club or fund”

[Definition of “club or fund” deleted by s. 1 (b) of Act No. 113 of 1976.]

“Companies Act” means the Companies Act, 1973 (Act No. 61 of 1973);

[Definition of “Companies Act” inserted by s. 1 (b) of Act No. 85 of 1991 and amended by s. 3 (a) of Act No. 101 of 1992.]

“construct” means erect, set up, lay down or place;

“department” means the Department of Posts and Telecommunications;

[Definition of “department” substituted by s. 1 (a) of Act No. 13 of 1974.]

“deposit”

[Definition of “deposit” inserted by s. 1 (c) of Act No. 113 of 1976, substituted by s. 1 (a) of Act No. 1 of 1978 and deleted by s. 1 of Act No. 37 of 1984.]

“depositor”

[Definition of “depositor” inserted by s. 1 (c) of Act No. 113 of 1976, substituted by s. 1 (b) of Act No. 1 of 1978 and deleted by s. 1 of Act No. 37 of 1984.]

“drawee”

[Definition of “drawee” deleted by s. 1 (d) of Act No. 113 of 1976.]

“drawer”

[Definition of “drawer” deleted by s. 1 (d) of Act No. 113 of 1976.]

“excluded commitments” means any—

(a) public stock and bonds issued in terms of section 121 (1) (b) before the repeal of that section by the Post Office Amendment Act, 1991; and

(b) loan and other financing and related agreements entered into by the department, but excluding those made by the State to the department in terms of the Exchequer Act, 1975 (Act No. 66 of 1975),

[Para. (b) substituted by s. 3 (b) of Act No. 101 of 1992.]

in respect of which the Minister with the approval of the Minister of Finance decides that the State will continue to be liable after the transfer date concerned;

[Definition of “excluded commitments” inserted by s. 1 (c) of Act No. 85 of 1991 and amended by s. 3 (b) of Act No. 101 of 1992.]

“financial year” means the period from 1 April in a year to 31 March in the following year;

[Definition of “financial year” inserted by s. 1 (c) of Act No. 113 of 1976.]

“friendly society”

[Definition of “friendly society” deleted by s. 1 of Act No. 37 of 1984.]

“Fund” means the Post Office Fund contemplated in section 12D;

[Definition of “Fund” inserted by s. 1 (b) of Act No. 13 of 1974 and substituted by s. 1 (e) of Act No. 113 of 1976.]

“imprisonment”

[Definition of “imprisonment” deleted by s. 1 (e) of Act No. 85 of 1991.]

“internal service”

[Definition of “internal service” inserted by s. 1 (a) of Act No. 56 of 1973 and deleted by s. 1 (f) of Act No. 113 of 1976.]

“international service”

[Definition of “international service” inserted by s. 1 (a) of Act No. 56 of 1973 and deleted by s. 1 (f) of Act No. 113 of 1976.]

“mail” means every article collected for conveyance by post, and includes loose and individual articles and every mail bag, vessel or conveyance of any kind by which postal articles are carried, whether or not it contains any such articles, and any person or animal employed in conveying or delivering mails or postal articles;

“mail-bag” includes every bag, box, parcel, basket or hamper and any other envelope or covering in which postal articles in course of transmission by post are conveyed, whether or not it

contains such articles;

“Master” means a Master of the Supreme Court acting within the jurisdiction conferred upon him by law;

“master of any vessel” includes any person (not being a pilot) having command or charge of a vessel, whether a ship of war or any other vessel;

“Minister” means the Minister entrusted with the administration of the department;

[Definition of “Minister” substituted by s. 1 (c) of Act No. 13 of 1974, by s. 1 (f) of Act No. 85 of 1991 and by s. 3 (c) of Act No. 101 of 1992.]

“money order” means a money order issued under this Act or by any postal authority for payment under this Act;

“National Savings Certificate” means any National Savings Certificate issued under section 77A;

[Definition of “National Savings Certificate” inserted by s. 1 (d) of Act No. 13 of 1974.]

“officer” includes any person in the service or employed in connection with any business of the department or any successor company;

[Definition of “officer” substituted by s. 1 (g) of Act No. 85 of 1991.]

“port” includes any harbour, river, lake or roadstead and any other navigable water;

“postage” means the amount chargeable for the transmission of articles by post;

“postage stamp” or “stamp” means any piece of paper or other substance or material having thereon the stamp, mark or impression of any die, plate or other instrument made or used under this Act or by any postal authority for the purpose of denoting any postage or other postal fee;

“postal article” means any letter, post-card, reply post-card, letter-card, newspaper, book, packet, pattern or sample packet

or any parcel or other article when in course of transmission by post, and includes a telegram when conveyed by post;

“postal authority” includes the Postmaster-General of the United Kingdom or of any other duly constituted postal authority of any British possession or of any foreign country or place;

“postal company” means the company incorporated as contemplated in section 3 (1) to conduct a postal service;

[Definition of “postal company” inserted by s. 1 (h) of Act No. 85 of 1991.]

“postal employer” means the postal company or a subsidiary of that company, as the case may be;

[Definition of “postal employer” inserted by s. 1 (h) of Act No. 85 of 1991.]

“postal enterprise” means all the assets, liabilities, rights and obligations, including any claim to copyright, trade marks and patentable inventions but excluding rights and obligations in terms of excluded commitments, of the State which relate to or are connected with the conduct of the postal service by the department, as determined by the Minister;

[Definition of “postal enterprise” inserted by s. 1 (h) of Act No. 85 of 1991.]

“postal order” means a postal order issued under this Act or by any postal authority for payment under this Act;

“postal pension fund” means the pension fund established in terms of section 9;

[Definition of “postal pension fund” inserted by s. 1 (i) of Act No. 85 of 1991.]

“postal service” means the affairs which the Postmaster-General or, subsequent to the postal transfer date, the postal company is entitled to conduct in terms of Chapters III, IV and V, including the exclusive privilege of receiving, collecting, dispatching, conveying and delivering letters and of performing all incidental services;

[Definition of “postal service” inserted by s. 1 (i) of Act No. 85

of 1991.]

“postal transfer date” means the date determined by the Minister in terms of section 4 (1) (a) in respect of the postal enterprise;

[Definition of “postal transfer date” inserted by s. 1 (i) of Act No. 85 of 1991.]

“postmaster” means the officer in charge of a post office;

“Postmaster-General” means the officer occupying the post with that designation on the fixed establishment of the department;

[Definition of “Postmaster-General” inserted by s. 1 (g) of Act No. 113 of 1976.]

“post office” includes any house, building, room, carriage, place or structure where postal articles are received, sorted, delivered, made up or dispatched or which is used for any other purpose in connection with the rendering or operation of any postal, telecommunications, savings, money transfer or other service by the department or any successor company or officers thereof and any pillar box or other receptacle provided by or with the approval of the department or a successor company for the reception of postal articles for transmission;

[Definition of “post office” substituted by s. 1 (h) of Act No. 113 of 1976 and by s. 1 (j) of Act No. 85 of 1991.]

“Post Office Appropriation Act” means an Act approved by Parliament for an appropriation or additional appropriation of expenditure chargeable to the Fund;

[Definition of “Post Office Appropriation Act” inserted by s. 1 (i) of Act No. 113 of 1976.]

“Post Office Service Act” means the Post Office Service Act, 1974 (Act No. 66 of 1974), and the regulations made thereunder;

[Definition of “Post Office Service Act” inserted by s. 1 (l) of Act No. 85 of 1991.]

“prescribed” means prescribed by or under this Act;

“railway” includes any tramway, whether the means of traction

be animal or steam power, electricity or other motive force, but does not include the railway lines of the South African Rail Commuter Corporation Limited referred to in section 22 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989), or Transnet Limited, a company formed under section 2 of the said Act or a wholly-owned subsidiary of Transnet Limited established under section 32 (1) of that Act with reference to a business unit acquired by such wholly-owned subsidiary in terms of paragraph (b) of the said section 32 (1);

[Definition of “railway” substituted by s. 1 (m) of Act No. 85 of 1991.]

“railway authority”

[Definition of “railway authority” deleted by s. 1 (j) of Act No. 113 of 1976.]

“regulation” means a regulation made under this Act;

“Republic”

[Definition of “Republic” inserted by s. 1 (b) of Act No. 56 of 1973 and deleted by s. 1 (n) of Act No. 85 of 1991.]

“revenue” means all moneys received by way of rates levied on services rendered by the department, and all other earnings from the business operations of the department;

[Definition of “revenue” inserted by s. 1 (k) of Act No. 113 of 1976.]

“Savings Bank” or “Post Office Savings Bank” means the Post Office Savings Bank referred to in section 52;

[Definitions of “Savings Bank” and “Post Office Savings Bank” inserted by s. 1 (k) of Act No. 113 of 1976.]

“Savings Bank certificate”

[Definition of “Savings Bank certificate” inserted by s. 1 (k) of Act No. 113 of 1976 and deleted by s. 1 of Act No. 37 of 1984.]

“Savings Bank year”

[Definition of “Savings Bank year” deleted by s. 1 (b) of Act No. 113 of 1976.]

“security” means any stock, certificate, bond certificate, Savings Bank certificate or National Savings Certificate or document issued as proof of the borrowing of money under this Act;

[Definition of “security” inserted by s. 1 (k) of Act No. 113 of 1976.]

“sender”, in relation to any postal article or telegram, means the person from whom that postal article or telegram purports to have come, unless such person proves that he is not the sender thereof;

“successor company” means a company incorporated as contemplated in section 3 (1);

[Definition of “successor company” inserted by s. 1 (o) of Act No. 85 of 1991.]

“telecommunications” means any system or method of conveying signs, signals, sounds, communications or other information by means of electricity, magnetism, electromagnetic waves or an agency of a like nature, whether with or without the aid of tangible conductors, from one point to another;

[Definition of “telecommunications” inserted by s. 1 (m) of Act No. 113 of 1976.]

“telecommunications company” means the company incorporated as contemplated in section 3 (1) to conduct a telecommunications service;

[Definition of “telecommunications company” inserted by s. 1 (p) of Act No. 85 of 1991.]

“telecommunications employer” means the telecommunications company or a subsidiary of that company, as the case may be;

[Definition of “telecommunications employer” inserted by s. 1 (p) of Act No. 85 of 1991.]

“telecommunications enterprise” means all the assets, liabilities,

rights and obligations, including any claim to copyright, trademarks and patentable inventions but excluding rights and obligations in terms of excluded commitments, of the State which relate to or are connected with the conduct of the telecommunications service by the department, as determined by the Minister;

[Definition of “telecommunications enterprise” inserted by s. 1 (p) of Act No. 85 of 1991.]

“telecommunications line” includes any apparatus, instrument, pole, mast, wire, pipe, pneumatic or other tube, thing or means which is or may be used for or in connection with the sending, conveying, transmitting or receiving of signs, signals, sounds, communications or other information;

[Definition of “telecommunications line” inserted by s. 1 (m) of Act No. 113 of 1976.]

“telecommunications pension fund” means the pension fund established in terms of section 9;

[Definition of “telecommunications pension fund” inserted by s. 1 (q) of Act No. 85 of 1991.]

“telecommunications service” means the affairs which the Postmaster-General or, subsequent to the telecommunications transfer date, the telecommunications company is entitled to conduct in terms of Chapter VI;

[Definition of “telecommunications service” inserted by s. 1 (c) of Act No. 56 of 1973, deleted by s. 1 (m) of Act No. 113 of 1976 and inserted by s. 1 (q) of Act No. 85 of 1991.]

“telecommunications transfer date” means the date determined by the Minister in terms of section 4 (1) (b) in respect of the telecommunications enterprise;

[Definition of “telecommunications transfer date” inserted by s. 1 (q) of Act No. 85 of 1991.]

“telegram” means any communication in written form or information in the form of an image transmitted by the department or any successor company over a telecommunications line and delivered in any such form, or intended to be thus transmitted and delivered or delivered from

any post office or intended to be thus delivered as a communication or as information transmitted either wholly or partially over a telecommunications line;

[Definition of “telegram” substituted by s. 1 (c) of Act No. 113 of 1976 and by s. 1 (r) of Act No. 85 of 1991.]

“telegram”

[Definition of “telegram” deleted by s. 1 (p) of Act No. 113 of 1976.]

“telegram line”

[Definition of “telegram line” deleted by s. 1 (p) of Act No. 113 of 1976.]

“this Act” includes any regulations made thereunder;

“transfer date” means a date of transfer contemplated in section 4 (1);

[Definition of “transfer date” inserted by s. 1 (s) of Act No. 85 of 1991.]

“vessel” includes every description of vessel employed on the high seas, in harbour, on rivers or on the coast or on any navigable water.

CHAPTER I

powers and rights of the postmaster-general

2. Administration and control of the department.—(1) The administration, control and management of the department shall, subject to the authority of the Minister, be vested in an officer to be styled the Postmaster-General.

[Sub-s. (1) substituted by s. 55 of Act No. 66 of 1974.]

(2) The Postmaster-General shall have the supervision and control of all persons in the service of the department and all offices or workplaces of the department and all services and activities which the department may render or undertake, and may issue such instructions as he may deem necessary for the conduct and guidance of officers of the department in carrying

out the provisions of this Act.

[Sub-s. (2) substituted by s. 55 of Act No. 66 of 1974, by s. 2 (a) of Act No. 113 of 1976 and by s. 2 of Act No. 85 of 1991.]

(3)

[Sub-s. (3) deleted by s. 2 (b) of Act No. 113 of 1976.]

(4)

[Sub-s. (4) substituted by s. 55 of Act No. 66 of 1974 and deleted by s. 2 (b) of Act No. 113 of 1976.]

(5)

[Sub-s. (5) deleted by s. 2 (b) of Act No. 113 of 1976.]

2A. Accounting responsibility of Postmaster-General.—(1)

The Postmaster-General is the accounting officer of the department and is charged with the responsibility of accounting for all revenue and other moneys received by the department or held for or on the account of the department, and for all expenditure and payments by the department.

(2) The Postmaster-General shall, for the purpose of discharging his responsibility under subsection (1), exercise the powers granted and perform the duties entrusted to him by this Act or any other law.

[S. 2A inserted by s. 3 of Act No. 113 of 1976.]

2B. General powers of Postmaster-General.—(1) The Postmaster-General may with the approval of the Minister and subject to the provisions of this Act and of any other law—

(a) establish, maintain, reorganize or abolish divisions, branches, offices or other work-places of the department, reorganize the department and transfer any function of the department to or take over any function from any other department of State or any body;

[Para. (a) substituted by s. 3 (a) of Act No. 85 of 1991.]

(b).

[Para. (b) deleted by s. 3 (b) of Act No. 85 of 1991.]

(c).

[Para. (c) deleted by s. 3 (b) of Act No. 85 of 1991.]

(d).

[Para. (d) substituted by s. 2 (a) of Act No. 37 of 1984 and deleted by s. 3 (b) of Act No. 85 of 1991.]

(e).

[Para. (e) substituted by s. 1 (a) of Act No. 27 of 1983 and deleted by s. 3 (b) of Act No. 85 of 1991.]

(f).

[Para. (f) deleted by s. 3 (b) of Act No. 85 of 1991.]

(g)determine the hours during which services are to be rendered by the department and the hours during which the public shall have access to workplaces of the department for the purpose of utilizing the services referred to, and may determine different hours in respect of different services and different work-places;

[Para. (g) substituted by s. 3 (c) of Act No. 85 of 1991.]

(h).

[Para. (h) deleted by s. 3 (d) of Act No. 85 of 1991.]

(i).

[Para. (i) deleted by s. 3 (d) of Act No. 85 of 1991.]

(j).

[Para. (j) deleted by s. 3 (d) of Act No. 85 of 1991.]

(k).

[Para. (k) deleted by s. 3 (d) of Act No. 85 of 1991.]

(l).

[Para. (l) deleted by s. 3 (d) of Act No. 85 of 1991.]

(m).

[Para. (m) substituted by s. 1 of Act No. 7 of 1986 and deleted by s. 3 (d) of Act No. 85 of 1991.]

(n).

[Para. (n) deleted by s. 3 (d) of Act No. 85 of 1991.]

(o).

[Para. (o) deleted by s. 3 (d) of Act No. 85 of 1991.]

(p).

[Para. (p) deleted by s. 3 (d) of Act No. 85 of 1991.]

(q).

[Para. (q) deleted by s. 3 (d) of Act No. 85 of 1991.]

(r).

[Para. (r) deleted by s. 3 (d) of Act No. 85 of 1991.]

(s).

[Para. (s) deleted by s. 3 (d) of Act No. 85 of 1991.]

(t).

[Para. (t) added by s. 1 (b) of Act No. 27 of 1983 and deleted by s. 3 (d) of Act No. 85 of 1991.]

(u).

[Para. (u) added by s. 2 (b) of Act No. 37 of 1984 and deleted by s. 3 (d) of Act No. 85 of 1991.]

(v).

[Para. (v) added by s. 2 (b) of Act No. 37 of 1984 and deleted by s. 3 (d) of Act No. 85 of 1991.]

(w).

[Para. (w) added by s. 2 (b) of Act No. 37 of 1984 and deleted by s. 3 (d) of Act No. 85 of 1991.]

(x)perform any function assigned to him under section 90A.

[Para. (x) added by s. 3 (e) of Act No. 85 of 1991.]

(2) The Minister may, notwithstanding the provisions of subsection (1), authorize the Postmaster-General to exercise any power referred to in subsection (1) in all cases or in cases of a particular class or category or in cases where particular circumstances apply, without the approval of the Minister.

(3)

[Sub-s. (3) substituted by s. 1 (c) of Act No. 27 of 1983 and deleted by s. 3 (f) of Act No. 85 of 1991.]

(3A)

[Sub-s. (3A) inserted by s. 1 (d) of Act No. 27 of 1983 and deleted by s. 3 (f) of Act No. 85 of 1991.]

(4)

[S. 2B inserted by s. 3 of Act No. 113 of 1976. Sub-s. (4) substituted by s. 2 (c) of Act No. 37 of 1984 and deleted by s. 3 (f) of Act No. 85 of 1991.]

2C. Write-off of certain debts.—The Postmaster-General may in his discretion approve the write-off of the whole or any portion of an amount owing to the department by any person, if he is satisfied—

(a)that the amount is irrecoverable;

(b)that the recovery of the amount would be uneconomical;

(c)that recovery of the amount would cause undue hardship to the debtor or his dependants because they are deprived of the minimum essential means of a livelihood;

(d)that the assets of the debtor or in the estate of a deceased or mentally ill debtor, whether or not such assets have been

pledged to the department, are indispensable to his dependants or are of relatively little value and the debtor or his estate, as the case may be, is unable to pay the amount or any portion thereof, except by the disposal of such assets and such disposal would cause undue hardship;

(e) that it would be to the advantage of the department to effect a settlement of, or to waive, its claim.

[S. 2C inserted by s. 3 of Act No. 113 of 1976.]

2D. Delegation of powers of Postmaster-General.—(1) The Postmaster-General may, on such conditions as he may determine, delegate to an officer or to the holder of any post in the department any power conferred upon him by this Act or any other law, except the power of delegation granted under this subsection and a power which he may exercise only with the approval of the Minister, and may in his discretion withdraw any such delegation.

[Sub-s. (1) substituted by s. 4 of Act No. 101 of 1992.]

(2) The Postmaster-General shall not be divested of any power delegated by him and may amend or withdraw any decision made in the exercise of that power.

(3) When delegating any power to the holder of a post, the Postmaster-General may direct that the power may be exercised by the permanent incumbent of the post or a person appointed to act in the post or a person who for the time being performs the functions attached to the post.

[S. 2D inserted by s. 3 of Act No. 113 of 1976.]

CHAPTER 1A

[Chapter 1A inserted by s. 5 of Act No. 85 of 1991.]

SUCCESSOR COMPANIES

[Heading inserted by s. 5 of Act No. 85 of 1991.]

3. Incorporation of successor companies.—(1) On a date or dates preceding the postal transfer date or the telecommunications transfer date, as the case may be, the Minister shall effect the incorporation in terms of the

Companies Act of two public companies, namely, a postal company to conduct a postal service and a telecommunications company to conduct a telecommunications service, which companies shall bear names approved by the Minister, and the issue to each company of a certificate to commence business.

(2) The Minister shall on behalf of the State sign all documents that are required to be signed by the promoters of the companies.

(3) The Postmaster-General—

(a) shall be appointed as the first director of each successor company and shall in that capacity in respect of each company sign the documents which are required to be signed by a director of the company for the purpose of incorporation of the company and the issue to the company of a certificate to commence business;

(b) shall occupy the post of director of a successor company until the date immediately preceding the transfer date concerned.

(4) Each successor company—

(a) shall upon incorporation issue one share with a nominal value of one rand to the State;

(b) shall in its memorandum of association inter alia provide that that successor company and its subsidiaries—

(i) shall have as its main object and main business in the case of the postal company to conduct the postal service and in the case of the telecommunications company to conduct the telecommunications service;

(ii) shall not have the power to perform the following acts without the approval of the Minister granted with the concurrence of the Minister of Finance, namely—

(aa) the alienation or encumbrance by the company otherwise than in the normal course of its business of assets of the company with a market value of more than 10 per cent of the market value of all the assets of the company;

(bb) the cessation or alteration of the main object or main

business of the company;

(cc)the alienation of shares held by the company in any subsidiary thereof so that the company retains 50 per cent or less of the voting shares of the subsidiary;

(dd)the merger of the company with another company or the entering into of a partnership or joint venture by the company;

(c)shall have articles of association providing inter alia that—

(i)the directors, with the exception of the managing director, shall fulfil a non-executive function;

(ii)the affairs of the company shall be managed by a management board appointed in terms of the articles of association;

(iii)one of the directors shall be appointed as managing director as well as chairman of the management board;

(iv)no person, except the State, shall, whether directly or indirectly, hold any shares in the company;

(d)shall, apart from the shares referred to in subsection (4) (a) and sections 5 (1) and 12U (4) (a), not issue any shares:

Provided that paragraphs (b) (ii), (c) and (d) shall not apply to the telecommunications company.

[Sub-s. (4) amended by s. 1 (a) of Act No. 11 of 1997.]

(5) Notwithstanding the provisions of the Companies Act, the postal company shall not have more than one member, and the telecommunications company shall not have more than seven members.

[Sub-s. (5) substituted by s. 1 (b) of Act No. 11 of 1997.]

(6) The powers and duties of the State as a member and shareholder of each successor company shall be exercised and performed by the Minister.

(7) A successor company shall not conduct any business and shall not acquire any assets, liabilities, rights or obligations prior to the transfer date concerned.

[S. 3 amended by s. 2 of Act No. 56 of 1973, repealed by s. 4 of Act No. 113 of 1976 and inserted by s. 5 of Act No. 85 of 1991.]

4. Transfer of postal enterprise and telecommunications enterprise to successor companies.—(1) On a date determined by the Minister by notice in the Gazette—

(a) the postal enterprise shall be transferred to the postal company, from which date the postal company shall, subject to the provisions of any other law, have the exclusive power to conduct the postal service;

(b) the telecommunications enterprise shall be transferred to the telecommunications company, from which date the telecommunications company shall, subject to the provisions of any other law, have the exclusive power to conduct the telecommunications service.

(2) (a) The value of the assets and liabilities of the enterprises transferred in terms of subsection (1) shall be determined by the Minister with the concurrence of the Minister of Finance, and the net asset value of those enterprises shall likewise be determined, regard being had to the obligations imposed upon the postal company and the telecommunications company by section 12U.

(b) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), or any other law in terms of which a tax or levy may be imposed, it shall be deemed that expenses were actually incurred by a successor company in acquiring the assets transferred to it in terms of subsection (1) and that, notwithstanding the provisions of any other law, the expenses concerned, including the cost of the assets, are equal to the value determined in terms of subsection (2) (a).

(3) (a) In so far as the postal enterprise and the telecommunications enterprise have the use of State land immediately prior to the date referred to in subsection (1), such land shall on the said date pass to the postal company or the telecommunications company, as the case may be, and it shall be deemed that such land was on the said date sold by the State President in terms of the provisions of the State Land Disposal Act, 1961 (Act No. 48 of 1961), to the company concerned.

(b) Notwithstanding the provisions of section 5 of the State Land Disposal Act, 1961, and section 18 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), a registrar as defined in section 102 of the Deeds Registries Act, 1937, shall, on submission to him of a certificate by the Minister of Public Works and Land Affairs that State land has passed in terms of paragraph (a), free of charge make such entries and endorsements as he may deem necessary in or on any relevant register, title deed or other document in his office or laid before him, in order to effect the transfer in the name of the company concerned.

(c) If a particular piece of State land was used jointly by the postal enterprise and the telecommunications enterprise immediately prior to the date mentioned in subsection (1), and the successor companies after that date agree to divide that piece of land between them without the payment of compensation by one party to the other or without giving anything in exchange therefor, the subdivision of the land concerned shall be exempted from the payment of transfer duty, stamp duty or other fees if, upon the registration of the subdivision, a certificate signed by the secretaries of both successor companies is submitted in which it is certified that an agreement as contemplated in this paragraph has been concluded.

[Para. (c) added by s. 12 (a) of Act No. 129 of 1993.]

(4) (a) Any servitude, other real right or lease existing immediately before the date referred to in subsection (1) in favour of the State, the department or the Postmaster-General and which is exercised in favour of the postal enterprise or the telecommunications enterprise shall on the said date pass to the postal company or the telecommunications company, as the case may be.

(b) The registrar as referred to in subsection (3) (b) shall, on submission to him of a certificate by the Minister of Public Works and Land Affairs that a servitude, other real right or lease has passed in terms of paragraph (a) or that a servitude exists over State land which has passed in terms of subsection (3) (a), free of charge make such entries and endorsements as he may deem necessary in or on any relevant register, title deed or other document in his office or laid before him, in order to—

(i) register the passing of the servitude, other real right or lease

to the company concerned in terms of paragraph (a); or

(ii) confirm the existence of the servitude in favour of any other person, over the State land which has so passed.

(4A) (a) Subject to the provisions of paragraph (b), a successor company shall have the right to use its immovable property for the purposes for which the department used the property concerned on the date immediately prior to the date mentioned in subsection (1) or for which it was intended to be used on that date.

(b) If land of a successor company has not been zoned, or has in terms of an applicable township construction or development scheme, guide plan or statutory provision been zoned or intended for purposes other than those for which it is used on the date immediately prior to the date mentioned in subsection (1), the successor company concerned shall as soon as practicable conclude an agreement with the local authority responsible for the zoning or re-zoning of land in the area concerned with regard to the zoning or re-zoning of the land concerned for a purpose which is in accordance with the use thereof on the date immediately prior to the date mentioned in subsection (1): Provided that—

(i) if such agreement has been concluded, that agreement shall be reduced to writing and the local authority concerned shall, if necessary, amend its township construction or development scheme or guide plan accordingly;

(ii) if such agreement could not be concluded, the matter shall be referred to the Administrator of the province concerned, who may grant permission for or approval of the zoning or re-zoning concerned on such conditions as he may deem necessary.

(c) The local authority—

(i) with which any agreement in terms of paragraph (b) has been concluded; or

(ii) within whose area of jurisdiction that land is situated, in the case of land referred to in paragraph (b) (ii),

shall record, in respect of the land concerned the appropriate zoning, after which such zoning shall for all purposes be regarded as the zoning of such land.

[Sub-s. (4A) inserted by s. 12 (b) of Act No. 129 of 1993.]

(5) The Minister shall in all litigation whatsoever, including arbitrations, to which the Minister is a party, be substituted as the party to the suit—

(a) by the postal company with effect from the postal transfer date in the case of litigation pertaining to the postal enterprise;

(b) by the telecommunications company with effect from the telecommunications transfer date in the case of litigation pertaining to the telecommunications enterprise.

(6) The successor company concerned may apply for the registration of any registerable right relating to intellectual property or inventions (including the registration as patents of patentable inventions) transferred by the State in terms of this section to the successor company concerned.

(7) The Registrar of Trade Marks shall make such entries, notes and endorsements as he may deem necessary in or on any relevant register, certificate or other document in his office or submitted to him so as to effect the transfer of trade marks to the postal company or the telecommunications company in terms of this section, and may request the successor company concerned to submit or produce to him such information or document as he may deem necessary for such purpose.

(8) If any doubt arises as to whether anything for the purposes of this Act pertains to or is connected with the postal enterprise, the telecommunications enterprise, the department or anyone else, the decision of the Minister shall be conclusive.

(9) (a) Each successor company may establish subsidiary companies of which the successor company shall be the sole member and shareholder and shall allow the assignments, substitutions and transfers contemplated in this section to be made to such subsidiary.

(b) The provisions of this Act applicable to such successor company, shall apply mutatis mutandis to the subsidiary thereof while the successor company is the sole member and shareholder of the subsidiary.

(10) No stamp duty, transfer duty or any other tax or levy shall

be payable in respect of the transfer of the postal enterprise or the telecommunications enterprise in terms of this section.

(11) Any officer in the employment of a successor company shall be deemed to be an officer in the service of the State for the purposes of section 7 of the State Land Disposal Act, 1961 (Act No. 48 of 1961), and section 24 of the Expropriation Act, 1975 (Act No. 63 of 1975).

[S. 4 substituted by s. 1 of Act No. 80 of 1965, repealed by s. 4 of Act No. 113 of 1976 and inserted by s. 5 of Act No. 85 of 1991.]

5. Shareholding in successor companies.—(1) As a consideration for the transfer contemplated in section 4 (1) each successor company shall, in addition to the share referred to in section 3 (4) (a), issue such shares in those companies to the State as the Minister with the concurrence of the Minister of Finance may determine: Provided that the nominal value plus any premium payable in respect of all the shares so issued by each company, shall be equal to the net asset value of the enterprise concerned.

(2) The shares issued in terms of subsection (1) shall be allotted and issued at the time and on the conditions which the Minister with the concurrence of the Minister of Finance may determine.

(3) Shares issued in terms of this section shall have such nominal value and shall be issued at such premium, if any, as the Minister with the concurrence of the Minister of Finance may determine and shall be issued as fully paid by the transfer to the successor company concerned of assets and liabilities with a net asset value equal to the nominal value of the shares plus any such premium.

(4) Any dividends received by the State in respect of shares in a successor company shall be paid into the State Revenue Fund.

(5) No stamp duty shall be paid by a successor company in respect of the issue of shares to the State in terms of this Act.

(6) No money shall be paid by a successor company in terms of section 63 or 75 of the Companies Act in respect of the creation of, or any increase in, the capital of such a company.

(7) The State may not alienate any shares or rights to shares in

the postal company, and the postal company may not issue shares in itself to any person other than the State.

[S. 5 amended by s. 35 of Act No. 94 of 1974, repealed by s. 4 of Act No. 113 of 1976 and inserted by s. 5 of Act No. 85 of 1991. Sub-s. (7) substituted by s. 2 of Act No. 11 of 1997.]

6. Subsidy to postal company.—(1) During the first five years after the commencement of this section the Minister may, in consultation with the Minister of Finance, out of money appropriated by Parliament for the purpose, grant an annual subsidy to the postal company in respect of normal expenditure.

(2) A request for a subsidy shall be submitted by the postal company to the Minister by a date determined by the Minister in order for it to be in time for the evaluation process for inclusion in the annual compilation and exposition of the Government's expenditure proposals for appropriation purposes.

(3) The payment of subsidies shall be for such purposes and period and subject to such conditions as the Minister, with concurrence of the Minister of Finance, may determine.

[S. 6 repealed by s. 4 of Act No. 113 of 1976, inserted by s. 5 of Act No. 101 of 1992 and substituted by s. 3 of Act No. 11 of 1997.]

7. Powers of successor companies.—(1) (a) The postal company shall, subject to the provisions of any other law, from the postal transfer date have the exclusive power to conduct the postal service, but the approval of the Minister shall, subject to the provisions of subsection (3), be required for—

(i) the determination of the fees, rates or charges levied by the postal company in respect of the postal service;

(ii) the determination of the hours during which postal, savings, money transfer and other services shall be rendered by the postal company and the hours during which the public shall have access to post offices and other work places of the postal company for the purpose of utilizing the said services;

(iii) the imposition of any onerous conditions in connection with the provision of the postal service;

(iv) the termination of the provision of a postal service in any area where the service was provided by the department immediately prior to the postal transfer date.

(b) Any person who performs an act which under paragraph (a) is the exclusive privilege of the postal company with regard to the receipt, collecting, dispatching, conveying and delivering of letters and the performance of incidental services, or who sends, tenders or delivers any letter to be dealt with contrary to this section, shall be guilty of an offence and liable on conviction to a fine not exceeding R100 in respect of every letter received, collected, dispatched, conveyed, tendered or delivered.

(c) Nothing in this subsection contained shall extend to any letter—

(a) sent or conveyed to or from any post office;

(b) exceeding the dimensions prescribed for letters;

(c) containing process of or proceedings or pleadings in any court of justice or affidavits or depositions;

(d) exclusively concerning goods sent and to be delivered therewith; or

(e) sent by any person exclusively concerning his private affairs or the private affairs of the bearer or the receiver:

Provided that no person shall collect any such letter for the purpose of sending it either by post or otherwise.

(2)

[Sub-s. (2) deleted by s. 4 of Act No. 11 of 1997.]

(3) The Minister may, notwithstanding the provisions of subsections (1) and (2), authorize the postal company or the telecommunications company to exercise any power referred to in subsection (1) or (2) in all cases or in cases of a particular category or in cases where particular circumstances apply, without the approval of the Minister.

(4) The postal company or the telecommunications company may, in exercising a power referred to in subsection (1) or (2), determine different fees, rates or charges in respect of different

services or services rendered in different areas or under different circumstances, or may determine special fees, rates or charges which may be higher or lower than the normal tariffs, rates or charges, or may exempt particular users or prospective users of services in extraordinary or in specific circumstances from any of the prescribed fees, rates or charges.

(5)

[S. 7 substituted by s. 6 of Act No. 85 of 1991. Sub-s. (5) deleted by s. 6 of Act No. 101 of 1992.]

7A. Exemption of successor companies from certain laws.—If the department has performed an act or has commenced with the performance thereof, including any building work, construction work or other work completed or commenced with by the department, prior to the date mentioned in section 4 (1) and the provisions of any law did not apply to the department in respect of that act, building work, construction work or other work, the provisions of that law shall likewise not apply to the successor company concerned in respect of that act, building work, construction work or other work.

[S. 7A inserted by s. 13 of Act No. 129 of 1993.]

CHAPTER 1B

[Chapter 1B inserted by s. 7 of Act No. 85 of 1991.]

STAFF AND PENSION MATTERS

[Heading inserted by s. 7 of Act No. 85 of 1991.]

8. Transfer to successor company.—(1) Any officer or employee of the department performing functions pertaining to the postal service or the telecommunications service, and who—

(a) elects to become an employee of a successor company, shall, if he notifies the department in writing of his election prior to the applicable transfer date, notwithstanding the provisions of the Post Office Service Act and without interrupting his service, from the postal transfer date or the telecommunications transfer date, as the case may be, become an employee in a similar post in the postal company or the telecommunications company, respectively, subject to conditions of employment which shall not be less favourable than those applicable to him on the date

immediately preceding the applicable transfer date;

(b) does not in terms of paragraph (a) elect to become an employee of a successor company, shall, notwithstanding the provisions of the Post Office Service Act, but subject to the conditions determined by the Staff Management Board referred to in section 4 of the Post Office Act with the concurrence of the Minister, from the postal transfer date or the telecommunications transfer date, as the case may be, be seconded to the postal company or the telecommunications company, respectively, there to perform services in a post similar to the post occupied by him in the department, but such officer or employee shall while he is so seconded remain subject to the laws governing officers and employees of the department.

(2) If, for the purposes of subsection (1), the question arises whether any person performs functions pertaining to the postal service or the telecommunications service, such question shall be decided by the Postmaster-General.

[Sub-s. (2) substituted by s. 20 of Act No. 88 of 1996.]

(3) If any person seconded in terms of subsection (1) (b), after the applicable transfer date elects to become an employee of the successor company to which he has been seconded, he shall, notwithstanding the provisions of the Post Office Service Act, and without interrupting his service, from a date determined by the successor company concerned after consultation with the chief actuary, become an employee of that company in a post similar to the post occupied by him while being so seconded, subject to the conditions of service of that company: Provided that where such election is made more than one year after the applicable transfer date, the successor company concerned shall not be obliged to employ such officer or employee.

(3A) Notwithstanding the proviso to subsection (3), any person referred to in the said proviso who on the date of commencement of the Post Office Second Amendment Act, 1993, has not been employed by the successor company concerned to which he has been seconded, shall, from a date determined by the Minister, become an employee of such successor company in accordance with the provisions of this section.

[Sub-s. (3A) inserted by s. 1 of Act No. 176 of 1993.]

(4) For the purposes of the provisions of the Income Tax Act, 1962 (Act No. 58 of 1962), it shall be deemed that no change of employer took place when employment is taken up at a successor company by officers and employees in terms of subsections (1) and (3) and that the position of officers and employees in respect of the phasing in of any tax levied on benefits or advantages derived by reason of employment or the holding of any office as contemplated in Schedule 7 to the Income Tax Act, 1962, shall remain unchanged.

(5) When any officer or employee of the department becomes an employee of a successor company in terms of subsection (1) or (3)—

(a) he shall retain all vacation and sick leave which on the date immediately preceding his employment by the successor company stands to his credit with the department, including all monetary benefits attached thereto;

(b)(i) any enquiry or other action instituted or contemplated in respect of alleged misconduct committed by such officer or employee prior to his employment by that successor company, shall be disposed of or instituted by such company and such company shall take steps against the officer or employee concerned if he is found guilty of misconduct, in terms of the laws applicable to him before such employment;

(ii) for the purposes of subparagraph (i) any reference in the laws contemplated in that subparagraph, to—

(aa) the Minister, shall be construed as a reference to the chairman of the board of directors of the company concerned;

(bb) the Staff Management Board, shall be construed as a reference to the management board of such company;

(cc) the Postmaster-General, shall be construed as a reference to the managing director of such company;

(dd) the department, shall be construed as a reference to the company concerned;

[Para. (b) substituted by s. 7 of Act No. 101 of 1992.]

(c) he shall cease to be a member of any pension fund to which he was in terms of section 44 of the Post Office Service Act

compelled to belong on the date immediately preceding the date of his employment by the successor company concerned, and shall have no claim against the pension fund concerned;

(d) he shall become a member of the postal pension fund in the case of the postal company or of the telecommunications pension fund in the case of the telecommunications company as from the date of his employment by the successor company concerned;

(e) the pension fund referred to in paragraph (c) shall pay to the postal pension fund or the telecommunications pension fund, as the case may be, an amount, whether in cash or in specie, equal to the percentage funding multiplied by the actuarial liability of the fund in respect of that officer or employee on the date of his employment by the successor company concerned, plus interest thereon calculated at the bank rate from that date until the date of payment thereof, and any claim which that pension fund may have against such officer or employee shall pass to the postal pension fund or the telecommunications pension fund, as the case may be.

(6) For the purposes of subsection (5) (e)—

(a) the actuarial liability of a pension fund in respect of a particular member or group of members of the fund shall be the actuarial liability of the fund in respect of such member or group of members of the fund as determined by the chief actuary and an actuary appointed by the Minister of National Health and Population Development;

(b) the percentage funding of a pension fund shall be the market value of the assets of the fund expressed as a percentage of the total actuarial liability of the fund as determined at the time of the most recent actuarial evaluation of the fund or any revision thereof made on the instructions of the Minister of National Health and Population Development;

(c) the bank rate shall be the rate from time to time determined in terms of section 10 (2) of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989).

(7) Any staff association recognized by the Minister as contemplated in section 43 (1) (b) of the Post Office Service Act immediately prior to the postal transfer date or the telecommunications transfer date, shall be recognized by the

successor company concerned.

[S. 8 repealed by s. 4 of Act No. 113 of 1976 and inserted by s. 7 of Act No. 85 of 1991.]

8A. Transfer to department.—(1) Any employee of a successor company seconded to the department as well as any other employee of a successor company may, with his consent, be transferred to the department and appointed as an officer or employee of the department, subject to such conditions of service as may be agreed upon between such employee and the Postmaster-General, and which the Minister may approve.

(2) When an employee of a successor company becomes an officer or employee of the department in terms of subsection (1)—

(a) he shall cease to be a member of the telecommunications pension fund or the postal pension fund, as the case may be, to which he was compelled to belong on the date immediately preceding the date of his employment by the department, and shall have no claim against the pension fund concerned;

(b) he shall become a member of the Government Service Pension Fund contemplated in the Government Service Pension Act, 1973 (Act No. 57 of 1973), or the Temporary Employees Pension Fund contemplated in the Temporary Employees Pension Fund Act, 1979 (Act No. 75 of 1979), whichever is applicable, as from the date of his employment by the department;

(c) the pension fund concerned referred to in paragraph (a) shall pay to the Government Service Pension Fund or the Temporary Employees Pension Fund, as the case may be, an amount, whether in cash or in specie, equal to the percentage funding multiplied by the actuarial liability of the fund in respect of the employee on the date of his employment by the department, plus interest thereon calculated at the bank rate, from that date until the date of payment thereof, and any claim which that pension fund may have against such employee shall pass to the Government Service Pension Fund or the Temporary Employees Pension Fund, as the case may be.

(3) For the purposes of subsection (2) (c)—

(a) the actuarial liability of a pension fund in respect of a

particular member or group of members of the fund shall be the actuarial liability of the fund in respect of such member or group of members of the fund as determined by the actuary of the telecommunications pension fund or the postal pension fund, as the case may be, and an actuary appointed by the Minister of Finance;

(b) the percentage funding of a pension fund shall be the market value of the assets of the fund expressed as a percentage of the total actuarial liability of the fund as determined at the time of the most recent actuarial valuation of the fund or any revision thereof made on the instructions of the Minister of Finance;

(c) the bank rate shall be the rate from time to time determined in terms of section 10 (2) of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989).

[S. 8A inserted by s. 2 of Act No. 176 of 1993.]

9. Establishment of pension funds.—(1) From the date of commencement of the Post Office Amendment Act, 1991, there are hereby established a postal pension fund and a telecommunications pension fund.

(2) Both the funds referred to in subsection (1) shall be juristic persons.

[S. 9 repealed by s. 4 of Act No. 113 of 1976 and inserted by s. 7 of Act No. 85 of 1991.]

10. Pension statutes.—(1) The control and management of the postal pension fund and the telecommunications pension fund, the conditions for admission to and termination of membership of each fund, the amount and nature of contributions by members and contributions and other payments by the postal employer or the telecommunications employer, the benefits due to members and other beneficiaries, and the manner in which the statutes may be amended, shall be governed by the statutes of each fund, as the case may be.

(2) The statutes of each fund shall be published by the Minister in the Gazette and shall come into operation on the postal transfer date in the case of the postal pension fund and on the telecommunications transfer date in the case of the telecommunications pension fund.

(3) Until the date of registration of the postal pension fund and the telecommunications pension fund, as the case may be, in terms of section 10D, any amendment of the statutes of the pension fund concerned shall be subject to the approval of the Minister granted with the concurrence of the Minister of Finance.

(4) The statutes of the postal pension fund and the telecommunications pension fund shall be binding on each fund as well as the postal employer and the telecommunications employer, as the case may be, and on the members and beneficiaries of each fund.

[S. 10 repealed by s. 4 of Act No. 113 of 1976 and inserted by s. 7 of Act No. 85 of 1991.]

10A. Actuarial evaluation of pension funds.—(1) The postal pension fund and the telecommunications pension fund shall each be valued by an actuary, appointed by the Minister, within three years from the date on which the fund concerned was established, and thereafter each fund shall be valued by such actuary at intervals not exceeding three years, as the Minister may determine.

(2) The report of the actuary shall comply with the requirements of section 16 (7) of the Pension Funds Act, 1956 (Act No. 24 of 1956), and shall be submitted by the actuary to the Minister and to the Minister of Finance.

(3) A copy of the report shall be submitted by the actuary to the employer concerned.

(4) In addition to complying with the requirements of section 16 (7) of the Pension Funds Act, 1956, the actuary shall calculate, and mention in his report, what amounts are necessary to maintain the pension fund concerned in a sound financial position.

(5) The postal employer shall guarantee the financial obligations of the postal pension fund.

[Sub-s. (5) substituted by s. 5 (a) of Act No. 11 of 1997.]

(6) The State shall guarantee the obligations of the postal employer in terms of subsection (5).

[Sub-s. (6) substituted by s. 5 (a) of Act No. 11 of 1997.]

(7) (a) The guarantee of the State in terms of subsection (6) shall be limited to the difference between the amount paid in terms of section 8 (5) (e) to the postal pension fund and the amount of the actuarial liability, on the date of employment of an officer or employee by the postal employer, of the pension fund referred to in section 8 (5) (c) in respect of those officers or employees of the department who in terms of section 8 (5) (d) become members of the postal pension fund , plus interest on that amount calculated at the rate which shall, subject to paragraph (c), from time to time be determined by the chief actuary.

[Para. (a) substituted by s. 5 (b) of Act No. 11 of 1997.]

(b) For the purposes of paragraph (a) “actuarial liability” shall have the meaning assigned to it in section 8 (6) (a).

(c) The rate referred to in paragraph (a) shall not be less than 12 per cent per annum on the outstanding balance.

(d) The guarantee of the State in terms of subsection (6) shall decrease to the extent to which the postal company pays the amounts plus interest referred to in paragraph (a) to the postal pension fund, in terms of its obligations under subsection (5) and shall be extinguished when the obligations have been fully discharged.

[S. 10A inserted by s. 7 of Act No. 85 of 1991. Para. (d) substituted by s. 5 (b) of Act No. 11 of 1997.]

10B. Pension benefits may not be ceded, encumbered or attached.—(1) No pension or lump sum from a pension fund referred to in section 10, or right to such a benefit, or right in respect of contributions made by, or on behalf of, a member, may be ceded, pledged or hypothecated, or be attached or subjected to any form of execution under a judgment or order of a court of law, and in the event of the beneficiary attempting to cede, pledge or hypothecate a benefit or right thereto, payment of the benefit may be withheld, suspended or entirely discontinued by the pension fund concerned in its discretion: Provided that the pension fund concerned may, during such period as it may determine, make payment of such benefit or of any benefit in pursuance of such contributions or part thereof to one or more of the dependants of the beneficiary or to a curator

for such dependant or dependants.

(2) Notwithstanding the provisions of subsection (1), the pension fund concerned may on the date of a member's retirement or the date on which he ceases to be a member of the fund, deduct—

(a) any amount due to that fund in respect of a loan granted by that fund in terms of its statutes to a member or beneficiary, from any benefit to which the member or beneficiary is entitled in terms of such statutes;

(b) any amount due by a member to his employer in respect of—

(i) any loan granted by the employer to such member at his request;

(ii) any amount for which the employer is liable in terms of a guarantee furnished in respect of a loan granted by some other person to the member for the purchase of land or a dwelling or the erection, alteration, improvement, maintenance or repair of a dwelling for occupation by the member or a dependant of the member;

(iii) compensation (including the legal costs recoverable from the member in a matter contemplated in subparagraph (ii)) in respect of any damage caused to the employer, by reason of any theft, dishonesty, fraud, misconduct or negligence by the member;

(iv) any other written agreement between the member and the employer in respect of a study bursary, training of the member or the military service obligations of the member,

from any benefit payable to the member or a beneficiary in terms of the statutes of that fund, and pay such amount to the employer concerned;

(c) any amount which such fund or the employer has paid or will pay by an arrangement with, or on behalf of, a member or beneficiary in respect of—

(i) such member's or beneficiary's subscription to a medical scheme registered otherwise than provisionally in terms of the Medical Schemes Act, 1967 (Act No. 72 of 1967);

(ii) any insurance premium payable by such member or beneficiary to an insurer registered in terms of the Insurance Act, 1943 (Act No. 27 of 1943),

from any benefit to which the member or beneficiary is entitled in terms of the statutes of that fund and pay such amount, if due, to such employer, medical scheme or insurer, as the case may be.

[S. 10B inserted by s. 7 of Act No. 85 of 1991. Sub-s. (2) added by s. 8 (1) of Act No. 101 of 1992.]

10C. Insolvency of pensioner.—(1) If the estate of any person in receipt of a pension from a pension fund referred to in section 9 is sequestrated or surrendered or assigned for the benefit of his creditors, payment of the pension shall forthwith be discontinued, and shall thereafter in the discretion of the pension fund concerned in whole or in part be paid to or for the benefit of all or any of the following persons, namely, the pensioner, his wife or minor child or, failing a wife or minor child, to the mother of an illegitimate child or any child, whether legitimate, adopted or illegitimate, or to any other relative dependent upon the pensioner: Provided that if the payment is made to the pensioner, it shall be for his own personal use and, notwithstanding anything to the contrary contained in any law relating to insolvency, such payment shall not in any way be attached or appropriated by the trustee of his insolvent estate or by his creditors.

(2) If payment of a pension has been discontinued under this section, the pension shall revive on the rehabilitation of the pensioner or on the sequestration of his estate being set aside or the claims of his creditors being satisfied, and he shall receive a pension at the same rate and subject to the same conditions as before the sequestration, surrender or assignment, together with any arrears that may be due.

[S. 10C inserted by s. 7 of Act No. 85 of 1991.]

10D. Registration of pension funds.—(1) The Registrar of Pension Funds may at the request of the postal pension fund or the telecommunications pension fund register the pension fund concerned in terms of section 4 of the Pension Funds Act, 1956 (Act No. 24 of 1956), and may, for the purposes of such request, regard such pension fund as a “pension fund organization” as defined in section 1 of the said Act.

(2) From the date of such registration—

(a) the whole of the Pension Funds Act, 1956, shall apply to the pension fund concerned;

(b) the provisions of sections 10, 10A (1), (2), (3) and (4), 10B and 10C of this Act shall cease to apply to the pension fund concerned; and

(c) the pension fund concerned shall, for the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), not be regarded as a pension fund as defined in paragraph (a) of the definition of “pension fund” in section 1 of the said Act.

[S. 10D inserted by s. 7 of Act No. 85 of 1991.]

10E. Membership of pension fund by employees of subsidiary companies.—(1) If a successor company establishes a subsidiary company in terms of section 4 (9), an employee of the successor company who is transferred or seconded to such subsidiary company, shall continue to enjoy membership of the pension fund concerned of which he was a member immediately before the date of his transfer or secondment.

(2) Any employee employed by a subsidiary company after the date of its establishment, shall become a member of the postal pension fund or the telecommunications pension fund, as the case may be, subject to the statutes of such fund.

[S. 10 E inserted by s. 7 of Act No. 85 of 1991.]

11. Postal officers, vehicles, mails etc., exempt from tolls.— No duty, toll or ferry charge shall be demanded or taken from or in respect of the passing of—

(a) any person, horse or vehicle engaged in any service of the department; or

(b) any mail; or

(c) any material or tools used in the construction or repair of any telegraph line, except when carried under contract or by common carrier.

12. Postal officers vehicles, etc., to have precedence in public

streets, etc.—Every person, horse or vehicle engaged in connection with the conveyance of mails or telegrams shall have precedence over all other persons, horses or vehicles in any public street, road, thoroughfare or place.

CHAPTER II

FINANCES

[Heading inserted by s. 5 of Act No. 113 of 1976.]

12A. Affairs of department to be administered on business principles.—(1) The affairs of the department shall be administered on business principles, due regard being had to the promotion by means of efficient postal and telecommunications services, of commerce, industry and agriculture in all parts of the Republic, and to the promotion of the Republic's foreign trade.

(2) As far as possible, the profits of the department, after provision has been made for the maintenance, replacement, renewal and depreciation of fixed assets and the payment of interest on loans, shall not be more than is sufficient for the redemption of loans, reasonable reserves, the provision of new fixed assets and, subject to the provisions of section 12B, to meet any other financial liability imposed on the department by law.

[S. 12A inserted by s. 5 of Act No. 113 of 1976.]

12B. Compensation for loss on certain services and facilities.—(1) If the State President or an Act of Parliament or a resolution of the Senate and the House of Assembly requires any service or facility to be rendered free of charge by the department or at a rate which does not cover the cost of providing the service or facility, the Minister shall as soon as practicable after the end of each financial year present to Parliament an account approved by the Minister of Finance and showing, as nearly as possible, the amount of the loss incurred by reason of the provision of the service or facility, and such amount shall be paid out of the State Revenue Fund into the Fund.

(2) In calculating the loss arising from the operation of such service or facility, the value of contributions to revenue from other services and facilities of the department which may be due

to the operation of such service or facility, shall be taken into account.

[S. 12B inserted by s. 5 of Act No. 113 of 1976.]

12C. Compensation for services provided to or by other State departments.—(1) Compensation for services provided by the department to or on behalf of any other State department, or by any other State department to or on behalf of the department, shall be paid on a basis agreed upon from time to time by the Postmaster-General and the head of the other State department, or, in the absence of any such agreement, as determined by the Minister in consultation with the Minister of Finance, the Minister of Transport or the Administrator of the province concerned, depending on whether the compensation is to be paid out of or into the State Revenue Fund, the Railway and Harbour Fund or a provincial revenue fund.

[Sub-s. (1) amended by s. 1 of Act No. 49 of 1996.]

(2) Payment of such compensation for services provided during any financial year shall, unless it is otherwise agreed upon under subsection (1), be by way of instalments paid monthly during the financial year in question and as far as possible equal to one-twelfth of the total compensation estimated in respect of that financial year by the department which provides the services in question, and as soon as practicable after the end of the financial year in question an adjustment between the Fund and the State Revenue Fund, the Railway and Harbour Fund or the relevant provincial revenue fund, as the case may be, shall be made in respect of the difference between the total amount paid by way of such instalments in that financial year and the compensation actually due in respect of that financial year.

[Sub-s. (2) amended by s. 1 of Act No. 49 of 1996.]

(3) Whenever it is provided in any law that any postal article or telegram may be sent to, or that any telephone conversation may be conducted with, any officer of any other State department free of charge or without prepayment of charges, the handling and conveyance or the transmission, as the case may be, by the department of such postal article, telegram or telephone conversation shall be deemed to be a service provided by the department to the other State department in question.

[S. 12C inserted by s. 5 of Act No. 113 of 1976.]

12D. Post Office Fund and Housing Loan Fund.—(1) There shall be a Post Office Fund, of which the department shall keep account in its books and into which shall, subject to the provisions of subsection (2), be paid—

(a) all revenue;

(b) moneys borrowed in terms of the provisions of this Act or section 29 of the Exchequer and Audit Act, 1975 (Act No. 66 of 1975);

(c) deposits in the Savings Bank;

(d) the proceeds of issues of National Savings Certificates;

(e) interest received on all investments made by the department;

(f) the proceeds from the realization of securities and other assets; and

(g) moneys received by the department from any other source and with regard to which the department has the right of disposal,

and from which shall be defrayed all expenditure incurred in accordance with an Act of Parliament to provide for the requirements of the department.

(2) (a) There shall be a Housing Loan Fund, of which the department shall keep account in its books and into which shall be paid—

(i) moneys appropriated by Parliament for the Housing Loan Fund;

(ii) moneys received by way of repayment of amounts of a loan paid from the Housing Loan Fund;

(iii) interest received on amounts of a loan paid from the Housing Loan Fund;

(iv) any other moneys accruing to the Housing Loan Fund,

and from which may be paid the amount of any loan granted in terms of any scheme for housing of persons in the employment

of the department established under the Post Office Service Act, 1974 (Act No. 66 of 1974).

(b) Any unexpended balance in the Housing Loan Fund at the end of any financial year shall be carried forward as a credit in the Housing Loan Fund to the next succeeding financial year.

[S. 12D inserted by s. 5 of Act No. 113 of 1976 and substituted by s. 2 (1) of Act No. 27 of 1983.]

12E. Post Office Account.—(1) The department shall maintain at the Bank an account entitled “Post Office Account” into which shall be deposited, subject to the provisions of subsection (2)—

(a) all moneys paid into the Fund under section 12D; and

(b) all other moneys whatever received or held by the department,

and from which all expenditure shall be defrayed and all payments shall be made for which the department may be liable.

(2) The department may, for the purpose of defraying expenditure or of making payments for which the department may be liable, utilize or retain on hand for utilization any moneys received without depositing such moneys in the said account.

(3) Subject to any provision of this Act or any other Act to the contrary, no money shall be withdrawn from the said account or utilized in terms of subsection (2) for the defrayal of expenditure chargeable to the Fund, unless the defrayal in question is in accordance with appropriation by law.

(4) The department may utilize moneys in the said account for the refund of money inadvertently or incorrectly paid into the account, and where such a refund is chargeable to the Fund the amount thereof shall be deemed to have been appropriated by law.

[S. 12E inserted by s. 5 of Act No. 113 of 1976.]

12F. Appropriation of moneys in Fund, and estimates of expenditure and revenue.—(1) The Minister shall for every financial year, in a form determined by him, submit to

Parliament an estimate of expenditure, in which the amounts are set out which in his opinion should in respect of the financial year in question be expended from the Fund for specific purposes to meet the requirements of the department, for appropriation of the amounts in question by a Post Office Appropriation Act.

(2) The Minister may submit to Parliament, in a form determined by him, an estimate of additional expenditure from the Fund in respect of any financial year for purposes for which amounts have been appropriated by a Post Office Appropriation Act for that financial year and for purposes for which amounts have not been so appropriated, for appropriation of the relevant additional amounts by an Additional Post Office Appropriation Act.

(3) The Minister may approve that a saving on an amount which in respect of any financial year has been appropriated by a Post Office Appropriation Act for a specific purpose, be applied towards the defrayal of excess expenditure for any other purpose or purposes for which an amount or amounts have been so appropriated.

(4) The Minister may, on the conditions and within the limits determined by him, authorize any officer or officers in the department to approve the utilization of savings referred to in subsection (3) in the manner stated therein, pending virement approval by the Minister of such utilization, which virement approval shall be obtained as soon as practicable after the close of the books of the department for the financial year in respect of which such utilization occurs.

(5) Notwithstanding the provisions of subsections (1), (2) and (3), the Minister may grant authority for amounts to be expended from the Fund to defray—

(a) excess expenditure for any purpose or purposes for which an amount or amounts have been appropriated by a Post Office Appropriation Act;

(b) expenditure for any purpose or purposes for which an amount or amounts have not been so appropriated, if he is satisfied that the expenditure in question cannot without prejudice to the public interest be postponed until an amount or amounts for such purpose or purposes can be appropriated by a Post Office Appropriation Act:

Provided that the total amount for the spending of which authority may be granted in respect of a financial year in terms of this section shall not exceed an amount equal to two per cent of the total amount appropriated by a Post Office Appropriation Act for that financial year or, if a Post Office Appropriation Act for the year in respect of which such spending is authorized has not at the relevant time been passed, two per cent of the total amount appropriated by a Post Office Appropriation Act in respect of the immediately preceding financial year.

(6) Particulars of amounts spent under authority in terms of subsection (5) and of the purposes for which the amounts have been spent shall be submitted to Parliament by the Minister as soon as practicable together with estimates referred to in subsection (1) for appropriation of the amounts in question.

[Sub-s. (6) substituted by s. 2 (1) of Act No. 7 of 1986.]

(7) The Minister shall for every financial year, in a form determined by him, submit to Parliament an estimate of expected revenue during that financial year.

[S. 12F inserted by s. 5 of Act No. 113 of 1976.]

12G. Duration of Post Office Appropriation Act and utilization of amounts appropriated in respect of a financial year.—(1) A Post Office Appropriation Act shall be authority for the department—

(a) to utilize money which has been appropriated in respect of a financial year also after the end of that financial year;

(b) to incur, from the beginning of the financial year following the financial year to which it relates and until a Post Office Appropriation Act relating to the new financial year comes into operation, expenditure in respect of the last-mentioned financial year for purposes for which amounts were appropriated in a Post Office Appropriation Act for the preceding financial year: Provided that until such time as provision has been made in a Post Office Appropriation Act for such requirements during a financial year, such money shall be deemed to have been appropriated by an Act for such requirements, subject to the following limitations: Money deemed to have been so appropriated shall not amount—

(i) in respect of the first four months of the relevant financial year, to more than 45 per cent of;

(ii) in respect of each of the following months, to more than 10 per cent of; and

(iii) in total, to more than,

the amount voted by Parliament by a Post Office Appropriation Act in respect of the immediately preceding financial year.

[Para. (b) substituted by s. 1 of Act No. 171 of 1993.]

(2) At the commencement of a Post Office Appropriation Act any expenditure incurred in terms of subsection (1) (b) prior to the commencement thereof shall be deemed to be expenditure incurred under appropriation in the Post Office Appropriation Act in question, and such expenditure shall be accounted for as if it had been incurred under such appropriation.

(3) The appropriations made by a Post Office Appropriation Act in respect of a financial year shall as far as possible be charged with all expenditure incurred in respect of that financial year, whether or not such expenditure has been defrayed at the close of the accounts for the financial year in question.

[S. 12G inserted by s. 5 of Act No. 113 of 1976.]

12H. Accounts and statements.—(1) Proper account shall be kept of the transactions of the department by means of a system of account-books, accounts and records approved by the Postmaster-General after consultation with the Auditor-General.

(2) The Postmaster-General may, after consultation with the Auditor-General, make such changes to the said system as he may consider necessary to provide for changed circumstances.

(3) The full amounts of revenue earned or accrued and the full amounts of the liabilities of the department incurred or accrued, shall as far as possible be brought to account monthly.

(4) The Postmaster-General shall as soon as practicable after the end of each month cause a statement to be published in the Gazette showing the revenue and expenditure of the department during that month and during the period from the first day of the relative financial year to the end of that month.

(5) The department shall as soon as possible, but not later than four months after the close of the relative financial year, prepare and transmit to the Auditor-General the following statements and accounts, in a form determined by the Postmaster-General after consultation with the Auditor-General, in respect of the relative financial year:—

(a) a balance-sheet setting out the true state of all the financial affairs of the department on the last day of the relative financial year;

(b) a general revenue and expenditure account;

(c) a statement specifying in respect of each main division of the estimates of expenditure the amount appropriated in the said estimates and in any additional estimates of expenditure, and the amount with which each such main division was charged at the close of the accounts for the financial year in question in terms of section 12G (3);

[Para. (c) substituted by s. 3 (a) of Act No. 7 of 1986.]

(d)

[Para. (d) deleted by s. 3 of Act No. 27 of 1983.]

(e) such other accounts and statements as the Auditor-General may deem necessary or desirable.

(6) Each statement referred to in subsection (5) (c) shall be accompanied by an explanation of the causes of any variation in excess of two per cent between the amount which has been appropriated in the estimates of expenditure or any additional estimates of expenditure in respect of each main division referred to in subsection (5) (c) and the amount with which that main division was charged at the close of the accounts for the financial year in question.

[Sub-s. (6) substituted by s. 3 (b) of Act No. 7 of 1986.]

(7) Each balance-sheet, account and statement referred to in subsection (5) (a), (b) and (c) shall be signed by the Postmaster-General, and this duty may not be delegated by the Postmaster-General, notwithstanding anything to the contrary contained in this Act.

[Sub-s. (7) substituted by s. 3 (c) of Act No. 7 of 1986.]

(8) All the accounts of the Department shall be audited by the Auditor-General.

[S. 12H inserted by s. 5 of Act No. 113 of 1976. Sub-s. (8) added by s. 18 of Act No. 52 of 1989.]

12I. Loans.—(1) The Postmaster-General may at any time, with the approval of the Minister given in consultation with the Minister of Finance, borrow money in the Republic or in any other country to finance anticipated deficits in the Fund, and may do so by—

(a) entering into agreements with governments, banks or financial institutions, including an international bank or foreign financial institution;

(b) making issues of public stock and bonds,

on such terms and conditions as the Minister may approve in consultation with the Minister of Finance, and may furnish any security required to be lodged therefor or which is considered necessary.

(2) The Postmaster-General may at any time, with the approval of the Minister granted generally or in a specific instance, by agreement borrow money from the South Atlantic Cable Company (Proprietary) Limited registered on 13 May, 1965, in terms of the Companies Act, 1926 (Act No. 46 of 1926), as substituted by the Companies Act, 1973 (Act No. 61 of 1973).

(3)

[Sub-s. (3) repealed by s. 3 (1) of Act No. 21 of 1980.]

(4) Agreements entered into and securities issued under this section shall be signed by the Postmaster-General or a person or persons authorized thereto by him in writing.

(5) An agreement entered into in terms of this section may provide that any moneys borrowed thereunder may at any time during the currency of the agreement be repaid in whole or in part and that an amount so repaid shall again be available for drawing in terms of that agreement, and an amount or part of an

amount thus repaid shall be deemed to have been appropriated by law.

[S. 12I inserted by s. 5 of Act No. 113 of 1976.]

12J. Provisions applicable to issues of stock.—(1) The public stock that the Postmaster-General may issue in terms of section 12I (1) (b) shall be either internal stock or external stock, and such internal stock shall be registered stock.

(2) Internal registered stock shall be transferable by a securities transfer form in terms of section 135 of the Companies Act, 1973 (Act No. 61 of 1973), and the stock certificate which the department issues in respect thereof shall be prima facie evidence of the title of the person mentioned therein as the holder of the stock in question, to such stock.

(3) The department shall keep records in which shall be entered in respect of each issue of stock—

(a) the name and address of each holder of such stock;

(b) the amount of such stock of each holder; and

(c) the date or dates on which such stock was registered in the name of a holder.

(4) The department shall issue—

(a) to a person, upon payment to the department of the full amount of any internal registered stock allocated by the department to him on application by him, a stock certificate for the full amount of such stock;

(b) to the transferee a stock certificate for the full amount of any such stock transferred by the department into his name by a securities transfer form lodged with the department and accompanied by the relevant stock certificate in the transferor's name.

(5) External stock may be transferred by a written instrument in the acceptable or general form applicable in the country in which the stock is issued.

[S. 12J inserted by s. 5 of Act No. 113 of 1976.]

12K. Appointment of agents and making of advances.—(1) The Minister may, on the terms and conditions agreed upon, appoint the Bank, a financial institution or any other person as an agent for the issue, management, repurchase or repayment of securities issued under this Act, or to perform any other action which the department may or is required to perform in terms of section 12I or 12J.

(2) The department may, as a charge against the Fund, make interest-free advances to an agent referred to in subsection (1) for the repurchase of securities, and advances so made shall be deemed to have been appropriated by law.

(3) The Minister may either in general or in a particular case or in cases of a particular nature delegate to an officer or the holder of a post in the department, on such conditions as he may determine, any power conferred upon him by subsection (1).

[S. 12K inserted by s. 5 of Act No. 113 of 1976. Sub-s. (3) added by s. 4 of Act No. 27 of 1983.]

12L. Department not responsible for fulfilment of obligations resulting from lien over securities.—Neither the department nor any agent appointed under section 12K shall be responsible for the fulfilment of any obligation resulting from any lien, whether expressed, implied or constructive, held over any security, notwithstanding that the department or such agent was notified of such lien.

[S. 12L inserted by s. 5 of Act No. 113 of 1976.]

12M. Bank overdraft.—The Postmaster-General may at any time borrow from the bank by way of overdraft such sums of money as he may deem necessary to meet anticipated temporary deficits in the Post Office Account, and may pay interest on such loans, and the Bank may grant such loans to the department.

[S. 12M inserted by s. 5 of Act No. 113 of 1976.]

12N. Expenditure in connection with loans.—(1) When in the raising of a loan the gross amount of the moneys borrowed is reduced by any costs, including any discount and commission, such costs shall be deemed to be expenditure chargeable to the Fund and the net amount so borrowed shall be increased by the amount of such costs.

(2) All interest payable on loans, exchange rate losses, commission, management charges and any other costs incurred in respect of moneys borrowed in terms of this Act or incurred with the object of borrowing moneys in terms of this Act, shall be paid by the department from the Fund.

[S. 12N inserted by s. 5 of Act No. 113 of 1976.]

12O. Repayment of loans.—(1) The department may prior to the due date, unless it is inconsistent with any conditions of issue or any agreement, or on the due date, or, in the case of moneys borrowed by way of overdraft in terms of section 12M, at any time, repay any moneys borrowed in terms of this Act, and any moneys so repaid shall be deemed to have been appropriated by law.

[Sub-s. (1) substituted by s. 4 of Act No. 7 of 1986.]

(2) Any moneys borrowed in terms of this Act and not claimed by the person entitled thereto within a period of six years from the date on which he became entitled to claim such moneys, may be paid into the Fund: Provided that moneys so paid into the Fund and subsequently claimed by or on behalf of the person entitled thereto, may be paid by means of a drawback from current revenue accruing to the Fund.

[S. 12O inserted by s. 5 of Act No. 113 of 1976.]

12P. Opening of bank accounts.—No account shall be opened on behalf of the department at the Bank without the written approval of the Postmaster-General, and, subject to the provisions of section 12M, the Bank shall not allow such an account to be overdrawn.

[S. 12P inserted by s. 5 of Act No. 113 of 1976 and substituted by s. 2 of Act No. 35 of 1995.]

12Q. Investment of moneys held by department and realization of certain investments.—(1) The Postmaster-General may in his discretion invest on short call deposit in the Republic or in any other country any moneys held by the department.

[Sub-s. (1) amended by s. 20 of Act No. 46 of 1984, and substituted by s. 5 (1) (a) of Act No. 7 of 1986.]

(2)

[Sub-s. (2) deleted by s. 5 (1) (b) of Act No. 7 of 1986.]

(3) The sums of money withdrawn from the Fund for investment or the purchase or repurchase of securities in accordance with subsections (1) and (4), shall be deemed to have been appropriated by law for the relative purposes.

[Sub-s. (3) substituted by s. 5 (1) (c) of Act No. 7 of 1986.]

(4) The Postmaster-General may, whenever he deems it advisable, buy, keep or negotiate any security and may repurchase and keep or negotiate any security issued by the department.

[S. 12Q inserted by s. 5 of Act No. 113 of 1976. Sub-s. (4) substituted by s. 5 (1) (d) of Act No. 7 of 1986.]

12R. Recovery of losses and damages.—(1) If a person who is or was in the employ of the department caused the department any loss or damage because he—

(a) failed to collect moneys for the collection of which he is or was responsible;

(b) is or was responsible for an irregular payment of moneys or for a payment of moneys not supported by a proper voucher;

(c) is or was responsible for fruitless expenditure of moneys due to an omission to carry out his duties;

(d) is or was responsible for a deficiency in, or for the destruction of, or damage to, moneys, stamps, face value documents and forms having a potential value, securities, equipment, stores or any other property of the department;

(e) due to an omission to carry out his duties or in any other manner, is or was responsible for a claim against the department,

[Para. (e) substituted by s. 6 (a) of Act No. 7 of 1986.]

the Postmaster-General shall determine the amount of such loss or damage or, in a case where property of the department has been lost or destroyed, the amount which has to be paid by the

department for the replacement of that property, and, subject to the provisions of subsection (5), order, by notice in writing, the said person to pay to him, within thirty days from the date of such notice, the amount so determined.

[Sub-s. (1) amended by s. 6 (a) of Act No. 7 of 1986.]

(2) If a person who is in the employ of the department and who has in terms of subsection (1) been ordered to pay an amount, fails to pay such amount within the period stipulated in the notice in question, the amount shall, subject to the provisions of subsections (4), (6) and (7), be deducted from his monthly salary: Provided that such deduction shall not in any month exceed one-fourth of his monthly salary.

(3) If a person who was in the employ of the department owes money to the department by virtue of his having in terms of subsection (1) been ordered to pay an amount, the Postmaster-General may postpone the payment of any salary, wage or allowance which may be payable to that person and, if the said person fails to pay the amount owing within the period stipulated in the notice in question, the Postmaster-General may, subject to the provisions of subsections (4), (6) and (7), apply so much of such salary, wage or allowance towards the diminution or extinguishment of such debt and pay the balance (if any) of the said salary, wage or allowance to the person in question, or if the said debt has not been so extinguished, recover the whole or the outstanding portion thereof, as the case may be, from the person concerned by legal process.

[Sub-s. (3) substituted by s. 6 (b) of Act No. 7 of 1986.]

(4) If a person who has been ordered to pay an amount in terms of subsection (1) makes, within the period stipulated in the notice in question, an offer to pay the amount in instalments, the Postmaster-General may allow payment in such instalments as he may consider reasonable: Provided that if the redemption of the amount in terms of the offer will not be effected within a period of twelve months calculated from the date on which the first instalment is payable, the Postmaster-General may approve that such amount be paid over a period in excess of the period mentioned, and may determine the other terms and conditions subject to which the amount shall be paid.

(5) If for any reason whatsoever the Postmaster-General is of the opinion that the amount of any loss or damage referred to in

subsection (1) should not be recovered or should be recovered in part only from the person responsible therefore, he may exempt that person from payment of the whole or a portion of such amount.

(6) A person who has in terms of subsection (1) been ordered to pay an amount may within a period of thirty days from the date of such order in writing request the Postmaster-General, stating the grounds for his request, to exempt him from payment of the whole or a portion of such amount in terms of subsection (5), and if the Postmaster-General refuses to exempt such person in accordance with his request from the payment of the whole or a portion of the amount in question, such person may within thirty days after he has been notified in writing of any such refusal, appeal against such refusal to the Minister, and the Minister may, after such further investigation as he may deem necessary, dismiss the appeal or order that the appellant be exempted either wholly or partly, according as he may consider fair and reasonable from the payment of such amount.

(7) A person who has in terms of subsection (1) been ordered to pay an amount may, instead of appealing to the Minister under subsection (6), apply within a period of thirty days from the date of such order, or within such further period as the court may allow, to a competent court for an order setting aside such first-mentioned order or reducing such amount, and the court may upon such an application, if it is not convinced by the Postmaster-General on the merits of the case that the order was rightly made or that that amount is correct, make an order setting aside such first-mentioned order or reducing that amount, as the case may be.

(8) If an amount is in terms of subsection (5), (6) or (7) reduced, the reduced amount shall *mutatis mutandis* be recovered in accordance with the provisions of subsections (1), (2), (3) and (4).

[S. 12R inserted by s. 5 of Act No. 113 of 1976.]

12S. Gifts to department.—Whenever a gift is made to the department and it is not apparent to what purpose the gift should be applied, the Minister may decide the manner in which such gift shall be utilized.

[S. 12S inserted by s. 5 of Act No. 113 of 1976.]

12T. Unauthorized expenditure.—(1) Expenditure shall be unauthorized if a pay—ment in respect thereof is made—

(a)for a purpose or purposes for which no provision has been made in the then current Post Office Appropriation Act or the spending of which has not been authorized under section 12F (5) (b);

(b)in excess of the amount appropriated in the then current Post Office Appropriation Act for the purpose or purposes for which the expenditure has been incurred, and for which excess no approval or authority in terms of section 12F (3) or 12F (5) (a), as the case may be, has been granted; and

(c)in respect of which an appropriate authority required in terms of the provisions of this Act or any other law, cannot be submitted by the Postmaster-General to the Auditor-General.

(2) Unauthorized expenditure referred to in subsection (1) shall not form a charge against the Fund until—

(a)in the case of paragraphs (a) and (b) of that subsection, the expenditure concerned has been authorized by law; or

(b)in the case of paragraph (c) of that subsection, the expenditure concerned has been validated by law.

(3) Unauthorized expenditure which has not been authorized or validated as contemplated in subsection (2), shall be recoverable from the Postmaster-General if he cannot or is unwilling to recover the amount concerned from the beneficiary or the person responsible for the unauthorized expenditure.

[S. 12T inserted by s. 18 of Act No. 52 of 1989.]

12U. Loans to postal company and telecommunications company.—(1) The State shall be deemed, with effect from the postal transfer date, to have lent and advanced to the postal company the amounts which the State owes in terms of excluded commitments entered into by the Postmaster-General in terms of this Act and which pertain to or are connected with the conduct of the postal service by the department.

(2) The State shall be deemed with effect from the telecommunications transfer date to have lent and advanced to the telecommunications company the amounts which the State

owes in terms of excluded commitments entered into by the Postmaster-General in terms of this Act and which pertain to or are connected with the conduct of the telecommunications service by the department.

(3) The amounts owing to the State by the postal company and the telecommunications company, respectively, in terms of the excluded commitments contemplated in subsections (1) and (2), shall bear interest at the rate at which, and shall be repaid to the State within the period for which, the department borrowed the money in terms of the agreement concerned.

(4) For the purposes of the transfer by the department to the postal company and the telecommunications company of the loans made to the department by the State in terms of the Exchequer Act, 1975 (Act No. 66 of 1975)—

(a) the amount described in section 28 of the Exchequer Act, 1975, as permanent capital, shall notwithstanding the provisions of the said section be deemed to be a loan made by the State to the department which shall be converted on the transfer date concerned into ordinary shares held by the State in the successor company concerned: Provided that the nominal value and any premium payable in respect of the shares so issued shall be determined by the Minister with the concurrence of the Minister of Finance and shall in the aggregate be equal to the total amount of the permanent capital;

(b) the department shall to the extent of such transfer be released from any debt or obligation to the State in respect of such loans.

(5)

[Sub-s. (5) deleted by s. 9 of Act No. 101 of 1992.]

(6) The Minister shall deal with the excluded commitments with the concurrence of the Minister of Finance.

[S. 12U inserted by s. 9 of Act No. 85 of 1991.]

12V. Submission of statements.—The Minister shall within three months after the end of the financial year of each successor company lay upon the Table in Parliament the audited annual financial statements of the company, if Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within 14 days after the commencement of its next

ordinary session.

[S. 12V inserted by s. 9 of Act No. 85 of 1991.]

12W. Financial instruments.—(1) Subject to the provision of subsections (2) and (3), a successor company of which all the issued equity shares are held by the State, may, for as long as the said shares are being so held, and notwithstanding anything to the contrary contained in the Companies Act, issue stock, securities, bills, promissory notes, debentures, debenture stock, obligations or other financial instruments as proof of a loan of money, and may negotiate or have them listed in the same manner and on the same financial markets or on the same stock exchange as is customary in the case of similar financial instruments issued by the State.

(2) Financial instruments referred to in subsection (1) shall only be issued with the approval of the Minister.

[Sub-s. (2) substituted by s. 3 of Act No. 35 of 1995.]

(3) Any financial instruments issued by a successor company before the commencement of this section and which purported to be public stock or bonds issued by the Postmaster-General in terms of section 121 (1) (b), shall be deemed to be financial instruments issued by the company concerned in terms of subsection (1).

(4) Public stock or bonds which immediately prior to the deletion of section 12U (5) by the Posts and Telecommunications Acts Amendment Act, 1992, were in terms of the said provision deemed to be debentures issued by the successor company concerned, shall be deemed to be financial instruments issued by the company concerned in terms of subsection (1).

(5) The provisions of the Companies Act in respect of debentures shall, subject to subsection (8), not apply to financial instruments referred to in subsections (1), (3) and (4).

(6) A successor company may engage in commercial transactions of whatever nature, including repurchase agreements, in respect of its own financial instruments and similar financial instruments issued by the State or other institutions.

(7) A successor company shall, as far as possible, keep a register of all financial instruments referred to in subsections (1), (3) and (4).

(8) Stock referred to in subsections (1), (3) and (4) may be transferred by means of a securities transfer form in the manner referred to in section 135 of the Companies Act, and the stock certificate issued by the successor company concerned in respect of such transfer shall be prima facie evidence of the right to such stock of the person named therein as the holder of such stock.

(9) No levy, tax, stamp duty, fees or other costs of whatever nature shall be payable in respect of the issue or transfer of any financial instrument referred to in subsections (1), (3) and (4).

(10) No provision of this section shall be construed as derogating from the powers of a successor company in terms of its memorandum of association or its articles and under the provisions of the Companies Act, to issue, negotiate or list any financial instrument as proof of the loan of money.

[S. 12W inserted by s. 10 of Act No. 101 of 1992.]

CHAPTER III

POSTS

[Headings substituted by s. 6 of Act No. 113 of 1976.]

13. Rates of postage.—(1) Subject to the provisions of this Act, there shall be paid on every article for transmission by post, such postage and other sums as may be prescribed by the postal company.

(2) Save as is otherwise prescribed by the postal company, the postage and any fees which may be payable in respect of any postal article posted within the Republic shall be prepaid by means of postage stamps, issued for the Republic by the postal company, and not previously used, obliterated or defaced, and in default thereof there shall be payable in money upon every such postal article, at the time of or after delivery thereof, an amount so prescribed.

(3) In the case of loose postal articles received from masters of vessels, the single rates of postage applicable to articles posted

in the Republic for delivery therein shall be chargeable and may be collected in money on delivery.

[S. 13 amended by s. 3 of Act No. 56 of 1973, by s. 7 of Act No. 113 of 1976 and by s. 3 of Act No. 37 of 1984 and substituted by s. 10 of Act No. 85 of 1991.]

14..

[S. 14 repealed by s. 8 of Act No. 113 of 1976.]

15..

[S. 15 repealed by s. 11 of Act No. 85 of 1991.]

16..

[S. 16 repealed by s. 4 of Act No. 56 of 1973.]

17.

[S. 17 substituted by s. 5 of Act No. 56 of 1973 and repealed by s. 4 of Act No. 37 of 1984.]

18.

[S. 18 repealed by s. 6 of Act No. 56 of 1973.]

19. Letters to have precedence over other articles in certain circumstances.—Whenever in the opinion of the postal company the dispatch or delivery of letters from a post office would be delayed by the dispatch or delivery at the same time of other classes of postal articles, the latter or any of them may, subject to the regulations of the postal company, be detained in such post office for subsequent dispatch or delivery.

[S. 19 substituted by s. 12 of Act No. 85 of 1991.]

20..

[S. 20 amended by s. 3 of Act No. 80 of 1965 and repealed by s. 8 of Act No. 113 of 1976.]

21.

[S. 21 repealed by s. 8 of Act No. 113 of 1976.]

22. When postal articles deemed to be in course of transmission, or to be posted or delivered.—For the purposes of this Act—

(a) a postal article shall be deemed to be in course of transmission by post from the time of its being delivered to a post office to the time of its being delivered to the person to whom it is addressed;

(b) the placing of a postal article of any description in a pillar box or other receptacle provided for the purpose by or with the approval of the postal company or the delivery of a postal article to a postman or other person authorized to receive postal articles of that description for the post, shall be deemed to be delivery to a post office;

[Para. (b) amended by s. 75 (b) of Act No. 85 of 1991.]

(c) the delivery of a postal article at the house or office of the person to whom the article is addressed or to his servant or agent or other person considered to be authorized to receive the article according to the usual manner of delivering that person's postal articles or at the address specified on such article, shall be deemed to be delivery to the person addressed;

(d) delivery into a private box or private bag shall be deemed to be in all respects equivalent to personal delivery to the addressee.

23.

[S. 23 repealed by s. 8 of Act No. 113 of 1976.]

24. Articles deemed to be posted in contravention of Act.—A postal article received in a post office shall be deemed to have been posted in contravention of this Act—

(a) if the postage stamps thereon have been previously used, obliterated or defaced;

(b) if any profane, blasphemous, indecent, obscene, offensive or libellous matter appears on the outside thereof or any indecent or obscene matter is enclosed therein; or

(c) if it is posted or contains anything in fraud of or contrary to

the provisions of this Act or any other law.

25. Postal articles to be sent by postmasters to returned letter office for disposal.—(1) Subject to the provisions of subsection (2), any postal article—

(a) which is without address or bears an illegible address or is otherwise undeliverable; or

(b) which is refused by the person to whom it is addressed; or

(c) which has been posted or is reasonably suspected to have been posted in contravention of this Act or any other law,

shall be sent to the office known as the returned letter office and dealt with as may be prescribed by the postal company.

[Sub-s. (1) amended by s. 13 of Act No. 85 of 1991.]

(2) Any postal article referred to in subsection (1) (a) or (b)—

(a) excluding a letter or parcel, and which does not bear on the outside thereof the name and address of the sender, which in the opinion of the postal company is of little value or importance, which does not contain any money, documents or valuable articles and which has not been posted upon the public service, or any postal article referred to in subsection (1) (c), may, according to the postal company's direction, be destroyed or disposed of in some other manner;

[Para. (a) amended by s. 75 (b) of Act No. 85 of 1991.]

(b) which bears on the outside thereof the name and address of the sender, may be returned to him or delivered to him direct.

[S. 25 substituted by s. 7 of Act No. 56 of 1973.]

26. Articles subject to customs duty.—Any postal article containing or suspected of containing an enclosure upon which customs duty is payable shall be dealt with as prescribed by the postal company, subject to any law relating to customs.

[S. 26 substituted by s. 14 of Act No. 85 of 1991.]

27. Articles other than letters may be opened for examination.—(1) Any postal article, other than a letter, may

be opened in the post for examination in order to ascertain whether that article is entitled to transmission at the rate of postage pre-paid thereon or has been posted in contravention of this Act.

(2) The postal company shall decide as to whether any postal article is a letter or any other description of postal article within the meaning of this Act.

[Sub-s. (2) amended by s. 75 (b) of Act No. 85 of 1991 and substituted by s. 21 of Act No. 88 of 1996.]

28. Treatment of unclaimed letters in returned letter office.—

(1) Subject to the provisions of subsection (2), any postal article originally posted within the Republic and which is sent to the returned letter office in terms of section 25, shall be opened by an officer nominated by the postal company for that purpose, and shall, unless it contains any valuable or saleable enclosure or has in the opinion of the postal company been posted in contravention of this Act or with intent to evade payment of the postage properly chargeable thereon, be returned to the sender thereof if his name and address are known, and may, if the sender refuses to receive it or if his name and address are not known, according to the postal company's direction, be destroyed or disposed of in some other manner.

[Sub-s. (1) amended by s. 75 (b) of Act No. 85 of 1991.]

(2) Any postal article referred to in subsection (1) the name and address of the sender of which are known but which, in the opinion of the postal company, is of little value or importance, which does not contain any documents, has not been transmitted by registered post and has not been posted upon the public service, may, after it has been retained for the period prescribed by the postal company and with due regard to the requirements prescribed by that company, be destroyed or disposed of in any other manner so prescribed.

[S. 28 substituted by s. 8 of Act No. 56 of 1973. Sub-s. (2) substituted by s. 15 of Act No. 85 of 1991.]

29. Unclaimed articles of value and articles posted in

contravention Act.—(1) Every postal article opened under the provisions of this Act which contains any valuable or saleable enclosure, shall be safely kept and a record thereof and of its contents shall be made and preserved, and the postal company

shall, unless any such postal article or the contents thereof have in his opinion been posted in contravention of this Act or with intent to evade payment of the postage chargeable thereon, cause notice of his possession of that article and of the contents thereof to be sent to the person to whom the same is addressed or, if he cannot be found, to the sender thereof if he can be found, and shall, upon application by the person to whom the notice has been sent, cause such postal article and its contents to be delivered to any such person upon payment of all charges due thereon.

(2) If no application under subsection (1) is made within three months after the sending of any notice under that subsection, or if the postal article in question or the contents thereof have in the opinion of the postal company been posted in contravention of this Act or with intent to evade payment of any charge properly payable thereon, such article and its contents shall (without affecting the liability to any penalty or punishment to which the sender may be subject) be destroyed, sold or otherwise disposed of as the postal company may direct: Provided that whenever in the application of the provisions of this subsection the question arises as to whether any profane, blasphemous, indecent, obscene or offensive matter appears on the outside of any postal article or is enclosed therein, the postal company shall not take any decision in regard to that question except in consultation with a committee as defined in section 47 of the Publications Act, 1974, and designated by the directorate referred to in that section, for the purposes of this section, either generally or in any particular case.

[Sub-s. (2) amended by s. 21 of Act No. 26 of 1963 and by s. 48 of Act No. 42 of 1974.]

(3) The proceeds of the sale of any postal article or the contents thereof as aforesaid, as well as any such contents consisting of money or any order or security for money, shall be paid into and form part of the postal revenue.

(4) Any such order or security for money shall for the purpose of procuring payment be deemed to be the property of the postal company.

[S. 29 amended by s. 75 (b) of Act No. 85 of 1991.]

30. Sender of undelivered article liable for all charges due thereon.—The sender of any undelivered postal article shall on

demand pay all charges due thereon and shall, in the event of his refusal to pay such charges, be guilty of an offence and liable on conviction to a fine not exceeding R10: Provided that nothing in this section contained shall be construed as releasing the person to whom any postal article is originally addressed from liability to pay the charges due thereon if such a postal article is delivered to him.

[S. 30 amended by s. 16 of Act No. 85 of 1991.]

31. Delay in transmission, return to sender or delivery to other than addressee of article prohibited.—Save as expressly provided in this Act, no postal article shall be delayed in transmission or returned to the sender or be delivered to any person not named in the address thereof, except with the consent in writing of the addressee or on the special authority of the postal company.

[S. 31 amended by s. 75 (b) of Act No. 85 of 1991.]

32.

[S. 32 repealed by s. 9 of Act No. 56 of 1973.]

33. Articles addressed to insolvent persons.—Whenever any person has been found to be insolvent by a competent court in the Republic, the postal company shall, if that court so orders, and for so long as may be specified in the order, cause all postal articles addressed to such person to be delivered to the person named in the order.

[S. 33 amended by s. 75 (b) of Act No. 85 of 1991.]

34. Articles addressed to deceased persons.—Postal articles addressed to deceased persons may be delivered to the executors or administrators of those deceased persons on the production of letters of administration or, pending production of letters of administration, at the addresses indicated thereon.

35. Articles addressed to persons conducting a lottery or sports pool or dealing in indecent or obscene matter.—When the postal company is satisfied on enquiry or by any advertisement, letter, circular or other documentary evidence that any person is conducting or assisting as agent or otherwise in conducting a lottery or sports pool, or is dealing in indecent or obscene matter, and is using the services of the postal company for the

purpose, the postal company may detain or delay all postal articles addressed to such person (whether under his own or under a fictitious or assumed name) or his agent or representative, or to any address of any such person, agent or representative without the name of any person appearing thereon, and all such postal articles may be opened and returned to the senders thereof or otherwise disposed of as the postal company may deem fit.

[S. 35 substituted by s. 13 of Act No. 51 of 1965 and amended by s. 75 (b) of Act No. 85 of 1991.]

36. Notice of departure of vessels.—(1) The master or agent of any vessel, except any master or agent exempted in terms of section 45A from compliance with the provisions of this section, which is about to depart from any port within the Republic shall give to the postmaster at the port from which that vessel is about to depart, notice in writing of the intended time of departure and the ports of call and destination of that vessel.

[Sub-s. (1) substituted by s. 9 of Act No. 113 of 1976.]

(2) Any such notice shall be given so as to terminate between the hours of eight o'clock in the forenoon and six o'clock in the afternoon—

(a) not less than twenty-four hours before the intended time of departure if the destination of the vessel in question is a port outside the Republic; and

(b) not less than three hours before that time if such destination is a port within the Republic:

Provided that shorter notice may be allowed by the postal company or the postmaster at the port of departure in any particular case or special class of cases.

[Sub-s. (2) amended by s. 75 (b) of Act No. 85 of 1991.]

(3) Any postmaster who receives any such notice shall thereupon grant to the master of the vessel a certificate stating the day and hour when the notice was given and that the provisions of this Act have been complied with, and until such a certificate has been given clearance papers shall not be given in respect of the vessel.

(4) Where the time of departure of any such vessel is postponed for a period exceeding one hour, the master or agent of that vessel shall forthwith advise the postmaster concerned accordingly.

(5) Any such master or agent who omits to give any notice required under this section, or who departs from a port before the time mentioned in any such notice, shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000.

[Sub-s. (5) amended by s. 17 of Act No. 85 of 1991.]

37. Masters of vessels to convey mail tendered to them.—The master of any vessel, except any master exempted in terms of section 45A from compliance with the provisions of this section, shall receive thereon any mail tendered to him by an officer for conveyance, and shall give a receipt therefor in such form as may be required by the postal company, and shall without delay deliver such mail according to the direction thereof at the port of call or destination, and in default of compliance with any provision of this section he or the agent shall incur a penalty not exceeding one thousand rand which shall be recoverable by action in any competent court.

[S. 37 substituted by s. 10 of Act No. 113 of 1976 and amended by s. 75 (b) of Act No. 85 of 1991.]

38. Masters of certain vessels to provide facilities for the handling of postal articles.—The master of any vessel, except any master exempted in terms of section 45A from compliance with the provisions of this section, shall provide all reasonable facilities on board the vessel to any officer duly authorized by the postal company, to enable that officer to receive and prepare for dispatch any postal articles which may be brought on board for transmission up to the time of the vessel's departure.

[S. 38 substituted by s. 11 of Act No. 113 of 1976 and amended by s. 75 (b) of Act No. 85 of 1991.]

39. Payment for conveyance of mails by non-contract vessels.—(1) The master of any vessel (other than a vessel under contract for the conveyance of mail) about to depart from any port within the Republic, who receives on board any mail for the purpose of conveying the same according to the direction thereof, shall be entitled to demand and receive for such conveyance payment at such rates as may be prescribed and

shall give a receipt for the amount so received by him: Provided that no master of a vessel shall be entitled to demand payment in respect of the second conveyance of any mail brought from one port to another and transhipped to or forwarded by a second vessel belonging to the same owner.

(2) Payment for the conveyance of mails under this section shall be made only in respect of mails dispatched from a port within the Republic, and in no case in respect of mails received at any port within the Republic.

40. Custody of mails on board vessels.—Any mail conveyed by a vessel departing from a port within the Republic shall be locked up on board the vessel apart and separate from all other articles and things, in a place which is secure, dry and vermin-proof, and if during the whole or any part of the voyage any such mail is not so locked up, the master of the vessel in question shall be guilty of an offence and liable on conviction to a fine not exceeding R500.

[S. 40 amended by s. 18 of Act No. 85 of 1991.]

41. Mails and gratuity to be returned if vessel does not depart according to notice given.—(1) Whenever the master of a vessel has received any mail for conveyance on board, and the vessel does not depart on her voyage according to the time notified for the departure thereof as provided in section thirty-six, that master shall in writing notify the postmaster concerned of the cause and the probable duration of the delay, and shall on demand return such mail, together with any gratuity which may have been paid for the conveyance thereof, to the postmaster, port officer or customs officer or to some other person duly authorized for the purpose in writing under the hand of the postmaster concerned.

(2) Any master who fails to comply with the provisions of subsection (1), shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000.

[Sub-s. (2) amended by s. 19 of Act No. 85 of 1991.]

42. Letters arriving by vessel to be delivered to post office by master.—Any mail or letter (being within the exclusive privilege of the postal company and not included among the exceptions enumerated in section seven) which at the time of the arrival of any vessel in any port within the Republic is on

board directed to any person within the Republic, shall on demand be delivered by the master of the vessel to the postmaster, port officer or customs officer at that port or to some other person authorized for the purpose by writing under the hand of the postmaster concerned or, if no demand is made, at the post office with which the master of the vessel can first communicate.

[S. 42 amended by s. 75 (b) of Act No. 85 of 1991.]

43. Declaration to be made by masters on arrival of mails.—

(1) The master of any vessel, except any master exempted in terms of section 45A from compliance with the provisions of this section, arriving at a port within the Republic shall, as soon as practicable after arrival, sign in the presence of the postmaster, port officer or customs officer or some other person appointed by the postmaster concerned to receive the same, a declaration in the form required by the postal company, of compliance with this Act, and shall not report, break bulk or make entry of any part of the cargo of such vessel in any port until such declaration has been signed.

[Sub-s. (1) substituted by s. 12 of Act No. 113 of 1976 and amended by s. 75 (b) of Act No. 85 of 1991.]

(2) Any such master who fails to make such a declaration or who makes a false declaration or who knowingly or negligently detains or keeps in his possession or fails to deliver any mail or letter referred to in section forty-two after demand has been made under that section, or does not duly deliver any such mail or letter at the post office as provided in that section, or does not use due diligence in the delivery of the same, shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000.

[Sub-s. (2) amended by s. 20 (a) of Act No. 85 of 1991.]

(3) Any such master who reports or, except with the express permission of a customs officer, breaks bulk or makes entry before all mails or letters on board have been delivered in accordance with section forty-two, shall be guilty of an offence and liable on conviction to a fine not exceeding R200.

[Sub-s. (3) amended by s. 20 (b) of Act No. 85 of 1991.]

44. Penalty for retention by any person on board a vessel of

letter which should have been delivered to post office.—Any person, being either the master or one of the officers or crew of a vessel inward bound or a passenger thereof, who knowingly has in his baggage or in his possession or custody any letter (except a letter not within the exclusive privilege of the postal company)—

(a)after the master of the vessel has delivered any part of the mail or letters on board his vessel to the post office; or

(b)after demand made by a postmaster, port officer or customs officer or any person duly authorized to demand the mails on board,

shall be guilty of an offence and liable on conviction, in the case of an offence under paragraph (a), to a fine not exceeding R50, and, in the case of an offence under paragraph (b) to a fine not exceeding R100 for each such letter.

[S. 44 amended by ss. 21 and 75 (b) of Act No. 85 of 1991.]

45. Vessels not to report, etc., until declaration signed by master.—A customs officer shall not allow the master of any inward bound vessel to report until the declaration required by section forty-three has been made and produced to him, and may refuse to permit bulk to be broken on board any such vessel or entry to be made of any part of her cargo until all mail and letters on board have been delivered as required by this Act, and may search every such vessel for mails and letters which may be on board contrary to this Act, and may seize the same and forward them to the nearest post office.

45A. Exemptions.—The postal company may exempt the master or agent of any specific vessel or any vessel of a specific class or category from compliance with any provision of section 36, 37, 38 or 43.

[S. 45A inserted by s. 13 of Act No. 113 of 1976 and amended by s. 75 (b) of Act No. 85 of 1991.]

CHAPTER IV

MONEY TRANSFER SERVICES

[Headings substituted by s. 14 of Act No. 113 of 1976.]

46. Remittance of money through postal company.—Money may be remitted through the postal company either within or outside the Republic at rates determined by the postal company, and the postal company may authorize any employee to issue and pay money orders, postal orders and other documents authorized to be used for the purpose of so remitting money.

[S. 46 substituted by s. 22 of Act No. 85 of 1991.]

47. Postal company may refuse to issue or pay money orders, postal orders, etc., to certain persons.—The postal company may refuse to issue or pay any money order, postal order or other document authorized to be used for the purpose of remitting money through the postal company, in favour of any person to whom the provisions of section 35 apply, and where payment of any such order or other document is refused, such order may, if it was issued in the Republic, be returned to the person to whom it was originally issued or otherwise disposed of as the postal company may deem fit, or, if it was issued outside the Republic, the amount thereof shall be returned to the postal authority of the country in which it was issued.

[S. 47 substituted by s. 23 of Act No. 85 of 1991.]

48 to 50 inclusive.

[Ss. 48 to 50 inclusive repealed by s. 15 of Act No. 113 of 1976.]

51. Money orders, etc., to be deemed bank notes, etc., in case of forgery or theft, and unissued postal orders deemed money of postal company.—(1) Any money order, postal order or other document issued under section 46 shall be deemed to be a bank note or an order for the payment of money and a valuable security within the meaning of any law relating to forgery or theft.

(2) Any unissued postal order shall be deemed to be money of the postal company.

[S. 51 amended by s. 16 of Act No. 113 of 1976 and substituted by s. 24 of Act No. 85 of 1991.]

CHAPTER V

POST OFFICE SAVINGS BANK AND NATIONAL SAVINGS

CERTIFICATES

[Headings substituted by s. 2 of Act No. 13 of 1974 and by s. 17 of Act No. 113 of 1976.]

52. Establishment of Post Office Savings Bank.—(1) There is hereby established a Post Office Savings Bank which, subject to and in accordance with the provisions of the regulations and, subject to the provisions of this Act, under the control and management of the postal company, shall undertake such activities as are customary for a financial institution carrying on the business of accepting deposits.

(2) Interest on deposits in the Post Office Savings Bank shall be paid at a rate determined from time to time by the postal company, with the concurrence of the Minister of Finance, in the case of each kind of deposit.

[S. 52 substituted by s. 5 of Act No. 37 of 1984 and by s. 25 of Act No. 85 of 1991.]

53.

[S. 53 amended by s. 5 of Act No. 25 of 1970, substituted by s. 18 of Act No. 113 of 1976, amended by s. 5 of Act No. 27 of 1983 and repealed by s. 6 of Act No. 37 of 1984.]

54. Deposits in Post Office Savings Bank or National Savings Certificates in name of minors or married women.—
Notwithstanding anything to the contrary contained in any other law—

(a) deposits in the Post Office Savings Bank made by or for the benefit of, or any National Savings Certificate issued in favour of, any person under 21 years of age, may be repaid to that person after he has attained the age of seven years, or such other age above seven years as may be determined by regulation in respect of any particular kind of deposit or account in the Post Office Savings Bank, in every respect as if he were of full age; and

(b) deposits in the Post Office Savings Bank standing in the name of, or any National Savings Certificate issued in favour of, a married woman shall be repayable to her as if she were unmarried.

[S. 54 substituted by s. 3 of Act No. 13 of 1974 and by s. 7 of Act No. 37 of 1984.]

55.....

[S. 55 repealed by s. 19 of Act No. 113 of 1976.]

56.

[S. 56 amended by s. 34 (1) of Act No. 67 of 1968, substituted by s. 4 of Act No. 13 of 1974 and by s. 20 of Act No. 113 of 1976, amended by s. 2 of Act No. 1 of 1978 and by s. 6 of Act No. 27 of 1983 and repealed by s. 8 of Act No. 37 of 1984.]

57.

[S. 57 substituted by s. 21 of Act No. 113 of 1976 and by s. 3 of Act No. 1 of 1978 and repealed by s. 9 of Act No. 37 of 1984.]

58.

[S. 58 substituted by s. 22 of Act No. 113 of 1976, amended by s. 4 of Act No. 1 of 1978 and repealed by s. 10 of Act No. 37 of 1984.]

58A.

[S. 58A inserted by s. 5 of Act No. 1 of 1978 and repealed by s. 11 of Act No. 37 of 1984.]

59.

[S. 59 repealed by s. 12 of Act No. 37 of 1984.]

60.....

[S. 60 repealed by s. 12 of Act No. 37 of 1984.]

61.

[S. 61 repealed by s. 12 of Act No. 37 of 1984.]

62.

[S. 62 repealed by s. 12 of Act No. 37 of 1984.]

63.....

[S. 63 repealed by s. 12 of Act No. 37 of 1984.]

64.....

[S. 64 repealed by s. 26 of Act No. 85 of 1991.]

65. Secrecy.—No person shall, in respect of the transactions of any depositor in the Savings Bank or any holder of a National Savings Certificate, disclose any information (including the name of any such depositor or holder) which came to his knowledge in the performance of his duties and functions in terms of this Act, except—

(a)to an employee appointed by the postal company to assist in carrying out the provisions of this Chapter;

(b)to the Commissioner for Inland Revenue, for the purposes of any law relating to the imposition of any tax or levy;

(c)to the Master in relation to the administration of the estate of any deceased depositor in the Savings Bank or holder of a National Savings Certificate; or

(d)when required by order of a competent court:

Provided that nothing in this section contained shall be deemed to limit the authority of the auditors of the successor company to require a disclosure of such accounts and documents as may be necessary to enable them to carry out the duties imposed upon them by law.

[S. 65 substituted by s. 5 of Act No. 13 of 1974, amended by s. 13 of Act No. 37 of 1984 and substituted by s. 27 of Act No. 85 of 1991.]

66.....

[S. 66 amended by s. 35 of Act No. 67 of 1968 and repealed by s. 6 of Act No. 13 of 1974.]

67.

[S. 67 substituted by s. 7 of Act No. 13 of 1974 and repealed by s. 23 of Act No. 113 of 1976.]

68.....

[S. 68 repealed by s. 8 of Act No. 13 of 1974.]

69.

[S. 69 amended by s. 19 of Act No. 80 of 1959 and by s. 15 of Act No. 76 of 1961, substituted by s. 9 (1) of Act No. 102 of 1969 and repealed by s. 9 of Act No. 13 of 1974.]

70. Transfer of deposits from or to another country.—The postal company may in accordance with arrangements made with any postal authority for the transfer from or to the Republic of sums of money standing to the credit of depositors in the Savings Bank or depositors in a savings bank controlled by that postal authority and subject to the provisions of this Act and of any regulation made under section 9 of the Currency and Exchanges Act, 1933 (Act No. 9 of 1933), place any sum so transferred to the postal company to the credit of a depositor's ordinary account.

[S. 70 substituted by s. 24 of Act No. 113 of 1976, amended by s. 14 of Act No. 37 of 1984 and substituted by s. 28 of Act No. 85 of 1991.]

71.

[S. 71 repealed by s. 10 of Act No. 13 of 1974.]

72.....

[S. 72 substituted by s. 11 of Act No. 56 of 1973 and by s. 25 of Act No. 113 of 1976 and repealed by s. 15 of Act No. 37 of 1984.]

73.

[S. 73 amended by s. 12 of Act No. 56 of 1973 and repealed by s. 26 of Act No. 113 of 1976.]

74 and 75.

[Ss. 74 and 75 repealed by s. 26 of Act No. 113 of 1976.]

76.

[S. 76 amended by s. 11 (1) of Act No. 58 of 1966 and by s. 36 (1) of Act No. 67 of 1968, substituted by s. 11 of Act No. 13 of 1974 and repealed by s. 26 of Act No. 113 of 1976.]

76A. Inactive accounts.—If a balance in an ordinary account has remained unchanged for more than a period determined by the Minister by regulation (but which may not be less than two years), except for the accrual of interest, the postal company may in its discretion transfer the balance to the revenue of the postal company and utilize it for the purposes of the company: Provided that if the depositor concerned or any person legally competent to claim the balance on his behalf applies for the repayment thereof, or if an amount for deposit in the ordinary account concerned is paid after such transfer, an amount equal to the balance and the interest which would have accrued thereon if it had not been so transferred shall be transferred from the revenue of the postal company to the credit of the depositor concerned.

[S. 76A inserted by s. 27 of Act No. 113 of 1976, amended by s. 75 (b) of Act No. 85 of 1991 and substituted by s. 11 of Act No. 101 of 1992.]

77.....

[S. 77 substituted by s. 12 of Act No. 13 of 1974 and repealed by s. 28 of Act No. 113 of 1976.]

77A. Issue of National Savings Certificates.—(1)
Notwithstanding anything to the contrary contained in any other law the postal company may from time to time, with the approval of the Minister in the case of each issue, raise money by way of issues of National Savings Certificates.

(2) The conditions upon which National Savings Certificates are issued, shall in the case of each issue be determined by the Minister in consultation with the Minister of Finance and shall be prescribed by regulation: Provided that the term of any certificate shall not exceed ten years.

[Sub-s. (2) substituted by s. 1 (a) of Act No. 75 of 1981.]

(3)

[Sub-s. (3) deleted by s. 1 (b) of Act No. 75 of 1981.]

(4) On the amount represented by any National Savings Certificate which is not repaid before or on the expiry of the term thereof, interest may be paid from the expiry of such term to the date of repayment, at such rate as the Minister in consultation with the Minister of Finance may determine and which shall be prescribed by regulation.

[Sub-s. (4) substituted by s. 1 (c) of Act No. 75 of 1981.]

(5) The maximum amount which may be invested and held by—

(a) any single natural person;

(b) any natural person and, in a case where he is liable for the payment of income tax in respect of interest earned by any other natural person on National Savings Certificates, such other person jointly;

(c) any body or institution from which investments in National Savings Certificates may be accepted,

in any particular, or in more than one, issue of National Savings Certificates, shall, with the approval of the Minister and with the concurrence of the Minister of Finance, be prescribed by regulation.

[Sub-s. (5) substituted by s. 16 of Act No. 37 of 1984.]

(6) This section shall not be so construed as to derogate from the power of the postal company to borrow or raise money under the provisions of any other law.

[S. 77A inserted by s. 13 (1) of Act No. 13 of 1974 and amended by s. 75 (b) of Act No. 85 of 1991.]

*77B. Regulations as to National Savings Certificates.—(1) Subject to the provisions of section 77A, the Minister may make regulations—

(a) as to any matter which by this Act is required or permitted to be prescribed by regulation in respect of National Savings Certificates;

(b) prescribing the procedure which shall be observed at the

issue of, and the payment of amounts represented by, National Savings Certificates and the forms which shall be used in connection therewith;

(c)prescribing in respect of each issue of National Savings Certificates the price of issue, term, units or multiples of units in which certificates may be issued, rate of interest and times and manner of payment of interest, and, subject to paragraph (d) of this subsection and the proviso to paragraph (b) of subsection (2), the minimum period which shall elapse from the date of issue of any certificate before the amount represented by it may be repaid;

[Para. (c) substituted by s. 2 (a) of Act No. 75 of 1981 and by s. 7 (a) of Act No. 27 of 1983.]

(d)as to the circumstances under which and the conditions upon which any National Savings Certificate may be repaid before the expiry of the minimum period prescribed under paragraph (c);

[Para. (d) substituted by s. 2 (a) of Act No. 75 of 1981.]

(d A)as to the conditions and procedure applying to the transfer of any National Savings Certificate by the holder thereof to another person, the forms to be used in connection with such transfer and the fees payable in respect thereof;

[Para. (dA) inserted by s. 2 (b) of Act No. 75 of 1981.]

(e)as to the replacement of any National Savings Certificate which has been lost, destroyed or damaged, and the fees payable in respect of any such replacement;

(f)as to the issue of National Savings Certificates to certain persons or classes of persons;

(f A)as to the purchase of any National Savings Certificate by a trustee on behalf of a beneficiary and by one person in the name of another on particular conditions relating to the repayment of the amount represented by such certificate and compliance with such conditions, and as to limitations and requirements (including different limitations or requirements in respect of different categories of such investments or different categories of such investors) that shall apply to such purchases;

[Para. (fA) inserted by s. 29 (b) of Act No. 113 of 1976 and substituted by s. 17 of Act No. 37 of 1984.]

(g) as to, generally, any other matters in respect of which he deems it necessary or expedient to make regulations in order that the objects of this Act relating to National Savings Certificates may be achieved.

[Sub-s. (1) amended by s. 29 (a) of Act No. 113 of 1976.]

(2) Regulations made in terms of subsection (1) may prescribe as a condition of any particular issue of National Savings Certificates—

(a) that the interest thereon shall be exempted from income tax, and the interest on National Savings Certificates issued upon any such condition shall be so exempted;

(b) that the rate of interest prescribed by the said regulations in relation to the relevant issue of National Savings Certificates, may from time to time be increased or decreased by the Minister by way of an amendment of the said regulations: Provided that if any such rate of interest is decreased, any National Savings Certificate affected thereby shall, as from the date on which the said rate of interest is decreased, be repayable at the request of the holder of the relevant National Savings Certificate, together with any interest accrued thereon on the date of repayment.

[Sub-s. (2) substituted by s. 7 (b) of Act No. 27 of 1983.]

(3) Different regulations may in terms of subsection (1) be made in respect of different issues of National Savings Certificates.

(4) No regulation shall be made in terms of subsection (1) (c), (d) or (f) except in consultation with the Minister of Finance.

[S. 77B inserted by s. 13 (1) of Act No. 13 of 1974. Sub-s. (4) added by s. 2 (c) of Act No. 75 of 1981.]

*Pending amendment. Refer Act No. 8/1991, s. 29.

77C. Security for repayment of certain deposits and of amounts represented by certain certificates.—The revenue and

assets of the postal company and thereafter the State, shall serve as security for the repayment of deposits in the Savings Bank and of the amounts represented by Savings Bank, National Savings and Union Loan Certificates, and for the payment of interest due thereon.

[S. 77C inserted by s. 13 (1) of Act No. 13 of 1974 and substituted by s. 30 of Act No. 85 of 1991.]

77D.

[S. 77D inserted by s. 13 (1) of Act No. 13 of 1974, substituted by s. 30 of Act No. 113 of 1976 and by s. 18 of Act No. 37 of 1984 and repealed by s. 31 of Act No. 85 of 1991.]

77E.

[S. 77E inserted by s. 31 of Act No. 113 of 1976, substituted by s. 19 of Act No. 37 of 1984 and repealed by s. 32 of Act No. 85 of 1991.]

77F. Loans made from funds of Post Office Savings Bank.— Money made available by way of loans from the funds of the Post Office Savings Bank for use by the department, shall from the telecommunications transfer date be deemed to be owing by the telecommunications company to the postal company, which loan shall from the telecommunications transfer date be deemed to be represented by debentures issued for the amount of the loan by the telecommunications company in terms of the Companies Act subject to such conditions as the Minister with the concurrence of the Minister of Finance may determine.

[S. 77F inserted by s. 33 of Act No. 85 of 1991.]

CHAPTER VI

TELECOMMUNICATIONS

[Headings substituted by s. 32 of Act No. 113 of 1976.]

78. Telecommunications company to have exclusive privilege in respect of telecommunications.—(1) Subject to the provisions of any other Act of Parliament, the telecommunications company shall have the exclusive privilege of constructing, maintaining or using, or of authorizing any person to construct, maintain or use, any telecommunications

line for the sending, conveying, transmitting or receiving of sounds, images, signs, signals, communications or other information, and of transmitting telegrams over any such telecommunications line within the Republic or the territorial waters thereof, and of performing all the incidental services of receiving, collecting or delivering telegrams.

(2) The telecommunications company may, on such conditions as it may generally or specially prescribe in any case—

(a) against payment of the rental which it may generally or specially prescribe in any case, lease any telecommunications line referred to in subsection (1) to any person for use by him, or by any other person, in the manner and for the purposes determined by the telecommunications company;

(b) against payment of the licence fee prescribed by it, issue to any person a licence to construct, maintain or so to use any such telecommunications line, or to permit any other person so to use it.

(3) (a) (i) The telecommunications company shall not under subsection (2) authorize the use of a telecommunications line for the transmission of images or other visible signs, with or without attendant sounds, except with the approval of the Minister responsible for the administration of the Broadcasting Act, 1976 (Act No. 73 of 1976), granted after consultation with the South African Broadcasting Corporation.

(ii) The provisions of subparagraph (i) shall not apply where the said Broadcasting Corporation has been authorized to use a telecommunications line, or in any case in which the images or signs, in the opinion of the telecommunications company, fall within a class of images or signs the transmission of which is the function of the telecommunications company.

(b) Where the authority of the telecommunications company for the use of a telecommunications line is subject to the approval of the Minister responsible for the administration of the Broadcasting Act, 1976 (Act No. 73 of 1976), the said Minister may grant his approval subject to such conditions relating to the said use, and fix such fees in respect thereof, as he may deem fit, and direct that such fees shall be disposed of in the manner determined by him.

(4) Different rentals or fees may be prescribed or fixed under

subsections (2) and (3) in respect of different categories of telecommunications lines or different systems of telecommunications lines.

(5) No person shall use any telecommunications line for the purpose of transmitting or delivering telegrams or telephonic communications for the public, except under the authority of the telecommunications company and on such terms and conditions as it may prescribe, and the telecommunications company shall have the right of inspecting all offices which are authorized to accept, transmit or deliver public telegrams or telephonic communications.

(6) This section shall not apply in respect of a telecommunications line—

(a) which conforms to the requirements prescribed by the telecommunications company and which is used exclusively for the conveyance of transmissions, in any broadcasting service, which are received by means of radio, to a receiving apparatus which reproduces such transmissions; or

(b) where both the sending or transmission and the receiving of the same sounds, images, signs, signals, communications or other information take place on a single piece of land or on pieces of land which are contiguous to each other and owned by the same person.

[S. 78 substituted by s. 33 of Act No. 113 of 1976, amended by s. 23 of Act No. 61 of 1982 and by s. 7 of Act No. 24 of 1990 and substituted by s. 34 of Act No. 85 of 1991.]

79. Telecommunications company may take over private lines after notice.—The telecommunications company may, subject to an obligation to pay such compensation as may, in the absence of agreement, be determined, *mutatis mutandis*, in accordance with the provisions of sections 12, 14 and 15 of the Expropriation Act, 1975 (Act No. 63 of 1975), after giving six months' notice of its intention so to do, take over the whole or any part of any telecommunications line or system, not being a system of communication constructed and maintained by the South African Rail Commuter Corporation Limited referred to in section 22 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989), or Transnet Limited a company formed under section 2 of the said Act or a wholly-owned subsidiary of Transnet Limited established under

section 32 (1) of that Act with reference to a business unit acquired by such wholly-owned subsidiary in terms of paragraph (b) of the said section 32 (1), whether constructed before or after the commencement of this Act, and whether constructed, maintained or operated under any special or general legislative authority or otherwise.

[S. 79 substituted by s. 32 of Act No. 55 of 1965, by s. 43 of Act No. 63 of 1975 and by s. 35 of Act No. 85 of 1991.]

80. Right of entry and to construct lines across any lands, etc.—The telecommunications company may for the purposes of this Act and the conducting of the telecommunications service enter upon any land, including any street, road, footpath or land reserved for public purposes, and any railway, and construct and maintain a telecommunications line or any work (including any call office cabinet) upon, under, over, along or across any land, street, road, footpath or waterway or any railway, and alter or remove the same, and may for that purpose attach wires, stays or any other kind of support to any building or other structure.

[S. 80 substituted by s. 4 of Act No. 80 of 1965 and by s. 36 of Act No. 85 of 1991.]

80A. Facilities for installation of telecommunications equipment to be installed in buildings.—If in any building (other than a dwelling-house) erected in a prescribed area after the commencement of the Post Office Amendment Act, 1973, no conduit-pipes or other facilities complying with the requirements of the telecommunications company in respect of the installation of telecommunications equipment in that building or such building have been installed, the telecommunications company may at his discretion—

(a) refuse to provide telecommunications services in that building or in any part thereof until such conduit-pipes or other facilities have been so installed; or

(b) provide telecommunications services in that building or in any part thereof, and in respect of the installation of the telecommunications equipment in question charge the amount, in addition to the fees prescribed for the provision of those telecommunications services, by which the costs of the installation of the said equipment in the opinion of the telecommunications company exceed the costs which would

have been incurred if the said conduit-pipes or other facilities had been installed in the building in question.

[S. 80A inserted by s. 14 of Act No. 56 of 1973 and amended by s. 75 (c) of Act No. 85 of 1991.]

80B. Local authorities may provide underground conduit-pipes for telecommunications services.—(1) If any local authority and the telecommunications company agree that in a particular area electricity supply and telecommunications services shall be provided by means of underground cable, that local authority may on any premises within the said area, when installing such cable for an underground electricity supply line on the said premises, in accordance with the requirements of the telecommunications company provide a conduit-pipe or other facilities for the installation of an underground telecommunications service line from a point of connection on the street boundary to a building on those premises.

[Sub-s. (1) amended by s. 75 (c) of Act No. 85 of 1991.]

(2) The costs of the provision of the said conduit-pipe or other facilities shall be payable to the local authority in question and shall for the purposes of any law be deemed to be fees payable by the owner of the premises in question to the local authority in respect of the installation of the electricity supply line.

[S. 80B inserted by s. 14 of Act No. 56 of 1973.]

81. Lines may be laid under streets, etc.—The telecommunications company may after reasonable notice in writing to the local authority or person owning or having the care and management of any street, road or footpath, construct and maintain in the manner specified in that notice any telecommunications lines, pipes, tunnels or tubes required for telecommunications purposes under any such street, road or footpath, and may alter or remove the same, and may for such purposes break or open up any street, road or footpath and alter the position thereunder of any pipe (not being a sewer drain or main) for the supply of water, gas or electricity: Provided that the local authority or person to whom any such pipe belongs, or by whom it is used, shall be entitled at all times while any work in connection with the alteration in the position of that pipe is in progress, to supervise that work, and the telecommunications company shall pay all reasonable expenses to which any such local authority or person may be put in connection with any

alterations or removals under this section or in connection with supervision of work relating to any such alteration.

[S. 81 substituted by s. 37 of Act No. 85 of 1991.]

82. Compensation for injury to property.—(1) The telecommunications company shall in the carrying out of any work take all reasonable precautions for the safety of the public, but shall not be liable for any compensation, save in so far as actual injury may be caused to any work or property or standing crops (other than trees or underwood referred to in section eighty-six) or injury may be caused to any person in consequence of failure by the telecommunications company to comply with the provisions of this section: Provided that any work in connection with the construction, maintenance or repair of any telecommunications line shall be carried out in such a way as to avoid as far as possible loss or inconvenience to owners of property or the public, and any street, road or footpath shall, while it is opened, broken up or otherwise obstructed, be at all times fenced or guarded and during the night be lighted, and on completion of such work any street, road, footpath, land or railway which may have been disturbed shall be restored to as good a condition as that in which it was before being broken up.

[Sub-s. (1) amended by s. 75 (c) of Act No. 85 of 1991.]

(2) The compensation in the case of injury aforesaid being caused to any work, property or standing crops shall, if the amount cannot be otherwise agreed upon, be settled by a competent court.

[Sub-s. (2) substituted by s. 33 of Act No. 55 of 1965 and by s. 44 of Act No. 63 of 1975.]

83. Removal of lines at request of local authority or other person.—(1) If in the opinion of the telecommunications company it is necessary at any time subsequent to the construction upon, in, over, along, across or under any land, railway, street, road, footpath or waterway, of any telecommunications line or any call office cabinet or any pipe, tunnel or tube, whether constructed before or after the commencement of this Act, to alter or remove the same owing to any alteration of alignment or level or any other work on the part of any local authority or person, the cost of the alteration or removal shall be borne by that local authority or person.

[Sub-s. (1) substituted by s. 5 of Act No. 80 of 1965.]

(2) (a) Where any line passing over any private property interferes with any building about to be erected on that property, the telecommunications company shall, on receiving satisfactory proof that a building is actually to be erected, cause the line to be deviated or altered in such manner as will remove all obstacles to building operations.

(b) Notice that any such deviation or alteration is required shall be given to the telecommunications company in writing not less than twenty-eight days before the alteration or deviation is required to be effected.

(3) In the event of any deviation or alteration of a telecommunications line passing over any private property being desired on any other grounds than are set forth in subsection (2), twenty-eight days' notice thereof in writing shall be served on the telecommunications company, who shall decide whether or not the deviation or alteration is possible, necessary or expedient, and if the telecommunications company agrees to make the deviation or alteration, the cost of carrying out the work in connection therewith shall be borne by the person at whose request the deviation or alteration is effected: Provided that in any case where in the opinion of the telecommunications company it is justified, the telecommunications company may bear the whole or any part of the said cost.

[Sub-s. (3) substituted by s. 15 of Act No. 56 of 1973.]

(4) Notwithstanding the provisions of subsections (1) and (3), a divisional council shall not be required to pay the costs incurred in connection with any such alteration, removal or deviation which is necessitated by any road works on its part.

[S. 83 amended by s. 75 (c) of Act No. 85 of 1991. Sub-s. (4) deleted by s. 1 of Act No. 50 of 1962 and added by s. 21 of Act No. 80 of 1971.]

84. Gates in fences.—(1) If any fence erected or to be erected on land over which a telecommunications line is constructed or is to be constructed, renders or would render it impossible or inconvenient for the telecommunications company to obtain access to that land for any of the purposes of its functions, the

telecommunications company may at its own expense erect and maintain gates in that fence and shall provide therefor duplicate keys, one of which shall be handed over to the owner or occupier of the land.

(2) Any person intending to erect any such fence shall give not less than six weeks' notice in writing to the telecommunications company of his intention.

[S. 84 substituted by s. 38 of Act No. 85 of 1991.]

85.

[S. 85 repealed by s. 39 of Act No. 85 of 1991.]

86. Trees obstructing telecommunications lines.—Trees or underwood which in the opinion of the telecommunications company obstruct or interfere or are likely to interfere with the working or maintenance of any telecommunications line, whether growing upon State-owned land or upon any road or street or upon private land, shall after reasonable notice by the telecommunications company be cut down or trimmed in accordance with his requirements by the authority having the care and the management of such State-owned land, road or street or by the owner or occupier of such private land, as the case may be, at the expense of the telecommunications company, and, in the event of failure to comply with any such notice, the telecommunications company may himself cause the said trees and underwood to be cut down or trimmed as he may deem necessary: Provided that where communication is actually interfered with or endangered by any such trees or underwood, the telecommunications company may cause the work which is immediately necessary for the removal of the interference or danger to be undertaken without any such notice as aforesaid.

[S. 86 amended by s. 75 (c) of Act No. 85 of 1991.]

87. Height or depth of lines.—(1) (a) Aerial wires or cables along any railway or public or private street, road, footpath or land shall be at a height of at least ten feet (or in or in the immediate neighbourhood of towns, twelve feet) above the surface of the ground, and aerial wires or cables crossing any railway, street, road or footpath shall be at least fourteen feet (or in or in the immediate neighbourhood of towns, eighteen feet) above the surface of the ground.

(b) Underground telecommunications lines shall be placed at least two feet below the surface of the ground.

(2) If the owner of any private land proves to the satisfaction of the telecommunications company that he is obstructed in the free use of his land by reason of the insufficient height or depth of any telecommunications line, the telecommunications company shall, subject to the provisions of sections eighty-three and eighty-six, take such steps as he may deem necessary for giving relief to that owner.

[Sub-s. (2) amended by s. 75 (c) of Act No. 85 of 1991.]

88. Person establishing electrical works to conform to certain requirements of telecommunications company.—(1) Any person who constructs, equips or carries on any railway or works for the supply of light, heat or power by means of electricity, shall conform to the requirements of the telecommunications company for the prevention of any telecommunications line being injuriously affected thereby, and shall, before commencing the construction of any such railway or works, give one month's notice in writing to the telecommunications company of his intention to commence the construction, and shall furnish the telecommunications company with a plan of the proposed railway or works, together with particulars showing the manner and position in which the same are intended to be constructed, executed and carried on and such further information relative to the proposed railway or works as the telecommunications company may require.

(2) If it appears to the telecommunications company that the construction, equipment or carrying on of any such railway or works is likely to affect injuriously any telecommunications line, or if any telecommunications line is injuriously affected by the construction, equipment or carrying on of any such railway or works, the telecommunications company shall give reasonable notice of its requirements to the person concerned, and any person who, after receiving any such notice, proceeds with or causes to be proceeded with any such construction, equipment or carrying on in contravention of the said requirements, shall be liable to the telecommunications company in damages (recoverable by action in a competent court) of R50 for every day on which the same is proceeded with or the injurious effect continues, and shall in addition make good any damage or expense which may be caused to the telecommunications company by reason of the failure to comply

with the telecommunications company's requirements.

[S. 88 substituted by s. 40 of Act No. 85 of 1991.]

89. Order of transmission of telegrams.—(1) Telegrams and telephonic communications shall be sent for all persons alike, without favour or preference, and shall as far as practicable be transmitted in the order in which they are received, but telegrams and tele-phononic communications relating to the preservation of the peace of the Republic or of the adjacent territories or the arrest of criminals or the discovery or prevention of crime or any other matter connected with the administration of justice shall have precedence over all other telegrams and telephonic communications: Provided that nothing in this section contained shall be held to prevent precedence being given to any class of telegrams under such conditions and upon payment of such special rates of charges as may be prescribed by the telecommunications company: And provided further that no person shall be permitted to occupy a telecommunications line in such a manner as unreasonably to impede the speedy transmission of other telegrams and telephonic communications.

[Sub-s. (1) substituted by s. 34 of Act No. 113 of 1976 and amended by s. 41 (a) of Act No. 85 of 1991.]

(2) Any officer who wilfully offends against the provisions of this section shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Sub-s. (2) amended by s. 41 (b) of Act No. 85 of 1991.]

90. Telegrams which may be refused transmission.—Any telegram which, in the opinion of the postal company or the telecommunications company, contains anything in its contents, address or signature of a blasphemous, indecent, obscene, offensive or libellous nature or anything repugnant to law or decency, shall be refused transmission.

[S. 90 substituted by s. 42 of Act No. 85 of 1991.]

90A. Exercise by other persons of powers transferred to successor company.—(1) (a) Notwithstanding anything to the contrary contained in this Act, the Minister may, after

consultation with the successor company concerned, and if it is in the public interest, by notice in the Gazette, also authorize any other person to exercise any power corresponding with any part of the exclusive power to conduct the postal service or the telecommunications service which has in terms of this Act been transferred to the postal company or the telecommunications company, respectively, on such conditions as the Minister may deem fit.

(b) A notice in terms of paragraph (a) shall come into operation on a date 12 months after publication thereof, unless—

(i) the Minister in view of the significance of the power in issue determines a shorter period; or

(ii) all persons who have been authorized to exercise a power corresponding with a power mentioned in the notice, agree to the commencement thereof on an earlier date to be mentioned in the notice.

(2) Notwithstanding anything to the contrary contained in this Act, the Minister may by notice in the Gazette provide that the power of a successor company—

(a) to grant to any other person the right to exercise a power transferred to that company in terms of this Act;

(b) to determine the conditions subject to which the right granted under paragraph (a) may be exercised;

(c) to supervise the exercising of the right granted under paragraph (a),

shall as from a date mentioned in the notice vest in the Postmaster-General.

(3) (a) The Minister may, in respect of a power which vests in the Postmaster-General, by virtue of the provisions of subsection (2), prescribe conditions that shall apply if a right granted in terms of subsection (2) (a) is exercised.

(b) The conditions referred to in paragraph (a) shall also apply to a successor company provided that the regulations concerned were made after consultation with that successor company.

[S. 90A inserted by s. 43 of Act No. 85 of 1991. Sub-s. (3)]

added by s. 14 of Act No. 129 of 1993.]

CHAPTER VII

OFFENCES AND PENALTIES

[Headings substituted by s. 35 of Act No. 113 of 1976.]

91. Forgery, etc., of stamps, dies, etc.—Any person who, without due authority or lawful excuse (the proof of which shall be upon such person)—

(a)makes, alters, imitates or imports or assists in making, altering, imitating or importing any postage stamp, date stamp, card, envelope, wrapper, cover or any money order, postal order or Savings Bank warrant or any other warrant or order for the payment of money through the postal company or acknowledgement of deposit or any form or paper similar to that used or made for the purposes of the functions of the postal company or by any postal authority, or uses, issues, offers, exposes for sale, sells, deals in, sends by post or disposes of or has in his custody or possession any such stamp, date stamp, card, envelope, wrapper, cover, money order, postal order, Savings Bank warrant or any other warrant or order, acknowledgement of deposit, form or paper, knowing it to have been made or altered or to be an imitation contrary to this section;

(b)engraves or in any manner makes upon any plate or material any stamp or mark or figure or device in imitation of or resembling any stamp or mark or figure or device used or made for the purposes of the functions of the postal company or by any postal authority, or sells, disposes of, purchases, receives, or has in his custody or possession any plate or material so engraved or made;

(c)makes or assists in making or has in his custody or possession any mould, frame or other instrument having thereon any words, letters, figures, marks, lines or devices peculiar to paper provided, used or made for any postage stamps or for any other purposes of the functions of the postal company or by any postal authority;

(d)makes or assists in making or has in his custody or possession any paper in the substance of which appear any words, letters, figures, marks, lines or devices peculiar to paper

provided, used or made for any postage stamps or for any other purposes of the functions of the postal company or by any postal authority, or makes, purchases, sells, disposes of or receives or has in his custody or possession any paper provided or made for the purpose of being used for any postage stamps or for any other purposes of the functions of the postal company or by any postal authority before the same has been issued for public use;

(e)makes use of any stamp, die, plate or paper engraved or made for the purposes of the functions of the postal company or by any postal authority, or sells, disposes of, purchases, receives or has in his custody or possession any such paper or material whatever bearing an impression or mark of any such stamp, die or plate; or

(f)makes on any envelope, wrapper, card, form or paper any mark in imitation of or similar to or purporting to be any official stamp or mark used for the purposes of the functions of the postal company or by any postal authority or any words, letters, device or marks which signify or imply or may reasonably be regarded as signifying or implying that any article bearing such words, letters, device or marks has been in or is entitled to be sent through the post,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding seven years, and any stamp, die, plate, instrument or material found in the possession of any person in contravention of this section shall be seized and forfeited.

[S. 91 amended by s. 36 of Act No. 113 of 1976 and substituted by s. 44 of Act No. 85 of 1991.]

92. Removing marks from stamps, etc., with intent to defraud.—(1) Any person who, with intent to defraud—

(a)removes from any article sent by post or from any telegram or document used for the purposes of the functions of the postal company or the telecommunications company, any stamp which has been affixed thereon, or wilfully removes, either really or apparently, from any stamp which has been previously used, any mark or impression which has been made thereon at any post office, or knowingly utters, puts off or uses any stamp or any part of any stamp which has been so removed or from which any such mark or impression has been removed;

(b)erases, cuts, scrapes, defaces, obliterates or otherwise discharges or removes from, either really or apparently, or in any manner adds to or alters any mark or impression upon any postal article, money order, postal order, Savings Bank warrant or other warrant or order or acknowledgement of deposit, paper or other material provided, used or made for the purposes of the functions of the postal company or by any postal authority; or

(c)makes, does or practises or is concerned in any other act, contrivance or device for which no specific penalty is provided, or attempts unlawfully to evade payment of any of the rates, fees or duties determined under this Act,

shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Sub-s. (1) substituted by s. 45 of Act No. 85 of 1991.]

(2) For the purposes of this section the sender of any postal article shall, unless the contrary is proved, be deemed to be the person by whom any postage stamp upon that article was affixed.

(3) In any proceedings in respect of any offence under this section the burden shall lie on the accused of proving an absence of intent to defraud.

93. Negligence or intoxication while in charge of mail, false report of assault, and irregularly receiving, conveying, or delivering of postal articles.—Any person authorized to receive or in any way to handle any mail, who—

(a)negligently loses or wilfully detains, delays, misdelivers or omits to dispatch any mail (whether or not the same is afterwards recovered or delivered) or communicates or divulges the contents of any postal article;

(b)while in charge of any mail leaves it, or suffers any person, not being the guard or person employed for that purpose, to travel in the place appointed for the guard in or upon any conveyance carrying that mail or to travel in or upon any such conveyance not authorized to carry passengers or upon any horse or other animal conveying that mail;

(c) is guilty of carelessness, negligence or any misconduct whereby the safety of any mail is endangered;

(d) while in charge of any mail is intoxicated or loiters or wilfully misspends or loses time so as to retard the arrival of the mail at its proper destination within the time fixed for its arrival, or does not use due care and diligence safely to convey the mail at the due rate of speed;

(e) gives any false information of any assault or attempt at robbery upon him; or

(f) without due authority, collects, receives, conveys or delivers any postal article otherwise than in the ordinary course of post,

shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or imprisonment for any period not exceeding six months or to both such fine and such imprisonment.

[S. 93 amended by s. 46 of Act No. 85 of 1991.]

94. Fraudulent, injurious and offensive practices in connection with postal articles and premises.—(1) Any person who—

(a) with intent to defraud, puts into any post office anything purporting to be a postal article within the exemptions specified in this Act, or any postal article purporting to belong to a class in respect of which a lower rate of postage or no postage is chargeable, or any postal article containing any other postal article unstamped or insufficiently stamped which if sent alone would be liable to postage;

(b) with intent to defraud, puts into any post office any article in or upon or with which there is any communication, intelligence, character, figure, number, mark, matter or thing not allowed by this Act or by any other law, or wilfully subscribes on the outside of any postal article or otherwise a false statement of the contents thereof;

(c) puts into any post office any article in which or with which or upon which there is any indecent or obscene matter or anything of a profane, libellous or grossly offensive character;

(d) without due authority (the proof of which shall be on such

person) places or paints anything whatsoever upon, or wilfully injures, disfigures or tampers with any post office or any card, notice or other property of or used by or on behalf of the postal company or telecommunications company or commits a nuisance on or against any post office or against or upon any such card, notice or property;

[Para. (d) substituted by s. 47 (a) of Act No. 85 of 1991.]

(e)detains, secretes or keeps any mail or postal article which ought to have been delivered to another person or which has been found by himself or by any other person;

(f)by false pretence or misstatement induces any officer to deliver to him or to any other person any postal article not addressed to or intended for either of them,

shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or imprisonment for a period not exceeding six months or to both such fine and such imprisonment, without prejudice to any right the postal company or telecommunications company may have of proceeding civilly against any person convicted under paragraph (d) hereof for compensation for such damage as may have been caused by him.

[Sub-s. (1) amended by s. 47 (b) of Act No. 85 of 1991.]

(2) In any proceedings in respect of any offence under paragraph (a) or (b) of subsection (1) the burden of proving an absence of intent to defraud shall lie on the accused.

95. Placing of anything dangerous, filthy, noxious or deleterious in or against any post office, and theft of or stopping with intent to rob any mail or postal article.—(1) Any person who—

(a)sends in or with any postal article or puts into or against any post office any fire, match or light or any explosive, dangerous, filthy, noxious or deleterious matter or thing or any matter or thing which is likely to injure any post office, person or mail;

(b)steals any mail or steals from any mail or post office or from the possession or custody of any officer or for any purpose embezzles or fraudulently secretes or destroys any postal article or any of the contents thereof;

(c) receives any such mail or postal article or any of the contents thereof knowing the same to have been stolen, embezzled or fraudulently secreted or to have been sent or intended to be sent by post; or

(d) stops any mail with intent to rob or search that mail,

shall be guilty of an offence and liable on conviction to a fine not exceeding R28 000 or imprisonment for a period not exceeding seven years or to both such fine and such imprisonment: Provided that the postal company may, subject to special precautions determined by it, exempt from the provisions of this section noxious or deleterious matter sent in the interest of public health.

[Sub-s. (1) amended by s. 48 (a) of Act No. 85 of 1991.]

(2) Notwithstanding anything to the contrary contained in any law, the postal company or telecommunications company may cause any article referred to in subsection (1) (a) or any postal article of which he suspects that it contains such an article, to be removed at any time by a police official or any person designated by a police official or to be handed over for examination to a police official or such other person, and a police official may destroy or render harmless or cause to be destroyed or rendered harmless any such article or postal article which he considers to be dangerous, or may otherwise dispose thereof.

[S. 95 substituted by s. 37 of Act No. 113 of 1976. Sub-s. (2) substituted by s. 48 (b) of Act No. 85 of 1991.]

96. Irregular opening of or tampering with mail or irregular destruction, secretion or opening of postal articles.—Any officer who otherwise than in pursuance of his duty opens or tampers with or wilfully destroys, makes away with or secretes or suffers to be opened or tampered with, destroyed, made away with or secreted any mail or postal article, and any person who opens or tampers with or wilfully destroys, makes away with or secretes any mail, shall be guilty of an offence and liable on conviction to a fine not exceeding R28 000 or imprisonment for a period not exceeding seven years or to both such fine and such imprisonment.

[S. 96 substituted by s. 38 of Act No. 113 of 1976 and amended

by s. 49 of Act No. 85 of 1991.]

97. Wilfully obstructing or delaying mail.—Any person who wilfully interferes with the conveyance of any mail or through whose act or neglect the conveyance of any mail is interfered with, shall be guilty of an offence and liable on conviction to a fine not exceeding R400 or, in default of payment, imprisonment for a period not exceeding one month, for each hour or part of an hour during which the delivery of the mail is delayed in consequence of any such interference.

[S. 97 amended by s. 50 of Act No. 85 of 1991.]

98. Wilful opening or delay by any person other than officer of postal article or telegram addressed to another person.—(1) Any person, not being an officer, who wilfully opens any postal article or telegram which he knows ought to have been delivered to another person or does any act or thing whereby the due delivery of that article or telegram to such other person is prevented, obstructed or delayed, shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Sub-s. (1) amended by s. 51 (a) of Act No. 85 of 1991.]

(2) Nothing in this section contained shall apply to any person who does any act to which this section applies where that person is the parent or in the position of parent or guardian of the addressee and the addressee is a minor under sixteen years of age or a ward.

(3)

[Sub-s. (3) deleted by s. 51 (b) of Act No. 85 of 1991.]

99. Unauthorized use of words “Post Office”, “mail”, “yellow page directory”, “telex directory”, “telephone directory”, etc.— Any person who without the authority of the postal company or the telecommunications company, as the case may be (the proof of which shall be on the accused)—

(a) places or maintains or suffers to be placed or maintained or to remain in, on or near any house, premises, wall, door, window, box, post, pillar or other place belonging to him under his control the words “Post Office” or any other word or a mark

which may imply or may give reasonable cause for believing that house, premises, wall, door, window, box, post, pillar or other place to be a post office;

(b) places or maintains or permits to be placed or maintained or to remain on any vehicle or vessel the word “mail” or any other word or mark which may imply or may give reasonable cause for believing that such vehicle or vessel is used for the conveyance of mails; or

(c) in connection with any publication or proposed publication, or in any invitation, prospectus, order form, notice, invoice or advertisement relating to any publication, uses the words “telephone directory”, “yellow page directory”, “yellow pages”, “telex directory” or any other word or a mark, in circumstances or in a manner which may imply or may give reasonable cause for believing that such a publication or proposed publication is a telephone directory, yellow page directory, telex directory or other publication published on the authority of the postal company or the telecommunications company,

[Para. (c) amended by s. 52 (b) of Act No. 85 of 1991.]

shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[S. 99 substituted by s. 16 of Act No. 56 of 1973 and amended by s. 52 of Act No. 85 of 1991.]

100.

[S. 100 amended by s. 39 of Act No. 113 of 1976 and repealed by s. 53 of Act No. 85 of 1991.]

101. Fraudulent issue of documents or presentation or sending of communications.— Any person who with fraudulent intent—

(a) issues, re-issues, utters or presents to any other person or at any post office any money order, postal order, Savings Bank warrant or other warrant, order or document for the transfer, payment or deposit of money through or with the postal company;

(b) transmits through the post or otherwise any letter, telegram or

other communication or message concerning any money order, postal order, Savings Bank warrant or other warrant, order or document for the transfer, payment or deposit of money through or with the postal company;

(c) forges or, knowing it to be forged, utters any delivery slip or other document issued by the postal company as proof of the receipt of a postal article,

shall be guilty of an offence and liable on conviction to a fine not exceeding R28 000 or imprisonment for a period not exceeding seven years or to both such fine and such imprisonment, and in any proceedings in respect of any offence under this section the burden of proving an absence of fraudulent intent shall lie on the accused.

[S. 101 substituted by s. 40 of Act No. 113 of 1976 and amended by s. 54 of Act No. 85 of 1991 and by s. 75 (b) of Act No. 85 of 1991.]

102. Personating officers of department, postal company or telecommunications company with fraudulent intent.—Any person who with fraudulent intent personates or represents himself to be an officer of the department or the postal company or telecommunications company, shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

[S. 102 substituted by s. 55 of Act No. 85 of 1991.]

103. False declarations.—Any person who in any declaration prescribed by this Act makes a false statement knowing the same to be false, shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000.

[S. 103 amended by s. 56 of Act No. 85 of 1991.]

104. Theft, destruction, forging or alteration of telegrams.—(1) Any person who—

(a) with fraudulent intent takes from the possession of any officer or other person having the custody thereof for the postal company or from any post office, or steals, secretes or destroys any telegram or any part thereof or fraudulently receives any such telegram or any part thereof;

[Para. (a) amended by s. 75 (b) of Act No. 85 of 1991.]

(b) forges a telegram or utters a telegram knowing the same to be forged or false or transmits by telegraph as a telegram any message or communication purporting to be a telegram which he knows to be forged or false; or

(c) knowingly sends, delivers or causes to be sent or delivered to any officer for the purpose of being transmitted as a telegram any message or communication which has been wilfully and without due authority altered or which purports to be signed or sent by any other person without that person's consent, or who wrongfully signs any telegram with the name of another person without that person's consent or with the name of some fictitious person, or who wilfully and without the consent of the sender alters any telegram or writes, issues or delivers any message or communication which purports to be a telegram received through a telegraph office but which was not so received,

shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.

[Sub-s. (1) amended by s. 57 of Act No. 85 of 1991.]

(2) In any proceedings in respect of any offence under this section the burden of proving an absence of intent to defraud, ignorance of the facts or due authority for the act which is the subject of the offence, as the case may be, shall lie on the accused.

105. Divulging contents of telegrams or telephonic communications.—Any officer who, not being a witness in a court of law, without the consent of the sender or addressee or receiver, or otherwise than in pursuance of his duties—

(a) opens or tampers with or divulges the contents or substance of any telegram, or discloses its existence otherwise than by delivering it or giving a copy thereof to the person to whom he is authorized to deliver it or to give such copy, or who maliciously or wilfully misdelivers, mistimes, secretes, intercepts, destroys, makes away with, alters or omits to transmit or deliver or prevents or delays the delivery or

transmission of any telegram or makes use for his own purposes of any knowledge he may acquire of the contents thereof;

(b)divulges the existence, contents or substance of any telephonic communication or maliciously or wilfully intercepts a telephonic communication or prevents or delays the transmission thereof or makes use for his own purposes of any knowledge he may acquire of the contents thereof,

shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.

[S. 105 substituted by s. 41 of Act No. 113 of 1976 and amended by s. 58 of Act No. 85 of 1991.]

106. Erection of telecommunications lines without authority.—Save as is provided in section 78, any person who without the authority of the telecommunications company, erects, maintains or uses any telecommunications line, whether constructed before or after the commencement of this Act, shall, if he fails to comply with any notice from the telecommunications company to remove that line or to pay such charges, if any, in respect thereof as may from time to time be prescribed, be guilty of an offence and liable on conviction to a fine not exceeding R50 for every day during which any such line is or continues to be set up, maintained or used in contravention of the provisions of this Act, and the telecommunications company may without compensation take absolute possession of, cut down or destroy the whole or any part of that line or in its discretion put it out of operation by total sealing or partially seal it on condition that such telecommunications line may not be used for the purpose of transmission or reception while it is so partially sealed.

[S. 106 substituted by s. 59 of Act No. 85 of 1991.]

107. Injury to telecommunications lines, etc., and arrest of offenders.—Any person who wilfully or maliciously destroys, injures or removes any telecommunications line or any material, instrument or apparatus used in connection therewith or any call office cabinet, or disturbs, obstructs or impedes in any way the free use or working of any such line, material, instrument, apparatus or cabinet, or affixes or attaches any wire, conductor or any other thing to any telecommunications line or call office

cabinet, or any part thereof, without the authority of the telecommunications company, or who interferes with or hinders the construction or alteration of any such line or cabinet or the maintenance or examination thereof or causes delay in the restoration of any such line or cabinet, shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment, without prejudice to any right the telecommunications company may have of proceeding civilly against such person for compensation for such damage as may have been caused by him, and any person who witnesses the commission or any attempt at the commission of such an offence may without warrant apprehend the person offending and bring him before any magistrate's court to be dealt with according to law.

[S. 107 substituted by s. 6 of Act No. 80 of 1965 and amended by ss. 60 and 75 (c) of Act No. 85 of 1991.]

108. Accidental or negligent injury to telecommunications lines or call office cabinets.—Any person who, either directly or by means of an animal, vehicle or other thing owned by him or in his custody or under his control, destroys or injures any telecommunications line or call office cabinet of the telecommunications company, shall be liable to pay to the telecommunications company such expenses as may be incurred in making good the destruction or injury, and if the destruction or injury be occasioned by negligence on the part of any person, that person shall in addition be guilty of an offence and liable on conviction to a fine not exceeding R500: Provided that in any case where in the opinion of the telecommunications company it is justified, the telecommunications company may bear the whole or any part of the said expenses: Provided further that a divisional council shall not be liable for any expenses incurred in making good any such destruction or injury caused in the course of road works by such council, and not due to negligence on the part of any person in its employment.

[S. 108 amended by s. 2 of Act No. 50 of 1962, substituted by s. 7 of Act No. 80 of 1965 and by s. 17 of Act No. 56 of 1973 and amended by ss. 61 and 75 (c) of Act No. 85 of 1991.]

109. Attempting to commit or procuring commission of offences.—Any person who attempts to commit any offence under this Act or solicits or authorizes or endeavours to employ, cause, procure, aid, abet, incite or counsel any other person to

do anything the doing whereof is an offence under this Act, shall be guilty of an offence and liable to the same punishment as if he actually committed the offence.

110. Penalty for offences for which no special penalty provided.—Any person who contravenes or fails to comply with any provision of this Act for which no special or other penalty is provided, shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[S. 110 substituted by s. 42 of Act No. 113 of 1976 and amended by s. 62 of Act No. 85 of 1991.]

111.

[S. 111 substituted by s. 43 of Act No. 113 of 1976 and repealed by s. 63 of Act No. 85 of 1991.]

112. In criminal proceedings, etc., property in postal articles, money, money orders, etc., may be laid in postal company or telecommunications company.—In any information or complaint as to or any prosecution for any crime or any offence committed in respect of the postal company or telecommunications company or of any mail, telegram or telecommunications line or any property, moneys, money order, postal order or other document authorized to be used for the purpose of remitting, paying or depositing money through or with the postal company or telecommunications company, as the case may be, or with respect to any act, deed, matter or thing which has been done or committed with any malicious, injurious or fraudulent intent relating to or concerning the postal company or telecommunications company, as the case may be, or any such mail, telegram, telecommunications line, property, moneys, money order, postal order or other document, it shall be sufficient—

(a)to allege that any such mail, telegram, property, moneys, money order, postal order or other document belongs to or is in the lawful possession of the postal company or telecommunications company, as the case may be, and to put in the same in evidence, and it shall not be necessary to allege or prove the same to be of any value;

(b)to allege that any such act, deed, matter or thing was done or

committed with intent to injure or defraud the postal company or telecommunications company, as the case may be, without setting forth its or any other name, addition or description whatsoever; and

(c)if the offender be an officer, to allege that the offender was an officer of the postal company or telecommunications company, as the case may be, at the time of the committing of the offence without stating the nature or particulars of his employment.

[S. 112 amended by s. 44 of Act No. 113 of 1976 and substituted by s. 64 of Act No. 85 of 1991.]

113. Evidence: acceptance of official marks.—In any proceedings for the recovery of any sum payable under this Act in respect of a postal article—

(a)the official stamp or mark thereupon denoting the sum due shall be prima facie evidence of the liability of that postal article to the charge specified thereon; and

(b)the production of any such postal article having thereon a post office stamp or mark denoting that the article has been refused or that the person to whom the same is addressed is dead or could not be found, shall be prima facie evidence of the fact denoted.

114. Deputy may appear for Postmaster-General.—The Postmaster-General may depute any officer to appear on his behalf in any inferior court either as defendant or for any purpose other than as prosecutor, and his authority in writing to that effect shall be good and sufficient in law.

CHAPTER VIII

MISCELLANEOUS

[Headings substituted by s. 45 of Act No. 113 of 1976.]

115. Non-liability of postal company and telecommunications company.—Save as is otherwise provided in this Act, the postal company or telecommunications company, as the case may be, or any officer or any person conveying postal articles in pursuance of any contract entered into or arrangements made in terms of this Act or conveying mail which he or she is obliged

to convey in terms of this Act (in this section and in section 115bis referred to as a mail carrier) or any employee of a mail carrier shall not be liable by reason of any error, default, delay, omission, damage, destruction, non-delivery, non-transmission or loss, whether negligent or otherwise, in respect of any postal article or telegram or by reason of anything lawfully done under this Act or any other law, and bona fide payment of any sum of money under the provisions of this Act or any other law shall, to whomsoever made, discharge the postal company or telecommunications company, as the case may be, and the officer by whom any such payment was made, from all liability whatsoever in respect of any such payment, notwithstanding any forgery, fraud, mistake, neglect, loss or delay which may have been committed or have occurred in connection therewith: Provided that nothing in this section contained shall be construed as exempting the postal company or telecommunications company, as the case may be, from liability for damage or loss caused to any person by reason of fraud on the part of an officer in relation to his or her official duties or as exempting any mail carrier from liability for damage or loss caused to any person by reason of fraud on the part of such carrier or of any employee of such carrier in relation to his or her duties.

[S. 115 substituted by s. 8 of Act No. 80 of 1965, by s. 65 of Act No. 85 of 1991 and by s. 22 of Act No. 88 of 1996.]

115bis. Compensation may be paid in certain cases.—(1) The postal company may—

(a) if any unauthorized person by fraudulent means obtains payment of any deposit, in its discretion make good the loss sustained by the depositor or any portion thereof;

(b) in its discretion and subject to any requirements and limitations that are prescribed, pay compensation for the loss of or damage to any postal article or the contents thereof whether conveyed by the postal company or by any mail carrier.

(2) Where the postal company has by virtue of the provisions of subsection (1) paid any amount in respect of loss caused by the commission of an offence, he shall, for purposes of section 300 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), be deemed to have suffered, as the result of the commission of such offence, loss of property belonging to him to the extent of the amount so paid.

(3) (a) Any mail carrier shall on demand pay to the postal company an amount equal to any amount paid by the postal company by virtue of the provisions of subsection (1) (b) in respect of any postal article or of the contents thereof lost while in the possession of such carrier or such lesser amount as the postal company may in its discretion determine.

(b) Any amount payable in terms of paragraph (a) shall be recoverable by action in any competent court.

[S. 115bis inserted by s. 9 of Act No. 80 of 1965, amended by s. 46 of Act No. 113 of 1976 and substituted by s. 66 of Act No. 85 of 1991.]

116. Application of Act.—This Act shall apply throughout the Republic.

[S. 116 substituted by s. 47 of Act No. 113 of 1976, repealed by s. 67 of Act No. 85 of 1991 and inserted by s. 7 of Act No. 5 of 1996.]

117.

[S. 117 amended by s. 37 of Act No. 67 of 1968, substituted by s. 14 of Act No. 13 of 1974 and repealed by s. 48 of Act No. 113 of 1976.]

118. Detention of postal articles and telegrams suspected of being concerned with offences and action to be taken in connection therewith.—Notwithstanding anything to the contrary in any law contained, any postal article or telegram which is reasonably suspected of containing anything which will afford evidence of the commission of any offence or is reasonably suspected of being sent in order to further the commission of any offence or to prevent the detection of any offence, shall be detained by the officer in charge of any post office in which it is or through which it passes, and the postal company or telecommunications company, as the case may be, may bring the detention of any such postal article or telegram to the notice of an attorney-general or, at the request of an attorney-general, cause any such postal article or telegram to be handed over to any public prosecutor.

[S. 118 substituted by s. 13 of Act No. 37 of 1963 and by s. 68 of Act No. 85 of 1991.]

118A.

[S. 118A inserted by s. 1 of Act No. 101 of 1972, amended by s. 1 of Act No. 80 of 1982 and by s. 69 of Act No. 85 of 1991 and repealed by s. 9 (1) of Act No. 127 of 1992.]

119. Imprisonment where fine is not paid.—The court which has imposed a fine upon any person convicted of an offence under this Act in respect of which no period of imprisonment is expressly prescribed in default of payment of the fine, may, if the fine is not paid forthwith, sentence the person convicted to imprisonment for a period not exceeding six months, unless the fine be sooner paid.

119A. Regulations by Minister.—The Minister may make regulations with regard to—

(a) any matter which shall or may be prescribed by him under this Act; and

(b) in general, any matter which he deems necessary or expedient in order to achieve the objects of this Act.

[S. 119A inserted by s. 49 of Act No. 113 of 1976 and substituted by s. 70 of Act No. 85 of 1991.]

119B. Instructions by Postmaster-General.—The Postmaster-General may from time to time issue instructions which shall not be inconsistent with the provisions of this Act, in regard to—

(a) any matter mentioned in section 2B;

(b) the operation or administration of any service or activity which the department may perform or undertake in terms of this Act;

(c) the administration in general of the provisions of this Act and the achievement of the objects thereof in so far as they relate to the functions of the department.

[S. 119B inserted by s. 49 of Act No. 113 of 1976 and substituted by s. 71 of Act No. 85 of 1991.]

120.

[S. 120 repealed by s. 72 of Act No. 85 of 1991.]

120A. Annual reports.—As soon as is practicable after 31 March of each year, the Postmaster-General shall frame a report upon the activities of the department during the year which ended on that date, and every report framed in terms of this section shall be sent to the Minister and shall be laid upon the Table in the Senate and in the House of Assembly within fourteen days after receipt thereof, if Parliament is then in ordinary session, or if Parliament is not then in ordinary session, within fourteen days of the commencement of its next ensuing ordinary session.

[S. 120A inserted by s. 56 of Act No. 66 of 1974.]

121. Officers to take oath or make affirmation.—Every officer required by the Postmaster-General, postal company or telecommunications company to do so, shall before exercising the duties of his office take an oath or make an affirmation before a justice of the peace in the form set forth in the First Schedule.

[S. 121 substituted by s. 73 of Act No. 85 of 1991.]

121A.

[S. 121A inserted by s. 18 of Act No. 56 of 1973 and repealed by s. 74 of Act No. 85 of 1991.]

122. Repeal of laws.—(1) Subject to the provisions of subsection (2), the laws mentioned in the Second Schedule are hereby repealed to the extent set out in the third column of that Schedule.

(2) Any convention or agreement entered into or in force or any regulation, notice, approval, authority, return, certificate or document issued, made, promulgated, given or granted and any other action taken under any provision of a law repealed by subsection (1), shall be deemed to have been entered into, issued, made, promulgated, given, granted or taken under the corresponding provision of this Act.

123. Short title.—This Act shall be called the Post Office Act, 1958.

First Schedule

[First Schedule substituted by s. 51 of Act No. 113 of 1976 and by s. 76 of Act No. 85 of 1991.]

oath to be taken or affirmation to be made by officers

I (name in full)

.....
....., do solemnly swear/affirm* faithfully in my position as an employee of the post office/postal company/telecommunications company* to be honest, trustworthy and fair without respect of persons according to the law and to the best of my knowledge, that I will not contrary to the law or to my duty communicate or divulge the contents of any letter, telegram or official paper of any description or any information regarding any telephone conversation or regarding the transactions of a depositor in the Post Office Savings Bank or the holder of National Savings Certificates, nor open or detain or cause or suffer to be opened or detained any letter or other postal article or any telegram nor on any account whatever destroy or make away with any letter, telegram or official paper entrusted to my care, that I will give account of any responsibility entrusted to me whenever and wherever such may be required of me.

so help me god.

Signature

Sworn/Affirmed* before me at

.....

in the District of

.....

on theday of19

.....

Justice of the Peace

*delete which is not applicable

Second Schedule

laws repealed

| No. and Year of Law | Title | Extent of Repeal |
|---------------------|---|---|
| Act No. 10 of 1911 | Post Office Administration and Shipping Combinations Discouragement Act, 1911 | The whole. |
| Act No. 40 of 1920 | Financial Adjustments Act, 1920 | Section three. |
| Act No. 47 of 1920 | Post Office Administration and Shipping Combinations Discouragement Act Amendment Act, 1920 | The whole. |
| Act No. 38 of 1922 | Financial Adjustments Act, 1922 | Section five. |
| Act No. 34 of 1930 | Financial Adjustments Act, 1930 | Section twelve. |
| Act No. 31 of 1931 | Post Office (Amendment) Act, 1931 | The whole. |
| Act No. 25 of 1932 | Financial Adjustments Act, 1932 | Section two. |
| Act No. 2 of 1934 | Post Office (Amendment) Act, 1934 | The whole. |
| Act No. 37 of 1943 | Finance Act, 1943 | Section eleven. |
| Act No. 46 of 1944 | Finance Act, 1944 | Sections fourteen, fifteen and sixteen. |
| Act No. 50 of 1952 | Finance Act, 1952 | Section five. |
| Act No. 34 of 1954 | Finance Act, 1954 | Section seven. |
| Act No. 37 of 1958 | Finance Act, 1958 | Section seven. |