

REPUBLIC OF SOUTH AFRICA

MAGISTRATES AMENDMENT BILL

(As introduced)

(MINISTER OF JUSTICE)

[B 92—97]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP LANDDROSTE

(Soos ingedien)

(MINISTER VAN JUSTISIE)

[W 92—97]

ISBN 0 621 27416 X

No. of copies printed 3 000

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Magistrates' Courts Act, 1944, so as to effect certain consequential amendments; to make provision for the creation of administrative regions; and to further regulate the exercising of administrative control over the functions performed by magistrates; to amend the Magistrates Act, 1993, so as to further regulate the vacation of office by a magistrate; to regulate the assignment of administrative functions to magistrates; and to make provision for certain penalty provisions to be prescribed by regulation; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 32 of 1944, as substituted by section 1 of Act 53 of 1970 and amended by section 23 of Act 94 of 1974, section 1 of Act 105 of 1982, section 2 of Act 34 of 1986 and section 1 of Act 4 of 1991

5

1. Section 1 of the Magistrates' Courts Act, 1944, is hereby amended—

- (a) by the insertion before the definition of “court” of the following definition:
“ ‘administrative region’ means an administrative region created by the Minister under section 2 (2);”;
- (b) by the substitution for the definition of “court of appeal” of the following definition: 10
“ ‘court of appeal’ means the [provincial or local division of the Supreme Court] High Court to which an appeal lies from the magistrate’s court;”;
- (c) by the insertion after the definition of “court of appeal” of the following definition: 15
“ ‘head of the administrative region’ means the magistrate designated as such by the Minister, after consultation with the Magistrates Commission;”;
- (d) by the insertion after the definition of “magistrate” of the following definition: 20
“ ‘Magistrates Commission’ means the Magistrates Commission estab-

lished by section 2 of the Magistrates Act, 1993 (Act No. 90 of 1993);”;
and

- (e) by the substitution for the definition of “Minister” of the following definition:
“ ‘Minister’ [in section 15 (2) and (4) and in section 113,] means the
Minister of Justice; [and in any other provision of this Act, ‘Minister’
in relation to any matter to be dealt with in a regional division,
district or subdistrict administered under the control of the Minister
of Justice, and in relation to the creation or abolition of any such
regional division, district or subdistrict, means that Minister or any
other Minister of State acting on his behalf;] ”.

Amendment of section 2 of Act 32 of 1944, as substituted by section 2 of Act 53 of 1970 and amended by section 7 of Act 102 of 1972 and section 2 of Act 34 of 1986

2. Section 2 of the Magistrates’ Courts Act, 1944, is hereby amended by the addition of the following subsection:

- “(2) The Minister may, by notice in the *Gazette* and after consultation with the
Magistrates Commission, join any group of districts together to create an
administrative region for administrative purposes.”.

Amendment of section 12 of Act 32 of 1944, as amended by section 9 of Act 40 of 1952 and section 25 of Act 94 of 1974

3. Section 12 of the Magistrates’ Courts Act, 1944, is hereby amended by the addition to subsection (1) of the following paragraph:

- “(c) shall be subject to the administrative control of the head of the administrative region in which his or her district is situate.”.

Amendment of section 13 of Act 90 of 1993, as amended by section 4 of Act 85 of 1995 and sections 6 and 8 of Act 35 of 1996

4. Section 13 of the Magistrates Act, 1993, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) A magistrate shall vacate his or her office on attaining the age of [65] 60 years: Provided that—
(a) a magistrate who, on attaining the age of 60 years, wishes to continue to serve in such office and whose mental and physical health enables him or her so to continue may, on the recommendation of the Commission, continue to hold such office for the period that the Minister, after consultation with the Commission, may determine; and
(b) if he or she attains the [said] age on which he or she is to vacate his or her office in terms of this section, after the first day of any month, he or she shall be deemed to attain that age on the first day of the next ensuing month.”.

Substitution of section 14 of Act 90 of 1993, as amended by section 8 of Act 35 of 1996

5. The following section is hereby substituted for section 14 of the Magistrates Act, 1993:

“Powers and duties of magistrates

14. (1) A magistrate shall possess the powers and perform the duties conferred on or assigned to him or her by or under the laws of the Republic or, in any specific case, by the Minister after consultation with the Commission.

(2) The Minister may, from time to time and after consultation with the Commission, make regulations conferring on or assigning to magistrates, administrative powers and duties which do not affect the judicial independence of magistrates.

(3) A regulation made under subsection (2) may provide that the Minister may, after consultation with the Commission, confer or assign administrative powers and duties of a general nature on or to magistrates.

(4) The provisions of section 16(2) shall apply with the necessary |
changes in respect of any regulation made under subsection (2)."

**Amendment of section 16 of Act 90 of 1993, as amended by sections 7 and 8 of Act
35 of 1996**

6. Section 16 of the Magistrates Act, 1993, is hereby amended by the addition of the 5
following subsection:

"(6) A regulation made under subsection (1)(j), and which regulates the
attendance of persons at misconduct proceedings contemplated in such a
regulation, may provide that any person who contravenes a provision thereof or
fails to comply therewith shall be guilty of an offence and on conviction be liable 10
to a fine, or to imprisonment for a period not exceeding three months."

Short title

7. This Act shall be called the Magistrates Amendment Act, 1997.

MEMORANDUM ON THE OBJECTS OF THE MAGISTRATES AMENDMENT BILL, 1997

The Bill emanates from proposals made by the Magistrates Commission, the Association of Regional Court Magistrates of South Africa, the Judicial Officers' Association of South Africa and the Regional Courts' President. The objects of the Bill are briefly the following:

Clauses 1, 2 and 3 of the Bill relate to the introduction of the new cluster-system of court management. Section 1 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), is amended by the insertion of the definitions of "administrative region", "head of the administrative region" and "Magistrates Commission", whilst the definitions of "court of appeal" and "Minister" are being modernised. Section 2 of the said Act is amended so as to provide for the establishment of administrative regions and section 12 so as to provide that a magistrate of a district shall be subject to the administrative direction of the head of the administrative region in which his or her district is situate.

Clause 4 amends section 13 of the Magistrates Act, 1993 (Act No. 90 of 1993), in order to provide that a magistrate must vacate his or her office on attaining the age of 60 years, as opposed to 65 years. In addition, however, provision is also made for such a magistrate to voluntarily continue in office, provided that his or her mental and physical health enables him or her to so continue and the Magistrates Commission recommends such continuation in office. The period of such continuation must be determined by the Minister after consultation with the Commission.

Clause 5 amends section 14 of the Magistrates Act, 1993, by empowering the Minister to make regulations regarding the conferring on or assigning to magistrates, of administrative powers and duties which do not affect the judicial independence of magistrates.

Clause 6 amends section 16 (regulations) of the Magistrates Act, 1993, by the insertion of a new subsection in terms of which a regulation may provide that any contravention thereof shall constitute an offence punishable by law.

The Magistrates Commission and the representative bodies of the magistracy were consulted regarding the provisions of the Bill.

PARLIAMENTARY PROCEDURE

The Department of Justice and the State Law Advisers are of the opinion that the procedure established by section 75 of the Constitution should be followed with regard to this Bill.