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REPUBLIC OF SOUTH AFRICA

PORTFOLIO COMMITTEE AMENDMENTS TO

MAGISTRATES AMENDMENT BILL

[B 92—97]

(As agreed to by the Portfolio Committee on Justice (National Assembly))

[B 92A—97]

REPUBLIEK VAN SUID-AFRIKA

PORTEFEULJEKOMITEE-AMENDEMENTE OP

WYSIGINGSWETSONTWERP OP LANDDROSTE

[W 92—97]

(Soos goedgekeur deur die Portefeuljekomitee oor Justisie (Nasionale Vergadering))

[W 92A—97]

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AMENDMENTS AGREED TO

MAGISTRATES AMENDMENT BILL
[B 92—97]

NEW CLAUSES

1. That the following be new Clauses to follow Clause 2:

Amendment of section 9 of Act 32 of 1944, as substituted by section 2 of Act 8 of 1967 and amended by section 4 of Act 53 of 1970, section 8 of Act 102 of 1972, section 11 of Act 29 of 1974, section 24 of Act 94 of 1974, section 1 of Act 28 of 1981, section 2 of Act 34 of 1986, section 17 of Act 90 of 1993 and section 3 of Act 104 of 1996

3. Section 9 of the Magistrates' Courts Act, 1944, is hereby amended—

(a) by the substitution for paragraph *(a*A*)* of subsection (1) of the following paragraph:

"*(a*A*)* The Minister may, in a particular case or generally and subject to such directions as he or she may deem fit, delegate the power conferred upon him or her by paragraph *(a)* to the Director-General of his or her department or another officer of that department with the rank of director or an equivalent or higher rank or a magistrate at the head of a regional division or a **[magistrate with the rank of chief magistrate]** person occupying the office of chief magistrate, including an acting chief magistrate.";

(b) by the substitution for paragraph *(b)* of subsection (1) of the following paragraph:

"*(b)* No person shall be appointed as a magistrate of a regional division unless he **[is a magistrate who]** or she has satisfied all the requirements for the degree of *baccalaureus legum* of a university in the Republic or has passed the Public Service Senior Law Examination or an examination deemed by the **[Public Service Commission]** Minister to be equivalent or superior to the said examination, and the **[board referred to in section 9*bis*]** Magistrates Commission has informed the Minister that he or she is suitable for appointment as a magistrate of a regional division."; and

(c) by the substitution for subsections (3) and (4) of the following subsections, respectively:

"(3) Whenever by reason of absence or incapacity a magistrate, additional magistrate or assistant magistrate is unable to carry out the functions of his or her office or whenever such office becomes vacant, the Minister, or an officer in the Department of Justice or a magistrate at the head of a regional division or a **[magistrate with the rank of chief magistrate]** person occupying the office of chief magistrate, including an acting chief magistrate authorized thereto in writing by the Minister, may appoint any other competent person to act in the place of the absent or incapacitated magistrate, additional magistrate or assistant magistrate, as the case may be, during such absence or incapacity or to act in the vacant office until the vacancy is filled: Provided that no person shall be appointed as an acting magistrate of a regional division unless he or she has satisfied all the requirements for the degree referred to in subsection

(1)*(b)* or has passed an examination referred to in that subsection: Provided further that when any such vacancy has remained unfilled for a continuous period exceeding three months the fact shall be reported to the Magistrates Commission **[established by section 2 of the Magistrates Act, 1993 (Act 90 of 1993)]**.

(4) The Minister or an officer in the Departement of Justice or a magistrate at the head of a regional division or a **[magistrate with the rank of chief magistrate]** person occupying the office of chief magistrate, including an acting chief magistrate authorized thereto in writing by the Minister, may appoint temporarily any competent person to act either generally or in a particular matter as magistrate of a regional division in addition to any magistrate or acting magistrate of that division or as additional or assistant magistrate for any district or sub-district in addition to the magistrate or any other additional or assistant magistrate.''.

Substitution of section 10 of Act 32 of 1944

4. The following section is hereby substituted for section 10 of the Magistrates' Courts Act, 1944:

''Qualifications for appointments of judicial officers

10. Subject to the provisions of the **[law governing the public service]** Magistrates Act, 1993 (Act No. 90 of 1993), and of section **[eleven]** 11—

(a) a person who has not before the commencement of **[this Act]** the Magistrates Amendment Act, 1998, held a substantive appointment as magistrate shall not hold such an appointment and a person who has not before the commencement of **[this Act]** the Magistrates Amendment Act, 1998, held a substantive appointment as assistant magistrate shall not hold such an appointment, unless in either case he or she has passed the civil service lower law examination or an examination declared by the **[Public Service Commission]** Minister to be equivalent thereto;

(b) in recommending any person for appointment as a magistrate, additional magistrate or assistant magistrate the **[Public Service Commission]** Magistrates Commission may give preference to a person who holds a degree in law of a university in South Africa, or has passed the Civil Service Higher Law Examination or an examination deemed by the Commission to be equivalent thereto.''.

NEW CLAUSE

1. That the following be a new Clause:

Amendment of section 92 of Act 32 of 1944, as substituted by section 30 of Act 94 of 1974 and amended by section 9 of Act 91 of 1977, section 1 of Act 109 of 1984, section 9 of Act 25 of 1987, section 2 of Act 129 of 1993 and section 2 of Act 33 of 1997

6. Section 92 of the Magistrates' Courts Act, 1944, is hereby amended by the substitution for paragraph *(a)* of subsection (1) of the following paragraph:

"*(a)* by imprisonment, may impose a sentence of imprisonment for a period not exceeding **[twelve months]** three years, where the court is not the court of a regional division, or not exceeding **[ten]** 15 years, where the court is the court of a regional division;".

CLAUSE 4

Clause rejected.

CLAUSE 5

1. On page 4, from line 47, to omit subsections (2) and (3) and to substitute:

(2) The Minister may, 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, including regulations empowering the Minister, after consultation with the Commission, to confer or assign administrative powers and duties of a general nature on or to magistrates.

CLAUSE 7

1. On page 6, in line 13, to omit "1997" and to substitute "1998".

LONG TITLE

1. On page 2, in the second line, to omit "and" and to substitute:

to further regulate the appointment of magistrates;

2. On page 2, in the fourth line, after "magistrates" to insert:

; and to increase the penal jurisdiction of magistrates' courts

3. On page 2, in the fourth and fifth lines, to omit "to further regulate the vacation of office by a magistrate;".

4. On page 2, in the sixth line, to omit "and".