

REPUBLIC OF SOUTH AFRICA

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# MAGISTRATES AMENDMENT BILL

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*(As amended by the Portfolio Committee on Justice (National Assembly))*

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(MINISTER OF JUSTICE)

**[B 92B—97]**

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REPUBLIEK VAN SUID-AFRIKA

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# WYSIGINGSWETSONTWERP OP LANDDROSTE

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*(Soos gewysig deur die Portefeuljekomitee oor Justisie (Nasionale Vergadering))*

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(MINISTER VAN JUSTISIE)

**[W 92B—97]**

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**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.

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# BILL

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

**B**E 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**

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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 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 (aA) of subsection (1) of the following paragraph:

“(aA) 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 9bis] 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)]. 5

(4) 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 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.”. 10 15

#### 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— 20

(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; 25

(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.”. 30 35

#### 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

5. 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.”. 40

#### 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 45

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;”. 50

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

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

**“Powers and duties of magistrates**

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**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, 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.

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(3) 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**

8. Section 16 of the Magistrates Act, 1993, is hereby amended by the addition of the following subsection: 20

“(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 to a fine, or to imprisonment for a period not exceeding three months.”.

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**Short title**

9. This Act shall be called the Magistrates Amendment Act, 1998.

## MEMORANDUM ON THE OBJECTS OF THE MAGISTRATES AMENDMENT BILL

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 Presidents of the Regional Courts. The objects of the Bill are briefly the following:

**Clauses 1, 2 and 5** 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 changed to conform with the Constitution. 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 3** amends section 9 of the Magistrates' Courts Act, 1944, so as to make it clear that an acting chief magistrate may also be delegated by the Minister of Justice to perform certain functions as contemplated in this section. In addition, the requirement that only a magistrate can be appointed as a regional magistrate is deleted, and certain obsolete expressions in section 9 are being replaced.

**Clause 4** substitutes section 10 of the Magistrates' Courts Act, 1944, so as to further regulate the qualification for appointment of magistrates. The reference to "the law governing the public service" is replaced by a reference to the Magistrates Act, 1993 (Act No. 90 of 1993), and references to the Public Service Commission are being replaced with references to the Minister of Justice and the Magistrates Commission, respectively.

**Clause 6** amends section 92 of the Magistrates' Courts Act, 1944, so as to increase the penal jurisdiction of magistrates' courts from one to three years' imprisonment, in the case of district courts, and from ten to 15 years' imprisonment, in the case of regional courts.

**Clause 7** 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 8** 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 magistrates' representative bodies 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.