

REPUBLIC OF SOUTH AFRICA

MAGISTRATES' COURTS AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 33362 of 6 July 2010)
(The English text is the official text of the Bill)*

(MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 23—2010]

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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.

BILL

To amend the Magistrates' Courts Act, 1944, so as to regulate anew the qualifications required for the appointment of a person as a magistrate, additional magistrate and magistrate of a regional division; to further regulate the inclusion of magistrates of regional divisions on the list of magistrates who may adjudicate on civil disputes; to authorise the Minister to determine the conditions relating to the authorisation of a person to serve process of court or other documents on behalf of a public body; and to provide for matters connected therewith.

PARLIAMENT of the Republic of South Africa enacts, as follows:—

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, section 3 of Act 104 of 1996, section 3 of Act 66 of 1998, section 1 of Act 62 of 2000, section 1 of Act 28 of 2003 and section 1 of Act 22 of 2005 5

1. Section 9 of the Magistrates' Courts Act, 1944 (hereinafter referred to as the principal Act), is hereby amended— 10

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

“(a) Subject to the Magistrates Act, 1993, and **[the provisions of paragraph (b) of this subsection and of]** section 10 of this Act, the Minister may appoint for any district or sub-district a magistrate, one or more additional magistrates or one or more assistant magistrates and for every regional division a magistrate or magistrates.”; and 15

(b) by the deletion of paragraph (b) of subsection (1).

Substitution of section 10 of Act 32 of 1944, as substituted by section 4 of Act 66 of 1998 20

2. The following section is hereby substituted for section 10 of the principal Act:

“Qualifications for appointment of judicial officers

10. Subject to the provisions of the Magistrates Act, 1993 (Act No. 90 of 1993), any appropriately qualified woman or man who is a fit and proper

person may be appointed as a magistrate, an additional magistrate or a magistrate of a regional division.”.

Amendment of section 12 of Act 32 of 1944, as amended by section 9 of Act 40 of 1952, section 25 of Act 94 of 1974, section 5 of Act 66 of 1998 and section 4 of Act 31 of 2008

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3. Section 12 of the principal Act is hereby amended by the substitution for subsections (6), (7) and (8) of the following subsections, respectively:

“(6) Only a magistrate of a regional division whose name appears on the list referred to in subsection (7), may adjudicate on civil disputes **[as]** contemplated in section 29(1) **[and]** or 29(1B), in accordance with the criteria set out in subsection (8). 10

(7) The Magistrates Commission must enter the names of magistrates of regional divisions on a list of magistrates **[for the adjudication of]** who may adjudicate on civil disputes contemplated in—

(a) section 29(1) **[and]** or 29(1B); or 15

(b) both sections 29(1) and 29(1B).

(8) The Magistrates Commission may only enter the name of a magistrate on the list in terms of subsection (7) if one or more places have been appointed in terms of section 2(1)(iA) within the regional division in respect of which the magistrate in question had been appointed for the adjudication of civil disputes, and— 20

(a) the head of the South African Judicial Education Institute has issued a duly signed certificate that the magistrate has successfully completed an appropriate training course in the adjudication of civil disputes; or

(b) the Magistrates Commission is satisfied that, before the establishment of the Institute referred to in paragraph (a), the magistrate has successfully completed an appropriate training course in the adjudication of civil disputes; or 25

(c) the Magistrates Commission is satisfied that the magistrate, on account of previous experience—

(i) **as a magistrate presiding over the adjudication of civil disputes; or** 30

(ii) **as a legal practitioner with at least five years’ experience in the administration of justice],**

has suitable knowledge of, and expertise in, civil litigation matters to preside over the adjudication of civil disputes contemplated in section 29 (1) **[and]** or 29(1B) or both sections 29(1) and 29(1B).”.

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Amendment of section 15 of Act 32 of 1944, as amended by section 11 of Act 40 of 1952, section 2 of Act 19 of 1963, section 29 of Act 70 of 1968, section 26 of Act 94 of 1974, section 1 of Act 59 of 1982, section 64 of Act 90 of 1986 and section 4 of Act 18 of 1996

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4. Section 15 of the principal Act is hereby amended by the insertion after subsection (2) of the following subsection:

“(2A) The Minister may, by notice in the *Gazette*, determine the conditions of authorisation of a person referred to in subsection (2)(a) or any other matter relating to that authorisation.”.

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Short title and commencement

5. This Act is called the Magistrates’ Courts Amendment Act, 2010, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE MAGISTRATES' COURTS AMENDMENT BILL, 2010

1. PURPOSE OF BILL

The primary aim of the Bill is to amend the Magistrates' Courts Act, 1944 (Act No. 32 of 1944) (hereinafter referred to as the principal Act), so as to—

- (a) regulate anew the qualifications required for the appointment of a person as a magistrate, additional magistrate or magistrate of a regional division;
- (b) further regulate the inclusion of magistrates of regional divisions on the list of magistrates who may adjudicate on civil disputes; and
- (c) authorise the Minister to determine the conditions relating to the authorisation of a person to serve process of court or other documents on behalf of a public body.

2. BACKGROUND

The amendments proposed in clauses 1 to 3 of the Bill are necessary as it facilitate the smooth implementation of the Jurisdiction of Regional Courts Amendment Act, 2008.

3. OBJECTS OF BILL

3.1 Clauses 1 and 2 amend section 9(1)(a) and (b) and section 10 of the principal Act by abolishing the requirement that only a magistrate in possession of a LLB degree may be appointed as a regional court magistrate, and by providing that any appropriately qualified woman or man who is a fit and proper person may be appointed as a magistrate, an additional magistrate or a magistrate of a regional division. These amendments will bring the requirements for appointment as a magistrate, an additional magistrate or a magistrate of a regional division, in line with the requirements for appointment as a judge as provided for in section 174(1) of the Constitution.

3.2 Under the Jurisdiction of Regional Courts Amendment Act, 2008, section 12 of the principal Act was amended to provide that only a regional court magistrate whose name appears on the list referred to in section 12(7) of the principal Act may adjudicate on civil disputes as provided for in section 29(1). Section 29 of the principal Act was substituted in its entirety by the Jurisdiction of Regional Courts Amendment Act, 2008, to provide for adjudication of various types of civil matters and divorce matters. Section 12(8) of the principal Act as amended by the Jurisdiction of Regional Courts Amendment Act, 2008, provides that the Magistrates Commission may only enter the name of a regional court magistrate on the list if one or more places have been appointed in terms of section 2(1)(iA) within the regional division in respect of which the magistrate in question had been appointed for the adjudication of civil disputes and if—

- (a) the head of the SA Judicial Education Institute has issued a certificate that the magistrate has successfully completed an appropriate training course in the adjudication of civil disputes;
- (b) the Magistrates Commission is satisfied that, before the establishment of the Institute, the magistrate has successfully completed an appropriate training course in the adjudication of civil disputes; or
- (c) the Magistrates Commission is satisfied the magistrate, on account of previous experience—
 - (i) as a magistrate presiding over the adjudication of civil disputes; or
 - (ii) as a legal practitioner with at least five years' experience in the administration of justice,
 has suitable knowledge of, and experience in, civil litigation matters to preside over the adjudication of civil disputes contemplated in section 29(1) and 29(1B).

Due to the conjunctive nature of the current provision, only the names of regional court magistrates who are experienced in both areas of adjudication i.e. various types of civil matters or divorce matters, may be entered on the said list, thereby preventing a regional court magistrate who is suitably experienced in one or the other field of adjudication from being assigned to a regional court exercising jurisdiction only in that field. To broaden the pool of magistrates who may adjudicate on these matters, clause 3 amends section 12 of the principal Act to provide that the names of magistrates who are experienced in the adjudication of either civil law matters or divorce matters may be entered on the list, kept by the Magistrates Commission, as regional court magistrates who may adjudicate on civil disputes.

- 3.3 Section 15(2)(a) of the Magistrates' Courts Act, 1944, provides that whenever a public body has the right to prosecute privately in respect of an offence under any law, or whenever a fine imposed on conviction in respect of an offence is to be paid into the revenue of a public body, the process of the court and all other documents in the case must be served by a person authorised in writing by such public body. Section 15(2)(b) further provides that, where it is expedient that such process be served in the area of jurisdiction of another public body, a person authorised by such other public body may serve the process of the court and other documents in the case. Clause 4 amends section 15 of the principal Act by the insertion of a new subsection (2A), which gives the Minister of Justice and Constitutional Development a discretion to determine the conditions of the authorisation of a person to serve process of court or other documents on behalf of a public body or to determine any other matter relating to that authorisation. The purpose of the amendment is to prevent certain irregularities that are currently taking place regarding the service of those documents. For instance persons are not always authorised in writing, procedures for service are not adhered to and other persons are serving documents on behalf of the authorised person.

4. IMPLEMENTATION PLAN

The Bill does not require detailed implementation plans due to the fact that the Bill is primarily aimed at facilitating the smooth implementation of the Jurisdiction of Regional Courts Amendment Act, 2008.

5. DEPARTMENTS AND PARTIES CONSULTED

- 5.1 The Bill was submitted for comment to, *inter alia*—
- the Chief Justice of the Republic of South Africa;
 - the respective Judges President;
 - Magistrates;
 - the Magistrates' Commission;
 - the Law Society of South Africa;
 - the General Council of the Bar;
 - the various Bar Councils;
 - the Chief Family Advocate;
 - the National Prosecuting Authority; and
 - the Board of Sheriffs.
- 5.2 The Bill was also made available on the Website of the Department together with a document explaining the objects of the Bill and public comments were invited regarding the contents of the Bill.

5.3 Comments were received from—

- the Molao Academy;
- the Law Society of South Africa;
- various individuals;
- the Commission on Gender Equality;
- the Cape Bar Council; and
- the National Prosecuting Authority.

6. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

The amendments do not bring about additional organisational or personnel implications.

7. FINANCIAL IMPLICATIONS

There are no financial implications.

8. COMMUNICATION IMPLICATIONS

The Public Education and Communication component of the Department will assist with public awareness initiatives, where necessary.

9. CONSTITUTIONAL IMPLICATIONS

The State Law Advisers are of the view that the provisions of the Bill are consistent with the Constitution.

10. PARLIAMENTARY PROCEDURE

10.1 The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

10.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.