

REPUBLIC OF SOUTH AFRICA

**JUDICIAL MATTERS
AMENDMENT BILL**

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

(MINISTER OF JUSTICE)

[B 95B—97]

REPUBLIEK VAN SUID-AFRIKA

**WYSIGINGSWETSONTWERP OP
GEREGTELIKE
AANGELEENTHEDE**

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

(MINISTER VAN JUSTISIE)

[W 95B—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.

BILL

To amend the Insolvency Act, 1936, so as to further regulate the obtaining of legal assistance by the trustee of an insolvent estate; to amend the Prevention of Counterfeiting of Currency Act, 1965, so as to make the possession of counterfeit coins or forged or altered bank notes punishable in law; to amend the Criminal Procedure Act, 1977, so as to effect certain textual improvements in connection with the use of force in effecting arrests; to further regulate the proof of certain facts by means of affidavits or certificates; and to provide that an accused may in certain circumstances be sentenced by a judge other than the judge who convicted him or her; to amend the Criminal Law Second Amendment Act, 1992, so as to prohibit certain acts connected with military, paramilitary or similar operations and weapons, ammunition, explosives or other explosive devices; to amend the Interception and Monitoring Prohibition Act, 1992, so as to make provision in connection with the monitoring of communications; and to make further provision in connection with the issue and execution of directions; to amend the Recognition of Foreign Legal Qualifications and Practice Act, 1993, so as to make other provision in connection with the duration of the said Act; to amend the Promotion of National Unity and Reconciliation Act, 1995, so as to effect a textual adjustment; to amend the Justice Laws Rationalisation Act, 1996, so as to effect certain textual improvements; to amend the Criminal Procedure Second Amendment Act, 1997, so as to effect certain textual improvements; and to amend the Criminal Law Amendment Act, 1997, so as to further regulate the setting aside of sentences of death; to amend the Proceeds of Crime Act, 1996, so as to effect a textual improvement; and to provide for matters connected therewith.

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

Substitution of section 73 of Act 24 of 1936, as amended by section 20 of Act 16 of 1943, section 24 of Act 99 of 1965 and section 1 of Act 78 of 1980

1. The following section is hereby substituted for section 73 of the Insolvency Act, 1936: 5

“Trustee may obtain legal assistance

73. (1) Subject to the provisions of this section and section 53(4), the trustee of an insolvent estate may with the prior written authorization of the creditors engage the services of any attorney or counsel to perform the legal work specified in the authorization on behalf of the estate: Provided that the trustee—
- (a) if he or she is unable to obtain the prior written authorization of the creditors due to the urgency of the matter or the number of creditors involved, may with the prior written authorization of the Master engage the services of any attorney or counsel to perform the legal work specified in the authorization on behalf of the estate; or
- (b) if it is not likely that there will be any surplus after the distribution of the estate, may at any time before the submission of his or her accounts obtain written authorization from the creditors for any legal work performed by any attorney or counsel,
- and all costs incurred by the trustee, including any costs awarded against the estate in legal proceedings instituted on behalf of or against the estate, in so far as such costs result from any steps taken by the trustee under this subsection, shall be included in the cost of the sequestration of the estate.
- (2) Subject to the provisions of subsection (3), costs incurred under this section, except costs awarded against the estate in legal proceedings, shall not be subject to taxation by the taxing master of the court if the trustee has entered into any written agreement in terms of which the fees of any attorney or counsel will be determined in accordance with a specific tariff: Provided that no contingency fees agreement referred to in section 2(1) of the Contingency Fees Act, 1997 (Act No. 66 of 1997), shall be entered into without the express prior written authorization of the creditors.
- (3) If—
- (a) the trustee has not entered into an agreement under subsection (2); or
- (b) there is any dispute as to the fees payable in terms of such an agreement,
- the costs shall be taxed by the taxing master of the High Court having jurisdiction or, where the costs are not subject to taxation by the said taxing master, such costs shall be assessed by the law society or bar council concerned or, where the counsel concerned is not a member of any bar council, by the body or person designated under section 5(1) of the Contingency Fees Act, 1997.
- (4) No bill of costs based upon an agreement entered into under subsection (2) shall be accepted as cost of the sequestration of the estate, unless such bill is accompanied by a declaration under oath or affirmation by the trustee stating—
- (a) that he or she had been duly authorized by either the creditors or the Master, as the case may be, to enter into such an agreement;
- (b) that any legal work specified in such bill has been performed to the best of his or her knowledge and belief;
- (c) that any disbursements specified in such bill have been made to the best of his or her knowledge and belief; and
- (d) that, to the best of his or her knowledge and belief, the attorney or counsel concerned has not overreached him or her.
- (5) Notwithstanding anything to the contrary contained in this Act, the Master may disallow any costs incurred under this section if the Master is of the opinion that any such costs are incorrect or improper or that the trustee acted in bad faith, negligently or unreasonably in incurring any such costs.”.

Amendment of section 2 of Act 16 of 1965

2. Section 2 of the Prevention of Counterfeiting of Currency Act, 1965, is hereby amended by the substitution for paragraph (d) of the following paragraph:

- “(d) without lawful authority or excuse—
- (i) has in his or her possession any counterfeit coin or any forged or altered bank note; 5
 - [(i)](ii) imports or receives into the Republic any counterfeit coin or any forged or altered bank note; or
 - [(ii)](iii) exports from the Republic or puts or takes or causes to be put or taken on board any ship, vessel, boat, aircraft or vehicle for the purpose of being so exported, any counterfeit coin or any forged or altered bank note 10
- [any counterfeit coin or any forged or altered bank note];”.**

Amendment of section 50 of Act 51 of 1977, as amended by section 1 of Act 56 of 1979, section 37 of Act 122 of 1991, section 1 of Act 75 of 1995 and section 1 of Act 85 of 1997

3. Section 50 of the Criminal Procedure Act, 1977, is hereby amended—

- (a) by the substitution for subparagraph (ii) of paragraph (d) of subsection (1) of the following subparagraph:
- “(ii) or will expire at, or if the time at which such period is deemed to expire under subparagraph (i) or (iii) is or will be, a time when the arrested person cannot, because of his or her physical illness or other physical condition, be brought before a lower court **[for the purposes of an order for his or her further detention]**, the court before which he or she would, but for the illness or other condition, have been brought **[for the purposes of such an order]**, may **[upon]** on the application of the prosecutor, which, if not made before the expiration of the period of 48 hours, may be made at any time before, or on, the next succeeding court day, and in which the circumstances relating to the illness or other condition are set out, supported by a certificate of a medical practitioner, **[order]** authorise that the arrested person be detained at a place specified by the court and for such period as the court may deem necessary so that he or she may recuperate and be brought before the court **[for the purpose of an order for his or her further detention for the purposes of his or her trial or his or her release]**; Provided that the court may, on an application as aforesaid, authorise that the arrested person be further detained at a place specified by the court and for such period as the court may deem necessary; or”; 20 25 30 35
- (b) by the substitution for subparagraph (aa) of paragraph (a)(i) of subsection (6) of the following subparagraph: 40
- “(aa) be informed by the court of the reason for **[the]** his or her further detention [to continue]; or”; and
- (c) by the substitution in the Afrikaans text for paragraph (b) of the said subsection (6) of the following paragraph: 45
- “(b) ’n **[Beskuldigde]** Gearresteerde persoon beoog in paragraaf (a)(i) is nie daarop geregtig om buite gewone hofure na die hof gebring te word nie.”.

Amendment of section 59A of Act 51 of 1977, as inserted by section 3 of Act 85 of 1997

4. Section 59A of the Criminal Procedure Act, 1977, is hereby amended—

- (a) by the substitution in the Afrikaans text for subsection (1) of the following subsection: 55
- “(1) ’n Prokureur-generaal, of ’n aanklaer deur die betrokke prokureur-generaal skriftelik daartoe gemagtig, kan, ten opsigte van die misdrywe bedoel in Bylae 7 en in oorleg met die polisiebeampte belas met die ondersoek, die vrylating van ’n beskuldigde op borgtog magtig.”; and

- (b) by the substitution in the Afrikaans text of subsection (3) for the words preceding paragraph (a) of the following words:

“Die uitwerking van borgtog wat ooreenkomstig hierdie artikel verleen is, is dat [**n beskuldigde**] die persoon wat in bewaring is, uit bewaring vrygelaat word—”.

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Amendment of section 60 of Act 51 of 1977, as substituted by section 3 of Act 75 of 1995 and amended by section 4 of Act 85 of 1997

5. Section 60 of the Criminal Procedure Act, 1977, is hereby amended—

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

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“(b) Subject to the provisions of section 50(6)[(b)] (c), **[if a court refers an accused to another court for trial or sentencing]** the court referring **[the]** an accused to any other court for trial or sentencing retains jurisdiction relating to the powers, functions and duties in respect of bail in terms of this Act until the accused appears in such other court for the first time.”; and

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- (b) by the substitution in subsection (14) for the words preceding the proviso of the following words:

“Notwithstanding **[any law]** anything to the contrary contained in any law, no accused shall, for the purposes of bail proceedings, have access to any information, record or document relating to the offence in question, which is contained in, or forms part of, a police docket, including any information, record or document which is held by any police official charged with the investigation in question, unless the prosecutor otherwise directs:”.

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Amendment of section 212 of Act 51 of 1977, as amended by section 12 of Act 56 of 1979, sections 46 and 47 of Act 97 of 1986, section 11 of Act 5 of 1991 and section 40 of Act 122 of 1991

6. Section 212 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for paragraph (a) of subsection (4) of the following paragraph:

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“(a) Whenever any fact established by any examination or process requiring any skill—

- (i) in biology, chemistry, physics, astronomy, geography or geology;
 (ii) in mathematics, applied mathematics or mathematical statistics or in the analysis of statistics;
 (iii) in computer science or in any discipline of engineering;
 (iv) in anatomy or in human behavioural sciences;
 (v) in biochemistry, in metallurgy, in microscopy, in any branch of pathology or in toxicology; or
 (vi) in ballistics, in the identification of [finger-prints] finger prints or palm-prints or in the examination of disputed documents,

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is or may become relevant to the issue at criminal proceedings, a document purporting to be an affidavit made by a person who in that affidavit alleges that he or she is in the service of the State or of a provincial administration or is in the service of or is attached to the South African Institute for Medical Research or any university in the Republic or any other body designated by the Minister for the purposes of this subsection by notice in the *Gazette*, and that he or she has established such fact by means of such an examination or process, shall, upon its mere production at such proceedings be *prima facie* proof of such fact: Provided that the person who may make such affidavit may, in any case in which skill is required in chemistry, anatomy or pathology, issue a certificate in lieu of such affidavit, in which event the provisions of this paragraph shall *mutatis mutandis* apply with reference to such certificate.”.

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Substitution of section 275 of Act 51 of 1977

7. The following section is hereby substituted for section 275 of the Criminal Procedure Act, 1977:

“Sentence by judicial officer or judge other than judicial officer or judge who convicted accused 5

275. (1) If sentence is not passed upon an accused forthwith upon conviction in a lower court, or if, by reason of any decision or order of a superior court on appeal, review or otherwise, it is necessary to add to or vary any sentence passed in a lower court or to pass sentence afresh in such court, any judicial officer of that court may, in the absence of the judicial officer who convicted the accused or passed the sentence, as the case may be, and after consideration of the evidence recorded and in the presence of the accused, pass sentence on the accused or take such other steps as the judicial officer who is absent, could lawfully have taken in the proceedings in question if he or she had not been absent. 10 15

(2) Whenever—

- (a) a judge is required to sentence an accused convicted by him or her of any offence; or
 (b) any matter is remitted on appeal or otherwise to the judge who presided at the trial of an accused, and that judge is for any reason not available, any other judge of the provincial or local division concerned may, after consideration of the evidence recorded and in the presence of the accused, sentence the accused or, as the case may be, take such other steps as the former judge could lawfully have taken in the proceedings in question if he or she had been available.”. 20 25

Amendment of Schedule 5 to Act 51 of 1977, as substituted by section 9 of Act 85 of 1997

8. Schedule 5 to the Criminal Procedure Act, 1977, is hereby amended—

- (a) by the deletion, in the Afrikaans text, of the fifth offence; 30
 (b) by the substitution in the Afrikaans text of the sixth offence for the words preceding paragraph (a) of the following words:
 “’n Misdryf bedoel in artikel 13(f) van die Wet op Dwelmmiddels en Dwelmsmokkelary, 1992 (Wet No. 140 van 1992), indien [**bewys is**] beweer word dat—”; 35
 (c) by the substitution in the Afrikaans text for paragraph (b) of the ninth offence of the following paragraph:
 “(b) waarby bedrae van meer as R100 000,00 betrokke is, indien [**bewys is**] beweer word dat die misdryf deur ’n persoon, groep persone, sindikaat of ’n onderneming handelende in die uitvoering of ter bevordering van ’n gemeenskaplike doel of sameswering gepleeg is; of”; and 40
 (d) by the substitution in the Afrikaans text of paragraph (c) of the said ninth offence for the words preceding subparagraph (i) of the following words:
 “indien [**bewys is**] beweer word dat die misdryf gepleeg is deur ’n wetstoepassingsbeampte—”. 45

Amendment of Schedule 6 to Act 51 of 1977, as added by section 10 of Act 85 of 1997

9. Schedule 6 to the Criminal Procedure Act, 1977, is hereby amended by the substitution in the Afrikaans text for subparagraph (iii) of paragraph (a) of the second offence of the following subparagraph: 50

- “(iii) deur ’n persoon wat [**skuldig bevind is aan**] aangekla word van die pleging van twee of meer misdrywe van verkragting; of”.

Amendment of Schedule 7 to Act 51 of 1977, as added by section 10 of Act 85 of 1997

10. Schedule 7 to the Criminal Procedure Act, 1977, is hereby amended—
 (a) by the substitution for the heading thereto of the following heading:

“SCHEDULE 7 5

(Section [60(6)(b)] 59A)”;

- (b) by the substitution for the ninth offence of the following offence:
 “Theft and any offence referred to in section 264(1)(a), (b) and (c), if the amount involved in the offence exceeds [R2 000,00] R200,00 but does not exceed R20 000,00.”; and 10
 (c) by the deletion, in the Afrikaans text, of the tenth offence.

Insertion of Chapter 4A and sections 16A, 16B, 16C and 16 D in Act 126 of 1992

11. The following chapter is hereby inserted after Chapter 4 of the Criminal Law Second Amendment Act, 1992:

“CHAPTER 4A 15

**OFFENCES RELATING TO MILITARY, PARAMILITARY OR
SIMILAR OPERATIONS AND WEAPONS, AMMUNITION,
EXPLOSIVES OR OTHER EXPLOSIVE DEVICES**

Certain acts connected with military, paramilitary or similar operations and weapons, ammunition, explosives or other explosive devices prohibited 20

16A. (1) No person shall—

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| (a) | in any manner train any other person or undergo any training— | 25 |
| | (i) in the conducting of any military, paramilitary or similar operation; or | |
| | (ii) in any tactical or other procedure applicable to, or required in, the preparation for any such operation or the execution thereof; | |
| (b) | instruct or train any other person or undergo any instruction or training in the construction, manufacture or use of any weapon, ammunition, explosive or other explosive device— | 30 |
| | (i) for the purpose of endangering life or causing serious damage to property; | |
| | (ii) for the purpose of promoting any political objective; or | |
| | (iii) for military, paramilitary or similar purposes; | |
| (c) | assist in any instruction or training contemplated in this subsection, or equip any other person who is so instructed or trained or intended to be so instructed or trained with any such weapon, ammunition, explosive or explosive device or organise or employ two or more such other persons, whether they are so equipped by him or her or not— | 35 |
| | (i) for the purpose of endangering life or causing serious damage to property; | 40 |
| | (ii) for the purpose of promoting any political objective; or | |
| | (iii) for military, paramilitary or similar purposes. | |
| | (2) The provisions of subsection (1) shall not apply in respect of— | |
| (a) | any member of the South African National Defence Force or of any reserve, corps or service established by or under the Defence Act, 1957 (Act No. 44 of 1957), who— | 45 |
| | (i) acts in the course and within the scope of his or her duties as such a member and in accordance with the requirements of the | |

- Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), the said Act or any order, command, instruction or regulation issued or made under the said Act; or
- (ii) undergoes training in terms of the said Act or any order, command, instruction or regulation issued or made under the said Act; 5
- (b) any member of the South African Police Service or of any municipal police service established under the South African Police Service Act, 1995 (Act No. 68 of 1995), who— 10
- (i) acts in the course and within the scope of his or her duties as such a member and in accordance with the requirements of the said Act, any other law or any order, instruction, determination or regulation issued or made under the said Act; or
- (ii) undergoes training in terms of any determination or regulation issued or made under the said Act; 15
- (c) any correctional official of the Department of Correctional Services or any person authorised under the Correctional Services Act, 1959 (Act No. 8 of 1959), who— 20
- (i) in the case of any such official, acts in the course and within the scope of his or her duties as such an official and in accordance with the requirements of the said Act, any other law or any order, authorization or regulation issued or made under the said Act or, in the case of any person so authorised, acts within the scope of and in accordance with such authorization; or
- (ii) undergoes training in terms of any order or authorization issued under the said Act; 25
- (d) in the case of any act relating to weapons, ammunition or explosives, any employee of the Armaments Development and Production Corporation of South Africa, Limited, of Denel (Pty) Ltd, of any factory manufacturing armaments or arms in accordance with a permit issued under the Armaments Development and Production Act, 1968 (Act No. 57 of 1968), or the Arms and Ammunition Act, 1969 (Act No. 75 of 1969), or of any factory licensed under the Explosives Act, 1956 (Act No. 26 of 1956), to manufacture explosives, who— 30
- (i) acts in the course and within the scope of his or her employment as such an employee and with a view to the promotion of the sale of armaments, arms, ammunition or explosives or the instruction or training— 35
- (aa) of co-employees in the manufacture, maintenance or development of armaments, arms, ammunition or explosives; or 40
- (bb) of persons employed by employers who are permitted to purchase armaments, arms, ammunition or explosives, in the construction, manufacture, use or maintenance thereof; or 45
- (ii) undergoes instruction or training in the manufacture, maintenance or development of armaments, arms, ammunition or explosives;
- (e) in the case of any act relating to weapons or ammunition, any person who is appointed as a traffic officer or traffic warden under the Road Traffic Act, 1989 (Act No. 29 of 1989), and who— 50
- (i) acts in the course and within the scope of his or her duties as such an officer or warden and in furtherance of the objects of the said Act or in accordance with the requirements of any other law or the conditions of any approved training course; or 55
- (ii) undergoes training at any recognised or approved training centre in accordance with the conditions of any approved training course;

- (f) in the case of any act relating to weapons or ammunition, any person who is registered as a security officer in terms of the Security Officers Act, 1987 (Act No. 92 of 1987), and who—
- (i) in the case of an employer, acts in good faith in rendering a security service for the protection or safeguarding of persons or property or, in the case of an employee, acts in the course and within the scope of his or her employment as such an officer and with a view to the protection or safeguarding of persons or property; or
 - (ii) undergoes training in terms of the said Act or any regulation made under the said Act;
- (g) in the case of any act relating to explosives, any member of a service established by or under any law for the protection of persons or property, who—
- (i) acts in the course and within the scope of his or her duties as such a member and with a view to the protection of persons or property; or
 - (ii) undergoes training at any recognised or approved training centre; or
- (h) any person who otherwise acts, or undergoes instruction or training, in a lawful manner.
- (3) For the purposes of subsection (1)—
- (a) 'explosive device' means any device which is capable of causing bodily injury, loss of life or damage to, or loss of, property by explosion or ignition and which is so used or intended to be so used;
 - (b) 'political objective' includes—
 - (i) the bringing about of any constitutional, political, social, economic or industrial change in the Republic; or
 - (ii) the inducement of any person, including the national, provincial or local sphere of government, to do or to abstain from doing any act, or to support or to oppose any person, cause, action or failure to take action, whether it is coupled with the use or display of force or not;
 - (c) 'weapon' includes any cannon, mortar, rocket launcher, grenade, machine gun, firearm or air rifle, or any imitation thereof.

Offences and penalties

16B. Any person who contravenes a provision of section 16A(1) shall be guilty of an offence and liable on conviction to such fine as the court may deem fit to impose, or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

Temporary exemption

16C. (1) Notwithstanding anything to the contrary contained in section 16A(1), the Minister of Justice may in consultation with the Minister for Safety and Security exempt—

- (a) any employer who uses the services of any employee exclusively for the purposes of the protection or safeguarding of the personnel, property or business interests of that employer; and
- (b) any employee or group of employees whose services are so used, on application in writing by the employer, from the provisions of the said section 16A(1) for such period and on such conditions as may be determined by the Minister of Justice in consultation with the Minister for Safety and Security.

(2) The Minister of Justice may in consultation with the Minister for Safety and Security at any time withdraw an exemption contemplated in subsection (1) or withdraw, amend or supplement any condition on which any such exemption was granted.

(3) The Minister of Justice shall notify in writing any employer affected by a decision under this section of such decision.

Authority of attorney-general

16D. No prosecution in respect of an offence referred to in section 16B shall be instituted without the written authority of the attorney-general concerned.” 5

Substitution of long title of Act 126 of 1992

12. The following long title is hereby substituted for the long title of the Criminal Law Second Amendment Act, 1992:

“ACT 10

To amend the Criminal Procedure Act, 1977, so as to delete certain obsolete expressions; and to extend Part III of Schedule 2; to amend the Intimidation Act, 1982, so as to provide that an act or conduct which inspires fear in the observer thereof constitutes the offence of intimidation if proved that fear was inspired; and to create an additional offence; to amend the Internal Security Act, 1982, so as to delete the attorney-general’s power to prohibit release on bail or on warning; to delete the detention of witnesses under warrant issued by the attorney-general; and to further regulate a certain offence; to provide that the organizing, training, equipping or arming of members or supporters of organizations is prohibited in certain cases; to provide that certain acts connected with military, paramilitary or similar operations and weapons, ammunition, explosives or other explosive devices are prohibited; to provide that an attorney-general may issue a certificate in respect of certain offences to the effect that a special criminal procedure be followed in respect of the trial of such offences; to grant special powers to a court of law with regard to the hearing of such offences; to provide for a special plea procedure in respect of such offences; to provide that a person who has been arrested on account of the alleged commission of such an offence, may only on the written authorization of the attorney-general be released on bail or on warning; to provide for the imposition of a prescribed sentence for the unlawful possession of weaponry in specified instances; and to provide for the detention of persons in certain cases for interrogation in respect of certain weaponry; and to provide for matters connected therewith.” 15 20 25 30 35

Amendment of section 1 of Act 127 of 1992, as amended by section 32 of Act 38 of 1994 and section 1 of Act 77 of 1995

13. Section 1 of the Interception and Monitoring Prohibition Act, 1992, is hereby amended—

- (a) by the substitution for the definition of “monitor” of the following definition: 40
 “ ‘monitor’ includes the recording of conversations or communications by means of a monitoring device;”; and
- (b) by the substitution for the definition of “monitoring device” of the following definition: 45
 “ ‘monitoring device’ means any instrument, device or equipment which is used or can be used, whether by itself or in combination with any other

instrument, device or equipment, to listen to or record any conversation or communication;”.

Amendment of section 2 of Act 127 of 1992

14. Section 2 of the Interception and Monitoring Prohibition Act, 1992, is hereby amended— 5

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

“(b) intentionally monitor [a] any conversation or communication by means of a monitoring device so as to gather confidential information concerning any person, body or organization.”; and 10

(b) by the substitution for paragraph (c) of subsection (2) of the following paragraph:

“(c) conversations by or with, or communications to or from, a person, body or organization, whether a telecommunications line is being used in conducting those conversations or transmitting those communications or not, be monitored in any manner by means of a monitoring device.”. 15

Amendment of section 3 of Act 127 of 1992, as amended by section 32 of Act 38 of 1994 and section 4 of Act 18 of 1996

15. Section 3 of the Interception and Monitoring Prohibition Act, 1992, is hereby amended by the substitution for paragraph (a) of subsection (2) of the following paragraph: 20

“(a) for the purposes referred to in subsection (1)(b)(i) or (ii) or subsection (4), be made by an officer referred to in section 33 of the South African Police Service Act, 1995 (Act No. 68 of 1995), provided [that] the officer concerned obtained in advance the approval of another officer in the South African Police Service with at least the rank of assistant-commissioner, or a member of the said Police Service occupying a post on at least the same level, and who [shall be] has been authorised in writing by the National Commissioner of the South African Police Service to grant such approval;” 25 30

Amendment of section 4 of Act 127 of 1992, as amended by section 32 of Act 38 of 1994 and section 4 of Act 18 of 1996

16. Section 4 of the Interception and Monitoring Prohibition Act, 1992, is hereby amended—

(a) by the substitution for paragraph (a) of subsection (2) of the following paragraph: 35

“(a) take possession of and examine any postal article or telegram to which the direction applies, or, as the case may be, listen in to or make a recording of any conversation or communication to which the direction applies;” and 40

(b) by the substitution for subparagraph (iii) of paragraph (b) of the said subsection (2) of the following subparagraph:

“(iii) an officer of at least the rank of assistant-commissioner in the South African Police Service or a member of the said Police Service occupying a post on at least the same level,” 45

Amendment of section 5 of Act 127 of 1992, as amended by section 32 of Act 38 of 1994 and section 4 of Act 18 of 1996

17. Section 5 of the Interception and Monitoring Prohibition Act, 1992, is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph: 50

“(b) make available the necessary facilities and devices and enable the member who is authorized in terms of section 4(1) to execute a direction or to assist with the execution of a direction, to effect the necessary connections in order to monitor conversations or communications to which the direction applies.”.

Substitution of long title of Act 127 of 1992

18. The following long title is hereby substituted for the long title of the Interception and Monitoring Prohibition Act, 1992:

“ACT

To prohibit the interception of certain communications and the monitoring of certain conversations or communications; to provide for the interception of postal articles and communications and for the monitoring of conversations or communications in the case of a serious offence or if the security of the Republic is threatened; and to provide for matters connected therewith.” 5
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Amendment of section 9 of Act 114 of 1993

19. Section 9 of the Recognition of Foreign Legal Qualifications and Practice Act, 1993, is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection: 15
 “(2) **[Any section of this]** This Act shall **[subject to the provisions of subsection (3)]** cease to have effect **[after the expiry of one year from the commencement of that section]** on 1 April 1998, but **[this]** it shall not affect the previous operation of **[that section]** this Act or any exemption granted **[in terms thereof]** thereunder.”; and
 (b) by the deletion of subsection (3). 20

Amendment of section 29 of Act 34 of 1995, as amended by section 24 of Act 104 of 1996

20. Section 29 of the Promotion of National Unity and Reconciliation Act, 1995, is hereby amended by the substitution for subsection (5) of the following subsection: 25

- “(5) No person other than a commissioner, a member of the staff of the Commission or any person required to produce any article or to give evidence shall be entitled or be permitted to attend any investigation conducted in terms of this section, and the Commission may, having due regard to the principles of openness and transparency, declare that any article produced or information **[submitted]** furnished at such investigation shall not be made public until the Commission 30 determines otherwise or, in the absence of such a determination, until the article is produced or the information is furnished at a hearing in terms of this Act, or at any proceedings in any court of law.”.

Amendment of Schedule II to Act 18 of 1996

21. Schedule II to the Justice Laws Rationalisation Act, 1996, is hereby amended— 35
 (a) below the heading “LAWS OF THE FORMER REPUBLIC OF CISKEI”, by the substitution in the second column thereof for the expression “General Law Second Amendment Act, 1984” of the expression “General Law Amendment Act, 1984”; and
 (b) below the heading “LAWS OF THE FORMER SELF-GOVERNING 40 TERRITORY OF LEBOWA”, by the substitution in the third column thereof for the expression “Sections 14, 15, 18, 18A and 107” of the expression “The whole, except sections 14, 15, 18, 18A and 107”.

Amendment of section 34 of Act 76 of 1996

22. Section 34 of the Proceeds of Crime Act, 1996, is hereby amended by the substitution for paragraph (a) of the following paragraph: 45

- “(a) to impose any penalty mentioned in section **[31]** 33, even though that penalty may exceed the punitive jurisdiction of that court; and”.

Amendment of section 3 of Act 85 of 1997

23. Section 3 of the Criminal Procedure Second Amendment Act, 1997, is hereby amended by the substitution in the said section 3 for the words preceding the marginal note of the following words:

“The following section is hereby inserted in the principal Act after section [58] 59:” 5

Substitution of section 12 of Act 85 of 1997

24. The following section is hereby substituted for section 12 of the Criminal Procedure Second Amendment Act, 1997:

“Short title and commencement

[12]11. This Act shall be called the Criminal Procedure Second Amendment Act, 1997, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.” 10

Amendment of section 1 of Act 105 of 1997

25. Section 1 of the Criminal Law Amendment Act, 1997, is hereby amended—

(a) by the substitution for paragraph (b) of subsection (3) of the following paragraph: 15

“(b) The court—

(i) shall consider the written arguments and the evidence led at the trial; and

(ii) may, if necessary, hear oral argument on such written arguments, and shall advise the President, with full reasons therefor, **[of the need to set aside the sentence of death, of]** on the appropriate sentence to be substituted in **[its]** the place of the sentence of death and, if applicable, **[of]** on the date to which the sentence shall be antedated.”; and 20

(b) by the substitution for subsection (10) of the following subsection: 25

“(10) All other appeals in cases where the sentence of death was imposed and which are **[either part heard or pending before]** not disposed of by the Supreme Court of Appeal shall be disposed of by that **[court, which for that purpose shall have the powers set forth in section 322(2) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977)]** Court: Provided that the said Court shall, if the Court confirms the conviction, set aside the sentence of death and impose such punishment as it considers to be proper.” 30

Short title and commencement

26. (1) This Act shall be called the Judicial Matters Amendment Act, 1998. 35

(2) The provisions of—

(a) sections 1, 2, 6, 7, 11 to 18 and 20 shall come into operation on a date fixed by the President by proclamation in the *Gazette*;

(b) sections 3 to 5 and 8 to 10 shall come into operation on the date of commencement of the Criminal Procedure Second Amendment Act, 1997 (Act No. 85 of 1997); 40

(c) section 19 shall be deemed to have come into operation on 1 October 1993;

(d) section 21 shall be deemed to have come into operation on 1 April 1997; 45

(e) section 22 shall be deemed to have come into operation on 16 May 1997;

(f) sections 23 and 24 shall be deemed to have come into operation on 10 December 1997; and

(g) section 25 shall be deemed to have come into operation on 19 December 1997. 50

(3) Different dates may be fixed under subsection (2)(a) in respect of different provisions of this Act.

MEMORANDUM ON THE OBJECTS OF THE JUDICIAL MATTERS AMENDMENT BILL

A. LAWS AMENDED

The Bill amends the following laws:

1. The Insolvency Act, 1936:
Section 73 of the said Act provides for the costs incurred by the trustee of an insolvent estate in respect of the stated legal assistance as well as any costs awarded against the estate in legal proceedings to be included in the cost of the sequestration of the estate. All costs which are not subject to taxation by the taxing master of the court must be taxed by the Master according to a tariff framed from time to time by him or her. However, the existing tariff was framed in 1981 and is regarded by the legal profession as wholly inadequate. Consequently, a practice came into existence whereby the trustee obtains the authorisation of the creditors to conclude agreements with attorneys and counsel for the payment of a more generous scale of remuneration. In Muller v The Master and others 1992(4)SA 277(TPD) the court decided that the Master is bound by those agreements. It is the object of the proposed section 73—
 - (i) to extend the legal assistance in respect of which the trustee may incur costs; and
 - (ii) to bring the provisions in question into line with the principles contained in Muller's case, *supra*.
2. The Prevention of Counterfeiting of Currency Act, 1965:
The possession of counterfeit coins or forged or altered bank notes is being made punishable in law.
3. The Criminal Procedure Act, 1977:
 - (a) At the request of the Forensic Science Laboratory of the South African Police Service, the list of skills required to prove certain facts by means of affidavits is being extended.
 - (b) In order to rectify an omission in the law of criminal procedure, a judge other than the judge who convicted an accused is being empowered, in the absence of the latter judge, to sentence the accused and to dispose of any matter remitted to the court of first instance.
 - (c) Certain textual improvements are being effected.
4. The Criminal Law Second Amendment Act, 1992:
Although section 199(2) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), expressly states that the defence force is the only lawful military force in the Republic, the military and paramilitary training of members of the public continues unabated. It appears that the existing section 13 of the said Act does not have the desired effect owing to the specific intent which needs to be proved. Consequently, it is being proposed that certain acts connected with military, paramilitary or similar operations and weapons, ammunition, explosives or other explosive devices be prohibited.
5. The Interception and Monitoring Prohibition Act, 1992:
 - (a) It is being proposed that the scope of the said Act be extended in order to include the monitoring of communications.
 - (b) Due to the demilitarisation of the South African Police Service, the category of members of the said Police Service involved in the issue and execution of directions is being extended.
6. The Recognition of Foreign Legal Qualifications and Practice Act, 1993:
The relevant section is being amended in order to provide that the said Act has ceased to have effect on 1 April 1998.
7. The Promotion of National Unity and Reconciliation Act, 1995:
The relevant section is being amended in order to bring it into line with section 28(5) of the said Act.
8. The Justice Laws Rationalisation Act, 1996:
Certain textual improvements are being effected.

9. The Proceeds of Crime Act, 1996:
A textual improvement is being effected.
10. The Criminal Procedure Second Amendment Act, 1997:
Certain textual improvements are being effected.
11. The Criminal Law Amendment Act, 1997:
The relevant sections are being amended in order to dispose of the duty to give reasons for the setting aside of the sentence of death and to enable the Supreme Court of Appeal to impose an appropriate sentence in lieu of the sentence of death.

B. PROCEDURE TO BE FOLLOWED

In the opinion of the State Law Adviser, the Bill must be dealt with in accordance with the procedure prescribed by section 75 of the said Constitution.

C. PARTIES CONSULTED

The following interested parties were consulted:

- * The Chief Justice, Judiciary and Judicial Service Commission
- * The Attorneys-General
- * The Regional Court Presidents and Chief Magistrates
- * The Regional Representatives of the Department of Justice
- * The General Council of the Bar
- * The Black Lawyers Association
- * The National Association for Democratic Lawyers
- * The Association of Law Societies of the RSA
- * The Independent Association of Advocates of SA
- * The Black Advocates Forum
- * The Association of Advocates
- * Legal Resources Centre
- * Lawyers for Human Rights
- * The Magistrates Commission
- * The Magistrates' Association of South Africa
- * The Association for Regional Magistrates of South Africa
- * The Association of Insolvency Practitioners
- * The Truth and Reconciliation Commission
- * The Human Rights Committee of South Africa
- * The Chief Master of the Supreme Court
- * The National Economic, Development and Labour Council
- * Government Departments, namely:
 - the National Intelligence Agency
 - the South African Secret Service
 - the South African Police Service
 - the South African National Defence Force