

REPUBLIC OF SOUTH AFRICA

JUDICIAL MATTERS AMENDMENT BILL

(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill published in Government Gazette No 21492 of 22 August 2000) (The English text is the official text of the Bill)

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 63—2000]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP GEREGTELIKE AANGELEENTHEDE

(Soos ingedien in die Nasionale Vergadering as 'n artikel 75-wetsontwerp; verduidelikende opsomming van Wetsontwerp in Staatskoerant No 21492 van 22 Augustus 2000 gepubliseer) (Die Afrikaanse teks is die amptelike vertaling van die Wetsontwerp)

(MINISTER VIR JUSTISIE EN STAATKUNDIGE ONTWIKKELING)

[W 63—2000]

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

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

To amend the Magistrates' Courts Act, 1944, so as to further regulate the appointment of judicial officers; to amend the General Law Amendment Act, 1955, so as to remove a reverse onus; to amend the Interpretation Act, 1957, so as to substitute a definition; to amend the Stock Theft Act, 1959, so as to provide anew for the jurisdiction of magistrates' courts in respect of sentence; to amend the Supreme Court Act, 1959, consequentially; to amend the Administration of Estates Act, 1965, so as to substitute an obsolete expression; to amend the Criminal Procedure Act, 1977, so as to delete a definition; to further regulate the hearing of bail proceedings; to repeal an obsolete provision; to effect certain consequential amendments; and to further regulate the granting of bail; to amend the Attorneys Act, 1979, so as to insert a new definition; and to make new provision regarding the constitution and quorum of the Attorneys Fidelity Fund Board of Control; to amend the Game Theft Act, 1991, so as to make new provision regarding the jurisdiction of magistrates' courts in respect of sentence; to amend the Magistrates Act, 1993, so as to make new provision for the composition of the Magistrates Commission; to amend the Magistrates' Courts Amendment Act, 1993, so as to repeal an obsolete provision; to amend the Criminal Law Amendment Act, 1997, so as to provide that the court of a regional division retains its jurisdiction to try offences referred to in Part I of Schedule 2 to that Act; to amend the National Prosecuting Authority Act, 1998, so as to further regulate the engagement of persons to perform services in specific cases; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, 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 and section 3 of Act 66 of 1998

1. Section 9 of the Magistrates' Courts Act, 1944, is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) [No] A person [holding any appointment under subsection (1) shall 10
perform the functions of a] appointed as judicial officer [in any magistrate’s
court, unless he has taken] under this section shall, before commencing with his

Amendment of section 12 of Act 59 of 1959, as amended by section 1 of Act 46 of 1980 and section 4 of Act 105 of 1982

6. Section 12 of the Supreme Court Act, 1959, is hereby amended by the substitution in subsection (1) for paragraph (bA) of the following paragraph:

“(bA) the Chief Justice or, in his or her absence, the senior available judge of the appellate division may direct that an appeal in a criminal or civil matter [**save a criminal matter arising out of proceedings instituted before a special criminal court constituted under section 148 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977),**] be heard before a court consisting of three judges;”. 5 10

Amendment of section 72 of Act 66 of 1965, as amended by section 7 of Act 54 of 1970, section 17 of Act 70 of 1979 and section 3 of Act 192 of 1993

7. Section 72 of the Administration of Estates Act, 1965, is hereby amended by the substitution in subsection (1)(a) for subparagraph (ii) of the following subparagraph:

“(ii) by the mother of **[an illegitimate]** a minor born out of wedlock who has not been so deprived of the guardianship of such minor or of her parental powers over him or her; or”. 15

Amendment of section 1 of Act 51 of 1977, as amended by section 1 of Act 107 of 1990, section 1 of Act 5 of 1991, section 35 of Act 122 of 1991, section 16 of Act 116 of 1993, section 38 of Act 129 of 1993, section 4 of Act 18 of 1996, section 1 of Act 49 of 1996 and section 137 of Act 111 of 1998 20

8. Section 1 of the Criminal Procedure Act, 1977, is hereby amended by the deletion of the definition of “special superior court”.

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 and section 5 of Act 34 of 1998 25

9. Section 60 of the Criminal Procedure Act, 1977, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) An accused who is in custody in respect of an offence shall, subject to the provisions of section 50(6) and (7), be entitled to be released on bail at any stage preceding his or her conviction in respect of such offence, **[unless]** if the court [finds that it is in the interests of justice that he or she be detained in custody] is satisfied that the interests of justice so permit.”. 30

Repeal of section 148 of Act 51 of 1977

10. Section 148 of the Criminal Procedure Act, 1977, is hereby repealed.

Amendment of section 315 of Act 51 of 1977, as substituted by section 20 of Act 105 of 1982 and amended by section 10 of Act 107 of 1990 and section 39 of Act 105 of 1997 35

11. Section 315 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) In respect of appeals and questions of law reserved in connection with criminal cases heard by a provincial or local division **[or a special superior court]**, the court of appeal shall be the Appellate Division of the Supreme Court (in this Chapter referred to as the Appellate Division), except in so far as subsection (3) otherwise provides.”. 40

Amendment of section 316 of Act 51 of 1977, as amended by section 21 of Act 105 of 1982 and section 15 of Act 26 of 1987

12. Section 316(1) of the Criminal Procedure Act, 1977, is hereby amended by the deletion of paragraph (a).

Amendment of section 317 of Act 51 of 1977, as amended by section 22 of Act 105 of 1982 5

13. Section 317 of the Criminal Procedure Act, 1977, is hereby amended by the deletion of subsection (3).

Amendment of section 319 of Act 51 of 1977, as amended by section 24 of Act 105 of 1982 10

14. Section 319 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The provisions of sections 317(2), [(3),] (4) and (5) and 318(2) shall apply *mutatis mutandis* with reference to all proceedings under this section.”.

Amendment of Schedule 2 to Act 51 of 1977, as amended by section 5 of Act 126 of 1992 15

15. Schedule 2 to the Criminal Procedure Act, 1977, is hereby amended by the substitution in Part II for the—

(a) ninth offence of the following offence:

“Theft, whether under the common law or a statutory provision, receiving stolen property knowing it to have been stolen, fraud, forgery or uttering a forged document knowing it to have been forged, in each case if the amount or value involved in the offence exceeds [two hundred rand] R2 500.”; and 20

(b) eleventh offence of the following offence: 25

“Any offence under any law relating to the illicit—

(a) possession of—

(i) dagga exceeding 115 grams; or

(ii) any other dependence-producing drugs; or

(b) conveyance or supply of dependence-producing drugs.”. 30

Amendment of Schedule 7 to Act 51 of 1977, as added by section 10 of Act 85 of 1997 and amended by section 10 of Act 34 of 1998 30

16. Schedule 7 to the Criminal Procedure Act, 1977, is hereby amended 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 R200,00 but] does not exceed R20 000,00.”. 35

Amendment of section 1 of Act 53 of 1979, as amended by section 1 of Act 87 of 1989, section 1 of Act 102 of 1991 and section 1 of Act 115 of 1993

17. Section 1 of the Attorneys Act, 1979, is hereby amended by the insertion after the definition of “articles of clerkship” of the following definition: 40

“ ‘attend’, for purposes of Chapter I, includes participation in a distance education course approved by the provincial law societies, and ‘attended’ and ‘attending’ have a corresponding meaning;”.

Amendment of section 28 of Act 53 of 1979

18. Section 28 of the Attorneys Act, 1979, is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph: 45

“(b) [two] three members of each society elected annually by the council of the society.”.

Substitution of section 33 of Act 53 of 1979

19. The following section is hereby substituted for section 33 of the Attorneys Act, 1979:

“Quorum

33. **[Eight]** ~~Ten~~ members of the board of control shall constitute a quorum for any meeting thereof.”. 5

Amendment of section 5 of Act 105 of 1991

20. Section 5 of the Game Theft Act, 1991, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any person who under the pretext of this Act wrongfully and maliciously arrests any person or causes him or her to be arrested or effects any search shall be guilty of an offence and liable on conviction to a fine **[not exceeding R4 000]** or **[in default of payment to]** imprisonment for a period not exceeding **[twelve months or to both such fine and such imprisonment]** three years.”. 10

Amendment of section 6 of Act 105 of 1991

21. Section 6 of the Game Theft Act, 1991, is hereby amended by the substitution for paragraphs (a) and (b) of the following paragraphs, respectively:

“(a) where the court is not a court of a regional division, a fine **[not exceeding R8 000]** or **[in default of payment imprisonment not exceeding two years or both such fine and such imprisonment in the case of a first conviction and in the case of a second or further conviction,]** imprisonment for a period not exceeding three years; or
(b) where the court is a court of a regional division, a fine **[not exceeding R40 000]** or **[in default of payment]** imprisonment for a period not exceeding **[ten]** fifteen years **[or both such fine and such imprisonment]**.”. 15 20 25

Amendment of section 3 of Act 90 of 1993, as amended by section 1 of Act 35 of 1996

22. (1) Section 3 of the Magistrates Act, 1993, is hereby amended by the substitution in subsection (1)(a) for subparagraph (xi) of the following subparagraph:

“(xi) four **[senators]** permanent delegates to the National Council of Provinces and their alternates designated together by the [Senate] Council [by resolution adopted by a majority] with a supporting vote of at least [two thirds of all its members] six provinces; and”.

(2) Any person designated as a member of the Magistrates Commission in terms of section 3(1)(a)(xi) of the Magistrates Act, 1993 (Act No. 90 of 1993), prior to the commencement of this Act, must be regarded as having been so designated in terms of that section as amended by subsection (1). 35

Repeal of section 6 of Act 120 of 1993, as substituted by section 4 of Act 18 of 1996

23. Section 6 of the Magistrates’ Courts Amendment Act, 1993, is hereby repealed.

Amendment of section 53 of Act 105 of 1997

24. Section 53 of the Criminal Law Amendment Act, 1997, is hereby amended by the addition of the following subsection: 40

“(4) Sections 51 and 52 shall not derogate from the provisions of section 89(2) of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944).”.

Amendment of section 38 of Act 32 of 1998

25. Section 38 of the National Prosecuting Authority Act, 1998, is hereby amended by the addition of the following subsections:

“(3) Where the engagement of a person contemplated in subsection (1) will not result in financial implications for the State—

(a) the *National Director*; or

(b) a *Deputy National Director* or a *Director*, in consultation with the *National Director*,

may, on behalf of the State, engage, under an agreement in writing, such person to perform the services contemplated in subsection (1) without consulting the *Minister* as contemplated in that subsection.

(4) For purposes of this section, ‘services’ include the conducting of a prosecution under the control and directions of the *National Director*, the *Deputy National Director* or a *Director*, as the case may be.”.

Short title and commencement

26. This Act is called the Judicial Matters Amendment Act, 2000, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE JUDICIAL MATTERS AMENDMENT BILL, 2000

1. PURPOSE OF BILL

The main object of the Bill is to encompass in a single Bill a variety of amendments to laws which are administered by the Department of Justice and Constitutional Development and which amendments do not require individual Amendment Bills. These mainly comprise the rectification of certain provisions and are also aimed at supplementing certain lacunae which have arisen in practice. The Bill also contains certain amendments which are of a more substantial nature.

2. OBJECTS OF BILL

The objects of the respective clauses of the Bill are briefly explained below.

2.1 **Clause 1** amends section 9(2)(a) of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), so as to provide that all magistrates, whether in a permanent, acting or temporary capacity, must take the prescribed oath or make the prescribed affirmation before such a person may preside over a court. It further amends the said section in order to bring the wording of the oath prescribed therein into line with that of the oath prescribed for judges in terms of item 6(1) of Schedule 2 to the Constitution.

2.2 In **Samuel Manamela and Another v the State** (Case No. CCT 25/99), the Constitutional Court declared the reverse onus provision in section 37(1) of the General Law Amendment Act, 1955 (Act No. 62 of 1955), to be inconsistent with the Constitution and invalid. **Clause 2** amends the said section 37(1) so as to bring the provisions thereof into line with the Constitutional Court's order.

2.3 In **clause 3** the definition of "law" in section 2 of the Interpretation Act, 1957 (Act No. 33 of 1957), is amended in order to include the common law.

2.4 **Clauses 4 and 5** amend the Stock Theft Act, 1959 (Act No. 57 of 1959), whilst the Game Theft Act, 1991 (Act No. 105 of 1991), is amended by **clauses 20 and 21**, so as to bring the penalty clauses contained therein into line with the present general penal jurisdiction of magistrates' courts, namely three years' imprisonment, in the case of district courts, and fifteen years' imprisonment, in the case of regional courts.

2.5 Section 72(1)(a)(ii) of the Administration of Estates Act, 1965 (Act No. 66 of 1965), is amended by **clause 7** in order to substitute the archaic and stigmatizing expression "illegitimate minor" with the expression "minor born out of wedlock".

2.6.1 In the light of the Constitutional Court's judgment in **S v Dlamini; S v Dladla and Others; S v Joubert; S v Schietekat** 1999 (2) SACR 51 (CC), **clause 9** amends section 60(1)(a) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), in order to bring the provisions thereof into line with the Constitution.

2.6.2 In the light of our present constitutional dispensation, the view is held that the "special superior court" envisaged by section 148 of the Criminal Procedure Act, 1977, is superfluous and **clause 10** makes provision for the repeal thereof. Emanating from the repeal of section 148, **clauses 6, 8 and 11 to 14** effect consequential amendments to section 12 of the Supreme Court Act, 1959 (Act No. 59 of 1959), and sections 1, 315, 316, 317 and 319 of the Criminal Procedure Act, 1977.

2.6.3 **Clauses 15 and 16** amend Schedules 2 and 7 to the Criminal Procedure Act, 1977, respectively, by extending the power of certain police officials to release accused persons, who are in custody in respect of certain offences, on bail before their first appearance in a lower court.

2.7.1 Section 1 of the Attorneys Act, 1979 (Act No. 53 of 1979), is amended by **clause 17** which provides for the insertion of a definition of "attend" in order to make it clear that "attend" includes "participation in a distance education course".

2.7.2 **Clause 18** amends section 28(1)(b) of the Attorneys Act, 1979, so as to increase the number of members of the respective provincial law societies on the Attorneys Fidelity Fund Board of Control. Section 33 of the Attorneys Act, 1979, which provides for the quorum of the above Board of Control, is amended by **clause 19** so as to bring

the provisions thereof into line with the proposed new number of members of the said Board.

2.8 **Clause 22** amends section 3(1)(a)(xi) of the Magistrates Act, 1993 (Act No. 90 of 1993), in order to bring the designation procedure in respect of delegates to the National Council of Provinces as members of the Magistrates Commission into line with the designating procedure prescribed in section 178(1)(i) of the Constitution.

2.9 **Clause 23** amends the Magistrates' Courts Amendment Act, 1993 (Act No. 120 of 1993), by repealing an obsolete provision.

2.10 **Clause 24** amends section 53 of the Criminal Law Amendment Act, 1997 (Act No. 105 of 1997), in order to expressly provide that a regional court retains its jurisdiction to try the offences of murder and rape referred to in Part I of Schedule 2 to the said Act.

2.11 **Clause 25** amends section 38 of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), so as to provide that where the engagement of a person to perform services in specific cases will not result in financial implications for the State, the National Director, Deputy National Director, or a Director of Public Prosecutions may, under an agreement in writing and without prior consultation with the Minister for Justice and Constitutional Development, on behalf of the State, engage persons having suitable qualifications and experience to perform such services.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

3.1 The Magistrates Commission, the Law Society of South Africa and the Office of the National Director of Public Prosecutions have been consulted in respect of **clauses 1, 17 to 19 and 25**, respectively. The Office of the National Director of Public Prosecutions and the South African Police Service have been consulted in respect of **clauses 15 and 16**.

3.2 The view is held that, due to the nature of the amendments in **clauses 2 to 14 and 20 to 24**, no extensive consultation is required in respect thereof.

4. IMPLICATIONS FOR PROVINCES

None

5. FINANCIAL IMPLICATIONS FOR STATE

The amendments proposed in **clause 15** will result in financial savings for the Department of Justice and Constitutional Development.

6. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that the 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.