

- (b) inform the relevant magistrate and the head of the **prison** from where the **mentally ill/prisoner** was initially transferred of this fact in writing within two weeks of having notified the South African Police Service.
- (2) The South African Police Service is obliged to accede to the request for assistance made in terms of this section.
- (3) When requesting the assistance, the estimated level of dangerousness of the **mentally ill/prisoner** must be conveyed to the member of the South African Police Service providing the assistance.

59. **EXPIRY OF TERM OF IMPRISONMENT**

- (1) Subject to the provisions of this section, **mentally ill prisoners** must be released from the **prison or health establishment** designated in terms of **section 49** at which they are detained, upon the **expiry** of their term of imprisonment.
- (2) At least three months before the **expiry** of the term of imprisonment, an application may be made in accordance with the relevant provisions in\_ to the head of the relevant designated **health establishment** for the provision of assisted or involuntary care and treatment, as the case may be, to the **mentally ill prisoner** concerned.
- (3) At least one month before the **expiry** of the term of imprisonment, an application may be made to a magistrate for the continued detention of a **mentally ill prisoner** in the relevant designated **health establishment** pending the finalisation of the application contemplated in **subsection 2**. An application in terms of this subsection may only be made in respect of a **mentally ill prisoner** who was being cared for and treated in the relevant designated **health establishment**.

**CHAPTER VIII****CARE AND ADMINISTRATION OF PROPERTY OF THE MENTALLY ILL****60. APPOINTMENT OF AN ADMINISTRATOR FOR THE CARE AND ADMINISTRATION OF PROPERTY OF THE MENTALLY ILL**

- (1) An *administrator* may be appointed for the care and administration of the *property* of a *mentally ill* person by the Master of the High Court upon -
- (a) consideration by the Master of an application submitted in terms of section 61; and
  - (b) consideration of a finding and recommendation by a High Court Judge when conducting an enquiry contemplated in section 62 that the *mental health status of the person* is of such a nature that the person is incapable of managing his or her *property* and that an *administrator* be appointed in respect of that person.
- (2) An *administrator* may only be appointed in respect of the *property* of a *mentally ill* person if the procedures set out in sections 61 and 62 have been complied with.

**61. APPLICATION TO THE MASTER OF THE HIGH COURT FOR THE APPOINTMENT OF AN ADMINISTRATOR**

- (1) Any person over the age of 18 may apply to the Master of the High Court for the appointment of an *administrator* for a *mentally ill* person.
- (2) The application must be made under oath in writing and must -
- (a) set out the relationship of the applicant to the person in respect of whom the application is made and -
    - (i) if the applicant is not the spouse or next of kin of that person, the reason why the spouse or next of kin have not brought the application; and

- (ii) if they are not available to make the application, what steps have **been taken to establish their whereabouts** prior to making the application;
  - (b) enclose all available mental health related medical certificates or reports relevant to the person's **mental health status** and his or her incapability to manage his or her **property**;
  - (c) set out the grounds on which the applicant believes that the person is incapable of managing his or her **property**;
  - (d) state that within a period of seven days immediately preceding the submission of the application, the applicant had been in the presence of the person in respect of whom the application is made;
  - (e) state an estimate of the value of the **property** and the annual income of the person in respect of whom the application is made, as at the time of submitting the application;
  - (f) attach proof that a copy of the application has been given to the person in respect of whom the application is made;
  - (g) provide the particulars and contact details of the person who would be most suited to serve as an **administrator** for the person in respect of whom the application is made; and
  - (h) state the name and contact details of the persons who may be able to **provide further information relating to the mental health status** of the person in respect to whom the application is made.
- (3) Upon receiving the application and considering the allegations and facts contained in the application, the Master of the High Court may -
- (a) appoint an interim **administrator** pending the outcome of the application;
  - (b) **appoint an administrator if the estimated property value and annual income** of the person in respect of whom the application is made, is below the **prescribed amount**.

- (4) **Within 60 days** of receiving the application, the Master of the High Court may cause an **investigation into the merits of the application to be conducted by a magistrate or any other person within 30 days of being appointed to conduct the investigation** or such extended periods as may be granted by the Master. The person conducting the investigation -
- (a) must **verify** all material allegations and facts contained in the application and call on the person in respect **of whom the application is** made or his or her legal representative to respond to the application; and
  - (b) **may -**
    - (i) summon any person to appear before them to provide information and documents relevant to the application; and
    - (ii) enquire into the financial standing of the person in respect of **whom** the application is made: and
  - (c) **must submit** a report on their findings to the Master.
- (5) Within two weeks of completing the investigations or considering the magistrates report, the Master may -
- (a) subject to **subsection 61 (3)(b)** appoint an *administrator*;
  - (b) decline to appoint an *administrator*; or
  - (c) refer the matter for the consideration of a High Court Judge in chambers.
- (6) If the Master declines to appoint an *administrator* or refuses to refer the application for the consideration by a High Court Judge, the Master must by written notice inform the applicant in writing of the reasons for the decision.
- (7) **In the event of the Master declining to appoint an *administrator*, the applicant may within one month of receiving the written notice referred to in subsection (6) appeal against the Master's decision by submitting a written notice of appeal to a High Court Judge in chambers, setting out the grounds of the appeal. A copy of this notice must also be submitted to the Master.**

- (8) If the Master decides to refer the application for the consideration of a High Court Judge, or the applicant appeals against the decision of the Master, the Master must, within two weeks of receiving the notice of appeal or having taken the decision to refer the application for consideration by the High Court Judge, submit to the High Court Judge a copy of –
- (a) the application;
  - (b) a written summary of his or her findings made pursuant to the investigation or the written report of the magistrate as the case may be;
  - (c) the reasons for refusing the application or for referring the application to the High Court Judge; and
  - (d) in the case of an appeal, the applicant's notice of appeal.
- (9) Within one month of receiving the relevant items, the High Court Judge must –
- (i) consider the application or appeal as the case may be in the *prescribed* manner, including providing the appellant, the applicant, the independent *mental health practitioners* and the head of the *health establishment* to make oral representations on the merits of the application or appeal; and
  - (ii) send a written notice of his or her decision to the applicant or appellant as the case may be, the head of the *health establishment* and head of the *provincial department* stating the reasons for the decision.
- (10) The costs for conducting the investigation contemplated in **§ 14(1)(b)** must be paid out of the income derived from the property of the person concerned or the property itself or if the Master or High Court Judge is of the view that the application was frivolous or vexatious, out of the property of the applicant.

62. ***RECOMMENDATION TO APPOINT ADMINISTRATOR BY HIGH COURT JUDGE IN THE COURSE OF CONDUCTING AN ENQUIRY IN TERMS OF THIS ACT OR IN THE COURSE OF ANY LEGAL PROCEEDING***

- (1) If A High Court Judge, in the course of conducting an enquiry in terms of *this Act* or in the course of any legal proceeding, has reason to believe that the person in respect of whom an enquiry or legal proceeding is being held or conducted, may be incapable of managing his or her property, may as part of that enquiry or proceeding initiate an investigation into the ***mental health status*** of that person and **the capacity of that** person to manage his or her property.
- (2) When conducting the investigation, the High Court Judge may call for further information and assistance from any relevant person as may be necessary for purposes of establishing the ***mental health status*** of the person concerned and **the capacity of that person to manage** his or her ***property***.
- (3) If upon completing the investigation, the High Court Judge finds that the ***mental health status*** of the person concerned is of such a nature that the person is incapable of managing his or her property, **the Judge may recommend that an administrator** be appointed in respect of that person, and in writing, notify that person and the Master's office of the finding and recommendation and the reasons for it.
- (4) Within 60 days of being notified of the High Court Judge's recommendation, the Master must -
  - (a) cause an investigation to be conducted into the estimated value of the property and annual income of the person concerned;
  - (b) cause an investigation to be conducted to determine who would be most suited to serve as ***administrator*** for the person concerned; and
  - (c) appoint the ***administrator*** which could be himself or herself if the estimate property value and annual income of the person concerned is below the ***prescribed*** amount.

- (5) The costs for conducting the investigation contemplated in **subsection** (4) must be paid out of the income derived from the property of the person concerned or the property itself.

63. **CONFIRMATION OF APPOINTMENT OF ADMINISTRATOR**

The date on which the appointment of an *administrator* becomes effective is the date on which the Master of the High Court signs the official notice of appointment.

64. **POWERS, FUNCTIONS AND DUTIES OF ADMINISTRATORS AND MISCELLANEOUS PROVISIONS RELATING TO THE APPOINTMENT OF ADMINISTRATORS**

- (1) **Within 60 days of being appointed as administrator, the administrator** must lodge security with the Master in an amount to be determined by the Master except that on good cause shown by the *administrator*, the Master may -
- (a) **reduce the amount of security required; or**
  - (b) **dispense with security**
- (2) If **at any stage whilst acting as an administrator**, the Master becomes aware that **sequestration proceedings have been commenced** against the *administrator* or is likely to be instituted or if the Master has reason to believe it is in the best interest of the person in respect of whom an *administrator* has been appointed, the Master may -
- (a) increase the amount of security to **be paid by an administrator**, or
  - (b) appoint a co-administrator, in which case all acts relating to the property of the person concerned must be done with the consent of both *administrators*.
- (3) An *administrator* has the following powers and functions -
- (a) **to take care of and administer the property of the person concerned and perform all acts incidental thereto: and**

- (b) **subject to any other law, carry on any business or undertaking of the person concerned.**
- (4) The powers and functions of an *administrator* are subject to the following limitations –
- (a) an *administrator* may **not alienate or mortgage any immovable property of the person concerned unless authorised to** do so by a *court* order or the Master consents to this; and
- (b) an *administrator* or his or her spouse, child, parent, partner, *associate* or agent may not purchase or otherwise acquire any property of the person concerned unless the Master consents to this or the purchase or acquisition was authorised by written instrument made by the person concerned prior to the appointment of the *administrator*.
- (5) Upon being appointed, an *administration* must –
- (a) pay all monies received on behalf of the person concerned into the hands of the Master except –
- (i) **if the Master directs otherwise:**
- (ii) if a written instrument of the person made before the *administrator* was **appointed, authorises otherwise; or**
- (iii) for money required for the repayment of any debt, the payment of expenses relating to the safe custody of the **property** of the person concerned, the maintenance or education of the person concerned or his or her dependants, or to pay for the current expenditure of the business or undertaking<sup>of</sup> the person concerned.
- (b) **submit and update an inventory of the property of the person concerned** in the *prescribed* manner; and
- (c) **submit annual accounts of the property of the persons concerned in the** *prescribed* manner.

65. **TERMINATION OF ADMINISTRATORSHIP**

- (1) The term of office of an *administrator* in terms of *this Act* may only be terminated
- (a) upon consideration of an application to this effect made by –
    - (i) the person in respect of whom an *administrator* was appointed; or
    - (ii) the *administrator*.
  - (b) by the Master on his or her own initiative if<sup>7</sup>
- (2) The application contemplated in subsection (1)(a) must –
- (a) be made in writing;
  - (b) be sent to the Master of the High Court; and
  - (c) contain the following –
    - (i) the grounds on which the application is based;
    - (ii) enclose ail medical certificates or reports issued subsequent to the appointment of the *curator bonis* and relevant to the *mental health status* of the person concerned; and
    - (iii) state the estimated value of the *property* of the person concerned at the time of submitting the application.
- (3) Upon receipt of the application, the Master must cause the application to be processed in the following manner\* -
- (4) <sup>9</sup>

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<sup>7</sup>Instructions needed eg. misconduct, sequestration. etc.

<sup>8</sup>Instructions needed.

<sup>9</sup> Further provisions are needed to deal with Section 65(1)(b) instance of termination.

**CHAPTER IX****REGULATIONS****66. GENERAL POWER TO ISSUE REGULATIONS**

- (1) The *Minister after consultation* with all the *relevant members of the Executive Council* may issue regulations on the matters listed below –
- (a) **surgical procedures or medical or therapeutic treatment for *mental health care users* as may be deemed appropriate;**
  - (b) **the setting of quality standards and norms for care, treatment and *rehabilitation* of *mental health care users*;**
  - (c) **the establishment of maximum security hospitals for *mental health care users* who are a danger to themselves and others;**
  - (d) **the seclusion of *mental health care users* and use of mechanical means of restraint;**
  - (e) **the establishment of facilities for *state patients and mentally ill prisoners*;**
  - (f) **the observation, detention care, treatment and *rehabilitation* of *mental health care users* referred to a *health establishments* by *courts* of law;**
  - (g) **the establishment of child and adolescent facilities for the promotion of their *mental health status* and their admission, care, treatment and *rehabilitation* at *health establishments*;**
  - (h) **the discharge or leave of absence of *mental health care users* on their recovery or on the application from spouses or *associates*;**
  - (i) **the temporary or permanent removal from or transfer of *mental /tea/t/z care users* to a *health establishment* including the utilisation of the South African Police Services to assist in effecting a removal or transfer and the conditions applicable to any removal or transfer;**

- (j) the books **and** records which must be kept by a *health establishment* in respect of a *mental health care user* **and** the entries which must be made therein, including the accounts, returns, reports, extracts, copies, statements, notices, documents and information which must be sent to the *Minister* or organ of state;
- (k) the payment of maintenance costs and expenses incurred in connection with the transfer, detention, care, treatment and *rehabilitation and maintenance of any mental health care user in health establishments* administered under the auspices of an organ of state;
- (l) licensing of *health establishments providing mental health care, treatment and rehabilitation* services **and conditions attending** to such licences;
- (m) matters concerning the powers, functions, guidelines for exercising these powers and functions and reporting obligations of a *Mental Health Review Board*;
- (n) the care, treatment and *rehabilitation of mental health care users with infectious or communicable diseases*; **and**
- (o) **any other matter necessary or expedient to achieving the purpose of *this Act*.**

#### **67. CONTENT OF REGULATIONS**

- (1) A **regulation** issued in terms of *this Act* may -
  - (a) confer a power or duty on any person, body or public authority;
  - (b) contain conditions and provide for exemptions; **and**
  - (c) be made in respect of -
    - (i) different parts of the Republic: **or**
    - (ii) different categories of persons.

- (2) In any **regulation** issued in terms of *this Act*, the *Minister*, as the case may be, may -
- (a) designate as authoritative any published methodology, procedure, practice or standard that is generally recognised as authoritative within the relevant profession; and
  - (b) require any person or body to comply with that designated methodology, **procedure, practice or standard**.

**68. PROCEDURE FOR ISSUING REGULATIONS**

- (1) The *Minister* **must** comply with the following procedures when intending to issue or amend regulations in terms of *this Act* -
- (a) **the intention to** issue the regulation must be announced by notice in the Gazette and other appropriate means of communication.
  - (b) the notice must **specify** -
    - (i) that a draft regulation has been developed for comment; and
    - (ii) where a copy of the **draft** regulation may be obtained.
  - (c) the period for comment must be **at least 30 days**.
  - (d) at any time before issuing the regulation, discussions or consultations in any form may be held with any relevant interest group.
  - (e) the comments received must be considered before issuing the regulations.
- (2) When intending to issue or amend any other regulation, the *Minister* may hold discussions and consultations with any relevant interest group.
- (3) The provisions of **subsection (1)** and (2) do not **apply** in respect of
- (a) any regulation which the public interest requires to be made without delay; and

- (b) an **amendment to** correct a textual error.
- (4) Any regulation affecting state revenue or expenditure may be made only wit/z ***the concurrence of*** the member of the Cabinet responsible for Finance.
- (5) Any regulation affecting the South African Police Services may be made only ***with the concurrence of*** the member of Cabinet responsible for safety and security.
- (6) Any regulation affecting the terms and conditions of a person employed by the ***national department, a provincial department or a*** district health authority, or any labour relations matter, may be made only ***with the concurrence of*** the member of the Cabinet responsible for the Public Service and Administration.
- (7) Any regulation relating to the appointment of an ***administrator*** including the threshold amounts for the appointment of the Master as ***administrator and the terms of these appointments*** as set out in ***this Act***, may be made only with the concurrence of the member of Cabinet responsible for **Justice**.

69. ***CONDITIONS AND EXEMPTIONS CONTAINED IN REGULATIONS***

- (1) At any time and with respect to any institution, person, body, or organisation, the ***Minister***, as the case may be, by notice in the Gazette, sent by post, or hand delivered, may -
- (a) impose, vary or withdraw any condition contemplated in a regulation; or
- (b) **grant, vary or withdraw an exemption contemplated in a regulation.**
- (2) The ***Minister***, as the case may be, may not vary or withdraw a condition or exemption issued in terms of **subsection (1)** unless the person or body to whom it applies has made a representation to them in connection with it.

70. ***RESTRICTIONS AND PROHIBITIONS CONFERRED IN REGULATIONS***

- (1) If a regulation creates a restriction or prohibition, to the extent that the public health is not prejudiced, the restriction or prohibition must -

- (a) be in proportion to the object pursued by that regulation; and
  - (b) limit the conduct of business, and the movement of persons and goods, as little as is reasonably possible.
- (2) If failure to comply with a restriction or prohibition in terms of any regulation is an offence for which a person may be subject to criminal liability, that regulation must provide that, to the extent practicable, before being subject to criminal liability, the affected person must be given notice of the offence and an opportunity to comply with the regulations.

## CHAPTER X

### GENERAL PROVISIONS

#### 71. OFFENCES & PENAL TIES

- (1) It is an offence to -
- (a) misrepresent a material fact in any application, report, record, certificate made or issued in terms of *this Act*;
  - (b) make a false entry in any application, report, record or certificate made, issued or kept in terms of *this Act*;
  - (c) obstruct or hinder persons exercising a power or function in terms of *this Act*;
  - (d) exploit, physically or otherwise abuse, neglect or degradingly treat a *mental health care user* or permit a *user* to be treated in this manner;
  - (e) assist or incite *mental health care users* to abscond from a *health establishment* at which they have been admitted or detained in terms of *this Act*; or

(f) assist or incite **mental health care users** not to comply with any care, treatment or **rehabilitation plan or terms of a leave of absence or conditional discharge granted in terms of *this Act***.

(2) Any person found guilty of having committed an offence in terms of this section will be liable on conviction to a fine not exceeding R5 000 or to imprisonment not exceeding six months or both.

#### 72. **ESTABLISHMENT OF AD VISOR Y OR TECHNICAL COMMITTEES**

(1) **The Minister** may, appoint any advisory or technical committees for purposes of achieving the objectives of ***this Act***.

(2) When appointing an advisory or technical committee, the **Minister**, by regulation, may determine -

- (a) its composition, functions, and working procedure;
- (b) the terms, conditions, remuneration and allowances applicable to its members; and
- (c) any other incidental matters relating to it.

#### 73. **ASSIGNMENT AND DELEGATION OF POWERS**

(1) Subject to section 15 of the Exchequer Act, 1975 (Act No 66 of 1975),

(a) **The Minister**, in writing, may delegate any power conferred on the **Minister** by ***this Act*** or any other Act -

- (i) any person in the employ of the State; or
- (ii) any board or body established in terms of ***this Act***; and

- (b) the *relevant member of the Executive Council*, in writing, may delegate any power conferred on that member by *this Act* or by, the *Minister*, in terms of *this Act*, to any person or body mentioned in **subsection a(i) or (ii)**.
- (2) Any person or body to whom a power is delegated in terms of subsection (1) may exercise that power subject to the direction of the *Minister*, or *relevant member of the Executive Council*, who delegated that power.
- (3) At any time, the Minister or relevant member of the Executive Council may -
- (a) withdraw a delegation made in terms of **subsection (1)**; and
- (b) **withdraw or amend** any decision made by a person or body in terms of a delegated power contemplated in **subsection (1)**.
- (4) Until it is withdrawn or amended, any decision made by a person or body in terms of a delegated power contemplated in **subsection (1)** is deemed to **have** been made by the *Minister* or *relevant member of the Executive Council*, as the case may be.
- (5) Any right or privilege acquired, or any obligation or liability incurred, as a result of a decision in terms of a delegated power contemplated in subsection ( 1 ) cannot be affected by any subsequent withdrawal or amendment of that decision.

#### 74. **LIMITATION OF LIABILITY**

- (1) A legal proceeding against a body or person in respect of any act or omission in terms of *this Act*, may be instituted only within 12 months **of** the earlier of-
- (a) the date the claimant became aware of that act or omission; and
- (b) the date the claimant might reasonably be expected to have become aware of that act or omission.
- (2) At least one **month before instituting legal proceedings contemplated in subsection ( 1), a claimant must serve written notice of intention to institute proceedings on -**
- (a) the *Minister*,

- (b) the *relevant member of the Executive Council* in the province in which the cause of action arose; or
  - (c) the defendant concerned.
- (3) Notice in terms of subsection (2) to the *Minister* or a Member of the Executive Council is deemed to be notice to the defendant concerned.
- (4) If the *Minister*, or a relevant Member of the Executive Council, is the defendant or respondent in any proceedings contemplated in subsection (1), any process by which those proceedings are initiated may be served on the *Minister* or member of Executive Council, as the case may be.
- (5) A *court* may dispense with the requirements of subsections (1) or (2) if the interests of justice require.

75. **RESTRICTION OF LIABILITY**

- (1) The State Liability Act 1957 (Act No 20 of 1957) applies, with the changes required by context, to each body established in terms of *this Act*, but a reference in that Act to “the *Minister* of the Department concerned” must be interpreted as referring to the Chairperson or head of the relevant body.
- (2) No member of staff, person or contractor of a body listed in subsection (1) is liable for any report, finding, point of view, or recommendation that is given in good faith and submitted to the *Minister*, Parliament or published generally in terms of *this Act*, except insofar as that report or publication -
- (a) discloses any fact which, in terms of *this Act*, it is an offence to disclose;
  - (b) violates a *mentally ill prisoner's* right to confidentiality in terms of *this Act*; or
  - (c) permits the identification of a person in any way contrary to *this Act*.

**76. REPEAL OF LAWS AND TRANSITIONAL ARRANGEMENTS**

- (1) The laws mentioned in **Schedule 1**<sup>10</sup> are repealed to the extent indicated in this Schedule.
- (2) The repeal of those laws does not effect any transitional arrangement contained in **Schedule 2**<sup>11</sup>.
- (3) The transitional arrangements in Schedule 2 must be read and applied as substantive provisions of *this Act*.

**77. STATE BOUND**

*This Act* binds the State.

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<sup>10</sup> To be drafted at the end of the drafting process.

<sup>11</sup> To be drafted at the end of the drafting process.