

PRESIDENT'S OFFICE

No. 1100.  
3 July 1996

NO. 35 OF 1996: MAGISTRATES AMENDMENT ACT, 1996

It is hereby notified that the President has assented to the following Act which is hereby published for general information:-

GENERAL EXPLANATORY NOTE:

- \*\* \*\* Words between asterisks indicate omissions from existing enactments.
- << >> Words between pointed brackets indicate insertions in existing enactments.

ACT

To amend the Magistrates Act, 1993, in order to further regulate the composition of the Magistrates Commission; to further regulate the suspension of magistrates; to further regulate the establishment of committees; and to provide for matters in connection therewith.

(Afrikaans text signed by the President.)

(Assented to 27 June 1996.)

BE IT ENACTED by the Parliament of the Republic of South Africa, a follows:-

Amendment of section 3 of Act 90 of 1993

1. Section 3 of the Magistrates Act, 1993 (hereinafter referred to as the principal Act), is hereby amended-

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

<<"(1) (a) The Commission shall consist of-

- (i) a judge of the Supreme Court of South Africa, as chairperson, designated by the President in consultation with the Chief Justice;
- (ii) the Minister or his or her nominee, who must be an officer of the Department of Justice;
- (iii) two regional magistrates, one to be designated by the respective regional magistrates and the other by the President after consultation with the respective regional magistrates;
- (iv) two magistrates with the rank of chief magistrate, one to be designated by the respective chief magistrates and the other by the President after consultation with the respective chief magistrates;
- (v) two magistrates who do not hold the rank of regional magistrate or chief magistrate, one to be designated by the magistrates' profession and the other by the President after consultation with the magistrates' profession;
- (vi) two practising advocates designated by the Minister after consultation with the advocates' profession;

- (vii) two practising attorneys designated by the Minister after consultation with the attorneys' profession;
- (viii) one teacher of law designated by the Minister after consultation with the teachers of law at South African universities;
- (ix) the Head: Justice College;
- (x) four persons designated by the National Assembly from among its members, at least two of whom must be members of opposition parties represented in the Assembly-
- (xi) four senators and their alternates designated by the Senate by resolution adopted by a majority of at least two thirds of all its members; and
- (xii) five fit and proper persons appointed by the President in consultation with the Cabinet, at least two of whom shall not be involved in the administration of justice or the practice of law in the ordinary course of their business.

(b) The chairperson shall designate one of the persons referred to in paragraph (a) (iii) to (v), inclusive, as vice-chairperson of the Commission, and when the chairperson is not available, the vice-chairperson shall perform the functions assigned to the chairperson by or under this Act>>.";

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

"(2) A member of the Commission shall be appointed <<or designated>> for a period not exceeding five years, and any such appointment <<or designation>> may be withdrawn by the **\*\*State President\*\*** <<appointing or designating authority, as the case may be,>> at any time after consultation with the Commission if in his<<, her or its>> opinion there are sound reasons for doing so."; and

(c) by the substitution for subsection (3) of the following subsection:

"(3) Any person whose period of office as a member of the Commission has expired, may be reappointed <<or redesignated>>.".

Amendment of section 4 of Act 90 of 1993

2. Section 4 of the principal Act is hereby amended by the substitution, in the Afrikaans text, for paragraph (c) of the following paragraph:

"(c) **\*\*hom te beywer vir\*\*** <<stappe te doen om>> die deurlopende opleiding van regterlike beamptes in die onderskeie laer howe <<te bevorder>> en aanbevelings daaromtrent aan die Minister te doen;".

Amendment of section 6 of Act 90 of 1993

3. Section 6 of the principal Act is hereby amended-

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

"(1) The Commission<<, for the proper performance of its functions-

(a) shall establish an executive committee consisting of two members of the Commission designated by the Commission; and>>

<<(b)>> may establish **\*\*one or more\*\*** <<such other>> committees <<as the Commission may deem necessary,>> consisting of one or

more members of the Commission designated by the Commission and one or more other persons, if any, whom the Commission may appoint for that purpose and for the period determined by **it** <<the Commission>>.";

(b) by the substitution for subsection (4) of the following subsection:

"(4) <<(a)>> A committee shall, <<in accordance with the policy laid down by the Commission and>> subject to the directions of the Commission, perform such functions of the Commission as the Commission may assign to **it** <<such committee>>.

<<(b) Any function so performed by the executive committee referred to in subsection (1) (a) shall be deemed to have been performed by the Commission.>>"; and

(c) by the substitution for subsection (5) of the following subsection:

"(5) On completion of the functions assigned **to it** in terms of subsection (4) <<to>> a committee <<referred to in subsection (1) (b), such committee>> shall submit a written report thereon to the Commission **, whereupon the committee shall automatically dissolve**". insertion of sections 6A, 6B and 6C in Act 90 of 1993

4. The following sections are hereby inserted in the principal Act after section 6:

"Investigation of complaints against magistrate

<<6A. The Minister shall make regulations-

- (a) creating a structure and prescribing procedures in terms of which members of the public may report to such structure any alleged improper conduct or any conduct which has resulted or might result in any impropriety or prejudice on the part of a magistrate; and
- (b) determining the powers and functioning of such structure.

Establishment of complaints committee

6B. (1) The Commission shall, pending the creation of the structure contemplated in section 6A, establish one or more committees dealing with complaints in terms of this section, consisting of one or more members of the Commission designated by the Commission and one or more other persons, if any, whom the Commission may appoint for a specified period.

(2) The provisions of section 6(2), (3) and (7) shall, with the necessary changes, apply to the extension of the period of appointment of a member of the committee, the designation of a chairperson of the committee and to a meeting of the committee.

(3) The Commission shall take all such steps as the Commission deems appropriate so as to ensure that the committee is accessible to the public.

(4) Any conduct by a magistrate that is alleged to be improper or to have resulted in any impropriety or prejudice may be reported to the committee by any person by means of a written or oral declaration under oath or after having made an affirmation, specifying-

- (a) the nature of the matter in question;
- (b) the grounds on which he or she feels that an investigation is

necessary; and

(c) all other relevant information known to him or her.

(5) The committee shall be competent to investigate and gather evidence in regard to any complaint referred to in subsection (4) in accordance with a procedure prescribed by regulation.

(6) The committee shall-

(a) report to the Commission on any finding, point of view or recommendation in respect of a matter so investigated; and

(b) as soon as possible, make the findings of an investigation available to the complainant and to any person implicated thereby.

(7) On the date that the regulations contemplated in section 6A come into operation, this section shall lapse.

Proviso

6C. The provisions of sections 6A and 6B shall not be construed as empowering the structure, committee or the Commission to interfere with the judicial independence or the judicial functioning of a magistrate.>>".

Substitution of section 8 of Act 90 of 1993

5. The following section is hereby substituted for section 8 of the principal Act:

"Remuneration and expenses of members of Commission and committees

8. (1) The chairman of the Commission or a member of a committee who is a judge of the Supreme Court <<or a member of the Commission designated in terms of section 3(1)(a)(x) and (xi)>>, may be paid such allowances for travelling and subsistence expenses incurred by him or her in the performance of his or her functions in terms of this Act as the Minister may determine with the concurrence of the Minister of State Expenditure.

(2) A member of the Commission or a committee who is not a judge or magistrate <<or a member of the Commission designated in terms of section 3(1)(a)(x) and (xi)>> \*\*and\*\* <<or>> who is not subject to the laws governing the public service, may be paid such remuneration, including allowances for travelling and subsistence expenses incurred by him <<or her>> in the performance of his <<or her>> functions in terms of this Act, as the Minister may determine with the concurrence of the Minister of State Expenditure."

Amendment of section 13 of Act 90 of 1993

6. Section 13 of the principal Act is hereby amended-

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

"(a) The \*\*Minister\*\* <<Commission>> may <<provisionally>> suspend a magistrate \*\*on the recommendation of the Commission and, subject to the provisions of this subsection, remove him from office-

(i) for misconduct;

(ii) on account of continued ill-health; or

(iii) on account of incapacity to carry out his duties of office efficiently\*\* <<from office pending an investigation by the Commission into such magistrate's fitness to hold office>>.";

(b) by the insertion after paragraph (a) of subsection (3) of the following paragraph:

"<<(aA) The Minister may confirm such suspension if the Commission recommends that such magistrate be removed from office

(i) on the ground of misconduct;

(ii) on account of continued ill-health; or

(iii) on account of incapacity to carry out the duties of his or her office efficiently>>.";

(c) by the substitution for paragraph (c) of subsection (3) of the following paragraph:

"(c) A report in which the suspension <<in terms of paragraph (aA)>> of a magistrate and the reason therefor are made known, shall be tabled in Parliament by the Minister within 14 days of such suspension, if Parliament is then in session, or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session."

(d) by the substitution for paragraph (d) of subsection (3) of the following paragraph:

"(d) \*\*If\*\* Parliament <<shall>>, within \*\*21\*\* <<30>> days after the report referred to in paragraph (c) \*\*was\*\* <<has been>> tabled in Parliament, <<or as soon thereafter as is reasonably possible,>> \*\*passes\*\* <<pass>> a resolution \*\*in which\*\* <<as to whether or not>> the restoration to his <<or her>> office of a magistrate so suspended is recommended \*\*, such magistrate shall be restored to his office accordingly\*\*."; and

(e) by the substitution for paragraph (e) of subsection (3) of the following paragraph:

"(e) <<After a resolution has been passed by Parliament as contemplated in paragraph (d), the Minister shall restore the magistrate concerned to his or her office or remove him or her from office, as the case may be.>>".

Amendment of section 16 of Act 90 of 1993

7. Section 16 of the principal Act is hereby amended by the insertion after paragraph (k) of subsection (1) of the following paragraph:

"(<<kA) the procedure to be followed by a committee referred to in section 6B and, in general, any matter, which is not in conflict with this Act ably necessary for the functioning of the committee;>>".

Substitution of expressions in Act 90 of 1993

8. The principal Act is hereby amended-

(a) by the substitution, in the English text, for the expression "chairman" wherever it occurs of the expression "chairperson";

(b) by the substitution, in the English text, for the expression

"vice-chairman" wherever it occurs of the expression  
"vice-chairperson";

- (c) by the substitution, in the English text, for the expression "he" wherever it occurs of the expression "he or she";
- (d) by the substitution, in the Afrikaans text, subject to paragraph (j), for the expression "hy" wherever it occurs of the expression "hy of sy";
- (e) by the substitution, in the English text, for the expression "him" wherever it occurs of the expression "him or her";
- (f) by the substitution, in the Afrikaans text, subject to paragraph (j), for the expression "hom" wherever it occurs of the expression "hom of haar";
- (g) by the substitution in sections 12(1) and (7), 13(1), (4) and (5), 15, 16(1)(j) and (4) and 18(3) for the expression "his" wherever it occurs of the expression "his or her";
- (h) by the substitution in section 13(2) and (3)(b), in the Afrikaans text, for the expression "sy" of the expression "sy of haar";
- (i) by the substitution, in the English text, in sections 2, 6(2) and (3) and 7(1)(a), (c), (e) and (f) for the expression "it" of the expression "the Commission";
- (j) by the substitution, in the Afrikaans text, in sections 2, 6(2) and (3) and 7(1)(a), (c), (e) and (f) for the expressions "hom" and "hy" of the expression "die Kommissie"; and
- (k) by the substitution in the words preceding paragraph (a) of subsection (1) of section 7 for the expression "its" of the expression "the".

#### Application of Act

9. (1) This Act shall not affect the validity of anything done by the Magistrates Commission before the commencement thereof.

(2) A vacancy in the Magistrates Commission which arises from the commencement of this Act, shall not affect the validity of anything done by the Magistrates Commission while such vacancy remains unfilled.

#### Short title and commencement

10. This Act shall be called the Magistrates Amendment Act, 1996, and shall come into operation on a date fixed by the President by proclamation in the Gazette.