

MAGISTRATES ACT 90 OF 1993

[ASSENTED TO 23 JUNE 1993] [DATE OF COMMENCEMENT: 1 OCTOBER 1993]
(Unless otherwise indicated)

(Afrikaans text signed by the State President)

as amended by

General Law Sixth Amendment Act 204 of 1993
Judicial Matters Amendment Act 85 of 1995
Justice Laws Rationalisation Act 18 of 1996
Magistrates Amendment Act 35 of 1996
Judicial Matters Amendment Act 104 of 1996
Public Service Laws Amendment Act 47 of 1997
Magistrates Amendment Act 66 of 1998
Judicial Matters Second Amendment Act 122 of 1998
Judicial Matters Amendment Act 62 of 2000
Judicial Officers (Amendment of Conditions of Service) Act 28 of 2003

Regulations under this Act

COMPLAINTS PROCEDURE REGULATIONS (GN R1240 in GG 19309 of 1 October 1998)
REGULATIONS FOR JUDICIAL OFFICERS IN LOWER COURTS (GN R361 in GG 15524 of 11 March 1994)

ACT

To provide for the establishment, constitution, objects and functions of a Magistrates Commission; to further regulate the appointment and remuneration of, and vacation of office by, magistrates; to provide that certain conditions of service of magistrates and other judicial officers may be determined by regulation; and to provide for matters in connection therewith.

1 Definitions

In this Act, unless the context otherwise indicates-

'chairperson' means the chairperson of the Commission appointed in terms of section 3 (1) (a) (i);

[Definition of 'chairperson', formerly definition of 'chairman', amended by s. 8 (a) of Act 35 of 1996.]

'Commission' means the Magistrates Commission established by section 2;

'committee' means a committee established by the Commission under section 6;

'lower court' means a court established under section 2 of the Magistrates' Courts Act;

'magistrate' means a judicial officer appointed under section 9 of the Magistrates' Courts Act read with section 10 of this Act;

[Definition of 'magistrate' substituted by s. 2 (a) of Act 28 of 2003.]

'Magistrates' Courts Act' means the Magistrates' Courts Act, 1944 (Act 32 of 1944);

'Minister' means the Minister of Justice;

'remuneration' means the remuneration that a magistrate is entitled to in terms of

section 12;

[Definition of 'remuneration' inserted by s. 2 (c) of Act 28 of 2003.]

'salary'

[Definition of 'salary' deleted by s. 2 (b) of Act 28 of 2003.]

'salary scale' means a minimum and maximum salary limit attached to a specific level of work;

'scale' , in relation to salary, includes a salary at a fixed amount;

'this Act' includes the regulations under section 16.

2 Establishment of Magistrates Commission

There is hereby established a commission, to be known as the Magistrates Commission, with the powers and duties conferred on or assigned to the Commission by or under this Act or any other law.

[S. 2 amended by s. 8 (i) of Act 35 of 1996.]

3 Constitution of Commission and period of office of members

(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 permanent delegates to the National Council of Provinces and their alternates designated together by the Council with a supporting vote of at least six provinces; and

[Sub-para. (xi) substituted by s. 29 (1) of Act 62 of 2000.]

- (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.

[Sub-s. (1) substituted by s. 1 (a) of Act 35 of 1996.]

(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 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.

[Sub-s. (2) substituted by s. 1 (b) of Act 35 of 1996.]

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

[Sub-s. (3) substituted by s. 1 (c) of Act 35 of 1996.]

(4) A vacancy in the Commission shall not affect the validity of the proceedings or decisions of the Commission.

4 Objects of Commission

The objects of the Commission shall be-

- (a) to ensure that the appointment, promotion, transfer or discharge of, or disciplinary steps against, judicial officers in the lower courts take place without favour or prejudice, and that the applicable laws and administrative directions in connection with such action are applied uniformly and correctly;
- (b) to ensure that no influencing or victimization of judicial officers in the lower courts takes place;
- (c) to endeavour to promote the continuous training of judicial officers in the respective lower courts and to make recommendations in regard thereto to the Minister;
- (d) to compile a code of conduct for judicial officers in the lower courts;
- (e) to advise the Minister and to make recommendations to him or her regarding the administrative matters applicable to magistrates, including proposals regarding legislation purporting to regulate the conditions of service and relevant matters regarding magistrates, separately;

[Para. (e) amended by s. 8 (e) of Act 35 of 1996.]

- (f) to carry out investigations and make recommendations to the Minister regarding the matters mentioned in section 13 (3) (a) ;

- (g) to advise the Minister or to make recommendations to him or her regarding the requirements for appointment and the appointment of judicial officers in the respective lower courts; and

[Para. (g) amended by s. 8 (e) of Act 35 of 1996.]

- (h) to advise the Minister or to make recommendations to him or her or to

report to the Minister for the information of Parliament regarding any matter which, in the opinion of the Commission, is of interest for-

- (i) the independence of the dispensing of justice; and
- (ii) the efficiency of the administration of justice,

in the lower courts.

[Para. (h) amended by s. 8 (e) of Act 35 of 1998.]

5 Meetings of Commission

(1) Meetings of the Commission shall be held at the times and places determined-

- (a) by the chairperson or, if he or she is not available, by the vice-chairperson of the Commission; or
- (b) if both the chairperson and the vice-chairperson of the Commission are not available, by the majority of the members of the Commission.

[Sub-s. (1) amended by s. 8 (a) , (b) and (c) of Act 35 of 1996.]

(2) The majority of the members of the Commission shall constitute a quorum for a meeting of the Commission.

(3) If both the chairperson and the vice-chairperson of the Commission are absent from a meeting of the Commission, the members present shall elect one of their number to preside at that meeting.

[Sub-s. (3) amended by s. 8 (a) and (b) of Act 35 of 1998.]

(4) The person presiding at a meeting of the Commission may regulate the proceedings and procedure thereat, including the quorum for a decision of the Commission, and shall cause minutes to be kept of the proceedings.

(5) The proceedings of the Commission shall take place *in camera* unless the person presiding at a meeting directs otherwise.

6 Committees of Commission

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

- (a) shall establish an executive committee consisting of two or more members of the Commission designated by the Commission; and
- (b) may establish 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 the Commission.

[Sub-s. (1) substituted by s. 3 (a) of Act 35 of 1996.]

(2) The Commission may extend the period of an appointment made by the Commission under subsection (1) or withdraw such appointment during the period referred to in that subsection.

[Sub-s. (2) amended by s. 8 (i) of Act 35 of 1996.]

(3) The Commission shall designate a chairperson for every committee and, if the Commission deems it necessary, a vice-chairperson.

[Sub-s. (3) amended by s. 8 (a) , (b) and (i) of Act 35 of 1996.]

(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 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.

[Sub-s. (4) substituted by s. 3 (b) of Act 35 of 1996.]

(5) On completion of the functions assigned 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.

[Sub-s. (5) substituted by s. 3 (c) of Act 35 of 1996.]

(6) The Commission may at any time dissolve any committee.

(7) The provisions of section 5 shall *mutatis mutandis* apply to a meeting of a committee.

6A Investigation of complaints against magistrate

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.

[S. 6A inserted by s. 4 of Act 35 of 1996.]

6B Establishment of complaints committee

(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.

[S. 6B inserted by s. 4 of Act 35 of 1996.]

6C Proviso

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.

[S. 6C inserted by s. 4 of Act 35 of 1996.]

7 Functions of Commission

(1) The Commission may, in order to achieve the objects mentioned in section 4-

- (a) carry out or cause to be carried out any investigation that the Commission deems necessary;

[Para. (a) amended by s. 8 (i) of Act 35 of 1996.]

- (b) obtain access to official information or documents;

- (c) hear any person or summon any person to appear before the Commission for questioning, or require from any person a written explanation in respect of any matter falling within the ambit of its objects;

[Para. (c) amended by s. 8 (i) of Act 35 of 1996.]

- (d) advise the Minister with regard to any matter or provide him or her with a recommendation;

[Para. (d) amended by s. 8 (e) of Act 35 of 1996.]

- (e) make known any finding, point of view or recommendation of the Commission in the manner which and to whom the Commission deems fit; and

[Para. (e) amended by s. 8 (i) of Act 35 of 1998.]

- (f) subject to the provisions of subsection (2), report to the Minister for the information of Parliament on any matter the Commission deems fit.

[Para. (f) amended by s. 8 (i) of Act 35 of 1996.]

[Sub-s. (1) amended by s. 8 (k) of Act 35 of 1996.]

(2) A report regarding a matter contemplated in subsection (1) (f), shall be tabled in Parliament by the Minister within 14 days after it was presented to him or her, 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.

[Sub-s. (2) amended by s. 8 (e) of Act 35 of 1996.]

(3) A committee may, subject to the directions of the Commission, exercise any of the powers referred to in subsection (1) (a) , (b) or (c) .

(4) Any person who intentionally obstructs the Commission or a committee in the exercising of its powers under subsection (1) (a) , (b) or (c) , shall be guilty of an offence and liable upon conviction to a fine or to imprisonment for a period not exceeding three months.

8 Remuneration and expenses of members of Commission and committees

(1) The chairperson 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.

[Sub-s. (1) amended by s. 8 (a) of Act 35 of 1996.]

(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) 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.

[S. 8 amended by s. 19 of Act 104 of 1996 and substituted by s. 5 of Act 35 of 1996.]

9 Secretary and staff of Commission

The work incidental to the performance by the Commission of its functions shall be performed by officers of the Department of Justice designated by the Director-General: Justice, of whom one shall be designated by him or her as secretary of the Commission.

[S. 9 amended by s. 8 (e) of Act 35 of 1998.]

10 Appointment of magistrates

The Minister shall, after consultation with the Commission, appoint magistrates in respect of lower courts under and subject to the Magistrates' Courts Act.

[Date of commencement of s. 10: 11 March 1994.]

11 Conditions of service of magistrates, except salary and vacation of office

Subject to the provisions of this Act, the conditions of service of a magistrate shall be determined in accordance with the regulations under section 16.

[Date of commencement of s. 11: 11 March 1994.]

12 Remuneration of magistrates

- (1) (a) Magistrates are entitled to such salaries, allowances or benefits-
- (i) as determined by the President from time to time by notice in the *Gazette* , after taking into consideration the recommendations of the Independent Commission for the Remuneration of Public Office-bearers established under section 2 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997 (Act 92 of 1997); and
 - (ii) approved by Parliament in terms of subsection (3).

(b) Different categories of salaries and salary scales may be determined by the

President in respect of different categories of magistrates.

(c) The Commission referred to in paragraph (a) (i) must, when investigating or considering the remuneration of magistrates, consult with-

- (i) the Minister and the Cabinet member responsible for finance; and
- (ii) the Chief Justice or a person designated by the Chief Justice.

(2) A notice in terms of subsection (1) (a) or any provision thereof may commence with effect from a date specified in the notice, which date may not be more than one year before the date of publication of the notice.

(3) (a) A notice issued under subsection (1) (a) must be submitted to Parliament for approval before publication thereof.

(b) Parliament must by resolution-

- (i) approve the notice, whether in whole or in part; or
- (ii) disapprove the notice.

(4) The amount of any remuneration payable in terms of subsection (1), shall be paid out of the National Revenue Fund as contemplated in section 213 of the Constitution.

(5) (a) If any magistrate is appointed in an acting or temporary capacity to any other judicial office-

- (i) for a continuous period exceeding one day; and
- (ii) the remuneration attached to that office exceeds the remuneration attached to the office ordinarily held by the magistrate,

he or she shall, for the duration of such appointment, be entitled to such additional remuneration as determined from time to time by the Minister.

(b) For the purpose of paragraph (a) additional remuneration must be calculated by the day, and any part of a day must be reckoned as a day.

(6) The remuneration of magistrates shall not be reduced except by an Act of Parliament.

(7) If an officer or employee in the public service is appointed as a magistrate, the period of his or her service as a magistrate shall be reckoned as part of and continuous with his or her service in the public service for the purposes of leave, pension and any other condition of service.

[S. 12 amended by s. 4 of Act 18 of 1996, by s. 8 (g) of Act 35 of 1996, by s. 19 of Act 104 of 1996 and by s. 35 (1) of Act 47 of 1997 and substituted by s. 3 of Act 28 of 2003.]

[Date of commencement of s. 12: 11 March 1994.]

13 Vacation of office and discharge of magistrates

(1) A magistrate shall vacate his or her office on attaining the age of 65 years: Provided that-

- (a) the Minister may, after consultation with the Commission, allow a magistrate-
 - (i) who, on attaining the age of 65 years wishes to continue to serve in such office; and

- (ii) whose mental and physical health enables him or her to do so, to continue to hold such office for the period that the Minister may determine; and
- (b) if he or she attains the said age after the first day of any month, he or she shall be deemed to attain that age on the first day of the next ensuing month.

[Sub-s. (1) amended by s. 8 (c) and (g) of Act 35 of 1996 and substituted by s. 11 of Act 122 of 1998.]

(2) A magistrate shall not be suspended or removed from office except in accordance with the provisions of subsections (1), (3), (4) and (5).

(3) (a) The Minister, on the advice of the Commission, may provisionally suspend a magistrate from office if-

- (i) the Commission, after affording the magistrate a reasonable opportunity to be heard regarding the desirability of such provisional suspension, is satisfied that reliable evidence exists indicating that an allegation against that magistrate is of such a serious nature as to make it inappropriate for the magistrate to perform the functions of a magistrate while the allegation is being investigated; and
- (ii) an investigation has been instituted by the Commission into such magistrate's fitness to hold office.

(b) A report in which the provisional suspension in terms of paragraph (a) of a magistrate and the reasons therefor are made known, must be tabled in Parliament by the Minister within seven days of such suspension, if Parliament is then in session, or, if Parliament is not then in session, within seven days after the commencement of its next ensuing session.

(c) Parliament must, as soon as is reasonably possible, pass a resolution as to whether or not the provisional suspension of the magistrate is confirmed.

(d) If Parliament passes a resolution as contemplated in paragraph (c) that the provisional suspension is not confirmed, the suspension lapses.

(e) The provisional suspension of a magistrate in terms of paragraph (a) lapses after 60 days from the date of the suspension, unless the Commission, within that period, commences its inquiry into the allegation in question by causing a written notice containing the allegation concerned to be served on the magistrate.

(f) An inquiry referred to in paragraph (e) must be concluded as soon as possible, and the Commission must cause a report on the progress in respect of that inquiry to be submitted to Parliament every three months.

(g) Parliament may, at any stage pending-

- (i) the conclusion of an inquiry referred to in paragraph (e) ; or
- (ii) a resolution referred to in subsection (4) (c) ,

pass a resolution setting aside the suspension of the magistrate concerned, whereupon the suspension shall lapse forthwith.

[Sub-s. (3) amended by s. 6 of Act 35 of 1996 and substituted by s. 4 of Act 28 of 2003.]

(4) (a) If the Commission recommends that a 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,

the Minister must suspend that magistrate from office or, if the magistrate is at that stage provisionally suspended in terms of subsection (1) (a) , confirm the suspension.

(b) A report in which the suspension in terms of paragraph (a) of a magistrate and the reason therefor are made known, must 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.

(c) Parliament must, as soon as is reasonably possible, pass a resolution as to whether or not the restoration to his or her office of a magistrate so suspended is recommended.

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

[Sub-s. (4) amended by s. 8 (g) of Act 35 of 1996 and substituted by s. 4 of Act 28 of 2003.]

(4A) (a) The remuneration of a magistrate is not affected during a period of suspension in terms of subsection (3) (a) or (4) (a) , unless the Commission determines otherwise.

(b) If the Commission determines that the remuneration of a magistrate shall be reduced or withheld in terms of paragraph (a) , a report regarding that determination and the reason therefor must be tabled in Parliament by the Minister within seven days of such determination, if Parliament is then in session, or, if Parliament is not then in session, within seven days after the commencement of its next ensuing session.

(c) Parliament must, as soon as is reasonably possible, consider that report and pass a resolution as to whether or not the determination concerned is confirmed, either with or without amendment, or set aside.

(d) If Parliament passes a resolution as contemplated in paragraph (c) that the determination is set aside, that determination shall lapse with effect from the date when the determination was first made.

[Sub-s. (4A) inserted by s. 4 of Act 28 of 2003.]

(5) (a) The Minister may, at the request of a magistrate, allow such magistrate to vacate his or her office-

- (i) on account of continued ill-health;
- (iA) in order to effect a transfer and appointment as contemplated in section 15 (1) of the Public Service Act, 1994 (Proclamation R103 of 1994); or

[Sub-para. (i A) inserted by s. 4 (b) of Act 85 of 1995.]

- (ii) for any other reason which the Minister deems sufficient.

(b) Any request of a magistrate contemplated in paragraph (a) (ii) shall be addressed to the Minister so that he or she receives it at least six calendar months before the date on which the magistrate wishes so to vacate his or her office, unless the Minister

approves a shorter period in a specific case.

[Para. (b) amended by s. 8 (c) of Act 35 of 1996.]

(c) If a magistrate-

- (i) is allowed to vacate his or her office in terms of paragraph (a) (i), he or she shall be entitled to such pension benefits as he or she would have been entitled to under the pensions Act applicable to him or her if his services had been terminated on the ground of continued ill-health occasioned without his or her being instrumental thereto; or

[Sub-para. (i) amended by s. 8 (c) and (e) of Act 35 of 1996.]

- (ii) is allowed to vacate his or her office in terms of paragraph (a) (ii), he or she shall be deemed-

(aa) to have been removed from office to promote efficiency for reasons other than his or her own unfitness or incapacity; or

(bb) to have been retired in accordance with section 16 (4) of the Public Service Act, 1994 (Proclamation 103 of 1994),

[Item (bb) amended by s. 4 of Act 18 of 1996.]

as the Minister may direct, and he or she shall be entitled to such pension benefits as he or she would have been entitled to under the pensions Act applicable to him or her if he or she had been so removed from office or had been so retired, according to the direction of the Minister.

[Sub-s. (5) amended by s. 8 (c) , (e) and (g) of Act 35 of 1996.]

(6) For the purpose of a transfer and appointment contemplated in section 15 (1) of the Public Service Act, 1994, a magistrate shall be deemed to be holding an appointment in an institution as contemplated in that section.

[Sub-s. (6) added by s. 4 (c) of Act 85 of 1995.]

(7) The period of service as a magistrate of a magistrate transferred and appointed under section 15 (1) of the Public Service Act, 1994, shall be reckoned as part of and continuous with his or her service in the public service for the purposes of leave, pension and any other condition of service.

[Sub-s. (7) added by s. 4 (c) of Act 85 of 1995.]

[Date of commencement of s. 13: 11 March 1994.]

14 Powers and duties of magistrates

(1) A magistrate shall possess the powers and perform the duties conferred on or assigned to him or her by or under the laws of the Republic or, in any specific case, by the Minister after consultation with the Commission. *

(2) The Minister may, after consultation with the Commission, make regulations conferring on or assigning to magistrates administrative powers and duties which do not affect the judicial independence of magistrates, including regulations empowering the Minister, after consultation with the Commission, to confer or assign administrative powers and duties of a general nature on or to magistrates.

(3) The provisions of section 16 (2) shall apply with the necessary changes in respect of any regulation made under subsection (2).

[S. 14 amended by s. 8 (e) of Act 35 of 1996 and substituted by s. 7 of Act 66 of 1998.]

[Date of commencement of s. 14: 11 March 1994.]

15 Magistrates shall not perform other paid work

No magistrate shall, without the consent of the Minister, perform any paid work outside his or her duties of office.

[S. 15 amended by s. 8 (g) of Act 35 of 1996 .]

[Date of commencement of s. 15: 11 March 1994.]

15A Equal benefits accruing to spouses and partners of magistrates

If a magistrate who is not legally married is involved with not more than one person in a permanent heterosexual or same-sex life partnership-

- (a) in which the magistrate and the person concerned have undertaken reciprocal duties of support; and
- (b) which is registered with the Director-General: Justice and Constitutional Development in accordance with the regulations made under section 16,

that person is for all relevant purposes of this Act regarded as the lawfully wedded spouse of that magistrate.

[S. 15A inserted by s. 5 of Act 28 of 2003.]

16 Regulations

(1) The Minister may, after the Commission has made a recommendation, make regulations regarding the following matters in relation to judicial officers in the lower courts:

- (a) (i) The requirements for appointment and the appointment, promotion, transfer, discharge and disciplinary steps;
- (ii) the recognition of appropriate qualifications and experience for the purposes of the determination of salary;
- (iii) the procedure and manner of and criteria for evaluation and the conditions or requirements for the purposes of promotion;
- (iv) transfer and resettlement costs;
- (b) the duties, powers, conduct, discipline, hours of attendance, leave of absence, including leave gratuity, and pension, including contributions to a pension fund, and any other condition of service, including the occupation of official quarters;
- (c) the creation of posts on the fixed establishment, and the number, grading, regrading, designation, redesignation or conversion of posts on the fixed establishment of any magistrate's office;
- (d) the training of judicial officers in the various lower courts, including financial assistance for such training;
- (e) a code of conduct to be complied with by judicial officers;
- (f) the provision of official transport;
- (g) the conditions on which and the circumstances under which remuneration for overtime duty, and travel, subsistence, climatic, local and other allowances, may be paid;
- (h) the circumstances under which a medical examination shall be required for the purposes of any provision of this Act or any other law, and the form of medical reports and certificates;

- (i) the legal liability of any judicial officer in respect of any act done in terms of this Act or any other law and the legal liability emanating from the use of official transport;
- (j) the circumstances under which and the conditions and manner in which a judicial officer may be found guilty of misconduct, or to be suffering from continued ill-health, or of incapacity to carry out his or her duties of office efficiently;
[Para. (j) amended by s. 8 (g) of Act 35 of 1996.]
- (k) the procedure for dealing with complaints and grievances of judicial officers, and the manner in which and time when or period wherein and person to whom documents in connection with requests and communications of such judicial officers shall be submitted;
- (k A) 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, which is reasonably necessary for the functioning of the committee;
[Para. (k A) inserted by s. 7 of Act 35 of 1996.]
- (l) the recognition of any professional society;
- (m) the membership or conditions of membership of a particular medical aid scheme or medical aid society and the manner in and the conditions on which membership fees and other moneys which are payable or owing by or in respect of judicial officers or their dependants, to a medical aid scheme or medical aid society, may be recovered from the salaries of such judicial officers and paid to such medical aid scheme or medical aid society;
- (n) the contributions to and the rights, privileges and obligations of judicial officers or their dependants with regard to such a medical aid scheme or medical aid society;
- (n A) the requirements for, and the registration of, not more than one person and the deregistration of that person as a partner of a magistrate, as envisaged in section 15A, with the Director-General: Justice and Constitutional Development;
[Para. (n A) inserted by s. 6 of Act 28 of 2003.]
- (o) in general, any matter, which is not in conflict with this Act, which is reasonably necessary for the regulation of the conditions of service of judicial officers or any matter in connection with the rights, powers, functions and duties of a judicial officer.

(2) (a) A regulation made under this section shall be in force unless and until Parliament during the session in which the list referred to in section 17 of the Interpretation Act, 1957 (Act 33 of 1957), which relates to that regulation, has been laid upon the Table in Parliament, by resolution disapproves the regulation, in which event the regulation shall lapse with effect from a date to be specified in the resolution.

(b) The lapsing of a regulation in terms of this subsection shall not affect the validity of anything done under the regulation prior to the date mentioned in the resolution.

(c) The provisions of this subsection shall not affect the power of the Minister to make a new regulation regarding the matter dealt with by a regulation that has lapsed in terms of paragraph (a) .

(3) Any regulation under this section which results in State expenditure, shall be made

with the concurrence of the Minister of Finance.

[Sub-s. (3) amended by s. 19 of Act 104 of 1996.]

(4) No regulation made under subsection (1), shall contain any provision which affects the service benefits of any magistrate as they existed prior to the date of commencement of this section to his or her detriment.

[Sub-s. (4) amended by s. 8 (g) of Act 35 of 1996.]

(5) Different regulations may be made under subsection (1) in respect of magistrates and other judicial officers.

[Date of commencement of s. 16: 11 March 1994.]

(6) A regulation made under subsection (1) (j) , and which regulates the attendance of persons at misconduct proceedings contemplated in such a regulation, may provide that any person who contravenes a provision thereof or fails to comply therewith shall be guilty of an offence and on conviction be liable to a fine, or to imprisonment for a period not exceeding three months.

[Sub-s. (6) added by s. 8 of Act 66 of 1998.]

17 A amends section 9 (1) of the Magistrates' Courts Act 32 of 1944 by substituting paragraph (a) .

[Date of commencement of s. 17: 11 March 1994.]

18 Transitional provisions and saving

(1) Any person who immediately before the date of commencement of section 10 occupied the office of magistrate or held the substantive rank of magistrate or regional magistrate, shall as from the said date be deemed to have been duly appointed in terms of the provisions of section 9 of the Magistrates' Courts Act read with section 10 of this Act, and the provisions of this Act shall be applicable to such person.

(2) The salary paid to a magistrate immediately before the date of commencement of the first notice contemplated in section 12 (1), or any provision thereof which may be applicable to him or her, shall be deemed to have been determined in terms of that section.

[Sub-s. (2) amended by s. 8 (e) of Act 35 of 1996.]

(3) The conditions of service applicable to a person referred to in subsection (1) immediately before the date of commencement of section 12, shall not be affected to his or her detriment, and no such condition of service shall, after such date, be construed or applied in a manner which is less favourable to the person concerned than the manner in which it was construed or applied immediately before the said date.

[Sub-s. (3) amended by s. 8 (g) of Act 35 of 1996.]

(4) Subject to the provisions of this Act, any-

- (a) law regarding any condition of service;
- (b) measure regarding the duties, functions and powers; or
- (c) arrangement regarding any administrative function,

which applied to a magistrate or other judicial officer immediately before the date of commencement of any regulation under section 16 relating to such matter, shall remain in force until the date on which such regulation commences.

(5) Notwithstanding the provisions of the Government Service Pension Act, 1973 (Act

57 of 1973)-

- (a) any person contemplated in subsection (1), shall remain a member of the Government Service Pension Fund referred to in section 3 of the Government Service Pension Act, 1973;
- (b) any person appointed as a magistrate after the commencement of section 10 who is a member of the fund referred to in paragraph (a) , shall remain a member; and
- (c) any person appointed as a magistrate after the commencement of section 10 who is not a member of the fund referred to in paragraph (a) , shall become a member of the fund and contribute thereto,

until other provision is made by regulation under section 16 (1) (b) .

[Sub-s. (5) added by s. 21 of Act 204 of 1993.]

[Date of commencement of s. 18: 11 March 1994.]

19 Short title and commencement

(1) This Act shall be called the Magistrates Act, 1993, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette* .

(2) Different dates may be so fixed in respect of different provisions of this Act.

MAGISTRATES AMENDMENT ACT 35 OF 1996

[ASSENTED TO 27 JUNE 1996] [DATE OF COMMENCEMENT: 1 OCTOBER 1998]

(Afrikaans text signed by the President)

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.

1 Amends section 3 of the Magistrates Act 90 of 1993 , as follows: paragraph (a) substitutes subsection (1); paragraph (b) substitutes subsection (2); and paragraph (c) substitutes subsection (3).

2 Amends the Afrikaans text of section 4 of the Magistrates Act 90 of 1993 by substituting paragraph (c) .

3 Amends section 6 of the Magistrates Act 90 of 1993 , as follows: paragraph (a) substitutes subsection (1); paragraph (b) substitutes subsection (4); and paragraph (c) substitutes subsection (5).

4 Inserts sections 6A, 6B and 6C in the Magistrates Act 90 of 1993 .

5 Substitutes section 8 of the Magistrates Act 90 of 1993 .

6 Amends section 13 (3) of the Magistrates Act 90 of 1993 , as follows: paragraph (a) substitutes paragraph (a) ; paragraph (b) inserts paragraph (a A) ; paragraph (c) substitutes paragraph (c) ; paragraph (d) substitutes paragraph (d) ; and paragraph (e) substitutes paragraph (e) .

7 Amends section 16 (1) of the Magistrates Act 90 of 1993 by inserting paragraph (k A) .

8 Amends the Magistrates Act 90 of 1993 , as follows: paragraph (a) substitutes the expression 'chairperson' for the expression 'chairman', wherever it occurs; paragraph (b) substitutes the expression 'vice-chairperson' for the expression 'vice-chairman', wherever it occurs; paragraph (c) substitutes the expression 'he or she' for the expression 'he', wherever it occurs; paragraph (d) substitutes in the Afrikaans text, subject to paragraph (j) , the expression 'hy of sy' for the expression 'hy', wherever it occurs; paragraph (e) substitutes the expression 'him or her' for the expression 'him', wherever it occurs; paragraph (f) substitutes in the Afrikaans text, subject to paragraph (j) , the expression 'hom of haar' for the expression 'hom', wherever it occurs; paragraph (g) substitutes in sections 12 (1) and (7), 13 (1), (4) and (5), 15, 16 (1) (j) and (4) and 18 (3) the expression 'his or her' for the expression 'his', wherever it occurs; paragraph (h) substitutes in the Afrikaans text of sections 13 (2) and (3) (b) the expression 'sy of haar' for the expression 'sy'; paragraph (i) substitutes in sections 2, 6 (2) and (3) and 7 (1) (a) , (c) , (e) and (f) the expression 'the Commission' for the expression 'it'; paragraph (j) substitutes in the Afrikaans text of sections 2, 6 (2) and (3) and 7 (1) (a) , (c) , (e) and (f) the expression 'die Kommissie' for the expressions 'hom' and 'hy'; and paragraph (k) substitutes in section 7 (1) in the words preceding paragraph (a) the expression 'the' for the expression 'its'.

9 Application of Act

(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.

10 Short title and commencement

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* .

MAGISTRATES AMENDMENT ACT 66 OF 1998

[ASSENTED TO 28 SEPTEMBER 1998] [DATE OF COMMENCEMENT: 7 OCTOBER 1998]

(English text signed by the President)

ACT

To amend the Magistrates' Courts Act, 1944, so as to effect certain consequential amendments; to make provision for the creation of administrative regions; to further regulate the appointment of magistrates; to further regulate the exercising of administrative control over the functions performed by magistrates; and to increase the penal jurisdiction of magistrates' courts; to amend the Magistrates Act, 1993, so as to regulate the assignment of administrative functions to magistrates; to make provision for certain penalty provisions to be prescribed by regulation; and to provide for matters connected therewith.

1 Amends section 1 of the Magistrates' Courts Act 32 of 1944 , as follows: paragraph (a) inserts the definition of 'administrative region'; paragraph (b) substitutes the definition of 'court of appeal'; paragraph (c) inserts the definition of 'head of administrative region'; paragraph (d) inserts the definition of 'Magistrates Commission'; and paragraph (e) substitutes the definition of 'Minister'.

2 Amends section 2 of the Magistrates' Courts Act 32 of 1944 by substituting subsection (2).

3 Amends section 9 of the Magistrates' Courts Act 32 of 1944 , as follows: paragraph

(a) substitutes subsection (1) (aA) ; paragraph (b) substitutes subsection (1) (b) ; and paragraph (c) substitutes subsections (3) and (4).

4 Substitutes section 10 of the Magistrates' Courts Act 32 of 1944 .

5 Amends section 12 of the Magistrates' Courts Act 32 of 1944 by adding subsection (1) (c) .

6 Amends section 92 of the Magistrates' Courts Act 32 of 1944 by substituting subsection (1) (a) .

7 Substitutes section 14 of the Magistrates Act 90 of 1993 .

8 Amends section 16 of the Magistrates Act 90 of 1993 by adding subsection (6).

9 Short title

This Act shall be called the Magistrates Amendment Act, 1998.

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