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Kaapstad,

THE PRESIDENCY

No. 1065 11 December 2012

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

Act No. 14 of 2012: Sheriffs Amendment Act, 2012

DIE PRESIDENSIE

No. 1065 11 Desember 2012

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

Wet 14 van 2012: Wysigingswet op Balju's, 2012



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.
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(English text signed by the President)
(Assented to 6 December 2012)

ACT

To amend the Sheriffs Act, 1986, so as to substitute certain definitions and to insert a new definition; to provide for the establishment of Advisory Committees to assist the Minister of Justice and Constitutional Development in the appointment of sheriffs and to provide that the conditions on which sheriffs may be appointed may be prescribed by regulation; to provide for allowances payable to members of the Advisory Committees; to further regulate the appointment of acting sheriffs and the appointment of sheriffs for a particular suit in certain circumstances; to empower the Minister of Justice and Constitutional Development to designate persons to serve process of court in certain circumstances and to appoint sheriffs or acting sheriffs to perform certain functions of sheriffs in areas where no sheriff or acting sheriff has been appointed in certain circumstances; to further regulate the objects of the South African Board for Sheriffs; to amend the constitution of the South African Board for Sheriffs; to further regulate the filling of vacancies of, and the vacating of office by, members of the South African Board for Sheriffs; to further regulate the allowances payable to members of the South African Board for Sheriffs and of committees of that Board; to provide for the dissolution of the South African Board for Sheriffs and the appointment of an interim Board; to further regulate the general functions of the South African Board for Sheriffs; to further regulate the utilisation of the moneys in the Fidelity Fund for Sheriffs; to further regulate the auditing of records and financial statements of the Fidelity Fund for Sheriffs; to further regulate improper conduct by sheriffs; and to extend the matters in respect of which regulations can be made; and to provide for matters connected therewith.

PREAMBLE

SINCE the Sheriffs Act, 1986, commenced on 1 March 1990;

AND SINCE certain practical problems relating to the sheriffs' profession are being experienced;

AND SINCE it is the purpose of this Act, as an interim measure, pending a comprehensive review of the Sheriffs Act, 1986, to address those practical problems,

PARLIAMENT of the Republic of South Africa therefore enacts, as follows:—

Amendment of section 1 of Act 90 of 1986, as amended by section 1 of Act 74 of 1998, section 12 of Act 55 of 2003 and section 10 of Act 31 of 2008

1. Section 1 of the Sheriffs Act, 1986 (Act No. 90 of 1986) (hereinafter referred to as the principal Act), is hereby amended— 5

- (a) by the substitution for the definition of “auditor” of the following definition:
“**‘auditor’** means a person registered as an accountant and auditor in terms of the **[Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991)] Auditing Profession Act, 2005 (Act No. 26 of 2005);**” 10
- (b) by the insertion after the definition of “building society” of the following definition:
“**‘Department’** means the Department of Justice and Constitutional Development;”
- (c) by the substitution for the definition of “Minister” of the following definition: 15
“**‘Minister’** means the **[Minister of Justice] Cabinet member responsible for the administration of justice;**” and
- (d) by the substitution for the definition of “superior court” of the following definition: 20
“**‘superior court’** means a **[provincial or local division of the Supreme Court of South Africa] High Court contemplated in section 166 of the Constitution of the Republic of South Africa, 1996;**”.

Amendment of section 2 of Act 90 of 1986

2. Section 2 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 25

- “(1) Subject to the provisions of subsection (2), the Minister may, after considering the report of an Advisory Committee, appoint in the prescribed manner and on the prescribed conditions for a lower or superior court a fit and proper person as sheriff of that court.”.

Insertion of section 2A in Act 90 of 1986 30

3. The following section is hereby inserted in the principal Act after section 2:

“Allowances payable to members of Advisory Committees

2A. A member of an Advisory Committee referred to in section 2(1), who is not in the full-time employment of the State, may be paid by the Department such allowances 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 Finance.”. 35

Amendment of section 5 of Act 90 of 1986, as amended by section 1 of Act 3 of 1991

4. Section 5 of the principal Act is hereby amended— 40

- (a) by the substitution for subsection (1) of the following subsection: 40
“(1) When a sheriff—
 - (a) is unable to perform his or her functions;
 - (b) is prohibited by any court of law from performing any particular function in connection with a case; **[or]**
 - (c) for any reason ceases to hold office; or 45
 - (d) has not been appointed for a specific area of jurisdiction of a lower or superior court,
the Minister may, in the prescribed manner, appoint a person to act, subject to the provisions of section 30, as sheriff—

- (i) in the circumstances referred to in paragraph (a), until the sheriff is able to resume his or her functions;
 - (ii) in the circumstances referred to in paragraph (b), in order to perform the particular function; or
 - (iii) in the circumstances referred to in **[paragraph] paragraphs (c) and (d), [until a successor is appointed]** for such period as the Minister may determine.”;
- (b) by the substitution for subsection (1A) of the following subsection:
“(1A) The Minister may for the purposes of a particular suit and on the conditions that he or she may determine, appoint a person or another sheriff to act as sheriff—
- (a) if objection is made against the service or execution of any process by the sheriff on the grounds that he or she has an interest in the suit or that he or she is related to a party to the suit; or
 - (b) if the Minister for any other reason considers it necessary.”;
- and
- (c) by the insertion of the following subsection after subsection (1A):
“(1B) The Minister may only appoint a person referred to in subsection (1)—
- (a) after consultation with the judicial officer who heads the court in respect of whose area of jurisdiction such appointment is to be made and subject to written confirmation by the Board that it is prepared to issue a fidelity fund certificate to that person; and
 - (b) on the conditions that he or she may determine.”.

Insertion of sections 6A and 6B in Act 90 of 1986

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

“Minister may designate person to serve process

6A. (1) Whenever process of any court in a civil or criminal case is to be served within an area for which—

- (a) no sheriff or acting sheriff has been appointed; or
- (b) a vacancy in the office of sheriff in that area has, for any other reason, not been filled,

the Minister may, notwithstanding any other law, and if he or she deems it necessary to achieve the objectives of effective and sustainable service delivery and in the interests of justice, in writing, designate any official in the employ of the Department—

- (i) for the period specified in the designation;
- (ii) in respect of the court specified in the designation; and
- (iii) on the conditions, if any, specified in the designation, to serve any process of that court or any other document as if the official had been appointed as a sheriff of that court.

(2) Section 30 does not apply to a person designated in terms of subsection (1).

(3) The fees payable to a sheriff or acting sheriff in respect of or in connection with any service effected by an official referred to in subsection (1), shall be chargeable and shall be dealt with in the prescribed manner.

Minister may appoint sheriff or acting sheriff to perform functions in another area

6B. (1) Whenever any functions of a sheriff, other than the service of process of any court or any other document, are to be performed within an area for which no sheriff or acting sheriff has been appointed, the Minister may, after consultation with the Board, in writing, appoint any sheriff or acting sheriff to perform those functions in that area on the conditions that the Minister may determine.

(2) The Rules Board for Courts of Law may make rules in respect of functions performed by a sheriff or acting sheriff referred to in subsection (1).”

Substitution of section 8 of Act 90 of 1986

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

“Objects of Board

8. The objects of the Board shall be—
- (a) the maintenance of the esteem of, the enhancement of the status of, and the improvement of the standard of training of and functions performed by, sheriffs; 10
 - (b) the development and implementation of appropriate measures, including support programmes for purposes of issuing fidelity fund certificates to sheriffs who have the potential to establish and operate an office of a sheriff successfully; and
 - (c) the development of guidelines for the appointment of deputy sheriffs.” 15

Amendment of section 9 of Act 90 of 1986, as amended by section 4 of Act 74 of 1998 and section 11 of Act 42 of 2001

7. Section 9 of the principal Act is hereby amended— 20

- (a) by the substitution for subsection (1) of the following subsection: 20
“(1) The Board shall consist of **[12] 11** members appointed by the Minister.”;
- (b) by the substitution for subsection (2) of the following subsection: 25
“(2) Subject to the provisions of section 10, the Minister shall appoint the following persons as members of the Board, namely— 25
 - (a) **[not fewer than six and not more than nine] five** sheriffs, each from a different province of the Republic, **[chosen by the Minister]** from among at least **[eighteen] 10** sheriffs, nominated **[from within] by associations which, in the opinion of the Minister, represent the Sheriff’s profession, of whom at least [two] one sheriff** must be nominated from each province, to represent the profession as a whole; 30
 - (b) **[not fewer than three and not more than six other persons, one of whom must be nominated by the attorneys’ profession, who are fit and proper and broadly representative of the South African community and who in the opinion of the Minister are able to assist the Board in achieving its objects] one official from the Department designated by the Minister as his or her representative;** 35
 - (c) one attorney, or his or her alternate, in private practice designated by the Law Society of South Africa; 40
 - (d) one person, or his or her alternate, designated by the National Credit Regulator established in terms of the National Credit Act, 2005 (Act No. 34 of 2005); and
 - (e) three other persons designated by the Minister and who, in the opinion of the Minister, are fit and proper persons to serve on the Board, at least one of whom shall have extensive experience in the field of finance and accounting.”; and 45
- (c) by the substitution for subsection (5) of the following subsection: 50
“(5) The deputy chairperson **[may] shall**, if there is a vacancy in the office of chairperson or if the chairperson is absent or is, for any reason, unable to act as chairperson, perform the functions of the chairperson.”.

Amendment of section 11 of Act 90 of 1986

8. Section 11 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) Every member of the Board appointed in terms of section 9(2) shall, subject to section 14A, be appointed for a period of three years, but shall, after the expiration of the period for which he or she was appointed, continue to hold office for a further period, but not exceeding three months, until his or her successor has been appointed. 5

(2) (a) If a member of the Board appointed in terms of **[paragraph (a) of]** section 9(2)(a) for any reason ceases to hold office, the Minister may, after consultation with the Board and subject to section 10, appoint a sheriff in his or her place for the unexpired period of his or her term of office. 10

(b) If a member of the Board appointed in terms of **[paragraph (b) of]** section 9(2)(b), (c), (d) or (e) for any reason ceases to hold office, the Minister may, subject to **[that paragraph]** those paragraphs and section 10, appoint a person in his or her place for the unexpired period of his or her term of office.”. 15

Substitution of section 12 of Act 90 of 1986

9. The following section is hereby substituted for section 12 of the principal Act:

“Vacating of office by member of Board

12. (1) A member of the Board shall vacate his or her office— 20

(a) if he or she becomes subject to any disability mentioned in section 10;

(b) if he or she becomes of unsound mind;

(c) if he or she has been absent from more than two consecutive meetings of the Board without leave of the chairperson; **[or]**

(d) if he or she has been appointed in terms of section 9(2)(a) or 11(2)(a) and ceases to hold office as sheriff; or 25

(e) if he or she has been appointed in terms of section 9(2)(b), (c), (d) or (e) or 11(2)(b) and ceases to hold office.

(2) The Minister may at any time remove a member of the Board from his or her office— 30

(a) after consultation with the nominating or designating authority, where applicable, if sound reasons exist for doing so; or

(b) at the request of the nominating or designating authority.

(3) For the purposes of this section ‘nominating or designating authority’ means the body which or person who nominated or designated the member of the Board in terms of section 9(2).” 35

Substitution of section 13 of Act 90 of 1986

10. The following section is hereby substituted for section 13 of the principal Act:

“Allowances to members of Board and of committees of Board

13. A member of the Board or of a committee referred to in section 16(a) or 17(1) who is not in the full-time employment of the State may be paid from the funds of the Board such allowances as the Board may determine in general or in any particular case.” 40

Insertion of section 14A in Act 90 of 1986

11. The following section is hereby inserted in the principal Act after section 14:

“Dissolution of Board, appointment and meetings of interim Board

14A. (1) If the Minister, upon receipt of a written request or complaint and after due inquiry, is satisfied that—

(a) the Board has failed to perform its functions in terms of this Act; or
(b) any other sound reason exists for doing so,
he or she may dissolve the Board on such terms and conditions as he or she deems fit.

(2) (a) Upon the dissolution of the Board provided for in subsection (1), the Minister shall, having regard to the provisions of section 9(2), appoint an interim Board, consisting of at least seven persons.

(b) The interim Board shall be appointed within 21 days after the dissolution of the Board and shall be appointed for a period determined by the Minister, which period shall not exceed six months.

(3) (a) The Minister shall from among the members of the interim Board designate a chairperson of the interim Board.

(b) The interim Board shall elect a deputy chairperson from among its members and the deputy chairperson shall hold office for such period as the interim Board may determine at the time of his or her election.

(4) The chairperson of the interim Board may, at any time of his or her own accord, or shall, at the written request of not fewer than five members, convene a special meeting of the interim Board.

(5) Five members of the interim Board shall form a quorum for a meeting of the interim Board.

(6) Section 14(1), (4), (5) and (6) shall *mutatis mutandis* apply in respect of a meeting of the interim Board.”.

Amendment of section 16 of Act 90 of 1986

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

“(kA) make rules regulating the conduct of its proceedings;”.

Amendment of section 27 of Act 90 of 1986

13. Section 27 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection:

“(1A) The maximum amount that may be recovered by the Board from the Fund for the purposes of subsection (1)(e) shall be determined by the Board, in consultation with the Minister.”.

Amendment of section 28 of Act 90 of 1986

14. Section 28 of the principal Act is hereby amended by the addition of the following subsections:

“(3) An auditor who has performed an audit contemplated in subsection (2), shall in the auditor’s report express an opinion as to whether or not the moneys of the Fund were spent for purposes authorised by this Act.

(4) Within 30 days after receipt of the auditor’s report, the Board shall submit that report to the Minister together with the audited financial statements of the Fund.”.

Amendment of section 43 of Act 90 of 1986, as amended by section 12 of Act 74 of 1998

15. Section 43 of the principal Act is hereby amended by the substitution for paragraphs (h) and (i) of subsection (1) of the following paragraphs:

- “(h) he or she makes use of fraudulent or misleading representations, including— 5
- (i) the simulation of legal procedures;
 - (ii) the use of simulated official or legal documents;
 - (iii) representation as a police officer; or
 - (iv) the making of unjustified threats to enforce rights; **[or]**
- (i) he or she fails to comply with any regulation pertaining to the service of 10
process; or
- (j) he or she contravenes or fails to comply with section 53.”.

Amendment of section 62 of Act 90 of 1986, as amended by section 20 of Act 74 of 1998

16. Section 62 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) The Minister may after consultation with the Board make regulations as to—
- (a) the requirements for appointment as sheriff;
 - (b) the manner and procedures regarding the appointment of sheriff; 20
 - (c) the establishment of an Advisory Committee for each province;
 - (d) the appointment of members of Advisory Committees;
 - (e) the procedure to be followed by an Advisory Committee in recommending candidates for appointment as sheriff to the Minister, as provided for in section 2(1), including— 25
 - (i) the shortlisting and interviewing of candidates;
 - (ii) the manner in which candidates are shortlisted and recommended to the Minister; and
 - (iii) the procedure to be followed when an Advisory Committee does not find a suitable candidate for appointment, 30and, in general, any matter, which is not in conflict with this Act, which is reasonably necessary for the proper functioning of Advisory Committees;
 - (f) the recognition of any professional society or association representing sheriffs for purposes of section 9(2)(a);
 - [(a)](g) the steps to be taken to ensure compliance with the code of conduct 35 referred to in section 16(k);
 - [(b)](h) the disposal of process and other documents in the possession of a sheriff when he or she ceases to hold office;
 - [(c)](i) the service of process on sheriffs or deputy sheriffs;
 - [(d)](j) the furnishing by a banking institution or building society of particulars 40 relating to an account mentioned in section 22(1) or (2);
 - [(dA)](k) the procedure to be followed in terms of section 3(2)(b), including measures aimed at co-ordinating the functions performed by such sheriffs;
 - [(dB)](l) the procedure to be followed in connection with the recovery of a fine 45 imposed in terms of section 49(1)(b);
 - [(dC)](m) the payment and control of admission of guilt fines in terms of this Act;
 - [(e)](n) any matter required or permitted to be prescribed by regulation under this Act; and
 - [(f)](o) in general, any **[matter which the Minister may consider necessary or 50 expedient to prescribe in order that the objects of this Act may be achieved, and the generality of this paragraph shall not be limited by the preceding paragraphs]** ancillary or incidental matter that is necessary to prescribe for the proper implementation or administration of this Act.”. 55

Short title and commencement

17. This Act is called the Sheriffs Amendment Act, 2012, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.