

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 313

Cape Town

5 July 1991

No. 13354

THE PRESIDENCY

No. 1503

5 July 1991

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

No. 107 of 1991: Decriminalization Act, 1991.



AIDS HELPLINE: 0800-123-22 Prevention is the cure

ACT

To provide for the decriminalization of certain offences and matters connected therewith.

(English text signed by the State President.)
(Assented to 27 June 1991.)

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

Definitions

1. In this Act, unless the context otherwise indicates—
 - (i) “administrator” means an administrator as defined in section 1 of the Provincial Government Act, 1986 (Act No. 69 of 1986); (i) 5
 - (ii) “committee” means an advisory committee established under section 3; (ii)
 - (iii) “justice of the peace” means a justice of the peace designated by the Director-General: Justice in terms of section 8; (viii) 10
 - (iv) “Minister” means the Minister of Justice; (iv)
 - (v) “offence” means any act or omission punishable by law in terms of any statutory provision; (v)
 - (vi) “representations officer” means any person employed by a responsible authority charged with the consideration of and decision on written representations in relation to fines or other administrative sanctions purporting to be payable or enforceable by law; (vii) 15
 - (vii) “responsible authority” means—
 - (a) an Administration of any House of Parliament; 20
 - (b) any provincial administration;
 - (c) any state department; or
 - (d) any board or body established by or under any law, which administers any law creating any offence; (vi) and
 - (viii) “this Act” includes any regulation made and in force under section 11. (ii) 25

Decriminalization of offences

2. Notwithstanding anything to the contrary contained in any law, but subject to the provisions of this Act, the Minister may, after consideration of a report referred to in section 5 and with the concurrence of the Minister or administrator who administers any law concerned, or who is in control of the responsible authority which administers any such law concerned, by notice in the *Gazette* with effect from a date fixed by him and specified in the notice—
 - (a) declare this Act to be applicable to any such law; 30
 - (b) suspend any provision of any such law creating any offence and any such provision connected therewith; and 35
 - (c) take or cause to be taken such steps and make or cause to be made such arrangements as he may deem necessary, including the making of regulations under section 11 in place of any such suspended provision, in order to replace such offence by an administrative sanction.

Establishment of advisory committee

3. The Minister may of his own volition or at the request of another Minister or an administrator establish an advisory committee to perform the functions referred to in section 5 subject to this Act and in accordance with the directions which the Minister may issue in general or in relation to a particular case. 40

Constitution of committee

4. (1) A committee shall consist of a chairman and such number of other members as the Minister may determine: Provided that if a responsible authority has a substantial interest in such constitution, the Minister shall establish such committee with the concurrence of the Minister or the administrator who is in control of such responsible authority. 5

(2) The chairman and other members of a committee shall be appointed by the Minister, subject to subsections (1) and (3), as often as it may become necessary.

(3) The chairman and other members of a committee shall have such qualifications, expertise or experience as, in the opinion of the Minister, make them suitable to serve on the committee concerned. 10

(4) The chairman or any other member of a committee shall hold office as chairman or such member, as the case may be, during the Minister's pleasure.

Powers, functions and duties of committee

5. (1) A committee shall inquire into and compile a written report in relation to the necessity or desirability of replacing an offence by an administrative sanction. 15

(2) A report referred to in subsection (1) shall contain a recommendation whether the offence concerned ought to be replaced by an administrative sanction or not and, if so—

(a) what form such administrative sanction ought to take and the manner in which it ought to be applied; 20

(b) what other steps ought to be taken and arrangements made in relation to such contemplated replacement; and

(c) what regulations contemplated in section 11 will be necessary to give effect thereto. 25

(3) A report compiled by a committee by virtue of section 3 and this section shall be signed by the chairman of the committee and made available to the Minister as soon as practicable after the completion thereof by the committee.

(4) For the purposes of an inquiry in terms of this section a committee—

(a) shall obtain evidence; and 30

(b) may undertake such research or cause such research to be undertaken as it may deem necessary,

and in the application of this section, the provisions of sections 4, 5 and 6 of the Commissions Act, 1947 (Act No. 8 of 1947), shall apply *mutatis mutandis* in relation to a committee, and a committee shall have the powers conferred by sections 2, 3 and 4 of that Act upon a commission contemplated therein, as if a committee were such a commission, as well as such other powers as the Minister may, for the purposes of this section, confer upon a committee from time to time by notice in the *Gazette*. 35

(5) The manner in which a committee performs its functions, including the procedure at and quorum for a meeting of the committee, shall, subject to this Act, be determined in general or in relation to a specific case, by the chairman of the committee. 40

Administrative staff

6. All work in connection with the performance by a committee of its functions shall be performed by one or more officers in the service of the Department of Justice designated by the Director-General: Justice for that purpose. 45

Compensation and financing of expenditure

7. (1) Any member of a committee or a justice of the peace who is not subject to the provisions of the Public Service Act, 1984 (Act No. 111 of 1984), shall be entitled to such compensation, including compensation for travel and subsistence expenses incurred by him in the performance of his functions in terms of this Act, as the Minister may, with the concurrence of the Minister of Finance, determine. 50

(2) All expenditure incurred in connection with any committee and its functions or a justice of the peace and his functions shall be met out of the State Revenue 55

Fund by means of an appropriation in terms of section 4 of the Exchequer Act, 1975 (Act No. 66 of 1975), as a charge against the State Revenue Account.

Designation of panel of justices of the peace for each province to perform certain functions

8. (1) The Director-General: Justice shall from time to time in respect of each province— 5
- (a) designate a panel comprising justices of the peace appointed as such under section 2(1) of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963), and who shall be available in the province concerned to exercise the powers and perform the functions and duties conferred upon or assigned to such a justice of the peace by or in terms of this Act; 10
- (b) cause a list to be kept on which the name, address and telephone number of every justice of the peace who is a member of any such panel appear, and cause copies of such list to be supplied to the responsible authority concerned. 15
- (2) A panel referred to in subsection (1) shall comprise as many justices of the peace as the Director-General: Justice may from time to time deem necessary and designate after consultation with the responsible authority concerned.
- (3) A justice of the peace who is a member of a panel referred to in subsection (1) may resign from it by written notice to the Director-General: Justice. 20

Powers, functions and duties of justices of the peace

9. (1) Upon receipt of a written objection to a decision by a representations officer in relation to a fine or other administrative sanction purporting to be payable or enforceable by law and the written comments thereon by the responsible authority concerned, the justice of the peace shall consider them and may confirm, vary or set aside the decision concerned: Provided that if he varies the decision concerned, such variation shall not be more aggravating than the decision concerned. 25
- (2) In considering an objection and comments referred to in subsection (1)— 30
- (a) the justice of the peace shall determine whether the principles of natural justice have been complied with as prescribed by regulation under section 11 and, if he finds that they have not been so complied with, or if he finds any other valid reason therefor, he shall set the decision aside; 35
- (b) the justice of the peace shall not—
- (i) hear oral evidence or call witnesses to testify; or
- (ii) allow legal representation.
- (3) Notwithstanding the provisions of section 3(a) of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963), any justice of the peace may exercise or perform the powers, functions and duties conferred upon or assigned to him by or in terms of this Act in any magisterial district in the province for which he has been designated in terms of section 8. 40
- (4) Whenever by reason of absence or incapacity a justice of the peace is unable to consider any objection and comments contemplated in subsection (1) or to decide thereon, another available justice of the peace shall consider it and decide thereon *de novo*. 45

Decision of representations officer or justice of the peace final

10. Unless within 30 days of the publication of a representations officer's decision regarding representations in relation to a fine or other administrative sanction purporting to be payable or enforceable by law, an objection to such decision is lodged in writing with the responsible authority concerned, or if such decision is confirmed, varied or set aside by a justice of the peace, such first-mentioned decision or such confirmation, variation or setting aside shall be final and no appeal shall lie from it. 50

Regulations

11. (1) Subject to the provisions of subsections (2), (3) and (4), the Minister may make regulations not inconsistent with this Act in relation to—
- (a) the nature, extent, establishment, application and enforcement of any administrative sanction in the place of any legal provision creating any offence and suspended under section 2, including but not limited to the imposition and payment of fines; 5
 - (b) the procedure to be followed by a responsible authority in relation to the application and enforcement of any administrative sanction contemplated in paragraph (a), including— 10
 - (i) the manner in which and the person by whom fines which shall by law be payable in such application, shall be prescribed or determined; and
 - (ii) the manner in which and period within which written representations may be lodged with a responsible authority for consideration and decision by a representations officer in relation to fines or other administrative sanctions purporting to be payable or enforceable by law, and the compliance with the principles of natural justice in such consideration and decision; 15
 - (c) the right to object to a decision of a representations officer referred to in paragraph (b)(ii) to a justice of the peace and the procedure for lodging and dealing with such objection and the dealing with and enforcement, keeping and disposal of the decision of the justice of the peace thereon; and 20
 - (d) in general, any matter in respect of which the Minister may deem it necessary or expedient to make regulations so as to achieve the objects of this Act, and the generality of this paragraph shall not be limited by paragraphs (a) and (b). 25
- (2) Any regulation under subsection (1) which has a bearing on any law which is administered by another Minister or an administrator or by a responsible authority under his control, shall be made with the concurrence of that Minister or administrator. 30
- (3) No regulation having a bearing on State income or expenditure shall be made under subsection (1), except with the concurrence of the Minister of Finance. 35
- (4) No regulation under subsection (1) shall come into operation unless it has been published in the *Gazette* at least 30 days prior to the day on which it is declared to come into operation.

Savings

12. The provisions of this Act shall not apply to any charge for an offence instituted in a court of law on a date prior to the date with effect from which such offence is replaced by an administrative sanction in accordance with this Act. 40

Short title

13. This Act shall be called the Decriminalization Act, 1991.