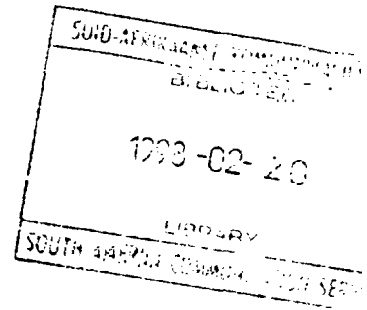


REPUBLIC OF SOUTH AFRICA

SHERIFFS AMENDMENT BILL

(As introduced in the National Assembly)

(MINISTER OF JUSTICE)



[B 2—98]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP BALJU'S

(Soos ingedien in die Nasionale Vergadering)

(MINISTER VAN JUSTISIE)

[W 2-98]

ISBN 0 621275425

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.

BILL

To amend the Sheriffs Act, 1986, in order to provide for the rationalisation of certain laws relating to sheriffs and messengers of the court which were in force in various areas of the national territory of the Republic by virtue of the Constitution; to amend certain definitions; to empower the Minister to appoint more than one sheriff for a particular area to perform the duties and functions assigned to a sheriff; to restructure the composition of the Board for Sheriffs in order to make it more representative; to provide for a disciplinary inquiry by an independent and impartial person who must be suitably qualified in law; to provide that sheriffs be allowed, before they pay over the interest accrued on their trust accounts to the Fidelity Fund for Sheriffs, to deduct therefrom their expenses in respect of their trust accounts; to compel a sheriff to obtain professional indemnity insurance; to provide for admission of guilt fines; to provide for additional actions against a sheriff who is found guilty of improper conduct; to make it an offence to impersonate a sheriff or to act as a sheriff when that person is not recognized by law as such; to extend the application of the Act to the entire national territory of the Republic; and to provide for transitional provisions; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 90 of 1986

1. Section 1 of the Sheriffs Act, 1986 (hereinafter referred to as the principal Act), is hereby amended—

(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. [1951 (**Act No. 51 of 1951**)] 1991 (Act No. 80 of 1991);”;

(b) by the substitution for the definition of “banking institution” of the following definition:
“ ‘banking institution’ means an institution [registered as a bank in terms] as referred to in section 93 of the Banks Act, [1965 (**Act No. 23 of 1965**)] 1990 (Act No. 94 of 1990);”;

(c) by the substitution for the definition of “building society” of the following definition:

“ ‘building society’ means a permanent building society as [defined in section 1 of the Mutual Building Societies Act, 1965 (Act No. 24 of 1965),] referred to in section 94 of the Mutual Banks Act, 1993 (Act No. 124 of 1993), or a building society as [defined in section 1 of the Building Societies Act, 1986] referred to in section 93 of the Banks Act, 1990 (Act No. 94 of 1990);”;

(d) by the insertion after the definition of “Fund” of the following definition:

“ ‘legal practitioner’ means any person duly admitted and enrolled as an advocate in terms of the Admission of Advocates Act, 1964 (Act No. 74 of 1964), or any person duly admitted and enrolled as an attorney in terms of the Attorneys Act, 1979 (Act No. 53 of 1979);”;

(e) by the substitution for the definition of “lower court” of the following definition:

“ ‘lower court’ means a court established under the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), and a divorce court established under section 10 of the [Black Administration Act, 1927,] Administration Amendment Act, 1929 (Act No. 9 of 1929)[, but does not include a court of which the area of jurisdiction is situated within an area for **which a legislative assembly has been established under the National States Constitution Act, 1971 (Act No. 21 of 1971)**];”;

(f) by the substitution for the definition of “sheriff” of the following definition:

“ ‘sheriff’ means a sheriff appointed under section 2(1), and includes, for the purposes of Chapter II, ~~III~~, IV or V, an acting sheriff and for the purposes of Chapter IV a deputy sheriff appointed under section 6(1);”.

Amendment of section 3 of Act 90 of 1986

2. Section 3 of the principal Act is hereby amended by the addition to subsection (2) of the following paragraph, the existing subsection becoming paragraph (a):

“(b) The Minister may, after consultation with the Board, appoint more than one sheriff for that particular area to perform the duties and functions assigned to a sheriff.”.

Amendment of section 4 of Act 90 of 1986

3. Section 4 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) A sheriff shall vacate his or her office—
(a) if he or she is removed from office under subsection (3) or section 49~~(2)~~(5);
or
(b) if he or she is deemed to be removed from office in terms of section 5 1.”.

Amendment of section 9 of Act 90 of 1986

4. Section 9 of the principal Act is hereby amended—

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

“(2) Subject to the provisions of section 10, the Minister shall appoint the following persons as members of the Board, namely—

(a) not fewer than six and not more than nine sheriffs chosen by the Minister from among at least [twelve] nine sheriffs, one from each of the provinces of the Republic, as the case may be, whose names have been submitted for that purpose by [an association which in the opinion of the Minister represents sheriffs] the South African Institute for Sheriffs;

(b) [three] not fewer than three and not more than six other persons 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.”;
- (b) by the insertion of the following subsection after subsection (2):
 “(2A) In constituting the Board the Minister shall have due regard to the need for the Board to be representative in respect of race, gender and geographical composition.”; and
- (c) by the substitution for subsection (3) of the following subsection:
 “(3) (a) Whenever necessary the Director-General: Justice shall in writing request the [association] South African Institute for Sheriffs referred to in subsection (2)(a) to submit to him or her the names as contemplated in that subsection within the period specified in the request.
 (b) If [such association] the South African Institute for Sheriffs—
 (i) fails to submit the relevant names within the period referred to in paragraph (a); or
 (ii) submits names which do not represent an adequate number of sheriffs who in the opinion of the Minister are suitable for appointment contemplated in subsection (2)(a),
 the Minister shall appoint the required number of sheriffs considered by him or her as suitable.”.

Amendment of section 17 of Act 90 of 1986 20

- 5. Section 17 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (3) of the following paragraph:**
 “(b) to consider an appeal in terms of section 18[(4)](3)(b).”.

Substitution of section 18 of Act 90 of 1986

- 6. The following section is hereby substituted for section 18 of the principal Act:** 25

“Disciplinary authority

18. (1) (a) The Board may establish one or more disciplinary committees, each consisting of at least three members of the Board.

(b) One of the members of a disciplinary committee shall be designated by the Board as chairperson of the disciplinary committee. 30

(c) A disciplinary committee shall be invested and charged with the functions relating to a charge of improper conduct assigned to the Board by or under Chapter IV.

(2) (a) Notwithstanding the provisions of subsection (1), the Board may appoint an independent and impartial person as and when necessary who shall be vested and charged with the functions relating to a charge of improper conduct assigned to the Board by or under Chapter IV. 35

(b) A person appointed in terms of paragraph (a) shall be a person who is suitably qualified in law.

(c) A person appointed in terms of paragraph (a) may summon to his or her assistance one or two persons of skill and experience in the matter to which the action relates who are willing to sit and act as assessors in an advisory capacity. 40

(d) A person or persons appointed in terms of paragraphs (a) and (c), respectively, shall be entitled to the remuneration and allowances out of the funds of the Board which the Board, in consultation with such person, may determine. 45

(3) (a) Any sheriff aggrieved by a finding made, or penalty imposed, in accordance with Chapter IV by a disciplinary committee or a person appointed in terms of subsection (2)(a), may, in the prescribed manner and within the prescribed period after such disciplinary committee or person has made the finding or imposed the penalty, appeal to the Board against the finding or penalty. 50

(b) The Board shall consider in the prescribed manner an appeal lodged with it in accordance with paragraph (a), and may— 55

- (i) set aside the finding or penalty appealed against or substitute therefor any other finding or penalty which the disciplinary committee or person appointed in terms of subsection (2)(a) could have made or imposed; or
- (ii) confirm the finding or penalty appealed against.”.

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Amendment of section 22 of Act 90 of 1986

7. Section 22 of the principal Act is hereby amended by the substitution of subsection (4) of the following subsection:

“(4) Interest on money in an account mentioned in subsection (1) or (2) shall, unless the person on whose behalf the sheriff is holding or has received those moneys, in writing indicates otherwise, be paid in the prescribed manner to the Fund by the sheriff concerned: Provided that, before a sheriff pays the interest to the Fund, he or she may deduct his or her expenses incurred in respect of his or her trust account, from the interest accrued on the trust account in accordance with a tariff and procedure prescribed by the Board.”.

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Amendment of section 26 of Act 90 of 1986

8. Section 26 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (1) of the following subsection:

“(b) the prescribed contribution referred to in section 30[(b)](1)(c)(ii) or 3 1(2):”.

Substitution of section 30 of Act 90 of 1986

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9. The following section is hereby substituted for section 30 of the principal Act:

“Prohibition of performance of functions of sheriff in certain circumstances

30. (1) A sheriff or his or her deputy shall not perform any functions assigned to a sheriff by or under any law unless—

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- (a) the sheriff is the holder of a fidelity fund certificate; and
- (b) the sheriff obtains professional indemnity insurance to the satisfaction of the Board to cover any liability which he or she may incur in the course of the performance of his or her functions in terms of this Act:

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or

- (c) in the case of an acting sheriff—
 - (i) the acting sheriff is the holder of a fidelity fund certificate; or
 - (ii) the acting sheriff has paid the prescribed contribution to the Board.

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(2) The Board may prescribe, in connection with indemnity insurance referred to in subsection (1)(b), the minimum cover requirements to be complied with, the contingencies to be covered by such insurance and the circumstances under which a person who would otherwise be required to obtain such insurance, shall be exempted therefrom.

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(3) The Board may, on such conditions as it may determine, exempt a sheriff appointed under section 5(1A) from the provisions of subsection (1)(b) or (c) of this section.”.

Amendment of section 33 of Act 90 of 1986

10. Section 33 is hereby amended by the insertion after paragraph (l) of subsection (1) of the following paragraph:

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“(m) has not obtained professional indemnity insurance to the satisfaction of the Board to cover any liability which he or she may incur in the course of the performance of his or her functions in terms of this Act.”.

Insertion of section 45A in Act 90 of 1986

11. The following section is hereby inserted in the principal Act after section 45: 50

“Admission of guilt

45A. (1) When a sheriff is accused of misconduct the Board may, if it believes that on conviction of the sheriff concerned, a fine not exceeding the amount determined by the Minister from time to time by notice in the *Gazette* will be imposed upon him or her, afford the sheriff concerned the opportunity to admit his or her guilt in respect of the misconduct in question and to pay the fine determined by the Board in the said notice on or before the date specified in the said notice, without appearing before the Board.

(2) Any sheriff who wishes to pay an admission of guilt fine in terms of subsection (1)—

(a) may, in the manner prescribed by regulation, pay the fine before the date determined in the written notice; and

(b) shall surrender the written notice at the time and place of payment of the fine.”.

Substitution of section 49 of Act 90 of 1986

12. The following section is hereby substituted for section 49 of the principal Act:

“Action against sheriff who is found guilty of improper conduct

49. (1) When the Board finds a sheriff guilty of improper conduct, the Board may—

(a) caution or reprimand the sheriff,

(b) impose upon the sheriff a fine not exceeding the amount determined by the Minister from time to time by notice in the *Gazette*, which fine shall be payable to the Board in accordance with the regulations referred to in section 62;

(c) cancel the fidelity fund certificate of the sheriff, or

(d) recommend to the Minister that the sheriff be removed from his or her office, or called upon to resign as sheriff, with effect from a date determined by the Minister.

(2) Where the Board finds a sheriff guilty of improper conduct, it may—

(a) on the conditions determined by it, postpone the taking of any steps in respect of him or her or the imposition of any penalty upon him or her for a particular period determined by the Board;

(b) impose a fine referred to in subsection (1), but suspend the payment of such fine, or any part thereof on the conditions it may deem fit; or

(c) make any other order it may deem just, reasonable and equitable in the circumstances.

(3) (a) If the taking of any steps or the imposition of any penalty has been postponed for a particular period in terms of subsection (2)(a), and if at the end of that period the Board is satisfied that the sheriff concerned has substantially observed all the relevant conditions, the Board shall inform that sheriff that no steps will be taken in respect of him or her or that no penalty will be imposed upon him or her.

(b) If the payment of a fine or any part thereof has been suspended by the Board for a particular period in terms of subsection (2)(b), and if at the end of such period the Board is satisfied that the sheriff concerned has substantially observed all the relevant conditions, the Board shall inform such sheriff that the payment of that fine or that part thereof will not be enforced.

(c) If a sheriff fails to comply with any conditions determined in terms of subsection (2), the Board shall impose a penalty upon him or her or execute the penalty imposed upon him or her, unless he or she satisfies the Board that the non-compliance with such conditions was due to circumstances beyond his or her control.

(4) Any court with civil jurisdiction may on the application of the Board grant an order for the recovery from the sheriff concerned of any amount he or she failed to pay in accordance with the fine imposed under subsection

(1)(b), together with any interest thereon, whereupon the order so granted shall have the effect of a civil judgment of that court and shall be executed in the prescribed manner.

(5) If the Board makes a recommendation under subsection (1)(d), the Board shall send to the Minister the documents relating to the inquiry and, where applicable, to an appeal under section 18(3)(a) or 61(1), and the Minister may act according to that recommendation or impose upon the sheriff concerned such other penalty as the Board could have imposed upon him or her.”

Amendment of section 50 of Act 90 of 1986

13. Section 50 of the principal Act is hereby amended by the substitution for paragraph (c) of subsection (2) of the following paragraph:

“(c) if he or she appeals under section 18[(4)](3)(a) or 61(1) against his or her conviction on the charge in question and the appeal is upheld; or”.

Amendment of section 51 of Act 90 of 1986

14. Section 51 of the principal Act is hereby amended by the substitution for paragraph (b) of the following paragraph:

“(b) fails to resign with effect from the date on which he or she has been called upon to resign under section 49[(2)](5).”.

Amendment of section 60 of Act 90 of 1986

15. Section 60 of the principal Act is hereby amended—

(a) by the insertion after paragraph (g) of subsection (1) of the following paragraph:

“(gA) has not been appointed as a sheriff, acting sheriff or deputy sheriff in terms of this Act and who practises or performs any functions assigned by or under any law to a sheriff or holds himself or herself out as a sheriff, acting sheriff or deputy sheriff or pretend to be, or make use of any name, title or addition or description creating the impression that he or she is a sheriff, acting sheriff or deputy sheriff or is recognized by law as such: Provided that nothing in this paragraph contained shall prohibit any legal practitioner or his or her employees from performing any lawful duty or function assigned to him or her;”; and

(b) by the substitution for paragraphs (a) and (b) of subsection (2) of the following paragraphs, respectively:

“(a) in the case of an offence referred to in paragraph (u), (c), (d), (gA), (h) or (i) of subsection (1), to a fine [not exceeding R2 000,] or to imprisonment for a period not exceeding one year, or to both such fine and such imprisonment; and

(b) in the case of an offence referred to in paragraph (b), (e), (f) or (g) of subsection (1), to a fine [not exceeding R1 000,] or to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment.”.

Amendment of section 61 of Act 90 of 1986

16. Section 61 of the principal Act is hereby amended by the substitution for paragraph (c) of subsection (1) of the following paragraph:

“(c) the exercise of a power by the Board in considering an appeal in terms of section 18[(4)](3)(b).”.

Amendment of section 62 of Act 90 of 1986

17. Section 62 of the principal Act is hereby amended by the insertion after paragraph (d) of subsection (1) of the following paragraphs:

“(dA) the procedure to be followed in terms of section 3(2)(b);
 (dB) the procedure to be followed in connection with the recovery of a fine
 imposed in terms of section 49(1)(b);
 (dC) the payment and control of admission of guilt fines in terms of this Act;”.

Substitution of expressions in Act 90 of 1986

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18. The principal Act is hereby amended by the substitution, in the English text, for the expressions ‘-chairman’ and ‘vice-chairman’, wherever they occur, of the expressions ‘chairperson’ and ‘vice-chairperson’ respectively.

Extension of Act 90 of 1986

19. The application of the principal Act is hereby extended to the entire national territory of the Republic. 10

Repeal of laws

20. The laws mentioned in the first column of the Schedule are hereby repealed or amended to the extent indicated in the third column thereof.

Savings

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21. (1) Any person who immediately prior to the date of commencement of this Act—
 (a) held office as messenger or acting messenger of any lower court, or was appointed as a deputy messenger, shall as from the said date be deemed to have been duly appointed in terms of the provisions of the principal Act as a sheriff or acting sheriff of that lower court, or as a deputy sheriff, respectively; 20
 or

(b) held office as deputy sheriff or acting deputy sheriff of any superior court, or was appointed as an assistant of a deputy sheriff or acting deputy sheriff, shall as from that date be deemed to have been duly appointed in terms of the provisions of the principal Act as a sheriff or acting sheriff of that superior court, or as a deputy sheriff, respectively. 25

(2) Any sheriff or acting sheriff referred to in paragraph (a) or (b) of subsection (1) shall hold office subject to the provisions of the principal Act: Provided that—

(a) the provisions of section 30 of the principal Act shall not apply in respect of any such sheriff or acting sheriff for a period of twelve months after the date of commencement of this Act, within which period such sheriff or acting sheriff shall apply to the Board for a fidelity fund certificate as contemplated in section 31 of the principal Act: 30

(b) any security furnished by any such sheriff or acting sheriff in connection with his or her appointment shall, notwithstanding the repeal of any provision governing the furnishing of such security, be maintained until the day upon which he or she becomes the holder of a fidelity fund certificate; 35

(c) notwithstanding the provisions of section 35 of the principal Act, the Fund shall not incur liability in respect of any such sheriff or acting sheriff for an act, referred to in section 35 of the principal Act, committed by such sheriff or acting sheriff before the date of commencement of this Act; 40

(d) the provisions of section 51 (a)(ii) or 53 of the principal Act shall not apply to remunerative work which any such sheriff or acting sheriff performs outside his or her office after the date of commencement of this Act if he or she—
 (i) had performed such work immediately prior to the said date; and 45
 (ii) notifies the Minister in writing of such remunerative work within 30 days after the said date; and

(e) any such sheriff shall hold office as contemplated in section 4(1) of the principal Act until the date on which he or she attains the age of 70 years.

(3) (a) Any investigation or procedure in terms of a law repealed by section 2 in respect of a messenger or deputy sheriff who is alleged— 50

- (i) to have been negligent or dilatory in the service or execution of process; or
- (ii) to have wilfully demanded payment of more than his or her proper fees or expenses; or
- (iii) to have made a false return; or
- (iv) to have misconducted himself or herself in any other manner in connection with his or her duties,

which has not been finalised by the commencement of this Act, shall be referred to the Board for Sheriffs, which shall treat the matter as it deems appropriate.

(b) The Board for Sheriffs may in respect of any matter referred to it in terms of 10 paragraph (a) —

- (i) exercise the powers and the jurisdiction conferred upon it by the principal Act and the regulations made thereunder; and
 - (ii) have such regard to the existing record of any proceedings in such matter as it deems appropriate.
- (4) Anything done under a provision of a law repealed by section 2 which may be done under a corresponding provision of the principal Act, shall be deemed to have been done under that corresponding provision.

Construction of references to messenger in existing laws and process of court

22. A reference in any law in force immediately prior to the date of commencement 20 of this Act, in any area or in any process of court of such area, to a messenger or a messenger of any lower court shall, subject to the provisions of item 2(2) of Schedule 6 to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), be construed as a reference to a sheriff of that lower court appointed under the principal Act.

Short title and commencement

23. This Act shall be called the Sheriffs Amendment Act, 1998, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE

LAWS REPEALED OR AMENDED BY SECTION 2

Number and year of law	Short title	Extent of repeal or amendment	Area of national territory in respect of which law is repealed or amended
Act No.32 of 1944	Magistrates' Courts Act. 1944	1. The repeal of sections 14, 15, 18, 18A and 107.	The territories of the former Republics of Transkei, Venda and Ciskei and the former self-governing territories of Jazankulu, KaNgwane, KwaNdebele, KwaZulu, Lebowa and Qwaqwa.
Act No.59 of 1959	Supreme Court Act, 1959	1. The amendment of section 34— a) by the substitution for paragraph (a) of subsection (1) of the following paragraph: “(a) The Minister may, subject to the laws governing the public service, appoint for the Supreme Court registrars, assistant registrars [, sheriffs, additional sheriffs, deputy-sheriffs] and other officers whenever they may be required for the administration of justice or the execution of the powers and authorities of the said court; Provided that if the duties to be performed by any deputy-sheriff are in the opinion of the Public Service Commission insufficient to keep at least one person fully occupied throughout the year, and no officer in the public service is in the opinion of the said Commission able to perform the duties of such deputy-sheriff in addition to his other duties, or if in the opinion of the Minister the duties of such deputy-sheriff can be performed satisfactorily and at less cost to the State by a person who is not an officer in the public service, the Minister may appoint any person as such deputy-sheriff at such remuneration and on such conditions as the Minister may determine].”;	The territory of the former Republic of Venda.

Number and year of law	Short title	Extent of repeal <i>or</i> amendment	Area of national territory in respect of which law is repealed or amended
		<p>(b) by the substitution for paragraph (b) of subsection (1) of the following paragraph “(b) Whenever by reason of absence or incapacity a registrar or assistant registrar [or sheriff] is unable to carry out the functions of his or her office, or his or her office becomes vacant, [the Minister may authorize any other competent officer of the public service to act in the place of the absent or incapacitated officer during such absence or incapacity or to act in the vacant office until the vacancy is filled: Provided that when any such vacancy has remained unfilled for a continuous period exceeding six months the fact shall be reported to the Public Service Commission.”: and</p> <p>(c) by the deletion of paragraph (c) of subsection (1) and subsections (3), (4), (5) and (6).</p> <p>2. The repeal of section 35. 3. The amendment of section 36—</p> <p>(a) by the substitution for subsection (1) of the following subsection: “(1) The sheriff or the deputy-sheriff concerned [or his assistant] shall execute all sentences, decrees, judgments, writs, summonses, rules, orders, warrants, commands and processes of the court directed to the sheriff and make return of the manner of execution thereof to the court and to the party at whose instance they were issued.”: and</p> <p>(b) by the substitution for subsection (2) of the following subsection: “(2) The return of the sheriff or a deputy-sheriff [or his assistant] of what has been done upon any process of the court, shall be <i>prima facie</i> evidence of the matters therein stated.”.</p>	

Number and year of law	Short title	Extent of repeal or amendment	Area of national territory in respect of which law is repealed or amended
		<p>4. The repeal of sections 37 and 38.</p> <p>5. The amendment of section 40—</p> <p>(a) by the substitution for paragraph (a) of the following paragraph: “(a) obstructs a sheriff or deputy-sheriff [or his assistant] in the execution of his or her duty;”;</p> <p>(b) by the substitution for paragraph (c) of the following paragraph: “(c) being a Judgment debtor and being required by a sheriff or deputy-sheriff [or his assistant] to point out property to satisfy a warrant issued in execution of judgment against such person—</p> <p>(i) falsely declares to that sheriff or deputy-sheriff [or his assistant] that he or she possesses no property or insufficient property to satisfy the warrant; or</p> <p>(ii) although knowing of such property neglects or refuses to point out such property or to deliver it to the sheriff or deputy-sheriff [or his assistant] when requested to do so; or”;</p> <p>(c) by the substitution for paragraph (d) of the following paragraph: “(d) being a judgment debtor refuses or neglects to comply with any requirement of a sheriff or deputy-sheriff [or his assistant] in regard to the delivery of documents in his or her possession or under his or her control relating to the title of the immovable property under execution.”.</p>	

Number and year of law	Short title	tent of repeal or amendment	Area of national territory in respect of which law is repealed or amended
Act No. 32 of 1982	Supreme Court of Bophuthatswana Act. 1982	<p>The amendment of section</p> <p>by the substitution for paragraph (a) of subsection (1) of the following paragraph: “(a) The Minister may, subject in the laws governing the Public Service, appoint for the Supreme Court registrars, deputy-registrars, assistant registrars [, sheriffs, additional sheriffs, deputy-sheriffs] and other officers whenever they may be required for the administration of justice or the execution of the powers and authorities of the said Court [: Provided that, if the duties to be performed by any deputy-sheriff are in the opinion of the Public Service Commission insufficient to keep at least one person fully occupied throughout the year, and no officer in the Public Service is in the opinion of the said Commission able to perform the duties of such deputy-sheriff in addition to his other duties, or if in the opinion of the Minister the duties of such deputy-sheriff can be performed satisfactorily and at less cost to the State by a person who is not an officer in the Public Service, the Minister may appoint any person as such deputy-sheriff at such remuneration and on such conditions as the Minister may determine].” :</p> <p>by the substitution for paragraph (b) of subsection (1) of the following paragraph: “(b) Whenever by reason of absence or incapacity a registrar, deputy-registrar or assistant registrar [or sheriff] is unable to carry out the functions of his or her office, or his or her office becomes vacant, the Minister may authorise any other competent officer of the Public Service to act in the place of the absent or</p>	The territory of the former Republic of Bophuthatswana

Number and year of law	Short title	Extent of repeal or amendment	Area of national territory in respect of which law is repealed or amended
		<p>incapacitated officer during such absence or incapacity or to act in the vacant office until the vacancy is filled: Provided that, when any such vacancy has remained untill for a continuous period exceeding six months the fact shall be reported to the Public Service Commission.”; and</p> <p>(c) by the deletion of paragraph (c) of subsection (1) and subsections (3), (4), (5) and (6),</p> <p>2. The repeal of section 19.</p> <p>3. The amendment of <i>section 20</i>—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) The sheriff or the deputy-sheriff [or his assistant] shall execute all sentences, decrees, judgments, writs, summonses, subpoenas, rules, orders, warrants, commands and processes of the court directed to the sheriff and make return of the manner of execution thereof to the court and to the party at whose instance they were issued.”; and</p> <p>(b) by the substitution for subsection (2) of the following subsection:</p> <p>“(2) The return of the sheriff or a deputy-sheriff [or his assistant] of the steps taken in connection with any process of the court, shall be <i>prima facie</i> evidence of the matters therein stated.”.</p> <p>4. The repeal of sections 21 and 22.</p> <p>5. The amendment of section 24 -</p> <p>(a) by the substitution for paragraph (a) of the following paragraph:</p> <p>“(a) obstructs or hinders a sheriff or deputy-sheriff [or his assistant] in the exercise or performance of his or her powers, -ions or duties under or by virtue of the provisions of this Act or any other law.”;</p>	

Number and year of law	Short title	Extent of repeal or amendment	Area of national territory in respect of which law is repealed or amended
		<p>(b) by the substitution for paragraph (b) of the following paragraph: “(b) upon having been required by a sheriff or deputy-sheriff [or his assistant] in [be course of exercising or performing any aforesaid power, function or duty, to identify himself or herself or to furnish proof of his or her identity, refuses or fails to do so or to do so 10 the satisfaction of such sheriff or deputy-sheriff [or assistant], or furnishes a false identity or proof of identity;”;</p> <p>(c) by the substitution for paragraph (d) of the following paragraph: “(d) being a judgment debtor and being required by a sheriff or deputy sheriff [or his assistant] to point out property to satisfy a warrant issued in execution of judgment against such person— (i) falsely declares to that sheriff or deputy-sheriff [or his assistant] that he or she possesses no property or insufficient property to satisfy the warrant; or (ii) while knowing of such property refuses or neglects to point out such property or to deliver it to the sheriff or deputy-sheriff [or his assistant] when requested to do so: or”; and</p> <p>(d) by the substitution for paragraph (e) of the following paragraph:</p>	

Number and year of law	Short title	Extent of repeal or amendment	Area of national territory in respect of which law is repealed or amended
		“(e) being a judgment debtor refuses or neglects to comply with any requirement of a sheriff or deputy-sheriff [or his assistant] in connection with the delivery of documents in his or her possession or under his or her control relating in the title of the immovable property under execution.”.	
Act No. 5 of 1983	Supreme Court Act, 1983	<p>1. The amendment of section 13—</p> <p>(a) by the substitution for paragraph (a) of subsection (1) of the following paragraph: “(a) The Minister may, subject to the laws governing the public service, appoint for the court or for any division thereof a registrar, assistant registrar [, sheriff, additional sheriffs, deputy sheriffs] and other officers whenever they may be required for the administration of justice or the exercise of the powers and authority of the court[: Provided that if the duties to be performed by any deputy-sheriff are, in the opinion of the Public Service Commission, insufficient to keep at least one person fully occupied throughout the year and no officer in the public service is in the opinion of the said Commission, able to perform the duties of such deputy sheriff in addition to his other duties, or if, in the opinion of the Minister, the duties of such deputy sheriff can be performed satisfactorily and at less cost to the Government by a person who is not an officer in the public service, the Minister may appoint any person as such deputy sheriff at such remuneration and on such conditions as the Minister may determine].”;</p> <p>(b) by the substitution for paragraph (b) of the following paragraph:</p>	The territory of the former Republic of Transkei.

Number and year of law	Short title	Extent of repeal or amendment	Area of national territory in respect of which law is repealed or amended
		<p>“(b) Whenever by reason of absence or incapacity the Registrar <u>or</u> Assistant Registrar [or Sheriff] is unable to carry out the functions of his or her office, or his or her office becomes vacant, the Minister may authorize any other competent person to act in the place of the absent or incapacitated officer during such absence or Incapacity or to act in the vacant office until the vacancy is filled: Provided that when any such vacancy has remained unfilled for a continuous period exceeding six months the fact shall be reported to the Public Service Commission.”;</p> <p>(c) by the deletion of paragraph (c) of subsection (1) and subsections (3), (4), (5), (6) and (7); and</p> <p>(d) by the substitution for paragraphs (a) and (b) of subsection (8) of the following paragraphs, respectively:</p> <p>“(a) The Sheriff or the deputy sheriff <i>concerned</i> [or his assistant] shall execute sentences, decrees, judgments, writs, summonses, rules, orders, warrants, commands and processes of the court directed to the sheriff and make return of the manner of execution thereof to the court and to the party at whose instance they were issued,</p> <p>(b) The return of the Sheriff or a deputy sheriff [or his assistant] of what has been done upon any process of the court, shall be <i>prima facie</i> evidence of the matters therein stated.”.</p> <p>2. The repeal of section 14.</p> <p>3. The amendment of section 16—</p> <p>(a) by the substitution for paragraph (a) of the following paragraph:</p> <p>“(a) obstructs the Sheriff or deputy sheriff [or his assistant] in the execution of his or her duty.”;</p> <p>(b) by the substitution for paragraph (c) of the following paragraph:</p>	

Number and year of law	Short title	Extent of repeal or amendment	Area of national territory in respect of which law is repealed or amended
		<p>“(c) being a judgment debtor and being required by the Sheriff or deputy sheriff [or his assistant] to point out property to satisfy a warrant issued in execution of a judgment against such person—</p> <p>(i) falsely declared to the Sheriff or deputy sheriff [or his assistant] that he or she possesses no property or insufficient property to satisfy the warrant; or</p> <p>(ii) although knowing of such property, neglects or refuses to point out such property or to deliver it to the Sheriff or a deputy sheriff [or his assistant] when requested to do so, or;” and</p> <p>’) by the substitution for paragraph (d) of the following paragraph:</p> <p>“(d) being a judgment debtor, refuses or neglects to comply with any requirement of the Sheriff or deputy sheriff [or his assistant] in regard to the delivery of documents in his or her possession or under his or her control relating to the title of the immovable property under execution.”.</p> <p>Amendment of section 17</p> <p>’ the substitution for the words preceding paragraph (a) the following words:</p> <p>“(a) The Sheriff or a deputy sheriff [or his assistant] shall not seize in execution of any process-”.</p>	
Act No. 32 of 1985	Magistrates’ Courts Consolidation Act. 1985	The repeal of sections 15, 16, 17, 18, 19, 20 and 137,	The territory of the former Republic of Bophuthatswana

Number and year of law	Short title	Extent of repeal or amendment	Area of national territory in respect of which law is repealed or amended
Decree No. 43 of 1990	Supreme Court Decree, 1990	<p>1. Amendment of section 22— <i>(a)</i> by the substitution for paragraph <i>(a)</i> of subsection (1) of the following paragraph “<i>(a)</i> The Minister may, subject otherwise to the laws governing the public service, appoint for the Supreme Court or any division thereof a registrar, assistant registrar [, sheriff, additional sheriff, deputy-sheriffs] and other officers whenever they may be required for the administration of justice or the execution of the powers and authorities of such court or division[; Provided that, if the duties to be performed by any deputy-sheriff are in the opinion of the Minister insufficient to keep at least one person fully occupied throughout the year, and no officer in the public service is in his opinion able to perform the duties of such deputy-sheriff in addition to his other duties or if in the opinion of the Minister, the duties of such deputy-sheriff can be performed satisfactorily and at less cost to the State by a person who is not an officer in the public service, he may appoint any person as such deputy-sheriff at such remuneration and on such conditions as he may determine.”;</p> <p><i>(b)</i> by the substitution for paragraph <i>(b)</i> of subsection (1) of the following paragraph: “<i>(b)</i> Whenever by reason of absence or incapacity a registrar or assistant registrar [or sheriff] is unable to carry out the functions of his or her office or his or her office becomes vacant, the Minister may authorise any other competent officer of the public service to act in the place of the absent or incapacitated officer during such absence or incapacity or to act in the vacant office until the vacancy is filled “: and</p>	The territory of the former Republic of Ciskei

Number and year of law	Short title	Extent of repeal or amendment	Area of national territory in respect of which law is repealed or amended
		<p>(c) by the deletion of paragraph (c) of subsection (1) and subsections (2), (3), (4), (5) and (6).</p> <p>2. The repeal of section 24.</p> <p>3. The amendment of section 25—</p> <p>a) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) The sheriff or the deputy-sheriff concerned [or his assistant] shall execute all sentences, decrees, judgments, writs, summonses, rules, orders, warrants, commands and processes of the Supreme Court directed to the sheriff and make return of the manner of execution thereof to the court concerned and to the party at whose instance they were issued.”; and</p> <p>b) by the substitution for subsection (2) of the following subsection:</p> <p>“(2) The return of the sheriff or a deputy-sheriff [or his assistant] of what has been done upon any process of the court shall be <i>prima facie</i> evidence of the matters stated therein.”.</p> <p>4. The amendment of section 27—</p> <p>a) by the substitution for paragraph (a) of the following paragraph:</p> <p>“(a) obstructs a sheriff or deputy-sheriff [or his assistant] in the execution of his or her duty.”;</p> <p>b) by the substitution for paragraph (c) of the following paragraph:</p> <p>“(c) being a judgment debtor and being required by a sheriff or deputy-sheriff [or his assistant] to point out property to satisfy a warrant issued in execution of a judgment against such person—</p> <p>(i) falsely declares to that sheriff or deputy-sheriff [or his assistant] that he or she possesses no property or insufficient property to satisfy the warrant; or</p>	

Number and year of law	Short title	Extent of repeal or amendment	Area of national territory in respect of which law is repealed or amended
		<p>(ii) although knowing of such property neglects or refuses to point out such property or to deliver it to the sheriff or deputy-sheriff [or his assistant] when requested to do so, or"; and</p> <p>c) by the substitution for paragraph (d) of the following paragraph: “(d) being a judgment debtor refuses or neglects to comply with any requirement of a sheriff or deputy-sheriff [or his assistant] in regard to the delivery of documents in his or her possession or under his or her control relating to the title of any immovable property under execution.”.</p> <p>i. The repeal of sections 28 and 29.</p>	

**MEMORANDUM ON THE OBJECTS OF THE SHERIFFS
AMENDMENT BILL, 1998**

1. Prior to the commencement on 1 March 1990 of the Sheriffs Act, 1986 (Act 90 of 1986), certain matters relating to messengers of the court were regulated in terms of the Magistrates' Courts Act, 1944 (Act 32 of 1944). The Supreme Court Act, 1959 (Act 59 of 1959), also contained similar provisions. The provisions of the Magistrates' Courts Act, 1944, and the Supreme Court Act, 1959, have either been repealed or amended by the Sheriffs Act, 1986, which, *inter alia*, provides for the appointment of sheriffs, the establishment of a Board for Sheriffs, a fidelity fund for sheriffs and the regulation of conduct of sheriffs.

2. The provisions of the Magistrates' Courts Act, 1944, and the Supreme Court Act, 1959, were still in force at the time when the former TBVC states and self-governing territories gained independence and self-governing status. At present the Sheriffs Act, 1986, does not apply in the former TBVC states and self-governing territories. A Task Group appointed by the Deputy Minister of Justice was mandated to expedite the rationalisation of the sheriffs' profession. The Working Group adopted various resolutions, some of which have been incorporated into the Bill.

3. The Sheriffs Amendment Bill, 1998, facilitates the rationalisation of both the sheriffs' and messengers' of court professions in line with the requirements of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996). The Bill aims to create legal certainty and extends the application of the Sheriffs Act, 1986, throughout the national territory. The composition of the Board for Sheriffs is also being adapted to reflect the racial, gender and geographical composition of the South African community. Measures are further suggested to promote accountability through the streamlining of disciplinary procedures and the implementation of penalties. Provision is also made for various transitional measures to ensure the smooth rationalisation of the sheriffs' profession.

4. The State Law Advisers are of the opinion that this Bill must be dealt with in accordance with the procedure set out in section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.