

REPUBLIC OF SOUTH AFRICA

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# **JUDICIAL OFFICERS (AMENDMENT OF CONDITIONS OF SERVICE) BILL**

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*(As presented by the Portfolio Committee on Justice and Constitutional Development  
(National Assembly), after consideration of the Judicial Officers Amendment Bill  
[B72—2001]) (The English text is the official text of the Bill)*

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(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

**[B 33—2003]**

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**GENERAL EXPLANATORY NOTE:**

[                      ]      Words in bold type in square brackets indicate omissions from existing enactments.

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# **BILL**

**To amend the Magistrates' Courts Act, 1944, so as to further regulate the appointment of magistrates in an acting or temporary capacity; and**

**To amend the Magistrates Act, 1993, so as to—**

- \* **further regulate the remuneration of magistrates;**
- \* **further regulate the suspension of magistrates; and**
- \* **make provision generally for equal benefits to accrue to spouses and heterosexual or same-sex life partners of magistrates; and**

**To amend the Independent Commission for the Remuneration of Public Office-bearers Act, 1997, so as to extend—**

- \* **the definition of “office-bearer” to include judges and magistrates;**
- \* **the composition of the Independent Commission for the Remuneration of Public Office-bearers; and**
- \* **the functions of the Independent Commission for the Remuneration of Public Office-bearers; and**

**To amend the Public Finance Management Act, 1999, in order to add the remuneration of magistrates to Schedule 5 thereof; and**

**To amend the Judges' Remuneration and Conditions of Employment Act, 2001, so as to—**

- \* **further regulate the remuneration of judges;**
- \* **bring the provisions relating to benefits accruing to spouses and heterosexual or same-sex life partners of judges in line with a decision of the Constitutional Court; and**

**To provide for matters incidental to the above provisions.**

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 9 of Act 32 of 1944, as substituted by section 2 of Act 8 of 1967, and as amended by section 4 of Act 53 of 1970, section 8 of Act 102 of 1972, section 11 of Act 29 of 1974, section 24 of Act 94 of 1974, section 1 of Act 28 of 1981, section 2 of Act 34 of 1986, section 17 of Act 90 of 1993, section 3 of Act 104 of 1996, section 3 of Act 66 of 1998 and section 1 of Act of 62 of 2000**

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**1.** Section 9 of the Magistrates' Courts Act, 1944, is amended by the substitution for subsections (3), (4) and (5) of the following subsections:

“(3) Subject to subsections (4) and (5), the Minister, after consultation with the head of the court concerned, may appoint any appropriately qualified and fit and proper person to act—

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(a) in the place of any magistrate, additional magistrate or assistant magistrate who is not available; or

(b) in any vacant office of magistrate; or

(c) as a magistrate in addition to any magistrate of a regional division or a district.

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(4) (a) A magistrate at the head of a regional division or a person occupying the office of chief magistrate, including an acting chief magistrate authorized thereto in writing by the Minister, may—

(i) whenever a magistrate, additional magistrate or assistant magistrate is for any reason unavailable to carry out the functions of his or her office; and

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(ii) in consultation with the Minister or an officer in the Department of Justice and Constitutional Development designated by the Minister, temporarily appoint any competent person in the place of the magistrate concerned.

(b) An appointment in terms of paragraph (a) remains valid for the duration of the unavailability of the magistrate in question, or for a period not exceeding five consecutive court days, whichever period is the shortest.

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(c) Any person appointed in terms of paragraph (a) may—

(i) upon the expiry of the appointment in terms of paragraph (b); and

(ii) if the magistrate in whose place the appointment has been made, is still unavailable,

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be reappointed once only in terms of paragraph (a) in the place of that magistrate.

(5) (a) Any person appointed in terms of subsection (3)—

(i) holds that office for a period determined by the Minister at the time of the appointment, but the period so determined may not exceed three months; and

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(ii) may be reappointed to that office in terms of subsection (3).

(b) The Minister must cause Parliament and the Magistrates Commission to be informed whenever any vacancy in the office of a magistrate has remained unfilled for a continuous period exceeding three months.

(6) Any person appointed in terms of subsection (3) or (4) is also deemed to have been so appointed in respect of any period during which he or she is necessarily engaged in connection with the disposal of any proceedings—

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(a) in which he or she has participated as such a magistrate, including an application for leave to appeal in respect of such proceedings; and

(b) which have not yet been disposed of at the expiry of the period for which he or she was appointed.”.

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**Amendment of section 1 of Act 90 of 1993, as amended by section 8 of Act 35 of 1996**

**2.** Section 1 of the Magistrates Act, 1993, is amended—

(a) by the substitution for the definition of “magistrate” of the following definition:

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“ ‘magistrate’ means a judicial officer appointed under section 9 of the Magistrates’ Courts Act read with section 10 of this Act [, **excluding any person occupying that office in an acting or temporary capacity and any assistant magistrate**];”;

(b) by the deletion of the definition of “salary”;

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(c) by the addition of the following definition:

“‘remuneration’ means the remuneration that a magistrate is entitled to in terms of section 12;”.

**Substitution of section 12 of Act 90 of 1993, as amended by section 4 of Act 18 of 1996, section 8 of Act 35 of 1996, section 19 of Act 104 of 1996 and section 35 of Act 47 of 1997** 5

3. The following section is substituted for section 12 of the Magistrates Act, 1993:

**“Remuneration of magistrates**

**12. (1) (a)** Magistrates are entitled to such salaries, allowances or benefits— 10

(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 No. 92 of 1997); and 15

(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— 20

(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— 25

(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. 30

(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, 35

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. 40

(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.”. 45 50

**Amendment of section 13 of Act 90 of 1993, as amended by section 4 of Act 85 of 1995, section 4 of Act 18 of 1996, section 6 of Act 35 of 1996 and section 11 of Act 122 of 1998**

4. Section 13 of the Magistrates Act, 1993, is amended by the substitution for subsections (3) and (4) of the following subsections: 55

“(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.

(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.

(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.”.

#### Insertion of section 15A in Act 90 of 1993

5. The following section is inserted in the Magistrates Act, 1993:

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#### “Equal benefits accruing to spouses and partners of magistrates

**15A.** 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

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(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.”.

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#### Amendment of section 16 of Act 90 of 1993, as amended by sections 7 and 8 of Act 35 of 1996, section 19 of Act 104 of 1996 and section 8 of Act 66 of 1998

6. Section 16 of the Magistrates Act, 1993, is amended by the insertion in subsection (1) of the following paragraph:

“(nA) 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;”.

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#### Amendment of section 1 of Act 92 of 1997

7. Section 1 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997, is amended by the substitution for the definition of “office-bearer” of the following definition:

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“ ‘office-bearer’ means—

(a) any member of the Cabinet, any Deputy Minister, any member of the National Assembly or any permanent delegate to the National Council of Provinces [any member of the Council of Traditional Leaders, any member of any provincial house of traditional leaders or any traditional leader];

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(b) any member of the Executive Council of a province or any member of any provincial legislature [or any member of any Municipal Council of any category or type of municipality];

(c) any member of any Municipal Council of any category or type of municipality;

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(d) any person holding the office of—

(i) Constitutional Court judge or a judge as defined in section 1 of the Judges’ Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001); and

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(ii) magistrate who is appointed under section 9 of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), read with section 10 of the Magistrates Act, 1993 (Act No. 90 of 1993); and

(e) any member of the National House of Traditional Leaders, any member of any provincial house of traditional leaders or any traditional leader.”.

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#### Amendment of section 3 of Act 92 of 1997

8. Section 3 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997, is amended by the substitution for subsection (1) of the following subsection:

“(1) The Commission shall consist of [seven] eight members appointed by the President.”.

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## Substitution of section 4 of Act 92 of 1997

9. The following section is substituted for section 4 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997:

### “Persons not qualified to be members of Commission

4. (1) (a) Subject to paragraph (b), no person shall be appointed as a member of the Commission if—  
 [(a)](i) that person is an office-bearer as defined in paragraphs (a), (b), (c), (d)(ii) or (e) of the definition of ‘office-bearer’ in section 1;  
 [(b)](ii) that person holds office in any political party or political organisation;  
 [(c)](iii) that person is an unrehabilitated insolvent; or  
 [(d)](iv) that person has been convicted of any offence for which that person has been sentenced to imprisonment without the option of a fine for a period of not less than twelve months, unless a period of at least five years has expired after the date on which the sentence was served.

(b) A person as defined in paragraph (d)(i) of the definition of ‘office bearer’ may only be appointed as a member of the Commission if he or she is designated by the President as the chairperson of the Commission.

(2) For the purposes of subsection [(1)(d)] (1)(a)(iv), no person shall be deemed to have been sentenced until an appeal against the conviction or sentence has been disposed of or until the period has expired within which an appeal may be lodged, as the case may be.”.

## Amendment of section 7 of Act 92 of 1997

10. Section 7 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997, is amended by the substitution for subsection (3) of the following subsection:

“(3) (a) If both the chairperson and the deputy chairperson of the Commission are absent or for any reason unable to act as chairperson at a meeting of the Commission, the members present must elect a chairperson from their number for the purpose of that meeting.

(b) The decision of a majority of the members of the Commission present at a meeting of the Commission shall constitute a decision of the Commission, and, in the event of an equality of votes on any matter, the person presiding at the meeting concerned shall have a casting vote in addition to that person’s deliberative vote.”.

## Amendment of section 8 of Act 92 of 1997

11. Section 8 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997, is amended by the substitution for subsections (3) and (4) of the following subsections:

“(3) The Commission may conduct or cause to be conducted such research or obtain such information from the Secretary to Parliament, the secretary to any provincial legislature, the secretary to the [Council] National House of Traditional Leaders, the secretary to any provincial house of traditional leaders, the chief executive officer of any municipality, the Chief Justice or any person designated for that purpose by the Chief Justice, or any [office-bearer] functionary or body as may be necessary for the performance of the functions of the Commission under this Act, section 219 of the Constitution or any other law.

(3A) Whenever the Commission performs any function in terms of this Act relating to the remuneration of any office-bearer as defined—

(a) in paragraph (d)(i) of the definition of ‘office-bearer’ in section 1, it must have regard to the provisions of the Judges’ Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001), and in particular to section 2 of that Act; or

(b) in paragraph (d)(ii) of the definition of ‘office-bearer’ in section 1, it must have regard to the provisions of the Magistrates Act, 1993 (Act No. 90 of 1993), and in particular to section 12 of that Act.



(3B) (a) If the chairperson of the Commission is an office-bearer as defined in paragraph (d)(i) of the definition of ‘office-bearer’ in section 1, that member must refrain from participating in any of the Commission’s deliberations relating to the remuneration of any office-bearer as defined in paragraph (d) of the said definition.

(b) Any member of the Commission who may directly or indirectly derive any benefit from the acceptance by the President of any recommendations by the Commission, must refrain from participating in any of the Commission’s deliberations relating to such recommendations.

(4) The Commission shall, after taking into consideration the factors referred to in subsection (6), publish **[annually]** in the *Gazette* recommendations concerning—

(a) the salary, allowances and benefits of any office-bearer as defined in **[paragraph]** paragraphs (a), (d) and (e) of the definition of ‘office-bearer’ in section 1;

(b) the upper limits of the salary, allowances or benefits of any office-bearer as defined in **[paragraph]** paragraphs (b) and (c) of the definition of ‘office-bearer’ in section 1; and

(c) the resources which are necessary to enable an office-bearer as defined in paragraphs (a), (b), (c) and (e) of the definition of ‘office-bearer’ in section 1 to perform the office-bearer’s functions effectively.

(5) Recommendations referred to in subsection (4) must be published in the *Gazette* at least once a year in respect of each category of office-bearers and must be submitted to Parliament before publication.

(6) When making recommendations referred to in subsection (4) the Commission must take the following factors into account:

(i) The role, status, duties, functions and responsibilities of the office-bearers concerned;

(ii) the affordability of different levels of remuneration of public office bearers;

(iii) current principles and levels of remuneration, particularly in respect of organs of state, and in society generally;

(iv) inflationary increases;

(v) the available resources of the state; and

(vi) any other factor which, in the opinion of the said Commission, is relevant.”.

#### **Amendment of section 13 of Act 92 of 1997**

**12.** Section 13 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997, is amended by the addition of the following subsection:

“(3) The vacancy arising in the Commission on account of the amendment of section 3(1) by the Judicial Officers (Amendment of Conditions of Service) Act, 2003, shall be filled by the appointment of a member for such term, but not exceeding five years, as determined by the President at the time of such appointment.”.

#### **Amendment of Schedule 5 to Act 1 of 1999**

**13.** Schedule 5 to the Public Finance Management Act, 1999, is amended by the addition of the following item:

“4. Magistrates Act, 1993 (Act No. 90 of 1993) (covering remuneration of magistrates in terms of section 12).”.

#### **Amendment of section 1 of Act 47 of 2001**

**14.** Section 1 of the Judges’ Remuneration and Conditions of Employment Act, 2001, is amended—

(a) by the substitution for the definition of “annual salary” of the following definition:

“ ‘**annual salary**’ means the annual salary referred to in section 2(1)(a) and the allowance referred to in section 2(1)(b) payable to a Constitutional Court judge or a judge **[in terms of section 2]**;”;



- (b) by the insertion in subsection (1) after the definition of “Minister” of the following definition:

“**‘partner’** means only one person with whom a Constitutional Court judge or judge, who is not legally married, is involved in a permanent heterosexual or same-sex life partnership—

- (a) in which the Constitutional Court judge or judge and the person concerned have undertaken reciprocal duties of support; and
- (b) which is, for the purposes of this Act, registered as such with the Director-General: Justice and Constitutional Development in accordance with the regulations made under section 13;”;

- (c) by the insertion in subsection (1) after the definition of “service” of the following definition:

“**‘spouse’** means a person to whom a Constitutional Court judge or judge is legally married;”.

#### **Substitution of section 2 of Act 47 of 2001**

**15.** The following section is substituted for section 2 of the Judges’ Remuneration and Conditions of Employment Act, 2001:

#### **“Remuneration of Constitutional Court judges and judges**

**2.** (1) Any person who holds office as a Constitutional Court judge or as a judge, whether in an acting or permanent capacity, shall in respect thereof, **in addition to the amounts referred to in section 13 and an allowance at the rate of R3 500 per annum,** be paid—

(a) an annual salary **[at a rate]** and such 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 No. 92 of 1997); and

- (ii) approved by Parliament in terms of subsection (4); and

(b) an allowance at the rate of R3 500 per annum, which allowance shall not be taxable, unless Parliament expressly provides otherwise.

(2) The Commission referred to in subsection (1)(a) must, when investigating or considering the salaries, allowances or benefits of Constitutional Court judges and judges—

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

(3) 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.

(4) **[The allowance payable in terms of subsection (1) shall not be taxable, unless Parliament expressly provides otherwise.]**

(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.

(5) **[The amount of the annual salary and allowance payable in terms of]** Any remuneration contemplated in subsection (1), shall be paid as a direct charge against the National Revenue Fund.

(6) No Constitutional Court judge or judge may, without the consent of the Minister, accept, hold or perform any other office of profit or receive in respect of any service any fees, emoluments or other remuneration apart from his or her salary and any amount which may be payable to him or her in his or her capacity as such a Constitutional Court judge or judge.”.

## Substitution of sections 9 and 10 of Act 47 of 2001

16. The following sections are substituted for sections 9 and 10 of the Judges' Remuneration and Conditions of Employment Act, 2001:

### **"Amount payable to surviving spouse or partner of Constitutional Court judge and judge** 5

9. (1) The surviving spouse or partner of a Constitutional Court judge or judge who on or after the fixed date was or is discharged from active service in terms of section 3 or 4 or who died or dies while performing active service, shall be paid with effect from the first day of the month immediately succeeding the month in which he or she dies an amount— 10

(a) in the case of a surviving spouse or partner of a Constitutional Court judge or judge who was so discharged from active service, equal to two thirds of the salary which was in terms of section 5 payable to that Constitutional Court judge or judge; or 10

(b) in the case of a surviving spouse or partner of a Constitutional Court judge or judge who died while performing active service as a Constitutional Court judge or judge, equal to two thirds of the amount to which that Constitutional Court judge or judge would have been entitled in terms of section 5 if he or she was discharged from active service in terms of section 3(1)(a) or (2)(a) on the date of his or her death; 15 20

Provided that if the Constitutional Court judge or judge is survived by more than one spouse, the amount envisaged in paragraph (a) or (b) shall be divided equally between the spouses concerned, unless the judge concerned determined otherwise in accordance with a regulation made under section 13(1)(cB). 25

(2) The amount payable to the surviving spouse or partner of a Constitutional Court judge or judge in terms of subsection (1) shall be payable with effect from the first day of the month immediately succeeding the day on which he or she died, and shall be payable until the death of such spouse or partner. 30

### **Gratuity payable to surviving spouse or partner of Constitutional Court judge and judge**

17. If a gratuity referred to in section 6 would have been payable to a Constitutional Court judge or judge who died or dies on or after the fixed date had he or she not died but, on the date of his or her death, was discharged from active service in terms of section 3 or 4, there shall— 35

(a) if such Constitutional Court judge or judge is survived by a [surviving] spouse or partner, be payable to such surviving spouse or partner, in addition to any amount payable to that spouse or partner in terms of section 9; or 40

(b) if such Constitutional Court judge or judge is not survived by a spouse or partner, be payable to the estate of such Constitutional Court judge or judge, 45

a gratuity which shall be equal to the amount of the gratuity which would have been so payable to such Constitutional Court judge or judge had he or she not died but was, on the date of his or her death, discharged from active service as aforesaid: Provided that if the Constitutional Court judge or judge is survived by more than one spouse, the gratuity calculated in terms of this section shall be divided equally between the spouses concerned, unless the judge concerned determined otherwise in accordance with a regulation made under section 13(1)(cB)." 50

### Amendment of section 11 of Act 47 of 2001

**18.** Section 11 of the Judges' Remuneration and Conditions of Employment Act, 2001, is amended by the substitution for subsection (7) of the following subsection:

“(7) The surviving spouse or partner of a Constitutional Court judge or judge referred to in subsection (2) or (4) must, with effect from the first day of the month immediately succeeding the month in which he or she dies, be paid an amount equal to two thirds of the salary which was payable to that Constitutional Court judge or judge in terms of subsection (3)(a) or (5)(a), which amount shall be payable until the death of such spouse or partner: Provided that if the Constitutional Court judge or judge is survived by more than one spouse, the amount concerned shall be divided equally between the spouses concerned, unless the judge concerned determined otherwise in accordance with a regulation made under section 13(1)(cB).”.

### Amendment of section 13 of Act 47 of 2001

**19.** Section 13 of the Judges' Remuneration and Conditions of Employment Act, 2001, is amended by the addition in subsection (1) of the following paragraphs:

- “(cA) the requirements for, and the registration of, not more than one person and the deregistration of that person as a partner of a Constitutional Court judge or a judge with the Director-General: Justice and Constitutional Development;
- (cB) the determination, for the purposes of the proviso to section 9(1), 10(1) or 11(7), by a Constitutional Court judge or judge who has more than one spouse, of the division of the amounts referred to in those sections between those spouses in the event of his or her death.”.

### Transitional provisions

**20.** (1) Any remuneration, including any annual salary, salary, allowance or benefit accruing immediately before the commencement of this Act to a magistrate or a judge, is deemed to have been determined in accordance with—

- (a) section 12 of the Magistrates Act, 1993 (Act No. 90 of 1993), as amended by this Act; or
- (b) section 2 of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001), as amended by this Act,

as the case may be.

(2) Any person who, immediately before the commencement of this Act, held an acting appointment as a magistrate in terms of section 9(3) of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944)—

- (a) is deemed to have been so appointed in terms of section 9(3) of that Act, as amended by section 1 of this Act; and
- (b) notwithstanding section 9(5)(a)(i) of that Act, holds that office for the period determined before the commencement of this Act.

### Short title and commencement

**21.** This Act is called the Judicial Officers (Amendment of Conditions of Service) Act, 2003, and comes into operation on 1 November 2003 or on such earlier date as may be fixed by the President by proclamation in the *Gazette*.

## **MEMORANDUM ON THE OBJECTS OF THE JUDICIAL OFFICERS (AMENDMENT OF CONDITIONS OF SERVICE) BILL, 2003**

1. The Bill emanates from the Judicial Officers Amendment Bill [B 72-2001], and comprises various amendments originally proposed in that Bill, as elaborated and complemented upon by the Portfolio Committee on Justice and Constitutional Development (National Assembly).

2. The principal objects of the Bill are to amend—

- (a) the Magistrates' Courts Act, 1944, so as to further regulate the appointment of magistrates in an acting or temporary capacity;
- (b) the Magistrates Act, 1993, so as to—
  - \* further regulate the remuneration of magistrates;
  - \* further regulate the suspension of magistrates; and
  - \* make provision generally for equal benefits to accrue to spouses and heterosexual or same-sex life partners of magistrates;
- (c) the Independent Commission for the Remuneration of Public Office-bearers Act, 1997, so as to extend—
  - \* the definition of "office-bearer" to include judges and magistrates;
  - \* the composition of the Independent Commission for the Remuneration of Public Office-bearers; and
  - \* the functions of the Independent Commission for the Remuneration of Public Office-bearers;
- (d) the Public Finance Management Act, 1999, in order to add the remuneration of magistrates to Schedule 5 thereof; and
- (e) the Judges' Remuneration and Conditions of Employment Act, 2001, so as to—
  - \* further regulate the remuneration of judges; and
  - \* bring the provisions relating to benefits accruing to spouses and heterosexual or same-sex partners of judges in line with a decision of the Constitutional Court.

### **3. DEPARTMENTS/BODIES/PERSONS CONSULTED**

Consultation took place on the Judicial Officers Amendment Bill [B 72-2001], which included public hearings by the Portfolio Committee. The Portfolio Committee also considered written comments of interested parties on the redrafted version of the Bill.

### **4. IMPLICATIONS FOR PROVINCES**

None.

### **5. FINANCIAL IMPLICATIONS FOR STATE**

None.

### **6. PARLIAMENTARY PROCEDURE**

The Judicial Officers Amendment Bill [B 72-2001] was classified as a Bill that must be dealt with in terms of section 75 of the Constitution of the Republic of South Africa (Act No. 108 of 1996).