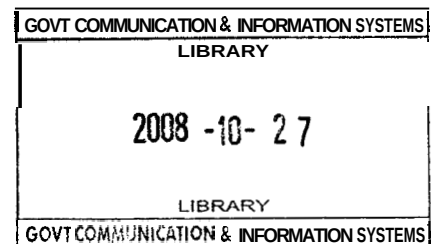


REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
JUDICIAL MATTERS
AMENDMENT BILL**

[B 48—2008]

*(As agreed to by the Portfolio Committee on Justice and
Constitutional Development (National Assembly))*



[B 48A—2008]

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AMENDMENTS APPROVED

JUDICIAL MATTERS AMENDMENT BILL

[B 48—2008]

LONG TITLE

1. On page 2, from the first line, to omit “prohibit the unlawful disposal of the body of a newly born baby” and to substitute “further regulate the concealment of birth of a newly born child”.
2. On page 2, in the sixteenth line, to omit “penalties” and to substitute “fines”.
3. On page 2, in the sixteenth line, after “attorneys”, to insert “and candidate attorneys”.
4. On page 2, from the nineteenth line, to omit “to amend the Intestate Succession Act, **1987**, so as to regulate the position of permanent same-sex life partners;”.
5. On page 2, from the twenty second line, after “so as”, to insert: “to further regulate the appointment of members of the Council for Debt Collectors;”.
6. On page 2, in the twenty fourth line, to omit “and”.
7. On page 2, in the twenty-fifth line, after “collectors;”, to insert “and **to** regulate the recusal of members of committees appointed to deal with disciplinary matters;”.
8. On page 2, from the thirty seventh line, after “penalties;” to insert: “to amend the Criminal Law (Sexual Offences and Related Matters) Amendment Act, **2007**, so as to extend the period within which the National Register for Sex Offenders must be established; to extend the period within which the National Commissioner **of** Correctional Services, the National Commissioner of the South African Police Service and the Director-General: Health must forward particulars in their possession to the Registrar of the National Register for Sex Offenders; and to extend the period within which the Minister of Justice and Constitutional Development must adopt and table the policy framework relating to sexual offences, in Parliament;”.

ENACTING PROVISION

1. On page 3, from the first line, to omit “**BE IT ENACTED** by the Parliament of the Republic of South Africa, as follows:—” and to substitute “Parliament of the Republic of South Africa enacts as follows:—”.

CLAUSE 1

1. On page 3, in line 6; to omit “Unlawful disposal of body of child” and to substitute “Concealment of birth of newly **born** child”.
2. On page 3, in line 8, after “any” to insert “newly born”.
3. On page 3, in line 8, to omit “or not”.

CLAUSE 3

1. On page 3, in line 42, to omit “assistant-landdros” and to substitute “assistent-landdros”.

CLAUSE 4

1. On page 3, in line 53, to omit “such” and to substitute “[such] the”
2. On page **4**, in line 1, to omit “such” and to substitute “[such]”.

CLAUSE 5

1. On page 4, in line 18, to omit “such” and to substitute “[such] that”

CLAUSE 6

1. On page 4, in line **25**, to omit “contemplated” and to substitute “referred to”.
2. On page **4**, in line 41, to omit “such” and to substitute “[such] that”.

CLAUSE 7

1. On page 4, in line 51, to omit “contemplated” and to substitute “referred to”.
2. On page 4, in line 53, to omit “contemplated” and to substitute “provided for”.
3. On page 5, from line 10, to omit “[under section 54 (in this section referred to as the summons)]”, and to substitute “under section 54 [(in this section referred to as the summons)]”.
4. On page 5, in line 21, to omit “such” and to substitute “[such] that”.
5. On page 5, in line 32, to omit “such” and to substitute “[such] that”.
6. On page 6, in line 1, to omit “such” and to substitute “[such] that”.
7. On page 6, in line 3, to omit “such” and to substitute “[such] that”.
8. On page 6, in line 25 to omit “contemplated” and to substitute “provided for”.
9. On page 6, in line 30, to omit “such” and to substitute “[such] that”.
10. On page 6, in line 31, to omit “such” and to substitute “[such] that”.
11. On page 6, in line 32, to omit “such” and to substitute “[such] that”.
12. On page 6, in line 46, to omit “contemplated” and to substitute “provided for”.
13. On page 6, in line 46, to omit “such” and to substitute “[such] that”
14. On page 6, in line 49, to omit “such” and to substitute “[such] that”.

15. On page 6, in line 57, to omit “30 days before publication thereof in the Gazette” and to substitute “for approval”.
16. On page 6, in line 60, to omit “contemplated” and to substitute “referred to”.
17. On page 6, in line 60, after “(3)”, to insert “(a)”.
18. On page 6, in line 61, to omit “contemplated” and to substitute “referred to”.
19. On page 7, in line 3, to omit “contemplated” and to substitute “referred to”.
20. On page 7, in line 5, to omit “such”.
21. On page 7, in line 6, after “submit”, to insert “any”

CLAUSE 8

1. On page 7, from line 16, to omit subclause (1) and to substitute:

(1) If an accused who is alleged to have committed an offence provided for in section 57(2)(a), has appeared in court and is—
 (a) in custody awaiting trial on that charge and not on another more serious charge;
 (b) released on bail under section 59 or 60; or
 (c) released on warning under section 72,
 the public prosecutor may, before the accused has entered a plea and **[if he or she on reasonable grounds believes that a magistrate’s court, on convicting such accused of that offence, will not impose a fine exceeding the amount determined by the Minister from time to time by notice in the Gazette,]** in accordance with the directives issued by the National Director of Public Prosecutions under section 57(11), hand to the accused a written notice, or cause [such] the notice to be delivered to the accused by a peace officer, containing an endorsement in terms of section 57 that the accused may admit his or her guilt in respect of the offence in question and that he or she may pay [a] the stipulated fine in respect thereof of that offence, as determined by the Minister in terms of section 57(2)(b), without appearing in court again.
2. On page 7, in line 36, to omit “such” and to substitute “**[such] the**”.
3. On page 7, in line 37, to omit “contemplated” and to substitute “**[contemplated]** referred to”.
4. On page 7, in line 37, to omit “such” and to substitute “**[such] the**”.
5. On page 7, in line 38, to omit “contemplated” and to substitute “**[contemplated]** referred to”.

CLAUSE 9

- I. Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

Amendment of section 60 of Act 51 of 1977, as substituted by section 3 of Act 75 of 1995 and amended by section 4 of Act 85 of 1997, section 5 of Act 34 of 1998, section 9 of Act 62 of 2000 and section 4 of Act 55 of 2003

9. Section 60 of the Criminal Procedure Act, 1977, is hereby amended by—

(a) the insertion after subsection (2A) of the following subsection:

“(2B) (a) If the court is satisfied that the interests of justice permit the release of an accused on bail as provided for in subsection (1), and if the payment of a sum of money is to be considered as a condition of bail, the court must hold a separate inquiry into the ability of the accused to pay the sum of money being considered or any other appropriate sum.

(b) If, after an inquiry referred to in paragraph (a), it is found that the accused is—

(i) unable to pay any sum of money, the court must consider setting appropriate conditions that do not include an amount of money for the release of the accused on bail or must consider the release of the accused in terms of a guarantee as provided for in subsection (13)(b); or

(ii) able to pay a sum of money, the court must consider setting conditions for the release of the accused on bail and a sum of money which is appropriate in the circumstances.”; and

(b) the substitution for subsection (13) of the following subsection:
“(13) The court releasing an accused on bail in terms of this section may order that the accused—

(a) deposit with the clerk of **[the] any magistrate’s court** or the registrar of **[the] any High Court**, as the case may be, or with a correctional official at the **[prison] correctional facility** where the accused is in custody or with a police official at the place where the accused is in custody, the sum of money determined by the court in question; or

(b) shall furnish a guarantee, with or without sureties, that he or she will pay and forfeit to the State the amount that has been set as bail, or that has been increased or reduced in terms of section 63(1), in circumstances in which the amount would, had it been deposited, have been forfeited to the State.”.

CLAUSE 10

1. On page 8, in line 14, to omit “such” and to substitute “**[such] the**”.
2. On page 8, in line 16, to omit “contemplated” and to substitute “**[contemplated] provided for**”.
3. On page 8, in line 22, to omit “such” and to substitute “**[such] the**”.
4. On page 8, in line 35, to omit “contemplated” and to substitute “provided for”.
5. On page 8, in line 38, to omit “contemplated” and to substitute “referred to”.

6. On page 8, in line 40, to omit “such”.
7. On page 8, in line 41, after “submit”, to insert “any”.

CLAUSE 11

1. On page 8, in line 55, to omit “such a” and to substitute “the”.
2. On page 9, in line 9, to omit “such” and to substitute “that”.
3. On page 9, in line 17, to omit “such a” and to substitute “the”.
4. On page 9, in line 20, to omit “such” and to substitute “*any*”.

CLAUSE 12

1. On page 9, in line 27, after “offence” to insert: “that person”.
2. On page 9, in line 28, to omit “such person”.
3. On page 9, in line 30, to omit “such person”.
4. On page 9, in line 32, to omit “such” and to substitute “that”.
5. On page 9, in line 35 to omit “such” and to substitute “[**such**] that”.
6. On page 9, in line 37, to omit “such a” and to substitute “[**such**] the”.
7. On page 9, in line 37, after “offence”, to insert: “in question”.
8. On page 9, in line 38, to omit “such” and to substitute “[**such**] *any*”.
9. On page 9, in line 40, to omit “such” and to substitute “~~the~~”.
10. On page 9, in line 40, after “offence”, to insert: “in question”.
11. On page 9 in line 44, to omit “contemplated” and to substitute “provided for”.
12. On page 9, in line 45, to omit “such” and to substitute “that”.

CLAUSE 13

1. On page 9, in line 51, to omit “**32**” and to substitute “**38**”

CLAUSE 14

1. On page 10, in line 17, to omit “contemplated” and to substitute “as provided for”.
2. On page 10, in line 30, to omit “such” and to substitute “[**such**] the”

CLAUSE 16

1. On page 10, from line 40, to omit “**and amended by section 21 of Act 105 of 1982, section 15 of Act 26 of 1987 and section 12 of Act 62 of 2000**”.

2. On page 10, in line 44, to omit “contemplated” and to substitute “[**contemplated**]provided for”.
3. On page 10, in line 48, to omit “such” and to substitute “[**such**]the”.
4. On page 11, from line 6, to omit “any such” and to substitute “[**any such**]the”.

CLAUSE 17

1. On page 11, in line 16, after “(5)” to insert “(a)”.
2. On page 11, in line 20, after “*Gazette*”, to insert: “, after consultation with the Chief Justice, the National Director of Public Prosecutions and the Minister for Safety and Security,”.
3. On page 11, after line 21, to insert:

“(b) Any determination made by the Minister under paragraph (a) must be tabled in Parliament for approval.”.

CLAUSE 18

1. On page 11, in line 23, to omit “**section 2 of Act 108 of 1984 and**”.
2. On page 11, in line 28, to omit “such” and to substitute “[**such**]the”.
3. On page 11, in line 29, to omit “such” and to substitute “[**such**]the”.

CLAUSE 19

1. On page 11, in line 56, to omit “such” and to substitute “[**such**]the”.

CLAUSE 20

1. On page 12, in line 17, to omit “such”.
2. On page 12, in line 18, to omit “contemplated” and to substitute “[**contemplated**]referred to”.

CLAUSE 21

1. On page 12, in line 36, to omit “such” and to substitute “these”.

CLAUSE 22

1. Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

Amendment of section 3 of Act 114 of 1998

23. Section 3 of the Debt Collectors Act, 1998, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) [A member of the Council shall hold office for a term, not exceeding three years, determined by the Minister at the time of the member’s appointment: Provided that the Minister may withdraw an appointment of a member at any time and, provided further, that a member may be reappointed at the expiration of his or her term of office.]

(a) A member of the Council, subject to paragraphs *(b)*, *(c)*, *(d)* and *(e)*, holds office for a term, not exceeding three years, determined by the Minister at the time of the member’s appointment.

(b) The Minister may, on good cause shown, withdraw an appointment of a member at any time.

(c) A member of the Council may be re-appointed at the expiry of his or her term of office.

(d) A member of the Council appointed in terms of this section who is a member of a committee referred to in section 15(2), must, notwithstanding his or her subsequent vacation of office as a member of the Council, dispose of the matters he or she is seized with and, for that purpose only, is deemed to hold office as a member of the Council in respect of any period during which he or she is necessarily engaged in connection with the disposal of the matters which were not disposed of when he or she vacated office as a member of the Council.

(e) A member of the Council referred to in paragraph *(d)* who, in the opinion of the Council, is—

(i) unfit to dispose of the matters in question; or

(ii) incapacitated and is not able to dispose of the matters in question due to that incapacity,

may be exempted by the Council from the provisions of paragraph *(d)*.”.

CLAUSE 25

1. On page 14, in line 40, to omit “such” and to substitute “[**such**] the”.
2. On page 14, in line 42, to omit “such” and to substitute “[**such**] that”
3. On page 14, in line 46, to omit “contemplated” and to substitute “provided for”.

CLAUSE 26

1. On page 15, in line 7, to omit “such” and to substitute “[**such**] those”
2. On page 15, after line 10, to insert:

“(d) regarding the recusal of members of committees referred to in section 15(2),”.
3. On page 15, in line 11, to omit “(d)” and to substitute “(e)”.
4. On page 15, in line 13, to omit “(e)” and to substitute “(f)”.

CLAUSE 27

1. On page 15, in line 22, to omit “31 December 2008” and to substitute “28 February 2009”.

CLAUSE 29

1. On page 15, from line 36, to omit “31 December 2008” and to substitute “28 February 2009”.

CLAUSE 30

1. On page 15, in line 43, to omit “contemplated” and to substitute “[**contemplated**] referred to”.
2. On page 15, in line 46, to omit “31 December 2008” and to substitute “28 February 2009”.

CLAUSE 33

1. On page 16, in line 21, to omit “such” and to substitute “[**such**] the”.
2. On page 16, in line 23, to omit “such” and to substitute “the”.

CLAUSE 34

1. On page 16, in line 30, to omit “contemplated” and to substitute “referred to”.
2. On page 16, in line 33, to omit “such” and to substitute “that”.
3. On page 16, in line 38, to omit “said”
4. On page 16, in line 38, after “president”, to insert “in question”.
5. On page 16, in line 42, to omit “contemplated” and to substitute “referred to”.
6. On page 16, in line 46, to omit “such” and to substitute “that”.
7. On page 16, in line 47, to omit “such” and to substitute “the”
8. On page 16, in line 47, after “court” to insert “in question”.

NEW CLAUSES

1. That the following be new clauses:

Amendment of section 42 of Act 32 of 2007

36. Section 42 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A National Register for Sex Offenders containing particulars of persons convicted of any sexual offence against a child or a person who is mentally disabled or are alleged to have committed a sexual offence against a child or a person who is mentally disabled and who have been dealt with in terms of

section 77(6) of 78(6) of the Criminal Procedure Act, 1977, whether committed before or after the commencement of this Chapter and whether committed in or outside the Republic, must, **[within six months after the commencement of this Chapter]** before 30 June 2009, and, in accordance with the provisions of this Chapter and the regulations made thereunder, be established and maintained by the Minister.”.

Amendment of section 50 of Act 32 of 2007

37. Section 50 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, is hereby amended by the substitution for subsections (5), (6) and (7) of the following subsections:

“(5)(a) The National Commissioner of Correctional Services must, in the prescribed manner and **[within]** at least three months [after the commencement of this Chapter] before the establishment of the Register referred to in section 42, forward to the Registrar the particulars referred to in section 49 of every prisoner or former prisoner which he or she has on record, who, at the commencement of this Chapter, is serving a sentence of imprisonment or who has served a sentence of imprisonment as the result of a conviction for a sexual offence against a child, including an offence **[contemplated]** referred to in section 14 of the Sexual Offences Act, 1957 (Act 23 of 1957), and must, where possible, forward the available particulars of every prisoner or former prisoner which he or she has on record, who at the commencement of this Chapter, is serving a sentence of imprisonment or has served a sentence of imprisonment as a result of a conviction for a sexual offence against a person who is mentally disabled, including an offence **[contemplated]** referred to in section 15 of the Sexual Offences Act, 1957, and the Registrar must forthwith enter those particulars in the Register.

(b) The National Commissioner of Correctional Services must, in the prescribed manner and period, inform each serving prisoner whose particulars have been forwarded to the Registrar of the implications thereof.

(6) The National Commissioner of the South African Police Service must, in the prescribed manner and **[within]** at least three months [after the commencement of this Chapter] before the establishment of the Register referred to in section 42, forward to the Registrar all the available particulars in his or her possession referred to in section 49 of every person, who, at the commencement of this Chapter, has a previous conviction for a sexual offence against a child, including, as far as is possible, an offence **[contemplated]** referred to in section 14 of the Sexual Offences Act, 1957, and who has a previous conviction for a sexual offence against a person who is mentally disabled, including, as far as is possible, an offence **[contemplated]** referred to in section 15 of the Sexual Offences Act, 1957, and the Registrar must forthwith enter those particulars in the Register.

(7)(a) The Director-General: Health must, in the prescribed manner and **[within]** at least three months [after the commencement of this Chapter] before the establishment of the Register referred to in section 42, forward to the Registrar the particulars referred to in section 49 of every person, who, at the commencement of this Chapter, is subject to a direction in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977, as the result of an act which constituted a sexual offence against a child or a person who is mentally disabled and the Registrar must forthwith enter those particulars in the Register.

(b) The Director-General: Health must, in the prescribed

manner and period, inform each person referred to in paragraph (a) whose particulars have been forwarded to the Registrar of the implications thereof.”.

Amendment of section 62 of Act 32 of 2007

38. Section 62 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The Minister must—

- (a) **[within one year after the implementation of this Act]** before 31 March 2009, adopt and table the policy framework in Parliament;
- (b) publish the policy framework in the *Gazette* within one month after it has been tabled in Parliament;
- (c) review the policy framework within five years after its publication in the *Gazette* and at least once every five years thereafter; and
- (d) amend the policy framework when required, in which case **[such]** ~~the~~ amendments must be tabled in Parliament and published in the *Gazette*, as **[contemplated]** provided for in paragraph (b).”.

CLAUSE 37

1. On page 17, in line 17, to omit “36” and to substitute “39”.