

REPUBLIC OF SOUTH AFRICA

QUALIFICATION OF LEGAL PRACTITIONERS AMENDMENT BILL

(As introduced)

(MINISTER OF JUSTICE)

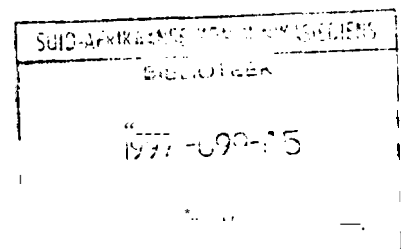
[B 83—97]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP DIE KWALIFIKASIE VAN REGSPRAKTISYNS

(Soos ingedien)

(MINISTER VAN JUSTISIE)



[W 83-97]

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

Words underlined with a solid line indicate insertions in existing enactments.

To amend the Admission of Advocates Act, 1964, the Attorneys Act, 1979, and the Recognition of Foreign Legal Qualifications and Practice Act, 1993, so as to provide for the requirement of a universal legal qualification in order to be admitted and enrolled to practise as an advocate or an attorney; and to provide for matters connected therewith.

Amendment of section 3 of Act 74 of 1964, as amended by section 1 of Act 73 of 1965, section 16 of Act 29 of 1974, section 1 of Act 39 of 1977, section 1 of Act 60 of 1984, section 1 of Act 17 of 1987, section 2 of Act 106 of 1991, section 2 of Act 55 of 1994 and section 1 of Act 33 of 1995

“(aa) has satisfied all the requirements for the degree of *baccalaureus legum* of any 10 university in the Republic after completing a period of study of not less than [five] four years for that degree: or”.

(b) by the insertion in subsection (1) after paragraph (a) of the following 25 paragraph:

- “(aA) two years after he or she has satisfied all the requirements for the degree of bachelor other than the degree of *baccalaureus legum*, of any university in the Republic or after he or she has been admitted to the status of any such degree by any such university and has satisfied all the requirements for the degree of *baccalaureus legum* of any such university after completing a period of study for such degrees of not less than five years in the aggregate;”;
- (c) by the re-numbering of paragraph (aA) of subsection (1) to (aB);
- (d) by the deletion of paragraph (b) of subsection (1);
- (e) by the substitution for paragraph (c) of subsection (1) of the following paragraph:
- “(c) three years after he or she has satisfied all the requirements for any degree, other than an honorary degree, of any university in the Republic **[or has passed an examination conducted by such a university and certified by the Board referred to in paragraph (a) to be equivalent or superior to the examination for such a degree]**, but has not satisfied the requirements of paragraph (a), (aA) or **[(b)] @&”;**
- (f) by the substitution for paragraph (cA) of subsection (1) of the following paragraph:
- “(cA) three years after he or she has satisfied all the requirements for any degree other than an honorary degree, or for other such degrees, of a university in a country designated under paragraph **[(aA)](aB)**, and in respect of which degree or degrees a university in the Republic has certified that the syllabus of instruction and the standard of training thereof are equivalent or superior to those required for a corresponding degree of such university in the Republic, **[or after he has passed an examination or examinations conducted by a university in a country so designated and certified by the Board referred to in paragraph (a) to be equivalent or superior to the examination for a degree referred to in paragraph (c)]** but has not satisfied the requirements of paragraph (a), (aA), **[(b)](aB)** or (c);”;
- (g) by the substitution in subsection (1A) for the words preceding paragraph (a) of the following words:
- “Any person intending to be admitted as an attorney and who has not served articles of clerkship in terms of subsection (1), and has satisfied all the requirements for a degree referred to in paragraph (a) or **[(aA)](aB)** of subsection (1) **[or has become entitled to be admitted as an advocate of the Supreme Court]**, or the degrees referred to in paragraph (aA) of that subsection, shall serve under articles of clerkship for a period of one year and shall in addition thereto—”.

Amendment of section 2A of Act 53 of 1979, as inserted by section 3 of Act 115 of 1993

3. Section 2A of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“Any person intending to be admitted as an attorney and who has satisfied all of the requirements for a degree referred to in paragraph (a) or **[(aA)](aB)** of section 2(1) **[or who has become entitled to be admitted as an advocate of the Supreme Court]**, or the degrees referred to in paragraph (aA) of that section, and who—”.

Amendment of section 4 of Act 53 of 1979, as amended by section 3 of Act 108 of 1984

4. Section 4 of the principal Act is hereby amended by the substitution for subparagraph (ii) of paragraph (b) of the following subparagraph:

“(ii) satisfied all the requirements for a degree, other than an honorary degree, at any university in the Republic, or for a degree or degrees referred to in paragraph **[(aA)](aB)** or (cA) of section 2(1), in respect of which a certification in accordance with those respective paragraphs has been done.”.

Amendment of section 4A of Act 53 of 1979, as inserted by section 4 of Act 115 of 1993

5. Section 4A of the principal Act is hereby amended by the substitution for subparagraph (ii) of paragraph (b) of the following subparagraph:

- “(ii) has satisfied all the requirements for a degree referred to in paragraphs (a) or 5
[(aA)] (aB) of section 2(1) **[or has become entitled to be admitted as an
advocate of the Supreme Court], or the degrees referred to in paragraph
(aA) of that section; and”.**

Amendment of section 8 of Act 53 of 1979, as substituted by section 6 of Act 87 of 1989 and amended by section 8 of Act 115 of 1993

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

“(1) Any candidate attorney who[—

- (a) **was admitted as an advocate by any division of the Supreme Court or is entitled to be so admitted; or**

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- (b)] has satisfied all the requirements for the degree referred to in paragraph (a) of section 2(1), or for the degrees referred to in paragraph (aA) of that section, or for a degree or degrees referred to in paragraph [(aA)] (aB) of that section in respect of which a certification in accordance with that paragraph has **been** done,

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shall be entitled to appear in any court. other than any division of the Supreme Court. and before any board, tribunal or similar institution in or before which his or her principal is entitled to appear. instead of and on behalf of such principal, who shall be entitled to charge the fees for such appearances as if he or she himself or herself had appeared: Provided that such a candidate attorney shall not be entitled 25 to appear in a court of a regional division established under section 2 of the Magistrates' Courts Act, 1944 (Act No.32 of 1944), or a Divorce Court established under section 10 of the Black Administration Act, 1927, Amendment Act. 1929 (Act No. 9 of 1929). unless he **[was so admitted as an advocate or is entitled to be so admitted and] or she—**

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- (i) has previously practised as an advocate for at least one year; or
(ii) has served for at least one year under his or her articles or contract of service;
or
(iii) has at least one year's experience as a state advocate, state prosecutor or magistrate.”.

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Amendment of section 11 of Act 53 of 1979, as substituted by section 10 of Act 115 of 1993

7. Section 11 of the principal Act is hereby amended—

- (a) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

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“If a person who has served any period under articles of clerkship which were cancelled or abandoned before completion thereof, has satisfied all the requirements for a degree referred to in paragraph (a) or (c) of section 2(1). or the degrees referred to in paragraph (aA) of that section, or a degree or degrees referred to in paragraph [(aA)] (aB) or (cA) of that 45 section in respect of which a certification in accordance with those respective paragraphs has been done. **[or is entitled to be admitted as an advocate,]** the court may. on the application of such person and subject to such conditions as the court may impose, order—”;

- (b) by the substitution for subparagraph (i) of paragraph (a) of subsection (3) of the following subparagraph:

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“(i) after he or she satisfied such requirements **[or became so entitled]:** and”;

- (c) by the substitution for paragraph (b) of subsection (3) of the following paragraph:

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“(b) if the period served by such person under the first-mentioned articles of clerkship is equal to or exceeds the period which he or she would, at the time of the making of the application. be required to

serve under articles of clerkship in terms of this Act, that the period so served be considered as adequate service under articles for the purposes of this Act, and thereafter any period so served by such person shall be deemed to have been served after and under articles entered into after he or she satisfied such requirements **[or became so entitled]**.”.

Amendment of section 13 of Act 53 of 1979, as amended by section 2 of Act 76 of 1980, section 1 of Act 60 of 1982, section 2 of Act 56 of 1983, section 6 of Act 108 of 1984, section 10 of Act 87 of 1989 and section 12 of Act 115 of 1993

8. Section 13 of the principal Act is hereby amended— 1.0

(a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) shall, if a university in South Africa which has a law faculty has certified that an examination which he or she has passed in any country or territory is, in so far as it relates to the syllabus of instruction and the standard of 15 training, together with a supplementary examination (if any) required by that university, the requirements of which have been satisfied by that person, equivalent or superior to the examination which is required for the degree mentioned in section 2(1)(a) **[and which has been recognized by the Board for the Recognition of Examinations in Law 20 established by section 16 of the Universities Act, 1955 (Act No. 61 of 1955),]** be exempted from satisfying the requirements for the degree mentioned in the said section 2(1)(a);”;

(b) by the substitution for subsection (3) of the following subsection:

“(3) The court may, on the application of a candidate attorney who has 25 satisfied all the requirements for a degree referred to in paragraph (a) or (c) of section 2(1), or for the degrees referred to in paragraph (aA) of that section, or for a degree or degrees referred to in paragraph [(aA)] (aB) or (cA) of that section in respect of which a certification in accordance with those respective paragraphs has been done, **[or is entitled to be 30 admitted as an advocate,]** and subject to such conditions as the court may impose, order that the whole or any part of the period served by that candidate attorney under articles before he or she satisfied such requirements **[or became so entitled]**, shall, for the purpose of his or her admission and enrolment as an attorney, be regarded as having been 35 served after and under articles entered into after he or she satisfied such requirements **[or became so entitled]**.”.

Amendment of section 15 of Act 53 of 1979, as substituted by section 7 of Act 108 of 1984 and amended by section 11 of Act 87 of 1989, section 14 of Act 115 of 1993 and section 3 of Act 33 of 1995

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9. Section 15 of the principal Act is hereby amended by the substitution for items (aa), (bb) and (cc) of subparagraph (iii) of paragraph (b) of subsection (1) of the following items, respectively:

“(aa) has satisfied all the requirements for **[a] the degree referred to in [section 2(1)(a)] paragraph (a) of section 2(1), or for the degrees referred to in 45 paragraph (aA) of that section,** after pursuing for that degree or degrees a course of study referred to in paragraph (a) or (aA) of that section, as the case may be; or

(bb) has satisfied all the requirements for a degree or degrees referred to in paragraph [(aA)] (aB) of section 2(1) in respect of which a certification in 50 accordance with that paragraph has been done; or

(cc) has previously been admitted as an advocate **[or is entitled to be so admitted]**.”.

Amendment of section 6 of Act 114 of 1993

10. Section 6 of the Recognition of Foreign Legal Qualifications and Practice Act,

1993 (Act No. 114 of 1993), is hereby amended by the substitution in subsection (2) for the words following upon item (*bb*) of subparagraph (i) of paragraph (a) of the following words:

“correspond with the syllabus and standard of training which are normally required by a university in the Republic for the completion of a degree referred to in section 5 3(2)(a)(i) of the Admission of Advocates Act, 1964 (Act No. 74 of 1964). [**or**]@ section 2(1)(a) of the Attorneys Act, 1979 (Act No. 53 of 1979)[, **as the case may be**]; and”.

Transitional provisions

11. (1) Any person who at the commencement of this Act— 10

(a) was registered as a student at any university in the Republic with a view to obtaining the degree of *baccalaureus procurationis* and has satisfied the requirements for the said degree on or before 31 December 2002; or

(b) has satisfied the requirements for the degree of *baccalaureus procurationis*, shall be entitled to be admitted and enrolled as an attorney as if this Act had not been 15 passed.

(2) Nothing in this Act contained shall prejudice any right or privilege, including the right to appear in or before any court of law, tribunal or other body, vested in any person who at the commencement of this Act—

(a) was duly admitted and enrolled— 20

(i) as an attorney in terms of the Attorneys Act, 1979 (Act No. 53 of 1979);

or

(ii) as an advocate in terms of the Admission of Advocates Act, 1964 (Act No. 74 of 1964); or

(b) enjoyed such right or privilege on account of being in possession of any 25 qualification in law, whether prescribed by law or not.

Short title

12. This Act shall be called the Qualification of Legal Practitioners Amendment Act, 1997.

MEMORANDUM ON THE OBJECTS OF THE QUALIFICATION OF LEGAL PRACTITIONERS AMENDMENT BILL, 1997

1. At a Legal Education Forum held on 26 and 27 November 1996 and attended by the deans of all the law faculties in the Republic, as well as representatives of the legal professions, it was unanimously decided that there is a need for a uniform four-year legal qualification, to be named a *baccalaureus legum* degree, which will enable a person to enter any branch of the legal profession. The Bill under discussion aims to achieve this goal. All relevant stake-holders have since been approached in order to test the support for this proposal, with virtually all in favour thereof.

2. The only legal professions in respect of which certain minimum qualifications in law, as a prerequisite for admission into that profession, are statutorily prescribed, are the attorneys' profession (see the provisions of the Attorneys Act, 1979 (Act 53 of 1979)), the advocates' profession (see the provisions of the Admission of Advocates Act, 1964 (Act 74 of 1964)) and the appointment of a magistrate of a regional division (see section 9(b) of the Magistrates' Courts Act, 1944 (Act 32 of 1944)). In order to give effect to the decision taken at the Legal Education Forum, it is therefore necessary to amend certain of the provisions of the Attorneys Act, 1979, and the Admission of Advocates Act, 1964. These consequential amendments are reflected in clauses 1 to 10 of the Bill. No amendments to the Magistrates' Courts Act, 1944, are deemed necessary.

3. Besides the consequential amendments to the above-mentioned laws, it is considered essential that provision be made for transitional provisions which are aimed at the protection of persons with certain vested rights. For this purpose clause 11 is included in the Bill. This clause provides for the following protection:

- 3.1 The protection of persons who are currently engaged in studies for a degree of *baccalaureus procurationis* and who are aspiring to become attorneys, but who will not be able to complete their studies before the Bill under discussion becomes law (see clause 11(1)(a) of the Bill). These persons are given time until the year 2003 to complete their studies. In doing so, they will qualify (for purposes of the prescribed qualification in law) for admission as attorneys, as if the Bill was never passed. They will thus qualify for admission even though they will not be in possession of a *baccalaureus legum* degree, which will then be prescribed for admission into the attorneys' profession. It is not necessary to protect persons who are currently studying to become advocates, as the prescribed qualification for admission into the advocates' profession will remain the same, namely the degree of *baccalaureus legum*.
- 3.2 The protection of persons who, at the time when the Bill becomes law, are in possession of a degree of *baccalaureus procurationis*, but who have not been admitted to practise as attorneys (see clause 11(1)(b) of the Bill). Such persons would qualify indefinitely to be admitted as attorneys on the strength of their qualification in law (*baccalaureus procurationis*), even though he or she will not be able to comply with the qualification in law that will then be prescribed in terms of the Attorneys Act, 1979, namely a degree of *baccalaureus legum*. Again it will not be necessary to provide for similar protection for persons wanting to be admitted as advocates, as the prescribed legal qualification will remain the same.
- 3.3 The protection of persons who are already admitted and enrolled to practise as attorneys or advocates, at the time when the Bill becomes law (see clause 11(2)(a) of the Bill). This protection is deemed necessary in order to ensure that the change in the prescribed legal qualification does not in any way prejudice or affect any of the existing rights or privileges of these persons. Similarly a general protective measure is included in order to protect any existing right or privilege of any person who holds a position on account of any qualification in law (see clause 11(2)(b) of the Bill).

Interested parties consulted

1. The Chief Justice of South Africa
2. The Judicial Service Commission
3. The Judges President of the High Courts of South Africa
4. The President of the Constitutional Court
5. The Attorneys-General
6. The Regional Court Presidents
7. The Chief Magistrates
8. The Regional Representatives of the Department of Justice
9. The Association of Law Societies of the RSA
10. The Legal Resources Centre
11. Lawyers for Human Rights
12. The Magistrates Commission
13. The Office for Serious Economic Offences
14. The Association of Trust Companies in South Africa
15. The South African Insurance Association
16. Association of Advocates
17. Road Accident Fund
18. South African Institute for Chartered Accountants
19. The Chief Family Advocate
20. Justice College
21. The Chief Master of the High Court
22. The General Council of the Bar of South Africa
23. Black Lawyers Association
24. National Association of Democratic Lawyers
25. The State Attorneys
26. The Deans of all Faculties of Law
27. Department of Private Law. University of Cape Town
28. Association of Regional Magistrates of South Africa
29. Independent Association of Advocates of South Africa
30. Black Advocates Forum
31. Corporate Lawyers Association of South Africa
32. Business Practices Committee
33. The Society of University Teachers of Law
34. The Clearing Bankers Association of South Africa
35. The Association of Insolvency Practitioners
36. Business South Africa
37. Vends Magistrates' Association
38. Lebowa Magistrates' Association
39. Public Service Association of South Africa
40. Public Service League of South Africa
41. Society of State Advocates of South Africa
42. Public Service Union
43. Gazankulu Magistrates' Association
44. Public Service Lawyers Association
45. Institute of Public Servants
46. Public Prosecutors Association of South Africa
47. Transkei Public Servants Association

In the opinion of the Department and the State Law Advisers this Bill should be dealt with in terms of section 75 of the Constitution of the Republic of South Africa, 1996.