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South Africa

## Sheriffs Act, 1986

Act 90 of 1986

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# Sheriffs Act, 1986

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# South Africa

## Sheriffs Act, 1986

### Act 90 of 1986

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(English text signed by the State President.)

## ACT

**To provide for the appointment of sheriffs, the establishment of a Board for Sheriffs and a Fidelity Fund for Sheriffs, the regulation of the conduct of sheriffs, and matters connected therewith.**

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

### 1. Definitions

In this Act, unless the context indicates otherwise—

"**acting sheriff**" means an acting sheriff appointed under section 5(1);

"**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);

"**banking institution**" means an institution registered as a bank in terms of the Banks Act, 1965 (Act No. 23 of 1965);

"**Board**" means the Board for Sheriffs established by section 7, and includes, for the purposes of Chapter IV (excluding section 52), a disciplinary committee;

"**building society**" means a permanent society as defined in section 1 of the Mutual Building Societies Act, 1965 (Act No. 24 of 1965), or a building society as defined in section 1 of the Building Societies Act, 1986;

"**deputy sheriff**" means a deputy sheriff appointed under section 6(1);

"**disciplinary committee**" means a disciplinary committee established under section 18(1);

"**fidelity fund certificate**" means a fidelity fund certificate referred to in section 32(1);

"**financial year**" means the financial year of the Board referred to in section 21(1);

"**Fund**" means the Fidelity Fund for Sheriffs established by section 26(1);

"**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, 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);

"**Minister**" means the Minister of Justice;

"**prescribed**" means prescribed by regulation;

"**regulation**" means a regulation made under section 62(1);

"**sheriff**" means a sheriff appointed under section 2(1), and includes, for the purposes of Chapter II, III, IV or V, an acting sheriff;

"**superior court**" means a provincial or local division of the Supreme Court of South Africa;

"**this Act**" includes a regulation.

## **Chapter I** **Appointment of sheriffs and other persons**

### **2. Appointment of sheriffs**

- (1) Subject to the provisions of subsection (2), the Minister may appoint in the prescribed manner for a lower or superior court a person as sheriff of that court.
- (2) The same person may be appointed as sheriff of both a lower and a superior court and two or more persons may be appointed as sheriffs of the same court.

### **3. Performance of functions by sheriff**

- (1) Subject to the provisions of this section, a sheriff shall perform within the area of jurisdiction of the lower or superior court for which he has been appointed the functions assigned by or under any law to a sheriff of that court.
- (2) The Minister may describe one or more areas within the area of jurisdiction of a lower or superior court and allocate any such area to a sheriff of that court.
- (3) A sheriff to whom an area has been allocated under subsection (2), shall perform his functions within that area.
- (4) The Minister may at any time alter the description of an area referred to in subsection (2).

### **4. Term of office of sheriffs**

- (1) A sheriff shall hold office, subject to the other provisions of this section, until the date on which he attains the age of 65 years, but may be reappointed for such period as the Minister may after consultation with the Board determine.
- (2) A sheriff shall vacate his office—
  - (a) if he is removed from office under subsection (3) or section 49(2); or
  - (b) if he is deemed to be removed from office in terms of section 51.
- (3) The Minister may at any time after consultation with the Board remove a sheriff from his office—
  - (a) if the fidelity fund certificate of the sheriff has been cancelled under section 34(1) or 49; or
  - (b) if in the opinion of the Minister reasons exist for doing so in the interest of the maintenance of effective and reliable service to the courts and the public.
- (4) A sheriff may resign by giving the Minister three months' notice in writing of his resignation.

## 5. Appointment of acting sheriffs

- (1) When a sheriff—
- (a) is unable to perform his functions;
  - (b) is prohibited by any court of law from performing any particular function in connection with a case; or
  - (c) ceases to hold office,
- the Minister may appoint a person to act, subject to the provisions of section 30, as sheriff—
- (i) in the circumstances referred to in paragraph (a), until the sheriff is able to resume his functions;
  - (ii) in the circumstances referred to in paragraph (b), in order to perform the particular function; or
  - (iii) in the circumstances referred to in paragraph (c), until a successor is appointed.
- (1A) The Minister may for the purposes of a particular suit appoint a person to act as sheriff—
- (a) if objection is made against the service or execution of any process by the sheriff on the grounds that he has an interest in the suit or that he is related to a party to the suit;
  - (b) if the Minister for any other reason considers it necessary.
- [subsection (1A) inserted by section 1 of Act 3 of 1991]*
- (2) The provisions of section 4(2) and (3) shall apply *mutatis mutandis* in respect of an acting sheriff.

## 6. Appointment of deputy sheriffs and employees

- (1) Any sheriff or acting sheriff may with the approval of the Board and on such conditions as the Board may determine appoint one or more deputy sheriffs, for whom he shall be responsible.
- (2) A deputy sheriff may, subject to the directions of the sheriff or acting sheriff appointing him, perform the functions of any such sheriff or acting sheriff.
- (3) Any sheriff or acting sheriff may appoint such other persons in his employ as he may consider necessary.

## Chapter II Board for Sheriffs

### 7. Establishment of Board for Sheriffs

There is hereby established a board to be known as the Board for Sheriffs and which shall be a juristic person.

### 8. Objects of Board

The objects of the Board shall be the maintenance of the esteem of, the enhancement of the status of, and the improvement of the standard of training of and functions performed by, sheriffs.

### 9. Constitution of Board

- (1) The Board shall consist of 12 members appointed by the Minister.

- (2) Subject to the provisions of section 10, the Minister shall appoint the following persons as members of the Board, namely—
- (a) nine sheriffs chosen by the Minister from among at least twelve sheriffs whose names have been submitted for that purpose by an association which in the opinion of the Minister represents sheriffs;
  - (b) three other persons who in the opinion of the Minister are able to assist the Board in achieving its objects.
- (3) (a) Whenever necessary the Director-General: Justice shall in writing request the association referred to in subsection (2)(a) to submit to him the names as contemplated in that subsection within the period specified in the request.
- (b) If such association—
- (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 as suitable.
- (4) Whenever necessary the Board shall elect from among its members a chairman and vice-chairman of the Board, and the chairman and vice-chairman shall hold office for such period as the Board may determine at the time of their election.
- (5) The vice-chairman may, if the chairman is absent or for any reason unable to act as chairman, perform the functions of the chairman.

## **10. Persons not qualified to be members of Board**

No person shall be appointed as a member of the Board if—

- (a) he is not a South African citizen permanently resident in the Republic;
- (b) he is an unrehabilitated insolvent;
- (c) he has been dismissed from a position of trust by reason of improper conduct involving a breach of such trust;
- (d) he has been convicted of any offence involving dishonesty or of any other offence for which he has been sentenced to imprisonment without the option of a fine; or
- (e) he has been found guilty of improper conduct in accordance with Chapter IV.

## **11. Term of office of members of Board and filling of vacancies**

- (1) Every member of the Board appointed in terms of section 9(2) shall be appointed for a period of three years, but shall, after the expiration of the period for which he was appointed, continue to hold office for a further period, but not exceeding three months, until his successor has been appointed.
- (2) (a) If a member of the Board appointed in terms of paragraph (a) of section 9(2) for any reason ceases to hold office, the Minister may, after consultation with the Board and subject to section 10, appoint a sheriff in his place for the unexpired period of his term of office.
- (b) If a member of the Board appointed in terms of paragraph (b) of section 9(2) for any reason ceases to hold office, the Minister may, subject to that paragraph and section 10, appoint a person in his place for the unexpired period of his term of office.

- (3) Any person whose term of office as a member of the Board has expired, shall be eligible for reappointment.

## 12. Vacating of office by member of Board

- (1) A member of the Board shall vacate his office—
- (a) if he becomes subject to any disability mentioned in section 10;
  - (b) if he becomes of unsound mind;
  - (c) if he has been absent from more than two consecutive meetings of the Board without leave of the chairman; or
  - (d) if he has been appointed in terms of section 9(2)(a) or 11(2)(a) and ceases to hold office as sheriff.
- (2) The Minister may at any time remove a member of the Board from his office if sound reasons exist for doing so.

## 13. Allowances to members of Board

A member of the Board who is not in the full-time employment of the State may be paid from the funds of the Board such allowances as the Board may determine in general or in any particular case.

## 14. Meetings of Board

- (1) The Board shall meet for the first time at the time and place determined by the Minister and thereafter at least once in every year at such times and places as the chairman may determine.
- (2) The chairman may at any time of his own accord or shall at the written request of not fewer than five members convene a special meeting of the Board.
- (3) Seven members of the Board shall form a quorum for a meeting of the Board.
- (4) If both the chairman and the vice-chairman are absent from a meeting of the Board, the members present shall from among their number elect a person to preside at that meeting.
- (5) The decision of a majority of the members of the Board present at a meeting of the Board shall constitute a decision of the Board, and in the event of an equality of votes on any matter, the person presiding at the meeting in question shall have a casting vote in addition to his deliberative vote.
- (6) No decision taken by the Board or act performed under authority of the Board shall be invalid merely by reason of a vacancy on the Board or of the fact that any person not entitled to sit as a member of the Board, sat as such a member at the time when the decision was taken or the act was authorized, if the decision was taken or the act was authorized by the majority of the members of the Board present at the time and who were entitled to sit as members of the Board.

## 15. Appointment of staff

The Board may appoint such persons as it may consider necessary for the work incidental to the performance of its functions, on such conditions and at such remuneration as it may determine.

## 16. General functions of Board

In addition to the other functions assigned to the Board by this Act, the Board may—

- (a) establish committees to advise it on any matter in respect of which a function is assigned to it;

- (b) appoint with the approval of the Minister any person other than a member of the Board as a member of any committee referred to in paragraph (a), and determine the allowances payable to that person;
- (c) subject to the provisions of this Act, determine the manner in which meetings of any committee of the Board shall be convened, the procedure and quorum at those meetings and the manner in which minutes of those meetings shall be kept;
- (d) hire, buy or otherwise acquire such movable or immovable property as it may consider necessary for the performance of its functions and let, sell or otherwise dispose of property so acquired;
- (e) from time to time raise money by way of loan for the purpose of performing its functions;
- (f) hypothecate its immovable property as security for a loan referred to in paragraph (e);
- (g) with a view to promoting its objects, lend money against such security as it may consider adequate;
- (h) with the approval of the Minister, donate money or other property;
- (i) by means of insurance provide for cover for the Board against any loss, damage, risk or liability which it may suffer or incur;
- (j) arrange for—
  - (i) cover, by means of insurance, for sheriffs against any loss, damage, risk or liability which they may suffer or incur;
  - (ii) the establishment of a medical aid or pension scheme for sheriffs;
- (k) with the approval of the Minister, frame a code of conduct which shall be complied with by sheriffs;
- (l) in general perform such acts as may be necessary or expedient for the achievement of its objects.

## 17. Executive committee

- (1) The Board may establish an executive committee of the Board consisting of the chairman, the vice-chairman and such other members of the Board as the Board may determine.
- (2) The chairman of the Board shall be the chairman of the executive committee.
- (3) The executive committee may perform the functions of the Board during the periods between meetings of the Board, but shall not have the power—
  - (a) except in so far as the Board directs otherwise, to set aside or vary any decision of the Board; or
  - (b) to consider an appeal in terms of section 18(4)(b).
- (4) The Board may set aside or vary any decision of the executive committee.

## 18. Disciplinary committees

- (1) The Board may establish one or more disciplinary committees, each consisting of at least three members of the Board.
- (2) One of the members of a disciplinary committee shall be designated by the Board as chairman of the disciplinary committee.
- (3) 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.
- (4) (a) Any sheriff aggrieved by a finding made or penalty imposed by a disciplinary committee in the performance of its functions in accordance with Chapter IV, may in the prescribed

manner and within the prescribed period after the disciplinary committee has made the finding or imposed the penalty, appeal to the Board against the finding or penalty.

- (b) The Board shall consider in the prescribed manner an appeal lodged with it in accordance with paragraph (a), and may—
  - (i) set aside the finding or penalty appealed against or substitute therefor any other finding or penalty which the disciplinary committee could have made or imposed; or
  - (ii) confirm the finding or penalty appealed against.

## **19. Annual levies payable to Board**

- (1) Every sheriff shall annually on or before the prescribed date pay the prescribed levy to the Board.
- (2) Different levies may be prescribed under subsection (1) in respect of different categories of acting sheriffs.

## **20. Funds of Board**

- (1) The funds of the Board shall consist of—
  - (a) the levies paid to the Board in terms of section 19(1);
  - (b) interest derived from investments;
  - (c) moneys which may accrue to the Board from any other source.
- (2) The Board shall utilize its funds to defray the expenses incurred by the Board in the performance of its functions in accordance with this Act, but shall utilize any money or other property donated or bequeathed to the Board in accordance with the conditions of the donation or bequest concerned.
- (3) The Board shall open an account with a banking institution or building society, and shall deposit in that account the moneys received by it in terms of this Chapter.
- (4) The Board may invest any money received in terms of this Chapter and not required for immediate use by means of deposits with the Public Investment Commissioners, a banking institution or a building society or in such other manner as the Minister may with the concurrence of the Minister of Finance determine.

## **21. Financial year, records and annual financial statements of Board**

- (1) The financial year of the Board shall terminate on the last day of February in each year.
- (2) The Board shall—
  - (a) cause records to be kept of moneys received or expended by it, and of its assets, liabilities and financial transactions;
  - (b) as soon as possible, but not later than three months after the end of each financial year, cause annual financial statements to be prepared showing, with the appropriate particulars, moneys received and expenditure incurred by it during, and its assets and liabilities at the end of, such financial year.
- (3) The records and annual financial statements referred to in subsection (2) shall be audited by an auditor appointed by the Board.

## Chapter III

### Position of trust of sheriffs

#### Accounts for trust moneys

##### **22. Accounts for trust moneys**

- (1) Every sheriff shall open and keep a separate trust account, which shall contain a reference to this subsection, with a banking institution or building society, and shall forthwith deposit therein the moneys held or received by him on account of any person.
- (2)
  - (a) A sheriff may invest in a separate savings or other interest-bearing account opened by him with a banking institution or building society any money deposited in his trust account and not immediately required for any particular purpose.
  - (b) A savings or other interest-bearing account referred to in paragraph (a) shall contain a reference to this subsection.
- (3) The amount standing to the credit of an account opened by a sheriff in terms of subsection (1) or (2), shall not form part of the assets of that sheriff or, if he dies or becomes insolvent, of his deceased or insolvent estate.
- (4) Interest on moneys 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.

*[subsection (4) substituted by section 25 of [Act 139 of 1992](#)]*

##### **23. Book-keeping and auditing of accounts**

- (1) A sheriff shall, subject to the provisions of subsection (4)–
  - (a) keep separate record of moneys deposited or invested by him in, and payments made by him out of, an account mentioned in section 22(1) or (2);
  - (b) cause the records referred to in paragraph (a) to be audited by an auditor at least once annually.

*[subsection (1) substituted by section 2(a) of [Act 3 of 1991](#)]*

- (2) An auditor who has performed an audit in terms of subsection (1)(b) shall as soon as may be practicable after completion of the audit furnish the Board with a report on his findings on the prescribed form.
- (3) If in the opinion of the Board sound reasons exist for doing so, it may by way of a notice in writing request any sheriff to submit to the Board within the period specified in the notice, which period shall not be less than 30 days after the date of the notice, such auditor's report, statement or other document relating to an account mentioned in section 22(1) or (2) as the Board may require.
- (4) The Board may, on such conditions as it may determine, exempt a sheriff from the provisions of subsection (1)(b) of this section.

*[subsection (4) added by section 2(b) of [Act 3 of 1991](#)]*

##### **24. Power of court in respect of accounts**

- (1) If in the opinion of a competent superior court sound reasons exist for doing so, that court may upon application of the Board or any person having a direct financial interest in an account

mentioned in section 22(1) or (2), prohibit the sheriff concerned from dealing with the said account in any manner.

- (2) If a court prohibits a sheriff under subsection (1) from dealing with an account in any manner, the court may appoint a *curator bonis* to control and administer that account on behalf of the sheriff.

## **25. Winding-up of accounts**

When a sheriff ceases to hold office, an account opened by him in terms of section 22(1) or (2) shall be wound up in the prescribed manner, and the amount standing to the credit of the account shall be paid out in the prescribed manner to the persons entitled to it.

## **Fidelity Fund for sheriffs**

### **26. Establishment and control of Fidelity Fund for sheriffs**

- (1) There is hereby established a fund to be known as the Fidelity Fund for sheriffs, and into which shall be paid—
  - (a) interest paid to the Fund in terms of section 22(4);
  - (b) the prescribed contribution referred to in section 30(b)(ii) or 31(2);
  - (c) interest derived from the investment of moneys in the Fund;
  - (d) moneys recovered on behalf of the Fund by virtue of the provisions of section 39;
  - (e) moneys mentioned in section 41(2);
  - (f) moneys which may accrue to the Board from any other source.
- (2) The Fund shall be controlled and managed by the Board, which shall utilize the moneys in the Fund in accordance with this Chapter.
- (3) (a) Moneys forming part of the Fund shall, until spent or invested in accordance with this Chapter, be paid into and kept in an account opened with a banking institution or building society.
- (b) Such account shall be called the Fidelity Fund Account for sheriffs.

### **27. Utilization of Fund**

- (1) Subject to the provisions of this Chapter, the moneys in the Fund shall be utilized for—
  - (a) the settlement of claims admitted against the Fund or judgments, including costs, obtained against the Fund;
  - (b) any contribution in the discretion of the Board in respect of expenses incurred by a claimant to verify his claim;
  - (c) legal expenses incurred in defending an action against the Board in respect of the Fund or otherwise incurred in relation to the Fund;
  - (d) premiums payable in respect of insurance agreements entered into by the Board under section 29(1);
  - (e) the expenses involved in the control and management of the Fund;
  - (f) interest on and redemption of loans negotiated by the Board on behalf of the Fund;
  - (g) moneys required or permitted to be paid out of the Fund in accordance with this Chapter.

- (2) Any money in the Fund not immediately required for the purposes of the Fund shall be invested in the prescribed manner.

## 28. Auditing of records and statements of Fund

- (1) The Board shall—
- (a) cause records to be kept of moneys received in, and payments made out of, the Fund;
  - (b) as soon as possible, but not later than three months after the end of each financial year, cause annual financial statements to be prepared showing, with the appropriate particulars, moneys received and expenditure incurred on behalf of the Fund during, and the financial state of affairs of the Fund at the end of, such financial year.
- (2) The records and annual financial statements referred to in subsection (1) shall be audited by an auditor appointed by the Board.

## 29. Insurance agreements in order to indemnify Fund

- (1) The Board may at its discretion enter into an agreement with an insurer who carries on an insurance business in the Republic whereby the Fund will be indemnified, to the extent and in the manner provided in the agreement, against liability for a contingency referred to in section 35.
- (2) An agreement referred to in subsection (1) shall be entered into in respect of sheriffs generally.

## Fidelity fund certificates

## 30. Prohibition of performance of functions of sheriff in certain circumstances

- (1) A sheriff or his deputy sheriff shall not perform any function assigned to a sheriff by or under any law unless—
- (a) the sheriff is the holder of a fidelity fund certificate; or
  - (b) 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.

*[subsection (1), previously unnumbered, numbered by section 3 of Act 3 of 1991]*

- (2) 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) of this section.

*[subsection (2) added by section 3 of Act 3 of 1991]*

## 31. Applications for fidelity fund certificates

- (1) A sheriff may apply on the prescribed form to the Board for a fidelity fund certificate.
- (2) An application referred to in subsection (1) shall be accompanied by the prescribed contribution.
- (3) A sheriff applying in terms of subsection (1) for a fidelity fund certificate shall furnish such additional particulars in connection with his application as the Board may require.

## 32. Issue of fidelity fund certificates

- (1) If the Board is satisfied, after consideration of an application referred to in section 31, that the sheriff is, having regard to the provisions of section 33, a suitable person to hold a fidelity fund certificate, the Board shall issue to him a fidelity fund certificate on the prescribed form.

- (2) A fidelity fund certificate shall be valid until 31 December of the year in respect of which it has been issued.
- (3) Notwithstanding the provisions of subsection (2), the Board may at any time issue to an acting sheriff a fidelity fund certificate having a period of validity of not less than one month and not more than six months.

### **33. Disqualifications relating to fidelity fund certificates**

- (1) Subject to the provisions of subsection (2), the Board shall not issue a fidelity fund certificate to a sheriff if he—
  - (a) is not a South African citizen permanently resident in the Republic;
  - (b) is not of or over the age of 21 years;
  - (c) is an unrehabilitated insolvent;
  - (d) is of unsound mind;
  - (e) does not comply with the prescribed standard of training;
  - (f) does not have the prescribed practical experience;
  - (g) has at any time been dismissed from a position of trust by reason of improper conduct involving a breach of such trust;
  - (h) has at any time been convicted of any offence involving dishonesty or of any other offence for which he has been sentenced to imprisonment without the option of a fine;
  - (i) has failed to comply with a provision of section 23(1)(b) during a period of one year immediately prior to the date on which he applies for a fidelity fund certificate;
  - (j) has at any time been prohibited under section 24(1) from dealing with an account mentioned in section 22(1) or (2) in any manner;
  - (k) was previously the holder of a fidelity fund certificate which has been cancelled under section 34(1) or 49;
  - (l) has at any time incurred liability towards the Board by virtue of the provisions of section 39, unless he has repaid the relevant amount in full to the Board or has made in the opinion of the Board satisfactory arrangements for the repayment of any such amount.
- (2) If in respect of any sheriff who is subject to any disability mentioned in subsection (1), the Board is satisfied that, having regard to the relevant considerations, the issue of a fidelity fund certificate to him is justified in the interest of fairness towards him, the Board may, on such conditions as the Board may with the concurrence of the Minister determine, issue a fidelity fund certificate to him when he applies therefor.

### **34. Cancellation of fidelity fund certificates**

- (1) Notwithstanding the provisions of Chapter IV, the Board may cancel a fidelity fund certificate issued to a sheriff after at least 14 days' notice in writing to the sheriff—
  - (a) if the sheriff becomes subject to a disability mentioned in section 33(1)(a), (c), (d), (g), (h), (j) or (l);
  - (b) if the sheriff contravenes or fails to comply with a condition imposed under section 33(2); or
  - (c) if that fidelity fund certificate was issued on information subsequently proved to be false.
- (2) The Board shall cancel the fidelity fund certificate of a sheriff if it is requested by the sheriff to do so or if the sheriff ceases to hold office.

- (3) Any person who has in his possession or under his control any fidelity fund certificate cancelled under this section, shall return that certificate to the Board within 30 days after he became aware of the cancellation.

## **Liability of Fund**

### **35. Liability of Fund**

Subject to the provisions of this Chapter, moneys in the Fund shall be utilized to compensate any person who, after the commencement of this Act, suffers any loss or damage—

- (a) as a result of—
  - (i) the failure of a sheriff to pay out or deliver to any such person any money or property over which he acquired control by virtue of his office, or the proceeds of the sale of such goods; or
  - (ii) the act or omission of a sheriff or his deputy sheriff in connection with—
    - (aa) the service or execution of any process;
    - (bb) the arrest of any person; or
    - (cc) subject to section 55, the rescue or escape of any person arrested by him or committed to his custody; and
- (b) for which the sheriff, the sheriff and his deputy sheriff jointly or his deputy sheriff is liable in law.

### **36. Claims against Fund**

- (1) A claim against the Fund in respect of a contingency referred to in section 35 may be lodged with the Board on the prescribed form.
- (2) Subject to the provisions of subsection (3), no person shall have a claim against the Fund in respect of a contingency referred to in section 35 unless—
  - (a) the claimant lodges his claim with the Board in terms of subsection (1) within three months after he became aware of the contingency; or
  - (b) the claimant furnishes the Board, within six months after a written demand was sent to him by the Board, with such proof in verification of his claim as the Board may reasonably require.
- (3) If the Board is satisfied that, having regard to the circumstances, a claim or the proof required by it was lodged or furnished as soon as possible, it may at its discretion extend the period mentioned in paragraph (a) or (b) of subsection (2), as the case may be.
- (4) If the Board admits a claim against the Fund, the Board shall pay out of the Fund such compensation as may be agreed upon by the Board and the claimant.
- (5) Any dispute relating to the amount of compensation to be paid out of the Fund shall be settled by arbitration in accordance with the Arbitration Act, 1965 ([Act No. 42 of 1965](#)).

### **37. Actions against Board in respect of Fund**

- (1) If the Board refuses to admit a claim against the Fund, the claimant may, subject to this section and section 38, institute an action against the Board in respect of the Fund in the court within the area of jurisdiction of which the cause of action arose.
- (2) An action against the Board in respect of the Fund shall not be instituted without leave of the Board unless the claimant has exhausted all available legal remedies against the sheriff or deputy sheriff

in respect of whom the claim arose, or his estate, and against all other persons liable in respect of the loss or damage suffered by the claimant.

- (3) In any action against the Board in respect of the Fund, the Board may raise any defence which could have been raised by the sheriff or deputy sheriff in respect of whom the claim arose.

### **38. Limitation of liability of Fund**

- (1) The Fund shall not be liable for any loss or damage suffered by a sheriff as a result of any act or omission by his deputy sheriff or any employee in the service of the sheriff.
- (2) No person shall recover from the Board in respect of the Fund any amount larger than the difference between the amount of the loss or damage suffered by him and the amount or value of all moneys or other benefits which he has received or is entitled to receive from any other source in respect of that loss or damage.
- (3) No amount shall be paid out of the Fund as interest on the amount of any claim admitted against the Fund or any judgment obtained against the Fund.

### **39. Transition of rights and remedies to Board**

When the Board settles any claim or judgment against the Fund in accordance with this Chapter, there shall pass to the Board all the rights and remedies of the claimant in respect of his claim against any sheriff, deputy sheriff or other person or, if applicable, in the case of the death, insolvency or other legal incapacity of any such sheriff, deputy sheriff or person, against the estate of any such sheriff, deputy sheriff or person.

### **40. Computation of claims against future accumulations of Fund**

- (1) Only moneys in the Fund shall be available for the payment of any claim admitted against the Fund or for the satisfaction of any judgment obtained against the Fund, but if at any time there is insufficient money in the Fund to settle all those claims and judgments, they shall, to the extent to which they are not settled, be charged against future accumulations of the Fund.
- (2) The Board may at its discretion determine the order in which claims and judgments against the Fund may be settled and may, if the moneys in the Fund are insufficient to settle in full all claims and judgments, settle any claim or judgment *pro rata* to the amount available in the Fund.

### **41. Utilization of insurance moneys**

- (1) No claimant having a claim against the Fund in respect of a contingency referred to in section 35 shall have—
  - (a) any legal claim against an insurer who has entered into an agreement referred to in section 29(1) with the Board;
  - (b) any right or claim in respect of any money paid to the Board by the insurer in accordance with that agreement.
- (2) Money referred to in subsection (1)(b) shall be paid into the Fund and, subject to the provisions of this Chapter, be utilized by the Board in order to settle claims or judgments against the Fund.

### **42. Fund exempt from insurance laws**

No provision of any law relating to insurance shall apply to the Fund.

## Chapter IV Improper conduct

### 43. Improper conduct

- (1) A sheriff shall be guilty of improper conduct if—
  - (a) he is negligent or dilatory in the service or execution of any process;
  - (b) he makes a false return in respect of the service or execution of any process;
  - (c) he demands payment of more than the fees or expenses prescribed by or under any law;
  - (d) he contravenes or fails to comply with a provision of the code of conduct referred to in section 16(k);
  - (e) he fails to take all reasonable steps to prevent his deputy sheriff from committing a deed of improper conduct as contemplated in paragraph (a), (b), (c) or (d);
  - (f) he commits a deed of insolvency referred to in section 8 of the Insolvency Act, 1936 ([Act No. 24 of 1936](#)); or
  - (g) he commits an offence.
- (2) The acquittal or conviction of a sheriff by any court of law on any criminal charge shall not be a bar to proceedings against him in accordance with this Chapter on a charge of improper conduct, even if the facts set forth in the charge of improper conduct would, if proved, constitute the offence set forth in the criminal charge on which he was so acquitted or convicted or any other offence of which he might have been convicted at his trial on the said criminal charge.
- (3) If the improper conduct with which a sheriff is charged amounts to an offence of which he has been convicted by a court of law, a certified copy of the record of his trial and conviction by that court shall, upon the identification of the sheriff as the person who has been convicted according to the record, be sufficient proof that he committed such offence, unless—
  - (a) the conviction has been set aside by a competent court; or
  - (b) the sheriff proves that he was in fact wrongly convicted.

### 44. Lodging of complaint against sheriff

- (1) Any complaint, accusation or allegation against a sheriff may be lodged with the Board in the prescribed manner.
- (2) The Board shall keep record of each complaint, accusation or allegation lodged with it in terms of subsection (1).

### 45. Charge of improper conduct

- (1) When a sheriff is accused of improper conduct the Board may charge him in writing with that improper conduct.
- (2) A charge of improper conduct shall be served upon a sheriff in the prescribed manner, and the charge shall contain or be accompanied by a request that the sheriff furnishes the Board with a written admission or denial of the charge and, if the sheriff so prefers, a written explanation in connection with the charge within 14 days of the serving thereof.
- (3) The Minister may at any time withdraw a charge of improper conduct.

**46. Inquiry into improper conduct**

The Board shall inquire into a charge of improper conduct at such time and place as the Board may determine and shall in the prescribed manner give the sheriff charged at least 14 days' notice in writing of the time and place so determined.

**47. Procedure at inquiry**

- (1) The Board may authorize any person to attend an inquiry instituted in terms of section 46, to adduce evidence and arguments in support of the charge and to cross-examine any person who has given evidence in rebuttal of the charge.
- (2) At such inquiry the sheriff charged shall have the right to be present, to be assisted or represented by another person, to give evidence and, either personally or through a representative—
  - (a) to be heard;
  - (b) to call witnesses;
  - (c) to cross-examine any person called as a witness in support of the charge; and
  - (d) to have access to documents produced in evidence.
- (3) The failure of the sheriff charged to attend the inquiry shall not invalidate the proceedings.
- (4) The Board shall keep a record of the proceedings and of the evidence given.

**48. Powers of Board in respect of inquiry**

- (1) For the purposes of an inquiry in terms of section 46, the Board may—
  - (a) summon any person who in its opinion may be able to give information of material importance concerning the charge inquired into, or who is believed to have in his possession or custody or under his control any book, document or thing which may have a bearing on that charge, to appear before the Board;
  - (b) call upon, and administer an oath to, or accept an affirmation from, any person present at the inquiry who was or could have been summoned under paragraph (a);
  - (c) interrogate or require any person who was called upon under paragraph (b) to produce a book, document or thing referred to in paragraph (a).
- (2) A summons for the attendance before the Board of any person shall be in the prescribed form and shall be served in the prescribed manner.
- (3) The law relating to privilege as applicable to a person summoned to give evidence or to produce a document or thing before a court of law, shall be applicable in respect of the interrogation of, or the production of a book, document or thing by, any person referred to in subsection (1)(c).

**49. Action against sheriff who is found guilty of improper conduct**

- (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 R1 000, which fine shall be payable to the Board;
  - (c) cancel the fidelity fund certificate of the sheriff; or
  - (d) recommend to the Minister that the sheriff be removed from his office, or called upon to resign as sheriff, with effect from a date determined by the Minister.

- (2) If the Board makes a recommendation under paragraph (d) of subsection (1), the Board shall send to the Minister the documents relating to the inquiry and, where applicable, to an appeal under section 18(4)(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.

## **50. Suspension of sheriff**

- (1) The Minister may suspend a sheriff from his office at any time before the sheriff is charged with improper conduct in accordance with this Chapter, or after he has been so charged.
- (2) A sheriff who has been suspended from his office shall forthwith be reinstated in office—
  - (a) if he is not charged with improper conduct within a period of 12 months after the date of his suspension;
  - (b) if he is found not guilty on the charge in question;
  - (c) if he appeals under section 18(4)(a) or 61(1) against his conviction on the charge in question and the appeal is upheld; or
  - (d) if a penalty referred to in paragraph (a) or (b) of section 49 (1) is imposed upon him.
- (3) The Minister may at any time cancel the suspension of a sheriff, but the cancellation shall not prevent the sheriff from being charged with improper conduct in accordance with this Chapter.

## **51. Certain sheriffs deemed to be removed from their office by reason of improper conduct**

Any sheriff who—

- (a) while suspended from his office under section 50(1) or while a charge of improper conduct against him in accordance with this Chapter has not yet finally been dealt with—
  - (i) resigns as sheriff; or
  - (ii) engages himself without the approval of the Minister to perform remunerative work outside his office as sheriff; or
- (b) fails to resign with effect from the date on which he has been called upon to resign under section 49(2),

shall, unless the Minister directs otherwise, be deemed to be removed from his office by reason of improper conduct with effect from the date on which he so resigns, engages himself to perform remunerative work or fails to resign, as the case may be.

## **52. Powers of Minister relating to improper conduct**

- (1) If in the opinion of the Minister sound reasons exist for doing so, he may authorize any person to charge any sheriff with improper conduct and to inquire into the charge.
- (2) When the Minister authorizes a person under subsection (1) to charge a sheriff with improper conduct, the Board shall forthwith discontinue any steps which the Board has taken against the sheriff in accordance with this Chapter.
- (3) A person authorized under subsection (1) shall be invested and charged with the functions relating to a charge of improper conduct assigned to the Board by or under this Chapter, and for the purposes of section 61 a finding made or penalty imposed by that person shall be deemed to be a finding made or penalty imposed by the Board.
- (4) Nothing in this section contained shall be construed as empowering the Minister to authorize a person to charge a sheriff with improper conduct after the Board has already made a finding in accordance with this Chapter in respect of the charge in question.

## Chapter V General

### **53. Performance of remunerative work outside office of sheriff**

No sheriff shall without the approval of the Minister perform or engage himself to perform remunerative work outside his office as sheriff.

### **54. Indemnification of State**

The State shall not be liable for any loss or damage arising out of any act or omission by a sheriff or his deputy sheriff.

### **55. Liability of sheriffs**

A sheriff or his deputy sheriff shall not be liable for any damage arising out of the rescue or escape of any person arrested by him or committed to his custody, unless the rescue or escape was caused by his negligent or wilful conduct.

### **56. Appointment of inspectors**

- (1) For the purposes of exercising any power—
  - (a) referred to in subsection (1) or (2) of section 57, the Minister may, either in general or in any particular case, appoint any person as an inspector;
  - (b) referred to in subsection (2) of section 57, the Board may, either in general or in any particular case, appoint any person whom the Board may consider suitable as an inspector.
- (2) Every inspector appointed under subsection (1) shall be furnished with a certificate stating that he has been appointed as an inspector.
- (3) An inspector who exercises any power under section 57 shall at the request of any person affected by the exercise of that power produce his certificate referred to in subsection (2).

### **57. Powers of inspectors**

- (1) Any inspector appointed under paragraph (a) of section 56(1) may at any reasonable time examine any book, record or other document of the Board or Fund or make extracts therefrom or copies thereof.
- (2) Any inspector appointed under paragraph (a) or (b) of section 56(1) may—
  - (a) at any reasonable time enter the office of any sheriff;
  - (b) require the production of any fidelity fund certificate;
  - (c) seize any fidelity fund certificate cancelled under section 34 or 49;
  - (d) examine any book, record or other document relating to the functions of a sheriff or make extracts therefrom or copies thereof;
  - (e) for the purposes of any prosecution under this Act or any charge of improper conduct in accordance with Chapter IV, seize and retain such book, record or other document.

**58. Minister may direct Board to furnish information**

The Minister may in writing direct the Board to furnish him within the period specified in the direction with such information as he may require in connection with the functions of the Board or the financial state of affairs of the Board or Fund.

**59. Annual reports**

The Board shall within six months after the end of every financial year submit to the Minister a report, together with a copy of the annual financial statements audited in terms of sections 21(3) and 28(2), on the functions performed by the Board during such year.

**60. Offences and penalties**

- (1) Any person who—
  - (a) contravenes or fails to comply with a provision of section 19(1), 22(1), 23(1), 30 or 34(3);
  - (b) fails to comply with a request under section 23(3);
  - (c) contravenes or fails to comply with a condition imposed under section 33(2);
  - (d) in an application for any fidelity fund certificate knowingly gives information or makes a statement which is false or misleading;
  - (e) has been duly summoned under section 48 and who fails, without sufficient cause—
    - (i) to attend at the time and place specified in the summons; or
    - (ii) to remain in attendance until excused from further attendance by the person presiding at the inquiry;
  - (f) has been called upon under section 48(1)(b) and who refuses to be sworn or to make an affirmation as a witness;
  - (g) fails, without sufficient cause—
    - (i) to answer fully and satisfactorily any question lawfully put to him under section 48(1)(c);
    - (ii) to produce any book, document or thing in his possession or custody or under his control which he was required to produce under section 48(1)(c);
  - (h) hinders or obstructs any inspector in the exercise of his powers under section 57(2); or
  - (i) falsely gives himself out to be an inspector appointed under section 56(1)(a) or (b), shall be guilty of an offence.
- (2) Any person who is convicted of an offence under this Act shall be liable—
  - (a) in the case of an offence referred to in paragraph (a), (c), (d), (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.

## **61. Appeal to court against decisions of disciplinary committee or Board**

- (1) Any sheriff aggrieved by—
  - (a) the cancellation of his fidelity fund certificate by the Board under section 34(1);
  - (b) a finding made or penalty imposed by a disciplinary committee or the Board in the performance of its functions in accordance with Chapter IV; or
  - (c) the exercise of a power by the Board in considering an appeal in terms of section 18(4)(b), may, after notice to the Board and within 60 days after the date on which that fidelity fund certificate has been cancelled, that finding has been made or penalty has been imposed or that power has been exercised, as the case may be, appeal against the decision in question to the superior court having jurisdiction in the area where the head office of the Board is situated.
- (2) The court shall examine and consider an appeal lodged with it in accordance with subsection (1), and may—
  - (a) if it is of the opinion that the disciplinary committee or Board, as the case may be, has not acted in accordance with the provisions of this Act, set aside the decision appealed against or substitute therefor any other decision which the disciplinary committee or Board could have made;
  - (b) confirm the decision appealed against; or
  - (c) give such other order, including any order as to costs, as it may consider fit.

## **62. Regulations**

- (1) The Minister may after consultation with the Board make regulations as to—
  - (a) the steps to be taken to ensure compliance with the code of conduct referred to in section 16(k);
  - (b) the disposal of process and other documents in the possession of a sheriff when he ceases to hold office;
  - (c) the service of process on sheriffs or deputy sheriffs;
  - (d) the furnishing by a banking institution or building society of particulars relating to an account mentioned in section 22(1) or (2);
  - (e) any matter required or permitted to be prescribed by regulation under this Act; and
  - (f) in general, any matter which the Minister may consider necessary or expedient to prescribe in order that the objects of this Act may be achieved, and the generality of this paragraph shall not be limited by the preceding paragraphs.
- (2) Regulations made under subsection (1) may prescribe penalties for any contravention thereof or failure to comply therewith not exceeding a fine of R1 000 or imprisonment for a period of six months.

## **63. Minister may assign functions to officers**

- (1) The Minister may—
  - (a) delegate to any officer of the Department of Justice any power conferred upon the Minister by this Act, excluding the power referred to in section 62(1), on such conditions as the Minister may determine; or
  - (b) authorize any such officer to perform any duty assigned to the Minister by this Act.

- (2) Any delegation under subsection (1)(a) shall not prevent the exercise of the relevant power by the Minister himself.

#### **64. Amendment or repeal of provisions of laws, and savings**

- (1) Subject to the provisions of this section, the provisions of the laws mentioned in the Schedule are hereby amended or repealed to the extent indicated in the third column thereof.
- (2) Any person who immediately prior to the commencement of this Act—
  - (a) held office as messenger or acting messenger of any lower court, or was appointed as a deputy messenger, shall upon that commencement be deemed to be appointed under the provisions of this Act as a sheriff or acting sheriff of that lower court, or as a deputy sheriff, respectively; 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 upon that commencement be deemed to be appointed under the provisions of this Act as a sheriff or acting sheriff of that superior court, or as a deputy sheriff, respectively.
- (3) Any sheriff or acting sheriff referred to in paragraph (a) or (b) of subsection (2) shall hold office subject to the provisions of this Act: Provided that—
  - (a) the provisions of section 30 shall not apply in respect of any such sheriff or acting sheriff before a date determined by the Minister by notice in the *Gazette*;
  - (b) any security furnished by any such sheriff or acting sheriff in connection with his appointment shall, notwithstanding the repeal of a provision governing the furnishing of such security, be maintained until the day upon which he becomes the holder of a fidelity fund certificate;
  - (c) notwithstanding the provisions of section 35, the Fund shall not incur liability in respect of any such sheriff or acting sheriff before the day upon which he becomes the holder of a fidelity fund certificate;
  - (d) the provisions of section 51(a)(ii) or 53 shall not apply to remunerative work which any such sheriff or acting sheriff performs outside his office after the commencement of this Act if he—
    - (i) had performed such work immediately prior to that commencement; and
    - (ii) notifies the Minister in writing of such remunerative work within 30 days after that commencement; and
  - (e) any such sheriff shall hold office as contemplated in section 4(1) until the date on which he attains the age of 70 years.
- (4) Anything done under a provision repealed by subsection (1) which may be done under a corresponding provision of this Act, shall be deemed to have been done under that corresponding provision.

#### **65. Construction of references to messenger in existing laws and process of court**

A reference in any law in force immediately prior to the commencement of this Act, or in any process of court, to a messenger or a messenger of any lower court shall be construed as a reference to a sheriff of that lower court appointed under this Act.

#### **66. Short title and commencement**

This Act shall be called the Sheriffs Act, 1986, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

## Schedule (Section 63)

### Provisions of laws amended or repealed

No. and year of law	Short title	Extent of amendment or repeal
Act No. 32 of 1944	Magistrates' Courts Act, 1944	<p>1. The repeal of section 14(1), (1A), (2), (3), (4), (5), (6) and (9).</p> <p>2. The amendment of section 15 by the substitution in subsection (4) for the words "deputy messenger" of the word "sheriff".</p> <p>3. The repeal of sections 18 and 18A.</p> <p>4. The amendment of section 107 by the substitution for the word "deputy-messenger", wherever it appears, of the words "deputy sheriff".</p>
Act No. 59 of 1959	Supreme Court Act, 1959	<p>1. The amendment of section 34—</p> <p>(a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:</p> <p style="padding-left: 40px;">"(a) The Minister may, subject to the laws governing the public service, appoint for the Supreme Court registrars, assistant registrars</p>

[sheriffs,  
additional  
sheriffs,  
deputy  
sheriffs]  
and  
other  
officers  
whenever  
they  
may  
be  
required  
for  
the  
administration  
of  
justice  
or  
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service,  
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person  
as  
such  
deputy  
sheriff  
at  
such  
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and  
on  
Such  
conditions  
as  
the  
Minister  
may  
determine].;

- (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 office, or his 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  
for  
Administration;  
and

- (c) by the deletion of paragraph (c) of subsection (1) and subsections (3), (4), (5) and (6).
2. The repeal of sections 34A and 35.
  3. The amendment of section 36—
    - (a) by the substitution for subsection (1) of the following subsection:

"(1) The  
sheriff  
or  
**[the]**  
a  
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

(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 *prima  
facie* evidence  
of  
the  
matters  
therein  
stated.".

4. The repeal of sections 37  
and 38.

5. The amendment of section  
40—

(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  
duty;"

(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 —
- (i) falsely declares to that sheriff or deputy-sheriff [or his assistant] that he possesses no property or

insufficient  
prop-  
erty  
to  
satisfy  
the  
warrant;  
or

(ii) although  
knowing  
of  
such  
property  
neg-  
lects  
or  
refuses  
to  
point  
out  
such  
prop-  
erty  
or  
to  
deliver  
it  
to  
the  
sheriff  
or  
deputy-  
sheriff  
**[or**  
**his**  
**assistant]**  
when  
requested  
to  
do  
so;  
or";  
and

(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 possession or under his control relating to the title of the immovable property under execution,".