



REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

VOL. 400

CAPE TOWN, 7 OCTOBER 1998

KAAPSTAD, 7 OKTOBER 1998

No. 19322

OFFICE OF THE PRESIDENT

No. 1247. 7 October 1998

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 66 of 1998: Magistrates Amendment Act, 1998.

KANTOOR VAN DIE PRESIDENT

No. 1247. 7 Oktober 1998

Hierby word bekend gemaak dat die President sy goedkeuring gegee het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 66 van 1998: Wysigingswet op Landdroste, 1998.

GENERAL EXPLANATORY NOTE:

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

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

ACT

To amend the Magistrates' Courts Act, 1944, so as to effect certain consequential amendments; to make provision for the creation of administrative regions; to further regulate the appointment of magistrates; to further regulate the exercising of administrative control over the functions performed by magistrates; and to increase the penal jurisdiction of magistrates' courts; to amend the Magistrates Act, 1993, so as to regulate the assignment of administrative functions to magistrates; to make provision for certain penalty provisions to be prescribed by regulation; and to provide for matters connected therewith.

(English text signed by the President.)
(Assented to 28 September 1998.)

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

Amendment of section 1 of Act 32 of 1944, as substituted by section 1 of Act 53 of 1970 and amended by section 23 of Act 94 of 1974, section 1 of Act 105 of 1982, section 2 of Act 34 of 1986 and section 1 of Act 4 of 1991

5

1. Section 1 of the Magistrates' Courts Act, 1944, is hereby amended—

- (a) by the insertion before the definition of "court" of the following definition:

" 'administrative region' means an administrative region created by the Minister under section 2 (2);"
- (b) by the substitution for the definition of "court of appeal" of the following definition:

" 'court of appeal' means the [provincial or local division of the Supreme Court] High Court to which an appeal lies from the magistrate's court;"
- (c) by the insertion after the definition of "court of appeal" of the following definition:

" 'head of the administrative region' means the magistrate designated as such by the Minister, after consultation with the Magistrates Commission;"
- (d) by the insertion after the definition of "magistrate" of the following definition:

" 'Magistrates Commission' means the Magistrates Commission estab-

10

15

20

ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui skappings uit bestaande verordenings aan.

_____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

WET

Tot wysiging van die Wet op Landdroshowe, 1944, ten einde sekere gevolglike wysigings aan te bring; voorsiening te maak vir die instelling van administratiewe streke; die aanstelling van landdroste verder te reël; die uitoefening van administratiewe beheer oor die werksaamhede wat deur landdroste verrig word, verder te reël; en om die strafjurisdiksie van landdroshowe te verhoog; tot wysiging van die Wet op Landdroste, 1993, ten einde die toewysing van administratiewe werksaamhede aan landdroste te reël; voorsiening te maak dat sekere strafbepalings by regulasie voorgeskryf kan word; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

(Engelse teks deur die President geteken.)
(Goedgekeur op 28 September 1998.)

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 1 van Wet 32 van 1944, soos vervang deur artikel 1 van Wet 53 van 1970 en gewysig deur artikel 23 van Wet 94 van 1974, artikel 1 van Wet 105 van 1982, artikel 2 van Wet 34 van 1986 en artikel 1 van Wet 4 van 1991

1. Artikel 1 van die Wet op Landdroshowe, 1944, word hierby gewysig—

(a) deur die volgende omskrywing voor die omskrywing van “die distrik” in te voeg:

10 “ ‘administratiewe streek’ ’n administratiewe streek wat kragtens artikel 2 (2) deur die Minister ingestel is;”;

(b) deur die omskrywing van “die hof van appèl” deur die volgende omskrywing te vervang:

15 “ ‘die hof van appèl’ die [provinsiale of plaaslike afdeling van die Hooggeregshof] Hoë Hof waarna ’n appèl van die magistratshof aangeteken kan word;”;

(c) deur die volgende omskrywings na die omskrywing van “hof” in te voeg:

20 “ ‘hoof van die administratiewe streek’ die landdros as sodanig deur die Minister, na oorlegpleging met die Landdrostekommissie, aangewys; ‘Landdrostekommissie’ die Landdrostekommissie by artikel 2 van die Wet op Landdroste, 1993 (Wet No. 90 van 1993), ingestel;”;

(d) deur die omskrywing van “Minister” deur die volgende omskrywing te vervang:

“ ‘Minister’ [, in artikel 15 (2) en (4) en in artikel 113,] die Minister

lished by section 2 of the Magistrates Act, 1993 (Act No. 90 of 1993);”;
and

- (e) by the substitution for the definition of “Minister” of the following definition:
“ ‘Minister’ [, in section 15 (2) and (4) and in section 113,] means the
Minister of Justice; [and in any other provision of this Act, ‘Minister’
in relation to any matter to be dealt with in a regional division,
district or subdistrict administered under the control of the Minister
of Justice, and in relation to the creation or abolition of any such
regional division, district or subdistrict, means that Minister or any
other Minister of State acting on his behalf;] ”.

Amendment of section 2 of Act 32 of 1944, as substituted by section 2 of Act 53 of 1970 and amended by section 7 of Act 102 of 1972 and section 2 of Act 34 of 1986

2. Section 2 of the Magistrates’ Courts Act, 1944, is hereby amended by the addition of the following subsection:

“(2) The Minister may, by notice in the *Gazette* and after consultation with the
Magistrates Commission, join any group of districts together to create an
administrative region for administrative purposes.”.

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

3. Section 9 of the Magistrates’ Courts Act, 1944, is hereby amended—

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

“(aA) The Minister may, in a particular case or generally and subject to such directions as he or she may deem fit, delegate the power conferred upon him or her by paragraph (a) to the Director-General of his or her department or another officer of that department with the rank of director or an equivalent or higher rank or a magistrate at the head of a regional division or a [magistrate with the rank of chief magistrate] person occupying the office of chief magistrate, including an acting chief magistrate.”;

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

“(b) No person shall be appointed as a magistrate of a regional division unless he [is a magistrate who] or she has satisfied all the requirements for the degree of *baccalaureus legum* of a university in the Republic or has passed the Public Service Senior Law Examination or an examination deemed by the [Public Service Commission] Minister to be equivalent or superior to the said examination, and the [board referred to in section 9bis] Magistrates Commission has informed the Minister that he or she is suitable for appointment as a magistrate of a regional division.”; and

- (c) by the substitution for subsections (3) and (4) of the following subsections, respectively:

“(3) Whenever by reason of absence or incapacity a magistrate, additional magistrate or assistant magistrate is unable to carry out the functions of his or her office or whenever such office becomes vacant, the Minister, or an officer in the Department of Justice or a magistrate at the head of a regional division or a [magistrate with the rank of chief magistrate] person occupying the office of chief magistrate, including an acting chief magistrate authorized thereto in writing by the Minister, may appoint any other competent person to act in the place of the absent or incapacitated magistrate, additional magistrate or assistant magistrate, as the case may be, during such absence or incapacity or to act in the vacant office until the vacancy is filled: Provided that no person shall be appointed as an acting magistrate of a regional division unless he or she has satisfied all the requirements for the degree referred to in subsection

van Justisie; [in elke ander bepaling van hierdie Wet beteken 'Minister', met betrekking tot 'n aangeleentheid waarmee gehandel moet word in 'n streekafdeling, distrik of subdistrik wat onder beheer van die Minister van Justisie geadministreer word, en met betrekking tot die instelling of afskaffing van so 'n streekafdeling, distrik of subdistrik, daardie Minister of enige ander Staatsminister wat namens hom optree;]".

Wysiging van artikel 2 van Wet 32 van 1944, soos vervang deur artikel 2 van Wet 53 van 1970 en gewysig deur artikel 7 van Wet 102 van 1972 en artikel 2 van Wet 34 van 1986

2. Artikel 2 van die Wet op Landdroshowe, 1944, word hierby gewysig deur die volgende subartikel by te voeg:

"(2) Die Minister kan, by kennisgewing in die *Staatskoerant* en na oorlegpleging met die Landdrostekommissie, 'n groep distrikte saamvoeg ten einde 'n administratiewe streek vir administratiewe doeleindes in te stel."

Wysiging van artikel 9 van Wet 32 van 1944, soos vervang deur artikel 2 van Wet 8 van 1967 en gewysig deur artikel 4 van Wet 53 van 1970, artikel 8 van Wet 102 van 1972, artikel 11 van Wet 29 van 1974, artikel 24 van Wet 94 van 1974, artikel 1 van Wet 28 van 1981, artikel 2 van Wet 34 van 1986, artikel 17 van Wet 90 van 1993 en artikel 3 van Wet 104 van 1996

3. Artikel 9 van die Wet op Landdroshowe, 1944, word hierby gewysig—

(a) deur paragraaf (aA) van subartikel (1) deur die volgende paragraaf te vervang:

"(aA) Die Minister kan die bevoegdheid wat by paragraaf (a) aan hom of haar verleen word, in 'n bepaalde geval of in die algemeen en behoudens die voorskrifte wat hy of sy goedvind, opdra aan die Direkteur-generaal van sy of haar departement of 'n ander beamppte van daardie departement met die rang van direkteur of 'n gelykstaande of hoër rang of 'n magistraat aan die hoof van 'n streekafdeling of 'n magistraat [met die rang van hooflanddros] wat die amp van hooflanddros beklee, met inbegrip van 'n waarnemende hooflanddros."

(b) deur paragraaf (b) van subartikel (1) deur die volgende paragraaf te vervang:

"(b) Niemand word as 'n magistraat van 'n streekafdeling aangestel nie tensy hy [**'n magistraat is wat**] of sy aan al die vereistes vir die graad *baccalaureus legum* van 'n universiteit in die Republiek voldoen het of in die Senior Staatsdienseksamen in die Regte of 'n eksamen deur die [Staatsdienskommissie] Minister as gelykstaande met of hoër as bedoelde eksamen geag, geslaag het, en die [in artikel 9bis bedoelde raad] Landdrostekommissie die Minister meegedeel het dat hy of sy geskik is vir aanstelling as 'n magistraat van 'n streekafdeling."; en

(c) deur subartikels (3) en (4) deur onderskeidelik die volgende subartikels te vervang:

"(3) Wanneer 'n magistraat, addisionele magistraat of assistent-magistraat weens afwesigheid of onvermoë, nie in staat is om sy of haar ampswerksaamhede te verrig nie of wanneer so 'n amp vakant word, kan die Minister of 'n beamppte in die Departement van Justisie of 'n magistraat aan die hoof van 'n streekafdeling of 'n [magistraat met die rang van hooflanddros] persoon wat die amp van hooflanddros beklee, met inbegrip van 'n waarnemende hooflanddros, skriftelik deur die Minister daartoe gemagtig, enige ander bevoegde persoon aanstel om in die plek van die afwesige of onvermoënde magistraat, addisionele magistraat of assistent-magistraat, na gelang van die geval, gedurende sodanige afwesigheid of tydperk van onvermoë waar te neem, of om in die vakante amp waar te neem totdat die vakature aangevul word: Met dien verstande dat niemand as waarnemende magistraat van 'n streekafdeling aangestel word nie tensy hy of sy aan al die vereistes vir die in subartikel (1)(b) bedoelde graad voldoen het of in 'n in daardie subartikel bedoelde eksamen geslaag het: Met dien verstande voorts dat wanneer so 'n vakature ononderbroke gedurende 'n tydperk van meer as

(1)(b) or has passed an examination referred to in that subsection: Provided further that when any such vacancy has remained unfilled for a continuous period exceeding three months the fact shall be reported to the Magistrates Commission [established by section 2 of the Magistrates Act, 1993 (Act 90 of 1993)].

(4) The Minister or an officer in the Department of Justice or a magistrate at the head of a regional division or a [magistrate with the rank of chief magistrate] person occupying the office of chief magistrate, including an acting chief magistrate authorized thereto in writing by the Minister, may appoint temporarily any competent person to act either generally or in a particular matter as magistrate of a regional division in addition to any magistrate or acting magistrate of that division or as additional or assistant magistrate for any district or sub-district in addition to the magistrate or any other additional or assistant magistrate."

Substitution of section 10 of Act 32 of 1944

4. The following section is hereby substituted for section 10 of the Magistrates' Courts Act, 1944:

"Qualifications for appointments of judicial officers

10. Subject to the provisions of the [law governing the public service] Magistrates Act, 1993 (Act No. 90 of 1993), and of section [eleven] 11—

(a) a person who has not before the commencement of [this Act] the Magistrates Amendment Act, 1998, held a substantive appointment as magistrate shall not hold such an appointment and a person who has not before the commencement of [this Act] the Magistrates Amendment Act, 1998, held a substantive appointment as assistant magistrate shall not hold such an appointment, unless in either case he or she has passed the civil service lower law examination or an examination declared by the [Public Service Commission] Minister to be equivalent thereto;

(b) in recommending any person for appointment as a magistrate, additional magistrate or assistant magistrate the [Public Service Commission] Magistrates Commission may give preference to a person who holds a degree in law of a university in South Africa, or has passed the Civil Service Higher Law Examination or an examination deemed by the Commission to be equivalent thereto."

Amendment of section 12 of Act 32 of 1944, as amended by section 9 of Act 40 of 1952 and section 25 of Act 94 of 1974

5. Section 12 of the Magistrates' Courts Act, 1944, is hereby amended by the addition to subsection (1) of the following paragraph:

"(c) shall be subject to the administrative control of the head of the administrative region in which his or her district is situate."

Amendment of section 92 of Act 32 of 1944, as substituted by section 30 of Act 94 of 1974 and amended by section 9 of Act 91 of 1977, section 1 of Act 109 of 1984, section 9 of Act 25 of 1987, section 2 of Act 129 of 1993 and section 2 of Act 33 of 1997

6. Section 92 of the Magistrates' Courts Act, 1944, is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) by imprisonment, may impose a sentence of imprisonment for a period not exceeding [twelve months] three years, where the court is not the court of a regional division, or not exceeding [ten] 15 years, where the court is the court of a regional division;"

drie maande onaangevul gebly het, die geval aan die Landdrostekommissie [ingestel by artikel 2 van die Wet op Landdroste, 1993 (Wet 90 van 1993),] meegedeel moet word.

(4) Die Minister of 'n beampste in die Departement van Justisie of 'n magistraat aan die hoof van 'n streekafdeling of 'n [magistraat met die rang van hooftlanddros] persoon wat die amp van hooftlanddros beklee, met inbegrip van 'n waarnemende hooftlanddros, skriftelik deur die Minister daartoe gemagtig, kan tydelik enige bevoegde persoon aanstel om, hetsy in die algemeen hetsy in 'n bepaalde aangeleentheid op te tree as magistraat van 'n streekafdeling benewens enige magistraat of waarnemende magistraat van daardie afdeling of as addisionele magistraat of assistent-magistraat vir enige distrik of subdistrik, benewens die magistraat of enige ander addisionele magistraat of assistent-magistraat."

15 Vervanging van artikel 10 van Wet 32 van 1944

4. Artikel 10 van die Wet op Landdroshoue, 1944, word hierby deur die volgende artikel vervang:

"Kwalifikasies vir aanstelling as regterlike amptenaar

20 10. Behoudens die [wetsbepaling op die staatsdiens] bepalings van die Wet op Landdroste, 1993 (Wet No. 90 van 1993), en [die bepalings] van artikel [elf] 11—

(a) mag niemand wat nie voor die inwerkingtreding van [hierdie Wet] die Wysigingswet op Landdroste, 1998, 'n substantiewe betrekking as magistraat beklee het nie, so 'n betrekking beklee nie, en mag niemand wat nie voor die inwerkingtreding van [hierdie Wet] die Wysigingswet op Landdroste, 1998, 'n substantiewe betrekking as assistent-magistraat beklee het nie, so 'n betrekking beklee nie, tensy so iemand in die een of die ander geval die staatsdiens-laerwetseksamen of 'n eksamen wat volgens verklaring van die [Staatsdienskommissie] Minister daarmee gelykstaan, met goeie gevolg afgelê het;

(b) kan die [Staatsdienskommissie] Landdrostekommissie wanneer hy 'n aanbeveling doen vir die aanstelling van iemand as 'n magistraat, addisionele magistraat of assistent-magistraat, voorkeur gee aan iemand wat 'n graad in die regte van 'n universiteit in Suid-Afrika besit, of wat die staatsdiens-hoërwetseksamen of 'n eksamen wat volgens oordeel van die Kommissie daarmee gelykstaan, met goeie gevolg afgelê het."

Wysiging van artikel 12 van Wet 32 van 1944, soos gewysig deur artikel 9 van Wet 40 van 1952 en artikel 25 van Wet 94 van 1974

5. Artikel 12 van die Wet op Landdroshoue, 1944, word hierby gewysig deur die volgende paragraaf by subartikel (1) te voeg:

"(c) is onderworpe aan die administratiewe beheer van die hoof van die administratiewe streek waarbinne sy of haar distrik geleë is."

45 Wysiging van artikel 92 van Wet 32 van 1944, soos vervang deur artikel 30 van Wet 94 van 1974 en gewysig deur artikel 9 van Wet 91 van 1977, artikel 1 van Wet 109 van 1984, artikel 9 van Wet 25 van 1987, artikel 2 van Wet 129 van 1993 en artikel 2 van Wet 33 van 1997

6. Artikel 92 van die Wet op Landdroshoue, 1944, word hierby gewysig deur paragraaf (a) van subartikel (1) deur die volgende paragraaf te vervang:

50 "(a) met gevangenisstraf, gevangenisstraf vir 'n tydperk van hoogstens [twaalf maande] drie jaar oplê, waar die hof nie die hof van 'n streekafdeling is nie, of van hoogstens [tien] 15 jaar, waar die hof die hof van 'n streekafdeling is;"

Substitution of section 14 of Act 90 of 1993, as amended by section 8 of Act 35 of 1996

7. The following section is hereby substituted for section 14 of the Magistrates Act, 1993:

“Powers and duties of magistrates

5

14. (1) A magistrate shall possess the powers and perform the duties conferred on or assigned to him or her by or under the laws of the Republic or, in any specific case, by the Minister after consultation with the Commission.

(2) The Minister may, after consultation with the Commission, make regulations conferring on or assigning to magistrates administrative powers and duties which do not affect the judicial independence of magistrates, including regulations empowering the Minister, after consultation with the Commission, to confer or assign administrative powers and duties of a general nature on or to magistrates.

10

15

(3) The provisions of section 16(2) shall apply with the necessary changes in respect of any regulation made under subsection (2).”

Amendment of section 16 of Act 90 of 1993, as amended by sections 7 and 8 of Act 35 of 1996

8. Section 16 of the Magistrates Act, 1993, is hereby amended by the addition of the following subsection: 20

“(6) A regulation made under subsection (1)(j), and which regulates the attendance of persons at misconduct proceedings contemplated in such a regulation, may provide that any person who contravenes a provision thereof or fails to comply therewith shall be guilty of an offence and on conviction be liable to a fine, or to imprisonment for a period not exceeding three months.” 25

Short title

9. This Act shall be called the Magistrates Amendment Act, 1998.

Vervanging van artikel 14 van Wet 90 van 1993, soos gewysig deur artikel 8 van Wet 35 van 1996

7. Artikel 14 van die Wet op Landdroste, 1993, word hierby deur die volgende artikel vervang:

5 **“Bevoegdhede en pligte van landdroste**

14. (1) 'n Landdros besit die bevoegdhede en verrig die pligte wat by of kragtens die wette van die Republiek of, in 'n bepaalde geval, na oorleg met die Kommissie, deur die Minister aan hom of haar verleen of opgedra word.

10 (2) Die Minister kan, na oorleg met die Kommissie, regulasies uitvaardig waarby administratiewe bevoegdhede en pligte wat nie die regterlike onafhanklikheid van landdroste beïnvloed nie, aan landdroste verleen of opgedra word, met inbegrip van regulasies wat aan die Minister die bevoegdheid verleen om, na oorleg met die Kommissie, administratiewe bevoegdhede en pligte van 'n algemene aard aan landdroste te verleen of op te dra.

15 (3) Die bepalinge van artikel 16(2) is met die nodige aanpassings van toepassing met betrekking tot 'n regulasie kragtens subartikel (2) uitgevaardig.”.

20 **Wysiging van artikel 16 van Wet 90 van 1993, soos gewysig deur artikels 7 en 8 van Wet 35 van 1996**

8. Artikel 16 van die Wet op Landdroste, 1993, word hierby gewysig deur die volgende subartikel by te voeg:

25 “(6) 'n Regulasie kragtens subartikel (1) (j) uitgevaardig, en wat die bywoning van persone reël by wangedragverrigtinge in sodanige regulasie beoog, kan voorsiening maak dat 'n persoon wat 'n bepaling daarvan oortree of versuim om daaraan te voldoen, aan 'n misdryf skuldig is en by skuldigbevinding strafbaar is met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens drie maande.”.

Kort titel

30 9. Hierdie Wet heet die Wysigingswet op Landdroste, 1998.