

15 January 2010
lb021209

REPUBLIC OF SOUTH AFRICA

MAGISTRATES' COURTS AMENDMENT BILL

(As submitted to Minister)

(MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B —2010]

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

BILL

To amend the Magistrates' Courts Act, 1944, so as to regulate anew the qualifications required for the appointment of a person as a magistrate, additional magistrate and magistrate of a regional division; to further regulate the inclusion of magistrates of regional divisions on the list of magistrates who may adjudicate on civil disputes; and to authorise the Minister to further regulate the conditions relating to the authorisation of a person to serve process of court or other documents on behalf of a public body; and to provide for matters connected therewith.

PARLIAMENT of the Republic of South Africa, enacts as follows:—

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, section 3 of Act 104 of 1996, section 3 of Act 66 of 1998, section 1 of Act 62 of 2000, section 1 of Act 28 of 2003 and section 1 of Act 22 of 2005

1. Section 9 of the Magistrates' Courts Act, 1944, is hereby amended by the deletion of paragraph *(b)* of subsection (1).

Amendment of section 10 of Act 32 of 1944, as substituted by section 4 of Act 66 of 1998

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

"Qualifications for appointment of judicial officers

10. Subject to the provisions of the Magistrates Act, 1993 (Act No. 90 of 1993), any appropriately qualified woman or man who is a fit and proper person may be appointed as a magistrate, an additional magistrate or a magistrate of a regional division."

Amendment of section 12 of Act 32 of 1944, as amended by section 9 of Act 40 of 1952, section 25 of Act 94 of 1974, section 5 of Act 66 of 1998 and section 4 of Act 31 of 2008

3. Section 12 of the Magistrates' Courts Act, 1944, is hereby amended by the substitution for subsections (6), (7) and (8) of the following subsections:

"(6) Only a magistrate of a regional division whose name appears on the list referred to in subsection (7), may adjudicate on civil disputes as contemplated in –

(a) section 29(1) [and] or 29(1B); or

(b) both section 29(1) and 29(1B),

in accordance with the criteria set out in subsection (8).

"(7) The Magistrates Commission must enter the names of magistrates of regional divisions on a list of magistrates **[for the adjudication of] who may adjudicate on** civil disputes contemplated in **[section 29(1) and 29(1B)] subsection (6).**

(8) The Magistrates Commission may only enter the name of a magistrate on the list in terms of subsection (7) if one or more places have been appointed in terms of section 2(1)(iA) within the regional division in respect of which the magistrate in question had been appointed for the adjudication of civil disputes, and –

(a) the head of the South African Judicial Education Institute has issued a duly signed certificate that the magistrate has successfully completed an appropriate training course in the adjudication of civil disputes; or

- (b) the Magistrates Commission is satisfied that, before the establishment of the Institute referred to in paragraph (a), the magistrate has successfully completed an appropriate training course in the adjudication of civil disputes; or
- (c) the Magistrates Commission is satisfied that the magistrate, on account of previous experience [-
 - (i) as a magistrate presiding over the adjudication of civil disputes; or
 - (ii) as a legal practitioner with at least five years' experience in the administration of justice,]

has suitable knowledge of, and expertise in, civil litigation matters to preside over the adjudication of civil disputes contemplated in section 29 (1) **[and] or** 29 (1B) or both section 29(1) and 29(1B)."

Amendment of section 15 of Act 32 of 1944, as amended by section 11 of Act 40 of 1952, section 2 of Act 19 of 1963, section 29 of Act 70 of 1968, section 26 of Act 94 of 1974, section 1 of Act 59 of 1982, section 64 of Act 90 of 1986 and section 4 of Act 18 of 1996

4. Section 15 of the Magistrates' Courts Act, 1944, is hereby amended by the insertion after subsection (2) of the following subsection:

"(2A) The Minister may, by notice in the *Gazette*, determine the conditions of authorisation of a person referred to in subsection (2)(a) or any other matter relating to that authorisation."

Short title and commencement

5. This Act is called the Magistrates' Courts Amendment Act, 2010, and comes into operation on the date of commencement of the Jurisdiction of Regional Courts Amendment Act, 2008 (Act 31 of 2008).

INVITATION TO COMMENT ON THE MAGISTRATES' COURTS AMENDMENT BILL, 2010

1. The objects of the Magistrates' Courts Amendment Bill, 2010 (the Bill), is to amend the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), so as to regulate anew the qualifications required for the appointment of a person as a magistrate, additional magistrate and magistrate of a regional division; to further regulate the inclusion of magistrates of regional divisions on the list of magistrates who may adjudicate on civil disputes; and to authorise the Minister to further regulate the conditions relating to the authorisation of a person to serve process of court or other documents on behalf of a public body; and to provide for matters connected therewith. These proposed amendments are discussed in paragraph 3, hereunder.

2. Any person wishing to comment on the Bill is invited to submit written comments to the Minister of Justice and Constitutional Development on or before 19 March 2010.

Comments should be directed for the attention of S J Robbertse and -

(a) if forwarded by post, to be addressed to:

The Department of Justice and Constitutional Development

Private Bag X81

PRETORIA

0001

(b) if delivered by hand, be delivered at -

Momentum Building

329 Pretorius Street

PRETORIA

(c) if sent by E-mail, be sent to **srobbertse@justice.gov.za**

(d) if faxed, be faxed to **086 648 3326**

3. DISCUSSION OF PROPOSED AMENDMENTS

3.1 Clauses 1 and 2 amend sections 9(1)(b) and 10 of the Magistrates' Courts Act, 1944 (Act 32 of 1944), by abolishing the requirement that only a magistrate in possession of a LLB degree may be appointed as a regional court magistrate, and by providing that any appropriately qualified woman or man who is a fit and proper person may be appointed as a magistrate, an additional magistrate or a magistrate of a regional division. These amendments will bring the requirements for appointment as a magistrate, an additional magistrate or a magistrate of a regional division, in line with the requirements for appointment as a judge as provided for in section 174(1) of the Constitution.

3.2 The Jurisdiction of Regional Courts Amendment Act, 2008, amended section 12 of the Magistrates' Courts Act, 1944, to provide that only a regional court magistrate whose name appears on the list referred to in section 12(7) may adjudicate on civil disputes as provided for in section 29(1) of the Magistrates' Courts Act, 1944 (various types of civil matters) and section 29(1B) (divorce matters). Section 12(8) provides that the Magistrates Commission may only enter the name of a regional court magistrate on the list if one or more places have been appointed in terms of section 2(1)(iA) within the regional division in respect of which the magistrate in question had been appointed for the adjudication of civil disputes and if –

- (a) the head of the SA Judicial Education Institute has issued a certificate that the magistrate has successfully completed an appropriate training course in the adjudication of civil disputes;
- (b) the Magistrates Commission is satisfied that, before the establishment of the Institute, the magistrate has successfully completed an appropriate training course in the adjudication of civil disputes; or
- (c) the Magistrates Commission is satisfied the magistrate, on account of previous experience –
 - (i) as a magistrate presiding over the adjudication of civil disputes; or
 - (ii) as a legal practitioner with at least five years' experience in the administration of justice,
 has suitable knowledge of, and experience in, civil litigation matters to preside over the adjudication of civil disputes contemplated in section 29(1) and 29(1B).

Due to the conjunctive nature of the current provision, only the names of regional court magistrates who are experienced in both those areas of adjudication may be entered on the said list, thereby preventing a regional court magistrate who is suitably experienced in one or the other field of adjudication from being assigned to a regional court exercising jurisdiction only in that field. In order to broaden the pool of magistrates who can adjudicate on these matters, clause 3 amends section 12 of the Magistrates' Courts Act, 1944, in order to provide that the names of magistrates who are experienced in the adjudication of either civil law matters or divorce matters may be entered on the list, kept by the Magistrates Commission, of regional court magistrates who may adjudicate on civil disputes.

3.3 Section 15(2)(a) of the Magistrates' Courts Act, 1944, provides that whenever a public body has the right to prosecute privately in respect of an offence under any law, or whenever a fine imposed on conviction in respect of an offence is to be paid into the revenue of a public body, the process of the court and all other documents in the case must be served by a person authorised in writing by such public body. Section 15(2)(b) provides

that, where it is expedient that such process shall be served in the area of jurisdiction of another public body, a person authorised by such other public body may serve the process of the court and other documents in the case. Clause 4 amends section 15 of the Magistrates' Courts Act, 1944, by the insertion of a new subsection (2A), which gives a discretion to the Minister of Justice and Constitutional Development to determine the conditions of the authorisation of a person to serve process of court or other documents on behalf of a public body or to determine any other matter relating to that authorisation. The purpose of the amendment is to prevent certain irregularities that are taking place regarding the service of those documents, for instance persons are not always authorised in writing, procedures for service are not adhered to and persons are serving documents on behalf of the authorised person.

4. An electronic copy of the Bill is obtainable at:
<http://www.justice.gov.za/legislation/bills/bills.htm>