

SHERIFFS AMENDMENT ACT 74 OF 1998

[ASSENTED TO 30 SEPTEMBER 1998] [DATE OF COMMENCEMENT: 1 MARCH 1999]
(Unless otherwise indicated)

(English text signed by the President)

ACT

To amend the Sheriffs Act, 1986, in order to provide for the rationalisation of certain laws relating to sheriffs and messengers of the court which were in force in various areas of the national territory of the Republic by virtue of the Constitution; to amend certain definitions; to empower the Minister to appoint more than one sheriff for a particular area to perform the duties and functions assigned to a sheriff; to restructure the composition of the Board for Sheriffs in order to make it more representative; to provide for a disciplinary inquiry by an independent and impartial person who must be suitably qualified in law; to provide that sheriffs be allowed, before they pay over the interest accrued on their trust accounts to the Fidelity Fund for Sheriffs, to deduct therefrom their expenses in respect of their trust accounts; to further regulate the issuing of fidelity fund certificates to acting sheriffs; to compel a sheriff to obtain professional indemnity insurance; to provide for admission of guilt fines; to provide for additional actions against a sheriff who is found guilty of improper conduct; to create certain offences; to extend the application of the Act to the entire national territory of the Republic; and to provide for transitional provisions; and to provide for matters connected therewith.

1 Amends [section 1](#) of the Sheriffs [Act 90 of 1986](#), as follows: paragraph *(a)* substitutes the definition of 'auditor'; paragraph *(b)* substitutes the definition of 'banking institution'; paragraph *(c)* substitutes the definition of 'building society'; paragraph *(d)* inserts the definition of 'legal practitioner'; paragraph *(e)* substitutes the definition of 'lower court'; and paragraph *(f)* substitutes the definition of 'sheriff'.

2 Amends [section 3](#) of the Sheriffs [Act 90 of 1986](#) by adding paragraph *(b)* to subsection (2), the existing subsection becoming paragraph *(a)*.

[Date of commencement of s. 2: 1 September 2000.]

3 Amends [section 4](#) of the Sheriffs [Act 90 of 1986](#) by substituting subsection (2).

4 Amends [section 9](#) of the Sheriffs [Act 90 of 1986](#), as follows: paragraph *(a)* substitutes subsection (2); paragraph *(b)* inserts subsection (2A); paragraph *(c)* substitutes subsection (3); paragraph *(d)* substitutes subsection (4); and paragraph *(e)* substitutes subsection (5).

5 Amends section 17 (3) of the Sheriffs [Act 90 of 1986](#) by substituting paragraph *(b)*.

6 Substitutes [section 18](#) of the Sheriffs [Act 90 of 1986](#).

7 Amends [section 22](#) of the Sheriffs [Act 90 of 1986](#) by substituting subsection (4).

8 Amends section 26 (1) of the Sheriffs [Act 90 of 1986](#) by substituting paragraph *(b)*.

9 Substitutes [section 30](#) of the Sheriffs [Act 90 of 1986](#).

10 Amends [section 32](#) of the Sheriffs [Act 90 of 1986](#) by substituting subsection (3).

11 Amends section 33 (1) of the Sheriffs [Act 90 of 1986](#) by inserting paragraph *(m)*.

12 Amends [section 43](#) (1) of the Sheriffs [Act 90 of 1986](#), as follows: paragraph *(a)* substitutes paragraph *(g)*; and paragraph *(b)* adds paragraphs *(h)* and *(i)*.

13 to 15 inclusive Substitutes sections 45, 46 and 49 of the Sheriffs [Act 90 of 1986](#).

16 Amends section 50 (2) of the Sheriffs [Act 90 of 1986](#) by substituting paragraph *(c)*.

17 Amends [section 51](#) of the Sheriffs [Act 90 of 1986](#) by substituting paragraph *(b)*.

18 Amends [section 60](#) of the Sheriffs [Act 90 of 1986](#), as follows: paragraph *(a)* inserts subsection (1) (*g A*); paragraph *(b)* inserts subsection (1A); and paragraph *(c)* substitutes subsection (2).

19 Amends section 61 (1) of the Sheriffs [Act 90 of 1986](#) by substituting paragraph *(c)*.

20 Amends section 62 (1) of the Sheriffs Act 90 of 1986 by inserting paragraphs (d A) , (d B) and (d C) .

21 Amends the Sheriffs Act 90 of 1986 by substituting the expressions 'chairperson' and 'deputy chairperson' for the expressions 'chairman' and 'vice-chairman', respectively, wherever they occur.

22 **Extension of Act 90 of 1986**

The application of the principal Act is hereby extended to the entire national territory of the Republic.

23 **Repeal of laws**

The laws mentioned in the first column of the Schedule are hereby repealed or amended to the extent indicated in the third column thereof.

24 **Savings**

(1) Any person who immediately prior to the date of commencement of this Act-

- (a) held office as messenger or acting messenger of any lower court, or was appointed as a deputy messenger, shall as from said date be deemed to have been duly appointed in terms of the provisions of the principal 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 sheriff of any superior court, or was appointed as an assistant of a deputy sheriff or acting deputy sheriff, shall as from that date be deemed to have been duly appointed in terms of the provisions of the principal Act as a sheriff or acting sheriff of that superior court, or as a deputy sheriff, respectively.

(2) Any sheriff or acting sheriff referred to in paragraph (a) or (b) of subsection (1) shall hold office subject to the provisions of the principal Act: Provided that-

- (a) the provisions of section 30 of the principal Act shall not apply in respect of any such sheriff or acting sheriff for a period of twelve months after the date of commencement of this Act, within which period such sheriff or acting sheriff shall apply to the Board for a fidelity fund certificate as contemplated in section 31 of the principal Act;
- (b) any security furnished by any such sheriff or acting sheriff in connection with his or her appointment shall, notwithstanding the repeal of any provision governing the furnishing of such security, be maintained until the day upon which he or she becomes the holder of a fidelity fund certificate;
- (c) notwithstanding the provisions of section 35 of the principal Act, the Fund shall not incur liability in respect of any such sheriff or acting sheriff for an act, referred to in section 35 of the principal Act, committed by such sheriff or acting sheriff before the date of commencement of this Act;
- (d) the provisions of section 51 (a) (ii) or 53 of the principal Act shall not apply to remunerative work which any such sheriff or acting sheriff performs outside his or her office after the date of commencement of this Act if he or she-
 - (i) had performed such work immediately prior to the said date; and
 - (ii) notifies the Minister in writing of such remunerative work within 30 days after the said date; and
- (e) any such sheriff shall hold office as contemplated in section 4 (1) of the principal Act until the date on which he or she attains the age of 70 years.

(3) (a) Any investigation or procedure in terms of a law repealed by section 2 in respect of a messenger or deputy sheriff who is alleged-

- (i) to have been negligent or dilatory in the service or execution of process; or
- (ii) to have wilfully demanded payment of more than his or her proper fees or expenses; or
- (iii) to have made a false return; or
- (iv) to have misconducted himself or herself in any other manner in connection with his or her duties,

which has not been finalised by the commencement of this Act, shall be referred to the Board for Sheriffs, which shall treat the matter as it deems appropriate.

- (b) The Board for Sheriffs may in respect of any matter referred to it in terms of paragraph (a) -
- (i) exercise the powers and the jurisdiction conferred upon it by the principal Act and the regulations made thereunder; and
 - (ii) have such regard to the existing record of any proceedings in such matter as it deems appropriate.

(4) Anything done under a provision of a law repealed by section 2 which may be done under a corresponding provision of the principal Act, shall be deemed to have been done under that corresponding provision.

(5) Notwithstanding section 11 of the principal Act, the terms of office of the members of the Board as it existed immediately prior to the commencement of this Act, shall expire upon the commencement of this Act, and the Minister may at any time after the passing of this Act, appoint the members of the Board in terms of section 9 of the principal Act, as amended by section 4 of this Act.

25 Construction of references to messenger in existing laws and process of court

A reference in any law in force immediately prior to the date of commencement of this Act, in any area or in any process of court of such area, to a messenger or a messenger of any lower court shall, subject to the provisions of item 2 (2) if Schedule 6 to the Constitution of the Republic of South Africa, 1996 ([Act 108 of 1996](#)), be construed as a reference to a sheriff of that lower court appointed under the principal Act.

26 Short title and commencement

This Act shall be called the Sheriffs Amendment Act, 1998, and shall come into operation on a date fixed by the President by proclamation in the *Gazette* .

Schedule LAWS REPEALED OR AMENDED BY SECTION 23

Number and year of law	Short title	Extent of repeal or amendment	Area of national territory in respect of which law is repealed or amended
Act 32 of 1944	Magistrates' Courts Act, 1944	1. The repeal of sections 14, 15, 18, 18A and 107.	The territories of the former Republics of Transkei, Venda and Ciskei and the former self-governing territories of Gazankulu, KaNgwane, KwaNdebele, KwaZulu, Lebowa and Qwaqwa.
Act 59 of 1959	Supreme Court Act, 1959	1. The amendment of section 34- (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph: " (a) The Minister may, subject to the laws governing the public service, appoint for the Supreme Court registrars, assistant registrars and other officers whenever they may be required for the administration of justice or the execution of the powers and authorities of the said court. "; (b) by the substitution for paragraph (b) of subsection (1) of the following paragraph: ' (b) Whenever by reason of absence or	The territory of the former Republic of Venda.

incapacity a registrar or assistant registrar is unable to carry out the functions of his or her office, or his or her 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.'; and

- (c) by the deletion of paragraph (c) of subsection (1) and subsections (3), (4), (5) and (6).
2. The repeal of section 35.
3. The amendment of section 36-
- (a) by the substitution for subsection (1) of the following subsection:
- '(1) The sheriff or the deputy-sheriff concerned 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 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 in the

		<p>execution of his or her duty;';</p> <p>(b) by the substitution for paragraph (c) of the following paragraph:</p> <p>' (c) being a judgment debtor and being required by a sheriff or deputy-sheriff to point out property to satisfy a warrant issued in execution of judgment against such person-</p> <p>(i) falsely declares to that sheriff or deputy-sheriff that he or she possesses no property or insufficient property to satisfy the warrant; or</p> <p>(ii) although knowing of such property neglects or refuses to point out such property or to deliver it to the sheriff or deputy-sheriff when requested to do so; or'; and</p> <p>(c) by the substitution for paragraph (d) of the following paragraph:</p> <p>' (d) being a judgment debtor refuses or neglects to comply with any requirement of a sheriff or deputy-sheriff in regard to the delivery of documents in his or her possession or under his or her control relating to the title of the immovable property under execution,'.</p>	
<p>Act 32 of 1982</p>	<p>Supreme Court of Bophuthatswana Act, 1982</p>	<p>1. The amendment of section 18-</p> <p>(a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:</p> <p>' (a) The Minister may, subject to the laws governing the Public Service, appoint for the Supreme Court</p>	<p>The territory of the former Republic of Bophuthatswana</p>

registrars, deputy-registrars, assistant registrars and other officers whenever they may be required for the administration of justice or the execution of the powers and authorities of the said Court.';

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

' (b) Whenever by reason of absence or incapacity a registrar, deputy-registrar or assistant registrar is unable to carry out the functions of his or her office, or his or her office becomes vacant, the Minister may authorise 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.'; and

(c) by the deletion of paragraph (c) of subsection (1) and subsections (3), (4), (5) and (6).

2. The repeal of section 19.

3. The amendment of section 20-

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

'(1) The sheriff or the deputy-sheriff shall execute all sentences, decrees, judgments, writs, summonses, subpoenas, 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 of the steps taken in connection with any process of the court, shall be *prima facie* evidence of the matters therein stated.'

4. The repeal of sections 21 and 22.

5. The amendment of section 24-

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

' (a) obstructs or hinders a sheriff or deputy-sheriff in the exercise or performance of his or her powers, functions or duties under or by virtue of the provisions of this Act or any other law;';

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

' (b) upon having been required by a sheriff or deputy-sheriff in the course of exercising or performing any aforesaid power, function or duty, to identify himself or herself or to furnish proof of his or her identity, refuses or fails to do so or to do so to the satisfaction of such sheriff or deputy-sheriff, or furnishes a false identity or proof of identity;';

- (c) by the substitution for paragraph (d) of the following paragraph:

' (d) being a judgment debtor and being required by a sheriff or deputy sheriff to point out property to satisfy a warrant issued in execution of judgment against such person-

		<p>(i) falsely declares to that sheriff or deputy-sheriff that he or she possesses no property or insufficient property to satisfy the warrant; or</p> <p>(ii) while knowing of such property refuses or neglects to point out such property or to deliver it to the sheriff or deputy-sheriff when requested to do so; or'; and</p> <p>(d) by the substitution for paragraph (e) of the following paragraph:</p> <p>' (e) being a judgment debtor refuses or neglects to comply with any requirement of a sheriff or deputy-sheriff in connection with the delivery of documents in his or her possession or under his or her control relating to the title of the immovable property under execution,'.</p>	
<p>Act 5 of 1983</p>	<p>Supreme Court Act, 1983</p>	<p>1. The amendment of section 13-</p> <p>(a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:</p> <p>' (a) The Minister may, subject to the laws governing the public service, appoint for the court or for any division thereof a registrar, assistant registrar and other officers whenever they may be required for the administration of justice or the exercise of the powers and authority of the court.';</p> <p>(b) by the substitution for paragraph (b) of the following paragraph:</p> <p>' (b) Whenever by reason of absence or</p>	<p>The territory of the former Republic of Transkei.</p>

incapacity the Registrar or Assistant Registrar is unable to carry out the functions of his or her office, or his or her office becomes vacant, the Minister may authorize any other competent person 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.;

(c) by the deletion of paragraph (c) of subsection (1) and subsections (3), (4), (5), (6) and (7); and

(d) by the substitution for paragraphs (a) and (b) of subsection (8) of the following paragraphs, respectively:

' (a) The Sheriff or the deputy sheriff concerned shall execute 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.

(b) The return of the Sheriff or a deputy sheriff of what has been done upon any process of the court, shall be *prima facie* evidence of the matters therein stated.'

2. The repeal of section 14.

3. The amendment of section 16-

(a) by the substitution for paragraph (a) of the following paragraph:

' (a) obstructs the Sheriff or deputy sheriff in the execution of his or her duty;'

		<p>(b) by the substitution for paragraph (c) of the following paragraph:</p> <p>' (c) being a judgment debtor and being required by the Sheriff or deputy sheriff to point out property to satisfy a warrant issued in execution of a judgment against such person-</p> <p>(i) falsely declared to the Sheriff or deputy sheriff that he or she possesses no property or insufficient property to satisfy the warrant; or</p> <p>(ii) although knowing of such property, neglects or refuses to point out such property or to deliver it to the Sheriff or a deputy sheriff when requested to do so, or;'; and</p> <p>(c) by the substitution for paragraph (d) of the following paragraph:</p> <p>' (d) being a judgment debtor, refuses or neglects to comply with any requirement of the Sheriff or deputy sheriff in regard to the delivery of documents in his or her possession or under his or her control relating to the title of the immovable property under execution,'.</p> <p>4. Amendment of section 17 by the substitution for the words preceding paragraph (a) of the following words:</p> <p>' (a) The Sheriff or a deputy sheriff shall not seize in execution of any process-'.</p>	
<p>Act 32 of 1985</p>	<p>Magistrates' Courts Consolidation Act, 1985</p>	<p>The repeal of sections 15, 16, 19, 20 and 137.</p>	<p>The territory of the former Republic of Bophuthatswana</p>

Decree 43 of 1990	Supreme Court Decree, 1990	<p>1. Amendment of section 22-</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 otherwise to the laws governing the public service, appoint for the Supreme Court or any division thereof a registrar, assistant registrar and other officers whenever they may be required for the administration of justice or the execution of the powers and authorities of such court or division.';</p> <p>(b) by the substitution for paragraph (b) of subsection (1) of the following paragraph:</p> <p style="padding-left: 40px;">' (b) Whenever by reason of absence or incapacity a registrar or assistant registrar is unable to carry out the functions of his or her office or his or her office becomes vacant, the Minister may authorise 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.';</p> <p style="padding-left: 40px;">and</p> <p>(c) by the deletion of paragraph (c) of subsection (1) and subsections (2), (3), (4), (5) and (6).</p> <p>2. The repeal of section 24.</p> <p>3. The amendment of section 25-</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p style="padding-left: 40px;">'(1) The sheriff or the deputy-sheriff concerned shall execute all sentences, decrees, judgments, writs, summonses, rules, orders, warrants, commands and processes of the Supreme Court</p>	The territory of the former Republic of Ciskei
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directed to the sheriff and make return of the manner of execution thereof to the court concerned 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 of what has been done upon any process of the court shall be *prima facie* evidence of the matters stated therein.'

4. The amendment of section 27-

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

' (a) obstructs a sheriff or deputy-sheriff in the execution of his or her 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 to point out property to satisfy a warrant issued in execution of a judgment against such person-

(i) falsely declares to that sheriff or deputy-sheriff that he or she possesses no property or insufficient property to satisfy the warrant; or

(ii) although knowing of such property neglects or refuses to point out such property or to deliver it to the sheriff or deputy-sheriff when requested to do so, or';

		<p>and</p> <p>(c) by the substitution for paragraph (d) of the following paragraph:</p> <p>' (d) being a judgment debtor refuses or neglects to comply with any requirement of a sheriff or deputy-sheriff in regard to the delivery of documents in his or her possession or under his or her control relating to the title of any immovable property under execution,'.</p> <p>5. The repeal of sections 28 and 29.</p>	
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