

Government Gazette 14986

STATE PRESIDENT'S OFFICE

No. 1287
20 July 1993

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

NO. 120 OF 1993: MAGISTRATES' COURTS AMENDMENT ACT, 1993

GENERAL EXPLANATORY NOTE:

Words in bold type indicate omissions from existing enactments.

Words in italics indicate insertions in existing enactments.

ACT

To amend the Magistrates' Courts Act, 1944, in order to make provision for the establishment and jurisdiction of civil courts for civil divisions and the appointment of senior civil magistrates for the said courts; to create a separate court structure for the adjudication of civil cases; to further regulate the constitution of the Regional Magistrates Appointments Advisory Board; to provide for the establishment of family courts for the adjudication of divorce actions and the appointment of family magistrates for the said courts; to provide that advocates and attorneys may, in certain circumstances, be appointed as judicial officers; to delete or replace certain obsolete expressions; to emend the Afrikaans text; to replace the short title; and to replace the long title; to amend the Black Administration Act, 1927, the Deeds Registries Act, 1937, the Interpretation Act, 1957, the General Law Amendment Act, 1957, the Attorneys Act, 1979, the Small Claims Courts Act, 1984, the Matrimonial Property Act, 1984, the Rules Board for Courts of Law Act, 1985, and the Short Process Courts and Mediation in Certain Civil Cases Act, 1991, in order to effect certain consequential amendments; to amend the Black Administration Act, 1927, Amendment Act, 1929, in order to abolish separate divorce courts for Blacks; to amend the Divorce Act, 1979, in order to provide for certain procedures in connection with divorce actions; to amend the Mediation in Certain Divorce Matters Act, 1987, in order to empower the Minister of Justice to make the provisions thereof applicable to a divorce action adjudicated in a family court; and to provide for matters in connection therewith.

(Afrikaans text signed by the State President.)

(Assented to 9 July 1993.)

BE IT ENACTED by the State President and 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 and section 2 of Act 34 of 1986

1. Section 1 of the Magistrates' Courts Act, 1944 (hereinafter referred to as the principal Act), is hereby amended-

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

" 'civil court' means a civil court established under section 2(i), (j) or

(k); 'civil division' means a civil division established under section 2(c);

'civil magistrate' means a civil magistrate appointed under section 9(1)(a)(ii);;

(b) by the substitution for the definition of "court" of the following definition:

"'court' means a magistrate's court

(a) any court established under section 2(g), (h), (i), (j) or (k); and (b) subject to the provisions of section 29B(2), in Chapters VI to XI, inclusive, or if the expression is used in relation to any civil case, a civil court; or

(c) in Chapters XII to XVI, inclusive, or when the expression is used in relation to any criminal case, a regional court or a magistrate's court;";

(c) 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 to which an appeal lies from the magistrate's any court;";

(d) by the insertion after the definition of "court of appeal" of the following definitions:

"'district' in Chapters VI to XI, inclusive, includes a civil or family division;

'family court' means a family court established under section 2(k); 'family division' means a family division established under section 2(d);

'family magistrate' means a family magistrate appointed under section 9(1)(a)(v);"

(e) by the substitution for the definition of "judicial officer" of the following definition:

*"'judicial officer' means a **magistrate, an additional magistrate or an assistant magistrate** any holder of an office, whether in a permanent, acting or temporary capacity. who may hold a court under this Act;"*; by the substitution for the definition of "magistrate" of the following definition:

"'magistrate' means a magistrate appointed under section 9(1) (a) (i) ;"

(g) by the insertion after the definition of "magistrate" of the following definition:

"'magistrate's court' means a magistrate's court established under section 2(g);"

(h) 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; 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;"

(i) by the substitution for the definition of "practitioner" of the following definition:

*"'practitioner' means an advocate, an attorney, **an articulated clerk** a candidate attorney such as is referred to in section 21 or an agent such as is referred to in section 22;"*

(j) by the insertion after the definition of "practitioner" of the following definitions:

"'regional court' means a regional court established under section

'regional division' means a regional division established under section 2(b);

'regional magistrate' means a regional magistrate appointed under section 9(1)(a)(iii);

'senior civil magistrate' means a senior civil magistrate appointed under section 9(1)(a)(iv);"; and

(k) by the deletion of the definitions of "province", "Republic" and "territory".

Substitution 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. The following section is hereby substituted for section 2 of the principal Act:

"Minister's powers relative to districts, regional divisions, civil divisions, family divisions and courts

2. The Minister may, by notice in the Gazette-

(a) establish districts, define the local limits of each district, which may consist of various non-contiguous areas, and determine the name by which any district shall be known;

(b) establish regional divisions consisting of a number of districts, or of a district together with one or more subdistricts, and determine the name by which any regional division shall be known;

(c) establish civil divisions consisting of one or more districts, or of a district together with one or more subdistricts, and determine the name by which any civil division shall be known;

(d) establish family divisions of the civil court consisting of one or more districts, or of a district together with one or more subdistricts, and determine the name by which any family division shall be known;

(e) increase or decrease the local limits of any district or regional,

civil or family division;

- (f) for all purposes or for such purposes as he may determine, annex any district or any portion thereof to another district;*
- (g) establish a magistrate's court for any district;*
- (h) establish a regional court for any regional division;*
- (i) establish a civil court for any district;*
- (j) establish a civil court for any civil division;*
- (k) establish a family court for any family division;*
- (l) appoint one or more places within each district for the holding of the magistrate's court of such district, and define the local limits of an area in a district, which area may include any portion of an adjoining district, and determine the name by which such area shall be known, and appoint one or more places in such area for the holding of the magistrate's court of such area; of which first-mentioned places, if more than one is appointed, one shall be appointed as the seat of the magistracy;*
- (m) appoint one or more places in each regional division for the holding of the regional court of such regional division;*
- (n) appoint one or more places within each district for the holding of the civil court of such district, and define the local limits of an area in a district, which area may include any portion of an adjoining district, and determine the name by which such area shall be known, and appoint one or more places in such area for the holding of the civil court of such area; of which first-mentioned places, if more than one such place is appointed, one shall be appointed as the seat of the civil court;*
- (o) appoint one or more places in each civil division for the holding of the civil court of such civil division;*
- (p) appoint one or more places in each family division for the holding of the family court of such family division;*
- (q) within any district appoint places other than the seat of magistracy for the holding of periodical magistrates' courts, and define the local limits within which such court shall have jurisdiction, and include within those limits any portion of an adjoining district;*

- (r) *detach a portion of a district or portions of two or more adjoining districts as a subdistrict to form the area of jurisdiction of a detached magistrate's court, and determine the name by which such subdistrict shall be known, and appoint the places where such detached court is to be held;*
- (s) *within any district appoint places other than the seat of the civil court for the holding of periodical civil courts, and define the local limits within which such court shall have jurisdiction, and include within those limits any portion of an adjoining district;*
- (t) *detach a portion of a district or portions of two or more adjoining districts as a subdistrict to form the area of jurisdiction of a detached civil court, and determine the name by which such subdistrict shall be known, and appoint the places where such detached court is to be held;*
- (u) *withdraw or vary any notice under this section and abolish any regional, civil or family division or district, subdistrict or other area of jurisdiction and also the court thereof."*

Substitution of section 3 of Act 32 of 1944, as amended by section 4 of Act 40 of 1952

3. The following section is hereby substituted for section 3 of the principal Act:

"Existing courts, districts and regional divisions to continue, and interpretation of certain expressions

3. (1) The courts, **and** districts and *regional divisions* existing immediately before the commencement of **this Act section 3 of the Magistrates' Courts Amendment Act, 1993**, shall be deemed to have been established under this Act.

(2) All references in any other law to *magistrate's court*, magistrates' courts, *lower court* or *lower courts* **of resident magistrate** shall be read as referring to *the court or courts concerned, as the case may be*, established under this Act."

Amendment of section 4 of Act 32 of 1944, as amended by section 5 of Act 40 of 1952, section 26 of Act 70 of 1968 and section 3 of Act 53 of 1970

4. Section 4 of the principal Act is hereby amended by the substitution in subsection (4) for the expression "messenger of the court" of the expression "sheriff".

Amendment of section 7 of Act 32 of 1944, as substituted by section 1 of

Act 25 of 1987

5. Section 7 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Subject to the provisions of section 7A and the rules, the records of the court, other than a record with reference to which a direction has been issued under section 153(2) or 154(1) of the Criminal Procedure Act, 1977, or with reference to which the provisions of section 154(2)(a) or 154(3) of that Act apply, shall be accessible to the public under supervision of the clerk of the court at convenient times and upon payment of the fees prescribed from time to time by the Minister in consultation with the Minister of Finance, and for this purpose and for all other purposes the records of any **magistrate's** court which has at any time existed within the Republic, shall be deemed to be the records of the court of the district in which the place where such court was held is situated, and such records shall be preserved at the seat of magistracy *or civil court, as the case may be*, of that district for such periods as the Director-General: Justice may from time to time determine: Provided that the said Director-General may order that the records of a **court for any regional division** *regional court, a civil court of a civil division or a family court* shall be so preserved at such a place or places within that *regional, civil or family division, as the case may be*, as he may from time to time determine: Provided further that payment of such fees shall not be required from any person who satisfies **the magistrate of the district where the records of the court are preserved, or any judicial officer designated by the said magistrate from among the members of his staff** any judicial officer of the court in respect of which the records are desired that he desires access to the records of the court in connection with research for academic purposes."

Substitution 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 and section 17 of the Magistrates Act of 1993

6. The following section is hereby substituted for section 9 of the principal Act:

"Appointment of judicial officers

9. (1) (a) *Subject to the provisions of the Magistrates Act, 1993, and the provisions of section 10, the Minister may-*

(i) *for every district or subdistrict appoint a magistrate, one*

or more additional magistrates or one or more assistant magistrates;

- (ii) for every district or subdistrict appoint one or more civil magistrates;*
- (iii) for every regional division appoint one or more regional magistrates;*
- (iv) for every civil division appoint one or more senior civil magistrates;*
- (v) for every family division appoint one or more family magistrates. (b) The Minister may, in a particular case or generally and subject to such directions as he may deem fit, delegate the power conferred upon him by paragraph (d) to the Director-General of his Department or another officer of that Department with the rank of director or an equivalent or higher rank, or, in respect of a district situated wholly or partly in a self-governing territory referred to in the Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971), to any officer of his Department who holds the office of secretary or director of a department of the government of the self-governing territory concerned.*

(c) A judicial officer of a district, subdistrict or regional, civil or family division may at the same time also be such a judicial officer of another district, subdistrict or regional, civil or family division, respectively.

(d) The Minister may, with due regard to the circumstances and the extent of judicial functions in a particular district for which a magistrate's court and a civil court have been established, appoint a judicial officer as magistrate, additional magistrate or assistant magistrate and civil magistrate for that district, and in any such case any such person shall possess the powers and jurisdiction and perform the duties connected to both such offices: Provided that a magistrate, additional magistrate or assistant magistrate who presided at criminal proceedings from which a civil action arises in a civil court and in which the same parties are involved, shall not preside in that court in respect of that action unless the parties agree thereto.

(2)(a) Any person appointed as judicial officer under this section shall, before commencing with his functions in terms of this Act for the first time, take an oath or make an affirmation subscribed by him, in the form set out below:

I,.....

(full name)

do hereby swear/solemnly and sincerely affirm and declare that whenever I may be called upon to perform the functions of a judicial officer in any court, I will administer justice to all persons alike without fear, favour or prejudice and, as the circumstances of any particular case may require, in accordance with the law and customs of the Republic of South Africa.

(b) Any such oath or affirmation shall be taken or made in open court before the most senior available judicial officer of the court concerned or a justice of the peace, who shall at the foot thereof endorse a statement of the fact that it was taken or made before him and of the date on which it was so taken or made and append his signature thereto.

(3) Whenever by reason of absence or incapacity a judicial officer is unable to carry out the functions of his office or whenever such office becomes vacant, the Minister or an officer of the Department of Justice authorized thereto in writing by the Minister, may appoint any other competent officer of the public service or any competent retired officer of the public service to act in the place of the absent or incapacitated judicial officer 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 regional, senior civil or family magistrate unless he has satisfied all the requirements for the degree referred to in section 10(b) or has passed an examination referred to in that section.

(4) The Minister or an officer of the Department of Justice authorized thereto in writing by the Minister, may appoint temporarily any person to act, subject to such conditions or restrictions as the Minister or such officer may determine, either generally or in a particular matter, as judicial officer of a district, subdistrict or regional, civil or family division, as the case may be, in addition to any other judicial officer or acting judicial officer of any such district, subdistrict or regional, civil or family division.

(5) The provisions of section 9quat(2) and (4) shall mutatis mutandis apply to any person appointed under subsection (3) or (4): Provided that the provisions of section 9quat(4) shall not apply to any such person who is subject to the laws governing the public service."

Amendment of section 9bis of Act 32 of 1944, as inserted by section 2 of Act 48 of 1965 and amended by section 5 of Act 53 of 1970 and section 2 of Act 28 of 1981

7. Section 9bis of the principal Act is hereby amended by the substitution for subsections (1), (2), (3) and (4) of the following subsections:

"(1) The Minister of **Justice** shall establish a board, to be known as the Regional **Divisions Magistrates** Appointments Advisory Board, to determine from time to time the suitability of **magistrates persons** for appointment as *regional magistrates of regional divisions* and to advise the Minister **concerned** as to the suitability of such **magistrates persons** for appointment as *regional magistrates of regional divisions*.

(2) *The board referred to in subsection 1 shall consist of-*

(a) *the Director-General: Justice, who shall be the chairman thereof;*

(b) *the Chief Director: Justice College;*

(c) *the regional magistrates heading regional divisions; and*

(d) *one advocate and one attorney nominated by the General Council of the Bar of South Africa and the Association of Law Societies of the Republic of South Africa, respectively.*

(3) **Half** A majority of the members of the board referred to in subsection (1) shall form a quorum for a meeting of the board.

(4) *The board referred to in subsection (1) shall designate one of the members as the vice-chairman thereof, and if the chairman of the board is absent from any meeting, the vice-chairman of the board shall preside at that meeting, and if both the chairman and the vice-chairman of the board are absent from any meeting, one of the members present thereat and previously designated thereto by the chairman shall preside at such meeting."*

Insertion of sections 9ter and 9quat in Act 32 of 1944

8. The following sections are hereby inserted in the principal Act after section 9bis:

"Establishment of Senior Civil and Family Magistrates Appointments Advisory Board

9ter. (1) The Minister shall establish a board, to be known as the Senior Civil and Family Magistrates Appointments Advisory Board, to determine from time to time the suitability of persons for appointment as senior civil and family magistrates and to advise the Minister as to the suitability of such persons for appointment as senior civil and family magistrates.

(2) *The board referred to in subsection (1) shall consist of-*

(a) the Director-General: Justice, who shall be the chairman thereof;

(b) the Chief Director: Justice College;

(c) the Chief Family Advocate;

(d) (i) two senior civil magistrates; (ii) two family magistrates; and (iii) two judicial officers designated in terms of section 12(6) to exercise administrative control over civil, senior civil and family magistrates, appointed by the Minister after consultation with the Magistrates Commission established by section 2 of the Magistrates Act, 1993; and

(e) one advocate and one attorney nominated by the General Council of the Bar of South Africa and the Association of Law Societies of the Republic of South Africa, respectively.

(3) The board referred to in subsection (1) shall designate one of the members as the vice-chairman thereof.

(4) The provisions of section 9bis(3) to (6), inclusive, shall mutatis mutandis apply to the meetings of the board referred to in subsection

(5)(a) For the purposes of the initial functioning of the board referred to in subsection (1), the board shall consist of the members referred to in subsection (2)(a) to (c), inclusive, and (e), as well as six judicial officers appointed by the Minister for a period not exceeding two years.

(b) The Minister may at any time before the expiry of the period for which a judicial officer has been appointed in terms of paragraph (a), appoint a senior civil or family magistrate or another judicial officer in the place of the first-mentioned judicial officer.

Appointment of certain practitioners as civil, senior civil or family magistrates in acting capacity

9quat. (1) Subject to the provisions of section 10(b), the Minister may, if he deems it desirable that an advocate or an attorney be appointed, whether in general or in a specific case, to act as civil, senior civil or family magistrate of a district or civil or family division, as the case may be-

(a) in the place of any civil, senior civil or family magistrate; or

(b) in addition to the civil, senior civil and family magistrates of such district or civil or family division, as the case may be; or

(c) in any vacancy in such district or civil or family division, as the case may be, so appoint such advocate or attorney for such period as the Minister may determine, from persons whose names have been submitted for that purpose by the board referred to in section 9ter(1), after consultation with the General Council of the Bar of South Africa and the Association of Law Societies of the Republic of South Africa.

(2) Any appointment as judicial officer made under subsection (1) shall be deemed to have been made also in respect of any period during which the person appointed is necessarily engaged in connection with the disposal of proceedings in which he has taken part as such judicial officer and which have not been disposed of at the expiry of the period for which he was appointed or, having been disposed of before or after such expiry, are reopened.

(3) The provisions of section 9(2) shall mutatis mutandis apply in relation to a person appointed under subsection (1).

(4) The Minister may, with the concurrence of the Minister of State Expenditure, determine the remuneration and allowances and the method of calculation of such remuneration and allowances payable to a person appointed under subsection (1) for services rendered.

(5) (a) Any person appointed under subsection (1) may resign by notice in writing to the Minister.

(b) The Minister may, on the recommendation of the board referred to in section 9ter(1) revoke the appointment of any person appointed under subsection (1)."

Substitution of section 10 of Act 32 of 1944

9. The following section is hereby substituted for section 10 of the principal Act:

"Qualifications for appointment as judicial officer

10. Subject to the provisions of **the law governing the public service and of** section 11-

(a) a person who has not before the commencement of **this Act** section 9 of the *Magistrates' Courts Amendment Act, 1993*, held a substantive appointment as magistrate shall not hold **such** an appointment *as magistrate or civil magistrate* and a person who has not before the said commencement **of this Act** held a substantive appointment as assistant magistrate shall not hold **such** an appointment *as magistrate or civil magistrate*,

unless in either case he has passed the **civil service lower law examination** *diploma iuris examination* or an examination **declared** *deemed* by the **Public Service Commission Magistrates Commission** established by section 2 of the *Magistrates Act, 1993, to be equivalent thereto or of a higher standard;*

(b) *no person shall be appointed as a regional, senior civil or family magistrate unless he is a magistrate, additional magistrate or civil magistrate or an advocate or attorney who has satisfied all the requirements for the degree of baccalaureus legum of a university in the Republic or has passed the diploma legum examination or an examination deemed by the Magistrates Commission mentioned in paragraph (a) to be equivalent or of a higher standard, and the board referred to in section 9bis(1) or 9ter(1), as the case may be, has advised the Minister that he is suitable for appointment as regional, senior civil or family magistrate, as the case may be: Provided that no person who does not satisfy all the requirements for the degree of baccalaureus legum, shall be appointed as a family magistrate."*

Substitution of section 11 of Act 32 of 1944

10. The following section is hereby substituted for section 11 of the principal Act:

"Existing judicial officers to continue in office, and interpretation of certain expressions

11. (1) All **magistrates, additional magistrates and assistant magistrates** *judicial officers* holding office at the commencement of **this Act** *section 9 of the Magistrates' Courts Amendment Act, 1993,* shall be deemed to have been appointed under this Act.

(2) References in any other law to chief magistrates, resident magistrates, magistrates, additional magistrates, civil magistrates or criminal magistrates, shall be read as referring to **magistrates** *judicial officers, as the case may be,* appointed under this Act.

(3) All such references to assistant resident magistrates or to assistant magistrates shall be read as referring to assistant magistrates appointed under this Act."

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

11. The following section is hereby substituted for section 12 of the principal Act:

"Powers of judicial officers

12. (1) *A magistrate of a district or subdistrict-*

(a) *may hold a court in the magistrate's court;*

(b) *shall possess the powers and perform the duties conferred or imposed upon magistrates by law;*

(c) *shall exercise administrative control over and distribute the work among the additional magistrates and assistant magistrates of the district or subdistrict for which he was appointed.*

(2) *An additional magistrate or an assistant magistrate-*

(a) *may hold a court in the magistrate's court;*

(b) *shall possess the powers and perform the duties conferred or imposed upon magistrates by law in so far as he is not expressly prohibited from exercising or performing either by the Minister or by the magistrate of the district.*

(3) *A civil magistrate-*

(a) *may hold a court in the civil court of a district;*

(b) *shall possess the powers and perform the duties conferred or imposed upon civil magistrates by law.*

(4) *A senior civil magistrate-*

(a) *may hold a court in the civil court of a district as well as a civil division;*

(b) *shall possess the powers and perform the duties conferred or imposed upon civil magistrates and senior civil magistrates by law;*

(c) *who has been appointed as a family magistrate, shall possess the powers and perform the duties conferred or imposed upon civil, senior civil and family magistrates by law.*

(5) *A family magistrate-*

(a) *may hold a court in the family court of a family division;*

(b) *shall possess the powers and perform the duties conferred or imposed upon family magistrates by law.*

(6) A civil, senior civil and family magistrate shall be subject to the administrative control of a judicial officer designated for that purpose in respect of one or more areas of jurisdiction concerned by the Minister or an officer of the Department of Justice authorized thereto by the Minister in writing, and such judicial officer shall distribute the work among the civil, senior civil and family magistrates, as the case may be, of the area or areas of jurisdiction concerned.

(7) A regional magistrate-

(a) may hold a court in the regional court;

(b) shall possess the powers and perform the duties conferred or imposed upon regional magistrates by law.

(8) A person appointed as judicial officer under section 9(3), shall during the period of his appointment possess the powers and jurisdiction and perform the duties connected with the office in which he is acting.

(9) Any person appointed temporarily under section 9(4) to act as judicial officer of a district, subdistrict or regional, civil or family division shall, during the period of his appointment, and subject to such conditions or restrictions as the Minister or the officer so appointing him may impose, possess the powers and jurisdiction and perform the duties connected with the office in which he is so acting.

(10) Any person appointed as a judicial officer under section 9quat(1), shall during the period of his appointment possess the powers and jurisdiction and perform the duties connected with the office in which he is acting."

Amendment of section 13 of Act 32 of 1944, as amended by section 3 of Act 91 of 1977

12. Section 13 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The magistrate of the district in which a magistrate's court, regional court, civil court of a district, civil court of a civil division or family court is situate, shall for every such court appoint such number of clerks of the court and assistant clerks of the court as may be necessary."

Substitution of section 14 of Act 32 of 1944, as amended by section 10 of Act 40 of 1952, section 28 of Act 70 of 1968, section 6 of Act 53 of 1970, section 12 of Act 29 of 1974, section 3 of Act 28 of 1981 and section 64 of Act 90 of 1986

13. The following section is hereby substituted for section 14 of the principal Act:

"Sheriff may in certain circumstances refuse to serve or execute process

14. 1(7)(1) A **messenger sheriff** receiving any process for service or execution from a practitioner or plaintiff by whom there is due and payable to the **messenger sheriff** any sum of money in respect of services performed more than three months previously in the execution of any duty of his office, and which notwithstanding request has not been paid, may refer such process to **the magistrate any judicial officer** of the court out of which the process was issued, with particulars of the sum due and payable by the practitioner or plaintiff; and the **magistrate judicial officer** may, if he is satisfied that a sum is due and payable by the practitioner or plaintiff to the **messenger sheriff** as aforesaid which notwithstanding request has not been paid by writing under his hand authorize the **messenger sheriff** to refuse to serve or execute such process until the sum due and payable to the **messenger sheriff** has been paid.

(8)(2) A **magistrate judicial officer** granting any such authority shall forthwith transmit a copy thereof to the practitioner or plaintiff concerned and a **messenger sheriff** receiving any such authority shall forthwith return to the practitioner or plaintiff the process to which such authority refers with an intimation of his refusal to serve or execute the same and of the grounds for such refusal.

(3) If any process referred to in subsection (1) was issued out of any court of a civil or family division, the sheriff may refer it to any judicial officer of any civil court of a district situate within that civil or family division, who may exercise the powers contemplated in that subsection."

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 and section 64 of Act 90 of 1986

14. Section 15 of the principal Act is hereby amended-

(a) by the substitution in paragraph (a) of subsection (1) for the expression "messenger" wherever it occurs of the expression "sheriff";

(b) by the substitution in paragraph (b) of subsection (1) for the expressions "messenger" and "Consolidated Revenue Fund" of the

expressions "sheriff" and "State Revenue Fund", respectively; and

(c) by the substitution in subsection (3) for the expression "deputy messenger of the court" of the expression "deputy sheriff".

Substitution of section 16 of Act 32 of 1944

15. The following section is hereby substituted for section 16 of the principal Act:

"Sheriffs' duties relative to detention of persons by order of court

16. The **messenger sheriff** shall receive and cause to be lodged in a prison all persons arrested by such **messenger sheriff** or committed to his custody."

Substitution of section 17 of Act 32 of 1944, as substituted by section 4 of Act 91 of 1977

16. The following section is hereby substituted for section 17 of the principal Act:

"Sheriff's return to be evidence

17. The return of a **messenger sheriff** or of any person authorized to perform any of the functions of a **messenger sheriff** to any civil process of the court, shall be prima facie evidence of the matters therein stated."

Substitution of section 19 of Act 32 of 1944

17. The following section is hereby substituted for section 19 of the principal Act:

"Officers appointed previously to remain in office

19. Every officer of the court holding office immediately prior to the commencement of **this Act section 12 of the Magistrates' Courts Amendment Act, 1993**, shall be deemed to be duly appointed under this Act, and shall be invested with power, duties and authority accordingly."

Substitution of section 26 of Act 32 of 1944, as substituted by section 9 of Act 53 of 1970

18. The following section is hereby substituted for section 26 of the principal Act:

"Area of jurisdiction

26. (1) Except where it is otherwise by law provided, the area of jurisdiction of a court shall be the *civil or family division or* district, subdistrict or area for which such court is established.

(2) A court established for a district shall have no jurisdiction in a subdistrict or in an area referred to in section **2(h)** 2(n).

(3) Nothing in subsection (2) shall affect proceedings pending in the court of a district at the time of the **creation establishment** of a subdistrict or an area referred to in section **2(h)** 2(n)."

Amendment of section 27 of Act 32 of 1944

19. Section 27 of the principal Act is hereby amended by the substitution for paragraph (b) of the following paragraph:

"(b) no person shall, without his own consent, be liable to appear as a party before any periodical court to answer any claim unless he resides nearer to the place where the periodical court is held than to the seat of **magistracy** *the civil court* of the district."

Amendment of section 28 of Act 32 of 1944, as amended by section 12 of Act 40 of 1952

20. Section 28 of the principal Act is hereby amended-

(a) by the substitution in subsection (1) for the expression "district" wherever it occurs of the expression "area of jurisdiction of the court"; and

(b) by the substitution in the Afrikaans text for paragraph (c) of subsection (1) of the following paragraph:

"(c) 'n persoon wie ook al, ten opsigte van enige verrigtings wet in verband staan met 'n aksie of verrigting deur sodanige persoon **selfs** *self* in die hof ingestel;"

Amendment of section 29 of Act 32 of 1944, as substituted by section 3 of Act 25 of 1987

21. Section 29 of the principal Act is hereby amended-

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

"Subject to the provisions of this Act, **the court** *a civil court of a district or a civil division*, in respect of causes of

action, shall have jurisdiction in-"; and

(b) by the addition of the following subsections:

"(3) The Minister may, in respect of the actions referred to in paragraphs (a), (b) and (d) to (g), inclusive, of subsection (1), from time to time after consultation with the judges president of the Supreme Court of South Africa, by notice in the Gazette determine different amounts for a civil court of a district and a civil division.

(4) In addition to any other jurisdiction conferred upon a family court by this Act or any other law, a family court shall have jurisdiction in respect of any divorce action as defined in section 1 of the Divorce Act, 1979 (Act No. 70 of 1979)."

Substitution of section 29A of Act 32 of 1944, as inserted by section 2 of Act 34 of 1986

22. The following section is hereby substituted for section 29A of the principal Act:

"Jurisdiction in respect of appeals against decisions of chiefs, headmen and chiefs' deputies

29A. (1) If a party appeals to **a magistrate's the civil court of a district** in terms of the provisions of section 12(4) of the Black Administration Act, 1927 (Act No. 38 of 1927), the said court may confirm, alter or set aside the judgment after hearing such evidence as may be tendered by the parties to the dispute, or as may be deemed desirable by the court.

(2) A confirmation, alteration or setting aside in terms of subsection (1), shall be deemed to be a decision of **a magistrate's the civil court of a district** for the purposes of the provisions of Chapter XI."

Insertion of section 29B in Act 32 of 1944

23. The following section is hereby inserted in the principal Act after section 29A:

"Jurisdiction of civil court of district relative to interlocutory orders and execution emanating from actions in court of civil division

29B. (1) Except where it is otherwise by law provided, a party or parties to any suit pending in a court of a civil division may, in accordance with the rules, apply to the civil court of the district in

which the summons was issued for any interlocutory order, including any order contemplated in section 30, 30bis, 31 or 32 which may emanate from such suit, and that court may grant such order.

(2) (a) Execution in terms of the provisions of Chapter IX of a judgment for the payment of any amount of money or an order for the payment in specified instalments of such an amount, and an administration order, shall in all cases be dealt with by the civil court of the district in which the summons was issued.

(b) The provisions of section 65M in relation to the execution of a judgment for the payment of any amount of money that has been given by a division of the Supreme Court of South Africa, shall mutatis mutandis apply in relation to any such judgment given by any court of a civil division."

Amendment of section 31 of Act 32 of 1944

24. Section 31 of the principal Act is hereby amended by the substitution in subsection (2) for the expression "messenger" of the expression "sheriff".

Amendment of section 32 of Act 32 of 1944

25. Section 32 of the principal Act is hereby amended by the substitution in subsection (1) for the expressions "district" and "messenger" of the expressions "area of jurisdiction" and "sheriff", respectively.

Amendment of section 35 of Act 32 of 1944

26. Section 35 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) An interpleader summons, if issued in the court of the district or division in which the property was attached, may, at the discretion of the court, be remitted for trial to the court in which the judgment was given."

Amendment of section 45 of Act 32 of 1944

27. Section 45 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding the proviso of the following words:

*"Subject to the provisions of **section** sections 46 and 46A, the court shall have jurisdiction to determine any action or proceeding otherwise beyond **the** its jurisdiction, if the*

parties consent in writing thereto:".

Amendment of section 46 of Act 32 of 1944, as amended by section 5 of Act 19 of 1963, section 28 of Act 94 of 1974, section 2 of Act 56 of 1984 and section 4 of Act 25 of 1987

28. Section 46 of the principal Act is hereby amended-

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

"(1) Subject to the provisions of the Indian Immigration Law, No. 25 of 1891 of Natal, the A civil court of a district shall have no jurisdiction in matters in which the dissolution of a marriage or separation from bed and board or of goods of married persons is sought."; and

(b) by the substitution for the words preceding paragraph (a) of subsection (2) of the following words:

"A *civil court of a district* shall have no jurisdiction in matters-".

Insertion of section 46A in Act 32 of 1944

29. The following section is hereby inserted in the principal Act after section 46:

"Matters beyond jurisdiction of court of civil division

46A. A court of a civil division shall have no jurisdiction in matters in which-

(a) the dissolution of a marriage is sought; and

(b) the validity or interpretation of a will or other testamentary document is in question."

Amendment of section 47 of Act 32 of 1944

30. Section 47 of the principal Act is hereby amended-

(a) by the substitution in subsection (1) for the expression "magistrate's court" wherever it occurs of the expression "civil court";

(b) by the substitution in subsection (2) for the expression "magistrate's court" in the words preceding paragraph (a) of the expression "civil court"; and

(c) by the substitution in subsection (3) for the expression "magistrate's court" of the expression "civil court".

Amendment of section 50 of Act 32 of 1944, as amended by section 6 of Act 19 of 1963 and section 5 of Act 25 of 1987

31. Section 50 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

"(b) the notice shall state that the applicant objects to the action being tried by the court or any **magistrate's** *other civil* court;"

Insertion of section 50A in Act 32 of 1944

32. The following section is hereby inserted in the principal Act after section 50:

"Removal of divorce action from family court to provincial or local division

50A. (1) Any family court in which a divorce action as defined in section i of the Divorce Act, 1979 (Act No. 70 of 1979), is pending-

(a) may at any stage of the proceedings-

(i) on its own accord;

(ii) on application by any party; or

(iii) on application by a Family Advocate appointed under section 2(1) of the Mediation in Certain Divorce Matters Act, 1987 Act No. 24 of 1987), if in the opinion of the court the circumstances so justify;

(b) shall, on application of any party, if the other party agrees thereto, suspend the proceedings and order the clerk of the court to refer that action in accordance with the rules to the registrar of the provincial or local division having jurisdiction where the court is held, for enrolment.

(2) Any question as to costs already incurred in the action referred to in subsection (1) shall abide the result of the action."

Amendment of section 51 of Act 32 of 1944, as amended by section 7 of Act 19 of 1963, section 9 of Act 80 of 1964, section 5 of Act 91 of 1977 and

section 2 of Act 19 of 1985

33. Section S1 of the principal Act is hereby amended-

(a) by the substitution in subsection (1) for the expression "district" of the expression "area of jurisdiction of the court"; and

(b) by the substitution in paragraph (a) of subsection (2) for the expression "messenger" of the expression "sheriff".

Amendment of section 52 of Act 32 of 1944

34. Section 52 of the principal Act is hereby amended-

(a) by the substitution in subsection (1) for the expression "district" wherever it occurs of the expression "area of jurisdiction"; and

(b) by the substitution in subsection (3) for the expression "district" of the expression "area of jurisdiction".

Amendment of section 65B of Act 32 of 1944, as inserted by section 2 of Act 63 of 1976

35. Section 65B of the principal Act is hereby amended by the substitution for the expression "messenger of the court" of the expression "sheriff".

Amendment of section 65D of Act 32 of 1944, as inserted by section 2 of Act 63 of 1976

36. Section 65D of the principal Act is hereby amended by the substitution for subsection (S) of the following subsection:

"(S) The court may, in its discretion, refuse to take account of the periodical payments that a judgment debtor has undertaken to make in terms of a **hire-purchase agreement** *credit transaction as defined in section 1 of the Credit Agreements Act, 1980 (Act No. 75 of 1980)*, for the purchase of goods which have not been exempted from seizure in terms of section 67 or which cannot, in the opinion of the court, be regarded as the judgment debtor's household requirements."

Amendment of section 65H of Act 32 of 1944, as inserted by section 2 of Act 63 of 1976

37. Section 65H of the principal Act is hereby amended by the substitution for the expression "messenger of the court" of the expression "sheriff".

Amendment of section 65J of Act 32 of 1944, as inserted by section 2 of Act 63 of 1976 and amended by section 2 of Act 53 of 1983

38. Section 65J of the principal Act is hereby amended-

- (a) by the substitution in subsection (1) for the expression "magistrate's court" in the words following on paragraph (e) of the expression "civil court"; and
- (b) by the substitution in subsection (3) for the expression "messenger of the court" of the expression "sheriff".

Amendment of section 65L of Act 32 of 1944, as inserted by section 2 of Act 63 of 1976

39. Section 65L of the principal Act is hereby amended by the substitution in paragraph (b) for the expressions "messenger of the court" and "messenger" of the expression "sheriff".

Amendment of section 66 of Act 32 of 1944, as amended by section 16 of Act 40 of 1952 and section 3 of Act 63 of 1976

40. Section 66 of the principal Act is hereby amended-

- (a) by the substitution for paragraph (b) of subsection (2) of the following paragraph:

"(b) **the magistrate or an additional or assistant magistrate** *a civil magistrate* of the district in which the property is situate has upon the application of the judgment creditor and after enquiry into the circumstances of the case, directed what steps shall be taken to bring the intended sale to the notice of the preferent creditor, and those steps have been carried out,";

- (b) by the substitution for subsection (6) of the following subsection:

"(6) A judgment creditor (whether by virtue of a judgment given in the Supreme Court of South Africa or in a **magistrate's civil court**) desiring to attach immovable property that is already under attachment (**whether made by a deputy sheriff or by a messenger**) and in respect of which a sale in execution is not pending, and who has lodged a warrant of execution with the **deputy sheriff or messenger of the court**, may, after notifying the interested parties, apply to the court for an order to the effect that the property may be sold in terms of his warrant.";

- (c) by the substitution in subsection (7) for the expression "messenger" of the expression "sheriff"; and

(d) by the substitution in subsection (8) for the expressions "messenger of the court" and "messenger" wherever the latter occurs of the expression "sheriff".

Amendment of section 68 of Act 32 of 1944

41. Section 68 of the principal Act is hereby amended-

(a) by the substitution in subsection (1) for the expression "messenger" of the expression "sheriff";

(b) by the substitution in subsection (2) for the expression "messenger" of the expression "sheriff";

(c) by the substitution in subsection (3) for the expression "messenger" of the expression "sheriff";

(d) by the substitution in subsection (4) for the expression "messenger" of the expression "sheriff"; and

(e) by the substitution in subsection (5) for the expression "messenger" wherever it occurs of the expression "sheriff".

Amendment of section 70 of Act 32 of 1944

42. Section 70 of the principal Act is hereby amended by the substitution for the expression "messenger" of the expression "sheriff".

Amendment of section 71 of Act 32 of 1944

43. Section 71 of the principal Act is hereby amended by the substitution for the expression "messenger" of the expression "sheriff".

Substitution of section 71A of Act 32 of 1944, as inserted by section 16 of Act 53 of 1970

44. The following section is hereby substituted for section 71A of the principal Act:

"Movable property which sheriff cannot dispose of in terms of this Act, shall be sold by public auction

71A. (1) Any movable property in the custody of the **messenger** *sheriff* or any other person acting on his behalf in respect of which attachment has been withdrawn or which is released from attachment and in respect of which the owner or person from whose possession the property has been removed, cannot be traced, and which cannot be disposed of in terms of

this Act, shall be sold by the **messenger sheriff** by public auction, and the proceeds of the sale shall, after deduction of the **messenger's sheriff's** costs, be paid into the **Consolidated State Revenue Fund**: Provided that such sale shall not take place unless such property has remained unclaimed for a period of fourteen days after the **messenger sheriff** has published, in one English and one Afrikaans newspaper circulating in the district where the last known address of the judgment debtor is situate, a notice containing the name of the judgment debtor and a description of the property and stating the intention to sell such property if it is not claimed within the period specified therein.

(2) After the public auction referred to in subsection (1), the **messenger sheriff** shall draw up a vendue roll as if the sale was a sale in execution of property and shall attach the roll to his return in respect of the relevant process of the court in the case together with proof that the proceeds of the sale have been paid into the **Consolidated State Revenue Fund**.

(3) The proceeds of a sale paid into the **Consolidated State Revenue Fund** in terms of this section, shall be refunded out of accruing revenue to any person who satisfies a **judicial officer civil magistrate** of the district in which the sale took place that he would have been entitled to receive the property referred to in this section after the attachment thereof had been withdrawn or the property had been released from attachment."

Amendment of section 72 of Act 32 of 1944, as substituted by section 4 of Act 63 of 1976

45. Section 72 of the principal Act is hereby amended by the substitution in subsection (1) for the expressions "district" and "magistrate's court" of the expressions "area of jurisdiction of the court" and "civil court", respectively.

Amendment of section 74 of Act 32 of 1944, as substituted by section 6 of Act 63 of 1976 and amended by section 6 of Act 19 of 1985 and section 8 of Act 25 of 1987

46. Section 74 of the principal Act is hereby amended by the substitution for the words following paragraph (b) of subsection (1) of the following words:

"such court or the court of the district in which the debtor resides or carries on business or is employed may, upon application by the debtor or under section 651, subject to such conditions as the court may deem fit with regard to security, preservation or disposal of assets, realization of movables subject to hypothec (**except movables**

referred to in section 34bis of the Land Bank Act, 1944 (Act No. 13 of 1944), or otherwise, make an order (in this Act called an administration order) providing for the administration of his estate and for the payment of his debts in instalments or otherwise."

Amendment of section 74A of Act 32 of 1944, as inserted by section 6 of Act 63 of 1976

47. Section 74A of the principal Act is hereby amended-

(a) by the substitution for paragraph (g) of subsection (2) of the following paragraph:

"(g) full particulars, supported as far as possible by a statement and a copy of the **agreement referred to credit transaction defined in section 9(1) 1 of the Hire-Purchase Act, 1942 (Act No. 36 of 1942) Credit Agreements Act, 1980 (Act No. 75 of 1980)**, of goods purchased under **hire-purchase agreement such credit transaction**, the purchase price, the instalments payable, the balance owing and the date on which the purchase price will be paid in full, and the reasons adduced by the debtor why provision should be made for the payment of the remaining instalments;"

(b) by the substitution in paragraph (i) of subsection (2) for the expression "hire-purchase agreement" of the expression "credit transaction referred to in paragraph (g)"; and

(c) by the substitution for subsection (4) of the Afrikaans text of the following subsection:

"(4) Indien daartoe versoek deur 'n ongeletterde skuldenaar en na betaling van die in die reëls voorgeskrewe geld, help die klerk van die **om hof** die skuldenaar om die in subartikel (1) genoemde staat te voltooi."

Amendment of section 74C of Act 32 of 1944, as inserted by section 6 of Act 63 of 1976

48. Section 74C of the principal Act is hereby amended-

(a) by the substitution for the proviso to subparagraph (i) of paragraph (b) of subsection (1) of the following proviso:

"Provided that no such asset that is the subject of any **agreement credit transaction regulated by the Hire-Purchase Act, 1942 (Act No. 36 of 1942) Credit Agreements Act, 1980 (Act No. 75 of 1980)**, shall be realized without the written permission of the

seller;"

(b) by the deletion of subparagraph (ii) of paragraph (b) of subsection (1); and

(c) by the substitution in paragraph (b) of subsection (2) for the expressions "hire-purchase agreement" and "agreement" of the expressions "credit transaction as defined in section 1 of the Credit Agreements Act, 1980" and "transaction", respectively.

Amendment of section 74G of Act 32 of 1944, as inserted by section 6 of Act 63 of 1976

49. Section 74G of the principal Act is hereby amended by the substitution for subsection (7) of the following subsection:

"(7) If any person who sold and delivered goods to the debtor under **hire-purchase agreement** *credit transaction* as defined in section 1 of the **Hire-Purchase Act, 1942 (Act No. 36 of 1942) Credit Agreements Act, 1980 (Act No. 75 of 1980)**, before the administration order was granted, is entitled or becomes entitled, by reason of the debtor's failure to fulfil any obligation under such **agreement** *transaction*, to demand immediate payment of the sum of the purchase price then still owing, and if such person advises the administrator in writing that he elects so to do, such **agreement** *transaction* shall be deemed to create a hypothec on the goods in favour of the seller whereby the amount still owing to him in terms of the **agreement** *transaction* is secured, and any term or condition of the **agreement** *transaction* with regard to the seller's right to dissolve or terminate such **agreement** *transaction* or his right to the return of the goods to which the **agreement** *transaction* relates shall not, in consequence of the debtor's non-compliance with any term or condition thereof, notwithstanding anything to the contrary in any law contained, be enforceable."

Amendment of section 74H of Act 32 of 1944, as inserted by section 6 of Act 63 of 1976

50. Section 74H of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

"(4) The provisions of section 74G(7), (8) and (9) and of subsections (1), (2) and (3) of this section shall, mutatis mutandis, apply to any person who after the granting of an administration order sold and delivered goods to the debtor under a **hire-purchase agreement** *credit transaction* as defined in section 1 of the **Hire-Purchase Act, 1942 (Act No. 36 of 1942) Credit Agreements**

Act, 1980 (Act No. 75 of 1980), and is desirous of providing proof of debt."

Amendment of section 74I of Act 32 of 1944, as inserted by section 6 of Act 63 of 1976 and amended by section 4 of Act 28 of 1981

51. Section 74I of the principal Act is hereby amended by the substitution in subsection (4) for the expression "messenger of the court" of the expression "sheriff".

Amendment of section 74J of Act 32 of 1944, as inserted by section 6 of Act 63 of 1976

52. Section 74J of the principal Act is hereby amended-

(a) by the substitution in subsection (6) for the expression "judicial officer" of the expression "civil magistrate"; and

(b) by the substitution for paragraph (b) of subsection (7) of the following paragraph:

"(b) if he is a practicing attorney, in the trust account that he keeps in terms of section **33 78** of the **Attorneys, Notaries and Conveyancers Admission Act, 1934 (Act No. 23 of 1934)***Attorneys Act, 1979 (Act No. 53 of 1979)*."

Substitution of section 74K of Act 32 of 1944, as inserted by section 6 of Act 63 of 1976

53. The following section is hereby substituted for section 74K of the principal Act:

"Realization of assets by administrator

74K. (1) An administrator may, if authorized thereto by the court, subject to the provisions of subsection (2), realize any asset of the estate under administration, and in granting any such authorization the court may impose any such conditions as it may deem fit.

(2) An asset mentioned in subsection (1) which is the subject of any credit transaction regulated by the Credit Agreements Act, 1980 (Act No. 75 of 1980), shall not be realized except with the written permission of the seller.

(3) If the credit grantor as defined in section 1 of the Credit Agreements Act, 1980, is obliged to pay to the debtor an amount in terms of section 15 of the said Act, that amount shall be paid to the administrator for pro rata distribution among the creditors.

(4) Whenever the court authorizes any administrator to realize any asset, the court may amend the payments to be made in terms of the administration order accordingly."

Amendment of section 74L of Act 32 of 1944, as inserted by section 6 of Act 63 of 1976

54. Section 74L of the principal Act is hereby amended by the substitution in subsection (2) for the expression "judicial officer" of the expression "civil magistrate".

Amendment of section 74S of Act 32 of 1944, as inserted by section 6 of Act 63 of 1976

55. Section 74S of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The provisions of the Criminal Procedure Act, **1955 (Act No. 56 of 1955)** 1977 (*Act No. 51 of 1977*), with regard to periodical imprisonment shall mutatis mutandis apply to periodical imprisonment imposed in terms of subsection (1)."

Amendment of section 80 of Act 32 of 1944

56. Section 80 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The stamps, fees, costs and charges in connection with any civil proceedings in **magistrates'** *civil* courts shall, as between party and party, be payable in accordance with the scales prescribed by the rules."

Amendment of section 81 of Act 32 of 1944

57. Section 81 of the principal Act is hereby amended by the substitution for the expression "district" of the expression "court".

Substitution of section 89 of Act 32 of 1944, as substituted by section 1 of Act 75 of 1959 and amended by section 7 of Act 91 of 1977 and section 17 of Act 107 of 1990

58. The following section is hereby substituted for section 89 of the principal Act:

"Jurisdiction in respect of offences

89. (1) The *magistrate's* court, **other than the court of a**

regional division, shall have jurisdiction over all offences except treason, murder and rape.

(2) The regional court **of a regional division** shall have jurisdiction over all offences except treason."

Amendment of section 90 of Act 32 of 1944, as substituted by section 20 of Act 40 of 1952 and amended by section 2 of Act 75 of 1959, section 3 of Act 17 of 1969 and section 8 of Act 91 of 1977

59. Section 90 of the principal Act is hereby amended-

(a) by the substitution for paragraph (d) of subsection (2) of the following paragraph:

"(d) committed on board any vessel on a voyage within the territorial waters of the Republic (**including the territory of South West Africa**), and the said territorial waters adjoin the district or the regional division; or";

(b) by the substitution in subsection (7) for the expression "magistrate's court" of the expression "court"; and

(c) by the substitution for subsection (8) of the following subsection:

"(8) Where an accused is alleged to have committed various offences within different districts within the area of jurisdiction of any attorney-general, the attorney-general concerned may in writing direct that criminal proceedings in respect of such various offences be commenced in **the court of any particular district magistrate's court** within his area of jurisdiction, whereupon such court shall have jurisdiction to act with regard to any such offence as if such offence had been committed within the area of jurisdiction of that court, and the **court of the regional division regional court** within whose area of jurisdiction **the court of such district such magistrate's court** is situated, shall likewise have jurisdiction in respect of any such offence if such offence is an offence which may be tried by **the court of a regional division a regional court**".

Substitution of section 91 of Act 32 of 1944

60. The following section is hereby substituted for section 91 of the principal Act:

"Criminal jurisdiction of periodical courts

91. (1) (a) *The court of the district within which an area is*

situate for which a periodical court has been established, shall retain concurrent jurisdiction with the periodical court within such portion of that area as is situate within such district.

(b) No person shall, without his consent, be liable to appear as an accused before any periodical court unless he resides nearer to the place where the periodical court is held than to the seat of magistracy of the district.

(2) A criminal case that has been instituted in a periodical court may, subject to the provisions of subsection (1) (b), in the discretion of the court be transferred to the court of the district and vice versa."

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 and section 9 of Act 25 of 1987

61. Section 92 of the principal Act is hereby amended-

(a) 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 12 months, **where if** the court is **not the court of a regional division** a magistrate's court, or not exceeding 10 years, **where if** the court is **the court of a regional division a regional court;**"; and

(b) by the substitution for subsection (2) of the following subsection:

"(2) (a) **The magistrate's court shall have jurisdiction to impose any punishment prescribed in respect of an offence under an ordinance of a province or the territory any law which relates to vehicles and the regulation of traffic on public roads, notwithstanding that such punishment exceeds the jurisdiction referred to in subsection (1).**

(b) **Where a person is convicted of culpable homicide arising out of the driving of a vehicle as defined in any applicable ordinance law referred to in paragraph (a), the magistrate's court shall have jurisdiction to impose any punishment which the court may impose under that paragraph in respect of the offence of driving a vehicle recklessly on a public road."**

Amendment of section 93ter of Act 32 of 1944, as inserted by section 3 of Act 14 of 1954 and amended by section 2 of Act 16 of 1959, section 10 of Act 91 of 1977 and section 1 of Act 118 of 1991

62. Section 93ter of the principal Act is hereby amended by the substitution in subsection (1) for the expression "the court of a regional division" of the expression "any regional court".

Amendment of section 107 of Act 32 of 1944, as substituted by section 12 of Act 19 of 1985

63. Section 107 of the principal Act is hereby amended-

(a) by the substitution in subsection (1) for the expression "messenger" of the expression "sheriff";

(b) by the substitution for the expression "messenger" in the words preceding paragraph (a) of subsection (3) and in that paragraph of the expression "sheriff"; and

(c) by the substitution in subsection (4) for the expression "messenger" of the expression "sheriff".

Amendment of section 108 of Act 32 of 1944, as amended by section 23 of Act 19 of 1963 and section 13 of Act 19 of 1985

64. Section 108 of the principal Act is hereby amended by the substitution in subsection (1) for the expression "messenger" of the expression "sheriff".

Amendment of section 109 of Act 32 of 1944, as substituted by section 9 of Act 63 of 1976

65. Section 109 of the principal Act is hereby amended-

(a) by the substitution in subsection (3) for the expression "messenger of the court" of the expression "sheriff"; and

(b) by the substitution for subsection (7) of the following subsection:

"(7) The provisions of the Criminal Procedure Act, 1955 (Act No. 56 of 1955) 1977 (Act No. 51 of 1977), relating to periodical imprisonment shall, mutatis mutandis, apply to periodical imprisonment imposed in terms of this section."

Substitution of section 110 of Act 32 of 1944, as substituted by section 20 of Act 53 of 1970

66. The following section is hereby substituted for section 110 of the principal Act:

"Jurisdiction as to plea of ultra vires

110. No magistrate's court shall be competent to pronounce upon the validity of a provincial ordinance or an ordinance of the Legislative Assembly of the territory or of a statutory proclamation of the State President or of the Administrator of the territory, and every such court shall assume that every such ordinance or proclamation is valid; but every such court shall be competent to pronounce upon the validity of any statutory regulation, order or bye-law."

Amendment of section 114 of Act 32 of 1944, as amended by section 9 of Act 16 of 1959 and section 12 of Act 91 of 1977

67. Section 114 of the principal Act is hereby amended-

(a) by the substitution in subsection (2) for the expression "magistrate's court" of the expression "court"; and

(b) by the deletion of subsections (3) and (4).

Repeal of section 115 of Act 32 of 1944

68. Section 115 of the principal Act is hereby repealed.

Repeal of section 115A of Act 32 of 1944, as inserted by section 21 of Act 53 of 1970 and amended by section 13 of Act 91 of 1977

69. Section 115A of the principal Act is hereby repealed.

Transitional provisions regarding certain civil cases

70. (1) No provision of this Act shall affect any civil matter pending at the commencement of the provision concerned, and such matter shall be continued and concluded in every respect as if this Act had not been passed.

(2) A civil matter shall, for the purposes of this section, be deemed to be pending if, at the commencement of the provision concerned of this Act, summons had been issued but judgment had not been given, and to be concluded when judgment is given.

Transitional provisions regarding divorce actions

71. (1) Any divorce court established under section 10 of the Black Administration Act, 1927, Amendment Act, 1929 (Act No. 9 of 1929), shall, notwithstanding the repeal of that section by section 74, for all purposes be deemed to be a family court established under section 2(k) of the Lower Courts Act, 1944 (Act No. 32 of 1944), and the area of jurisdiction of the first-mentioned court shall be deemed, subject to any amendment thereto, to

constitute a family division established under section 2(d) of the last-mentioned Act.

(2) Any rule applicable to a divorce court referred to in subsection (1) immediately before the commencement of this section, shall, notwithstanding the repeal of section 10 mentioned in that subsection by section 74, remain in force until it is repealed or amended by any rule applicable under section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), to divorce actions.

(3) Any president of a divorce court referred to in subsection (1) shall for all purposes be deemed to be a family magistrate who has been appointed under section 9(1)(a)(v) of the Lower Courts Act, 1944.

(4) Any divorce action pending in the Supreme Court or a divorce court referred to in subsection (1) immediately before the commencement of section 21(b) and this section, shall be continued and concluded as if this Act had not been passed.

(5) For the purposes of this section any divorce action shall be deemed to be pending if a summons has been issued or the notice of motion has been lodged or the notice has been delivered in terms of the rules of court, as the case may be, but no judgment has been given, and it shall be deemed to have been concluded if judgment has been given.

Substitution of section 117 of Act 32 of 1944, as amended by section 7 of Act 68 of 1957

72. The following section is hereby substituted for section 117 of the principal Act:

"Short title and commencement

117. This Act may be cited for all purposes as the Magistrates' *Lower Courts Act, 1944*, and shall come into operation on a date to be fixed by the Governor-General by proclamation in the Gazette."

Substitution of long title of Act 32 of 1944

73. The following long title is hereby substituted for the long title of the principal Act:

"ACT

To consolidate and amend the law relating to Magistrates' *Lower Courts*."

Repeal or amendment of laws

74. The laws mentioned in the Schedule are hereby repealed or amended in so far as indicated in the third column thereof.

Short title and commencement

75. (1) This Act shall be called the Magistrates' Courts Amendment Act, 1993, and shall come into operation on a date to be fixed by the State President by proclamation in the Gazette.

(2) Different dates may be so fixed in respect of- (a) different provisions of this Act; and (b) different areas in the Republic.

SCHEDULE

LAWS REPEALED OR AMENDED

No. and year	Title	Extent of repeal or amendment of Act
Act No. 38 of 1927	Black Administration Act, 1927	Amendment of section 12 by the substitution in subsection (4) for the expression "magistrate's court" wherever it occurs of the expression "civil court of a district".
Act No. 9 of 1929	Black Administration Act, 1927, Amendment Act, 1929	Repeal of section 10.
Act No. 47 of 1937	Deeds Registries Act, 1937	Amendment of section 102 by the substitution for the definition of "court" or "the court" of the following definition: "'court' or 'the court' means the provincial or local division of the Supreme Court having

**jurisdiction or any judge thereof
and, in section 45bis,
includes a family court
established under section 2(k) of
the Lower Courts Act, 1944 (Act
No. 32 of 1944), or any
family magistrate of such
court;"**.

**Act No. 33 of Interpretation Act, Amendment of section 2 by the
1957 1957 substitution for the
definition of "district" of the
following definition:**

**""district' means the area
subject to the jurisdiction
of the court of any
magistrate *a magistrate's
court;*"**.

**Act No. 68 of General Law Amendment of section 7-
1957 Amendment
Act, 1957 (a) by the deletion of "and" at
the end of paragraph (a)
of subsection (1); and

(b) by the deletion of paragraph
(b) of subsection (1).**

**Act No. 53 of Attorneys Act, 1979 (a) Amendment of section 8 by the
1979 substitution for the proviso to
subsection (1) of the following
proviso:**

**"Provided that such a candidate
attorney shall not be entitled to
appear in a court of a regional
division *regional court,
civil court of a civil division
or family court* established
under section 2 of the
Magistrates' Courts *Lower
Courts Act, 1944 (Act No. 32
of 1944), or a Divorce Court***

established under section 10 of the Black Administration Act, 1927, Amendment Act, 1929 (Act No. 9 of 1929), unless he was so admitted as an advocate or is entitled to be so admitted and-".

(b) Amendment of section 14 by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) the practice and procedure in the Supreme Court and in magistrates' courts established under the Magistrates' Courts Lower Courts Act, 1944 (Act No. 32 of 1944);".

(c) Amendment of the said Act by the substitution for the expression "Magistrates' Courts Act" wherever it occurs in the said Act of the expression "Lower Courts Act".

Act No. 70 of 1979 Divorce Act, 1979 (a) Amendment of section 1-

(i) by the insertion after the definition of "divorce action" of the following definition:

" *'Family Advocate' means any Family Advocate appointed under section 2(1) of the Mediation in Certain Divorce Matters Act, 1987 (Act No. 24 of 1987),"*,
and

(ii) by the substitution for the definition of "court" of the following definition:

"'court' means the provincial or local division of the Supreme Court of South Africa, or a divorce court established under section 10 of the Black Administration Act, 1927,

Amendment Act, 1929 (Act No. 9 of 1929)

family court established under section 2(k) of the Lower Courts Act, 1944 (Act No. 32 of 1944), which has jurisdiction with respect to a divorce action;".

(b) Amendment of section 11 by the addition of the following subsection, the existing section becoming subsection (1):

(2) Subject to the rules of court in relation to divorce actions, any divorce action which is pending in the Supreme Court may at any stage of the proceedings be referred to a family court established under section 2(k) of the Lower Courts Act, 1944 (Act No. 32 of 1944), having jurisdiction if the court may deem it desirable, and the court may, in respect of such proceedings, make such order for costs as it may deem fit."

Act No. 61 of 1984 **Small Claims Courts Act, 1984** **(a) Amendment of section 1 by the substitution for the definition of "district" of the following definition:**

"'district' means a district created established under section 2(1)(a) 2(a) of the Magistrates' Lower Courts Act, 1944 (Act No. 32 of 1944);".

(b) Amendment of the said Act-

(i) by the substitution for the expression Magistrates' Courts Act" wherever it occurs in the

said Act of the expression "Lower Courts Act";

(ii) by the substitution for the expression "messenger of the court" or "deputy messenger of the court" wherever it occurs in the said Act of the expression "sheriff" or "deputy sheriff", respectively; and

(iii) by the substitution for the expression "magistrate's court" wherever it occurs in the said Act of the expression "civil court".

Act No. 88 of 1984 Matrimonial Property Act, 1984 Amendment of section 1 by the substitution for the definition of "court" of the following definition:

"'court' means a provincial or local division of the Supreme Court of South Africa or a divorce court instituted under section 10 of the Black Administration Act, 1927, Amendment Act, 1929 (Act No. 9 of 1929) *family court established under section 2(k) of the Lower Courts Act, 1944 (Act No. 32 of 1944), and includes, for the purposes of section 16, a judge in chambers, and, for the purposes of section 16(1), a magistrate's lower court which has jurisdiction in the matter concerned."*

Act No. 107 of 1985 Rules Board for Courts of 1985 Amendment of section 1 by the substitution for the Law Act, definition of "lower court" of

the following definition:

''lower court' means a court of a regional division and a magistrate's court established in terms of

under section 2(g), (h), (i), (j) or (k) of the Magistrates' Lower Courts Act, 1944 (Act No. 32 of 1944), and flower courts' has a corresponding meaning;''.

Act No. 24 of 1987 **Mediation in Certain Divorce Matters Act, 1987** **(a) Amendment of the said Act by the insertion after section 1 of the following section:**

"Application of Act to family courts

1A. (1) Subject to the provisions of subsection (2), the provisions of this Act shall not be applicable to divorce actions adjudicated in a family court established under section 2(k) of the Lower Courts Act, 1944 (Act No. 32 of 1944). (2) The Minister may from time to time by notice in the Gazette with effect from a date determined by him and specified in the notice, declare the provisions of this Act to be applicable to divorce actions adjudicated in one or more family courts referred to in subsection (1) and specified in such notice."

(b) Amendment of section 5 by the substitution for subsection (2) of the following subsection:

"(2) No regulations may be made

under subsection (1)(c) or (d)
except with the concurrence of
the Minister of Finance
State Expenditure.".

Act No. 103 of 1991 Short Process Courts and

Mediation in Certain Civil Cases Act, 1991 (a) Amendment of section 1-
(i) by the substitution for the
definition of "district" of the
following definition:

**''district' means a district
established under section
2(1)(a) 2(a) of the
Magistrates' *Lower*
Courts Act, 1944 (Act No. 32 of
1944);'';**

**(ii) by the deletion of the
definition of "magistrate's
court"**

**(iii) by the deletion in the
Afrikaans text of "en" at
the end of the definition of
"notuleer"; and**

**(iv) by the insertion after the
definition of "adjudicator" of
the following definition:**

***''civil court' means a civil
court of a district established
under section 2(i) of the Lower
Courts Act, 1944 (Act No. 32 of
1944);''.***

(b) Amendment of the said Act-

**(i) by the substitution for the
expression "magistrate's court"
wherever it occurs in the said
Act of the expression "civil
court", and**

(ii) by the substitution for the

expression "Magistrates' Courts Act" wherever it occurs in the said Act of the expression "Lower Courts Act".

(c) Amendment of section 9 by the substitution for the words preceding the proviso to subject on (2) of the following words:

"If the adjudication of an action instituted in the magistrate's *civil* court is proceeded with in a court under the proviso to paragraph (b) of subsection (1), *the record of the proceedings of the magistrate's civil* court shall form part of the record of that court:".