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THE PRESIDENCY

No. 1065 11 December 2012

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

Act No. 14 of 2012: Sheriffs Amendment Act, 2012

DIE PRESIDENSIE

No. 1065 11 Desember 2012

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

Wet 14 van 2012: Wysigingswet op Balju's, 2012

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GENERAL EXPLANATORY NOTE:

[ ]	Words in bold type in square brackets indicate omissions from existing enactments.
______	Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President)
(Assented to 6 December 2012)

ACT

To amend the Sheriffs Act, 1986, so as to substitute certain definitions and to insert a new definition; to provide for the establishment of Advisory Committees to assist the Minister of Justice and Constitutional Development in the appointment of sheriffs and to provide that the conditions on which sheriffs may be appointed may be prescribed by regulation; to provide for allowances payable to members of the Advisory Committees; to further regulate the appointment of acting sheriffs and the appointment of sheriffs for a particular suit in certain circumstances; to empower the Minister of Justice and Constitutional Development to designate persons to serve process of court in certain circumstances and to appoint sheriffs or acting sheriffs to perform certain functions of sheriffs in areas where no sheriff or acting sheriff has been appointed in certain circumstances; to further regulate the objects of the South African Board for Sheriffs; to amend the constitution of the South African Board for Sheriffs; to further regulate the filling of vacancies of, and the vacating of office by, members of the South African Board for Sheriffs; to further regulate the allowances payable to members of the South African Board for Sheriffs and of committees of that Board; to provide for the dissolution of the South African Board for Sheriffs and the appointment of an interim Board; to further regulate the general functions of the South African Board for Sheriffs; to further regulate the utilisation of the moneys in the Fidelity Fund for Sheriffs; to further regulate the auditing of records and financial statements of the Fidelity Fund for Sheriffs; to further regulate improper conduct by sheriffs; and to extend the matters in respect of which regulations can be made; and to provide for matters connected therewith.

PREAMBLE

SINCE the Sheriffs Act, 1986, commenced on 1 March 1990;

AND SINCE certain practical problems relating to the sheriffs' profession are being experienced;

AND SINCE it is the purpose of this Act, as an interim measure, pending a comprehensive review of the Sheriffs Act, 1986, to address those practical problems,

ALGEMENE VERDUIDELIKENDE NOTA:

[ ]	Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.
______	Woorde met 'n volstreep daaronder dui invoegings in bestaande verordenings aan.

(English text signed by the President)
(Assented to 6 Desember 2012)

WET

Tot wysiging van die Wet op Balju's, 1986, ten einde sekere woordomskrywings te vervang en 'n nuwe woordomskrywing in te voeg; vir die instelling van Advieskomitees om die Minister van Justisie en Staatkundige Ontwikkeling behulpsaam te wees in die aanstelling van balju's voorsiening te maak en voorsiening te maak dat die voorwaardes waarop balju's aangestel kan word by regulasie voorgeskryf kan word; vir toelaes betaalbaar aan lede van die Advieskomitees voorsiening te maak; die aanstelling van waarnemende balju's en die aanstelling van balju's vir 'n bepaalde geding onder sekere omstandighede verder te reël; die Minister van Justisie en Staatkundige Ontwikkeling te magtig om persone aan te wys om prosesstukke onder sekere omstandighede te beteken en om balju's of waarnemende balju's aan te stel om sekere werksaamhede van balju's in gebiede waar geen balju of waarnemende balju aangestel is nie, onder sekere omstandighede te verrig; die oogmerke van die Suid-Afrikaanse Raad vir Balju's verder te reël; die samestelling van die Suid-Afrikaanse Raad vir Balju's te wysig; die vul van vakatures van, en die ontruiming van amp deur, lede van die Suid-Afrikaanse Raad vir Balju's verder te reël; die toelaes betaalbaar aan lede van die Suid-Afrikaanse Raad vir Balju's en van komitees van daardie Raad verder te reël; vir die ontbinding van die Suid-Afrikaanse Raad vir Balju's en die aanstelling van 'n tussentydse Raad voorsiening te maak; die algemene werksaamhede van die Suid-Afrikaanse Raad vir Balju's verder te reël; die aanwending van die geld in die Getrouheidsfonds vir Balju's verder te reël; die ouditering van aantekeninge en finansiële state van die Getrouheidsfonds vir Balju's verder te reël; onbehoorlike gedrag deur balju's verder te reël; en die aangeleenthede ten opsigte waarvan regulasies uitgevaardig kan word, uit te brei; en voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

AANHEF

AANGESIEN die Wet op Balju's, 1986, op 1 Maart 1990 in werking getree het;

EN AANGESIEN sekere praktiese probleme rakende die balju's professie ondervind word;

EN AANGESIEN dit die doel van hierdie Wet is, as 'n tussentydse maatreël, hangende 'n omvattende hersiening van die Wet op Balju's, 1986, om daardie praktiese probleme aan te spreek,

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

Amendment of section 1 of Act 90 of 1986, as amended by section 1 of Act 74 of 1998, section 12 of Act 55 of 2003 and section 10 of Act 31 of 2008

1. Section 1 of the Sheriffs Act, 1986 (Act No. 90 of 1986) (hereinafter referred to as the principal Act), is hereby amended—

(a) by the substitution for the definition of ''auditor'' of the following definition:

'' **'auditor'** means a person registered as an accountant and auditor in terms of the **[Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991)]** Auditing Profession Act, 2005 (Act No. 26 of 2005);'';

(b) by the insertion after the definition of ''building society'' of the following definition:

'' **'Department'** means the Department of Justice and Constitutional Development;'';

(c) by the substitution for the definition of ''Minister'' of the following definition:

'' **'Minister'** means the **[Minister of Justice]** Cabinet member responsible for the administration of justice;''; and

(d) by the substitution for the definition of ''superior court'' of the following definition:

'' **'superior court'** means a **[provincial or local division of the Supreme Court of South Africa]** High Court contemplated in section 166 of the Constitution of the Republic of South Africa, 1996;''.

Amendment of section 2 of Act 90 of 1986

2. Section 2 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

''(1) Subject to the provisions of subsection (2), the Minister may, after considering the report of an Advisory Committee, appoint in the prescribed manner and on the prescribed conditions for a lower or superior court a fit and proper person as sheriff of that court.''.

Insertion of section 2A in Act 90 of 1986

3. The following section is hereby inserted in the principal Act after section 2:

''**Allowances payable to members of Advisory Committees**

2A. A member of an Advisory Committee referred to in section 2(1), who is not in the full-time employment of the State, may be paid by the Department such allowances in the performance of his or her functions in terms of this Act, as the Minister may determine with the concurrence of the Minister of Finance.''.

Amendment of section 5 of Act 90 of 1986, as amended by section 1 of Act 3 of 1991

4. Section 5 of the principal Act is hereby amended—

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

''(1) When a sheriff—

(a) is unable to perform his or her functions;

(b) is prohibited by any court of law from performing any particular function in connection with a case; **[or]**

(c) for any reason ceases to hold office; or

(d) has not been appointed for a specific area of jurisdiction of a lower or superior court,

the Minister may, in the prescribed manner, appoint a person to act, subject to the provisions of section 30, as sheriff—

BEPAAL DIE PARLEMENT van die Republiek van Suid-Afrika derhalwe, soos volg:—

Wysiging van artikel 1 van Wet 90 van 1986, soos gewysig deur artikel 1 van Wet 74 van 1998, artikel 12 van Wet 55 van 2003 en artikel 10 van Wet 31 van 2008

1. Artikel 1 van die Wet op Balju's, 1986 (Wet No. 90 van 1986) (hierna die Hoofwet genoem), word hierby gewysig—

(a) deur na die omskrywing van ''bouvereniging'' die volgende omskrywing in te voeg:

'' **'Departement'** die Departement van Justisie en Staatkundige Ontwikkeling;'';

(b) deur die omskrywing van ''hoër hof'' deur die volgende omskrywing te vervang:

'' **'hoër hof'** 'n **[provinsiale of plaaslike afdeling van die Hooggeregshof van Suid-Afrika]** Hoë Hof in artikel 166 van die Grondwet van die Republiek van Suid-Afrika, 1996, beoog;'';

(c) deur die omskrywing van ''Minister'' deur die volgende omskrywing te vervang:

'' **'Minister'** die **[Minister van Justisie]** Kabinetslid wat vir die regspleging verantwoordelik is;''; en

(d) deur die omskrywing van ''ouditeur'' deur die volgende omskrywing te vervang:

'' **'ouditeur'** iemand wat ingevolge die **[Wet op Openbare Rekenmeesters en Ouditeurs, 1991 (Wet No. 80 van 1991)]** 'Auditing Profession Act, 2005' (Wet No. 26 van 2005), as rekenmeester en ouditeur geregistreer is;''.

Wysiging van artikel 2 van Wet 90 van 1986

2. Artikel 2 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

''(1) Behoudens die bepalings van subartikel (2) kan die Minister, na oorweging van die verslag van 'n Advieskomitee, op die voorgeskrewe wyse en op die voorgeskrewe voorwaardes vir 'n laer of hoër hof **[iemand]** 'n gepaste en geskikte persoon as balju van daardie hof aanstel.''.

Invoeging van artikel 2A in Wet 90 van 1986

3. Die volgende artikel word hierby in die Hoofwet na artikel 2 ingevoeg:

''**Toelaes betaalbaar aan lede van Advieskomitees**

2A. Daar kan aan 'n lid van 'n Advieskomitee in artikel 2(1) bedoel, wat nie in die heeltydse diens van die Staat is nie, deur die Departement die toelaes in die verrigting van sy of haar werksaamhede ingevolge hierdie Wet betaal word wat die Minister met die instemming van die Minister van Finansies bepaal.''.

Wysiging van artikel 5 van Wet 90 van 1986, soos gewysig deur artikel 1 van Wet 3 van 1991

4. Artikel 5 van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

''(1) Wanneer 'n balju—

(a) nie in staat is om sy of haar werksaamhede te verrig nie;

(b) deur 'n geregshof verbied word om 'n bepaalde werksaamheid in verband met 'n geding te verrig; **[of]**

(c) om die een of ander rede ophou om sy of haar amp te beklee; of

(d) nie vir 'n bepaalde regsgebied van 'n laer of hoër hof aangestel is nie,

kan die Minister, op die voorgeskrewe wyse, iemand aanstel om, behoudens die bepalings van artikel 30, as balju waar te neem—

(i) in the circumstances referred to in paragraph *(a)*, until the sheriff is able to resume his or her functions;
(ii) in the circumstances referred to in paragraph *(b)*, in order to perform the particular function; or
(iii) in the circumstances referred to in **[paragraph]** paragraphs *(c)* and *(d)*, **[until a successor is appointed]** for such period as the Minister may determine.'';

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

''(1A) The Minister may for the purposes of a particular suit and on the conditions that he or she may determine, appoint a person or another sheriff to act as sheriff—

(a) if objection is made against the service or execution of any process by the sheriff on the grounds that he or she has an interest in the suit or that he or she is related to a party to the suit; or

(b) if the Minister for any other reason considers it necessary.''; and

(c) by the insertion of the following subsection after subsection (1A):

''(1B) The Minister may only appoint a person referred to in subsection (1)—

(a) after consultation with the judicial officer who heads the court in respect of whose area of jurisdiction such appointment is to be made and subject to written confirmation by the Board that it is prepared to issue a fidelity fund certificate to that person; and

(b) on the conditions that he or she may determine.''.

Insertion of sections 6A and 6B in Act 90 of 1986

5. The following sections are hereby inserted in the principal Act after section 6:

''**Minister may designate person to serve process**

6A. (1) Whenever process of any court in a civil or criminal case is to be served within an area for which—

(a) no sheriff or acting sheriff has been appointed; or
(b) a vacancy in the office of sheriff in that area has, for any other reason, not been filled,

the Minister may, notwithstanding any other law, and if he or she deems it necessary to achieve the objectives of effective and sustainable service delivery and in the interests of justice, in writing, designate any official in the employ of the Department—

(i) for the period specified in the designation;
(ii) in respect of the court specified in the designation; and
(iii) on the conditions, if any, specified in the designation,

to serve any process of that court or any other document as if the official had been appointed as a sheriff of that court.

(2) Section 30 does not apply to a person designated in terms of subsection (1).

(3) The fees payable to a sheriff or acting sheriff in respect of or in connection with any service effected by an official referred to in subsection (1), shall be chargeable and shall be dealt with in the prescribed manner.

Minister may appoint sheriff or acting sheriff to perform functions in another area

6B. (1) Whenever any functions of a sheriff, other than the service of process of any court or any other document, are to be performed within an area for which no sheriff or acting sheriff has been appointed, the Minister may, after consultation with the Board, in writing, appoint any sheriff or acting sheriff to perform those functions in that area on the conditions that the Minister may determine.

(i) in die omstandighede in paragraaf *(a)* bedoel, totdat die balju sy of haar werksaamhede kan hervat;
(ii) in die omstandighede in paragraaf *(b)* bedoel, om die bepaalde werksaamheid te verrig; of
(iii) in die omstandighede in **[paragraaf]** paragrawe *(c)* en *(d)* bedoel, **[totdat 'n opvolger aangestel word]** vir so 'n tydperk as wat die Minister bepaal.'';

(b) deur subartikel (1A) deur die volgende subartikel te vervang:

''(1A) Die Minister kan vir die doeleindes van 'n bepaalde geding en op die voorwaardes wat hy of sy bepaal, iemand of 'n ander balju aanstel om as balju waar te neem—

(a) indien beswaar gemaak word teen die betekening of tenuitvoerlegging van 'n prosesstuk deur die balju op grond daarvan dat hy of sy by die geding 'n belang het of dat hy of sy verwant is aan 'n party by die geding; of

(b) indien die Minister dit om enige ander rede nodig ag.''; en

(c) deur na subartikel (1A) die volgende subartikel in te voeg:

''(1B) Die Minister kan 'n persoon in subartikel (1) bedoel, slegs aanstel—

(a) na oorlegpleging met die regterlike beampte wat die hoof is van die hof ten opsigte van wie se regsgebied so 'n aanstelling gemaak staan te word en onderworpe aan skriftelike bevestiging deur die Raad dat hy bereid is om 'n getrouheidsfondssertifikaat aan daardie persoon uit te reik; en

(b) op die voorwaardes wat hy of sy bepaal.''.

Invoeging van artikels 6A en 6B in Wet 90 van 1986

5. Die volgende artikels word hierby in die Hoofwet na artikel 6 ingevoeg:

''**Minister kan persoon aanwys om prosesstukke te beteken**

6A. (1) Wanneer prosesstukke van 'n hof in 'n siviele of kriminele saak beteken staan te word binne 'n gebied ten opsigte waarvan—

(a) geen balju of waarnemende balju aangestel is nie; of

(b) 'n vakature in die amp van balju in daardie gebied, om enige ander rede, nie gevul is nie,

kan die Minister, ondanks enige ander wet, en indien hy of sy dit nodig ag om die oogmerke van effektiewe en volhoubare dienslewering te bereik en in die belang van regspleging, 'n beampte in die diens van die Departement skriftelik aanwys—

(i) vir die tydperk in die aanwysing aangedui;
(ii) ten opsigte van die hof in die aanwysing aangedui; en
(iii) op die voorwaardes, indien enige, in die aanwysing aangedui,

om 'n prosesstuk van daardie hof of enige ander dokument te beteken asof die beampte as 'n balju van daardie hof aangestel is.

(2) Artikel 30 is nie van toepassing op 'n persoon wat ingevolge subartikel (1) aangewys is nie.

(3) Die fooie betaalbaar aan 'n balju of waarnemende balju ten opsigte van of in verband met 'n betekening uitgevoer deur 'n beampte in subartikel (1) bedoel, is verhaalbaar en word op die voorgeskrewe wyse hanteer.

Minister kan balju of waarnemende balju aanstel om werksaamhede in ander gebied te verrig

6B. (1) Wanneer enige werksaamhede van 'n balju, anders as die betekening van prosesstukke van 'n hof of enige ander dokument, verrig staan te word binne 'n gebied waarvoor geen balju of waarnemende balju aangestel is nie, kan die Minister, na oorlegpleging met die Raad, skriftelik 'n balju of waarnemende balju aanstel om daardie werksaamhede te verrig in daardie gebied op die voorwaardes wat die Minister bepaal.

8

(2) The Rules Board for Courts of Law may make rules in respect of functions performed by a sheriff or acting sheriff referred to in subsection (1).".

Substitution of section 8 of Act 90 of 1986

6. The following section is hereby substituted for section 8 of the principal Act:

"**Objects of Board**

8. The objects of the Board shall be—
(a) the maintenance of the esteem of, the enhancement of the status of, and the improvement of the standard of training of and functions performed by, sheriffs;
(b) the development and implementation of appropriate measures, including support programmes for purposes of issuing fidelity fund certificates to sheriffs who have the potential to establish and operate an office of a sheriff successfully; and
(c) the development of guidelines for the appointment of deputy sheriffs.".

Amendment of section 9 of Act 90 of 1986, as amended by section 4 of Act 74 of 1998 and section 11 of Act 42 of 2001

7. Section 9 of the principal Act is hereby amended—
(a) by the substitution for subsection (1) of the following subsection:
"(1) The Board shall consist of **[12]** 11 members appointed by the Minister.";
(b) by the substitution for subsection (2) of the following subsection:
"(2) Subject to the provisions of section 10, the Minister shall appoint the following persons as members of the Board, namely—
(a) **[not fewer than six and not more than nine]** five sheriffs, each from a different province of the Republic, **[chosen by the Minister]** from among at least **[eighteen]** 10 sheriffs, nominated **[from within]** by associations which, in the opinion of the Minister, represent the Sheriff's profession, of whom at least **[two]** one sheriff must be nominated from each province, to represent the profession as a whole;
(b) **[not fewer than three and not more than six other persons, one of whom must be nominated by the attorneys' profession, who are fit and proper and broadly representative of the South African community and who in the opinion of the Minister are able to assist the Board in achieving its objects]** one official from the Department designated by the Minister as his or her representative;
(c) one attorney, or his or her alternate, in private practice designated by the Law Society of South Africa;
(d) one person, or his or her alternate, designated by the National Credit Regulator established in terms of the National Credit Act, 2005 (Act No. 34 of 2005); and
(e) three other persons designated by the Minister and who, in the opinion of the Minister, are fit and proper persons to serve on the Board, at least one of whom shall have extensive experience in the field of finance and accounting."; and
(c) by the substitution for subsection (5) of the following subsection:
"(5) The deputy chairperson **[may]** shall, if there is a vacancy in the office of chairperson or if the chairperson is absent or is, for any reason, unable to act as chairperson, perform the functions of the chairperson.".

(2) Die Reëlsraad vir Geregshowe kan reëls maak ten opsigte van werksaamhede verrig deur 'n balju of waarnemende balju in subartikel (1) bedoel.''.

Vervanging van artikel 8 van Wet 90 van 1986

6. Artikel 8 van die Hoofwet word hierby deur die volgende artikel vervang:

''**Oogmerke van Raad**

8. Die oogmerke van die Raad is—
(a) die handhawing van die aansien van, die verhoging van die status van, en die verbetering van die standaard van opleiding van en werksaamhede verrig deur, balju's;
(b) die ontwikkeling en toepassing van gepaste maatreëls, met inbegrip van ondersteuningsprogramme vir doeleindes van uitreiking van getrouheidsfondssertifikate aan balju's wat die potensiaal het om 'n kantoor van 'n balju suksesvol in te rig en te bedryf; en
(c) die ontwikkeling van riglyne vir die aanstelling van adjunk-balju's.''.

Wysiging van artikel 9 van Wet 90 van 1986, soos gewysig deur artikel 4 van Wet 74 van 1998 en artikel 11 van Wet 42 van 2001

7. Artikel 9 van die Hoofwet word hierby gewysig—
(a) deur subartikel (1) deur die volgende subartikel te vervang:
''(1) Die Raad bestaan uit **[12]** 11 lede deur die Minister aangestel.'';
(b) deur subartikel (2) deur die volgende subartikel te vervang:
''(2) Behoudens die bepalings van artikel 10 stel die Minister die volgende persone as lede van die Raad aan, naamlik—
(a) **[minstens ses en hoogstens nege]** vyf balju's, elk van 'n ander provinsie van die Republiek, **[deur die Minister gekies]** uit minstens **[agttien]** 10 balju's **[uit die geledere van]**, deur verenigings wat, na die oordeel van die Minister, die Balju's professie verteenwoordig, benoem, waarvan ten minste **[twee]** een balju van elke provinsie benoem moet word, om die professie as geheel te verteenwoordig;
(b) **[minstens drie en hoogstens ses ander persone, waarvan een deur die prokureursprofessie aangewys word, wat gepaste en geskikte persone is, wat algemeen verteenwoordigend is van die Suid-Afrikaanse gemeenskap en wat na die oordeel van die Minister in staat is om die Raad met die verwesenliking van sy oogmerke te help]** een beampte van die Departement deur die Minister as sy of haar verteenwoordiger aangewys;
(c) een prokureur, of sy of haar plaasvervanger, in privaat praktyk deur die Regsvereniging van Suid-Afrika aangewys;
(d) een persoon, of sy of haar plaasvervanger, deur die Nasionale Kredietreguleerder ingestel ingevolge die ''National Credit Act, 2005'' (Wet No. 34 van 2005), aangewys; en
(e) drie ander persone deur die Minister aangewys en wat, na die oordeel van die Minister, gepaste en geskikte persone is om op die Raad te dien, waarvan minstens een uitgebreide ondervinding in die vakgebied van finansies en rekeningkunde moet hê.''; en
(c) deur subartikel (5) deur die volgende subartikel te vervang:
''(5) Die ondervoorsitter **[kan]** moet, indien daar 'n vakature in die amp van voorsitter is of indien die voorsitter afwesig is, of om die een of ander rede, nie as voorsitter kan optree nie, die werksaamhede van die voorsitter verrig.''.

Amendment of section 11 of Act 90 of 1986

8. Section 11 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

"(1) Every member of the Board appointed in terms of section 9(2) shall, subject to section 14A, be appointed for a period of three years, but shall, after the expiration of the period for which he or she was appointed, continue to hold office for a further period, but not exceeding three months, until his or her successor has been appointed.

(2) *(a)* If a member of the Board appointed in terms of **[paragraph *(a)* of]** section 9(2)*(a)* for any reason ceases to hold office, the Minister may, after consultation with the Board and subject to section 10, appoint a sheriff in his or her place for the unexpired period of his or her term of office.

(b) If a member of the Board appointed in terms of **[paragraph *(b)* of]** section 9(2)*(b)*, *(c)*, *(d)* or *(e)* for any reason ceases to hold office, the Minister may, subject to **[that paragraph]** those paragraphs and section 10, appoint a person in his or her place for the unexpired period of his or her term of office.".

Substitution of section 12 of Act 90 of 1986

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

"**Vacating of office by member of Board**

12. (1) A member of the Board shall vacate his or her office—

(a) if he or she becomes subject to any disability mentioned in section 10;
(b) if he or she becomes of unsound mind;
(c) if he or she has been absent from more than two consecutive meetings of the Board without leave of the chairperson; **[or]**
(d) if he or she has been appointed in terms of section 9(2)*(a)* or 11(2)*(a)* and ceases to hold office as sheriff; or
(e) if he or she has been appointed in terms of section 9(2)*(b)*, *(c)*, *(d)* or *(e)* or 11(2)*(b)* and ceases to hold office.

(2) The Minister may at any time remove a member of the Board from his or her office—

(a) after consultation with the nominating or designating authority, where applicable, if sound reasons exist for doing so; or
(b) at the request of the nominating or designating authority.

(3) For the purposes of this section 'nominating or designating authority' means the body which or person who nominated or designated the member of the Board in terms of section 9(2).".

Substitution of section 13 of Act 90 of 1986

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

"**Allowances to members of Board and of committees of Board**

13. A member of the Board or of a committee referred to in section 16*(a)* or 17(1) who is not in the full-time employment of the State may be paid from the funds of the Board such allowances as the Board may determine in general or in any particular case.".

Wysiging van artikel 11 van Wet 90 van 1986

8. Artikel 11 van die Hoofwet word hierby gewysig deur subartikels (1) en (2) onderskeidelik deur die volgende subartikels te vervang:

"(1) Elke lid van die Raad wat ingevolge artikel 9(2) aangestel is, word, behoudens artikel 14A, vir 'n tydperk van drie jaar aangestel, maar behou, na die verstryking van die tydperk waarvoor hy of sy aangestel is, sy of haar amp vir 'n verdere tydperk, maar hoogstens drie maande, totdat sy of haar opvolger aangestel is.

(2) *(a)* Indien 'n lid van die Raad wat ingevolge **[paragraaf *(a)* van]** artikel 9(2)*(a)* aangestel is om die een of ander rede ophou om sy of haar amp te beklee, kan die Minister, na oorlegpleging met die Raad en behoudens artikel 10, 'n balju in sy of haar plek vir die onverstreke tydperk van sy of haar ampstermyn aanstel.

(b) Indien 'n lid van die Raad wat ingevolge **[paragraaf *(b)* van]** artikel 9(2)*(b)*, *(c)*, *(d)* of *(e)* aangestel is om die een of ander rede ophou om sy of haar amp te beklee, kan die Minister, behoudens daardie **[paragraaf]** paragrawe en artikel 10, iemand in sy of haar plek vir die onverstreke tydperk van sy of haar ampstermyn aanstel.".

Vervanging van artikel 12 van Wet 90 van 1986

9. Artikel 12 van die Hoofwet word hierby deur die volgende artikel vervang:

"**Ontruiming van amp deur lid van Raad**

12. (1) 'n Lid van die Raad ontruim sy of haar amp—

(a) indien hy of sy onderhewig raak aan 'n onbevoegdheid in artikel 10 genoem;

(b) indien hy of sy geestelik versteurd raak;

(c) indien hy of sy sonder verlof van die voorsitter van meer as twee agtereenvolgende vergaderings van die Raad afwesig is; **[of]**

(d) indien hy of sy ingevolge artikel 9(2)*(a)* of 11(2)*(a)* aangestel is en ophou om sy of haar amp as balju te beklee; of

(e) indien hy of sy ingevolge artikel 9(2)*(b)*, *(c)*, *(d)* of *(e)* of 11(2)*(b)* aangestel is en ophou om sy of haar amp te beklee.

(2) Die Minister kan te eniger tyd 'n lid van die Raad van sy of haar amp onthef—

(a) na oorlegpleging met die nominerende of aanwysende gesag, waar van toepassing, indien daar gegronde redes bestaan om dit te doen; of

(b) op versoek van die nominerende of aanwysende gesag.

(3) Vir doeleindes van hierdie artikel beteken 'nominerende of aanwysende gesag' die liggaam wat of persoon wie die lid van die Raad ingevolge artikel 9(2) genomineer of aangewys het.".

Vervanging van artikel 13 van Wet 90 van 1986

10. Artikel 13 van die Hoofwet word hierby deur die volgende artikel vervang:

"**Toelaes aan lede van Raad en van komitees van Raad**

13. Daar kan aan 'n lid van die Raad of van 'n komitee in artikel 16*(a)* of 17(1) bedoel wat nie in die heeltydse diens van die Staat is nie die toelaes uit die fondse van die Raad betaal word wat die Raad in die algemeen of in 'n besondere geval bepaal.".

Insertion of section 14A in Act 90 of 1986

11. The following section is hereby inserted in the principal Act after section 14:

"**Dissolution of Board, appointment and meetings of interim Board**

14A. (1) If the Minister, upon receipt of a written request or complaint and after due inquiry, is satisfied that—

(a) the Board has failed to perform its functions in terms of this Act; or

(b) any other sound reason exists for doing so,

he or she may dissolve the Board on such terms and conditions as he or she deems fit.

(2) *(a)* Upon the dissolution of the Board provided for in subsection (1), the Minister shall, having regard to the provisions of section 9(2), appoint an interim Board, consisting of at least seven persons.

(b) The interim Board shall be appointed within 21 days after the dissolution of the Board and shall be appointed for a period determined by the Minister, which period shall not exceed six months.

(3) *(a)* The Minister shall from among the members of the interim Board designate a chairperson of the interim Board.

(b) The interim Board shall elect a deputy chairperson from among its members and the deputy chairperson shall hold office for such period as the interim Board may determine at the time of his or her election.

(4) The chairperson of the interim Board may, at any time of his or her own accord, or shall, at the written request of not fewer than five members, convene a special meeting of the interim Board.

(5) Five members of the interim Board shall form a quorum for a meeting of the interim Board.

(6) Section 14(1), (4), (5) and (6) shall *mutatis mutandis* apply in respect of a meeting of the interim Board.".

Amendment of section 16 of Act 90 of 1986

12. Section 16 of the principal Act is hereby amended by the insertion of the following paragraph after paragraph *(k)*:

"*(k*A*)* make rules regulating the conduct of its proceedings;".

Amendment of section 27 of Act 90 of 1986

13. Section 27 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection:

"(1A) The maximum amount that may be recovered by the Board from the Fund for the purposes of subsection (1)*(e)* shall be determined by the Board, in consultation with the Minister.".

Amendment of section 28 of Act 90 of 1986

14. Section 28 of the principal Act is hereby amended by the addition of the following subsections:

"(3) An auditor who has performed an audit contemplated in subsection (2), shall in the auditor's report express an opinion as to whether or not the moneys of the Fund were spent for purposes authorised by this Act.

(4) Within 30 days after receipt of the auditor's report, the Board shall submit that report to the Minister together with the audited financial statements of the Fund.".

13

Invoeging van artikel 14A in Wet 90 van 1986

11. Die volgende artikel word hierby in die Hoofwet na artikel 14 ingevoeg:

"**Ontbinding van Raad, aanstelling en vergaderings van tussentydse Raad**

14A. (1) Indien die Minister, by ontvangs van 'n skriftelike versoek of klagte en na behoorlike ondersoek, oortuig is dat—
(a) die Raad versuim het om sy werksaamhede ingevolge hierdie Wet te verrig; of
(b) 'n ander gegronde rede bestaan om dit te doen,
kan hy of sy die Raad ontbind op sodanige bedinge en voorwaardes wat hy of sy goeddink.

(2) *(a)* By ontbinding van die Raad soos in subartikel (1) bepaal, moet die Minister, met inagneming van die bepalings van artikel 9(2), 'n tussentydse Raad aanstel, bestaande uit ten minste sewe persone.

(b) Die tussentydse Raad word binne 21 dae na die ontbinding van die Raad aangestel en word aangestel vir 'n tydperk deur die Minister bepaal, welke tydperk nie ses maande mag oorskry nie.

(3) *(a)* Die Minister wys uit die lede van die tussentydse Raad 'n voorsitter van die tussentydse Raad aan.

(b) Die tussentydse Raad kies uit sy lede 'n ondervoorsitter en die ondervoorsitter beklee sy of haar amp vir die tydperk wat die tussentydse Raad ten tyde van sy of haar verkiesing bepaal.

(4) Die voorsitter van die tussentydse Raad kan, te eniger tyd uit eie beweging, of moet, op die skriftelike versoek van minstens vyf lede, 'n spesiale vergadering van die tussentydse Raad belê.

(5) Vyf lede van die tussentydse Raad maak 'n kworum vir 'n vergadering van die tussentydse Raad uit.

(6) Artikel 14(1), (4), (5) en (6) is *mutatis mutandis* ten opsigte van 'n vergadering van die tussentydse Raad van toepassing.".

Wysiging van artikel 16 van Wet 90 van 1986

12. Artikel 16 van die Hoofwet word hierby gewysig deur na paragraaf *(k)* die volgende paragraaf in te voeg:

"*(k*A*)* reëls maak wat die voer van sy verrigtinge reël;".

Wysiging van artikel 27 van Wet 90 van 1986

13. Artikel 27 van die Hoofwet word hierby gewysig deur na subartikel (1) die volgende subartikel in te voeg:

"(1A) Die maksimum bedrag wat deur die Raad van die Fonds vir doeleindes van subartikel (1)*(e)* verhaal kan word, word deur die Raad, in oorleg met die Minister, bepaal.".

Wysiging van artikel 28 van Wet 90 van 1986

14. Artikel 28 van die Hoofwet word hierby gewysig deur die volgende subartikels by te voeg:

"(3) 'n Ouditeur wat 'n ouditering beoog in subartikel (2) uitgevoer het, moet in die ouditeursverslag 'n mening uitspreek oor of die geld van die Fonds bestee is vir doeleindes wat by hierdie Wet gemagtig word al dan nie.

(4) Binne 30 dae na ontvangs van die ouditeursverslag moet die Raad daardie verslag, met die geouditeerde finansiële state van die Fonds, aan die Minister voorlê.".

Amendment of section 43 of Act 90 of 1986, as amended by section 12 of Act 74 of 1998

15. Section 43 of the principal Act is hereby amended by the substitution for paragraphs *(h)* and *(i)* of subsection (1) of the following paragraphs:

"*(h)* he or she makes use of fraudulent or misleading representations, including—
- (i) the simulation of legal procedures;
- (ii) the use of simulated official or legal documents;
- (iii) representation as a police officer; or
- (iv) the making of unjustified threats to enforce rights; **[or]**

(i) he or she fails to comply with any regulation pertaining to the service of process; or

(j) he or she contravenes or fails to comply with section 53.".

Amendment of section 62 of Act 90 of 1986, as amended by section 20 of Act 74 of 1998

16. Section 62 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The Minister may after consultation with the Board make regulations as to—

(a) the requirements for appointment as sheriff;

(b) the manner and procedures regarding the appointment of sheriff;

(c) the establishment of an Advisory Committee for each province;

(d) the appointment of members of Advisory Committees;

(e) the procedure to be followed by an Advisory Committee in recommending candidates for appointment as sheriff to the Minister, as provided for in section 2(1), including—
- (i) the shortlisting and interviewing of candidates;
- (ii) the manner in which candidates are shortlisted and recommended to the Minister; and
- (iii) the procedure to be followed when an Advisory Committee does not find a suitable candidate for appointment,

and, in general, any matter, which is not in conflict with this Act, which is reasonably necessary for the proper functioning of Advisory Committees;

(f) the recognition of any professional society or association representing sheriffs for purposes of section 9(2)*(a)*;

[*(a)*]*(g)* the steps to be taken to ensure compliance with the code of conduct referred to in section 16*(k)*;

[*(b)*]*(h)* the disposal of process and other documents in the possession of a sheriff when he or she ceases to hold office;

[*(c)*]*(i)* the service of process on sheriffs or deputy sheriffs;

[*(d)*]*(j)* the furnishing by a banking institution or building society of particulars relating to an account mentioned in section 22(1) or (2);

[*(d*A*)*]*(k)* the procedure to be followed in terms of section 3(2)*(b)*, including measures aimed at co-ordinating the functions performed by such sheriffs;

[*(d*B*)*]*(l)* the procedure to be followed in connection with the recovery of a fine imposed in terms of section 49(1)*(b)*;

[*(d*C*)*]*(m)* the payment and control of admission of guilt fines in terms of this Act;

[*(e)*]*(n)* any matter required or permitted to be prescribed by regulation under this Act; and

[*(f)*]*(o)* in general, any **[matter which the Minister may consider necessary or expedient to prescribe in order that the objects of this Act may be achieved, and the generality of this paragraph shall not be limited by the preceding paragraphs]** ancillary or incidental matter that is necessary to prescribe for the proper implementation or administration of this Act.".

15

Wysiging van artikel 43 van Wet 90 van 1986, soos gewysig deur artikel 12 van Wet 74 van 1998

15. Artikel 43 van die Hoofwet word hierby gewysig deur paragrawe *(h)* en *(i)* van subartikel (1) deur die volgende paragrawe te vervang:

"*(h)* hy of sy bedrieglike of misleidende voorstellings gebruik, met inbegrip van—
(i) die naboots van regsprosesse;
(ii) die gebruikmaking van nagebootste amptelike of regsdokumente;
(iii) voordoening as 'n polisiebeampte; of
(iv) die maak van ongeregverdigde dreigemente om regte af te dwing;

(i) hy of sy versuim om te voldoen aan 'n regulasie betreffende die betekening van prosesstukke; of

(j) hy of sy artikel 53 oortree of versuim om daaraan te voldoen.".

Wysiging van artikel 62 van Wet 90 van 1986, soos gewysig deur artikel 20 van Wet 74 van 1998

16. Artikel 62 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

"(1) Die Minister kan na oorlegpleging met die Raad regulasies uitvaardig betreffende—

(a) die vereistes vir aanstelling as balju;

(b) die wyse en prosedures betreffende die aanstelling as balju;

(c) die instelling van 'n Advieskomitee vir elke provinsie;

(d) die aanstelling van lede van Advieskomitees;

(e) die prosedure wat deur 'n Advieskomitee gevolg moet word by die aanbeveling van kandidate vir aanstelling as balju aan die Minister, soos in artikel 2(1) bepaal, met inbegrip van—
(i) die kortlys van en onderhoudvoering met kandidate;
(ii) die wyse waarop kandidate gekortlys en aan die Minister aanbeveel word; en
(iii) die prosedure wat gevolg moet word wanneer 'n Advieskomitee nie 'n geskikte kandidaat vir aanstelling vind nie,

en, in die algemeen, 'n aangeleentheid, wat nie met hierdie Wet in stryd is nie, wat redelik noodsaaklik vir die behoorlike funksionering van Advieskomitees is;

(f) die erkenning van enige professionele genootskap of vereniging wat balju's vir doeleindes van artikel 9(2)*(a)* verteenwoordig;

[*(a)*]*(g)* die stappe wat gedoen moet word om nakoming van die gedragskode bedoel in artikel 16*(k)* te verseker;

[*(b)*]*(h)* die beskikking oor proses- en ander stukke in die besit van 'n balju wanneer hy of sy sy of haar amp ontruim;

[*(c)*]*(i)* die bestelling van prosesstukke aan balju's of adjunk-balju's;

[*(d)*]*(j)* die verstrekking van besonderhede met betrekking tot 'n rekening in artikel 22(1) of (2) genoem deur 'n bankinstelling of bouvereniging;

[*(d*A*)*]*(k)* die prosedure wat ingevolge artikel 3(2)*(b)* gevolg moet word, met inbegrip van maatreëls wat daarop gemik is om die werksaamhede van sodanige balju's te koördineer;

[*(d*B*)*]*(l)* die prosedure wat in verband met die verhaling van 'n boete opgelê ingevolge artikel 49(1)*(b)* gevolg moet word;

[*(d*C*)*]*(m)* die betaling en beheer van skulderkenningsboetes ingevolge hierdie Wet;

[*(e)*]*(n)* 'n aangeleentheid wat kragtens hierdie Wet by regulasie voorgeskryf moet of kan word; en

[*(f)*]*(o)* in die algemeen, 'n **[aangeleentheid wat die Minister nodig of dienstig ag om voor te skryf ten einde die oogmerke van hierdie Wet te verwesenlik, en die algemeenheid van hierdie paragraaf word nie deur die voorafgaande paragrawe beperk nie]** bykomstige of bybehorende aangeleentheid wat nodig is om voor te skryf vir die behoorlike toepassing of administrasie van hierdie Wet.".

Short title and commencement

17. This Act is called the Sheriffs Amendment Act, 2012, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

17

Kort titel en inwerkingtreding

17. Hierdie Wet heet die Wysigingswet op Balju’s, 2012, en tree in werking op ’n datum deur die President by proklamasie in die *Staatskoerant* bepaal.