

REPUBLIC OF SOUTH AFRICA

JUDICIAL MATTERS AMENDMENT BILL, 2016

(DRAFT FOR PUBLIC COMMENT)

(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill published in Government Gazette No. of 2016) (The English text is the official text of the Bill)

(MINISTER OF JUSTICE AND CORRECTIONAL SERVICES)

[B —2016]

GENERAL EXPLANATORY NOTE:

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

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

BILL

Substitution of section 2 of Act 20 of 1957, as amended by section 1 of Act 201 of 1993 and substituted by section 1 of Act 14 of 2011

3. The following section is hereby substituted for section 2 of the State Liability Act, 1957:

"(1) In any action or other proceedings instituted **[by virtue of the provisions of section 1]** against a department, the executive authority of the department concerned must be cited as nominal defendant or respondent.

(2) The plaintiff or applicant, as the case may be, or his or her legal representative must **[within seven days]** —

(a) after [a summons or notice] any court process instituting proceedings and in which the executive authority of a department is cited as nominal defendant or respondent has been [issued] served, serve a copy of that [summons or notice] process on the [State Attorney] head of the department concerned; and

(b) within five days after the service of the process contemplated in paragraph (a), serve a copy of that process on the office of the State Attorney operating within the area of jurisdiction of the court from which the process was issued."

Amendment of section 3 of Act 20 of 1957, as amended by section 36 of Act 9 of 1989 and substituted by section 2 of Act 201 of 1993 and section 2 of Act 14 of 2011

4. Section 3 of the State Liability Act, 1957, is hereby amended by the substitution for subsection (6) of the following subsection:

- “(6) If the relevant treasury fails to ensure that—
- (a) the judgment debt is satisfied; or
 - (b) acceptable arrangements have been made with the judgment creditor for the satisfaction of the judgment debt, should there be inadequate funds available in the vote of the department concerned,
- within the time period specified in subsection (5), the registrar or clerk of the court concerned, as the case may be, must, upon the written request of the judgement creditor or his or her legal representative, issue a writ of execution or a warrant of execution in terms of the applicable Rules of Court against movable property owned by the State and used by the department concerned: Provided that a writ of execution or a warrant of execution, where a judgment by default was granted against a department, can only be issued by the registrar or clerk of the court if he or she is satisfied that the requirements of subsection (4) have been complied with.”.

Amendment of section 4A of Act 20 of 1957, as inserted by section 3 of Act 14 of 2011

5. Section 4A of the State Liability Act, 1957, is hereby amended—
- (a) by the insertion before the definition of “department” of the following definition:
“‘day’ means a day that is not a public holiday, Saturday or Sunday;”;
 - (b) by the insertion before the definition of “Public Finance Management Act” of the following definition:
“‘head of department’ means the incumbent of a post mentioned in Column 2 of Schedule 1, 2 or 3 to the Public Service Act, 1994 (Proclamation 103 of 3 June 1994), and includes any employee acting in such post;”; and
 - (c) by the substitution for the definition of “Rules of Court” of the following definition:
“ ‘Rules of Court’ include-

- (a) **[the Uniform Rules of Court published under Government Notice R48 of 12 January 1965] the rules made by the Rules Board for Courts of Law under the provisions of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985) or under the provisions of any other law; and**
- [(b) the Magistrates' Courts Rules published under Government Notice R740 of 23 August 2010; and]**
- (c) any other rule applicable to any other court, established by an Act of Parliament.”