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THE PRESIDENCY

No. 1360. 13 December 2000

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

No. 70 of 2000: Tourism Second Amendment Act, 2000,

DIE PRESIDENSIE

No. 1360. 13 Desember 2000

Hierby word bekend gemaak dat die President sy goedkeuring gegee het aan die onderstaande Wet wat algemeen inligting gepubliseer word:—

No. 70 van 2000: Tweede Wysigingswet op Toerisme, 2000,

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 .5 December 2000.)

ACT

To amend the Tourism Act, 1993, so as to insert certain definitions; to further provide for the training and registration of tourist guides; to make provision for a code of conduct and ethics for tourist guides; to regulate the procedure for lodging complaints; to make provision for the endorsement of certain registers in appropriate cases; to provide for disciplinary measures, appeals and reviews; to **criminalise** certain conduct; to provide for transitional matters; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 72 of 1993, as amended by section 1 of Act 105 of 1996

1. Section 1 of the Tourism Act, 1993 (hereinafter referred to as the principal Act), is 5 hereby amended—

(a) by the insertion after the definition of “Minister” of the following definition:

“ ‘National Registrar’ means the National Registrar of Tourist Guides mentioned in section 20(1);” and

(b) by the insertion after the definition of “prescribe” of the following definition: 10

“ ‘Provincial Registrar’ means a Provincial Registrar of Tourist Guides mentioned in section 21;”.

Substitution of section 20 of Act 72 of 1993

2. The following section is hereby substituted for section 20 of the principal Act:

“National Registrar of Tourist Guides 15

20. (1) The Minister shall appoint a suitably qualified officer in the Department as the National Registrar of Tourist Guides and publish his or her name in the *Government Gazette*.

(2) The National Registrar shall—

(a) maintain a central database of all tourist guides registered by Provincial Registrars in terms of section 21A; 20

(b) prepare a code of conduct and ethics for tourist guides in accordance with section 21C;

(c) hear and determine appeals lodged under section 21 G;

(d) monitor trends in the tourist guiding sector by conducting research and analysis; 25

- (e) publish or otherwise disseminate information about tourist guides, associations of tourist guides and any other information to promote and develop the tourist guiding sector nationally;
- (f) liaise with the board, Provincial Registrars, tourist guides, associations of tourist guides, education and training authorities, the South African Police Service, the Consumer Council, the provincial consumer affairs bodies and any other person or organisation to—
 - (i) facilitate the growth and development of the tourist guiding sector;
 - (ii) improve and maintain standards in the tourist guiding sector; and
 - (iii) co-operate on matters of mutual interest in the tourist guiding sector; and
- (g) review the regulations relating to tourist guides made under section 26 and recommend amendments thereof to the Minister.”.

Substitution of section 21 of Act 72 of 1993 15

3. The following section is hereby substituted for section 21 of the principal Act:

“Provincial Registrars of Tourist Guides

21. (1) The Member of the Executive Council responsible for tourism in each province shall appoint a suitably qualified officer in the province as the Provincial Registrar of Tourist Guides for that province and publish his or her name in the *Provincial Gazette*. 20

(2) A Provincial Registrar shall—

- (a) for the purposes of section 2 1A, keep a register of tourist guides within the province concerned and shall—
 - (i) record in the register the prescribed particulars with regard to each registered tourist guide;
 - (ii) delete from the register the particulars of any tourist guide whose registration has been withdrawn;
 - (iii) make the prescribed endorsement against the name of any tourist guide whose registration has been suspended; and
 - (iv) inform the National Registrar of anything done in terms of subparagraph (i), (ii) or (iii);
- (b) publish or otherwise disseminate information about registered tourist guides within the province and associations of tourist guides and any other information to promote and develop the tourist guiding sector within the province;
- (c) promote and develop the tourist guiding sector within the province in any manner other than as contemplated in paragraph (b);
- (d) deal with complaints lodged under section 2 1D;
- (e) act in accordance with section 2 1E when a tourist guide becomes subject to any disqualification mentioned in section 21 A(3); and
- (f) exercise disciplinary powers in accordance with section 21 F.

(3) The registration of a tourist guide by a Provincial Registrar in terms of subsection (2) shall be valid in all the provinces of the Republic.”. 40

Insertion of sections 21A to 21I in Act 72 of 1993 45

4. The following sections are hereby inserted in the principal Act after section 21:

“Procedure relating to registration of tourist guides

21A. (1) Any person who wishes to be registered as a tourist guide shall apply to any Provincial Registrar in the prescribed manner, and the application shall be accompanied by the prescribed registration fee. 50

(2) No person shall be registered as a tourist guide in terms of this Act unless he or she shows proof of the competence contemplated in section 21B.

(3) No person shall be registered as a tourist guide in terms of this Act if he or she— 55

- (a) is within the Republic or elsewhere convicted of an offence and is sentenced to imprisonment without the option of a fine;
- (b) loses his or her South African citizenship or right of permanent residence or work permit in the Republic;
- (c) has failed to pass the prescribed quality assurance process that a tourist guide shall complete not later than two years after the date of his or her last registration. 5

(4) If the Provincial Registrar is satisfied that the applicant complies with the competence for registration as a tourist guide and that the applicant is not subject to any disqualification mentioned in subsection (3), he or she shall register the applicant as a tourist guide. 10

(5) When the Provincial Registrar registers any person as a tourist guide, he or she shall issue to that person a registration certificate and a badge, which shall be in the prescribed form.

(6) (a) Registration as a tourist guide shall be valid for a period of two years, reckoned from the date of issue of the registration certificate. 15

(b) Any person registered as a tourist guide may before the end of the period for which he or she has been registered, apply to the Provincial Registrar on the prescribed form for the renewal of his or her registration as a tourist guide in respect of the ensuing period of two years, and if the person so applies for the renewal of his or her registration, his or her registration shall upon the payment of the prescribed fee be renewed, unless he or she has become subject to any of the disqualifications mentioned in subsection (3) since the previous registration or renewal of registration. 20

(7) If a tourist guide has since his or her registration acquired a competence contemplated in section 21 B in a prescribed field of specialisation or an additional competence within a field of specialisation the Provincial Registrar shall, on the application of the tourist guide made in the prescribed manner, accompanied by the prescribed fee, issue to the tourist guide a new registration certificate reflecting that competence and also a new badge, which shall be in the prescribed form. 25 30

(8) (a) Subject to paragraphs (b) and (c), the Provincial Registrar may refuse to approve an application for registration as a tourist guide if the applicant's registration was withdrawn on the grounds of misconduct in terms of section 21 F at any time within the period of three years preceding the date of application. 35

(b) If the Provincial Registrar is contemplating a refusal under paragraph (a), he or she shall, by notice sent by registered post or any other effective method, inform the applicant of the possible refusal and the reason therefor and call upon the applicant to submit such representations in connection therewith as he or she may wish to make, within a period specified in the notice, which, in any case, may not be fewer than 30 days from the date of the notice. 40

(c) Before the Provincial Registrar decides on an application under this subsection, he or she shall consider the representations, if any, made by the applicant in accordance with paragraph (b). 45

Competence

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Code of conduct and ethics

21C. (1) The National Registrar shall in the prescribed manner, after consultation with the Member of the Executive Council referred to in section 21(1), the Provincial Registrars, stakeholder groupings and the 55

Minister of Transport. prepare and publish a code of conduct and ethics with which all registered tourist guides shall comply.

(2) The code of conduct and ethics shall include provisions requiring of a tourist guide to take all reasonable steps to ensure the safety of a tourist whom the tourist guide is accompanying and requiring the tourist guide to render to the tourist services of an acceptable standard.

Complaints

21D. (1) (a) Any person may lodge a complaint with a Provincial Registrar if a person is acting as a tourist guide in contravention of section 21 H(1), (2) or (4).

(b) The Provincial Registrar shall, if the complaint discloses an offence, lay a charge with the South African Police Service.

(c) In the case of a contravention of section 21 H(2), the Provincial Registrar shall consider taking steps in accordance with section 2 IE.

(2) (a) Any person may lodge a complaint with a Provincial Registrar regarding the misconduct of a tourist guide.

(b) The Provincial Registrar shall, if the complaint discloses—

(i) a contravention of this Act or any other law constituting an offence, lay a charge with the South African Police Service and take steps in accordance with section 21 F;

(ii) misconduct not constituting an offence, including a contravention of the code of conduct and ethics contemplated in section 21 C, take steps in accordance with section 2 IF.

(3) (a) Any person may lodge a complaint with a Provincial Registrar regarding a contravention of section 21 H(3) or (5).

(b) The Provincial Registrar shall, if the complaint discloses an offence, lay a charge with the South African Police Service.

(4) The Provincial Registrar concerned shall within 14 days report to the National Registrar in writing on the result of any case dealt with in terms of subsection (1), (2) or (3).

Action by Provincial Registrar regarding disqualification of tourist guide

21E. (1) If a Provincial Registrar has reason to believe that a tourist guide has become subject to any disqualification mentioned in section 21 A(3), the Provincial Registrar shall by notice, sent by registered post or any other effective method, inform the tourist guide of the allegations against him or her and call upon that tourist guide to submit such representations in connection therewith as he or she may wish to make, within a period specified in the notice, which, in any case, may not be fewer than 30 days from the date of the notice.

(2) The notice shall direct the attention of the tourist guide to the possibility of his or her registration as a tourist guide being withdrawn.

(3) If the tourist guide requests the Provincial Registrar to be allowed to present his or her case personally before the Provincial Registrar, the Provincial Registrar shall grant such request.

(4) Where the tourist guide personally presents his or her case in terms of subsection (3), he or she may be assisted by an adviser of his or her choice.

(5) If, after considering the allegations against the tourist guide and his or her representations, if any, the Provincial Registrar is satisfied that one or more of the disqualifications mentioned in section 21 A(3) are applicable, the Provincial Registrar shall withdraw the person's registration as a tourist guide.

(6) The Provincial Registrar may by the notice referred to in subsection (1) suspend, for a period not exceeding 30 days, the registration of the

tourist guide concerned, pending the decision of the Provincial Registrar under subsection (5): Provided that before the decision to suspend the registration of the tourist guide is taken, he or she shall be afforded an opportunity to make representations to show why the registration should not be suspended.

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(7) The provisions of subsections (3) and (4) are applicable to any proceedings for the suspension of the registration of a tourist guide under subsection (6).

(8) If the registration of a tourist guide is suspended in terms of subsection (6), the Provincial Registrar shall make the prescribed endorsement in the register against the name of the tourist guide.

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(9) The Provincial Registrar shall cause the names of persons whose registration has been withdrawn under this section to be published in the *Government Gazette* and in at least one newspaper that circulates in the province concerned.

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Disciplinary measures

21F. (1) A Provincial Registrar who has reason to believe that a tourist guide is guilty of misconduct by—

(a) contravening a provision of this Act or any other law;

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(b) contravening the code of conduct and ethics contemplated in section 21C; or

(c) failing to comply with any condition subject to which he or she has been registered,

shall institute an investigation or cause an investigation to be instituted and, if satisfied that there is substance to such belief, by notice, sent by registered post or any other effective method, inform the tourist guide of the charge against him or her and call upon that tourist guide to submit such representations in connection therewith as he or she may wish to make, within a period specified in the notice, which, in any case, may not be fewer than 30 days from the date of the notice.

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(2) The notice shall direct the attention of the tourist guide to the possible penalties mentioned in subsection (5).

(3) If the tourist guide requests the Provincial Registrar to be allowed to present his or her case personally before the Provincial Registrar, the Provincial Registrar shall grant such request.

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(4) Where the tourist guide personally presents his or her case in terms of subsection (3), he or she may be assisted by an adviser of his or her choice.

(5) If, after considering the charge against the tourist guide and his or her representations, if any, the Provincial Registrar is satisfied that the tourist guide is guilty of the charge of which he or she is accused, the Provincial Registrar may—

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(a) issue a warning to the tourist guide;

(b) impose the prescribed fine, which may not exceed R1 000, on the tourist guide; or

(c) withdraw the registration as a tourist guide for such period, not exceeding five years, as the Provincial Registrar may determine.

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(6) The Provincial Registrar may, by the notice referred to in subsection (1), suspend, for a period not exceeding 30 days, the registration of the tourist guide concerned, pending the decision of the Provincial Registrar under subsection (5): Provided that before the decision to suspend the registration of the tourist guide is taken, he or she shall be afforded an opportunity to make representations to show why the registration should not be suspended.

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(7) The provisions of subsections (3) and (4) are applicable to any proceedings for the suspension of the registration of a tourist guide under subsection (6).

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(8) If the registration of a tourist guide is suspended in terms of subsection (6), the Provincial Registrar shall make the prescribed endorsement in the register against the name of the tourist guide.

Appeals and review's

21G. (1) (a) Any person who considers himself or herself aggrieved by a decision of a Provincial Registrar, may appeal against the decision in question to the National Registrar in the prescribed manner, within the prescribed period and upon payment of the prescribed fee. 5

(b) If the appellant requests the National Registrar to be allowed to argue his or her appeal personally before the National Registrar, the National Registrar shall grant such request.

(c) Where the appellant personally argues his or her appeal in terms of paragraph (b), he or she may be assisted by an adviser of his or her choice. 10

(d) The National Registrar may confirm, set aside or amend the decision.

(2) The power to determine an appeal in terms of this section is not restricted to the merits of the decision appealed against, but includes the power to review any irregularity alleged regarding the decision.

Prohibitions

21H. (1) No person who is not a registered tourist guide or whose registration as a tourist guide has been suspended or withdrawn, may for reward, whether monetary or otherwise, act as a tourist guide. 15

(2) No person who has become subject to any disqualification mentioned in section 21A(3) may for reward, whether monetary or otherwise, continue to act as a tourist guide. 20

(3) No person, company or close corporation may for the promotion of any business undertaking conducted by him, her or it, employ or continue to employ as a tourist guide any person who is not a registered tourist guide or whose registration as a tourist guide has been suspended or withdrawn or who has become subject to a disqualification contemplated in subsection (2). 25

(4) No tourist guide may drive a vehicle with a carrying capacity of more than 10 persons and at the same time act as a tourist guide.

(5) No person, company or close corporation employing a tourist guide may allow that tourist guide to drive a vehicle in contravention of subsection (4). 30

Disputes

21I. (1) Where a dispute or disagreement arises between the National Registrar and a Provincial Registrar concerning the performance of any of the functions contemplated in section 21A, 21C, 21D, 21E, 21F or 21G, the matter shall be referred to the Director-General: Environmental Affairs and Tourism for arbitration and his or her decision shall be final. 35

(2) The Director-General shall make a decision within 60 days after the date on which the matter is referred to him or her in terms of subsection (1). 40

Amendment of section 26 of Act 72 of 1993

5. Section 26 of the principal Act is hereby amended by the addition of the following subsections, the existing section becoming subsection (1):

"(2) The Minister shall, within 30-days after making any regulations under this Act, table the regulations in the National Assembly and the National Council of Provinces or, if Parliament is then not in session, within 30 days after the beginning of the ensuing session of Parliament. 45

(3) The National Assembly and the National Council of provinces may, within 30 days of the tabling of the regulations, submit their comments to the Minister. 50

(4) The Member of the Executive Council referred to in section 21(1) shall, within 30 days after the Minister made any regulations under this Act, table the regulations in the provincial legislature, and the provisions of subsections (2) and (3) shall for the purpose of this subsection apply with the necessary changes.”

Amendment of section 28 of Act 72 of 1993

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6. Section 28 of the principal Act is hereby amended—

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

“(a’) contravenes section [21(9)(a) or (10)] 21 H.”; and

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

“(2) Any company or close corporation that contravenes section 21 H(3) or (5) shall be guilty of an offence and liable on conviction to a fine not exceeding R10 000.”

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Transitional provisions

7. (1) The person, if any, who immediately before the date of commencement of this section occupied the post of Registrar of Tourist Guides in the employment of the board shall, with his or her consent, on such commencement be transferred to the establishment of the Department to the post of National Registrar of Tourist Guides, and shall be deemed to have been appointed as such by the Minister in terms of section 20 of the principal Act.

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(2) The incumbents of not more than two subordinate posts in the employment of the board who, immediately before the date of commencement of this section, were charged with the registration of tourist guides shall, with their consent, on such commencement be transferred to the establishment of the Department under the supervision of the National Registrar of Tourist Guides.

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(3) (a) The conditions of employment which were applicable to the persons referred to in subsections (1) and (2) immediately before the date of commencement of this section, shall not be affected to the detriment of the person concerned, and no such condition of employment shall after that date be construed or applied in a manner which is less favorable to the person concerned than the manner in which it was construed or applied immediately before that date.

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(b) The period of service of the persons referred to in subsections (1) and (2) in the public service shall be deemed to be part of and continuous with their employment by the board, for all purposes, including those of leave, pension and any other conditions of service, and the provisions of any pension law applicable to them as such employees, or in the event of their deaths, to their dependants, shall, with the necessary changes, continue so to apply.

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(4) The furniture, equipment and other movable assets and records (including computer software) used by the persons referred to in subsections (1) and (2) for the performance of their functions in the employment of the board, shall be transferred to the Department on the commencement of this section.

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(5) Any tourist guide registered in terms of the principal Act immediately before the date of amendment thereof by section 4 of this Act, shall remain so registered, subject to the principal Act as so amended, and shall be exempt from section 21A(2) or (3)(c) of the principal Act for a period of two years from the date of commencement of this section.

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(6) Any person who acted as a tourist guide immediately before the commencement of this Act without being registered as a tourist guide in terms of the principal Act, may, subject to subsection (7), continue to so act for a period of two years from the date of commencement of this section and shall be exempt from sections 21A, 21 H and 28 of the principal Act for that period.

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(7) (a) Any person contemplated in subsection (5) or (6) who wishes to be registered as a tourist guide under the principal Act as amended by section 4 of this Act, shall, within a period of six months from the commencement of this Act, apply for provisional registration to any Provincial Registrar.

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(b) The Minister may extend the period referred to in paragraph (a) if he or she deems it necessary.

(c) The Provincial Registrar may require the applicant to produce documentary or other proof that he or she acted as a tourist guide immediately before the commencement of this Act.

(d) In considering any application the Provincial Registrar shall have due regard to any measures and codes of practice made or developed by the State for the promotion of equality in accordance with Chapter 5 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000). 5

(e) A person whose application for provisional registration has been approved by the Provincial Registrar shall, within the period of two years referred to in subsection (5) or (6), for validation of registration, prove competence as contemplated in section 21 B of the principal Act. 10

(f) If the person fulfils the requirements for validation, he or she shall be deemed to have complied with and to have been registered in terms of section 21 A of the principal Act.

(8) In this section— 15

“board” means the South African Tourism Board established by section 2 of the principal Act;

“Department” means the Department of Environmental Affairs and Tourism; and

“Minister” means the Minister of Environmental Affairs and Tourism.

Short title and commencement 20

8. This Act shall be called the Tourism Second Amendment Act, 2000, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.