

REPUBLIC OF SOUTH AFRICA

SHERIFFS AMENDMENT BILL

*(As amended by the Portfolio Committee on Justice and Constitutional
Development (National Assembly))
(The English text is the official text of the Bill)*

(MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 2B—2012]

ISBN 978-1-77037-965-7

No. of copies printed 1 800

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

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,

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;”;
- (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—

 - (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: 5
 “(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 10
- (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)— 15
- (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 20
- (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 25

- 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, 30
- 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; 35
- (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). 40
- (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 45

- 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. 50
- (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).” 55

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.”.

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. 5

(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.”. 10

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; 15
- (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 20
- (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 25
- (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).” 30

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.”. 35

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 40

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. 45

(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):

“(kA) 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.”

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 5
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; 10
 - (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 15
 - (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; 20
 - (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 25 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);
 - [(dA)](k) the procedure to be followed in terms of section 3(2)(b), including 30 measures aimed at co-ordinating the functions performed by such sheriffs;
 - [(dB)](l) the procedure to be followed in connection with the recovery of a fine imposed in terms of section 49(1)(b);
 - [(dC)](m) the payment and control of admission of guilt fines in terms of this Act; 35
 - [(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 40 by the preceding paragraphs]** ancillary or incidental matter that is necessary to prescribe for the proper implementation or administration of this Act.”.

Short title and commencement

17. This Act is called the Sheriffs Amendment Act, 2012, and comes into operation on 45 a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE SHERIFFS AMENDMENT BILL, 2012

1. BACKGROUND

Certain challenges in the sheriffs' profession, relating mainly to the functioning and composition of the South African Board for Sheriffs (the Board), as well as the functioning of, and entry into, the sheriffs' profession, have been identified. The Sheriffs Amendment Bill, 2012 (the Bill), seeks to address those challenges in the interests of the administration of justice.

2. OBJECTS OF THE BILL

2.1 The objects of the Bill are to amend a number of sections of the Sheriffs Act, 1986 (Act No. 90 of 1986) (the Act), that have been identified as giving rise to challenges in the sheriffs' profession. The Bill also strives to transform the sheriffs' profession which, in turn, will enhance access to justice, with particular reference to the functioning of, and entry into, the sheriffs' profession.

2.2 The provisions of the Bill can be summarised as follows:

2.2.1 Ad clause 1

Clause 1 substitutes the definitions of "auditor", "Minister" and "superior court" to bring them in line with existing legislative provisions, and inserts a new definition of "Department".

2.2.2 Ad clause 2

Clause 2 amends section 2 of the Act that deals with the appointment of sheriffs so as to provide that the Minister of Justice and Constitutional Development (the Minister) may, after considering the report of an Advisory Committee, appoint a person as a sheriff. Furthermore, since sheriffs fulfil a crucial function in the administration of justice, provision is made that the Minister may, on the conditions that may be prescribed in terms of the regulations made under the Act, only appoint "fit and proper" persons as sheriffs.

2.2.3 Ad clause 3

Clause 3 inserts a new section 2A in the Act to provide for the payment by the Department of Justice and Constitutional Development (the Department) of allowances to members of Advisory Committees who are not in the full-time employment of the State, in the performance of their functions, as the Minister may determine, with the concurrence of the Minister of Finance.

2.2.4 Ad clause 4

2.2.4.1 Clause 4 substitutes section 5(1) and inserts a new section 5(1B) to provide that an acting sheriff may, in addition to the existing circumstances in which an acting sheriff may be appointed, also be appointed for such period as the Minister determines when a sheriff has not been appointed for a specific area of jurisdiction of a lower or superior court. Such an acting sheriff may, however, only be appointed by the Minister—

- (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 the Minister may determine.

2.2.4.2 Clause 4 also substitutes section 5(1A) to provide that the Minister may, for the purposes of a particular law suit and on the conditions that he or she determines, appoint another sheriff, if, among others, objection is raised against the service or execution of any process by a sheriff on the grounds that he or she, for instance, has an interest in the suit. At present only an acting sheriff may be appointed.

2.2.5 **Ad clause 5**

2.2.5.1 Clause 5 inserts sections 6A and 6B in the Act. Both amendments are aimed at addressing problems relating to the performance of the duties and functions of sheriffs in areas for which no sheriff or acting sheriff has been appointed. In some jurisdictions, especially the smaller ones, it is not economically viable for a person to practise as a sheriff. In order to ensure effective service delivery it is necessary to extend the category of persons who are competent to serve process in the absence of a sheriff. The proposed section 6A provides that any official in the employ of the Department, who is designated in writing by the Minister, may serve any process of the court or any other document within an area for which, among others, no sheriff or acting sheriff has been appointed, as if he or she had been appointed as a sheriff of that court. Provision is made that such an official will not be required to obtain, among others, a fidelity fund certificate from the Board. Provision is further made that the fees payable to a sheriff or acting sheriff in respect of or in connection with any service effected by such official will be chargeable and must be dealt with in the manner prescribed by regulation made by the Minister under section 62 of the Act.

2.2.5.2 The proposed section 6B makes provision for the performance of functions of a sheriff, other than the service of process of any court or any other document, within an area for which no sheriff or acting sheriff has been appointed, by a sheriff or acting sheriff of another area. Such a sheriff or acting sheriff may only be appointed by the Minister, after consultation with the Board, and on the conditions that the Minister determines. Provision is further made that the Rules Board for Courts of Law may make rules in respect of the functions performed by such a sheriff or acting sheriff.

2.2.6 **Ad clause 6**

Clause 6 substitutes section 8 of the Act, which deals with the objects of the Board. Provision is made for the addition of two objects of the Board, namely—

- (a) 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
- (b) the development of guidelines for the appointment of deputy sheriffs.

2.2.7 **Ad clause 7**

2.2.7.1 Section 9(2) of the Act presently provides that the Board consists of—

- (a) not less than six and not more than nine sheriffs; and
- (b) not less than three and not more than six other persons, one of whom must be nominated by the attorneys' profession, who are fit and proper persons 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.

2.2.7.2 In terms of section 9(1) of the Act, the Board consists of 12 members appointed by the Minister. The need has arisen to change the constitution of the Board in order to promote inclusivity of all the role-players affected by the functions performed by sheriffs. Clause 7 therefore substitutes subsections (1), (2) and (5) of section 9 of the Act. It is proposed that the Board consists of the following 11 members: five sheriffs nominated by associations which, in the opinion of the Minister, represent the Sheriffs' profession, an official from the Department designated by the Minister as his or her representative, one attorney, or his or her alternate, in private practice, designated by the Law Society of South Africa, one person, or his or her alternate, designated by the National Credit Regulator, and 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 must have extensive experience in the field of finance and accounting.

2.2.7.3 The restructuring of the Board will promote the participation of vital role-players and enhance the transformation of the sheriffs' profession. Subsection (5) is substituted to provide that the deputy chairperson must, if, among others, there is a vacancy in the office of chairperson or if the chairperson is absent, perform the functions of the chairperson.

2.2.8 **Ad clause 8**

Clause 8 amends section 11 of the Act, which regulates the term of office, and the filling of vacancies, of members of the Board. The amendments are consequential in nature and are required in view of the proposed new constitution of the Board and the new section 14A that is to be inserted in the Act, dealing with the dissolution of the Board (see paragraph 2.2.11 below).

2.2.9 **Ad clause 9**

Clause 9 substitutes section 12 of the Act, which regulates the vacating of office by members of the Board. These amendments are also consequential in nature and are required in view of the proposed new constitution of the Board.

2.2.10 **Ad clause 10**

Section 13 of the Act, which deals with allowances payable to members of the Board, presently provides that "[a] member of the Board 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." Clause 10 substitutes section 13 of the Act to make it clear that such allowances are also payable to members of committees of the Board.

2.2.11 **Ad clause 11**

Clause 11 inserts a new section 14A in the Act. This new section provides, among others, for the dissolution of the Board by the Minister in certain circumstances, the appointment of an interim Board and the period for which such an interim Board may be appointed, which may not exceed six months. Provision is further made for the convening of special meetings, the quorum for a meeting

and the procedures to be followed in respect of a meeting of the interim Board. This new clause is necessary to empower the Minister to dissolve the Board if it, for example, fails to perform its functions in terms of the Act.

2.2.12 **Ad clause 12**

Clause 12 amends section 16 of the Act, which deals with the general functions of the Board, by adding a further function in terms of which the Board “may make rules regulating the conduct of its proceedings”.

2.2.13 **Ad clause 13**

Section 26 of the Act provides for the establishment and control of a Fidelity Fund for Sheriffs (the Fund). In terms of section 27(1)(e) of the Act, the moneys in the Fund may be utilised for “the expenses involved in the control and management of the Fund”. Clause 13 amends section 27 by the insertion of a new subsection (1A), which provides that the maximum amount that may be recovered by the Board from the Fund for the purposes of subsection (1)(e) must be determined by the Board, in consultation with the Minister.

2.2.14 **Ad clause 14**

Section 28 of the Act deals with the auditing of records and statements of the Fund and provides in subsection (2) that the records and annual financial statements of the Fund must be audited by an auditor appointed by the Board. Clause 14 amends section 28 by adding two new subsections, which provide that—

- (a) an auditor who has performed an audit must in his or her auditor’s report express an opinion as to whether or not the moneys of the Fund were spent for purposes authorised by the Act; and
- (b) within 30 days after receipt of the auditor’s report, the Board must submit that report to the Minister together with the audited financial statements of the Fund.

2.2.15 **Ad clause 15**

Section 53 of the Act provides that “[n]o sheriff shall without the approval of the Minister perform or engage himself to perform remunerative work outside his office as sheriff.”. Clause 15 amends section 43 of the Act, which that regulates improper conduct by sheriffs, by the addition of a new paragraph to subsection (1), providing that a sheriff who contravenes or fails to comply with section 53 of the Act shall be guilty of improper conduct.

2.2.16 **Ad clause 16**

Clause 16 amends section 62 of the Act that sets out the matters in respect of which the Minister may, after consultation with the Board, make regulations. Provision is, among others, made that the Minister may make regulations relating to the establishment of Advisory Committees in every province to assist the Minister in identifying possible persons to be appointed in any vacancy in an office of sheriff, the appointment of members of such Committees, and the powers and functions of such Committees. Provision is further made that the Minister may make regulations relating, among others, to the requirements for, and the manner and procedures regarding, the appointment of sheriffs.

2.2.17 Ad clause 17

Clause 17 provides for the short title and commencement of the Act.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

The relevant stakeholders, including the Board, the South African Institute for Sheriffs, the South African National Association of Progressive Sheriffs, the South African Sheriffs Association and the Law Society of South Africa were consulted.

4. FINANCIAL IMPLICATIONS FOR STATE

The financial implications for the State (i.e. the Department) which will result from clauses 3 and 7, read with clause 10, which, respectively, envisage the payment of allowances to members of the Advisory Committees, who are not in the full-time employment of the State, and to the departmental official who is designated by the Minister as a member of the Board, will be minimal. It is, however, not possible to estimate the additional expenditure for the State as it will depend, among others, on the number of meetings held by the Board, committees of the Board and Advisory Committees and where such meetings are held.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.