



Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 520 Cape Town

27 October 2008

No. 31540

THE PRESIDENCY

No. 1142

27 October 2008

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

No. 20 of 2008: Judicial Service Commission Amendment Act, 2008.



AIDS HELPLINE: 0800-123-22 Prevention is the cure

Act No. 20, 2008

JUDICIAL SERVICE COMMISSION
AMENDMENT ACT, 2008**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 22 October 2008.)

ACT

To amend the **Judicial Service Commission Act, 1994**, so as to establish the **Judicial Conduct Committee** to receive and deal with complaints about judges; to provide for a **Code of Judicial Conduct** which serves as the prevailing standard of judicial conduct which judges must adhere to; to provide for the establishment and maintenance of a register of judges' registrable interests; to provide for procedures for dealing with complaints about judges; to provide for the establishment of **Judicial Conduct Tribunals** to inquire into and report on allegations of incapacity, gross incompetence or gross misconduct against judges; and to provide for matters connected therewith.

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

Insertion of Preamble in Act 9 of 1994

1. The following Preamble is inserted in the **Judicial Service Commission Act, 1994**, (hereafter referred to as the principal Act), after the long title: 5

“PREAMBLE

SINCE the **Judicial Service Commission** has been established by section 178(1) of the Constitution of the Republic of South Africa, 1996;

AND SINCE section 178(4) of the Constitution provides that the **Judicial Service Commission** has the powers and functions assigned to it in the Constitution and national legislation; 10

AND SINCE section 180 of the Constitution provides that national legislation may provide for any matter concerning the administration of justice that is not dealt with in the Constitution, including procedures for dealing with complaints about judicial officers; 15

AND SINCE section 177(1) of the Constitution provides that a judge may be removed from office only if—

Act No. 20, 2008

JUDICIAL SERVICE COMMISSION
AMENDMENT ACT, 2008

- (a) the Judicial Service Commission finds that the judge suffers from an incapacity, is grossly incompetent or is guilty of gross misconduct; and
- (b) the National Assembly calls for that judge to be removed, by a resolution adopted with a supporting vote of at least two thirds of its members;

AND SINCE section 177(3) of the Constitution provides that the President, on the advice of the Judicial Service Commission may suspend a judge who is the subject of a procedure in terms of section 177(1);

AND SINCE it is necessary to create an appropriate and effective balance between protecting the independence and dignity of the judiciary when considering complaints about, and the possible removal from office of, judicial officers, and the overriding principles of openness, transparency and accountability that permeate the Constitution and that are equally applicable to judicial institutions and officers;

AND SINCE it is necessary to create procedures, structures and mechanisms in terms of which—

- complaints against judges could be lodged and dealt with appropriately;
- allegations that any judge is suffering from an incapacity, is grossly incompetent or is guilty of gross misconduct could be investigated; and
- information can be placed before the Judicial Service Commission and Parliament in order to enable these institutions to make a finding whether a judge suffers from an incapacity, is grossly incompetent or is guilty of gross misconduct.”.

Insertion of heading in Act 9 of 1994

2. The following heading is inserted in the principal Act after the enactment clause:

**“CHAPTER 1
ADMINISTRATIVE PROVISIONS”.**

Substitution of section 1 of Act 9 of 1994

3. The following section is substituted for section 1 of the principal Act:

“Definitions

1. In this Act, unless the context otherwise indicates—

‘Chairperson’ means the Chief Justice;

‘Commission’ means the Judicial Service Commission established by section [105] 178 of the Constitution;

‘complainant’ means a person who lodged a complaint against a judge in terms of section 14;

‘Minister’ means the Cabinet member responsible for the administration of justice;

‘prescribed’ means as prescribed in terms of a regulation made under section 35;

‘respondent’ means a judge against whom a complaint was lodged in terms of section 14, or who is the subject of an allegation referred to a Tribunal in terms of this Act;

‘this Act’ includes the Code of Judicial Conduct contemplated in section 12 and any regulations made under section 35; and

‘Tribunal’ means a Tribunal appointed in terms of section 21.”.

Substitution of section 2 of Act 9 of 1994

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

“Acting Chairperson and vacancies

2. [(1) The members of the Commission designated as such in terms of section 105 (1) (c), (e), (f), (g), (h) and (i) of the Constitution shall hold office for a term not exceeding five years: Provided that—

- (a) the President shall remove any such member from office at any time if the designator who or which designated such member, so requests; or
(b) any such member may resign from office by giving at least one month’s written notice thereof to the chairperson.

(2) A member of the Commission designated as such in terms of section 105 (1) (e), (f), (g), (h) or (i) of the Constitution shall vacate his or her office automatically if he or she ceases to be qualified to be so designated.

(3) Subject to section 105 (1) of the Constitution, any person whose term of office as a member of the Commission has expired, may be redesignated.

(4) The Commission shall designate one of the members holding office in terms of section 105 (1) (b), (c), (e), (f), (g) or (i) of the Constitution as deputy chairperson of the Commission, and when the chairperson is not available, the deputy chairperson shall act as chairperson.]

(1) When the Chairperson is for any reason unavailable to serve on the Commission or perform any function or exercise any power, the Deputy Chief Justice, as his or her alternate, shall act as chairperson.

(2) If neither the Chief Justice nor the Deputy Chief Justice is available to preside at a meeting of the Commission, the members present at the meeting must designate one of the members holding office in terms of section 178(1)(b) or (c) of the Constitution as acting chairperson for the duration of the absence.

[(5)] (3) A vacancy in the Commission shall—

- (a) not affect the validity of the proceedings or decisions of the Commission: and
(b) be filled in accordance with section [105 (1)] 178(3) of the Constitution, and any member so designated shall, where applicable, hold office for the unexpired portion of his or her predecessor’s term of office.”.

Substitution of section 3 of Act 9 of 1994

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

“Remuneration and expenses of members of Commission

3. (1) Any member of the Commission who is [a judge, a member of Parliament or a Premier of a province] an office bearer as defined in section 1 of the Independent Commission for the Remuneration of Public Office-Bearers Act, 1997 (Act No. 92 of 1997), may be paid such allowances for travelling and subsistence expenses incurred by him or her in the performance of his or her functions as a member of the Commission as the Minister [of Justice] may determine with the concurrence of the Minister of Finance.

(2) Any member of the Commission who is not—

- (a) [a judge] an office bearer as defined in section 1 of the Independent Commission for the Remuneration of Public Office-Bearers Act, 1997;
or
(b) [a member of Parliament];
(c) a Premier of a province; or

Act No. 20, 2008

JUDICIAL SERVICE COMMISSION
AMENDMENT ACT, 2008

(d)] in the employ of the State and subject to the laws governing the public service,
may be paid such remuneration, including allowances for travelling and subsistence expenses incurred by him or her in the performance of his or her functions as a member of the Commission, as the Minister [of Justice] may determine with the concurrence of the Minister of Finance.”. 5

Repeal of section 4 of Act 9 of 1994

6. Section 4 of the principal Act is repealed.

Substitution of section 5 of Act 9 of 1994

7. The following section is substituted for section 5 of the principal Act: 10

“Publication of procedure of Commission

5. The Minister [of Justice shall] must by notice in the *Gazette*, make known the particulars of the procedure, including subsequent amendments, which the Commission has determined in terms of section [105 (4)] 178(6) of the Constitution.”. 15

Substitution section 6 of Act 9 of 1994

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

“Annual report

6. (1) The Commission shall within six months after the end of every year submit a written report to Parliament [**a report in writing regarding its activities during that year**] for tabling. 20

(2) The report referred to in subsection (1) must include information regarding—

- (a) the activities of the Commission during the year in question;
- (b) all matters dealt with by the Judicial Conduct Committee referred to in section 8; 25
- (c) all matters relating to, including the degree of compliance with, the Register of Judges' Registrable Interests referred to in section 13, as reported by the Registrar of Judges' Registrable Interests; and
- (d) all matters considered by the Commission in the course of the application of Chapters 2 and 3 of this Act, including the number of matters outstanding and the progress in respect thereof.”. 30

Insertion of Chapters 2, 3 and 4 in Act 9 of 1994

9. The following Chapters are inserted in the principal Act after section 6, the existing section 7 becoming section 39: 35

“CHAPTER 2**OVERSIGHT OVER JUDICIAL CONDUCT AND
ACCOUNTABILITY OF JUDICIAL OFFICERS****PART I*****Establishment and objects of Committee*** 40**Definitions and interpretation**

7. (1) For purposes of this Chapter, unless the context indicates otherwise—