

# Sheriffs Act 90 of 1986<sup>1</sup>

[ASSENTED TO 3 SEPTEMBER 1986]	[DATE OF COMMENCEMENT: 1 MARCH 1990]
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(English text signed by the State President)

published in

GG 10425 of 10 September 1986

commencement

(see s. 66 of this Act)

provisions	date	refer to
whole Act	1 March 1990	Proc R32 in GG 12317 of 1 March 1990

as amended

by	with effect from	refer to
Sheriffs Amendment <a href="#">Act 3 of 1991</a>	28 March 1991	<a href="#">s. 4 of Act 3 of 1991</a>
General Law Amendment <a href="#">Act 139 of 1992</a>	7 August 1992	<a href="#">s. 35 of Act 139 of 1992</a> ; Proc R89 in GG 14218 of 7 August 1992
Sheriffs Amendment <a href="#">Act 74 of 1998</a>	1 March 1999	<a href="#">s. 26 of Act 74 of 1998</a> ; Proc R24 in GG 19802 of 1 March 1999
	1 September 2000	Proc R53 in GG 21519 of 1 September 2000
Judicial Matters Amendment <a href="#">Act 42 of 2001</a>	7 December 2001	<a href="#">s. 48 (1) of Act 42 of 2001</a>
Judicial Matters Second Amendment <a href="#">Act 55 of 2003</a>	31 March 2005	<a href="#">s. 34 of Act 55 of 2003</a> ; Proc R13 in GG 27406 of 22 March 2005
Jurisdiction of Regional Courts Amendment <a href="#">Act 31 of 2008</a>	9 August 2010	<a href="#">s. 11 of Act 31 of 2008</a> ; Proc R41 in GG 33448 of 6 August 2010
Sheriffs Amendment <a href="#">Act 14 of 2012</a>	1 November 2013	Proc R47 in GG 36985 of 1 November 2013
	18 July 2014	Proc R48 in GG 37841 of 18 July 2014
	1 March 2015	Proc R84 in GG 38307 of 11 December 2014
Judicial Matters Amendment <a href="#">Act 8 of 2017</a>	2 August 2017; to be proclaimed	<a href="#">s. 43 of Act 8 of 2017</a>
Judicial Matters Amendment <a href="#">Act 15 of 2023</a>	3 April 2024	<a href="#">s. 35 (1) of Act 15 of 2023</a>

## ACT

**To provide for the appointment of sheriffs, the establishment of a South African Board for Sheriffs and a Fidelity Fund for Sheriffs, the regulation of the conduct of sheriffs, and matters connected therewith.**

[Long title substituted by [s. 14 of Act 55 of 2003](#) (wef 31 March 2005).]

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:-

<sup>1</sup> This Act has been updated to include all available historical commencement details

### 1 Definitions

In this Act, unless the context indicates otherwise-

'**acting sheriff**' means an acting sheriff appointed under section 5 (1);

'**auditor**' means a person registered as an accountant and auditor in terms of the Auditing Profession Act, 2005 ([Act 26](#)

of 2005);

[Definition of 'auditor' substituted by s. 1 (a) of [Act 74 of 1998](#) (wef 1 March 1999) and by s. 1 (a) of [Act 14 of 2012](#) (wef 1 November 2013).]

**'banking institution'** means an institution as referred to in [section 93](#) of the Banks Act, 1990 ([Act 94 of 1990](#));

[Definition of 'banking institution' substituted by s. 1 (b) of [Act 74 of 1998](#) (wef 1 March 1999).]

**'Board'** means the South African Board for Sheriffs established by section 7, and includes, for the purposes of Chapter IV (excluding section 52), a disciplinary committee;

[Definition of 'Board' substituted by [s. 12](#) of [Act 55 of 2003](#) (wef 31 March 2005).]

**'building society'** means a permanent building society as referred to in [section 94](#) of the Mutual Banks Act, 1993 ([Act 124 of 1993](#)), or a building society as referred to in [section 93](#) of the Banks Act, 1990 ([Act 94 of 1990](#));

[Definition of 'building society' substituted by s. 1 (c) of [Act 74 of 1998](#) (wef 1 March 1999).]

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

[Definition of 'Department' inserted by s. 1 (b) of [Act 14 of 2012](#) (wef 1 November 2013).]

**'deputy sheriff'** means a deputy sheriff appointed under section 6 (1);

**'disciplinary committee'** means a disciplinary committee established under section 18 (1);

**'fidelity fund certificate'** means a fidelity fund certificate referred to in section 32 (1);

**'financial year'** means the financial year of the Board referred to in section 21 (1);

**'Fund'** means the Fidelity Fund for Sheriffs established by section 26 (1);

**'legal practitioner'** means any person duly admitted and enrolled as an advocate in terms of the Admission of Advocates Act, 1964 ([Act 74 of 1964](#)), or any person duly admitted and enrolled as an attorney in terms of the Attorneys Act, 1979 ([Act 53 of 1979](#));

[Definition of 'legal practitioner' inserted by s. 1 (d) of [Act 74 of 1998](#) (wef 1 March 1999).]

**'lower court'** means a court established under the Magistrates' Courts Act, 1944 ([Act 32 of 1944](#));

[Definition of 'lower court' substituted by s. 1 (e) of [Act 74 of 1998](#) (wef 1 March 1999) and by [s. 10 \(2\)](#) of [Act 31 of 2008](#) (wef 9 August 2010).]

**'Minister'**<sup>2</sup> means the Cabinet member responsible for the administration of justice;

[Definition of 'Minister' substituted by s. 1 (c) of [Act 14 of 2012](#) (wef 1 November 2013).]

**'prescribed'** means prescribed by regulation;

**'regulation'** means a regulation made under section 62 (1);

**'sheriff'** means a sheriff appointed under section 2 (1), and includes, for the purposes of Chapter II, III, IV or V, an acting sheriff and for the purposes of Chapter IV a deputy sheriff appointed under section 6 (1);

[Definition of 'sheriff' substituted by s. 1 (f) of [Act 74 of 1998](#) (wef 1 March 1999).]

**'superior court'** means a High Court contemplated in section 166 of the Constitution of the Republic of South Africa, 1996;

[Definition of 'superior court' substituted by s. 1 (d) of [Act 14 of 2012](#) (wef 1 November 2013).]

**'this Act'** includes a regulation.

<sup>2</sup> The administration and the powers or functions entrusted by legislation transferred to the Minister of Justice and Constitutional Development (Proc 199 in GG 51368 of 11 October 2024)

## CHAPTER I APPOINTMENT OF SHERIFFS AND OTHER PERSONS (ss 2-6B)

### 2 Appointment of sheriffs

(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.

[Sub-s. (1) substituted by [s. 2](#) of [Act 14 of 2012](#) (wef 18 July 2014).]

(2) The same person may be appointed as sheriff of both a lower and a superior court and two or more persons may be appointed as sheriffs of the same court.

(3) Notwithstanding the provisions of subsection (1), where the office of a sheriff in an area remains vacant after the prescribed procedures for recruiting and appointing a fit and proper applicant have been followed, the Minister may, if he or she deems it necessary to achieve the objectives of effective and sustainable service delivery and in the interests of justice-

- (a) on the request of, or after consultation with, an Advisory Committee; and
- (b) after consultation with the Board,

in writing, appoint a sheriff of another area to serve as sheriff within such area, subject to written confirmation by the Board that it is prepared to issue a fidelity fund certificate to that sheriff.

[Sub-s. (3) added by [s. 17](#) of [Act 8 of 2017](#) (wef 2 August 2017).]

### 2A Allowances payable to members of Advisory Committees

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.

[S. 2A inserted by [s. 3](#) of [Act 14 of 2012](#) (wef 18 July 2014).]

### 3 Performance of functions by sheriff

(1) Subject to the provisions of this section, a sheriff shall perform within the area of jurisdiction of the lower or superior court for which he has been appointed the functions assigned by or under any law to a sheriff of that court.

(2) (a) The Minister may describe one or more areas within the area of jurisdiction of a lower or superior court and allocate any such area to a sheriff of that court or a sheriff of another court, after consultation with the Board and subject to written confirmation by the Board that it is prepared to issue a fidelity fund certificate to that sheriff.

(b) The Minister may, after consultation with the Board and subject to written confirmation by the Board that it is

prepared to issue a fidelity fund certificate, appoint more than one sheriff for that particular area to perform the duties and functions assigned to a sheriff.

[Para. (b) added by [s. 2 of Act 74 of 1998](#) (wef 1 September 2000).]  
[Sub-s. (2) substituted by [s. 18 of Act 8 of 2017](#) (wef 2 August 2017).]

(3) A sheriff to whom an area has been allocated under subsection (2), shall perform his functions within that area.

(4) The Minister may at any time alter the description of an area referred to in subsection (2).

#### 4 Term of office of sheriffs

(1) A sheriff shall hold office, subject to the other provisions of this section, until the date on which he attains the age of 65 years, but may be reappointed for such period as the Minister may after consultation with the Board determine.

(2) A sheriff shall vacate his or her office-

(a) if he or she is removed from office under subsection (3) or section 49 (5); or

(b) if he or she is deemed to be removed from office in terms of section 51.

[Sub-s. (2) substituted by [s. 3 of Act 74 of 1998](#) (wef 1 March 1999).]

(3) The Minister may at any time after consultation with the Board remove a sheriff from his office-

(a) if the fidelity fund certificate of the sheriff has been cancelled under section 34 (1) or 49; or

(b) if in the opinion of the Minister reasons exist for doing so in the interest of the maintenance of effective and reliable service to the courts and the public.

(4) A sheriff may resign by giving the Minister three months' notice in writing of his resignation.

#### 5 Appointment of acting sheriffs

(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;

(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 paragraphs (c) and (d), for such period as the Minister may determine.

[Sub-s. (1) substituted by s. 4 (a) of [Act 14 of 2012](#) (wef 18 July 2014).]

(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.

[Sub-s. (1A) inserted by [s. 1 of Act 3 of 1991](#) (wef 28 March 1991) and substituted by s. 4 (b) of [Act 14 of 2012](#) (wef 1 November 2013).]

(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.

[Sub-s. (1B) inserted by s. 4 (c) of [Act 14 of 2012](#) (wef 18 July 2014).]

(2) The provisions of section 4 (2) and (3) shall apply *mutatis mutandis* in respect of an acting sheriff.

#### 6 Appointment of deputy sheriffs and employees

(1) Any sheriff or acting sheriff may with the approval of the Board and on such conditions as the Board may determine appoint one or more deputy sheriffs, for whom he shall be responsible.

(2) A deputy sheriff may, subject to the directions of the sheriff or acting sheriff appointing him, perform the functions of any such sheriff or acting sheriff.

(3) Any sheriff or acting sheriff may appoint such other persons in his employ as he may consider necessary.

#### 6A Minister may designate person to serve process

(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.

[S. 6A added by [s. 5 of Act 14 of 2012](#) (wef 18 July 2014).]

## **6B Minister may appoint sheriff or acting sheriff to perform functions in another area**

(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.

(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).

[S. 6B added by [s. 5 of Act 14 of 2012](#) (wef 1 November 2013).]

## **CHAPTER II BOARD FOR SHERIFFS (ss 7-21)**

### **7 Establishment of South African Board for Sheriffs**

There is hereby established a board to be known as the South African Board for Sheriffs and which shall be a juristic person.

[S. 7 substituted by [s. 13 of Act 55 of 2003](#) (wef 31 March 2005).]

### **8 Objects of Board**

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.

[S. 8 substituted by [s. 6 of Act 14 of 2012](#) (wef 1 November 2013).]

### **9 Constitution of Board**

(1) The Board shall consist of 11 members appointed by the Minister.

[Sub-s. (1) substituted by s. 7 (a) of [Act 14 of 2012](#) (wef 1 March 2015).]

(2) Subject to the provisions of section 10, the Minister shall appoint the following persons as members of the Board, namely-

- (a) five sheriffs, each from a different province of the Republic, from among at least 10 sheriffs, nominated by associations which, in the opinion of the Minister, represent the Sheriff's profession, of whom at least one sheriff must be nominated from each province, to represent the profession as a whole;
- (b) 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 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.

[Sub-s. (2) substituted by s. 4 (a) of [Act 74 of 1998](#) (wef 1 March 1999), amended by s. 11 (a) of [Act 42 of 2001](#) (wef 7 December 2001) and substituted by s. 7 (b) of [Act 14 of 2012](#) (wef 1 March 2015).]

(2A) In constituting the Board the Minister shall have due regard to the need for the Board to be representative in respect of race, gender and geographical composition.

[Sub-s. (2A) inserted by s. 4 (b) of [Act 74 of 1998](#) (wef 1 March 1999).]

(3) .....

[Sub-s. (3) substituted by s. 4 (c) of [Act 74 of 1998](#) (wef 1 March 1999) and deleted by s. 11 (b) of [Act 42 of 2001](#) (wef 7 December 2001).]

(4) (a) The Minister shall designate one of the members of the Board as the chairperson of the Board.

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

[Sub-s. (4) substituted by s. 4 (d) of [Act 74 of 1998](#) (wef 1 March 1999).]

(5) The deputy chairperson 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.

[Sub-s. (5) substituted by s. 4 (e) of [Act 74 of 1998](#) (wef 1 March 1999) and by s. 7 (c) of [Act 14 of 2012](#) (wef 1 March 2015).]

### **10 Persons not qualified to be members of Board**

No person shall be appointed as a member of the Board if-

- (a) he is not a South African citizen permanently resident in the Republic;
- (b) he is an unrehabilitated insolvent;
- (c) he has been dismissed from a position of trust by reason of improper conduct involving a breach of such trust;
- (d) he has been convicted of any offence involving dishonesty or of any other offence for which he has been sentenced to imprisonment without the option of a fine; or
- (e) he has been found guilty of improper conduct in accordance with Chapter IV.

### **11 Term of office of members of Board and filling of vacancies**

(1) Every member of the Board appointed in terms of section 9 (2) shall, subject to section 14A, be appointed for a period of five 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 six months, until his or her successor has been appointed.

[Sub-s. (1) substituted by [s. 8 of Act 14 of 2012](#) (wef 1 March 2015) and by [s. 13 of Act 15 of 2023](#) (wef 3 April 2024).]

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

[Sub-s. (2) substituted by [s. 8 of Act 14 of 2012](#) (wef 1 March 2015).]

(3) Any person whose term of office as a member of the Board has expired, shall be eligible for reappointment.

## 12 Vacating of office by member of Board

(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;
- (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).

[S. 12 amended by [s. 21 of Act 74 of 1998](#) (wef 1 March 1999) and substituted by [s. 9 of Act 14 of 2012](#) (wef 1 March 2015).]

## 13 Allowances to members of Board and of committees of Board

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.

[S. 13 substituted by [s. 10 of Act 14 of 2012](#) (wef 1 November 2013).]

## 14 Meetings of Board

(1) The Board shall meet for the first time at the time and place determined by the Minister and thereafter at least once in every year at such times and places as the chairperson may determine.

[Sub-s. (1) amended by [s. 21 of Act 74 of 1998](#) (wef 1 March 1999).]

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

[Sub-s. (2) amended by [s. 21 of Act 74 of 1998](#) (wef 1 March 1999).]

(3) Seven members of the Board shall form a quorum for a meeting of the Board.

(4) If both the chairperson and the deputy chairperson are absent from a meeting of the Board, the members present shall from among their number elect a person to preside at that meeting.

[Sub-s. (4) amended by [s. 21 of Act 74 of 1998](#) (wef 1 March 1999).]

(5) The decision of a majority of the members of the Board present at a meeting of the Board shall constitute a decision of the Board, and in the event of an equality of votes on any matter, the person presiding at the meeting in question shall have a casting vote in addition to his deliberative vote.

(6) No decision taken by the Board or act performed under authority of the Board shall be invalid merely by reason of a vacancy on the Board or of the fact that any person not entitled to sit as a member of the Board, sat as such a member at the time when the decision was taken or the act was authorized, if the decision was taken or the act was authorized by the majority of the members of the Board present at the time and who were entitled to sit as members of the Board.

## 14A Dissolution of Board, appointment and meetings of interim Board

(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.

[S. 14A inserted by [s. 11 of Act 14 of 2012](#) (wef 1 November 2013).]

## 15 Appointment of staff

The Board may appoint such persons as it may consider necessary for the work incidental to the performance of its functions, on such conditions and at such remuneration as it may determine.

## 16 General functions of Board

In addition to the other functions assigned to the Board by this Act, the Board may-

- (a) establish committees to advise it on any matter in respect of which a function is assigned to it;
- (b) appoint with the approval of the Minister any person other than a member of the Board as a member of any committee referred to in paragraph (a), and determine the allowances payable to that person;
- (c) subject to the provisions of this Act, determine the manner in which meetings of any committee of the Board shall be convened, the procedure and quorum at those meetings and the manner in which minutes of those meetings shall be kept;
- (d) hire, buy or otherwise acquire such movable or immovable property as it may consider necessary for the performance of its functions and let, sell or otherwise dispose of property so acquired;
- (e) from time to time raise money by way of loan for the purpose of performing its functions;
- (f) hypothecate its immovable property as security for a loan referred to in paragraph (e);
- (g) with a view to promoting its objects, lend money against such security as it may consider adequate;
- (h) with the approval of the Minister, donate money or other property;
- (i) by means of insurance provide for cover for the Board against any loss, damage, risk or liability which it may suffer or incur;
- (j) arrange for-
  - (i) cover, by means of insurance, for sheriffs against any loss, damage, risk or liability which they may suffer or incur;
  - (ii) the establishment of a medical aid or pension scheme for sheriffs;
- (k) with the approval of the Minister, frame a code of conduct which shall be complied with by sheriffs;
- (kA) make rules regulating the conduct of its proceedings;  
[Para. (kA) inserted by [s. 12 of Act 14 of 2012](#) (wef 1 November 2013).]
- (l) in general perform such acts as may be necessary or expedient for the achievement of its objects.

## 17 Executive committee

(1) The Board may establish an executive committee of the Board consisting of the chairperson, the deputy chairperson and such other members of the Board as the Board may determine.

[Sub-s. (1) amended by [s. 21 of Act 74 of 1998](#) (wef 1 March 1999).]

(2) The chairperson of the Board shall be the chairperson of the executive committee.

[Sub-s. (2) amended by [s. 21 of Act 74 of 1998](#) (wef 1 March 1999).]

(3) The executive committee may perform the functions of the Board during the periods between meetings of the Board, but shall not have the power-

- (a) except in so far as the Board directs otherwise, to set aside or vary any decision of the Board; or
- (b) to consider an appeal in terms of section 18 (3) (b).

[Para. (b) substituted by [s. 5 of Act 74 of 1998](#) (wef 1 March 1999).]

(4) The Board may set aside or vary any decision of the executive committee.

## 18 Disciplinary authority

(1) (a) The Board may establish one or more disciplinary committees, each consisting of at least three members of the Board.

(b) One of the members of a disciplinary committee shall be designated by the Board as chairperson of the disciplinary committee.

(c) A disciplinary committee shall be invested and charged with the functions relating to a charge of improper conduct assigned to the Board by or under Chapter IV.

(2) (a) Notwithstanding the provisions of subsection (1), the Board may appoint an independent and impartial person as and when necessary who shall be vested and charged with the functions relating to a charge of improper conduct assigned to the Board by or under Chapter IV.

(b) A person appointed in terms of paragraph (a) shall be a person who is suitably qualified in law.

(c) A person appointed in terms of paragraph (a) may, subject to the approval of the Board, summon to his or her assistance one or two persons of skill and experience in the matter to which the action relates who are willing to sit and act as assessors in an advisory capacity.

(d) A person or persons appointed in terms of paragraphs (a) and (c), respectively, shall be entitled to the remuneration and allowances out of the funds of the Board which the Board, in consultation with such person, may determine.

(3) (a) Any sheriff aggrieved by a finding made, or penalty imposed, in accordance with Chapter IV by a disciplinary committee or a person appointed in terms of subsection (2) (a), may, in the prescribed manner and within the prescribed period after such disciplinary committee or person has made the finding or imposed the penalty, appeal to the Board against the finding or penalty.

(b) The Board shall consider in the prescribed manner an appeal lodged with it in accordance with paragraph (a), and may-

- (i) set aside the finding or penalty appealed against or substitute therefor any other finding or penalty which the disciplinary committee or person appointed in terms of subsection (2) (a) could have made or imposed; or
- (ii) confirm the finding or penalty appealed against.

[S. 18 substituted by [s. 6 of Act 74 of 1998](#) (wef 1 March 1999).]

## 19 Annual levies payable to Board

(1) Every sheriff shall annually on or before the prescribed date pay the prescribed levy to the Board.

(2) Different levies may be prescribed under subsection (1) in respect of different categories of acting sheriffs.

## 20 Funds of Board

(1) The funds of the Board shall consist of-

- (a) the levies paid to the Board in terms of section 19 (1);
- (b) interest derived from investments;
- (c) moneys which may accrue to the Board from any other source.

(2) The Board shall utilize its funds to defray the expenses incurred by the Board in the performance of its functions in accordance with this Act, but shall utilize any money or other property donated or bequeathed to the Board in accordance with the conditions of the donation or bequest concerned.

(3) The Board shall open an account with a banking institution or building society, and shall deposit in that account the moneys received by it in terms of this Chapter.

(4) The Board may invest any money received in terms of this Chapter and not required for immediate use by means of deposits with the Public Investment Commissioners, a banking institution or a building society or in such other manner as the Minister may with the concurrence of the Minister of Finance determine.

## **21 Financial year, records and annual financial statements of Board**

(1) The financial year of the Board shall terminate on the last day of February in each year.

(2) The Board shall-

- (a) cause records to be kept of moneys received or expended by it, and of its assets, liabilities and financial transactions;
- (b) as soon as possible, but not later than three months after the end of each financial year, cause annual financial statements to be prepared showing, with the appropriate particulars, moneys received and expenditure incurred by it during, and its assets and liabilities at the end of, such financial year.

(3) The records and annual financial statements referred to in subsection (2) shall be audited by an auditor appointed by the Board.

## **CHAPTER III POSITION OF TRUST OF SHERIFFS (ss 22-42)**

Accounts for trust moneys (ss 22-25)

### **22 Accounts for trust moneys**

(1) Every sheriff shall open and keep a separate trust account, which shall contain a reference to this subsection, with a banking institution or building society, and shall forthwith deposit therein the moneys held or received by him on account of any person.

(2) (a) A sheriff may invest in a separate savings or other interest-bearing account opened by him with a banking institution or building society any money deposited in his trust account and not immediately required for any particular purpose.

(b) A savings or other interest-bearing account referred to in paragraph (a) shall contain a reference to this subsection.

(3) The amount standing to the credit of an account opened by a sheriff in terms of subsection (1) or (2), shall not form part of the assets of that sheriff or, if he dies or becomes insolvent, of his deceased or insolvent estate.

(4) Interest on money in an account mentioned in subsection (1) or (2) shall, unless the person on whose behalf the sheriff is holding or has received those moneys, in writing indicates otherwise, be paid in the prescribed manner to the Fund by the sheriff concerned: Provided that, before a sheriff pays the interest to the Fund, he or she may deduct his or her expenses incurred in respect of his or her trust account, from the interest accrued on the trust account in accordance with a tariff and procedure prescribed by the Board.

[Sub-s. (4) substituted by s. 25 of [Act 139 of 1992](#) (wef 7 August 1992) and by s. 7 of [Act 74 of 1998](#) (wef 1 March 1999).]

[NB: A sub-s. (5) has been added by s. 19 of the Judicial Matters Amendment [Act 8 of 2017](#), a provision which will be put into operation by proclamation. See PENDLEX.]

### **23 Book-keeping and auditing of accounts**

(1) A sheriff shall, subject to the provisions of subsection (4)-

- (a) keep separate record of moneys deposited or invested by him in, and payments made by him out of, an account mentioned in section 22 (1) or (2);
- (b) cause the records referred to in paragraph (a) to be audited by an auditor at least once annually.

[Sub-s. (1) substituted by s. 2 (a) of [Act 3 of 1991](#) (wef 28 March 1991).]

(2) An auditor who has performed an audit in terms of subsection (1) (b) shall as soon as may be practicable after completion of the audit furnish the Board with a report on his findings on the prescribed form.

(3) If in the opinion of the Board sound reasons exist for doing so, it may by way of a notice in writing request any sheriff to submit to the Board within the period specified in the notice, which period shall not be less than 30 days after the date of the notice, such auditor's report, statement or other document relating to an account mentioned in section 22 (1) or (2) as the Board may require.

(4) The Board may, on such conditions as it may determine, exempt a sheriff from the provisions of subsection (1) (b) of this section.

[Sub-s. (4) added by s. 2 (b) of [Act 3 of 1991](#) (wef 28 March 1991).]

### **24 Power of court in respect of accounts**

(1) If in the opinion of a competent superior court sound reasons exist for doing so, that court may upon application of the Board or any person having a direct financial interest in an account mentioned in section 22 (1) or (2), prohibit the sheriff concerned from dealing with the said account in any manner.

(2) If a court prohibits a sheriff under subsection (1) from dealing with an account in any manner, the court may appoint a *curator bonis* to control and administer that account on behalf of the sheriff.

### **25 Winding-up of accounts**

When a sheriff ceases to hold office, an account opened by him in terms of section 22 (1) or (2) shall be wound up in the prescribed manner, and the amount standing to the credit of the account shall be paid out in the prescribed manner to the

persons entitled to it.  
Fidelity Fund for Sheriffs (ss 26-29)

## 26 Establishment and control of Fidelity Fund for Sheriffs

- (1) There is hereby established a fund to be known as the Fidelity Fund for Sheriffs, and into which shall be paid-
- (a) interest paid to the Fund in terms of section 22 (4);  
[NB: A para. (aA) has been inserted by s. 20 of the Judicial Matters Amendment [Act 8 of 2017](#), a provision which will be put into operation by proclamation. See PENDLEX.]
  - (b) the prescribed contribution referred to in section 30 (1) (c) (ii) or 31 (2);  
[Para. (b) substituted by s. 8 of [Act 74 of 1998](#) (wef 1 March 1999).]
  - (c) interest derived from the investment of moneys in the Fund;
  - (d) moneys recovered on behalf of the Fund by virtue of the provisions of section 39;
  - (e) moneys mentioned in section 41 (2);
  - (f) moneys which may accrue to the Board from any other source.
- (2) The Fund shall be controlled and managed by the Board, which shall utilize the moneys in the Fund in accordance with this Chapter.
- (3) (a) Moneys forming part of the Fund shall, until spent or invested in accordance with this Chapter, be paid into and kept in an account opened with a banking institution or building society.  
(b) Such account shall be called the Fidelity Fund Account for Sheriffs.

## 27 Utilization of Fund

- (1) Subject to the provisions of this Chapter, the moneys in the Fund shall be utilized for-
- (a) the settlement of claims admitted against the Fund or judgments, including costs, obtained against the Fund;
  - (b) any contribution in the discretion of the Board in respect of expenses incurred by a claimant to verify his claim;
  - (c) legal expenses incurred in defending an action against the Board in respect of the Fund or otherwise incurred in relation to the Fund;
  - (d) premiums payable in respect of insurance agreements entered into by the Board under section 29 (1);
  - (e) the expenses involved in the control and management of the Fund;
  - (f) interest on and redemption of loans negotiated by the Board on behalf of the Fund;
  - (g) moneys required or permitted to be paid out of the Fund in accordance with this Chapter.
- [NB: A para. (h) has been added by s. 21 (b) of the Judicial Matters Amendment [Act 8 of 2017](#), a provision which will be put into operation by proclamation. See PENDLEX.]
- (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.  
[Sub-s. (1A) inserted by s. 13 of [Act 14 of 2012](#) (wef 1 November 2013).]

(2) Any money in the Fund not immediately required for the purposes of the Fund shall be invested in the prescribed manner.

## 28 Auditing of records and statements of Fund

- (1) The Board shall-
- (a) cause records to be kept of moneys received in, and payments made out of, the Fund;
  - (b) as soon as possible, but not later than three months after the end of each financial year, cause annual financial statements to be prepared showing, with the appropriate particulars, moneys received and expenditure incurred on behalf of the Fund during, and the financial state of affairs of the Fund at the end of, such financial year.
- (2) The records and annual financial statements referred to in subsection (1) shall be audited by an auditor appointed by the Board.
- (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.  
[Sub-s. (3) added by s. 14 of [Act 14 of 2012](#) (wef 1 November 2013).]
- (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.  
[Sub-s. (4) added by s. 14 of [Act 14 of 2012](#) (wef 1 November 2013).]

## 29 Insurance agreements in order to indemnify Fund

- (1) The Board may at its discretion enter into an agreement with an insurer who carries on an insurance business in the Republic whereby the Fund will be indemnified, to the extent and in the manner provided in the agreement, against liability for a contingency referred to in section 35.
- (2) An agreement referred to in subsection (1) shall be entered into in respect of sheriffs generally.  
Fidelity fund certificates (ss 30-34)

## 30 Prohibition of performance of functions of sheriff in certain circumstances <sup>3</sup>

- (1) A sheriff or his or her deputy shall not perform any functions assigned to a sheriff by or under any law unless-
- (a) the sheriff is the holder of a fidelity fund certificate; and
  - (b) the sheriff obtains professional indemnity insurance to the satisfaction of the Board to cover any liability which he or she may incur in the course of the performance of his or her functions in terms of this Act; or
  - (c) in the case of an acting sheriff-
    - (i) the acting sheriff is the holder of a fidelity fund certificate; or
    - (ii) the acting sheriff has paid the prescribed contribution to the Board.
- (2) The Board may prescribe, in connection with indemnity insurance referred to in subsection (1) (b), the minimum cover requirements to be complied with, the contingencies to be covered by such insurance and the circumstances under which a

person who would otherwise be required to obtain such insurance, shall be exempted therefrom.

(3) The Board may, on such conditions as it may determine, exempt a sheriff appointed under section 5 (1A) from the provisions of subsection (1) (b) or (c) of this section.

[S. 30 amended by [s. 3 of Act 3 of 1991](#) (wef 28 March 1991) and substituted by [s. 9 of Act 74 of 1998](#) (wef 1 March 1999).]

[3](#) 1 July 1990 was determined as the date on which the provisions of s. 30 would become applicable in respect of a sheriff or an acting sheriff referred to in s. 64 (2) (a) or (b) of this Act - GN R1476 in GG 12554 of 29 June 1990

### 31 Applications for fidelity fund certificates

(1) A sheriff may apply on the prescribed form to the Board for a fidelity fund certificate.

(2) An application referred to in subsection (1) shall be accompanied by the prescribed contribution.

(3) A sheriff applying in terms of subsection (1) for a fidelity fund certificate shall furnish such additional particulars in connection with his application as the Board may require.

### 32 Issue of fidelity fund certificates

(1) If the Board is satisfied, after consideration of an application referred to in section 31, that the sheriff is, having regard to the provisions of section 33, a suitable person to hold a fidelity fund certificate, the Board shall issue to him a fidelity fund certificate on the prescribed form.

(2) A fidelity fund certificate shall be valid until 31 December of the year in respect of which it has been issued.

(3) Notwithstanding the provisions of subsection (2), the Board may at any time issue to an acting sheriff a fidelity fund certificate having a period of validity of not less than one month and not more than one year.

[Sub-s. (3) substituted by [s. 10 of Act 74 of 1998](#) (wef 1 March 1999).]

### 33 Disqualifications relating to fidelity fund certificates

(1) Subject to the provisions of subsection (2), the Board shall not issue a fidelity fund certificate to a sheriff if he-

- (a) is not a South African citizen permanently resident in the Republic;
- (b) is not of or over the age of 21 years;
- (c) is an unrehabilitated insolvent;
- (d) is of unsound mind;
- (e) does not comply with the prescribed standard of training;
- (f) does not have the prescribed practical experience;
- (g) has at any time been dismissed from a position of trust by reason of improper conduct involving a breach of such trust;
- (h) has at any time been convicted of any offence involving dishonesty or of any other offence for which he has been sentenced to imprisonment without the option of a fine;
- (i) has failed to comply with a provision of section 23 (1) (b) during a period of one year immediately prior to the date on which he applies for a fidelity fund certificate;
- (j) has at any time been prohibited under section 24 (1) from dealing with an account mentioned in section 22 (1) or (2) in any manner;
- (k) was previously the holder of a fidelity fund certificate which has been cancelled under section 34 (1) or 49;
- (l) has at any time incurred liability towards the Board by virtue of the provisions of section 39, unless he has repaid the relevant amount in full to the Board or has made in the opinion of the Board satisfactory arrangements for the repayment of any such amount;
- (m) has not obtained professional indemnity insurance to the satisfaction of the Board to cover any liability which he or she may incur in the course of the performance of his or her functions in terms of this Act.

[Para. (m) added by [s. 11 of Act 74 of 1998](#) (wef 1 March 1999).]

(2) If in respect of any sheriff who is subject to any disability mentioned in subsection (1), the Board is satisfied that, having regard to the relevant considerations, the issue of a fidelity fund certificate to him is justified in the interest of fairness towards him, the Board may, on such conditions as the Board may with the concurrence of the Minister determine, issue a fidelity fund certificate to him when he applies therefor.

### 34 Cancellation of fidelity fund certificates

(1) Notwithstanding the provisions of Chapter IV, the Board may cancel a fidelity fund certificate issued to a sheriff after at least 14 days' notice in writing to the sheriff-

- (a) if the sheriff becomes subject to a disability mentioned in section 33 (1) (a), (c), (d), (g), (h), (j) or (l);
- (b) if the sheriff contravenes or fails to comply with a condition imposed under section 33 (2); or
- (c) if that fidelity fund certificate was issued on information subsequently proved to be false.

(2) The Board shall cancel the fidelity fund certificate of a sheriff if it is requested by the sheriff to do so or if the sheriff ceases to hold office.

(3) Any person who has in his possession or under his control any fidelity fund certificate cancelled under this section, shall return that certificate to the Board within 30 days after he became aware of the cancellation.

Liability of Fund (ss 35-42)

### 35 Liability of Fund

Subject to the provisions of this Chapter, moneys in the Fund shall be utilized to compensate any person who, after the commencement of this Act, suffers any loss or damage-

- (a) as a result of-
  - (i) the failure of a sheriff to pay out or deliver to any such person any money or property over which he acquired control by virtue of his office, or the proceeds of the sale of such goods; or

- (ii) the act or omission of a sheriff or his deputy sheriff in connection with-
  - (aa) the service or execution of any process;
  - (bb) the arrest of any person; or
  - (cc) subject to section 55, the rescue or escape of any person arrested by him or committed to his custody; and
- (b) for which the sheriff, the sheriff and his deputy sheriff jointly or his deputy sheriff is liable in law.

### **36 Claims against Fund**

(1) A claim against the Fund in respect of a contingency referred to in section 35 may be lodged with the Board on the prescribed form.

(2) Subject to the provisions of subsection (3), no person shall have a claim against the Fund in respect of a contingency referred to in section 35 unless-

- (a) the claimant lodges his claim with the Board in terms of subsection (1) within three months after he became aware of the contingency; or
- (b) the claimant furnishes the Board, within six months after a written demand was sent to him by the Board, with such proof in verification of his claim as the Board may reasonably require.

(3) If the Board is satisfied that, having regard to the circumstances, a claim or the proof required by it was lodged or furnished as soon as possible, it may at its discretion extend the period mentioned in paragraph (a) or (b) of subsection (2), as the case may be.

(4) If the Board admits a claim against the Fund, the Board shall pay out of the Fund such compensation as may be agreed upon by the Board and the claimant.

(5) Any dispute relating to the amount of compensation to be paid out of the Fund shall be settled by arbitration in accordance with the Arbitration Act, 1965 ([Act 42 of 1965](#)).

### **37 Actions against Board in respect of Fund**

(1) If the Board refuses to admit a claim against the Fund, the claimant may, subject to this section and section 38, institute an action against the Board in respect of the Fund in the court within the area of jurisdiction of which the cause of action arose.

(2) An action against the Board in respect of the Fund shall not be instituted without leave of the Board unless the claimant has exhausted all available legal remedies against the sheriff or deputy sheriff in respect of whom the claim arose, or his estate, and against all other persons liable in respect of the loss or damage suffered by the claimant.

(3) In any action against the Board in respect of the Fund, the Board may raise any defence which could have been raised by the sheriff or deputy sheriff in respect of whom the claim arose.

### **38 Limitation of liability of Fund**

(1) The Fund shall not be liable for any loss or damage suffered by a sheriff as a result of any act or omission by his deputy sheriff or any employee in the service of the sheriff.

(2) No person shall recover from the Board in respect of the Fund any amount larger than the difference between the amount of the loss or damage suffered by him and the amount or value of all moneys or other benefits which he has received or is entitled to receive from any other source in respect of that loss or damage.

(3) No amount shall be paid out of the Fund as interest on the amount of any claim admitted against the Fund or any judgment obtained against the Fund.

### **39 Transition of rights and remedies to Board**

When the Board settles any claim or judgment against the Fund in accordance with this Chapter, there shall pass to the Board all the rights and remedies of the claimant in respect of his claim against any sheriff, deputy sheriff or other person or, if applicable, in the case of the death, insolvency or other legal incapacity of any such sheriff, deputy sheriff or person, against the estate of any such sheriff, deputy sheriff or person.

### **40 Computation of claims against future accumulations of Fund**

(1) Only moneys in the Fund shall be available for the payment of any claim admitted against the Fund or for the satisfaction of any judgment obtained against the Fund, but if at any time there is insufficient money in the Fund to settle all those claims and judgments, they shall, to the extent to which they are not settled, be charged against future accumulations of the Fund.

(2) The Board may at its discretion determine the order in which claims and judgments against the Fund may be settled and may, if the moneys in the Fund are insufficient to settle in full all claims and judgments, settle any claim or judgment *pro rata* to the amount available in the Fund.

### **41 Utilization of insurance moneys**

(1) No claimant having a claim against the Fund in respect of a contingency referred to in section 35 shall have-

- (a) any legal claim against an insurer who has entered into an agreement referred to in section 29 (1) with the Board;
- (b) any right or claim in respect of any money paid to the Board by the insurer in accordance with that agreement.

(2) Money referred to in subsection (1) (b) shall be paid into the Fund and, subject to the provisions of this Chapter, be utilized by the Board in order to settle claims or judgments against the Fund.

### **42 Fund exempt from insurance laws**

No provision of any law relating to insurance shall apply to the Fund.

## **CHAPTER IV IMPROPER CONDUCT (ss 43-52)**

### 43 Improper conduct

(1) A sheriff shall be guilty of improper conduct if-

- (a) he is negligent or dilatory in the service or execution of any process;
  - (b) he makes a false return in respect of the service or execution of any process;
  - (c) he demands payment of more than the fees or expenses prescribed by or under any law;
  - (d) he contravenes or fails to comply with a provision of the code of conduct referred to in section 16 (k);
  - (e) he fails to take all reasonable steps to prevent his deputy sheriff from committing a deed of improper conduct as contemplated in paragraph (a), (b), (c) or (d);
  - (f) he commits a deed of insolvency referred to in [section 8](#) of the Insolvency Act, 1936 ([Act 24 of 1936](#));
  - (g) he or she commits an offence in terms of this Act, or any other offence in respect of which violence, dishonesty, extortion or intimidation is an element;
- (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;

[Para. (g) substituted by s. 12 (a) of [Act 74 of 1998](#) (wef 1 March 1999).]

[Para. (h) added by s. 12 (b) of [Act 74 of 1998](#) (wef 1 March 1999) and substituted by s. 15 of [Act 14 of 2012](#) (wef 1 November 2013).]

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

[Para. (i) added by s. 12 (b) of [Act 74 of 1998](#) (wef 1 March 1999) and substituted by s. 15 of [Act 14 of 2012](#) (wef 1 November 2013).]

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

[Para. (j) added by s. 15 of [Act 14 of 2012](#) (wef 1 November 2013).]

(2) The acquittal or conviction of a sheriff by any court of law on any criminal charge shall not be a bar to proceedings against him in accordance with this Chapter on a charge of improper conduct, even if the facts set forth in the charge of improper conduct would, if proved, constitute the offence set forth in the criminal charge on which he was so acquitted or convicted or any other offence of which he might have been convicted at his trial on the said criminal charge.

(3) If the improper conduct with which a sheriff is charged amounts to an offence of which he has been convicted by a court of law, a certified copy of the record of his trial and conviction by that court shall, upon the identification of the sheriff as the person who has been convicted according to the record, be sufficient proof that he committed such offence, unless-

- (a) the conviction has been set aside by a competent court; or
- (b) the sheriff proves that he was in fact wrongly convicted.

### 44 Lodging of complaint against sheriff

(1) Any complaint, accusation or allegation against a sheriff may be lodged with the Board in the prescribed manner.

(2) The Board shall keep record of each complaint, accusation or allegation lodged with it in terms of subsection (1).

### 45 Charge of improper conduct

(1) The Board may, on its own initiative or upon the lodging of a complaint, accusation or allegation referred to in section 44 (1), charge a sheriff by a notice in writing with improper conduct.

(2) (a) A notice referred to in subsection (1) shall be served upon a sheriff in the prescribed manner, and shall contain or be accompanied by a request that the sheriff furnishes the Board with a written admission or denial of the charge and, if the sheriff so prefers, a written explanation in connection with the charge within 14 days of the service thereof.

(b) The Board may, if it believes that on conviction of the sheriff a fine not exceeding the prescribed amount will be imposed upon him or her, afford the sheriff an opportunity to admit his or her guilt in respect of the charge and to pay the fine determined by the Board in the said notice on or before the date specified in the notice without appearing before the Board.

(c) Any sheriff who wishes to pay an admission of guilt fine referred to in paragraph (b), must-

- (i) pay the fine in the prescribed manner before the date specified in the notice; and
- (ii) surrender the notice at the time and place of payment of the fine.

(d) The Board shall keep a register in the prescribed form of all fines paid in terms of this subsection, and a copy of the register shall be included in the reports referred to in section 59.

(3) The Minister may at any time withdraw a charge of improper conduct.

[S. 45 substituted by s. 13 of [Act 74 of 1998](#) (wef 1 March 1999).]

### 46 Inquiry into improper conduct

The Board shall, unless an admission of guilt fine has been determined and paid in terms of section 45 (2), inquire into a charge of improper conduct at such time and place as the Board may determine and shall in the prescribed manner give the sheriff charged at least 14 days' notice in writing of the time and place so determined.

[S. 46 substituted by s. 14 of [Act 74 of 1998](#) (wef 1 March 1999).]

### 47 Procedure at inquiry

(1) The Board may authorize any person to attend an inquiry instituted in terms of section 46, to adduce evidence and arguments in support of the charge and to cross-examine any person who has given evidence in rebuttal of the charge.

(2) At such inquiry the sheriff charged shall have the right to be present, to be assisted or represented by another person, to give evidence and, either personally or through a representative-

- (a) to be heard;
- (b) to call witnesses;
- (c) to cross-examine any person called as a witness in support of the charge; and
- (d) to have access to documents produced in evidence.

(3) The failure of the sheriff charged to attend the inquiry shall not invalidate the proceedings.

(4) The Board shall keep a record of the proceedings and of the evidence given.

#### **48 Powers of Board in respect of inquiry**

(1) For the purposes of an inquiry in terms of section 46, the Board may-

- (a) summon any person who in its opinion may be able to give information of material importance concerning the charge inquired into, or who is believed to have in his possession or custody or under his control any book, document or thing which may have a bearing on that charge, to appear before the Board;
- (b) call upon, and administer an oath to, or accept an affirmation from, any person present at the inquiry who was or could have been summoned under paragraph (a);
- (c) interrogate or require any person who was called upon under paragraph (b) to produce a book, document or thing referred to in paragraph (a).

(2) A summons for the attendance before the Board of any person shall be in the prescribed form and shall be served in the prescribed manner.

(3) The law relating to privilege as applicable to a person summoned to give evidence or to produce a document or thing before a court of law, shall be applicable in respect of the interrogation of, or the production of a book, document or thing by, any person referred to in subsection (1) (c).

#### **49 Action against sheriff who is found guilty of improper conduct**

(1) When the Board finds a sheriff guilty of improper conduct, the Board may-

- (a) caution or reprimand the sheriff;
- (b) impose upon the sheriff a fine not exceeding the amount<sup>4</sup> determined by the Minister from time to time by notice in the *Gazette*, which fine shall be payable to the Board in accordance with the regulations referred to in section 62;
- (c) cancel the fidelity fund certificate of the sheriff; or
- (d) recommend to the Minister that the sheriff be removed from his or her office, or called upon to resign as sheriff, with effect from a date determined by the Minister.

(2) Where the Board finds a sheriff guilty of improper conduct, it may-

- (a) on the conditions determined by it, postpone the taking of any steps in respect of him or her or the imposition of any penalty upon him or her for a particular period determined by the Board;
- (b) impose a fine referred to in subsection (1), but suspend the payment of such fine, or any part thereof on the conditions it may deem fit; or
- (c) make any other order it may deem just, reasonable and equitable in the circumstances.

(3) (a) If the taking of any steps or the imposition of any penalty has been postponed for a particular period in terms of subsection (2) (a), and if at the end of that period the Board is satisfied that the sheriff concerned has substantially observed all the relevant conditions, the Board shall inform that sheriff that no steps will be taken in respect of him or her or that no penalty will be imposed upon him or her.

(b) If the payment of a fine or any part thereof has been suspended by the Board for a particular period in terms of subsection (2) (b), and if at the end of such period the Board is satisfied that the sheriff concerned has substantially observed all the relevant conditions, the Board shall inform such sheriff that the payment of that fine or that part thereof will not be enforced.

(c) If a sheriff fails to comply with any conditions determined in terms of subsection (2), the Board shall impose a penalty upon him or her or execute the penalty imposed upon him or her, unless he or she satisfies the Board that the non-compliance with such conditions was due to circumstances beyond his or her control.

(4) Any court with civil jurisdiction may on the application of the Board grant an order for the recovery from the sheriff concerned of any amount he or she failed to pay in accordance with the fine imposed under subsection (1) (b), together with any interest thereon, whereupon the order so granted shall have the effect of a civil judgment of that court and shall be executed in the prescribed manner.

(5) If the Board makes a recommendation under subsection (1) (d), the Board shall send to the Minister the documents relating to the inquiry and, where applicable, to an appeal under section 18 (3) (a) or 61 (1), and the Minister may act according to that recommendation or impose upon the sheriff concerned such other penalty as the Board could have imposed upon him or her.

[S. 49 substituted by s. 15 of [Act 74 of 1998](#) (wef 1 March 1999).]

<sup>4</sup> R25 000 - GN R424 in GG 33209 of 21 May 2010

#### **50 Suspension of sheriff**

(1) The Minister may suspend a sheriff from his office at any time before the sheriff is charged with improper conduct in accordance with this Chapter, or after he has been so charged.

(2) A sheriff who has been suspended from his office shall forthwith be reinstated in office-

- (a) if he is not charged with improper conduct within a period of 12 months after the date of his suspension;
- (b) if he is found not guilty on the charge in question;
- (c) if he or she appeals under section 18 (3) (a) or 61 (1) against his or her conviction on the charge in question and the appeal is upheld; or

[Para. (c) substituted by [s. 16](#) of [Act 74 of 1998](#) (wef 1 March 1999).]

- (d) if a penalty referred to in paragraph (a) or (b) of section 49 (1) is imposed upon him.

(3) The Minister may at any time cancel the suspension of a sheriff, but the cancellation shall not prevent the sheriff from being charged with improper conduct in accordance with this Chapter.

#### **51 Certain sheriffs deemed to be removed from their office by reason of improper conduct**

Any sheriff who-

- (a) while suspended from his office under section 50 (1) or while a charge of improper conduct against him in

accordance with this Chapter has not yet finally been dealt with-

- (i) resigns as sheriff; or
  - (ii) engages himself without the approval of the Minister to perform remunerative work outside his office as sheriff; or
- (b) fails to resign with effect from the date on which he or she has been called upon to resign under section 49 (5),  
[Para. (b) substituted by [s. 17 of Act 74 of 1998](#) (wef 1 March 1999).]

shall, unless the Minister directs otherwise, be deemed to be removed from his office by reason of improper conduct with effect from the date on which he so resigns, engages himself to perform remunerative work or fails to resign, as the case may be.

## **52 Powers of Minister relating to improper conduct**

(1) If in the opinion of the Minister sound reasons exist for doing so, he may authorize any person to charge any sheriff with improper conduct and to inquire into the charge.

(2) When the Minister authorizes a person under subsection (1) to charge a sheriff with improper conduct, the Board shall forthwith discontinue any steps which the Board has taken against the sheriff in accordance with this Chapter.

(3) A person authorized under subsection (1) shall be invested and charged with the functions relating to a charge of improper conduct assigned to the Board by or under this Chapter, and for the purposes of section 61 a finding made or penalty imposed by that person shall be deemed to be a finding made or penalty imposed by the Board.

(4) Nothing in this section contained shall be construed as empowering the Minister to authorize a person to charge a sheriff with improper conduct after the Board has already made a finding in accordance with this Chapter in respect of the charge in question.

## **CHAPTER V GENERAL (ss 53-66)**

### **53 Performance of remunerative work outside office of sheriff**

No sheriff shall without the approval of the Minister perform or engage himself to perform remunerative work outside his office as sheriff.

### **54 Indemnification of State**

The State shall not be liable for any loss or damage arising out of any act or omission by a sheriff or his deputy sheriff.

### **55 Liability of sheriffs**

A sheriff or his deputy sheriff shall not be liable for any damage arising out of the rescue or escape of any person arrested by him or committed to his custody, unless the rescue or escape was caused by his negligent or wilful conduct.

### **56 Appointment of inspectors**

(1) For the purposes of exercising any power-

- (a) referred to in subsection (1) or (2) of section 57, the Minister may, either in general or in any particular case, appoint any person as an inspector;
- (b) referred to in subsection (2) of section 57, the Board may, either in general or in any particular case, appoint any person whom the Board may consider suitable as an inspector.

(2) Every inspector appointed under subsection (1) shall be furnished with a certificate stating that he has been appointed as an inspector.

(3) An inspector who exercises any power under section 57 shall at the request of any person affected by the exercise of that power produce his certificate referred to in subsection (2).

### **57 Powers of inspectors**

(1) Any inspector appointed under paragraph (a) of section 56 (1) may at any reasonable time examine any book, record or other document of the Board or Fund or make extracts therefrom or copies thereof.

(2) Any inspector appointed under paragraph (a) or (b) of section 56 (1) may-

- (a) at any reasonable time enter the office of any sheriff;
- (b) require the production of any fidelity fund certificate;
- (c) seize any fidelity fund certificate cancelled under section 34 or 49;
- (d) examine any book, record or other document relating to the functions of a sheriff or make extracts therefrom or copies thereof;
- (e) for the purposes of any prosecution under this Act or any charge of improper conduct in accordance with Chapter IV, seize and retain such book, record or other document.

### **58 Minister may direct Board to furnish information**

The Minister may in writing direct the Board to furnish him within the period specified in the direction with such information as he may require in connection with the functions of the Board or the financial state of affairs of the Board or Fund.

### **59 Annual reports**

The Board shall within six months after the end of every financial year submit to the Minister a report, together with a copy of the annual financial statements audited in terms of sections 21 (3) and 28 (2), on the functions performed by the Board during such year.

### **60 Offences and penalties**

(1) Any person who-

- (a) contravenes or fails to comply with a provision of section 19 (1), 22 (1), 23 (1), 30 or 34 (3);

- (b) fails to comply with a request under section 23 (3);
- (c) contravenes or fails to comply with a condition imposed under section 33 (2);
- (d) in an application for any fidelity fund certificate knowingly gives information or makes a statement which is false or misleading;
- (e) has been duly summoned under section 48 and who fails, without sufficient cause-
  - (i) to attend at the time and place specified in the summons; or
  - (ii) to remain in attendance until excused from further attendance by the person presiding at the inquiry;
- (f) has been called upon under section 48 (1) (b) and who refuses to be sworn or to make an affirmation as a witness;
- (g) fails, without sufficient cause-
  - (i) to answer fully and satisfactorily any question lawfully put to him under section 48 (1) (c); or
  - (ii) to produce any book, document or thing in his possession or custody or under his control which he was required to produce under section 48 (1) (c);
- (gA) has not been appointed as a sheriff, acting sheriff or deputy sheriff in terms of this Act and who practises or performs any functions assigned by or under any law to a sheriff or any other specified functionary or holds himself or herself out as a sheriff, acting sheriff or deputy sheriff or pretend to be, or make use of any name, title or addition or description creating the impression that he or she is a sheriff, acting sheriff or deputy sheriff or is recognized by law as such;
 

[Para. (gA) inserted by s. 18 (a) of [Act 74 of 1998](#) (wef 1 March 1999).]
- (h) hinders or obstructs any inspector in the exercise of his powers under section 57 (2); or
- (i) falsely gives himself out to be an inspector appointed under section 56 (1) (a) or (b),

shall be guilty of an offence.

(1A) Any sheriff or deputy sheriff who-

- (a) makes a false return in respect of the service or execution of any process;
- (b) embezzles, or fraudulently conceals or destroys any process; or
- (c) in respect of the property offered for sale at a sale in execution in terms of any rules of court, makes an arrangement with any person to buy such property, or to buy and dispose of such property-
  - (i) on behalf of the sheriff; or
  - (ii) in a manner which results in an improper personal gain for the sheriff; or
  - (iii) in a manner which will restrict or is likely to restrict the proceeds of such sale,

shall be guilty of an offence.

[Sub-s. (1A) inserted by s. 18 (b) of [Act 74 of 1998](#) (wef 1 March 1999).]

(2) Any person who is convicted of an offence under this Act shall be liable-

- (a) in the case of an offence referred to in paragraph (a), (c), (d), (h) or (i) of subsection (1), to a fine or to imprisonment for a period not exceeding one year, or to both such fine and such imprisonment;
- (b) in the case of an offence referred to in paragraph (b), (e), (f) or (g) of subsection (1), to a fine or to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment; and
- (c) in the case of an offence referred to in paragraph (gA) of subsection (1), or in subsection (1A), to a fine or to imprisonment for a period not exceeding three years, or to both such fine and such imprisonment.

[Sub-s. (2) substituted by s. 18 (c) of [Act 74 of 1998](#) (wef 1 March 1999).]

## **61 Appeal to court against decisions of disciplinary committee or Board**

(1) Any sheriff aggrieved by-

- (a) the cancellation of his fidelity fund certificate by the Board under section 34 (1);
- (b) a finding made or penalty imposed by a disciplinary committee or the Board in the performance of its functions in accordance with Chapter IV; or
- (c) the exercise of a power by the Board in considering an appeal in terms of section 18 (3) (b),

[Para. (c) substituted by [s. 19](#) of [Act 74 of 1998](#) (wef 1 March 1999).]

may, after notice to the Board and within 60 days after the date on which that fidelity fund certificate has been cancelled, that finding has been made or penalty has been imposed or that power has been exercised, as the case may be, appeal against the decision in question to the superior court having jurisdiction in the area where the head office of the Board is situated.

(2) The court shall examine and consider an appeal lodged with it in accordance with subsection (1), and may-

- (a) if it is of the opinion that the disciplinary committee or Board, as the case may be, has not acted in accordance with the provisions of this Act, set aside the decision appealed against or substitute therefor any other decision which the disciplinary committee or Board could have made;
- (b) confirm the decision appealed against; or
- (c) give such other order, including any order as to costs, as it may consider fit.

## **62 Regulations**

(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);
- (g) the steps to be taken to ensure compliance with the code of conduct referred to in section 16 (k);
- (h) the disposal of process and other documents in the possession of a sheriff when he or she ceases to hold office;
- (i) the service of process on sheriffs or deputy sheriffs;
- (j) the furnishing by a banking institution or building society of particulars relating to an account mentioned in section 22 (1) or (2);
- (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;
- (l) the procedure to be followed in connection with the recovery of a fine imposed in terms of section 49 (1) (b);
- (m) the payment and control of admission of guilt fines in terms of this Act;
- (n) any matter required or permitted to be prescribed by regulation under this Act; and
- (o) in general, any ancillary or incidental matter that is necessary to prescribe for the proper implementation or administration of this Act.

[Sub-s. (1) amended by [s. 20 of Act 74 of 1998](#) (wef 1 March 1999) and substituted by [s. 16 of Act 14 of 2012](#) (wef 18 July 2014).]

(2) Regulations made under subsection (1) may prescribe penalties for any contravention thereof or failure to comply therewith not exceeding a fine of R1 000 or imprisonment for a period of six months.

### 63 Minister may assign functions to officers

(1) The Minister may-

- (a) delegate to any officer of the Department of Justice any power conferred upon the Minister by this Act, excluding the power referred to in section 62 (1), on such conditions as the Minister may determine; or
- (b) authorize any such officer to perform any duty assigned to the Minister by this Act.

(2) Any delegation under subsection (1) (a) shall not prevent the exercise of the relevant power by the Minister himself.

### 64 Amendment or repeal of provisions of laws, and savings

(1) Subject to the provisions of this section, the provisions of the laws mentioned in the Schedule are hereby amended or repealed to the extent indicated in the third column thereof.

(2) Any person who immediately prior to the commencement of this Act-

- (a) held office as messenger or acting messenger of any lower court, or was appointed as a deputy messenger, shall upon that commencement be deemed to be appointed under the provisions of this Act as a sheriff or acting sheriff of that lower court, or as a deputy sheriff, respectively; or
- (b) held office as deputy sheriff or acting deputy sheriff of any superior court, or was appointed as an assistant of a deputy sheriff or acting deputy sheriff, shall upon that commencement be deemed to be appointed under the provisions of this Act as a sheriff or acting sheriff of that superior court, or as a deputy sheriff, respectively.

(3) Any sheriff or acting sheriff referred to in paragraph (a) or (b) of subsection (2) shall hold office subject to the provisions of this Act: Provided that-

- (a) the provisions of section 30 shall not apply in respect of any such sheriff or acting sheriff before a date determined by the Minister by notice in the *Gazette*;
- (b) any security furnished by any such sheriff or acting sheriff in connection with his appointment shall, notwithstanding the repeal of a provision governing the furnishing of such security, be maintained until the day upon which he becomes the holder of a fidelity fund certificate;
- (c) notwithstanding the provisions of section 35, the Fund shall not incur liability in respect of any such sheriff or acting sheriff before the day upon which he becomes the holder of a fidelity fund certificate;
- (d) the provisions of section 51 (a) (ii) or 53 shall not apply to remunerative work which any such sheriff or acting sheriff performs outside his office after the commencement of this Act if he-
  - (i) had performed such work immediately prior to that commencement; and
  - (ii) notifies the Minister in writing of such remunerative work within 30 days after that commencement; and
- (e) any such sheriff shall hold office as contemplated in section 4 (1) until the date on which he attains the age of 70 years.

(4) Anything done under a provision repealed by subsection (1) which may be done under a corresponding provision of this Act, shall be deemed to have been done under that corresponding provision.

### 65 Construction of references to messenger in existing laws and process of court

A reference in any law in force immediately prior to the commencement of this Act, or in any process of court, to a messenger or a messenger of any lower court shall be construed as a reference to a sheriff of that lower court appointed under this Act.

### 66 Short title and commencement

This Act shall be called the Sheriffs Act, 1986.

#### Schedule PROVISIONS OF LAWS AMENDED OR REPEALED

(Section 64)

No. and year of law	Short title	Extent of amendment or repeal
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<a href="#">Act 32 of 1944</a>	Magistrates' Courts Act, 1944	<b>1</b> Repeals section 14 (1), (1A), (2), (3), (4), (5), (6) and (9).
		<b>2</b> Amends section 15 (4) by substituting the word 'sheriff' for the words 'deputy messenger'.
		<b>3</b> Repeals sections 18 and 18A.
		<b>4</b> Amends section 107 by substituting the words 'deputy sheriff' for the word 'deputy-messenger', wherever it appears.
<a href="#">Act 59 of 1959</a>	Supreme Court Act, 1959	<b>1</b> Amends section 34, as follows: paragraph (a) substitutes subsection (1) (a); paragraph (b) substitutes subsection (1) (b); and paragraph (c) deletes subsection (1) (c) and subsections (3), (4), (5) and (6).
		<b>2</b> Repeals sections 34A and 35.
		<b>3</b> Amends section 36, as follows: paragraph (a) substitutes subsection (1); and paragraph (b) substitutes subsection (2).
		<b>4</b> Repeals sections 37 and 38.
		<b>5</b> Amends section 40, as follows: paragraph (a) substitutes paragraph (a); paragraph (b) substitutes paragraph (c); and paragraph (c) substitutes paragraph (d).

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*PENDLEX: Sheriffs Act 90 of 1986 after amendment by the Judicial Matters Amendment Act 8 of 2017*

**Section 22 (5)**

(a) Any money held in the trust account of a sheriff in respect of which the identity of the owner is unknown or which is unclaimed after one year, must, after the second annual closing of the accounting records of the sheriff following the date upon which those funds were deposited in the trust account of the sheriff, be paid in the prescribed manner to the Fund by the sheriff concerned.

(b) Nothing in this subsection deprives the owner of the money contemplated in paragraph (a) of the right to claim from the Fund any portion as he or she may prove an entitlement to.

**Section 26 (1) (aA)**

moneys received by the Fund in terms of section 22 (5) (a);

**Section 27 (1) (h)**

the payment of the costs for the enforcement of judgments of small claims courts by execution as contemplated in [section 41](#) of the Small Claims Courts Act, 1984 ([Act 61 of 1984](#)), in cases where successful judgment creditors are unable to afford such costs, in the circumstances and subject to the conditions determined by the Board in consultation with the Minister.

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