

BUITENGEWONE
OFFISIËLE KOERANT
 VAN SUIDWES-AFRIKA.
OFFICIAL GAZETTE
 EXTRAORDINARY
 OF SOUTH WEST AFRICA.



WEE OP GESAG.

Maandag, 28 Junie 1965

WINDHOEK

Monday, 28th June, 1965

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No. 104 Ordonnansies 1965: Uitvaardiging van . . .

CONTENTS

GOVERNMENT NOTICE:

Ordinances, 1965: Promulgation of . . .

Bladsy/Page

810

Goewermentskennisgewing.

Government Notice.

Die volgende Goewermentskennisgewing word vir algemene inligting gepubliseer.

J. J. KLOPPER,

Waarnemende Sekretaris van Suidwes-Afrika.

tegenwoordig deur van die Administrateur,
 Windhoek.

The following Government Notice is published for general information

J. J. KLOPPER,

Acting Secretary for South West Africa.

Administrator's Office,
 Windhoek.

No. 104.]

[28 Junie 1965.

No. 104.]

[28th June, 1965.

ORDONNANSIES, 1965: UITVAARDIGING VAN

ORDINANCES, 1965: PROMULGATION OF

Dit het die Administrateur behaag om sy goedkeuring te verleen aan 'n ooreenkomstige artikel twee-en-dertig van „De Suidwes-Afrika Konstitusie Wet 1925" (Wet 42 van 1925), aan die volgende Ordonnansies wat hiermee vir algemene inligting gepubliseer word, ooreenkomstige artikels vier-en-dertig van gemelde Wet:—

The Administrator has been pleased to assent, in terms of section *thirty-two* of the South West Africa Constitution Act, 1925 (Act 42 of 1925), to the following Ordinances which are hereby published for general information in terms of section *thirty-four* of the said Act:—

No.	Titel	Bladsy
No. 35	Strafproseswysigingsordonnansie, 1965.	811
No. 36	Algemene Regswysigingsordonnansie, 1965	827

Title	Page
Criminal Procedure Amendment Ordinance, 1965	812
General Law Amendment Ordinance, 1965 . . .	828

No. 36 of 1965.]

ORDINANCE

To amend the Commissioners of Oaths Proclamation, 1928, the Companies Ordinance, 1928, the Prescription Proclamation, 1943, the Adoption of Children Amendment Ordinance, 1955, the General Law Amendment Ordinance, 1956, the Magistrates Courts Ordinance, 1963, the Post Office Ordinance, 1963, and the Marriage Ordinance, 1963.

(Assented to 21st June, 1965)
(English text signed by the Administrator)

BE IT ORDAINED by the Legislative Assembly for the Territory of South West Africa, with the consent of the State President, in so far as such consent is necessary, previously obtained and communicated to the Legislative Assembly by message from the Administrator in accordance with the provisions of section *twenty-six* of the South West Africa Constitution Act, 1925, as amended by section *sixteen* of the South West Africa Affairs Amendment Act, 1949, of the Republic of South Africa, as follows —

1. The Commissioners of Oaths Proclamation, 1928, as amended, is hereby further amended by the deletion in sub-section (1) of section *two* of all the words after the word „Administrator” where it occurs for the second time.

Amendment of section 2 of Proclamation 24 of 1928.

2. The Companies Ordinance, 1928, as amended, is hereby further amended by the addition of the following sub-section after sub-section (3) of section *one hundred and eighty bis*:—

Amendment of section 180 bis of Ordinance 19 of 1928 as inserted by section 103 of Ordinance 27 of 1954.

“(4) Any director, manager or secretary who fails to comply with the provisions of sub-section (1) shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding six months.”

3. (1) The Prescription Proclamation, 1943, is hereby amended by the insertion of the following paragraphs after paragraph (b) of sub-section (1) of section *six*:—

Amendment of section 6 of Proclamation 13 of 1943.

(b) *bis* service on the debtor by a defendant to an action of a notice in terms of a rule of court joining such debtor as a party to such action;

(b) *ter* service on the debtor of a claim in reconvention;”

(2) Sub-section (1) shall come into operation on a date to be fixed by the Administrator by proclamation in the *Official Gazette*.

4. The Adoption of Children Amendment Ordinance, 1955, is hereby repealed.

Repeal of Ordinance 9 of 1955.

5. Section *seven* of the General Law Amendment Ordinance, 1956, is hereby amended by the addition to sub-section (1) of the words “except in so far as the imposition of any such penalty may be compulsory”.

Amendment of section 7 of Ordinance 12 of 1956.

6. The Magistrates Courts Ordinance, 1963, is hereby amended by deleting the proviso to section *seven*:—

Amendment of section 7 of Ordinance 29 of 1963.

7. The Magistrates Courts Ordinance, 1963, is hereby amended by the insertion after sub-paragraph (i) of paragraph (a) of sub-section (1) of section *twenty-four* of the following sub-paragraph:—

Amendment of section 24 of Ordinance 29 of 1963.

“(i) *bis* the compulsory examination by one or more duly registered medical practitioners of any party to proceedings in which damages or compensation in respect of alleged bodily injury is claimed and whose state of health is relevant to the determination of such damages or compensation, and the manner, time, place and responsibility for the cost

of the examination, and the making available to the opposing party of any documentary report on the examination;”.

8. The Magistrates Courts Ordinance, 1963, is hereby amended by the insertion of the following section after section *twenty-nine*:—

Insertion of section 29bis in Ordinance 29 of 1963.

“Attachment to found or confirm jurisdiction.”

29bis. The court may order attachment of person or property to found or confirm jurisdiction against any person who does not reside in the Territory in respect of an action within its jurisdiction, where the claim or the value of the matter in dispute amounts to at least forty rand, exclusive of any costs in respect of the recovery thereof, and may grant an order allowing service of any process in such action to be effected in such manner as may be stated in such order.”.

9. The Magistrates Courts Ordinance, 1963, is hereby amended by the substitution for paragraph (a) of subsection (2) of section *fifty* of the following paragraph:—

Amendment of section 50 of Ordinance 29 of 1963.

“(a) If any person, being duly subpoenaed to give evidence or to produce any books, papers or documents in his possession or under his control which the party requiring his attendance desires to show in evidence, fails, without lawful excuse, to attend or to give evidence or to produce those books, papers or documents according to the subpoena or, unless duly excused, fails to remain in attendance throughout the trial, the court may, upon being satisfied upon oath or by the return of the messenger that such person has been duly subpoenaed and that his reasonable expenses, calculated in accordance with the tariff prescribed under section *fifty bis*, have been paid or offered to him, impose upon the said person a fine not exceeding fifty rand, and in default of payment, imprisonment for a period not exceeding three months, whether or not such person is otherwise subject to the jurisdiction of the court.”.

10. The Magistrates Courts Ordinance, 1963, is hereby amended by the insertion of the following section after section *fifty*:—

Insertion of section 50bis in Ordinance 29 of 1963.

“Witness fees.”

50bis. (1) The Administrator may from time to time by notice in the *Official Gazette* prescribe a tariff of allowances which shall be paid to a witness in civil proceedings or to any person necessarily required to accompany any such witness on account of his youth or infirmity due to old age or any other infirmity.

(2) Such notice may differentiate between persons according to the distances which they have to travel to attend the court to which they are summoned or subpoenaed or according to their professions, callings or occupations or between different classes of persons, and may empower such officers in the service of the State as may be specified therein, in cases where payment of allowances in accordance with the tariffs so prescribed may cause undue hardship, to order payment of allowances in accordance with a higher tariff than the tariff so prescribed.

(3) Notwithstanding anything to the contrary in any law contained the court may order that no allowances or only a portion of the allowances prescribed shall be paid to any witness.”.

11. The Magistrates Courts Ordinance, 1963, is hereby amended by the insertion of the following section after section *seventy-four*:—

Insertion of section 74bis of Ordinance 29 of 1963.

“Review of conditions of sale of immovable property to be sold in execution of a Supreme Court judgment.”

74bis. Notwithstanding anything to the contrary in any law contained, the court may, on the application of any interested party review and confirm, modify or settle the conditions of sale in respect of any immovable property to be sold in execution of any judgment of any division of the Supreme Court of South Africa.”.

12. The Magistrates Courts Ordinance, 1963, is hereby amended by the substitution for sub-section (2) of section ninety-two of the following sub-section:—

Amendment of section 92 of Ordinance 29 of 1963.

"(2) If upon the conviction of an accused person after summary trial it is brought to the notice of the presiding judicial officer before sentence is passed, that the accused has previous convictions which in the opinion of that officer, would justify a sentence in excess of his jurisdiction he may set aside his findings and shall in such event also set aside his finding in respect of any other accused person who has been convicted after being tried jointly with such first mentioned accused person, and the proceedings shall be deemed to have been a preparatory examination, unless, in the case of a trial by a court which is not the court of a regional division, the presiding judicial officer on the application of the public prosecutor, directs that the case be tried afresh by the court of a regional division."

13. The Magistrates Courts Ordinance, 1963, is hereby amended by the substitution for section one hundred and two of the following section:—

Amendment of section 102 of Ordinance 29 of 1963.

"Execution of sentence not suspended unless bail granted."

102. (1) Subject to the provisions of section one hundred and three the execution of any sentence shall not be suspended by the transmission of, or the obligation to transmit, the record for review unless a magistrate of the court which imposed the sentence thinks fit to order that the convicted person be released on bail: Provided that bail may be refused in respect of a sentence of a fine or, in default of payment, imprisonment, for the sole reason that the magistrate has reason to believe that the convicted person is able to pay the fine.

(2) The recognizance which shall be taken on the release on bail of the convicted person shall be taken by the magistrate from the convicted person alone or from him and one or more sureties in the discretion of the magistrate according to the nature and circumstances of the case.

(3) A condition of the recognizance shall be that the convicted person shall, at such time and place as may be specified in the recognizance, upon service in the manner prescribed by the rules of a written request upon him or at a place mentioned in the recognizance, pay any fine or surrender himself to undergo any imprisonment he may be required to pay or undergo at the conclusion of the proceedings on review.

(4) The magistrate may add to the recognizance any condition he may deem necessary or advisable in the interests of justice, *inter alia*, as to —

- (a) times and places at which and persons to whom the convicted person shall personally present himself;
- (b) places where he is forbidden to be;
- (c) any other matter relating to his conduct.

(5) The magistrate of the district where the convicted person is in custody may, notwithstanding anything to the contrary in any law contained, *mero motu* release him on bail as aforesaid, if it appears that the judge to whom the record aforesaid has been submitted, has not endorsed his certificate thereon in terms of sub-section (1) of section ninety-nine.

(6) The provisions of sections ninety-eight up to and including one hundred and one, one hundred and three up to and includ-

ing *one hundred and four* and *one hundred and six* up to and including *one hundred and ten* of the Criminal Procedure Ordinance, 1963 (Ordinance 34 of 1963) shall *mutatis mutandis* apply with reference to the granting of bail pending review".

14. The Magistrates Courts Ordinance, 1963, is hereby amended by the substitution in sub-section (2) of section *one hundred and three* for the words

Amendment of section 103 of Ordinance 29 of 1963.

"shall not give sufficient bail to appear after being served at some place to be mentioned in the bail bond or recognizance with a written notice signed by the clerk of the court requiring him so to do"

of the words

"has not been released on bail".

15. The Post Office Ordinance, 1963, is hereby amended by the substitution for section *one hundred and eleven* of the following section:—

Substitution of new section for section 111 of Ordinance 30 of 1963.

Detention of postal articles and telegrams suspected of being concerned with offences and action to be taken in connection therewith.

111. Notwithstanding anything to the contrary in any law contained any postal article or telegram which is reasonably suspected of containing which will afford evidence of the commission of any offence or is reasonably suspected of being sent in order to further the commission of any offence or to prevent the detection of any offence, shall be detained by the officer in charge of any post office or telegraph office in which it is or through which it passes, and the Director may bring the detention of any such postal article or telegram to the notice of the Attorney-General or, at the request of the Attorney-General cause any such postal article or telegram to be handed over to any public prosecutor."

16. (1) The Marriage Ordinance, 1963, is hereby amended by the insertion in paragraph (a) of section *ten* after the word "belongs" of the words "or where in the opinion of the minister of religion of the congregation in question or his duly authorized substitute he or she usually attends divine service".

Amendment of section 10 of Ordinance 33 of 1963.

(2) In deciding on the validity of any marriage solemnized after the commencement of the Marriage Ordinance, 1963, which has not before the commencement of this Ordinance been declared invalid by a competent court, section *ten* of the said ordinance shall be construed as if sub-section (1) of this section was in force on the date on which such marriage was solemnized and had been in force at all relevant times prior to that date.

17. The Marriage Ordinance, 1963, is hereby amended by the insertion in sub-section (1) of section *thirteen* after the word "published" where it occurs for the first time of the words "or his duly authorized representative."

Amendment of section 13 of Ordinance 33 of 1963.

18. (1) This Ordinance shall be called the General Law Amendment Ordinance, 1965.

Short title.

(2) Sections *six* up to and including *fourteen* shall come into operation on a date to be fixed by the Administrator by proclamation in the *Official Gazette*.