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GOVERNMENT GAZETTE

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No. 8702

OFFICE OF THE PRIME MINISTER

KANTOOR VAN DIE EERSTE MINISTER

No. 1020.

11 May 1983

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

No. 59 of 1983: Criminal Law Amendment Act, 1983.

No. 1020.

11 Mei 1983

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 59 van 1983: Wysigingswet op die Strafwet, 1983.

Act No. 59, 1983

CRIMINAL LAW AMENDMENT ACT, 1983

GENERAL EXPLANATORY NOTE:**[]**

Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Trespass Act, 1959, so as to increase the penalties for contravention of the said Act; to amend the Stock Theft Act, 1959, so as to do away with an exception and an obligation applied in relation to the furnishing of a document of identification or the acquisition of a certain certificate in respect of stock or produce disposed of by a non-European who is not the registered owner of land, or obtained from any such non-European; to empower a purchaser of stock or produce who in terms of an agreement of sale does not become the owner thereof merely by the delivery thereof, to drive, convey or transport such stock or produce along any public road as if he were the owner thereof; to increase certain penalties for contravention of the said Act; to further regulate the compensation for damage to or loss of stock or produce; and to delete an obsolete provision and to replace certain obsolete expressions; to amend the General Law Amendment Act, 1972, so as to delete an obsolete provision; to repeal the Stock Theft Amendment Act, 1973; to amend the Criminal Procedure Act, 1977, so as to provide for the appointment of an additional attorney-general; to further regulate the search of premises and arrests by private persons without warrant; to further regulate the power of a magistrate's court to enquire into an accused person's failure to appear on a summons in any other magistrate's court; to provide for the cancellation of bail at the request of an accused person; to further regulate the obligation of an accused person to plead in a magistrate's court on a charge to be adjudicated in a division of the Supreme Court of South Africa or in a regional court; to provide for the reception of the record of the proceedings in a magistrate's court as part of the record of the court in which an accused person is arraigned for summary trial; to provide further for the places to which proceedings may be adjourned and for the suspension of sentences of imprisonment; to make different provision for the review of suspended sentences; to provide further for the remittal of a case after the setting aside of a conviction and sentence based on a plea of guilty; and to replace certain obsolete expressions; and to provide for matters connected therewith.

(Afrikaans text signed by the State President.)
(Assented to 4 May 1983.)

Act No. 59, 1983

CRIMINAL LAW AMENDMENT ACT, 1983

BE IT ENACTED by the State President and the House of Assembly of the Republic of South Africa, as follows:—

Substitution of section 2 of Act 6 of 1959.

1. The following section is hereby substituted for section 2 of the Trespass Act, 1959:

“Penalties. 2. Any person convicted of an offence under section 1 shall be liable to a fine not exceeding **[twenty-five pounds] R2 000** or to imprisonment for a period not exceeding **[three months] two years** or to both such fine and such imprisonment.”

Amendment of section 1 of Act 57 of 1959.

2. Section 1 of the Stock Theft Act, 1959, is hereby amended 10 by the deletion of the definition of “non-European”.

Amendment of section 6 of Act 57 of 1959.

3. Section 6 of the Stock Theft Act, 1959, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) Any person (including any auctioneer, agent or market master **[but excluding any non-European who is not the registered owner of any land]**) who sells, barter, gives or in any other manner disposes of any stock to any other person shall at the time of delivery to such other person of the stock so sold, bartered, given or disposed of, furnish such other person with a document (hereinafter called a document of identification)—”

Substitution of section 7 of Act 57 of 1959, as amended by section 38 of Act 80 of 1964.

4. The following section is hereby substituted for section 7 of the Stock Theft Act, 1959:

“Acquisition of stock or produce from persons whose places of residence are unknown. 7. (1) Any person who in any manner (otherwise than at a public sale) acquires or receives into his possession, or any auctioneer, agent or market master who receives into his possession for the purpose of sale, from any **[non-European who is not, to his knowledge, the registered owner of any land or from any] person** who has no known place of residence, any stock or produce without obtaining at the time of delivery of such stock or produce to him a certificate, issued not more than thirty days before the delivery, from— 35

(a) **[(in the case of such non-European)] the employer, chief, headman or subheadman of [such non-European] the person concerned or a deputy of such chief or an ‘official witness’, as defined in Chapter I [of Part I] of the [Schedule to Act No. 19 of 1891 of Natal] Code of Zulu Law, as referred to in section 24 of the Black Administration Act, 1927 (Act No. 38 of 1927);** 40

(b) a justice of the peace;

(c) a policeman of or above the rank of sergeant; 45

(d) a dipping foreman;

(e) a stock inspector; **[or]**

(f) two residents of substantial means of the neighbourhood in which the transaction takes place; 50

[(b)] (g) [(in the case of such other person) a justice of the peace, a policeman of or above the rank of sergeant, two residents of substantial means of the neighbourhood in which the transaction takes place or] the person from whom such [other] 55 person purchased or acquired such stock or produce.

giving a description of the stock or produce and certifying that to the best of his or their knowledge and belief such **[non-European or other] person** is en- 60

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titled to dispose of or deal with such stock or produce, shall be guilty of an offence.

(2) Any person who has obtained such a certificate shall retain it in his possession for a period of at least three months.

(3) Any person may within the said three months demand an inspection of such certificate, and upon such demand the person having possession of such certificate shall produce it for inspection to the person making the demand.

(4) Any person who fails to comply with the provisions of subsection (2) or any demand made under subsection (3) or who wilfully makes any false statement in a certificate referred to in subsection (1) shall be guilty of an offence."

Amendment of section 8 of Act 57 of 1959.

5. Section 8 of the Stock Theft Act, 1959, is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

"(2) No person shall cause or permit any stock or produce [belonging to him] of which he is the owner to be driven, conveyed or transported by any other person on or along any public road without furnishing him with a removal certificate which he is required to have in terms of subsection (1)."; and

(b) by the addition of the following subsection:

"(9) For the purposes of subsections (1), (2) and (8)

(d) 'owner' shall include any person who obtained stock or produce by virtue of an agreement of sale in terms of which any such person does not become the owner of such stock or produce merely by virtue of the delivery to him of such stock or produce."

Amendment of section 13 of Act 57 of 1959.

6. Section 13 of the Stock Theft Act, 1959, is hereby amended—

(a) by the deletion of subparagraph (ii) of paragraph (a);

(b) by the substitution for subparagraph (v) of the said paragraph (a) of the following subparagraph:

"(v) a fine not exceeding [five hundred pounds] R2 000; or"; and

(c) by the deletion of paragraph (c).

Substitution of section 14 of Act 57 of 1959.

7. The following section is hereby substituted for section 14 of the Stock Theft Act, 1959:

"Penalty where not otherwise provided for.

14. Any person who is convicted of an offence under this Act for which no penalty is otherwise provided shall be liable to a fine not exceeding [one hundred pounds] R1 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment."

Substitution of section 15 of Act 57 of 1959, as substituted by section 13 of Act 102 of 1972.

8. The following section is hereby substituted for section 15 of the Stock Theft Act, 1959:

"Compensation for damage to or loss of stock or produce.

15. Whenever any court convicts any person of an offence referred to in section 11 (1) (a), (b), (c) or (d) which has caused damage to or loss of stock or produce—

(a) the court shall direct the attention of the owner thereof, if present in court, to the provisions of section [357] 300 of the Criminal Procedure Act, [1955 (Act No. 56 of 1955)] 1977 (Act No. 51 of 1977);

(b) the court, in the case of a magistrate's court, may, notwithstanding the provisions of paragraph (a) of the proviso to subsection (1) of the said section 300, make in accordance with the provisions of the said section 300 an award not exceeding R10 000."

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Amendment of
section 13 of
Act 102 of 1972.

9. Section 13 of the General Law Amendment Act, 1972, is hereby amended by the deletion of subsection (2).

Repeal of
Act 13 of 1973.

10. The Stock Theft Amendment Act, 1973, is hereby repealed.

Amendment of
section 3 of
Act 51 of 1977.

11. Section 3 of the Criminal Procedure Act, 1977, is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) The State President shall, subject to the laws relating to the public service, appoint in respect of the area of jurisdiction of each provincial division and of the Witwatersrand Local Division of the Supreme Court of South Africa an attorney-general, who, on behalf of the State and subject to the provisions of this Act—

(a) shall have authority to prosecute, in the name of the Republic in criminal proceedings in any court in the area in respect of which he has been appointed, any person in respect of any offence in regard to which any court in the said area has jurisdiction; and

(b) may perform all functions relating to the exercise of such authority.”; and

(b) by the addition to subsection (6) of the following paragraph:

“(c) Notwithstanding any provision of this Act or any other law to the contrary, the attorney-general appointed in respect of the area of jurisdiction of the Transvaal Provincial Division of the Supreme Court of South Africa shall not exercise any authority or perform any functions in respect of the area of jurisdiction of the Witwatersrand Local Division of the Supreme Court of South Africa.”

Substitution of
section 24 of
Act 51 of 1977.

12. The following section is hereby substituted for section 24 of the Criminal Procedure Act, 1977:

“Search of
premises.

24. Any person who is lawfully in charge or occupation of any [land] premises and who reasonably suspects that stolen stock or produce, as defined in any law relating to the theft of stock or produce, is [on any premises upon that land] on or in the premises concerned, or that any article has been placed [on such premises] thereon or therein or is in the custody or possession of any person upon or in such premises in contravention of any law relating to intoxicating liquor, dependence-producing drugs, arms and ammunition or explosives, may at any time, if a police official is not readily available, enter such premises for the purpose of searching such premises and any person thereon or therein, and if any such stock, produce or article is found, he shall take possession thereof and forthwith deliver it to a police official.”

Amendment of
section 42 of
Act 51 of 1977.

13. Section 42 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The owner, lawful occupier or person in charge of [land] property on or in respect of which any person is found committing any offence, and any person authorized thereto by such owner, occupier or person in charge, may without warrant arrest the person so found.”

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Amendment of
section 55 of
Act 51 of 1977.

14. Section 55 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for paragraph (a) of subsection (3) of the following paragraph:

“(a) If, in any case in which a warrant of arrest is issued, it was permissible for the accused in terms of section 57 to admit his guilt in respect of the summons on which he failed to appear and to pay a fine in respect thereof without appearing in court, and the accused is arrested under such warrant in [a magisterial district] the area of jurisdiction of a magistrate’s court other than the [magisterial district] magistrate’s court [in] which issued the warrant of arrest [was issued, the magistrate’s court of such other district] such other magistrate’s court may, notwithstanding any provision of this Act or any other law to the contrary, and if satisfied that the accused has, since the date on which he failed to appear on the summons in question, admitted his guilt in respect of that summons and has paid a fine in respect thereof without appearing in court, in a summary manner enquire into his failure to appear on such summons and, unless the accused satisfies the court that his failure was not due to any fault on his part, convict him of the offence referred to in subsection (1) and sentence him to a fine not exceeding one hundred rand or to imprisonment for a period not exceeding three months.”

Insertion of
section 68A in
Act 51 of 1977.

15. The following section is hereby inserted in the Criminal Procedure Act, 1977, after section 68:

“Cancellation of bail at request of accused. 68A. Any court before which a charge is pending in respect of which the accused has been released on bail may, upon application by the accused, cancel the bail and refund the bail money if the accused is in custody on any other charge or is serving a sentence.”

Substitution of
section 119 of
Act 51 of 1977,
as substituted by
section 3 of
Act 64 of 1982.

16. The following section is hereby substituted for section 119 of the Criminal Procedure Act, 1977:

“Accused to plead in magistrate’s court on instructions of attorney-general. 119. When an accused appears in a magistrate’s court and the alleged offence may be tried by a superior court only or is of such a nature or magnitude that it merits punishment in excess of the jurisdiction of a magistrate’s court, the prosecutor may, notwithstanding the provisions of section 75, on the instructions of the attorney-general, whether in general or in any particular case, put the charge, as well as any other charge which shall, in terms of section 82, be disposed of in a superior court, to the accused in the magistrate’s court, and the accused shall, subject to the provisions of sections 77 and 85, be required by the magistrate to plead [to the charge] thereto forthwith.”

Amendment of
section 121 of
Act 51 of 1977,
as amended by
section 6 of
Act 56 of 1979.

17. Section 121 of the Criminal Procedure Act, 1977, is hereby amended by the insertion in subsection (5) after paragraph (a) of the following paragraph:

“(aA) The record of the proceedings in the magistrate’s court shall, upon proof thereof in the court in which the accused is arraigned for a summary trial, be received as part of the record of that court against the accused, and any admission by the accused shall stand and form part of the record of that court unless the accused satisfies the court that such admission was incorrectly recorded.”

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Substitution of section 122A of Act 51 of 1977, as inserted by section 7 of Act 56 of 1979.

18. The following section is hereby substituted for section 122A of the Criminal Procedure Act, 1977:

"Accused to plead in magistrate's court on charge to be tried in regional court.

122A. When an accused [is brought before a magistrate's court under section 50 (1), including an accused released on bail under section 59 or on warning by a police official under section 72] appears in a magistrate's court and the alleged offence may be tried by a regional court but not by a magistrate's court or the prosecutor informs the court that he is of the opinion that the alleged offence is of such a nature or magnitude that it merits punishment in excess of the jurisdiction of a magistrate's court but not of the jurisdiction of a regional court, the prosecutor may, notwithstanding the provisions of section 75, put the relevant charge, as well as any other charge which shall, in terms of section 82, be disposed of by a regional court, to the accused, who shall, subject to the provisions of sections 77 and 85, be required by the magistrate to plead [to the charge] thereto forthwith."

Substitution of section 169 of Act 51 of 1977.

19. The following section is hereby substituted for section 169 of the Criminal Procedure Act, 1977:

"Court may adjourn proceedings to any place.

169. A court before which criminal proceedings are pending, may from time to time during such proceedings, if the court deems it necessary or expedient that the proceedings be continued at any place within its area of jurisdiction other than the one where the court is sitting, adjourn the proceedings to such other place, or, if the court with reference to any circumstance relevant to the proceedings deems it necessary or expedient that the proceedings be adjourned to a place other than the place at which the court is sitting, adjourn the proceedings, on the terms which to the court may seem proper, to any such place, whether within or outside the area of jurisdiction of such court, for the purpose of performing at such place any function of the court relevant to such circumstance."

Amendment of section 189 of Act 51 of 1977.

20. Section 189 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) If any person present at criminal proceedings is required to give evidence at such proceedings and refuses to be sworn or to make an affirmation as a witness, or, having been sworn or having made an affirmation as a witness, refuses to answer any question put to him or refuses or fails to produce any book, paper or document required to be produced by him, the court may in a summary manner enquire into such refusal or failure and, unless the person so refusing or failing has a just excuse for his refusal or failure, sentence him to imprisonment for a period not exceeding two years or, where the criminal proceedings in question relate to an offence referred to in Part III of Schedule 2 or in [the] Schedule 3 to the Internal Security Act, [1950 (Act 44 of 1950)] 1982 (Act No. 74 of 1982), to imprisonment for a period not exceeding five years."

Amendment of section 297 of Act 51 of 1977.

21. Section 297 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for subsection (6) of the following subsection:

"(6) (a) A court which sentences a person to a term of imprisonment as an alternative to a fine or, if the court which has imposed such sentence was a regional court or a magistrate's court, a magistrate, may, where

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the fine is not paid; at any stage before the expiration of the period of imprisonment, suspend the operation of the sentence and order the release of the person concerned on such conditions relating to the payment of the fine or such portion thereof as may still be due, as to the court or, in the case of a sentence imposed by a regional court or magistrate's court, the magistrate, may seem expedient, including a condition that the person concerned take up a specified employment and that the fine due be paid in instalments by the person concerned or his employer: Provided that the power conferred by this subsection shall not be exercised by a magistrate where the court which has imposed the sentence has so ordered."

- (b) A court which has suspended a sentence under paragraph (a), whether differently constituted or not, or any court of equal or superior jurisdiction, or a magistrate who has suspended a sentence in terms of paragraph (a), may at any time—
- (i) further suspend the operation of the sentence on any existing or additional conditions which to the court or magistrate may seem expedient; or
 - (ii) cancel the order of suspension and recommit the person concerned to serve the balance of the sentence."

Amendment of section 302 of Act 51 of 1977.

22. Section 302 of the Criminal Procedure Act, 1977, is hereby amended by the deletion of paragraph (b) of subsection (2).

Amendment of section 312 of Act 51 of 1977.

23. Section 312 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Where a conviction and sentence under section 112 are set aside on review or appeal on the ground [only] that any provision of subsection (1) (b) or subsection (2) of that section was not complied with, or on the ground that the provisions of section 113 should have been applied, the court in question shall remit the case to the court by which the sentence was imposed and direct that court to comply with the provision in question or to act in terms of section 113, as the case may be."

Short title and commencement.

24. (1) This Act shall be called the Criminal Law Amendment Act, 1983.

(2) Sections 3 and 4 shall come into operation on the expiration of a period of 30 days after the date on which this Act is published in the *Gazette*.

(3) Section 11 shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.