

Interim measures brought about through Attorneys Amendment Act

By Kevin O'Reilly

The Attorneys Amendment Act 40 of 2014 was promulgated in GG38821/27-5-2015 in December 2014 and came into operation on 29 May 2015.

Its aim is to amend the Attorneys Act 53 of 1979 as an interim measure.

Below is a summary of the sections practitioners should take note of.

Section 3

A candidate attorney may do their articles at a law clinic if that law clinic has been certified by the law society having jurisdiction in that area.

Section 4 and 4A

Prior to entering into articles or starting community service, a candidate attorney must submit the required documents to the secretary of the law society having jurisdiction in that area.

Section 5

Within two months of date of contract, the principal to the candidate attorney must lodge the original contract of articles or service with the secretary of the law society that has jurisdiction in that area.

Section 8

An article clerk may only appear in a magistrate's court and not the High Court, Supreme Court of Appeal or the Constitutional Court. An article clerk can appear instead of his or her principal and charge the same fee. An article clerk may only appear in the regional court, as per s 2 of the Magistrates' Court Act 32 of 1944, once the requirements of the principal Act have been complied with, namely, the article clerk practiced as an advocate for six months or has served one year of the contract of articles or previously acted as a state advocate, magistrate or state prosecutor for one year. An article clerk may request a certificate from the law society having jurisdiction to issue a certificate to confirm that he or she meets the requirements to appear in the regional court.

The society has discretion to issue such certificate. Should the principal request such certificate from the society, the society must provide same on receipt of the prescribed fee.

Section 9

Unless the article clerk has received written consent from the law society having jurisdiction in the area, an article clerk may not have any other occupation. Further, he or she may not have interest in the company, therefore, they cannot profit share.

Section 10

One may cede one's articles within two months of starting one's articles. This requires one to notify the law society of the cession and provide affidavits.

Section 19

To be admitted or readmitted one must send his or her application along with supporting documents to the relevant law society –

- at least one month (admission); or
- at least three months for readmission before the date of his or her application.

Section 20

If one was admitted as an attorney, including those admitted in former Republics of Transkei, Bophuthatswana, Venda and Ciskei (TBVC), then to have one's name placed on the roll of attorneys one needs to obtain a certificate stating one has not been struck off the roll and that there are no pending cases against one.

Section 23

This section allows a firm to have a name of its choice provided it has been approved by the law society.

Section 49

One may bring an application against the Fidelity Fund in the magistrate's court. Section 19 states: 'Section 49 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection: "(4) Any action against the fund may, subject to the provisions of this Act [and the regulations made thereunder], be brought in [any provincial or local division of the Supreme [Court]] the High Court or a magistrate's court having jurisdiction within the area of jurisdiction of which the cause of action arose.'"

Section 55 and 77

The sections dealing with the TBVC areas have been repealed in its entirety due to the dissolution of the law societies in those areas.

Section 71

Allows a law society to investigate unprofessional/dishonest and unworthy conduct of a practitioner on the roll, if the practitioner falls within its jurisdiction. This applies irrespective of whether that person is a member of that society. The society may take steps against such a person regardless of when or where such conduct took place, or when the person may or may not have become a member of the society.

Section 78

The section highlights that only the law society with jurisdiction may inspect a practitioner's books or bring an application to have a *curator bonis* appointed over the trust account of a practice.

Section 86

This section addresses the practitioners and persons who were admitted or obtained degrees in the TBVC areas will be recognised and be allowed to continue practicing or commence articles, as long as such person has complied with the requirements of the law society having jurisdiction.

Section 86A

This section was included to confirm that the amendment applies to the entire Republic of South Africa.

In conclusion, the Amendment Act has brought about uniformity in the profession that can be seen by the dissolving of the old TBVC law societies.

Kevin O'Reilly MA (NMMU) is a sub-editor at *De Rebus*.