

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
PERFORMING ANIMALS
PROTECTION AMENDMENT
BILL**

[B 9—2015]

*(As agreed to by the Portfolio Committee on Agriculture, Forestry and Fisheries
(National Assembly))*

[B 9A—2015]

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AMENDMENTS AGREED TO

PERFORMING ANIMALS PROTECTION AMENDMENT BILL

[B 9—2015]

CLAUSE 3

1. On page 2, in line 8, to omit “3L” and to substitute with “3P”.
2. On page 3, from line 38, to omit subsection (1) and to substitute with the following:

“(1) The National Licensing Officer may delegate any of his or her functions under this Act to—
 (a) an officer, in consultation with the relevant head of department;
 or
 (b) an expert or other person appointed in terms of section 3D.”.

3. On page 3, after line 43, to insert the following:

“(3) A person contemplated in subsection (1) must comply with the qualifications set out in section 3B.”.

4. On page 3, from line 44, to omit section 3F and to substitute with the following:

“Application for licence

3F. (1) Any person who—
 (a) intends to exhibit an animal;
 (b) trains an animal to be exhibited; or
 (c) uses an animal for safeguarding,
 must apply to the National Licensing Officer for the district in which the permanent address of the applicant is situated and must pay the prescribed fee.
 (2) An application for a licence in terms of this Act must be in writing and must include the following information:
 (a) A detailed description of the animal that the applicant intends to exhibit or train for exhibition or use for safeguarding;
 (b) a detailed description of the general nature of the performances in which the animal is intended to be exhibited or trained to be exhibited;
 (c) a detailed description of the general nature of the safeguarding in which the animal is intended to be used;
 (d) a detailed description of the type of living quarters that will be provided to the animal when performing or not performing, being exhibited or trained to be exhibited or for safeguarding;
 (e) meal plans and general practices that the applicant will follow to maintain and ensure the health and wellbeing of the animal;
 (f) the number of hours per day that the animal will be required to perform, be exhibited, trained to be exhibited or safeguarded;
 (g) written motivation for the granting of the licence;
 (h) information as to whether the applicant has ever held or been refused a certificate or licence in the past; and
 (i) proof of payment of the prescribed fee.

(3) The National Licensing Officer may, with the consent of the applicant, visit the premises under the lawful control of the applicant to assess the suitability thereof for the intended exhibition, training or safeguarding of animals.”.

5. On page 4, from line 1, to omit section 3G and to substitute with the following:

“Consideration and granting of applications for licences by National Licensing Officer

3G. (1) The National Licensing Officer may grant an application for any licence if he or she is satisfied—

- (a) with the information furnished by the applicant as contemplated by section 3F(2); and
 (b) that the premises, accommodation, equipment and facilities that are utilised for the training, exhibition or performance of the animal are safe and will not cause harm to the animal.

(2) The National Licensing Officer must consider and decide on an application within 45 days after receipt of the application.

6. On page 4, in line 34, to omit “3I” and to substitute with “3H”.
 7. On page 4, in line 49, to omit “3J” and to substitute with “3I”.
 8. On page 4, in line 49, to omit “21” and to substitute with “7”.
 9. On page 4, after line 52, to insert the following:

“Duration of licence

3J. A licence is valid for a period of 12 calendar months from the date of issue thereof.

Validity of licence

3K. A licence is valid for use anywhere within the Republic of South Africa, unless the exhibition, training for exhibition of any animal or use of an animal for safeguarding is specifically prohibited in terms of any Provincial law or Municipal by-law in force within that specific jurisdiction.”.

10. On page 5, in line 2, to omit “3K” and to substitute with “3L”.
 11. On page 5, after line 11, to insert the following:

“(3) If a licence is refused, suspended, cancelled or withdrawn, an applicant must cease the training, exhibition or use of an animal for safeguarding.”.

12. On page 5, after line 16, to insert the following:

“Right to appeal

3M. A person who feels aggrieved by any decision or action by the National Licensing Officer in terms of this Act may appeal in the prescribed manner to the Minister against such decision or action.

Appeal Board, composition and membership

3N. (1) The Minister may constitute a board known as the Appeal Board to investigate and consider any appeal referred to it in terms of section 3O(1).

(2) The Board must consist of at least three members appointed by the Minister, of whom—

- (a) one person must be appointed on account of his or her knowledge in the relevant fields of the law; and
- (b) two or more persons must have expert knowledge of the subject of the appeal.

(3) The person referred to in subsection 2(a) must be designated as the chairperson.

(4) The remuneration of a member of the Board must be prescribed.

(5) Any person appointed in terms of subsection (2) must recuse himself or herself as a member of the Board if he or she has any direct or indirect personal interest in the outcome of the appeal.

Investigation and consideration by Board

3O. (1) The Minister may refer an appeal to the Board.

(2) An appeal must be heard on the date, time and place determined by the chairperson.

(3) The chairperson must inform the appellant and any other party that has an interest in the appeal in writing of the date, time and place of the hearing.

(4) The chairperson may, for the purposes of the hearing of an appeal—

- (a) summon any person who may have material information concerning the subject of the hearing or who has in his or her possession or custody or under his or her control any document which has any bearing upon the subject of the hearing, to appear before the Board at a date, time and place specified in the summons, to be questioned or to produce that document, and the chairperson may retain for examination any document so produced; and
- (b) administer an oath to or accept an affirmation from any person called as a witness at the hearing.

(5) A person who appeals in terms of section 3M and the National Licensing Officer may be represented.

(6) If a member of the Board—

- (a) dies during the investigation of the appeal or so soon before the commencement of the investigation that the vacancy cannot be filled in time;
- (b) is unable to act and another person cannot be appointed in time; or
- (c) is, after the investigation has commenced, unable to continue therewith,

the parties may agree that the investigation be continued by the remaining members of the Board.

(7) Where the member of the Board who has died or has become incapacitated as envisaged in subsection (6) was or is the chairperson of the Board, the Minister must designate one of the remaining members of the Board to act as chairperson.

Consideration of appeal by Minister

- 3P.** (1) Where the Minister has referred an appeal to the Board in terms of section 3O(1), he or she may—
- (a) confirm or set aside the recommendations of the Board; and
 - (b) order the National Licensing Officer to execute the decision in connection therewith.
- (2) Where the Minister considers an appeal, he or she may—
- (a) confirm, set aside or vary the decision of the National Licensing Officer; and
 - (b) order the National Licensing Officer to execute the decision in connection therewith.
- (3) The decision of the Minister must be in writing and a copy thereof must be furnished to the National Licensing Officer, appellant and any other party that has an interest in the appeal.
- (4) If the Minister—
- (a) sets aside any decision or action by the National Licensing Officer, the prescribed fee paid by the appellant in respect of the appeal must be refunded to him or her; or
 - (b) varies any decision or action by the National Licensing Officer, the Minister may direct that the whole or any part of such fee, be refunded to the appellant.”.

NEW CLAUSE

1. That the following be a new clause:

Amendment of section 4 of Act 24 of 1935, as substituted by section 4 of Act 7 of 1991

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

“Right of entry

- 4.** In addition to the powers conferred by any other law, any police officer may—
- (a) at any reasonable time enter upon any premises, place or vehicle in which animals are maintained, or kept or confined for the purposes of exhibition or of being trained or of being transported or in which **[dogs]** animals used for safeguarding are maintained, kept, confined or conveyed;
 - (b) inspect any such animals, **[dogs,]** premises, places or vehicles and may fully enquire into the measures and methods by which such animals **[or dogs]** are controlled, restrained, trained or used and the course of feeding such animals **[or dogs]**; and
 - (c) during any exhibition of trained animals, or during the use of **[dogs]** animals for safeguarding, or at any other time, enter upon any premises, place or vehicle or portion thereof used in connection with such exhibition or use in order to inspect such premises, place or vehicle, the animals **[or dogs]** present therein and the conditions under which such animals **[or dogs]** are maintained, controlled and fed during such exhibition or use and at other times.”.

NEW CLAUSE

1. That the following be a new clause:

Amendment of section 5 of Act 24 of 1935, as substituted by section 2 of Act 20 of 1985 and amended by section 5 of Act 7 of 1991

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

“Obstruction of police officer

5. Any person who wilfully obstructs, delays or otherwise interferes with a police officer in the exercise of the powers herein granted, or who conceals any animal with intent to defeat the exercise of such powers, or otherwise hampers or impedes the exercise of such powers **[shall be]**, is guilty of an offence and liable on conviction to a fine not exceeding **[R4 000]** **R20 000** or to imprisonment for a period not exceeding **[twelve months]** **five years** in addition to any other penalty imposed for the contravention of any provision of this Act or any regulation made thereunder.”.

NEW CLAUSE

1. That the following be a new clause:

Amendment of section 7 of Act 24 of 1935, as amended by section 4 of Act 7 of 1972, section 1 of Act 54 of 1983, section 3 of Act 20 of 1985 and section 6 of Act 7 of 1991

6. The following section is hereby substituted for section 7 of the principal Act:

“Regulations

7. The Minister may, in addition to any other power specially given herein, make regulations not inconsistent with this Act for prescribing any or all of the following matters[—]:

- (a) **[the]** The form of application, [and] information to be supplied and the fee to be paid upon application for the granting of a licence; [and for the renewal thereof];
- (b) (i) the form of **[certificate]** licence which [shall] must be issued in respect of licensed animals [or dogs] and the form of amendments which may be made on such [certificates] licences;
 - (ii) the information to be supplied for the issuing of a **[certificate]** licence referred to in subparagraph (i), which includes the manner of identification of an animal; [or dog];
- (c) the method and form of confinement and accommodation of any animal class, species or variety of animals in respect of which a **[certificate]** licence has been issued, whether travelling, or being transported or stationary;
- (d) any other reasonable requirement which may be necessary to prevent cruelty or suffering in the exhibition, training, maintenance, use or travelling of animals in respect of which a **[certificate]** licence has been granted; [and]
- (dA) the manner in which a person may appeal against a decision or action taken by the National Licensing Officer;

(dB) the fee to be paid by a person who appeals a decision or action taken by the National Licensing Officer;
(dC) the remuneration to be paid to a member of the Board; and
(e) a penalty of a fine not exceeding [R4 000] R20 000 or to imprisonment for a period not exceeding [twelve months] five years for a contravention of any regulation,
 and generally for the better carrying out of the objects and purposes of this Act.”.

NEW CLAUSE

1. That the following be a new clause:

Amendment of section 8 of Act 24 of 1995, as amended by section 5 of Act 7 of 1972, section 2 of Act 54 of 1983, section 4 of Act 20 of 1985 and section 7 of Act 7 of 1991

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

“Penalty

8. (1) Any person contravening the provisions of this Act or any regulation made thereunder for which a penalty has not been prescribed or any condition of a licence [or certificate shall be] is guilty of an offence and liable on conviction to a fine not exceeding [R4 000] R20 000 or to imprisonment for a period not exceeding [twelve months] five years.

[(2) In addition to the penalty provided for in subsection (1) it shall be lawful for a magistrate to suspend for such period as he may determine not exceeding one year the licence of any person convicted of a second or subsequent offence under this Act or any other law relating to the prevention of cruelty to animals.

(3) Every magistrate shall endorse upon the licence of every holder the particulars of every offence of which such holder has been convicted and the penalty imposed.]”.

CLAUSE 4

1. On page 5, in line 17, after “1935”, to insert “, as amended by section 7 of Act 7 of 1972 and section 9 of Act 7 of 1991”.
2. On page 5, after line 18, to insert the following:
 - “(a) by the substitution for the definition of “animal” of the following definition:

“ ‘animal’ [has the meaning assigned to it by the Animal Protection Act, 1962 (Act No. 71 of 1962), but does not include any reptile] means any equine, bovine, sheep, goat, pig, fowl, ostrich, dog, cat or other domestic animal or bird, or any wild animal or wild bird which is in captivity or under the control of a person;”.
3. On page 5, in line 19, to omit “(a)” and to substitute with “(b)”.
4. On page 5, in line 19, to omit the second “definition” and to substitute with “definitions”.

5. On page 5, in line 20, to omit the definition of “Animal Scientist” and to substitute with the following definition:

“ ‘Animal Scientist’ means a person registered as a professional natural scientist in the field of Animal Science in terms of section 20(3)(a) of the Natural Scientific Professions Act, 2003 (Act No. 27 of 2003);”.
6. On page 5, after line 22, to insert the following definition:

“ ‘Board’ means the board referred to in section 3N(1);”.
7. On page 5, after line 22, to insert the following:

“(c) by the deletion of the definition of “certificate”;

(d) by the insertion after the definition of “exhibit” of the following definition:

“ ‘head of department’ means a head of department as defined in the Public Service Act, 1994 (Proclamation 103 of 1994);”.
8. On page 5, in line 23, to omit “(b)” and to substitute with “(e)”.
9. On page 5, from line 29, to omit paragraph (c) and to substitute with the following:

“(f) by the substitution for the definition of “use for safeguarding” of the following definition:

“ ‘use for safeguarding’ means the training, use or placing at disposal for gain, or the letting, of [a dog] an animal, with a view to or for the protection of persons and property[.];”; and
10. On page 5, in line 33, to omit “(d)” and to substitute with “(g)”.

CLAUSE 5

1. Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Insertion of section 11B in Act 24 of 1935

9. The following section is hereby inserted in the principle Act after section 11:

“Transitional arrangements

11B. (1) A licence issued in terms of the repealed section 2 of this Act or a certificate issued in terms of the repealed section 3 of this Act is deemed to have been issued in terms of section 3I of this Act and remains valid until the licence or certificate expires or is suspended, cancelled, withdrawn or amended by the National Licensing Officer.

(2) Anything done or any decision taken in terms of the repealed section 2 or 3 of this Act is deemed to have been done or taken by the National Licensing Officer.

(3) Any application for a licence or certificate made before the commencement of the Performing Animals Protection Amendment Act, 2015, must be processed by the National Licensing Officer in accordance with any criteria contained in the repealed sections 2 and 3 of this Act.

(4) Any investigation conducted or criminal proceedings pending before a court before the commencement of the Performing Animals Protection Amendment Act, 2015, must be processed and finalised as if sections 2 and 3 of this Act had not been repealed.".

NEW CLAUSE

1. That the following be a new Clause:

Amendment of certain expressions in Act 24 of 1935

10. The principal Act is hereby amended by the substitution for the expression "*a dog for safeguarding*", "*any dog for safeguarding*" or "*dogs for safeguarding*", wherever it occurs, of the relevant expression of "*an animal for safeguarding*", "*any animal for safeguarding*" or "*animals for safeguarding*".

LONG TITLE

1. On page 2, in the first line of the long title, after "so as" to insert the following:

"to repeal certain sections and".
2. On page 2, from the third line of the long title, to omit ", train or use of an animal for safeguarding" and to substitute with:

"and train performing animals or use of animals for safeguarding".

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