



The Contemporary Gazette

relevant new legislation for your business



SOUTH AFRICAN INSTITUTE OF
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■ YOUR WEALTH

SAIPA Your Law : Volume 16 Issue 1, 18 January 2021

This Update

This newsletter overviews new relevant National laws up to **18th January 2021**.

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General

1. NOTABLE ONE LINERS

Banks Act (Banks regulations)

The [banks regulations](#) were amended on 1 January 2021.

Border Management Authority Act (Commissioners)

[Chapter 3](#) (commissioners and deputy commissioners) commenced 1 January 2021.

Note: It seems commencement dates must still be gazetted for the remainder of [the Act](#), and different dates may be proclaimed for different sections, [border law enforcement area](#) parts or [ports of entry](#).

Further note: The Act will apply to the exercise by the Authority of its border law enforcement functions within the border law enforcement area and at ports of entry but, unless provided otherwise, will not apply to border functions exercised by the Defence Force, postal services, or SARS customs.

*Final note: Related laws may include, *ia*, the [Animal Diseases Act](#); [Civil Aviation Act](#); [Customs and Excise Act](#); [Game Theft Act](#); [Immigration Act](#); [Merchant Shipping Act](#); [National Environmental Management Act](#); [National Land Transport Act](#); [National Regulator for Compulsory Specifications Act](#); [Perishable Products Export Control Act](#); [Precious Metals Act](#); [Refugees Act](#); [Stock Theft Act](#); and [Tourism Act](#).*

Border Management Authority Act (Draft one-stop border post policy)

The draft policy is available from the Department of Home Affairs. Comment deadline 28 February 2021.

Civil Aviation Act (COVID-19)

[COVID-19 health directions](#) requirements for airline crew amended December 2020.

Competition Act (Final forestry sector impact assessment report)

The report of decisions on matters such as continuity of supply of timber from large vertically integrated firms, and access to supply of timber products for the downstream operations of small vertically integrated and non-integrated downstream players, is available from the Commission.

Competition Act (Land-based public passenger transport market inquiry)

Completion date for the [inquiry](#) to assess general competition; examine price regulation; consider route allocation, licensing and entry requirements; consider operational subsidies and transport plans; and consider transformation, including ownership patterns, further extended to 31 March 2021.

Note: The inquiry focuses on services offered by rail based public passenger transport services (Gautrain and Metrorail) and road based public passenger transport services (commuter buses, long distance buses, app based taxis eg Uber and Taxify, minibus taxis, metered taxis, and localised taxis).

Competition Act (Guidelines for competition in the SA automotive aftermarket industry)

The guidelines are available from the Competition Commission.

Consumer Protection Act / Safety at Sports and Recreational Events Act (COVID-19)

[COVID-19 activities and events directions](#) amended to reflect the current adjusted alert level 3 regulations, including, where relevant, a 30-minute window between classes to allow for cleaning before other classes resume, and sports bodies to adjust commencement time of matches to comply with the cut off 8pm time.

Correctional Services Act (Judicial inspectorate)

CCT 307/19 held that [sections 88A\(1\)\(b\) and 91](#) are constitutionally invalid to the extent that they fail to provide an adequate level of independence to the Judicial Inspectorate for Correctional Services.

Note: The declaration is suspended for 24 months to give Parliament an opportunity to correct the defect.

Criminal Procedure Act (Prescription in Civil and Criminal Matters Certain S Offences Amendment Act)

The Amendment Act extended the section 18 [list of offences for which prosecution may be instituted after 20 years](#) has lapsed since the date of the alleged commission of the offence.

Cross-border Road Transport Act (COVID-19)

[COVID-19 health directions](#) requirements for cross-border freight operators amended December 2020.

Disaster Management Act (COVID-19 regulations)

[COVID-19 regulations](#) most recently amended 11 January for level 3 adjustments (curfew; public places, including ATM requirements introduced without consultation; funerals; gatherings, including prohibiting faith-based gatherings; evictions/demolitions; rental housing; closed places and borders; cargo transportation; continued blanket liquor ban etc).

Note: The amended regulations should be read with the determination of hotspots, that were also amended, and that apply to [identified areas](#) in addition to, and above, the level 3 regulations.

Final note: Businesses with COVID-19 and other health and safety duties, that may have children under 6 on their premises, may need to review their health and safety requirements - keeping in mind that other safety requirements such as social distancing still apply as far as children under 6 are involved.

Disaster Management Act (COVID-19 declaration)

[COVID-19 disaster declaration](#) 8th extension to 15 February 2021 "taking into account the need to continue augmenting the existing legislation and contingency arrangements".

Disaster Management Act (Eastern Cape Provincial Disaster Risk Management Policy Framework)

The framework is available from the Department of Cooperative Governance and Traditional Affairs.

Drugs and Drug Trafficking Offences Act

CCT235/19 and 234/19 held that [section 63](#) is inconsistent with the Constitution and, together with several amendments made to the schedules, invalid from 18 December 2020 to the extent that it purports to delegate plenary legislative power to amend Schedules 1 and 2 to the Minister.

Note: The order of invalidity is suspended for 24 months to give Parliament to remedy the defect.

Electronic Communications Act (Draft digital sound broadcasting regulations)

Comment deadline for the [draft regulations](#) were extended to 8 January 2021.

Extradition Act (Warrants of arrest within SA)

CCT235/19 and 234/19 held that [section 5\(1\)\(a\)](#) is inconsistent with the Constitution and invalid as from 18 December 2020.

Financial Advisory and Intermediary Services Act (General code of conduct)

Reminder that [general code of conduct](#) requirements relating to financial interest and conflict of interest management policy; information about financial service; advertising; direct marketing; and complaints management, were amended 6 months from 26 June 2020.

Note: The complaints management framework will be further amended 12 months from 26 June 2020.

Identification Act (Draft identity management policy)

The draft policy is available from the Department of Home Affairs. No comment deadline gazetted.

Immigration Act (COVID-19)

[COVID-19 entry and exit directions](#) amended to give Visa concessions to certain foreigners within SA until 31 March 2021 (also see direction 21 declaration of undesirability); to list closed land ports of entry through which exempted categories may be allowed and the conditions for entry; and to limit services to be rendered by Home Affairs under adjusted alert level 3.

Insurance Act (Contingent business insurance)

The 23 December 2020 press release (available from the FSCA) states that the Authority, in light of legal certainty provided by the Supreme Court of Appeal, now expects the non-life insurance industry to honour its contingent business insurance (CBI) cover duties, and make payment of valid CBI claims without delay.

Note: The Authority also expects expedited discussions between the non-life insurance industry and reinsurers to ensure that policyholders who have already suffered huge financial losses since March 2020, do not continue to suffer these losses.

Insurance Act (Ombudsman for Short-term Insurance members)

Information request 1 of 2021 (INS), available from the FSCA, states that all licensed non-life insurers that are members of The Ombudsman for Short-term Insurance must furnish information to the Authority on the number of personal lines claims reported in the 2020 calendar year.

Interim Protection of Informal Land Rights Act (24th extension)

This interim measure, now extended to 31 December 2021, [provides that](#) informal rights to land cannot be taken away without the consent of the person holding that right; and any sale or other disposition of any land is subject to any existing informal rights to that land.

Labour Relations Act (Bargaining councils)

[Bargaining council accreditations](#) gazetted (General Public Service; Public Service Co-Ordinating; Printing, Newspaper and Packaging Industry; and Laundry, Cleaning and Dyeing Industry Cape).

Legal Practice Act (Accreditation as a training service provider)

The norms and standards guidelines for accreditation are available from the Council.

Legal Practice Act (Misconduct)

The Council has decided that it is [misconduct](#) on the part of a principal/training supervisor to enter into a practical vocational training contract with a candidate attorney/pupil which incorporates any unreasonable or unusual terms, which terms may include, without limitation, a requirement that the candidate attorney/pupil be in possession of a valid driver's licence, or owns or has access to the use of a vehicle for use in the course of the latter's service under the contract.

Note: It is now also misconduct for an attorney seeking to employ a candidate legal practitioner to stipulate in an advertisement that it is a requirement that an applicant must be, or to enquire of an applicant whether he/she is,

in possession of a valid driver's licence or owns or has access to the use of a vehicle for use in the course of his/her prospective employment as a candidate legal practitioner.

Further note: It is now also misconduct for a training supervisor to enquire of an applicant for a practical vocational training contract whether he/she is in possession of a valid driver's licence or owns or has access to the use of a vehicle for use in the course of his/her prospective employment as a candidate legal practitioner.

Final note: The rule does not seem to give any regard to the open ended uncertainty it may create in relationships, including weighing up the new risk of giving additional training beyond the minimum requirements of the attorney, or to the actual environment and service needs of an attorney.

Local Government Municipal Structures Act (Traditional and Khoi-San Leadership Act)

The Traditional and Khoi-San Leadership Act will, on 1 April 2021, repeal the [identification of traditional leaders schedule](#), and amend the [participation of traditional leaders](#).

Marine Living Resources Act (West Coast Rock Lobster)

Dates gazetted for West Coast Rock Lobster [recreational for subsistence fishing](#), and [closed season](#).

Medicines and Related Substances Act (Fees)

New [fees](#) have been gazetted, including fees for clinical trials; new licences; assessments; permits and certificates; amendments; transfers; and appeals.

National Energy Act (Buildings)

The [mandatory display and submission of energy performance certificates for buildings](#) commenced 8 December 2020, with a 2-year transitional measure for compliance, for affected entities.

National Environmental Management Air Quality Act (Ozone depleting substances)

Requirements for import quota allocations, and for import or export permit recommendation, added to the [phasing-out and management of ozone depleting substances regulations](#).

National Environmental Management Biodiversity Act (Bitter aloe)

Non-detriment Scientific Authority findings for aloe ferox (bitter aloe) are available from the Department.

National Environmental Management Biodiversity Act (Botanical gardens)

A national botanical garden expansion strategy is available from the Department.

National Environmental Management Waste Act (Extended producer responsibility)

The [extended producer responsibility](#) regulations commencement date is now 5 May 2021 and existing producer responsibility organisations (PROs) must register within 6 months from that date, while producers of identified products established after 5 May 2021 have 3 months to register from establishment.

Note: Producers of identified products will be required to take in excess of 26 measures, such as paying the extended producer responsibility fee to fund the scheme, implementing transformation within all levels of the value chain, and reporting to the SA waste information system,

Further note: Failure to comply is generally an offence punishable by a fine, imprisonment of up to 15 years, registration revocation and/or forced scheme participation - in some instances one may have to rely on the court to consider the principle that the punishment should be proportionate to the transgression.

Final note: The regulations must be read with the extended producer responsibility schemes [for the electrical and electronic equipment sector](#); [for the lighting sector](#); and [for the paper and packaging sector \(and some single products\)](#).

National House of Traditional Leaders Act (Traditional and Khoi-San Leadership Act)

The Traditional and Khoi-San Leadership Act will repeal [this Act](#) on 1 April 2021.

National Small Enterprise Act (Draft Amendment Bill 2020)

The Draft Bill proposes, [amongst others](#), creating unfair trade practices (see section 17T). Comment deadline 60 days from 11 December 2020.

Note: There are similar measures and mechanisms under other laws such as the [Consumer Protection Act](#) and the [Competition Act](#), and regulatory duplications can create unnecessary regulatory uncertainty.

Further note: The Constitutional right to access to courts may become a consideration depending on how the proposed ombud chapter proceeds.

Nuclear Energy Act (Draft nuclear non-proliferation regulations)

[Draft regulations](#) gazetted that include site design and nuclear material import, export and loss notices. Comment deadline 60 calendar days from 11 December 2020.

Occupational Health and Safety Act (Driven machinery regulations)

[Code of practice for commercial zip line and aerial adventure parks](#) incorporated into the standards for the [driven machinery regulations](#).

Pension Funds Act (Boards)

Guidance note 2 of 2020 (RF), available from FSCA, provides guidance on the expectation when boards of retirement funds consider releasing a proportion of the assets backing unpaid surplus liabilities.

Pension Funds Act (Extension applications)

Communication 56 of 2020 (RF), available from the FSCA, states that, as of 1 March 2021, extension applications will only be accepted from funds signed by the principal officer or deputy principal officer and/or a member of the Board duly authorised by the Board to do so.

Note: The notice also highlights themes of poor planning or governance; lack of internal controls and cooperation; and tax directives declined by SARS, and states that the FSCA will only consider granting a further extension for the same submission under exceptional circumstances.

Further note: Communication 57 of 2020 (RF), available from the FSCA, provides application forms for use by retirement funds and retirement fund benefit administrators in applications for extensions in terms of section 279 of the Financial Sector Regulation Act.

Pension Funds Act (Transfers)

Information request 6 of 2020 (RF), available from the FSCA, requests information related to pending transfers in term of section 14 by 31 March 2021.

Prescription Act (Prescription in Civil and Criminal Matters Certain S Offences Amendment Act)

The Amendment Act added [offences that do not prescribe](#).

Draft Preservation and Development of Agricultural Land Bill

The Draft Bill proposes, [amongst others](#), activities only allowed on [agricultural land](#) if there is an agro-ecosystem authorisation (Authorisation); agricultural areas in which listed activities will only be allowed if there is an Authorisation; and activities that do not require an Authorisation but must meet norms and standards. No comment deadline given.

Note: [Norms and standards are to be informed](#) by, amongst others, soil surveys, rangeland surveys, land use surveys, land capability assessments, land suitability assessments, agricultural potential assessments, and impact assessments.

Further note: The draft bill also proposes warrantless [compliance inspections](#) for any non-compliance with this proposed law, without reference to the common law right to legal privilege; [contravention directives](#) related to agro-ecosystem authorisations; and [data gathering](#).

Final note: [10 offences](#) are proposed including contravening the restrictions imposed on the use of agricultural land within a protected agricultural area in terms of section 11; commencing with a listed activity without an agro-eco authorisation; failure to comply with an agro-eco authorisation condition; failure to comply with a request by an inspector; and unlawfully and intentionally or negligently commits an act or omission which detrimentally affects agricultural land.

Public Audit Act (Auditor-General SA and National Treasury)

The [memorandum of agreement](#), that includes criteria to determine whether an auditee has financial difficulty, has been amended.

Public Service Act (Human resource management)

The [regulation 10](#) amended leave of absence form is available from the Department.

Refugees Act (COVID-19)

[COVID-19 entry and exit directions](#) amended so that an asylum seeker permit and a granted refugee status, which expired from 15 March 2020, or is to expire or be withdrawn in the government declared disaster, is deemed extended to 31 March 2021.

Remuneration of Public Office Bearers Act (Traditional and Khoi-San Leadership Act)

The Traditional and Khoi-San Leadership Act will, from 1 April 2021, broaden the ambit of who may be entitled to remuneration, pension benefits and medical benefits under [this Act](#).

Short-term Insurance Act (Independent intermediary)

The INS notice 22 of 2020 (exemption of certain independent intermediaries authorised to collect premiums on behalf of Lloyd's or a Lloyd's underwriter from [regulation 4.2\(6\)](#)), is available from the FSCA.

Social Assistance Act (Social Assistance Amendment Act 2020)

Once a commencement date is gazetted, the Amendment Act will, [amongst others](#), make a child who heads a child-headed household eligible for a section 6 [child support grant](#); allow the Minister to [prescribe an additional payment](#) linked to a social grant, and to differentiate on the basis of need.

Note: The Amendment Act will also allow the Minister to prescribe who qualifies for [social relief of distress](#), while also stating that any [person](#) may qualify if his or her household is affected by a disaster [as defined in the Disaster Management Act](#).

Further note: [Child support grants](#), [care dependency grants](#), [foster child grants](#), [disability grants](#), [older persons grants](#), [war veterans grants](#), and [grants-in-aid](#)) are subject to provisions relating to [eligibility](#), [being absent from SA](#), [overpayment](#), [abuse of social grants](#), and [false representations](#).

Further note: A financial institution, when considering provisions relating to [information to be furnished to the agency by third parties](#) and [powers of inspectorate to request information and to subpoena](#), should consider all related laws.

Final note: Reminder that, in terms of the [Older Persons Act](#), a person who is of the opinion an [older person](#) is [in need of care and protection](#) (e.g. income taken against their wish or abandoned without means of support) may report this to a social worker ([certain professionals must report](#) such a belief); and any person who suspects an [older person](#) has been [abused](#), or suffers abuse-related injuries, [must immediately notify](#) the Director-General or a police official.

South African Schools Act (COVID-19)

[COVID-19 schools directions](#) amended to give direction to officials, markers, internal moderators and administration staff involved in the marking process, and to officials involved in the resulting and processing of the National Senior Certificate and Senior Certificate examination.

Special Investigating Units and Special Tribunals Act (DPSA and SITA)

[Investigation into Integrated Financial Management System](#) activities amended to add the Department of Public Service and Administration and the State Information Technology Agency as investigated institutions; and to extend the investigation parameters to 1 November 2013 to 24 December 2020.

Note: Past investigations of interest may include the Department of Public Works 1, 2, 3, and 4 [investigations](#); and the State Information Technology Agency 1, 2 and 3 [investigations](#).

Special Investigating Units and Special Tribunals Act (Saldanha Bay)

Investigation launched into [Saldanha Bay local municipality](#) (1 January 2017 to 24 December 2020) relating to security services by or on behalf of the municipality, in terms of bid number SBM 45/17/18.

Standards Act

New, proposed, amended, and withdrawn [standards](#) gazetted for 11 and 31 December 2020, and 8 January 2021.

Subdivision of Agricultural Land Repeal Act (Draft Preservation and Development of Agricultural Land Bill)

The Draft Bill proposes amending the [Subdivision of Agricultural Land Repeal Act](#) so that, when that Act commences, a Subdivision of Agricultural Land Act application, appeal or process not yet decided or otherwise disposed of, must be finalised under that Act.

Note: Any consent granted or deemed to have been granted in terms of the Subdivision of Agricultural Land Act, is to remain valid for the specified period or if not specified, for 5 years from the date that the Draft Bill is enacted and has commenced.

Traditional and Khoi-San Leadership Act (Commencement)

The Act will commence 1 April 2021 with a duty on traditional and Khoi-San leaders to transform and adapt customary law and customs to comply with the Bill of Rights; to refrain from using allocated resources to promote or prejudice the interest of any political party; and to only use allocated resources for the purposes of the functions, duties and responsibilities created by the Act.

Note: It is not clear what practical sanctions exist to ensure that the above guiding principles are not relegated to a symbolic gesture meant to placate concerns raised in previous reiterations of the Bill.

Further note: The Constitutional right to culture is not absolute and must be balanced against and with other Constitutional Rights including right to access court, life, human dignity, equality, property etc.

Final note: The Prevention and Combating of Corrupt Activities Act will also be a key law, as this Act involves direct and indirect control over taxpayers and other public money and property.

Traditional Leadership and Governance Framework Act (Traditional and Khoi-San Leadership Act)

The Traditional and Khoi-San Leadership Act will repeal this Act on 1 April 2021.

Tourism Act (COVID-19)

COVID-19 public transport directions amended so that all operating licences and accreditation certificates for tourist and charter transport services that expire during the period that commenced from 26 March 2020 up to and including 28 February 2021, are deemed valid until 31 August 2021.



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SAIPA Technical and Standards Department



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