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## GENERAL NOTICE

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### NOTICE 286 OF 2014

#### PERFORMING ANIMALS PROTECTION AMENDMENT BILL

#### PUBLICATION FOR INFORMATION AND FOR PUBLIC COMMENTS

I, Tina Joemat-Pettersson, Minister of Agriculture, Forestry and Fisheries hereby invite all interested institutions, organisations and individuals to submit written comments on the draft Performing Animals Protection Amendment Bill.

Comments must be submitted in writing within 30 days from date of publication of this notice. They must be sent to:

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**Tina Joemat-Pettersson**

**Minister of Agriculture, Forestry and Fisheries**

**REPUBLIC OF SOUTH AFRICA**

**PERFORMING ANIMALS PROTECTION AMENDMENT BILL**

*(As introduced in the National Assembly (proposed section 75))*

*(The English text is the official text of the Bill)*

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(MINISTER OF AGRICULTURE, FORESTRY AND FISHERIES)

[B XX—201X]

**GENERAL EXPLANATORY NOTE:**

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

\_\_\_\_\_        Words underlined with a solid line indicate insertions in existing enactments.

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**BILL**

To amend the Performing Animals Protection Act, 1935, so as to insert certain definitions; to provide for the designation of a National Executive Officer; to provide for the designation of delegated officers; to provide for a procedure for the application for a licence to exhibit, train or use an animal for safeguarding; to enable the National Executive Officer to appoint experts to assist in the exercise and performance of powers, functions and duties; to provide for any person to object against the granting of a licence; to provide for the issuance of licence by delegated officers; to provide for the establishment of the Performing Animals Appeal Board to deal with appeals; to provide for the composition of the Performing Animals Appeal Board; and to provide for matters connected therewith.

**BE IT ENACTED** by the Parliament of the Republic of South Africa, as follows:—

**Repeal of section 2 of Act 24 of 1935**

1. Section 2 of the Performing Animals Protection Act, 1935 (Act No. 24 of 1935), (hereinafter referred to as the "principal Act"), is hereby repealed.

**Repeal of section 3 of Act 24 of 1935**

2. Section 3 of the principal Act is hereby repealed.

**Insertion of section 3A to 3M in Act 24 of 1935**

3. The following sections are hereby inserted in the principal Act after section 3:

**"Designation of an National Executive Officer**

**3A.** The Minister shall designate an officer in the Department, who has an appropriate tertiary qualification who shall exercise the powers and perform the duties as prescribed.

**Qualification of National Executive Officers**

**3B.(1)** The officer in terms this act shall either be :

(a) Animal Scientist; or

(b) Veterinarian

### **3C. Delegations of functions**

(1) The National Executive Officer may appoint such experts or other persons as necessary with a view to assisting in the exercise and performance of powers, functions and duties.

(2) The terms, conditions, remuneration and allowance applicable to any expert or person appointed under subsection (1), and the work to be performed or services to be rendered will be determined by the relevant public service prescripts.

### **Functions of National Executive Officer**

**3D.(1) The officer may**

- (a) grant, refuse, amend, suspend, reinstate or -cancel a licence; or
- (b) attach terms, conditions and limitations to licences additional to those provided for in any regulation made under this Act, but not in a manner inconsistent with the Act or the regulations.
- (c) request from any person or organisation any information the officer may require

(2) The National Executive Officer may, in respect of a licence granted in terms of subsection (1)—

- (a) suspend, for such period as it may determine, or cancel a licence which is the subject of a report, complaint or objection, or any right or privilege which is attached thereto;

- (b) declare such licence to be subject to such conditions as contained in this Act and the regulations made under this Act, and further conditions specific to the application concerned; or
- (c) rescind the suspension of the licence concerned or of any right or privilege that is attached thereto, with immediate effect or from such date as it may determine, subject to such conditions as contained in this Act and the regulations made under this Act.

(3) The National Executive Officer shall perform such other functions as may be assigned to it in terms of this Act.

### **Consideration and granting of applications for licences by National Executive Officer**

**3D. (1) The National Executive Officer may grant an application for any licence if —**

- (a) the National Executive Officer is satisfied that the information furnished by the applicant as contemplated by section 3I(2) is in accordance with the purpose of the Act;
- (b) the applicant concerned is fit to be the holder of the licence; and
- (c) the premises, accommodation, equipment and facilities that will be utilised for the training, exhibition or performance of the animal are safe and humane and will not cause harm to the animal.

### **Duration of license**

**3E. A licence is valid for a period of 12 calendar months from date of issue.**



**Renewal of license**

3F. (1) Every application for the renewal of a licence must be made three months prior to the date of expiration of the licence.

(2) Applications received on or after the date of expiration of the license may not be renewed and an application for a new license must be made.

**Delegation of powers and functions**

3G.(1) (a) The National Executive Officer may delegate any function conferred on him or her under this Act -

(i) to any officer under his or her control;

(ii) to a person who is competent to exercise the function;

(2) (a) The officer must furnish the persons contemplated in subsection (1) with a written authority in which it is stated that the person mentioned therein is authorised to exercise the functions

**Functions of the delegated officers**

3H. The delegated officer shall—

(a) receive—

(i) all applications for licences;

(ii) all amendment of conditions; and

(iii) any other application in terms of this Act; and

(b) submit all—

(i) applications for licences;

(ii) amendment of conditions; and

- (iii) any other application in terms of this Act, within ten days of receipt, or such longer period as may be determined by the National Executive Officer in the event of objections lodged against the granting of a particular licence; and
- (c) perform such other functions as may be—
  - (i) assigned in terms of this Act; and
  - (ii) required to fulfil as a delegated officer.

### **Application for licence**

31.(1) Any person who intends to exhibit or train for exhibition any animal, or who uses a dog for safeguarding, must apply for a licence in terms of this Act and the regulations made under this Act, to the delegated officer in the district in which the licence is sought and pay the fee prescribed.

(2) An application for a licence in terms of this Act must be in writing and must include the following information:

- (a) A description of the animal the applicant intends to exhibit or train for exhibition or to be used for safeguarding (b) a description of the general nature of the performances in which the animal is to be exhibited or trained to be exhibited;
- (c) description of the general nature of the safeguarding in which the animal is to be used;
- (d) written motivation for the granting of the licence; and
- (e) proof of payment of the prescribed fee.

(4) For purposes of considering and granting a licence under section 3D, a delegated officer may with the consent of the applicant visit any premises to assess the suitability thereof for the intended exhibition, training or safeguarding whereafter the officer concerned must submit—

(a) the application with supporting documentation as prescribed; and

(b) a report with recommendations to the National Executive Officer.

### **Notices and summonses**

3J.(1) The National Executive Officer may notify any person who is or may be affected by or is concerned in the consideration of a particular matter, as contained in this Act and the Regulations.

(2) A person who has received a notice in terms of subsection (1) shall make a representation to the National Executive Officer within seven days.

(3) The National Executive Officer must notify the delegated officer who has submitted a report contemplated in section 3I(4)(b) of the representation of the affected person.

(6) The National Executive Officer may, in considering any application, of its own accord take cognisance of any matter which in its opinion may be a ground for an objection to the granting of the application.

**Objections**

3K.(1) Any person may lodge an objection to the granting of a licence in terms of this Act, in the prescribed manner within ten days from date of lodgement of the application with the delegated officer.

(2) An objection lodged in terms of subsection (1) clearly state—

(a) the reasons for the objection;

(b) the full names of the person or institution objecting; and

(c) the full address and contact details of the person or institution objecting, accompanied by any supporting documentation.

(3) The applicant shall, within ten days of receipt of an objection lodged in terms of subsection (1), lodge his or her written response, if any, to the objections lodged by submitting a copy thereof to both the delegated officer and the persons who lodged the objection.

**Hearing of applications**

3L.(1) The National Executive Officer may convene a hearing to consider any application and objections to the application in question, on such date, time and place as will be determined by it.

(2) All interested persons, including the applicant and any person who has lodged an objection to an application, must be afforded an opportunity to be heard and may be represented by a person of their choice.

### Issuing of Licence

3M.(1) After the National Executive Officer has granted an application in terms of this Act, it must instruct the delegated officer to issue the licence concerned, subject to such conditions as contemplated in sections 3C and 3D.

(2) The National Executive Officer may suspend, withdraw or amend the licence if the applicant no longer complies with any condition subject to which the licence was issued:

(3) The National Executive Officer may not withdraw a licence unless the licence holder in question has been—

- (a) informed of the intended withdrawal and the grounds upon which it is based; and
- (b) afforded a reasonable opportunity to make a representation or to rectify any shortcoming with regard to such non compliance within the period specified by the Officer.

### **Amendment of section 11 of Act 24 of 1935**

4. Section 11 of the principal Act is hereby amended by—

(a) the insertion after the definition of “animal” of the following definitions:

“**Animal Scientist**” means a person registered as such in terms of the South African Natural Scientist Professions Act, 2003 (Act 27 of 2003);

**“Appeal Board”** means the Performing Animals Appeal Board established in section 11A;”

(b) the insertion after the definition of “certificate” of the following definition:

**““Delegated Officer”** means an officer as defined in section 1 (1) of the Public Service Act, 1994 (Proclamation 103 of 1994), read with section 1 of the Public Servant Amendment Act, 1996 (Act no 13 of 1996);”

(c) the insertion after the definition of “Minister” of the following definition:

**““National Executive Officer”** means the officer designated as such in terms of Section 3A of the Act;”

(d) the insertion after the definition of “police officer” of the following definition:

**““prescribed”** means prescribed by the Minister by regulation under this Act;”

(e) the insertion after the definition of “use for safeguarding” of the following definition:

**““Veterinarian”** means a person registered in terms of the Veterinary and Paraveterinary Professions Act, 1982 (Act no 19 of 1982)to practise a veterinary profession as defined in Section1 of that Act;”

#### **Insertion of sections 11A to 11H in Act 24 of 1935**

5. The following sections are hereby inserted in the principal Act after section 11:

#### **“Establishment of Performing Animals Appeal Board**

11A.(1) The Performing Animals Appeal Board is hereby established.

(2) The Appeal Board is a body appointed by the Director General to consider appeals made against the decisions of the National Executive Officer.

**Appeal against decision by National Executive Officer**

11B.(1) A person who is aggrieved by any decision or action taken by the National Executive Officer in terms of this Act may appeal in writing in the prescribed manner to the Director General against such decision or action.

(2) The Director General must refer an appeal for consideration and decision to the Appeal Board.

**Composition of Appeal Board**

11C.(1) The Appeal Board consists of a chairperson assisted by two other members with relevant qualifications, appointed by the Director General.

(2) The Chairperson of the Appeal Board must at least have –

(a) 5 years' legal experience as a practising advocate

(3) The other two members must at least have –

(a) 5 years' experience in animal or veterinary science

(4) Any person appointed in terms of subsection (1) must recuse himself or herself as a member of the Appeal Board if he or she has any direct or indirect personal interest in the outcome of an appeal.

(5)(a) An appeal in terms of subsection 11B must be heard on the date and at the time and place determined by the chairperson and the chairperson must inform the person appealing and any other party that has an interest in the appeal in writing of the date, time and place of the hearing.

(b) Any person appealing in terms of this Act and the National Executive Officer may be represented at the hearing of such an appeal by an advocate or attorney.

(6) The Appeal Board may, after investigation of the appeal—

(a) confirm, set aside or vary the relevant decision or action of the National Executive Officer; and

(b) order the National Executive Officer to execute the decision of the board in connection therewith.

(7) The decision of the Appeal Board must be in writing and a copy of the decision with reasons must be furnished to the National Executive Officer, the appellant and any other party.

(8) If the Appeal Board sets aside any decision or action by the National Executive Officer, the prescribed fees paid by the appellant in respect of the appeal in question must be refunded to him or her or, if the Appeal Board varies



any such decision or action, the Appeal Board may direct that the whole or any part of such fees be refunded to the appellant.

**Short title**

6. This Act is called the Performing Animals Protection Amendment Act, 2014 and comes into operation on a date fixed by proclamation in the *Gazette*.

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