

REPUBLIC OF SOUTH AFRICA

**REPEAL OF THE BLACK
ADMINISTRATION ACT AND
AMENDMENT OF CERTAIN LAWS
AMENDMENT BILL**

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 35874 of 2 November 2012)
(The English text is the official text of the Bill)*

(PORTFOLIO COMMITTEE ON JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 40—2012]

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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.

BILL

To amend the Repeal of the Black Administration Act and Amendment of Certain Laws Act, 2005, so as to remove a date; and to provide for matters connected therewith.

PARLIAMENT of the Republic of South Africa enacts as follows:—

Amendment of section 1 of Act 28 of 2005, as amended by section 1 of Act 8 of 2006, section 1 of Act 13 of 2007, section 1 of Act 7 of 2008, section 1 of Act 20 of 2009 and section 1 of Act 20 of 2010

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1. Section 1 of the Repeal of the Black Administration Act and Amendment of Certain Laws Act, 2005, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Sections 12(1), (2), (3), (4) and (6) and 20(1), (2), (3), (4), (5), (6) and (9) and the Third Schedule of the Act are hereby repealed on [—

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(a) **30 December 2012; or**

(b)] such date as national legislation to further regulate the matters dealt with in sections 12(1), (2), (3), (4) and (6) and 20(1), (2), (3), (4), (5), (6) and (9) and the Third Schedule of the Act is implemented [,

whichever occurs first].”.

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Short title and commencement

2. This Act is called the Repeal of the Black Administration Act and Amendment of Certain Laws Amendment Act, 2012, and comes into operation on 28 December 2012.

**MEMORANDUM ON THE OBJECTS OF THE REPEAL OF THE
BLACK ADMINISTRATION ACT AND AMENDMENT OF CERTAIN
LAWS AMENDMENT BILL, 2012**

1. PURPOSE OF BILL

The purpose of this Bill is to amend the Repeal of the Black Administration Act and Amendment of Certain Laws Act, 2005 (Act No. 28 of 2005) (“the Act”) in order to delete a date attached to the operation of sections 12, 20 and the Third Schedule of the Black Administration Act, 1927 (Act No. 38 of 1927), so that these sections and the Schedule will remain in operation until substitute legislation regulating the role and functions of the institution of traditional leadership in the administration of justice is promulgated and implemented.

2. OBJECTS OF BILL

2.1 Section 1(3) of the Act provides that the remaining provisions of sections 12 and 20 and the Third Schedule of the Black Administration Act, 1927 (Act No. 38 of 1927), will be repealed on 30 December 2012 or on such date as national legislation to further regulate the matters dealt with in these provisions has been implemented, whichever occurs first. These sections deal with the judicial functions of traditional leaders.

2.2 The Traditional Courts Bill, 2012, [B1—2012], is aimed, among others, at creating a uniform legislative framework, regulating the role and functions of the institution of traditional leadership in the administration of justice in accordance with constitutional imperatives and values. This Bill deals with matters that are provided for in sections 12 and 20 and the Third Schedule of the Black Administration Act, 1927. The Traditional Courts Bill, 2012, is currently before the Select Committee on Security and Constitutional Development. Once that Bill has been dealt with by the National Council of Provinces, it will be referred to the National Assembly for approval. It is foreseen that the Traditional Courts Bill, 2012, will not be signed into law by the statutory deadline of 30 December 2012. The aim of this Bill is consequently to extend the application of sections 12 and 20 and the Third Schedule of the Black Administration Act, 1927, until national legislation regulating the matters dealt with in sections 12 and 20 and the Third Schedule of the Black Administration Act, 1927, is implemented.

3. FINANCIAL IMPLICATIONS FOR STATE

None.

4. DEPARTMENTS AND PARTIES CONSULTED

The Bill was published for general comments. Only one response was received, from the Western Cape government, which did not oppose the Bill. Because of the urgency of the matter and since the Bill merely seeks to extend the application of certain existing provisions of the Black Administration Act, 1927, no further consultations were held.

5. PARLIAMENTARY PROCEDURE

5.1 The view is held that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it does not contain provisions to which the procedure set out in section 74 of 76 of the Constitution applies.

5.2 Since the Bill does not contain provisions pertaining to customary law and customs of traditional communities, but only seeks to extend the period of application of certain provisions of an Act, it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003).