

REPUBLIC OF SOUTH AFRICA

**BIRTHS AND DEATHS
REGISTRATION AMENDMENT
BILL**

(As introduced)

(MINISTER OF HOME AFFAIRS)

[B 53—97]

REPUBLIEK VAN SUID-AFRIKA

**WYSIGINGSWETSONTWERP OP
DIE REGISTRASIE VAN
GEBORTES EN STERFTES**

(Soos ingedien)

(MINISTER VAN BINNELANDSE SAKE)

[W 53—97]

ISBN 0 621 27217 5

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 Births and Deaths Registration Act, 1992, so as to further regulate the rectification of particulars in documents in the custody of the Director-General: Home Affairs; to provide for the surrendering of certificates and documents which reflect incorrect particulars to the Director-General, and to create an offence in this regard; to repeal or to substitute certain obsolete or superfluous provisions and expressions; to further regulate the assumption of another surname; and to provide for matters connected therewith.

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

Amendment of section 7 of Act 51 of 1992

1. Section 7 of the Births and Deaths Registration Act, 1992 (hereinafter referred to as the principal Act), is hereby amended— 5

(a) by the substitution for subsection (2) of the following subsection:

“(2) If **[by virtue of subsection (1)]** in the course of the administration of this Act it comes to the attention of the Director-General that any particulars in respect of any person in any document submitted or preserved in terms of this Act or included in the population register are not correctly reflected, the Director-General may supplement and correct such particulars.”; and 10

(b) by the addition of the following subsection:

“(3) Any person who is in possession of a certificate or other document purported to be issued in terms of this Act, which does not correctly reflect the particulars in any document referred to in subsection (2) or in the population register, shall within the prescribed period hand over or send by registered post such certificate or document to the Director-General.” 15

Substitution of section 25 of Act 51 of 1992 20

2. The following section is hereby substituted for section 25 of the principal Act:

“Alteration of surname of minor

25. (1) When—

- (a) the birth of any **[illegitimate]** minor born out of wedlock has been registered and the mother of that minor marries any person other than the natural father of the minor; 5
- (b) the father of any minor is deceased or his or her parents’ marriage has been dissolved and his or her mother remarries or his or her mother as a widow or divorcee resumes a surname which she bore at any prior time;
- (c) the birth of any **[illegitimate]** minor born out of wedlock has been registered under the surname of his or her natural father; or 10
- (d) a minor is in the care of a guardian, his or her mother or his or her guardian, as the case may be, may apply to the Director-General for the alteration of his or her surname to the surname of his or her mother, or the surname which his or her mother has resumed, or the surname of his or her guardian, as the case may be, and the Director-General may alter the registration of birth of that minor accordingly in the prescribed manner: Provided that the man who married the mother of a minor mentioned in paragraph (a) or (b), shall grant written consent to the alteration. 15 20

(2) Any parent or any guardian of a minor whose birth has been included under a specific surname in the population register, may on the strength of a reason not mentioned in subsection (1), apply to the Director-General for the alteration of the surname of the minor under which his or her birth was registered, and the Director-General may, on submission of a good and sufficient reason given for the contemplated alteration of the surname, alter the said original surname accordingly in the prescribed manner. 25

(3) For the purpose of this section “guardian” includes any person who has in law or in fact the custody or control of a minor.”.

Substitution of section 26 of Act 51 of 1992 30

3. The following section is hereby substituted for section 26 of the principal Act:

“Assumption of another surname

26. (1) Subject to the provisions of this Act or any other law, no person shall assume or describe himself or herself by or pass under any surname other than that under which he or she has been included in the population register **[or that under which he obtained permanent residence in the Republic]**, unless the Director-General has authorized him or her to assume that other surname: Provided that this subsection shall not apply when— 35

- (a) a woman after her marriage[, **including a marriage according to the rites of the Islamic or any Indian religion or a customary union as defined in section 35 of the Black Administration Act, 1927 (Act No. 38 of 1927),**] assumes the surname of the man with whom she concluded such marriage **[or union]** or after having assumed his surname, resumes a surname which she bore at any prior time; 40
- (b) a married or divorced woman or a widow resumes a surname which she bore at any prior time. 45

(2) At the request of any person the Director-General may[, **if he is satisfied that there is a good and sufficient reason for that person’s assumption of another surname**], authorize the person to assume a surname other than his or her surname as included in the population register, and the Director-General shall include the substitutive surname in the population register in the prescribed manner[, **and may authorize a person to assume a surname other than that under which he obtained permanent residence in the Republic**].”.

Amendment of section 31 of Act 51 of 1992

4. Section 31 of the principal Act is hereby amended by the deletion in subsection (1) of the word “or” at the end of paragraph (e), the addition of the word “or” at the end of paragraph (f), and the addition of the following paragraph:

“(g) without reasonable cause fails to hand over or send any certificate or document as contemplated in section 7(3),” 5

Short title

5. This Act shall be called the Births and Deaths Registration Amendment Act, 1997.

**MEMORANDUM ON THE OBJECTS OF THE BIRTHS AND DEATHS
REGISTRATION AMENDMENT BILL, 1997**

The above-mentioned Bill contains proposals for the amendment of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992), hereinafter referred to as the principal Act, which can be explained as follows:

Clauses 1 and 4

The Director-General: Home Affairs currently has only limited powers to rectify entries in documents, records and registers pertaining to births and deaths. In terms of a legal opinion the Department may not rectify particulars after registration — only the High Court may decide on such matters. This avenue is, however, beyond the means of the poorer clients of the Department. An amendment to effectively regulate rectifications is proposed in clause 1(a) of the Bill.

The Identification Act, 1986 (Act No. 72 of 1986), provides for the handing over of documents that reflect incorrect particulars. In order to curtail the incidence of false birth and death certificates more effectively it is proposed in clause 1(b) of the Bill to also include such a provision in the principal Act. In clause 4 it is proposed that failure to hand over such documents be made an offence.

Clause 2

Clause 2 of the Bill proposes to substitute the undesirable reference to “illegitimate” minors in section 25 of the principal Act with the more acceptable expression “born out of wedlock”, which is also used elsewhere in the principal Act by way of an amendment introduced during 1995.

Clause 3

The requirement of “good and sufficient reason” provided for in section 26 of the principal Act in order to assume another surname, creates certain practical problems as there is uncertainty as to an individual’s constitutional right to choose a surname of his or her choice, and how the limitation of rights in section 36 of the Constitution affects such choice. The question arises whether the demanding of a good and sufficient reason is not in conflict with these rights and whether changes should not be granted on request as long as the surname is not offensive or assumed for one or other obvious fraudulent reason. The overriding opinion is that the adoption of another surname should fall within an individual’s exclusive right, but that the exercising of the right should be strictly regulated on the basis as currently provided for in section 26 of the principal Act. A suitable amendment of section 26 is proposed in clause 3 of the Bill. (Because of other provisions, the reference in section 26 relating to permanent residence and to certain marriages are superfluous. It is also proposed in clause 3 of the Bill that these references be removed.)

In the opinion of the Department and the State Law Advisers this Bill should be dealt with in terms of section 75 of the Constitution.