

REPUBLIC OF SOUTH AFRICA

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**BIRTHS AND DEATHS  
REGISTRATION AMENDMENT  
BILL**

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*(As amended by the Portfolio Committee on Home Affairs (National Assembly))*

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(MINISTER OF HOME AFFAIRS)

[B 53B—97]

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REPUBLIEK VAN SUID-AFRIKA

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

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*(Soos gewysig deur die Portefeuljekomitee oor Binnelandse Sake (Nasionale Vergadering))*

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(MINISTER VAN BINNELANDSE SAKE)

[W 53B—97]

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**“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; and 45
- (c) a woman, whether married or divorced, add to the surname which she assumed after the marriage, any surname which she bore at any prior time.

(2) At the request of any person the Director-General may, if he or she 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 50

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) 5  
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).”.

**Short title**

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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 references in section 26 relating to permanent residence and to certain marriages are superfluous. It is proposed in clause 3 of the Bill that these references be removed. It is also provided that a married or divorced woman may add to the surname which she assumed after her marriage, any surname which she bore at any prior time.

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.