

REPUBLIC OF SOUTH AFRICA

BIRTHS AND DEATHS REGISTRATION AMENDMENT BILL

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill
published in Government Gazette No 22552 of 3 August 2001) (The English text is the
official text of the Bill)*

(MINISTER OF HOME AFFAIRS)

[B 53—2001]

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

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

To amend the Births and Deaths Registration Act, 1992, so as to define an expression; to reduce the age of majority; to provide for the registration of a child in the surname of either or both parents; to further regulate the alteration of the surname of a minor; and to allow a widow to assume a previous 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 1 of Act 51 of 1992, as amended by section 3 of Act 41 of 1995 and section 1 of Act 40 of 1996

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

- (a) by the insertion in subsection (1) after the definition of “child born out of wedlock” of the following definition:
- “ ‘competent court’ includes a magistrates’ court, and a children’s court established as contemplated in the Child Care Act, 1983 (Act No. 74 of 1983);”; and
- (b) by the substitution for the definition of “ ‘major’ or ‘person of age’ ” of the following definition:
- “ ‘major’ or ‘person of age’ means any person who has attained the age of [21] 18 years or who has under the provisions of section 2 of the Age of Majority Act, 1972 (Act No. 57 of 1972), been declared to be a major, and includes a person under the age of [21] 18 years, who has contracted a legal marriage;”.

Amendment of section 9 of Act 51 of 1992, as amended by section 4 of Act 41 of 1995 and section 1 of Act 43 of 1998 20

2. Section 9 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subject to the provisions of section 10, the notice of birth referred to in subsection (1) of this section shall be given under the surname of either the father or the mother of the child concerned or the surnames of both the father and mother joined together as a double barrelled surname.”.

Amendment of section 25 of Act 51 of 1992, as substituted by section 2 of Act 67 of 1997 and amended by section 11 of Act 86 of 1997

3. Section 25 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection:

“(1A) Notwithstanding subsection (1)(b) and (c), the natural father’s written consent is not required where the mother has sole guardianship of the child concerned.”. 5

Amendment of section 26 of Act 51 of 1992, as substituted by section 3 of Act 67 of 1997

4. Section 26 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph: 10

“(c) a woman, whether married or divorced, or a widow adds to the surname which she assumed after the marriage, any surname which she bore at any prior time.”. 15

Short title

5. This Act is called the Births and Deaths Registration Amendment Bill, 2001.

MEMORANDUM ON THE OBJECTS OF THE BIRTHS AND DEATHS REGISTRATION AMENDMENT BILL, 2001

1. For purposes of section 28(3) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) (“the Constitution”), a child means a person under the age of 18 years. It is thus proposed that the definition of “ ‘major’ or ‘person of age’ ” contained in section 1 of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992) (“the Act”), be amended so that one becomes a major upon ceasing to be a child as contemplated in section 28 of the Constitution.

2. The expression “competent court” as used in section 25(1)(b) and (c) of the Act is not defined in the Act, and the interpretation thereof presents some difficulties. It is proposed that it be defined to put the matter beyond doubt.

3. In line with section 9 of the Constitution, it is deemed expedient that parents of children born during the existence of the marriage should be allowed to register their children under the surname of either the father or the mother or under both their surnames joined together as a double barrelled surname.

4. The Bill also seeks to establish the principle that the consent of the natural father is not required for the alteration of the surname of the child where the mother of the child has the sole guardianship of the child.

5. FINANCIAL IMPLICATIONS FOR STATE

None.

6. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Home Affairs are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.