

GENERAL EXPLANATORY NOTE:

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

*(English text signed by the President.)
(Assented to 9 March 2004.)*

ACT

To provide for the alteration of the sex description of certain individuals in certain circumstances; and to amend the Births and Deaths Registration Act, 1992, as a consequence; and to provide for matters incidental thereto.

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

Definitions

1. In this Act, unless the context indicates otherwise-

"gender characteristics" means the ways in which a person expresses his or her social identity as a member of a particular sex by using style of dressing, the wearing of prostheses or other means;

"gender reassignment" means a process which is undertaken for the purpose of reassigning a person's sex by changing physiological or other sexual characteristics, and includes any part of such a process;

"intersexed", with reference to a person, means a person whose congenital sexual differentiation is atypical, to whatever degree;

"medical practitioner" means a person providing health services in terms of any law, including in terms of the -

- (a) Allied Health Professions Act, 1982 (Act No. 63 of 1982);
- (b) Health Professions Act, 1974 (Act No. 56 of 1974);
- (c) Nursing Act, 1978 (Act No. 50 of 1978);
- (d) Pharmacy Act, 1974 (Act No. 53 of 1974);
- (e) Dental Technicians Act, 1979 (Act No. 19 of 1979); and
- (f) Mental Health Care Act, 2002 (Act No. 17 of 2002);

"primary sexual characteristics" means the form of the genitalia at birth;

"secondary sexual characteristics" means those which develop throughout life and which are dependant upon the hormonal base of the individual person;

"sexual characteristics" means primary or secondary sexual characteristics or gender characteristics.

Application for alteration of sex description

2. (1) Any person whose sexual characteristics have been altered by surgical or medical treatment or by evolvment through natural development resulting in gender reassignment, or any person who is intersexed may apply to the Director-General of the National Department of Home Affairs for the alteration of the sex description on his or her birth register.

(2) An application contemplated in subsection (1) must -

- (a) be accompanied by the birth certificate of the applicant;

- (b) in the case of a person whose sexual characteristics have been altered by surgical or medical treatment resulting in gender reassignment, be accompanied by reports stating the nature and results of any procedures carried out and any treatment applied prepared by the medical practitioners who carried out the procedures and applied the treatment or by a medical practitioner with experience in the carrying out of such procedures and the application of such treatment;
- (c) in every case in which sexual characteristics have been altered resulting in gender reassignment, be accompanied by a report, prepared by a medical practitioner other than the one contemplated in paragraph (b) who has medically examined the applicant in order to establish his or her sexual characteristics; and
- (d) in the case of a person who is intersexed, be accompanied by—
 - (i) a report prepared by a medical practitioner corroborating that the applicant is intersexed; and
 - (ii) a report prepared by a qualified psychologist or social worker corroborating that the applicant is living and has lived stably and satisfactorily, for an unbroken period of at least two years, in the gender role corresponding to the sex description under which he or she seeks to be registered.

(3) If the Director-General refuses the application contemplated in subsection (1), he or she must furnish the applicant with written reasons for the decision.

(4) If an application contemplated in subsection (1) is refused, the applicant may appeal to the Minister of Home Affairs against the decision taken by the Director-General.

(5) An application contemplated in subsection (4) must be lodged with the Minister within 14 days after the decision of the Director-General was made known and must be accompanied by the documents referred to in subsection (2) and the reasons for the Director-General's refusal.

(6) If an appeal in terms of subsection (4) is refused, the applicant may apply to the magistrate of the district in which he or she resides for an order directing the change of his or her sex description.

(7) An application contemplated in subsection (6) must be accompanied by the documents referred to in subsection (2) and the reasons for the Minister's refusal.

(8) On the date and at the time determined by the magistrate the applicant must appear before the magistrate in chambers and must at the request of the magistrate furnish such additional information and proof as the magistrate may require.

(9) If the application is granted the magistrate must issue an order directing the Director-General to alter the sex description in the birth register of the person named in the order.

(10) An applicant may, on his or her appearance before the magistrate, be assisted by a legal representative.

Order for alteration of sex description

3. (1) If the Director-General grants an application contemplated in section 2(1) or receives an order from a magistrate in terms of section 2(9), the Director-General must proceed in terms of section 27A of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992).

(2) A person whose sex description has been altered, is deemed for all purposes to be a person of the sex description so altered as from the date of the recording of such alteration.

(3) Rights and obligations that have been acquired by or accrued to such a person before the alteration of his or her sex description are not adversely affected by the alteration.

Insertion of section 27A in Act 51 of 1992

4. The following section is hereby inserted in the Births and Deaths Registration Act, 1992, after section 27:

"Alteration of sex description

27A. (1) If the Director-General grants an application or a magistrate issues an order in terms of section 2 of the Alteration of Sex Description and Sex Status Act, 2003, the Director-General shall alter the sex description on the birth register of the person concerned.

(2) An alteration so recorded shall be dated and after the recording of the said alteration the person concerned shall be entitled to be issued with an amended birth certificate."

Short title

5. This Act is called the Alteration of Sex Description and Sex Status Act, 2003.