

REPUBLIC OF SOUTH AFRICA

SOUTH AFRICAN CITIZENSHIP AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 33356 of 5 July 2010)
(The English text is the official text of the Bill)*

(MINISTER OF HOME AFFAIRS)

[B 17—2010]

ISBN 978-1-77037-656-4

No. of copies printed 1 800

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 South African Citizenship Act, 1995, so as to substitute, insert or delete certain definitions; to revise the provisions relating to acquisition of citizenship by birth, descent and naturalisation; to repeal or to substitute certain obsolete references; and to effect certain technical corrections; and to provide for matters connected therewith.

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

Substitution of Chapter 1 of Act 88 of 1995

1. The following Chapter is hereby substituted for Chapter 1 of the South African Citizenship Act, 1995 (hereinafter referred to as the principal Act): 5

“Chapter 1

Definitions and Interpretation [and Application] of Act

Definitions

1. [(1)] In this Act, unless the context otherwise indicates—
 - [(i)] ‘alien’ means a person who is not a South African citizen; (xviii) 10
 - [(ii)] ‘customary union’ means the association of a man and a woman in a conjugal relationship according to indigenous law and custom, where neither the man nor the woman is party to a subsisting marriage, which is recognised by the Minister in terms of section 1(4) of this Act; (v) 15
 - ‘Children’s Act’ means the Children’s Act, 2005 (Act No. 38 of 2005);
 - ‘Constitution’ means the Constitution of the Republic of South Africa, 1996;
 - [(iii)] ‘Department’ means the Department of Home Affairs; [(i)] 20
 - ‘foreigner’ means a person who is not a South African citizen;
 - [(iv)] ‘former states’ means—
 - (a) the former Republic of Transkei as referred to in the Status of Transkei Act, 1976 (Act No. 100 of 1976);

- (b) the former Republic of Bophuthatswana as referred to in the Status of Bophuthatswana Act, 1977 (Act No. 89 of 1977);
- (c) the former Republic of Venda as referred to in the Status of Venda Act, 1979 (Act No. 107 of 1979); and
- (d) the former Republic of Ciskei as referred to in the Status of Ciskei Act, 1981 (Act No. 110 of 1981); [(xvi)] 5
- (v) **‘husband’ includes a husband in a customary union; (ii)**
‘Immigration Act’ means the Immigration Act, 2002 (Act No. 13 of 2002);
- [(vi)] **‘major’** means any person who has attained the age of **[21]** 18 years 10
[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 years who has contracted a legal marriage; (vii)]
- (vii) **‘marriage’ [includes a customary union]** means— 15
 - (a) a marriage concluded in terms of—
 - (i) the Marriage Act, 1961 (Act No. 25 of 1961); or
 - (ii) the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998);
 - (b) a civil union concluded in terms of the Civil Union Act, 2006 20
 (Act No. 17 of 2006); or
 - (c) a marriage concluded in terms of the laws of a foreign country; [(vii)]
- (viii) **‘Minister’** means the Minister of Home Affairs; [(x)]
- (ix) **‘minor’ [or ‘minor child’]** means any person who is not a major; 25
 [(ix)]
‘permanent residence’ means permanent residence in terms of the Immigration Act;
‘permanent resident’ means a person having permanent residence status in terms of the Immigration Act; 30
- [(x)] **‘prescribed’** means prescribed by regulation; [(xv)]
- (xi) **‘prior law’** means any law repealed by section 26; [(xvii)]
- (xii) **‘regulation’** means a regulation made under section 23; [(xi)]
- (xiii) **‘responsible parent’** means a parent [as] contemplated in [section 1 of the Guardianship Act, 1993 (Act No. 192 of 1993)] Chapter 3 of the Children’s Act; [(xiv)] 35
- (xiv) **‘spouse’ [includes a spouse in a customary union]** means a person who is a party to a marriage recognised in terms of this Act; [(iv)]
- (xv) **‘this Act’** includes the Schedules to the Act and the regulations [; (vi)]
- (xvi) **‘wife’ includes a wife in a customary union. (iii)]**. 40

Interpretation of Act

[(2)] **1A. (1)** For the purposes of this Act, unless clearly inconsistent with the provisions of this Act—

- (a) any reference in this Act to entrance into the Republic, to permanent residence in the Republic, to any period of residence or ordinary 45
 residence in the Republic or to any period of absence from the Republic, shall be construed to include any entrance into, residence in or absence from the Republic of South Africa or any of the former states as they had existed immediately prior to the commencement of the Constitution; 50
- (b) the expressions “in the Republic” and “outside the Republic” shall be construed as if the former states were part of the former Republic of South Africa, whenever it has to be determined whether any event or action which occurred or took place prior to the commencement of the Constitution, occurred or took place in or outside the Republic; and 55
- (c) the expression “Government of the Republic” shall be construed to include the governments of the former states whenever it has to be determined if a person was in the service of the Government of the Republic prior to the commencement of the Constitution.

[(3)] **(2)** For the purposes of this Act— 60

- (a) a person born aboard a registered ship or aircraft shall be deemed to have been born at the place where the ship or aircraft is registered, and a person born aboard an unregistered ship or aircraft belonging to the Government of any country shall be deemed to have been born in that country; 5
- (b) a person—
- (i) to whom an exemption from **[the prohibition mentioned in section 23(a) of the Aliens Control Act, 1991 (Act No. 96 of 1991)]** compliance with visa requirements in terms of section 10A of the Immigration Act, has been granted unconditionally and for an unspecified period in terms of section **[28(2)] 10A(4)(a)** of that Act, whether as an individual or as a member of a category of persons; or
 - (ii) to whom **[the said prohibition is not applicable by virtue of section 29(1)(a) or (c) of that Act]** an exemption has been granted in terms of section 31(3)(a) or (c) of the Immigration Act, 15
- and who entered the Republic or is in the Republic for purposes of permanent residence, shall be deemed to be or have been lawfully admitted to the Republic for permanent residence therein, or 20 permanently and lawfully residing in the Republic.
- [(4)] (3) For the purposes of this Act—**
- (a) **[A] a customary [union shall be recognised by the Minister for the purposes of this Act] marriage and a marriage concluded in terms of the laws of a foreign country shall be recognised by the Minister, if the Minister is satisfied, upon information submitted to him or her in the prescribed form by the applicant and such other person alleged to be the applicant's spouse in the [customary union] marriage concerned, that the applicant is in fact a spouse in the [customary union in question.] said marriage; and** 25 30
- (b) **[The] the Minister may, in addition to any information submitted in terms of paragraph (a) or to clarify any information so submitted, call for further information to be submitted to him or her, or may call upon any person to appear before him or her and require or allow such person to give such oral information or produce such other information as in the opinion of the Minister may assist him or her in deciding the matter in question.”.** 35

Substitution of section 2 of Act 88 of 1995

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

“Citizenship by birth 40

2. (1) Any person—

- (a) who immediately prior to the date of commencement of the South African Citizenship Amendment Act, 2010, was a South African citizen by birth; or
 - (b) who is born in or outside the Republic, one of his or her parents, at the time of his or her birth, being a South African citizen, shall be a South African citizen by birth. 45
- (2) No person shall be a South African citizen by virtue of subsection (1)(b) if, at the time of his or her birth, one of his or her parents had not been admitted to the Republic for permanent residence therein and his or her other parent was not a South African citizen. 50
- (3) Any person born in the Republic and who is not a South African citizen by virtue of the provisions of subsection (2) shall be a South African citizen by birth, if—
- (a) he or she does not have the citizenship or nationality of any other country, or has no right to such citizenship or nationality; and
 - (b) his or her birth is registered in the Republic in accordance with the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992). 55

- (4) Any person born in the Republic of parents who have been admitted into the Republic and who is not a South African citizen, qualifies to be a South African citizen by birth, if—
- (a) he or she has lived in the Republic from the date of birth to attaining the age of majority; and
 - (b) his or her birth is registered in the Republic in accordance with the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992).”.

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Substitution for section 3 of Act 88 of 1995, as amended by section 2 of Act 69 of 1997

3. The following section is hereby substituted for section 3 of the principal Act: 10

“Citizenship by descent

3. Any person who is adopted in terms of the provisions of the Children’s Act by a South African citizen and whose birth is registered in accordance with the provisions of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992), shall be a South African citizen by descent.”.

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Substitution of section 4 of Act 88 of 1995, as amended by section 3 of Act 69 of 1997

4. The following section is hereby substituted for section 4 of the principal Act:

“Citizenship by naturalisation

4. (1) Any person who—
- (a) immediately prior to the date of the commencement of the South African Citizenship Amendment Act, 2010, was a South African citizen by naturalisation; or
 - (b) in terms of this Act is granted a certificate of naturalisation as a South African citizen in terms of section 5,
- shall be a South African citizen by naturalisation. 20
- (2) Any person referred to in subsection (1)(b) shall, with effect from the date of the issue of the certificate, be a South African citizen by naturalisation. 25
- (3) A child born in the Republic of parents who are not South African citizens or who have not been admitted into the Republic for permanent residence, qualifies to apply for South African citizenship upon becoming a major if—
- (a) he or she has lived in the Republic from the date of his or her birth to the date of becoming a major; and
 - (b) his or her birth has been registered in accordance with the provisions of the Births and Deaths Registration Act, 2002 (Act No. 51 of 2002).”.
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Amendment of section 5 of Act 88 of 1995, as amended by section 4 of Act 69 of 1997

5. Section 5 of the principal Act is hereby amended by—
- (a) the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 40

“The Minister may, upon application in the prescribed **[form]** manner, grant a certificate of naturalisation as a South African citizen to any **[alien]** foreigner who satisfies the Minister that—”;
 - (b) the substitution in subsection (1) for paragraphs (b) and (c) of the following paragraphs, respectively: 45

“(b) he or she has been **[lawfully]** admitted to the Republic for permanent residence therein; and

(c) he or she is ordinarily resident in the Republic and that he or she has been so resident for a continuous period of not less than **[one year]** five years immediately preceding the date of his or her application[, **and that he or she has, in addition, been resident in the Republic for a further period of not less than four years during the eight**
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- years immediately preceding the date of his or her application];
and”;
- (c) the substitution in subsection (1) for paragraph (g) of the following paragraph:
“(g) he or she has **[an]** adequate knowledge of the responsibilities and
privileges of South African citizenship[.]; and”;
- (d) the addition to subsection (1) of the following paragraph:
“(h) he or she is a citizen of a country that allows dual citizenship:
Provided that in the case where dual citizenship is not allowed by
his or her country, such person renounces the citizenship of that
country and furnishes the Minister with the prescribed proof of such
renunciation.”;
- (e) the substitution for subsection (4) of the following subsection:
“(4) (a) The Minister may, notwithstanding the provisions of
subsection (1), upon application in the prescribed form **[by the
responsible parent or the guardian]** for a certificate of naturalisation in
respect of a minor who is permanently and lawfully resident in the
Republic, grant to that minor a certificate of naturalisation as a South
African citizen.
(b) An application in terms of paragraph (a) must be made by the
responsible parent or the legal guardian of the minor concerned.”;
- (f) the substitution for subsection (5) of the following subsection:
“(5) The Minister may, notwithstanding the provisions of subsection
(1), upon application in the prescribed manner, grant a certificate of
naturalisation as a South African citizen to a foreigner who satisfies the
Minister that he or she is the spouse or surviving spouse of a South
African citizen and that he or she has been—
(a) admitted to the Republic for permanent residence;
(b) ordinarily resident in the Republic for a prescribed period; and
(c) married to such citizen during the period contemplated in paragraph
(b).”; and
- (g) the substitution in subsection (9) for paragraph (a) of the following paragraph:
“(a) Notwithstanding anything to the contrary contained in subsection
(1)(c), the Minister may under exceptional circumstances grant a
certificate of naturalisation as South African citizen to an applicant who
does not comply with the requirements of **[the said]** subsection (1)(c)
relating to residence or ordinary residence in the Republic.”.

Amendment of section 6 of Act 88 of 1995

6. Section 6 of the principal Act is hereby amended by—
- (a) the deletion in subsection (1) of the word “or” at the end of paragraph (a), the
insertion of the word “or” at the end of paragraph (b) and the addition to that
subsection of the following paragraph:
“(c) he or she engages in a war under the flag of a country that the
Government of the Republic does not support.”; and
- (b) the substitution for subsection (2) of the following subsection:
“(2) Any person referred to in subsection (1) other than a person who
obtained citizenship by naturalisation may, prior to his or her loss of
South African citizenship in terms of this section, apply to the Minister to
retain his or her South African citizenship, and the Minister may, if he or
she deems it fit, order such retention.”.

Amendment of section 8 of Act 88 of 1995

7. Section 8 of the principal Act is hereby amended by the substitution for subsection
(3) of the following subsection:
“(3) Whenever the Minister deprives a person of his or her South African
citizenship under this section or section **[9 or]** 10, that person shall cease to be a
South African citizen with effect from such date as the Minister may direct and
thereupon the certificate of naturalisation or any other certificate issued under this
Act in relation to the status of the person concerned, shall be surrendered to the
Minister and cancelled, and any person who refuses or fails on demand to surrender
any such certificate which he or she has in his or her possession, shall be guilty of

an offence and liable on conviction to a fine or to imprisonment for a period not exceeding **[two]** five years, or to both such fine and imprisonment.”.

Substitution of section 10 of Act 88 of 1995

8. The following section is hereby substituted for section 10 of the principal Act:

“Deprivation of citizenship in case of children

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10. Whenever the responsible parent of a minor has in terms of the provisions of section **[6, 8 or 9]** 6 or 8 ceased to be a South African citizen, the Minister may, with due regard to the provisions of the **[Guardianship Act, 1993 (Act No. 192 of 1993)]** Children’s Act, order that such minor, if he or she was born outside the Republic and is under the age of 18 years, shall cease to be a South African citizen.”.

Amendment of section 11 of Act 88 of 1995, as amended by section 6 of Act 69 of 1997

9. Section 11 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

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“(3) Whenever—

- (a) a South African citizen by naturalisation or registration ceased to be a South African citizen by virtue of the provisions of any prior law; or
- (b) a South African citizen by naturalisation ceases to be a South African citizen by virtue of the provisions of section 6, 7, 8, **[9]** or 10, he or she shall, for the purposes of the **[Aliens Control Act, 1991 (Act No. 96 of 1991)]** Immigration Act, but subject to the provisions of subsection (4), be deemed to be **[an alien]** a foreigner who is not—
 - (i) in possession or **[is not]** deemed to be in possession of a permit referred to in section **[25 or 26]** 10(2) or 25(2) of that Act; or
 - (ii) in terms of section **[28(2)]** 31(2)(a) of the said Act, exempted or deemed to be exempted from the **[prohibition in]** provisions of section **[23(a)]** 10(1) of that Act.”.

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Amendment of section 13 of Act 88 of 1995, as amended by section 7 of Act 69 of 1997

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10. Section 13 of the principal Act is hereby amended by—

- (a) the deletion of subsection (1);
- (b) the substitution in subsection (3) for paragraph (a) of the following paragraph:

“(a) Any person who ceased to be a South African citizen by virtue of the provisions of any prior law or by virtue of the provisions of section 9 as it existed immediately before its repeal by section 1 of the South African Citizenship Amendment Act, 2004 (Act No. 17 of 2004), or who ceases to be a South African citizen by virtue of the provisions of section 6, 7, 8, **[9]** or 10 may—

 - (i) if he or she is not a person **[as]** referred to in section 11(3) and who is residing in the Republic permanently or returns to the Republic for permanent residence therein, as the case may be; or
 - (ii) if he or she is a person as referred to in section 11(3) and a permit for permanent residence referred to in section 25 of the **[Aliens Control Act, 1991 (Act No. 96 of 1991),]** Immigration Act is issued to him or her, apply to the Minister in the prescribed **[form]** manner for the resumption of his or her former South African citizenship.”; and
- (c) the substitution for subsection (4) of the following subsection:

“(4) The provisions of section 5(7) shall **[mutatis mutandis]** apply with the changes required by the context in respect of a certificate referred to in subsection (3)(b).”.

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Substitution of certain words in Act 88 of 1995

11. The principal Act is hereby amended by the substitution for the words “alien” and “Supreme Court”, wherever they occur, of the words “foreigner” and “High Court”, respectively.

Short title and commencement

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12. This Act is called the South African Citizenship Amendment Act, 2010, and comes into operation on a date determined by the President by Proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN CITIZENSHIP AMENDMENT BILL, 2010

OBJECTS OF BILL

1.1 The main objective of the Bill is to revise the provisions in the South African Citizenship Act, 1995 (Act No. 88 of 1995) (the Act), relating to the acquisition of citizenship by birth, descent or naturalisation. The Bill also seeks to substitute, insert or delete certain definitions, to repeal or to substitute certain obsolete references, to effect certain technical corrections and to provide for matters connected therewith.

1.2 The Bill seeks to amend the provisions of the Act relating to the acquisition of citizenship by birth by providing that a person who is born in or outside the Republic, one of his or her parents, at the time of his or her birth, being a South African citizen, shall be a South African citizen by birth, if the birth was registered in accordance with the Births and Deaths Registration Act, 2002 (Act No. 51 of 2002) (the Births and Deaths Registration Act). The Bill also seeks to provide that no person shall be a South African citizen by birth if, at the time of his or her birth, one of his or her parents had not been admitted into the Republic for permanent residence and his or her other parent was not a South African citizen.

1.3 The Bill furthermore seeks to provide that any person born in the Republic and who is not a South African citizen shall be a South African citizen by birth, if he or she does not have the citizenship or nationality of any other country, or has no right to such citizenship or nationality, and such person's birth is registered in the Republic in accordance with the Births and Deaths Registration Act. The Bill also seeks to provide that any person born in the Republic of parents who have been admitted into the Republic for permanent residence and who is not a South African citizen, qualifies to be a South African citizen by birth, if he or she has lived in the Republic from the date of birth to attaining the age of majority and his or her birth is registered in the Republic in accordance with the Births and Deaths Registration Act.

1.4 The Bill seeks to revise the provisions of the Act dealing with citizenship by descent by proposing that a child adopted in accordance with the Children's Act, 2005 (Act No. 38 of 2005), by a South African citizen acquires citizenship by descent.

1.5 The Bill seeks to revise the provisions of the Act dealing with citizenship by naturalisation by proposing an additional requirement for naturalisation in that a person who applies for a certificate of naturalisation should be a citizen of a country that allows dual citizenship, and in the case where such person's country does not allow dual citizenship, that the said person renounces his or her citizenship of that country. Furthermore, the Bill seeks to amend the Act in order to revise the categories of persons who qualify for citizenship by naturalisation.

1.6 The Bill also proposes a further condition for loss of South African citizenship. It is proposed that a South African citizen shall cease to be a South African citizen if he or she engages in a war under the flag of a country that the Government of the Republic does not support.

1.7 The Bill seeks to amend the Act in order to bring the Act in line with the provisions of the Immigration Act, 2002 (Act No. 13 of 2002), and the Children's Act, 2005, as well as to repeal or substitute references to repealed legislation.

2. DEPARTMENTS/BODIES/PERSONS CONSULTED

None.

3. FINANCIAL IMPLICATIONS FOR STATE

None.

4. PARLIAMENTARY PROCEDURE

4.1 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.

4.2 The State Law Advisers are of the opinion that 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), since it does not contain provisions pertaining to customary law or customs of traditional communities.