

REPUBLIC OF SOUTH AFRICA

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**SOUTH AFRICAN CITIZENSHIP  
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 42B—97]

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REPUBLIEK VAN SUID-AFRIKA

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**WYSIGINGSWETSONTWERP OP  
SUID-AFRIKAANSE BURGERSKAP**

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

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(MINISTER VAN BINNELANDSE SAKE)

[W 42B—97]

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**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 South African Citizenship Act, 1995, so as to further regulate citizenship by descent; to further regulate the citizenship of persons who were citizens of any former state by registration; to empower the Minister of Home Affairs to exempt South African citizens from the deprivation of citizenship when making use of the passport facilities of another country; to empower the said Minister to grant a certificate of naturalisation in exceptional circumstances to an applicant who does not comply with the requirements relating to residence or ordinary residence in the Republic; to regulate the resumption of South African citizenship by persons who have lost their citizenship by virtue of the provisions of prior laws; to empower the said Minister to grant exemption to a person who ceased to be a citizen by virtue of a certain provision of a prior law; and to effect certain consequential amendments arising from the operation of the said Act; and to provide for incidental matters.

**B**E IT, ENACTED by the Parliament of the Republic of South Africa, as follows:—

### **Amendment of section 1 of Act 88 of 1995**

1. Section 1 of the South African Citizenship Act, 1995 (hereinafter referred to as the principal Act), is hereby amended by the deletion in subsection (1) of the definition of “South African citizenship by registration”,

### **Amendment of section 3 of Act 88 of 1995**

2. Section 3 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) [who is] born outside the Republic [on or after the date of commencement of this Act], and—

- (i) one of whose parents was or is, at the time of his or her birth, a South African citizen and whose birth is registered in terms of the provisions of section 13 of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992); or

- (ii) to whose responsible parent a certificate of **[the]** resumption of previous South African citizenship has, in terms of section 13(3), been issued, and who has entered the Republic for permanent residence therein before becoming a major, and whose birth is within one year after the date of issue of such certificate, or such longer period as the Minister in the special circumstances of the case may approve, registered in the Republic in the prescribed manner: or
- (iii) who is adopted in terms of the provisions of the Child Care Act, 1983 (Act No. 74 of 1983), by a South African citizen and whose birth is registered in accordance with the provisions of subparagraph (i), shall, subject to the provisions of subsection (2), be a South African citizen by descent.”.

#### **Amendment of section 4 of Act 88 of 1995**

3. Section 4 of the principal Act is hereby amended by the deletion of subparagraph (iii) of paragraph (a) of subsection (1).

#### **Amendment of section 5 of Act 88 of 1995**

4. Section 5 of the principal Act is hereby amended by the addition of the following subsection:

“(9) (a) Notwithstanding anything to the contrary contained in subsection (1), the Minister may under exceptional circumstances grant a certificate of naturalisation as a South African citizen [o an applicant who does not comply with the requirements of the said subsection ( 1 ) relating to residence or ordinary residence in the Republic.

(b) The Minister shall within 14 days after the commencement of the sittings of Parliament in each year table in Parliament the names of any persons to whom certificates of naturalisation were granted under paragraph (a) in the immediately preceding year, including the reasons for the granting of any such certificate.”.

#### **Amendment of section 9 of Act 88 of 1995**

5. ( I ) Section 9 of the principal Act is hereby amended by the addition of the following subsections, the existing section becoming subsection ( 1 ):

“(2) Notwithstanding anything to the contrary contained in subsection ( 1 ), the Minister may under circumstances regarded by him or her as exceptional exempt any person, on application in the prescribed form, from the provisions of the said subsection ( 1 ), in so far as they relate to the use of the passport facilities of another country, for such period and on such conditions as may be determined by the Minister.

(3) The Minister may at any time withdraw an exemption contemplated in subsection (2) or withdraw, amend or supplement any condition on which any such exemption was granted.

(2) Any consent in writing issued before the commencement of this Act to any person or any category of persons to make use of the passport facilities of another country shall be valid as if it had been issued under a provision of the principal Act or of any other law repealed by the principal Act, as the case may be.

(3) The provisions of section 9(3) of the principal Act shall *mutatis mutandis* apply in respect of a consent referred to in subsection (2).”.

#### **Amendment of section 11 of Act 88 of 1995**

6. Section 11 of the principal Act is hereby amended by the substitution in subsection (3) for the words preceding subparagraph (i) of the following words:

“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] **under the provisions of section 6, 7, 8, 9 or 10**] 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), but subject to the provisions of subsection (4), be deemed to be an alien, who is not—”.

#### Amendment of section 13 of Act 88 of 1995

**7. Section 13 of the principal Act** is hereby amended by the substitution for paragraph (a) of subsection (3) of the following paragraph:

“(a) Any person who **[in terms of the provisions of section 6, 7, 9 or 10 ceased to be a South African citizen] ceased to be a South African citizen by virtue of the provisions of any prior law or ceases to be a South African citizen by virtue of the provisions of section 6, 7, 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 [or intends residing permanently in the Republic], as the case may be: (1)”

(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), is issued to him or her.

apply to the Minister in the prescribed form for the resumption of his or her former South African citizenship.”.

#### Substitution of section 22 of Act 88 of 1995

8. The following section is hereby substituted for section 22 of the principal Act:

##### “Delegation of powers

**22.** The Minister may, subject to such conditions as he or she may deem necessary, delegate any power conferred on him or her by this Act, excluding a power referred to in section 5(9) or 25, to an officer in the service of the Department, but shall not be divested of any power so delegated, and may set aside or amend any decision of the delegate made in the exercise of such a power.”.

#### Amendment of section 23 of Act 88 of 1995

9. Section 23 of the principal Act is hereby amended—

(a) by the substitution for paragraph (a) of the following paragraph:

“(a) **the form of an application [for a certificate of naturalisation as a South African citizen], declaration, certificate or other document under this Act;**” and

(b) by the deletion of paragraph (b).

#### Amendment of section 26 of Act 88 of 1995

**10.** Section 26 of the principal Act is hereby amended by the addition of the following subsection:

“(4) **Notwithstanding the repeal of section 15(1)(a) of the South African Citizenship Act, 1949, by subsection (1), the Minister may at any time exempt any Person who ceased to be a South African citizen by virtue of the provisions of the said section 15(1)(a), on application on the prescribed form, from the provisions of the said section 15(1)(a), either unconditionally or on such conditions as the Minister may determine, and any person so exempted, shall be deemed to have remained a South African citizen.**”.

#### Insertion of section 26A in Act 88 of 1995

**11. (1)** The following section is hereby inserted after section 26 of the principal Act: 50

**“Construction of references to citizens and citizenship of former states in existing laws and in certain documents**

**26A. A reference in any law in force immediately prior to the commencement of this Act, or in any certificate or other document under** any such law, to a citizen of any former state or citizenship of any former state shall, unless inconsistent with the context or otherwise clearly inappropriate, be construed as a reference to a South African citizen or **South African citizenship, respectively.”**

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(2) The provisions of subsection ( 1 ) shall be deemed to have come into operation on 6 October 1995,

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**Short title**

**12. This Act shall be called the South African Citizenship Amendment Act, 1997.**

**MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN  
CITIZENSHIP AMENDMENT BILL, 1997**

The South African Citizenship Act, 1995—

- (a) does not grant as of right South African citizenship to all qualifying persons born outside the Republic or to persons who were citizens of the former TBVC states by registration;
- (b) does not empower the Minister of Home Affairs clearly and specifically to exempt South African citizens from the deprivation of citizenship when making use of the passport facilities of another country;
- (c) does not empower the said Minister to grant a certificate of naturalisation as a South African citizen in exceptional circumstances to an applicant who does not comply with requirements of section 5(1) of the said Act relating to residence or ordinary residence in the Republic;
- (d) does not adequately provide for the resumption of South African citizenship by persons who have lost their citizenship by virtue of the provisions of laws repealed by the said Act;
- (e) does not empower the said Minister to exempt any person who ceased to be a South African citizen by virtue of the provisions of section 15(1)(a) of the South African Citizenship Act, 1949, from those provisions; and
- (f) does not clearly and specifically provide that a citizen of the former TBVC states or citizenship of those states is a South African citizen or South African citizenship, respectively.

The objects of the Bill are to rectify the said deficiencies.

In the opinion of the State Law Adviser, the Bill must be dealt within accordance with the procedure prescribed by section 75 of the Constitution.