

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



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THE PRESIDENCY

No. 1173

7 December 2010

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 17 of 2010: South African Citizenship Amendment Act, 2010.



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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.

(English text signed by the President.)
(Assented to 3 December 2010.)

ACT

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 (Act No. 17 of 2006); or 20
- (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 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; 45
- (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—

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- (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 10
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** 25
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 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) Any person born in the Republic and who is not a South African citizen by virtue of the provisions of subsection (1) shall be a South African citizen by birth, if— 50
- (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). 51