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OFFICE OF THE PRESIDENT

No. 1603. 28 November 1997

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

No. 69 of 1997: South African Citizenship Amendment Act, 1997.

KANTOOR VAN DIE PRESIDENT

No. 1603. 28 November 1997

Hierby word bekend gemaak dat die President sy goedkeuring gegee het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 69 van 1997: Wysigingswet op Suid-Afrikaanse Burger-skap, 1997.

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.

ACT

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.

*(Afrikaans text signed by the President.)
(Assented to 26 November 1997.)*

BE 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". 5

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

ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.

_____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

WET

Tot wysiging van die Wet op Suid-Afrikaanse Burgerskap, 1995, ten einde burgerskap deur afkoms verder te reël; die burgerskap van persone wat burgers van 'n voormalige staat deur registrasie was, verder te reël; die Minister van Binnelandse Sake te magtig om Suid-Afrikaanse burgers van die ontneming van burgerskap vry te stel wanneer van die paspoortgeriewe van 'n ander land gebruik gemaak word; genoemde Minister te magtig om 'n sertifikaat van naturalisasie in buitengewone omstandighede aan 'n applikant toe te ken wat nie aan die voorskrifte met betrekking tot verblyf of gewone verblyf in die Republiek voldoen nie; die herneming van Suid-Afrikaanse burgerskap deur persone wat hul burgerskap uit hoofde van die bepalings van vorige wette verloor het, te reël; genoemde Minister te magtig om vrystelling te verleen aan 'n persoon wat uit hoofde van 'n sekere bepaling van 'n vorige wet opgehou het om 'n burger te wees; en sekere gevolglike wysigings voortspruitende uit die werking van genoemde Wet aan te bring; en om vir bykomstige aangeleenthede voorsiening te maak.

*(Afrikaanse teks deur die President geteken.)
(Goedgekeur op 26 November 1997.)*

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 1 van Wet 88 van 1995

1. Artikel 1 van die Wet op Suid-Afrikaanse Burgerskap, 1995 (hieronder die Hoofwet genoem), word hierby gewysig deur in subartikel (1) die omskrywing van "Suid-Afrikaanse burgerskap deur registrasie" te skrap.

Wysiging van artikel 3 van Wet 88 van 1995

2. Artikel 3 van die Hoofwet word hierby gewysig deur paragraaf (b) van subartikel (1) deur die volgende paragraaf te vervang:
- 10 "(b) [wat] buite die Republiek [op of na die datum van die inwerkingtreding van hierdie Wet] gebore [word], en—
- 15 (i) van wie enige ouer, by sy of haar geboorte, 'n Suid-Afrikaanse burger was of is en wie se geboorte [kragtens] ingevolge die bepalings van artikel 13 van die Wet op die Registrasie van Geboortes en Sterftes, 1992 (Wet No. 51 van 1992), geregistreer [word] is; of

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- (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 to 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. (1) 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

- 5 (ii) aan wie se verantwoordelike ouer 'n sertifikaat van herneming van vorige Suid-Afrikaanse burgerskap uitgereik is ingevolge artikel 13(3), en wat die Republiek vir permanente verblyf daarin binnegekom het voor [die] bereiking van meerderjarigheid, en wie se geboorte binne 'n
- 10 (iii) wat [kragtens] ingevolge die bepalings van die Wet op Kindersorg, 1983 (Wet No. 74 van 1983), deur 'n Suid-Afrikaanse burger aangeneem is en wie se geboorte [geregistreer is] ooreenkomstig die bepalings van subparagraaf (i) geregistreer is, is, behoudens die bepalings van subartikel (2), 'n Suid-Afrikaanse burger deur afkoms."

15 Wysiging van artikel 4 van Wet 88 van 1995

3. Artikel 4 van die Hoofwet word hierby gewysig deur subparagraaf (iii) van paragraaf (a) van subartikel (1) te skrap.

Wysiging van artikel 5 van Wet 88 van 1995

20 4. Artikel 5 van die Hoofwet word hierby gewysig deur die volgende subartikel by te voeg:

25 "(9) (a) Ondanks andersluidende bepalings van subartikel (1) kan die Minister onder buitengewone omstandighede 'n sertifikaat van naturalisasie as 'n Suid-Afrikaanse burger aan 'n applikant toeken wat nie aan die voorskrifte van genoemde subartikel (1) met betrekking tot verblyf of gewone verblyf in die Republiek voldoen nie.

30 (b) Die Minister moet binne 14 dae na die aanvang van die sittings van die Parlement in elke jaar die name van enige persone aan wie sertifikate van naturalisasie as Suid-Afrikaanse burgers kragtens paragraaf (a) toegeken is in die onmiddellik voorafgaande jaar, met inbegrip van die redes vir die toekenning van enige sodanige sertifikaat, in die Parlement ter Tafel lê."

Wysiging van artikel 9 van Wet 88 van 1995

5. (1) Artikel 9 van die Hoofwet word hierby gewysig deur die volgende subartikels by te voeg, terwyl die bestaande artikel subartikel (1) word:

35 "(2) Ondanks andersluidende bepalings van subartikel (1) kan die Minister onder omstandighede wat hy of sy as buitengewoon beskou 'n persoon, op aansoek in die voorgeskrewe vorm, van die bepalings van genoemde subartikel (1), vir sover hulle op die gebruik van die paspoortgeriewe van 'n ander land betrekking het, vrystel vir die tydperk en op die voorwaardes wat die Minister bepaal.

40 (3) Die Minister kan te eniger tyd 'n vrystelling beoog in subartikel (2) intrek of 'n voorwaarde waarop so 'n vrystelling verleen is, intrek, wysig of aanvul."

(2) 'n Skriftelike magtiging wat voor die inwerkingtreding van hierdie Wet aan 'n persoon of 'n kategorie persone uitgereik is om van die paspoortgeriewe van 'n ander land gebruik te maak, is geldig asof dit kragtens 'n bepaling van die Hoofwet of van

45 'n ander wet wat deur die Hoofwet herroep is, na gelang van die geval, uitgereik is.

(3) Die bepalings van artikel 9(3) van die Hoofwet is *mutatis mutandis* van toepassing ten opsigte van 'n magtiging in subartikel (2) bedoel.

Wysiging van artikel 11 van Wet 88 van 1995

50 6. Artikel 11 van die Hoofwet word hierby gewysig deur in subartikel (3) die woorde wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang:

"Wanneer—

(a) 'n Suid-Afrikaanse burger deur naturalisasie of registrasie uit hoofde van die bepalings van 'n vorige wet opgehou het om 'n Suid-Afrikaanse burger te wees; of

(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, 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 **[or intends residing permanently in the Republic]**, 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), 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;”;

(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:

- (b) 'n Suid-Afrikaanse burger deur naturalisasie [**kragtens**] uit hoofde van die bepalings van artikel 6, 7, 8, 9 of 10 ophou om 'n Suid-Afrikaanse burger te wees,
word hy of sy by die toepassing van die Wet op Vreemdelinge-beheer, 1991 (Wet No. 96 van 1991), maar behoudens die bepalings van subartikel (4), geag 'n vreemdeling te wees wat nie—".

Wysiging van artikel 13 van Wet 88 van 1995

7. Artikel 13 van die Hoofwet word hierby gewysig deur paragraaf (a) van subartikel (3) deur die volgende paragraaf te vervang:
- 10 “(a) 'n Persoon wat [**ingevolge die bepalings van artikel 6, 7, 9 of 10 opgehou het**] uit hoofde van die bepalings van 'n vorige wet opgehou het om 'n Suid-Afrikaanse burger te wees of uit hoofde van die bepalings van artikel 6, 7, 8, 9 of 10 ophou om 'n Suid-Afrikaanse burger te wees, kan—
- 15 (i) indien hy of sy nie 'n persoon is **nie** soos bedoel in artikel 11(3) [**nie**] en wat permanent in die Republiek woonagtig is of na die Republiek terugkeer vir permanente verblyf daarin [**of van voorneme is om permanent in die Republiek te woon**], na gelang van die geval; of
- 20 (ii) indien hy of sy 'n persoon is soos bedoel in artikel 11(3) en 'n permit vir permanente verblyf [**soos**] bedoel in artikel 25 van die Wet op Vreemdelinge-beheer, 1991 (Wet No. 96 van 1991), aan hom of haar uitgereik is, in die voorgeskrewe vorm by die Minister om die herneming van sy of haar vorige Suid-Afrikaanse burgerskap aansoek doen.”.

Vervanging van artikel 22 van Wet 88 van 1995

8. Artikel 22 van die Hoofwet word hierby deur die volgende artikel vervang:

25 “Delegering van bevoegdhede

22. Die Minister kan, onderworpe aan die voorwaardes wat hy of sy nodig ag, 'n bevoegdheid by hierdie Wet aan hom of haar verleen, uitgesonderd 'n bevoegdheid bedoel in artikel 5(9) of 25, aan 'n beampte in diens van die Departement delegeer, maar is nie ontdoen nie van 'n bevoegdheid aldus gedelegeer, en kan 'n beslissing van die gedelegeerde geneem by die uitoefening van so 'n bevoegdheid, tersyde stel of wysig.”.

Wysiging van artikel 23 van Wet 88 van 1995

9. Artikel 23 van die Hoofwet word hierby gewysig—
- 35 (a) deur paragraaf (a) deur die volgende paragraaf te vervang:
- “(a) die vorm van 'n aansoek [**om 'n sertifikaat van naturalisasie as 'n Suid-Afrikaanse burger**], verklaring, sertifikaat of ander stuk kragtens hierdie Wet;”; en
- (b) deur paragraaf (b) te skrap.

Wysiging van artikel 26 van Wet 88 van 1995

- 40 10. Artikel 26 van die Hoofwet word hierby gewysig deur die volgende subartikel by te voeg:
- “(4) Ondanks die herroeping van artikel 15(1)(a) van die Wet op Suid-Afrikaanse Burgerskap, 1949, deur subartikel (1), kan die Minister te eniger tyd 'n persoon wat uit hoofde van die bepalings van genoemde artikel 15(1)(a) opgehou het om 'n Suid-Afrikaanse burger te wees, op aansoek in die
- 45 voorgeskrewe vorm, van die bepalings van genoemde artikel 15(1)(a) vrystel, hetsy onvoorwaardelik of op die voorwaardes wat die Minister bepaal, en iemand wat aldus vrygestel is, word geag 'n Suid-Afrikaanse burger te gebly het.”.

Invoeging van artikel 26A in Wet 88 van 1995

- 50 11. (1) Die volgende artikel word hierby na artikel 26 van die Hoofwet ingevoeg:

**“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.” 5

(2) The provisions of subsection (1) shall be deemed to have come into operation on 6 October 1995. 10

Short title

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

“Uitleg van verwysings na burgers en burgerskap van voormalige state in bestaande wette en in sekere stukke

5 **26A.** 'n Verwysing in 'n wet wat onmiddellik voor die inwerkingtreding van hierdie Wet van krag is, of in 'n sertifikaat of ander stuk kragtens so 'n wet, na 'n burger van 'n voormalige staat of burgerskap van 'n voormalige staat word, tensy dit met die samehang onbestaanbaar of andersins duidelik onvanpas is, uitgelê as 'n verwysing na onderskeidelik 'n Suid-Afrikaanse burger of Suid-Afrikaanse burgerskap.”

10 (2) Die bepalings van subartikel (1) word geag op 6 Oktober 1995 in werking te getree het.

Kort titel

12. Hierdie Wet heet die Wysigingswet op Suid-Afrikaanse Burgerskap, 1997.

