



Republic of Namibia
Annotated Statutes

Aliens Act 1 of 1937 (SA), sections 1, 9 and 14

(SA GG 2409)

came into force in South Africa and South West Africa on 1 February 1937
(section 14 of Act)

APPLICABILITY TO SOUTH WEST AFRICA: The definition of “Union” in section 1 included “the territory of South West Africa”. Section 13*bis*, prior to its repeal by the Immigration Control Act 7 of 1993, stated “This Act and any amendment thereof shall also apply in the territory of South West Africa, including that portion thereof known as the Eastern Caprivi Zipfel.”

TRANSFER TO SOUTH WEST AFRICA: The administration of this Act was transferred to South West Africa by the Executive Powers (Immigration) Transfer Proclamation, AG 9 of 1978, dated 10 February 1978 and the Executive Powers (Interior) Transfer Proclamation, AG 17 of 1978, dated 30 March 1978. None of the amendments to the Act in South Africa after the date of the transfer proclamations applied to South West Africa because none were made expressly so applicable.

as amended by

Aliens Amendment Act 59 of 1961 (RSA) (RSA GG 30)

came into force on date of publication: 30 June 1961; with respect to the surviving sections of Act 1 of 1937, amended only the Afrikaans text of section 1

Commonwealth Relations Act 69 of 1962 (RSA) (RSA GG 264)

deemed to have come into force in relevant part on 31 May 1962 (section 71 of Act 69 of 1962)

Aliens Amendment Act 7 of 1967 (RSA) (RSA GG 1664)

came into force on date of publication: 17 February 1967

Aliens and Immigration Laws Amendment

Proclamation, AG 15 of 1989 (OG 5728)

came into force on date of publication: 9 June 1989

Namibian Citizenship Act 14 of 1990 (GG 65)

brought into force on 15 September 1990 by Proc. 13/1990 (GG 72)

The Immigration Control Act 7 of 1993 (GG 690), which was brought into force on 29 July 1994 by GN 133/1994 (GG 895), repealed most of this Act (sections 2-8*ter* and 10-13*bis*), along with most of its amending Acts. The only surviving sections of this Act in force in Namibia are section 1 (definitions), section 9 (change of name) and section 14 (short title).

ACT

To restrict and regulate the entry of certain aliens into the Union and their residence or temporary sojourn therein, and to restrict and regulate the right of any person to assume a surname.

[Note that the only surviving substantive provision of the Act deals with name changes.]

ARRANGEMENT OF SECTIONS

1. Definitions

9. Change of name not permitted except under Governor-General's authority

14. Short title and date of commencement

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:-

Definitions

[None of the definitions in section 1 are relevant to section 9 – the only surviving substantive section of the Act – because none of the defined terms appear in that section.]

1. In this Act -

“alien” means a person who is not a South African citizen;

[definition of “alien” amended by Act 69 of 1962 and substituted by Act 7 of 1967]

“board” means the Immigrants Selection Board mentioned in section 3;

[definition of “board” substituted by Act 7 of 1967]

“domicile”, “immigration, officer” and “Minister” shall have the meanings ascribed respectively to those expressions in section 1 of the principal Act; have the meanings ascribed respectively to those expressions in section *thirty* of the principal Act;

[definition of “domicile”, “immigration, officer” and “Minister” substituted by Act 7 of 1967 and by AG Proc. 15 of 1989]

[definition of “European inhabitant of the Union” deleted by AG Proc. 15 of 1989]

“principal Act” means the Admission of Persons to the territory Regulation Act, 1972 (Act 59 of 1972);

[definition of “principal Act” substituted by Act 7 of 1967 and by AG Proc. 15 of 1989; the word “territory” should be capitalised]

[definition of “territory” inserted by AG Proc. 15 of 1989 and deleted by the Namibian Citizenship Act 14 of 1990]

[The definition of “Union” was substituted by Act 7 of 1967 and deleted by AG Proc. 15 of 1989. In the original Act and the substitution, this term was defined to include “the territory of South West Africa”.]

Change of name not permitted except under Governor-General's authority

Aliens Act 1 of 1937 (SA), sections 1, 9 and 14

[All of the references to the “Governor-General” in section 9 were removed by AG Proc. 15 of 1989, but the heading of section 9 was not amended accordingly. The Republic of South Africa Constitution Act 32 of 1961 provided in Article 3(b) that as from 31 May 1961, any reference to the Governor-General in any law in force in the Union of South Africa or in any other territory in respect of which Parliament is competent to legislate shall be construed as a reference to the Republic or the State President as the circumstances may require.]

9. (1) If any person who at any time bore or was known by a particular surname, assumes or describes himself by or passes under any other surname which he had not assumed or by which he had not described himself or under which he had not passed before the first day of January 1937, he shall be guilty of an offence unless the Administrator-General or an officer in the Government Service authorized thereto by him, has authorized him to assume that other surname and such authority has been published in the *Official Gazette*: Provided that this subsection shall not apply when -

[text preceding the proviso substituted by AG Proc. 15 of 1989]

- (a) a woman on her marriage, assumes the surname of her husband;
- (b) a married or divorced woman or a widow resumes a surname which she bore at any prior time;
- (c) a woman who lives or lived with a man as his putative wife, assumes the surname of that man, or after having assumed his surname, resumes a surname which she bore at any prior time;
- (cA) a woman who concluded a marriage according to the rites of the Islamitic or any Indian religion, or a woman who concluded a customary union as defined in section 17 of the Native Administration Proclamation, 1928 (Proclamation 15 of 1928), assumes the surname of the man with whom she concluded such marriage or union or after having assumed his surname, resumes a surname which she bore at any prior time;

[paragraph (cA) inserted by AG Proc. 15 of 1989]

- (d) a person who has been adopted in the Union in accordance with the provisions of any law relating to the adoption of children, assumes the surname of the person who adopted him;

[The Republic of South Africa Constitution Act 32 of 1961 provided in Article 3(a) that as from 31 May 1961, any reference to the Union in any law in force in the Union of South Africa or in any other territory in respect of which Parliament is competent to legislate shall be construed as a reference to the Republic.]

- (e) a person born as an illegitimate child, after the marriage of his parents to one another, assumes the surname of his father;
- (f) a person assumes as a surname, a name attaching to a title to which he succeeded by inheritance or which was conferred upon him by the King;

[The United Nations Human Rights Committee which oversees the International Covenant on Civil and Political Rights ruled in 2002 that the different procedures for men and women with respect to the assumption of a spouse’s surname upon marriage constituted unfair sex discrimination in terms of the International Covenant and gave the Namibian government 90 days to report on what has been done to rectify that problem. United Nations Human Rights Committee, Communication No. 919/2000, CCPR/C/74/D/919/2000, 28 June 2002. However, subsection (1) has not been amended accordingly.]

Aliens Act 1 of 1937 (SA), sections 1, 9 and 14

[The Republic of South Africa Constitution Act 32 of 1961 provided in Article 3(b) that as from 31 May 1961, any reference to the King in any law in force in the Union of South Africa or in any other territory in respect of which Parliament is competent to legislate shall be construed as a reference to the Republic or the State President as the circumstances may require.]

- (2) No such notice as is mentioned in sub-section (1) shall be issued unless -
- (a) the person concerned has published in the manner hereinafter prescribed once in each of two consecutive weeks in the *Official Gazette* and in each of two daily newspapers which circulate in the district in which the said person resides and which have been designated for such publication by the magistrate of that district, a notice of his intention to assume another surname; and

[paragraph (a) substituted by AG Proc. 15 of 1989]

- (b) the Administrator-General or an officer in the Government Service authorized thereto by him, has satisfied himself from a statement submitted by the said person and from reports furnished by the Commissioner of the South West African Police and by the said magistrate, that the said person is of good character and that there is a good sufficient reason for his assumption of another surname; and

[paragraph (b) substituted by AG Proc. 15 of 1989]

- (c) the said person has paid such fees and has complied with such further requirements as may be prescribed by regulation.

(3) The said notice shall set forth in full every christian name and the surname which the person in question bears or by which he is known, every other christian name or surname which he previously bore or by which he was previously known, the christian name or names and surname which he desires to assume, his residential address and his business address (if any), the reasons why he desires to assume another surname, and shall invite any person who objects to his assumption of any such christian name or surname, to lodge his objection in writing with the magistrate of the district in which the person in question resides.

[The word "christian" is not capitalised in the *Government Gazette*.]

(4) If any person has lodged with the said magistrate any such objection, as aforesaid, the magistrate shall attach that objection to his report mentioned in paragraph (b) of sub-section (2).

(5) A conviction or an acquittal of a person on a charge under sub-section (1) of having assumed or described himself or passed under any particular surname, shall not be a bar to a further charge and conviction under that sub-section if the said person, after the first-mentioned conviction or acquittal, again assumes or describes himself or passes under that surname or any other surname.

Short title and date of commencement

14. This Act shall be called the Aliens Act, 1937, and shall come into operation on the first day of February, 1937.