

CIVIL REGISTRATION

Aliens Act 1 of 1937, sections 1, 9 and 14, as amended in South Africa to February 1978

Summary: This Act ([SA GG 2409](#)) originally governed the presence of anyone who is not a South African citizen in South Africa and South West Africa. The Immigration Control Act 7 of 1993 repealed most of this Act (sections 2-8*ter* and 10-13*bis*), along with most of its amending Acts. The only surviving sections are section 1 (definitions, as amended by various Acts), section 9 (change of name, as amended by section 12 of Proc. 15/1989) and section 14 (short title). The only substantive provision remaining in force, section 9, deals with name changes. (This is why the Act now appears in the category on “CIVIL REGISTRATION” rather than “CITIZENSHIP AND IMMIGRATION”.)

Applicability to SWA: 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 of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Immigration) Transfer Proclamation (AG 9/1978), dated 10 February 1978. Section 3 of the transfer proclamation excluded sections 8(1) and 12(1) of the Act from the operation of section 3(1) of the General Proclamation. However the reference to “sections 8(1) and 12(1) of the Aliens Act” in section 3 of the transfer proclamation was subsequently substituted by section 51 of the Aliens and Immigration Laws Amendment Proclamation (AG 15/1989) ([OG 5728](#)) to read “section 12(1)(b) of the Aliens Act”.

The Executive Powers (Interior) Transfer Proclamation (AG 17/1978), dated 30 March 1978, was also applicable to this Act. Section 3(2)(a) of this transfer proclamation excluded section 12(1) of the Act from the operation of section 3(1)(c) of the General Proclamation, which deals with the interpretation of the term “Republic”.

The provisions of the Act relating to the Immigrant Selection Board were excluded from transfer by section 3(2)(b) of the General Proclamation, which exempted from the operation of section 3(1) of the General Proclamation “those provisions of any law ... which provide for or relate to the institution, constitution or control of any juristic person or any board or any other body of persons that may exercise powers or perform other functions in or in respect of both the territory and the Republic”.

None of the amendments to the Act in South Africa after the date of the transfer proclamations were made expressly applicable to SWA.

Amendments: None of the South African amendments to the original Act which were applicable to South West Africa are relevant now that the only surviving substantive section of the Act is section 9. (Section 1 is still in force, but none of the surviving definitions appear in section 9.)

The Aliens and Immigration Laws Amendment Proclamation, AG 15/1989 ([OG 5728](#)) amends section 9.

The amendments made to the Act by the Namibian Citizenship Act 14 of 1990 ([GG 65](#)) are not relevant to the sole surviving substantive section.

The Immigration Control Act 7 of 1993 ([GG 690](#)) repealed sections 2-8^{ter} and 10-13^{bis} of the primary Act.

It should be noted that the amendments made to the Act in SWA and Namibia have been so extensive that hardly any of the original RSA Act remains. As noted above, the only surviving sections are sections 1, 9 and 14.

Regulations: Regulations pertaining to name changes are contained in GN 759/1937 (OG 720), as amended by the following:

- SA GN 1030/1938 (SA GG 2540)
- SA GN 2134/1943 (SA GG 3272).

Application of law: The First Law Amendment (Abolition of Discriminatory or Restrictive Laws for the Purposes of Free and Fair Election) Proclamation (AG 14/1989) ([OG 5726](#)) affected how the definition of “alien” was to be construed, but this is of no relevance to the surviving portions of the Act.

Cases:

Swart v Minister of Home Affairs 1997 NR 268 (HC) (deals with aspects of the Act which were repealed by the Immigration Control Act 7 of 1993 (sections 1, 2 and 12(1)(a))

Müller v President of the Republic of Namibia & Another 1999 NR 190 (SC) (section 9) (critiqued in E Bonthuys, “‘Deny Thy Father and Refuse Thy Name’: Namibian Equality Jurisprudence and Married Women’s Surnames”, 117 (3) *South African Law Journal* 464 (2000); analysis revised by *Minister of Health and Social Services & Others v Medical Association of Namibia Ltd & Another* 2012 (2) NR 566 (SC))

According to *Müller*, the references to the Administrator-General in section 9 should be construed as references to the President after independence in terms of Article 140(5) of the Namibian Constitution. However, according to the subsequent case of *Minister of Health and Social Services & Others v Medical Association of Namibia Ltd & Another*, this interpretation should be based on Art 140(4) instead of Art 140(5).

Following on the *Müller* case, 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.

Births, Marriages and Deaths Registration Act 81 of 1963, as amended in South Africa to March 1978

Summary: This Act ([RSA GG 550](#)) governs the registration of births, marriages and deaths. It repeals the *Births, Marriages and Deaths Registration Act 17 of 1923*.

Applicability to SWA: This Act was initially brought into force in South West Africa by Ord. 27/1965 ([OG 2636](#)) with effect from the date of publication of that Ordinance (21 June 1965), subject to certain rules of construction contained in Ord 27/1965. Ord 27/1965 was repealed and replaced by the *Births, Marriages and Deaths Registration Amendment Act 58 of 1970* (RSA), which was brought into force on 1 February 1972, making the Act, with the exception of sections 7A and 42(4), applicable to South West Africa through the insertion of section 51A into the Act.

Section 1, as substituted by *Act 58 of 1970*, defines “Republic” to include “the territory of South West Africa”. Section 51A, inserted by *Act 58 of 1970*, states “This Act, except sections 7A and 42(4), and any amendment thereof, and any regulations made under this Act, shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel, and in such application the word ‘Bantu’ shall be construed as ‘native’ and any compound or derivative of ‘Bantu’ shall be construed as a corresponding compound or derivative of the word ‘native’.”

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Interior) Transfer Proclamation (AG 17/1978), dated 30 March 1978.

Section 3(2)(c) of the transfer proclamation excluded the reference to the “Republic” throughout the Act from the operation of section 3(1) of the General Proclamation, meaning that “Republic” retained the meaning given to it in the definition section of the Act (South Africa and SWA).

There were two amendments to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Births, Marriages and Deaths Registration Amendment Act 35 of 1982* ([RSA GG 8094](#)) and the *Marriages, Births and Deaths Amendment Act 41 of 1986* ([RSA GG 10211](#)) – neither of which was made expressly applicable to SWA.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Births, Marriages and Deaths Registration Amendment Act 17 of 1967* ([RSA GG 1670](#))
- *Births, Marriages and Deaths Registration Amendment Act 18 of 1968* ([RSA GG 2023](#))
- *Births, Marriages and Deaths Registration Amendment Act 58 of 1970* ([RSA GG 2843](#))
- *Births, Marriages and Deaths Registration Amendment Act 51 of 1974* ([RSA GG 4440](#)).

The Act was also amended by section 1 of the Native Laws Amendment Proclamation AG. 3 of 1979 ([OG 3898](#)), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979).

Certain terms are to be construed in accordance with section 1 of the References to Plural Relations and Development Act 10 of 1979 ([OG 4023](#)) (which does not technically make any amendments to the Act).

The Marriages, Births and Deaths Amendment Act 5 of 1987 ([OG 5356](#)) makes substantial amendments to this Act.

Repealed regulations: Regulations are contained in SA GN 1181/1934 (SA GG 2218; re-published in OG 579). These regulations were originally made in terms of section 34 and 48 of the Births, Marriages and Deaths Registration Act 17 of 1923, which was repealed by the Births, Marriages and Deaths Registration Act 81 of 1963. Pursuant to section 51(2) of the Births, Marriages and Deaths Registration Act 81 of 1963, the General Regulations are deemed to have been made under that Act. These regulations are amended by GN 873/1937 (OG 721), GN 1329/1955 (OG 1934), GN 718/1956 (OG 2017) and GN 415/1960 (OG 2257). However, these regulations do not appear to be in force in Namibia.

There was a chain of regulations which replaced the regulations contained in SA GN 1181/1934. They were first substituted by regulations published in RSA GN R.86/1964 (RSA GG 703).

These 1964 regulations were in turn substituted (along with the amendments contained in RSA GN R.819/1967, RSA GG 1766) by regulations contained in RSA GN R.1737/1971 (RSA GG 3272) in so far as the substituted regulations “are applicable to a person who is not a Bantu”.

The 1964 regulations, as amended and read with RSA GN R.1737/1971 (RSA GG 3272), were then withdrawn by RSA GN R.2385/1975 (RSA GG 4936). However, these 1975 regulations applied only “in relation to persons who are Bantu as defined in the Population Registration Act, 1950 (Act 30 of 1950), or who are natives (excluding Namas) as defined in section 25 of the Native Administration Proclamation, 1928 (South-West Africa Proclamation 15 of 1928).”

Thus, the regulations which applied to Namibia were the regulations published in RSA GN R.1737/1971 (RSA GG 3272) (for “non-Bantus”), and the regulations published in RSA GN R.2385/1975 (RSA GG 4936) (for “Bantus and natives excluding Namas”) – both of which were promulgated prior to the date of transfer of the Act to SWA. (It is possible that the 1964 regulations, as amended prior to the date of transfer, remained in force in respect of Namas – but if so, they would have no practical relevance in post-independence Namibia.)

In South Africa, the regulations contained in RSA GN R.1737/1971, as amended, were substituted by the regulations contained in RSA GN R.2206/1986 (RSA GG 10499) – which were made after the date of transfer and which were thus not applicable to SWA.

“The regulations published under Government Notice R.1737 of 1 October 1971 [RSA GG 3272], as amended by Government Notices R. 922 of 27 May 1977, R.290 of 15 February 1980, R. 6 of 2 January 1981 and R.2005 of 25 September 1981, and the regulations published under Government Notice R.2385 of 19 December 1975 [RSA GG 4936], as amended by Government Notices R. 850 of 16 April 1981 and R. 2422 of 6 November 1981, are hereby withdrawn.”

In Namibia, subsequent regulations were made under this Act in GN 214/1987 ([OG 5480](#)), which repealed RSA GN R.1737/1971 and RSA GN R.2385/1975.

Regulations: Regulations made under the law repealed by this Act survive pursuant to section 51(2) of the Act. However, aside from the repealed regulations discussed above, the pre-independence regulations have not been comprehensively researched.

Regulations made under this Act are contained in GN 214/1987 ([OG 5480](#)). These regulations are amended by GN 128/2001 ([GG 2564](#)), GN 214/2013 ([GG 5264](#)) and GN 137/2018 ([GG 6647](#)).

Cases: *MW v Minister of Home Affairs* 2014 (4) NR 1108 (HC), overruled on appeal 2016 (3) NR 707 (SC) (meaning of ordinary residence in Art 4(1)(d) of Namibian Constitution, in relation to citizenship and birth registration).

Notices: Forms and certificates made pursuant to Regulation 2 of the regulations contained in GN 214/1987 ([OG 5480](#)) were announced in GN 27/2014 ([GG 5425](#)), but this notice was withdrawn by GN 49/2014 ([GG 5439](#)) and replaced by GN 52/2014 ([GG 5444](#)). GN 52/2014 is amended by GN 173/2016 ([GG 6088](#)).

GN 52/2014 ([GG 5444](#)) prescribes forms in terms of regulation 2(a)(iii), which it erroneously refers to as regulation 2(iii). GN 172/2016 erroneously states that it is amending the regulations contained in GN 214/1987. It also erroneously states that GN 27/2014 ([GG 5425](#)) amended these regulations, and makes no reference to the fact that GN 27/2014 was withdrawn and replaced by GN 52/2014.

Identification Act 21 of 1996

Summary: This Act ([GG 1447](#)) provides for a population register and for the issue of identity documents. It repeals the *Identity Documents in South West Africa Act 37 of 1970* and the Identification of Persons Act 2 of 1979. The Act was brought into force on 18 May 2001 by GN 95/2001 ([GG 2533](#)).

Regulations: Identification Regulations are contained in GN 96/2001 ([GG 2533](#)), as amended by GN 136/2018 ([GG 6647](#)) (substitution of regulation 7(1), concerning fees for duplicate IDs) and by GN 22/2020 ([GG 7116](#)) (substitution of regulation 3 and Annexure C concerning the form of identity documents).

Note: Identity documents issued under the previous acts will continue to be valid until a date determined by the Minister of Home Affairs and announced in the *Government Gazette*.

See also **BIRTHS AND DEATHS**.

See also **MARRIAGE AND DIVORCE**.