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THE PRESIDENCY

No. 350

12 April 2006

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

No. 28 of 2005: Repeal of the Black Administration Act and Amendment of Certain Laws Act, 2005.



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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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*(English text signed by the President.)
(Assented to 7 April 2006.)*

ACT

To repeal the provisions of the Black Administration Act, 1927, incrementally; to amend the Administration of Estates Act, 1965, so as to give the Masters of the High Courts jurisdiction over the property of all minors, including those who are governed by the principles of customary law; and to provide for matters connected therewith.

PREAMBLE

SINCE the Constitution of the Republic of South Africa, 1996, as the supreme law of the Republic, was adopted so as to—

- * establish a society based on democratic values, social and economic justice, equality and fundamental human rights;
- improve the quality of life of all citizens; and
- free the potential of each person by every means possible;

AND SINCE the Black Administration Act, 1927 (the Act), is regarded as a law that—

- * is repugnant to the values set out in the Constitution, particularly section 1 and the Bill of Rights in Chapter 2 thereof;
- is reminiscent of past divisions and discrimination; and
- ought to be repealed as a matter of the utmost urgency;

AND SINCE the repeal of some provisions of the Act, in the interests of legal certainty and good governance, necessitates the incremental approach adopted hereunder, **by** repealing those provisions of the Act requiring legislative alternatives on a fixed and reasonably foreseeable future date or on such date as the legislative alternatives are implemented by the role players in question, whichever occurs earlier,

Act No. 28, 2005 REPEAL OF THE BLACK ADMINISTRATION ACT
AND AMENDMENT OF CERTAIN LAWS ACT. 2005

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa,
as follows:—

Repeal of Act 38 of 1927 and savings

1. (1) Sections 1, 2(1), (2), (3), (5), (6) and (9), 3, 5(1)(a), 11(3)(a), 11A, 21A, 23(1),
(2), (3), (5), (6), (7)(b), (8), (9), (10)(a), (b), (c), (e) and (f) and (11), 26(1), 27, 31, 33,
34 and the Second Schedule of the Black Administration Act, 1927 (Act No. 38 of 1927)
(hereafter referred to as the Act), are hereby repealed. 5

(2) Section 2(7), (7)*bis*, (7)*ter* and (8) of the Act is hereby repealed on—

(a) 31 July 2006; or

(b) such date when the last of the provinces of— 10

(i) KwaZulu-Natal;

(ii) Free State;

(iii) Mpumalanga;

(iv) North West;

(v) Limpopo; and 15

(vi) Eastern Cape,

have repealed those provisions that were assigned to them or their equivalent
and have enacted and implemented corresponding provincial legislation
regulating the matters dealt with in section 2(7), (7)*bis*, (7)*ter* and (8) of the
Act in terms of the Traditional Leadership and Governance Framework Act, 20
2003 (Act No. 41 of 2003), within their areas of jurisdiction,

whichever occurs first.

(3) Sections 12(1), (2), (3), (4) and (6) and 20(1), (2), (3), (4), (5), (6) and (9) and the
Third Schedule of the Act are hereby repealed on— 25

(a) 31 July 2006; or

(b) such date as national legislation to further regulate the matters dealt with in
sections 12(1), (2), (3), (4) and (6) and 20(1), (2), (3), (4), (5), (6) and (9) and
the Third Schedule of the Act is implemented,

whichever occurs first.

(4) Section 22(7) and (8) of the Act is hereby repealed on— 30

(a) 31 July 2006; or

(b) such date as national legislation to further regulate the matters dealt with in
section 22(7) and (8) of the Act is implemented,

whichever occurs first.

(5) Section 24 of the Act is hereby repealed on— 35

(a) 31 July 2006; or

(b) such date as provincial legislation in the province of KwaZulu-Natal in order
to further regulate the matters dealt with in section 24 of the Act is
implemented,

whichever occurs first. 40

(6) Any—

(a) proclamation made under section 25(1) of the Act, including a proclamation
validated by an Act of Parliament, and in force immediately prior to the
commencement of section 5 of the Abolition of Racially Based Land
Measures Act, 1991 (Act No. 108 of 1991), in an area, including a former 45
self-governing territory;

(b) regulation made under section 30(2) of the Act or any by-law made under
section 30A(1) of the Act and in force immediately prior to the commence-
ment of section 8 of the Abolition of Racially Based Land Measures Act, 1991
(Act No. 108 of 1991), in an area, including a former self-governing territory, 50

which has not been repealed in terms of section 87 of the said Abolition of Racially
Based Land Measures Act, 1991, is hereby repealed on—

(i) 31 July 2006; or

(ii) such date as it is repealed by a competent authority,

whichever occurs first. 55

(7) Sections 32, 35, 36, 37, the long title and First Schedule of the Act are hereby
repealed subject to the repeal of all the provisions referred to in subsections (1) to (6).

(8) (a) The repeal of any section, including sections 11A, 31, 34 and the Second
Schedule of the Black Administration Act, 1927, by this Act must not be construed as
derogating from any right which was acquired in terms of any section of the Black 60
Administration Act, 1927, prior to the repeal thereof by this Act.

Act No. 28,2005 REPEAL OF THE BLACK ADMINISTRATION ACT
AND AMENDMENT OF CERTAIN LAWS ACT, 2005

(b) The Registrar of Deeds having jurisdiction must, without charge, remove any restrictive condition contained in a deed which was imposed by virtue of the operation of section 34 of the Black Administration Act, 1927, and contemplated in the Second Schedule thereto, if the Minister responsible for land affairs in writing approves an application by the owner of the land in question for such removal. 5

Amendment of section 4 of Act 66 of 1965, as amended by section 1 of Act 86 of 1983, section 26 of Act 57 of 1988, section 4 of Act 20 of 2001 and section 2 of Act 47 of 2002

2. Section 4 of the Administration of Estates Act, 1965, is hereby amended by the substitution for subsection (2) of the following subsection: 10

“(2) In respect of the property belonging to a minor, including property of a minor governed by the principles of customary law, or property belonging to a person under curatorship or to be placed under curatorship, jurisdiction shall lie—

(a) in the case of any such person who is ordinarily resident within the area of jurisdiction of a High Court, with the Master appointed in respect of that area; 15
and

(b) in the case of any such person who is not so resident, with the Master appointed in respect of any such area in which is situate the greater or greatest portion of the property of that person: 20

Provided that— 20

(i) a Master who has exercised jurisdiction under paragraph (a) or (b) shall continue to have jurisdiction notwithstanding any change in the ordinary residence of the person concerned or in the situation of the greater or greatest portion of his or her property; and

(ii) in the case of any mentally ill person who under the Mental Health Act, 1973 (Act No. 18 of 1973), has been received or is detained in any place, jurisdiction shall lie with the Master who, immediately prior to such reception or detention, had jurisdiction in respect of his or her property under paragraph (a) or (b).” 25

Short title 30

3. This Act shall be called the Repeal of the Black Administration Act and Amendment of Certain Laws Act, 2005.