

REPUBLIC OF SOUTH AFRICA

**ALTERATION OF
SEX DESCRIPTION AND
SEX STATUS BILL**

*(As amended by the Portfolio Committee on Home Affairs (National Assembly))
(The English text is the official text of the Bill)*

(MINISTER OF HOME AFFAIRS)

[B 37D—2003]

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GENERAL EXPLANATORY NOTE:

Words underlined with a solid line indicate insertions in existing enactments.

BILL

To provide for the alteration of the sex description of certain individuals in certain circumstances; and to amend the Births and Deaths Registration Act, 1992, as a consequence; and to provide for matters incidental thereto.

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

Definitions

1. In this Act, unless the context indicates otherwise—
- “gender characteristics” means the ways in which a person expresses his or her social identity as a member of a particular sex by using style of dressing, the wearing of prostheses or other means; 5
 - “gender reassignment” means a process which is undertaken for the purpose of reassigning a person’s sex by changing physiological or other sexual characteristics, and includes any part of such a process;
 - “intersexed”, with reference to a person, means a person whose congenital sexual differentiation is atypical, to whatever degree; 10
 - “medical practitioner” means a person providing health services in terms of any law, including in terms of the—
 - (a) Allied Health Professions Act, 1982 (Act No. 63 of 1982);
 - (b) Health Professions Act, 1974 (Act No. 56 of 1974);
 - (c) Nursing Act, 1978 (Act No. 50 of 1978); 15
 - (d) Pharmacy Act, 1974 (Act No. 53 of 1974);
 - (e) Dental Technicians Act, 1979 (Act No. 19 of 1979); and
 - (f) Mental Health Care Act, 2002 (Act No. 17 of 2002);
 - “primary sexual characteristics” means the form of the genitalia at birth;
 - “secondary sexual characteristics” means those which develop throughout life and which are dependant upon the hormonal base of the individual person; 20
 - “sexual characteristics” means primary or secondary sexual characteristics or gender characteristics.

Application for alteration of sex description

2. (1) Any person whose sexual characteristics have been altered by surgical or medical treatment or by evolvment through natural development resulting in gender reassignment, or any person who is intersexed may apply to the Director-General of the National Department of Home Affairs for the alteration of the sex description on his or her birth register. 25
- (2) An application contemplated in subsection (1) must— 30
- (a) be accompanied by the birth certificate of the applicant;

- (b) in the case of a person whose sexual characteristics have been altered by surgical or medical treatment resulting in gender reassignment, be accompanied by reports stating the nature and results of any procedures carried out and any treatment applied prepared by the medical practitioners who carried out the procedures and applied the treatment or by a medical practitioner with experience in the carrying out of such procedures and the application of such treatment; 5
- (c) in every case in which sexual characteristics have been altered resulting in gender reassignment, be accompanied by a report, prepared by a medical practitioner other than the one contemplated in paragraph (b) who has medically examined the applicant in order to establish his or her sexual characteristics; and 10
- (d) in the case of a person who is intersexed, be accompanied by—
- (i) a report prepared by a medical practitioner corroborating that the applicant is intersexed; and 15
 - (ii) a report prepared by a qualified psychologist or social worker corroborating that the applicant is living and has lived stably and satisfactorily, for an unbroken period of at least two years, in the gender role corresponding to the sex description under which he or she seeks to be registered. 20
- (3) If the Director-General refuses the application contemplated in subsection (1), he or she must furnish the applicant with written reasons for the decision.
- (4) If an application contemplated in subsection (1) is refused, the applicant may appeal to the Minister of Home Affairs against the decision taken by the Director-General. 25
- (5) An application contemplated in subsection (4) must be lodged with the Minister within 14 days after the decision of the Director-General was made known and must be accompanied by the documents referred to in subsection (2) and the reasons for the Director-General's refusal.
- (6) If an appeal in terms of subsection (4) is refused, the applicant may apply to the magistrate of the district in which he or she resides for an order directing the change of his or her sex description. 30
- (7) An application contemplated in subsection (6) must be accompanied by the documents referred to in subsection (2) and the reasons for the Minister's refusal.
- (8) On the date and at the time determined by the magistrate the applicant must appear before the magistrate in chambers and must at the request of the magistrate furnish such additional information and proof as the magistrate may require. 35
- (9) If the application is granted the magistrate must issue an order directing the Director-General to alter the sex description in the birth register of the person named in the order. 40
- (10) An applicant may, on his or her appearance before the magistrate, be assisted by a legal representative.

Order for alteration of sex description

3. (1) If the Director-General grants an application contemplated in section 1(1) or receives an order from a magistrate in terms of section 1(7), the Director-General must proceed in terms of section 27A of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992). 45
- (2) A person whose sex description has been altered, is deemed for all purposes to be a person of the sex description so altered as from the date of the recording of such alteration. 50
- (3) Rights and obligations that have been acquired by or accrued to such a person before the alteration of his or her sex description are not adversely affected by the alteration.

Insertion of section 27A in Act 51 of 1992

4. The following section is hereby inserted in the Births and Deaths Registration Act, 1992, after section 27:

“Alteration of sex description

27A. (1) If the Director-General grants an application or a magistrate issues an order in terms of section 1 of the Alteration of Sex Description and Sex Status Act, 2003, the Director-General shall alter the sex description on the birth register of the person concerned. 5

(2) An alteration so recorded shall be dated and after the recording of the said alteration the person concerned shall be entitled to be issued with an amended birth certificate.”. 10

Short title

5. This Act is called the Alteration of Sex Description and Sex Status Act, 2003.

MEMORANDUM ON THE OBJECTS OF THE ALTERATION OF SEX DESCRIPTION AND SEX STATUS BILL, 2003

1. BACKGROUND TO AND OBJECTS OF BILL

The South African Law Commission submitted a report to the then Minister for Justice and Constitutional Development Mr A M Omar MP on the investigation into the legal consequences of sexual realignment and related matters.

In its report the South African Law Commission made certain recommendations regarding legislation providing that any person whose sex organs have been altered by surgical or medical treatment be allowed to apply to the Director-General of Home Affairs for the alteration of such person's sex description in the National Population Register. The Law Commission recommended draft legislation to this effect and it is after careful study of the Commission's recommendations that this Bill was submitted to Cabinet for approval.

The Bill deals with the actual application for the alteration of sex description to the Director-General of Home Affairs. The Bill sets out the requirements for such application, the manner in which the Director-General has to deal with a refusal to register, the steps which the applicant may take if the Director-General refuses to register the altered sex description and other related matters.

The Bill also deals with the consequences of the alteration of sex description and requires the Director-General to register the altered sex description in terms of the proposed amendment to the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992), in certain circumstances.

The Bill further provides that the rights and obligations that have accrued to or acquired by the said person before the alteration of his or her sex description shall not be abolished by the alteration or an order by the court.

The Bill seeks to amend the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992), by inserting a section dealing with alteration of sex description and the issuing of an amended birth certificate to the person concerned.

2. CONSULTATION

Association of Law Societies of South Africa
Cape Bar Council
Department of Correctional Services
Department of Health
Family and Marriage Society of South Africa
General Bar Council of South Africa
Professor CJ Davel
Reverend Father H Ennis, OFM
South African National Council for Child and Family Welfare

3. IMPLICATIONS FOR PROVINCES

None.

4. FINANCIAL IMPLICATIONS FOR STATE

The proposed Bill will lead to new responsibilities for the Department of Home Affairs and as a result, additional financial resources are needed.

The amendment will bring about an increase in the revenue collected by the Department of Home Affairs in the form of fees payable for the issue of amended birth certificates.

5. PARLIAMENTARY PROCEDURE

The Department of Home Affairs and the State Law Advisers are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provisions to which the procedures set out in section 74 or 76 of the Constitution apply.