



REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

Price 10c Prys
Overseas 15c Oorsee
POST FREE—POSVRY

Vol. 47.]

CAPE TOWN, 21st MAY, 1969.

KAAPSTAD, 21 MEI 1969.

[No. 2401.]

DEPARTMENT OF THE PRIME MINISTER.

No. 818.

21st May, 1969.

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

No. 54 of 1969: Heraldry Amendment Act, 1969.

DEPARTEMENT VAN DIE EERSTE MINISTER.

No. 818.

21 Mei 1969.

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

No. 54 van 1969: Heraldiekwysigingswet, 1969.

Act No. 54, 1969

HERALDRY AMENDMENT ACT, 1969.

ACT

To amend the provisions of the Heraldry Act, 1962, relating to definitions, the grant of coats of arms, badges and other emblems, the functions of the heraldry council and the bureau of heraldry, the information obtainable from the register kept in the said bureau, the exercise of discretionary powers, the making of regulations and the protection of family coats of arms; so as to provide for the registration and protection of names and uniforms and the amendment of registered names or uniforms, for the appointment of a heraldry committee, for applications for registration of coats of arms, badges, other emblems, names or uniforms or of amendments of registered coats of arms, badges, other emblems, names or uniforms to be made in the manner determined by the state herald and for a right of appeal against the rejection of such applications; so as to make new provision for the consideration of applications for registration of coats of arms, badges or other emblems and of the amendment of registered coats of arms, badges or other emblems; so as to provide for such applications which are pending at the commencement of this Act, and for applications for the registration of names, uniforms or badges, under the Protection of Names, Uniforms and Badges Act, 1935, which are pending at such commencement; to repeal the said Protection of Names, Uniforms and Badges Act, 1935; and to provide for incidental matters.

(English text signed by the State President.)

(Assented to 7th May, 1969.)

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:—

Substitution of section 1 of Act 18 of 1962.

1. The following section is hereby substituted for section 1 of the Heraldry Act, 1962 (hereinafter referred to as the principal Act):

"Definitions. 1. In this Act, unless the context otherwise indicates—

- (i) 'application' means an application for registration referred to in section 7 (3); and 'applicant' has a corresponding meaning; (i)
- (ii) 'association' means any association of persons in the Republic, the territory or a foreign country formed for the promotion of sport or for any other lawful purpose, the pursuit of which in the opinion of the Minister is calculated to be in the public interest; (xxiv)
- (iii) 'badge' means any object or figure, being a symbolic representation, but not displayed on a shield, used for official or municipal purposes or by any association, institution or person as a mark of recognition or as a distinguishing token; (x)
- (iv) 'bureau' means the bureau of heraldry established by section 3;

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- (v) 'coat of arms' means any object or figure, being a symbolic representation displayed in colours on a shield in conformity with the principles and rules of heraldry, with or without a crown, helmet, crest, mantling, supporters, motto or other accessories; (xxvi)
- (vi) 'committee' means the heraldry committee referred to in section 6 (3); (xi)
- (vii) 'council' means the heraldry council established by section 6 (1); (xvii)
- (viii) 'differencing' means the incorporation of a brisure in a family coat of arms in conformity with the principles and rules of heraldry in order to distinguish between different members or branches of a family; (v)
- (ix) 'heraldic representation' means a coat of arms, badge or other emblem; (vii)
- (x) 'institution' means any institution, including any university, university college, teachers' college, training college, normal college, technical college, school or research institute in the Republic, the territory or a foreign country, for the promotion of education, arts, science or any other lawful human activity, and any union or society of the present or past members, students or scholars of any such institution; (ix)
- (xi) 'Minister' means the Minister of National Education; (xii)
- (xii) 'municipal' means of or belonging to an institution or body referred to in section 84 (1) (f) (i) or (ii) of the Republic of South Africa Constitution Act, 1961 (Act No. 32 of 1961), and any similar institution or body in the territory; (xiii)
- (xiii) 'name' means any name referred to in section 7 (2); (xiv)
- (xiv) 'official' means of or belonging to the Government of the Republic or any provincial administration; (ii)
- (xv) 'other emblem' means any flag, pennant, gonfalon, decoration, medal, seal, insignia of rank, any office or order or other or kindred symbolic representation, but does not include a coat of arms or badge; (iii)
- (xvi) 'prescribed' means prescribed by regulation; (xxv)
- (xvii) 'province' includes the territory; (xvi)
- (xviii) 'provincial administration' means the administration of a province; (xv)
- (xix) 'register' means the register kept in terms of section 5; (xviii)
- (xx) 'registration' means an entry in the register; and 'registered' has a corresponding meaning; (xix)
- (xxi) 'regulation' means any regulation made under section 25; (xx)
- (xxii) 'special name' means any special name or designation referred to in section 7 (2); (xxi)
- (xxiii) 'state herald' means the officer appointed in terms of section 4; (xxii)
- (xxiv) 'territory' means the territory of South-West Africa, including that part of the said territory known as the Eastern Caprivi Zipfel and referred to in section 38 (5) of the South-West Africa Constitution Act, 1968 (Act No. 39 of 1968); (vi)
- (xxv) 'this Act' includes any regulation; (viii)
- (xxvi) 'uniform' means the design of any article or articles of wearing apparel, being distinctive in design and colour, but without a heraldic

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representation as part thereof, intended to be used by members of an association or institution which is not of a political or religious character. (xxiii)".

Repeal of section 2 of Act 18 of 1962.

2. Section 2 of the principal Act is hereby repealed.

Substitution of section 3 of Act 18 of 1962.

3. The following section is hereby substituted for section 3 of the principal Act:

"Bureau of heraldry.

3. (1) There is hereby established a bureau of heraldry for the registration of heraldic representations, names, special names or uniforms and for the performance of such other functions as are assigned to the bureau by or under this Act.

(2) The functions of the bureau shall be to—

- (a) receive and examine applications for the registration of heraldic representations, names, special names or uniforms;
- (b) keep the register and the documents lodged in terms of this Act;
- (c) issue certificates of registration of heraldic representations, names, special names and uniforms; and
- (d) carry out such other duties as may be assigned to the bureau by the Minister or this Act."

Substitution of section 5 of Act 18 of 1962.

4. (1) The following section is hereby substituted for section 5 of the principal Act:

"Register of heraldic representations, names, special names and uniforms.

5. A register shall be kept in the bureau in which the bureau shall on application in the manner determined by the state herald after consultation with the council enter the particulars determined by the state herald in respect of—

- (a) the coat of arms of the Republic, the national flag of the Republic, the coats of arms of the provinces and any other heraldic representation instituted, constituted or created by any law, and any amendment thereof effected by any law;
- (b) any official or municipal heraldic representation granted by competent authority, or adopted in terms of any law, before the commencement of this Act;
- (c) any official or municipal heraldic representation granted in terms of section 2 before the commencement of the Heraldry Amendment Act, 1969, or adopted after the commencement of this Act in terms of any law, and any amendment thereof;
- (d) any other heraldic representation, the application for registration of which has been approved under this Act, and any amendment of which the application therefor has been so approved, of a registered heraldic representation; and
- (e) any name, special name or uniform, the application for registration of which has been approved under this Act, and any amendment, of which the application therefor has been so approved, of a registered name, special name or uniform."

(2) The register mentioned in section 1 of the Protection of Names, Uniforms and Badges Act, 1935 (Act No. 23 of 1935), shall be deemed to be kept in terms of section 5 of the principal Act.

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Substitution of
section 6 of Act 18
of 1962.

5. The following section is hereby substituted for section 6 of the principal Act:

"Heraldry
council and
heraldry
committee.

6. (1) There is hereby established a heraldry council which shall consist of the state herald and at least six other members to be appointed by the Minister on such conditions as he may determine.

(2) The functions of the council shall be to—

- (a) determine the policy to be applied in approving an application;
- (b) consider and decide upon such matters as the state herald or the committee may refer to it;
- (c) consider and approve for registration, or reject, applications referred to it in terms of this Act;
- (d) consider appeals noted under section 9;
- (e) consider objections lodged in terms of section 7B; and
- (f) carry out such other duties as may be assigned to the council by the Minister.

(3) The Minister shall appoint a heraldry committee, consisting of such members of the council as the Minister may designate, to decide and to report to the state herald upon applications referred to it by the state herald.

(4) Subject to any directions by the Minister, the council and the committee shall determine when and where they shall meet and the procedure and quorum at their meetings, including the number of votes required for a decision.

(5) A member of the council who is not in the full-time employment of the State, shall out of moneys appropriated by Parliament for the purpose, be paid in respect of his services as member of the council such allowances as the Minister in consultation with the Minister of Finance, may determine.

(6) Such a member of the council who is also a member of the committee, shall in respect of his services as member of the committee similarly be paid additional allowances, so determined."

Substitution of
section 7 of Act 18
of 1962.

6. The following section is hereby substituted for section 7 of the principal Act:

"Applica-
tions for
registration.

7. (1) Any official or municipal authority, association, institution or person may apply to the bureau for registration of a heraldic representation, or of any amendment of a registered heraldic representation which has been registered in its or his name.

(2) Any association or institution which is not of a political or religious character may apply to the bureau for registration of its name or of one special name or designation used by the association or institution for its members or for the members of any organization constituted by the association or institution in accordance with its rules and regulations, or of any uniform used by the association or institution or of any amendment of any name, special name or uniform which has been registered in its name.

(3) An application for registration of a heraldic representation, name, special name or uniform or of any amendment of a registered heraldic representation, name, special name or uniform shall be made to the bureau in the form determined by the state herald and shall be accompanied by the documents and designs determined by the state herald and the prescribed fees."

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Insertion of sections 7A and 7B in Act 18 of 1962.

7. The following sections are hereby inserted in the principal Act after section 7:

"Notice of applications. 7A. The bureau shall give notice in the *Gazette* of any application made to it in terms of section 7, and of the period within which and the manner in which any objection in terms of section 7B shall be lodged with the bureau.

Objections. 7B. Any official or municipal authority, association, institution or person wishing to object to the registration of any heraldic representation, name, special name or uniform or to the amendment of a registered heraldic representation, name, special name or uniform on the grounds that such registration or amendment would encroach upon rights to which it or he is legally entitled, shall lodge such objection with the bureau in such manner and within such period as the bureau may by notice in the *Gazette* determine."

Substitution of section 8 of Act 18 of 1962.

8. The following section is hereby substituted for section 8 of the principal Act:

"Consideration of applications by state herald. 8. (1) If an application is in the form determined by the state herald under section 7, the state herald may, subject to the provisions of section 19, approve or reject the application, or he may refer it to the committee: Provided that if any objection is lodged against the registration of the heraldic representation, name, special name or uniform concerned, or against the amendment concerned of any registered heraldic representation, name, special name or uniform, he shall refer the application to the council.

(2) (a) Any person who is able to produce proof to the satisfaction of the state herald that he is a descendant of a person who lawfully bears or bore a particular family coat of arms, or a lawfully adopted child of that person, bearing the same lawfully conferred family name as that of that person, may apply to the bureau for registration in his name of that family coat of arms, and the state herald may, subject to the provisions of section 19, approve or reject the application.

(b) If the state herald does not reject such an application, he may, on payment by the applicant of the fees fixed by the Minister in consultation with the Minister of Finance, approve the application, with or without differencing: Provided that the system of differencing shall be determined by the state herald in consultation with the council.

(3) If the state herald approves an application under subsection (1) or (2), the bureau shall enter in the register the particulars determined by the state herald, in respect of the heraldic representation, name, special name or uniform concerned, and the bureau shall give notice, in the *Gazette*, of the registration and issue to the applicant concerned a certificate of registration.

(4) An application may be rejected by the state herald if—

(a) the design of the heraldic representation or uniform be similar to a design or any material part of a design protected by copyright or this Act, and permission in writing for the use of such design or such material part has not been obtained from the owner thereof;

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- (b) the design of the heraldic representation does not accord with the principles and rules of heraldry;
- (c) the application does not comply with the provisions of this Act or is defective in other respects; or
- (d) the further information or particulars referred to in section 8B are not furnished."

Insertion of sections 8A and 8B in Act 18 of 1962.

9. The following sections are hereby inserted in the principal Act after section 8:

"Consideration of applications by the committee and the council.

8A. (1) Whenever an application is referred to the committee or the council by the state herald, the committee or the council may, subject to the provisions of section 19, approve the application or reject it.

(2) If the committee is of opinion that an application so referred to it ought not to be approved, it may refer the application to the council.

(3) The council may, subject to the provisions of section 19, approve such application or reject it.

(4) The provisions of section 8 (4) shall apply to the consideration of an application by the committee or the council.

(5) If the committee or the council approves an application, the bureau shall enter in the register the particulars determined by the state herald, in respect of the heraldic representation, name, special name or uniform concerned, and the bureau shall give notice in the *Gazette* of the registration and issue to the applicant concerned a certificate of registration.

Request for further information or particulars.

8B. The bureau may, with regard to an application, require from the applicant such further information or particulars as the state herald, the committee or the council, as the case may be, desires."

Substitution of section 9 of Act 18 of 1962.

10. The following section is hereby substituted for section 9 of the principal Act:

"Appeal against rejection of application by the state herald or the committee.

9. (1) If an application is rejected by the state herald or the committee, the applicant may, within six weeks after the bureau has informed him thereof, appeal to the council, in writing and specifying, to the satisfaction of the council, the grounds of appeal, against the rejection of his application, and the council may uphold or reject the appeal.

(2) At the hearing of any such appeal against the rejection, by the state herald, of an application, he shall recuse himself.

(3) If an application is approved by the council on appeal, the bureau shall enter in the register the particulars determined by the state herald, in respect of the heraldic representation, name, special name or uniform concerned or the amendment thereof, and the bureau shall give notice, in the *Gazette*, of the registration and issue to the appellant a certificate of registration."

Repeal of sections 10, 11, 12 and 13 of Act 18 of 1962.

11. Sections 10, 11, 12 and 13 of the principal Act are hereby repealed.

Substitution of section 14 of Act 18 of 1962.

12. The following section is hereby substituted for section 14 of the principal Act:

"Proprietary rights to heraldic representation, and

14. Subject to the provisions of section 20—
(a) a registered heraldic representation (other than a family coat of arms) shall be the full and exclusive property of the official or municipal

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use of name,
special name
or uniform.

authority, association, institution or person in whose name it has been registered;

- (b) a registered family coat of arms shall be the inalienable property of the person in whose name it has been registered; and
- (c) every association or institution in whose name a name, special name or uniform has been registered, shall be entitled to the sole and exclusive right to use that name, special name or uniform."

Amendment of
section 16 of Act 18
of 1962.

13. Section 16 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

"(1) The register shall be open for inspection by the public during the prescribed hours on payment of the fees fixed by the Minister in consultation with the Minister of Finance and subject to the prescribed conditions."; and

- (b) by the deletion of subsection (2).

Substitution of
section 17 of Act 18
of 1962.

14. The following section is hereby substituted for section 17 of the principal Act:

"Informa-
tion from
register.

17. The bureau may at the request of any person and on payment of the fees fixed by the Minister in consultation with the Minister of Finance, furnish such person with an extract from the register or a reproduction of a registered heraldic representation."

Amendment of
section 18 of Act 18
of 1962.

15. Section 18 of the principal Act is hereby amended by the deletion of paragraph (b).

Substitution of
section 19 of Act 18
of 1962.

16. The following section is hereby substituted for section 19 of the principal Act:

"Exercise
of discre-
tionary
powers.

19. Whenever any discretionary power is by this Act given to the state herald, the council or the committee, such power shall not be exercised adversely to an applicant or an objector or other person who according to the register appears to be an interested party, without affording such applicant, objector or interested party a reasonable opportunity of being heard."

Amendment of
section 20 of Act 18
of 1962.

17. Section 20 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

"(1) Nothing in this Act shall prevent any person from using any registered heraldic representation, name, special name or uniform in the course of or for the purpose of any stage play, historical pageant or other form of performance or entertainment or any cinematographic film, provided it is not used in such a manner or under such circumstances as to bring it into ridicule or contempt."; and

- (b) by the substitution for subsections (3) and (4) of the following subsections:

"(3) Nothing in this Act shall deprive any person of the right to use any heraldic representation, name, special name or uniform which at the commencement of this Act is not unlawfully in regular use by such person: Provided that the onus of proving such use shall be upon such person."

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(4) Nothing in this Act shall deprive any person of the right to use any heraldic representation, name, special name or uniform to the use of which he has become entitled by reason of his membership or past membership of an association or institution, within or outside the Republic or the territory: Provided that the onus of proving such right shall be upon the person claiming such right."

Substitution of
section 21 of
Act 18 of 1962.

18. The following section is hereby substituted for section 21 of the principal Act:

"Damages
for misuse
of registered
heraldic
representa-
tions,
names,
special
names or
uniforms.

21. Any person who—

- (a) without the written authority of the association or institution in whose name any name, special name or uniform has been registered, or without being a member of such association or institution, uses such name, special name or uniform or a material part thereof or any replica or reproduction thereof or any imitation which might reasonably be confused with any such name, special name or uniform; or
 - (b) without the written authority of the official or municipal authority, association, institution or person in whose name any heraldic representation has been registered or, if such person has died, of the widow of such person in the case of a family coat of arms, or without any other lawful reason, wears, uses, sells, barter or trades in any such heraldic representation or a material part thereof or any replica or reproduction thereof or any imitation which might reasonably be confused with any such heraldic representation,
- may be sued in any court of law by any such official or municipal authority, association, or person or widow of such person for—
- (i) an amount not exceeding one hundred rand, and such court may without proof of any damages, and in addition to the costs of the action, award such amount, not exceeding the said amount, as may in the circumstances of the case appear to it to be reasonable; or
 - (ii) damages or an interdict or for both damages and an interdict, and such court may, in addition to the costs of the action, award such damages as may appear to it to be reasonable in the circumstances, or grant an interdict or both award damages and grant an interdict."

Substitution of
section 22 of
Act 18 of 1962.

19. The following section is hereby substituted for section 22 of the principal Act:

"Penalties
for misuse
of official or
municipal
heraldic
representa-
tion.

22. Any person who, without the written permission of the official or municipal authority in whose name any official or municipal heraldic representation has been registered, or without any other lawful reason, sells, barter or uses for gain or trades in such heraldic representation or any material part thereof or any replica or reproduction thereof or any imitation thereof which might reasonably be confused therewith, shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred rand."

Substitution of
section 25 of
Act 18 of 1962.

20. The following section is hereby substituted for section 25 of the principal Act:

"Regula-
tions.

25. (1) The Minister may make regulations with regard to—

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- (a) a tariff of the fees which shall be paid in respect of any application, registration or appeal and the manner in which such fees shall be paid;
- (b) all matters which by this Act are required or permitted to be prescribed; and
- (c) generally, all matters which he considers it necessary or expedient to prescribe to give effect to the provisions of this Act, or in order that the objects of this Act may be achieved.

(2) The generality of the powers conferred by paragraph (c) of subsection (1) shall not be limited by the provisions of the other paragraphs of the said subsection.

(3) Any regulation with regard to any tariff of fees referred to in paragraph (a) of subsection (1) may only be made in consultation with the Minister of Finance."

Repeal of section 26 of Act 18 of 1962.

21. Section 26 of the principal Act is hereby repealed.

Pending applications.

22. The provisions of the principal Act, as existing prior to the amendment thereof by this Act, shall continue to apply in respect of any application, referred to in section 8 (1) (a) or (b) of the principal Act as existing prior to the amendment thereof by this Act, and made at the commencement of this Act but which has not yet at such commencement been finally disposed of, and the provisions of the principal Act, as amended by this Act, shall apply in respect of any other application so made but not yet finally disposed of at such commencement.

Substitution of long title of Act 18 of 1962.

23. The following long title is hereby substituted for the long title of the principal Act:

"To make provision for the establishment of a bureau of heraldry, a heraldry committee and a heraldry council; for the registration and protection of coats of arms, badges, other emblems, names and uniforms; and for other matters incidental thereto."

Repeal of Act 23 of 1935.

24. (1) Subject to the provisions of section 4 (2) and subsections (2) and (3) of this section, the Protection of Names, Uniforms and Badges Act, 1935, is hereby repealed.

(2) Any name, special name, uniform or badge which was immediately prior to the commencement of this Act entered in the register mentioned in section 1 of the Protection of Names, Uniforms and Badges Act, 1935, and in respect of which there existed immediately prior to such commencement a valid certificate of registration under the provisions of that Act, shall be deemed to be a name, special name, uniform or badge, respectively, registered under this Act: Provided that in the case of any such uniform with any such badge as an integral portion thereof, such uniform, without such badge, shall be deemed to be a uniform, and such badge a badge, registered under this Act.

(3) Any application made under section 2 of the Protection of Names, Uniforms and Badges Act, 1935, for the registration of a name, special name, uniform or badge, which has, at the commencement of this Act, not yet been finally disposed of, shall be disposed of in accordance with the provisions of that Act, as if this Act had not been passed, and thereupon any such name, special name, uniform or badge which the Minister referred to in section 4 of that Act causes under that section to

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be registered, shall, subject to the proviso to subsection (2) of this section, be deemed to be a name, special name, uniform or badge, respectively, registered under this Act.

Short title and
commencement.

25. This Act shall be called the Heraldry Amendment Act, 1969, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.