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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.

DIE PRESIDENSIE

No. 350

12 April 2006

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

No. 28 van 2005: Wet op die Herroeping van die Swart Administrasie Wet en Wysiging van Sekere Wette, 2005.

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.

(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- ought to be repealed as a matter of the utmost urgency;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, 5
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.

(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—

- (a) 31 July 2006; or 25
- (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, 55

whichever occurs first.

(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.

WORD DAAR DERHALWE BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Herroeping van Wet 38 van 1927 en voorbehoude

1. (1) Artikels 1, 2(1), (2), (3), (5), (6) en (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) en (f) en (11), 26(1), 27, 31, 33, 34 en die Tweede Bylae by die Swart Administrasie Wet, 1927 (Wet No. 38 van 1927) (hierna die Wet genoem), word hierby herroep. 5
- (2) Artikel 2(7), (7)*bis*, (7)*ter* en (8) van die Wet word hierby herroep op—
- (a) 31 Julie 2006; of
- (b) sodanige datum waarop die laaste van die provinsies van— 10
- (i) KwaZulu-Natal;
- (ii) Vrystaat;
- (iii) Mpumalanga;
- (iv) Noordwes;
- (v) Limpopo; en 15
- (vi) Oos-Kaap,
- die gemelde bepalings wat aan hulle opgedra is of hulle ekwivalent, herroep en ooreenstemmende provinsiale wetgewing ingevolge die “Traditional Leadership and Governance Framework Act, 2003” (Wet No. 41 van 2003), in hulle regsgebiede verorden en geïmplementeer het wat die aangeleenthede waarmee artikel 2(7), (7)*bis*, (7)*ter* en (8) van die Wet handel, reël, 20
- welke ook al die eerste plaasvind.
- (3) Artikels 12(1), (2), (3), (4) en (6) en 20(1), (2), (3), (4), (5), (6) en (9) en die Derde Bylae by die Wet word hierby herroep op—
- (a) 31 Julie 2006; of 25
- (b) sodanige datum waarop nasionale wetgewing geïmplementeer word ten einde die aangeleenthede waarmee artikels 12(1), (2), (3), (4) en (6) en 20(1), (2), (3), (4), (5), (6) en (9) en die Derde Bylae by die Wet handel, verder te reël, 30
- welke ook al die eerste plaasvind.
- (4) Artikel 22(7) en (8) van die Wet word hierby herroep op— 30
- (a) 31 Julie 2006; of
- (b) sodanige datum waarop nasionale wetgewing geïmplementeer word ten einde die aangeleenthede waarmee artikel 22(7) en (8) van die Wet handel, verder te reël, 35
- welke ook al die eerste plaasvind.
- (5) Artikel 24 van die Wet word hierby herroep op—
- (a) 31 Julie 2006; of
- (b) sodanige datum waarop provinsiale wetgewing in die provinsie van KwaZulu-Natal geïmplementeer word ten einde die aangeleenthede waarmee artikel 24 van die Wet handel, verder te reël, 40
- welke ook al die eerste plaasvind.
- (6) Enige—
- (a) proklamasie uitgevaardig kragtens artikel 25(1) van die Wet, met inbegrip van ’n proklamasie bekragtig deur ’n Wet van die Parlement, en wat onmiddellik voor die inwerkingtreding van artikel 5 van die Wet op die Afskaffing van Rasgebaseerde Grondreëlings, 1991 (Wet No. 108 van 1991), in ’n gebied, met inbegrip van ’n voormalige selfregerende gebied, van krag is; 45
- (b) regulasie uitgevaardig kragtens artikel 30(2) van die Wet of ’n verordening uitgevaardig kragtens artikel 30A(1) van die Wet, en wat onmiddellik voor die inwerkingtreding van artikel 8 van die Wet op die Afskaffing van Rasgebaseerde Grondreëlings, 1991 (Wet No. 108 van 1991), in ’n gebied, met inbegrip van ’n voormalige selfregerende gebied, van krag is, 50
- wat nie ingevolge artikel 87 van die gemelde Wet op die Afskaffing van Rasgebaseerde Grondreëlings, 1991, herroep is nie, word hierby herroep op—
- (i) 31 Julie 2006; of 55
- (ii) sodanige datum waarop dit deur ’n bevoegde owerheid herroep word, 55
- welke ook al die eerste plaasvind.
- (7) Artikels 32, 35, 36, 37, die lang titel en die Eerste Bylae by die Wet word hierby herroep, behoudens die herroeping van al die bepalings bedoel in subartikels (1) tot (6).
- (8) (a) Die herroeping van enige artikel, met inbegrip van artikels 11A, 31, 34 en die Tweede Bylae by die Swart Administrasie Wet, 1927, deur hierdie Wet word nie uitgelê 60

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(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.

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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:

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“(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; and

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(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:

Provided that—

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(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).”.

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Short title

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

WET OP DIE HERROEPING VAN DIE SWART Wet No. 28, 2005
ADMINISTRASIE WET EN WYSIGING VAN SEKERE WETTE, 2005

om afbreuk te doen aan enige reg wat ingevolge enige artikel van die Swart Administrasie Wet, 1927, verkry is voor die herroeping daarvan deur hierdie Wet nie.

(b) Die Registrateur van Aktes wat regsbevoeg is moet, kosteloos, enige beperkende voorwaarde vervat in 'n akte wat opgelê is uit hoofde van die werking van artikel 34 van die Swart Administrasie Wet, 1927, en beoog in die Tweede Bylae daarby, verwyder indien die Minister wat vir grondsake verantwoordelik is, skriftelik 'n aansoek deur die eienaar van die betrokke grond vir sodanige verwydering goedkeur. 5

Wysiging van artikel 4 van Wet 66 van 1965, soos gewysig deur artikel 1 van Wet 86 van 1983, artikel 26 van Wet 57 van 1988, artikel 4 van Wet 20 van 2001 en artikel 2 van Wet 47 van 2002 10

2. Artikel 4 van die Boedelwet, 1965, word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

“(2) Ten opsigte van die goed wat aan 'n minderjarige behoort, met inbegrip van goed van 'n minderjarige wat deur die beginsels van die gewoontereg gereël word, of goed wat aan 'n persoon onder kuratele of wat onder kuratele gestel moet word behoort, berus die regsbevoegdheid— 15

(a) in die geval van so 'n persoon wat sy of haar gewone verblyf binne die regsgebied van 'n Hoë Hof het, by die Meester wat ten opsigte van daardie gebied aangestel is; en

(b) in die geval van so 'n persoon wat nie aldus sy of haar verblyf het nie, by die Meester wat aangestel is ten opsigte van so 'n gebied waarin die grootste gedeelte van die goed van daardie persoon geleë is: 20

Met dien verstande dat—

(i) 'n Meester wat kragtens paragraaf (a) of (b) regsbevoegdheid uitgeoefen het, ondanks enige verandering van die gewone verblyf van die betrokke persoon of van die ligging van die grootste gedeelte van sy of haar goed, sy regsbevoegdheid bly behou; en 25

(ii) in die geval van 'n geestesongestelde persoon wat kragtens die Wet op Geestesgesondheid, 1973 (Wet No. 18 van 1973), in enige plek opgeneem is of aangehou word, regsbevoegdheid by die Meester berus wat onmiddellik voor bedoelde opname of aanhouding, kragtens paragraaf (a) of (b) ten opsigte van sy of haar goed regsbevoegdheid besit het.”. 30

Kort titel

3. Hierdie Wet heet die Wet op die Herroeping van die Swart Administrasie Wet en Wysiging van Sekere Wette, 2005. 35