

Repeal of the Black Administration Act and Amendment of Certain Laws Act 28 of 2005¹

[ASSENTED TO 7 APRIL 2006]	[DATE OF COMMENCEMENT: 12 APRIL 2006]
	(see s. 3 of this Act)

(English text signed by the President)

published in
GG 28726 of 12 April 2006
as amended

by	with effect from	refer to
Repeal of the Black Administration Act and Amendment of Certain Laws Amendment Act 8 of 2006	30 July 2006	s. 2 of Act 8 of 2006
Repeal of the Black Administration Act and Amendment of Certain Laws Amendment Act 13 of 2007	29 September 2007	s. 2 of Act 13 of 2007
Repeal of the Black Administration Act and Amendment of Certain Laws Amendment Act 7 of 2008	29 June 2008	s. 2 of Act 7 of 2008
Repeal of the Black Administration Act and Amendment of Certain Laws Amendment Act 20 of 2009	29 December 2009	s. 2 of Act 20 of 2009
Repeal of the Black Administration Act and Amendment of Certain Laws Amendment Act 20 of 2010	29 December 2010	s. 2 of Act 20 of 2010
Repeal of the Black Administration Act and Amendment of Certain Laws Amendment Act 20 of 2012	28 December 2012	s. 2 of Act 20 of 2012

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- ought to be repealed as a matter of the utmost urgency;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

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

- ¹ This Act has been updated to include all available historical commencement details

1 Repeal of Act 38 of 1927 and savings

(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 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) 30 December 2010; or

[Para. (a) amended by [s. 1 of Act 8 of 2006](#) (wef 30 July 2006) and substituted by [s. 1 of Act 20 of 2009](#) (wef 29 December 2009).]

(b) such date when the last of the provinces of-

- (i) KwaZulu-Natal; ²
- (ii) Free State; ³

- (iii) Mpumalanga; ⁴
- (iv) North West; ⁵
- (v) Limpopo; and ⁶
- (vi) Eastern Cape, ⁷

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, 2003 (Act 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 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.

[Sub-s. (3) amended by [s. 1 of Act 8 of 2006](#) (wef 30 July 2006), by [s. 1 of Act 13 of 2007](#) (wef 29 September 2007), by [s. 1 of Act 7 of 2008](#) (wef 29 June 2008), by [s. 1 of Act 20 of 2009](#) (wef 29 December 2009) and by [s. 1 of Act 20 of 2010](#) (wef 29 December 2010) and substituted by [s. 1 of Act 20 of 2012](#) (wef 28 December 2012).]

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

(a) 30 September 2007; or

[Para. (a) amended by [s. 1 of Act 8 of 2006](#) (wef 30 July 2006).]

(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-

(a) 30 September 2007; or

[Para. (a) amended by [s. 1 of Act 8 of 2006](#) (wef 30 July 2006).]

(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.

(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 108 of 1991](#)), in an area, including a former 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 commencement of [section 8](#) of the Abolition of Racially Based Land Measures Act, 1991 ([Act 108 of 1991](#)), in an area, including a former self-governing territory,

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) 30 September 2007; or

[Sub-para. (i) amended by [s. 1 of Act 8 of 2006](#) (wef 30 July 2006).]

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

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 Administration Act, 1927, prior to the repeal thereof by this Act.

(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.

² The KwaZulu-Natal Traditional Leadership and Governance [Act 5 of 2005](#) repeals the Regulations Prescribing the Duties, Powers, Privileges and Conditions of Service for Chiefs and Headmen, 1957 (Proc R110 of 1957), KwaZulu Tribal Taxation [Act 7 of 1974](#), KwaZulu Financial Regulations for Tribal and Community Authorities Act 17 of 1979, KwaZulu Amakhosi and Iziphakanyiswa [Act 9 of 1990](#), KwaZulu Act on the Payment of Salaries, Allowances and other Privileges to the Ingonyama Act 6 of 1993, KwaZulu-Natal Legislative Remuneration Act 2 of 1994, KwaZulu-Natal Act on the House of Traditional Leaders 7 of 1994, KwaZulu-Natal Amakhosi and Iziphakanyiswa Amendment Act 5 of 1995 and Transitional Measures: Appointment of Municipal Facilitation Committee for DC 29 Area, 2000 (PN 243 of 2000), with effect from 16 January 2006 - PN 5 in *PG* 6460 of 16 January 2006.

The repeal of the KwaZulu Act on the Code of Zulu Law, 1985 ([Act 16 of 1985](#)) and the Natal Code of Zulu Law, 1987 (Proc R151 of 1987) take effect on a date determined by the responsible Member of the Executive Council by notice in the *Gazette*.

³ The Free State Traditional Leadership and Governance [Act 8 of 2005](#) repeals sections 1, 2 (7), 2 (7)*bis*, 2 (7)*ter* and 2 (8) of the Black Administration [Act 38 of 1927](#), the Regulations Prescribing the Duties, Powers, Privileges and Conditions of Service for Chiefs and Headmen, 1957 (Proc R110 of 1957), Traditional Authorities Act 23 of 1978 (Bophuthatswana) and Qwaqwa Administration of Authorities Act 6 of 1983, with effect from 1 April 2006 - Proc 20 in *PG* 32 of 5 May 2006

⁴ The Mpumalanga Traditional Leadership and Governance [Act 3 of 2005](#) repeals to the extent assigned to the Province the Black Administration [Act 38 of 1927](#), the Black Authorities Act 68 of 1951 and the Regulations Prescribing the Duties, Powers, Privileges and Conditions of Service for Chiefs and Headmen, 1957 (Proc R110 of 1957), with effect from 7 April 2006 - Proc 1 in *PG* 1330 of 5 April 2006

⁵ The North West Traditional Leadership and Governance [Act 2 of 2005](#) repeals to the extent assigned to the Province the Bophuthatswana Traditional Authorities Act 23 of 1978, Black Administration [Act 38 of 1927](#), Pounds Act 7 of 1976, Registration and Control of Dogs Act 4 of 1976, Registration of Customary Unions Act 7 of 1977, Bophuthatswana Wheel Tax [Act 23 of 1979](#), Black Authorities Act 68 of 1951, Regulations Prescribing the Duties, Powers, Privileges and Conditions of Service for Chiefs and Headmen, 1957 (Proc R110 of 1957), Regulations for the Control of Residents on and the Occupation of Privately Owned or Tribally Owned Land in Black Areas (Proc R129 of 1967) and the Betterment Areas Proclamation (R196 of 1967), with effect from a date to be fixed by the Premier by notice in the *Gazette*

⁶ The Limpopo Traditional Leadership and Institutions Act 6 of 2005 repeals the Venda Traditional Leaders Proclamation 29 of 1991 and the Black Administration [Act 38 of 1927](#) (to the extent that it is assigned to the Province), with effect from 1 April 2006 - Proc 1 in *PG* 1240 of 31 March 2006

⁷ The Eastern Cape Traditional Leadership and Governance Act 4 of 2005 repeals sections 1, 2 (7), 2 (7)*bis*, 2 (7)*ter* and 2 (8) of the Black Administration [Act 38 of 1927](#), section 66 and Schedules 4 and 10 of the Republic of Transkei Constitution [Act 15 of 1976](#), the Black Authorities Act 68 of 1951, the Regulations Prescribing the Duties, Powers, Privileges and Conditions of Service for Chiefs and Headmen, 1957 (Proc R110 of 1957), the Transkeian Authorities Act 4 of 1956, Proc 118 of 1969 (land Regulations) and the Administrative Authorities

2 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

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

'(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
- (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-

- (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 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).'

3 Short title

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