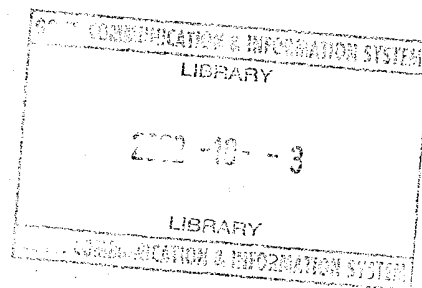


REPUBLIC OF SOUTH AFRICA

ADMINISTRATION OF ESTATES AMENDMENT BILL

(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill published in Government Gazette No 23860 of 19 September 2002) (The English text is the official text of the Bill)

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)



[B 54—2002]

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GENERAL EXPLANATORY NOTE:

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

BILL

To amend the Administration of Estates Act, 1965, so as to further regulate the administration of deceased estates which do not devolve according to customary law; and to provide for matters connected therewith.

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

Insertion of section 2A in Act 66 of 1965

1. The following section is inserted after section 2 of the Administration of Estates Act, 1965:

“Designation by Minister of service points and of posts of persons to exercise functions on behalf of Master

2A. (1) The Minister may designate posts in, or additional to, the fixed establishment of the Department of Justice and Constitutional Development for the purpose of this section.

(2) Persons appointed to, or acting in, posts which have been designated by the Minister, must exercise the powers and perform the duties delegated or assigned to them on behalf of, and under the direction of, the Master.

(3) The Minister may designate places within the area of jurisdiction of a Master as service points where the powers are exercised and the duties are performed on behalf of the Master in terms of subsection (2).

(4) The Minister may delegate any power conferred on him or her in terms of this section to the Director-General: Justice and Constitutional Development or to a person in the Department holding the rank of a deputy Director-General.”

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 and section 4 of Act 20 of 2001

2. Section 4 of the Administration of Estates Act, 1965, is amended by—

(a) the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) In respect of the estate of a deceased person which does not devolve according to customary law, or of any portion thereof, jurisdiction shall lie—”; and

(b) the insertion after subsection (1) of the following subsection:

“(1A) The Master shall not have jurisdiction in respect of any property which devolves according to customary law, or of the estate of a person

if all the property of the person devolves according to customary law, and no documents in respect of such property or estate shall be lodged with the Master, except a will or a document purporting to be a will.”

Amendment of section 23 of Act 38 of 1927, as amended by section 7 of Act 9 of 1929, section 2 of Act 34 of 1986 and section 10 of Act 108 of 1991

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3. Section 23 of the Black Administration Act, 1927, is amended by the deletion in subsection (7) of paragraph (a).

Short title

4. This Act is called the Administration of Estates Amendment Act, 2002.

MEMORANDUM ON THE OBJECTS OF THE ADMINISTRATION OF ESTATES AMENDMENT BILL, 2002

1. In the case of **Moseneke v The Master** 2001(2) SA 18 (CC), the Constitutional Court declared section 23(7)(a) of the Black Administration Act, 1927 (Act No. 38 of 1927), inconsistent with the Constitution and invalid with immediate effect. This section provided that the appointment of an executor was not necessary in, nor did the Master of the High Court have any powers in connection with, the administration and distribution of "the estate of any black" who died without leaving a valid will. The Constitutional Court also declared regulation 3(1) of R200 *Gazette* No 10601 of 6 February 1987 invalid but suspended the order of invalidity until 6 December 2002. The Court ordered that the regulation should be interpreted so that beneficiaries of an intestate "black" estate had a choice to report the estate to a magistrate or the Master. (The reporting of the intestate "estates of a black" was previously confined to magistrates' offices.) The Court emphasised (paragraph [27]) that the decision deals with estates that devolve according to common law only and not with estates that devolve according to customary law.

2. The South African Law Commission ("Commission") has almost finalised its investigation into the customary law of succession, but its recommendations in this regard will not be available in time to meet the Constitutional Court deadline of 6 December 2002. The law of succession determines the beneficiaries of a deceased person and their rights, while the rules for the administration of estates prescribe the procedure to administer the estate, that is, how to pay creditors and transfer benefits to beneficiaries. Under customary law, where a beneficiary steps into the shoes of the deceased, there is no clear distinction between the rules for the administration of estates and the law of succession. Pending the finalisation of the Commission's review of the customary law of succession no changes are proposed to the administration of estates that devolve according to customary law.

3. The **Moseneke** judgment concluded (paragraphs [22] and [23]) that the benefits of administering deceased estates by magistrates, such as convenience and low costs, can also be accomplished by a non-discriminatory provision. After considering all the possibilities, the Department of Justice and Constitutional Development concluded that the best way to reap the benefits of central records and control, as well as accessibility by and assistance for people at grassroots levels, is to administer all estates under the control of the Master, but to designate service points where officials of the Department will exercise functions on behalf of and under the direction of the Master. (Proposed new section 2A of the Administration of Estates Act, 1965 (Act 66 of 1965)).

4. As an interim measure, until the Commission's review of the customary law of succession has been concluded, it is proposed that all estates of a deceased person which do not devolve according to customary law must be administered under the control of the Master. The Bill states clearly that the Master will not have jurisdiction or functions in respect of any property that devolves according to customary law. Arrangements will be made for the repeal of regulation 3(1) of R200 at the same time when the amending legislation comes into operation.

5. Based on statistics and information of officers who at present fulfill functions regarding the administration of estates at magistrates' office, officials will be designated at service points to exercise powers and perform duties on behalf of and under the direction of the Master. These officials may, for instance, issue appointments in suitable small estates, hold meetings of beneficiaries and assist with the finalisation of small estates. In some cases the officials will merely forward documents to the Master and assist with enquiries. It is preferable to designate any official serving in a post rather than any particular official. (Proposed new section 2A(1) of the Administration of Estates Act.) This will avoid problems when persons are on leave or other cases where persons act in a post. Circumstances that necessitate changes to the service points and posts to be designated will arise from time to time. In order to lessen the burden of the Minister, it is provided that the Minister may delegate the power to designate service points and posts to the Director-General: Justice and Constitutional Development and other senior officials in the Department. (Proposed new section 2A(4) of the Administration of Estates Act.)

6. FINANCIAL IMPLICATIONS FOR STATE

The amendments emanating from the **Moseneke** judgment will have financial implications for the Masters' Offices which will be required to assist in the running of the envisaged service points. The Masters' Offices have made provision for this in their Medium Term Expenditure Framework for the 2003/2004 financial year.

7. OTHER DEPARTMENTS/BODIES CONSULTED

The Department has consulted with representatives of the Masters' Division within the Department in respect of the amendments.

8. PARLIAMENTARY PROCEDURE

In the opinion of the Department and the State Law Advisers, this Bill should be dealt with in terms of 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.