

WIJ **W**ILLEM **A**ALEXANDER,
BIJ DE GRATIE GODS,
KONING DER NEDERLANDEN,
PRINS VAN ORANJE-NASSAU,
ENZ. ENZ. ENZ.

Decree of XXX amending the Decree on the Change of Surname and the Rules on Applications for a Name Change and Name Determination in connection with the temporarily cost-free changes of surnames by descendants of enslaved people (Decree on the Change of Surname by Descendants of Enslaved People and Temporary Funding)

We Willem-Alexander, by the grace of God, King of the Netherlands, Prince of Orange-Nassau, etc. etc.

On the recommendation issued by the Minister for Legal Protection, reference

XXX; Taking account of Section 7(5) of Book 1 of the Dutch Civil Code;

Having obtained the opinion of the Advisory Division of the Council of State (opinion dated XXX, no. XXX);

Having seen the more detailed report of the Minister for Legal Protection dated XXX, Legislation and Legal Affairs Department, no. XXX;

Have approved and decreed:

Section I

The Decree on the Change of Surname shall be amended as

follows.

A

The following section shall be added after Section 1:

Section 1a

1. The surname of a person shall be changed on request if they declare to be a descendant of an enslaved person from whom the surname derives.
2. The change pursuant to Subsection 1 shall preferably be made through the transposition of a few letters or through the addition of a prefix or suffix; if this is not possible or considered undesirable by the applicant, the change shall be made through the choice of a different surname. The different surname shall be that of a parent or other blood relative in the ascending line, or a surname that does not yet occur in the Netherlands. The change shall not be made through the addition of a name.
3. The application shall be rejected if the applicant already has a surname that was changed pursuant to this Section.

B

In Section 3(4)(d)(1°), the following text shall be inserted after 'Titles XIII to XV and XVIII to XX of Book 2 of the Dutch Penal Code': 'or Titles XIII to XV and XVIII to XX of Book 2 of the Penal Code of the BES Islands'.

C

In Section 6(a), the following text shall be inserted after 'Titles XIII to XV and XVIII to XX of Book 2 of the Dutch Penal Code': 'or Titles XIII to XV and XVIII to XX of Book 2 of the Penal Code of the BES Islands'.

Section II

The Rules on Applications for a Name Change and Name Determination shall be amended as follows:

A

Section 3 shall be amended as follows:

1. With Subsection 2 being renumbered to 3, the number '2' shall be placed in front of 'The amount shall be payable twice'.
2. After Subsection 3 (new), the following subsection shall be added:
 4. Subsections 1 to 3 shall apply mutatis mutandis to an application pursuant to Section 7 of Book 1 of the Civil Code of the BES Islands, on the understanding that the fee referred to in Section 7(5) of that Book shall amount to USD 890.

B

Section 4 shall be amended as follows:

1. The number '2' shall be placed in front of the text.
2. The following subsection shall be inserted prior to the above:
 1. A change of surname pursuant to Section 1a of the Decree on Changes of Surname shall be free of charge.

C

The following section shall be inserted after Section 4:

Section 4a

1. The Minister for Legal Protection may decide to waive the fee referred to in Section 3(4) if the application is related to the fact that
 - a. the applicant derives their surname from an enslaved person;
 - b. the parent from whom the applicant derives their surname was convicted by final judgment of perpetrating a crime as referred to in Titles XIII to XV and XVIII to XX of Book 2 of the Dutch Penal Code, or Titles XIII to XV and XVIII to XX of Book 2 of the Penal Code of the BES Islands, against the applicant, a relative once or twice removed or their life companion, whereby a crime shall also include complicity in an attempted crime; or
 - c. the applicant, in the absence of such a final conviction, declares to be the victim of a crime as referred to under (b), committed by the parent from whom the applicant derives their surname, and demonstrates, by submitting an expert statement, that inability to change their surname would seriously harm their physical or mental health.
2. In the event of an application relating to the fact referred to in Subsection 1(c), the applicant must submit evidence of an award for compensation from the Violent Offences Compensation Fund.

D

The following section shall be inserted after Section 6:

Section 6a

This Decree is also based on Section 7(5) of Book 1 of the Civil Code for the BES Islands. E

In Section 7(2), 'Rules on Applications for a Name Change and Name Determination' shall be replaced by 'Decree on Procedure and Fees for Changes of Surname in the European and Caribbean Netherlands'.

Section III

Effective from five years after the date of entry into force referred to in Section VI, Section 4 of the Decree on Procedure and Fees for Changes of Surname in the European and Caribbean Netherlands shall read:

Section 4

A change of surname pursuant to Section 6 of the Decree on Changes of Surname shall be free of charge, on the understanding that, in the case of an application pursuant to Section 6(b) of that decree, the applicant must submit evidence of an award for compensation from the Violent Offences Compensation Fund.

Section IV

Effective from five years after the date of entry into force referred to in Section VI, Section 4a(1) of the Decree on Procedure and Fees for Changes of Surname in the European and Caribbean Netherlands shall read:

Section 4a

1. The Minister for Legal Protection may decide to waive the fee referred to in Section 3(4) if the application is related to the fact that
 - a. the parent from whom the applicant derives their surname was convicted by final judgment of perpetrating a crime as referred to in Titles XIII to XV and XVIII to XX of Book 2 of the Dutch Penal Code, or Titles XIII to XV and XVIII to XX of Book 2 of the Penal Code of the BES Islands, against the applicant, a relative once or twice removed or their life companion, whereby a crime shall also include complicity in an attempted crime; or
 - b. the applicant, in the absence of such a final conviction, declares to be the victim of a crime as referred to under (b), committed by the parent from whom the applicant derives their surname, and demonstrates, by submitting an expert statement, that inability to change their surname would seriously harm their physical or mental health.

Section V

The time of five years after the date of entry into force referred to in Sections III and IV may be amended by Royal Decree, which may also provide that the amendment will not take place.

Section VI

This Decree shall enter into force on a date to be determined by Royal Decree, which date may differ for individual sections or parts thereof.

Section VII

This Decree shall be cited as: Decree on Changes of Surname by Descendants of Enslaved People and Temporary Funding.

We order and command that this Decree together with the relevant explanatory memorandum shall be published in the Bulletin of Acts and Decrees (*Staatsblad*).

The Minister for Legal Protection,

F.M. Weerwind

Explanatory Memorandum

A. General

1. Reason for and content of Decree

In the government response of 19 December 2022 to the report of findings by the Slavery Past Dialogue Group *Ketenen van het verleden* ('Chains of the past'), the Prime Minister announced that, in anticipation of a structural provision, a temporary regulation would be prepared under which descendants of enslaved people could change their name free of charge.¹ This announcement was confirmed in the government's letter of June 23, 2023.² This Decree provides for the announced regulation, which will enable descendants of people enslaved in the colonial past to change their surname free of charge.

In addition, the rules on the change of surname in the European Netherlands will also become applicable in the BES islands. This will align the regulation for the change of surname on the BES islands as much as possible with the regulation existing in the European Netherlands.

a. Changes of name by descendants of enslaved people

When enslaved people were shipped and sold, they were stripped of their own names and, consequently, a part of their cultural identity. Only when they were freed did enslaved people acquire a surname. This name was usually not one of their own choosing, and often associated with the name of the (former) slaveholder or the plantation where they worked. Descendants of enslaved people still bear such surnames today. In these cases, surnames can be a reminder of the unjust and violent history of slavery, as these names refer to the persons who colonized and oppressed enslaved ancestors in the locations where the slave trade took place.

The government has apologised for the role and involvement of its historical administrative predecessors in allowing, enabling, promoting, prolonging and profiting from the slave trade and slavery that undermined human dignity on a long-term and structural basis. It has also apologised for the fact that successive governments after 1863 did not sufficiently realise and acknowledge that the slavery past had and has a negative impact.³ As well as offering these apologies, the government is also introducing measures aimed at knowledge and awareness, acknowledgement and commemoration, and the impact and psychological processing of the slavery past. One of these measures is an amendment of the rules on the change of surname, which means that surnames associated with the slavery past can be altered. During the preparatory stage of both the government response and this Decree, this subject was discussed with stakeholder organisations, who expressed a wish that a low-threshold opportunity should be offered for changing surnames associated with the slavery past. An application for a change of surname on this basis will temporarily be free of charge. The imposition of a fee might constitute an extra threshold and possibly exclude descendants from the opportunity to change their surnames.

The absence of a fee will increase accessibility and promote equality. In this way, this Decree can help foster social recovery and address the consequences of the Dutch slavery past. Therefore, the premise that government services should be performed on a cost-effective basis will be abandoned in this case. In principle, the fee waiver will apply for a period of five years (see section 2 'Financial consequences'). The effects of the regulation will be monitored. We will consider whether invocation of this ground for change can remain possible without a fee being payable. A change of surname may cause documents such as identity documents and driving licences to become invalid. The person involved will therefore have to re-apply for these documents and bear the costs incurred. This person will also be responsible for ensuring that diplomas and suchlike are adjusted.

¹ *Parliamentary Papers II*, 2022/23, 36284, no. 1

² *Parliamentary Papers I* 2022/23, 36284, no. C.

³ *Parliamentary Papers II* 2022/23, 36284, no. 1, pg. 2

The Decree on the Change of Surname (*Besluit geslachtsnaamswijziging*, hereafter: the Decree or Bgn) sets out the grounds for a change of surname. This Decree provides for a basis on which descendants of enslaved people can change their surnames (Section 1a (new) Bgn). The *Rules on Applications for a Name Change and Name Determination* (hereafter: the Rules) have been adjusted in order to temporarily make this change free of charge (Sections 4(1) (new) and 4a(1)(a) (new) of the Rules).

A change of name will be possible in the Netherlands if a person has Dutch nationality (even if they live abroad), holds an asylum residence permit or is stateless. In conformity with Section 1:7(3) of the Dutch Civil Code (*Burgerlijk Wetboek*, hereafter: BW) and Section 1:7(3) of the Civil Code of the BES Islands (hereafter: BW BES), underage children over which the parent has parental responsibility and whose name they bear will share in the change of that parent's surname.

Basis

To facilitate changes of surname by descendants of enslaved people, the Decree provides for an additional, new basis for change. The government's aforementioned letter of June 23, 2023 indicates that the basic premises in this regard are that the regulation:

- a) should be as straightforward as possible for applicants – there should be no heavy burden of proof, and no expert statement regarding the psychological distress experienced etc. should be required;
- b) should minimise distinctions based on the origin of names. People with their roots in former colonies where very incomplete name records were kept should not, in principle, bear a heavier burden of proof than those with their roots in former colonies where name records were more extensive;
- c) can be implemented responsibly by the Ministry of Justice and Security (Dienst Justis).

Until this amendment of the Decree, descendants of enslaved people could, in practice, only change their name if they experienced psychological distress because of their name. Furthermore, the petitioner had to submit evidence of serious physical or mental harm attested by a qualified psychologist. This threshold has now been removed. The new Decree provides that a person's surname can be changed on request, if they declare in the request that they are a descendant of an enslaved person from whom the surname derives. The applicant's 'self-declaration' will be sufficient for that purpose. A standard form will be developed for this declaration. Communication about the c and the arrangement of practical access to the regulation will be discussed with representatives from the stakeholder group, while the insights obtained with regard to the feasibility assessment will also be taken into account. There is no further burden of proof; Dienst Justis will only check if this self-declaration is included in the application. It will not check if the declaration is truthful. The aforementioned principles make the omission of a burden of proof inevitable due to the following.

The report by the Verwey-Jonker Institute, entitled *Verkenning basis voor naamswijziging in verband met het Nederlandse slavernijverleden* ('Exploring the basis for name changes associated with Dutch slavery'), reveals that 15 accepted and historically reliable lists and registers are available containing surnames associated with the Dutch slavery past.⁴ Some of these lists exist in hardcopy, while others can be consulted online. The available registers cover the territories of Suriname (the most complete) and the former Netherlands Antilles (two-thirds complete), and within the latter especially Aruba, Bonaire and Curaçao. The available registers are person-based. They are not therefore so much lists of surnames as of persons and families who at some point were enslaved or freed. The available registers are not one hundred percent complete. Groups and persons are missing. For example, emigrant enslaved people have been removed from Dutch colonial sources over time. In the Antilles in particular, it was common for people to move between the Caribbean islands and/or to the mainland of South America, or to be forcibly relocated and thus end up in the territory of another colonial power.

No survey of surnames related to the Dutch slavery past yet exists for the former Dutch East Indies. The report concludes that it is impossible at present to additionally compile

⁴ Appendix to *Parliamentary Papers I II 2022/23*, 36200 VII, no. 125.

an accepted list from slave registers, manumission registers and emancipation registers and/or church archives for the Dutch East Indies.

These circumstances mean that some of the applicants cannot demonstrate or argue convincingly that they descend from an enslaved person. Considering the purpose of the regulation, this difficulty necessitates a basis without further conditions and evidence regarding the matter. The regulation would otherwise be ineffective, since some persons seeking justice would be unable to exercise a conferred right. If registers were determinative in providing access to (cost-free) name change, a petitioner whose ancestor does not appear on a register would have less chance of success than persons whose ancestors can be traced. Such circumstance is undesirable.

The report's conclusion also implies that no list of surnames can be compiled by means of which Dienst Justis can check whether an applicant's surname is the name of a descendant of an enslaved person from whom the surname was derived. Likewise, Dienst Justis cannot and will not assess whether the applicant does indeed descend from a particular ancestor.

New surname

Invoking the new ground for change also raises the question of what the new surname will be. The applicant has several options. In line with the existing system, the change should preferably be made through the transposition of a few letters or the addition of a prefix or suffix. In addition, the change can be made by choosing the surname of a parent or other blood relative in the ascending line. In view of the background to this ground for change, it stands to reason that the applicant is also given the option to choose an ancestor's surname. It is up to the applicant to demonstrate that this is a surname of a parent or ancestor in a manner similar to the currently applicable possibilities under Section 2(1)(a) or (b) Bgn, for example. The applicant may also choose a surname that does not yet occur in the Netherlands. Again given the background of this ground for change, there is no requirement that the new name should sound Dutch. The name may have its origin in a region in Africa, for example.

The change cannot be made through the addition of a name. Such a change is subject to the rules of Section 2 Bgn or of the Combined Surnames (Introduction) Act. Outside the scope of these rules, the addition of a name is deemed unnecessary and therefore the acquisition of a double name is considered undesirable. Considering this provision's purpose to allow change of surnames for descendants of an enslaved person and, given the source of their name, experience distress, addition (and thus keeping the original name) is also not an obvious alternative.

b. Regulation for Caribbean Netherlands

Pursuant to Section 1:7(5) BW BES, rules concerning the manner of submitting and handling applications for a change of surname may be established by decree. The fee payable for a change of surname may also be determined by decree. No provisions for such decree have yet been made. Pursuant to the new Section 6a of the Rules, this decree on the procedure and fees for name changes in the European Netherlands will also become applicable on the BES islands. It is furthermore stipulated that (parts of) sections may enter into force on different dates. Many of the Rules can conceivably be applied to the BES islands, but implementation in a few areas has not yet been finalized. To prevent a delay until the Rules can be implemented in their entirety, a provision has been included for a phased entry into force.

Unlike Section 1:7(5) BW, the BW BES does not yet contain a basis to also regulate the grounds for change of surname by decree. The aim is to provide for such a basis within the foreseeable future. Until there is such provision, the grounds for change of surname on the BES Islands are laid down in policy rules (BES Change of surname Policy Rules), whereby the grounds are as much as possible similar to the grounds included in the Bgn.

Pursuant to Section 1:7(6) BW, the written notification of the intention to change name will count as a decision. The BW BES does not yet include such stipulation. The intention is to provide for this as well and to adjust the BW BES on this point in line with Section 1:7(6) BW.

Thus, the procedure and regulation for a change of surname on the BES islands will be aligned as much as possible with the procedure and regulation existing in the European Netherlands. As soon as basis for this has been included in the BW BES, the policy rules referred to above will be repealed and the Decree will become applicable on the BES islands as well.

2. Financial consequences

Normally, the fee for a name change by Dienst Justis is € 835. Pursuant to this Decree, descendants of enslaved people will be able to change their surnames free of charge. They will not be required to pay a fee.

It is not possible to provide figures on the number of descendants of enslaved people wishing to change their surnames. This wish depends on individual considerations and choices. Accordingly, the number of descendants of enslaved people who will submit an application for a name change to Dienst Justis is unknown and cannot be estimated in advance. This causes a financial risk for the State. The government letter of June 23, 2023 indicates that the measure belongs to the commitments made in the government response of December 19, 2022, and that this measure will be funded from the total amount of € 100 million which the government has set aside for this purpose.⁵ The funding is temporary and in principle covers a period of five years. Dienst Justis will monitor the effects of the regulation by recording the influx of applications and considering whether the numbers differ from previous years. Should available funds be depleted sooner or later, the duration of funding may be adjusted. Furthermore, the condition that a 'self-declaration' is sufficient entails the risk that the regulation will be abused by persons for whom the regulation is not intended. It is also for this reason that Dienst Justis will monitor the effects of the regulation in order to determine whether this ground for change can continue to be invoked without a fee being paid (see also section 3 'Evaluation').

3. Evaluation

In addition to Dienst Justis monitoring the effects of the regulation, the regulation will also be evaluated after no more than three years. This evaluation will examine whether the regulation has any unintended thresholds, consider the extent of the financial impact and depletion of available funds and, if possible, examine any unauthorized use of the regulation.

A policy review of the Decree as a whole will be undertaken in 2024. It will assess the procedure, its grounds and consistency, as well as the costs to be charged in connection with a name change.

4. Advice and consultation

The preparation of the Decree also involved a gender test to determine whether there were any effects on gender equality. This test showed that the effects of facilitating this type of name change are the same for men and women, since there is no difference in social position in this regard.

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⁵ *Parliamentary Papers I, 2022/23, 36284, no. C*

B. Notes on individual sections

Section I

Part A

Persons who descend from an enslaved person from whom they derive their name can have their name changed pursuant to Section 1a. To this end, they must issue a self-declaration. They will not be required to submit further documentary evidence.

The change of name should preferably be made through the transposition of a few letters or through the addition of a prefix or suffix. If, however, such is not possible or if the applicant considers these alternatives undesirable, the applicant can also choose a different surname, i.e. the name of a parent or ancestor, or a surname that does not yet occur in the Netherlands.

A change through the addition of a name is not permitted. In line with Section 4(3) Bgn, a change on this ground is possible on a one-off basis.

Parts B and C

Now that the name change regulation on the BES islands has been aligned as far as possible, the references to the Penal Code have been adjusted as well. Reference is made to the corresponding provisions in the Penal Code of the BES Islands. After all, it is irrelevant for the purposes of the Decree and the Rules respectively whether a judgment under the Penal Code was given in the European Netherlands or in the Caribbean Netherlands.

Section II

Parts A and C

Section 3(4) of the Rules determines the amount of the fee in cases in which the applicant lives in the BES islands. Section 4a provides for cases in which no fee is owed. These cases are comparable to those in which no fee is owed in the European Netherlands as well.

Part B

Persons who apply for a change of surname pursuant to Section 1a Bgn are not required to pay a fee. This provision is laid down in Section 4(1) of the Rules.

Part D

The new Section 6a provides for a new, additional basis of the Rules, so that these also apply in cases where a name change request is made by an applicant living in one of the public entities Bonaire, St. Eustatius or Saba.

Part E

Since the Rules now also apply to the BES islands, the short title has been adjusted accordingly. This explanatory memorandum nevertheless still uses the term 'Rules'.

Sections III to VI

This Decree will enter into force on a date to be determined by Royal Decree. The date of entry into force may differ for individual sections or parts thereof (Section VI). Where necessary, for example, the amendments applicable to the BES islands may enter into force on a different date. There may be cause such delay if the Decree is not yet ready for implementation on the BES islands.

The amendments will apply to applications for a name change submitted on or after the date of entry into force. The central government, Dienst Justis and relevant organisations will take note of this change, so that citizens are informed about the moment of entry into force and other matters. Such notification is also important due to the temporary nature of the fee waiver for this name change, which in principle expires after five years (Sections III and IV).

Pursuant to Section V, a Royal Decree may provide that the basis for the fee waiver will lapse earlier or later than after five years, but may also provide that this basis will not lapse. The reason is that funds for the fee waiver must be available. No estimate can be made concerning how often and

within what period this ground for change will be invoked. It is therefore uncertain when the available funds will be depleted. It is desirable that, if the available funds are exhausted earlier or later, the duration of funding can be adjusted. Where applicable, this will also offer a basis for making the fee waiver permanent if the decision-making pursuant to the announced evaluation of the regulation should give cause for such structural change.

The Minister for Legal Protection,

F.M. Weerwind