

South Africa

Immigration Act, 2002

Act 13 of 2002

Legislation as at 27 April 2004

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South Africa

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Provisions	Status
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Section 4	commenced on 26 February 2003 by Proclamation R13 of 2003 .
Section 13, section 56, section 836, section 3851, section 5355	commenced on 12 March 2003 by Proclamation R13 of 2003 .
Section 37	not yet commenced.

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[Amended by [Prevention and Combating of Corrupt Activities Act, 2004 \(Act 12 of 2004\)](#) on 27 April 2004]

(English text signed by the President.)

ACT

To provide for the regulation of admission of persons to, their residence in, and their departure from the Republic; and for matters connected therewith.

In providing for the regulation of admission of foreigners to, their residence in, and their departure from the Republic and for matters connected therewith, the Immigration Act aims at setting in place a new system of immigration control which ensures that—

- (a) temporary and permanent residence permits are issued as expeditiously as possible and on the basis of simplified procedures and objective, predictable and reasonable requirements and criteria, without consuming excessive administrative capacity;
- (b) security considerations are fully satisfied and the State retains control on the immigration of foreigners to the Republic;
- (c) interdepartmental coordination constantly enriches the functions of immigration control and that a constant flow of public inputs is present in further stages of policy formulation, including regulation making;
- (d) the needs and aspirations of the age of globalization are respected and the provisions and the spirit of the General Agreement on Trade in Services is complied with;
- (e) border monitoring is strengthened to ensure that the borders of the Republic do not remain porous and illegal immigration through them may be effectively detected, reduced and deterred;

- (f) ports of entry are efficiently administered and managed;
- (g) immigration laws are efficiently and effectively enforced, deploying to this end significant administrative capacity of the Department of Home Affairs, thereby reducing the pull factors of illegal immigration;
- (h) the South African economy may have access at all times to the full measure of needed contributions by foreigners;
- (i) the contribution of foreigners in the South African labour market does not adversely impact on existing labour standards and the rights and expectations of South African workers;
- (j) a policy connection is maintained between foreigners working in South Africa and the training of our nationals;
- (k) push factors of illegal immigration may be addressed in cooperation with other Departments and the foreign states concerned;
- (l) immigration control is performed within the highest applicable standards of human rights protection; and
- (m) xenophobia is prevented and countered both within Government and civil society.

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

1. Definitions and interpretation

- (1) In this Act, unless the context indicates otherwise—

"**admission**" means entering the Republic at a port of entry on the basis of the authority to do so validly granted by this Act or by an immigration officer in terms of this Act, and the verb "to admit" has a corresponding meaning;

"**application**" means a request in the prescribed form which complies with the requirements and provides the information and documentation which may be prescribed;

"**Board**" means the Immigration Advisory Board contemplated in [section 4](#) of this Act;

"**border**" means the national borders of the Republic and includes ports of entry, coastlines and the outer margin of territorial waters;

"**chartered accountant**" means a person referred to in section 1 of the Chartered Accountants Designation (Private) Act, 1993 ([Act No. 67 of 1993](#)) and includes an accountant, other than a chartered accountant, who is recognised as such under any law and who has been specifically or generally delegated by a chartered accountant to perform any or all activities contemplated in this Act;

"**citizen**" has the meaning assigned thereto in the South African Citizenship Act, 1995 and "citizenship" has a corresponding meaning;

"**corporate applicant**" means a juristic person established under the laws of the Republic or of a foreign country which conducts business, not-for-gain, agricultural or commercial activities within the Republic and which applies for a corporate permit referred to in [section 21](#) of this Act;

"**Court**" means an Immigration Court established in terms of [section 37](#) of this Act;

"**customary union**" means a conjugal relationship according to indigenous law and custom and which is recognised and documented as prescribed;

"**Department**" means the Department of Home Affairs;

"**departure**" means exiting the Republic from a port of entry in compliance with this Act and the verb "to depart" has a corresponding meaning;

"**deportation**" means the action or procedure aimed at causing an illegal foreigner to leave the Republic involuntarily, or under detention in terms of this Act and the verb "to deport" has a corresponding meaning;

"**Director-General**" means the Director-General of the Department;

"**employer**" includes the person contractually bound by the applicable employment contract as an employer or, in the case of a juristic person, its chief executive officer or the person to whom such officer has delegated the final responsibility in respect of personnel matters;

"**foreign country**" means a country other than the Republic;

"**foreign state**" means the juristic entity governing a foreign country;

"**foreigner**" means an individual who is neither a citizen nor a resident, but is not an illegal foreigner;

"**illegal foreigner**" means an foreigner who is in the Republic in contravention of this Act and includes a prohibited person;

"**immediate family**" means persons within the second step of kinship, where marriage or a spousal relationship is counted as one of such steps, but any common antecedent is not so counted;

"**immigration officer**" means an officer of the Department, or another person having the prescribed requirements, appointed as such from time to time by the Department and, for purposes of this Act, includes a person employed in, or contracted by, the Department who has been authorised by the Department to exercise certain powers and perform certain functions in the name of and on behalf of the Department;

"**marriage**" means a legally sanctioned conjugal relationship intended to be permanent and concluded under the laws of the Republic, or under the laws of a foreign country as prescribed from time to time, and includes a customary union;

"**master**" means the master of a ship and refers to the person who at any given time is in charge or command of a ship;

"**Minister**" means the Minister of Home Affairs;

"**organ of State**" has the meaning defined in section 239 of the [Constitution](#);

"**owner**" means the owner of record and, in the case of a ship, it includes the charterer of the ship and any agent within the Republic of the owner or the charterer;

"**passport**" means any passport or travel document containing the prescribed information and characteristics issued—

- (a) under the South African Passport and Travel Document Act, 1994;
- (b) on behalf of a foreign state recognised by the Government of the Republic to a person who is not a citizen;
- (c) on behalf of any international organisation prescribed from time to time, including regional or sub-regional ones, to a person who is not a citizen; and
- (d) any other document approved by the Director-General after consultation with the Minister and issued under special circumstances to a person who cannot obtain a document referred to in paragraphs (a) to (c);

"**port of entry**" means a place prescribed from time to time where a foreigner has to report before he or she may move, sojourn or remain within, or enter the Republic;

"**premises**" means any building, structure or tent together with the land on which it is situated and the adjoining land used in connection with it and includes any land without any building, structure or tent and any vehicle, conveyance, or ship;

"**prescribed**" means provided for by regulation, the verb "to prescribe" has a corresponding meaning and "prescribed from time to time" refers to [section 7\(2\)](#);

"**prohibited person**" means any person referred to in [section 29](#) of this Act;

"**publish**" means publish by notice in the *Government Gazette* and, to the extent possible and feasible under the circumstances, convey by mail or email to parties or stakeholders who have requested their inclusion or have been included in mailing lists to be maintained by the Department in respect of subject matters in respect of which public input is called for by this Act, prescribed, advisable or expedient;

"**regulations**" means general rules adopted by the Minister after consultation with the Board in terms of this Act and published;

"**Republic**" means the Republic of South Africa and its territory;

"**resident**" means the holder of a permanent residence permit referred to in [section 25](#) of this Act;

"**ship**" includes any vessel, boat, aircraft or other prescribed conveyance;

"**spouse**" means a person who is party to a marriage, or a customary union, or to a permanent homosexual or heterosexual relationship which calls for cohabitation and mutual financial and emotional support, and is proven by a prescribed affidavit substantiated by a notarial contract and "spousal relationship" has a corresponding meaning;

"**status**" means the permanent or temporary residence issued to a person in terms of this Act and includes the rights and obligations flowing therefrom, including any term and condition of residence imposed by the Department when issuing any such permits;

"**temporary residence**" means a permit referred to in [section 10](#) of this Act;

"**this Act**" means this Act, including its schedules, and includes the regulations made pursuant thereto;

"**training fund**" means the public record referred to in [section 2\(2\)\(g\)\(i\)](#) of this Act;

"**undesirable person**" means a person referred to in [section 30](#) of this Act;

"**visa**" means the prescribed endorsement issued upon application on the valid passport of a foreigner granting such foreigner the authority to proceed to the Republic to report for a prescribed examination to an immigration officer at the port of entry with a view to admission on a specified temporary residence, which at any time before admission may be withdrawn by the Department;

"**work**" means business, commercial or remunerative activities within the Republic, excluding work on the basis of a permit referred to in [sections 12](#) or [14](#), or work for a foreign employer pursuant to a contract which only partially calls for activities in the Republic, or work as a business or profession mainly based outside the Republic but requiring activities within the Republic.

- (2) In [sections 15](#), [18](#), [19](#), [21](#), [26](#) and [27](#), whenever a certificate by a chartered accountant is called for, the applicant may instead elect that such certificate be furnished by another person to whom the facts contained in the certificate are known, but in every case where the certificate is issued to a person other than a chartered accountant, it shall be necessary for the Department to verify the facts itself.

Objectives and structures of immigration control

2. Objectives and functions of immigration control

- (1) In the administration of this Act, the Department shall pursue the following objectives:
- (a) Promoting a human-rights based culture in both government and civil society in respect of immigration control;

- (b) facilitating and simplifying the issuance of permanent and temporary residences to those who are entitled to them, and concentrating resources and efforts in enforcing this Act at community level and discouraging illegal foreigners;
 - (c) detecting and deporting illegal foreigners;
 - (d) creating a climate of cooperation with other organs of State to encourage them to take responsibility in implementing this Act within the ambit of their respective powers and functions;
 - (e) preventing and deterring xenophobia within the Department, any sphere of government or organ of State and at community level;
 - (f) creating a climate of cooperation with communities and organs of civil society, including trade unions, to encourage them to cooperate with the Department to implement this Act;
 - (g) promoting a climate within the Republic which encourages illegal foreigners to depart voluntarily;
 - (h) ensuring that, subject to this Act, migration to and from the Republic takes place only at ports of entry and illegal crossing of the borders is deterred, detected and punished;
 - (i) promoting integration of functions, harmonisation and cooperative relations among all organs of State with responsibilities in respect of controlling the borders and activities at ports of entry;
 - (j) regulating the influx of foreigners and residents in the Republic to—
 - (i) promote economic growth, *inter alia*, by—
 - (aa) ensuring that businesses in the Republic may employ foreigners who are needed;
 - (bb) facilitating foreign investments, tourism and industries in the Republic which are reliant on international exchanges of people and personnel;
 - (cc) enabling exceptionally skilled or qualified people to sojourn in the Republic;
 - (dd) increasing skilled human resources in the Republic;
 - (ee) facilitating the movement of students and academic staff within the Southern African Development Community for study, teaching and research; and
 - (ff) promoting tourism;
 - (ii) where applicable, encouraging the training of citizens and residents by employers to reduce employers' dependence on foreigners' labour and promote the transfer of skills from foreigners to citizens and residents;
 - (iii) enable family reunification;
 - (k) administering the prescribed fees, fines and other payments it exacts or receives in such a fashion as to defray the overall cost of its operation
 - (l) administering refugee protection and related legislation;
 - (m) administering citizenship by naturalisation and incidental matters relating thereto; and
 - (n) facilitating compliance with the Republic's international obligations.
- (2) In order to achieve the objectives set out in subsection (1), the Department shall—
- (a) inspect workplaces in the prescribed manner to ensure that no illegal foreigner is employed and that foreigners, if any, are employed in the job description and at the terms and

- conditions set out in their temporary residences, and that the relevant training fees, if any, are paid;
- (b) inspect institutions of learning to ensure that illegal foreigners are not enrolled therein;
 - (c) liaise with the South Africa Police Service to—
 - (i) ensure that the identity of people who are arrested, detained or convicted is checked for purposes of this Act; and
 - (ii) educate and instruct law-enforcing agencies to detect illegal foreigners and report them to the Department;
 - (d) liaise with the South African Revenue Service to ensure that the identity of people who contravene the provisions of the laws administered by the Commissioner for the South African Revenue Services is checked for purposes of this Act;
 - (e) educate communities and organs of civil society on the rights of foreigners, illegal foreigners and refugees, and conduct other activities to prevent xenophobia;
 - (f) in cooperation with the Department of Foreign Affairs—
 - (i) promote programmes in foreign countries with the aim of deterring people from becoming illegal foreigners; and
 - (ii) table the need for cooperation in preventing migration towards the Republic on the agenda of relations with foreign states, negotiating appropriate measures and agreements with such foreign states;
 - (g) maintain public records showing funds received or collected—
 - (i) under this Act from employers as training fees or fines, which, in the prescribed percentage, shall be known as the training fund;
 - (ii) from foreign states to defray the cost of repatriating illegal foreigners originating from their country, as determined through international relations and agreements;
 - (iii) from donors or other sources; and
 - (iv) from other fees and fines imposed or exacted by the Department in terms of this Act which, in the percentage prescribed from time to time, shall be known as the judicial assistance fund;
 - (h) monitor and exact compliance from any person or entity exercising responsibilities or bearing duties or obligations in terms of this Act;
 - (i) deport illegal foreigners who are unwilling to leave the Republic voluntarily;
 - (j) train its investigative unit to detect illegal foreigners, monitor compliance with the terms and conditions of permits, control borders, and perform any other function under this Act or which may be delegated to it;
 - (k) be empowered to contract through public tender with private persons to perform under its control any of its functions, including but not limited to detaining and escorting illegal foreigners for deportation purposes and manning ports of entry;
 - (l) administer ports of entry and monitor borders in terms of [section 36](#) of this Act; and
 - (m) conduct any other activity called for by this Act or necessary for or conducive to its implementation.

3. Powers of Department

- (1) Subject to and for the purposes of this Act, through its duly authorised officers, the Department may—
 - (a) enter workplaces and inspect employment records for the purposes of this Act;
 - (b) enter and inspect for purposes of this Act any place open to the public;
 - (c) exercise any powers relevant to, or necessary for, the functions set out in [section 2\(2\)](#);
 - (d) request any sphere of government or organ of State to—
 - (i) take actions or adopt procedures to ensure that the recipients of their services are identified as citizens and residents or foreigners; and
 - (ii) request that prescribed services, or licenses, or concessions or other actions be subject to proof of status or citizenship,
provided that such requirements shall not prevent the rendering of such services to illegal foreigners when so required by the [Constitution](#) or a law;
 - (e) request anyone in the Republic, who is reasonably suspected of being an illegal foreigner, to identify himself or herself as a citizen or resident, or to produce a permit to be in the Republic;
 - (f) organise and participate in community fora or other community-based organisation to deter xenophobia and involve the citizenry in the application and implementation of this Act, and educate the citizenry in migration issues;
 - (g) apprehend, detain and deport any illegal foreigner;
 - (h) despite any other law, represent the State in any proceedings in a Court in respect of any matter arising out of this Act;
 - (i) assist the public prosecution of any offence under this Act;
 - (j) enter into an agreement with any person, including any department of State, in terms of which the Department will be authorised to make use of any of the facilities, equipment or personnel belonging to, or under the control, or in the employment of such person or department;
 - (k) exercise any other power called for by this Act, or necessary for or conducive to its implementation; and
 - (l) delegate any of its powers and functions, provided that—
 - (i) the terms and conditions of such delegations are approved by the Minister after consultation with the Board; and
 - (ii) such delegation is performance audited by the Director-General and reviewed by the Board every twelve months to express a recommendation to the Minister, failing which it shall lapse.
- (2) Subject to this Act, the powers and functions vested in the Department and the Director-General in terms of this Act shall be exercised and performed as directed by the Minister.
- (3) The Minister may delegate to the Director-General any of the powers and functions vested in him or her in terms of this Act.

4. Immigration Advisory Board

- (1) The Immigration Advisory Board is hereby established.

- (2) The Board shall be chaired by a designee of the Minister and consist of—
- (a) one representative of the Department of Trade and Industry;
 - (b) one representative of the Department of Labour;
 - (c) one representative of the Department of Tourism;
 - (d) one representative of the Department of Finance;
 - (e) one representative of the Department of Safety and Security;
 - (f) one representative of the South African Revenue Service;
 - (g) one representative of the Department of Education;
 - (h) one representative of the Department of Foreign Affairs;
 - (i) one representative of the Department of Defence;
 - (j) the Director-General;
 - (k) up to five persons from civil society, including one representing organised labour and one representing organised business, appointed by the Minister after the Minister has given notice in the *Gazette* soliciting public nominations of such persons; and
 - (l) up to four individuals appointed by the Minister on grounds of their expertise in administration, regulatory matters or immigration law, control, adjudication or enforcement.
- (3) The Board shall meet when called by the Chairperson and—
- (a) shall meet regularly;
 - (b) may determine its procedures at meetings;
 - (c) may invite immigration officers and other employees of the Department to attend or participate in its meetings; and
 - (d) may appoint committees from its members to assist in the performance of its functions.
- (4) A member of the Board referred to in subsection (2)(k) and (l) shall—
- (a) serve for a four-year-term, at the expiry of which they shall be eligible for one or more re-appointments, provided that the Minister may elect to fill any vacancy which may occur by appointing a person for the unexpired portion of the term of the member in whose place such person is appointed;
 - (b) at no time—
 - (i) be or become an unrehabilitated insolvent;
 - (ii) be or have been judicially declared of unsound mind;
 - (iii) suffer an infirmity of mind or body preventing him or her from the proper discharge of the duties of his or her office;
 - (iv) be convicted by final conviction or sentence of an offence without the option of a fine;
 - (v) be or become a political office bearer; or
 - (vi) be or have been removed from an office of trust on account of misconduct involving theft or fraud;
 - (c) cease to be a member—
 - (i) on resignation;

- (ii) if requested by the Minister to resign for good cause;
 - (iii) if he or she fails to attend two consecutive meetings of the Board, unless his or her apology has been accepted by the Board; or
 - (iv) if he or she becomes disqualified in terms of this Act; and
- (d) be paid such remuneration and be entitled to such benefits and allowances as determined from time to time by the Minister after consultation with the Director-General and with the approval of the Minister of Finance.
- (5) The Board may request the Department to provide it with the necessary administrative capacity and assistance.
 - (6) The Board may establish and operate through committees to carry out its functions.
 - (7) The Minister may dissolve the Board on such terms and conditions as he or she sees fit, provided that a new Board shall be convened within 90 calendar days.
 - (8) The members of the Board who are not public servants shall be entitled to such remuneration and reimbursements as the Minister may determine from time to time in consultation with the Minister of Finance.
 - (9) Subject to this Act, the Board shall operate and meet as prescribed.

5. Functions of Board

The Board shall advise the Minister in respect of—

- (a) the contents of regulations made in terms of this Act;
- (b) the formulation of policy pertaining to immigration matters;
- (c) the implementation of immigration policy by the Department;
- (d) the reviewing of a decision of the Department in terms of [section 8](#) if and when requested by Minister;
- (e) such other matters relating to this Act on which the Minister may request advice.

6. Inter-departmental co-operation

- (1) The Director-General or his or her delegatee shall chair a liaison committee made up of senior employees representing the various departments which have functions relating to ports of entry.
- (2) The liaison committee shall meet whenever necessary to discuss and agree on co-operation and co-ordination with regard to matters relating to the administration of ports of entry and the movement of goods and persons through ports of entry.

7. Regulation making

- (1) The Minister shall have the power to make regulations called for, or conducive to, the implementation of this Act and in making regulations in terms of this Act, the Minister shall—
 - (a) publish and table in Parliament his or her intention of adopting regulations specifying their subject matter and soliciting public comments during a period not shorter than 21 calendar days;
 - (b) having considered public comments received, publish and table in Parliament draft regulations soliciting further comments during a period not shorter than 21 calendar days; and

- (c) publish the final regulations together with a summary of comments which have not been accommodated and the reasons for their rejection.
- (2) Only subsection (1)(b) and (c) shall apply in respect of any regulations which this Act requires to be prescribed from time to time.
- (3) The Board may request the Minister to—
 - (a) reconsider any intended regulations prior to their promulgation; or
 - (b) consider the need to adopt, repeal or amend regulations.
- (4) Regulations shall be consistent with this Act, and shall not disregard the advice of the Board and public comments in an arbitrary or capricious manner: Provided that any regulation made in terms of this section shall be tabled within 30 days after its promulgation if Parliament is in session and if Parliament is in recess when the regulation is published, within 12 days after the resumption of the session.

8. Adjudication and review procedures

- (1) Before making a determination adversely affecting a person, the Department shall notify the contemplated decision and related motivation to such affected person and give such person at least 10 calendar days to make representations, after which the Department shall notify such person that either such decision has been withdrawn or modified, or that it shall become effective, subject to subsection (2).
- (2) Within 20 calendar days of its notification, the person aggrieved by an effective decision of the Department may appeal against it—
 - (a) to the Director-General, who may reverse or modify it within 10 calendar days, failing which the decision shall be deemed to have been confirmed; or
 - (b) within 20 calendar days of modification or confirmation by the Director-General, if any, to the Minister, who may reverse or modify it within 20 calendar days, failing which the decision shall be deemed to have been confirmed, and be final, provided that in exceptional circumstances or when such person stands to be deported as a consequence of such decision —
 - (i) the Minister may extend such deadline; and
 - (ii) at the request of the Department, the Minister may request such person to post a bond to defray his or her deportation costs, if applicable; or
 - (c) within 20 calendar days of modification or confirmation by the Minister, if any, to a Court, which may suspend, reverse or modify it in accordance with its rules.
- (3) If not appealed in terms of subsection (2), a decision of the Department is final, subject to [section 37](#) of this Act.
- (4) Any person adversely affected by a decision of the Department shall be notified in writing of his or her rights under this section and other prescribed matters, and may not be deported before the relevant decision is final.
- (5) Notwithstanding subsection (1), as soon as notified to the person concerned in terms of subsection (4), the decision of an immigration officer refusing entry into the Republic shall be effective for the purpose of subsection (1), and final for purposes of deportation, but subject to subsections (2) and (3).

Admission and departure

9. Admission and departure

- (1) Subject to this Act, no person shall enter the Republic at a place other than a port of entry.
- (2) Subject to this Act, a citizen or a resident shall be admitted, provided that he or she identifies himself or herself as such in the prescribed manner and, in the case of a resident, the immigration officer records his or her entrance.
- (3) No person shall leave the Republic—
 - (a) unless in possession of a passport, or a certificate issued by the Department upon application in lieu thereof;
 - (b) unless, if he or she is a person under the age of 16 years who does not hold a passport, he or she is accompanied by his or her parent who holds a passport in which his or her name was entered in terms of the provisions of the South African Passports and Travel Documents Act, 1994 or on behalf of any government or international organisation recognised by the Government of the Republic; and
 - (c) except at a port of entry, unless—
 - (i) in possession of a certificate by the Department granting permission upon application to leave the Republic at a place other than a port of entry within a certain period not exceeding six months at a time, provided that for good cause an immigration officer may withdraw such permission; or
 - (ii) exempted by the Minister, as he or she deems fit, on recommendation of the Director-General, which exemption may be withdrawn by the Director-General at any time; and
 - (d) unless, in the case of a resident, the departure is recorded by an immigration officer.
- (4) A foreigner may only enter the Republic—
 - (a) by producing to an immigration officer his or her passport to be valid for no less than 30 days after the expiry of the intended stay, and
 - (b) if issued with a valid temporary residence, as set out in this Act, and may only depart as set out in this Act.

Temporary residence

10. Temporary residence permits

- (1) Upon admission, a foreigner may enter and sojourn in the Republic only if in possession of a temporary residence.
- (2) Subject to this Act, upon application and upon prescribed examination at the port of entry, one of the temporary residences set out in [section 11](#) to [section 23](#) may be issued to a foreigner.
- (3) If issued outside the Republic, a temporary residence is deemed to be of force and effect only after an admission.
- (4) A temporary residence is to be issued on condition that the holder is not or does not become a prohibited or an undesirable person.
- (5) For good cause, as prescribed, the Department may attach reasonable individual terms and conditions to a temporary residence.
- (6) Subject to this Act, a foreigner may change his or her status while in the Republic.

11. Visitor's permit

- (1) A visitor's permit may be issued by the Department in respect of a foreigner who—
 - (a) holds a visa; or
 - (b) is a citizen of a foreign state prescribed from time to time and provides the financial or other guarantees prescribed from time to time in respect of his or her departure, provided that such permit—
 - (i) cannot exceed three months and upon application may be renewed by the Department; or
 - (ii) may be issued by the Department upon application for any period not to exceed three years to a foreigner who has satisfied the Department that he or she controls sufficient available financial resources, which may be prescribed from time to time, and is engaged in the Republic in—
 - (aa) academic sabbaticals;
 - (bb) voluntary or charitable activities;
 - (cc) research; or
 - (dd) other prescribed activities and cases.
- (2) The holder of a visitor's permit may not conduct work.
- (3) An illegal foreigner receiving a visitor's permit shall comply with any terms and conditions which may be prescribed from time to time and provide the prescribed deposit to be forfeited to the Department in case of his or her non-compliance with this Act.
- (4) A visitor's permit may be issued for more than one entry if multiple entries into the Republic over a period not exceeding three months are requested by the person concerned.
- (5) Special financial and other guarantees may be prescribed in respect of the issuance of a visitor's permit to certain classes of foreigners prescribed from time to time.

12. Diplomatic permit

- (1) A diplomatic permit may be issued by the Department, or by the Department of Foreign Affairs under delegation and in the prescribed manner and form and as directed by the Department, to—
 - (a) an ambassador, a minister of a foreign state, a career diplomat or consular officer of a foreign government recognized *de jure* by the South African Government, or a representative of an international organisation prescribed from time to time, who is accepted by the Minister of Foreign Affairs;
 - (b) upon a basis of reciprocity, other officials or employees of a foreign government or international organisation contemplated in paragraph (a);
 - (c) a member of the immediate family of the foreigners contemplated in paragraphs (a) and (b);
 - (d) upon a basis of reciprocity, attendants, servants and personal employees of the foreigners contemplated in paragraphs (a) to (c); and
 - (e) other prescribed foreigners who are dignitaries of a foreign state.
- (2) The holder of a diplomatic permit may not conduct work, provided that the foreigners referred to in subsection (1)(c) may combine such permit with a separately issued work permit.

13. Study permit

- (1) A study permit may be issued to a foreigner intending to study in the Republic for longer than three months by—
 - (a) the Department, as prescribed, or, at the option of the applicant.
 - (b) the Department through the registrars office or a designated official of an institution of learning where the foreigner intends to study, provided that such institution—
 - (i) has been approved by and is in good standing with the Department;
 - (ii) certifies that it has received guarantees to its satisfaction that such foreigner's tuition fees will be paid;
 - (iii) has received the prescribed guarantees that such foreigner will have sufficient means to support himself or herself while in the Republic;
 - (iv) in the case of a minor, provides the name of a person present in South Africa who is, or has accepted to act, as such minor's guardian while in the Republic;
 - (v) undertakes to provide a prescribed periodic certification that such foreigner is satisfactorily performing his or her curriculum of study; and
 - (vi) undertakes to notify the Department when such foreigner has completed his or her studies, or is no longer performing them satisfactorily.
- (2) When so requested by, and after consultation with, the Department of Education, the Department shall determine an *ad hoc* fee for the issuance of study permits in respect of institutions publicly funded or subsidised.
- (3) A study permit does not entitle the holder to conduct work, provided that—
 - (a) a study permit holder may undertake part-time work for a period not exceeding the prescribed period, if the permit holder is attending a higher education institution;
 - (b) the work referred to in paragraph (a) may include temporary or full time work during the academic vacation periods.
 - (c) the Department may, in appropriate cases, authorise the holder of a study permit to conduct work as practical training in a field related to that of his or her studies.

14. Treaty permit

- (1) A treaty permit may be issued to a foreigner conducting activities in the Republic in terms of an international agreement to which the Republic is a party.
- (2) The treaty permit may be issued by—
 - (a) the Department, as prescribed; or
 - (b) the Department of Foreign Affairs or the other organ of State responsible for the implementation of the treaty concerned under a delegation from the Department, provided that—
 - (i) information relating to the failure of such foreigner to comply with the terms and conditions of the permit and to depart when required is conveyed to the Department;
 - (ii) the organ of State concerned satisfies the Department that, under the circumstances, it has the capacity to perform this function; and
 - (iii) the requirements, procedures and forms for the issuance of such permit are prescribed.

15. Business permit

- (1) A business permit may be issued by the Department to a foreigner intending to establish, or invest in, a business in the Republic in which he or she may be employed, and to the members of such foreigner's immediate family provided that—
 - (a) such foreigner invests the prescribed financial or capital contribution in such business;
 - (b) the contribution referred to in paragraph (a) be part of the intended book value of such business;
 - (c) a chartered accountant certifies compliance with the provisions of this Act, and
 - (d) such foreigner has undertaken to comply with any relevant registration requirement set out in any law administered by the South African Revenue Service.
- (2) The holder of a business permit may conduct work.
- (3) The Department may reduce or waive the capitalization requirements referred to in subsection (1) (a) for businesses which are prescribed from time to time to be in the national interest or when so requested by the Department of Trade and Industry.
- (4) The holder of a business permit shall cause the certification referred to in subsection (1)(c) to be renewed within 24 months of the issuance of the permit, and within every two years thereafter.
- (5) A business permit may be issued for more than one entry to a person if multiple entries into the Republic by that person over a period of time are necessary for that person to conduct the business in question effectively.

16. Crew permit

- (1) A crew permit may be issued to a foreigner who is a member of the crew of a ship by—
 - (a) the Department; as prescribed, or
 - (b) the Department through the owner of the ship carrying such member of the crew, provided that such owner—
 - (i) is in good standing with the Department;
 - (ii) has provided the prescribed financial guarantees to the Department to ensure compliance of such foreigner with the provisions of this Act and of his or her permit; and
 - (iii) accepts to be responsible for a prescribed fine, should the foreigner fail to honour the terms of such permit.
- (2) A crew permit may be issued on condition that the holder agrees to refrain from moving beyond a predetermined area.
- (3) The holder of a crew permit may not conduct work.

17. Medical treatment permit

- (1) A medical treatment permit may be issued to a foreigner intending to receive medical treatment in the Republic for longer than three months by—
 - (a) the Department, as prescribed, or
 - (b) the Department through the registrars office or a designated official of an institution where the foreigner intends to receive treatment, provided that such institution—
 - (i) has been approved by and is in good standing with the Department;

- (ii) certifies that it has received guarantees to its satisfaction that such foreigner's treatment costs will be paid;
 - (iii) in the case of a minor, provides the name of a person present in South Africa who is, or has accepted to act, as such minor's guardian while in the Republic or certifies that such minor will be accompanied by a parent or guardian to the Republic;
 - (iv) undertakes to provide a prescribed periodic certification that such foreigner is under treatment; and
 - (v) undertakes to notify the Department when such foreigner has completed his or her treatment.
- (2) When so requested by, and after consultation with, the Department of Health, the Department shall determine an *ad hoc* fee for the issuance of medical treatment permits in respect of institutions publicly funded or subsidised.
- (3) A medical treatment permit does not entitle the holder to conduct work.

18. Relative's permit

- (1) A relative's permit may be issued by the Department to a foreigner who is a member of the immediate family of a citizen or a resident, provided that such citizen or resident provides the prescribed financial assurance.
- (a) certified by a chartered accountant, or, at the applicant's option,
 - (b) to be corroborated by relevant documentation to be evaluated by the Department that he or she has the means available to support such foreigner for the requested duration of such permit, either personally or through the contribution of such foreigner.
- (2) The holder of a relative's permit may not conduct work.

19. Work permit

- (1) A quota work permit may be issued by the Department as prescribed to a foreigner if the foreigner falls within a category determined by the Minister at least annually by notice in the *Gazette* after consultation with the Ministers of Labour and Trade and Industry and as long as the number of work permits so issued for such category does not exceed the quota determined in the notice.
- (2) A general work permit may be issued by the Department to a foreigner not falling within a category contemplated in subsection (1) if the prospective employer—
- (a) satisfies the Department in the manner prescribed that despite diligent search he or she has been unable to employ a person in the Republic with qualifications equivalent to those of the applicant;
 - (b) produces certification from a chartered accountant that the terms and conditions under which he or she intends to employ such foreigner, including salary and benefits, are not inferior to those prevailing in the relevant market segment for citizens and residents, taking into account applicable collective bargaining agreements and other applicable standards, as recorded by the Department of Labour, if any, provided that—
 - (i) a copy of such certification shall be conveyed to a prescribed office of the Department of Labour; and
 - (ii) such certification shall lapse if objected to for good cause by such office of the Department of Labour within 15 calendar days of its receipt;
 - (c) has committed to notify the Department when such foreigner is no longer employed or is employed in a different capacity or role; and

- (d) has submitted a certification from a chartered accountant of the job description and that the position exists and is intended to be filled by such foreigner.
- (3) A general work permit contemplated in subsection (2) shall lapse if, within six months of its issuance, and within every year thereafter, its holder fails to submit to the Department certification from his or her employer's chartered accountant that he or she is still employed and of the terms and conditions of his or her employment, including the job description.
- (4) Subject to any prescribed requirements, an exceptional skills work permit may be issued by the Department to an individual of exceptional skills or qualifications and to those members of his or her immediate family determined by the Department under the circumstances or by regulation.
- (5) An intra-company transfer work permit may be issued by the Department to a foreigner who is employed abroad by a business operating in the Republic in a branch, subsidiary or affiliate relationship and who by reason of his or her employment is required to conduct work in the Republic for a period not exceeding two years, provided that—
 - (a) a chartered accountant acting on behalf of the employer of such foreigner certifies that the employer needs to employ such foreigner within the Republic and such foreigner's job description;
 - (b) the employer undertakes that it will take adequate or prescribed measures to ensure that such foreigner will at all times comply with the provisions of this Act, and will immediately notify the Department if it has reason to believe otherwise; and
 - (c) the employer furnishes the prescribed financial guarantees to defray deportation and other costs should such foreigner fail to depart when no longer allowed to sojourn in the Republic.
- (6) The holder of an intra-company transfer work permit may conduct work only for the employer referred to in subsection (5) and in accordance with the job description and other elements contemplated in the certification referred to in subsection (5) or set out in his or her permit.

20. Retired person permit

- (1) A retired person permit may be issued for a period exceeding three months to a foreigner who intends to retire in the Republic, provided that the foreigner provides proof that such foreigner has—
 - (a) the right to a pension or an irrevocable annuity or retirement account which will give such foreigner a prescribed minimum payment for the rest of his or her life from the country of his or her origin; or
 - (b) a minimum prescribed net worth.
- (2) The Department may authorise the holder of a retired person permit to conduct work under terms and conditions as the Department may deem fit to determine under the circumstances.
- (3) A retired person permit may—
 - (a) allow its holder to sojourn in the Republic on a seasonal or continuous basis; and
 - (b) not exceed a four-year period, at the expiry of which it may be renewed one or more times, subject to subsection (1).

21. Corporate permit

- (1) A corporate permit may be issued by the Department to a corporate applicant to employ foreigners who may conduct work for such corporate applicant.

- (2) After consultation with the Departments of Labour and of Trade and Industry, the Department shall determine the maximum number of foreigners to be employed in terms of a corporate permit by a corporate applicant, after having considered—
- (a) the certification prepared by a chartered accountant on the basis of the relevant prescription or information of the Department of Labour, if any, that at any given time the relevant foreigners are employed on terms and conditions not inferior to those offered to citizens and residents or prevailing in the relevant market segment, taking into account collective bargaining agreements and other standards, if any;
 - (b) the undertaking by the corporate applicant that it will—
 - (i) take adequate or prescribed measures to ensure that any foreigner employed in terms of the corporate permit will at any time comply with the provisions of this Act and the corporate permit; and
 - (ii) immediately notify the Department if it has reason to believe that such foreigner is no longer in compliance with subparagraph (i) above;
 - (c) the financial guarantees posted in the prescribed amount and form by the corporate applicant to defray deportation and other costs should the corporate permit be withdrawn, or certain foreigners fail to leave the Republic when no longer subject to the corporate permit; and
 - (d) corroborated representations made by the corporate applicant in respect of the need to employ foreigners, their job descriptions, the number of citizens or residents employed and their positions, and other prescribed matters.
- (3) The Department may withdraw or modify the corporate permit for good and reasonable cause.
- (4) In consultation with the Minister of Trade and Industry or Minerals and Energy or Agriculture, as the case may be, the Minister of Labour may designate certain industries, or segments thereof, in respect of which the Government may—
- (a) reduce or waive the requirements of subsection (2) (d); or
 - (b) enter into agreements with one or more foreign states and set as a condition of a corporate permit that its holder—
 - (i) employs foreigners partially, mainly or wholly from such foreign countries; and
 - (ii) remits a portion of the salaries of such foreigners to such foreign countries;
 - (c) apply this subsection in respect of foreigners required for seasonal or temporary peak period employment; or
 - (d) waive or reduce the requirement of subsection (2)(c) under special conditions.
- (5) The holder of a corporate permit may also employ foreigners in terms of [section 19](#).

22. Exchange permit

An exchange permit may be issued by the Department to a foreigner—

- (a) participating in a programme of cultural, economic or social exchange, organised or administered by an organ of State, or a public higher education institution, in conjunction with an organ of a foreign state, provided that—
 - (i) after consultation with the Board, the Minister may delegate the authority to issue such permits to such organ of State if such organ of State has satisfied the Minister that it can ensure the compliance of such foreigner with this Act and report to the Department on the stages and the completion of the relevant programme together with other prescribed information;

- (ii) it may be prescribed that, in respect of certain programmes, upon expiration of such permit such foreigner may not qualify for a status until he or she has complied with the requirement of a prescribed period of physical presence in his or her foreign country or of domicile outside the Republic; or
- (b) who is under 25 years of age and has received an offer to conduct work for no longer than one year, provided that—
 - (i) the prospective employer certifies that the position exists, and has committed himself or herself to—
 - (aa) pay such foreigner remuneration which complies with applicable legal requirements;
 - (bb) provide for the welfare and the needs of such foreigner while in the Republic under the aforesaid permit; and
 - (cc) report to the Department the failure of the foreigner to comply with the terms of his or her permit or to depart when so required;
 - (ii) such foreigner may not conduct work other than work for which the permit is issued; and
 - (iii) such foreigner may not qualify for a temporary or permanent residence permit until he or she has spent two years outside the Republic, which requirement may be waived by the Department in extraordinary circumstances.

23. Asylum

The Department may issue an asylum permit to an asylum seeker subject to the Refugees Act, 1998 ([Act No. 130 of 1998](#)), on any prescribed terms and conditions.

24. Cross-border and transit passes

- (1) The Department may issue a cross-border pass with the same effect as a multiple admission visitor's permit to a foreigner who is a citizen of a prescribed foreign country with which the Republic shares a border and who does not hold a passport but has received a prescribed identity document by the Department and is registered with the Department.
- (2) The Department may issue a transit visa authorising a foreigner travelling to a foreign country to make use of the transit facilities at a port of entry.

Permanent residence

25. Permanent residence

- (1) The holder of a permanent residence permit has all the rights, privileges, duties and obligations of a citizen, save for those rights, privileges, duties and obligations which a law or the [Constitution](#) explicitly ascribes to citizenship.
- (2) Subject to this Act, upon application, one of the permanent residence permits set out in sections [26](#) and [27](#) may be issued to a foreigner.
- (3) A permanent residence permit is to be issued on condition that the holder is not a prohibited person, and subject to [section 28](#) of this Act.
- (4) For good cause, as prescribed, the Department may attach reasonable individual terms and conditions to a permanent residence permit.

26. Direct residence

Subject to [section 25](#), the Department shall issue a permanent residence permit to a foreigner who—

- (a) has been the holder of a work permit, including one issued under a corporate permit, in terms of this Act for five years and has received an offer for permanent employment, provided that—
 - (i) such foreigner submitted a certification from his or her prospective permanent employer's chartered accountant of the job description and that the position exists and is intended to be filled by such foreigner; and
 - (ii) the Department of Labour certifies that the terms and conditions of such offer, including salary and benefits, are not inferior to those prevailing in the relevant market segment for citizens and residents, taking into account applicable collective bargaining agreements and other standards;
- (b) is the spouse of a citizen or resident, provided that—
 - (i) the Department is satisfied that a good faith spousal relationship exists; and
 - (ii) such permit is issued on condition that it shall lapse if at any time within three years from its application the good faith spousal relationship no longer subsists, save for the case of death;
- (c) is a child of a citizen or resident under the age of 21, provided that such permit shall lapse if such foreigner does not submit an application for its confirmation within two years of his or her having turned 21 years of age; or
- (d) is a child of a citizen.

27. Residence on other grounds

The Department may issue a permanent residence permit to a foreigner of good and sound character who—

- (a) has received an offer for permanent employment, provided that—
 - (i) such foreigner submitted a certification from a chartered accountant acting on behalf of such foreigner's prospective permanent employer that the position exists and that the position and related job description was advertised in the prescribed form and no suitably qualified citizen or resident was available to fill it;
 - (ii) the Department of Labour certifies that the terms and conditions of such offer, including salary and benefits, are not inferior to those prevailing in the relevant market segment for citizens or residents, taking into account applicable collective bargaining agreements and other standards, if any;
 - (iii) the application falls within the yearly limits of available permits prescribed from time to time for each sector of industry, trade and commerce, after consultation with the Departments of Trade and Industry, Labour and Education; and
 - (iv) the permit may be extended to such foreigner's spouse and children younger than 21 years of age;
- (b) taking into account any prescribed requirement, has demonstrated to the satisfaction of the Department extraordinary skills or qualifications, and to those members of such foreigner's immediate family determined by the Department under the circumstances or by regulation;

- (c) intends to establish a business in the Republic investing in it the prescribed financial contribution to be part of the intended book value as certified by a chartered accountant, and to the members of such foreigner's immediate family, provided that—
 - (i) the Department may waive or reduce such capitalisation requirements for businesses prescribed from time to time to be in the national interest or when so requested by the Department of Trade and Industry; and
 - (ii) the permit shall lapse if the holder fails to renew such certification within two years of the issuance of the permit, and three years thereafter;
- (d) is a refugee referred to in section 21(c) of the Refugees Act, 1998 ([Act No. 130 of 1998](#)), subject to any prescribed requirement;
- (e) intends to retire in the Republic, provided that a chartered accountant acting on behalf of such foreigner certifies that such foreigner—
 - (i) has the right to a pension or an irrevocable annuity or retirement account which will give such foreigner a prescribed minimum payment for the rest of his or her life; or
 - (ii) has a minimum prescribed net worth;
- (f) has provided a certification by a chartered accountant that he or she has a prescribed minimum net worth and has paid a prescribed amount to the Department; or
- (g) is the relative of a citizen or resident within the first step of kinship.

28. Withdrawal of permanent residence

The Department may withdraw a permanent residence permit if its holder—

- (a) within four years of the issuance of such permit, has been convicted of any of the offences listed in Schedule 1;
- (b) has been convicted three times of any of the offences listed in Schedules 1 and 2;
- (c) has been absent from the Republic for more than three years, provided that—
 - (i) upon showing good cause and upon prior application the Department may extend this period in specific cases;
 - (ii) the time when such holder—
 - (aa) was residing abroad while in the service of the State;
 - (bb) was residing abroad while a representative or employee of a person or association of persons resident or established in the Republic;
 - (cc) was residing abroad while in the service of an international organisation of which the State is a member;
 - (dd) in the case of the spouse or dependent child of a person referred to in subitem (aa), (bb) or (cc), such spouse or child was residing with such person; or
 - (ee) in the case of the spouse or dependent child of a person who is a South African citizen, such spouse or child was residing with such person,shall not be computed within such period;
 - (iii) the Minister, on recommendation of the Director-General, may grant an exemption from the requirement of residence in respect of certain residents or class of residents;
 - (iv) the period of absence may only be interrupted by an admission and sojourn in the Republic; and

- (v) the requirement of residence in the Republic shall not affect any foreigner to whom exemption has been granted under [section 31](#) (2)(b) as a member of a category of persons, unless such foreigner previously entered the Republic or sojourned therein for the purpose of permanent residence under the authority of such exemption; or
- (d) has not taken up residence in the Republic within one year of the issuance of such permit.

Exclusions and exemptions

29. Prohibited persons

- (1) The following foreigners do not qualify for a temporary or a permanent residence permit:
 - (a) those infected with infectious diseases as prescribed from time to time;
 - (b) anyone against whom a warrant is outstanding or a conviction has been secured in the Republic or a foreign country with which the Republic has regular diplomatic relations in respect of genocide, terrorism, murder, torture, drug trafficking, money laundering or kidnapping;
 - (c) anyone previously deported and not rehabilitated by the Department in the prescribed manner;
 - (d) a member of or adherent to an association or organisation advocating the practice of racial hatred or social violence; and
 - (e) anyone who is or has been a member of or adherent to an organisation or association utilising crime or terrorism to pursue its ends.
- (2) After consultation with the Director-General, for good cause the Minister may declare a person referred to in subsection (1) not to be a prohibited person.

30. Undesirable persons

- (1) The following foreigners, may be declared undesirable by the Department as prescribed:
 - (a) anyone who is or is likely to become a public charge;
 - (b) anyone identified as such by the Minister after consultation with the Board, or in the case of urgency, by the Minister who, in such cases, shall inform the Board as soon as practicable;
 - (c) anyone who has been judicially declared incompetent;
 - (d) an unrehabilitated insolvent;
 - (e) anyone who has been ordered to depart in terms of this Act;
 - (f) anyone who is a fugitive from justice; and
 - (g) anyone with previous criminal convictions without the option of a fine for conduct which would be an offence in the Republic, with the exclusion of certain prescribed offences.
- (2) Upon application from the affected person, the Department may waive any of the grounds of undesirability provided that it reports such decisions to the Minister and the Board, with reasons.

31. Exemptions

- (1) The following persons or categories of persons are not illegal foreigners:
 - (a) a member of a military force of a foreign state which has been granted consent by the Government of the Republic to enter the Republic, while such consent subsists; and

- (b) the officers and crew of an official ship of a foreign state, while such ship is in port.
- (2) Upon application, the Minister, as he or she deems fit, after consultation with the Board, may under terms and conditions determined by him or her—
 - (a) allow a distinguished visitor and certain members of his or her immediate family and members in his or her employ or of his or her household to be admitted and sojourn in the Republic for a period not exceeding six months, provided that such foreigners do not intend to reside in the Republic permanently;
 - (b) grant a foreigner or a category of foreigners the rights of permanent residence for a specified or unspecified period when special circumstances exist which justify such a decision; provided that the Minister may—
 - (i) exclude one or more identified foreigners from such categories; and
 - (ii) for good cause, withdraw such right from a foreigner or a category of foreigners;
 - (c) authorise any person or category of persons to enter the Republic at a place other than a port of entry, in which case the Department shall issue to such person(s) the prescribed written permission or passport endorsement, provided that such authorisation may be withdrawn at any time by the Minister; and
 - (d) for good cause, waive any prescribed requirement or form, provided that if such consultation requirement would unduly delay an urgent action, the Minister may inform the Board after the fact of any action taken under this subsection and of the reasons for the urgency.

Enforcement and monitoring

32. Illegal foreigners

- (1) Any illegal foreigner shall depart, unless authorised by the Department to remain in the Republic pending his or her application for a status.
- (2) Any illegal foreigner shall be deported.

33. Inspectorate

- (1) An inspectorate shall be established through regulations and shall consist of such persons, including immigration officers, as may be determined by the Minister.
- (2) On the recommendation of the Director-General, the Minister shall appoint the head of the inspectorate.
- (3) The inspectorate shall investigate any matter falling within the scope of this Act, subject to the directions of the Minister, and shall in the performance of its functions follow such procedure as may be prescribed.
- (4) An immigration officer may, for the purposes of this Act—
 - (a) at any time before the commencement or in the course of an investigation conduct an inspection in loco;
 - (b) by notice in writing call upon any person who is in possession of or has the custody of or control over any thing which in the opinion of the Department is relevant to the investigation to produce such thing, and the Department may inspect and retain any thing so produced for a reasonable time; and

- (c) by notice in writing call upon any person to appear before the Department and to give evidence or to answer questions relevant to the subject matter of the investigation,
- provided that any of such notices shall specify the time when and the place where the person to whom it is directed shall appear, be signed by an immigration officer, be served by an immigration officer or by a sheriff by delivering a copy thereof to the person concerned or by leaving it at such person's last known place of residence or business, and shall specify the reason why the article is to be produced or the evidence is to be given.
- (5) In the pursuance of this Act, an immigration officer may obtain a warrant to—
- (a) enter or search any premises for a person or thing or to make inquiries, including the power to—
- (i) examine any thing found in or upon such premises;
- (ii) request from the person who is in control of such premises or in whose possession or under whose control any thing is when it is found, or who is upon reasonable grounds believed to have information with regard to such thing, an explanation or information; and
- (iii) make copies of or extracts from any such thing found upon or in such premises;
- (b) apprehend an illegal foreigner, subject to [section 34\(1\)](#); or
- (c) after having issued a receipt in respect thereof, seize and remove documentation or any other thing which—
- (i) is concerned with or is upon reasonable grounds suspected of being concerned with any matter which is the subject of any investigation in terms of this Act; or
- (ii) contains, or is on reasonable grounds suspected to contain, information with regard to any such matter,
- provided that—
- (aa) any thing so seized shall be returned in good order as soon as possible after the purpose of its seizure has been accomplished; and
- (bb) a person from whom a book or document has been taken shall be allowed reasonable access, including the right to make copies at his or her expense.
- (6) A warrant referred to in subsection (5) shall be issued by a magistrate of a Court which has jurisdiction in the area where the premises in question are situated, and only if it appears to the magistrate from information on oath that there are reasonable grounds for believing that a thing mentioned in subsection (5) is upon or in such premises, and shall specify which of the acts mentioned in subsection (5) may be performed thereunder by the person to whom it is issued.
- (7) A warrant issued in terms of this section shall be executed by day unless the magistrate who issues the warrant authorises its execution by night at times which shall be reasonable, and any entry upon or search of any premises in terms of this section shall be conducted with strict regard to decency and order, including—
- (a) a person's right to, respect for, and the protection of, his or her dignity;
- (b) the right of a person to freedom and security; and
- (c) the right of a person to his or her personal privacy.

- (8) A person executing a warrant in terms of this section shall immediately before commencing with the execution—
- (a) identify himself or herself to the person in control of the premises, if such person is present, and hand to such person a copy of the warrant or, if such person is not present, affix such copy to a prominent place on the premises; and
 - (b) supply such person at his or her request with particulars regarding his or her authority to execute such a warrant.
- (9) (a) An immigration officer may, without a warrant, enter upon any premises, other than a private dwelling, and exercise the powers referred to in subsection (5)(a) and (c)—
- (i) if the person who is competent to do so consents to such entry, search, seizure and removal; or
 - (ii) if he or she upon reasonable grounds believes that—
 - (aa) the required warrant will be issued to him or her in terms of subsection (5) if he or she were to apply for such warrant; and
 - (bb) the delay caused by the obtaining of any such warrant would defeat the object of the entry, search, seizure and removal.
 - (b) Any entry and search in terms of paragraph (a) shall be executed by day, unless the execution thereof by night is justifiable and necessary.
- (10) (a) Any person who may on the authority of a warrant issued in terms of subsection (5), or under the provisions of subsection (9), enter upon and search any premises, may use such force as may be reasonably necessary to overcome resistance to such entry or search; and
- (b) No person may enter upon or search any premises unless he or she has audibly demanded access to the premises and has notified the purpose of his or her entry, unless such person is upon reasonable grounds of the opinion that any thing may be destroyed or a person put at risk of bodily harm if such access is first demanded and such purpose is first notified.
- (11) If, during the execution of a warrant or the conducting of a search in terms of this section, a person claims that a thing found on or in the premises concerned contains privileged information and refuses its inspection or removal, the person executing the warrant or conducting the search shall, if he or she is of the opinion that the thing contains information which is relevant to the investigation and that such information is necessary for the investigation, request a person designated by a Court which has jurisdiction to seize and remove that thing for safe custody until a Court has made a ruling on the question whether the information concerned is privileged or not.
- (12) A warrant issued in terms of this section may be issued on any day and shall be in force until—
- (a) it is executed;
 - (b) it is cancelled by the person who issued it or, if such person is not available, by a person with similar authority;
 - (c) the expiry of one month from the day of its issue; or
 - (d) the purpose for the issuing of the warrant has lapsed, whichever may occur first.
- (13) In consultation with the Minister and through diplomatic channels, the Department may obtain permission from the relevant authority of a foreign country to receive evidence or gather information in or from that country.
- (14) When exercising powers under this section, an immigration officer shall clearly identify him or herself as such by means of adequate identification.

34. Deportation and detention of illegal foreigners

- (1) Without need for a warrant, an immigration officer may arrest an illegal foreigner or cause him or her to be arrested, and shall, irrespective of whether such foreigner is arrested, deport him or her or cause him or her to be deported and may, pending his or her deportation, detain him or her or cause him or her to be detained in a manner and at the place under the control or administration of the Department determined by the Director-General, provided that the foreigner concerned—
 - (a) shall be notified in writing of the decision to deport him or her and of his or her right to appeal such decision in terms of this Act;
 - (b) may at any time request any officer attending to him or her that his or her detention for the purpose of deportation be confirmed by warrant of a Court, which, if not issued within 48 hours of such request, shall cause the immediate release of such foreigner;
 - (c) shall be informed upon arrest or immediately thereafter of the rights set out in the preceding two paragraphs, when possible, practicable and available in a language that he or she understands;
 - (d) may not be held in detention for longer than 30 calendar days without a warrant of a Court which on good and reasonable grounds may extend such detention for an adequate period not exceeding 90 calendar days, and
 - (e) shall be held in detention in compliance with minimum prescribed standards protecting his or her dignity and relevant human rights.
- (2) The detention of a person in terms of this Act elsewhere than on a ship and for purposes other than his or her deportation shall not exceed 48 hours from his or her arrest or the time at which such person was taken into custody for examination or other purposes, provided that if such period expires on a non-court day it shall be extended to four p.m. of the first following court day.
- (3) The Department may order a foreigner subject to deportation to deposit a sum sufficient to cover in whole or in part the expenses related to his or her deportation, detention, maintenance and custody and an officer may in the prescribed manner enforce payment of such deposit.
- (4) Any person who fails to comply with an order made in terms of subsection (3) shall be guilty of an offence and liable on conviction to a fine not exceeding R20 000 or to imprisonment not exceeding 12 months.
- (5) Any person other than a citizen or a resident who having been—
 - (a) removed from the Republic or while being subject to an order issued under a law to leave the Republic, returns thereto without lawful authority or fails to comply with such order; or
 - (b) refused admission, whether before or after the commencement of this Act, has entered the Republic,shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months and may, if not already in detention, be arrested without warrant and deported under a warrant issued by a Court and, pending his or her removal, be detained in the manner and at the place determined by the Director-General.
- (6) Any illegal foreigner convicted and sentenced under this Act may be deported before the expiration of his or her sentence and his or her imprisonment shall terminate at that time.
- (7) On the basis of a warrant for the removal or release of a detained illegal foreigner, the person in charge of the prison concerned shall deliver such foreigner to that immigration officer or police officer bearing such warrant, and if such foreigner is not released he or she shall be deemed to be in lawful custody while in the custody of the immigration officer or police officer bearing such warrant.

- (8) A person at a port of entry who has been notified by an immigration officer that he or she is an illegal foreigner or in respect of whom the immigration officer has made a declaration to the master of the ship on which such foreigner arrived that such person is an illegal foreigner shall be detained by the master on such ship and, unless such master is informed by an immigration officer that such person has been found not to be an illegal foreigner, such master shall remove such person from the Republic, provided that an immigration officer may cause such person to be detained elsewhere than on such ship, or be removed in custody from such ship and detain him or her or cause him or her to be detained in the manner and at a place determined by the Director-General.
- (9) The person referred to in the preceding subsection shall, pending removal and while detained as contemplated in that subsection, be deemed to be in the custody of the master of such ship and not of the immigration officer or the Department, and such master shall be liable to pay the costs of the detention and maintenance of such person while so detained if the master knew or should reasonably have known that such person was an illegal foreigner, provided that—
- (a) if such master fails to comply with the provisions of that subsection, or if required to pay such costs, such master or the owner of such ship shall forfeit in respect of every person concerned a sum fixed by the immigration officer, not exceeding an amount prescribed from time to time;
 - (b) the immigration officer may, before such person is removed from such ship, require the master or the owner of such ship to deposit a sum sufficient to cover any expenses that may be incurred by the Department in connection with the deportation, detention, maintenance and custody of such person, if there are grounds to believe that the master knew or should reasonably have known that such person was an illegal foreigner;
 - (c) if such person is not removed from the Republic on the ship on which he or she was conveyed to the Republic, except by reason of not being an illegal foreigner, and if the master knew or should have known that such person was an illegal foreigner, the owner of that ship shall at the request of an immigration officer convey that person, or have him or her conveyed, free of charge to the State to a place outside the Republic, and any person, other than an immigration officer, charged by the Department with the duty of escorting that person to such place, shall be deemed to be an immigration officer while performing such duty; and
 - (d) if the owner of such ship fails to comply with the provisions of this section, he or she shall forfeit in respect of each such person a sum fixed by the immigration officer, not exceeding an amount prescribed from time to time.
- (10) A person who escapes or attempts to escape from detention imposed under this Act shall be guilty of an offence and may be arrested without a warrant.

35. Ships

- (1) Save for extraordinary circumstances necessitating otherwise, no master shall cause his or her ship to enter the Republic by landing or shoring at any place other than a port of entry.
- (2) An immigration officer or other authorised person employed by the Department may—
- (a) board any ship which is entering or has entered into any port and for good cause prohibit or regulate disembarkation from, or the offloading of, such ship in order to ascertain the status or citizenship of its passengers; and
 - (b) request the person in control of a port of entry or any person acting under his or her authority to order the master to moor or anchor his or her ship in such port at such distance from the shore or landing place or in such position as he or she may direct.

- (3) The master of a ship entering a port of entry upon demand shall deliver to an immigration officer—
- (a) a list stating—
 - (i) the names of all passengers on board the ship, classified according to their respective destinations; and
 - (ii) such other details prescribed from time to time;
 - (b) a list of stowaways, if any have been found;
 - (c) a list of the crew and all other persons, other than passengers and stowaways, employed, carried or present on the ship; and
 - (d) a return, under the hand of the medical officer of that ship or, if there is no such medical officer, under the hand of the master himself or herself, stating—
 - (i) any cases of disease, whether infectious or otherwise, which have occurred or are suspected to have occurred upon the voyage;
 - (ii) the names of the persons who have suffered or are suffering from such disease;
 - (iii) details of any birth or death which occurred upon the voyage between such port and a previous port; and
 - (iv) any other prescribed matter or event, provided that such immigration officer may—
 - (aa) exempt from the requirements of this subsection the master of a ship destined for any other port in the Republic, subject to compliance with the duty to deliver such lists or return at such port and with any directive such immigration officer may issue to the master; and
 - (bb) if satisfied that a name should be added to or deleted from any of such lists, authorise such addition or deletion.
- (4) If a ship arrives at a port of entry with a passenger on board bound for a destination outside the Republic who is not on board when the ship leaves such port and has not been admitted, the master or the owner of that ship shall forfeit a sum fixed by the immigration officer within a prescribed limit.
- (5) An immigration officer may require the master of a ship to muster the crew of such ship on the arrival of such ship in any port of entry and again before it leaves such port.
- (6) The competent officer of customs at any harbour may refuse to give to the master of any ship clearance papers to leave that harbour unless he or she has complied with the provisions of this Act and produced a certificate of an immigration officer to that effect.
- (7) A master shall ensure that any foreigner conveyed to a port of entry for purposes of travelling to a foreign country holds a transit visa, if required.

36. Monitoring entries in Republic and exits

- (1) The Department shall control the entry and exit of people through the borders of the Republic in order to ensure compliance with this Act, and may do so with the assistance of other organs of State.
- (2) The Department may receive a delegation from the South African Revenue Service or the Commissioner thereof, the Department of Safety and Security, the Department of Defence or the Department of Finance enabling and mandating it to exercise powers and perform functions exercised or performed under any law by any of such Departments relating to the control of movement of people or goods across the borders, including ports of entry.

- (3) By proclamation, the President may order that certain assets and human resources of the Department allocated to the control of entry and exit be placed under the control of the Minister of Defence to be deployed as determined by the President in terms of section 201 of the [Constitution](#).

Immigration Courts

37. Immigration Courts

- (1) Every magistrates' court is an Immigration Court for the purposes of this Act and shall have jurisdiction on any matter arising from the application of this Act, including, but not limited to—
- (a) the review of decisions of the Department;
 - (b) any legal proceedings against the Department; and
 - (c) any matter concerning status.
- (2) Any legal proceedings arising from the application of this Act shall be dealt with as soon as is reasonably possible and the Courts must ensure that such proceedings are finalised without any unavoidable delay.

The Rules Board for Courts of Law established in terms of the Rules Board of Courts of Law Act, 1985 ([Act No. 107 of 1985](#)), shall as soon as reasonably possible after the commencement of this Act make rules aimed at facilitating the adjudication of any matter arising from this Act in a simplified and expeditious manner.

Duties and obligations

38. Employment

- (1) No person shall employ—
- (a) an illegal foreigner;
 - (b) a foreigner whose status does not authorise him or her to be employed by such person; or
 - (c) a foreigner on terms, conditions or in a capacity different from those contemplated in such foreigner's status.
- (2) An employer shall make a good faith effort to ascertain that no illegal foreigner is employed by him or her or to ascertain the status or citizenship of those whom he or she employs.
- (3) If it is proven, other than by means of the presumption referred to in subsection (5), that a person was employed in violation of subsection (1), it shall be presumed that the employer knew at the time of the employment that such person was among those referred to in subsection (1), unless such employer proves that he or she—
- (a) employed such person in good faith; and
 - (b) complied with subsection (2), provided that a stricter compliance shall be required of any employer who employs more than five employees or has been found guilty of a prior offence under this Act related to this section.
- (4) An employer employing a foreigner shall—
- (a) for two years after the termination of such foreigner's employment, keep the prescribed records relating thereto; and
 - (b) report to the Department—
 - (i) the termination of such foreigner's employment; and

- (ii) any breach on the side of the foreigner of his or her status.
- (5) If an illegal foreigner is found on any premises where a business is conducted, it shall be presumed that such foreigner was employed by the person who has control over such premises, unless *prima facie* evidence to the contrary is adduced.

39. Learning institutions

- (1) No learning institution shall knowingly provide training or instruction to—
- (a) an illegal foreigner;
 - (b) a foreigner whose status does not authorise him or her to receive such training or instruction by such person; or
 - (c) a foreigner on terms or conditions or in a capacity different from those contemplated in such foreigner's status.
- (2) If an illegal foreigner is found on any premises where instruction or training is provided, it shall be presumed that such foreigner was receiving instruction or training from, or allowed to receive instruction or training by, the person who has control over such premises, unless *prima facie* evidence to the contrary is adduced.

40. Accommodation

- (1) Any business offering overnight accommodation shall make a good faith effort to identify its customers as citizens or status holders and shall report in the prescribed form to the Department any failure to effect such identification.
- (2) When subsection (1) is not complied with and an illegal foreigner is found on any premises referred to in that subsection, it shall be presumed that such illegal foreigner was harboured by the person who has control over such premises, unless *prima facie* evidence to the contrary is adduced.

41. Identification

When so requested by an immigration officer or a police officer any person shall identify himself or herself as a citizen, resident or foreigner when so requested by an immigration officer or a police officer, and if on reasonable grounds such immigration officer or a police officer is not satisfied that such person is entitled to be in the Republic, such immigration officer or a police officer may take such person into custody without a warrant and if necessary detain him or her in a prescribed manner and place until such person's *prima facie* status or citizenship is ascertained.

42. Aiding and abetting illegal foreigners

- (1) Subject to this Act, and save for necessary humanitarian assistance, no person, shall aid, abet, assist, enable or in any manner help—
- (a) an illegal foreigner; or
 - (b) a foreigner in respect of any matter, conduct or transaction which violates such foreigner's status, when applicable,
- including but not limited to—
- (i) providing instruction or training to him or her, or allowing him or her to receive instruction or training;
 - (ii) issuing to him or her a licence or other authorisation to conduct any business or to carry on any profession or occupation;

- (iii) entering into an agreement with him or her for the conduct of any business or the carrying on of any profession or occupation;
 - (iv) conducting any business or carrying on any profession or occupation in cooperation with him or her;
 - (v) assisting, enabling or in any manner helping him or her to conduct any business or carry on any profession or occupation;
 - (vi) obtaining a licence or other authority for him or her or on his or her behalf to conduct any business or to carry on any profession or occupation;
 - (vii) doing anything for him or her or on his or her behalf in connection with his or her business or profession or occupation;
 - (viii) harbouring him or her, which includes providing accommodation; or
 - (ix) letting or selling or in any manner making available any immoveable property in the Republic to him or her.
- (2) In any criminal proceedings arising out of this section, it is no defence to aver that the status of the foreigner concerned, or whether he or she was an illegal foreigner, was unknown to the accused if it is proved that the accused ought reasonably to have known the status of the foreigner, or whether he or she was an illegal foreigner.

43. Obligation of foreigners

A foreigner shall—

- (a) abide by the terms and conditions of his or her status, including any terms and conditions attached to the relevant permit by the Department upon its issuance, extension or renewal; and
- (b) depart upon expiry of his or her status.

44. Organs of State

When possible, any organ of State shall endeavour to ascertain the status or citizenship of the persons receiving its services and shall report to the Department any illegal foreigner, or any person whose status or citizenship could not be ascertained, advising through public notices or directly the person concerned of such reporting practice, provided that such requirement shall not prevent the rendering of services to which illegal foreigners and foreigners are entitled under the [Constitution](#) or any law, including the law of contract.

45. Other institutions

Prescribed institutions or persons other than organs of State may be required by regulation to endeavour to ascertain the status or citizenship of the persons with whom they enter into commercial transactions, as prescribed, and shall report to the Department any illegal foreigner, or any person whose status or citizenship could not be ascertained, provided that such requirement shall not prevent the rendering of services or performance to which illegal foreigners and foreigners are entitled under the [Constitution](#) or any law, including the law of contract.

Miscellaneous

46. Immigration practitioners

- (1) No one, other than an attorney, advocate or immigration practitioner, may conduct the trade of representing another person in the proceedings or procedures flowing from this Act.

- (2) In order to be registered on a roll of immigration practitioners to be maintained by the Department, an immigration practitioner shall apply in the prescribed manner, producing evidence of the prescribed qualifications and paying any prescribed registration fee.
- (3) After affording him or her a fair opportunity to be heard, the Department may withdraw the registration of an immigration practitioner who has contravened this Act or any prescribed duty.

47. Internal monitoring and controls

- (1) The Department shall set up an internal anticorruption unit charged with the task of preventing, deterring, detecting and exposing any instance of corruption, abuse of power, xenophobia and dereliction of duty by a person employed in the Department, provided that such unit shall—
 - (a) not oust the jurisdiction or the investigative authority of any other organ of State; and
 - (b) comprise specialized members seconded from time to time and on a rotating basis by the National Commissioner of the South African Police Service.
- (2) The Director-General shall report to the Minister and inform the Board annually on—
 - (a) measures and proposals aimed at increasing the efficacy, efficiency and cost-effectiveness of the Department; and
 - (b) statistical data relating to the implementation of this Act and the Department.
- (3) The Board shall utilise the information referred to in subsection (2) in its annual report to Parliament.

48. Foreigners erroneously allowed to enter Republic

No illegal foreigner shall be exempt from a provision of this Act or be allowed to sojourn in the Republic on the grounds that he or she was not informed that he or she could not enter or sojourn in the Republic or that he or she was admitted or allowed to remain in the Republic through error or misrepresentation, or because his or her being an illegal foreigner was undiscovered.

Offences

49. Offences

- (1)
 - (a) Anyone who enters or remains in the Republic in contravention of this Act shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding three months.
 - (b) Any illegal foreigner who fails to depart when so ordered by the Department, shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding nine months.
- (2) Anyone who knowingly assists a person to enter the Republic in contravention of this Act shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding one year.
- (3) Anyone who knowingly employs an illegal foreigner or a foreigner in violation of this Act shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding one year, provided that such person's second conviction of such an offence shall be punishable by imprisonment not exceeding two years or a fine, and the third or subsequent convictions of such offences by imprisonment not exceeding three years without the option of a fine.
- (4) Anyone who intentionally facilitates an illegal foreigner to receive public services to which such illegal foreigner is not entitled shall be guilty of an offence and liable on conviction to a fine.
- (5) Any civil servant who provides false or intentionally inaccurate or unauthorised documentation or benefit to an illegal foreigner, or otherwise facilitates such illegal foreigner to disguise his or

her identity or status, or accepts any undue financial or other consideration to perform an act or to exercise his or her discretion in terms of this Act, shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding two years, provided that if such civil servant is employed by the Department such offence shall be punishable by imprisonment not exceeding three years without the option of a fine.

- (6) Anyone failing to comply with one of the duties or obligations set out under [sections 42](#) to [sections 46](#) of this Act shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding 18 months.
- (7) Anyone participating in a conspiracy of two or more persons to conduct an activity intended to violate this Act repeatedly shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding four years, provided that if part of such activity is conducted or intended to be conducted in a foreign country the offence shall be punishable by imprisonment not exceeding four years without the option of a fine.
- (8) Anyone who wilfully or through gross negligence produces a false certification contemplated by this Act shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding one year, and shall be suspended from the relevant professional association for a period not exceeding two years.
- (9) Anyone, other than a civil servant, who produces a document purporting to be a document issued or administered by the Department shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding two years.
- (10) Anyone who through offers of financial or other consideration or threats, compels or induces an officer to contravene this Act or to breach such officer's duties shall be guilty of an offence and liable on conviction—
 - (a) to a fine or to imprisonment not exceeding 18 months; or
 - (b) if subsequently such officer in fact contravenes this Act or breaches his or her duties, to a fine or to imprisonment not exceeding three years.
- (11) Anyone guilty of the offence contemplated in [section 37\(10\)](#) shall be liable on conviction to a fine or to imprisonment not exceeding six months.
- (12) A Court may make an order as to costs in favour of the Department to the extent necessary to defray the costs referred to in [section 37\(3\)](#) against—
 - (a) any illegal foreigner referred to in subsection 37(3);
 - (b) any person who contravened [section 45](#);
 - (c) any person who conveyed into the Republic a foreigner without the required transit visa; or
 - (d) any person who committed an offence contemplated in subsections (5), (7), (8) or (10),which order shall have the effect of a civil judgment of that court.

50. Administrative offences

- (1) Any foreigner who leaves the Republic after the expiry of his or her permit shall be liable to an administrative fine of a prescribed amount not exceeding R3000, which fine shall be imposed by the Department on detection of the overstay and exacted when such foreigner is admitted or makes an application with the Department.
- (2) Anyone who through negligence produces an incorrect certification contemplated by this Act shall be liable to an administrative fine of a prescribed amount not exceeding R8000, which fine shall be imposed by the Department.

- (3) Any owner or master of a ship who through negligence contravenes the provisions of [section 35](#) shall be liable to an administrative fine of a prescribed amount not exceeding R10 000, which fine shall be imposed by the Department.

Transitional provisions

51. Transitional definitions

In respect of sections [52](#) and [53](#) the following additional or different definitions shall apply, unless the context requires otherwise:

- (i) "**prescribe**" means to provide through regulations and "prescribed" has a correspondent meaning;
- (ii) "**previous Act**" means the Aliens Control Act, 1991 ([Act No. 96 of 1991](#));
- (iii) "**published**" means published in the *Government Gazette*; and
- (iv) "**regulations**" means both general and specific rules adopted by the Minister and published.

52. Functions of Department and Board

- (1) Until the Board is duly constituted and operational, any regulation required in terms of this Act shall be prescribed.
- (2) Subject to this Act, any regulations adopted under the previous Act shall remain in force and effect until repealed or amended.
- (3) The Board shall be convened within 90 days of the coming into force of this Act.

53. Existing permits

- (1) Any permanent residence permit validly issued in terms of the previous Act shall be deemed to have been issued in terms of, and in compliance with, this Act.
- (2) Any permit issued in terms of the previous Act for a determined period shall continue in force and effect in accordance with the terms and conditions under which it was issued, but may only be renewed in terms of this Act, provided that—
 - (i) the Department may waive the requirement to submit a new application; and
 - (ii) for good cause the Department may authorise a permit to be renewed in terms of the previous Act.
- (3) Any exemptions for an undetermined period granted in terms of section 28(2) of the previous Act shall be deemed a permanent residence permit for the purposes of this Act, and any exemption granted for a determined period shall continue in force and effect in accordance with the terms and conditions under which it was issued.
- (4) Permits issued under section 41 of the previous Act shall continue in force and effect in accordance with the terms and conditions under which they were issued, but may not be renewed.

54. Repeal of laws

- (1) The laws mentioned in Schedule 3 are hereby repealed or amended to the extent set out in its third column.
- (2) Anything done under the provisions of a law repealed by subsection (1) and which could have been done under this Act shall be deemed to have been done under this Act.

55. Short title and commencement

- (1) This Act shall be referred to as the Immigration Act, 2002, and shall come into force and effect on a date determined by the President by proclamation in the *Government Gazette*.
- (2) The date of coming into force and effect of [section 37](#) shall be determined in consultation with the Minister for Justice and Constitutional Development.

Schedule 1

Offences referred to in section 28(a) and (b) of this Act

Treason against the Republic

Murder

Rape, other than statutory rape

Indecent Assault

Robbery

Kidnapping

Assault when a dangerous wound is inflicted

Arson

Any conspiracy, incitement or attempt to commit an offence referred to in this Schedule

Schedule 2

Offences referred to in section 28(b) of this Act

An offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004

[offence of "Corruption" substituted by section 36(1) of [Act 12 of 2004](#)]

Sedition

Public violence

Culpable Homicide

Bestiality

Malicious injury to property

Breaking and entering any premises

Theft

Receiving stolen property knowing it to have been stolen

Fraud

Forgery or uttering a forged document knowing it to have been forged

Offences relating to coinage

Any offence relating to the illicit possession, conveyance or supply of dependence-producing drugs

Any conspiracy, incitement or attempt to commit an offence referred to in this Schedule

Any offence the punishment of which may be a period of imprisonment exceeding six months without the option of a fine

Schedule 3
Laws repealed or amended

No and year of law	Short title	Extent of the repeal or amendment
Act No. 96 of 1991	Aliens Control Act, 1991	The whole repealed
Act No. 75 of 1995	Aliens Control Amendment Act, 1995	The whole repealed
Act No. 88 of 1995	South African Citizenship Act, 1995	<p>1. Amendment of section 1</p> <p>Section 1 of the South African Citizenship Act, 1995 (hereinafter referred to as "the principal Act") is hereby amended by the addition of the following definition:</p> <p style="padding-left: 40px;"><u>"prescribed", as used in section 5 of this Act, has the meaning assigned thereto in the Immigration Act of 2002:"</u></p> <p>2. Amendment of section 26</p> <p>The following subsection is hereby added to the end of section 26 of the principal Act:</p> <p style="padding-left: 40px;"><u>"(5) In case of an inconsistency between this Act and the Immigration Act of 2002, the latter shall prevail."</u></p> <p>3. Implementation</p> <p>The amendments to the principal Act shall come into force and effect at a date prescribed by the</p>

		Minister, provided that the Minister may determine different dates for different provisions thereof.
Act No. 130 of 1998	Refugees Act, 1998	<p>1. Amendment of section 1</p> <p>Section 1 of the Refugees Act, 1998 (hereinafter referred to as "<i>the principal Act</i>"), is hereby amended by —</p> <p>(a) the addition or substitution of the following definitions:</p> <p style="padding-left: 40px;"><u>"Board"</u> has the meaning assigned thereto in the <u>Immigration Act of 2002</u></p> <p style="padding-left: 40px;"><u>"Court"</u> has the meaning assigned thereto in the <u>Immigration Act of 2002</u></p> <p style="padding-left: 40px;"><u>"prescribed"</u> has the meaning assigned thereto in the <u>Immigration Act of 2002:</u></p> <p>(b) the deletion of the following definitions:</p> <p style="padding-left: 40px;">"Aliens Control Act";</p> <p style="padding-left: 40px;">"Appeal Board".</p>

2. **Amendments to principal Act**

- (1) The principal Act is hereby amended by substituting—
- (a) the word "Minister" with the words "Minister, acting after consultation with the Board", where such word occurs in sections 7[1] and 10;
 - (b) the word "Minister" with the word "Department" where such word occurs in sections 22 and 23;
- (2) The principal Act is hereby amended by deleting—
- (a) the words "and Appeal Board" and the word "both" where they occur in sections 15, 16, 19 and 20; and
 - (b) the words "or Appeal Board" where they occur in sections 17 and 18.
- (3) The principal Act is hereby amended by deleting sections 12, 13 and 14 and by substituting

section 26 with the following section:

"26. Appeals

[(1)

Any asylum seeker may lodge an appeal with the Appeal Board in the manner and within the period provided for in the rules if the Refugee Status Determination Officer has rejected the application in terms of section 24(3) (c).

(2)

The Appeal Board may after hearing an appeal confirm, set

aside
or
substitute
any
decision
taken
by
a
Refugees
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Determination
Officer
in
terms
of
section
24(3)
(c).

(3)
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An
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that,
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- (a) invite the UNHCR representative to make oral or written representations;
- (b) refer the matter back to the Standing Committee for further inquiry and investigation;
- (c) request the attendance of any person

who,
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**[Appeal
Board]**
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with
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information;

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inquiry
or
investiga-
tion;

(e) request
the
applicant
to
appear
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other
informa-
tion
as
it
may
deem
necessary.

**[(4)
The
Appeal
Board
must
allow**

		<p style="text-align: right;">legal representation upon the request of the applicant.]”</p> <p>3. Implementation</p> <p>The amendments to the principal Act shall come into force and effect at a date prescribed by the Minister, provided that the Minister may determine different dates for different provisions thereof ensuring that the relevant provisions come into force only after the Courts have been partially or fully established.</p>
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