IMMIGRATION ACT, 13 OF 2002 (AS AMENDED IN 2004)

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Full Text:
IMMIGRATION ACT

Act 13 of 2002
As amended by Act 19 of 2004

Immigration Amendment Act No. 19 of 2004

(English Text signed by the President)
(Assented to 12 October 2004)
(Date of Commencement 01 July 2005)

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.

PREAMBLE

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, and without consuming excessive administrative capacity;
(b) security considerations are fully satisfied and the State retains control over the immigration of foreigners to the Republic;
(c) interdepartmental coordination and public consultations enrich the functions of immigration control;
(d) economic growth is promoted through the employment of needed foreign labour, foreign investment is facilitated, the entry of exceptionally skilled or qualified people is enabled, skilled human resources are increased, academic exchanges within the Southern African Development Community is facilitated and tourism is promoted;
(e) the role of the Republic in the continent and the region is recognised;
(f) the entry and departure of all persons at ports of entry are efficiently facilitated, 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 citizens;
(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;
(m) xenophobia is prevented and countered;
(n) a human rights based culture of enforcement is promoted;
(o) the international obligations of the Republic are complied with; and
(p) civil society is educated on the rights of foreigners and refugees.

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1. Definitions and interpretation

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

' admission' means entering the Republic at a port of entry in terms of section 9;
' Board' means the Immigration Advisory Board established by section 4;
' border' means the national borders of the Republic;
' citizen' has the meaning assigned thereto in the South African Citizenship Act, 1995 (Act No. 88 of 1995);
'conveyance' means any ship, boat, aircraft or vehicle, or any other means of transport;
' 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;
'court ' means a magistrate's court;
' customary union' means a customary union recognised in terms of the Recognition of Customary Marriages Act, 1998 (Act No 120 of 1998);
' Department' means the Department of Home Affairs;
' depart or departure' means exiting the Republic from a port of entry in compliance with this Act;
' deport or deportation' means the action or procedure aimed at causing an illegal foreigner to leave the Republic in terms of this Act;

‘ Director-General’ means the Director-General of the Department;
‘ employer’ includes a 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 not a citizen;
‘ illegal foreigner’ means a foreigner who is in the Republic in contravention of this Act;
‘ 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 appointed in terms of section 33;
‘ marriage’ means –
a marriage concluded in terms of the Marriage Act, 1961 (Act No. 25 of 1961); or
a legal marriage under the laws of a foreign country;
‘ Minister’ means the Minister of Home Affairs;
‘ organ of state’ means an organ of state as defined in section 239 of the Constitution;
‘ owner’ means the owner of record and includes the charterer of a conveyance 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 Passports and Travel Documents Act, 1994 (Act No. 4 of 1994);
(b) on behalf of a foreign state recognized by the Government of the Republic to a person who is not a citizen;
(c) on behalf of any international organisation as prescribed, including regional or sub-regional organisations, to a person who is not a citizen, or any other document approved by the Minister and issued under special circumstances to a person who cannot obtain a document contemplated in paragraphs (a) to (c);
‘permanent residence permit’ means a permit contemplated in section 25, 26 or 27;
‘port of entry’ means a place designated as such by the Minister where all persons have
to report before they may enter, sojourn or remain within, or depart from 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 conveyance;
‘prescribed’ means prescribed by regulation;
‘prohibited person’ means any person contemplated in section 29;
‘Republic’ means the Republic of South Africa;
‘spouse’ means a person who is a party to¾
marriage, or a customary union; or
a permanent homosexual or heterosexual relationship as prescribed;
‘status’ means the status of the person as determined by the relevant permanent or temporary residence permit granted to a person in terms of this Act;
‘temporary residence permit ’ means a temporary residence permit contemplated
in section 10;
‘this Act’ means this Act, including its schedules, and includes the regulations made pursuant thereto;
‘transit visa’ means a transit visa contemplated in section 10B;
‘undesirable person’ ‘means a person contemplated in section 30;
‘visa’ means the authority contemplated in section 10A to proceed to a port of entry;
‘ work’ includes¾
conducting any activity normally associated with the running of a specific business; or
being employed or conducting activities consistent with being employed or
consistent with the profession of the person, with or without remuneration or reward, within the Republic.

OBJECTIVES AND STRUCTURES OF IMMIGRATION CONTROL

2. Objectives and functions of immigration control
Section 2 of the principal Act is repealed

3. Delegation of Powers

Delegation of Powers

3. (1) The Minister may, subject to the conditions that he or she may deem necessary, delegate any power conferred on him or her by this Act, excluding a power referred to in sections 3, 4, 5 and 7, to an officer or category of officers or an employee or category of employees or a person or category of persons in the Public Service, but shall not be divested of any power so delegated.

(2) The Director-General may, subject to the conditions that he or she may deem necessary, delegate any power conferred on him or her by this Act to an officer or category of officers or an employee or category of employees or a person or category of persons in the Public Service, but shall not be divested of any power so delegated.

Immigration Advisory Board

(1) The Immigration Advisory Board is hereby established.

(2) (a) The Board shall consist of—
(i) (aa) the Director-General; and
the Head of the National Immigration Branch of the Department;

(ii) a representative of the following Departments, at least equivalent to the rank of Deputy Director-General:
Department of Defence;
Department of Education;
Department of Environmental Affairs and Tourism;
Department of Trade and Industry;
Department of Foreign Affairs
Department of Justice and Constitutional Development;
Department of Labour;
Department of Safety and Security; and
National Treasury;

(iii) a representative, at least the equivalent to the rank of Deputy Director-General, of the-
National Intelligence Coordinating Committee; and
South African Revenue Service;

(iv) a person representing organised business;
a person representing organised labour; and up to five individual persons appointed by the Minister on the basis of their knowledge, experience and involvement pertaining to immigration law, control, adjudication or enforcement.
(b) The Minister shall designate from the members of the Board a Chairperson and Deputy Chairperson of the Board.

(3) (Subsection 4(3) of the principal Act is deleted.)
(4) A member of the Board referred to in subsection (2)(a)(iv), (v) and (vi) 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 administrative work connected with the performance of the functions of the Board shall be performed by officers of the Department, designated by the Director-General for that purpose.
(6) (Subsection 4(6) of the principal Act is deleted.)
(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) (Subsection 4(8) of the principal Act is deleted.)
(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 the contents of regulations that may be made in terms of this Act;
the formulation of policy pertaining to immigration matters; and any other matter relating to this Act on which the Minister may request advice; and serve as the interdepartmental cooperation forum for all immigration matters.

6. Inter-departmental co-operation
Section 6 of the principal Act is repealed.

7. Regulations

(1) The Minister may, after consultation with the Board, make regulations relating to¾
the powers and duties of immigration officers;
the steps to be taken to prevent the entry of illegal foreigners into the Republic and to facilitate the tracing and identification of illegal foreigners in, and their removal from, the Republic;
the procedure regulating the entry into and departure from the Republic of persons at a port of entry, and the requirements and conditions to be complied with at such a port;
the times and places of, and the manner of conducting, an enquiry relating to, or the examination of, persons entering or desiring to enter the Republic or who, having been found in the Republic, are suspected of being prohibited persons or unlawfully resident therein;
the permits and the certificates which may be issued under this Act, the requirements for the issuing of permits and certificates and the conditions to which such permits or certificates may be subjected, and the circumstances under which such permits or certificates may be cancelled or withdrawn;
the conditions upon which prohibited persons may be allowed to pass through the Republic while journeying or being conveyed to a place outside the Republic;
the forms of warrants, permits, certificates or other documents to be issued or used, or of declarations to be made, or of registers to be kept, for the purposes of this Act, and the particulars to be provided on or inserted in any such document, declaration or register;
the fees that may be charged in respect of overtime services required to be performed by immigration officers;
the fees that may be charged in respect of the application for and issuing of visas, permits and certificates and other services rendered in terms of this Act;
the steps to be taken to prevent the departure from the Republic of a person not in possession of a passport or other appropriate documentation;
the requirements and conditions which should be complied with by any person who, on behalf of any other person, applies for a permit referred to in sections 11 to 22 and 25 to 27, and the registration of an immigration practitioner contemplated in section 46;
the manner in which payment of a deposit contemplated in section 34(3) may be enforced;
the steps to be taken to ensure proper exploitation of the local labour market before a work permit is issued in terms of section 19;
the circumstances whereunder and the manner in which a penalty shall be incurred by and recovered from the owner, agent, charterer or person in control of a conveyance and who conveyed a foreigner contemplated in section 35(7) to the Republic;
any matter that may be prescribed under this Act; and
generally, any matter required for the better achievement of the objects and purposes of this Act.
(2) Different regulations may be made under subsection (1)(c) in respect of different ports of entry, and the forms of warrants, permits, certificates, documents, declarations or registers prescribed under subsection (1)(g) may differ in respect of different categories of persons.
(3) A regulation made under subsection (1) may provide that any person who contravenes a provision thereof or fails to comply therewith shall be guilty of an offence and on conviction be liable to a fine, or to imprisonment for a period not exceeding 12 months.
(4) The Minister may¾
exempt a person or category of persons from paying fees prescribed under subsection (1)(h); and
withdraw an exemption granted to a person or a category of persons under paragraph (a).
(5) Any fee which may be prescribed under subsection (1) shall be prescribed by the Minister with the concurrence of the Minister of Finance.

8. Review and appeal procedures

(1) An immigration officer who refuses entry to any person or finds any person to be an illegal foreigner shall inform that person on the prescribed form that he or she may in writing request the Minister to review that decision an
if he or she arrived by means of a conveyance which is on the point of departing and is not to call at any other port of entry in the Republic, that request shall without delay be submitted to the Minister; or
in any other case than the one provided for in paragraph (a), that request shall be submitted to the Minister within three days after that decision.
(2) A person who was refused entry or was found to be an illegal foreigner and who has requested a review of such a decision in a case contemplated in subsection (1)(a), and who has not received an answer to his or her request by the time the relevant conveyance departs, shall depart on that conveyance and shall await the outcome of the review outside the Republic; or
in a case contemplated in subsection (1)(b), shall not be removed from the Republic before the Minister has confirmed the relevant decision.
(3) Any decision in terms of this Act, other than a decision contemplated in subsection (1), that materially and adversely affects the rights of any person, shall be communicated to that person in the prescribed manner and shall be accompanied by the reasons for that decision.
(4) An applicant aggrieved by a decision contemplated in subsection (3) may, within 10 working days from receipt of the notification contemplated in subsection (3), make an application in the prescribed manner to the Director-General for the review or appeal of that decision.

(5) The Director-General shall consider the application contemplated in subsection (4), whereafter he or she shall either confirm, reverse or modify that decision.

(6) An applicant aggrieved by a decision of the Director-General contemplated in subsection (5) may, within 10 working days of receipt of that decision, make an application in the prescribed manner to the Minister for the review or appeal of that decision.

(7) The Minister shall consider the application contemplated in subsection (6), whereafter he or she shall either confirm, reverse or modify that decision.

ADMISSION AND DEPARTURE

9. Admission and Departure

(1) Subject to this Act, no person shall enter or depart from the Republic at a place other than a port of entry.

(2) Subject to this Act, a citizen shall be admitted, provided that he or she identifies himself or herself as such and the immigration officer records his or her entrance.

(3) No person shall enter or depart from the Republic—

(a) unless in possession of a valid passport;

(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 (Act No. 4 of 1994), or on behalf of any government or international organisation recognized by the Government of the Republic;

(c) except at a port of entry, unless—

(i) in possession of a certificate issued by the Director-General granting permission upon application to enter or depart from 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 the Director-General may withdraw such permission; or

(ii) exempted as an individual or falling within a category of persons exempted by the Minister, on the recommendation of the Director-General, which exemption may be withdrawn by the Minister;

(d) unless the entry or departure is recorded by an immigration officer; and

(e) unless examined by an immigration officer as prescribed.

(4) A foreigner who is not the holder of a permanent residence permit may only enter the Republic as contemplated in this section if—

(a) his or her passport is valid for not less than 30 days after the expiry of the intended stay; and

(b) issued with a valid temporary residence permit, as set out in this Act.

TEMPORARY RESIDENCE

10. Temporary residence permits

(1) Upon admission, a foreigner, who is not the holder of a permanent residence permit, may enter and sojourn in the Republic only if in possession of a temporary residence permit issued by the Director-General.

(2) Subject to this Act, upon application in the prescribed manner and on the prescribed form, one of the temporary residence permits contemplated in sections 11 to 23 may be issued to a foreigner.

(3) If issued outside the Republic, a temporary residence permit is deemed to be of force and effect only after an admission.

(4) A temporary residence permit is to be issued on condition that the holder is not or does not become a prohibited or an undesirable person.

(5) The Director-General may for good cause attach reasonable individual terms and conditions as may be prescribed to a temporary residence permit.

(6) Subject to this Act, a foreigner may apply to the Director-General in the prescribed manner and on the prescribed form to change his or her status or the conditions attached to his or her temporary residence permit, or both such status and conditions, as the case may be, while in the Republic.

(7) Subject to this Act, the Director-General may, on application in the prescribed manner and on the prescribed form, extend the period for which a permit contemplated in subsection (2) was issued.

(8) An application for a change in status does not provide a status and does not entitle the applicant to any benefit under the Act, except for those explicitly set out in the Act, or to sojourn in the Republic pending the decision in respect of that application.

(9) The Director-General may at any time in writing notify the holder of a temporary residence permit issued in terms of this section that, subject to subsection (10), the permit shall be cancelled for the reasons disclosed in the notice and that the holder is thereby ordered to leave the Republic within a period stated in that notice, and upon the expiration of that period the permit shall become null and void.

(10) The holder of a temporary residence permit who receives a notice contemplated in subsection (9) may, before the expiration of the period stated in that notice, make representations to the Director-General which he or she shall consider before making his or her decision.

10A. Visas

(1) Any foreigner who enters the Republic shall, subject to subsections (2) and (4), on demand produce a valid visa, granted under subsection (3), to an immigration officer.

(2) Any person who holds a valid permit issued in terms of sections 13 to 22 and 25 to 27 shall, upon his or her entry into the Republic and after having been issued with that permit, be deemed to be in possession of a valid visa for the purposes of this section.

(3) A visa referred to in subsection (1)¾

may, subject to any condition that the Minister may deem fit, be granted by the Minister to any person who is not exempt, as contemplated in subsection (4), from the requirement of having to be in possession of a valid visa, and who has applied for such a visa in the prescribed manner and on the prescribed form;

shall contain a statement to the effect that authority to proceed to the Republic to report to an immigration officer at a port of entry has been granted by the Minister to the holder of a passport, and such statement shall be endorsed in the passport concerned; and

may for good cause be withdrawn and declared null and void by the Minister.

(4) The Minister may¾

exempt any person or category of persons from subsection (1) with regard to the requirement of having to be in possession of a valid visa in order to obtain a visitor's permit contemplated in section 11, for a specified or unspecified period and either unconditionally or subject to the conditions that the Minister may impose;

exclude any person belonging to a category of persons contemplated in paragraph (a) from any exemption granted to that category; and

withdraw any exemption granted in terms of paragraph (a) to any category of persons or to any person, and, in the case of a person, the Minister may do so irrespective of whether that person was exempted as an individual or as a member of a category of persons.

(5) Any person who contravenes subsection (1) shall be guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 12 months, and an immigration officer may-

whether or not that person has been convicted of that offence, if that person is not in custody, arrest him or her or cause him or her to be arrested without a warrant;

remove that person or cause him or her to be removed from the Republic under a warrant issued by the Minister; and

pending the removal of that person, detain him or her or cause him or her to be detained in the manner and at a place determined by the Director-General.

(6) If a person has been convicted and sentenced under subsection (5), that person may before the expiration of that sentence be removed from the Republic in the manner contemplated in the said subsection.

10B. Transit visas

(1) Subject to subsection (4) (a), no person, other than a citizen or permanent resident, who is proceeding from a place outside the Republic to a destination outside the Republic, including making use of the transit areas of South African ports of entry, shall travel through the Republic, unless he or she is in possession of a transit visa issued for that purpose in terms of subsection (2).

(2) The Minister may, on the conditions that he or she may impose, authorise the issue of a transit visa to any person.

(3) Any person who contravenes subsection (1) or who, while traveling through the Republic as contemplated in subsection (1), fails on demand by an immigration officer to

produce a transit visa issued to him or her under subsection (2), or any holder of any such transit visa who contravenes any condition of that visa-
shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years; and
may be dealt with as an illegal foreigner, whether or not that person has been convicted or sentenced as contemplated in paragraph (a).

(4) The Minister may¾

exempt any person or category of persons from this section;
exclude any person belonging to a category or persons contemplated in paragraph (a) from any exemption granted to that category; and
withdraw any exemption granted under paragraph (a) to any category of persons or to any person and, in the case of a person, whether or not he or she was exempted as an individual or as a member of a category of persons.

11. Visitor's Permit

(1) A visitor's permit may be issued for any purpose other that those provided for in sections 13 to 24, and subject to subsection (2), by the Director-General in respect of a foreigner who—

(a) complied with section 10A; and
(b) provides the financial or other guarantees prescribed in respect of his or her departure: Provided that such permit—
(i) may not exceed three months and upon application may be renewed by the Director-General for a further period which shall not exceed three months; or
(ii) may be issued by the Director-General upon application for any period which may not exceed three years to a foreigner who has satisfied the Director-General that he or she controls sufficient available financial resources, which may be prescribed, and is engaged in the Republic in—
(aa) an academic sabbatical;
(bb) voluntary or charitable activities;
(cc) research; or
(dd) any other prescribed activity.

(2) The holder of a visitor's permit may not conduct work, unless authorised by the Director-General in the prescribed manner and subject to the prescribed requirements and conditions.

(3) (Section 11 (3) of the principal Act is deleted.)

(4) (Section 11 (4) of the principal Act is deleted.)

(5) Special financial and other guarantees may be prescribed in respect of the issuance of a visitor's permit to certain prescribed classes of foreigners ; and

(6) Notwithstanding the provisions of this section, a visitor's permit may be issued to a foreigner who is the spouse of a citizen or permanent resident and who does not qualify for any of the permits contemplated in sections 13 to 22:

Provided that-
such permit shall only be valid while the good faith spousal relationship exists;
on application, the holder of such permit may be authorised to perform any of the activities provided for in the permits contemplated in sections 13 to 22; and
the holder of such permit shall apply for permanent residence contemplated in section 26 (b) within three months from the date upon which he or she qualified to be issued with that permit.

12. Diplomatic permit

Section 12 of the principal Act is repealed.

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—
the Director-General as prescribed; or
(b) the Director-General 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 Director-General;
(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 Director-General when such foreigner has completed his or her studies, or is no longer performing them satisfactorily.

(2) The Director-General shall, when so requested by and after consultation with the Department of Education, determine an ad hoc fee for the issuance of study permits in respect of institutions which are 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 Director-General 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) A treaty permit may be issued by—
(a) the Director-General, as prescribed; or
(b) the Department of Foreign Affairs or another organ of state responsible for the implementation of the treaty concerned under a delegation from the Director-General , 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 Director-General;
(ii) the organ of state concerned satisfies the Director-General that, under the circumstances, it has the capacity to perform this function; and
(iii) the permit is issued in accordance with the prescribed requirements, procedures and forms.

15. Business permit

(1) A business permit may be issued by the Director-General to a foreigner intending to establish or invest in, or who has established or invested in a business in the Republic in which he or she may be employed, and an appropriate permit for the duration of the business permit 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) forms part of the intended book value of such business; and

(c) 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 not conduct work other than work related to the business in respect of which the permit has been issued.

(3) The Director-General may reduce or waive the capitalisation requirements referred to in subsection (1)(a) for businesses which are prescribed 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 submit proof to the satisfaction of the Director-General that he or she has fulfilled the requirements contemplated in subsection (1)(a) within 24 months of the issuance of the permit, and within every two years thereafter.

(5) A business permit may be issued to a foreigner for more than one entry if multiple entries into the Republic by that foreigner over a period of time are necessary for that foreigner to conduct the business in question effectively.

16. Crew permit

(1) The Director-General may, as prescribed, issue a crew permit to a foreigner who is a member of the crew of a conveyance.

(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 Director-General, as prescribed, or

(b) the Director-General 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 Director-General;

(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 Director-General when such foreigner has completed his or her treatment.

(2) When so requested by and after consultation with the Department of Health, the Director-General shall determine an ad hoc fee for the issuance of medical treatment permits in respect of institutions which are 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 for the prescribed period by the Director-General to a foreigner who is a member of the immediate family of a citizen or a permanent resident, provided that such citizen or permanent resident provides the prescribed financial assurance.

(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 Director-General, as prescribed, to a foreigner if the foreigner falls within a specific professional category or within a specific occupational class 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 or class does not exceed the quota determined in the notice.

(2) A general work permit may be issued by the Director-General to a foreigner not falling within a category or class contemplated in subsection (1) if the prospective employer —

(a) satisfies the Director-General in the manner prescribed that despite diligent search he or she has been unable to employ a person in the Republic with qualifications or skills and experience equivalent to those of the applicant;

(b) satisfies the Director-General in the prescribed manner that the terms and conditions under which he or she intends to employ that foreigner, including salary and benefits, are not inferior to those prevailing in the relevant market segment for citizens, taking into account applicable collective bargaining agreements and other applicable standards; and

(c) has agreed in writing to notify the Director-General when such foreigner is no longer employed or is employed in a different capacity or role.

(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 satisfactory proof to the Director-General that he or she is still employed and of the terms and conditions of his or her employment, including the job description: Provided that a general work permit shall remain valid for a period not longer than six months in respect of a holder whose employment contract has been terminated until that holder has exhausted all applicable rights of recourse: Provided further that the period may be extended for further periods of three months at a time on submission of proof to the satisfaction of the Director-General that, due to circumstances beyond the control of the holder, the recourse procedures have not been finalised.

(4) Subject to any prescribed requirements, an exceptional skills work permit may be issued by the Director-General to an individual possessing exceptional skills or qualifications and to those members of his or her immediate family determined by the Director-General under the circumstances or as may be prescribed.

(5) An intra-company transfer work permit may be issued by the Director−General 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) the employer undertakes that it will take prescribed measures to ensure that such foreigner will at all times comply with the provisions of this Act, and will immediately notify the Director-General if it has reason to believe otherwise; and

(b) 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 requirements 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 Director-General may authorise the holder of a retired person permit to conduct work under terms and conditions as the Director-General 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 Director-General to a corporate applicant to employ foreigners who may conduct work for such corporate applicant.
(2) After consultation with the Departments of Labour and Trade and Industry, the Director-General 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 undertaking by the corporate applicant that it will—
(i) take prescribed measures to ensure that any foreigner employed in terms of the corporate permit will at all times comply with the provisions of this Act and the corporate permit; and
(ii) immediately notify the Director-General if it has reason to believe that such foreigner is no longer in compliance with subparagraph (i);
(b) 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
(c) corroborated representations made by the corporate applicant in respect of
the need to employ foreigners, their job descriptions, the number of citizens or permanent residents employed and their positions, and other prescribed matters.
(3) The Director-General may withdraw or amend a corporate permit for good and reasonable cause.
(4) The Minister may, after consultation with the Minister of Trade and Industry or Minerals and Energy or Agriculture, as the case may be, and the Minister of Labour, designate certain industries, or segments thereof, in respect of which the Government may—
(a) reduce or waive the requirements of subsection (2)(c);
(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)(b) 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 Director-General to a foreigner—
(a) participating in a programme of cultural, economic or social exchange,
organised or administered by an organ of state or a learning institution, in conjunction with a learning institution or an organ of a foreign state, provided that—
(i) such organ of state or learning institution reports to the Director-General on the stages and the completion of the relevant programme together with other prescribed information; and
(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 Director-General 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 permanent residence permit within two years after the expiry of the exchange permit, which requirement may be waived by the Director-General in extraordinary circumstances.

23. Asylum transit permit

(1) The Director-General may issue an asylum transit permit to a person who at a port of entry claims to be an asylum seeker, which permit shall be valid for a period of 14 days only.
(2) Despite anything contained in any other law, when the permit contemplated in subsection (1) expires before the holder reports in person to a Refugee Reception Officer at a Refugee Reception Office in order to apply for asylum in terms of section 21 of the Refugees Act, 1998 (Act No. 130 of 1998), the holder of that permit shall become an illegal foreigner and be dealt with in accordance with this Act.

24. Cross-border and transit permits

(1) The Director-General may issue a cross-border permit to a citizen or a permanent resident or a foreigner who is a citizen or a resident of a prescribed foreign country with which the Republic shares a border.
(2) The Director-General may issue a transit permit authorizing¾
(a) a foreigner traveling to a foreign country to make use of the transit facilities at a port of entry; or
(b) a foreigner to travel from a port of entry through the Republic to a foreign country.

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 shall be issued on condition that the holder is not a prohibited or an undesirable person, and subject to section 28.
(4) For good cause, as prescribed, the Director-General may attach reasonable individual terms and conditions to a permanent residence permit.

26. Direct residence

Subject to section 25, the Director-General may 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 proven to the satisfaction of the Director-General that he or she has received an offer for permanent employment;
(b) has been the spouse of a citizen or permanent resident for five years and the Director-General is satisfied that a good faith spousal relationship exists: Provided that such permit shall lapse if at any time within two years from the issuing of that permit the good faith spousal relationship no longer subsists, save for the case of death;

(c) is a child under the age of 21 of a citizen or permanent resident, 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 Director-General 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 has proven to the satisfaction of the Director-General that the position exists and that the position and related job description was advertised in the prescribed form and no suitably qualified citizen or permanent resident was available to fill it;
(ii) the application falls within the yearly limits of available permits prescribed for each sector of industry, trade and commerce, after consultation with the Departments of Trade and Industry, Labour and Education; and
(iii) 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 Director-General that he or she possesses extraordinary skills or qualifications, and to those members of such foreigner's immediate family determined by the Director-General under the circumstances or as may be prescribed;
(c) intends to establish or has established a business in the Republic and investing in it or in an established business the prescribed financial contribution to be part of the intended book value, and to the members of such foreigner's immediate family, provided that—
(i) the Director-General may waive or reduce such capitalisation requirements for businesses prescribed 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 prove within two years of the issuance of the permit and three years thereafter, to the satisfaction of the Director-General, that the prescribed financial contribution to be part of the intended book value is still invested as contemplated in this paragraph;
(d) is a refugee referred to in section 27(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 such foreigner proves to the satisfaction of the Director-General that he or she—
(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 proven to the satisfaction of the Director-General that he or she has a prescribed minimum net worth and has paid a prescribed amount to the Director-General; or
(g) is the relative of a citizen or permanent resident within the first step of kinship.

28. Withdrawal of permanent residence permit

The Director−General may withdraw a permanent residence permit if its holder—
(a) is convicted of any of the offences listed in Schedules 1 and 2;
(b) has failed to comply with the terms and conditions of his or her permit;
(c) has been absent from the Republic for more than three years, provided that—
(i) upon showing good cause and upon prior application the Director−General 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 sub-item (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 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 are prohibited persons and do not qualify for a visa, admission into the Republic, a temporary or a permanent residence permit:
(a) Those infected with or carrying infectious, communicable or other diseases or viruses as prescribed;
(b) anyone against whom a warrant is outstanding or a conviction has been secured in the Republic or a foreign country in respect of genocide, terrorism, murder, torture, drug-related charges, money laundering or kidnapping;
(c) anyone previously deported and not rehabilitated by the Director-General in the prescribed manner;
(d) a member of or adherent to an association or organisation advocating the practice of racial hatred or social violence;
(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; and
(f) anyone found in possession of a fraudulent residence permit, passport or identification document.
(2) The Director-General may, for good cause, 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 Director-General, as prescribed, and after such declaration, do not qualify for a visa, admission into the Republic, a temporary or a permanent residence permit:
(a) Anyone who is or is likely to become a public charge;
(b) anyone identified as such by the Minister;
(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 by the affected person, the Minister may, for good cause, waive any of the grounds of undesirability.

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 a public conveyance of a foreign state, while such conveyance is in the port of entry.

(2) Upon application, the Minister 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 to and sojourn in the Republic, 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 would 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 rights from a foreigner or a category of foreigners;
(c) for good cause, waive any prescribed requirement or form; and
(d) for good cause, withdraw an exemption granted by him or her in terms of this section.

(3) The provisions of sections 10 and 25 shall not apply to a foreigner¾
who prior to 1 February 1937 lawfully entered the Republic for the purpose of permanent residence therein;
who by virtue of the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001), enjoys any immunities and privileges in the Republic; or
to whom a written authority or permission to enter the Republic has been issued in terms of section 1 or 3 of the Immigration Quota Act, 1930 (Act No. 8 of 1930), and who entered the Republic within the period stated in that authority or permit or within that period as lawfully extended.

ENFORCEMENT AND MONITORING

32. Illegal foreigners
(1) Any illegal foreigner shall depart, unless authorised by the Director-General in the prescribed manner 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 is hereby established and shall consist of the persons, including immigration officers, determined by the Minister.

(2) (a) The Minister shall appoint the head of the inspectorate.

(b) The Director-General shall appoint immigration officers and other persons required to exercise the functions of the inspectorate.

(c)The Minister may prescribe
(i) the procedure to be followed in the appointment of immigration officers or categories of immigration officers;
(ii) the requirements for the appointment contemplated in subparagraph (i); and
(iii) the allocation of functions to immigration officers or categories of immigration officers.

(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— at any time before the commencement or in the course of an investigation conduct an inspection in loco in accordance with subsections (5) and (9) ;

(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 Director- General is relevant to the investigation to produce such thing, and the Director-General 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 Director-General 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 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 thing 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 Director-General 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 the 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 a place 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 Director-General 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 permanent 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
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 Director-General, 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.

(11) A person detained on a ship may not be held in detention for longer than 30 days without an order of court.

35. Duties with regard to conveyances

(1) Save for extraordinary circumstances necessitating otherwise, no person in charge of a conveyance shall cause that conveyance to enter the Republic at any place other than a port of entry.

(2) An immigration officer or other authorised person employed by the Director-General may—

(a) board any conveyance which is entering or has entered into any port of entry and for good cause prohibit or regulate disembarkation from, or the offloading of, such conveyance 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 person in charge of a conveyance to park, moor or anchor that conveyance in such port of entry at such distance from the shore or landing place or in such position as he or she may direct.

(3) The person in charge of a conveyance entering or prior to entering a port of entry shall upon demand deliver to an immigration officer—

(a) a list stating—

(i) the names of all passengers on board the conveyance, classified according to their respective destinations; and

(ii) such other details as may be prescribed;

(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 conveyance; and

(d) a return, under the hand of the medical officer of that conveyance or, if there is no such medical officer, under the hand of the person in charge of a conveyance 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 of entry 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 conveyance 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 conveyance leaves such port of entry and has not been admitted, the person in charge or the owner of that conveyance shall forfeit a sum fixed by the immigration officer within a prescribed limit.

(5) An immigration officer may require the person in charge of a conveyance to muster the crew of such conveyance on the arrival of such conveyance in any port of entry and again before it leaves such port of entry.

(6) The competent officer of customs at any port of entry may refuse to give to the person in charge of a conveyance clearance papers to leave that port of entry unless he or she has complied with this Act and produced a certificate of an immigration officer to that effect.

(7) A person in charge of a conveyance shall ensure that any foreigner conveyed to a port of entry¾

(a) for purposes of traveling to a foreign country, holds a valid passport and transit visa, if required; and

(b) holds a valid passport and visa, if required.

(8) A person in charge of a conveyance shall be responsible for the detention and removal of a person conveyed if such person is refused admission in the prescribed manner, as well as for any costs related to such detention and removal incurred by the Department.

36. Monitoring entries in Republic and exits

Section 36 of the principal Act is repealed.

IMMIGRATION COURTS

37. Immigration Courts

Section 37 of the principal Act is repealed

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 Director-General—

(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. Keeping of registers of lodgers by certain persons

(1) The person in charge of any premises, whether furnished or unfurnished, where lodging or sleeping accommodation is provided for payment or reward shall, if those premises fall within a prescribed class, in the prescribed manner keep a register of all persons who are provided with lodging or sleeping accommodation thereon, and every such person shall sign the register and furnish therein the prescribed particulars regarding himself or herself.

(2) Every person in charge of premises referred to in subsection (1) shall, when required to do so by an immigration officer or police officer, produce the register referred to in that subsection for inspection.

(3) Any person who¾
contravenes or fails to comply with a provision of subsection (1) or (2);
gives false or incorrect particulars for the purposes of subsection (1); or
hinders any officer referred to in subsection (2) in the performance of his or her functions,
shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months.

41. Identification

(1) When so requested by an immigration officer or a police officer, any person shall identify himself or herself as a citizen, permanent resident or foreigner, and if on reasonable grounds such immigration officer or police officer is not satisfied that such person is entitled to be in the Republic, such person may be interviewed by an immigration officer or a police officer about his or her identity or status, and such immigration officer or police officer may take such person into custody without a warrant, and shall take reasonable steps, as may be prescribed, to assist the person in verifying his or her identity or status, and thereafter, if necessary detain him or her in terms of section 34.

(2) Any person who assists a person contemplated in subsection (1) to evade the processes contemplated in that subsection, or interferes with such processes, shall be guilty of an offence.

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 Director-General upon its issuance, extension or renewal, and that status shall expire upon the violation of those conditions; 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 Director-General 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 to which illegal foreigners and foreigners are entitled under the Constitution or any law.

45. Other institutions

Prescribed institutions or persons other than organs of state may, in the prescribed manner, be required to endeavor to ascertain the status or citizenship of the persons with whom they enter into commercial transactions, as prescribed, and shall report to the Director-General 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.

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 Director-General, 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 Director-General may withdraw the registration of an immigration practitioner who has contravened this Act or any prescribed duty.

47. Internal monitoring and controls

Section 47 of the principal Act is repealed.

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, or departs from 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 Director-General, 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 or remain in, or depart from 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 38 to 46, 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 contravene this Act, 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.

(9) Anyone, other than a duly authorised civil servant, who manufactures or provides or causes the manufacturing or provision of 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 34(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 expenses referred to in section 34(3) against—

(a) any illegal foreigner referred to in section 34(3);

(b) any person who contravened section 38 or 42;

(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 subsection (5), (7), (8) or (10),

which order shall have the effect of a civil judgment of that court.

(13) Any person who pretends to be, or impersonates, an immigration officer shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding four years.

(14) Any person who for the purpose of entering or remaining in, or departing from, or of facilitating or assisting the entrance into, residence in or departure from, the Republic, whether in contravention of this Act or not, commits any fraudulent act or makes any false representation by conduct, statement or otherwise, shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding four years.

(15) Any person who¾

(a) for the purpose of entering the Republic, or of remaining therein, in contravention of this Act, or departing from the Republic, or of assisting any other person so as to enter or so to remain or so to depart, utters, uses or attempts to use-

(i) any permit, certificate, written authority or other document which has been issued by lawful authority, or which, though issued by lawful authority, he or she is not entitled to use; or

(ii) any fabricated or falsified permit, certificate, written authority or other document; or

(b) without sufficient cause has in his or her possession¾

(i) any stamp or other instrument which is used or capable of being used for purposes of fabricating or falsifying or unlawfully recording on any document any endorsement under this Act or required to be submitted in terms of this Act;

(ii) any form officially printed for purposes of issuing any permit, certificate, written authority or other document under this Act or required to be submitted in terms of this Act, or any reproduction or imitation of any such form;

(iii) any passport, travel document, identity document or other document used for the facilitation of movement across borders, which is blank or reflects particulars other than those of the person in whose possession it is found; or

(iv) any fabricated or falsified passport, travel document, identity document or other document used for the facilitation of movement across borders,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding four years.

(16) Any person who¾

(a) contravenes or fails to comply with any provision of this Act, if such contravention or failure is not elsewhere declared an offence, or if no penalty is prescribed in respect of an offence; or

(b) commits any other offence under this Act in respect of which no penalty is elsewhere prescribed,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding two years.

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 Director-General on detection of the overstay and exacted when such foreigner is admitted or makes an application with the Director-General.

(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 Director-General.

(3) Any owner or person in charge of a conveyance who through negligence contravenes the provisions of section 35(7), shall be liable to an administrative fine of a prescribed amount not exceeding R10 000, which fine shall be imposed by the Director-General.

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
CorruptionSeditionPublic violenceCulpable 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

Acts repealed

No and year of Act	Short Title	Extent of the repeal
Act No. 96 of 1991	Aliens Control Act, 1991	The whole repealed
Act No. 75 of 1995 (Editorial Note: In terms of Schedule 3 to Act No. 13 of 2002, Act No. 75 of 1995 has been repealed. It is suggested that it was meant to read Act No 76 of 1995.)	Aliens Control Amendment Act, 1995	The whole repealed