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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF HOME AFFAIRS

NO. 3311

18 April 2023

PUBLICATION OF THE NATIONAL IDENTIFICATION AND REGISTRATION BILL, 2022

The Department of Home Affairs (the "DHA") invites public comments on the draft National Identification and Registration Bill, 2022.

Written submissions should reach the DHA on or before 30 June 2023. Submissions should be addressed to the Chief Director: Legal Services and may be forwarded to the DHA in any of the following manners:

- (a) delivered by hand to the Department of Home Affairs, 230 Johannes Ramokhoase Street, Hallmark Building (c/o old Proes and Andries Street), Pretoria, 0001, for attention of Adv Moses Malakate (Tel.: (012) 406 4273) or Adv Luvo Vena (Tel.: (012) 406 4276);
- (b) mailed to the DHA at Private Bag X114, Pretoria, 0001;
- (c) faxed to 086 576 9025; or
- (d) e-mailed to Moses.Malakate@dha.gov.za and Luvo.Vena@dha.gov.za

Any enquiries should be directed to Adv Moses Malakate at 076 481 4716 or Adv Luvo Vena at (012) 406 4276.



DR P.A. MOTSOLEDI, MP
MINISTER OF HOME AFFAIRS

DATE:

13/4/2023

REPUBLIC OF SOUTH AFRICA

NATIONAL IDENTIFICATION REGISTRATION BILL

*(As introduced in the National Assembly (proposed section 75);
explanatory summary of Bill published in Government Gazette No. ... of)
(The English text is the official text of the Bill)*

(Minister of Home Affairs)

[B — 2022]

BILL

To provide for the establishment of a single, inclusive and integrated national identification system for the Republic and for that reason to provide for the Act to apply to permanent residents and foreigners who sojourn temporarily within the Republic; to provide for the compilation and maintenance of a population register and identification database; to provide for the assignment of national identity numbers and reference numbers; to provide for the issuance of national identity cards and temporary identity, deaths, births and marriage certificates; and to provide for matters connected therewith.

PREAMBLE

WHEREAS it is the policy of the State to establish a single, inclusive and integrated national identification system for the storing of identity information of all citizens and foreigners within the Republic;

AND WHEREAS the national identification database will provide a secure and efficient digital system that ensures the protection of data collected, the privacy of personal information of individuals, and supporting the protection of national security interests;

AND THEREFORE the national identification system will be used to ensure the efficient regulation of official identification of persons, prevent identity fraud, avert fraudulent transactions involving personal identification, and therefore provide a reliable identification database for the official verification and authentication of identity information,

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

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CHAPTER 1

DEFINITIONS AND APPLICATION OF ACT

Definitions

1. In this Act, unless the context otherwise indicates—

“**biometric information**” means the front facing photograph, fingerprint, iris scan and such other identifiable features of an individual;

“**certificate**” means a birth, death or marriage certificate referred to in section 17;

“**database**” means the national identification database referred to in section 6;

“**demographic information**” in relation to an individual, include information concerning the age, race, gender, address, telephone number, e-mail address of that individual that may be included in the database;

“**Director-General**” means the Director-General: Home Affairs;

“**fingerprints**” includes palm prints;

“**identity card**” means the identity card referred to in section 14 and unless clearly inconsistent with the provisions of this Act, includes an identity document referred to in section 27(1) or (2);

“**identity information**” means the biographic, biometric or numerical information that may be collected under this Act in respect of a person;

“**information**” includes documents or any other information in whatever form, whether electronic or otherwise;

“**Minister**” means the Minister of Home Affairs;

“**ordinary place of residence**”, with reference to any person, means the place where he or she normally lives and to which he or she returns regularly after any period of temporary absence;

“**personal information**” means personal information as defined in section 1 of the Protection of Personal Information Act, 2013 (Act No. 4 of 2013);

“**population register**” means the register referred to in section 5;

“**prescribed**” means prescribed by regulation;

“**regulation**” means a regulation made under section 25;

“**temporary identity certificate**” means a temporary identity certificate issued under section 16;

“**this Act**” includes the regulations; and

“**verification**” means the process by which the accuracy of identity information is established.

Utilising of information for purposes of Act

2. The information contained in the population register which existed immediately before the commencement of this Act, as well as the information contained in any document kept by the Director-General under any law, which are appropriate for the compilation and maintenance of the population register, must be used by the Director-General for that purpose.

Application of Act

3. This Act applies to—

- (a) all persons who are South African citizens and persons who are lawfully and permanently resident in the Republic; and
- (b) foreigners who sojourn temporarily within the Republic for a prescribed period.

Objects of Act

4. The objects of this Act are to—

- (a) ensure universal registration of all vital events, including but not limited to, births, marriages and deaths;
- (b) empower the Director-General to issue a gender neutral identity number to non-binary person;
- (c) criminalise the act of burying of a deceased person without registration of death;
- (d) empower the Director-General to compile and maintain a population register and database;
- (e) facilitate the registration of identity information of all citizens, persons residing in the Republic temporarily or permanently; and
- (f) provide for a primary source for the verification and authentication of the identity information.

Assignment of functions to officials

5. (1) The Director-General may—

- (a) delegate any power granted to him or her by or under this Act, except the power referred to in this section and section 18, to an officer in the public

service; and

(b) grant authority that a duty assigned to him or her in terms of this Act may be performed by such an officer.

(2) A power so delegated and a duty so authorised must be performed, subject to the directions of the Director-General, who may at any time withdraw such delegation or authority.

(3) A delegation under subsection (1)(a) does not prevent the Director-General from exercising such power.

(4) A delegation or authority granted under a provision of an Act which is repealed by this Act and which was in force immediately before the commencement of this Act, must be deemed to have been granted under this section.

CHAPTER 2

POPULATION REGISTER AND DATABASE

Population register

6. (1) The Director-General must, as soon as practicable after the commencement of this Act, in the prescribed manner, compile and thereafter maintain a population register for the Republic.

(2) The particulars required for the compilation and maintenance of the population register must be obtained by the Director-General in the prescribed manner from the information referred to in section 9.

Database

7. (1) The Director-General must, as soon as practicable after the commencement of this Act, in the prescribed manner, compile and thereafter maintain an identification database for the recording of identity information of foreigners who sojourn temporarily within the Republic for a prescribed period.

(2) The particulars required for the compilation and maintenance of the database must be obtained by the Director-General in the prescribed manner from the information referred to in section 10.

Access to population register and database

8. Subject to the provisions of this Act, no person has access to the population register

and the database and no person may record or amend any particulars in such register and the database, unless specifically authorised thereto by the Director-General or a court order authorises such access, recording or amendment.

Assignment of identity numbers

9. (1) The Director-General must assign an identity number to every citizen and permanent resident whose particulars are included in the population register.

(2) An identity number must be compiled in the prescribed manner out of figures and must, in addition to a serial, index and control number, consist of a reproduction, in figure codes, of the following particulars, and no other particulars whatsoever, relating to such person, namely—

- (a) date of birth;
- (b) in respect of gender—
 - (i) if that person's status is determined, the description of such gender; and
 - (ii) if a person's status is not determined, a numerical figure that bears no relation to the gender of the person; and
- (c) whether or not such a person is a South African citizen.

(3) An identity number that is assigned in terms of subsection (1) must be assigned permanently to that person and may not be assigned to, or re-used by, any other person.

(4) A person who unlawfully and intentionally assigns to, or causes to be used by, any other person, or a person who unlawfully and intentionally uses, an identity number assigned in terms of this section, in contravention of subsection (3), is guilty of an offence and liable on conviction to a fine not exceeding R100 000.00 or to imprisonment for a term not exceeding 10 years, or to both such fine and imprisonment.

Particulars to be included in population register

10. (1) The Director-General must, in respect of any person referred to in section 3(a), include in the population register the following relevant particulars available to him or her—

- (a) identity number referred to in section 8;
- (b) surname, full forenames, gender where applicable, date of birth and the place

- or country of birth;
- (c) if the person has attained the age of 10 years, that person's—
 - (i) ordinary place of residence and postal address;
 - (ii) recent photograph; and
 - (iii) fingerprints
 - (d) if the person is a South African citizen, but is not a citizen by birth or descent, the date of naturalisation or registration as such a citizen, and, if the person is a foreigner and was not born in the Republic, the date of entry into the Republic, and the country of citizenship;
 - (e) the particulars of marriage contained in the relevant marriage register or other documents relating to the contracting of such marriage, and such other particulars concerning his or her marital status as may be furnished to the Director-General;
 - (f) particulars concerning passports and travel documents;
 - (g) after death of that person, the required particulars furnished when notice of death was given;
 - (h) on permanent departure of that person from the Republic, the date of such departure, and particulars concerning the cancellation in the prescribed manner of the identity card or that card with the exception of the prescribed section thereof if any; and
 - (i) other particulars determined by the Minister by notice in the *Gazette* as particulars which are subject to the conditions, exceptions or exemptions if any, mentioned in the notice.
- (2) A person who unlawfully and intentionally submits false information, or misrepresents any information in terms of this section, is guilty of an offence, and liable on conviction to a fine not exceeding R20 000.00 or imprisonment, or to both such fine and imprisonment.

Particulars to be included in database

11. The Director-General must, in respect of any person referred to in section 3(b) include in the database the following relevant particulars available to the Director-General—

- (a) surname, full forenames, gender where applicable, date of birth and the place or country of birth;

- (b) if the person has attained the age of 10 years, that person's—
 - (i) ordinary place of residence and postal address;
 - (ii) a recent photograph; and
 - (iii) fingerprints;
- (c) the particulars of marriage contained in the relevant marriage register or other documents relating to the contracting of such marriage, and such other particulars concerning such marital status as may be furnished to the Director-General;
- (d) particulars concerning passports and travel documents;
- (e) particulars concerning a visa issued to that person in terms of the Immigration Act or a permit issued to that person in terms of the Refugees Act;
- (f) after death of that person, the required particulars furnished when notice of death was given;
- (g) on permanent departure from the Republic, the date of such departure, and particulars concerning the cancellation in the prescribed manner of visa that was issued to that person in terms of the Immigration Act or a permit that was issued to that person in terms of the Refugees Act; and
- (h) other particulars determined by the Minister by notice in the *Gazette* as particulars which are subject to the conditions, exceptions or exemptions if any, mentioned in the notice.

Allocation of reference numbers for foreign nationals

12. (1) The Director-General must assign a reference number to foreigners whose particulars are included in the database in terms of subsection 9(1).

(2) A reference number allocated in terms of subsection (1) must be compiled in the prescribed manner.

(3) A reference number that is allocated in terms of subsection (1) must be allocated permanently to that person and must not be allocated to, or re-used by, any other person during the lifetime, or after death, of the person.

Verification of particulars included in database

13. The Director-General may—

- (a) request any person to furnish the Director-General with proof of the correctness of the particulars which have been furnished in respect of such

person in any document in terms of this Act; and

- (b) investigate or cause to be investigated any matter in respect of which particulars are required to be recorded in the database.

Notification of change of particulars

14. (1) Every person whose name is included in the population register and the database must, where such person has attained the age of 16 years and having been issued with an identity card—

- (a) after any permanent change of ordinary place of residence or postal address;
or
- (b) after any change of any of the relevant particulars submitted to the Director-General in terms of section 7,

notify the Director-General within the prescribed period and in the prescribed manner of that change.

(2) If the Director-General, on the basis of information at the disposal of the Director-General, is of the opinion that a change in respect of any of the particulars referred to in subsection (1) has occurred, the Director-General may, in the prescribed manner, record the change in the population register and database, in consultation with the person concerned, and must thereupon notify the person concerned in the prescribed manner that the change has been recorded.

CHAPTER 3

IDENTITY CARD AND CERTIFICATES

Identity card

15. An identity card may contain only the following relevant particulars in respect of the person to whom it is issued—

- (a) identity number;
- (b) surname and full forenames;
- (c) date of birth;
- (d) prescribed naturalisation information;
- (e) the prescribed fingerprint or prints; and
- (f) any other particulars in the population register determined by the Minister by notice in the *Gazette* as particulars which, subject to the conditions, exceptions or exemptions if any, mentioned in the notice, may be included in

identity cards.

Application for identity card

16. (1) A person whose particulars are included in the database and who has attained the age of 10 years must, in the prescribed form and within 30 days from the date when such person attains the age of 10 years, apply to the Director-General for an identity card to be issued to him or her.

(2) A minor making an application in terms of subsection (1) must be assisted by a parent or guardian or any person who is duly authorised to submit such an application on behalf of the minor.

(3) The Director-General must, in respect of every person referred to in subsection (1), when that person applies for an identity card, have the fingerprints of that person taken in the prescribed manner so that it may be included in the database.

(4) The Director-General must after receipt of an application for an identity card in terms of subsection (1), consider the application and issue to the applicant an identity card in the prescribed manner.

(5) A person who, without lawful authority, makes, produces, manufactures, prints, binds, designs, or distributes, any document purporting to be a national identification card, commits an offence and is liable on conviction to a fine not exceeding R100 000.00 or to imprisonment for a term not exceeding 10 years, or to both such fine and imprisonment.

Temporary identity certificate

17. When any person has applied for an identity card, or has for official purposes lodged his or her identity card with the Director-General, the Director-General may, on application, issue to the person concerned whose particulars are included in the database in terms of section 6, a temporary identity certificate in the prescribed form and manner, which, for the period and on the conditions mentioned therein, must for the purpose of this Act be regarded as an identity card.

Issuing of births, deaths and marriage certificates

18. (1) The Director-General must as soon as reasonably practicable after the receipt of an application, issue a birth, death or marriage certificate in the prescribed form after the particulars of such birth, marriage or death were included in the population register in terms of section 9.

(2) Any certificate issued in terms of subsection (1), must in all courts of law on the face of it be considered as evidence of the particulars set forth therein.

Reproduction of documents

19. (1) Notwithstanding anything to the contrary contained in any other law, the Director-General may, in respect of a person or class of persons determined by him or her, reproduce or cause to be reproduced any document from which the population register is compiled or maintained by means of any process which, in his or her opinion, accurately and durably reproduces such documents, and may preserve or cause to be preserved those reproductions as alternatives to such documents.

(2) A reproduction referred to in subsection (1) must, notwithstanding anything to the contrary contained in any other law, for all purposes be deemed to be the original document from which it was reproduced and a copy of such reproduction which has been certified by the Director-General as a true copy, must in any court of law be considered as conclusive proof of the contents of the relevant original document.

Proof of identity

20. (1) An authorised officer as defined in subsection (3) may, at any time, request any person reasonably presumed to have attained the age of 16 years to prove his or her identity to that officer by the production of his or her identity card as defined in subsection (4).

(2) If it comes to the attention of an officer acting in the service of the Department of Home Affairs that a person referred to in section 3 who has attained the age of 10 years has not complied with the provisions of section 13(1), that officer must take the prescribed steps to ensure that that person applies without delay for an identity card in terms of this Act.

(3) For the purposes of this section, “**authorised officer**” means—

- (a) a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977); or
- (b) a person, or a member of a category of persons, designated by the Minister by notice in the *Gazette*, and who for the purpose of this section is deemed to be such a peace officer.

(4) For the purposes of subsection (1) “**identity card**” includes any other proof of identity issued by the State and on which the name and a photograph of the holder

appear.

Possession of another's identification.

21. (1) Any person who, without the permission of the holder of the identity card, a certificate or a temporary identity certificate, knowingly and wilfully is possession of another person's identity card, a certificate or a temporary identity certificate, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three years.

(2) This section does not apply to—

- (a) a person engaged in a lawful business who obtains another person's personal identification in the ordinary course of business;
- (c) any person who finds another person's lost personal identification and does not intend to deprive the other person of the personal identification or to use it to commit a crime, provided he or she takes reasonably steps to return the identity card, certificate or temporary certificate to its owner; and
- (d) any law enforcement agency that produces or displays counterfeit credit or debit cards, checks or other payment instruments, or personal identification for investigative or educational purposes.

CHAPTER 4

SECRECY AND FURNISHING OF INFORMATION

Secrecy

22. Subject to the provisions of section 22, —

- (a) no person may publish or communicate to any other person any information recorded in the population register and database, an identity card, a temporary identity certificate or any certificate which such person acquired by virtue of exercising a function in terms of any law, except for the purposes of this Act, judicial proceedings or the performance of functions in terms of any other law; and
- (b) no person who came into possession of any information referred to in paragraph (a), who knows that such information has been communicated in contravention of the provisions of this section, may publish the information or communicate it to any other person.

Furnishing of information

23. (1) Notwithstanding the provisions of section 20, the Director-General may, subject to the restrictions, conditions, exclusions, directives and fees as may be prescribed, furnish any information in respect of a person whose name is included in the population register and database to—

- (a) any person or institution on behalf of, and on the written instruction of, any such person;
- (b) any State department, municipality or statutory body;
- (c) any organisation, body, society or institution whose main activity is insurance business as defined in the Insurance Act, 1943 (Act No. 27 of 1943), or banking as contemplated in the Banks Act, 1990 (Act No. 94 of 1990); or
- (d) any other organisation, body, society or institution.

(2) Subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) and the Protection of Personal Information Act, 2013 (Act No. 4 of 2013), the information contemplated in subsection (1) may only be furnished if the information is required for the exercise or protection of any rights, is in the public interest, or is for the compilation of a voters' roll.

CHAPTER 5**CORRECTION, CANCELLATION AND REPLACEMENT****Correction or cancellation of identity cards and certificates**

24. (1) If an identity card does not reflect correctly the particulars of the person to whom it was issued, or a temporary identity certificate or any certificate does not reflect correctly the particulars of the person to whom it was issued, the person concerned or the guardian of the person to whom the card or certificate was issued, as the case may be, must, within the prescribed period hand over or send, by registered post, the identity card, temporary identity certificate or certificate, as the case may be, to the Director-General.

(2) If the identity card, temporary identity certificate or certificate referred to in subsection (1) is not handed over or sent to the Director-General in accordance with that subsection, the Director-General may, in the prescribed manner, obtain restoration thereof or seize it.

(3) If, in terms of this section, the Director-General has obtained possession of—

- (a) an identity card, he or she must, subject to section 16, without delay, cancel it

- in the prescribed manner and replace it with a corrected identity card; or
- (b) a temporary identity certificate or any certificate, he or she must, without delay—
- (i) effect the necessary corrections directly on the temporary identity certificate or other certificate, as the case may be, if in his or her opinion it can be done; or
 - (ii) in the prescribed manner, cancel and replace it with a corrected temporary identity certificate or appropriate certificate, as the case may be.

(4) When it comes to the attention of the Director-General that an identity card has been issued to a person whose name is not required in terms of section 3 to be included in the population register, the Director-General must request that person to return the identity card for cancellation.

Surrender or seizure of identity card of deceased person

25. (1) Any person who has in his or her possession a document being or purporting to be an uncanceled identity card of a person who has died, must within 30 days after the document came into his or her possession, hand over or send by registered post such document for cancellation to the Director-General.

(2) A document handed over or sent to the Director-General in terms of subsection (1), must without delay after the receipt thereof, be cancelled and destroyed in the prescribed manner and, unless a relative of the deceased person indicates in writing that he or she wants it.

(3) When it comes to the attention of the Director-General that any person is in possession of a document being or purporting to be an uncanceled identity card of a person who has died, he or she must, without delay, seize that document and thereupon the provisions of subsection (2) apply in respect of that document.

CHAPTER 6 GENERAL PROVISIONS

Offences and penalties

26. (1) Any person who, —

- (a) for the purpose of this Act, make or cause to be made a false statement;

- (b) records any particulars in the population register, unless authorised thereto in terms of section 7;
- (c) records any particulars in the population register which are in a material respect false, or fraudulently change any particulars therein;
- (d) having come into possession of an identity card, a certificate or a temporary identity certificate belonging to another person, present it as his or her own or belonging to any person other than the person to whom it belongs;
- (e) imitate, alter, deface, destroy or mutilate any identity card or any part thereof, certificate or temporary identity certificate, or cause it to be done or allow it to be done;
- (f) allow an identity card, a certificate or a temporary identity certificate belonging to him or her or which is under his or her control, to come into the possession of any other person for an unlawful purpose;
- (g) state or make a representation that any incorrect particulars in an identity card, a certificate or a temporary identity certificate are correct;
- (h) at any time after a new identity card was issued to him or her, regain possession of an identity card previously issued to him or her under this Act or under an Act repealed in terms of section 26, or without lawful cause, refuses to return for cancellation that previous identity card to the Director-General within 14 days after a written request to return such identity card was served upon him or her, or after he or she regained possession of the previous identity card, as the case may be; or
- (i) possess any identity card or any part thereof, a certificate or temporary identity certificate which has been imitated, altered, defaced or mutilated or any particulars of which are incorrect,

is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years.

(2) Any person who—

- (a) contravenes a provision of subsection (1);
- (b) without lawful cause fails or refuses to comply with a request in terms of section 12(a) or 22(4);
- (c) without lawful cause refuses to comply with a provision of section 15(1); or
- (d) contravenes a provision of section 22(1) or 20(1),

is guilty of an offence and liable on conviction to a fine or to imprisonment for a period

not exceeding five years.

(3) Any person who, without a lawful burial order or by any means, knowingly and wilfully disposes of the body of any deceased person or conceals or attempts to conceal a body or who otherwise aids and abets any person to conceal the death or a deceased human body shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three years.

(4) A court convicting any person of an offence referred to in subsection (2) must, if applicable, subject to section 35(2) and (4) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), —

- (a) declare the document or certificate in respect of which the offence was committed to be forfeited to the State; and
- (b) declare any instrument used for the purpose of or in connection with the commission of the offence, or the convicted person's rights thereto, to be forfeited to the State: Provided that such declaration shall not affect any rights which any person other than the convicted person may have to such instrument, if it is proved that such person did not know that it was being used or would be used for the purpose of or in connection with the commission of such offence, or that he or she could not prevent such use.

Regulations

27. (1) The Minister may make regulations regarding—

- (a) the issue of duplicate identity cards, temporary identity certificates, or other certificates, the circumstances under, and the conditions subject to, which they may be issued and the fees payable therefor;
- (b) the form and the issuance of certificates in respect of particulars contained in the database or in an identity card, the purposes for which such certificates may be used and the evidential value thereof;
- (c) the issuing of instructions and the prescribing of forms by the Director-General which may be necessary for the effective execution of the provisions of this Act; and
- (d) in general, all matters which, in terms of this Act, are required or permitted to be prescribed or which he or she considers necessary or expedient to prescribe in order that the objects of this Act may be achieved.

(2) Any regulations made under subsection (1) may prescribe penalties of a fine or of

imprisonment for a period not exceeding two years for any contravention thereof or failure to comply therewith.

(3) A regulation made under a provision repealed by section 26 and which was in force immediately before the commencement of this Act is deemed to have been made under this section.

(4) Any fees which may be prescribed under this Act must be prescribed by the Minister with the concurrence of the Minister of Finance.

Transitional provisions

28. (1) Notwithstanding the repeal of the law referred to in section 26, the Director-General must continue to issue identity documents in accordance with that law until a date determined by the Minister by notice in the *Gazette* in terms of subsection (2)(b).

(2) (a) Any identity document issued in terms of an Act repealed by section 26, or which remains valid under a provision of such law, remains valid until an identity card is issued in terms of section 15 or until a date contemplated in paragraph (b).

(b) The Minister may by notice in the *Gazette* fix a date for the replacement of identity documents referred to in paragraph (a) and may make regulations regarding such replacement.

Repeal of laws

29. The Identification Act, 1997 (Act No. 68 of 1997), is hereby repealed.

Short title and commencement

30. This Act is called the National Identification Registration Act, 2022 and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

DEPARTMENT OF HOME AFFAIRS

NO. 3312

18 April 2023

PUBLICATION OF THE ONE STOP BORDER POST BILL, 2022

The Department of Home Affairs (the "DHA") invites public comments on the draft One Stop Border Post Bill, 2022.

Written submissions should reach the DHA on or before **30 June 2023**. Submissions should be addressed to the Chief Director: Legal Services and may be forwarded to the DHA in any of the following manners:

- (a) delivered by hand to the Department of Home Affairs, 230 Johannes Ramokhoase Street, Hallmark Building (c/o old Proes and Andries Street), Pretoria, 0001, for attention of Adv Moses Malakate (Tel.: (012) 406 4273) or Ms Sipiwe Sambo (Tel.: (012) 406 4272);
- (b) mailed to the DHA at Private Bag X114, Pretoria, 0001;
- (c) faxed to 0865 144 267; or
- (d) e-mailed to Moses.Malakate@dha.gov.za and Sipiwe.Sambo@dha.gov.za

Any enquiries should be directed to Adv Moses Malakate at 076 481 4716 or Ms Sipiwe Sambo at (012) 406 4272.



DR P.A. MOTSOLEDI, MP
MINISTER OF HOME AFFAIRS

DATE: 13/4/2023

REPUBLIC OF SOUTH AFRICA

ONE STOP BORDER POST BILL

*(As introduced in the National Assembly (proposed section 75); explanatory
summary of Bill published in Government Gazette No. of) (The English text
is the official text of the Bill)*

(MINISTER OF HOME AFFAIRS)

[B—2022]

ACT

To provide for the establishment of one stop border posts through international agreements; to provide for the establishment of common control zones in the territory of an adjoining state through international agreements; to provide that international agreements provide for on one stop border processing arrangements; authorise the application of the laws of the Republic and the adjoining state in the one stop border post; and to provide for matters connected therewith.

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

ARRANGEMENT OF SECTIONS

1. Definitions
2. Application of Act
3. Establishment of control zones and one stop border posts
4. Application of border law enforcement
5. Application of criminal laws
6. Free transfer of money or goods within control zones
7. Obligation to remit
8. Regulations
9. Short title and commencement

Definitions

1. In this Act, unless the context shows that another meaning is intended—

“**adjoining state**” means a neighbouring state, including the agency of the state, with whom an agreement has been entered into;

“**agreement**” means an international agreement referred to under section 3(1) of this Act and concluded in terms of section 231 of the Constitution;

“**border law enforcement**” means the execution and enforcement of border law enforcement legislation relevant to facilitating and managing the legitimate movement of persons and goods within the border law enforcement area and ports of entry;

“**border law enforcement legislation**” means all relevant legislation dealing with border management including border law enforcement;

“**common control zone**” means the geographical area or zone where the domestic laws of either adjoining state that is applicable to clearance formalities for goods, people and means of transport exiting one country and entering another are conducted and wherein officials of such adjoining states are entitled to apply their respective domestic laws;

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

“**exclusive zone**” an area in the common control zone dedicated for the exclusive use of one of the parties;

“**Minister**” means the Minister of Home Affairs;

“**official**” means an authorised person responsible for exercising border controls on behalf of a party, and includes a police officer;

“**one-stop border post**” means a port of entry established as a one stop border post in terms of section 3(1)(a) of this Act;

“**party**” means a party to an agreement, and “**parties**” has the corresponding meaning;

“**port of entry**” means a port of entry designated by the Minister in terms of section 9A of the Immigration Act, 2002 (Act No. 13 of 2002), and includes any port, point or place of entry or exit approved by the Minister in terms of section 30 of the Border Management Authority Act;

“**Republic**” means the Republic of South Africa;

“**regulation**” means any regulation made under this Act; and

“**this Act**” includes the regulations.

Application of Act

2. This Act applies outside the territory of the Republic in accordance with any binding international agreement entered into between the Republic and an adjoining state in terms of section 231 of the Constitution.

Establishment of one stop border post and common control zone

3. (1) Subject to section 231 of the Constitution, the Minister may conclude an agreement with an adjoining state to—

- (a) establish a one-stop border post that will be jointly managed by the Republic and the adjoining state, at any port of entry within a control zone in the territory of the adjoining state or the Republic; or
- (b) establish a common control zone in the territory of the adjoining state; and
- (c) permit officials to exercise—
 - (i) border law enforcement at the border post referred to in paragraph (b); and
 - (ii) any power of arrest, search, seizure or detention of person or thing, in accordance with the laws of the Republic and the adjoining state within the common control zone.

(2) The Minister must, by notice in the *Gazette*, list a port of entry as a one stop border post after its establishment as a one stop border post as contemplated under section (1)(a) of this Act.

Application of border law enforcement

4. (1) The agreement contemplated under section 3(1) must provide that the laws relating to border law enforcement of—

- (a) the adjoining state apply in the common control zone established in the territory of the Republic and must be enforced by the officials of the adjoining state in the same way as they are enforced in the territory of the adjoining state; and
- (b) the Republic apply in the common control zone established in the territory of the adjoining state and must be enforced by the officials of the Republic in the same way as they are enforced within the Republic.

(2) Any contravention of the laws relating to border law enforcement of the adjoining state within the common control zone in the territory of the Republic is subject to the

laws of the adjoining state as if the contravention occurred in the territory of the adjoining state.

(3) Any contravention of the laws relating to border law enforcement of the Republic within the common control zone in the territory of the adjoining state is subject to the laws of the Republic as if the contravention occurred in the territory of the Republic.

(4) An official enforcing border law enforcement and procedures in a common control zone must do so in accordance with the border law enforcement laws of the state that he or she works for.

Application of criminal laws

5. (1) Subject to subsection (5) and any Article to the contrary provided for in an agreement contemplated under section 3, where an act or omission that constitutes a criminal offence in an adjoining state is committed in the common control zone in the territory of the adjoining state—

(a) the offender concerned is subject to the jurisdiction of the courts of the adjoining state; and

(b) the offence is decided in terms of the criminal law of the adjoining state.

(2) Where an act or omission that constitutes a criminal offence in the Republic is committed in the common control zone in the territory of the Republic—

(a) the offender concerned is subject to the jurisdiction of the courts of the Republic; and

(b) the offence is decided in terms of the criminal law of the Republic.

(3) Where an act or omission that constitutes a criminal offence in the Republic is committed in the exclusive zone of the Republic in the territory of the adjoining state—

(a) the offender concerned is subject to the jurisdiction of the courts of the Republic; and

(b) the offence is decided in terms of the criminal law of the Republic.

(4) Where an act or omission that constitutes a criminal offence in the adjoining state is committed in the exclusive zone of the adjoining state in the territory of the Republic—

(a) the offender concerned is subject to the jurisdiction of the courts of the adjoining state; and

(b) the offence is decided in terms of the criminal law of the adjoining state.

(5) Despite subsection (1), where an act or omission referred to in subsection (1) is also an offence in the Republic and is committed—

- (a) in the common control zone in the territory of the Republic; and
- (b) by a person who is not a citizen of the adjoining state, and the laws of the adjoining state apply to the extent that a finding of guilty of that act or omission may lead to the offender being imposed a death penalty—
 - (i) the offender concerned is subject to the jurisdiction of the courts of the Republic; and
 - (ii) the offence is decided in terms of the criminal law of the Republic.

Free transfer of money or goods within common control zone

6. Subject to the agreement envisaged under section 3, the goods or money moved by any official, for official use, from the territory of the Republic or the territory of an adjoining state to the territory of the Republic or adjoining state as the case may be, through the common control zone, are not subject to the import or export and entry or exit laws of the Republic or the adjoining state.

Obligation to re-admit

7. (1) Where—

- (a) the state of entry, either the Republic or the adjoining state, declines to admit any person, vehicle, animal, merchandise or other goods; or
- (b) a person decides not—
 - (i) to enter through a designated port of entry of the Republic or the adjoining state; or
 - (ii) to send or take back any vehicle, animal, merchandise or other goods under his or her control to the state of exit, the authorities of the state of exit must accept the person back into such state and any vehicle, animal, merchandise or other goods under that person's control.

(2) Despite subsection (1), the competent authorities of the state of exit, when receiving the person referred to under that subsection, may take any measures in accordance—

- (a) with its domestic laws; and
- (b) in a manner that does not impose obligations on the state of entry.

Regulations

8. The Minister may make regulations not inconsistent with this Act and which he or she considers necessary or expedient to give effect to the objects of this Act.

Short title and commencement

9. This Act is called the One-Stop Border Post Act, 2022 and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

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