Namibia

Immigration Control Act, 1993

Act 7 of 1993

Legislation as at 19 August 1993

FRBR URI: /akn/na/act/1993/7/eng@1993-08-19

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PDF created on 28 March 2024 at 11:13.

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Republic of Namibia
Annotated Statutes

Immigration Control Act, 1993

Act 7 of 1993

Published in Government Gazette 690 on 19 August 1993

Assented to on 6 August 1993

Commenced on 29 July 1994 by Commencement of the Immigration Control Act, 1993

[This is the version of this document from 19 August 1993 and includes any amendments published up to 22 March 2024.]

ACT

To regulate and control the entry of persons into, and their residence in, Namibia; to provide for the removal from Namibia of certain immigrants; and to provide for matters incidental thereto.

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

[The Act uses the spellings "dependent" and "dependant" interchangeably as nouns, while consistently using "dependent" as an adjective; these words and their variants are reproduced here as they appear in the Government Gazette.]

Part I – INTRODUCTORY PROVISIONS

1. Definitions

In this Act, unless the context otherwise indicates -

"**board**" means the Immigration Selection Board established under section 25;

"**Chief of Immigration**" means the Chief of Immigration appointed under section 3(1)(a);

"**conveyance**" includes any vehicle, train, aircraft or ship;

"**domicile**", subject to the provisions of Part IV, means the place where a person has his or her home or permanent residence or to which such person returns as his or her permanent abode, and not merely for a special or temporary purpose;

"**employment permit**" means an employment permit referred to in section 24(b)(1);

"**immigration officer**" means an immigration officer appointed under section 3(1)(b);

"**master**", in relation to a ship, means any person (other than a pilot) for the time being in charge or command of that ship;

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

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

"**occupier**", in relation to any premises, means -

(a) the person who actually occupies such premises;

(b) the person entitled to occupy such premises;

(c) the person having the control or management of such premises; and

(d) the agent of any such person who is absent from Namibia or whose whereabouts are unknown;

"**owner**", in relation to a ship, includes the charterer of the ship or any agent within Namibia of the owner or charterer;

"**passport**" means any passport or other travel document of identity issued -

(a) to a person on behalf of the Government of Namibia;

(b) on behalf of the government of any country recognized by the Government of Namibia, to a person who is a citizen of the country concerned, but not also a Namibian citizen;

(c) on behalf of any international organization of which Namibia is a member, to a person who is not a Namibian citizen,

and which contains a personal description of such person, the name of the country in which he or she was born and the date of his or her birth, and to which a photograph of such person is attached in which all the features of his or her face are clearly and correctly depicted;

"**permanent residence permit**" means a permanent residence permit referred to in section 24(a);

"**Permanent Secretary**" means the Permanent Secretary: Home Affairs;

"**police officer**" means any member of the Force as defined in section l of the Police Act, 1990 (Act 19 of 1990);

"**port**" or "port of entry" means -

(a) any place on the coast of Namibia;

(b) any railway station or place in Namibia at or near any of the borders thereof; or

(c) any airport or aerodrome in Namibia,

where an immigration officer is stationed;

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

"**prescribed**" means prescribed by regulation or under this Act;

"**prohibited immigrant**" means a person referred to in section 39;

"**provisional permit**" means a provisional permit referred to in section 11;

"**regulation**" means any regulation made and in force under this Act;

"**ship**" includes any vessel or boat, of any kind, used in navigation, whether propelled by means of sails, steampower or other mechanical means or towing or oars or in any other manner;

["Steampower" is normally written as two words: "steam power".]

"**student's permit**" means a student's permit referred to in section 24(b)(ii);

"**this Act**" includes any order, direction or regulation issued or made or deemed to have been issued or made under this Act;

"**tribunal**" means any immigration tribunal established under section 43;

"**visitor's entry permit**" means a visitor's entry permit referred to in section 24(b)(iii).

2. Application of Act

(1) Subject to the provisions of subsection (2), the provisions of Part V, except sections 30, 31 and 32 thereof, and Part VI of this Act shall not apply to -

(a) a Namibian citizen;

(b) any person domiciled in Namibia who is not a person referred to in paragraph (a) or (f) of section 39(2);

(c) any spouse or dependent child of a person referred to in paragraph (b), provided such spouse or child is not a person referred to m paragraph (d), (e), (f) or (g) of section 39(2);

(d) any person duly accredited to Namibia by or under the authority of the government of any sovereign state;

(e) any person who under any law is entitled to any diplomatic immunities and privileges by reason of such person's association with an organization of which the Government of Namibia is a member;

(f) any person who for the purpose of employment enters Namibia -

(i) under such conditions, excluding such provisions, as may be agreed upon between the State and such person;

(ii) under any convention or agreement with the government of any other state; or

(iii) in accordance with any scheme of recruitment or repatriation approved by the Minister;

(g) any member of the official staff or of the household of a person referred to in paragraphs (d), (e) and (f); and

(h) any member of a crew of -

(i) any public ship of a foreign state, while such ship is in port; or,

(ii) any aircraft or other public vehicle, while such person is or remains a member of such crew.

(2) Notwithstanding the provisions of subsection (1) of this section, the provisions of Part V and Part VI referred to in that subsection, shall apply to any person appearing before an immigration officer at any port of entry with the intention to enter and to remain in Namibia unless such person satisfies such immigration officer that he or she is a person referred to in that subsection.

(3) The provisions of this Act shall apply, in so far as they can be applied, to all conveyances other than ships, and in respect of persons entering or seeking to enter or who have entered or are being brought into or have been brought into Namibia by means of such conveyances or on foot.

(4) (a) If a person referred to in paragraph (d), (e), (f) or (g) of subsection (1) ceases, while he or she is in Namibia, to belong to any category of persons contemplated in that paragraph, he or she may after the expiration of a period of 90 days as from such cessation, be dealt with under Part VI as a prohibited immigrant, unless such person has in terms of section 26 been granted permission to remain in Namibia for the purpose of permanent residence therein or unless such person has in terms of section 27, 28 or 29, as the case may be, been granted permission to remain temporarily in Namibia.

(b) If a person referred to in paragraph (a) who is granted permission under section 27, 28 or 29, as the case may be, during a stated period and subject to any condition, remains in Namibia after the expiration of that period or contravenes or fails to comply with that condition, he or she may be dealt with under Part VI as a prohibited immigrant.

Part II – ADMINISTRATION OF ACT

3. Appointment of Chief of Immigration and immigration officers

(1) The Minister may -

(a) subject to the laws governing the public service, appoint a person to be known as the Chief of Immigration or, during the absence or incapacity of the Chief of Immigration, to exercise or perform his or her powers, duties or functions, an acting Chief of Immigration, who shall, respectively, exercise or perform, subject to the direction and control of the Minister, the powers, duties and functions conferred or imposed upon the Chief of Immigration by or under the provisions of this Act, and such other functions as may be imposed upon him or her by the Minister; and

(b) appoint as immigration officers -

(i) any officer or employee in the public service;

(ii) on such terms and conditions as may be determined by agreement, any person in the service of any body or institution established or instituted by or under any law, including any regional council established under the Regional Councils Act, 1992 (Act 22 of 1992), and any local authority council established or deemed to have been established under the Local Authorities Act, 1992 (Act 23 of 1992), who shall exercise or perform the powers, duties and functions conferred upon or assigned to an immigration officer in terms of this Act, and such other functions as may be imposed by the Minister or Chief of Immigration, as the case may be, upon him or her for the purpose of carrying out the provisions of this Act.

(2) In the application of the provisions of paragraph (b) of subsection (1), the Minister may appoint as an immigration officer any person belonging to a group, category or class, as may be determined by the Minister, of officers, employees or persons referred to in that paragraph, by determining that each such officer, employee or person, as the case may be, belonging to such group, category or class shall be an immigration officer, whereupon each such officer, employee or person, shall hold office as an immigration officer as long as such person belongs to such group, category or class or until such person is removed from office by the Minister.

(3) The Minister may -

(a) remove an immigration officer from his or her office;

(b) withdraw any power or duty conferred upon, or assigned to, any immigration officer by him or her in terms of paragraph (b) of subsection (1) of this section.

(4) An immigration officer shall at the time of his or her appointment be furnished with a certificate signed by the Permanent Secretary stating that he or she has been appointed as an immigration officer.

4. Delegation of powers

(1) The Minister may, subject to such conditions as he or she may deem necessary, delegate in writing any power conferred on him or her by this Act, excluding a power conferred on him or her by sections 25(3), 43, 46(1), 49 and 58(1) and any such power which has to be exercised by notice in the Gazette, to the Chief of Immigration or any other officer or employee in the service of the Ministry, but shall not be divested of any power so delegated.

(2) The Chief of Immigration may, subject to such conditions as he or she may deem necessary, delegate to an immigration officer or any other officer or employee in the Ministry any power conferred on him or her by or under this Act, but shall not be divested of any power so delegated.

5. Limitation of liability

No compensation shall be payable by the Minister, Permanent Secretary, Chief of Immigration, any immigration officer or any other officer or employee employed in carrying out the provisions of this Act, in respect of any act done in good faith under this Act.

Part III – ENTRY INTO NAMIBIA

Ports of entry

Duties of immigration officers and passports and visas

6. Persons to enter Namibia at ports of entry

(1) Subject to the provisions of sections 7, 8 and 9, no person shall enter Namibia at any place other than a port of entry, unless -

(a) the passport of such person, of a category determined by the Minister, bears an endorsement; or

(b) such person is in possession of a document issued to him or her by an immigration officer,

to the effect that permission has been granted to him or her by the Minister or such immigration officer to enter Namibia at that place and to be in Namibia for such purposes and during such period and subject to such conditions as may be stated in that endorsement or document.

(2) An immigration officer shall, if the Minister so directs, and may, subject to review by the Minister at the request of the person concerned, withdraw any permission referred to in subsection (1).

(3) The Minister may from time to time by notice in the Gazette, declare that a prohibited immigrant or a category of prohibited immigrants specified in such notice shall enter or return to Namibia at a port or ports specified in that notice and, if such person enters Namibia at any place other than a port or ports so specified, such person shall be deemed to have entered Namibia at a place other than a port of entry as contemplated in subsection (1).

7. Persons to present themselves to immigration officer before entering Namibia

A person seeking to enter Namibia shall before entering Namibia present himself or herself to an immigration officer at a port of entry and satisfy such officer that he or she is not a prohibited immigrant in respect of Namibia and is entitled to enter and to be in Namibia.

8. Powers of immigration officers in respect of certain persons presenting themselves

(1) For the purpose of ascertaining any matter referred to in section 7, an immigration officer may require any person referred to in that section -

(a) to answer, in writing or otherwise, such questions as the immigration officer may put to him or her which are relevant to his or her identity, citizenship or country of origin, as the case may be;

(b) to make and sign a declaration in the prescribed form;

(c) to produce documentary or other evidence relevant to his or her claim to enter or be in Namibia or that his or her entry into or his or her presence within Namibia will not be unlawful;

(d) to submit to any examination or test to which such person may be subjected under this Act;

(e) if it is suspected that such person is afflicted with any disease or physical infirmity which under this Act would render him or her a prohibited immigrant, to submit to an examination by a medical practitioner designated by the Minister.

(2) Any declaration made by any person under subsection (1) shall, notwithstanding anything to the contrary contained in any law relating to stamp duty, be exempted from such stamp duty as may be imposed by law in respect of affidavits and solemn or attested declarations.

9. Permission of entry into Namibia

An immigration officer shall, if he or she is satisfied that a person seeking to enter Namibia complies with the requirements of sections 6, 7 and 8 and who is not, or is clearly not, a prohibited immigrant in respect of Namibia, or is clearly entitled to enter or be in Namibia, permit such person to land and enter or remain in Namibia and endorse that permission in or on such passport or other document determined by the Minister.

10. Refusal of entry into Namibia

(1) If any person seeking to enter Namibia fails to comply with the provisions of section 6, 7 or 8 or, having complied with such provisions, fails to satisfy the immigration officer that he or she is not a prohibited immigrant in respect of Namibia, such immigration officer may, subject to the provisions of section 11, by notice in writing refuse such person entry into Namibia and such person shall not be permitted to land in and enter Namibia.

(2) No appeal shall lie against the decision by an immigration officer to so refuse a person to enter Namibia under subsection (1).

(3) If any person who enters or has entered Namibia in contravention of the provisions of section 6, 7 or 8 or, after having been refused permission to enter Namibia in terms of subsection (1) of this section, is found in Namibia, he or she shall be guilty of an offence and on conviction be liable to a fine not exceeding R20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment, and may be dealt with under Part VI as a prohibited immigrant.

11. Provisional permits for persons suspected of being prohibited immigrants in respect of Namibia

(1) If any person seeking to enter Namibia, after having complied with the provisions of section 6, 7 and 8, fails to satisfy the immigration officer that he or she is not a prohibited immigrant, the immigration officer may issue to such person a provisional permit to enter and reside in Namibia for such period, but not exceeding 2 months, and subject to such conditions as the immigration officer may impose.

(2) (a) If a permit referred to in subsection (1) has been issued subject to any condition, the immigration officer may, in order to ensure that such condition is complied with, require prior to the issue of such permit that the person to whom such permit is to be issued deposit with such immigration officer an amount to be fixed by the immigration officer, not exceeding an amount determined by the Minister by notice in the Gazette in general, or to lodge with the immigration officer, to his or her satisfaction, a guarantee in the prescribed form, for the amount concerned.

(b) An amount or guarantee deposited or lodged with an immigration officer in terms of paragraph (a) shall, subject to paragraph (c), be refunded or cancelled on such person's

departure from Namibia or if the immigration officer decides under subsection (4) that such person is not a prohibited immigrant.

(c) If a person has contravened or failed to comply with a condition of his or her permit, the Minister may order that the amount deposited with the immigration officer be forfeited to the State or, if a guarantee was lodged with the immigration officer, that the amount payable in terms of the guarantee be recovered for the benefit of the State.

(3) Any person to whom a permit referred to in subsection (1) has been issued, may enter Namibia and may remain therein for the duration of the permit.

(4) Before the expiration of a permit issued under subsection (1), the immigration officer shall, after having made such investigations as he or she may deem necessary, satisfy himself or herself whether the person to whom the permit was issued is or is not a prohibited immigrant, and if such immigration officer is satisfied that such person is -

(a) a prohibited immigrant, he or she shall notify such person in writing of that fact and, such person may be dealt with under Part VI as a prohibited immigrant; or

(b) not a prohibited immigrant, he or she shall notify such person in writing of that fact and on application of such person in terms of -

(i) section 26, the board may authorize the issue of a permanent residence permit under that section to such person; or

(ii) section 27, the board may authorize the issue of an employment permit under that section to such person; or

(iii) section 28, the Chief of Immigration may authorize the issue of a student's permit under that section to such person; or

(iv) section 29, the immigration officer may authorize the issue of a visitor's entry permit under that section to such person,

as the case may be.

(5) If the immigration officer is satisfied that the person to whom a provisional permit was issued under subsection (1) is not a prohibited immigrant, the residence of such person in Namibia during the period for which the permit was issued shall, for the purpose of determining whether or not such person has acquired a domicile in Namibia, not be regarded as temporary or conditional residence in Namibia merely because such permit was issued to such person.

(6) Any person to whom a provisional permit was issued under subsection (1) and who acts in conflict with the purpose for which, or fails to comply with a condition subject to which, such permit was issued, shall be guilty of an offence and on conviction be liable to a fine not exceeding R8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment, and may be dealt with under Part VI as a prohibited immigrant.

(7) The provisions of this section shall not be construed as authorizing any person to whom a provisional permit has been issued (whether or not as a purpose for which or a condition subject to which such permit has been issued), to enter into or to be in any employment or to conduct any business or to carry on any profession or occupation or to receive any training instruction or education in any training or educational institution, in Namibia.

12. Passports and visas

(1) Any person seeking to enter Namibia who fails on demand by an immigration officer to produce to such immigration officer an unexpired passport which bears a valid visa or an endorsement by a person authorized thereto by the Government of Namibia to the effect that authority to proceed to Namibia for the purpose of being examined under this Act has been granted by the Minister or an officer authorized thereto by the Minister, or such person is accompanied by a document containing a statement to that effect together with particulars of such passport, shall be refused to enter and

to be in Namibia, unless such person is proved to be a Namibian citizen or a person domiciled in Namibia.

(2) (a) The Minister may exempt any person or category of persons from the provisions of subsection (1) in respect of a visa, endorsement or document referred to therein for a specified or unspecified period and either unconditionally or subject to such conditions as the Minister may impose.

(b) The Minister may exclude from any exemption granted to a category of persons under paragraph (a) any person belonging to that category.

(c) The Minister may -

(i) withdraw any exemption granted under paragraph (a) to any category of persons or to any person, whether as an individual or as a member of a category of persons; or

(ii) cancel and declare null and void any visa, endorsement or document referred to in the said subsection (1).

(3) Any person under the age of 16 years shall on entering Namibia deemed to be in possession of a valid passport if such person is accompanied by his or her parent in possession of such a passport in which the name of that person was inserted on behalf of the Government of Namibia or on behalf of any government of any other state recognized by the Government of Namibia.

[The word "be" appears to have been omitted here: "Any person... shall... be deemed to be in possession of a valid passport...".]

(4) If any person enters or has entered Namibia in contravention of the provisions of subsection (1) or, after having been refused to enter Namibia in terms of that subsection, is found in Namibia, he or she shall be guilty of an offence and on conviction be liable to a fine not exceeding R20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment, and may be dealt with under Part VI as a prohibited immigrant.

13. Transit visas

(1) No person, other than a Namibian citizen or person domiciled in Namibia, who is proceeding from a destination outside Namibia to a destination outside Namibia shall travel through Namibia, unless such person is in possession of a transit visa issued for such purpose in terms of subsection (2).

(2) The Minister may authorize the issue to any person of a transit visa on such conditions as the Minister may impose.

(3) The Minister may -

(a) exempt any person or category of persons from the provisions of subsection (1);

(b) exclude from any exemption granted to a category of persons under paragraph (a), any person belonging to that category; and

(c) withdraw any exemption granted under paragraph (a) to any category of persons or to any person, whether as an individual or as a member of a category of persons.

(4) Any person referred to in subsection (1) who, while travelling through Namibia as contemplated in that subsection, contravenes the provisions of that subsection or fails on demand by an immigration officer to produce to such officer a transit visa issued to him or her under subsection (2), or any holder of any such transit visa who contravenes or fails to comply with any condition of such visa, shall be guilty of an offence and on conviction be liable to a fine not exceeding R8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment, and may be dealt with under Part VI as a prohibited immigrant.

Ships in ports

Powers of immigration officers and duties of masters of ships

14. Immigration officer may board ships and prohibit or regulate traffic between ships and shore

(1) An immigration officer may, subject to the provisions of section 53, if he or she regards it necessary for the purpose of achieving the purposes and objects of this Act, board any ship which is entering or has entered or has been brought into any port.

(2) Any immigration officer may, for the better carrying out of the provisions of this Act, prohibit or regulate any communication with, disembarkation from, or the offloading of, any ship on which the immigration officer is proceeding with the examination of persons or which has on board or is suspected of having on board any prohibited immigrant, and the immigration officer may cause such steps to be taken to carry out any such prohibition or regulation as the Minister may approve.

(3) For the better carrying out of the objects and purposes of this Act any person in control of the port concerned or person acting under his or her authority may, at the request of an immigration officer, order the master of any ship to moor or anchor such ship in the port at such distance from the shore or landing place or in such position as such person may direct.

15. Master of ship to furnish certain lists and returns to immigration officer

(1) The master of any ship which enters any port shall deliver to an immigration officer upon demand -

(a) a list stating the following, namely -

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

(ii) the class by which each such passenger has travelled; and

(iii) such other particulars as may be prescribed;

(b) a list of stowaways, if any;

(c) a list of the crew and all persons (other than passengers or stowaways) employed or carried on the ship in any capacity by or on behalf of the owner, or present on the ship;

(d) a return, under the hand of the medical officer of that ship or, if there is not a medical officer, under his or her hand, stating -

(i) any known cases of disease, whether infectious or otherwise, which have occurred on the voyage;

(ii) any actual or suspected cases of physical or mental infirmity or disability;

(iii) subject to the provisions of subsection (2) -

(aa) the name of such person who has suffered or is suffering from such disease, infirmity or disability; and

(bb) in each case the nature of the disease, infirmity or disability; and

(iv) particulars of any birth or death which occurred on the voyage between the said port and the previous port.

(2) (a) When a return referred to in paragraph (d) of subsection (1) is to be delivered to an immigration officer as contemplated in that paragraph, every passenger shall upon demand furnish, in writing in such manner and on such form as may be prescribed, to the medical officer or master, as the case may be, such particulars as may be required by him or her for the purposes of subparagraph (iii) of that paragraph, and thereupon such particulars, duly

attested under his or her hand by such medical officer or master, shall together with such return be delivered to such immigration officer.

(b) Any person, other than a Namibian citizen or person domiciled in Namibia, who fails to comply with the provisions of paragraph (a) may be refused by an immigration officer to enter Namibia, and such person may, if he or she, after having been so refused, enters or has entered or is found in Namibia, be dealt with under Part VI as a prohibited immigrant.

(3) In the case of a ship arriving at a port in Namibia and destined for any other port in Namibia, the immigration officer at the first-mentioned port may exempt the master of such ship, subject to such rules as such immigration officer may make for the guidance of such master, from the duty to deliver all or any such lists or the return referred to in subsection (1) at the other port where the ship arrives.

16. Detention and removal of prohibited immigrants arriving by sea at a port

(1) Any person arriving by sea at a port of entry who has been personally notified by an immigration officer that he or she is a prohibited immigrant in respect of Namibia and of whom such immigration officer has made a declaration to the master of the ship on which such person has so arrived that such person is such a prohibited immigrant, shall be detained by such master on that ship and, unless such master is officially informed that such person has been found not to be such a prohibited immigrant, that person shall be refused to enter Namibia and the master shall remove that person from Namibia.

(2) Any person referred to in subsection (1) shall, while detained, pending removal, on board the ship referred to in that subsection, be deemed to be in the custody of the master of such ship and not of the immigration officer, the Minister or the Government, and such master shall be liable to pay the costs of the detention, maintenance and control of such person while so detained.

(3) If the master of the ship referred to in subsection (1) fails to comply with the provisions of that subsection, or to pay the cost mentioned in subsection (2), such master or the owner of such ship shall forfeit in respect of every such person an amount to be fixed by the immigration officer, not exceeding an amount determined by the Minister by notice in the Gazette in general.

(4) The immigration officer may, if he or she deems it necessary, require the master or the owner of a ship to deposit an amount sufficient to cover any expenses that may be incurred by the Ministry in connection with the removal, detention, maintenance and custody of a person conveyed on that ship.

(5) (a) If any person referred to in subsection (1) is for any reason not removed from Namibia in the ship on which such person was conveyed to Namibia (except by reason of the fact that such person was found not to be a prohibited immigrant) the owner of that ship shall, at the request of the immigration officer, convey that person free of charge to the State, to a place outside Namibia.

(b) If the owner referred to in paragraph (a) fails to comply with the provisions of that paragraph, such owner shall forfeit in respect of each person referred to in that paragraph an amount to be fixed by the immigration officer, not exceeding an amount determined by the Minister by notice in the Gazette in general.

(6) If any person who, after having escaped or in his or her attempt to escape from detention, enters Namibia or, after having been refused to enter Namibia while being dealt with under this section, is found within Namibia, he or she shall be guilty of an offence and on conviction be liable to a fine not exceeding R20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment, and may be dealt with under Part VI as a prohibited immigrant.

17. Responsibility of owner and master of ship in respect of transit passengers

If a ship arrives at any port in Namibia with a passenger on board bound for a destination outside Namibia and, whether or not that passenger has been refused by an immigration officer to land and to enter

Namibia, such person is not on board when the ship departs, the master or the owner of that ship shall forfeit in respect of such passenger an amount to be fixed by the immigration officer, not exceeding an amount determined by the Minister by notice in the Gazette in general.

18. Responsibility of owner and master of ship in respect of crew

(1) An immigration officer may require the master of a ship to muster the crew of such ship on or after the arrival of such ship in any port and again before such ship departs from such port.

(2) If any person whose name appears on the list referred to in section 15(1)(c) is not on board when the ship is ready to depart, the master or the owner of the ship may be required before the ship departs, to deposit with the immigration officer in respect of such person an amount fixed by the immigration officer, not exceeding an amount determined by the Minister by notice in the Gazette in general, unless it is proved to the satisfaction of the immigration officer that such person is a Namibian citizen or such person is domiciled in Namibia.

(3) The amount referred to in subsection (2) shall be forfeited to the State unless the master or owner proves to the satisfaction of the immigration officer within 90 days after such amount was deposited that the person in respect of whom such amount was deposited, is no longer in Namibia.

19. Recovery of amounts forfeited under sections 16 and 17 or deposited under section 18

(1) Until any amount which has been forfeited under section 16 or 17 has been paid, or any amount which is to be deposited under section 18 has been submitted, no clearance papers shall be given to the master or owner of the ship in question.

(2) Such ship may be declared executable by order of the High Court for the recovery of any amount forfeited under section 16 or 17 or required to be deposited under section 18.

20. Power to refuse clearance papers

The competent officer of customs at any port may refuse to give to the master of any ship clearance papers to leave that port until such master has complied with the provisions of this Act and produced a certificate of an immigration officer to that effect.

21. Agreement with ship-owners relating to the carrying out of certain provisions of Act

(1) In order to facilitate the clearance of ships habitually calling at any port, the Minister may enter into an agreement (with or without the giving of security) with the owner of such ships whereby such owner undertakes that he or she or the masters of such ships belonging to him or her and calling habitually at such ports shall carry out so much of the provisions of sections 16, 17 and 18 as may relate to such owner or master.

(2) The terms of an agreement entered into under subsection (1), shall be substituted for the provisions of section 16, 17 or 18 in so far as those provisions relate to the payment or deposit of moneys by such owner or master of a ship.

Part IV – DOMICILE IN NAMIBIA

22. Domicile in Namibia

(1) For the purposes of this Act, no person shall have a domicile in Namibia, unless such person -

(a) is a Namibian citizen;

(b) is entitled to reside in Namibia and so resides therein, whether before or after the commencement of this Act, in terms of the provisions of section 7(2)(a) of the Namibian Citizenship Act, 1990 (Act 14 of 1990);

(c) is ordinarily resident in Namibia, whether before or after the commencement of this Act, by virtue of a marriage entered into with a person referred to in paragraph (a) in good faith as contemplated in Article 4(3) of the Namibian Constitution;

(d) in the case of any other person, he or she is lawfully resident in Namibia, whether before or after the commencement of this Act, and is so resident in Namibia, for a continuous period of two years.

(2) For the purposes of the computation of any period of residence referred to in subsection (1)(d), no period during which any person -

(a) is or was confined in a prison, reformatory or mental institution or other place of detention established by or under any law;

(b) resided in Namibia only by virtue of a right obtained in terms of a provisional permit issued under section 11 or an employment permit issued under section 27 or a student's permit issued under section 28 or a visitor's entry permit issued under section 29;

(c) involuntarily resided or remained in Namibia;

(d) has entered or resided in Namibia through error, oversight, misrepresentation or in contravention of the provisions of this Act or any other law; or

(e) resided in Namibia in accordance with the provisions of paragraph (d), (e), (f) or (g) of section 2(1),

shall be regarded as a period of residence in Namibia.

23. Loss of domicile

(1) A person shall lose his or her domicile in Namibia -

(a) in the case of a Namibian citizen, at the same time that he or she in terms of the provisions of any law ceases to be a Namibian citizen, unless he or she is a person referred to in section 22(1)(b);

(b) in the case of a person referred to in paragraph (b) of section 22(1), if such person is deprived of his or her right to reside in Namibia, by order, as contemplated in section 7(2)(b) of the Namibian Citizenship Act, 1990 (Act 14 of 1990);

(c) in the case of a person referred to in paragraph (c) of section 22(1), if the marriage of such person, referred to therein, has been dissolved otherwise than by the death of his or her spouse at any time within a period of two years from the date of such marriage;

(d) in the case of any other person having domicile in Namibia, if such person -

(i) subject to the provisions of subsection (2), has been absent from Namibia for a continuous period exceeding two years or exceeding such longer period as the Minister may in writing in each case determine;

(ii) subject to the provisions of subsection (3), has made any declaration, whether for the purpose of this Act or any other law, to the effect that he or she no longer resides in Namibia or regards himself or herself as no longer being resident in Namibia.

(2) Any person referred to in subparagraph (i) of paragraph (d) of subsection (1) who is absent from Namibia shall not lose his or her domicile if he or she is so absent -

(a) in the service of the State;

(b) as the representative or employee of a person or association of persons resident or established in Namibia or in the service of an international organization of which the State is a member;

(c) on account of his or her ill health or disability;

(d) for reason of attending any educational institution; or

(e) in the case of the spouse or dependent child of a person referred to in paragraphs (a), (b), (c) and (d) of this subsection, if that spouse or child is so absent with such person.

(3) For the purpose of subparagraph (ii) of paragraph (d) of subsection (1), the fact that a person referred to in that subparagraph has taken up permanent residence in a country other than Namibia shall be prima facie proof of a declaration by that person that he or she no longer resides in Namibia.

Part V – LIMITATION OF ENTRY INTO, AND RESIDENCE IN, NAMIBIA PERMANENT RESIDENCE PERMITS, EMPLOYMENT PERMITS, STUDENTS' PERMITS AND VISITORS' ENTRY PERMITS

24. Limitation or entry into, and residence in, Namibia

Subject to the provisions of section 35, no person shall -

(a) enter or reside in Namibia with a view to permanent residence therein, unless such person is in possession of a permanent residence permit issued to him or her in terms of section 26; or

(b) enter or reside in Namibia with a view to temporary residence therein, unless -

(i) in the case of any person who intends to enter or reside in Namibia for the purpose of employment or conducting a business or carrying on a profession or occupation in Namibia, such person is in possession of an employment permit issued to him or her in terms of section 27; or

(ii) in the case of any person who intends to enter or reside in Namibia for the purpose of attending or undergoing any training, instruction or education at any training or educational institution in Namibia, such person is in possession of a student's permit issued to him or her in terms of section 28; or

(iii) in the case of any person who intends to enter or reside for any other purpose, such person is in possession of a visitor's entry permit issued to him or her in terms of section 29.

25. Immigration Selection Board

(1) There is hereby established a board to be known as the Immigration Selection Board.

(2) The board -

(a) shall, subject to the provisions of -

(i) section 26, consider applications for permanent residence permits referred to in section 24(a);

(ii) section 27, consider applications for employment permits referred to in section 24(b)(1);

(b) may take such other action and do such other things as may be required for the proper performance of its functions and duties under this Act.

(3) The board shall consist of not less than five and not more than seven members as the Minister may appoint, of whom one shall be designated by the Minister as chairperson of the board.

(4) A member of the board shall hold office for such period as the Minister may, either generally or in respect of any particular member, determine.

(5) The remuneration, allowances, benefits and gratuities of a member of the board who is not in the full time service of the State, shall be determined by the Minister, in consultation with the Minister of Finance.

(6) A member of the board shall be notified in writing of his or her appointment or designation or any determination in respect of him or her in terms of subsection (3), (4) or (5), as the case may be.

(7) The quorum for any meeting of the board shall be a majority of the members of the board.

(8) (a) The chairperson shall preside at all meetings of the board at which he or she is present and in the event of his or her absence from any meeting, the members present thereat shall elect one of their number to act as chairperson at that meeting.

(b) An acting chairperson referred to in paragraph (a) shall at any meeting at which he or she presides, have all the powers and perform all the duties and functions of the chairperson.

(9) The decision of the majority of the members of the board present at any meeting thereof, shall be a decision of the board and in the event of an equality of votes, the person presiding at the meeting in question shall have a casting vote in addition to his or her deliberative vote.

(10) (a) The board may, with the approval of the Minister, subject to such conditions as the board may determine, establish committees and assign to it any of its powers, duties and functions conferred or imposed upon it by or under this Act.

(b) Anything done by any such committee by virtue of any such assignment of a power, duty or function shall for all purposes be deemed to have been done by the board.

(11) The meetings of the board and of its committees shall be held at such times and at such places as the chairperson of the board may determine.

(12) The administrative work in connection with the functions of the board or any committee thereof shall be performed by officers in the Ministry designated by the Permanent Secretary.

26. Application for permanent residence permits

(1) (a) An application for a permanent residence permit shall be made on a prescribed form and shall be submitted to the Chief of Immigration.

(b) Different forms may, for the purpose of paragraph (a), be prescribed for different categories of persons.

(2) Subject to the provisions of subsection (7), the Chief of Immigration shall submit every application received by him or her to the board together with such information relating to the applicant as he or she may have obtained and shall furnish such further information to the board as it may require in connection with such applicant.

(3) The board may authorize the issue of a permit to enter and to be in Namibia for the purpose of permanent residence therein to the applicant and make the authorization subject to any condition the board may deem appropriate: Provided that the board shall not authorize the issue of such a permit unless the applicant satisfies the board that -

(a) he or she is of good character; and

(b) he or she will within a reasonable time after entry into Namibia assimilate with the inhabitants of Namibia and be a desirable inhabitant of Namibia; and

(c) he or she is not likely to be harmful to the welfare of Namibia; and

(d) he or she has sufficient means or is likely to earn sufficient means to maintain himself or herself and his or her spouse and dependent children (if any), or he or she has such qualifications, education and training or experience as are likely to render him or her

efficient in the employment, business, profession or occupation he or she intends to pursue in Namibia; and

(e) he or she does not and is not likely to pursue any employment, business, profession or occupation in which a sufficient number of persons are already engaged in Namibia to meet the requirements of the inhabitants of Namibia; and

(f) the issue to him or her of a permanent residence permit would not be in conflict with the other provisions of this Act or any other law; or

(g) he or she is the spouse or dependent child, or a destitute, aged or infirm parent of a person permanently resident in Namibia who is able and undertakes in writing to maintain him or her.

(4) When the board has authorized the issue of a permanent residence permit, the Chief of Immigration shall issue such permit in the prescribed form to the applicant concerned.

(5) The validity of a permanent residence permit shall lapse if the person to whom such permit has been issued in terms of subsection (4) -

(a) fails to enter Namibia for the purpose of permanent residence therein within a period of six months from the date on which that permit was issued or within such longer period as the Chief of Immigration may from time to time determine and on such conditions as he or she may determine.

(b) not yet having acquired a domicile in Namibia in terms of this Act -

(i) has been absent from Namibia for a continuous period exceeding two years or exceeding such longer period as the Chief of Immigration may in writing in each case determine, but exclusive of any such period in respect of which such person is so absent mutatis mutandis in accordance with the provisions of section 23(2);

(ii) voluntarily departs from Namibia and resides in a country other than Namibia with the intention of permanently residing outside Namibia; or

(iii) becomes a prohibited immigrant in terms of this Act.

(6) The board may, on an application referred to in subsection (1) made by a person who has been permitted under this Act to be in Namibia or to whom an employment permit referred to in section 27 or a student's permit referred to in section 28 or a visitor's entry permit referred to in section 29 has been issued, authorize the issue to him or her of a permit in terms of this section mutatis mutandis as if he or she were outside Namibia, and upon the issue of that permit he or she may reside permanently in Namibia.

(7) (a) If the board rejects an application submitted to it in terms of subsection (2), the board shall not be obliged to reconsider such application, and the board shall not consider another such application by the same person before the expiration of a period of not less than six months from the date on which the said person was informed of the decision of the board: Provided that if the Chief of Immigration receives any new information or it is shown that the circumstances affecting the application in question have changed, he or she may at any time request the board to reconsider the first-mentioned application.

(b) After receipt of a request in terms of paragraph (a) the board shall reconsider the application in question as if it were submitted to the board under subsection (2).

27. Application for employment permits

(1) The board may, subject to the provisions of subsection (2), on application of any person made on a prescribed form, authorize the Chief of Immigration to issue to such person an employment permit -

(a) to enter Namibia or any particular part of Namibia and to reside therein;

(b) if he or she is already in Namibia to reside in Namibia or any particular part of Namibia,

for the purpose of entering or continuing in any employment or conducting any business or carrying on any profession or occupation in Namibia during such period and subject to such conditions as the board may impose and stated in the said permit.

(2) The board shall not authorize the issue of an employment permit unless the applicant satisfies the board that -

(a) he or she has such qualifications, education and training or experience as are likely to render him or her efficient in the employment, business, profession or occupation concerned; and

(b) the employment, business, profession or occupation concerned is not or is not likely to be any employment, business, profession or occupation in which a sufficient number of persons are already engaged in Namibia to meet the requirements of the inhabitants of Namibia; and

(c) the issue to him or her of an employment permit would not be in conflict with the other provisions of this Act or any other law.

(3) The board may, with due regard to the provisions of subsection (2), from time to time extend the period for which, or alter the conditions subject to which, such permit was issued under subsection (1), and a permit so altered shall be deemed to have been issued under that subsection.

(4) (a) If the board intends issuing an employment permit under subsection (1) to a person for that purpose or subject to conditions, he or she may, in order to ensure that the purpose of his or her residence and the conditions under which the permit was issued are observed or complied with, require that person, before issuing the permit to him or her, to deposit with the Chief of Immigration an amount fixed by the board, not exceeding an amount determined by the Minister by notice in the Gazette in general, or to lodge with the Chief of Immigration to his or her satisfaction, in the prescribed form, a guarantee for the amount concerned.

[There appears to be some grammatical confusion in paragraph (a) regarding the pronouns in the phrase "he or she may... require that person...". The words "he or she" appear to refer to the board given the sentence structure, but the appropriate pronoun in that case would be "it". It may be that the provision intended to state that the board may instruct the Chief of Immigration to require that the person seeking the employment permit must deposit a specified amount of money. However, it is not possible to be certain about what was intended.]

(b) An amount or guarantee deposited or lodged with the Chief of Immigration in terms of paragraph (a) shall, subject to paragraph (c), be refunded to the person concerned or cancelled on his or her departure from Namibia, as the case may be.

(c) If such person acted in conflict with the purpose for which, or failed to comply with a condition subject to which, the employment permit was issued to him or her under subsection (1), the Minister may order that the amount deposited with the Chief of Immigration be forfeited to the State or, if a guarantee was lodged with the Chief of Immigration that the amount payable in terms of the guarantee be recovered for the benefit of the State.

(5) When the board authorizes the issue of such an employment permit to any person under subsection (1), it may authorize in that permit the spouse and dependent child of that person, if the spouse or child accompanies or resides with him or her, to enter and reside in Namibia with that person.

(6) Any person to whom an employment permit was issued under subsection (1) or who was authorized in that permit under subsection (5) to reside with that person, and who remains in Namibia after the expiration of the period or extended period for which, or acts in conflict with the purpose for which, that permit was issued, or contravenes or fails to comply with any condition subject to which it was issued, shall be guilty of an offence and on conviction be liable to a fine not exceeding

R12 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment, and may be dealt with under Part VI as a prohibited immigrant.

28. Application for students' permits

(1) The Chief of Immigration may, on application of any person who has complied with all the relevant requirements of this Act, issue to him or her a student's permit -

(a) to enter Namibia or any particular part of Namibia and to reside therein;

(b) if he or she is already in Namibia to reside in Namibia or any particular part of Namibia,

for the purpose of attending or undergoing any training, instruction or education at any training or educational institution, approved by the Minister, during such period and subject to such conditions as the Chief of Immigration may impose and stated in the said permit.

(2) The Chief of Immigration may from time to time extend the period for which, or alter the conditions subject to which, such permit was issued under subsection (1), and a permit so altered shall be de med to have been issued under that subsection.

(3) (a) If the Chief of Immigration intends issuing a student's permit under subsection (1) to a person for that purpose or subject to conditions, he or she may, in order to ensure that the purpose of his or her residence and the conditions under which the permit was issued are observed or complied with, require that person, before issuing the permit to him or her, to deposit with the Chief of Immigration an amount fixed by him or her, not exceeding an amount determined by the Minister by notice in the Gazette in general, or to lodge with him or her to his or her satisfaction, in the prescribed form, a guarantee for the amount concerned.

[This sentence is confusing as written because some of the pronouns]

[("he or she", "him or her", "his or her") appear to refer to the Chief of Immigration, while others ("his or her" and "him or her") appear to refer to the person seeking the permit.]

(b) An amount or guarantee deposited or lodged with the Chief of Immigration in terms of paragraph (a) shall, subject to paragraph (c), be refunded to the person concerned or cancelled on his or her departure from Namibia, as the case may be.

(c) If such person acted in conflict with the purpose for which, or failed to comply with a condition subject to which, the student's permit was issued to him or her under subsection (1), the Minister may order that the amount deposited with the Chief of Immigration be forfeited to the State or, if a guarantee was lodged with the Chief of Immigration that the amount payable in terms of the guarantee be recovered for the benefit of the State.

(4) When the Chief of Immigration issues such a student's permit to any person under subsection (1), he or she may authorize in that permit the spouse and dependent child of that person, if the spouse or child accompanies or resides with him or her, to enter and reside in Namibia with that person.

(5) Any person to whom a student's permit was issued under subsection (1) or who was authorized in that permit under subsection (4) to reside with that person, and who remains in Namibia after the expiration of the period or extended period for which, or acts in conflict with the purpose for which, that permit was issued, or contravenes or fails to comply with any condition subject to which it was issued, shall be guilty of an offence and on conviction be liable to a fine not exceeding R12 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment, and may be dealt with under Part VI as a prohibited immigrant.

(6) The provisions of this section shall not be construed as authorizing any person to whom a student's permit has been issued (whether or not as a purpose for which or a condition subject to which such permit has been issued), to enter into or to be in any employment or to conduct any business or to carry on any profession or occupation in Namibia, unless such person is under any law required to enter into or to be in any employment in order to attend or undergo any such training, instruction or education and such permit or such purpose or condition relates to such employment.

29. Application for visitors' entry permits

(1) An immigration officer may, on the application of any person who has complied with all the relevant requirements of this Act, issue to such person a visitor's entry permit -

(a) to enter Namibia or any particular part of Namibia and to sojourn temporarily therein;

(b) if he or she is already in Namibia to sojourn temporarily in Namibia or any particular part of Namibia,

for such purposes and during such period, not exceeding 12 months, as may be determined by the immigration officer and subject to such conditions as the immigration officer may impose, and stated in the said permit.

(2) An immigration officer may, from time to time, extend the period for which a visitor's entry permit was issued under subsection (1), but not for more than 12 months at a time, or alter the purpose for which, or the condition subject to which, such permit was issued, and a permit so altered shall be deemed to have been issued under that subsection.

(3) (a) If an immigration officer intends issuing a visitor's entry permit under subsection (1) to a person for a specified purpose or subject to conditions, such immigration officer may in order to ensure that the purpose of such person's sojourn and the conditions under which the permit was issued are observed or complied with, require such person, before issuing the permit to him or her, to deposit with such immigration officer an amount fixed by him or her, not exceeding an amount determined by the Minister by notice in the Gazette in general, or to lodge with him or her to his or her satisfaction, in the prescribed form, a guarantee for the amount concerned.

[This sentence is confusing as written because some of the pronouns]

[("him or her" and "his or her") appear to refer to the Chief of Immigration, while others ("him or her") appear to refer to the person seeking the permit.]

(b) An amount or guarantee deposited or lodged with an immigration officer in terms of paragraph (a) shall, subject to paragraph (c), be refunded to the person concerned or cancelled on his or her departure from Namibia, as the case may be.

(c) If such person acted in conflict with the purpose for which, or failed to comply with a condition subject to which, such permit was issued to him or her under subsection (1), the Minister may order that the amount deposited with the immigration officer be forfeited to the State or, if a guarantee was lodged with the immigration officer, that the amount payable in terms of the guarantee be recovered for the benefit of the State.

(4) When an immigration officer issues such a visitor's entry permit to any person under subsection (1), such immigration officer may issue a similar permit to the spouse, dependent child or any other person who is in the employ of such person, if such spouse, child or employee accompanies or resides with such person.

(5) Any person to whom a visitor's entry permit was issued under subsection (1) and who remains in Namibia after the expiration of the period or extended period for which, or acts in conflict with the purpose for which, that permit was issued, or contravenes or fails to comply with any condition subject to which it was issued, shall be guilty of an offence and on conviction be liable to a fine not exceeding R12 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment, and may be dealt with under Part VI as a prohibited immigrant.

(6) The provisions of this section shall not be construed as authorizing any person to whom a visitor's entry permit has been issued (whether or not as a purpose for which or a condition subject to which such permit has been issued), to enter into or to be in any employment or to conduct any business or to carry on any profession or occupation or to receive any training, instruction or education in any training or educational institution, in Namibia.

30. Prohibitions in respect of certain persons to enter into, or to be in, employment or to conduct a business, profession or occupation, or to receive any training, instruction or education in any training or educational institution, or to harbour such persons, in Namibia

(1) If any person to whom has been issued any permit under this Act, as the case may be, is prohibited by reason of any purpose for which such permit was issued under this Act or any condition stated in such permit from -

(a) entering into or being in the employment of any other person;

(b) entering into or being in the employment of any other person, except a person specified in such permit;

(c) entering into or being in the employment of any other person in any capacity except a capacity specified in such permit or for a period longer than the period so specified;

(d) conducting a business or carrying on a profession or occupation;

(e) receiving any training, instruction or education at any institution;

(f) receiving any training, instruction or education at any institution, except an institution specified in such permit,

no person shall -

(i) in the case of a prohibition referred to in paragraph (a), employ or continue to employ such person;

(ii) in the case of a prohibition referred to in paragraph (b), employ or continue to employ such person, unless he or she is the person specified in the permit;

(iii) in the case of a prohibition referred to in paragraph (c), employ or continue to employ such person in any capacity except the capacity specified in the permit or for a period longer than the period so specified;

(iv) in the case of a prohibition referred to in paragraph (d), enter into an agreement with such person for the conduct of a business or the carrying on of a profession or occupation or conduct a business or carry on a profession or occupation in co-operation with such person;

(v) in the case of a prohibition referred to in paragraph (e), provide training, instruction or education to such person or permit him or her to receive training, instruction or education;

(vi) in the case of a prohibition referred to in paragraph (f), provide training, instruction or education to such person or permit him or her to receive training, instruction or education at an institution, unless it is at the institution specified in the permit.

(2) If any permit has been issued under this Act, as the case may be, to a person permitting him or her to reside or sojourn in any particular part of Namibia, no person shall -

(a) employ or continue to employ such person in any part of Namibia except that particular part;

(b) enter into an agreement with such person for the conduct of a business or the carrying on of a profession or occupation in any part of Namibia except that particular part;

(c) conduct any business or carry on any profession or occupation in co-operation with such person in any part of Namibia except that particular part;

(d) assist, enable or in any manner help such person to conduct a business or carry on a profession or occupation in any part of Namibia except that particular part;

(e) do anything for or on behalf of such person in connection with a business or carry on a profession or occupation in any part of Namibia except that particular part;

(f) harbour such person in any part of Namibia except that particular part;

(g) let or sell or in any manner make available to such person immovable property in any part of Namibia except that particular part; or

(h) provide training, instruction or education to such person or permitting him or her to receive training, instruction or education in any part of Namibia except that particular part.

(3) No person shall -

(a) employ or continue to employ any person who is in Namibia in contravention of the provisions of this Act or any condition imposed by or under this Act;

(b) provide training, instruction or education to such person or allow him or her to receive training, instruction or education;

(c) issue to such person a licence or other authorization to conduct any business or to carry on any profession or occupation;

(d) enter into an agreement with such person for the conduct of any business or the carrying on of any profession or occupation;

(e) conduct any business or carry on any profession or occupation in co-operation with such person;

(f) assist or in any manner enable such person to conduct any business or to carry on any profession or occupation;

(g) obtain a licence or other authority for or on behalf of such person to conduct any business or to carry on any profession or occupation;

(h) do anything for or on behalf of such person in connection with his or her business or profession or occupation;

(i) harbour any such person; or

(j) let or sell or in any manner make available any immovable property in Namibia to any such person.

(4) Any person who contravenes the provisions of subsection (1), (2) or (3) shall be guilty of an offence and on conviction be liable to a fine not exceeding R12 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

(5) If a person is charged with a contravention of subsection (1)(i) or (v), (2)(a) or (h) or (3)(a) or (b), such person may -

(a) in the case of a charge of a contravention of subsection (1)(i) or (v), be found guilty of a contravention of subsection (1)(iv), if such be the facts proved;

(b) in the case of a charge of a contravention of subsection (2)(a) or (h), be found guilty of a contravention of subsection (2)(b), (c), (d), (e), (f) or (g), if such be the facts proved;

(c) in the case of a charge of a contravention of subsection (3)(a) or (b), be found guilty of a contravention of subsection (3)(c), (d), (e), (f) or (h), if such be the facts proved.

(6) (a) A person referred to in paragraph (a) of subsection (3) may not obtain a licence or other authority to conduct a business or carry on a profession or occupation.

(b) A licence or other authority obtained in contravention of the provisions of paragraph (a) shall be null and void.

31. Returns by employers and educational institutions regarding employees and students

(1) At the request of the Chief of Immigration or an immigration officer, an employer shall as soon as is possible, but not later than 21 days after the date of such request, furnish a return regarding all persons in his or her employ who are not Namibian citizens and who were in his or her employ on the date of the request, to the Chief of Immigration or that immigration officer on the prescribed form made available to the employer for such purpose.

(2) Any person who fails to comply with a request under subsection (1), or who furnishes a return of which any essential particular is false, shall be guilty of an offence and on conviction be liable to a fine not exceeding R8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(3) The provisions of subsections (1) and (2) shall mutatis mutandis apply in respect of any person who provides training, instruction or education as if he or she were an employer and the persons to whom he or she provides training, instruction or education were his or her employees.

32. Certain hotel-keepers and other persons to keep register of lodgers

(1) The occupier 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 class prescribed by regulation, keep in accordance with those regulations a register of all persons who are provided with lodging or sleeping accommodation thereon and every such person shall sign the register and furnish such particulars regarding himself or herself as may be required for the proper completion of the register: Provided that the provisions of this subsection shall not apply to a person who is -

(a) duly accredited to Namibia by or under the authority of the government of any sovereign state or any person who under any law is entitled to any diplomatic immunities and privileges by of such person's association with an organization of which the Government of Namibia is a member and any member of the official staff or of the household of any such person;

(b) under the age of 16 years.

(2) Every occupier 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 who -

(a) contravenes or fails to comply with a requirement under subsection (1) or (2);

(b) gives false or incorrect particulars for the purposes of subsection (1); or

(c) hinders or obstructs any officer referred to in subsection (2) in the performance of his or her functions under that subsection,

shall be guilty of an offence and on conviction be liable to a fine not exceeding R4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

33. Exceptions

The provisions of section 24 shall not apply -

(a) to any person who prior to the commencement of this Act lawfully entered Namibia for the purpose of permanent residence therein;

(b) to any person exempted in terms of section 35 from any of the provisions of the said section 24.

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34. Duties of certain persons not in possession of permit

(1) Any person who at any time entered Namibia and, irrespective of the circumstances of his or her entry, is not or is not deemed to be in possession of a permanent residence permit issued to him or her under section 26 or an employment permit issued to him or her under section 27 or a student's permit issued to him or her under section 28 or a visitor's entry permit issued to him or her under section 29, or has not under section 35 been exempted from the provisions of section 24, as the case may be, shall present himself or herself to an immigration officer or to an officer of the Ministry.

(2) Any person who has under section 35 been exempted from the provisions of section 24(b) for a specified period, shall before the date on which such period expires present himself or herself to an immigration officer or to an officer of the Ministry.

(3) Any person referred to in subsection (1) who fails to comply with the provisions of that subsection or any person referred to in subsection (2) who fails to comply with the provisions of the last-mentioned subsection or any person, so referred to, who fails, on being called upon to do so by an immigration officer, then and there to furnish to such immigration officer the particulars determined by the Chief of Immigration to enable the board, the Chief of Immigration or such immigration officer, as the case may be, to consider the issuing to the said person of a permit concerned, shall be guilty of an offence and on conviction be liable to a fine not exceeding R4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment, and may be dealt with under Part VI as a prohibited immigrant.

35. Exemptions

(1) Notwithstanding the provisions of this Act, the Minister may exempt any person or category of persons from all or any of the provisions of this Part, and for a specified or unspecified period and either unconditionally or subject to such conditions as the Minister may impose, and may do so also with retrospective effect, whereupon the Chief of Immigration shall be notified to that effect.

(2) The Minister may exclude from any exemption granted to a category of persons under subsection (1) any person belonging to that category.

(3) The Minister may withdraw any exemption granted under subsection (1) to any category of persons or to any person, and, in the case of a person, whether he or she was exempted as an individual or as a member of a category of persons, the Minister may direct, by notice in writing addressed to such person, that such person may be dealt with under Part VI as a prohibited immigrant, should he or she fail to leave Namibia before a date specified by the Minister in that notice.

(4) The Minister may issue or cause to be issued to any person whose exemption is withdrawn under subsection (3), an employment permit referred to in section 27 or a student's permit referred to in section 28 or a visitor's entry permit referred to in section 29, as the case may be, to reside or sojourn in Namibia or any particular part of Namibia.

36. Invalidity and cancellation of permits

(1) If any person is in possession of a document purporting to have been issued to him or her in terms of section 24 but which is not a permit in terms of the said section, such person may be dealt with under Part VI as a prohibited immigrant.

(2) If a permit has been issued in terms of section 26 on an application which contains any incorrect information, or if the person in possession of such a permit or his or her agent has furnished any incorrect information in connection with that application or any application for the extension of the period of validity of such permit, or if the said person within a period of two years as from the date of issue of that permit without the consent of the Minister engages in Namibia in any employment, business, profession or occupation other than that stated in the said permit, the Minister may direct that by notice in writing addressed to that person, such permit be cancelled, and such person may be dealt with under Part VI as a prohibited immigrant should he or she fail

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to leave Namibia before a date specified by the Minister in that notice, and upon expiration of the period stated in that notice that permit shall become null and void.

(3) The Minister may at any time direct by notice in writing addressed to any person in possession of an employment permit issued in terms of section 27 or a student's permit issued in terms of section 28 or a visitor's entry permit issued in terms of section 29, as the case may be, that the permit be cancelled, and such person may be dealt with under Part VI as a prohibited immigrant should he or she fail to leave Namibia before a date specified by the Minister in that notice, and upon expiration of the period stated in that notice that permit shall become null and void.

37. Holder of permit or other document not entitled by virtue of that permit or document only to enter or reside in Namibia

No person in possession of a permit issued under this Part or any other document (other than a valid certificate of identity issued under section 38) issued at any time under any law permitting such person to enter into or reside in Namibia, shall only by virtue of such permit or document be entitled to enter or reside in Namibia or be exempted from any other provision of this Act.

38. Certificates of identity for persons lawfully resident in Namibia

The Minister may authorize the issue of a certificate of identity to any person who is lawfully resident in Namibia and who desires to leave Namibia temporarily but is for any reason in doubt whether he or she will be able to lawfully enter Namibia on his or her return.

Part VI – PROHIBITED IMMIGRANTS

ARREST DETENTION AND REMOVAL OF PROHIBITED IMMIGRANTS

Prohibited immigrants

39. Prohibited immigrants

(1) Any of the persons referred to in subsection (2) who enters or has entered Namibia or is in Namibia, shall be a prohibited immigrant in respect of Namibia.

(2) A person referred to in subsection (1) shall be a prohibited immigrant in respect of Namibia, if -

(a) such person has been removed from Namibia under a warrant issued under section 44, 49 or 50 of this Act or any other law, or who fails to leave Namibia after having in terms of section 48 of this Act been ordered to leave Namibia, unless such person is in possession of a valid authority in terms of this Act to return to and to be or to remain in Namibia;

(b) such person or category of persons is deemed by the Minister on economic grounds or on account of standard or habits of life to be unsuited to the requirements of Namibia;

(c) such person is likely to become a public charge by reason of infirmity of mind or body, or because such person is not in possession of sufficient means to support himself or herself and such of his or her dependants as such person may bring or has brought with him or her into Namibia;

(d) such person is a mentally ill or physically afflicted person, unless in any such case the person concerned or the person accompanying him or her or any other person gives security to the satisfaction of the Minister for the permanent support in Namibia of such mentally ill or afflicted person or for such person's removal from Namibia when so authorized by a tribunal under this Part;

(e) such person is infected or afflicted with a contagious disease or is a carrier of such a virus or disease, as may be prescribed;

(f) such person (not having received a free pardon) has been convicted (whether before or after the commencement of this Act) -

(i) in Namibia, of any offence specified in Schedule I; or

(ii) in any other country, of any offence which is substantially similar to any offence specified in that Schedule and, by reason of the circumstances of such offence, is regarded by the Minister to be an undesirable inhabitant of, or visitor to, Namibia;

(g) such person, from information received from any government through official or diplomatic channels, is regarded by the Minister to be an undesirable inhabitant of, or visitor to, Namibia;

(h) such person, in terms of any other provision of this Act, may be dealt with as a prohibited immigrant or is not in terms of any such provision otherwise entitled to be or to remain in Namibia.

40. Exemptions

(1) Notwithstanding anything to the contrary in this Part contained, the Minister may -

(a) in writing exempt any person;

(b) by notice in the Gazette exempt any category of persons,

from the provisions of section 39 for a specified or unspecified period and either unconditionally or subject to such conditions as the Minister may impose.

(2) The Minister may exclude from any exemption granted to a category of persons under subsection (1)(b), any person belonging to that category.

(3) An exemption granted -

(a) under subsection (1)(a) may be withdrawn by the Minister by notice to the person concerned;

(b) under subsection (1)(b) may be withdrawn by the Minister, in a like manner.

(4) Any exemption granted under subsection (1)(a) shall lapse when the person exempted departs from Namibia.

(5) The Minister may authorize persons outside Namibia to issue to any intending immigrant a certificate that he or she is exempted from the provisions of section 39, but no such certificate shall be recognized in Namibia unless the holder thereof furnishes to the satisfaction of the immigration officer concerned proof that he or she is the person to whom the certificate relates.

41. Prohibited immigrants not exempted from provisions of Act if permitted to enter Namibia erroneously

No prohibited immigrant shall be exempted from the provisions of this Act or be permitted to remain in Namibia on the grounds only that such person had not been informed that he or she could not enter or remain in Namibia or that he or she had been permitted to enter or remain in Namibia through oversight, misrepresentation or owing to the fact having been undiscovered as such a prohibited immigrant.

Arrest, detention and removal of prohibited immigrants

42. Arrest and detention of prohibited immigrants found in Namibia

(1) (a) When a person who enters or has entered or is found within Namibia, on reasonable grounds is suspected of being a prohibited immigrant in terms of any provision of this Act, an immigration officer may -

(i) if such person is not in custody, arrest such person or cause him or her to be arrested without a warrant; and

(ii) pending the investigations to be made in terms of subsection (4) by such immigration officer, detain such person or cause him or her to be detained in the manner and at the place determined by the Minister, for such period, not exceeding 14 days, or for such longer period as the Minister may deter mine, not exceeding 14 days at a time.

(b) When any police officer or person or member of a category of persons authorized thereto in writing by the Minister on reasonable grounds suspects that a person is a prohibited immigrant and is not entitled to be in Namibia, such officer, person or member may require such person to produce to him or her proof that he or she is so entitled to be in Namibia and if such person fails to satisfy such officer, person or member that he or she is so entitled such officer, person or member may take him or her into custody without a warrant, and shall as soon as is practicable bring him or her before an immigration officer to be dealt with in terms of paragraph (a).

(2) When a person is detained in custody in terms of the provisions of this Act, the immigration officer shall -

(a) comply with the provisions of Article 11(5) of the Namibian Constitution; and

(b) without delay give notice in writing, of the grounds for such detention and place where such person is to be so detained to such person and his or her legal representative (if any), and if such person has been detained in custody after having arrived by sea, also to the master of the ship on which such person has arrived, unless such ship has departed from the port concerned and is not to call at any other port in Namibia.

(3) (a) An immigration officer may require from any person referred to in subsection (1), to deposit with such immigration officer, in lieu of being detained as contemplated in that subsection, an amount to be fixed by the immigration officer, not exceeding an amount determined by the Minister by notice in the Gazette in general, or to lodge with the immigration officer, to his or her satisfaction, a guarantee in the prescribed form for the amount concerned, as a surety that such person, if not so detained, shall comply with such conditions as the immigration officer may impose in writing.

(b) Any person who has deposited an amount referred to in paragraph (a) or has lodged a guarantee, so referred to therein, with an immigration officer, may remain in Namibia for such period as may be required for the purposes of any investigation referred to in subsection (1).

(c) An amount or guarantee deposited or lodged with an immigration officer in terms of paragraph (a), shall, subject to the provisions of paragraph (d), be refunded or cancelled if the authorization referred to in subsection (4) is not granted or in any case, on such person's departure from Namibia.

(d) If a person has contravened or failed to comply with any condition referred to in paragraph (a), the Minister may order that the amount deposited with the immigration officer be forfeited to the State, or if a guarantee was lodged with the immigration officer, that the amount of the guarantee be recovered for the benefit of the State.

(e) When the Minister makes an order referred to in paragraph (d) of this subsection, he or she may also order that the person referred to in that paragraph be arrested and detained mutatis

mutandis in accordance with the provisions of subsection (1) of this section, pending any investigations to be made as contemplated in the last-mentioned subsection.

(4) An immigration officer shall -

(a) in the case of a person referred to in subsection (1), before the expiration of the period or longer period referred to in that subsection; or

(b) in the case of a person referred to in subsection (3),

after having made such investigations as the immigration officer may have deemed necessary, decide whether the person, so referred to therein, is or is not a prohibited immigrant, and if the immigration officer decides that such person is a prohibited immigrant, he or she -

(i) shall notify such person in writing of that fact and in such notice inform him or her that application will be made to the tribunal concerned under section 44 for authorization for his or her removal from Namibia should he or she fail to leave Namibia before a date specified by the immigration officer in the notice which date shall not be a date less than 48 hours from the time such person is served with such notice; and

(ii) may, if such person fails to leave Namibia before the date specified in the said notice and such person is not in custody arrest him or her or cause him or her to be arrested without a warrant, and may pending the hearing and determination of an application to the tribunal under section 44 for authorization for his or her removal from Namibia, detain such person or cause him or her to be detained in a manner and at a place determined by the Minister.

(5) If the immigration officer or, in the case of an application to the tribunal under section 44, the tribunal, decides that the person referred to in subsection (1) is not a prohibited immigrant, the residence of such person in Namibia during the period for which he or she was suspected of being a prohibited immigrant shall, for the purpose of determining whether or not such person has acquired a domicile in Namibia, not be regarded as temporary or conditional residence in Namibia merely because such person was suspected of being a prohibited immigrant.

43. Establishment of immigration tribunals to authorize removal of prohibited immigrants from Namibia

(1) For the purposes of the provisions of Article 11(4) of the Namibian Constitution, the Minister shall establish so many tribunals to be known as immigration tribunals as the Minister may deem desirable for the hearing and determination of applications for authorization for the removal of persons from Namibia in terms of this Act or any other law.

(2) (a) A tribunal shall consist of three or more members as may be appointed by the Minister and a member of a tribunal shall hold office for such period, not exceeding three years, as may be determined on his or her appointment as such a member.

(b) A member of a tribunal shall be eligible for reappointment.

(3) A member of a tribunal who is not an officer in the public service shall be paid such remuneration and allowances at such rates as the Minister, in consultation with the Minister of Finance, may determine from time to time.

(4) The Minister shall designate any member of a tribunal as chairperson of that tribunal.

(5) A member of a tribunal shall be notified in writing of his or her appointment or designation or any determination in respect of him or her in terms of subsection (2), (3) or (4), as the case may be.

(6) (a) The decision of a majority of the members of a tribunal shall be a decision of a tribunal, and in the event of an equality of votes, the chairperson shall have a casting vote in addition to his or her deliberative vote.

(b) Except as is otherwise provided in section 47, no appeal shall lie against the decision of a tribunal.

(7) The administrative work in connection with the functions of a tribunal shall be performed by officers in the Ministry designated by the Permanent Secretary.

(8) Subject to the provisions of sections 46 and 47, a tribunal shall have exclusive jurisdiction at the port or ports of entry and within the area assigned to it by the Minister, to hear and determine an application referred to in section 44(1).

44. Application for authorization for removal of prohibited immigrants from Namibia

(1) When any prohibited immigrant who enters or has entered or is found within Namibia is to be removed from Namibia, application for authorization for such removal shall be made to a tribunal having jurisdiction under section 43.

(2) An application referred to in subsection (1) shall be in writing and may be made by any immigration officer or any other officer authorized by the Minister for that purpose, who shall, in such application set forth the reasons why authorization for the removal of the person concerned is sought.

(3) An application under this section shall be heard on the date and at the place and time determined by the chairperson of the tribunal concerned who shall notify the immigration officer who made the application, in writing thereof.

(4) The immigration officer referred to in subsection (3), shall, at least three days before the application is to be heard by the tribunal concerned, give written notice of the application, date, place and time of the hearing to the person concerned, personally, or in such other manner as may be prescribed.

(5) Any person against whom an application is made under this section may be represented at the hearing of the application by counsel or an attorney.

(6) The procedure at the hearing of an application under this section shall be as determined by the chairperson of the tribunal.

(7) If a person appointed under section 43(2) -

(a) dies during the hearing of an application under this section or so soon before the commencement of the hearing that the vacancy cannot be filled in time;

(b) is unable to act and another person cannot be appointed in his or her stead in time; or

(c) is, after the hearing of the application has commenced, unable to continue therewith,

the parties to the application may agree that the hearing be continued by the remaining members, in which event, where the member who has died or has become incapacitated was or is the chairperson of the tribunal, the Minister shall designate one of the remaining members to act as chairperson.

(8) (a) If the parties do not agree in terms of subsection (7), the hearing shall be adjourned in order that the Minister may appoint a person as a member, in the case of a member who has died, in accordance with the requirements of section 43(2), in the place of the member who has so died or, in the case of a member who has become incapacitated, in the place of the member who has so become incapacitated, for the duration of that hearing.

(b) Where an appointment has been made under paragraph (a), the hearing shall, if the parties so agree, be continued from the stage at which the hearing was interrupted by the death or incapacity of a member, or shall, if the parties do not so agree, be commenced de novo.

(9) A tribunal may, after the hearing of an application referred to in this section, if -

(a) the person to whom the application relates is a prohibited immigrant; and

(b) by reason of the circumstances pertaining to such person, reasonable grounds exist to cause him or her to be removed from Namibia,

by warrant issued under the hand of the chairperson of the tribunal, authorize the removal of such person from Namibia.

(10) Except as is otherwise provided in this Part, no power conferred or duty imposed on any person to remove any person from Namibia under this Act or any other law, shall be exercised or performed, unless a tribunal has authorized such removal under this section.

45. Witnesses and evidence

(1) A tribunal may, in the prescribed manner, summon witnesses to give evidence or produce documents and may, through the chairperson or any other person for the time being lawfully acting as such, administer an oath or affirmation to any witness.

(2) Evidence adduced before a tribunal shall be recorded in writing.

(3) Any person who, when summoned to give evidence or produce any document, fails, without reasonable excuse, to comply with the terms of the summons or who, whether summoned or not, refuses, while under examination, to answer to the best of his or her knowledge or belief, all questions put to him or her by or with the concurrence of the tribunal or who wilfully interrupts the proceedings thereof, shall be guilty of an offence and on conviction be liable to a fine not exceeding R2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment: Provided that any witness shall have the same privileges in respect of answering any question or producing any document as he or she would have if he or she were to answer such question before, or to produce such document to, the High Court.

(4) If any person to whom an oath or affirmation has been administered under subsection (1), knowingly gives false evidence material to the question which is being considered by the tribunal, he or she shall be guilty of an offence and on conviction be liable to the penalties prescribed by law for perjury.

46. Variation or modification by Minister of decision causing removal of prohibited immigrant

(1) The Minister may -

(a) vary or modify any decision which would have the effect of causing the removal from Namibia of the person to whom the application referred to in section 44 relates;

(b) withdraw any warrant issued under section 44(9), or suspend the execution thereof for such period and on such conditions as the Minister may determine; or

(c) if the Minister is of the opinion that a condition of suspension determined under paragraph (b) has been contravened or not been complied with, withdraw such suspension.

(2) Any decision of the Minister under subsection (1) of this section, shall, for all purposes -

(a) in the case of paragraph (a) of that subsection, be deemed to be a decision of the tribunal concerned not authorizing the removal from Namibia of the person concerned under section 44 to the extent of the variation or modification referred to therein;

(b) in the case of paragraph (b) of that subsection, in so far as it relates -

(i) to a withdrawal of the warrant referred to therein, be deemed to be a decision of the tribunal concerned not authorizing the removal from Namibia of the person concerned under section 44; or

(ii) to a suspension of such warrant for a period referred to therein, be deemed to be a decision of the tribunal concerned authorizing the removal from Namibia of the person concerned under section 44 at the expiration of that period; or

(c) in the case of paragraph (c) of that subsection, be deemed to be a decision of the tribunal concerned authorizing the removal from Namibia of the person concerned under section 44.

47. Reservation of question of law for decision of High Court

(1) A tribunal may of its own motion, and shall at the request of the person affected by an application made under section 44 or of an immigration officer, reserve for the decision of the High Court any question of law which arises upon an application heard before that tribunal.

(2) The tribunal referred to in subsection (1) shall state such question of law in the form of a special case for the decision of the High Court by transmitting such special case to the registrar of that court.

(3) If such special case is stated at the request of the person affected by the application made under section 44, such person shall lodge with the registrar security to such an amount as the registrar may determine, in respect of any such costs as the High Court may order such person to pay.

(4) (a) A question of law reserved under subsection (1) may be argued before the High Court and the High Court may call for such further information, to be supplied by the tribunal or person concerned, as the High Court may deem necessary.

(b) The High Court may give such decision in respect of the special case, as supplemented by such further information (if any), and may make such order as to the costs of the proceedings as it may deem fit.

(c) Any decision of the High Court under paragraph (b) setting aside the decision of a tribunal shall, for all purposes, where the tribunal had, by the decision so set aside, refused the granting of an application for authorization for the removal of a person from Namibia under section 44, be deemed to be a decision of the tribunal concerned authorizing the removal of that person from Namibia under that section.

(5) The person affected by the application made under section 44 or the Chief of Immigration shall have a right of appeal to the Supreme Court against a decision referred to in subsection (4)(b) as if it were a civil action heard by the High Court.

(6) In the case of an appeal to the Supreme Court by the person affected by the application referred to in subsection (5), such person shall lodge with the registrar security to such further amount as may be determined by that registrar in respect of such costs as the Supreme Court may order such person to pay.

(7) For the purposes of this section “question of law” includes a question of citizenship or domicile, as the case may be.

48. Steps where removal is authorized

(1) If a tribunal authorizes or is deemed to have authorized the removal of a person from Namibia under section 44, any immigration officer shall, subject to the provisions of subsection (2), notify such person in writing of that fact and order such person to leave Namibia within a period specified in such notice.

(2) The period referred to in subsection (1) shall not be less than 48 hours and shall commence at the time such person is served with the notice referred to in that subsection.

(3) A notice referred to in subsection (1) may specify in relation to the person on whom it is served, the route by, and the place at, which such person shall leave Namibia.

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49. Removal of persons for reasons of state security

(1) Notwithstanding anything to the contrary in this Act or any other law contained, the Minister may, on the recommendation of the Security Commission established under Article 114 of the Namibian Constitution, forthwith remove or cause to be removed from Namibia by warrant issued under his or her hand any person who enters or has entered or is found in Namibia and whose activities endanger or are calculated to endanger the security of the State, whether or not such person is a prohibited immigrant in respect of Namibia.

(2) An immigration officer may -

(a) if a person referred to in subsection (1) is not in custody, arrest such person or cause him or her to be arrested without a warrant; and

(b) pending his or her removal from Namibia under that subsection, detain such person in the manner and at the place determined by the Minister.

(3) No appeal shall lie against any decision of the Minister under subsection (1).

50. Persons previously dealt with under Act

(1) Notwithstanding anything to the contrary in this Act contained, no person removed from or ordered to leave Namibia under a provision of this Act shall, after such removal or departure, be entitled to enter or to be in Namibia for the purposes of permanent residence therein on the ground that such person at the time of his or her removal or departure -

(a) was the holder of a permanent residence permit issued under section 24(a); or

(b) was exempted under section 35, whether as an individual or as a member of a category of persons, from the provisions of the said section 24(a).

(2) If any person after having been removed from, or ordered to leave, Namibia is found within Namibia, he or she shall, unless he or she is in possession of an authority to return to, or to remain in, Namibia, be guilty of an offence and -

(a) on conviction be liable to a fine not exceeding R20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment;

(b) may be removed at any time from Namibia under a warrant issued by an immigration officer; and

(c) if he or she is not in custody, may be arrested or cause to be arrested without a warrant and, pending his or her removal, be detained in the manner and at the place determined by the Minister.

51. Arrest, detention and removal whether or not person is convicted of offence

Notwithstanding anything to the contrary in this Act or any other law contained, an immigration officer may, in the exercise or performance of any power or duty to arrest, detain or remove from Namibia a person under this Part, so arrest, detain or remove such person, whether or not such person has been convicted of any offence under this Act.

52. Power to remove persons before expiration of sentence of imprisonment, termination of sentence on removal and removal or release from prison or other place

(1) If a person has been sentenced to imprisonment under any provision of this Act or any other law and a tribunal has authorized the removal of such person from Namibia under section 44, or he or she is a person referred to in section 49 or 50(2), as the case may be, such person may be removed from Namibia before the expiration of his or her sentence of imprisonment.

(2) Any sentence of imprisonment imposed under the provisions of this Act or any other law, shall terminate as soon as the person concerned is under this Part removed from Namibia.

(3) An officer in charge of a prison or other place of detention determined by the Minister under this Act shall, if a warrant authorizing the removal or release of a person is produced to him or her by an immigration officer or police officer, deliver such person to that immigration officer or police officer and, if such person is not released, he or she shall be deemed to be in lawful custody while he or she is in the custody of an immigration officer or police officer for the time being in possession of that warrant.

Part VII – MISCELLANEOUS POWERS OF IMMIGRATION OFFICERS

53. Miscellaneous powers of immigration officers

(1) The provisions of this section, in so far as they provide for a limitation on the fundamental rights contemplated in subarticle (1) of Article 13 of the Namibian Constitution by authorizing interference with the privacy of a person's home, correspondence or communications are enacted on the authority conferred by that subarticle.

(2) For the purpose of exercising his or her powers and performing his or her duties under this Act, an immigration officer may at all reasonable times -

(a) enter upon any premises;

(b) stop by means of an appropriate indication or direction or in any other reasonable manner, and enter upon, any conveyance;

(c) question any person who is present on any such premises or conveyance, as the case may be, in connection with any matter to which this Act relates;

(d) search for any book, record, statement, register or other document on such premises or conveyance which in any way relates to the presence of any person on such premises or such conveyance, as the case may be;

(e) seize and examine any such book, record, statement, register or other document, and make copies thereof or extracts therefrom;

(f) call upon any person to furnish such officer with any information at his or her disposal with regard to the occupation or ownership of or residence on such premises or the ownership or control of such conveyance, as the case may be, or the presence of any person on such premises or conveyance;

(g) require any person who is or is suspected on reasonable grounds to be a prohibited immigrant to have his or her finger-prints, palm-prints or photograph to be taken in such officer's presence: Provided that all records of such finger-prints, palm-prints or photograph shall be destroyed or handed over to such person if the immigration officer is satisfied that such person has ceased to be or is not a prohibited immigrant;

(h) order any person who is suspected on reasonable grounds to be a prohibited immigrant or is not entitled to be in Namibia by notice in writing addressed and delivered to such person to appear before him or her at such time and place as may be specified in such notice in connection with any matter to which this Act relates; and

(i) require a police officer, or request any other person, to assist him or her as an interpreter or otherwise in exercising or performing his or her powers, duties and functions under this Act.

(3) An immigration officer may seize any passport or other document, if -

(a) he or she has reasonable grounds to believe that such passport or document has been obtained by any fraudulent act or false representation;

(b) the passport or document has been defaced or mutilated to such an extent that the passport or document or any part thereof is illegible;

(c) any amendment or endorsement has been made to, or inserted in, the passport or document by any person other than an official duly authorized to do so,

and may transmit the passport or document concerned to the authority which issued that passport or document or on behalf of which it was so issued.

(4) A search of a home in terms of a power conferred by subsection (1), shall not be carried out without a search warrant, unless -

(a) the owner or occupier of the dwelling, as the case may be, has consented to the search; or

(b) the immigration officer or police officer on reasonable grounds believes -

(i) that a search warrant will be granted if applied for; and

(ii) that the delay in obtaining such warrant would defeat the objects of the search.

(5) The provisions of sections 21 and 29 of the Criminal Procedure Act, 1977 (Act 51 of 1977), shall mutatis mutandis apply with reference to the obtaining and execution of a search warrant referred to in subsection (4), and, in the application of those provisions, a reference to a police official shall be construed as including a reference to an immigration officer.

(6) When an immigration officer exercises or performs a power or duty under this Act in the presence of any person affected thereby, the immigration officer shall on demand by any such person produce to him or her the certificate issued to such immigration officer in terms of section 3(4).

(7) A police officer required or any other person requested by an immigration officer to assist him or her as provided in paragraph (i) of subsection (1) may accompany such immigration officer in the performance of his or her duties or functions under this Act as if such police officer or person were an immigration officer.

[The reference to "paragraph (i) of subsection (1)" must be in error as there is no such provision in this section. It was probably intended to refer to "paragraph (i) of subsection (2)", which would make sense given the context.]

(8) Any owner or person in charge of any premises or conveyance on which persons are present, shall at all times make available such facilities as are reasonably required by an immigration officer in order to enable him or her to exercise or perform effectively the powers, duties and functions to be exercised or performed by him or her under this Act on or in any such premises or conveyance.

54. Offences in relation to immigration officers

Any person who -

(a) obstructs, hinders, opposes, resists or interferes with an immigration officer in the exercise of his or her powers or the performance of his or her duties or functions under this Act;

(b) without just cause refuses or fails to comply to the best of his or her ability with any requirement or order made by an immigration officer in the exercise of his or her powers or the performance of his or her duties or functions under this Act;

(c) refuses or fails to answer to the best of his or her ability any question which an immigration officer in the exercise of his or her powers or the performance of his or her duties or functions under this Act has put to him or her;

(d) compels or induces an immigration officer to perform or neglect an act in connection with the performance of his or her duties and functions or to exercise his or her powers under this Act, or because an immigration officer has performed or neglected such act, threatens or suggests violence or force against that immigration officer or any of his or her next of kin or dependents, or threatens

to damage or suggests damage to the property of the said officer or any of his or her next of kin or dependents;

(e) furnishes to an immigration officer information which is false or misleading;

(f) without lawful authority, holds himself or herself out as an immigration officer,

shall be guilty of an offence and on conviction be liable to a fine not exceeding R8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Part VIII – MISCELLANEOUS PROVISIONS

55. Persons in custody in transit through Namibia

Any person who is removed from any country, other than Namibia, under a warrant or order issued or made in such country, and who, in the course of such removal, enters or passes through Namibia shall, on entry into Namibia and throughout the period of his or her passage through Namibia be deemed to be, by reason of such warrant or order, in lawful custody and, if such person escapes, he or she may be apprehended without a warrant by any immigration officer or police officer and returned forthwith to the custody from which he or she escaped.

56. General offences and penalties

Any person who -

(a) aids or abets any person in entering or remaining in Namibia in contravention of this Act, knowing that such person is prohibited from entering or remaining in Namibia;

(b) conveys or causes to be conveyed into Namibia any person who is not in possession of a valid passport and who is not a Namibian citizen or a person domiciled in Namibia;

(c) aids or abets a person to be removed from Namibia in evading the removal, or harbours any such person knowing him or her to be subject to any such removal;

(d) for the purpose of entering or remaining in Namibia, or of facilitating or assisting the entrance into, or residence in, Namibia of himself or herself or any other person, in contravention of the provisions of this Act, commits any fraudulent act or makes any false representation by conduct, statement or otherwise;

(e) for the purpose of entering Namibia, or of remaining therein in contravention of the provisions of this Act or any other law, or of assisting any other person so to enter or so to remain, fabricates, forges or falsifies any permit, certificate or other document, or utters, uses, or attempts to use any permit, certificate, or other document which has not been issued by lawful authority, or which though issued by lawful authority, such person is not entitled to use, or uses any fabricated, forged or falsified permit, certificate or other document, knowing it to have been fabricated, forged or falsified;

(f) without sufficient cause, has in his or her possession -

(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

(ii) any form officially printed for purposes of issuing any permit, certificate or other document under this Act, or any reproduction or imitation of any such form;

(g) contravenes or fails to comply with any provision of this Act, if such contravention or failure is not elsewhere in this Act declared an offence,

shall be guilty of an offence and on conviction be liable -

(aa) in the case of any offence referred to in paragraph (a), (b), (c), (d) or (e), to a fine not exceeding R20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment; or

(bb) in the case of any other offence, to a fine not exceeding R8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

57. Evidence

(1) Any -

(a) order, notice, permit, certificate or other document; or

(b) warrant,

which may under this Act be issued shall, unless otherwise required in this Act, be good and effectual if signed -

(i) in the case of paragraph (a), by the Chief of Immigration or any immigration officer, as the case may be; and

(ii) in the case of paragraph (b), by the Minister, chairperson of a tribunal concerned or an immigration officer, as the case may be,

and, when so signed, shall be evidence in all courts of law and for other purposes that it was issued in accordance with the provisions of this Act.

(2) A certificate or written authority under the hand of a chairperson of a tribunal, the Chief of Immigration or an immigration officer, as the case may be, shall in any proceedings under this Act be prima facie proof of the facts stated therein, and it shall not be necessary to tender oral evidence in respect of such facts, unless the court before which such proceedings are held, so directs.

58. Regulations

(1) The Minister may make regulations, not inconsistent with the provisions of this Act, relating to -

(a) the powers and duties of the Chief of Immigration and immigration officers;

(b) the steps to be taken to prevent the entry of prohibited immigrants into Namibia and to facilitate the tracing and identification of prohibited immigrants in, and their removal from, Namibia;

(c) the procedures regulating the entry of persons into Namibia at a port of entry;

(d) the manner in which and the conditions on which any money or guarantee furnished as security under this Act shall be kept in safekeeping, refunded or forfeited;

(e) the times, places and conduct of medical examinations of persons entering or desiring to enter Namibia or who being found in Namibia are suspected of being prohibited immigrants;

(f) the infectious, communicable or other diseases (other than tuberculosis) or the viruses, the affliction with, or the carrying of which, will render a person to be a prohibited immigrant, and the conditions governing the issue to any person infected with tuberculosis of a permit to enter Namibia;

(g) the forms of warrants, permits, certificates, notices or other documents which may be issued or used under this Act or of the declarations to be made, or of registers to be kept, or of returns to be furnished for the purposes of this Act, and the particulars to be inserted or set forth in any such document, declaration, register or return;

(h) the conditions subject to which any permits, certificates, notices or other documents may be issued or re-issued under this Act, or on destruction or loss thereof, the circumstances under

which such permits, certificates, notices or other documents may be cancelled or withdrawn and the fees which may be charged in respect of such permits or certificates;

(i) the conditions upon which a prohibited immigrant may be permitted to pass through Namibia while journeying or being conveyed to a destination outside Namibia;

(j) the particulars to be furnished by persons entering Namibia;

(k) the class of premises contemplated in section 32;

(l) the fees that may be charged in respect of any person for overtime services required to be performed by immigration officers;

(m) the fees that may be charged in respect of the issuing of visas;

and generally all other matters which are by this Act required or permitted to be prescribed or which are necessary or expedient to be prescribed for the better carrying out of the objects and purposes of this Act.

(2) Different regulations may be made under paragraph (c) of subsection (1) in respect of different ports of entry, and the forms of warrants, permits, certificates, documents, declarations, registers or returns prescribed under paragraph (g) of that subsection may differ in respect of different categories of persons.

(3) Regulations made under subsection (1) may prescribe penalties for a contravention thereof or a failure to comply therewith not exceeding a fine of R2 000 or imprisonment for a period of six months, or to both such fine and such imprisonment.

(4) The Minister may -

(a) exempt a person or a person belonging to a category of persons from paying any fees prescribed by regulation under subsection (1)(l) or (m); or

(b) withdraw an exemption granted to a person under paragraph (a), whether granted to such person as an individual or as a person belonging to a category of persons.

59. Interpretation of laws

Any reference in any other law to any “passport control officer” or “prohibited person”, shall be deemed to be a reference to any “immigration officer” or “prohibited immigrant”, respectively.

60. Repeal of laws and savings

(1) Subject to the provisions of subsections (2) and (3), the laws specified in Schedule II are hereby repealed to the extent set out in the third column of that Schedule.

(2) Any temporary permit issued and in force under any law repealed by subsection (1) at the commencement of this Act, shall, at such commencement and in accordance with the purpose for which it was issued and subject to any period, condition or prohibition stated in that permit, be deemed to be an appropriate permit issued under the provisions of section 24(b) of this Act.

(3) Any regulation, permit, certificate, notice, exemption, appointment, approval or direction made, granted, issued or given or anything done or deemed to have been done under a provision of any law repealed by subsection (1) and which could be made, granted, issued, given or done under a provision of this Act, shall be deemed to have been made, granted, issued, given or done under the corresponding or allied provision of this Act.

61. Short title and commencement

This Act shall be called the Immigration Control Act, 1993, and shall come into operation on a date to be determined by the Minister by notice in the Gazette.

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Schedule I

OFFENCES

(Section 39(2)(f))

High treason.

Sedition.

Public violence.

Murder.

Culpable homicide.

Assault with intent to do grievous bodily harm.

Robbery.

Theft.

Receiving stolen property knowing it to be stolen.

Housebreaking or entering any premises with intent to commit an offence.

Extortion or the obtaining of property by means of a threat.

Fraud.

Arson.

Malicious injury to property.

Dealing in, selling, supplying or being in possession of any substance from time to time referred to in Part I, II or III of the Schedule to the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971 (Act 41 of 1971).

Counterfeiting coin or the uttering of counterfeit knowing it to be counterfeit.

Forgery or the uttering of a forged document knowing it to be forged.

Bribery.

Rape.

Indecent assault.

Unlawful carnal intercourse, or the commission of any immoral or indecent act, with a girl under the prescribed age or with a female idiot or imbecile, or soliciting or enticing any such girl or idiot or imbecile to the commission of any such act.

Public indecency.

Incest.

Sodomy.

Kidnapping.

Childstealing.

Abduction.

Defeating or obstructing the course of justice.

Perjury.

Contravention of section 18 of the Price Control Act, 1964 (Act 25 of 1964).

Contravention of section 21 of the Indecent or Obscene Photographic Matter Act, 1967 (Act 37 of 1967).

Contravention of section 2(1) of the Controlled Game Products Proclamation, 1980 (Proclamation AG. 42 of 1980).

[The Controlled Game Products Proclamation AG. 42 of 1980 was repealed by the Controlled Wildlife Products and Trade Act 9 of 2008.]

Contravention of any provision of the Combating of Immoral Practices Act, 1980 (Act 21 of 1980), which constitutes any offence under that Act.

Contravention of any law relating to exchange control.

Dealing in, selling or being in possession of unwrought precious metal or rough or uncut precious stones in contravention of any law.

Any attempt or incitement to commit any such offence.

Schedule II

LAWS REPEALED

(Section 60(1))

No. and year of law	Short title	Extent of repeal
Act 1 of 1937	Aliens Act, 1937	Sections 2 to 8 ter inclusive, and sections 10 to 13 bis inclusive
Act 26 of 1939	Aliens Registration Act, 1939	The whole
Act 1 of 1949	Aliens Registration Amendment Act, 1949	The whole
Act 59 of 1961	Aliens Amendment Act, 1961	The whole
Act 60 of 1961	Admission of Persons to the Union Regulation Amendment Act, 1961	The whole, in so far as it has not been repealed
Act 69 of 1962	Commonwealth Relations Act, 1962	Sections 6 to 16, inclusive, and section 29
Act 30 of 1963	Aliens Control Act, 1963	The whole
Act 23 of 1964	Residence in the Republic Regulation Act, 1964	Sections 2, 9, 10 and 11
Act 7 of 1967	Aliens Amendment Act, 1967	The whole
Act 61 of 1967	Border Control Act, 1967	Sections 5, 6, 7 and 14
Act 12 of 1971	Aliens Amendment Act, 1971	The whole
Act 59 of 1972	Admission of Persons to Namibia Regulation Act, 1972	The whole
Act 40 of 1973	Aliens Control Act, 1973	The whole
Proclamation AG. 17 of 1978	Executive Powers (Interior) Transfer Proclamation, 1978	Section 4
Proclamation AG. 14 of 1989	First Law Amendment (Abolition of Discriminatory or Restrictive Laws for purposes of Free and Fair Election) Proclamation, 1989	Section 4

Proclamation AG. 15 of 1989	Aliens and Immigration Laws Amendment Proclamation, 1989	Sections 2 to 11, inclusive, and sections 13 to 53, inclusive
Act 14 of 1990	Namibian Citizenship Act, 1990	Section 29, in so far as it relates to any entry in the Third Schedule relating to the Aliens Act, 1937, the Residence in the Republic Regulation Act, 1964, and the Admission of Persons to Namibia Regulation Act, 1972