

THE GAMBIA IMMIGRATION BILL, 2026

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THE GAMBIA IMMIGRATION BILL, 2026

A BILL ENTITLED

AN ACT to repeal the Immigration Act, 1965 and to enact a new law to provide for the regulation and governance of immigration and border management; to establish the Gambia Immigration Service as the principal authority responsible for immigration control; to make comprehensive provisions for the issuance of travel documents, passes, visas, and permits; to provide measures for the prevention and prohibition of migrant smuggling and related offences; to ensure effective administration of immigration procedures and enforcement of immigration laws; and for connected matters.

[Cap.16:02, Laws of the Gambia 2009]

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ENACTED by the President and the National Assembly.

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as The Gambia Immigration Act, 2026.

2. Interpretation

In this Act, unless the context otherwise requires –

“**Act**” means The Gambia Immigration Act, 2026;

“**bank**” means a banking institution whose operations include the acceptance of deposits transferable by cheque or other means of third-party transfer;

“**child**” means a person under the age of eighteen;

“**commercial carrier**” means a person who engages in the transportation of goods or people for commercial gain;

“**Committee**” means the Disciplinary Committee of the Council established under section 21;

“Comptroller-General” means the Comptroller-General appointed under section 7;

“Council” means the Gambia Immigration Council established under section 14;

“customary caregiver” means a person who –

- (a) lives with the child; and
- (b) provides daily care to the child without necessarily implying legal responsibility;

“financial or other material benefit” includes any type of financial or non-financial inducement, payment, bribe, reward, advantage, privilege or service, sexual or other services;

“fraudulent travel or identity document” means any travel or identity document-

- (a) that has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a state;
- (b) that has been improperly issued or obtained through misrepresentation corruption or duress or in any other unlawful manner; or
- (c) that is being used by a person other than the rightful holder;

“Fund” means the Smuggling of Migrant Trust Fund established under section 27;

“Government” means the Government of The Gambia;

“guardian” means a person who is the guardian of a child by virtue of the provisions of the Children’s Act or a person lawfully appointed to be guardian of the child by deed or will or by an order of a court of competent jurisdiction or by operation of law;

[Cap. 45:01, Laws of The Gambia 2009]

“illegal entry” means crossing border without complying with the necessary requirements for legal entry into the receiving State;

“immigration officer” means a person who is formally trained by the Service to perform immigration and border management duties;

“member of the Service” means any person employed into the Service;

“Minister” means the Minister responsible for internal affairs, and

“Ministry” shall be construed accordingly;

“mode of transport” includes any mode of conveyance by land, air and sea;

“non-refoulement” means the prohibition of the return by a State of an individual to the frontiers of territories where his or her life or freedom would be threatened or he or she may face the risk of torture, inhuman and degrading treatment or other forms of irreparable harm;

“parent” means the biological mother or father or adoptive mother or father of a Child;

“passport” means a document issued by the competent authority of a State, valid for international travels, which identifies the holder as a national of the issuing State and constitutes evidence of the holder’s right to return to that State;

“President” means the President of the Republic of The Gambia;

“Protocol State” means a State party to the Protocol against Smuggling of Migrants by Land, Sea and Air;

“Registrar” means the Registrar of the High Court of The Gambia;

“serious crime” means an offence punishable by imprisonment of not less than four years;

“Service” means The Gambia Immigration Service established under section 3;

“smuggling of migrants” means all conduct criminalised under Sub-Part 5 of Part 12 of this Act;

“smuggled migrant” means a person who has been the object of conduct criminalised under Sub-Part 5 of Part 12 of this Act; and

“vessel” includes any type of watercraft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water, except a warship, naval auxiliary or other vessel owned or operated by a government and used, for the time being, only on government non-commercial service.

PART 2 – ESTABLISHMENT, OBJECTIVES, ORGANISATIONAL STRUCTURE AND FUNCTIONS OF THE GAMBIA IMMIGRATION SERVICE, AND APPOINTMENT AND DUTIES OF IMMIGRATION OFFICERS

3. Establishment of The Gambia Immigration Service

(1) There is established by this Act, The Gambia Immigration Service.

(2) The Service is a body corporate with perpetual succession and a common seal and may –

- (a) sue and be sued in its corporate name;
- (b) enter into contracts and acquire, hold and dispose of property; and
- (c) do such other things or acts necessary for the proper performance of its functions under this Act which may lawfully be done by a body corporate.

(3) The application of the common seal of the Service shall be authenticated by the signature of the Comptroller- General or such other person as may be authorised by the Comptroller-General in writing to sign on behalf of the Service.

(4) A document bearing the imprint of the common seal of the Service is deemed to be properly sealed, unless the contrary is proved.

4. Objectives of the Service

The objectives of the Service are to –

- (a) ensure the effective administration and management of migration in the country; and
- (b) contribute to national security.

5. Functions of The Gambia Immigration Service

(1) The Service shall –

- (a) control persons entering, leaving or residing within The Gambia;

- (b) issue travel documents, including Gambian passports, to bona fide Gambians within and outside The Gambia;
- (c) issue permits to non-Gambian in The Gambia;
- (d) perform border management, including border surveillance and patrol;
- (e) investigate offences created under this Act and any other law relating to immigration matters;
- (f) subject to the written approval of the Attorney General, prosecute offences created under this Act and any other law relating to immigration matters;
- (g) advise on and implement international co-operation agreements with other countries and international organizations on matters relating to immigration;
- (h) enforce this Act, subsidiary legislation made under it and any other relevant legislation relating to immigration;
- (i) develop and adopt policies and strategies, and implement programs that would promote gender equality in the Service;
- (j) implement the provisions of this Act and any other subsidiary legislation made under it; and
- (k) perform any other functions for the effective implementation of provisions of this Act.

(2) The Service is subject to the directives of the Minister on matters of policy.

(3) The Minister shall formulate policies and strategies to ensure gender equity in the Service.

6. Organisational structure of the Service

The Service shall, in an organizational hierarchy, comprise –

- (a) the Comptroller-General who shall be the head of the Service;

- (b) the Deputy Comptroller-General, who shall assist the Comptroller-General in the performance of his or her duties;
- (c) the Assistant Comptrollers-General;
- (d) the Comptrollers of Immigration; and
- (e) any other officer or employee of the Service.

7. The Comptroller-General

(1) The President, after consultation with the Public Service Commission, shall appoint the Comptroller- General.

(2) A person is qualified for appointment as the Comptroller-General if he or she –

- (a) is a citizen of The Gambia;
- (b) has not been convicted by a court of competent jurisdiction of an offence involving felony, dishonesty or fraud;
- (c) has had a minimum of ten years experience in administration; and
- (d) holds a relevant academic or professional qualification.

(3) The Comptroller-General shall be responsible for the day- to-day administration of the Service and directing the performance of the functions specified in section 5;

(5) The Comptroller-General, as appropriate, may delegate any of his or her function to an immigration officer to perform.

(6) The Comptroller-General, as appropriate, may assign any immigration officer to perform any functions of the Service.

8. Deputy Comptroller-General

(1) The President, after consultation with the Public Service Commission, shall appoint the Deputy Comptroller- General from among the serving immigration officers of the Service.

(2) A person is qualified for appointment as the Deputy Comptroller-General if he or she –

- (a) is a citizen of The Gambia;
- (b) has not been convicted by a court of competent jurisdiction of an offence involving felony, dishonesty or fraud;
- (c) has had a minimum of ten years' experience in administration; and
- (d) holds a relevant academic or professional qualification.

(3) The Deputy Comptroller-General shall assist the Comptroller-General in the performance of his or her duties.

9. Establishment of directorates and units

(1) The Comptroller-General, with the approval of the Minister, may establish directorates and units in the Service as he or she considers necessary for the effective management of the Service.

(2) Subject to subsection (1), the Comptroller-General shall provide the terms of reference of the directorates and units of the Service established.

(3) Every Directorate of the Service shall be headed by an officer not below the rank of Comptroller.

10. Appointment of Assistant Comptrollers General

(1) The Council, after consultation with the Public Service Commission, shall appoint Assistant Comptrollers-General from among the serving Comptrollers of the Service.

(2) Assistant Comptrollers-General shall perform any other function that the Comptroller-General may direct subject to this Act.

11. Head of region

(1) The Comptroller-General shall designate a Comptroller or any other senior officer not below the rank of Assistant Comptroller as head of a region.

(2) The head of the region shall perform any other function that the Comptroller-General may direct, subject to this Act.

12. Appointment of other Immigration Officers

(1) The Council, after consultation with the Public Service Commission, shall appoint the employees of the Service subject to this Act.

(2) Notwithstanding sub-section (1), the Council in consultation with the Public Service Commission, may assign the Comptroller-General to appoint the Junior Immigration officers.

13. Ranks of the Service

(1) The Comptroller-General, in consultation with the Personnel Management Office and the Minister, shall make an Order published in the Gazette, to prescribe the ranks and corresponding grades for the men and women of the Service.

(2) The Order made in sub-section (1) shall indicate the senior and junior categories of officers of the Service.

(3) The Comptroller-General, in consultation with the Personnel Management Office and the Minister, may make an Order published in the Gazette, to vary or amend the content of the Order made in sub-section (1) from time to time.

PART 3 – GAMBIA IMMIGRATION COUNCIL

14. Establishment and composition of the Council

(1) There is established by this Act, the Gambia Immigration Council.

(2) The Council shall comprise—

- (a) a Chairperson;
- (b) Permanent Secretary of the Ministry or his or her representative not below the rank of a Deputy Permanent Secretary or a Director;
- (c) Permanent Secretary of the Ministry responsible for finance or his or her representative not below the rank of a Director;
- (d) Permanent Secretary of the Ministry responsible for foreign affairs or his or her representative not below the rank of Director;

- (e) Permanent Secretary of the Ministry responsible for public service or his or her representative not below the rank of a Director;
- (f) the Comptroller-General as the Secretary to the Council;
- (g) three other persons to be nominated by the Minister subject to the approval of the President.

(3) The persons nominated under sub- section 2(g) shall include –

- (a) a female;
- (b) a member of the civil society; and
- (c) an immigration officer who retired with a rank not below a Comptroller as the case may be.

(4) The Office of the Comptroller-General shall serve as the Secretariat of the Council.

15. Functions of the Council

The Council shall –

- (a) advise the Minister on the formulation of policies and strategies;
- (b) ensure that the policies and strategies formulated by the Minister are implemented by the Service;
- (c) ensure that the Service performs its functions effectively and efficiently;
- (d) monitor and evaluate the performance of Senior management team;
- (e) advise on the need of the Service relating to equipment to be purchase for operations;
- (f) advise on the financial matters concerning the Service;
- (g) monitor recruitment, selection, training and promotion of personnel of the Service through the Public Service Commission;

- (h) make recommendations to the Minister on bilateral and multilateral cooperation with foreign countries in matters relating to migration, border management and related issues;
- (i) support the Service in resource mobilization; and
- (j) perform any other functions necessary for efficient performance of the Service.

16. Tenure of office of members of the Council

- (1) The non- ex-officio member of the Council shall hold the office for a period of three years and may be reappointed only once.
- (2) A non-ex-officio member of the Council may resign from the office by giving one month's written notice to the President through the Minister.
- (3) A non-ex-officio member of the Council who is absent from three consecutive meetings of the Council without sufficient cause may be removed from the Council.
- (4) Where a non-ex-officio member of the Council is disqualified or unable to continue in office for any reason, the Minister shall declare his or her position vacant and arrange for a replacement member to be appointed by the President.

17. Appointment and qualifications of a non-ex-officio member of the Council

A person may only be appointed as non-ex-officio member of the Council if he or she –

- (a) in the case of the Chairperson, has at least ten years professional experience.
- (b) in the case of other non-ex-officio member, has at least five years relevant professional experience;
- (c) holds a relevant academic or professional qualification;
- (d) has not been convicted of an offence involving fraud or dishonesty;

- (d) is not declared bankrupt by competent court of jurisdiction; and
- (e) has not been dismissed from the public service of The Gambia for misconduct.

18. Meeting of the Council

- (1) The Council shall meet, at least once every three months, at such time and at such place as the Chairperson shall determine.
- (2) The Chairperson shall preside at meetings of the Council and in his or her absence, members present shall nominate a person among them to preside.
- (3) The Council may invite any person with the appropriate knowledge or skills to participate in its deliberations.
- (4) A person invited to participate in the deliberations of the Council shall not vote on any matter for decision before the Council.
- (5) The Chairperson, at the request of not less than three members of the Council, shall convene a special meeting of the Council.
- (6) The quorum at a meeting of the Council is four members.
- (7) The decisions of the Council shall be by a simple majority of the vote of the members present, but in the case of equality of vote, the presiding Chairperson shall have a casting vote.
- (8) The validity of the proceedings of the Council shall not be affected by a vacancy among its members or by a defect in the appointment or qualification of a member.
- (9) Subject to this section, the Council shall regulate the procedure at its meetings.

19. Disclosure of interest

- (1) A member of the Council who has a direct or an indirect interest in –
 - (a) the affairs of any company or enterprise being deliberated upon by the Council; or

(b) any contract proposed to be entered into by the Service, shall, as soon as possible after relevant facts have come to his or her knowledge, disclose the nature of his or her interest at the meeting of the Council.

(2) A disclosure made under sub-section (1) shall be recorded in the minutes of the meeting and the member concerned shall recuse himself or herself from the proceeding of the meeting on the matter.

(3) A member who breaches sub-sections (1) or (2) shall be removed from office.

20. Establishment of committees

The Council may establish such committees to assist it in performing any of its functions.

PART 4 – INVESTIGATION OF COMPLAINTS

21. Disciplinary Committee of the Council

(1) There is established by this Act, a Disciplinary Committee of the Council.

(2) The Committee shall comprise –

(a) a Chairperson, who shall be a Legal Practitioner with at least seven years post call experience; and

(b) four other persons, two of whom shall be women, and who have at least five years' experience.

(3) The Council shall appoint the members of the Committee within three months of the commencement of this Act and endorsed by the Minister.

(4) A member of the Committee shall hold office for a period not exceeding three years and he or she is not eligible for re-appointment.

(5) The Council, if a member of the Committee is absent or is for any other cause unable to attend a meeting of the Committee, may appoint another member of the Council to act in his or her place for that meeting.

(6) A member of the Committee may at any time resign from his or her office by giving thirty days' notice in writing to the Council and notice shall take effect from the date the Council receives it.

(7) The Committee shall meet at such places and times as the Committee shall determine.

(8) The validity of any proceedings of the Committee shall not be affected by any vacancy in its membership or by any defects in the appointment of a member of the Committee.

(9) The members of the Committee shall be subject to the Conditions of Service prescribed by the Public Service Commission.

(10) Except for substantive offences, any person who is aggrieved by an illegal act or professional misconduct allegedly committed by an immigration officer, may apply, by way of petition in writing, to the Committee to require the immigration officer to answer allegations contained in a petition.

(11) The petition laid before the Committee shall be made in respect of any of the following –

- (a) a violation of this Act;
- (b) a violation of any subsidiary legislation made under this Act; and
- (c) misconduct in any professional respect.

(12) The Committee shall not determine any complaint which is the subject matter of an action before a court.

(13) Where in a matter or hearing before a court, the Judge considers that any act referred to in sub-section (11) has been committed by an immigration officer, the Judge may refer the matter to the Committee in respect of that immigration officer in the manner set out in sub-section (11).

22. Powers and rules of procedure of the Committee

(1) The Committee may–

- (a) summon and examine witnesses on oath;
- (b) summon and examine parties concerned on oath; and

(c) call for the production of documents.

(2) A person who is summoned to attend and give evidence or to produce documents at a sitting of the Committee, shall be bound to obey the summons.

(3) A person who, without reasonable excuse –

(a) fails to obey the summons;

(b) withdraws without the permission of the Committee;

(c) refuses to answer any question put to him or her in the course of the inquiry; or

(d) refuses to produce any document,

commits the offence of contempt and the Committee shall refer the matter to the High Court for trial and punishment.

(4) A person who gives evidence in any inquiry shall –

(a) not be compelled to incriminate himself or herself; and

(b) in respect of any evidence, be entitled to all the privileges to which a witness who gives evidence before the High Court is entitled.

(5) The Committee may exclude from its proceedings, persons other than parties to the proceedings, where it considers it necessary in the interest of –

(a) national security;

(b) public safety, order or morality; or

(c) the protection of the privacy of persons concerned in the proceedings.

(6) The Council may make rules as to the times and places of the sittings of the Committee, the manner of summoning members of the Committee, the procedure to be followed and rules of evidence to be observed in any inquiry, in particular to –

(a) ensure that any party to the inquiry, if he or she so requires, shall be entitled to be heard by the Committee to defend the allegations made against him or her; and

- (b) provide for the allowances to witnesses of their expenses for attending the inquiry.

(7) The Committee shall provide the immigration officer with a copy of the allegations made against him or her together with any other relevant document.

(8) A question before the Committee shall be decided by a majority of the votes of members present and voting.

23. Disciplinary measures

(1) Where a person makes an application to the Committee under section 21 (10), the Committee shall hear the matter in accordance with the Rules of the Court until the Council makes rules for the Committee under section 22(6).

(2) The Committee shall, after holding an inquiry into a disciplinary case, decide whether the allegations inquired into have been proved and if it is so proved, it may make any one or more of the following orders against an Immigration Officer –

- (a) reprimand;
- (b) imposing such fine in accordance with Regulations or Code of Conduct made under this Act;
- (c) recommend for dismissal or discharge from the Service;
or
- (d) compensation to the complainant in whole or part satisfaction of any damage caused to him or her by the act or omission giving rise to his or her complaint.

(3) After concluding an investigation, the Committee shall notify the Officer of the Service against whom the complaint has been made, the complainant and Comptroller-General, of its final decision.

24. Filing and effect of the orders made by the Committee

(1) The Committee shall preface any order that it makes by a statement of its findings in relation to the facts of the petitioner's case.

(2) The Chairperson of the Committee shall sign an order made by the Committee.

(3) The Committee, subject to the Rules of Court or to the rules made under section 22(6), shall cause a copy of every order to be filed with the Registrar.

(4) The Registrar shall, as soon as an order has been filed with him or her –

- (a) act on it and enforce it in the same manner as a judgment or order of the High Court to like effect; and
- (b) cause a notice stating the effect of the operative part of the order to be published in the Gazette.

25. Appeal against an order of the Committee

(1) A person concern, within thirty days, may appeal against an order made by the Committee to the High Court of The Gambia.

(2) The person concerned shall make the appeal within thirty days starting from the day the order was brought to his or her.

PART 5 – FINANCIAL PROVISIONS

26. Source of funds of the Service

(1) The funds of the Service for its operational and administrative expenses shall include –

- (a) monies appropriated to it by the National Assembly; and
- (b) monies received by the Service from a lawful source to perform any legitimate functions of the Service.

(2) Notwithstanding subsection (1) (b), the Service shall not accept other lawful sources of monies if the terms and conditions attached to such monies would compromise the work of the Service.

(3) Monies provided to the Service shall be disclosed and reported on, in accordance with the Public Finance Act and other legislation dealing with public finance.

27. Smuggling of Migrant Trust Fund

(1) There is established by this Act, the Smuggling of Migrant Trust Fund.

- (2) Monies from the Fund shall be used –
- (a) to procure equipment and appliances for the Service;
 - (b) to conduct training for the members of the Service;
 - (c) to compensate spouses or next of kin of deceased Immigration Officers who died in active service;
 - (b) to pay rewards to officers for meritorious act; and
 - (c) for recreational activities.
- (3) The sources of monies for the Fund are –
- (a) 75% of the fines imposed by the courts under the provisions of this Act and the subsidiary legislation for any offence therein;
 - (b) 20% of the fees and charges paid to the Service;
 - (c) monies and assets forfeited to the Government in relation to smuggling of migrants; and
 - (d) grants, donations, gifts and any other voluntary contribution made to the Fund.
- (4) Notwithstanding sub-section (3) (b), the Minister may vary the amount in percentage in consultation with the Minister responsible for finance.
- (5) The Service shall manage the Fund.
- (6) The Minister, after consultation with Minister responsible for finance, may make Regulations on the management of the Fund.
- (7) Withdrawals from the Fund shall be done by the Comptroller-General subject to the approval of the Minister.

28. Estimates, accounts and audits

- (1) The Service, not later than three months before the end of each financial year, shall prepare and submit to the Minister for approval, estimates of the income, expenditures, and transfers of the Service for the ensuing year.
- (2) The Service shall keep proper records and books of accounts of its income, expenditure and transfers.

(3) The Service shall be exempted from providing audit reports or being audited on funds spent to finance intelligence and other covert activities.

(4) The Service shall prepare, in respect of each financial year, a statement of accounts.

(5) The Service, within three months after the end of each financial year, shall submit its statement of accounts to the Auditor General for auditing.

29. Annual report

(1) The Service, within three months after the end of each financial year, shall submit to the Minister, an annual report dealing generally with its activities and operations within the financial year.

(2) The report shall include –

- (a) a statement on the income, sources of income and application of the monies of the Service;
- (b) information relating to the funds and operation of the Service; and
- (c) such additional information relating to the funds and operation of the Service as the Minister may request in writing.

(3) The information provided under subsection (2) (b) and(c) shall not include the sources of information of the Service.

30. Allowances

Members of the Council, Committee, other committees of the Council and persons invited to attend meetings of the Council, shall be paid for allowances as may be approved by the Minister in consultation with the Minister responsible for finance.

PART 6 – GENERAL PROVISIONS

31. Power to use firearms

(1) The Comptroller-General, with the approval of the Minister, may authorise the carrying and use of firearms by an officer of the Service.

(2) Notwithstanding sub-section (1), the use of firearms may only be authorised to –

- (a) protect and defend the life of the member of the Service;
- (b) defend another person against eminent threat of death or serious injury;
- (c) carry out border surveillance through land, air and sea patrols;
- (d) provide training for officers; or
- (e) protect the facilities of the Service.

(3) The Comptroller-General shall report to the Minister on the number of authorisations issued to the immigration officers for the use of firearms every year.

(4) The Minister may make Regulations for the use of firearms by members of the Service.

32. Obedience to lawful directive

(1) An immigration officer, for the purpose of this Act, shall obey all lawful directives from a superior officer of the Service.

(2) Subject to this Act, the Comptroller-General may issue guidelines on lawful directives of the Service to assist immigration officers in the performance of their duties.

33. Exemption of immigration officer of the Service from liability

An immigration officer shall be exempted from civil or criminal proceedings for any act done, to be done or omitted in good faith in the performance of his or her duties.

34. Unlawful possession of uniform and other property of the Service

(1) A person, other than an immigration officer, who -

- (a) has possession of an article which is part of the clothing, accoutrement or equipment supplied to an officer, and

- (b) is unable to satisfactorily account for being in possession of such an article; or
- (c) in the nature of his or her dressing suggests impersonating the official dress code of the Service,

commits an offence and is liable on conviction to a fine of not less than fifty thousand dalasi or to a term of imprisonment of not less than two years, or to both.

(2) An Immigration Officer, on ceasing to be an officer, shall return all the clothing, arms, accoutrements and equipment supplied to or acquired by him or her for the performance of his or her duties to an officer-in-charge under whom the officer was serving.

35. Fees

(1) The Minister, in consultation with the Comptroller General of Immigration, shall by Order published in the *Gazette* prescribe fees for the issuance of any pass, permit, visa, travel document, or certificate under this Act.

(2) Subject to the provisions of this section, the fees prescribed in the Order shall be payable to the Comptroller-General or any other person authorised or identified by the Comptroller-General.

(3) The Minister, in consultation with the Comptroller General of Immigration, may by Order published in the *Gazette* vary or amend the content of the Order made in sub-section (1) from time to time.

(4) The Comptroller-General may issue a residential permit or renew a Pass for free of charge to –

- (a) members of the staff of quasi-Government educational and other organisations;
- (b) bona fide religious missions running educational institutions; or
- (c) other persons,

whose presence in The Gambia is of benefit to the Country.

(5) The Minister may make Regulations for the effective implementation of this section.

PART 7 – PASSPORTS

36. Power and procedure to issue passport

- (1) The power to issue passports shall be vested in the Comptroller-General.
- (2) A passport shall be issued only to Gambians except for Diplomatic Passport.
- (3) An application for passport made –
 - (a) in The Gambia shall be submitted to the appropriate Immigration Office; and
 - (b) outside the Gambia, shall be submitted to the appropriate Diplomatic Mission or Honorary Consulate.
- (4) All applications for passports at Gambian Diplomatic Missions shall be processed by an Immigration Attaché.
- (5) In this section, “**passport**” includes –
 - (a) Ordinary passport;
 - (b) Diplomatic passport; and
 - (c) Service Passport.
- (6) The Minister, after consultation with the Comptroller- General, may make Regulations on the application and issuance of passports.

37. Passport Offences

A person who –

- (a) uses more than one valid ordinary passport concurrently;
- (b) intentionally alters, tampers with or mutilates any passport or any page thereof;
- (c) knowingly makes or causes to be made any false statement for the purpose of procuring a passport whether for himself or herself or for another person;

- (d) submits multiple application forms to one or more passports offices with the intention of obtaining multiple ordinary passports;
- (e) upon application for a passport, knowingly conceals from or fails to disclose to the Service the loss of his or her passport;
- (f) acts as a broker at or in the vicinity of any passport office or elsewhere, for the procurement of a passport;
- (g) forges or traffics in passports or holds or is in possession of any forged passports knowing the same to be forged;
or
- (h) attempts, aids, abets, counsels, procures, connives or conspires with any other person to do any of the acts mentioned in this subsection,

commits an offence and is liable on conviction to a fine of not less than fifty thousand dalasi or imprisonment for a term not more than one year or to both.

38. Validity of passports

A passport shall be valid for a period of five years.

39. Application for a passport

(1) A person who is a citizen of The Gambia and wishes to acquire a passport shall do so in a form prescribed in the Regulations.

(2) Application for passport –

- (a) in the case of a person who is eighteen years and above, his or her application shall be supported by his or her birth certificate or attestation of the Alkalo or Seyfo or Naturalization Certificate or Registration Certificate, and National Identity Card; or
- (b) in the case of a child, his or her application shall be supported by his or her birth certificate or attestation of the Alkalo or Seyfo, and National Identity Card of one of his or her parents or guardian or customary caregiver.

(3) An application for a passport shall contain a declaratory form which shall be completed and signed by any of the following –

- (a) a Magistrate;
- (b) a civil servant who is on grade 10 or above;
- (c) a Justice of the Peace;
- (d) a Notary Public;
- (e) a Commissioner of Oaths; or
- (f) an Alkalo, where applicable.

(4) Where there is doubt as to the nationality of the applicant and none of his or her parents are alive, an affidavit sworn to by a Gambian adult relative of one of his or her parents or guardian or customary caregiver shall be required as an additional supporting document.

40. Interview of applicants

(1) Every applicant for an ordinary passport shall be invited to an interview and shall appear physically or virtually if he or she is applying for the first time.

(2) Without prejudice to sub-section (1), the Comptroller- General may waive the requirement for interview for applicants of ordinary Passports, who are persons of disability, pregnant women, elderly persons and any other vulnerable group.

(3) Without prejudice to sub-section (1), the Comptroller General shall waive interview for passport applicants, who are seriously ill or have a medical condition that requires them to travel abroad for medical treatment, when provided with a satisfactory medical report prepared by a registered medical doctor.

41. Issue of passport

Every application for passport shall be screened by the Service to ensure that there is no fraud on the part of the applicant, and if after the screening exercise nothing adverse is found against the applicant, he or she shall be issued with a passport after paying a prescribed fee.

42. Lost passport in The Gambia

- (1) Where a passport is lost in The Gambia, the holder shall report the matter to the nearest police station and shall obtain a police report on the matter.
- (2) Upon receiving an information concerning a loss passport, the Police shall investigate into the circumstances surrounding the loss and make a report on the matter.
- (3) The Service may only issue a passport to an applicant who was a holder of a loss passport, if the applicant provides a police report on the matter and a sworn declaration of the applicant explaining the circumstances leading to the loss of the passport.
- (4) Where an applicant for a lost passport has been issued a new passport and thereafter found his or her lost passport, he or she shall surrender the lost passport to any immigration office within a reasonable time.

43. Passport lost abroad

- (1) Where a passport is lost in abroad, the holder shall report the matter to the nearest Gambian Diplomatic Mission or Consulate or any other country performing immigration duties for his or her country of resident and shall obtain a police report on the matter.
- (2) An applicant whose passport is lost shall attach to his or her application, a police report of the country where his or her passport got lost and the application shall be supported by applicant's sworn declaration explaining the circumstances leading to the loss of his or her passport.
- (3) The Comptroller-General may make further investigation into the application to ensure that the police report is authentic before he or she issues approval for the replacement of the passport.
- (4) A person who submits false information to obtain a passport under this section commits an offence and is liable on conviction to a fine of not less than fifty thousand dalasi or imprisonment for a term of one year.

44. Passport lost through negligence

(1) Where it is discovered that an alleged lost passport was sold to another person or was deliberately destroyed by the holder, the Comptroller-General shall –

- (a) in relation to a passport that was deliberately destroyed, refuse to consider any application by the holder until after a period of eighteen months; and
- (b) in relation to a passport that was sold to another person, refuse to consider an application by the holder until after a period of five years.

(2) Notwithstanding paragraph (b), a person who sells his or her passport is liable on conviction to a fine of not less than twenty thousand dalasi and not more than fifty thousand Dalasi.

PART 8 – ENTRY INTO AND FROM THE GAMBIA

45. Persons liable to examination

(1) Subject to the provisions of this section, this Part shall apply to persons who are entering into or leaving The Gambia.

(2) Nothing in this section shall be construed to–

- (a) impose any restriction or liability under this Act as to entry, repatriation or deportation in respect of persons who satisfy an immigration officer that they are entitled, under any rule of law or enactment to immunity from suit or legal process not being immunity in respect only of things done or omitted to be done in the course of their duties, and to complete any other requirement of this Act before entry or departure;
- (b) in respect of any particular requirement, affect persons exempted therefrom by the Minister under this Act;
- (c) prohibit the entry of any person who satisfies an immigration officer about his or her identity as a citizen of The Gambia or as the holder of a valid travel document or that he or she is a person in the employment of the Government, as the case may be;

- (d) authorise the deportation from The Gambia of any citizen of The Gambia; and
- (e) exempt any person from medical examination if required by a health officer.

(3) Where a person enters The Gambia as an exempted person under this Act but while in The Gambia ceases to be entitled to such exemption, he or she shall report the fact in writing to the Comptroller-General as soon as possible and –

- (a) this Act shall have effect as if the person who ceased to be exempted were a person desirous of entering The Gambia for the first time; and
- (b) the Comptroller-General may deal with the case himself or herself.

(4) The Minister or an authorised officer may issue permit to a person mentioned under sub-section (3) to remain in The Gambia, but if a permit is refused -

- (a) the person shall be deemed to be a prohibited immigrant, and
- (b) he or she may be dealt with in accordance with the provisions of this Act.

46. Examination of persons entering or leaving The Gambia

(1) A person entering or leaving The Gambia shall –

- (a) enter or leave through an authorised port;
- (b) report to an immigration officer for examination; and
- (c) furnish certain information to an immigration officer as required under this Act or any subsidiary legislation made under this Act or any other law.
- (d) Without prejudice to paragraph (b) and (c), being in possession of a valid Gambian visa or entry clearance does not guarantee a right of automatic entry.

(2) An immigration officer may refuse admission in The Gambia if the person does not fulfil the entry requirements.

(3) Where an immigration officer requests a person to be examined under this section, the person, in the course of examination, shall –

- (a) declare whether or not he or she is carrying or conveying any document of any description specified by that officer, being a description appearing to that officer to be relevant for the purpose of the examination; and
- (b) produce to the officer any document of such description which he or she is carrying or conveying, and the power to examine the person shall include -
 - (i) to search him or her; and
 - (ii) to search his or her baggage or any baggage under his or her control with a view to ascertain whether he or she is carrying or conveying any such document.

(4) Nothing in sub-section (3) (b) shall authorise the search of any woman or girl except by a female officer and vice versa.

(5) An immigration officer may examine and hold up any document produced pursuant to or found on a search, for a time as he or she thinks proper for the purpose of examination not exceeding seven days.

(6) Reference in this Act to a person landing in The Gambia from or arriving at the ports in The Gambia as members of the crew of ships or aircrafts, or any other means of transportation, does not include reference to persons landing from a ship or aircraft which began its journey at a place in and has not during the journey called at any place outside The Gambia.

(7) For the avoidance of doubt –

- (a) a person seeking entry shall be treated as having been admitted into The Gambia after he or she has complied with all formalities prescribed for inspection by the immigration, health and customs authorities and whether the compliance is subject to conditions or otherwise; and
- (b) any permit or visa issued under any repealed Act and valid immediately before the commencement of this Act, shall on the commencement thereof be deemed to have been issued under this Act for the unexpired balance of the term of the permit or visa.

47. Passenger Manifest and Medical Examination

(1) Where any ship or aircraft lands in The Gambia, the master or captain, as the case may be, shall supply an immigration officer in charge with a separate list showing disembarking and transit passengers.

(2) An immigration officer may examine transit passengers as if they were immigrants when necessary.

(3) An immigrant or transit passenger named in any list, whose –

- (a) international certificate of health fails to comply with the requirements of The Gambia as set by the Ministry responsible for health; or
- (b) state of health caused the immigration officer to suspect of some health issues,

shall be submitted to a medical examination or vaccination as a medical inspector may reasonably require.

48. Production of travel documents

(1) Every passenger who arrives or departs The Gambia by any means at or from any recognised port, shall –

- (a) provide information to an immigration officer in relation to his or her embarkation or disembarkation, as the case may be, in a form prescribed by the Minister, and
- (b) satisfy the immigration officer that he or she is the holder of a valid travel document.

(2) Every member of the crew of a ship or aircraft who lands in or leaves The Gambia shall produce evidence of travel document as an immigration officer may require.

(3) A person who is a prohibited immigrant, whether in possession of a travel document or not, shall not enter The Gambia without the consent of the Comptroller-General.

(4) For the purposes of this section, the words “**travel document**” in the case of any member of the crew of a ship or aircraft, includes any card or other document in a form approved by or acceptable to the Comptroller- General.

49. Entry Requirement

(1) An immigration officer, unless the Comptroller- General otherwise directs, shall admit into The Gambia a person who –

- (a) has in his or her possession a valid passport or such other travel document as is approved by the Comptroller-General for admission into The Gambia;
- (b) is in possession of a valid visa, entry clearance, residence or work permit, or any other permit, or other form of approval;
- (c) is not a prohibited immigrant;
- (d) is not considered to be a risk to public health, public interest or national security; and
- (e) should not be admitted into The Gambia on any other ground that may be prescribed from time to time by the Minister or Comptroller-General.

(2) A residence or work permit granted to an immigrant shall be treated for purposes of entry into The Gambia as a multiple entry permit.

50. Power to refuse entry or to admit into The Gambia

(1) Unless the Comptroller-General otherwise directs, the power of an immigration officer to refuse entry or to admit a person into The Gambia subject to the conditions provided under this Act, -

- (a) shall be exercised by notice in writing, and
- (b) subject to sub-section (2), the notice shall be delivered to the person by the Immigration Officer.

(2) Where an immigrant who is to be admitted into The Gambia is a member of a particular group, the immigration officer may deliver the notice to the person in charge of the group, and it would duly be considered as delivered to the immigrant.

(3) A notice refusing a person admission into The Gambia may at any time be cancelled by a subsequent notice in writing given to him or her by an immigration officer.

(4) Where a notice is issued to cancel a previous notice under subsection (3), the immigration officer may at the same time give to the person a permit admitting him or her into The Gambia, subject to the conditions provided under this Act.

(5) Any condition specified in a notice under this section may at any time be revoked or varied by the Minister or the Comptroller-General of Immigration either by a notice in writing given to the immigrant to whom those conditions apply or by Order applying to immigrants of any class to whom the conditions for the time being applies.

(6) Any notice under this section and any condition specified in such a notice, unless previously cancelled or revoked under the provision of this Act, shall cease to have effect if the person to whom the notice was given enters or seeks to enter The Gambia.

(7) An immigration officer may refuse a non-Gambian from entering The Gambia if that non-Gambian—

- (a) is a prohibited immigrant;
- (b) has no valid visa where a visa is required for his or her entry;
- (c) has no valid entry clearance where an entry clearance is required for his or her entry;
- (d) has not obtained a resident or other permit where it is required for his or her entry; or
- (e) on the advice of a medical inspector, it is undesirable for medical reasons to admit him or her.

51. Visa requirements and conditions and power to issue visa

(1) Subject to this Act, the Comptroller-General has the sole authority to issue visas to non-Gambians.

(2) Application for visa shall be made to the Comptroller- General or to the appropriate Gambian Diplomatic Mission or Consulate established abroad.

(3) The Comptroller-General may designate an immigration officer to issue a visa to a non-Gambian on arrival at any point of entry in The Gambia.

(4) An immigration attaché is responsible for the issuance of visas on behalf of the Comptroller-General in the Diplomatic Missions or Consulates.

(5) Where no immigration attache is available in any Diplomatic Mission or Consulate, the head of the Mission or Consulate shall designate any other officer to issue visas on behalf of the Comptroller-General.

(6) Where an application for visa is made and requirements are fulfilled, the officer in charge of issuance of visa shall issue a visa to the following –

- (a) a person visiting The Gambia;
- (b) crew seeking permission to land in The Gambia;
- (c) a diplomat or government official of another country;
- (d) persons seeking entry under any technical aid scheme seeking entry into The Gambia;
- (e) special organised economic and trade delegations seeking entry into The Gambia;
- (f) other specialised delegation seeking entry into The Gambia;
- (g) persons specially invited by the Government of The Gambia; or
- (h) a person seeking entry into The Gambia for the purpose of taking up employment under a contract of service with the Government of The Gambia, other than by way of technical assistance, his or her spouse and dependants, on the production of the contract of service or such other evidence as may be satisfactory to the Comptroller-General.

(7) Where no Gambian Diplomatic Mission or Consulate is established in a country where an applicant wishes to make an application, such application shall, if –

- (a) there is an agreement between The Gambia and the government of that country for the performance by that government of consular functions on behalf of The Gambia, be made to that government; and

- (b) there is no such agreement, be made to such Diplomatic Mission as may be designated by the Minister responsible for foreign affairs.

(8) Nothing in this section shall apply to –

- (a) persons who after a tour of duty with the Government, corporation or company owned or controlled by the government, are abroad on leave with the intention of resuming duty in The Gambia thereafter;
- (b) spouse and children of person within paragraph (a);
- (c) persons employed in The Gambia and their spouses and dependents who before departure on leave apply for and obtain a re- entry visa from the Comptroller-General; and
- (d) transit passengers, who remain within the vicinity of the port of entry for a period not exceeding 72 hours.

52. Control of visitors and transit

(1) An immigration officer, at any time, may give notice to any person who –

- (a) has arrived at a recognized port in The Gambia as a visitor or as a transit passenger on board a ship or other water vessel, aircraft, motor vehicle or other means of transportation, and
- (b) is for the time being on board a ship or other water vessel, aircraft, motor vehicle, or other means of transportation,

prohibiting him or her from landing from the ship or other water vessel, aircraft, motor vehicle, or other means of transportation, while he or she remains at the port of entry, unless authorised by his or her supervisor to do otherwise.

(2) A person, subject to sub-section (3) and where necessary, shall be deemed as being refused admission into The Gambia if he or she –

- (a) contravenes sub-section (1);
- (b) being a visitor refused admission; or
- (c) having been admitted as a visitor into The Gambia subject to a condition restricting the period for which he or she may remain and thereafter remains in The Gambia beyond the restricted period.

(3) An immigration officer, at any time, may give notice in writing to any person who has entered in The Gambia to remain in The Gambia either without conditions or subject to conditions imposed by the Comptroller-General and such conditions may require him or her to leave The Gambia –

- (a) in specified ship or other water vessel, aircraft, motor vehicle, or other means of transportation; or
- (b) within a specified period in accordance with the conditions of his or her permit.

(4) Where such a notice is given to any person under sub-section (3), he or she shall not be treated as a person to whom admission to The Gambia has been refused unless, he or she –

- (a) is subject to conditions requiring him or her to leave The Gambia, and
- (b) fails to comply or is reasonably suspected of failing to comply with such conditions.

(5) A permit under this section shall be in such form as the Minister, from time to time, may prescribe.

(6) The Comptroller-General or an authorised immigration officer may vary, revoked or replace any permit issued or condition endorsed when necessary.

53. Power to exempt from certain entry requirements

(1) The Minister, in the interest of the nation, may by Order published in the *Gazette*, exempt any person or class of persons from entry requirements under this Act.

(2) The Minister, in consultation with the Minister of Health, may by Order published in the *Gazette*, require persons disembarking in The Gambia to be medically examined, in certain circumstances.

(3) The Minister, in the interest of the nation, may by Order published in the *Gazette*, exempt any person or class of persons from the requirement of this Act when departing from The Gambia.

54. Power of immigration officers to board ships, aircraft and other means of transportation to inspect

An immigration officer may board any ship, aircraft, vehicle or any other means of transportation of any description at any frontier or inland in The Gambia for the purposes of inspection.

55. Recognition of ports of entry

For the purpose of this Act, the Minister may by Order published in the *Gazette* prescribe any aerodrome, airport, seaport or control post as recognised port of entry and departure.

56. Arrival at elsewhere other than a recognised port

Where a ship, water vessel, aircraft, motor vehicle or any other means of transportation arrives in The Gambia –

- (a) the master of the ship or water vessel;
- (b) the captain of the aircraft;
- (c) the driver of the motor vehicle; or
- (d) the operator of the other means of transportation,

shall report to the nearest immigration office and no person shall leave the ship, water vessel, aircraft, motor vehicle, or other means of transportation without the authority of an immigration officer.

57. Power of immigration officer to arrest, detain search and prosecute

(1) An immigration officer who has a reasonable belief to suspect that an offence under this Act and any other subsidiary legislations made under this Act is about to be committed or is being committed or has been committed, has the power to –

- (a) arrest, search and detain the suspect; and

- (b) search premises during investigation,

subject to the provisions of the Constitution of the Republic of The Gambia.

(2) An immigration officer may conduct prosecution in the name of the Comptroller General of the Service of offences committed under this Act and any other subsidiary legislations made under this Act, before a subordinate court.

58. Prohibited immigrant

(1) A person shall be deemed as a prohibited immigrant if he or she

—

- (a) is issued with a deportation order under this Act or any other enactment;
- (b) is unable to show that he or she has the means of supporting himself or herself and his or her dependents if any, or is destitute and likely to be a burden on the public;
- (c) refuses to submit to a medical examination after being required to do so by a health officer;
- (d) has been sentenced in another country for any extraditable crime that is provided in the extradition legislation of The Gambia;
- (e) has been certified by a health officer to be medically unfit to enter The Gambia;
- (f) has been declared by the Minister by way of an executive instrument to be a person whose entry into The Gambia is not conducive to the public good;
- (g) procures or attempts to bring into The Gambia any person for the purpose of prostitution;
- (h) is a person who has not in his or her possession a valid passport;
- (i) is a person whose activities are contrary to the laws of The Gambia;

- (j) is a person who has been convicted of the offence of rape, defilement or any other sexual offence;
- (k) is a brothel keeper or a person permitting the defilement, or seduction of a child or young person on his or her premises or any other premises under his or her control;
- (l) encourages the seduction of a child or young person;
- (m) has been convicted for terrorism; or
- (n) a person who engages in any form of commercial sexual exploitation including, but not limited to –
 - (i) pimping,
 - (ii) pandering,
 - (ii) procuring,
 - (iv) profiting from prostitution,
 - (v) maintain a brothel,
 - (vi) child prostitution, and
 - (vii) child pornography.

(2) A prohibited immigrant shall be refused entry in The Gambia, and where he or she has already entered The Gambia, he or she shall be deported from The Gambia subject to this Act.

(3) Notwithstanding sub-section (1) –

- (a) where a person claims or files for asylum at the port of entry, he or she shall not be refused entry or be liable for deportation, extradition or be expelled or otherwise returned to a country where –
 - (i) his or her life or freedom would be threatened;
 - (ii) there are substantial grounds for believing that he or she may be subjected to torture or other cruel, inhumane and degrading treatment or punishment;or

- (iii) he or she would be in danger of being subjected to enforced disappearance, or of suffering another irreparable harm;
 - (b) where a person is a victim of trafficking in person, he or she shall not be liable for deportation and the provisions of the Trafficking in Persons Act shall apply for his or her protection.
- [Cap. 13:04, Laws of The Gambia 2009]
- (4) An immigration officer may –
 - (a) prevent a prohibited immigrant from entering The Gambia;
 - (b) where the prohibited migrant has already entered The Gambia, issue a directive that –
 - (i) the prohibited migrant to depart from The Gambia by the first available means, and
 - (ii) may use all reasonable force necessary to ensure compliance with the directive;
 - (c) direct a prohibited immigrant not to disembark from any ship, vehicle or aircraft or any other means of transportation on, or not to depart from any place except for places approved by the immigration officer; or
 - (d) arrest a prohibited immigrant without warrant and effect his or her repatriation or arraign him or her before a court of competent jurisdiction for offences committed under this section.
 - (5) A person who enters The Gambia while he or she is a prohibited immigrant commits an offence and is liable on summary conviction to–
 - (a) a fine not exceeding D20,000.00;
 - (b) imprisonment for a term of not less than six months and not exceeding two years; or
 - (c) both paragraph (a) and (b).

(6) In addition to the directive issued under paragraph (b) of sub-section (4), the immigration officer may direct the person –

- (a) in charge or the owner or agent of any vessel; or
- (b) vehicle or aircraft,

from which the prohibited immigrant disembarked, to remove the prohibited immigrant from The Gambia by the first available means.

(7) A person who contravenes sub-section (6) commits an offence and is liable on summary conviction to a fine not less than fifty thousand dalasi, or to imprisonment for a term not exceeding twelve months, or to both.

(8) Where a directive has been given under paragraph (b) or (c) of sub-section (4), the person to whom the directive has been given shall be deemed to be in lawful custody.

59. Appearance before immigration officer for person leaving The Gambia

(1) A person leaving The Gambia shall appear before an immigration officer at any of the approved places of departure before leaving the country.

(2) An immigration officer may examine a person who appears before him or her and shall ask that person to provide such information in his or her possession for the purpose of this Act.

(3) An immigration officer may dispense with personal attendance of any person leaving The Gambia if the officer is satisfied by documentary or other evidence of the identity of the person and the right to leave The Gambia.

(4) An Immigration may temporarily disallow a person from re-entering in The Gambia if that person –

- (a) willfully or recklessly makes false statement to an immigration officer; or
- (b) refuses to answer a question properly put to him or her by an immigration officer.

60. Illegal exit

(1) A person shall only leave The Gambia through recognised port of entry.

(2) Without prejudice to any other penalty imposed under this Act, a person who contravenes sub-section (1) commits an offence and is liable on summary conviction to a fine of not less than D25, 000.00, or to a term of imprisonment of not less than three months and not more than one year, or to both.

61. Conditions of departure

Subject to this Act, an immigration officer who is satisfied that a person leaving The Gambia –

- (a) is not a wanted person;
- (b) is in possession of a valid travel document;
- (c) has a valid visa to enter the country of destination; and
- (d) is not in arrears of payment of fees or penalty to the Comptroller-General of Immigration,

may permit that person to leave The Gambia on completing the prescribed form and endorse passport or travel document of the person.

PART 9 – RESIDENTIAL PERMIT AND EMPLOYMENT OF NON-GAMBIAN NATIONALS IN THE GAMBIA

62. Issue of residence permits

(1) A person who is not a citizen of The Gambia or an asylum seeker shall not enter or remain in The Gambia unless he or she has a valid pass or permit.

(2) Subject to this Act, the presence of a non-Gambia in The Gambia shall be deemed unlawful unless he or she provides a valid work permit or a valid residence permit or a valid pass issued by the Service.

(3) A residence permit issued to an immigrant shall specify whether the permit is for residence only or for both residence and employment.

(4) The Comptroller-General shall not grant a residence permit for residence only, unless he or she is satisfied that the immigrant is of good character and has sufficient means to live in The Gambia.

(5) The Comptroller-General shall grant a residence permit for residence and employment in accordance with the directions and instructions issued by the Government from time to time specifying the immigration policy of the country.

(6) The Comptroller-General shall endorse on a residence permit, -

- (a) the names of the members of the family of the immigrant concerned, who are or may be resident in The Gambia, and
- (b) the member of the family shall for the purpose of sub-section (5) of this Act be deemed to be in possession of a permit.

63. Validity of residence permit

The Minister, by Order published in the Gazette, shall determine the validity period of a residential permit.

64. Types of permits

(1) The Minister shall make Regulations to specify different classes of permits to be issued by the Service.

(2) Permits shall be issued in the manner provided by this Act.

65. Renewal of permits

(1) A person who has been granted a permit to remain in The Gambia under this Act, may within one month before the permit expires apply to the Comptroller-General in the prescribed manner for a renewal of the permit.

(2) An application for a renewal of a permit shall be treated as a fresh application for a permit.

(3) Notwithstanding sub-section (2), the Comptroller- General may renew the permit with effect from the date of issuance or from the date of expiry of the previous permit.

66. Expiration and revocation of permit or other authorisation

(1) A person shall not remain in The Gambia after the expiration of his or her permit to stay in The Gambia.

(2) The Comptroller-General may –

- (a) revoke a permit or visa issued by the Service on grounds of fraudulent misrepresentation or concealment or any other illegal practice;
- (b) revoke a permit or visa issued by the Service on grounds that the conditions governing the permit or visa have been broken; or
- (c) impose fresh conditions in relation to that permit or visa,

and shall take reasonable steps to communicate notice of the revocation or the fresh conditions imposed, to the person concerned.

(3) Where a permit is revoked and notice has been given the holder of the permit who is –

- (a) present in The Gambia, he or she shall not remain in The Gambia and shall be removed from The Gambia in accordance with the provisions of this Act and, –
 - (i) shall be prohibited from re-entering The Gambia temporarily, or
 - (ii) in the case of a prohibited immigrant, shall be prohibited permanently from re-entering in The Gambia; or
- (b) outside The Gambia, he or she shall be –
 - (i) prohibited from re-entering The Gambia temporarily, or
 - (ii) in the case of a prohibited immigrant, permanently prohibited from re-entering in The Gambia.

(4) A person who enters, re-enters or remains in The Gambia in contravention of any order made under this section, commits an offence and is liable on summary conviction to –

- (a) a fine of not less than D20, 000.00 and not more than D50, 000.00;
- (b) imprisonment for a term not less than three months or more than one year; or
- (c) both paragraph (a) and (b).

(5) The revocation of a permit applies to –

- (a) a person whose name is endorsed in the permit;
- (b) the spouse of the holder of the permit if the spouse was issued with a permit because of the permit which was revoked; and
- (c) any dependent of the holder of the permit who is not a citizen of The Gambia.

(6) The notice of revocation to the holder of the permit shall be communicated to the persons mentioned in sub-section (5).

67. Removal of irregular immigrants

(1) The Comptroller-General may order for the repatriation of a person whose presence in The Gambia is irregular.

(2) A person who is ordered to be repatriated from The Gambia, may be put in a withholding center while making necessary arrangements for his or her departure from The Gambia.

(3) For the purpose of this section, the presence of a person in The Gambia is considered “irregular” if his or her movement takes place outside the laws, regulations, or international agreements governing the entry into or exit from the state of origin, transit or destination.

68. Indefinite residence status for non-Gambian spouses

(1) A non-Gambian who is married to a Gambian is entitled to indefinite residence in The Gambia if that non- Gambian –

- (a) has resided in The Gambia throughout the period of 12 months immediately preceding the date of the application;

- (b) has resided in The Gambia for an aggregate period of not less than two years immediately preceding the period of the 12 months;
- (c) has not been convicted of any offence which attracts a sentence of imprisonment for a period of 12 months or more;
- (d) intends to reside permanently in The Gambia when granted with indefinite residence status; and
- (e) is in possession of a valid residence permit on the date of the application.

(2) The Comptroller-General, in a special circumstance subject to the approval of the Minister, may allow a continuous period of six months and an aggregate period of one year to be substituted for the 12 months and two years respectively provided under paragraphs (a) and (b) of sub-section (1).

(3) A non-Gambian spouse who is issued with an indefinite residence status shall automatically lose his or her indefinite residence status if he or she resides outside The Gambia for more than 12 consecutive months.

(4) A non-Gambian spouse who loses his or her an indefinite residence status may apply to the Comptroller- General for reinstatement and his or her application shall be treated as a fresh application which may be subject to certain conditions determined by the Comptroller-General.

(5) A non-Gambian spouse who is separated or divorced with his or her Gambian spouse while in a marriage that was contracted in good faith, his or her indefinite residence status shall continue to be valid.

(6) A non-Gambian spouse whose marriage is no longer in existence and is without an indefinite residence status, may apply to the Comptroller-General to be granted with indefinite residence status subject to sub-section (1).

69. Right of Abode

(1) Subject to this section, on an application and with the approval of the President, the Minister may grant the status of right of abode to any of the following persons –

- (a) a Gambian by birth, descent, adoption or registration;

- (b) a Gambian by naturalisation, who by reason of his or her acquisition of a non-Gambian nationality has lost his or her Gambian citizenship; and
- (c) a person of African descent in the Diaspora.

(2) A Gambian citizen mentioned in paragraph (a) and (b) of subsection (1) shall, as required by the Minister, produce both documentary and other evidence to attest to the loss of his or her Gambian citizenship document before he or she can be issued with another citizenship document.

(3) A person of African descent in the Diaspora may only be grant with the status of a right of abode if he or she satisfies the Minister that he or she –

- (a) is a person of good character which is attested to by two Gambians who are notaries public or lawyers or senior public officers of Grade 10 or other class of persons approved of by the Minister;
- (b) has not been convicted of a felony;
- (c) is not dependent on anybody to survive;
- (d) is capable of making a substantial contribution to the development of The Gambia; and
- (e) has attained the age of 18 years.

70. Stateless or regularisation of immigrants

The Comptroller-General may allow a non-Gambian in an irregular situation to stay lawfully in The Gambia by granting him or her a regular status if the person –

- (a) is at the risk of being stateless
- (b) has continuously resided in The Gambia for a period of five years;
- (c) has not been convicted of an offence and sentenced to imprisonment for a term of three years or more; and
- (d) intends to continue residing in The Gambia or to maintain a close and continuing association with The Gambia.

71. Employment of Non-Gambian Nationals

Every employer shall employ a non-Gambian in accordance with –

- (a) the Pay Roll Tax Act; and
[Cap. 83:04, Laws of The Gambia 2009]
- (b) a permit granted by the Comptroller-General under this Act.

72. Work permit

- (1) A work permit issued under this Act shall specify –
 - (a) the name and description of the person; and
 - (b) the employer of the person.
- (2) A person issued with a work permit shall not –
 - (a) without the written consent of the Comptroller- General engages in any other form of paid employment; or
 - (b) in any other business or professional occupation,
in The Gambia, other than the employment, business or professional occupation specified in the work permit.
- (3) An employer who employs a non-Gambian without a work permit, commits an offence and is liable on conviction to –
 - (a) a fine of not less than D25, 000.00 and in default of payment of the fine, the premises in which the employer is carrying on business shall be closed until the fine is paid; or
 - (b) pay the fine in paragraph (a) and also have the premises closed.

73. Change or cessation of employment

- (1) When a non-Gambian commences work for an employer in The Gambia, the employer shall, not later than seven days of the commencement of work –
 - (a) inform the Comptroller-General about the commencement of the work; and

- (b) furnish the Comptroller-General with a letter of guarantee in respect of the repatriation expenses of the non- Gambian, in a Form prescribed by the Comptroller-General.

(2) When a contract of employment between a non- Gambian employee and his or her employer is terminated in The Gambia –

- (a) the employer, not later than seven days of the termination, shall give notice of the termination to the Comptroller-General; and
- (b) the employee, not later than seven days of the termination, shall give notice of the termination to the Comptroller-General,

and the Comptroller-General shall direct them accordingly.

(3) Where an employer or employee fails to comply with sub-section 2 (a) or (b) as the case may be –

- (a) the employer shall pay an administrative fine of not less than D25, 000.00 and not more than D60, 000.00 to the Service; and
- (b) the employee shall pay an administrative fine of not less than D5000 and not more than D30, 000.00 to the Service, or for repatriation, or both.

(4) An employer who contravenes sub-section (3) (a) commits an offence and is liable on conviction to a fine of not less than D30, 000.00 and not more than D70, 000.00.

(5) An employee who contravenes sub-section (3) (b) commits an offence and is liable on conviction to a fine of not less than D30, 000.00 and not more than D60, 000.00.

74. Annual Returns

(1) An employer of a non-Gambian, not later than 14 days after the first day of January in each year, shall -

- (a) send an annual return to the Comptroller- General in a Form prescribed by the Comptroller-General; and
- (b) provide the names and addresses of his or her non-Gambian employees as at the 1st January and any other particulars required by the Comptroller-General.

(2) A body corporate which contravenes sub-section (1) shall pay an administrative fine of D250, 000.00 to the Service.

(3) A body corporate which fails to pay the fine in sub-section (2) commits an offence and is liable on conviction to a fine of D300, 000.00.

(4) A person who contravenes sub-section (1) shall pay an administrative fine of D125, 000.00 to the Service.

(5) A person who fails to pay the fine in sub-section (4) commits an offence and is liable on conviction to fine of D150, 000.00.

75. Renewal of Work Permits

(1) A person, one month before the expiry of a work permit, may apply to the Comptroller-General for the renewal of his or her work permit.

(2) An application for renewal shall be treated as a fresh application and shall be made in a Form prescribed by the Comptroller-General.

76. Employer's guarantee

(1) Where an employer provides the Comptroller-General with a letter of guarantee in respect of the repatriation of a non-Gambian, the employer is liable to pay under the guarantee the repatriation expenses of –

- (a) the non-Gambian if he or she ceased to work for the employer; and
- (b) the dependents of the non-Gambian in the event of the death of the non-Gambian.

(2) The employer may be released from his or her guarantee if -

- (a) alternative security for the repatriation of the non-Gambian and the dependents has been provided to the Comptroller-General; or
- (b) the Comptroller-General is satisfied that the non-Gambian and the dependents have left The Gambia.

(3) A letter of guarantee shall be in a Form prescribed by the Comptroller-General.

PART 9 – CONTROL OF CREW AND STOWAWAY

77. Examination of crew

(1) A person who enters The Gambia by inland, sea or air shall proceed to the nearest recognised port and appear before an immigration officer for examination.

(2) After examination of persons entering in The Gambia, an immigration officer shall detain any person who appears to be a prohibited immigrant and the provisions on deportation under this Act shall have effect accordingly.

(3) The Minister, by Order published in the *Gazette*, may make provisions for –

- (a) requiring masters of ships and commanders of aircraft arriving at ports in The Gambia to furnish an immigration officer on duty with particulars of the members of the crews of those ships or aircrafts; and
- (b) enabling the immigration officer to dispense with the furnishing of such particulars.

78. Control of members of the crew of the ship

(1) An immigration officer may give notice at any time to any person who –

- (a) has arrived at a port in The Gambia as a member of the crew of a ship or aircraft; and
- (b) is for time being on the ship or aircraft on which he or she arrived at the port,

prohibit him or her from disembarking from the ship or aircraft as the case may be, while it remains at the port.

(2) A person who is prohibited in sub-section (1) and he or she –

- (a) lands from a ship or aircraft in contravention of a prohibition imposed on him or her;
- (b) remains in The Gambia after his or her ship or aircraft has left the port; or

- (c) having been admitted into The Gambia subject to a condition restricting the period for which he or she may remain there, remains in The Gambia in contravention of that condition,

shall, subject to the provision of sub-section (5), be treated as if he or she had been refused admission into The Gambia.

(3) An immigration officer may give notice in writing at any time to any person who has landed or remained in The Gambia as mentioned in sub-section (2), authorising the person to remain in The Gambia -

- (a) without conditions; or
- (b) subject to any conditions that the Minister may impose.

(4) The conditions that may be imposed by the Minister in sub-section (3) (b), includes conditions requiring the person to leave The Gambia –

- (a) in a specified ship or aircraft; or
- (b) within a specified period in accordance with arrangements for his or her repatriation.

(5) Where a notice is given to a person in sub-section (3), he or she shall not be treated as a person to whom admission to The Gambia has been refused unless, he or she is subject to conditions requiring him or her to leave The Gambia and he or she fails to comply with the conditions.

79. Stowaway

A person who arrives at a port in The Gambia as a stowaway in a ship or aircraft, he or she shall be treated as if he or she were a prohibited immigrant and was refused admission into The Gambia accordingly.

80. Discharge of crew in The Gambia

Notwithstanding the provisions of any other Act or enactment, no member of a crew of any ship or aircraft who is not a citizen of The Gambia, shall be admitted into The Gambia without the approval of an immigration officer in accordance with this Act.

81. Duties and liabilities of carriers

(1) A person in charge of a carrier arriving from or leaving for any place outside The Gambia, or the owner or agent of the carrier, shall furnish an immigration officer at the first port of entry or departure with a list of the names of all persons in the carrier including –

- (a) details of identity of all passengers on the carrier classified according to their respective destinations;
- (b) a list of crew; and
- (c) such other information as the Minister may prescribe in Regulations.

(2) A list of the names of all persons in the carrier mentioned in sub-section (1) shall be in duplicates which shall be signed by the owner or the agent of the carrier.

(3) A person in charge of a carrier about to call at any port or place outside The Gambia, shall, if so, required by an immigration officer, take into his or her custody any person in respect of which sub-section (4) applies, and shall -

- (a) afford the person a passage to that port or place; and
- (b) provide proper accommodation and maintenance during that passage,

upon paying an amount prescribed by the Minister in the Regulations.

(4) Where a person is transported to The Gambia in a carrier and is refused permission to enter, on the ground that he or she is a prohibited immigrant or inadmissible person –

- (a) the owner of the carrier and the person in charge of the carrier -
 - (i) shall be liable to a surcharge in the sum not exceeding one hundred thousand Dalasi for every prohibited immigrant or inadmissible person, and
 - (ii) in default of payment of the sum surcharged, the carrier shall be liable to detention at the cost jointly and severally of the owner and the person in charge;

- (b) the person in charge of the carrier shall, if so, required by an immigration officer, take the person to a custody and ensure that the person is removed from The Gambia; and
- (c) the owner of the carrier and the person in charge of the carrier shall jointly and severally be liable to pay to the Government all expenses incurred by the Government in respect of the transportation, maintenance and upkeep of that person and his or her removal from The Gambia and the amount of such expenses shall be a civil debt recoverable summarily.

(5) Notwithstanding paragraphs (a), (b) and (c) of sub- section (4), the owner and the person in charge of a carrier, who knowingly brings passengers into The Gambia –

- (a) with forged documents,
- (b) without travel documents,
- (c) with documents issued to other people,
- (d) without return or onward ticket, or
- (e) passengers without entry requirements,

shall be liable to a surcharge D50, 000.00 for every passenger and in default of payment of the surcharge the carrier shall be liable to detention at its own cost.

(6) Any person who is taken into the custody of the person in charge of a carrier pursuant to this section is deemed to be in lawful custody while he or she is in The Gambia subject to the Constitution of the Republic of The Gambia.

(7) An immigration officer may examine the travel documents of transit passengers at any entry or exit port and take necessary actions in accordance with this Act.

(8) Where an immigration officer demands for the examination of the travel and other documents of a passenger on a carrier, the person in charge of the carrier shall present to the immigration officer -

- (a) the travel and other documents of the passenger; or

- (b) the details of identity of the passenger presented at the last port of departure to The Gambia.
- (9) An immigration officer shall have powers to –
- (a) detain a carrier;
 - (b) compel a carrier to pay a surcharge or penalties for bringing inadmissible persons into The Gambia; and
 - (c) compel the carrier to remove the inadmissible persons from The Gambia.
- (10) In this section, “**inadmissible person**” means a non-Gambian who –
- (a) refuses to submit for examination by a medical practitioner after being required to do so under section 47 of this Act;
 - (b) is incapable of supporting himself or herself and his or her dependents, if any, in The Gambia;
 - (c) is an adjudged bankrupt; or
 - (d) is an asylum seeker and his or her application for grant of refugee status has been rejected under the Refugee Act.

[Cap 16:04, Laws of The Gambia 2009]

- (e) is declared by the Minister inadmissible on grounds of national security or national interest, in an Order published in the *Gazette*.

82. Power to board and inspect ships

An immigration officer may inspect any ship, aircraft, vehicle or any other means of transportation, at any border entry port in The Gambia.

83. Recognition of airports and ports

The Minister, by Order published in the *Gazette*, may –

- (a) prescribe any aerodrome, airport or airline as a recognised airport or airline; and

- (b) recognise any port for shipping or point of entry by land or inland waters as a port of entry.

84. Persons arriving other than by sea or air

(1) A person arriving in The Gambia by inland waters or overland, shall enter through a recognised entry point and appear before an Immigration Officer.

(2) An immigration officer who examines a person and is satisfied that the person is a prohibited immigrant or inadmissible person –

- (a) shall inform the person in writing about the circumstances; and
- (b) may detain the person in accordance with this Act or instruct the person to leave The Gambia with immediate effect.

85. Control of immigrants by inland waters and overland

(1) A person who enters The Gambia by inland waters or overland, shall forthwith proceed to the nearest recognised port and appear before an immigration officer for examination.

(2) After the examination of a person entering The Gambia, an immigration officer is satisfied that the person is a prohibited immigrant or inadmissible person –

- (a) the person shall be detained; and
- (b) the person shall be deported in accordance with this Act.

86. Removal of immigrant where entry is refused

(1) Where a person arriving by ship or aircraft is for any reason refused entry into The Gambia, an immigration officer may give directions –

- (a) to the master of the ship or commander of the aircraft requiring them to remove the immigrant from The Gambia in that ship or aircraft; or
- (b) to the owners or agents of the ship or aircraft, requiring them to remove the immigrant from The Gambia in any ship or aircraft specified in the directions; or

- (c) to the owners or agents of the ship or aircraft, requiring them to make arrangements for the removal of the immigrant from The Gambia in any ship or aircraft bound for a country or territory in which he or she embarked for The Gambia.

(2) Where it appears that it is not practicable for directions to be given under sub-section (1) in respect of an immigrant, or that directions so given would be ineffective, the Immigration Officer may—

- (a) give to the owners or agents of any ship or aircraft the like directions as may be given under paragraph (c) of sub-section (1), and
- (b) in any such case, the cost of complying with the direction shall be defrayed by the owners or agents as the case may be, of the ship or aircraft.

(3) An immigrant in respect of whom a direction is given under this section may be placed, under the authority of an immigration officer, on any ship or aircraft in which he or she is to be removed in accordance with the direction.

87. Determination of nationality in special cases

(1) The Comptroller-General may give directives for the determination of the nationality of any person, or if a deportation order is in force for the disregarding of any change of nationality.

(2) Where at any time before or after entry into The Gambia, the nationality of any person is or may be questioned, or after entry into The Gambia for any reason changes his or her nationality, the burden of proof shall be on the person asserting the nationality.

88. Power to waive requirement for visa

Without prejudice to other provisions of this Act, where the Comptroller-General is satisfied that the government of another country permits the entry of Gambians without requiring a visa, he or she in consultation with the Minister may waive the requirement for visa for the nationals of that country.

89. Power to prescribe entry conditions and fees

The Minister, from time to time, may prescribe the conditions for entry into The Gambia and the fees payable in respect of any travel document, visa or permit.

90. Power to prohibit departure

(1) An immigration officer may prohibit departure of any person under the following conditions –

- (a) if there is a court order that the person shall not leave the country until the matter before it is determined;
- (b) where there is a reasonable suspicion that the person will be subject to trafficking in person; or
- (c) where there is a warrant of arrest relating to the person.

(2) Nothing in this section shall apply to a person entitled under any rule of law or enactment to immunity in respect of things done or omitted to be done in the course of his or her duty.

91. General provisions as to detained persons

(1) A person required or authorised to be detained under this Act may be detained in places approved as detention centres by the Comptroller-General.

(2) A person shall not be detained for more than seventy- two hours unless authorised by a court of competent jurisdiction.

(3) Where a person is detained under this Act, an authorised immigration officer may do all things reasonably necessary for photographing, measuring or otherwise identifying him or her and obtaining his or her biometric data.

92. Application of the Act to cases of dual nationality

(1) Subject to this Act, a person who having acquired Gambian nationality by registration or naturalisation, loses that nationality, and if he or she desires to obtain a residence permit after the election or loss of nationality, as the case may be, may –

- (a) apply to the Comptroller-General for a permit to enter or remain in The Gambia, and
- (b) the Comptroller-General may grant or refuse the permit.

(2) Upon application, the Comptroller-General may approve the issuance of a permit to a Gambian citizen by birth who had earlier renounced his or her nationality.

(3) Where the Comptroller-General refused the issuance of a permit, the person may file an appeal against the decision of the Comptroller-General to the Minister for the grant of the permit under this section.

93. Special cases where entry may be refused

Without prejudice to any of the provisions of this Act, an immigration officer shall refuse a non-Gambian from entering The Gambia if it appears to the Immigration Officer that the person concerned –

- (a) is a prohibited immigrant;
- (b) has no valid visa where a visa is required as a condition for entry;
- (c) has no valid entry clearance where an entry clearance is required as a condition for entry;
- (d) has not obtained any residence or other permit where a permit is required as a condition for entry.

94. Exemption of crew from entering The Gambia

(1) The members of the crew of a vessel or aircraft arriving in The Gambia from abroad may be permitted to enter The Gambia on satisfactory proof of their identity.

(2) A member of the crew of a vessel or aircraft shall not be discharged or left behind in The Gambia without the consent of an immigration officer.

(3) This section does not apply to a member of the crew of a vessel or aircraft who is a citizen of The Gambia.

95. Liability of a master or other person for detention expenses

(1) Where any person is in the custody of the Service, the master, owner, charterer and agent of the vessel or aircraft which brought the person to The Gambia shall be jointly and severally liable for all expenses incurred in the detention and maintenance of the person.

(2) Notwithstanding sub-section (1), the master, owner, charterer and agent of the vessel or aircraft bear no liability for all expenses incurred in the detention and maintenance of the person, when the person detained is subsequently permitted to enter The Gambia.

(3) Any expenses to be paid under sub-section (1), shall be recoverable as a debt due to the Government of The Gambia from the master, owner, charterer and agent of the vessel or aircraft jointly and severally.

96. Power to search a vessel or aircraft

An immigration officer may search any vessel or aircraft and anything on it or any vehicle taken off a vessel or aircraft, for the purpose of examining any person that may be inside them.

97. Offence in the Gambian territorial zone

Where a non-Gambian is charged with an offence alleged to have been committed on a vessel or an aircraft in Gambian territorial waters or airspace, the court may –

- (a) on convicting the person, order that upon the expiration of the sentence, or on the sooner readiness of the vessel to proceed to sea or the aircraft to take off, the person be held in the vessel or aircraft for conveyance from The Gambia; or
- (b) on discharging or acquitting the person charged, order that the person be immediately conveyed back to the vessel or aircraft.

98. Submission of Petitions

(1) Any person, other than a prohibited immigrant, who is aggrieved by a –

- (a) refusal to grant or renew a permit under this Act;
- (b) revocation of a permit under this Act; or
- (c) repatriation ordered by an immigration officer,

may file a petition to the Minister within seven days of the notice of refusal, revocation or repatriation order.

(2) Upon receiving the petition in sub-section (1), the Minister shall take reasonable actions as he or she considers appropriate subject to sub-section (4).

(3) Sub-section (1) does not apply to a deportation order issued under an executive instrument under the hand of the Minister.

(4) The Minister shall in determining a petition under sub-section (1) be assisted by a committee comprising the following persons –

- (a) a representative of the Attorney-General not below the rank of a Senior State Counsel, who shall be the Chairperson of the committee;
- (b) a representative of the Minister responsible for foreign affairs not below the rank of a Director; and
- (c) one other person appointed by the Minister who shall not be an officer or employee of the Service.

99. Petition shall serve as stay of action

A petition to the Minister under section 98 shall act as a stay of the action which has been petitioned against.

PART 11 – DEPORTATION

100. Person liable to deportation

(1) Subject to section 58 (3), a non-Gambian is liable to deportation if –

- (a) a court orders for his or her deportation under sub-section (2);
- (b) he or she has been found by a court to be destitute or without means of support or is certified to be medically unfit by a medical practitioner;
- (c) he or she is a prohibited immigrant as defined in this Act;
- (d) he or she is in The Gambia without a valid permit, or any of the conditions on which his or her permit was granted has been violated or breached;

- (e) his or her presence in The Gambia is in the opinion of the Minister not conducive to the public good; or
- (f) he or she is an inadmissible person as defined in this Act.

(2) An order for deportation is effective if it is made by a court upon conviction for an offence punishable by a term of imprisonment exceeding three months with or without a fine, and –

- (a) on an appeal against the conviction, the appellate court has upheld the recommendation; or
- (b) no appeal has been brought within the time allowed for appeal.

(3) Where a court passes an order under sub-section (2), the court shall serve the order on the Comptroller-General.

101. Deportation order

(1) The Minister, in writing, may order the deportation of any person liable to deportation.

(2) The order may be made subject to such conditions as the Minister may impose.

102. Effect of deportation order

(1) A person who is to be deported shall leave The Gambia in accordance with the requirements of the deportation order, and so long the deportation order is in force, he or she shall remain out of The Gambia.

(2) A person who enters The Gambia when a deportation order made against him or her is in force commits an offence and is liable on summary conviction to a term of imprisonment not exceeding five years and may be deported without any further deportation order being made.

(3) Where a person who is to be deported is serving a sentence of imprisonment, unless the President otherwise directs in the exercise of his or her power of prerogative of mercy under the Constitution, shall complete his or her sentence term in the prison.

103. Power to arrest

(1) A person, other than a person under a supervision order issued under section 107, who is to be deported or liable for deportation may be arrested and detained by the Comptroller General under the authority of the Minister until the person is dealt with under section 104.

(2) A person who is to be deported may be held in custody to or from any consulate or other place in The Gambia if the attendance of that person is required for the purposes of ascertaining his or her nationality or of making arrangements for his or her admission to another country.

(3) A person who is to be deported from The Gambia may be placed on a suitable vessel or aircraft by an immigration officer and may be lawfully detained on the vessel or aircraft, whilst the vessel or aircraft is within the territorial limits of The Gambia.

104. Detention of persons liable to deportation

(1) Where a recommendation for deportation is in force and the offender is neither detained in pursuance of the sentence or order of any court nor for the time being released on bail by any court, unless the court by which the recommendation is made otherwise directs, he or she shall be detained until the Minister –

- (a) makes a deportation order in respect of him or her; or
- (b) notifies him or her that no such order is to be made; or
- (c) directs him or her to be released pending further consideration of his or her case.

(2) Where a deportation order is in force, the offender may be detained under the authority of the Minister until he or she is removed from The Gambia pursuant to this Act.

(3) Where a person is released from detention pending further consideration of his or her case or while liable to be detained is not so detained, the Minister may by order impose certain restrictions on the person's place of residence and the condition of reporting to an immigration office or police station.

105. Offences in connection with deportation orders

- (1) If a person whom a deportation order is in force –
- (a) was removed from The Gambia and subsequently returns to The Gambia; or
 - (b) was placed on a ship, aircraft, vehicle or other means of conveyance, and lands from that ship or aircraft before it has left The Gambia,

he or she commits an offence and, any offence under this sub-section shall be deemed to continue throughout any period during which the offender is in The Gambia after its commission.

(2) If any person, upon whom any restriction or requirement is imposed under this Act, fails to comply with that restriction or requirement, he or she commits an offence.

(3) Where a person whom a deportation order is in force is convicted of an offence under sub-section (1), the operation of the deportation order shall be suspended but shall not cease to have effect.

(4) A person who knows or has a reasonable ground to believe that another person has committed an offence under sub-section (1) and harbors that person, commits an offence.

106. Power to record identification

An immigration officer, where a person to be deported is in custody, may do all things reasonably necessary for the identification of the person by means of photography, measurement, the taking of fingerprints and other biometrics.

107. Supervision order

(1) If on the expiration of six months of the deportation order, deportation has not been effected, or if at any time before the expiration of the order, the Minister is satisfied that deportation is impracticable or undesirable, he or she may make a supervision order that the person who is to be deported shall observe any conditions specified in the order as to –

- (a) the area in which he or she is to reside;

- (b) the carrying on by him or her of political activities;
- (c) reporting to an immigration officer from time to time;
- (d) the means by which he or she may gain a livelihood; and
- (e) his or her association with person with a criminal record.

(2) The six months duration of deportation order in sub-section (1), in respect of a person serving a term of imprisonment, shall commence from the end of the term.

(3) If a person whom a supervision order is made against fails to comply with the requirement of the order, commits an offence and is liable on summary conviction to a fine of not less than D10, 000.00 or to imprisonment for a term of not less than two months, or to both.

(4) The deportation order made in respect of any person shall be suspended while a supervision order is in force against the person.

(5) Subject to sub-section (4), a supervision order made in respect of any person shall expire after a period of two years from the date of the order.

(6) On the expiration of the supervision order, the deportation order made in respect of a person, shall expire.

108. Expenses of deportation

(1) The Comptroller-General may use any money or property that belongs to a person who is to be deported in payment of his or her deportation expenses.

(2) The person in charge, the owner and the agent of a vessel, aircraft or vehicle from which any person disembarks in The Gambia shall be jointly and severally liable to pay the deportation expenses of the person to the Comptroller General if the person was –

- (a) a member of a crew of the vessel or aircraft, and
- (b) left in The Gambia in contravention to this Act.

(3) A person, other than a person to whom sub-section (2) applies, who is concerned in or connected with the bringing into The Gambia of a prohibited immigrant of the description set out in this Act, shall be liable to pay the deportation expenses of that person to the Comptroller General.

109. Power to appoint receiver, where owner is deported

(1) Where it appears that a person who has previously conducted or managed any business has been deported or under section 104 is detained, the Minister shall cause the business to be wound up subject to sub-section (2).

(2) Before winding up a business in sub-section (1), the Minister shall cause application to be made to the High Court, for the appointment of a receiver or manager in respect of the business.

(3) Upon application, the High Court may appoint a receiver or manager, and such appointment shall be for a particular duration subject to certain conditions, modifications, restrictions or extensions of the ordinary powers and duties of a receiver or manager.

(4) The High Court may direct as to who and how the cost of the proceedings under this section, the remuneration, charges and expenses of the receiver or manager, should be settled.

(5) Without prejudice to sub-section (4), the High Court may order that the cost and expenses of the receiver or manager be charged against the property of the person whose business is to be wound up.

110. Removal of persons subject to deportation orders

(1) The Minister or any person acting under his or her authority may direct the master of a ship or commander of an aircraft which is about to leave The Gambia, requiring him or her to afford to any-

(a) person against whom a deportation order is in force; and

(b) dependents of his or her specified in the directions,

a passage to any port so specified and proper accommodation and maintenance during the passage.

(2) The word “**port**” in sub-section (1) refers a port in a country of which the person is a citizen or a country or territory to which the Minister has reason to believe that the person will be admitted, and at which the ship or aircraft is to call or land in the course of the voyage.

(3) A person in respect of whom directions is given in sub-section (1), may be placed on any ship or aircraft in which he or she is to be removed in accordance with the directions.

(4) The employer of any person against whom a deportation order is in force shall pay –

- (a) the expenses incidental to the voyage from The Gambia of the person to be deported and his or her dependents, if any; and
- (b) the maintenance until departure of the person and the dependents.

(5) In default of the payment mentioned in sub-section (4), the Minister may in any proper case sue for and recover the payments.

PART 12 – PROHIBITION ON SMUGGLING OF MIGRANTS AND CONNECTED MATTERS

111. Application of Part 12 of this Act

This Part applies to –

- (a) all forms of smuggling of migrants, whether connected with an organised criminal group or not;
- (b) any offence established under Part 12 of this Act when the offence is committed –
 - (i) wholly or partly, within the territory of The Gambia;
 - (ii) wholly or partly, on board of a vessel or other means of conveyance that is flying the flag of The Gambia, or aircraft that is registered under the laws of The Gambia at the time the offence was committed;
 - (iii) by a Gambian national present in The Gambia’s territory whose extradition is refused on the grounds of nationality; or

- (iv) by a person present in The Gambia whose extradition is refused on any other grounds; and
- (c) any offence established under Part 12 of this Act when-
 - (i) the smuggled migrant is a Gambian national, or a resident of The Gambia, or a visitor to The Gambia;
 - (ii) the offence is committed by a Gambian national, or a resident of The Gambia, or a visitor to The Gambia;
 - (iii) the offence is committed outside The Gambia, with a view to the commission of a serious crime within The Gambia; and
 - (iv) the offence is committed outside The Gambia and the consequences of the offence are directed or intended to breach the laws of The Gambia.

112. General offences

(1) Any person who intentionally procures the illegal entry of a person into a state of which the person is not a national, a resident or visitor, in order to obtain directly or indirectly a financial or other material benefit, commits an offence and is liable on conviction to –

- (a) a fine not less than D1, 000, 000.00; and
- (b) an imprisonment not less than five years.

(2) Any person who intentionally produces, procures, provides or possesses a fraudulent travel or identity document for the purpose of enabling the smuggling of migrants, to obtain directly or indirectly a financial or other material benefit, commits an offence and is liable on conviction to –

- (a) a fine not less than D1, 000, 000.00;
- (b) an imprisonment for a term of not less than five years;
or
- (c) both paragraphs (a) and (b).

(3) A person who intentionally uses illegal means to enable a person who is not a Gambian national, or a resident of The Gambia, or a visitor in The Gambia to remain in The Gambia without complying with the necessary requirements for legally remaining in The Gambia, in order to obtain directly or indirectly a financial or material benefit, commits an offence and is liable on conviction to –

- (a) a minimum fine of D50, 000.00;
- (b) imprisonment for a term of not less than three years; or
- (c) both paragraphs (a) and (b).

(4) A person who attempts to commit an offence under Part 12 of this Act is liable on conviction to the punishment prescribed for the offence.

(5) A person who aids, abets, procures or counsels another person to commit an offence under Part 12 of this Act is liable on conviction to the punishment prescribed for the offence.

(6) A person who takes part as an accomplice to an offence under Part 12 of this Act, commits an offence and is liable on conviction to imprisonment for a maximum of five years or a fine not more than D150, 000.00.

(7) A person who organises or directs another person to commit an offence under Part 12 of this Act, commits an offence and liable on conviction to a minimum fine of D100, 000.00 and not more than D250, 000.00, or imprisonment for a term of not more than 12 years or both.

(8) A person who intentionally takes advantage of an apparent or known vulnerability or dependency of a smuggled migrant, for profit or other material benefit, commits an offence and is liable on conviction to a minimum fine of D50, 000.00 and not more than D250, 000.00 or imprisonment for a term of not more than three years or both.

113. Aggravated smuggling of migrants

A person commits aggravated smuggling of migrant where -

- (a) the smuggling endangers or is likely to endanger the life of a smuggled migrant;
- (b) smuggling entails inhumane or degrading treatment;

- (c) the smuggling results in a serious injury or death of a smuggled migrant or another person;
- (d) the person takes advantage of a particular vulnerability or dependency of a smuggled migrant for financial or other material gain;
- (e) the person is a repeated offender under Part 12 of this Act;
- (f) the smuggling is part of the activity of an organised criminal group;
- (g) the person administers drugs by force, or uses weapons in the commission of the offence;
- (h) the smuggling involves a large number of smuggled migrants;
- (i) the person at the time of the offence, abuses his or her public duties;
- (j) the smuggled migrant is a child;
- (k) the person uses a child as an accomplice or participant in the criminal conduct;
- (l) the smuggled migrant is pregnant;
- (m) the smuggled migrant has a disability;
- (n) the person uses or threatens to use violence against a smuggled migrant or his or her family; or
- (o) the person destroys or attempts to destroy the travel or identity documents of a smuggled migrant,

and is liable on conviction to a fine not less than D3, 000, 000.00 and imprisonment for a term of not less than five years.

PART 13 – SEIZURE, ATTACHMENT AND FORFEITURE OF ASSETS

114. Forfeiture of passport

The passport of a Gambian who is convicted of an offence of smuggling of migrants under this Act, shall –

- (a) be forfeited to the Government; and
- (b) the person is not entitled to possess a passport until two years after the completion of his or her prison term or after the person has been pardoned by the President.

115. Forfeiture of assets after conviction

(1) A person convicted of an offence under this Act relating to smuggling of migrant shall forfeit to the Government –

- (a) all the assets and properties which are the subject of an interim attachment order of the Court after an attachment by the Service as specified in this Act;
- (b) any assets or properties derived from any proceeds obtained directly or indirectly not already disclosed in the Assets Declaration Form prescribed in the Regulations made under this Act, or not subject of an interim attachment order of the court; and
- (c) any property or instrumentalities used in any manner to commit or to facilitate the commission of the offence not already disclosed in the Assets Declaration Form prescribed in the Regulations made under this Act or not subject of an interim attachment order of the court.

(2) The assets and properties forfeited in sub-section (1) shall be vested in the Gambia Government and the proceeds of the assets and properties shall be paid into the Fund.

(3) The Court in imposing a sentence on any person who committed an offence under this Act, in addition to any other sentence imposed pursuant to this Act or any other relevant law, shall order that the person forfeits to the Gambia Government all properties described in sub-section (1) and the proceeds accruing from such properties shall be paid into the Fund.

(4) In this section, the term “**proceeds**” means any property derived or obtained, directly or indirectly through the commission of an offence under this Act or any other relevant law, or any income accruing from such property.

(5) The Minister, after consultation with the Comptroller- General, shall make Regulations prescribing Assets Declaration Form for the purpose of this Part.

116. Seizure of property of arrested persons

(1) In addition to the forfeiture of monies, the Court may order the seizure of the following properties when a person is allegedly charged with offence created under this Act –

- (a) any property found –
 - (i) on him or her;
 - (ii) in any place belonging to him or her;
 - (iii) to be in his or her possession; or
 - (iv) under his or her control;
- (b) any property belonging to him or her; or
- (c) any property suspected to be the proceeds of or obtained through the commission of any offence.

(2) At the conclusion of the trial, the Court may use the properties seized or its proceeds, as appropriate, to satisfy the smuggled person –

- (a) either in restitution of any money or property taken from him or her in the course of or as a result of the commission of the offence; or
- (b) as compensation for any injury, loss or damage suffered by the smuggled person.

117. Property within The Gambia subject to forfeiture

(1) A property in The Gambia shall be forfeited to the Government of The Gambia Government, and its proceeds shall be paid into the Fund if it -

- (a) is obtained directly or indirectly as a result of the commission of an offence created under this Act; or
- (b) represents the proceeds of an offence committed under the laws of another country and the offence is punishable by imprisonment for a term of not less than four years, and such offence if committed in the Gambia it would be punishable by imprisonment under this Act,

(2) The following monies and assets shall also be subject to forfeiture under this Act, and no proprietary right shall exist in them immediately they are forfeited –

- (a) all means of conveyance, including vehicle, vessel, aircraft or other means of transportation which are used or are intended to transport or facilitate the smuggling of any migrant;
- (b) all monies, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for the commission of an offence created under this Act or all proceeds traceable to such an exchange;
- (c) all monies, negotiable instruments and securities used or intended to be used to facilitate the commission of any offence created under this Act; and
- (d) all real property, including any right, title and interest including, any leasehold interest, and any improvement or appurtenance which is used or intended to be used in any manner or part to commit it or facilitate the commission of an offence under this Act.

(3) Without prejudice to sub-section (2), the properties used as conveyance including vehicle, vessel, aircraft or other means of transportation shall not be subject to forfeiture under this Act if used by any person in the transaction of business as a common carrier.

(4) Notwithstanding sub-section (3), where it appears that the owner or other person in charge of the means of conveyance was –

- (a) a consenting party to an offence; or
- (b) privy to the commission of an offence,

created under this Act, the means of conveyance shall also be subject to forfeiture.

118. Forfeiture of non-Gambian assets

Where a convicted person has assets or properties outside The Gambia, which is attributed to a commission of an offence created under this Act, the assets or properties shall –

- (a) be forfeited to the Government of The Gambia; and
- (b) the proceeds accruing therefrom shall be paid into the Fund,

subject to any treaty or arrangement with the other country where the assets or properties are situated.

119. Seizure of property subject to forfeiture

(1) The seizure of any property which is subject to forfeiture under this Act may be effected by the Service where –

- (a) the seizure is incidental to an arrest or search as provided for under this Act; or
- (b) the property is liable to forfeiture upon process issued by the Court following an application made by the Service.

(2) Where a property is seized under this Act, the Service may –

- (a) place the property under seal; or
- (b) remove the property to a place designated by the Service.

(3) A property taken or detained under this section shall be deemed to be in custody of the Service subject to the order of the Court.

120. Investigation of assets and property of an arrested person

Where a person is arrested for an offence under this Act, the Service shall immediately trace and attach all the assets and properties of the person acquired as a result of the offence.

121. Disclosure of assets and property by an arrested person

(1) Where a person is arrested for committing an offence under this Act, it shall be obligatory for the person to make full disclosure of all his or her assets and properties by completing Assets Declaration Form prescribed in the Regulations made under this Act.

(2) The disclosures made in the Assets Declaration Form shall be investigated by the Service.

(3) Any person who –

- (a) knowingly fails to make full disclosure of his or her assets and liabilities,
- (b) knowingly makes a declaration that is false, or
- (c) neglects or fails to make a declaration or furnish any information required, in the Assets Declaration Form,

commits an offence.

(4) A person who commits an offence under sub-section (2) shall be liable on conviction –

- (a) to imprisonment for a term of three years, or a fine of not less than D50, 000.00 or both; and
- (b) such assets not disclosed in the Assets Declaration Form shall be forfeited to the Government of The Gambia and the proceeds accrued there from shall be paid into the Fund.

(4) When an asset or property of any person arrested under this Act is to be attached, the Service shall apply to the Court for an interim attachment order.

122. Interim attachment order after seizure of property

Where an asset or property has been seized by the Service under this Act –

- (a) the Service shall immediately cause an application to be made to the Court for an interim attachment order, and
- (b) the Court, if satisfied that there is prima facie evidence that the property concerned is liable to forfeiture, shall make an interim attachment order.

123. Final order of forfeiture

Where a person is arrested and convicted of an offence under this Act, the Service shall apply to the Court for a final order of forfeiture of his or her assets and properties which are –

- (a) already subject to an interim attachment order;
- (b) derived from any proceeds the person obtained, directly or indirectly, because of the offence not already disclosed in the Assets Declaration Form prescribed in the Regulations made under this Act and not subject to interim attachment order; and
- (c) properties or instrumentalities used in any manner to commit or facilitate the commission of the offence not already disclosed in the Assets Declaration Form.

124. Disposal of forfeited properties

(1) A copy of every final order forfeiting the assets and properties of a person convicted under this Act shall be forwarded to the Service.

(2) Upon receipt of a final order pursuant to this section, the Minister shall take steps to publish in the *Gazette* all the properties concerned before carrying out sales by a Government licensed auctioneer.

(3) Where any part of the property included in a final order is money in a bank or any financial institution or in the possession of any person

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- (a) the Service shall cause a copy of the order to be produced and served on the manager or any person in control of the head office or branch of the bank or financial institution concerned, and

- (b) that manager or person shall, forthwith, pay over the money to the Service, and the Service shall pay the money received into the Fund.

125. Offences in relation to forfeiture orders

(1) Any person who, without due authorisation by the Service, sells or otherwise disposes of any property or asset which is the subject of attachment, seizure, interim attachment order or final forfeiture order, commits an offence and is liable on conviction –

- (a) to imprisonment for a term of 10 years without an option of a fine; or
- (b) return a sum which is twice the amount of the value of the property or asset.

(2) Any bank or other financial institution or the manager or person in control of the head office or branch of a bank or financial institution which fails to pay over any money which is the subject of a final forfeiture order to the Service upon the production of that order to him or her or the bank or financial institution or its branch commits an offence and is liable on conviction –

- (a) to imprisonment for a term of three years, or a fine of not less than D200,000.00, or to both, and
- (b) return a sum which is twice the amount of money withheld from payment to the Service.

(3) The Service shall immediately submit a report on the subject matter in sub-section (2) to the Central Bank of The Gambia, and the bank or financial institution concerned, where appropriate, shall be subject to a penalty provided for an offence committed by a body corporate under this Act.

126. Consequences of an acquittal in respect of confiscated assets and properties

(1) Where a person is discharged or acquitted of an offence under this Act, the court may make an order of revocation or confirmation of an interim attachment order made pursuant to this Act.

(2) A property may be attached where a discharge is merely given on technical grounds.

(3) Where an interim attachment order is revoked by a court under sub-section (1), all assets and properties of the person concerned shall be returned to him or her by the Service.

127. Freezing order on banks or other financial institutions

(1) Notwithstanding any other enactment, where any person is arrested or is under investigation for an offence committed under this Act, the Comptroller-General, if satisfied that the money in the account of the person is made through the commission of the offence, may –

- (a) apply to the Court by way of ex-parte for an order authorising the Service to issue or instruct a bank examiner or such other appropriate regulatory authority to issue an order as prescribed in the Regulations made under this Act, and
- (b) write request to the manager of the bank or any person in control of the financial institution where the account is or the head office of the bank or other financial institution, to freeze the account.

(2) Without prejudice to sub-section (1), a freezing order shall not be in place for a period longer than is necessary or expedient for the determination of the case.

(3) The Comptroller-General or bank examiner, based on the order issued by the court, or by any subsequent order, may –

- (a) direct the bank or other financial institution to supply any information and produce books and documents relating to the account; and
- (b) stop all outward and inward payments, operations or transactions, including any bill of exchange, in respect of the account of the arrested person or person under investigation.

(4) The manager or a person in control of a bank or a financial institution shall take necessary steps to comply with the requirements of the order issued by the court.

128. Duty of commercial carriers

(1) A commercial carrier shall ensure that a passenger on board the commercial carrier's means of transportation possesses the identity or travel documents required to enter the destination state or any transit state.

(2) A person who contravenes sub-section (1) commits an offence and is liable on conviction to a fine of not less than D250, 000.00 or imprisonment to a term of not less than three years, or to both.

(3) A commercial carrier does not contravene sub- section (1) if –

- (a) there are reasonable grounds to believe that the documents that the passenger has are the travel documents required for lawful entry in The Gambia;
- (b) the passenger possesses lawful travel documents;
- (c) the passenger's entry into The Gambia occurs due to circumstances beyond the control of the commercial carrier; or results from a rescue at the sea; or
- (d) the passenger is provided protection against refoulement or provided access to the asylum system in The Gambia.

129. Exclusion of liability for smuggled migrant

A smuggled migrant is excluded from liability on account of his or her smuggling.

130. Additional powers of the Court

Where a person is found guilty of an offence under Part 12 of this Act, a court shall, in addition to any penalty imposed under Part 12, make the following orders –

- (a) confiscation of assets, proceeds of crime and instruments of crime of smuggling of migrants or other related offences;
- (b) payment of restitution or compensation to victims of crime;
- (c) publicising the legal decision;
- (d) prohibiting the exercise, directly or indirectly, of one or more social or professional activities permanently or for a specified period;
- (e) temporary or permanent closure of an establishment or enterprise that was used to commit the offence in question;

- (f) exclusion from public bidding or from entitlement to public benefits or aid;
- (g) temporary or permanent disqualification from participation in public procurement;
- (h) temporary or permanent disqualification from practice of other commercial activities or from creation of another legal person; and
- (i) any other non-custodial order as appropriate.

131. Facilitating entry or stay for judicial processes

The Service may grant a visa or resident permit at no cost to a smuggled migrant to facilitate the investigation or prosecution of an offence under Part 12 of this Act.

Sub-Part 1 – PROTECTION AND ASSISTANCE MEASURES

132. Right to urgent medical care

- (1) A smuggled migrant is entitled to –
 - (a) equal access to primary medical health care and in emergency, he or she has access to urgent medical care at no cost; and
 - (b) equality of medical treatment accorded to Gambian nationals.
- (2) A healthcare worker shall not –
 - (a) disclose any personal information of a smuggled migrant to the law enforcement authorities, including immigration officers unless the disclosure is authorised by law; and
 - (b) refuse emergency medical care to a migrant because of his or her irregularity of entry or stay in The Gambia.

133. Protection against violence on migrants

(1) The Service shall comply with its standard operation procedures to afford migrants appropriate protection against violence that may be inflicted upon them, because of being the object of conduct criminalised under Part 12 of this Act.

(2) The Service when carrying out its function in sub-section (1) shall consider the special needs of men, women, children and other vulnerable migrants.

134. Assistance to migrants whose lives or safety are in danger

(1) The Service shall provide appropriate protection to migrants whose lives are endangered because of being the object of conduct criminalised by Part 12 of this Act.

(2) The measures referred to in sub-section (1) take into account the special needs of men, woman and children, and other migrants in vulnerable situation.

135. Smuggled migrants who are children

(1) In addition to any other protections provided in this Act –

- (a) in all actions by government officials, agencies and the courts concerning smuggling of migrants who are children, the primary consideration shall be the best interest of the child;
- (b) when the age of smuggled migrant is uncertain and there are reasons to believe that the smuggled migrant is a child, he or she shall be presumed to be child pending verification of his or her age;
- (c) any interviews or examinations of a smuggled migrant who is a child shall be conducted –
 - (i) by a specially trained professional;
 - (ii) in a suitable environment;
 - (iii) in a language that the child uses and understands;
and
 - (iv) in the presence of the parent, customary caregiver, legal guardian or a support person of the child;
- (d) smuggled migrants who are children shall have the right of access to education, which shall not be refused or limited by reason of their irregular entry or situation, or that of their parents or other guardians;

- (e) children shall not be detained for immigration purposes, whatever their status or the status of their parents or other guardians; and
 - (f) families with children shall be placed together in a child-friendly facility, unless it is not in the best interest of the children.
- (2) If a smuggled migrant is an unaccompanied child, the Service shall –
- (a) facilitate the appointment of a legal guardian to represent the interests of the child;
 - (b) take all the necessary steps to establish his or her identity and nationality; and
 - (c) make every effort to locate his or her family including referring the child to the Department of Social Welfare for the purpose of facilitating family reunification in the best interest of the child.
- (3) For the purpose of this section, “**unaccompanied child**” means a child who has been separated from both parents and other relatives and is not under the care of an adult recognised by law or custom.

136. Judicial proceedings

- (1) A smuggled migrant who has been subjected to violence, torture or other cruel, inhumane or degrading treatment or punishment, that threaten his or her life or safety shall have the right to institute civil proceedings to claim material and non-material damage suffered because of the specified acts.
- (2) A migrant who has been a victim of another crime or witnessed crime may participate, give evidence and testify in legal proceedings, whether he or she is in the jurisdiction of the prosecuting State, and may do so without fear of deportation, expulsion or other reprisals.
- (3) The right to pursue a judicial proceeding for material or non-material damages shall not be affected by the existence of criminal proceedings in connection with the same acts from which the claim derives.

(4) The immigration status or return of the smuggled migrant to his or her home country or other absence of the smuggled migrant from the jurisdiction shall not prevent the court from ordering payment of damages under this section.

137. Access to consular officials for smuggled migrants

(1) Where a smuggled migrant has been intercepted, or placed in a withholding centre, the Service shall –

- (a) inform the smuggled migrant without delay about his or her right to communicate with consular officers;
- (b) take all reasonable steps to facilitate such communication; and
- (c) have recourse to the protection and assistance of the consular officer.

(2) Where a smuggled migrant expresses interest in contacting consular office, the Service shall –

- (a) notify the relevant consul for the migrant; and
- (b) provide the exact location of the migrant and facilitate contact with the consul.

(3) If a smuggled migrant indicates that they do not want to have contact with the consular office, the Service shall respect his or her decision not to contact the office.

(4) A smuggled migrant who is being held in custody or detention shall have the right to –

- (a) receive visits from consular officers;
- (b) converse and correspond with consular officers; and
- (c) receive communications sent by consular authorities without delay and interference.

(5) The arresting or detaining authority shall take all reasonable steps to facilitate visits and communication to smuggled migrant.

(6) The arresting or detaining authority shall forward all correspondence from a smuggled migrant that is addressed to the relevant consular office without delay.

Sub-Part 2 – COORDINATION, COOPERATION, PREVENTION AND COMBATING OF SMUGGLING OF MIGRANTS

138. Establishment of National Coordinating Committee

(1) The Minister shall establish and constitute a National Coordinating Committee.

(2) The National Coordinating Committee shall consist of officials from relevant stakeholder institutions including the Service, the Local Government Councils and non- governmental service providers.

(3) The National Coordinating Committee shall –

- (a) oversee and coordinate the implementation of Part 12 of this Act;
- (b) develop a national plan of action to ensure comprehensive and effective implementation of Part 12 of this Act, which includes devising policy directives and periodic review of achievement of aims and objectives;
- (c) facilitate inter-agency and multidisciplinary cooperation between the various government agencies, international organisations and non-governmental organisations;
- (d) facilitate cooperation with relevant countries of origin, transit and destination, in particular border control agencies;
- (e) ensure that migrants obtain accurate and reliable information about their rights and their situation;
- (f) promote and strengthen development programmes and cooperation at the national level, considering the socio-economic realities of migration; and
- (g) report to the Minister on the progress of the implementation of Part 12 of this Act;

(4) The Service shall serve as the Secretariat of the Committee.

(5) The Committee may establish sub-committees when necessary to assist it in performing any of its functions as it considers necessary.

139. Establishment of Task Coordinating Group

(1) The Comptroller-General may establish and constitute a Task Coordinating Group constituting of officers of the Service and other stakeholder institutions.

(2) The Task Coordinating Group shall –

- (a) formulate and coordinate operational plan and actions of concerned stakeholders' institutions;
- (b) develop and disseminate information and material on the prevention and combating of smuggling of migrants, while protecting and preserving the rights of smuggled migrants;
- (c) develop and disseminate public information programmes to increase appropriate measures against the dissemination of misleading information relating to migration and matters connected to it;
- (d) ensure comprehensive and effective implementation of this Sub-Part, which includes reviewing the operational activities;
- (e) report to the Minister through the National Coordinating Committee, on operational matters and related matters;
- (f) advice the Minister and the Service on smuggling of migrants and related matters;
- (g) perform any other function deems necessary for the effective implementation of this section.

Sub-Part 3 – SMUGGLING OF MIGRANTS AT SEA

140. Extended application and Competent National Authority

(1) This Sub-Part applies to conduct engaged within the territorial waters of The Gambia on a vessel reasonably suspected of engaging directly or indirectly, in the smuggling of migrants by sea if –

- (a) the vessel is without nationality or may be assimilated to a vessel without nationality;
- (b) the vessel, although flying a foreign flag or refusing to show a flag, is of the nationality of the State concerned;
or
- (c) the vessel is flying the flag or displaying the marks of registry of any State other than The Gambia.

(2) The Service through the Ministry of Interior shall –

- (a) receive and respond to requests for assistance from other states;
- (b) transmit requests for assistance to other states;
- (c) receive and respond to requests for confirmation of registry or of the right of a vessel to fly the flag of The Gambia;
- (d) receive and respond to requests for authorisation from other States to take appropriate measures as indicated in this Part; and
- (e) transmit requests for authorisation to other States to take appropriate measures as indicated in this Sub-Part,

to facilitate cooperation between The Gambia and other States to prevent and suppress the smuggling of migrants by sea.

(3) The Service shall respond expeditiously to any request made under sub-section (2).

141. Conditions and limitations

(1) A power conferred on the Service under this Sub-Part is exercisable in relation to any vessel described in section 111 (b) (ii), or in section 124 for the purposes of detecting and taking appropriate action in relation to the smuggling of migrants by sea.

(2) The powers conferred under this Sub-Part are not exercisable in relation to a vessel beyond the limits of territorial sea of The Gambia and flying the flag or displaying the marks of registry of another country except if –

(a) the Gambia is exercising its rights of control in its contiguous zone or the right of hot pursuit; or

(b) the Minister has given the authority.

(3) The Minister shall not give the authority referred to in sub-section (2) (b) unless he or she is satisfied that –

(a) the other State has requested assistance of The Gambia for the purposes of detecting or preventing the smuggling of migrants and taking appropriate action; or

(b) the State has authorised The Gambia to act for the purposes referred to in paragraph (a).

(4) The Minister shall impose such conditions or limitations on the exercise of powers as may be necessary to give effect to any conditions or limitations imposed by the Protocol State.

(5) The Minister may authorise another State to exercise in relation to a Gambian vessel, powers corresponding to the powers conferred on officers authorised under this Sub-Part and subject to such conditions or limitations as he or she may impose.

(6) Sub-section (3) does not affect existing agreements between The Gambia and another State.

(7) The powers conferred on officers authorised under this Sub-Part are not exercisable in a territorial sea of any other State without the authority of the Minister.

(8) Pursuant to sub-section (7), the Minister shall not give the authority unless that State consents to the exercise of the powers.

142. Operational framework for measures at sea

(1) A measure taken at sea pursuant to this Sub-Part shall be carried out only by Service vessels, warships or military aircraft, or by other boats or aircraft, including, customs and coastguard clearly marked and identifiable as being on government service and authorised to that effect.

(2) When taking measures against a vessel, the Service or its authorised officer shall –

- (a) prepare safe places for arrival and disembarkation in which staff or trained personnel can screen arrivals for medical needs and provide emergency assistance, assess situations of vulnerability, offer initial psychological assistance, and provide basic information to migrants including information on their rights;
- (b) afford migrants protection against violence that may be inflicted upon them because of being the object of conduct criminalised under Part 12 this Act;
- (c) assist migrants whose lives are endangered because of being the object of conduct criminalised under Part 12 of this Act;
- (d) consider the special needs of men, women and children or any other migrant in vulnerable situation;
- (e) ensure the safety and humane treatment of the persons on board;
- (f) ensure that a measure taken is in compliance with human rights and humanitarian obligations, including the right to leave a country, the right to seek asylum and international protection, and the obligation of *non-refoulement*;
- (g) take due account of the need not to endanger the security of the vessel or its cargo;
- (h) take due account of the need not to prejudice the commercial or legal interest of the flag State or any other interested State; and

- (i) ensure, within available means, that a measure taken regarding the vessel is environmentally sound.

143. Safeguards in relation to danger to lives at sea

An authorised officer of the Service shall render assistance to persons in distress at sea to the best of his or her ability and the assistance may be rendered by any other person.

Sub-Part 4 – PROCESSES RELATED TO THE RETURN OF SMUGGLED MIGRANTS

144. Cooperation with International Organisations

The Ministry of Interior shall cooperate with relevant international organisations in the return of smuggled migrants in line with existing national, regional and international law.

145. Referral of migrants with specific protection needs

The Comptroller-General, in consultation with the Minister, shall ensure that –

- (a) smuggled migrants who are seeking general protection or who require special protection needs are quickly referred to competent authorities to act on their case; and
- (b) relevant international organisations are given access to smuggled migrants seeking asylum and other persons of concern.

146. Ensuring safety in exchange of information

(1) The Ministry responsible for internal affairs shall develop policies and procedures to ensure that an exchange of information about a smuggled migrant with a State of return or any other State does not put the returnee or his or her relatives in danger upon return.

(2) Information about the existence or content of an application made by a smuggled migrant for international protection is not provided to a State of return or any other State.

147. Legitimacy and validity of documents

The Service through the Ministry responsible for foreign affairs shall, at the request of an appropriate authority or representative of another Protocol State, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in the name of The Gambia and suspected of being used for the purposes of smuggling of migrants.

148. Facilitating return of smuggled migrants

The Ministry responsible for internal affairs, at the request of an appropriate authority or representative of another Protocol State of a smuggled migrant or of its own initiative, shall facilitate –

- (a) without undue or unreasonable delay, the return to The Gambia of a smuggled migrant who is a national of The Gambia or has the right to return to The Gambia; and
- (b) the return to The Gambia of a smuggled migrant who had the right of permanent residence in The Gambia at the time of entry into the receiving State.

149. Protection of smuggled migrants in the return process

- (1) The Ministry responsible for internal affairs shall –
 - (a) ensure that the return of a smuggled migrant from The Gambia does not violate the principle of *non-refoulement*, the right to seek asylum, or the prohibition of arbitrary and collective expulsion, the prohibition on torture and other forms of cruel, inhuman or degrading treatment or punishment, and, where children are involved, the best interests of the children prevail;
 - (b) guarantee that allegations of human rights violations during the process of return are promptly and impartially investigated and the perpetrators are held accountable;
 - (c) monitor the human rights situation of migrants including returnees;
 - (d) ensure that returned migrants have access to effective domestic complaint mechanisms and remedies;

- (e) in facilitating the return of smuggled migrants, take appropriate measures to ensure that-
 - (i) any planned or actual return of smuggled migrants occurs in an orderly manner and with due regard for the safety and dignity of the persons involved;
 - (ii) effort is made to limit the use of force in the deportation process, and
 - (iii) any form of physical restraint used is strictly necessary and proportionate to the actual or reasonably anticipated resistance of the migrants, and respect their dignity.
- (2) The use of any means of coercion or restraint likely to obstruct the migrant's nose or mouth, or force him or her into positions that may asphyxiate him or her is prohibited.

150. Protection of existing arrangements

Nothing in this Sub-Part prejudices –

- (a) any right or remedies afforded or available to persons who have been object of any offence related to smuggling of migrants under any other enactment of the National Assembly; or
- (b) any obligations entered into under any treaty or agreement that governs, in whole or in part, the return of migrants who have been the object of smuggling.

PART 14 – IMMIGRATION OFFENCES

151. Offences in connection with control of immigrants

- (1) A person who –
 - (a) aids or abets any person to enter The Gambia in contravention of this Act –
 - (b) subject to this Act, is refused for admission into The Gambia decides to enter or remains in The Gambia;
 - (c) contravenes or fails to comply with any condition imposed on him or her under this Act; and

- (d) restricts or obstructs any immigration officer in the lawful execution of his or her duty,

commits an offence.

(2) Any offence under sub-section (1) which is committed by entering or remaining in The Gambia shall be deemed to continue throughout any period during which the offender is in The Gambia thereafter.

(3) A person who knowingly harbors a perpetrator of an offence under sub-section (1) (a) or (b), commits an offence.

(4) A person who commits any of the offences prescribed under sub-section (1) and (3) is liable on conviction to imprisonment for a term of three years, or a fine of D250, 000.00, or both.

(5) A person who –

- (a) makes or causes an immigration officer to make a return, statement, or representation which he or she knows to be false or does not believe to be true;
- (b) refuses or fails to produce or furnish to an immigration officer a document or information which he or she is required to produce or furnish to the officer under this Act;
- (c) obstructs an immigration officer in the exercise of his or her function; or
- (d) without lawful authority, alters a document issued or made under or for the purpose of this Act or has in his or her possession a forged or altered passport or other travel document, or produces or reproduces any travel document,

commits an offence and is liable on conviction to imprisonment for a term of two years, or a fine of not less than D100, 000.00, or both.

(6) Where a person is charged with any of the offences under this Act and the evidence establishes an attempt to commit the offence, he or she may be convicted of having attempted to commit the offence and shall be liable on conviction to half of the penalty provided for that offence in this Act.

(7) Where a person is charged with attempt to commit any of the offences under this Act and the evidence establishes the commission of the full offence, the person shall be convicted of the offence as prescribed by this Act.

152. Offences by immigrant employers and workers

(1) An employer who –

- (a) discharge and repatriate an employee without giving notice to the Comptroller-General, or
- (b) re-designated or change his or her employee without the approval of the Comptroller-General.

commits an offence and is liable on conviction to a fine of D100, 000.00.

(2) In addition to the penalty imposed in sub-section (1), an employer or employee or their dependents, who are not Gambians, may be deported and their businesses may be wound up in accordance with the Companies Act, 2013.

[Act No.9 of 2023]

153. Offence of alteration of travel documents

(1) A person who alters or assists another in altering his or her travel document without lawful authority, commits an offence and is liable on conviction to imprisonment for a term of two years, or a fine of not less than D100, 000.00 or both.

(2) A person who produces or reproduces, or assists in the production or reproduction, of any travel document without lawful authority, commits an offence and is liable on conviction to imprisonment for a term of two years, or a fine of not less than D100, 000.00, or both.

154. General penalties proceedings

(1) A person who commits an offence under this Act, where no specific penalty is provided, shall be liable on conviction to imprisonment for a term of not less than six months, or a fine of not less than D25, 000.00, or both.

(2) In addition to penalty imposed in sub-section (1), the court may recommend the deportation of the offender.

(3) A natural agent who commits an offence under this Act, where no specific penalty is provided, shall be liable on conviction to imprisonment for a term of two years, or a fine of not less than D50,000.00, or to both.

(4) For the purpose of the trial of a person for any offence under this Act, the offence shall be deemed to have been committed either at the place at which it was committed, or at any place at which the offender may be.

(5) An immigration officer may, without warrant, arrest any person if the officer reasonably believes that an offence has been committed by that person under this Act.

(6) A power exercisable under this Act in the case of any person being exercising notwithstanding that proceedings for an offence under this Act have been taken against him or her.

PART 15 – MISCELLANEOUS AND SUPPLEMENTAL PROVISIONS

155. Public Private Partnership and Sharing Formula

Subject to public-private-partnership laws, the Service may collaborate with public and private sector interest groups on a Public-Private Partnership Platform to attract funds for–

- (a) acquisition;
- (b) provision and development of infrastructure; and
- (c) equipment,

to enable the Service to provide appropriate professional skills and modern migration management facilities.

156. Burden of proof

In any proceeding under this Act or Regulations made under this Act, or on examination by an immigration officer, if a question is raised as to whether a person is –

- (a) in possession of a passport, visa or permit,
- (b) a citizen of The Gambia, or
- (c) a citizen of any other country,

the burden of proof lies on the person concerned.

157. Offences of a body corporate

(1) Where an offence under this Act has been committed by a body corporate and is proved to have been committed with the connivance of or is attributable to any neglect on the part of –

- (a) a director;
- (b) manager;
- (c) secretary of the body corporate; or
- (d) any person purporting to act in any such capacity,

he or she shall be liable on conviction to imprisonment for a term of three years, or to a fine of not less than D200, 000.00, or to both.

(2) Where a body corporate is convicted of an offence under this Act, it shall be liable to a fine not less than D500, 000.00 and the Court may issue an order to wind up the body corporate.

(3) Nothing contained in sub-sections (1) and (2) shall render any person liable to any punishment if he or she proves that the offence was committed without his or her knowledge or that he or she exercised all due diligence to prevent the commission of such offence.

158. Orders, notices and directives as evidence

The documents including, an order, notice or directives made or given by the Minister for the purposes of this Act, shall be –

- (a) considered valid until the contrary is proved; and
- (b) prima facie evidence in any legal proceedings, once bearing a certificate purporting to be signed by or on behalf of the Minister and stating that the document is a true copy of the order, notice or directive.

159. Regulations

(1) The Minister may make Regulations to give effect to the provisions of this Act.

(2) Notwithstanding sub-section (1), the Regulations made by the Minister may include –

- (a) the terms and conditions of service of officers and employees of the Service;

- (b) uniform of the Service;
- (c) fees to be charged under this Act;
- (d) the forms to be used under this Act;
- (e) the issuance of passports, visas or permits;
- (g) the use of firearms;
- (h) effective management of borders;
- (i) for the control of immigrants' resident in The Gambia;
- (j) smuggling of migrants;
- (k) for the patrol of air, sea, and land borders;
- (l) the disposal of property in the possession of the Service;
- (m) for any other matter covered by the provisions of this Act.

160. Repeal and savings

- (1) The Immigration Act is hereby repealed.

[Cap. 16:02, Laws of The Gambia 2009]

- (2) Notwithstanding the repeal –

- (a) all employees in the employment of The Gambia Immigration Department immediately prior to the repeal of the Immigration Act shall continue to be employed by the Service;

[Cap. 16:02 Laws of The Gambia 2009]

- (b) any subsidiary legislation and all Forms made under the Immigration Act repealed shall continue to be in force until it is repealed.

[Cap. 16:02, Laws of The Gambia 2009]

- (c) it is declared that, without limiting the provisions of the Interpretation Act, the repeal by this Act shall not affect

any document made or done under the enactment so repealed;

[Cap.4:01, Laws of The Gambia 2009]

- (d) certificate, notice, authorization, consent, application, request or thing –
 - (i) made or issued, or
 - (ii) give or done,

under the repealed Act, that are in force at the commencement of this Act, so far as it could have been made, issued, given or done under this Act, shall continue in force and have effects as if made, issued, given or done under this Act;

- (e) a reference in legislation to The Gambia Immigration Department or to the Director of Gambia Immigration Department shall be construed as reference to the Service or the Comptroller-General, respectively;
- (f) the Director of The Gambia Immigration Department immediately prior to the repeal shall automatically be referred to as Comptroller-General under this Act until his or her retirement or legally replaced by another person;
- (g) the Deputy Director of The Gambia Immigration Department immediately prior to the repeal shall automatically be referred to as Deputy Comptroller-General under this Act until his or her retirement or legally replaced by another person;
- (h) all assets, funds, resources and other moveable property of which immediately before the commencement of this Act were vested in The Gambia Immigration Department shall be vested in the Service established; and
- (i) all rights, interests, obligations and liabilities of The Gambia Immigration Department existing immediately before the commencement of this Act shall be vested in or inherited by the Service.

OBJECTS AND REASONS

The object of the Bill is to give effect to the security sector reform agenda of the Government of The Gambia. A further objective of the Bill is to repeal the Immigration Act of 1965 and replace it with an Act that is in line with best international standards in connection to modern integrated border management system. The Bill also provides the Gambia Immigration Department with a legal framework that would help improve the efficiency, management, command, and accountability of the institution, and promote gender equality.

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HON. ABDOULIE SANYANG
MINISTER OF INTERIOR