

Zambia

## Immigration and Deportation Act, 2010

Act 18 of 2010

Legislation as at 16 April 2010

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## Zambia

# Immigration and Deportation Act, 2010

## Act 18 of 2010

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Assented to on 13 April 2010

Commenced on 17 September 2010 by Immigration and Deportation Act (Commencement) Order, 2010

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**An Act to consolidate the law relating to immigration; provide for the appointment of a Director-General of Immigration and other immigration officers and provide for their powers and functions; promote a human rights based approach and culture in respect of immigration controls; regulate the entry, exit and remaining within Zambia of immigrants and visitors; provide for prohibited immigrants and other specified persons and their deportation from Zambia; provide for, and regulate, immigration consultants; create an environment of cooperation with other public institutions and promote an integration of functions and harmonisation of operations among public institutions controlling borders and activities at ports of entry; repeal and replace the Immigration and Deportation Act, 1965; and provide for matters connected with, or incidental to, the foregoing.**

ENACTED by the Parliament of Zambia

### Part I – Preliminary

#### 1. Short title and commencement

This Act may be cited as the Immigration and Deportation Act, 2010, and shall come into operation on such date as the Minister may, by statutory instrument, appoint.

#### 2. Interpretation

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

“**admission**” means the entry into Zambia after being examined at a port of entry by an immigration officer;

“**asylum seekers permit**” means a permit issued under section thirty-one;

“**authorised person**” means any person to whom any function of the Department has been delegated to, or conferred on, under section seven;

“**border**” means the national borders of Zambia;

“**border pass**” means a prescribed document authorising a person to enter and remain temporarily in, or to re-enter, Zambia, and includes any class or description of such document;

“**business permit**” means a permit issued under section twenty-four;

“**business visitor**” means a person coming to Zambia to transact business during the person's stay in Zambia, such as attending meetings, conferences, arranging of deals and the signing of contracts and includes—

- (a) an overseas worker, who is paid by an employer abroad, who comes to Zambia, for a short period, to work, install, erect, repair or service foreign-made machinery or equipment;
- (b) a person who comes to Zambia to advise on the development of new computer systems or information technology; or

- (c) the provision of any service consisting of advice, training or learning by observation or in a classroom;

“**child**” includes a child adopted under the Adoption Act, but does not include—

- (a) a child adopted otherwise than under that Act, unless the Minister is satisfied that the circumstances of the adoption were such as substantially satisfy the requirements of subsections (1), (2), (3) and (4) of section four of that Act;
- (b) a spouse; or
- (c) a person who has attained the age of twenty one years;

*[Cap. 53]*

“**citizen**” means a citizen of Zambia;

“**depart**” means exiting Zambia from a port of entry in compliance with this Act and “departure” shall be construed accordingly;

“**Department**” means the Immigration Department in the Ministry responsible for home affairs;

“**deportation**” means removing or causing to be removed an illegal immigrant from Zambia, by the Minister, or detaining an illegal immigrant in accordance with this Act and “deport” shall be construed accordingly;

“**diplomatic permit**” means a permit issued under section twenty two;

“**Director-General of Immigration**” means the person appointed as Director-General of Immigration under section four;

“**educational institution**” means an institution, the primary function of which is to provide academic or other instruction established or registered under the Education Act, the University Act, 1999, or the Technical Education, vocational and Entrepreneurship Training Act, 1998;

*[Cap. 134; Act No. 11 of 1999; Act No. 13 of 1998]*

“**employer**” includes a person contractually bound under an employment contract or, in the case of a juristic person, its chief executive officer or any person to whom authority has been bestowed to make final decisions on human resources;

“**employment permit**” means a permit issued under section twenty eight;

“**established resident**” means, in relation to any date, a person who is not a citizen or a prohibited immigrant and who has been ordinarily and lawfully resident in Zambia or the former Protectorate of Northern Rhodesia, or both, for the period of four years immediately preceding that date, except that no period during which a person—

- (a) has been confined in a prison consequent on a sentence of imprisonment imposed by a court, which sentence has not, on appeal or review, been quashed or varied to a fine;
- (b) has been an inmate of a mental institution; or
- (c) has remained in Zambia as an ordinary visitor or in terms of a permit allowing such person for a limited period only so to remain,

shall be counted for the purpose of this definition;

“**foreign country**” means a country other than Zambia;

“**foreigner**” means any person who is not a citizen;

“**illegal immigrant**” means a foreigner who is in Zambia in contravention of this Act and includes a prohibited immigrant;

“**immediate family**” means a husband, wife or child;

“**immigration assistant**” means a person appointed as an immigration assistant in accordance with section four;

“**immigration consultant**” means a person, other than a legal practitioner, who for remuneration and by trade, represents or acts on behalf of other persons in respect of any of the procedures or activities under this Act;

“**immigration officer**” means a person appointed as an immigration officer in accordance with section four and includes the Director-General of Immigration and, in relation to the exercise of any power or the performance of any duty, any person on whom such power or duty has been conferred or imposed under this Act;

“**investor**” means any person, natural or juridical, who is not a citizen, investing in Zambia in accordance with the Zambia Development Agency Act, 2006, or under any other law;

[Act No. 11 of 2006]

“**investor’s permit**” means a permit issued under section twenty nine;

“**legal practitioner**” has the meaning assigned to it in the Legal Practitioners Act;

[Cap. 30]

“**national document of identity**” means a national registration card or passport;

“**ordinary visitor**” means any visitor, including a tourist and any person visiting friends and relatives in Zambia, other than a business visitor;

“**passport**” has the meaning assigned to it in the Passports Act, 2003;

[Act No. 22 of 2003]

“**port of entry**” means a place where a person has to report before entry into, sojourning in, remaining within, or departing from, Zambia;

“**prohibited immigrant**” has the meaning assigned to it in section thirty five;

“**refugee**” has the meaning assigned to it under the Refugees (Control) Act;

[Cap. 120]

“**removal**” means removing an illegal immigrant, by an immigration officer, on the order of the Director-General of Immigration, but does not include deportation;

“**repealed Act**” means the Immigration and Deportation Act, 1965;

[Cap. 123]

“**residence permit**” means a permit issued to any person under section twenty;

“**spouse**” means a husband or wife, whose marriage was solemnised under the Marriage Act, the laws of a foreign country or under the Zambian customary law;

[Cap. 50]

“**spouse permit**” means a permit issued under section twenty three;

“**status**” means the status of a person as determined by the relevant permit granted to that person under this Act;

“**study permit**” means a permit issued under section twenty six;

“**subordinate court**” means a court constituted under the Subordinate Courts Act;

[Cap. 28]

“**temporary employment permit**” means a permit issued under section twenty eight;

“**temporary permit**” means a permit issued under section twenty seven;

“**temporary residence permit**” means any of the permits specified under section twenty one;

“**traffic**” has the meaning assigned to it in the Anti-Human Trafficking Act, 2008;

[Act No. 11 of 2008]

“**transit permit**” means a permit issued under subsection (4) of section thirty-two;

“**visa**” means an endorsement on a valid passport of a foreigner, which is confirmed by examination by an immigration officer at the port of entry, granting that person the authority to enter Zambia;

“**visiting permit**” means a permit issued under section twenty five;

“**work**” includes the following:

- (a) conducting any activity normally associated with the running of a specific business; or
- (b) being employed or conducting activities consistent with being employed or with the profession of the person, with or without remuneration or reward;

“**Zambia Development Agency**” means the Agency established under the Zambia Development Agency Act, 2006; and

[Act No. 11 of 2006]

“**Zambia Revenue Authority**” means the Authority established under the Zambia Revenue Authority Act.

[Cap. 321]

### 3. Application

- (1) Subject to subsection (2), Parts IV and V shall not apply to any—
  - (a) citizen;
  - (b) established resident; or
  - (c) immediate family of a citizen or established resident;and such persons shall be entitled to enter and re enter into, and to remain within, Zambia.
- (2) Notwithstanding subsection (1), Parts IV and V shall apply to any person
  - (a) arriving in or departing from Zambia until the person satisfies an immigration officer that such person is a person to whom subsection (1) relates; or
  - (b) who is an established resident for the purpose of the exercise by the Minister of the Minister's powers under those Parts.

## Part II – Immigration Department

### 4. Appointment of Director-General of Immigration and other staff

- (1) The Public Service Commission shall appoint, as public officers, a Director-General of Immigration, immigration officers, immigration assistants and such other staff, for the Immigration Department within the Ministry responsible for home affairs, as shall be necessary for the proper administration of this Act.
- (2) A person shall not be appointed as a Director-General of Immigration unless the person has expertise in matters of immigration, administration or security.



- (3) The Director-General of Immigration may be removed from office if the Director-General—
  - (a) is declared to be of unsound mind;
  - (b) is in breach of any code of conduct provided for under this Act;
  - (c) is found guilty of any corrupt practice;
  - (d) is incompetent to perform the functions of the office of the Director-General;
  - (e) is an undischarged bankrupt;
  - (f) is found guilty of any misbehaviour or misconduct; or
  - (g) is convicted of an offence under any law and sentenced to imprisonment for a period exceeding six months.
- (4) If the Public Service Commission considers that the question of removing the Director-General of Immigration under this section ought to be investigated, then—
  - (a) the Public Service Commission shall appoint a tribunal which shall consist of three senior public officers; and
  - (b) the tribunal shall inquire into the matter and report on the facts thereof to the Public Service Commission and advise the Public Service Commission whether the Director-General of Immigration ought to be removed from office.
- (5) Where a tribunal appointed under subsection (4) advises the Public Service Commission that the Director-General of Immigration ought to be removed from office, the Public Service Commission shall remove the Director-General of Immigration from office.
- (6) If the question of removing the Director-General of Immigration from office has been referred to a tribunal under subsection (4), the Public Service Commission may suspend the Director-General of Immigration from performing the functions of the office of the Director-General of Immigration, and any such suspension may at any time be revoked by the Public Service Commission and shall in any case cease to have effect if the tribunal advises the Public Service Commission that the Director-General of Immigration ought to be removed from office.
- (7) This section shall not be construed as preventing the Public Service Commission from exercising the Commission's powers under any law relating to the security services.

## 5. Functions of Department

- (1) The Director-General of Immigration shall, subject to section seven, be responsible for the administration of this Act and the exercise of the Department's functions as provided under this Act.
- (2) The functions of the Department are to—
  - (a) control all borders as provided under this Act;
  - (b) administer and regulate all ports of entry;
  - (c) regulate the migration of any person to Zambia but at the same time promoting economic growth, encouraging the training of citizens and residents by employers by the following, as the case may be;
    - (i) ensuring that businesses in Zambia may employ skilled foreigners who are needed, especially in sectors that are reliant on international exchanges of people and personnel, as provided under any other law;
    - (ii) enabling exceptionally skilled or qualified people to sojourn in Zambia; or

- (iii) facilitating the movement of students and academic staff, within the Southern African Development Community and the Common Market for East and Southern Africa, for study, teaching and research;
  - (d) assist in the prosecution of any offence under this Act; and
  - (e) maintain public records showing funds received or collected—
    - (i) from foreign countries to defray the cost of repatriating illegal foreigners originating from their country, as determined through international relations and agreements;
    - (ii) from donors or other sources; and
    - (iii) from other fees and fines imposed or received by the Department under this Act.
- (3) The Director-General of Immigration shall, in carrying out the functions of the Department, as specified under subsection (1)—
  - (a) promote a human rights-based approach and culture in respect of migration control;
  - (b) facilitate and simplify the issuance of permits to those who are entitled to them;
  - (c) create an environment of cooperation and consultation with other public institutions by establishing advisory inter-departmental committees so as to enable the other public institutions to perform their functions, that impact on this Act, within the context of this Act and the ambit of their respective powers and functions;
  - (d) create a climate of cooperation with communities and organs of civil society, including trade unions, to encourage them to cooperate with the Department in the application and implementation of this Act;
  - (e) in consultation with the Commissioner for refugees and any other relevant body, educate communities and organs of civil society on the rights of foreigners and refugees;
  - (f) organise and participate in community fora or other community-based organisations to deter xenophobia and educate the citizenry on migration issues;
  - (g) in cooperation with the Ministry responsible for foreign affairs—
    - (i) promote programmes in foreign countries with the aim of deterring people from becoming illegal immigrants; and
    - (ii) table the need for cooperation in controlling migration towards Zambia on the agenda of relations with foreign countries and negotiating appropriate measures and agreements with such foreign countries;
  - (h) ensure the uniform application of this Act;
  - (i) ensure the efficient and effective operation of the Department;
  - (j) administer the prescribed fees, fines and other payments that the Department exacts or receives in such a fashion as to defray the overall cost of the Department's operations;
  - (k) liaise or interface with organs of foreign countries or international institutions dealing with migration or law enforcement, especially, but not exclusively, to fight terrorism, arms trafficking, human trafficking, drug trafficking, human smuggling, and organised crime; and
  - (l) conduct any other activity specified under this Act or that is necessary for or conducive to its implementation.
- (4) The Director-General of Immigration shall ensure that every immigration officer shall, when performing any of the functions of the Department, abide by the provisions of paragraphs (a), (b) and (c) of subsection (3).

- (5) The Department shall establish and train an investigative unit to detect illegal immigrants, monitor compliance with the terms and conditions of permits, control borders and perform any other function under this Act or which may be delegated to it.
- (6) The Department shall have officers in missions abroad or in any public or statutory body in order to promptly and effectively exercise the functions of the Department.
- (7) An officer in a mission abroad shall serve as an immigration attaché for a term of three years and may be re-appointed for a further term of three years.

## 6. Powers of Department

Subject to, and for the purposes of, this Act, through its duly authorised officers, the Department may—

- (a) enter, without warrant, any workplace and inspect employment records;
- (b) inspect workplaces in the prescribed manner to ensure that no illegal immigrant is employed and that foreigners, if any, are employed in the job description and at the terms and conditions set out in their permits, and that the relevant fees, if any, have been paid;
- (c) inspect any educational institution to ensure that illegal immigrants are not enrolled at the institution;
- (d) liaise with other law enforcement officers to—
  - (i) ensure that the identity of people who are arrested, detained or convicted is checked for the purposes of this Act; and
  - (ii) educate and instruct law enforcement agencies to detect illegal immigrants and report them to the Department;
- (e) liaise with the Zambia Revenue Authority and the Zambia Development Agency to ensure that the identity of people who contravene the provisions of the laws administered by the Authority or Agency or who intend to invest in Zambia is checked for the purposes of this Act;
- (f) exercise any power relevant to, or necessary for, the functions set out in subsection (2) of section five;
- (g) request any public institution—
  - (i) to take action or adopt procedures to ensure that the recipients of their services are identified as citizens or foreigners; and
  - (ii) that provides services, or issues permits, concessions or other authorisations to subject the applicant to proof of status or citizenship;
- (h) apprehend, detain and remove any illegal immigrant;
- (i) remove illegal immigrants who are unwilling to leave Zambia;
- (j) enter and search, without a warrant, any premises, trading area, residential area or dwelling house which the officer has reasonable grounds to believe have evidence connected with a contravention of this Act;
- (k) search, with a warrant issued by a court, the bank account, share account, expense account or safe deposit, of any person, which the officer has reasonable grounds to believe have evidence connected with a contravention of this Act;
- (l) enter into an agreement with any person, including any department of Government, under which the Department shall be authorised to make use of any of the facilities, equipment or personnel belonging to, or under the control of, or in the employment of, such person or department; and
- (m) exercise any other power specified by this Act or necessary for, or conducive to, its implementation.

## 7. Delegation of powers of Department

- (1) The Director-General of Immigration may, in writing and subject to such restrictions, reservations, exceptions and conditions as the Director-General of Immigration may think fit, delegate to an immigration officer or other authorised persons the exercise of all or any of the functions or powers conferred on the Department by or under this Act, except that no such delegation shall prevent the exercise by the Director-General of Immigration of any delegated power.
- (2) The Director-General of Immigration may, in writing, revoke or vary any delegation made, under subsection (1), of any power included in the delegation instrument.
- (3) The Minister may, by statutory order, confer any power and any duties of an immigration officer, under this Act, on any public officer or class of public officers.

## 8. Powers of search of aircraft, train, vehicle or other vessel

For the purpose of discharging any function under this Act, an authorised officer may—

- (a) without warrant, stop, enter and search any aircraft, train, vehicle or vessel entering in Zambia; and
- (b) require the person in charge of any aircraft, train, vehicle or vessel entering in Zambia to furnish a list of the names of all persons in the aircraft, train, vehicle or vessel, as the case may be, and such other prescribed information as it is within the power of such person to furnish.

## 9. Powers of arrest of suspects entering Zambia

- (1) Any person entering Zambia, whom an immigration officer suspects to have committed an offence under this Act, shall give that person's name and address and any national document of identity to an immigration officer on request.
- (2) An immigration officer may, without a warrant, arrest any person referred to in subsection (1) if that person refuses or fails to furnish, or gives false information of, that person's name and address to the immigration officer.

## 10. Appeal procedures

- (1) After making a decision, under this Act, which adversely affects a person, other than a decision relating to a deportation or removal, an immigration officer shall notify that person of the decision and the reasons for the decision and give the person at least forty-eight hours to make representations.
- (2) The immigration officer shall, where a person makes any representation under subsection (1), within fourteen days of receiving the representation, notify the person of the decision made, with respect to the representation.
- (3) Any person aggrieved with a decision of the immigration officer under subsection (1) may, within forty-eight hours of receiving the decision, appeal to the Minister.
- (4) The Minister may, upon receiving an appeal under subsection (3), reverse or modify the decision of the immigration officer within ten days:  
  
Provided that the Minister shall not take any decision before consulting the Director-General of Immigration and obtaining the Director's advice.
- (5) Any person aggrieved with a decision of the Minister under subsection (4) may, within forty-eight hours of the Minister's decision, if appropriate, appeal to a court, which may suspend, reverse or modify the decision.
- (6) If a decision of the Department is not appealed in terms of subsections (3) and (5), the decision shall be final.

## Part III – Persons entering into and departing from Zambia

### 11. Entry any remaining in Zambia

- (1) Subject to the other provisions of this Act, a person shall not enter Zambia at a place other than a port of entry.
- (2) Subject to this section, a person who is not a citizen shall not enter Zambia unless that person is in possession of a valid temporary residence permit, residence permit or valid border pass.
- (3) Subject to this section, the presence in Zambia of any person who is not a citizen shall, unless otherwise authorised under this Act, be unlawful, unless that person is in possession of a valid temporary residence permit, residence permit, or valid border pass.

### 12. Arrival in Zambia

- (1) Every person who arrives in Zambia by air—
  - (a) at any prescribed airport and intends to leave the precincts of such airport, shall forthwith appear before an immigration officer; or
  - (b) at any place other than a prescribed airport, shall forthwith proceed to and appear before the nearest immigration officer.
- (2) Every person who arrives in Zambia by inland waters or overland shall forthwith proceed to and appear before the nearest immigration officer at a port of entry or a place designated by the Minister by notice in the *Gazette*.
- (3) Any foreigner who arrives in Zambia shall, subject to subsections (4) and (5), on demand, produce a valid visa, granted under subsection (6), or a valid permit issued under this Act, to an immigration officer.
- (4) Any ordinary visitor or business visitor who arrives in Zambia at a port of entry may be issued with a visiting permit or a business permit, respectively, for such period as an immigration officer may endorse in that person's passport, subject to section twenty-one.
- (5) Any person who holds a valid permit issued under Part IV or to whom a temporary residence permit is issued on arrival at a port of entry shall, upon that person's admission into Zambia, be considered as being in possession of a valid visa for the purposes of this section.
- (6) A visa granted under this Act—
  - (a) may, subject to any condition that the Director-General of Immigration may consider necessary, be granted by the Director-General of Immigration to any foreigner, who has applied for the visa in the prescribed manner;
  - (b) has the effect of authorising the holder of the visa to report to an immigration officer at a port of entry for the purposes of admission;
  - (c) may be given free of charge or on payment of a prescribed fee; or
  - (d) may for good cause or reason, be withdrawn and declared void by the Director-General of Immigration.

### 13. Examination of entrants

- (1) An immigration officer shall examine any person appearing before the officer in accordance with section twelve for the purpose of ascertaining that person's—
  - (a) identity;

- (b) reasons for entering Zambia;
  - (c) reasons for wishing to remain in Zambia; and
  - (d) status under this Act.
- (2) For the purpose described in subsection (1), an immigration officer shall require any person to whom that subsection relates—
- (a) to produce that person's valid passport;
  - (b) to make such declaration as may be prescribed;
  - (c) to produce documentary or other evidence relative to that person's reason for entering or remaining in Zambia; or
  - (d) in writing or otherwise, to answer such questions as the immigration officer may put to the person.
- (3) An immigration officer shall not allow any foreigner, who does not possess a permit or visa as required under this Act, or who does not comply with any directive or request of an immigration officer, entry into Zambia.

#### **14. Permit holder to appear before immigration officer**

- (1) An immigration officer may, by notice in writing, require any person who holds a permit issued under this Act to appear before an immigration officer at such place and within such time as may be specified in the notice.
- (2) Any person specified under subsection (1) who is required to appear before an immigration officer and who does not do so, commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

#### **15. Security from entrants**

- (1) The Director-General of Immigration may require any foreigner who enters Zambia on a permit issued under this Act or who applies for a visa, as a condition of that person remaining in Zambia, to pay, as a deposit, a prescribed sum of money or to surrender that person's air ticket as a guarantee, or both.
- (2) The Director-General of Immigration shall specify the period not exceeding one year for which the guarantee is required.
- (3) Any sum deposited as a guarantee under this section may be applied by the Director-General of Immigration to meet any expenditure incurred by the Government within the specified period in connection with the care, treatment or maintenance within or the removal or deportation, from Zambia, of the person concerned.

#### **16. Departure from Zambia**

- (1) Every person departing from Zambia shall do so from a port of entry and, except if that person is in direct transit through Zambia by air having not left the precincts of a prescribed airport, shall appear before an immigration officer, unless that person is in possession of a written authorisation from the Director-General of Immigration granting permission to that person to depart Zambia at a place other than a port of entry within a specified period, not exceeding three months of the issue of the authorisation.

- (2) An immigration officer shall require a person departing from Zambia, as specified under subsection (1) to—
- (a) produce a valid passport, visa and any permit issued to that person under this Act and to surrender any visa or permit which is no longer valid;
  - (b) make and sign such declaration as may be prescribed; or
  - (c) in writing or otherwise, answer such questions relating to that person's identity or departure as may be put to the person by the immigration officer;
- unless the person is a child under the age of sixteen years who does not hold a passport and is accompanied by that child's parent who holds a valid passport in which the child's name is endorsed.
- (3) Any person who is legally in the country as an ordinary visitor and whose period, as specified in that person's visiting permit, has expired shall forthwith leave the country or proceed to the nearest immigration office to extend the period of that person's visiting permit.
- (4) Any person who is legally in the country as a business visitor and whose period, as specified in that person's business permit, has expired shall forthwith leave the country or proceed to the nearest immigration office to extend the period of that person's business permit.

## 17. Power to deport illegal immigrants

- (1) The Minister may, by order in writing, direct that any illegal immigrant be deported from and remain out of Zambia either indefinitely or for such period as may be specified in the order.
- (2) An illegal immigrant to whom an order made under this section relates shall—
  - (a) be deported to the place from where that person came or, with the approval of the Minister, to any place to which that immigrant consents to be deported if the government of that place consents to receive that immigrant; or
  - (b) if the Minister so directs, be kept in prison or in police custody until that illegal immigrant's departure from Zambia, and while so kept shall be deemed to be in lawful custody.
- (3) Subject to this section an order under this section shall be carried out in such manner as the Minister may direct.
- (4) Any order made, or directions given under this section may at any time be varied or revoked by the Minister by further order in writing.
- (5) In the case of a person who arrives in Zambia as a stowaway, the powers of the Minister under this section may be exercised by an immigration officer, and this section shall have effect accordingly.
- (6) Any order made before the commencement of this Act directing that an illegal immigrant be deported from Zambia and remain out of Zambia, whether indefinitely or for a specified period, shall for all the purposes of this Act be deemed to be an order made under this section, and shall be enforced accordingly.
- (7) An order made or deemed to have been made under this section shall, for so long as it provides that the illegal immigrant to whom it relates shall remain out of Zambia, continue to have effect whenever such immigrant is found in Zambia, and may be enforced accordingly.
- (8) Nothing under subsection (7) shall prevent the prosecution for an offence under this Act or any other written law of any person who returns to Zambia in contravention of any order.
- (9) Any illegal immigrant convicted and sentenced under this Act for contravening any provision of this Act may be deported before the expiration of the sentence and the imprisonment shall terminate at

that time, except if the foreigner is a person to whom section thirty-three of the Penal Code refers, in which case the Transfer of Convicted Prisoners Act, 1998, shall apply.

*[Cap. 87; Act No. 26 of 1998]*

- (10) Where an illegal immigrant is brought before a court as being unlawfully present in Zambia, and the court is informed that an application to the Minister for an order under this section has been made or is about to be made, the court may order that such immigrant be detained in prison or kept in police custody for a period not exceeding fourteen days, pending a decision by the Minister.

## **18. Arrest and detention prior to deportation**

- (1) An immigration officer may, without a warrant, arrest or cause to be arrested an illegal immigrant and detain that immigrant pending that immigrant's removal or deportation, in a manner prescribed and at a prescribed place of detention, except that the illegal immigrant concerned—
  - (a) shall be notified in writing of the reasons for the removal or deportation; and
  - (b) shall not be held in detention for longer than thirty days without a warrant of a court, which court, on good and reasonable grounds, may extend the detention for a period not exceeding ninety days.
- (2) The detention of an illegal immigrant under this Act, other than on a ship and for purposes other than for that immigrant's removal or deportation, shall not exceed forty-eight hours from the time of arrest or the time at which such immigrant was taken into custody for examination or other purposes.
- (3) The Department may order an illegal immigrant that is subject to removal or deportation to deposit a sum sufficient to cover the expenses related to that illegal immigrant's deportation, detention, maintenance and custody and an immigration officer may, in the prescribed manner, enforce payment of such deposit.
- (4) Any illegal immigrant who fails to comply with an order made under subsection (3) commits an offence and is liable, upon conviction, to a fine to the extent of the deposit required to be paid under subsection (3) or to imprisonment for a period not less than twelve months but not exceeding two years.
- (5) On the basis of an order for the deportation, removal or release of a detained illegal immigrant, the person in charge of the prison concerned shall deliver that illegal immigrant to an immigration officer or police officer bearing the order, and if the immigrant is to be deported or removed, the immigrant shall be deemed to be in lawful custody while in the custody of the immigration officer or police officer bearing the order.

## **19. Duties and liabilities of carriers**

- (1) The master of a ship, the captain of an aircraft, the guard of a train or the person in charge of a vehicle arriving from, or leaving for a place outside Zambia, or the owner of, or agent for, the ship, aircraft, train or vehicle, shall, if so required by an immigration officer, furnish a list in duplicate, signed by that person or by some person authorised to sign it on that person's behalf, of the names of all persons in the ship, aircraft, train or vehicle, and such other information as may be prescribed.
- (2) The master of a ship, the captain of an aircraft, the guard of a train or the person in charge of a vehicle about to leave for any port of entry or place outside Zambia, shall, if so required by an immigration officer, take into that person's custody any person in respect of whom an order for the deportation of that person has been made under section seventeen or any illegal immigrant that is to be removed from Zambia and, on due payment, afford that person passage to that port or place and proper accommodation and maintenance during that passage.



- (3) Where any person who is conveyed to Zambia in a ship, train, vehicle or aircraft is refused permission to enter Zambia on the ground that that person is a prohibited immigrant—
- (a) the master of the ship, the guard of a train, the person in charge of a vehicle or the captain of the aircraft shall, if so required by an immigration officer, take that immigrant into custody and secure that the immigrant is removed from Zambia; and
  - (b) the master, the owner and the agent in Zambia of the ship, or the captain, owner and agent in Zambia of the aircraft or the person in charge of a vehicle, shall be jointly and severally liable to pay to the Government all expenses incurred by the Government in respect of the transport and maintenance of that immigrant and that person's removal from Zambia, and the amount of such expenses shall be a civil debt recoverable summarily at the suit of the State.
- (4) Any illegal immigrant who is taken into the custody of the master of a ship, the captain of an aircraft, the guard of a train or the person in charge of a vehicle under this section shall be deemed to be in lawful custody while that person is in Zambia.

## Part IV – Immigration permits

### 20. Residence permit

- (1) A person shall apply to the Director-General of Immigration for a residence permit in the prescribed manner and form.
- (2) The Director-General of Immigration shall, upon receipt of an application under subsection (1), issue the person with a residence permit if the person—
- (a) is not an illegal immigrant;
  - (b) has an adequate knowledge of any language commonly used by the indigenous inhabitants of Zambia as may be prescribed, or of English;
  - (c) intends to remain in Zambia for a period in excess of ten years;
  - (d) belongs to a class set out in the First Schedule;
  - (e) is a foreigner holding an investor's permit for a period exceeding three years;
  - (f) is an established resident;
  - (g) is the spouse of a citizen who has held a spouse permit for a period of not less than five years;
  - (h) is a child of a citizen, irrespective of the age of that child;
  - (i) is a child or dependant under the age of twenty-one years of an established resident or person holding a valid residence permit;
  - (j) intends to retire in Zambia, except that such person shall prove to the satisfaction of the Director-General of Immigration that the person—
    - (i) has a right to a pension or an irrevocable annuity or retirement account from which the person receives a prescribed minimum payment for the rest of that person's life; or
    - (ii) has a minimum prescribed net worth and has paid a prescribed amount in an account in Zambia; or
  - (k) is a holder of an entry permit.
- (3) For the purposes of paragraph (b) of subsection (2), an immigration officer may require any foreigner to undertake a proficiency test.

- (4) The Minister, after consultations with the Director-General of Immigration, may direct that a person be issued with a residence permit.
- (5) The holder of a residence permit shall comply with the conditions specified in the permit and shall not engage, for gain, in any activity, business, trade, employment, profession, study or any other thing not specified in the residence permit.
- (6) Subject to this Act, a residence permit shall authorise the holder, until that holder becomes a citizen by registration, to enter and re enter into, and to remain within, Zambia.
- (7) The holder of a residence permit shall have the rights, privileges, duties and obligations of a citizen, except for those rights, privileges, duties and obligations which a law or the Constitution explicitly ascribes to citizenship.

*[Cap. 1]*

- (8) A residence permit shall cease to be valid if the holder—
  - (a) fails to enter Zambia within six months of the date of issue of the permit or such later date as the Director-General of Immigration may endorse on the residence permit;
  - (b) is absent from Zambia for a period in excess of six months without notifying the Director-General of Immigration, in writing, that that person proposes to return to Zambia; or
  - (c) is absent from Zambia for any period in excess of twelve months.
- (9) A person issued with a residence permit shall notify the nearest immigration office of any change of address.
- (10) A holder of a residence permit who fails to notify an immigration officer in writing of any change of address commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding twelve months, or to both.

## **21. Temporary residence permit**

- (1) A foreigner, who is not an established resident or holder of a residence permit, may enter and sojourn in Zambia only if in possession of any of the temporary residence permits issued under sections twenty-two to thirty-two.
- (2) Subject to this Act, an immigration officer may, upon application by a foreigner or on examination of a foreigner at a port of entry, issue a temporary residence permit to the foreigner for such period of time as the immigration officer may endorse on that foreigner's passport, except that the period shall not exceed the period specified for that permit as provided under this Act.
- (3) A temporary residence permit, if issued to any person outside Zambia, shall be deemed to be in force only after admission of that person into Zambia.
- (4) A temporary residence permit shall be issued on condition that the holder is not or shall not become an illegal immigrant.
- (5) The Director-General of Immigration may, as prescribed, attach reasonable terms and conditions, including prescribed financial and other guarantees, for a prescribed class of foreigners, applying for a temporary residence permit.
- (6) The holder of a temporary residence permit shall comply with the conditions specified in the permit and shall not engage, for gain, in any activity, business, trade, employment, profession, study or any other thing not specified in the permit.
- (7) Subject to this Act, a foreigner may, while in Zambia, apply to the Director-General of Immigration, in the prescribed form, to change that foreigner's status under any particular temporary residence permit to another temporary residence permit or to a residence permit, or to change the conditions

attached to the temporary residence permit, or to change both the status of the foreigner and conditions attaching to the permit, as the case may be.

- (8) An application by a foreigner for a change in status as provided under subsection (7) shall not change the status of the foreigner or entitle that foreigner to sojourn in Zambia pending the decision in respect of that application.
- (9) Subject to this Act, the Director-General of Immigration may, on application in the prescribed manner and form by a holder of a temporary residence permit, extend the period for which the temporary residence permit was issued.
- (10) The Director-General of Immigration may, by notice in writing, notify the holder of a temporary residence permit that, subject to subsection (11), the permit shall be cancelled for the reasons disclosed in the notice and direct that the holder leaves Zambia within the period specified in the notice and that on the expiry of that period the permit held by that holder shall be void.
- (11) The holder of a temporary residence permit who receives a notice under subsection (10) may, before the expiry of the period specified in the notice, make representations to the Director-General of Immigration who shall consider the representations before making a final decision.

## 22. Diplomatic permit

- (1) A diplomatic permit may be issued by the Director-General of Immigration to—
  - (a) an ambassador, a minister of a foreign country, a career diplomat or consular officer of a foreign government recognised by the Government, or a representative of a prescribed international organisation which is accepted by the Minister responsible for foreign affairs;
  - (b) on a basis of reciprocity, other officials or employees of a foreign government or international organisation specified in paragraph (a);
  - (c) a member of the immediate family of the persons specified in paragraphs (a) and (b);
  - (d) on a basis of reciprocity, attendants, servants and personal employees of the persons specified in paragraphs (a) to (c); and
  - (e) other prescribed foreigners who are dignitaries of a foreign country.
- (2) The holder of a diplomatic permit may not engage in work, except that the foreigners referred to in subsection (1) may, on reciprocity basis with any State, combine such permit with a separately issued employment permit.
- (3) Where any person ceases to be a person to whom subsection (1) refers, that person's presence in Zambia shall, unless otherwise authorised under this Act, be unlawful, after the expiration of such reasonable period following that cessation as an immigration officer may allow for the departure of that person from Zambia.

## 23. Spouse permit

- (1) Subject to section twenty-one, a spouse permit may be issued by the Director-General of Immigration to the spouse of the following:
  - (a) a citizen; or
  - (b) an established resident.
- (2) A spouse permit shall be valid for such period as may be prescribed.
- (3) The holder of a spouse permit may not engage in work, except if such spouse is issued with an employment permit separately.

## 24. Business permit

- (1) Subject to section twenty-one, a business permit may be issued by an immigration officer to a business visitor for a period not exceeding thirty days.
- (2) A business permit shall, in relation to a business visitor, specify the following:
  - (a) the business the holder is to undertake;
  - (b) the person or public or private institution that has invited the business visitor, or who the business visitor's point of contact is in Zambia;
  - (c) the period the permit is valid for; and
  - (d) the sanctions relating to the failure of the business visitor to comply with the terms and conditions of the permit.

## 25. Visiting visa and visiting permit

- (1) Subject to section twenty-one, a visiting visa may be issued by an immigration officer to an ordinary visitor, for a period not exceeding ninety days within any period of twelve months from the day of first entry into Zambia, unless an application is made to the immigration officer for an extension of the period one month before the expiry of the visa.
- (2) On application being made, in writing, an immigration officer may issue a visiting permit to any ordinary visitor—
  - (a) whose presence in Zambia is or is likely to become unlawful by virtue of that visitor remaining in Zambia for a period or periods exceeding ninety days in any period of twelve months, as specified in subsection (1);
  - (b) who, save as provided under paragraph (a), is not an illegal immigrant; or
  - (c) who is not the holder of any other permit issued under this Act.
- (3) A visiting permit shall specify the period of its validity, being a period not exceeding ninety days from the date of issue of such permit.
- (4) Subject to this Act, a visiting permit shall authorise the holder to enter and re enter into and to remain within Zambia until such permit expires.

## 26. Study permit

- (1) A person who intends to study in Zambia, on a full time basis, at an educational institution shall apply for a study permit, in the prescribed manner, while outside Zambia and shall remain outside Zambia until the study permit has been issued, except where the applicant has been ordinarily resident in Zambia or is a refugee at the time of the application.
- (2) Where any person applies for a study permit, as specified under subsection (1), the Director-General of Immigration may issue the study permit to the applicant if the applicant—
  - (a) is not a prohibited immigrant; and
  - (b) has been accepted for a programme of study at an educational institution in Zambia for a period longer than three months.
- (3) An educational institution to which a person has applied for a study programme shall submit to the Director-General of Immigration a certificate certifying that the institution has received guarantees that the applicant's fees shall be paid and that the applicant shall have sufficient means to support the applicant while in Zambia.

- (4) An educational institution referred to in subsection (3) shall notify the Director-General of Immigration when a student that is the holder of a study permit has completed that student's studies and shall surrender the study permit to the Director-General of Immigration.
- (5) A study permit shall specify the educational institution to which it relates and, subject to this Act, authorise the holder to study at that institution and to enter and re enter into and to remain within Zambia while under instruction at that institution and for such period thereafter as would reasonably enable that person to complete the programme of study.
- (6) The holder of a study permit shall comply with the conditions specified in the permit and shall not engage, for gain, in any activity, business, trade, employment, profession or any other thing not specified in the permit.

## 27. Temporary permit

- (1) An immigration officer may issue a temporary permit to a prohibited immigrant or to any person in respect of whom the Minister directs that such permit be issued.
- (2) An immigration officer may, as a condition precedent to the issuance of a temporary permit, require a prohibited immigrant or any other person to deposit such sum, not being more than a prescribed amount, for the purpose of securing compliance with the conditions specified in the permit and, if any such condition is not complied with, the Director-General of Immigration shall authorise that the money be used for purposes of deporting the person or that the money be forfeited to the State.
- (3) A temporary permit shall specify the prescribed conditions attaching to the permit and the period of the permit's validity, except that no period in excess of ninety days shall be specified without the approval of the Director-General of Immigration.
- (4) Except under a temporary permit, any person who belongs to class C specified in the Second Schedule and who returns to Zambia commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

## 28. Employment permit and temporary employment permit

- (1) On application being made in the prescribed manner, the Director-General of Immigration may, in consultation with the Ministry responsible for labour, issue an employment permit to any foreigner outside Zambia who—
  - (a) is not a prohibited immigrant;
  - (b) belongs to class A specified in the First Schedule;
  - (c) is employed by the Government of the Republic of Zambia or a statutory body; or
  - (d) is a volunteer or missionary.
- (2) The Director-General of Immigration may, in consultation with the Ministry responsible for labour, issue an employment permit to any person within Zambia who would be eligible under subsection (1) for such a permit if that person were outside Zambia.
- (3) Any ministry or department of the Government or a statutory body that intends to employ a foreigner shall comply with the prescribed requirements, procedures and forms specified for the issuance of an employment permit to the foreigner.
- (4) An employment permit shall specify—
  - (a) such conditions, if any, for observance by the holder, as to the area within which the holder may engage in employment and the nature of the employment in which the holder may engage, as the Director-General of Immigration considers necessary; and
  - (b) the period of its validity.

- (5) The period of validity of an employment permit, in any case, shall be for a period from the date of its issue to a date, as the Director-General of Immigration, having regard to all the circumstances of the case, thinks fit, and shall be capable of extension for a further period or periods to a maximum of five years from the date of its issue.
- (6) Subject to this Act and to any conditions specified in an employment permit, the permit shall authorise the holder—
  - (a) to engage in paid work under an employer resident in Zambia; and
  - (b) to enter and re-enter into and to remain within Zambia until the permit expires.
- (7) An employer shall, on the termination of an employment contract of, or the resignation or dismissal of, a foreign employee who is the holder of an employment permit issued under subsection (1), surrender the employment permit to the Director-General of Immigration within one month of the termination of the employment contract, resignation or dismissal of the foreign employee.
- (8) An employer shall, on termination of an employment contract of, or the resignation or dismissal of, a foreign employee who is the holder of an employment permit, issued under subsection (1), be fully responsible for the repatriation of the former foreign employee and other costs associated with the deportation of that former foreign employee if that former foreign employee fails to leave Zambia when no longer in employment.
- (9) An employer who contravenes subsection (7) or (8), commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units.
- (10) The Director-General of Immigration may issue a temporary employment permit to any business visitor who intends to remain in Zambia for a period in excess of thirty days, except that any period granted under a temporary employment permit shall not exceed six months in any period of twelve months.

## 29. Investor's permit

- (1) Any foreigner intending to establish a business or invest in, or who has established or invested in a business in Zambia shall apply to the Director-General of Immigration for an investor's permit in the prescribed manner and form.
- (2) The Director-General of Immigration may, upon receipt of an application under subsection (1), issue the applicant with an investor's permit if the applicant—
  - (a) is not a prohibited immigrant;
  - (b) is a person who will invest or has invested a prescribed financial or capital contribution in the business and shows proof of the same or holds, and submits to the Director-General of Immigration, an investment licence issued by the Zambia Development Agency; or
  - (c) is an investor who is joining an existing business entity and has a clearance letter from the Zambia Development Agency.
- (3) The holder of an investor's permit may conduct or supervise work.
- (4) The following shall apply in respect of an investor's permit:
  - (a) a holder of the permit shall not engage in any business other than as is prescribed for in the permit;
  - (b) the spouse and children, over eighteen years, of that foreigner may be issued with employment permits if they are to be employed in the family business;
  - (c) the holder of the permit may employ such number of qualified expatriate employees as may be authorised by the Director-General of Immigration on condition that the holder employs a prescribed minimum number of citizens;

- (d) the permit shall indicate the period of time for which it is valid and whether it is subject to renewal for a further indicated period;
  - (e) the permit shall specify the terms and conditions of the permit; and
  - (f) the holder of the permit may enter and re-enter and remain in Zambia until the permit expires in accordance with its terms.
- (5) A person issued with an investor's permit shall notify the nearest immigration officer of any change of address.
- (6) A holder of an investor's permit who fails to notify an immigration officer in writing of any change of address commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units.

### 30. Cross-border permit

- (1) An immigration officer may issue a cross-border permit, for a period not exceeding six months, to a foreigner who is a member of a regional grouping, to which Zambia is a party, or who ordinarily resides in a country with boundaries with Zambia and who—
- (a) is not a prohibited immigrant;
  - (b) has a valid passport or travel document; and
  - (c) is a member of an association of persons engaged in cross border business.
- (2) A cross border permit—
- (a) shall contain such conditions as the immigration officer shall specify on the permit;
  - (b) shall be valid for an initial period of ninety days; and
  - (c) may be renewed after the expiry of that period for further periods within any period of six months from the day of first entry into Zambia.
- (3) The holder of a cross-border permit may enter, re-enter and remain in Zambia until the permit expires.

### 31. Asylum seeker's permit

- (1) An immigration officer may issue asylum seeker's permit to any person seeking refuge or asylum in Zambia in accordance with the Refugees (Control) Act.

*[Cap. 120]*

- (2) An immigration officer may issue asylum seekers permit to a person who, at a port of entry, claims to be an asylum seeker, which permit shall be valid for a period not exceeding thirty days.
- (3) Notwithstanding anything contained in any other law, after the expiry of a permit, issued under subsection (1), if the holder has not, within the thirty days of the validity of the permit, reported to the Commissioner for Refugees or a refugee settlement as provided under the Refugees (Control) Act, that holder of the permit shall become an illegal immigrant and shall be dealt with in accordance with this Act.

*[Cap. 120]*

- (4) Any refugee found in any place other than a refugee settlement without a valid pass or permit commits an offence.

### 32. Border pass and transit permit

- (1) An immigration officer may issue a border pass to a citizen who does not hold a passport and who resides around a prescribed area where Zambia and another country share the border, for the purpose of visiting a prescribed border area of the neighbouring State.
- (2) Subject to subsection (3), an immigration officer may issue a transit visa authorising a foreigner
  - (a) travelling to a foreign country, to make use of the transit facilities at a port of entry; or
  - (b) to travel from a port of entry through Zambia to a foreign country.
- (3) A transit visa may be issued for a period not exceeding ninety days within any period of twelve months from the day of first entry into Zambia.
- (4) An immigration officer may, where a foreigner in transit exhausts the ninety days period referred to in subsection (3), before the end of the year, issue the foreigner with a transit permit.

### 33. Variation of conditions of permit

On application being made in the prescribed manner by a holder of a permit issued under this Act, and subject to the provisions of this Act relating to such permit, the Director-General of Immigration may vary the conditions and the period of validity, if any, specified in the permit.

### 34. Revocation and cancellation of permit

- (1) The Director-General of Immigration may, by notice in writing, revoke any permit issued under this Act if the holder—
  - (a) has contravened any provision of this Act or any other law;
  - (b) obtained a permit by means of any representation which was false in any material particular or by means of the concealment of any material information;
  - (c) has failed to comply with any requirement or condition of a permit issued under this Act;
  - (d) has become or is likely to become a charge on the Republic in consequence of failure to support oneself and such of that person's dependants as may be in Zambia; or
  - (e) is likely to be a danger to peace and good order in Zambia.
- (2) A notice to revoke a permit referred to in subsection (1), shall be served in person on the holder of the permit and it shall specify—
  - (a) the permit to be revoked; and
  - (b) the grounds on which the permit is being revoked.
- (3) Every permit, other than a temporary permit, issued under this Act to a person who thereafter becomes an illegal immigrant shall cease to be of force and effect at such time as the holder becomes an illegal immigrant.
- (4) Any permit surrendered under this Act shall be cancelled.

## Part V – Prohibited immigrants and human trafficking

### 35. Prohibited immigrants

- (1) Any person who belongs to a class set out in the Second Schedule shall be a prohibited immigrant in relation to Zambia and shall not qualify for a visa, any temporary residence permit, residence permit or admission, in any other manner, to Zambia.



- (2) Any person whose presence in Zambia is declared in writing by the Minister to be inimical to the public interest shall be a prohibited immigrant in relation to Zambia.
- (3) Subject to section thirty-six, the presence within Zambia of any prohibited immigrant shall be unlawful and such person shall be arrested without warrant, detained and deported from Zambia in accordance with this Act:

Provided that if the prohibited immigrant has a pending case before any court, the prohibited immigrant shall not be deported from Zambia until after the determination of the prohibited immigrant's case before the court.

- (4) An immigration officer may take or cause to be taken in the officer's presence for the purposes of record and identification, the measurements, photograph, finger and palm prints of any prohibited immigrant:

Provided that all records of the measurements, photograph, finger and palm prints shall be destroyed or handed over to a person who an immigration officer is satisfied has ceased to be a prohibited immigrant and who makes an application in that behalf.

- (5) Notwithstanding subsection (1), the Minister may, in the prescribed manner, exempt any person from all or any of the classes set out in the Second Schedule.

### **36. Prohibited immigrant required to leave Zambia**

- (1) Any immigration officer shall, if so directed by the Minister, by notice served in person on any prohibited immigrant or a person to whom subsection (2) of section thirty-five relates, require that immigrant or person to leave Zambia.
- (2) Any notice served in accordance with subsection (1) shall specify in relation to the person on whom it is served—
  - (a) the class set out in the Second Schedule to which it is considered the person belongs, or that the person is a person to whom subsection (2) of section thirty-five relates;
  - (b) the period within which the person is required to leave Zambia; and
  - (c) the route by which the person shall travel in leaving Zambia.
- (3) The period within which a person shall be required to leave Zambia shall, except in the case of a person who, within seven days of that person's appearing before an immigration officer in accordance with this Act has been served with a notice under this section, be not less than forty-eight hours and shall commence—
  - (a) in the case where such person does not make representations under this Act, from the time that person is served with such notice requiring the person to leave Zambia; or
  - (b) in the case where such person makes representations in accordance with this Act, from the time that person is advised that the representations have been unsuccessful.
- (4) Any person having been required by notice under this section to leave Zambia within a specified period who wilfully remains in Zambia after the expiry of that period commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding twelve months, or to both.
- (5) Any person who left Zambia as a prohibited immigrant or who was removed from Zambia and who unlawfully returns to Zambia commits an offence and is liable, upon conviction, to imprisonment for a period not exceeding three years.

### **37. Representation against requirement to leave Zambia**

- (1) Any person required by notice under section thirty-six to leave Zambia and who due to such notice has lawfully remained in Zambia longer than seven days may, within forty eight hours of receiving

such notice, deliver to any immigration officer written representations to the Minister against such requirement and the immigration officer shall place such representations before the Minister without delay.

- (2) If, after considering the representations as provided under subsection (1), the Minister does not think it fit to exercise the Minister's powers in relation to the issue of a permit to the person or the exemption of the person from the classes set out in the Second Schedule, the Minister shall notify that person that that person's representations have been unsuccessful.

### 38. Suspected prohibited immigrants

- (1) If an immigration officer has reasonable grounds to suspect that any person is a prohibited immigrant, the officer may detain the person for a reasonable period, not exceeding fourteen days, as may be required for the purpose of making inquiries relating to that person.
- (2) Any person who an immigration officer reasonably suspects to be a prohibited immigrant belonging to class C specified in the Second Schedule may be required by the immigration officer to submit to the taking of that person's measurements, photograph, finger and palm prints:

Provided that all records of the measurements, photograph, finger and palm prints shall be destroyed or handed over to that person if the person is found not to be a prohibited immigrant and makes an application in that behalf.

### 39. Deportation

- (1) After receiving the particulars under section thirty three of the Penal Code, in respect of a person who is not a citizen, the Minister, unless the term of imprisonment is set aside on appeal, shall, at the expiration of the sentence, under a warrant signed by the Minister, deport that person from Zambia.

*[Cap. 87]*

- (2) If an immigration officer has reasonable grounds to believe that any person's presence in Zambia or conduct is likely to be a danger to peace and good order in Zambia, that person shall be deported from Zambia under a warrant signed by the Minister.
- (3) Any prohibited immigrant who—
  - (a) having been required under section thirty-six to leave Zambia, fails to do so within the prescribed period; or
  - (b) fails to comply with any condition specified in a temporary permit issued to that person;shall, without warrant, be arrested, detained and deported from Zambia by an immigration officer in accordance with this Act.
- (4) An immigration officer may, without warrant, arrest, detain and remove from Zambia any person whom, within seven days of such person appearing before an immigration officer in accordance with this Act, the immigration officer reasonably believes to be a prohibited immigrant and—
  - (a) who is not the holder of a valid temporary permit;
  - (b) who has not been served with a notice under section thirtysix requiring that person to leave Zambia; and
  - (c) with respect to whom the procedure provided in section thirty-seven is inadequate to ensure the departure from Zambia of such person.
- (5) Any warrant issued under this section shall be sufficient authority for—
  - (a) the detention of the person named in the warrant pending completion of the arrangements for that person's deportation or removal from Zambia at the first reasonable opportunity; and

- (b) the deportation or removal from Zambia, in custody or otherwise, of that person.
- (6) For the purpose of establishing, in relation to a person liable to be removed or deported under this section, that person's identity, citizenship or country of origin, an immigration officer may require the person—
  - (a) in writing or otherwise, to answer such questions as the immigration officer may put to the person; and
  - (b) to produce any passport and any other pertinent document in that person's possession.

#### 40. Trafficking in persons

- (1) An immigration officer may, without a warrant, arrest and detain any person suspected to be involved in the trafficking of persons and cause that person to be prosecuted by an appropriate authority.
- (2) The Anti-Human Trafficking Act, 2008, shall apply in relation to dealing with foreigners who are victims of human trafficking, the making and effecting of deportation orders in relation to such persons, the effecting of port and border controls and any other relevant matters.

*[Act No. 11 of 2008]*

### Part VI – General provisions

#### 41. Border controls

- (1) The Department, through its duly authorised officers, shall control the borders to ensure compliance with this Act.
- (2) The Director-General of Immigration shall closely cooperate and work with the Zambia Revenue Authority, any public security or law enforcement agency or any other prescribed institution, enabling and mandating those bodies to exercise the functions and powers of the Department, and such bodies shall likewise enable and mandate immigration officers to perform and exercise the functions and powers of those bodies provided for under any other law, relating to the control of movement of people or goods across the borders.
- (3) The bodies referred to in subsection (2) may put at each other's disposal certain assets and human resources for an efficient and integrated border control.

#### 42. National monitoring and information system

- (1) The Department shall establish and maintain a national monitoring and information system on immigration matters and immigration control.
- (2) The system established and maintained, under subsection (1), shall provide for—
  - (a) the collection and management of data and information regarding immigration matters and immigration control;
  - (b) information on, and procedures for obtaining, immigration permits; and
  - (c) the use of electronic systems for immigration regulation and control.
- (3) For the purposes of any system established under this section, the Department shall consult and collaborate with any appropriate public authority or prescribed institution for its effective and efficient operation.
- (4) For the purposes of any national monitoring and information system established under this section, the Department may, in writing, require any person or appropriate public authority, within a

reasonable time or on a regular basis, to provide it with specified information, documents or statistics.

- (5) The Department shall issue guidelines to authorised users of the system established under subsection (1) on the keeping of records and the furnishing of information to the Department and on the use of the system.

#### 43. Obligations of employers

- (1) A person shall not employ—
  - (a) an illegal immigrant;
  - (b) a foreigner whose status does not authorise that person to be employed by that person; or
  - (c) a foreigner on terms and conditions or in a capacity different to those contemplated in the foreigner's status.
- (2) An employer shall make effort in good faith to ascertain that no illegal immigrant is employed by the employer or to ascertain the status or citizenship of those employed by the employer.
- (3) If it is proven, other than by means of the presumption referred to in subsection (5), that a person is or was employed in violation of subsection (1), it shall be presumed that the employer knew at the time of the employment that such person was among those referred to in subsection (1), unless such employer proves that the employer—
  - (a) employed such person in good faith; and
  - (b) complied with subsection (2), except that stricter compliance shall be required of any employer who had been found guilty of a prior offence under this Act related to this section.
- (4) An employer employing a foreigner shall—
  - (a) for two years after the termination of such foreigner's employment, keep the prescribed records relating to the foreigner's employment; and
  - (b) report to the Department—
    - (i) the termination of such foreigner's employment; and
    - (ii) any breach on the part of the foreigner, of the foreigner's status.
- (5) If an illegal immigrant is found on any premises where a business is conducted, it shall be presumed that such illegal immigrant is or was employed by the person who has control over the premises, unless *prima facie* evidence to the contrary is adduced.

#### 44. Educational institutions

- (1) A person employed by, or associated with, any type of educational institution shall not knowingly provide training or instruction to—
  - (a) an illegal immigrant;
  - (b) a foreigner whose status does not authorise that person to receive such training or instruction from that educational institution; or
  - (c) a foreigner on terms or conditions or in a capacity different to those contemplated in such foreigner's status.
- (2) If an illegal immigrant is found on any premises where instruction or training is provided, it shall be presumed that such illegal immigrant is, or was, receiving instruction or training from, or allowed to receive instruction or training by, the person who has control over such premises, unless *prima facie* evidence to the contrary is shown.

#### 45. Accommodation establishment

- (1) Any business offering accommodation or lodging facilities shall make effort, in good faith, to identify its customers as citizens or permit holders and shall report in the prescribed form to the Department any failure to effect such identification.
- (2) If subsection (1) is not complied with and an illegal immigrant is found in any room on any premises referred to in that subsection, having been offered that accommodation or lodging facilities established by the business, it shall be presumed that such illegal immigrant was harboured by the person who has control over such premises, unless *prima facie* evidence to the contrary is shown.

#### 46. Aiding and abetting illegal immigrants

- (1) Subject to this Act, a person shall not knowingly aid, abet, assist, enable or in any manner help—
  - (a) an illegal immigrant; or
  - (b) a foreigner in respect of any matter, conduct or transaction which violates such foreigner's status, when applicable, including but not limited to—
    - (i) providing instruction or training to that foreigner or allowing the foreigner to receive instruction or training;
    - (ii) issuing to the foreigner a licence or other authorisation to conduct any business or to carry on any profession or occupation;
    - (iii) entering into an agreement with the foreigner for the conduct of any business or the carrying on of any profession or occupation;
    - (iv) conducting any business or carrying on any profession or occupation in cooperation with the foreigner;
    - (v) assisting, enabling or in any manner helping the foreigner to conduct any business or carry on any profession or occupation;
    - (vi) obtaining a licence or other authority for the foreigner or on that foreigner's behalf to conduct any business or to carry on any profession or occupation;
    - (vii) doing anything for the foreigner or on that foreigner's behalf in connection with the foreigner's business profession or occupation;
    - (viii) harbouring the foreigner, which includes providing accommodation or lodging facilities; or
    - (ix) letting or selling or in any manner making available any immovable property in Zambia to that foreigner.
- (2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units but not less than two hundred thousand penalty units or to imprisonment for a period not exceeding five years but not less than two years, or to both.
- (3) Any person who assists any other person whose entry into or presence in Zambia, is in contravention of this Act, commits an offence if that person—
  - (a) makes a false statement;
  - (b) forges or unlawfully alters any permit, travel document or certificate;
  - (c) uses any permit, or certificate knowing it to be forged; or

- (d) alters or uses any permit, or travel document or certificate which that person is not entitled to use.
- (4) Any person who knowingly facilitates the entry into, or the remaining in Zambia, of any person in contravention of this Act, commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a period not exceeding three years, or to both.

#### **47. Immigration consultant**

- (1) A person shall not, other than a legal practitioner or immigration consultant, conduct the profession or trade of, as the case may be, representing another person in any proceedings or procedures under this Act.
- (2) A person who intends to conduct the profession or trade of representing persons in proceedings or procedures under this Act shall apply to the Department for registration as an immigration consultant in the prescribed manner and form.
- (3) The Department may, upon receipt of an application under subsection (2), register the applicant as an immigration consultant wherein the application meets such requirements as may be prescribed.
- (4) The Department shall, where it rejects an application made under subsection (2), inform the applicant accordingly and give the reasons therefor.
- (5) An immigration consultant shall comply with such code of ethics as may be prescribed.
- (6) The Director-General of Immigration may de-register any immigration consultant who contravenes any provision of this Act or any prescribed code of ethics.
- (7) Subject to prescribed qualifications and criteria for good standing, the Department shall maintain a register of immigration consultants, other than legal practitioners, who are authorised to act on behalf of, or represent, other persons in respect of this Act.

#### **48. Immigration ethics**

- (1) The Department shall set up an immigration integrity committee charged with the task of preventing, deterring, detecting and exposing any instance of corruption, abuse of power, xenophobia and dereliction of duty by a person employed in the Department:  

Provided that such committee shall not oust the jurisdiction, or the investigative authority of any other statutory body charged with the responsibility of dealing with corruption.
- (2) The Director-General of Immigration shall report to the Minister annually on—
  - (a) measures and proposals aimed at increasing the efficacy, efficiency and cost effectiveness of the Department; and
  - (b) statistical data relating to the implementation of this Act and the Department.
- (3) The Department shall establish a code of ethics for all immigration staff.

#### **49. Illegal immigrants not exempt or allowed to sojourn in Zambia**

An illegal immigrant shall not be exempt from a provision of this Act or be allowed to sojourn in Zambia on the grounds that the immigrant was not informed of those facts or that the immigrant was admitted or allowed to remain in Zambia through error or misrepresentation, or because the immigrant was undiscovered.

## 50. Evidence

Any document purporting to be—

- (a) a warrant, notice, permit, certificate or other document properly issued under this Act; or
- (b) a certified true copy of any record kept by the Director of Immigration;

shall, in any prosecution or other proceeding under or arising out of this Act, be *prima facie* evidence of the facts contained therein and shall be receivable in evidence without proof of the signature or the official character of the person appearing to have signed or certified the same:

Provided that the court before which the proceeding is brought may direct that oral evidence be brought relating to such facts, signature or official character.

## 51. Burden of proof

In any proceedings under, or for any of, the provisions of this Act, the burden of proving with respect to any person—

- (a) that person's status as a person to whom the provisions of section three relate; or
- (b) that the person is the holder of any permit issued under this Act or has been exempted under this Act from any provision of this Act;

shall be upon that person.

## 52. General offences

- (1) Any person who fails to comply with any lawful requirement under this Act commits an offence.
- (2) Any person who willfully and with intent to conceal that person's identity, citizenship or country of origin—
  - (a) fails to comply with a lawful requirement made under this Act; or
  - (b) when required under this Act to answer questions put to that person, makes any representations by words, writing or conduct of a matter of fact, which representation is false in fact;commits an offence.
- (3) Any person who enters and remains in Zambia after the expiry of that person's permit commits an offence.
- (4) A person commits an offence if that person—
  - (a) makes a false statement to an immigration officer;
  - (b) forges or unlawfully alters any permit, travel document, passport or any other document related to the enforcement of this Act;
  - (c) uses a forged permit, passport, certificate or any document related to the enforcement of this Act;
  - (d) alters a permit, passport or travel document or certificate or any other document related to the enforcement of this Act; or
  - (e) is found in possession of forged immigration stamps or seals, or an endorsement of a forged stamp in that person's passport or travel document.
- (5) Any person who attempts to use or uses a passport or travel document, other than the one upon which that person's entry was cleared, commits an offence, except in cases of loss or theft in

which case the lawfully issued passport or travel document and a police report shall be produced signifying to that fact.

### **53. Obstructing, assaulting, etc immigration officer**

- (1) Any person who resists or willfully obstructs an immigration officer in the due execution of an immigration officer's duties or any person acting in aid of such person commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.
- (2) Any person who assaults an immigration officer in the due execution of an immigration officer's duties or any person acting in aid of such person commits an offence and is liable, upon conviction, to imprisonment for a period not exceeding five years.

### **54. Engaging in employment, etc. without permit**

Any foreigner who engages in any employment, prescribed trade, work, business or any other occupation without a permit commits an offence.

### **55. Possession of more than one passport without authority**

Any person found in possession of more than one passport or travel document of identity without authority or who does not have dual nationality, commits an offence and is liable, upon conviction, to a fine not exceeding ten thousand penalty units or to imprisonment for a period not exceeding three years, or to both.

### **56. General penalty**

- (1) Any person who contravenes the provisions of this Act where no specific penalty has been provided is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both, and in the case of a foreigner in addition, to the variation or revocation of that person's permit as provided under this Act.
- (2) Where a person convicted of an offence under this Act fails to pay any fine imposed, the Department may forfeit any property, seized from such person or submitted as a guarantee under this Act, to defray costs.

### **57. Bail**

- (1) A person arrested and charged with an offence under this Act, may be admitted to bail in accordance with section one hundred and twenty-three of the Criminal Procedure Code Act:

*[Cap. 88]*

Provided that if a person who was deported from Zambia unlawfully returns into the country, the person shall not be admitted to bail if arrested and charged with an offence under this Act.

- (2) The Director-General of Immigration shall issue a person admitted to bail under subsection (1), with an appropriate permit pending the hearing and determination of that person's case before a court.

### **58. Forfeiture of vehicle, aircraft, boat or house**

- (1) Where any person is convicted under this Act of—
  - (a) entering or attempting to enter, departing or attempting to depart from Zambia;
  - (b) assisting any person to enter or depart from Zambia;
  - (c) conveying or attempting to convey any person into or out of Zambia; or



- (d) harbouring any prohibited immigrant;

in contravention of this Act, the court may order that any vehicle, aircraft, boat or any other mode of transport or house used for the purpose of, or in connection with, the commission of the offence shall be forfeited to the State:

Provided that, if it is proved that such vehicle, aircraft boat or house is not the property of the person convicted and that its owner was—

- (a) unaware that the vehicle, aircraft, boat or house, as the case maybe, was being used for that purpose; or
- (b) unable to prevent its use for the purpose of, or in connection with, the commission of the offence;

the court shall not make the order to forfeit such vehicle, aircraft, boat or any other mode of transport or house.

- (2) Where an immigration officer has reasonable grounds to believe that any vehicle, aircraft, boat or other mode of transport which is liable to forfeiture under subsection (1) is likely to be removed from Zambia unless it is detained, the officer may, subject to subsection (1), seize and detain any such vehicle, aircraft, boat or other mode of transport to enable the court make a decision in accordance with the provisions of subsection (1).
- (3) An immigration officer shall, where the immigration officer seizes and detains a vehicle, aircraft, boat or other mode of transport under subsection (2), issue the owner of the vehicle, aircraft, boat or other mode of transport with a seizure notice in the prescribed manner and form.

## 59. Regulations

- (1) The Minister may, by statutory instrument, make regulations for the better carrying out of the provisions of this Act.
- (2) Without prejudice to the generality of subsection (1), the regulations may make provision for—
  - (a) the additional powers and duties of immigration officers;
  - (b) the steps to be taken to prevent the entry of prohibited immigrants into Zambia and to facilitate the tracing and identification of illegal immigrants, in, and their removal from, Zambia;
  - (c) the procedure regulating the entry into and departure from Zambia of persons at a port of entry, and the requirements and conditions to be complied with at such a port;
  - (d) the times and places of, and the manner of conducting, an enquiry relating to, or the examination of, persons entering or desiring to enter Zambia or who, having been found in Zambia, are suspected of being illegal immigrants;
  - (e) the permits and the passes which may be issued under this Act, the requirements for the issuing of permits and passes and the additional conditions to which such permits or passes may be subjected, and the additional circumstances under which such permits or passes may be cancelled or withdrawn;
  - (f) the conditions upon which illegal immigrants may be allowed to pass through Zambia while journeying or being conveyed to a place outside Zambia;
  - (g) the forms of warrants, permits, passes, notices or other documents to be issued or used, or of declarations to be made, or of registers or information and monitoring systems to be established and maintained for the purposes of this Act, and the particulars to be provided on or inserted in any such document, declaration or register or information and monitoring system;

- (h) the fees that may be charged in respect of overtime services required to be performed by immigration officers;
  - (i) the fees that may be charged in respect of the application for and issuing of visas, permits and passes and other services rendered in terms of this Act;
  - (j) the steps to be taken to prevent the departure from Zambia of a person not in possession of a passport or other appropriate documentation;
  - (k) the requirements and conditions which should be complied with by any person who, on behalf of any other person, applies for a visa or permit;
  - (l) the registration of an immigration consultant;
  - (m) the manner in which payment of a deposit provided for under this Act may be enforced;
  - (n) the steps to be taken to ensure proper exploitation of the local labour market before a work permit is issued;
  - (o) the circumstances where under, and the manner in which, a penalty shall be incurred by and recovered from the owner, agent, charterer or person in control of a conveyance and who conveyed a foreigner to Zambia;
  - (p) the issue of passes to any person departing from Zambia for the purposes of facilitating that person's re-entry into Zambia;
  - (q) the places at which immigration controls shall be situated and the hours during which such controls shall operate; and
  - (r) generally, any matter required for the better achievement of the objects and purposes of this Act.
- (2) Different regulations may be made under paragraph (c) of subsection (1) in respect of different ports of entry, and the forms of warrants, permits, certificates, documents, declarations or registers prescribed under paragraph (g) of subsection (1) may differ in respect of different categories of persons.
- (3) A regulation made under subsection (1) may provide that any person who contravenes a provision of the regulation or fails to comply with it commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding twelve months, or to both.
- (4) The Minister may—
- (a) exempt a person or category of persons from paying fees prescribed under paragraph (i) of subsection (1); and
  - (b) withdraw an exemption granted to a person or a category of persons under paragraph (a).

## 60. Notice of service

Any written notice required under this Act to be served in person on any person may, if such person cannot be found, be published in the *Gazette* and shall be deemed to have been duly and properly served on the commencement of the day following the day of the publication of the *Gazette*.

## 61. Repeal of **Cap. 123**

The Immigration and Deportation Act, 1965, is hereby repealed.

## 62. Savings

- (1) Notwithstanding section sixty-one, every permit, other than a self-employment permit, warrant, direction, certificate, notice or other document and every order of deportation and every security which was valid immediately prior to the commencement of this Act and—
  - (a) that was issued, made, granted or given under the repealed Act; or
  - (b) the effect of which was preserved under the repealed Act;

shall be given effect as if issued, made, granted or given under this Act.

- (2) Any person who is the holder of a self-employment permit issued under the repealed Act shall, within six months of the commencement of this Act, apply in the prescribed form to the Director-General of Immigration for a self-employment permit or an investor's permit under this Act.
- (3) Any person who, before the commencement of this Act, was deported or removed from, required to leave or prohibited from entering into, or remaining within, Zambia, the former Protectorate of Northern Rhodesia or the former Federation of Rhodesia and Nyasaland, under any law of the Protectorate or Federation in force at the time, shall be deemed to have been deported or removed from, required to leave, or prohibited from entering into or remaining within, Zambia.
- (4) Any person who—
  - (a) on or before the 31st of December 1963, entered the former Protectorate of Northern Rhodesia from the Colony of Southern Rhodesia or the former Protectorate of Nyasaland;
  - (b) at the time of that entry was lawfully resident without a permit in the former Federation of Rhodesia and Nyasaland; and
  - (c) was on 1st January 1964, ordinarily resident in Zambia;

shall be deemed to have been lawfully resident in Zambia on 1st January, 1964, and not thereafter to have become a prohibited immigrant of class E as specified in the Second Schedule.

## First Schedule (Sections 20 and 21)

### Classes of persons who may be issued with residence permits

#### Class A

Any person who intends for gain to engage in any trade, business, profession, employment or other occupation—

- (a) for which the person is fitted by virtue of the person's academic or professional qualifications, standard of education, skill and financial resources;
- (b) in which, having regard to the productivity and efficiency of the persons already engaged therein, there is not already a sufficient number of persons engaged or available in Zambia to meet the requirements of the inhabitants of Zambia; or
- (c) which is likely to be of benefit to the inhabitants of Zambia generally.

#### Class B

Any person—

- (a) who has in the person's own right and at the person's full and free disposition for use in Zambia such financial resources as shall be sufficient to maintain the person; and
- (b) whose presence in Zambia is likely to be of benefit to the inhabitants of Zambia generally.

### **Class C**

Any forebear, parent, child or grandchild of a person who is dependent on that person if such person

- (a) is the holder of a valid residence permit;
- (b) is capable of maintaining such dependant; and
- (c) undertakes such maintenance.

### **Class D**

Any forebear, parent or grandchild of a person who is dependent on that person if such person

- (a) is a citizen or established resident;
- (b) is capable of maintaining such dependant; and
- (c) undertakes such maintenance.

## **Second Schedule (Section 35)**

### **Classes of prohibited immigrants**

#### **Class A – Persons capable of transmitting a prescribed disease**

Any person who is infected or inflicted with or is a carrier of a prescribed disease and who is capable or likely to become capable of infecting any other person with such disease or of transmitting to any person such disease.

#### **Class B – Prostitutes and persons engaged in human trafficking etc.**

Any prostitute or person who, in Zambia, is or has engaged in human trafficking.

#### **Class C – Persons previously deported or barred from the country**

Any person who under any law in force at the time has been deported or removed from, required to leave, or prohibited from entering into or remaining within Zambia:

Provided that a person with respect to whom an immigration officer is satisfied that the ground on which the person was so dealt with no longer applies to the person shall not belong to this Class.

#### **Class D – Persons whose permits to remain in Zambia become invalid**

Any person in Zambia with respect to whom a permit to remain in Zambia has been revoked or has expired.

### **Class E**

Any person, not being the holder of a valid permit to remain in Zambia, who—

- (a) is likely to become a charge on the Republic in consequence of the person's inability to support the person's self and any of the person's dependants in Zambia and to provide for the removal of the person's self and such dependants from Zambia;
- (b) has contravened any provision of this Act or regulations made hereunder or has failed to comply with any lawful requirement made under this Act or such regulations;

- (c) remains in Zambia for a period or periods totaling not less than three months in any period of twelve months; or
- (d) has made any false representation to or concealed any information from an immigration officer which is relevant to the person's entry into or presence within Zambia.

### **Class F – Persons entering without proper travel documents**

Visitors who are likely to be a charge on the Republic or who contravene this Act, etc.

Any person appearing before an immigration officer on entering Zambia, who is of the apparent age of sixteen years or more and who, on demand by the immigration officer, fails to establish that the person is the holder of a valid passport.

### **Class G – Persons who fail to report to an immigration officer on entering Zambia**

Any person entering Zambia who is required under section eleven to appear before an immigration officer and who fails to comply with the provisions of that section.

### **Class H**

Any person who—

- (a) before entering Zambia has been sentenced elsewhere than in Zambia to a term of imprisonment following that person's conviction of an offence;
- (b) in the opinion of the Director-General of Immigration is not of good character; and
- (c) has been convicted of an offence in Zambia.