

**GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS**

---

**DEPARTMENT OF HOME AFFAIRS**

**NO. 673**

**05 AUGUST 2015**

**ANNEXURE 1**

**REPUBLIC OF SOUTH AFRICA**

**BORDER MANAGEMENT AGENCY BILL**

*(As introduced in the National Assembly (proposed section 76); explanatory summary of Bill published in Government Gazette No. of 2015) (The English text is the official text of the Bill)*

---

**(MINISTER OF HOME AFFAIRS)**

**[B 2015]**

**SECRET**

**BILL**

**To provide for the establishment, organisation, regulation and control of the Border Management Agency; to provide for the transfer, assignment, and designation of law enforcement border related functions to the Border Management Agency; and to provide for matters connected thereto.**

**PREAMBLE**

**RECOGNISING** that border management is exercised by multiple organs of state with a purpose of securing borders and protecting the national interest;

**FURTHER RECOGNISING** the need for integrated and coordinated border management that facilitates secure travel and legitimate trade, in accordance with the Constitution, international and domestic law, in order to—

- contribute to the prevention of smuggling and trafficking of human beings and goods;
- prevent illegal cross-border movement;
- contribute to the protection of the Republic's environment and natural resources;
- contribute to the facilitation of legitimate trade and secure travel;
- ensure effective and efficient border law enforcement at ports of entry and on the borderline;
- contribute to the socio-economic development of the Republic; and
- protect the Republic from harmful and infectious diseases, pests and substances;

**ACKNOWLEDGING** that the circumstances of modern travel and trade require a single Agency to be responsible for ports of entry and the borderline of the Republic and the need to balance the facilitation of legitimate trade and travel with security;

**SECRET**

**AND FURTHER ACKNOWLEDGING**, the constitutional responsibility of the Defence Force to defend and protect the Republic, its territorial integrity and its people; and

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

SECRET

**TABLE OF CONTENTS****CHAPTER 1****DEFINITIONS, APPLICATION AND OBJECT OF ACT**

1. Definitions
2. Application of Act
3. Purpose of Act

**CHAPTER 2****BORDER MANAGEMENT AGENCY**

4. Establishment of the Agency
5. Functions of the Agency
6. Structure of the Agency

**CHAPTER 3****COMMISSIONER AND STAFF****Part A: Commissioner**

7. Appointment of Commissioner
8. Loss of Confidence in and Misconduct by the Commissioner
9. Functions and Responsibilities of Commissioner
10. Delegation of functions, duties and powers by the Minister and Commissioner

**Part B: Staff**

11. Appointment of Staff
12. Commissioned Officers
13. Functions, duties and powers of officers

**SECRET**

**Part C: Employment of officers and support staff**

- 14. Terms and Conditions
- 15. Prohibition of strikes, lockouts and protest action
- 16. Determination of employment disputes
- 17. Confidentiality

**CHAPTER 4  
FUNDS, ASSETS AND LIABILITY**

- 18. Funds
- 19. Immovable property
- 20. Exemptions from Tolls, Fees and Fees of Office
- 21. Liability

**CHAPTER 5  
ASSIGNMENT OF FUNCTIONS TO THE AGENCY**

- 22. Mechanisms for assigning functions to the Agency
- 23. Amendment of functions by legislation
- 24. Transfer of functions by legislation
- 25. Assignment of functions by legislation
- 25. Assignment of functions by regulation

SECRET

**CHAPTER 6**  
**INTER-MINISTERIAL CONSULTATIVE COMMITTEE AND ADVISORY**  
**COMMITTEES**

- 26. Inter-Ministerial Consultative Committee
- 27. Advisory Committees

**CHAPTER 7**  
**GENERAL**

- 28. Offences and penalties
- 29. Regulations
- 30. Transitional provisions
- 31. Short title and commencement

**SCHEDULE 1**  
**ASSIGNMENT OF LEGISLATIVE FUNCTIONS AND POWERS TO THE**  
**AGENCY**

**SCHEDULE 2**  
**TRANSITIONAL PROVISIONS**

SECRET

**CHAPTER 1**  
**DEFINITIONS, APPLICATION AND OBJECT OF ACT**

**Definitions**

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

“**Agency**” means the Border Management Agency established in terms of section 4 of this Act;

“**border law enforcement functions**” means the functions referred to in section 5 read together with the functions listed in Column 3 of Schedule 1 and in sections 24, 25 and 26;

“**borderline**” means, in respect of—

- (i) the land border, 10 kilometres or any reasonable distance from the internationally recognised borders of the Republic; and
- (ii) the maritime borders, the Exclusive Economic Zone as defined in the Maritime Zones Act, 1994 (Act No. 15 of 1994),

but it excludes the air borderline that the Defence Force will assume border law enforcement and border protection responsibility for;

“**Commissioner**” means the person appointed in terms of section 7 of the this Act;

“**Defence Force**” means the South African National Defence Force of the Republic;

“**goods**” includes any wares, supplies, merchandise, articles, products, commodities, substances, documents, animals, plants and their products, genetic materials, vehicles, waste or any other thing capable of being transported;

“**Labour Relations Act**” means the Labour Relations Act, 1995 (Act No. 66 of 1995);

“**Minister**” means the Minister responsible for Home Affairs;

“**officer**” means an officer appointed in terms of section 11 and includes commissioned officers appointed in terms of section 12;

“**port of entry**” means a port of entry designated by the Minister in terms of section 9A of the Immigration Act, 13 of 2002 and includes, with the approval of the Minister in terms of section 30(3) of this Act, any place of entry or exit designated by the Commissioner in terms of section 31 of the Customs Control Act, 31 of 2014;

“**principal legislation**” means the legislation listed in Column 1 in Schedule 1 and

SECRET

includes any regulations promulgated under that legislation;

**"principal organs of state"**, means,—

- (i) the Department of Home Affairs;
- (ii) the Department of Agriculture, Forestry and Fisheries;
- (iii) the Department of Police;
- (iv) the Department of Health;
- (v) the Department of Environmental Affairs;
- (vi) the South African Revenue Service; and
- (vii) any other organ of state that administers legislation that regulates the passage of persons and goods through ports of entry and the borderline;

**"Public Finance Management Act"** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

**"prescribed"** means prescribed by regulation;

**"protocol"** means a protocol as contemplated in section 35 of the Inter-Governmental Relations Framework Act, 2005 (Act No. 13 of 2005);

**"regulation"** means any regulation made under this Act;

**"this Act"** includes the schedules and its regulations; and

**"vehicle"** includes any vessel, aircraft, locomotive, railway carriage, conveyance, container or receptacle or any other means of transport whether or not used for the transport of goods or persons.

### **Application of Act**

2. (1) This Act applies to the exercise by the Agency of its border law enforcement functions within the borderline and at ports of entry.

(2) This Act applies outside the territory of the Republic if permitted to do so in terms of an international agreement entered into in terms of section 231 of the Constitution.

(3) This Act does not apply to the border protection functions exercised by the Defence Force.

(4) For the purposes of this section, "border protection functions" means the military functions contemplated in section 200(2) of the Constitution in relation to the borderline.

SECRET



**Purpose of Act**

3. The purpose of this Act is to establish and empower the Agency to—
- (a) exercise border law enforcement functions;
  - (b) manage the legitimate movement of persons and goods across the border border line and at ports of entry;
  - (c) coordinate with other organs of state, through the principles of cooperative governance, the functions performed by these organs of state, in respect of border management generally; and
  - (d) provide an enabling environment to facilitate legitimate trade.

**CHAPTER 2****BORDER MANAGEMENT AGENCY****Establishment of the Agency**

4. The Agency is hereby established as—
- (a) an organ of state with the exclusive responsibility for the performance of its border law enforcement functions;
  - (b) an institution outside of the public service;
  - (c) a national public entity contemplated in Part A of Schedule 3 of the Public Finance Management Act; and
  - (d) a service contemplated in section 199(3) of the Constitution.

**Functions of the Agency**

5. (1) The functions of the Agency are—
- (a) to perform border law enforcement functions within the borderline and at ports of entry;
  - (b) to coordinate the implementation of its border law enforcement functions with the principal organs of state and may enter into protocols with those organs of state to do so; and
  - (c) to provide an enabling environment to facilitate legitimate trade.
- (2) Notwithstanding the provisions of subsection (1)(a), the Minister may conclude

SECRET

a protocol with a Minister responsible for a principal organ of state for that organ of state to perform border law enforcement functions in terms of its principal legislation.

(3) The President may, by proclamation in the *Gazette*, declare a state of national defence contemplated in section 203 of the Constitution and section 89 of the Defence Act, 2002 (Act No. 42 of 2002) and subject to such a declaration of a state of national defence the President may direct the entire Agency, designated functions of the Agency or officers of the Agency to fall under the direct command and control of the Defence Force.

#### **Structure of Agency**

6. (1) The Agency consists of—

- (a) a Commissioner;
- (b) a border guard composed of officers appointed in accordance with sections 11 and 12; and
- (c) a support staff composed of employees other than officers appointed in accordance with section 11.

(2) The Minister must, after consultation with the Commissioner, determine the staff establishment and organisation of the Agency in a manner that promotes the object of this Act.

### **CHAPTER 3**

#### **COMMISSIONER, OFFICERS AND SUPPORT STAFF**

##### **Part A: Commissioner**

#### **Appointment of Commissioner**

7. (1) The President must appoint a Commissioner who—

- (a) is a fit and proper person;
- (b) possesses appropriate tertiary qualifications;
- (c) holds a minimum of 10 years of appropriate senior management experience; and
- (d) is a South African citizen.

SECRET

- (2) The person appointed as Commissioner holds office for an agreed term not exceeding five years: Provided that the term of office may be extended at the expiry of such period or successive periods not exceeding five years at a time as determined by the President.
- (3) If the office is vacant or the Commissioner is absent or unable to perform the functions of office, the Minister may designate a suitably qualified and experienced South African citizen to act as Commissioner.

#### **Loss of confidence in and misconduct by Commissioner**

8. (1) If the Cabinet loses confidence in the Commissioner or there is alleged misconduct, the President may establish a board of enquiry consisting of a judge as chairperson, and two other suitable persons, to—
  - (a) enquire into the circumstances that led to the loss of confidence or misconduct;
  - (b) compile a report; and
  - (c) make recommendations.
- (2) The chairperson may conduct the enquiry in a manner that the chairperson considers appropriate provided that the rules of natural justice are observed.
- (3) The President may, upon receipt of the recommendation of the report of the board of enquiry, remove the Commissioner from office or take any other appropriate action.

#### **Functions and responsibilities of Commissioner**

9. (1) The Commissioner is the chief executive officer of the Agency and responsible for—
  - (a) the effective performance of its functions;
  - (b) the day to day running of the Agency;
  - (c) the formation and development of an efficient administration;
  - (d) the development of a strategic plan setting out the priorities and objectives of the Agency as required in terms of the Public Finance Management Act;
  - (e) establishing and maintaining bureaus, depots, quarters, workshops or any other institution of any nature whatsoever, which may be expedient for the

SECRET

- general management, control and maintenance of the Agency;
- (f) the establishment and maintaining the effective functioning of a border risk management and targeting centre;
  - (g) the establishment and maintaining of a training institution in accordance with any applicable legislation;
  - (h) labour relations including—
    - (i) the control of the officers and the support staff;
    - (ii) the maintenance of discipline;
    - (iii) the training of officers and support staff; and
    - (iv) determining the qualifications and competency standards for officers and support staff in accordance with the requirements for persons' particular border law enforcement functions under principal legislation; and
  - (i) reporting to the Minister on an annual basis, or at the request of the Minister, on the performance of the Agency.
- (2) The Commissioner is the accounting authority for the Agency and is responsible for—
- (a) income and expenditure of the Agency;
  - (b) all assets and the discharge of liabilities of the Agency;
  - (c) the proper and diligent implementation of the Public Finance Management Act;
  - (d) reporting to the Minister on the financial matters of the Agency, which report must be included in the report contemplated in sub-section (1)(i);
- (3) The Commissioner is the commander of the Border Guard.

**Delegation of functions, duties and powers by Minister and Commissioner**

10. (1) The Minister may delegate to the Commissioner any function, duty or power conferred, or duty imposed, on the Minister—
- (a) by this Act;
  - (b) by legislation, the administration of which is transferred to the Minister in terms of section 97(a) of the Constitution; or
  - (c) any other legislation.

SECRET

- (2) The Commissioner may delegate to any officer of the Agency—
- (a) any function, duty and power conferred or imposed on the Agency or the Commissioner by this Act or any other legislation; or
  - (b) any function, power or duty assigned, transferred, designated or delegated in terms of section 25;
- (3) Any delegation in terms of subsection (1) or (2)—
- (a) is subject to the conditions the Minister or Commissioner considers appropriate;
  - (b) must be in writing;
  - (c) does not prevent the Minister or Commissioner from exercising that power or performing that duty; and
  - (d) may at any time be withdrawn in writing by the Minister or Commissioner.

### **Part B: Officers and support staff**

#### **Appointment of officers and support staff**

11. (1) The Commissioner must—
- (a) determine and implement a uniform recruitment procedure for the appointment of officers and support staff;
  - (b) appoint a person to a post in the staff establishment of the Agency; and
  - (c) before appointing any person, ensure that such person has not failed to obtain a security clearance.
- (2) The filling of any post in the staff structure whether by appointment, promotion or transfer must be done in accordance with the Constitution, labour legislation and this Act.
- (3) A document in the prescribed form certifying that a person has been appointed is prima facie proof of appointment.
- (4) For the purposes of this section, 'labour legislation' means the legislation administered by the Minister responsible for labour.

#### **Commissioned Officers**

12. (1) The President may from time to time appoint an officer appointed in terms section 11 as a commissioned officer.

SECRET

- (2) A deed of Commission, bearing the signatures of the President and the Minister, or replicas thereof, shall be proof of appointment as a commissioned officer.
- (3) In order to qualify to be appointed as a commissioned officer, a person must—
- (a) swear or declare allegiance to the Republic;
  - (b) be a South African citizen;
  - (c) have served successfully on probation as an officer with a temporary commission for a prescribed period;
  - (d) successfully complete specific prescribed training;
  - (e) never have been convicted and imprisoned without the option of a fine for a criminal offence, except one for which he or she has been granted amnesty in terms of the Promotion of National Unity and Reconciliation Act, 1995 (Act No. 34 of 1995);
  - (f) be a fit and proper person to serve and must have a trustworthy and exemplary character; and
  - (g) comply with prescribed security grading requirements.
- (4) The President may cancel a commission, but such a commission may not be cancelled without the holder thereof being notified in writing of any complaint or charge made against him or her and any action proposed to be taken in respect thereof, nor without him or her being called upon to show cause in relation thereto.

#### **Functions, duties and powers of officers**

13. (1) An officer must, in accordance with the conditions of appointment as an officer and any delegation in terms of section 10(2)—
- (a) ensure compliance with and enforce the provisions of the principal legislation listed in Column 3 of Schedule 1;
  - (b) perform any other functions that may be transferred, assigned, designated to the Agency under Chapter 5.
- (2) In the performance of the functions and duties referred to in subsection (1), an officer may exercise the powers referred to in—
- (a) this section;
  - (b) column 4 of Schedule 1 to the extent that those powers provide additional powers specific to the implementation of the functions to which they relate;

SECRET

and

- (c) the declaration of officer of the Agency as peace officers in terms of section 334(1)(a) of the Criminal Procedure Act.

(3) An officer may, with a warrant,—

- (a) search any person, goods, premises or vehicle within the borderline at a port of entry;
- (b) inspect any goods, premises or vehicle within the borderline or at a port of entry;
- (c) seize anything found in that search or inspection that may be lawfully seized;
- (d) question any person about any matter related to the passage of persons, goods or vehicles through a port of entry or across the borderline and to confirm their responses in a written declaration; and
- (e) arrest any person reasonably suspected of contravening any provision of the principal legislation enforced by the Agency.;

(4) An officer may, without a warrant—

- (a) exercise any power referred to in subsection (2) without a warrant if the officer on reasonable grounds believes that—
  - (i) a warrant will be issued if applied for; and
  - (ii) the delay in obtaining the warrant is likely to defeat the purpose for which the officer seeks to perform these actions.
- (b) conduct a routine inspection or search of any person, goods, premises or vehicle within the borderline or at a port of entry for the purposes of ascertaining compliance with legislation that has been assigned to the Agency; and during that inspection or search—
  - (i) in accordance with subsection (2)(c), seize or detain anything found;
  - (ii) in accordance with subsection (2)(d), and (e), question and arrest any person.

(5) An officer may, without a warrant—

- (a) order any vessel within the maritime borders of the borderline to stop;
- (b) require the master of a vessel to facilitate the boarding of a vessel by all appropriate means;

SECRET

- (c) go on board a vessel and take such other persons as are required for assistance in the execution of the officer's functions and powers;
  - (d) muster the crew of a vessel;
  - (e) require to be produced, examine and make copies of a certificate of registry, licence, permit, log book, official documents, relating to—
    - (i) the import or export of goods and the entry or exit of persons into or out of the Republic; or
    - (ii) the vessel and to the crew or any member thereof or to any person on board the vessel which is in their respective possession or control on board the vessel;
  - (f) require the master to appear and give an explanation concerning the vessel, the crew, any person or goods on board the vessel or document referred to in paragraph (e);
  - (g) examine or enquire into whether any provisions listed in Column 3 of Schedule 1 have been contravened;
  - (h) make an entry dated and signed in the vessel's log book;
  - (i) where there are reasonable grounds to believe that an offence under the principal legislation relating to the import or export of goods or the entry or exit of any person has been or is being committed, require the master to take the vessel to any place, port or harbour in the territory of the Republic for the purpose of carrying out any search, examination or enquiry; or
  - (j) give directions to the master and any crew member of any vessel stopped, boarded or searched as may be necessary or reasonably expedient for any purpose specified in this Act or for the compliance by the vessel, master or any crew member with any condition of a licence.
- (5) If an officer arrests a person with or without a warrant, that officer must, as soon as possible, bring that person to a police station under the control of the South African Police Service or, if a warrant expressly stipulates another place, to that place.
- (6) If an officer seizes anything found in the search in terms of subsections (2) or (3), that officer must, as soon as possible—
- (a) inform the relevant authorised organ of state of the seizure; and
  - (b) deliver the object seized in a manner and to a place or relevant organ of

SECRET



state as required by the relevant principal legislation being enforced by the Agency.

(7) An officer who is obliged to perform a duty or function or exercise a power contemplated in terms of this section must do so in a manner that—

- (a) is reasonable;
- (b) takes due regard of the fundamental rights of persons contained in Chapter 3 of the Constitution; and
- (c) if authorised by law to use force, applies minimum force that is reasonable in the circumstances.

### **Part C: Employment of officers and support staff**

#### **Terms and conditions**

14. (1) Officers and employees of the Agency are employed subject to the terms and conditions of employment determined by the Minister in consultation with the Minister of Finance and in accordance with any collective agreement concluded with any recognised trade union.

(2) Subject to the Government Employees' Pension Law, 1996 (Proclamation 21 of 1996), a person appointed as an officer or employee of the Agency—

- (a) becomes a member of the Government Employees' Pension Fund referred to in section 2 of the Government Employees' Pension Law, 1996; and
- (b) is entitled to pension and retirement benefits as if that person were in service in their previous employment dispensation from a organ of state.

(3) The Commissioner may establish a framework for the compensation of officers and their dependants when injured or killed in the line of duty which may include matters such as medical incapacity, disability pension, a disability regime and compulsory life insurance.

#### **Prohibition of strikes, lock outs and protest action**

15. (1) Notwithstanding any provision to the contrary in the Labour Relations Act—

- (a) officers are prohibited from striking and engaging in protest action; and
- (b) the Agency is prohibited from locking out its officers.

SECRET

**Determination of employment disputes**

16. (1) All employment disputes, including those in respect of which a strike or lockout is permitted under the Labour Relations Act may only be determined in accordance with the conciliation and arbitration procedures prescribed by the Minister in terms of section 30(3)(c)(iii).

(2) For the purpose of this section, an employment dispute is any dispute arising from employment relationship or from the labour relations relationship between the BMA and any trade union recognised by it.

**Confidentiality**

17. A staff member of the Agency must not disclose classified and personal information acquired in the performance of the Agency's functions to any person except—

- (a) an authorised staff member of the Agency;
- (b) a person designated to receive such information as approved by the Commissioner or the Minister;
- (c) a person permitted to receive such information in terms of the principal legislation; or
- (d) when required to do so by any law or a court.

**CHAPTER 4****FUNDS, ASSETS AND LIABILITY****Funds**

18. (1) The funds of the Agency consist of—

- (a) monies appropriated annually by Parliament for it to perform the functions referred to in section 5;
- (b) any government grants made to it; and
- (c) subject to the Public Finance Management Act, any other monies legally

SECRET

acquired by it.

(2) Once appropriated, the money must be paid to the Agency subject to the Public Finance Management Act.

#### **Immoveable property**

19. (1) The Commissioner may, in consultation with the Minister, acquire, maintain and dispose of immoveable property for the purposes of fulfilling the objects of this Act.

(2) The Minister must determine the policy and procedure of the Agency on the acquisition, maintenance and disposal of immoveable property.

(3) Any landlord or owner of immoveable property hosting a port of entry must provide and maintain reasonable accommodation for the Agency as determined by the Minister to effectively and efficiently perform its functions; Provided that the Agency shall be liable for associated service fees and costs.

#### **Exemptions from tolls and fees**

20. (1) Subject to this Act, any staff member who in the exercise of his or her powers or duties or functions finds it necessary to enter, pass through or go over any public or private facility, wharf, landing place, ferry, bridge, toll-bar, conservation area, gate or door in respect of any toll or fee may be lawfully demanded, shall be exempted from the payment of such toll or fee in respect of himself or herself, every person under his or her arrest and any animal, means of transport or property which he or she may require in the exercise of such powers or the performance of such duties or functions: Provided that if such staff member is not in uniform he or she or shall, upon a request by any person who may demand such toll or fee, disclose his or her identity by exhibiting to such person his or her certificate of appointment.

(2) Any person who may demand any such toll or fee, and who subjects any such staff member, person, animal, means of transport or property to unreasonable delay or detention in respect of the entry to, passage through or going over such public or private facility, wharf, landing place, ferry, bridge, toll-bar, conservation area, gate or door, shall be guilty of an offence and liable on conviction to fine or to imprisonment not exceeding twelve months.

SECRET

**Liability**

21. (1) Whenever any person is conveyed in or makes use of any vehicle, aircraft or vessel, being the property or under the control of the state or the Agency, the state or any staff member shall not be liable to such person or his or her spouse, parent, child, or other dependent for any loss or damage resulting from any bodily injury, loss of life or loss of or damage to property caused by or arising out of or in any way connected with the conveyance in or the use of such vehicle, aircraft or vessel, unless such person is so conveyed or makes use thereof in or in the interest of the performance of the function of the Agency or the state: Provided that the provisions of this section shall not affect the liability of a staff member who wilfully causes the said loss or damage.

(2) No legal proceedings shall be instituted against the Agency or any body or any staff member in respect of any alleged act performed under or in terms of this Act or any other law, or an alleged failure to do anything which should have being done in terms of this Act or any law, unless the legal proceedings are instituted before the expiry of a period of twelve calendar months after the date upon which the claimant became aware of the alleged act or omission, or after the date upon which the claimant might be reasonably be expected to become aware of the alleged act or omission, whichever is the earliest date.

**CHAPTER 5****ASSIGNMENT OF FUNCTIONS TO THE AGENCY****Mechanisms for assigning functions to the Agency**

22. (1) The Agency has any one or more of the following functions assigned to it—
- (a) those listed under column 3 of Schedule 1;
  - (b) those assigned by the Minister after a transfer of the administration of legislation by the President under section 97(a) of the Constitution;
  - (c) those permitted to be assigned, designated or delegated by legislation; and
  - (d) those assigned by regulation in terms of section 26.

SECRET

**Amendment of functions assigned under Schedule 1 of this Act**

23.(1) Despite any legislation to the contrary, the Minister may, with the agreement of the Minister responsible for any principal legislation, amend column 3 of the Schedule in respect of that legislation by either assigning any additional function or retracting an existing one.

(2) The amendment is subject to—

- (a) the approval of Parliament of the intended notice as contemplated in subsection (3); and
- (b) publication by notice in the *Gazette*.

(3) The notice must stipulate—

- (a) the functions to be assigned in terms thereof; and
- (b) the effective date of the assignment.

(4) The Minister must table the notice in Parliament for approval.

(5) Parliament may reject the notice within 90 days after it has been tabled, if Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within 45 days after the commencement of its next ensuing ordinary session.

(6) If Parliament rejects such notice, the Minister may, with the agreement of the Minister responsible for that principal legislation, table an amended notice in Parliament.

(7) If the Minister tables an amended notice and Parliament—

- (a) approves the amended notice, the Minister must publish that notice in terms of subsection (2)(b) within 30 days of the Parliament's approval; or
- (b) rejects the amended notice within 90 days after it has been tabled, if Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within 45 days after the commencement of its next ensuing ordinary session, subsection (6) and this paragraph apply.

(8) If Parliament does not reject a notice as contemplated in subsection (5) or (7)(b)—

- (a) such notice shall be deemed to have been approved by Parliament; and
- (b) the Minister must publish the notice in terms of subsection (2)(b) within 30 days after the periods referred to in subsection (5) or (7)(b), as the case may be and amend Schedule 1 simultaneously.

(9) A notice may at any time in like manner be amended or withdrawn.

SECRET

(10) Any assignment in terms of this section divests the Minister and the organ of state vested with those functions under the principal legislation of the responsibility for the performance of those functions by the Agency within the borderline and at ports of entry.

(11) For the purposes of this section, 'Minister responsible for the principal legislation' means a member of a provincial executive council and 'Parliament' means a provincial legislature if the functions to be assigned are contained in provincial legislation.

#### **Transfer of administration of legislation to the Minister**

**24** If the administration of any legislation is transferred to the Minister in terms of section 97(a) of the Constitution, the Minister may assign any duty, function or power conferred, or imposed by that legislation to the Agency.

#### **Assignment of functions permitted by legislation**

**25 (1)** Notwithstanding that the principal legislation may permit the functions to be assigned, transferred, designated or delegated to a particular person or entity, a Minister responsible for that legislation, or a head of that principal organ of state, may, with the agreement of the Minister, assign to the Agency any function that the principal legislation permits to be assigned, transferred, designated or delegated by that Minister or that head of the principal organ of state.

(2) For the purposes of this section, 'head of a principal organ of state' means a head of department for the purposes of the Public Service Act, 103 of 1994 or accounting officer of a public entity for the purposes of the Public Finance Management Act.

#### **Assignment of functions by regulation**

**26 (1)** Despite any legislation to the contrary, the Minister may, with the agreement of any Minister responsible for the administration of principal legislation, permit the assignment of functions by regulation under this Act.

(2) The regulations—

(a) must—

SECRET

- (i) assign the agreed functions in the principal legislation to the Agency;
  - (ii) regulate the performance of those functions and determine the powers in the principal legislation that are necessary for the performance of those functions;
- (b) may designate any officer to perform any function or duty under that legislation.
- (3) If any regulation published under this section conflicts with any regulation or policy published in respect of the principal legislation, the regulations published under this section will prevail.

SECRET

**CHAPTER 6**  
**INTER-MINISTERIAL CONSULTATIVE COMMITTEE AND ADVISORY**  
**COMMITTEES**

**Inter-Ministerial Consultative Committee**

27. (1) The Ministerial Consultative Committee is hereby established to-

- (a) consult on—
  - (i) any proposed amendment to the assignment of functions in Column 3 of Schedule 1;
  - (ii) any assignment, transfer, designation or delegation of functions in terms of section 25;
  - (iii) any assignment of functions by regulation in terms of section 26;
  - (iv) any proposed amendment to the principal legislation that may affect border management; and
  - (v) any international agreement that affects both the principal organs of state and the Agency; or
  - (vi) any other matter referred to it by the Minister;
- (b) consider and discuss the Commissioner's reports on the performance of the Agency in terms of section 9.

(2) The President must designate a Chairperson and a Deputy Chairperson of the Inter-Ministerial Consultative Committee.

(3) The Inter-Ministerial Consultative Committee consists of—

- (a) the Minister;
- (b) the Ministers responsible for—
  - (i) Finance;
  - (ii) Defence and Military Veterans;
  - (iii) Agriculture, Forestry and Fisheries;
  - (iv) Police;
  - (v) State Security;
  - (vi) Environmental Affairs;
  - (vii) Health;
  - (viii) Cooperative Governance and Traditional Affairs; and

SECRET



- (ix) any other Minister designated by the President.
- (4) The meetings of the Inter-Ministerial Consultative Committee—
  - (a) are convened by the Chairperson; and
  - (b) are held as regularly as may be necessary to perform its functions.
- (5) The Inter-Ministerial Consultative Committee may determine its own rules and procedures.

### **Advisory Committees**

28. (1) The Minister may appoint one or more advisory committees to advise the Minister and the Commissioner on any matter concerning border management and the functioning of the Agency, including resource utilisation, asset management, human resources and information technology.

(2) The Minister—

- (a) must determine the terms of reference of an advisory committee appointed in terms of subsection (1);
- (b) must appoint persons who are—
  - (i) fit and proper;
  - (ii) with the requisite expertise and experience; and
  - (iii) have the ability to perform effectively as a member of the committee;
- (c) may appoint persons as members on such conditions as the Minister may determine; and
- (d) may appoint as members of such a committee, persons independent of the Agency.

## **CHAPTER 7 GENERAL**

### **Offences and Penalties**

29. (1) It is an offence for any person—

- (a) to induce an officer or a member of the support staff of the Agency by giving or promising a reward to contravene this Act or principal legislation or to breach that officer's support staff member's duties under those laws;

SECRET

- (b) to compel an officer or a member of the support staff of the Agency through threats to contravene this Act or principal legislation or to breach that staff member's duties under those laws;
  - (c) to pretend to be, or impersonate, a staff member;
  - (d) to resist, hinder or obstruct a staff member in the performance of his or her functions or duties under this Act or principal legislation; and
  - (e) to wilfully furnish a staff member with information that is false or misleading.
- (2) It is an offence for an officer or a member of the support staff of the Agency to solicit or accept an inducement to perform or not perform a duty or function or contravene this Act or principal legislation or the breach of any duties imposed under this Act or principal legislation.
- (3) If a person is convicted of an offence referred to in subsection (1) or (2) that person is liable to a fine or a period of imprisonment not exceeding 10 years or both a fine and imprisonment.

### **Regulations**

30. (1) The Minister may make regulations regarding—
- (a) the terms and conditions of appointment of staff;
  - (b) the rules for the conduct of meetings and procedures of the advisory committees;
  - (c) the procedures for—
    - (i) the recognition of trade unions representing officers and employees;
    - (ii) collective bargaining on matters of mutual interest; and
    - (iii) the resolution of employment disputes through conciliation and arbitration by independent conciliators and arbitrators;
  - (d) the commissioning of officers;
  - (e) the handling and resolution of complaints and grievances from the public affecting the work of the Agency;
  - (f) the arming of officers; and
  - (g) any prescribed matter or other matter necessary for the implementation of this Act.
- (2) The Minister may only promulgate a regulation contemplated in subsection (1)(c)

SECRET

after consultation with the trade unions that engage in collective bargaining with the Agency.

(3) The Commissioner for the South African Revenue Service may only exercise the power to designate a place of entry in terms of section 31 of the Customs Control Act, 31 of 2014 with the approval of the Minister.

(4) Notwithstanding any provision to the contrary, the power to designate places of entry or exit for the passage of goods or persons in and out of the Republic under any legislation may only be made in consultation with the Minister.

#### **Transitional provisions**

31. The transitional arrangements in Schedule 2 must be read and applied as substantive provisions of this Act.

#### **Short title and commencement**

32. (1) This Act is called the Border Management Agency Act, 2015.

(2) Subject to subsection (3), this Act takes effect on a date to be determined by the President by proclamation in the Gazette.

(3) The President may determine different dates in respect of—

- (a) different provisions of this Act;
- (b) the assumption of different functions assigned in terms of this Act; and
- (c) the application of this Act to different ports of entry or parts of the borderline.

SECRET

**SCHEDULE 1**  
**ASSIGNMENT OF LEGISLATIVE FUNCTIONS AND POWERS TO THE**  
**AGENCY**

<b>No. and year of Act or Ordinance</b>	<b>Principal legislation</b>	<b>Compliance and enforcement functions assigned to the Agency on the borderline and at points of entry</b>	<b>Grant of specific powers to the Agency</b>
Act No. 36 of 1983	Agricultural Pests Act, 36 of 1983	Sections 3(1) and 3(2) read with 3(4), (5) and (6) and any regulations in respect of these provisions.	Sections 3(3), 4(1) to (3), 9 and 10.
Act No. 119 of 1990	Agricultural Product Standards Act, 119 of 1990	The enforcement of a prohibition of a prescribed product in terms of section 4(1) without approval.  Sections 4A(1)(b) and 5(2) and 6A(1) and any regulations in respect of the above provisions.	Section 3A(1)(c)
Act No. 35 of 1984	Animal Diseases Act, 35 of 1984	Sections 6(1)(a), (2)(a)(b) and (c), and 8(1) and any regulations in respect of these provisions.	Sections 6(2)(c) and (3)(a) and 8(1)
Act No. 7 of 2002	Animal Health Act, 7 of 2002	Sections 8(1) read with (5), 8(2), 9 (1) and (5) and 10(1) and any regulations in respect of these provisions.	Sections 9(6) and 10(4)(a).
Act No. 62 of 1998	Animal Improvement Act, 62 of 1998	Sections 13(1)(b), 16(1) and 17(1) and any regulations giving effect to this provision.	
Act No. 38 of 2005	Children's Act, 38 of 2005	Sections 284 and 288 and any regulations in respect of these provisions.	
Act No. 98 of 1978	Copyright Act, 98 of 1978	The importation of published works declared to be prohibited goods in terms of section 28.	
Act No. 37 of 1997	Counterfeit Goods Act, 37 of 1997	Section 2(1)(f) and any regulations in respect of this provision.	

SECRET

Act No. 4 of 1998	Cross-Border Road Transport Agency Act, 4 of 1998	Sections 25(1) and any regulations in respect of this provision.	Section 38 read with any regulation of this provision
Act No. 31 of 2014	Customs Control Act, 31 of 2014	All goods subject to customs control in terms of sections 28, 29, 30, 36; 38, 39, 40 and 41 read with section 43; Sections 49 to 83 read with section 86 and the rules made in section 87; Chapters 4, 5, 7, 9, 11, 12, 15 to 21 and the rules made in respect of each of these chapters.	Chapters 33, 34 and 36 and the rules made in respect of each these chapters.
Act No. 30 of 2014	Customs Duty Act, 30 of 2014	Section 27(1).	Section 51
Act No. 56 of 1986	Diamonds Act, 56 of 1986	Sections 24, 60 and 70 and any regulations in respect of these provisions.	
Act No. 140 of 1992	Drugs and Drug Trafficking Act, 140 of 1992	Section 5 read with the definition of 'deal in' in section 1; and any regulations in respect of this provision.	
Act No. 26 of 1956	Explosives Act, 26 of 1956	Sections 8, 8A and 8B and any regulations in respect of these provisions.	
Act No. 36 of 1947	Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 36 of 1947	Section 16(1)(3) and (5) and any regulation in respect of these provisions.	Section 15
Act No. 65 of 1996	Films and Publication Act, 65 of 1996	Section 24B(c)	
Act No. 60 of 2000	Firearms Control Act, 60 of 2000	Section 73, 80(4), 90(c) and 94(2)(b) and any regulations in respect of these provisions.	
Act No. 54 of 1972	Foodstuffs, Cosmetics & Disinfectants Act, 54 of 1972	Sections 2, 4(c) and any regulation in respect of these provisions.	Section 14.

SECRET

Act No. 15 of 1973	Hazardous Substances Act, 15 of 1973	Section 3A(1) and any regulation in respect of this provision.	Sections 9, 9A, 9B and 12.
Act No. 13 of 2002	Immigration Act, 13 of 2002	Sections 29, 30(1) and 35(1) and any regulation in respect of these provisions.	
Act No. 9 of 2014	Legal Metrology Act, 9 of 2014	Sections 17, 34(4) read with section 34 (5) and any regulation in respect of these provisions.	
Act No. 7 of 2003	Limpopo Environmental Management Act, 7 of 2003	Sections 41(1) and 43 in so far as they apply to the import or export of wild and exotic animals into or out of the Republic and any regulations in respect of these provisions.	
Act No. 59 of 2003	Liquor Act, 59 of 2003	Section 10(6)(b) and any regulation made in terms of section 5(2)(b).	
Act No. 60 of 1989	Liquor Products Act, 60 of 1989	Sections 16(1), 17(1) and any regulation in respect of this provisions.	
Act No. 18 of 1998	Marine Living Resources Act, 18 of 1998	Any regulation made in terms of section 77(2)(m).	Sections 51 to 55 for the purposes of enforcing the regulation in column 3.
Act No. 2 of 1981	Marine Traffic Act, 2 of 1981	Section 8A and any regulations made in respect of this provision.	Section 9 excluding subsection (5).
Act No. 40 of 2000	Meat Safety Act, 40 of 2000	Section 13 (1) and (6), 14(1) read with subsections (6) and (7) and any regulations made in respect of these provisions.	Section 13(7)
Act No. 101 of 1965	Medicines and Related Substances Act, 101 of 1965	Section 22A(7)(a), (11)(a) and (12) and any regulations made in respect of these provisions.	Section 28(2)
Act No. 10 of 1998	Mpumalanga Nature Conservation Act, 10 of 1998	Sections 31(1), 32(1), 34(1), 82(1) and (2), 83(1)(c) in so far as they apply to the import or export of the animals, species or cave formations into or out of the Republic and any regulations in respect of these provisions.	

SECRET

Act No. 41 of 2002	National Conventional Arms Control Act, 41 of 2002	Section 13 read with the definition of 'trade in controlled conventional arms' in section 1 and any regulations made in respect of these provisions.	Section 18;19
Act No. 107 of 1998	National Environmental Management Act, 107 of 1998	Section 39A and any regulation made in terms of section 44(1)(aB).	
Act No. 10 of 2004	National Environmental Management Biodiversity Act, 10 of 2004	Section 57(1) and (1A) read with (3), 65, 69, 71(1) and 81(1)(b) and any regulations made in respect of these provisions.	
Act No. 59 of 2008	National Environmental Management Waste Act, 59 of 2008	Section 15 (1) and any regulations made in respect of this provision.	
Act No. 61 of 2003	National Health Act, 61 of 2003	Section 57(3) and any regulations made in respect of this provision.	
Ordinance No. 8 of 1969	Nature Conservation Ordinance, 8 of 1969	Sections 13(1)(c), (d) and (3), 15, 16, 28(a), 29(1), 33(1)(b) and 34(b) and (c) in so far as they apply to the importation or exportation into or from the Republic and any regulations made in respect of these provisions.	
Ordinance No. 15 of 1983	Nature Conservation Ordinance, 15 of 1983	Sections 44(1)(a), (b) and (2), 47A(1), 58, 60, 62(1) and (2), and 70 in so far as they apply to the importation or exportation into or from the Republic and any regulations made in respect of these provisions.	
Ordinance No. 19 of 1974	Nature Conservation Ordinance, 19 of 1974	Section 44 (1)(a) and (b) read with subsection (2); section 58; sections 62 (1) and 70 in so far as they apply to the import or export of flora into or out of the Republic and any regulations in respect of these provisions.	

SECRET

Act No. 87 of 1993	Non-Proliferation of Weapons of Mass Destruction Act, 87 of 1993	Any prohibition of controlled goods made in section 13(1) read with (2)(a).	
Act No. 9 of 2009	Northern Cape Nature Conservation Act, 9 of 2009	Section 3(b) and(c), 4(b) and (c), 18(1), 26(1), 32(c) and (d), 33(c) and (d), 43, 49(1)(b) and (c), 50(1)(b)(c), 55(1)(a), 56 in so far as they apply to the importation or exportation into or from the Republic and any regulations made in respect of these provisions.	
Act No. 46 of 1999	Nuclear Energy Act, 46 of 1999	Sections 34(1) (d), (g), (k), (o), (q) and (r) and 35(1) and (3) and any regulations made in respect of these provisions.	
Act No. 53 of 1976	Plant Improvement Act, 53 of 1976	Sections 26, 27(1) read with (6) and any regulations made in respect of these provisions.	
Act No. 37 of 2005	Precious Metals Act, 37 of 2005	Sections 10(1) and 12 and any regulations made in respect of these provisions.	
Act No. 130 of 1998	Refugees Act, 130 of 1998		Restriction of the power to refuse entry to refugees in terms of section 2.
Act No. 46 of 1973	Sea Birds and Seals Protection Act, 46 of 1973	A prohibition of the export of the products of sea birds or seals under any permit issued in terms of section 4.	
Act No. 12 of 1988	Sea Fisheries Act, 12 of 1988	Section 47 (1)(j) and any regulations made in respect of this provision.	
Act No. 6 of 2009	Second-Hand Goods Act, 6 of 2009	Sections 23 (1)(a) and (c) and 25(4)(b) read with the definition of 'acquire' and 'dispose of' in section 1 and any regulations made in respect of these provisions.	
Act No. 58 of 1998	Ship Registration Act, 58 of 1998		Section 6

SECRET



Act, No. 5 of 1998	South African Maritime Safety Authority Act, 5 of 1998		Section 45(2)
Act No. 34 of 1997	South African Revenue Service Act, 34 of 1997	Section 4(1)(a) in respect of the collection of revenue or the control over the import and export of goods assigned to the South African Revenue Service Act at ports of entry.	
Act No. 16 of 1964	Tear Gas Act, 16 of 1964	Section 2 (1)	
Ordinance No. 12 of 1983	Transvaal Nature Conservation Ordinance, 12 of 1983	Sections 41(1), 44(1)(a), 45(1), 81(1), 85(1), 93(1)(a), 96(1), 98(1) and (2), and 99(1) in so far as they apply to the importation or exportation into or from the Republic and any regulations made in respect of these provisions.	
Act No. 89 of 1991	Value-added Tax Act, 89 of 1991	Section 13(5)(a)(i) subject to the such arrangements made by the Commissioner of the South African Revenue Service in terms of that section.	

SECRET

## SCHEDULE 2 TRANSITIONAL PROVISIONS

### **Persons transferred from an organ of state to the Agency**

1. (1) If a person is transferred from an organ of state to the Agency –
  - (a) the transfer does not interrupt the employee's continuity of service;
  - (b) the person may not upon transfer suffer any reduction in remuneration and conditions of service, unless that person consents;
  - (c) any proceedings against that person pending immediately before the transfer must be disposed of as if the transfer had not occurred;
  - (d) the transfer must be effected in accordance with fair labour practices.
- (2) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), no change of employer must be regarded as having taken place by virtue of the transfer contemplated in subsection (1).
- (3) If there is any dispute arising from the interpretation or application of this item, that dispute must be referred to the Labour Court for determination.

### **Assets, liabilities and funds**

2. (1) Immovable property of the state used by the principal organ of state for its border law enforcement functions prior to the commencement of this Act must be at the disposal of the Agency on terms and conditions as may be agreed on between the Minister and the responsible executive authority.
- (2) All movable assets of the state which were used by or which were at the disposal of the principal organ of state for its border law enforcement functions prior to the commencement of this Act, except those assets excluded by the Minister, become the property of the Agency.
- (3) In order to assume the transferred, assigned, or designated functions under Chapter 5 read with Column 3 of Schedule 1, the Minister must, in conjunction with the executive authority of a principal organs of state concerned, and with the approval of the Minister of Finance, and in the spirit of co-operative government envisaged in Chapter 3 of the Constitution of the Republic of South Africa, enter into a protocol or cooperative agreement to ensure that the assets, rights,

SECRET

obligations and liabilities, including the unexpended balance of appropriations, authorisations, allocations and other funds employed, held or used in connection with the management and administration of border law enforcement, are transferred to the Agency before the assumption of those.

(4) The Registrar of Deeds must make the necessary entries or endorsements for the transfer of any property in terms of subsection (1), and no office fee or other charge is payable in respect of that entry or endorsement.

(5) Any litigation resulting from any cause of action in relation to the assets, rights, obligations or liabilities transferred to the Agency in terms of subsection (3) which arose—

- (a) before the transfer date, must be conducted by or against the principal organ of state concerned; and
- (b) on or after the transfer date, must be conducted by or against the Agency.

#### **Ports of entry**

3 (1) Pending section 31 of the Customs Control Act, 31 of 2014, coming into force, the reference to that section in the definition of 'port of entry' in section 1 and in section 30(3) of this Act must be read as a reference to section 6 of the Customs and Excise Act, 91 of 1964.

(2) The ports of entry at the commencement of this Act are:

- (a) those designated by the Minister in terms of section 9A of the Immigration Act, 13 of 2002;
- (b) those appointed or prescribed by the Commissioner of the South African Revenue Services in terms of section 6 of the Customs and Excise Act, 91 of 1964;
- (c) those determined by the Minister responsible for agriculture in terms of the Agricultural Pests Act, 36 of 1983, the Agricultural Product Standards Act, 119 of 1990, the Animal Diseases Act, 35 of 1984 and the Animal Health Act, 7 of 2002.

(3) In order to ensure consistency and integration of the different functions, the Minister may withdraw a designation or determination of a place or point of entry

SECRET

and exit under sub-item (2)(b) or (c) after consultation with the Commissioner or the Minister of Agriculture as the case may be.

**Consultation over matters in section 30(3)(c)(iii)**

4. For the purposes of the initial consultations contemplated in section 30(3), the reference to the trade unions recognised by the Agency in that subsection must be read as a reference to the trade unions that are recognised by, or parties to collective bargaining arrangements with, the principal organs of state.

SECRET