

**CHAPTER 25:02
IMMIGRATION**

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An Act to amend and consolidate the law relating to immigration.

[Date of Commencement: 30th September, 1966]

PART I

Preliminary (ss 1-3)

1. Short title

This Act may be cited as the Immigration Act.

2. Interpretation

In this Act, unless the context otherwise requires-

"alien" means any person who is not a Commonwealth citizen;

"Chief Immigration Officer" means the person appointed as such in terms of section 3;

"immigration officer" means any person appointed as an immigration officer in terms of section 3, and includes the Chief Immigration Officer;

"magistrate" means a Magistrate Grade I and II;

"precincts of the airport" means that part of the airport at which customs and immigration formalities are conducted;

"residence permit" means a permit to reside in Botswana issued under section 19 or 21;

"travel document" means a passport or other document of identity which satisfies such conditions as may be prescribed;

"visitor" means any person in Botswana other than a person referred to in section 17(2).

3. Administration

(1) The Minister, by notice published in the *Gazette*, may appoint a Chief Immigration Officer and such immigration officers as he may deem necessary for the purposes of this Act.

(2) In the exercise of their functions under this Act, immigration officers shall act in accordance with such instructions as may be given by the Minister and, subject thereto, immigration officers shall act in accordance with such instructions as may be given by the Chief Immigration Officer.

PART II

Immigration Generally (ss 4-16)

4. Restriction of places of entry and examination of immigrants and suspected persons

(1) Every person entering Botswana shall-

- (a) enter through a point of entry specified by the Minister by order published in the *Gazette*; and
- (b) on arrival at the point of entry, present himself immediately to the nearest immigration officer:

Provided that this subsection shall not apply to any person-

- (i) who is authorized in writing by the Chief Immigration Officer to enter Botswana without complying with this subsection; or
- (ii) who is a member of a class of persons authorized by the Minister by order published in the *Gazette* so to enter Botswana,

and who enters Botswana in accordance with the conditions, if any, subject to which that

authority was so granted.

(2) It shall be no defence to a charge of contravening subsection (1) that the accused person was *bona fide* under a belief that he was not entering or had not entered Botswana.

(3) An immigration officer may require any person who has presented himself in accordance with subsection (1)(b) to submit to examination.

(4) Without prejudice to subsection (3), an immigration officer who suspects that a person is a prohibited immigrant or last entered Botswana in contravention of subsection (1) may at any time require that person immediately to submit to examination or to present himself to an immigration officer at such place and within such period as the officer making the requirement shall specify and, at that place, to submit to examination.

(5) A police officer or traditional authority who suspects that a person is a prohibited immigrant or last entered Botswana in contravention of subsection (1) may at any time require that person forthwith to present himself to an immigration officer and submit to examination.

(5A) A police officer who suspects that a person is a prohibited immigrant or last entered Botswana in contravention of subsection (1) may, at any time, require an admission of guilt deposit of not less than P1000 from the person so suspected.

(6) A person who has been required under this section to submit to examination or further examination may be examined by an immigration officer (in this section and in section 6 referred to as "the examining officer") and shall answer truthfully and to the best of his knowledge every question put to him by the examining officer for the purpose of ascertaining whether he is or is not a prohibited immigrant or liable to removal from Botswana under section 6.

(7) The examining officer may require the person under examination-

- (a) to declare whether he is or is not carrying or conveying or otherwise in possession of a travel document or other document of any description specified by the examining officer, being a description appearing to the officer to be relevant to any matter required to be ascertained under by subsection (6);
- (b) to produce to the examining officer any travel document or other document of any description prescribed by paragraph (a) which he is carrying or conveying or otherwise has in his possession;
- (c) forthwith to furnish to the examining officer such information relevant to any matter required to be ascertained under subsection (6) as the examining officer may specify;
- (d) to complete truthfully any prescribed form; and
- (e) to submit to examination by a medical practitioner named by the examining officer for the purpose of ascertaining whether he is or is not infected or afflicted with or suffering from any disease or physical infirmity which would render him a prohibited immigrant.

(8) The examining officer may-

- (a) take or cause to be taken the photograph, fingerprints and palmprints of the person under examination; and
- (b) search or cause to be searched the person under examination or any baggage belonging to him or under his control or, with the written sanction of the Chief Immigration Officer, any dwelling-place occupied by him for the purpose of ascertaining whether he is or is not carrying or conveying or otherwise in possession of a travel document or other document of any description referred to in subsection (7)(a):

Provided that no female person shall be searched under this paragraph except by a female immigration officer unless no female immigration officer is readily available in which case the search may be conducted by a female person designated for this purpose by the examining officer.

(9) At the conclusion of an examination the examining officer may, by notice in writing given to the person under examination, require that person to present himself to an immigration officer at such place and within such period as the examining officer shall specify and, at that place, to submit to further examination:

Provided that, where the person under examination is a member of a party in charge of which is a person appearing to the examining officer to be a responsible person, the notice may be given to the person in charge of the party instead of to the person under examination.

(10) Any person who contravenes this section or who fails to comply with any requirement made of him under this section or who furnishes any information in consequence of a requirement made of him under subsection (7)(c) which he knows to be false or does not believe to be true or who obstructs any examining officer in the exercise of a power conferred on him by subsection (8) shall be guilty of an offence and liable to a fine not less than P300 but not exceeding P4000 or to imprisonment for a period not exceeding four years or to both.

5. Examination of persons leaving Botswana

(1) Every person departing from Botswana, unless he is a person in direct transit through Botswana by air and does not leave the precincts of the airport, shall present himself to an immigration officer.

(2) The immigration officer may require such person-

- (a) to produce his travel document and any permit issued to him in terms of this Act and to surrender any such permit which has ceased to be valid;
- (b) to make and sign such declaration as may be prescribed;
- (c) to answer, in writing or otherwise, such questions relating to his identity or departure as may be put to him by the immigration officer.

(3) Any person who acts in contravention of, or fails to comply with this section, or with any requirement made of him by an immigration officer under subsection (2), shall be guilty of an offence and liable to the penalties prescribed in section 32(3).

6. Travel document to be produced

(1) Subject to subsection (2), any person being examined under section 4 who, on being required by the examining officer under section 4(7)(b) to produce to him any travel document which he is carrying or conveying or otherwise has in his possession, fails to produce a valid travel document issued to the person under examination or produces a document which the examining officer is not satisfied is a valid travel document issued to the person under examination shall be removed from Botswana by an immigration officer or by a police officer acting under the authority of an immigration officer unless-

- (a) he satisfies an immigration officer that he is a citizen of Botswana;
- (b) he produces a valid residence permit and satisfies an immigration officer that he is the person to whom the same has been issued; or
- (c) the Minister otherwise directs.

(2) Nothing in this section shall apply to-

- (a) a wife accompanying her husband if her name and description are endorsed on a valid travel document carried by her husband;
- (b) a person who appears to an immigration officer to be under the age of 16 years accompanying his father or mother if his name is endorsed on a valid travel document carried by such father or mother; or
- (c) any person who satisfies an immigration officer that he is a member of any class of persons exempted by the Minister by order published in the *Gazette* from carrying a travel document when entering Botswana.

7. Prohibited immigrants

Subject to this Act, the following persons shall be prohibited immigrants and their entry into or presence within Botswana is unlawful-

- (a) any person who, if he entered or remained in Botswana, would be likely to become a public charge by reason of infirmity of mind or body, or because he is not in possession for his own use of sufficient means to support himself and such of his dependants as he proposes to bring with him into Botswana;
- (b) any idiot or epileptic, or any person who is insane or mentally deficient, or any person who is deaf and dumb, or deaf and blind, or dumb and blind, or otherwise physically afflicted, unless in any such case he or a person accompanying him or some other person gives security to the satisfaction of the Minister for his permanent support in Botswana, or for his removal therefrom whenever required by the Minister;
- (c) any person who is infected or afflicted with or suffering from a prescribed disease unless he has the written authority of an immigration officer to enter and remain in Botswana, issued upon prescribed conditions, and he complies with such conditions;

- (d) any prostitute, or any person, male or female, who lives or has lived on or knowingly receives or has received any part of the earnings of prostitution, or has procured women or girls for immoral purposes;
- (e) any person who, not having received a free pardon, has been sentenced to imprisonment without the option of a fine in Botswana, or has been sentenced to imprisonment without the option of a fine in any other country for an offence which, if committed in Botswana, would be punishable with imprisonment without the option of a fine;
- (f) any person who, in consequence of information received from any source deemed by the President to be reliable, is declared by the President to be an undesirable inhabitant of or visitor to Botswana;
- (g) the wife and the children under the age of 18 years and any other dependants of a prohibited immigrant;
- (h) any person named in an order made under section 27(1), or of a class or description specified in such order.

8. Persons who are not prohibited immigrants

Notwithstanding anything contained in this Act, the following persons or classes of persons shall not be prohibited immigrants for the purposes of this Act-

- (a) any citizen of Botswana;
- (b) any person entitled to immunity from suit under the Diplomatic Immunities and Privileges Act.

9. Exclusion of prohibited immigrants

No prohibited immigrant shall enter or remain in Botswana and, subject to this Act, any immigration officer shall cause any prohibited immigrant entering or found within Botswana to be removed therefrom.

10. Detention of suspected prohibited immigrants

- (1) Any person suspected of being-
 - (a) a prohibited immigrant; or
 - (b) a person liable to be declared to be an undesirable inhabitant of or visitor to Botswana under section 7(f),

may be detained by an immigration officer for such reasonable period, not exceeding 14 days, as may be required for the purpose of making inquiries as to such person's identity and antecedents.

(2) An immigration officer who detains any person under subsection (1) shall, as soon as practicable, and in any event within a period of seven days, report such detention to the

Minister.

(3) Where any person suspected of being-

(a) a prohibited immigrant by reason of section 7(e); or

(b) a person liable to be declared to be an undesirable inhabitant of or visitor to Botswana under section 7(f),

has been detained under subsection (1), and the Minister considers that further time is required for the completion of the inquiries referred to under that subsection, the Minister may by order under his hand direct that the person shall be detained for a further period or periods, not exceeding 14 days at a time.

(4) Such person may, during such period, be detained in the nearest convenient prison or gaol unless with the consent of the Minister he or such sureties as may be approved by the Chief Immigration Officer enters into a bond for an amount so approved and deposits such sum, if any, as may be fixed by the Chief Immigration Officer to satisfy any judgment which may be given on the bond.

(5) The conditions of the bond shall be that such person shall appear within such period and before such person as may be described in the bond and shall report himself to an immigration officer at such times as may be fixed in the bond, and the bond may contain such other conditions as the Chief Immigration Officer sees fit to impose.

(6) Upon breach of any condition of the bond any court of competent jurisdiction may, upon application by the Chief Immigration Officer, give judgment against such person or his sureties in accordance with the conditions of the bond, and such person may be arrested and detained in the nearest convenient prison or gaol until such enquiries have been completed.

(7) Any person detained under this section and not serving a sentence of imprisonment shall be treated as a person awaiting trial.

11. Notice to and appeals by prohibited immigrants

(1) Whenever on the examination of any person under section 4 or otherwise an immigration officer determines that any person is a prohibited immigrant, notice that he is a prohibited immigrant and the grounds therefor shall be given by the immigration officer in the prescribed form to that person.

(2) Subject to subsection (6), every person to whom notice is given under subsection (1) that he is a prohibited immigrant may appeal therefrom to the nearest magistrate's court and such appeal shall be noted within three days after such notice has been given.

(3) Pending the hearing of any such appeal, such person shall not be removed from Botswana, but the provisions of section 14 shall apply in relation to that person as if he was being removed.

(4) A magistrate's court may, of its own motion or at the request of the appellant or of an immigration officer, reserve for the decision of a judge of the High Court any question of law

which arises upon an appeal heard before such magistrate's court, and shall state the question in the form of a special case for the opinion of the court by transmitting that special case to the Registrar thereof.

(5) A question stated in the manner described in subsection (4) may be heard by and argued before a judge of the High Court at any convenient time, and that judge may call for further information to be supplied by the magistrate, if he deems such information necessary, and may give such answer on the case, supplemented by the costs of the proceedings, as he may think fit.

(6) No appeal shall lie under subsection (2) against any notice that a person is a prohibited immigrant by reason of any declaration by the President under section 7(*f*) and no court shall question the adequacy of the grounds for any such declaration.

12. Exemption of prohibited immigrants

(1) Where any person is a prohibited immigrant under this Act, the President, in the case of a person declared by him to be a prohibited immigrant under section 7(*f*), and the Minister, in the case of any other person, may, in writing, direct that such person shall cease to be a prohibited immigrant for such period and subject to such conditions as may be specified.

(2) The President or the Minister, as the case may be, may, in writing, cancel any direction issued under subsection (1) and on such cancellation the person in respect of whom the direction was made shall be a prohibited immigrant.

13. Removal of prohibited immigrants

(1) Where a prohibited immigrant does not give notice of appeal under section 11, or where his appeal is dismissed, or where no appeal lies by reason of section 11(6), he shall be removed from Botswana by an immigration officer or by a police officer acting under the authority of an immigration officer.

(2) Any prohibited immigrant who is serving a sentence of imprisonment for committing any offence may, if the President so directs, be removed from Botswana by an immigration officer or by a police officer acting under the authority of an immigration officer and such sentence shall be deemed to have expired with effect from such person's departure from Botswana.

14. Detention pending removal

(1) Any person who is liable to be removed from Botswana under this Act may be detained by an immigration officer for such period as may be necessary for the completion of arrangements therefor.

(2) Such person may during such period be detained in the nearest convenient prison.

(3) Any person so detained and not serving a sentence of imprisonment shall be treated as a person awaiting trial.

15. Removal of persons arriving by air

(1) Where any person being removed from Botswana under this Act arrived in Botswana by air, an immigration officer, subject to subsection (2), may give directions-

- (a) to the commander of the aircraft in which that person arrived in Botswana, requiring him to remove that person from Botswana in that aircraft;
- (b) to the owners or agents of the said aircraft, requiring them to remove that person from Botswana in any aircraft specified in the directions, being an aircraft of which they are the owners or agents; or
- (c) to the said owners or agents, requiring them to make arrangements for the removal of that person from Botswana in any aircraft bound for a country specified in the directions, being either-
 - (i) a country of which that person is a national or in which he embarked for Botswana; or
 - (ii) a country to which there is reason to believe that that person will be admitted, and for securing him a passage to that country.

(2) No directions shall be given under subsection (1) in respect of any person after the expiration of two months from the date on which he last arrived in Botswana.

(3) Any person in respect of whom directions are given under subsection (1) may be placed by an immigration officer on board any aircraft in which he is to be removed in accordance with the directions.

(4) Any person who acts in contravention of or fails to comply with, any directions given under subsection (1) shall be guilty of an offence and liable to the penalties prescribed in section 32(2).

16. Powers of search, etc.

(1) For the purposes of exercising his powers and carrying out his duties under this Act, an immigration officer may-

- (a) without a search warrant enter upon and search any aircraft, train or other vehicle in Botswana; and
- (b) require the commander of an aircraft or the person in charge of any other vehicle or any vessel arriving from any place outside Botswana to furnish a list of all persons in the aircraft, vehicle or vessel, as the case may be, together with such other information as may be prescribed and the person concerned shall comply with such requirements.

(2) Any person who fails to comply with any requirement imposed on him under subsection (1)(b) shall be guilty of an offence and liable to the penalties prescribed in section 32(2).

PART III ***Visitors and Residents (ss 17-23)***

17. The right to remain in Botswana

(1) Subject to this Act, a visitor may remain in Botswana for such period not exceeding 90 days as may be specified in a visitor's permit, in such form as may be approved by the Minister, issued to the visitor by an immigration officer and signed by that officer:

Provided that a visitor shall not remain in Botswana for more than 90 days in aggregate in any one year unless-

- (i) he is authorized by the Chief Immigration Officer in writing to do so; or
- (ii) he is entitled by virtue of subsection (2) to reside in Botswana.

(2) Subject to this Act, a person shall not be entitled to reside in Botswana unless-

- (a) he is a citizen of Botswana;
- (b) he is in possession of a valid residence permit;
- (c) he is a member of any class of persons exempted by the Minister under section 23 from obtaining a residence permit in order to reside in Botswana; or
- (d) he is entitled to immunity from suit under the Diplomatic Immunities and Privileges Act.

(3) The Minister may at any time by notice in writing given to any particular visitor, or by order published in the *Gazette* applying to visitors of any specified class, direct that that visitor, or every visitor of that class, as the case may be, shall while he remains in Botswana be subject to such conditions (in this section referred to as "visit conditions") as he may specify in the notice, and may in like manner revoke or vary any visit conditions for the time being in force.

(4) Where a particular visitor to whom notice in writing is to be given under subsection (3) is a member of a party in charge of which is a person appearing to an immigration officer to be a responsible person, the notice under subsection (3) may be given to the person in charge of the party instead of to the particular visitor in question.

(5) Without prejudice to subsection (3), a visitor's permit may be issued subject to such conditions as the officer issuing it may determine, which conditions shall be specified in the permit.

(6) Any visitor who remains in Botswana in contravention of subsection (1) without reasonable cause shall be guilty of an offence and liable to a fine not exceeding P10 for every day during which the offence continues. Whether or not he is prosecuted or liable to be prosecuted for an offence under this subsection, any visitor who remains in Botswana in contravention of subsection (1) may be removed therefrom by an immigration officer or by a police officer acting under the authority of an immigration officer, and sections 13(2) and 14 shall have effect in relation to such visitor as they have in relation to a prohibited immigrant.

(7) A visitor who fails to comply with any visit conditions to which he is subject or with any conditions specified in his visitor's permit in accordance with subsection (5) shall be guilty of an

offence and liable to the penalties prescribed in section 32(2).

18. Immigrants Selection Boards

(1) There are hereby established a board to be known as the National Immigrants Selection Board, based in Gaborone, and boards to be known as Regional Immigrants Selection Boards, based in such places or areas of Botswana as is necessary or convenient.

(2) The provisions of the Schedule shall have effect in respect of the constitution of the boards referred to in subsection (1), the places or areas in which or for which they are established, and other matters in connection with the operation of such boards.

(3) The Minister may, by order published in the *Gazette*, amend any of the provisions of the Schedule.

19. Residence permits

(1) Any person wishing to obtain a residence permit shall lodge an application with the appropriate Regional Immigrants Selection Board, hereinafter referred to as "the Board", in the prescribed form and manner together with the prescribed fee which shall in no case be refundable to the applicant.

(2) The Board shall consider every application for a residence permit lodged with it in accordance with subsection (1) and shall either issue a residence permit or reject the application, in which last case the Board shall inform the applicant of its decision in writing.

(3) For the purpose of considering and determining an application for a residence permit, the Board may call for and obtain such additional information relating to the applicant, including his fingerprints and palmprints, as it may think it necessary or expedient to have.

(4) In determining an application for a residence permit, the Board shall have primary regard to the interests of Botswana and in this connection shall take into account the character of the applicant and whether-

- (a) in the case of an applicant who proposes to take up employment or engage for reward in any business, profession or other occupation in Botswana, he has or has not the qualifications, education, training and experience likely to render him efficient in that employment, business, profession or occupation and sufficient prospects of obtaining that employment or sufficient capital to engage in that business, profession or occupation, as the case may be; or
- (b) in the case of any other applicant, he is or is not in a position to support himself and any dependants in Botswana otherwise than by taking up employment or engaging for reward in any business, profession or other occupation.

(5) In the case of-

- (a) the wife or child under the age of 18 years of the holder of a residence permit; or
- (b) the aged parent or grandparent of such a holder who is able and has undertaken to

maintain him,

the Board shall not be required to take into account the matters prescribed by subsection (4)(a) or (b).

(6) The Minister may, either generally or with reference to a particular application for a residence permit, state in writing delivered to the Board that the interests of Botswana include such matters as the Minister shall specify and thereupon the interests of Botswana shall be deemed, for the purposes of subsection (4), to include those matters either in respect of all applications or in respect of the particular application in question, as the case may be.

(7) A residence permit issued under this section shall be issued in the prescribed form for such period, not exceeding five years, as the Board shall determine and may be issued subject to such conditions as the Board may determine, which conditions shall be specified in the permit.

(8) The Board may, at any time-

(a) by notice in writing given to a particular holder of a residence permit issued under this section; or

(b) by notice published in the *Gazette* applying to all such holders of any specified class,

vary the conditions for the time being attached to such residence permit.

(9) The particular holder of a residence permit to whom notice in writing has been given under subsection (8)(a) shall forthwith transmit his permit to the Board and, subject to section 20(4)(c), the conditions therein specified shall be varied in accordance with the notice and the permit returned to the holder.

(10) The holder of a residence permit issued under this section who contravenes subsection (9) or who fails to comply with any condition for the time being attached to his permit shall be guilty of an offence and liable to the penalties prescribed in section 32(2).

(11) A residence permit issued under this section may from time to time be renewed if the holder thereof has not become a citizen of Botswana and this section shall have effect in relation to every such renewal as it has in relation to the issue of a residence permit.

(12) A person whose application for a residence permit has been rejected by the Board shall not lodge a further application with the Board before the expiry of 12 months immediately after the date of the Board's rejection, unless the Minister authorizes an earlier application.

20. Appeals from Immigrants Selection Board

(1) An applicant for a residence permit who is aggrieved by the Board's decision rejecting his application or as to any condition subject to which his residence permit has been or is to be issued may appeal against that decision to the National Immigrants Selection Board.

(2) The particular holder of a residence permit who is aggrieved by the Board's decision, communicated to him by notice in writing under section 19(8)(a), to vary the conditions for the

time being attached to his permit may appeal against that decision to the National Immigrants Selection Board.

(3) Every appeal under this section shall be lodged with the National Immigrants Selection Board, in such form and manner as the National Immigrants Selection Board may require together with the prescribed fee, not later than 30 days immediately after the day on which the decision complained of was communicated to the appellant.

(4) The National Immigrants Selection Board shall consider every appeal lodged with it under this section and shall-

- (a) in the case of an appeal under subsection (1) against a decision of the Board rejecting an application for a residence permit, either dismiss the appeal or allow it, in which last case the Board shall forthwith issue a residence permit to the appellant subject to such conditions as the National Immigrants Selection Board may determine, which conditions shall be specified in the permit;
- (b) in the case of an appeal under subsection (1) against a decision of the Board as to any condition subject to which a residence permit has been or is to be issued, either dismiss the appeal, rescind the condition or alter its terms, in which last case the condition shall be specified in the permit as so altered by the National Immigrants Selection Board; or
- (c) in the case of an appeal under subsection (2) against a decision of the Board to vary the conditions for the time being attached to a residence permit, either dismiss the appeal, rescind the variation or alter its terms, in which last case the conditions specified in the permit shall reflect the variation as so altered by the National Immigrants Selection Board.

(5) Any person aggrieved by a decision of the National Immigrants Selection Board in dismissing his appeal to it, or in respect of any variation or alteration in the conditions of a residence permit issued to him, may appeal against that decision to the Minister, whose decision thereon shall be final.

21. Power of Minister to issue residence permits

(1) Notwithstanding the provisions of section 19, where the Minister is satisfied that by reason of any special circumstances which apply in the case of any person who has entered Botswana and is not a prohibited immigrant it is desirable for a residence permit to be issued to that person without an application therefor being considered and determined by the Board, he may, whether that person has or has not applied for a residence permit, issue a residence permit to that person.

(2) A residence permit issued under this section shall be issued in the prescribed form for such period, not exceeding five years, as the Minister shall determine and may be issued subject to such conditions as the Minister may determine, which conditions shall be specified in the permit.

(3) The Minister may, at any time-

- (a) by notice in writing given to a particular holder of a residence permit issued under this section; or
- (b) by order published in the *Gazette* applying to all such holders of any specified class,

vary the conditions for the time being attached to such a residence permit.

(4) The particular holder of a residence permit to whom notice in writing has been given under subsection (3)(a) shall forthwith transmit his permit to the Minister and the conditions therein specified shall be varied in accordance with the notice and the permit returned to the holder.

(5) The holder of a residence permit issued under this section who contravenes subsection (4) or who fails to comply with any condition for the time being attached to his permit shall be guilty of an offence and liable to the penalties prescribed by section 32(2).

(6) The Minister may from time to time renew a residence permit issued under this section if the holder thereof has not become a citizen of Botswana.

22. Cancellation of residence permits

(1) The Minister may cancel a residence permit in any of the following circumstances-

- (a) if the holder of the permit does not take up residence in Botswana within six months of the date of issue of the permit;
- (b) if the holder of the permit absents himself from Botswana for a continuous period of more than six months;
- (c) if the holder of the permit, or his agent, is convicted of any offence under section 30 in connection with application for the issue or renewal of that permit;
- (d) if the holder of the permit is convicted of an offence under section 19(10);
- (e) if the holder of the permit having attained the age of 18 years is convicted of any other offence punishable with imprisonment and the court by which he is convicted, or any court to which his case is brought by way of appeal against conviction or sentence, recommends that the permit be cancelled; or
- (f) if the Minister is satisfied that the object for which the permit was issued or renewed has been completed or no longer exists, or that it is no longer in the interest of Botswana that the holder should have such a permit.

(2) Where a person convicted of an offence by any court is committed for sentence by any other court, the power to make a recommendation under subsection (1)(e) shall be exercisable by the court to which he is committed and not by the court by which he is convicted.

(3) For the purpose of any law relating to appeals in criminal cases, a recommendation under subsection (1)(e) shall be treated as an order made on conviction; and the validity of such a

recommendation shall not be called in question except on an appeal against the recommendation or against the conviction upon which it is made.

(4) If a residence permit is cancelled under subsection (1) the Minister shall cause written notice of the cancellation to be served on the holder of the permit and in the notice shall state the reason for the cancellation and the period that is to elapse after such service before the cancellation takes effect and shall require him if he is still within Botswana to leave Botswana forthwith on the cancellation taking effect:

Provided that if it is not practicable to serve such written notice on the holder of the permit by reason of the absence of such holder from Botswana or because the holder cannot be found, the notice shall be deemed to be duly served if published in such manner as the Minister may direct.

(5) If any person who is required to leave Botswana under subsection (4) fails to do so without reasonable excuse, proof of which shall lie upon him, he shall be removed therefrom by an immigration officer or by a police officer acting under the authority of an immigration officer, and sections 13(2) and 14 shall have effect in relation to such person as they have in relation to a prohibited immigrant.

(6) Where the holder of a residence permit is removed from Botswana as a prohibited immigrant, his permit shall be deemed to be cancelled with effect from the date of his departure from Botswana.

23. Exemption from obtaining residence permit

(1) The Minister may, by order published in the *Gazette*, exempt any class of persons therein specified from obtaining a residence permit in order to reside in Botswana.

(2) The Minister may make regulations providing for the issue of and other matters connected with certificates certifying that the holders thereof are members of a class of persons exempted under subsection (1) and may, for any contravention of such regulations, prescribe the penalties prescribed in section 32(2).

(3) (a) Where the Minister is satisfied that a person has resided lawfully in Botswana for at least ten years under the terms and conditions of a residence permit, that he is of good character, and has made significant contributions of benefit to Botswana, he may, in writing, confer on such person the status of permanent resident, exempting him from the requirement of applying for or obtaining a resident permit.

(b) The conferment of such status of permanent resident may be made subject to such terms and conditions as the Minister considers necessary or desirable, and any failure by the person concerned to comply with such terms and conditions shall be an offence liable to the penalties prescribed in section 32 (2).

(c) The conferment of such status of permanent resident may be withdrawn by the Minister, in writing, without giving any reason therefor.

PART IV

Additional Provisions in respect of Aliens (ss 24-25)

24. Special restriction on aliens

The President may-

- (a) by order serve on an alien; or
- (b) by order published in the *Gazette* directed to aliens of a specified class,

impose in respect of that alien or aliens of a specified class, as the case may be, such special restrictions as to residence, reporting to the police, occupation or employment as he may consider necessary in the public interest.

25. Deportation of aliens

(1) Subject to subsection (6), the President may make an order requiring any alien to leave Botswana (in this section referred to as a "deportation order") in either of the following circumstances-

- (a) if that alien is convicted of any offence punishable with imprisonment and the court before which he is convicted, or any court to which his case is brought, by way of appeal against conviction or sentence recommends that a deportation order be made in respect of that alien; or
- (b) if the President deems it to be conducive to the public good to make a deportation order in respect of that alien.

(2) Where a person convicted of an offence by any court is committed for sentence to any other court, the power to make a recommendation under subsection (1)(a) shall be exercisable by the court to which he is committed and not by the court by which he is convicted.

(3) For the purposes of any law relating to appeals in criminal cases, a recommendation under subsection (1)(a) shall be treated as an order made on conviction and the validity of such a recommendation shall not be called in question except on an appeal against the recommendation or against the conviction upon which it is made.

(4) A deportation order shall be made in writing under the hand of the President, and the President shall cause the order to be served on the person to whom it relates and shall state in the order the period that is to elapse after such service before the order takes effect.

(5) If on the expiration of the period specified in a deportation order the alien in respect of whom the order was made has not left Botswana he shall be removed from Botswana by an immigration officer or by a police officer acting under the authority of an immigration officer and sections 13(2) and 14 shall have effect in relation to such alien as they have in relation to a prohibited immigrant.

(6) Nothing in this section shall apply to any person entitled to immunity from suit under the Diplomatic Immunities and Privileges Act.

PART V
Supplementary (ss 26-36)

26. Re-entry of prohibited immigrant

If any person who has been removed from or required to leave Botswana as a prohibited immigrant under the provisions of this Act or any other law re-enters Botswana without having ceased to be a prohibited immigrant, he may be arrested without warrant and shall be guilty of an offence and liable to the penalties prescribed in section 32(2).

27. Prohibition of entry of persons endangering the peace and security of Botswana

(1) The President may, by order published in the *Gazette*, prohibit the entry into Botswana of any person (not being a citizen of Botswana) who-

- (a) is named in such order; or
- (b) is of a class or description specified in such order,

if in his opinion the presence within Botswana of such person, or a person of such class or description, as the case may be, would endanger the peace or security of Botswana.

(2) Any person named in an order made under subsection (1), or of a class or description specified in such order, who enters Botswana, except in accordance with an exemption given under section 12, may be arrested without a warrant and shall be guilty of an offence and liable to the penalties prescribed in section 32(4).

(3) Where any person who is named in an order made under subsection (1), or who belongs to a class or who conforms to a description specified in such order is found in Botswana, he shall be deemed to have entered Botswana in contravention of subsection (2) unless the contrary is proved.

28. Aiding and abetting unlawful entry

- (1) Any person who-
- (a) unlawfully aids or abets any person whose entry into or presence within Botswana is contrary to this Act to enter or remain within Botswana;
 - (b) unlawfully aids or abets any person who is being removed from or has been required to leave Botswana in terms of this Act to evade leaving Botswana; or
 - (c) harbours any person who is being removed from or has been required to leave Botswana in terms of this Act,

shall, whether or not the person so aided, abetted or harboured is under the age of eight years, be guilty of an offence and liable to the penalties prescribed in section 32(2).

(2) An immigration officer who suspects, on reasonable grounds, that a person has committed an offence under subsection (1) may require that person immediately to submit to examination or to present himself to an immigration officer at such place and within such period

as the immigration officer making the requirement shall specify and, at that place, to submit to examination.

(3) Without prejudice to his powers to arrest without a warrant, a police officer who suspects, on reasonable grounds, that a person has committed an offence under subsection (1) may require that person forthwith to present himself to an immigration officer and submit to examination.

(3A) A police officer who suspects, on reasonable grounds, that a person has committed an offence under subsection (1) may, at any time, require an admission of guilt deposit of not less than P300 but not exceeding P1000 from the person so suspected.

(4) A person who has been required under this section to submit to examination may be examined by an immigration officer and shall answer truthfully and to the best of his knowledge every question put to him by that officer for the purpose of ascertaining whether he is or is not guilty of an offence under subsection (1) and for the purpose of discovering the circumstances of any offence which may have been committed under that subsection.

(5) Any person who contravenes this section or who fails to comply with any requirement made of him under this section shall be guilty of an offence and liable to a fine not less than P300 but not exceeding P4000 or to imprisonment for a period not exceeding four years or to both.

29. Contradictory statements

(1) Any person who, for the purpose of entering Botswana or remaining therein, makes a statement, either verbally or in writing, that he is required to make under this Act, or in a declaration on a prescribed form, that contradicts in a material particular a previous statement made by him for one or other of the said purposes, or a statement made by him on oath or in the form of an affidavit in a country outside Botswana for a similar purpose in such country, shall be guilty of an offence and liable to imprisonment for a term not exceeding one year or to a fine not exceeding P500, or to both.

(2) Upon the trial of a person for an offence under this section, it shall not be necessary to prove the falsity of either of the statements, but upon proof that both the statements were made by him, the court shall, subject to subsection (3), convict the accused person.

(3) Upon the trial of a person for an offence under this section it shall be a defence for the accused person to prove to the court that the conflicting statements were not made with the intention of deceiving or misleading anyone in Botswana.

(4) Upon the trial of a person for an offence under this section, the production of a statement in writing or in a prescribed form, or in an affidavit, as the case may be, purporting to be signed by the accused person, shall be sufficient evidence that such statement or affidavit was made by such accused person, unless the contrary be proved.

30. Other offences

(1) Any person who-

- (a) for the purposes of entering Botswana or remaining therein in contravention of this Act or any other law or of assisting any other person so to enter or remain, whether or not such person is under the age of eight years-
 - (i) makes a false statement verbally or in writing;
 - (ii) forges any certificate or document, other than any document mentioned in subsection (2), or who uses any such certificate or document knowing it to be forged; or
 - (iii) utters or uses any certificate or document other than any document mentioned in subsection (2), which has not been issued by any lawful authority or which he is not entitled to use; or
- (b) hinders or obstructs any immigration officer in the execution of his duties under this Act,

shall be guilty of an offence and liable to the penalties prescribed in section 32(2).

(2) Any person who-

- (a) is in unlawful possession of or makes use of any residence permit, passport or other document of identity belonging to another;
- (b) delivers his residence permit, passport or other document of identity to any other person for use by such other person; or
- (c) forges or unlawfully alters any residence permit, passport or other document of identity,

shall be guilty of an offence and liable to the penalties prescribed in section 32(2).

31. Evidence

(1) The burden of proving that a person has not entered or remained in Botswana in contravention of this Act shall lie upon such person.

(2) A certificate or written statement purporting to be under the hand of an immigration officer shall, in any proceedings in respect of a contravention of this Act, be *prima facie* evidence of the facts stated therein, and it shall not be necessary to tender oral evidence of such facts, unless the court before which the proceedings are held so directs.

(3) A certificate or written statement purporting to be signed by an officer of the government of any country other than Botswana shall, in any proceedings in respect of a contravention of this Act, be admissible in evidence without further proof thereof on its being placed before the court by a public prosecutor and the court shall presume that any reference therein to a person bearing the name by which an accused person is charged or any one of the names by which he is charged is a reference to that accused person and that the facts stated therein are true, unless the contrary is proved.

(4) Any order, warrant, permit, certificate or other document which may be issued under this Act shall be good and effectual if signed by an immigration officer or any officer in the public service of Botswana authorized by the Minister by notice published in the *Gazette* so to sign, and when so signed shall be accepted for all purposes as having been issued in accordance with this Act.

32. Penalties

(1) Any person who is convicted of an offence under any section of this Act which provides that the offender shall be liable to the penalties prescribed in this subsection, shall be liable to a fine not exceeding P200 or to imprisonment for a term not exceeding three months, or to both.

(2) Any person who is convicted of an offence under any section of this Act which provides that the offender shall be liable to the penalties prescribed in this subsection, shall be liable to a fine not exceeding P1000 or to imprisonment for a term not exceeding one year, or to both.

(3) Any person who is convicted of an offence under any section of this Act which provides that the offender shall be liable to the penalties prescribed in this subsection, shall be liable to a fine not exceeding P2000 or to imprisonment for a term not exceeding two years, or to both.

(4) Any person who is convicted of an offence under any section of this Act which provides that the offender shall be liable to the penalties prescribed in this subsection, shall be liable to a fine not exceeding P4000 or to imprisonment for a term not exceeding four years, or to both.

33. Application of Act to air passengers

Nothing in this Act shall apply to any person who enters Botswana by air and makes an unbroken air journey through Botswana:

Provided that an immigration officer may require any person who lands in Botswana in the course of such air journey to submit to examination in accordance with section 4 and thereupon this Act shall apply to such person.

34. Regulations

(1) The Minister may make regulations prescribing any matter or thing which under this Act is to or may be prescribed and generally for the better carrying out of the objects and purposes of this Act.

(2) Such regulations may prescribe-

- (a) the powers and duties of immigration officers;
- (b) the steps to be taken to prevent the entrance into Botswana of prohibited immigrants or of any person in contravention of this Act;
- (c) the points of entry and the times, places and conduct of the examination, medical or otherwise, of persons entering or desiring to enter Botswana or who are suspected of being prohibited immigrants or of having last entered Botswana in contravention of

section 4(1) or of having committed an offence under section 28(1);

- (d) the procedure for and the manner of detention of persons being removed from Botswana, and the procedure for and the manner of such removal;
- (e) the application in or towards payment of the expenses of or incidental to the detention, maintenance, medical treatment or removal from Botswana of any person being removed from Botswana and his dependants (if any) of money or other property belonging to that person;
- (f) the statistics to be kept of persons departing from Botswana;
- (g) the procedure to be followed by persons entering or leaving Botswana;
- (h) ports of departure for persons leaving Botswana.

(3) Different regulations may be made under paragraphs (c) and (e) of subsection (2) in respect of aliens and other persons.

35. Saving for inadvertence

No prohibited immigrant shall be exempt from this Act or be allowed to remain in Botswana-

- (a) by reason only that he had not been informed that he could not enter or remain in Botswana;
- (b) by reason only that he had been allowed to enter or remain in Botswana through oversight, misrepresentation, or a contravention of this Act; or
- (c) owing to the fact that it had not been discovered that he was a prohibited immigrant or undesirable inhabitant of or visitor to Botswana.

36. Exercise of discretionary functions by the President

(1) No person shall have the right to be heard before or after a decision is made by the President in relation to that person under this Act.

(2) No person affected by any such decision shall have the right to demand any information as to the grounds of such decision nor shall any such information be disclosed in any court.

SCHEDULE

NATIONAL IMMIGRANTS SELECTION BOARD

(s. 18)

1. The Board shall consist of the Chief Immigration Officer, who shall also be the secretary of the Board, and of not less than four other members appointed by the Minister.

2. Each member of the Board, other than the Chief Immigration Officer, shall hold office for such period as the Minister shall determine and shall be eligible for re-appointment.

3. (1) The Minister shall appoint a chairman and a deputy chairman of the Board from among the members thereof (other than the Chief Immigration Officer).

(2) The chairman or, in his absence, the deputy chairman shall preside at every meeting of the Board.

(3) The chairman or deputy chairman shall, when presiding at a meeting of the Board, have both an original and a casting vote.

4. The presence of-

(a) the chairman or deputy chairman; and

(b) such other members of the Board as together with the chairman or deputy chairman or both of them, as the case may be, constitute a majority of the members of the Board,

shall constitute a quorum of the Board:

Provided that no quorum shall be constituted unless one of the members present is the Chief Immigration Officer or some other immigration officer.

5. In addition to the secretary of the Board, the Minister may appoint from among public officers such officers of the Board as he may think fit.

6. Subject to this Act, the Board shall regulate its own procedure.

REGIONAL IMMIGRANTS SELECTION BOARDS

1. There shall be a Regional Immigrants Selection Board in each of the following towns, cities or townships, for the purposes of section 19 of the Act-

Gaborone

Francistown

Lobatse

Selebi-Phikwe Maun.

2. Each Regional Immigrants Selection Board shall consist of the following persons-

(a) the District Commissioner or District Officer for the place in which it is situated, who shall be chairman of the Board;

(b) the police officer in command of the police district in which it is situated, who shall be the deputy chairman of the Board;

(c) the representative of the Chief Immigration Officer in charge of the region, who shall be the secretary of the Board;

(d) the representative of the Commissioner of Labour in charge of the region;

(e) the town clerk or the council secretary, as appropriate, of the place where the Board is situated or his representative;

(f) a representative of the Ministry of Commerce and Industry nominated by the Minister;

(g) two persons appointed by the Minister from members of the public in the area served by the Board.

3. The chairman or the deputy chairman shall, when presiding at meetings of the Board, have an original and a casting vote.

4. A majority of the members of the Board, which majority shall include the chairman or the deputy chairman and the representative of the Chief Immigration Officer, shall form a quorum of the Board.

5. The Minister may appoint such other public officers as may be necessary to assist the Board to carry out its functions under the Act.

6. Subject to the provisions of the Act, and any directions of the Minister, the Board may regulate its own procedure.