

THE IMMIGRATION (CONSOLIDATION) LAW, 1966



No. 19



1966

I assent,

7th September, 1966

H.S. Norman-Walker,
Her Majesty's Commissioner.

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SCHEDULE

A LAW TO AMEND AND CONSOLIDATE THE LAW RELATING TO IMMIGRATION

(30th September, 1966)

ENACTED by the Legislature of Bechuanaland.

PART I

PRELIMINARY

Short Title and Commencement.

1. This Law may be cited as the Immigration (Consolidation) Law, 1966, and shall come into operation on the 30th September, 1966.

Interpretation.

2. In this Law, unless the context otherwise requires —

“alien” means any person who is not a Commonwealth citizen within the meaning of section 28 of the Constitution ;

“Chief Immigration Officer” means the person appointed as such in terms of section 5 ;

“domicile” has the meaning assigned thereto in section 3 ;

*amended
Act 3/72*
“~~established resident~~” ~~has the meaning assigned thereto in section 4 ;~~

“Immigration Control Officer” means the person appointed as such in terms of section 5 ;

“immigration officer” means any person appointed as an immigration officer in terms of section 5, and includes the Chief Immigration Officer ;

“magistrate” means any person appointed or entitled to hold a subordinate court of the first class or second class : and “magistrate’s court” shall be construed accordingly ;

“police officer” means any member of the Bechuanaland Protectorate Police ;

“residence permit” means a permit to reside in Botswana issued under section 21 ;

“special residence permit” means a residence permit issued or renewed on the instructions of the Minister given under section 21 (7) ;

"travel document" means a passport or other document of identity which satisfies such conditions as may be prescribed, and includes a certificate of identity issued under section 18.

Domicile.

3. (1) For the purpose of this Law, domicile means the place —

- (a) in which a person has his present permanent residence ;
or
- (b) to which a person returns as being the place of his permanent residence and not for a special or temporary purpose ;

and domiciled shall be construed accordingly.

(2) No person shall, for the purposes of this Law, be deemed to have a domicile within Botswana unless he has lawfully ordinarily resided therein for a continuous period of five years, which period shall not include —

- (a) any period during which he has been in possession of a special residence permit ;
- (b) any period during which he has been in possession of a residence permit issued under section 21 of the Immigration Law, 1963 (No. 31 of 1963) given under sub-section (3A) or (7) of that section ;
- (c) any period during which he has been in possession of a permit issued under section six or six A of the Immigration Proclamation (Cap. 39) or section seven or seven A of the African Immigration Proclamation (Cap. 40) ;
- (d) any period during which he has been entitled to immunity from suit under the Diplomatic Immunities and Privileges Proclamation (Cap. 42) ;
- (e) any period during which he has been detained in any prison, gaol, reformatory or mental hospital within or outside Botswana.

(3) A person shall be deemed to have lost his domicile within Botswana if he voluntarily departs from and remains outside Botswana with the intention of making his home outside Botswana, or if he is absent from Botswana for a continuous period of five years or such longer period as the Minister may fix in his case.

Established Residents

4. For the purposes of this Law, a person who is domiciled in Botswana or is the wife or ~~unmarried~~ child under the age of twenty-one years of a person who is domiciled in Botswana shall be deemed to be an established resident of Botswana.

Administration.

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

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

PART II

IMMIGRATION GENERALLY

Examination of Immigrants.

6. (1) Any person entering Botswana, other than a person having the written authority of the Immigration Control Officer or who is a member of a class of persons authorized by the Minister by notice in the *Gazette* to enter Botswana without complying with the provisions of this sub-section, shall, on arrival at the border or, if travelling by air, on arrival at an airport within Botswana, present himself immediately to the nearest immigration officer, or if it is impracticable so to present himself immediately on arrival by reason of the distance of the nearest immigration officer from the border or airport, as the case may be, that person shall immediately take all reasonable steps to present himself to an immigration officer as soon as possible.

(2) An immigration officer may examine any such person for the purpose of ascertaining whether that person is or is not a prohibited immigrant or liable for removal under section 7 and it shall be the duty of every such person to furnish to an immigration officer such information as that officer may require for the purpose of his functions under this sub-section.

(3) A person liable to be examined by an immigration officer under the provisions of this section shall, if directed to do so by such officer in the course of his examination —

- (a) declare whether or not he is carrying or conveying a travel document or other documents of any description specified by that officer, being a description appearing to that officer to be relevant for the purposes of the examination;
- (b) produce to the officer any travel document or other documents of any such description which he is carrying or conveying; and
- (c) submit to examination by a medical practitioner named by the officer for the purpose of ascertaining whether he is infected or afflicted with or suffering from any disease or physical infirmity which would render him a prohibited immigrant under this Law;

and the power to examine any such person shall include power —

- (d) to take his photograph, fingerprints or palmprints; and
- (e) to search him and any baggage belonging to him or under his control with a view to ascertaining whether he is carrying or conveying any documents of such description aforesaid:

Provided that no woman or girl shall be so searched except by a woman; and if there is no woman available for such search who is an immigration officer, the search may be carried out by a woman named for such purpose by an immigration officer.

(4) A person liable to be examined by an immigration officer under the provisions of this section may be required by an immigration officer at the conclusion of the examination to submit to a further such examination at such place and within such period as the immigration officer imposing the requirement may specify by notice in writing given to such person.

(5) Where any notice in writing is to be given under subsection (4) to any person who is a member of a party in charge of a person appearing to an immigration officer to be a responsible person, such notice shall be deemed to be duly given if delivered to the person in charge of the party.

(6) Any person found in Botswana by any immigration officer, police officer or traditional authority who is suspected of being a prohibited immigrant or of having entered Botswana in contravention of this section may be required by any such person to appear before an immigration officer and to submit to such an examination as is described in sub-section (2) and (3).

(7) If any person acts in contravention of, or fails to comply with any of the provisions of this section, or of any direction given or requirement imposed thereunder, he shall be guilty of an offence and liable on conviction to the penalties imposed in subsection (1) of section 27.

Travel Document to be Produced.

7. (1) Subject to the provisions of sub-section (2), any person who on examination under section 6 fails on demand by an immigration officer to produce a valid travel document 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 ~~or an established resident~~; or
- (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 is 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;
- (c) any person who satisfies an immigration officer that he is a member of any class of persons exempted by the Minister by notice in the *Gazette* from carrying a travel document when entering Botswana.

Prohibited Immigrants.

8. Subject to the provisions of this Law, 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 the Territory ;
- (g) the wife and the children under the age of eighteen years and any other dependants of a prohibited immigrant.

Persons who are not Prohibited Immigrants.

9. Notwithstanding anything contained in this Law, the following persons or classes of persons shall not be prohibited immigrants for the purposes of this Law

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

Exclusion of Prohibited Immigrants.

10. No prohibited immigrant shall enter or remain in Botswana and subject to the following provisions of this Law, any immigration officer shall cause any prohibited immigrant entering or found within Botswana to be removed therefrom.

Detention of Suspected Prohibited Immigrants.

11 (1) Any person suspected of being a prohibited immigrant may be detained by an immigration officer for such reasonable period, not exceeding fourteen days, as may be required for the purpose of making enquiries as to such person's identity and antecedents.

(2) Such person may, during such period, be detained in the nearest convenient prison or gaol unless 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

(3) 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.

(4) 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.

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

Notice to and Appeals by Prohibited Immigrants.

12 (1) Whenever on the examination of any person under section 6 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 the provisions of sub-section (6), every person to whom notice is given under sub-section (1) that he is a prohibited immigrant, may appeal therefrom to the nearest magistrate's court. Any 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 15 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. For the purposes of this sub-section a question of law includes a question of domicile.

(5) A question stated in the manner described in sub-section (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 sub-section (2) against any notice that a person is a prohibited immigrant by reason of any declaration by the President under paragraph (f) of section 8 unless the appeal is directed solely to the identity of the person affected by the declaration, and no court shall question the adequacy of the grounds for any such declaration.

Exemption of Prohibited Immigrants.

13. (1) The Minister may by writing under his hand direct that any person who is a prohibited immigrant under one or more provisions of this Law shall, either unconditionally or subject to such conditions as he imposes, be exempted therefrom either permanently or for such temporary period as he may specify, and that person shall thereupon cease to be a prohibited immigrant for the period of such exemption.

(2) If any person exempted under the provisions of sub-section (1) fails to comply with any of the conditions of such exemption, or if the Minister is satisfied that the object for which the exemption was given has been completed or no longer exists, the Minister may by writing under his hand withdraw the exemption, and thereafter all the provisions of this Law shall apply in relation to such person.

Removal of Prohibited Immigrants.

14. (1) Where a prohibited immigrant does not give notice of appeal under section 12, or where his appeal is dismissed, 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 contravening any of the provisions of this Law 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.

Detention Pending Removal.

15. (1) Any person being removed from Botswana under this Law 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.

Removal of Persons Arriving by Air.

16. (1) Where any person being removed from Botswana under this Law arrived in Botswana by air, an immigration officer, subject to the provisions of sub-section (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;
- (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 sub-section (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 sub-section (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 sub-section (1) shall be guilty of an offence and liable of conviction to the penalties prescribed in sub-section (2) of section 29

Powers of Search, etc.

17. (1) For the purpose of exercising his powers and carrying out his duties under this Law, an immigration officer may —

- (a) without a search warrant enter upon and search any aircraft, train or other vehicle in Botswana;
- (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 paragraph (b) of sub-section (1) shall be guilty of an offence and liable on conviction to the penalties prescribed in sub-section (2) of section 29.

Certificates of Identity.

18. ~~The Immigration Control Officer may in his discretion and on payment of the prescribed fee issue a certificate of identity to any person who satisfies him that he is an established resident of Botswana.~~

PART III

VISITORS AND RESIDENTS

The Right to Remain in Botswana.

19. (1) Subject to the provisions of this Law a visitor may remain in Botswana for a period not exceeding —

- (a) ninety days, or if he has previously been in Botswana during the same calendar year such lesser number of days

as together with the number of days on which he has previously been in Botswana during that calendar year amounts to ninety; or

- (b) if some other period is notified to him in writing by the Immigration Control Officer, such other period;

but shall not remain in Botswana thereafter unless he has made application for a residence permit which has not yet been determined or is entitled to reside in Botswana.

(2) Subject to the provisions of this Law a person shall be entitled to reside in Botswana if and shall not be entitled to reside in Botswana unless —

- (a) he is a citizen of Botswana ~~or an established resident~~;
- (b) he is in possession of a residence permit;
- (c) he is a member of any class of persons exempted by the Minister by notice in the *Gazette* 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 Proclamation.

(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 any notice in writing is to be given under paragraph (b) of sub-section (1), or under sub-section (3), to any visitor who is a member of a party in charge of a person appearing to the Immigration Control Officer to be a responsible person, such notice shall be deemed to be duly given if delivered to the person in charge of the party.

(5) Any visitor who remains in Botswana in contravention of the provisions of sub-section (1) without reasonable cause shall be guilty of an offence and liable on conviction to a fine not exceeding ten rand for every day during which the offence continues. Whether or not he is prosecuted or liable to be prosecuted for an offence under this sub-section, any visitor who remains in Botswana in contravention of the provisions of sub-section (1) may be removed therefrom by an immigration officer or by a police officer acting under the authority of an immigration

officer, and the provisions of section 14 (2) and section 15 shall have effect in relation to such visitor as they have in relation to to a prohibited immigrant.

(6) Any visitor who fails to comply with any visit conditions to which he is subject in terms of sub-section (3) shall be liable to the penalties prescribed in sub-section (2) of section 29.

(7) For the purposes of this section, "visitor" means any person in Botswana other than a person referred to in sub-section (2).

Immigrants Selection Board.

20. (1) The Board established by the Immigration Law, 1963, by the name of the Immigrants Selection Board shall continue in existence by that name for the purposes of this Law.

(2) The Board shall consist of the Immigration Control Officer and up to four other members appointed by the Minister. The Minister shall appoint one member of the Board to be Chairman and the Immigration Control Officer shall be Secretary thereof.

(3) The members of the Board shall hold office for such period and shall be paid such remuneration and allowances as the Minister may determine.

(4) The decision of the majority of the members of the Board present and voting shall constitute the decision of the Board.

(5) If a member is for any reason unable to exercise his functions on the Board, the Minister may appoint any person to act for such member during his absence.

Residence Permits

21. (1) Any person who wishes to obtain a residence permit may make an application therefor to the Board. Every such application shall be made in the prescribed form and shall contain the particulars therein required and shall be forwarded to the Board in the prescribed manner.

(2) The Board shall consider every application submitted to it as aforesaid and may obtain and consider from any source such additional information relating to the applicant as it may deem necessary.

(3) The Board shall then, on payment of the prescribed fee, issue a residence permit to any applicant who has not been given notice under section 12(1) that he is a prohibited immi-

grant if, in its absolute discretion but subject to the provisions of sub-section (6), it considers that the requirements of sub-section (4) read with sub-section (5) are satisfied in relation to the application:

Provided that before issuing such permit the Board may require a deposit to be made or security to be given in accordance with such provisions as may be prescribed.

(4) The requirements referred to in sub-section (3) are –

(a) that the applicant is of good character;

(b) that –

(i) in the case of an applicant who proposes to take employment or engage for reward in any business, profession or other occupation in Botswana, he has qualifications, education, training and experience likely to render him efficient in that employment or occupation and sufficient prospects of obtaining that employment or sufficient capital to engage in that occupation, as the case may be; and

(ii) in the case of any other applicant, he is in a position to support himself and his dependants, if any, in Botswana otherwise than by taking employment or engaging for reward in any business, profession or other occupation; and

(c) that it is in the interests of Botswana that the permit should be issued to the applicant.

(5) Paragraph (b) of the preceding sub-section shall not have effect in respect of any person who –

(a) is the wife or is the child under the age of eighteen years of a person in possession of a residence permit (other than a special residence permit), or whose application for such a permit has been approved by the Board, ~~or who is an established resident;~~ or

(b) is the aged parent or grandparent of any such person who is able and undertakes to maintain him.

(6) The Minister may give to the Board such general or special directions as he may deem fit as to the interpretation or application of paragraph (c) of sub-section (4) and the Board shall give effect to any such directions.

(7) If the Minister is satisfied that by reason of any

special circumstances which apply in the case of any person who has entered Botswana and who is not a prohibited immigrant it is desirable for a residence permit to be issued to such person without an application therefor being considered by the Board, he may, notwithstanding the preceding provisions of this section, and whether or not such person has applied for a residence permit, instruct the Immigration Control Officer to issue a residence permit to that person.

(8) A residence permit shall be issued for such period not exceeding three years, and subject to such conditions (in this section referred to as "residence conditions") as the Board, or in the case of a permit issued on the instructions of the Minister, the Minister may deem fit. Every such permit shall be in the prescribed form and issued in the prescribed manner, and different provisions therefor may be prescribed in respect of permits issued by the Board and permits issued on the instructions of the Minister.

(9) The Minister may at any time by notice in writing given to any particular person to whom a residence permit has been issued, or by order published in the *Gazette* applying to all such persons of any specified class, direct that that person, or every person of that class, as the case may be, shall be subject to such residence conditions (or additional residence conditions) as he may specify in the notice, or revoke or vary in such manner as he thinks fit any residence conditions for the time being in force in respect of that person, or of persons of that class, as the case may be.

(10) A residence permit may from time to time be renewed on the expiration of any period of validity thereof if the person to whom the permit was issued has not become a citizen of Botswana ~~or an established resident~~, and the preceding provisions of this section shall have effect in relation to any such renewal as they have in relation to the issue of such a permit.

(11) No decision of the Board or of the Minister concerning any application made under this section and no directions by the Minister under sub-section (6) or instructions by the Minister under sub-section (7) shall be open to question in any court on any grounds whatsoever.

(12) Any person to whom a residence permit has been issued who fails to comply with any residence conditions to which he is subject shall be guilty of an offence and liable on conviction to the penalties prescribed in sub-section (2) of section 29.

Cancellation of Residence Permits

22. (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 longer continuous period than six months;
- (c) if the holder of the permit, or his agent, is convicted of any offence under section 27 in connection with the application for the issue or renewal of that permit;
- (d) if the holder of the permit is convicted of an offence under section 21(12);
- (e) if the holder of the permit having attained the age of eighteen 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 President 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 paragraph (e) of the preceding subsection 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 paragraph (e) of subsection (1) 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 in terms of 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 the provisions of sub-section (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 the provisions of section 14(2) and of section 15 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 his departure from Botswana.

PART IV

ADDITIONAL PROVISIONS IN RESPECT OF ALIENS

Special Restriction on aliens

23. The President may –

- (a) by order served 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.

Deportation of Aliens

24. (1) Subject to the provisions of sub-section (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 paragraph (a) of sub-section (1) 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 paragraph (a) of sub-section (1) 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 the provisions of sub-section (2) of section 14 and of section 15 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 Proclamation.

PART V

SUPPLEMENTARY

Re-Entry of Prohibited Immigrant

25. If any person who has been removed from or required to leave Botswana (or the former protectorate of Bechuanaland) as a prohibited immigrant under the provisions of this Law 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 on conviction to the penalties prescribed in sub-section (2) of section 29.

Aiding and Abetting Unlawful Entry

26. (1) Any person who –

- (a) unlawfully aids or abets any person whose entry into or presence within Botswana is contrary to the provisions of this Law to enter or remain within Botswana; or
- (b) unlawfully aids or abets any person who is being removed from or has been required to leave Botswana in terms of this Law 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 Law;

shall, whether or not the person so aided, abetted or harboured as aforesaid is under the age of eight years, be guilty of an offence and liable on conviction to the penalties prescribed in sub-section (2) of section 29.

Other Offences

27. (1) Any person who –

- (a) for the purposes of entering Botswana or remaining therein in contravention of this Law 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 or in declaration on a prescribed form;
 - (ii) forges any certificate or document, other than any document mentioned in sub-section (2), or who uses any such certificate or document knowing it to be forged;
 - (iii) utters or uses any certificate or document other than any document mentioned in sub-section (2), which has not been issued by any lawful authority or which he is not entitled to use;
- (b) hinders or obstructs any immigration officer in the execution of his duties under this Law;

shall be guilty of an offence and liable on conviction to the penalties prescribed in sub-section (2) of section 29.

(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; or

- (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 on conviction to the penalties prescribed in sub-section (3) of section 29.

Evidence

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

(2) A certificate or written statement purporting to be under the hand of an immigration officer or the Immigration Control Officer shall, in any proceedings in respect of a contravention of this Law, 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) Any person who is convicted of an offence under any section or sub-section of this Law which provides that the offender shall be liable on conviction to the penalties prescribed in this sub-section, shall be liable on conviction to a fine not exceeding two thousand rand, or, in default of payment thereof, to imprisonment not exceeding two years, or to such imprisonment without the option of a fine, or to both such fine and imprisonment.

Penalties.

29. (1) Any person who is convicted of an offence under any section or sub-section of this Law which provides that the offender shall be liable on conviction to the penalties prescribed in this sub-section, shall be liable to a fine not exceeding two hundred rand, or, in default of payment thereof, to imprisonment not exceeding three months, or to such imprisonment without the option of a fine, or to both such fine and imprisonment.

(2) Any person who is convicted of an offence under any section or sub-section of this Law which provides that the offender shall be liable on conviction to the penalties prescribed in this sub-section, shall be liable to a fine not exceeding one thousand rand, or, in default of payment thereof, to imprisonment not exceeding one year, or to such imprisonment without the option of a fine, or to both such fine and imprisonment.

(3) Any person who is convicted of an offence under any section or sub-section of this Law which provides that the offender shall be liable on conviction to the penalties prescribed in this sub-section, shall be liable on conviction to a fine not exceeding two thousand rand, or, in default of payment thereof, to imprisonment not exceeding two years, or to such imprisonment without the option of a fine, or both such fine and imprisonment.

Applicability of Law to Air or Rail Passengers

30. Nothing in this Law shall apply to any person who enters Botswana by air or rail and makes an unbroken air or rail journey through Botswana:

Provided that an immigration officer may require any person who lands in Botswana in the course of such an air journey or any person in the course of such a rail journey to submit to examination in accordance with the provisions of section 6 and thereupon the provisions of this Law shall apply to such person.

Regulations

31. (1) The President, by notice in the *Gazette* may make regulations prescribing any matter or thing which under this Law is to or may be prescribed and generally for the better carrying out of the objects and purposes of this Law.

(2) Such regulations may prescribe -

- (a) the powers and duties of immigration officers and the Immigration Control Officer;
- (b) the steps to be taken to prevent the entrance of prohibited immigrants into Botswana;
- (c) the ports of entry and the times, places, and conduct of the enquiry or examination, medical or otherwise, of persons entering or desiring to enter Botswana, or who, being found in Botswana, are suspected of being prohibited immigrants;
- (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.

(3) Different regulations may be made under paragraph (c) and (e) of sub-section (2) in respect of aliens and other persons.

Saving for Inadvertence

32. No prohibited immigrant shall be exempt from the provisions of this Law or be allowed to remain in Botswana or be deemed to have acquired a domicile therein --

- (a) by reason only that he had not been informed that he could not enter or remain in Botswana; or
- (b) by reason only that he had been allowed to enter or remain in Botswana through oversight, misrepresentation, or a contravention of the provisions of this Law; 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.

Exercise of Discretionary Functions by the President

33. 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 any of the provisions of this Law. 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.

Repeal and Transitional

34. (1) The Immigration Law, 1963. (No.31 of 1963) is repealed.

(2) The provisions of the Schedule shall have effect for the purposes of transition to the provisions of this Law from the provisions of the law repealed by this section.

SCHEDULE

(Section 34 (2))

TRANSITIONAL PROVISIONS

Application of Law to Persons who Entered Bechuanaland

1. This Law shall have effect in relation to any person who entered the former protectorate of Bechuanaland as if he had then entered Botswana.

Domicile (residence at Mafeking)

2. (1) Section 3 shall have effect in relation to any period of residence at Mafeking by any person to whom this paragraph applies as if it had been residence in Botswana.

(2) This paragraph applies to any person who made a notification under paragraph (i) of the Schedule to the law repealed by section 34.

Prohibited Immigrants

3. This Law shall have effect in relation to any person who was a prohibited immigrant by virtue of any of the provisions of the law repealed by section 34 as if he was a prohibited immigrant by virtue of the corresponding provision of this Law.

Residence Permits

4. Every permit issued under section 21 of the law repealed by section 34 or having effect as a residence permit issued under that law shall have effect as a residence permit issued under this Law.

Schedule in addition to Section 13 of Interpretation Law.

5. The provisions of this Schedule shall be in addition to and not in derogation from the provisions of section 13 of the Interpretation and General Clauses Law, 1966.

Passed by the Legislative Assembly this day,

the 24th August, 1966.

G.T. MATENGE,
Clerk to the Legislative Assembly.