

IMMIGRATION SERVICE BILL, 2015

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SCHEDULE

IMMIGRATION SERVICE BILL, 2015

A
BILL

ENTITLED

IMMIGRATION SERVICE ACT, 2015

AN ACT to re-enact the Immigration Service Act, 1989 (PNDCL 226)
to provide for further matters in respect of the Immigration
Service and for related matters.

PASSED by Parliament and assented to by the President:

The Immigration Service

Establishment of the Service

1. In accordance with article 190 of the Constitution, there is established the Immigration Service.

Members of the Service

2. The members of the Service are

- (a) the persons holding the posts, specified in the Schedule, in the Service immediately before the commencement of this Act; and
- (b) any other persons employed by the Service.

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Object of the Service

3. The object of the Service is to
- (a) ensure the effective administration and management of migration in the country; and
 - (b) contribute to national security on matters pertaining to migration.

Functions of the Service

4. For the purpose of achieving the object, the Service shall
- (a) subject to existing laws, examine travel documents of persons entering or leaving the country through the borders of the country;
 - (b) ensure the application and enforcement of laws relating to the immigration and employment of non-Ghanaians in the country;
 - (c) advise on and implement international co-operation agreements with other countries and international organisations on matters relating to migration;
 - (d) manage and patrol the borders of the country;
 - (e) issue visas for entry into the country and permits for work in the country; and
 - (f) perform any other functions as may by law require.

Governing body of the Service

5. The governing body of the Service is a Council consisting of
- (a) a chairperson,
 - (b) the Comptroller-General appointed under section 14,
 - (c) one serving officer not below the rank of a Deputy Commissioner,
 - (d) the Chief Director of the Ministry of the Interior,
 - (e) one representative of the Ministry of Finance not below the rank of Director;
 - (f) one representative of the Attorney-General not below the rank of a Principal State Attorney;
 - (g) one representative of the Retired Senior Immigration Officers Association not below the rank of Deputy Commissioner;

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- (h) one representative of the Ghana Bar Association who is of at least ten years standing at the Bar; and
- (i) three other persons nominated by the President one of whom is a woman.

(2) The members of the Council shall be appointed by the President in accordance with article 70 of the Constitution.

(3) The Council shall ensure the proper and effective performance of the functions of the Service.

Functions of the Council

6. The functions of the Council are

- (a) to advise the Minister on the formulation of policies for the management of the Service;
- (b) to determine matters in respect of administration, welfare, training and discipline of officers and employees of the Service; and
- (c) to advise on matters of appointment and promotion of officers and other employees of the Service above the rank of Senior Inspector;
- (d) to draw up a Scheme of Service prescribing the terms and conditions of service of the officers and other employees of the Service; and
- (e) to make recommendation to the Minister on bilateral and multilateral co-operation with foreign countries in matters relating to migration and related issues.

Tenure of office of members of the Council

7. (1) A member of the Council shall hold office for four years and is eligible for re-appointment but a member shall be appointed for another term only.

(2) Subsection (1) does not apply to the Comptroller-General.

(3) A member of the Council, other than the Comptroller-General, may at any time resign from office in writing addressed to the President through the Minister.

(4) A member of the Council, other than the Comptroller-General, who is absent from three consecutive meetings of the Council without sufficient cause ceases to be a member of the Council.

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(5) The President may by letter addressed to a member revoke the appointment of that member.

(6) Where a member of the Council is, for a sufficient reason, unable to act as a member, the Minister shall determine whether the inability would result in the declaration of a vacancy.

(7) Where there is a vacancy

(a) under subsection (3) or (4) or section 9(2),

(b) as a result of a declaration under subsection (6), or

(c) by reason of the death of a member,

the Minister shall notify the President of the vacancy and the President shall appoint a person to fill the vacancy.

Meetings of the Council

8. (1) The members of the Council shall meet at least once every month for the dispatch of business at the times and in the places determined by the chairperson.

(2) The chairperson shall at the request in writing of not less than one-third of the membership of the Council convene an extraordinary meeting of the Council at the place and time determined by the chairperson.

(3) The quorum at a meeting of the Council is six members of the Council or a greater number determined by the Council in respect of an important matter.

(4) The chairperson shall preside at meetings of the Council and in the absence of the chairperson, a member of the Council elected by the members present from among their number shall preside.

(5) Matters before the Council shall be decided by a majority of the members present and voting and in the event of an equality of votes, the person presiding shall have a casting vote.

(6) The Council may co-opt a person to attend and participate in any of its meetings but a person co-opted is not entitled to vote on any issue for decision by the Council.

(7) Subject to this section, the Council shall regulate its own procedure for meetings.

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Disclosure of interest

9. (1) A member of the Council who has an interest in a matter for consideration shall

- (a) disclose the nature of the interest and the disclosure shall form part of the record of the consideration of the matter;
- (b) request to be recused from the deliberations of the Council in respect of the matter; and
- (c) not participate in the deliberations of the Council in respect of the matter.

(2) A member ceases to be a member of the Council if that member has an interest in a matter before the Council and

- (a) fails to disclose that interest; or
- (b) is present at or participates in the deliberations of the matter.

Establishment of committees

10. (1) The Council may establish committees consisting of members of the Council or non-members or both to perform a function.

(2) A committee of the Council shall be chaired by a member of the Council.

(3) Section 9 applies to a member of a committee of the Council.

Secretary to the Council

11. (1) The President shall in accordance with article 195 of the Constitution appoint a Secretary to the Council.

(2) The Secretary shall not be below the rank of an Assistant Commissioner.

(3) The Secretary is not a member of the Council and shall

- (a) keep accurate records of proceedings and decisions of the Council; and
- (b) perform any other function that the Council or Comptroller-General may direct.

Allowances

12. Members of the Council, members of a committee of the Council and co-opted persons shall be paid the allowances approved by the Minister in consultation with the Minister responsible for Finance.

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Ministerial oversight

13. The Minister may give directives to the Council on matters of policy and the Council shall comply.

Administrative provisions

The Comptroller-General

14. (1) The President shall in accordance with article 195 of the Constitution appoint the Comptroller-General who is the head of the Service.

(3) The Comptroller-General shall hold office on the terms and conditions specified in the letter of appointment.

Functions of the Comptroller-General

15. (1) The Comptroller-General is, subject to the direction of the Council on matters of policy, responsible for the day- to-day administration of the Service.

(2) The Comptroller-General may delegate a function to an officer of the Service but shall not be relieved from the ultimate responsibility for the performance of the delegated function.

Deputy Comptroller-General

16. (1) The President shall in accordance with article 195 of the Constitution appoint three Deputy Comptrollers-General.

(2) A Deputy Comptroller-General shall hold office on the terms and conditions specified in the letter of appointment

Functions of a Deputy Comptroller-General

17. (1) Each Deputy Comptroller-General appointed in accordance with section 16 is responsible for

- (a) Finance and Administration;
- (b) Command Post and Operations; or
- (c) Legal, Research and Monitoring; and
- (d) any other function that the Comptroller-General, in consultation with the Council, may assign.

(2) A Deputy Comptroller-General appointed for purposes of paragraph (c) of subsection (1) shall be a legal practitioner who is of at least five years standing at the Bar.

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Commissioners

18. (1) The Comptroller-General shall, in consultation with the Council, appoint Commissioners for the Service.

(2) A Commissioner shall head a Department of the Service.

(3) A Commissioner shall perform any function that the Comptroller-General may, in consultation with the Council, direct.

Appointment of other staff

19. (1) The President shall, in accordance with article 195 of the Constitution, appoint other staff of the Service that is necessary for the proper and effective performance of its functions.

(2) The President may in accordance with article 195 (2) of the Constitution delegate the power of appointment of other staff under subsection (1).

(3) The Council may on the advice of the Comptroller-General engage the services of consultants and advisers in the performance of its functions under this Act.

Directorate of the Service

20. The Directorate of the Service consists of the Comptroller-General and the three Deputy Comptrollers-General.

Financial provisions

Funds of the Service

21. The funds of the Service include

(a) moneys approved by Parliament;

(b) moneys generated by the Service in the performance of its functions;

(c) donations and grants; and

(d) any other moneys that are approved by the Minister responsible for Finance.

Expenses of the Service

22. The administrative expenses of the Service including the salaries, allowances, gratuities, pensions payable to or in respect of persons employed by the Service and the operational costs are a charge on the Consolidated Fund.

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Accounts and audit

23. (1) The Service shall keep books of account and proper records in relation to them in the form determined by the Auditor-General.

(2) The Council shall submit the accounts of the Service to the Auditor-General for audit within three months after the end of the financial year.

(3) The Auditor-General shall, not later than three months after the receipt of the accounts, audit the accounts and forward a copy of the audit report to the Minister.

(4) The financial year of the Service is the same as the financial year of the Government.

Internal Auditor

24. (1) The Service shall have an internal auditor who is responsible to the Comptroller-General in the performance of the functions of Office

(2) The internal auditor shall carry out an internal audit of the Service every three months and shall submit a report in respect of that period to the Comptroller-General.

(3) The chairperson of the Council shall submit a copy of the report to the Minister.

(4) This section shall be read as one with the Internal Audit Agency Act, 2003 (Act 658) and where there is a conflict the provisions of the Internal Audit Agency Act shall prevail.

Annual report and other reports

25. (1) The Council shall within one month after receipt of the audit report, submit to the Minister an annual report covering the activities and the operations of the Service for the year to which the report relates.

(2) The annual report shall include the report of the Auditor-General.

(3) The Minister shall, within one month after the receipt of the annual report, submit the report to Parliament with a statement the Minister considers necessary.

(4) The Council shall submit to the Minister any other report which the Minister may request in writing.

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Immigration Officers Welfare Fund

Establishment of Immigration Officers Welfare Fund

26. There is established by this Act an Immigration Officers Welfare Fund.

Object of the Fund

27. The object of the Fund includes the provision of financial resources for

- (a) the payment of reward to an officer of the Service;
- (b) the grant of medical and funeral benefits which are not chargeable to the general revenue, for the benefit of an officer of the Service; and
- (c) the payment of gratuity to dependants of an officer of the Service.

Sources of moneys for the Fund

28. The sources of moneys for the Fund include

- (a) moneys provided by the Minister responsible for Finance and approved by Parliament for payment into the Fund;
- (b) fines paid by an officer further to disciplinary proceedings; and
- (c) donations and gifts to the Fund.

Management of the Fund

29. The Fund shall be managed by the Comptroller-General.

General provisions

Power to use fire arms

30. An officer may, in the discharge of duties under this Act or any other enactment, use fire arms.

Obedience to lawful order

31. An officer shall, for the purpose of this Act, obey a lawful order and directive from a superior officer of the Service.

Indemnity for an act done in good faith

32. Subject to this Act, an officer is not liable for an act done or omission on the part of that officer, if the act or omission was done in good faith and in the execution or intended execution of the duties of the officer under this Act.

Unlawful possession of uniform and other property of the Service

33. (1) A person, other than an officer, who

- (a) has possession of an article which is part of the clothing, accoutrements or equipment supplied to an officer, and
- (b) is not able to satisfactorily account for the possession of the part of the clothing, accoutrements or equipment

commits an offence and is liable on summary conviction to a fine of not less than five hundred penalty units and not more than one thousand penalty units or to a term of imprisonment of not less than two years and not more than four years or to both.

(2) An officer shall, on ceasing to be an officer, return all the clothing, arms, accoutrements and equipment supplied to or acquired by that officer for the performance of the duties of the officer to the Officer-In-Charge under whom the officer was serving.

(3) An officer who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine of not less than five hundred penalty units and not more than one thousand penalty units or to a term of imprisonment of not less than two years and not more than four years or to both.

(4) A person, other than an officer, who

- (a) has in the possession of that person, or
- (b) wears or uses,

an article that closely resembles a part of the uniform of an officer so as to deceive a member of the general public, commits an offence and is liable on summary conviction to a fine of not less than two hundred penalty units and not more than four hundred penalty units or to a term of imprisonment of not less than fifteen months and not more than two years or to both.

Causing disaffection

34. A person who

- (a) causes or engages in an act that is calculated to cause disaffection among officers, or
- (b) induces or engages in an act calculated to induce an officer to withhold the service of the officer or commit an act of misconduct,

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commits an offence and is liable on summary conviction to a fine not less than five hundred penalty units and not more than one thousand penalty units or to a term of imprisonment of not less than two years and not more than four years or to both.

Disposal of property in the possession of the Service

35. (1) The Minister may issue guidelines on the disposal of property in the possession of the Service, for which

- (a) the owner cannot be ascertained; or
- (b) an order of a court has not been made.

(2) In furtherance of subsection (1), the Minister may authorise the sale of a property if the property has been in the possession of the Service for a period of not less than six months.

(3) Subsection (2) does not apply where

- (a) the property is of a perishable nature;
- (b) the Service will incur an unreasonable expense in keeping the property; or
- (c) the possession of the property will result in inconvenience to the Service.

(4) Where a property is sold in accordance with subsection (3), the proceeds from the sale shall not be disbursed until after six months from the date of sale.

(5) The proceeds from the sale of a property may be used

- (a) to defray the expenses incurred in the disposal of the property; and
- (b) for any other purpose that the Minister may direct.

Complaint by member of the public

36. A member of the public may make a complaint to the Comptroller-General through the Officer-In-Charge on

- (a) an instance of bribery, corruption, oppression or intimidation by an officer;
- (b) any neglect or non-performance of duty by an officer; or
- (c) any other misconduct by an officer of the Service.

(2) A complaint under subsection (1) shall be in writing and signed by the complainant.

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(3) The Comptroller-General shall, on receipt of a complaint under this section, cause an investigation to be conducted into the complaint and

- (a) send a report of the findings to the complainant; and
- (b) take action on the report as the circumstances may require.

(4) A person who knowingly makes a false or malicious complaint under this section commits an offence and is liable on summary conviction to a fine of not less than two hundred penalty units and not more than four hundred penalty units or to a term of imprisonment of not less than fifteen months and not more than two years or to both.

Miscellaneous provisions

Regulations

37. (1) The Minister may, on the advice of the Council, by Legislative Instrument, make Regulations for carrying out or giving effect to this Act.

(2) Without limiting subsection (1), the Regulations may provide for

- (a) the terms and conditions of service of officers and employees of the Service;
- (b) fees to be charged under this Act;
- (c) the forms to be used under this Act;
- (e) the organisational structure of the Service;
- (f) disciplinary matters;
- (g) the issuance of visas and permits;
- (h) the creation of additional Departments, Sections and Units;
- (i) the use of firearms; and
- (k) the effective management of borders.

Interpretation

38. In this Act, unless the context otherwise requires,
- “border” includes airports, seaports, land borders and inland checkpoints;
 - “Command Post” means a Regional Command, Sector Command, Metropolitan, Municipal, District, Section or Unit of the Service where an officer receives orders and exercises command;

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“Comptroller-General” means the person appointed under section 14;

“Council” means the Immigration Council established under section 5;

“Fund” means the Immigration Officers Welfare Fund established under section 26;

“Minister” means Minister responsible for the Interior;

“officer” includes senior and junior officers of the Service;

“salary” includes wages; and

“Service” means the Immigration Service established under section 1.

Repeal and saving

39. (1) The Immigration Service Act, 1989 (P.N.D.C.L. 226) is repealed.

(2) Despite the repeal of PNDCL 226, any Regulations, bye-laws, notices, orders, directions, appointments or any other act lawfully made or done under the repealed enactment and in force immediately before the coming into force of this Act shall be considered to have been made or done under this Act and shall continue to have effect until reviewed, cancelled or terminated.

Consequential amendments

40. A reference to the Director of Immigration in any enactment existing before the coming into force of this Act shall be construed as reference to the Comptroller-General.

Transitional provisions

41. (1) The assets, rights, obligations and liabilities of the Immigration Service established under the Immigration Service Law, 1989 (P.N.D.C.L. 226) and in force immediately before the commencement of this Act, are transferred to the Service.

(2) A person in the employment of the Immigration Service immediately before the commencement of this Act shall, on the coming into force of this Act, be deemed to have been duly employed by the Service established by this Act on terms and conditions which are not less in aggregate to terms and conditions attached to the post held by that person before the commencement of this Act.

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SCHEDULE

Posts in the Immigration Service
(Section 2)

1. Comptroller-General of Immigration
2. Deputy Comptroller-General of Immigration
3. Commissioner of Immigration
4. Deputy Commissioner of Immigration
5. Assistant Commissioner of Immigration
6. Chief Superintendent of Immigration
7. Superintendent of Immigration
8. Deputy Superintendent of Immigration
9. Assistant Superintendent of Immigration
10. Senior Inspector
11. Inspector
12. Assistant Inspector
13. Immigration Control Officer
14. Assistant Immigration Control Officer I
15. Assistant Immigration Control Officer II

Date of *Gazette* notification: 18th February, 2015.

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MEMORANDUM

The purpose of the Bill is to re-enact the Immigration Service Act, 1989 (PNDCL 226) to address the current challenges being faced by the Immigration Service. P.N.D.C.L 226 was enacted in 1989 to establish the Immigration Service. However it did not clearly outline the functions of the Service. As a result, the Service has to depend on other laws such as the Immigration Act, 2000 (Act 573) to determine the specific roles of the Service.

Furthermore, the Service which has been operating for over a number of years, has undergone a number of changes in respect of its functions. Thus there is a need for legislation to be enacted to address the additional functions, which include border patrols, which the Service performs. The Bill will therefore give the Service the needed legal backing to perform those new functions.

Currently the administrative structure of the Service is unable to support the Service in effectively responding to the evolving administrative and operational dynamics of migration management. Whilst the number of officers employed in the Service has increased exponentially, the progression of these officers has been stunted due to the fact that the highest rank in the Service has been capped at Director of Immigration. However in the Bill, the hierarchal command structure of the Service is raised to Comptroller-General which is two ranks higher than that of the current rank. Officers in the Service will thus get the opportunity to rise two steps higher. Moreover, this new hierarchy puts the Service at par with other security services within the country and the sub-region.

Furthermore, the Bill seeks to expand the operational structures of the Service by creating more Departments, Sections and Units to support the three existing directorates. This will invariably provide for increased command effectiveness and efficiency of the Service.

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A change which is worthy of note is the increase in the numerical strength of the governing body of the Service. The Bill has ensured that the membership consists of personalities of diverse background and experience which will help to address the challenges of the modern day Immigration Service.

Clause 1 of the Bill establishes the Immigration Service in accordance with article 190 of the Constitution. The members of the Service are listed in *clause 2*.

The objects of the Service are to ensure the effective administration and management of migration in the country and to contribute to national security on matters pertaining to migration, *clause 3*.

The functions of the Service as enumerated in *clause 4* are to examine travel documents of persons entering or leaving the country through the borders of the country, ensure the application and enforcement of laws relating to the immigration and employment of non-Ghanaians in the country and advise on and implement international co-operation agreements with other countries and international organisations on matters relating to migration. Other functions of the Service are to manage and patrol the borders of the country and to issue visas for entry into and permits for work in the country. The Service is also to perform any other functions that any other law requires.

Clause 5 provides for the governing body of the Service which is a Council consisting of the chairperson, the Comptroller-General, a serving officer not below the rank of a Deputy Commissioner and the Chief Director of the Ministry of the Interior. Others are a representative each of the Ministry of Finance not below the rank of Director, the Attorney-General not below the rank of a Principal State Attorney, one representative of the Retired Senior Immigration Officers Association not below the rank of Deputy Commissioner and the Ghana Bar Association who is of at least ten years standing at the Bar. The rest are three other persons nominated by the President one of whom is a woman. The members of the Council are to be appointed by the President in accordance with article 70 of the Constitution.

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The functions of the Council are enumerated in *clause 6* and these include advising the Minister on the formulation of policies for the management of the Service, determining matters in respect of administration, welfare, training and discipline of officers and employees of the Service and advising on matters of appointment and promotion of officers and other employees of the Service above the rank of Senior Inspector. The Council is also to ensure the implementation of the functions of the Service.

The standard provisions on tenure of office of members of the Council, meetings of the Council, disclosure of interest, establishment of committees and allowances are dealt with in *clause 7 to 10*.

Clause 11 provides for the Secretary to the Council. The Secretary is to be appointed by the President in accordance with article 195 of the Constitution. The Secretary who is not a member of the Council is to keep accurate records of proceedings and decisions of the Council; and perform any other function that the Council or Comptroller-General directs.

Allowances for members of the Council, members of a committee of the Council and co-opted persons are provided for in *clause 12*.

Clause 13 deals with ministerial oversight.

Clause 14 to 20 deals with administrative provisions. *Clause 14* provides for the appointment by the President of the Comptroller-General. The Comptroller-General is the head of the Service. The Comptroller-General is, subject to the direction of the Council on matters of policy, responsible for the day- to-day administration of the Service, *clause 15*.

Three Deputy Comptrollers-General are to be appointed by the President, in accordance with article 195 of the Constitution. Each Deputy Comptroller-General is to be responsible for Finance and Administration, Command Post and Operations and Legal, Research and Monitoring, *clause 17*.

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Clause 18 empowers the Comptroller-General to appoint Commissioners for the Service in consultation with the Council. The Commissioner is to head a Department of the Service. Provision for the appointment of other staff by the President is provided for in *clause 19*. The President has the discretion to delegate this power in accordance with article 195 (2) of the Constitution.

Clause 20 makes provision for the Directorate of the Service which consists of the Comptroller-General and the three Deputy Comptrollers-General.

Clause 21 to 25 deals with financial matters. *Clause 21* enumerates the funds of the Service which include moneys approved by Parliament and moneys generated by the Service in the performance of its functions. Donations and grants as well as any other moneys that are approved by the Minister responsible for Finance also form part of the funds of the Service.

Clause 20 deals with the expenses of the Service. The administrative expenses of the Service including the salaries, allowances, gratuities, pensions payable to or in respect of persons employed by the Service and the operational costs are to be a charge on the Consolidated Fund.

Standard provisions on accounts and audit are dealt with in *clause 23*. Provision is made for an internal auditor in *clause 24* with annual and other reports to be submitted to Parliament provided for in *clause 25*.

Clause 26 establishes the Immigration Officers Welfare Fund. The object of the Fund as stated in *clause 27* includes the provision of financial resources for the payment of reward to an officer of the Service and the grant of medical and funeral benefits which are not chargeable to the general revenue, for the benefit of an officer of the Service.

The sources of moneys for the Fund in *clause 28* are moneys provided by the Minister responsible for Finance and approved by Parliament for payment into the Fund, fines paid by an officer further to disciplinary proceedings and donations and gifts to the Fund. The Comptroller-General is responsible for the management of the Fund, *clause 29*.

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General provisions are dealt with in *clause 30 to 36*. *Clause 30* gives an officer of the Service the authority to use fire arms for the purpose of the discharge of duties under the Bill or any other enactment. Furthermore an officer is for the purpose of this Bill, to obey a lawful order and directive from a superior officer of the Service, *clause 31*.

Clause 32 indemnifies an officer for an act done or omission on the part of the officer if the act or omission was done in good faith and in the execution or intended execution of the duties of the officer under the Act.

Clause 33 makes it an offence for a person, other than an officer to be in possession of an article which is part of the clothing, accoutrements or equipment supplied to an officer and is not able to satisfactorily account for the possession of the part of the clothing, accoutrements or equipment, among others.

Clause 34 also makes it an offence for a person to cause or engage in an act that is calculated to cause disaffection among officers of the Service or induce or engage in an act calculated to induce an officer to withhold the service of the officer or commit an act of misconduct.

The manner of disposal of property in the possession of the Service is dealt with in *clause 35* whilst *clause 36* makes provision for the dealing with a complaint by a member of the public.

Clause 37 to 41 deals with miscellaneous matters. *Clause 37* empowers the Minister to provide for Regulations for the effective implementation of the Bill among others. Some of the matters for Regulations include the terms and conditions of service of officers and employees of the Service, fees to be charged under the Bill and the forms to be used under the Bill.

Clause 38 relates to the interpretation of words and expressions used in the Bill whilst *clause 39* repeals the Immigration Service Act, 1989 (P.N.D.C.L. 226) but saves Regulations, bye-laws, notices, orders,

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directions, appointments or any other act lawfully made or done under P.N.D.C.L. 226.

Consequential amendments are dealt with in *clause 40*.

The assets, rights, obligations and liabilities of the Immigration Service established under the Immigration Service Law, 1989 (P.N.D.C.L. 226) as well as the persons employed for the Service under PNDCL 226 are transferred to the Service established under the Bill, *clause 41*.

Thus the passage of the Bill will facilitate the creation of an Immigration Service which will be well equipped to deal with the challenges of modern day migration.

HON. MARK WAYONGO
Minister responsible for the Interior

Date: 13th February, 2015.