

REFUGEES ACT NO. 130 OF 1998

[ASSENTED TO 20 NOVEMBER, 1998]
[DATE OF COMMENCEMENT: 1 APRIL, 2000]

(English text signed by the President)

This Act has been updated to *Government Gazette* 42932 dated 23 December, 2019.

amended by

Refugees Amendment Act, No. 10 of 2015

Refugees Amendment Act, No. 33 of 2008
[with effect from 1 January, 2020]

Refugees Amendment Act, No. 12 of 2011
[with effect from 1 January, 2020]

Refugees Amendment Act, No. 11 of 2017
[with effect from 1 January, 2020]

EDITOR'S NOTE

S. 13 of Act No. 12 of 2011 substitutes all references in this Act to “Refugee Status Determination Officer” with “Status Determination Committee”.

S. 32 of Act No. 11 of 2017 amends certain phrases in Act No. 130 of 1998: The principal Act is hereby amended by the substitution the word or phrase—

- (a) “asylum seeker permit”, wherever it occurs, of the phrase “asylum seeker visa”;
- (b) “permit”, in relation to an asylum seeker permit, wherever it occurs, of the word “visa”; and
- (c) “Status Determination Committee”, wherever it occurs, of the phrase “Refugee Status Determination Officer”.

ACT

To give effect within the Republic of South Africa to the relevant international legal instruments, principles and standards relating to refugees; to provide for the reception into South Africa of asylum seekers; to regulate applications for and recognition of refugee status; to provide for the rights and obligations flowing from such status; and to provide for matters connected therewith.

Preamble.—WHEREAS the Republic of South Africa has acceded to the 1951 Convention Relating to Status of Refugees, the 1967 Protocol Relating to the Status of Refugees and the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa as well as other human rights instruments, and has in so doing, assumed certain obligations to receive and treat in its

territory refugees in accordance with the standards and principles established in international law.

ARRANGEMENT OF SECTIONS

CHAPTER 1 INTERPRETATION, APPLICATION AND ADMINISTRATION OF ACT

Sections

1. Definitions
- 1A. Interpretation and application of Act
2. General prohibition of refusal of entry, expulsion, extradition or return to other country in certain circumstances
3. Refugee status
4. Exclusion from refugee status
5. Cessation of refugee status
6.
7. Delegation of powers

CHAPTER 2 REFUGEE RECEPTION OFFICES, STANDING COMMITTEE FOR REFUGEE AFFAIRS AND REFUGEE APPEALS AUTHORITY

8. Refugee Reception Office
- 8A. Refugee Appeals Authority
- 8B. Composition of Refugee Appeals Authority
- 8C. Functions of Refugee Appeals Authority
- 8D. Term of office of members of Refugee Appeals Authority
- 8E. Disqualification from membership
- 8F. Removal from office of member of Refugee Appeals Authority
- 8G.
- 8H. Remuneration of members of Refugee Appeals Authority
- 8I. Administrative staff of Refugee Appeals Authority
- 8J. Annual Reports of Refugee Appeals Authority
9.
- 9A. Standing Committee for Refugee Affairs
- 9B. Composition of Standing Committee
- 9C. Functions of Standing Committee
- 9D. Term of office of members of Standing Committee
- 9E. Disqualification from membership
- 9F. Removal from office of member of Standing Committee
- 9G. Remuneration of members of Standing Committee
- 9H. Administrative staff of Standing Committee
10.
11.
12.
13.
14.
15.
16.
17.
18.
19.
20.

- 20A. Crime prevention and integrity measures

CHAPTER 3
APPLICATION FOR ASYLUM

21. Application for asylum
21A. Unaccompanied child and person with mental disability
21B. Spouse and dependants of asylum seekers and refugees
22. Asylum seeker visa
23. Detention of asylum seeker
24. Decision regarding application for asylum
24A. Review of applications rejected in terms of section 24 (3) (b)
24A. Review by Standing Committee
24B. Appeals to Refugee Appeals Authority

CHAPTER 4
REVIEWS AND APPEALS

25.
26.

CHAPTER 5
RIGHTS AND OBLIGATIONS OF REFUGEES AND ASYLUM SEEKERS

27. Protection and general rights of refugees
27A. Protection and general rights of asylum seekers
28. Removal and detention of refugees and asylum seekers
29. Restriction of detention
30. Identity document to refugee
31.
32.
33.
34. Obligations of refugees
34A. Obligations of asylum seekers

CHAPTER 6
SUPPLEMENTARY AND GENERAL PROVISIONS

35. Reception and accommodation of asylum seekers in event of mass influx
36. Withdrawal of refugee status
37. Offences and penalties
38. Regulations
39.
40.
41. Short title and commencement

CHAPTER 1
INTERPRETATION, APPLICATION AND ADMINISTRATION OF ACT

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

“**abusive application for asylum**” means an application for asylum made—

- (a) with the purpose of defeating or evading criminal or civil proceedings or the consequences thereof; or

(b) after the refusal of one or more prior applications without any substantial change having occurred in the applicant's personal circumstances or in the situation in his or her country of origin;

“asylum” means refugee status recognised in terms of this Act;

“asylum seeker” means a person who is seeking recognition as a refugee in the Republic;

“asylum seeker visa” means a visa contemplated in section 22;

[Definition of “asylum seeker visa”, previously “asylum seeker permit”, substituted by s. 1 (a) of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

“biometrics” means photographs, fingerprints (including palm prints), hand measurements, signature verification or retinal patterns, that may be used to verify the identity of individuals;

[Definition of “biometrics” substituted by s. 1 (a) of Act No. 12 of 2011 and comes into operation immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008): 1 January, 2020.]

“child” means any person under the age of 18 years;

“court” means a magistrate's court;

“Department” means the Department of Home Affairs;

“dependant”, in relation to an asylum seeker or a refugee, means any unmarried minor dependant child, whether born prior to or after the application for asylum, a spouse or any destitute, aged or infirm parent of such asylum seeker or refugee who is dependent on him or her, and who is included by the asylum seeker in the application for asylum or, in the case of a dependant child born after the application for asylum, is registered in terms of section 21B (2);

[Definition of “dependant” substituted by s. 1 (b) of Act No. 12 of 2011 and by s. 1 (b) of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

“Director-General” means the Director-General of the Department;

“fraudulent application for asylum” means an application for asylum based without reasonable cause on information, documents or representations which the applicant knows to be false and are intended to materially affect the outcome of the application;

“immediate family”

[Definition of “immediate family” deleted by s. 1 (c) of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

“Immigration Act” means the Immigration Act, 2002 (Act No. 13 of 2002);

“manifestly unfounded application” means an application for asylum made on grounds other than those contemplated in section 3;

[Definition of “manifestly unfounded application” substituted by s. 1 (c) of Act No. 12 of 2011 and comes into operation immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008): 1 January, 2020.]

“marriage” means—

- (a) either a marriage or a civil partnership concluded in terms of the Civil Union Act, 2006 (Act No. 17 of 2006);
- (b) a marriage concluded in terms of—
 - (i) the Marriage Act, 1961 (Act No. 25 of 1961); or
 - (ii) the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998); or
- (c) a marriage concluded in terms of the laws of a foreign country;
[Definition of “marriage” substituted by s. 1 (d) of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

“**Minister**” means the Minister of Home Affairs;

“**prescribed**” means prescribed by regulation;

“**refugee**” means any person who has been granted asylum in terms of this Act;

“**Refugee Appeals Authority**” means the Refugee Appeals Authority established in terms of section 8A;

“**Refugee Reception Office**” means a Refugee Reception Office established under section 8 (1);

“**Refugee Status Determination Officer**” means an officer referred to in section 8 (2);

[Definition of “Refugee Status Determination Officer” deleted by s. 1 (d) of Act No. 12 of 2011 and inserted by s. 1 (e) of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

“**regulation**” means any regulation made under this Act;

“**residence**” means a status recognised by competent authorities of a particular country that affords a person the right to sojourn in that country with the rights and obligations attached thereto;

“**social group**” includes a group of persons of particular gender, sexual orientation, disability, class or caste;

“**spouse**” means a person who is a party to—

- (a) a marriage as defined in terms of this Act; or
- (b) a permanent homosexual or heterosexual relationship as prescribed;

“**Standing Committee**” means the Standing Committee for Refugee Affairs established by section 9A;

[Definition of “Standing Committee” inserted by s. 1 (f) of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

“Status Determination Committee” means the Status Determination Committee or any of its subcommittees contemplated in section 8 (2);

[Definition of “Status Determination Committee” inserted by s. 1 (e) of Act No. 12 of 2011 and comes into operation immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008): 1 January, 2020.]

“this Act” includes the regulations made in terms of this Act;

“unfounded application”, in relation to an application for asylum in terms of section 21, means an application made on the grounds contemplated in section 3, but which is without merit;

[Definition of “unfounded application” substituted by s. 1 (f) of Act No. 12 of 2011 and comes into operation immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008): 1 January, 2020.]

“UNHCR” means the United Nations High Commissioner for Refugees.

[S. 1 substituted by s. 1 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

1A. Interpretation and application of Act.—This Act must be interpreted and applied in a manner that is consistent with—

- (a) the 1951 United Nations Convention Relating to the Status of Refugees;
- (b) the 1967 United Nations Protocol Relating to the Status of Refugees;
- (c) the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa;
- (d) the 1948 United Nations Universal Declaration of Human Rights; and
- (e) any domestic law or other relevant convention or international agreement to which the Republic is or becomes a party.

[S. 1A inserted by s. 2 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

2. General prohibition of refusal of entry, expulsion, extradition or return to other country in certain circumstances.—Notwithstanding any provision of this Act or any other law to the contrary, no person may be refused entry into the Republic, expelled, extradited or returned to any other country or be subject to any similar measure, if as a result of such refusal, expulsion, extradition, return or other measure, such person is compelled to return to or remain in a country where—

- (a) he or she may be subjected to persecution on account of his or her race, religion, nationality, political opinion or membership of a particular social group; or
- (b) his or her life, physical safety or freedom would be threatened on account of external aggression, occupation, foreign domination or other events seriously disturbing public order in any part or the whole of that country.

[Par. (b) substituted by s. 3 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

3. Refugee status.—Subject to Chapter 3, a person qualifies for refugee status for the purposes of this Act if that person—

- (a) owing to a well-founded fear of being persecuted by reason of his or her race, gender, tribe, religion, nationality, political opinion or membership of a particular social group, is outside the country of his or her nationality

and is unable or unwilling to avail himself or herself of the protection of that country, or, not having a nationality and being outside the country of his or her former habitual residence is unable or, owing to such fear, unwilling to return to it; or

[Par. (a) substituted by s. 4 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

- (b) owing to external aggression, occupation, foreign domination or other events seriously disturbing public order in either a part or the whole of his or her country of origin or nationality, is compelled to leave his or her place of habitual residence in order to seek refuge in another place outside his or her country of origin or nationality; or

[Par. (b) substituted by s. 4 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

- (c) is a spouse or dependant of a person contemplated in paragraph (a) or (b).

[Par. (c) substituted by s. 4 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

4. Exclusion from refugee status.—(1) An asylum seeker does not qualify for refugee status for the purposes of this Act if a Refugee Status Determination Officer has reason to believe that he or she—

- (a) has committed a crime against peace, a crime involving torture, as defined in the Prevention and Combating of Torture of Persons Act, 2013 (Act No. 13 of 2013), a war crime or a crime against humanity, as defined in any international legal instrument dealing with any such crimes; or
- (b) has committed a crime outside the Republic, which is not of a political nature and which, if committed in the Republic, would be punishable by imprisonment without the option of a fine; or
- (c) has been guilty of acts contrary to the objects and principles of the United Nations or the African Union; or
- (d) enjoys the protection of any other country in which he or she is a recognised refugee, resident or citizen; or
- (e) has committed a crime in the Republic, which is listed in Schedule 2 of the Criminal Law Amendment Act, 1997 (Act No. 105 of 1997), or which is punishable by imprisonment without the option of a fine; or
- (f) has committed an offence in relation to the fraudulent possession, acquisition or presentation of a South African identity card, passport, travel document, temporary residence visa or permanent residence permit; or
- (g) is a fugitive from justice in another country where the rule of law is upheld by a recognised judiciary; or
- (h) having entered the Republic, other than through a port of entry designated as such by the Minister in terms of section 9A of the Immigration Act, fails to satisfy a Refugee Status Determination Officer that there are compelling reasons for such entry; or
- (i) has failed to report to the Refugee Reception Office within five days of entry into the Republic as contemplated in section 21, in the absence of compelling reasons, which may include hospitalisation, institutionalisation or any other compelling reason: Provided that this provision shall not apply to a person who, while being in the Republic on

a valid visa, other than a visa issued in terms of section 23 of the Immigration Act, applies for asylum.

(2) For the purposes of subsection (1) (c), no exercise of a human right recognised under international law may be regarded as being contrary to the objects and principles of the United Nations or the African Union.

[S. 4 amended by s. 5 (a)-(c) of Act No. 33 of 2008, by s. 2 (a) of Act No. 12 of 2011 and substituted by s. 2 of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

5. Cessation of refugee status.—(1) A person ceases to qualify for refugee status for the purposes of this Act if—

- (a) he or she voluntarily re-avails himself or herself in the prescribed circumstances of the protection of the country of his or her nationality; or
- (b) having lost his or her nationality, he or she by some voluntary and formal act re-acquires it; or
- (c) he or she becomes a permanent resident or a citizen of the Republic or acquires the nationality of some other country and enjoys the protection of that country: Provided that a person whose permanent residence status is withdrawn is not prevented from re-applying for refugee status; or
- (d) he or she voluntarily re-establishes himself or herself in the country which he or she left or outside of which he or she remained owing to fear of persecution, or returns to visit such country; or
- (e) he or she can no longer continue to refuse to avail himself or herself of the protection of the country of his or her nationality because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist and no other circumstances have arisen which justify his or her continued recognition as a refugee; or
- (f) he or she has committed a crime in the Republic, which is listed in Schedule 2 of the Criminal Law Amendment Act, 1997 (Act No. 105 of 1997), or which is punishable by imprisonment without the option of a fine; or
- (g) he or she has committed an offence in relation to the fraudulent possession, acquisition or presentation of a South African identity card, passport, travel document, temporary residence visa or permanent residence permit; or
- (h) the Minister may issue an order to cease the recognition of the refugee status of any individual refugee or category of refugees, or to revoke such status.

[Sub-s. (1) amended by s. 6 of Act No. 33 of 2008 and substituted by s. 3 of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

(2) Subsection (1) (e) does not apply to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself or herself of the protection of the country of nationality.

(3) The refugee status of a person who ceases to qualify for it in terms of subsection (1) may be withdrawn in terms of section 36.

6.

[S. 6 repealed by s. 7 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

7. Delegation of powers.—(1) The Minister may, subject to the conditions that he or she may consider necessary, delegate any power conferred on him or her by this Act, excluding a power referred to in section 8A (3), 8B (1) (b), 8F, 9A (3), 9B (b), 9F or 38, to any officer or employee of the Department, but shall not be divested of any power so delegated.

[Sub-s. (1) substituted by s. 4 of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

(2) The Director-General may, subject to the conditions that he or she may deem necessary, delegate any power conferred on him or her by this Act, excluding a power referred to in section 8I, to any officer or employee of the Department, but shall not be divested of any power so delegated.

[S. 7 substituted by s. 8 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

CHAPTER 2
REFUGEE RECEPTION OFFICES, STANDING COMMITTEE FOR REFUGEE
AFFAIRS AND REFUGEE APPEALS AUTHORITY

[Ch. 2 heading substituted by s. 9 of Act No. 33 of 2008 and by s. 5 of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

8. Refugee Reception Office.—(1) Notwithstanding the provisions of any other law, the Director-General may, by notice in the *Gazette*, establish as many Refugee Reception Offices in the Republic as he or she regards as necessary for the purposes of this Act and may disestablish any Refugee Reception Office, by notice in the *Gazette*, if considered necessary for the proper administration of this Act.

[Sub-s. (1) substituted by s. 6 of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

(2) Each Refugee Reception Office must consist of at least one officer of the Department, designated by the Director-General as a Refugee Status Determination Officer.

[Sub-s. (2) substituted by s. 3 (a) of Act No. 12 of 2011 and by s. 3 (a) of Act No. 12 of 2011 and by s. 6 of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

(3)

[Sub-s. (3) deleted by s. 3 (b) of Act No. 12 of 2011 and comes into operation immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) 1 January, 2020.]

8A. Refugee Appeals Authority.—(1) There is hereby established a Refugee Appeals Authority.

(2) The Refugee Appeals Authority is independent and must function without any bias.

(3) The headquarters of the Refugee Appeals Authority must be determined by the Minister.

[S. 8A inserted by s. 11 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

8B. Composition of Refugee Appeals Authority.—The Refugee Appeals Authority consists of—

(a) a chairperson who is legally qualified; and

(b) such number of other legally qualified members as the Minister may appoint from time to time, having regard to the volume of work to be performed by the Refugee Appeals Authority.

[S. 8B inserted by s. 11 of Act No. 33 of 2008 and substituted by s. 7 of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

8C. Functions of Refugee Appeals Authority.—(1) The Refugee Appeals Authority must—

(a) subject to subsection (2), determine any appeal lodged in terms of this Act; and

(b) advise the Minister on any matter which the Minister refers to the Refugee Appeals Authority.

(2) An appeal contemplated in subsection (1) (a) must be determined by a single member or such number of members of the Refugee Appeals Authority as the chairperson may consider necessary.

[Sub-s. (2) substituted by s. 4 of Act No. 12 of 2011 and by s. 8 of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

(3) The Refugee Appeals Authority may determine its own procedure and make its own rules, which may not be in conflict with the provisions of this Act.

(4) Rules made under subsection (3) must be published in the *Gazette*.

[S. 8C inserted by s. 11 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

8D. Term of office of members of Refugee Appeals Authority.—

(1) Notwithstanding the provisions of any other law, a member of the Refugee Appeals Authority is appointed for any period not exceeding five years at a time and may be reappointed for any number of additional periods, any of which may not exceed five years at a time.

[Sub-s. (1) substituted by s. 9 of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

(2) A member may resign by tendering a written notice of resignation to the Minister.

[S. 8D inserted by s. 11 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

8E. Disqualification from membership.—A person may not be appointed as a member of the Refugee Appeals Authority if that person—

- (a) is not a South African citizen, unless the Minister considers that he or she possesses such skills and expertise as would significantly enhance the capacity of the Refugee Appeals Authority;
- (b) has been sentenced to imprisonment without the option of a fine during the preceding seven years;
- (c) is an unrehabilitated insolvent;
- (d) has been judicially declared of unsound mind;
- (e) has been removed from an office of trust on account of misconduct;
- (f) is a political office bearer holding a position in the national executive structure of any political party;
- (g) has been removed from a previous position on account of theft, fraud or corruption;
- (h) refuses to submit to a vetting investigation in accordance with section 2A of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994), when required to do so; or
- (i) fails any investigation referred to in paragraph (h).

[S. 8E inserted by s. 11 of Act No. 33 of 2008, amended by s. 5 of Act No. 12 of 2011 and substituted by s. 10 of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

8F. Removal from office of member of Refugee Appeals Authority.—(1) The Minister may remove a member of the Refugee Appeals Authority from office on account of misconduct or inability to perform the functions of his or her office effectively and efficiently.

(2) The Minister may remove a member of the Refugee Appeals Authority in terms of subsection (1) if such member has been given an opportunity to make representations or comments on the matter and the Minister has taken any such representations or comments into consideration.

(3) The Minister may summarily remove a member of the Refugee Appeals Authority from office if such member becomes disqualified in terms of section 8E.

[S. 8F inserted by s. 11 of Act No. 33 of 2008 with effect from: 1 January, 2020.
Sub-s. (3) added by s. 11 of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

8G.

[S. 8G inserted by s. 11 of Act No. 33 of 2008 and repealed by s. 12 of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

8H. Remuneration of members of Refugee Appeals Authority.—The members of the Refugee Appeals Authority must receive such remuneration, allowances and other benefits as the Minister may determine with the concurrence of the Minister of Finance.

[S. 8H inserted by s. 11 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

8I. Administrative staff of Refugee Appeals Authority.—The administrative work connected with the performance of the functions of the Refugee Appeals Authority must be performed by officers of the Department designated by the Director-General for that purpose.

[S. 8J inserted by s. 11 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

8J. Annual Reports of Refugee Appeals Authority.—(1) The Refugee Appeals Authority must, within 30 days after the end of each financial year, prepare a report on all its activities during that financial year and on its financial position as at the end of that financial year.

(2) The Refugee Appeals Authority must, immediately after the report contemplated in subsection (1) is finalised, submit the report together with the audited balance sheet and accounts pertaining to the funds of the Refugee Appeals Authority to the Minister for tabling in Parliament.

[S. 8J inserted by s. 11 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

9.

[S. 9 repealed by s. 12 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

9A. Standing Committee for Refugee Affairs.—(1) There is hereby established a Standing Committee for Refugee Affairs.

(2) The Standing Committee is independent and must function without any fear, favour or prejudice.

(3) The headquarters of the Standing Committee must be determined by the Minister.

[S. 9A inserted by s. 13 of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

9B. Composition of Standing Committee.—The Standing Committee consists of—

- (a) a chairperson who is legally qualified; and
- (b) such number of other legally qualified members as the Minister may appoint from time to time, having regard to the volume of work to be performed by the Standing Committee.

[S. 9B inserted by s. 13 of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

9C. Functions of Standing Committee.—(1) The Standing Committee—

- (a) must determine any review in terms of section 24A;

- (b) must, in the event that an asylum seeker is permitted to work or study in the Republic, determine the period and conditions in terms of which such asylum seeker may work or study whilst awaiting the outcome of his or her application for asylum;
- (c) may monitor and supervise all decisions taken by Refugee Status Determination Officers and may approve, disapprove or refer any such decision back to the Refugee Reception Office with recommendations as to how the matter must be dealt with; and
- (d) must advise the Minister or Director-General on any matter referred to it by the Minister or Director-General, including training that may be provided to members of staff at Refugee Reception Offices.

(2) Any function performed by the Standing Committee in terms of this Act must be determined by a single member or, in particular matters, such number of members of the Standing Committee as the chairperson may consider necessary.

[S. 9C inserted by s. 13 of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

9D. Term of office of members of Standing Committee.—(1) Notwithstanding the provisions of any other law, a member of the Standing Committee is appointed for any period not exceeding five years at a time and may be reappointed for any number of additional periods, any of which may not exceed five years at a time.

(2) A member may resign by tendering a written notice of resignation to the Minister.

[S. 9D inserted by s. 13 of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

9E. Disqualification from membership.—A person may not be appointed as a member of the Standing Committee if that person—

- (a) is not a South African citizen, unless the Minister considers that he or she possesses such skills and expertise as would significantly enhance the capacity of the Standing Committee;
- (b) has been sentenced to imprisonment without the option of a fine during the preceding seven years;
- (c) is an unrehabilitated insolvent;
- (d) has been judicially declared of unsound mind;
- (e) has been removed from an office of trust on account of misconduct;
- (f) is a political office bearer holding a position in the national executive structure of any political party;
- (g) has been removed from a previous position on account of theft, fraud or corruption;
- (h) refuses to submit to a vetting investigation in accordance with section 2A of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994) when required to do so; or
- (i) fails any investigation referred to in paragraph (h).

[S. 9E inserted by s. 13 of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

9F. Removal from office of member of Standing Committee.—(1) The Minister may remove a member of the Standing Committee from office on account of misconduct or inability to perform the functions of his or her office effectively and efficiently.

(2) The Minister may remove a member of the Standing Committee in terms of subsection (1) if such member has been given an opportunity to make representations or comments on the matter and the Minister has taken any such representations or comments into consideration.

(3) The Minister may summarily remove a member of the Standing Committee from office if such member becomes disqualified in terms of section 9E.

[S. 9F inserted by s. 13 of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

9G. Remuneration of members of Standing Committee.—The members of the Standing Committee must receive such remuneration, allowances and other benefits as the Minister may determine with the concurrence of the Minister of Finance.

[S. 9G inserted by s. 13 of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

9H. Administrative staff of Standing Committee.—The administrative work connected with the functions of the Standing Committee must be performed by officers of the Department, designated by the Director-General for that purpose.

[S. 9H inserted by s. 13 of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

10.

[S. 10 repealed by s. 12 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

11.

[S. 11 repealed by s. 12 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

12.

[S. 12 repealed by s. 12 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

13.

[S. 13 repealed by s. 12 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

14.

[S. 14 repealed by s. 12 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

15.

[S. 15 repealed by s. 12 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

16.

[S. 16 repealed by s. 12 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

17.

[S. 17 repealed by s. 12 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

18.

[S. 18 repealed by s. 12 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

19.

[S. 19 repealed by s. 12 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

20.

[S. 19 repealed by s. 12 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

20A. Crime prevention and integrity measures.—(1) The Director-General must, as soon as possible after the commencement of this Act, and from time to time thereafter, and without probable cause, direct all members and administrative staff of the Standing Committee, Refugee Appeals Authority and all members of staff at any Refugee Reception Office, including persons who are not members of staff but who perform any function at such an Office, to be subjected to measures to test the integrity of those persons for purposes of—

- (a) combating or preventing fraud, corruption or any crime of which dishonesty is an element; and
- (b) enhancing the integrity of, and confidence in, the asylum seeker and refugee system.

(2) Measures to test the integrity of persons as referred to in subsection (1) may include—

- (a) the gathering of information, as prescribed, by a duly authorised official in relation to—
 - (i) criminal records;
 - (ii) financial records;
 - (iii) personal information; or
 - (iv) any other information which may be relevant, to determine the integrity of a person; and
- (b) psychometric tests.

(3) (a) The information referred to in subsection (2) must, in the prescribed manner, be stored securely.

(b) No person may disclose any information which he or she obtained in the exercise of his or her powers or the performance of his or her duties in terms of this section, except—

- (i) to any other person who of necessity requires it for the performance of his or her functions in terms of this section;
- (ii) if he or she is a person who of necessity supplies it in the performance of his or her functions in terms of this section;
- (iii) information which is required in terms of any law or as evidence in any court of law or in any disciplinary proceedings; or
- (iv) to any competent authority which requires it for the institution, or an investigation with a view to the institution, of any criminal proceedings or any civil proceedings as contemplated in Chapter 5 or 6 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998).

(4) Any information gathered in terms of subsection (2) may be used for purposes of—

- (a) instituting criminal, civil or disciplinary proceedings against any person referred to in subsection (1);
- (b) evidence in criminal, civil or disciplinary proceedings, subject to the approval of the presiding officer in any such proceedings regarding the admissibility of such information; or
- (c) a vetting investigation in accordance with section 2A of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994).

(5) A person contemplated in subsection (1) who is a member of the public service and who refuses to subject himself or herself to a vetting investigation as contemplated in subsection (4) (c) when instructed to do so, or who fails such investigation, is subject to such disciplinary measures as may be in operation for members of the public service at the time.

[S. 20A inserted by s. 14 of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

CHAPTER 3 APPLICATION FOR ASYLUM

21. Application for asylum.—(1) (a) Upon reporting to the Refugee Reception Office within five days of entry into the Republic, an asylum seeker must be assisted by an officer designated to receive asylum seekers.

(b) An application for asylum must be made in person in accordance with the prescribed procedures to a Refugee Status Determination Officer at any Refugee Reception Office or at any other place designated by the Director-General by notice in the *Gazette*.

[Sub-s. (1) substituted by s. 13 of Act No. 33 of 2008 and by s. 15 (a) of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

(1A) Prior to an application for asylum, every applicant must submit his or her biometrics or other data, as prescribed, to an immigration officer at a designated port of entry or a Refugee Reception Office.

[Sub-s. (1A) inserted by s. 15 (b) of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

(1B) An applicant who may not be in possession of an asylum transit visa as contemplated in section 23 of the Immigration Act, must be interviewed by an immigration officer to ascertain whether valid reasons exist as to why the applicant is not in possession of such visa.

[Sub-s. (1B) inserted by s. 15 (b) of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

(1C) The Director-General may, by notice in the *Gazette*, require any category of asylum seekers to report to any particular or designated Refugee Reception Office or other place specially designated as such when lodging an application for asylum, if the Director-General considers it necessary for the proper administration of this Act.

[Sub-s. (1C) inserted by s. 15 (b) of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

(1D) For purposes of subsection (1C), a category of asylum seekers refers to asylum seekers from a particular country of origin or geographic area or of a particular gender, religion, nationality, political opinion or social group.

[Sub-s. (1D) inserted by s. 15 (b) of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

(2) The Refugee Status Determination Officer must, upon receipt of the application contemplated in subsection (1), deal with such application in terms of section 24.

[Sub-s. (2) substituted by s. 13 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

(2A) When making an application for asylum, every applicant must declare all his or her spouses and dependants, whether in the Republic or elsewhere, in the application for asylum.

[Sub-s. (2A) inserted by s. 15 (c) of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

(3) When making an application for asylum, every applicant, including his or her spouse and dependants, must have his or her biometrics taken in the prescribed manner.

[Sub-s. (3) substituted by s. 13 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

(4) Notwithstanding any law to the contrary, no proceedings may be instituted or continued against any person in respect of his or her unlawful entry into or presence within the Republic if—

(a) such person has applied for asylum in terms of subsection (1), until a decision has been made on the application and, where applicable, such application has been reviewed in terms of section 24A or where the applicant exercised his or her right to appeal in terms of section 24B; or

[Para. (a) substituted by s. 15 (d) of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

(b) such person has been granted asylum.

(5) The confidentiality of asylum applications and the information contained therein must be ensured at all times, except that the Refugee Appeals Authority may, on application and on conditions it deems fit, allow any person or the media to attend or report on its hearing if—

- (a) the asylum seeker gives consent; or
- (b) the Refugee Appeals Authority concludes that it is in the public interest to allow any person or the media to attend or report on its hearing, after taking into account all relevant factors including—
 - (i) the interests of the asylum seeker in retaining confidentiality;
 - (ii) the need to protect the integrity of the asylum process;
 - (iii) the need to protect the identity and dignity of the asylum seeker;
 - (iv) whether the information is already in the public domain;
 - (v) the likely impact of the disclosure on the fairness of the proceedings and the rights of the asylum seeker; and
 - (vi) whether allowing any person or the media access to its proceedings or allowing the media to report thereon would pose a credible risk to the life or safety of the asylum seeker or of his or her family, friends or associates.

[Sub-s. (5) substituted by s. 1 of Act No. 10 of 2015.]

(6) An application for asylum, which is found to contain false, dishonest or misleading information, whether by a Refugee Status Determination Officer, when considering the application, the Standing Committee, when reviewing, monitoring or supervising a decision or the Refugee Appeals Authority, when adjudicating an appeal, must be rejected.

[Sub-s. (6) added by s. 15 (e) of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

(7) It is presumed that a person who has indicated a language of preference in an application for asylum, understands and is proficient in such language.

[Sub-s. (7) added by s. 15 (e) of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

21A. Unaccompanied child and person with mental disability.—(1) Any unaccompanied child who is found under circumstances that clearly indicate that he or she is an asylum seeker and a child in need of care contemplated in the Children's Act, 2005 (Act No. 38 of 2005), must—

- (a) be issued with an asylum seeker visa in terms of section 22; and
- (b) in the prescribed manner, be brought before the Children's Court in the district in which he or she was found, to be dealt with in terms of the Children's Act, 2005.

(2) Any person reasonably suspected to have a mental disability who is found under circumstances that clearly indicate that he or she is an asylum seeker, must—

- (a) be issued with an asylum seeker visa in terms of section 22; and
- (b) in the prescribed manner, be referred to a health establishment contemplated in the Mental Health Care Act, 2002 (Act No. 17 of 2002), to be dealt with in terms of that Act.

[S. 21A inserted by s. 14 of Act No. 33 of 2008 with effect from: 1 January, 2020.

Sub-s. (2) to be amended by s. 16 of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

21B. Spouse and dependants of asylum seekers and refugees.—(1) A person who applies for refugee status in terms of section 21 and who would like one or more of his or her spouse and dependants to be granted refugee status must, when applying for asylum, include the details of such spouse and dependants in the application.

(2) Any asylum seeker or refugee whose child is born in the Republic must, within one month of the birth of his or her child, register such a child in terms of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992), and submit the certificate issued in terms of that Act at any Refugee Reception Office, to be included as a dependant of such asylum seeker or refugee.

[Sub-s. (2) substituted by s. 6 of Act No. 12 of 2011 and comes into operation immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008): 1 January, 2020.]

(2A) Any child of an asylum seeker born in the Republic and any person included as a dependant of an asylum seeker in the application for asylum has the same status as accorded to such asylum seeker.

[Sub-s. (2A) inserted by s. 17 (a) of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

(3) Where a dependant of a recognised refugee ceases to be a dependant by virtue of marriage or cessation of his or her dependence upon the recognised refugee, as the case may be, he or she may apply in the prescribed manner to be permitted to continue to remain within the Republic in accordance with the provisions of this Act.

[Sub-s. (3) substituted by s. 17 (b) of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

(3A) Where a dependant of an asylum seeker ceases to be a dependant by virtue of marriage or cessation of his or her dependence upon the asylum seeker, as the case may be, he or she may apply for asylum himself or herself in accordance with the provisions of this Act.

[Sub-s. (3A) inserted by s. 17 (c) of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

(4) Where a spouse of a recognised refugee is within the Republic in accordance with an asylum seeker visa or has been granted asylum in terms of this Act and ceases to be the spouse as a result of divorce or death of the recognised refugee, as the case may be, he or she may be permitted to continue to remain within the Republic in accordance

with the provisions of this Act: Provided that, in the case of divorce, the Director-General is satisfied that a good faith spousal relationship existed between the recognised refugee and such spouse for a period of at least two years after having been granted asylum.

(5) Nothing contained in this Act prevents a dependant who has, in terms of subsection (3), been permitted to continue to remain in the Republic from applying for recognition as a refugee in accordance with the provisions of this Act.

[S. 21B inserted by s. 14 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

22. Asylum seeker visa.—(1) An asylum seeker whose application in terms of section 21 (1) has not been adjudicated, is entitled to be issued with an asylum seeker visa, in the prescribed form, allowing the applicant to sojourn in the Republic temporarily, subject to such conditions as may be imposed, which are not in conflict with the Constitution or international law.

(2) Upon the issue of a visa in terms of subsection (1), any previous visa issued to the applicant in terms of the Immigration Act becomes null and void and must be returned to the Director-General for cancellation.

(3) The visa referred to in subsection (1) must contain the biometrics of the holder thereof.

(4) The visa referred to in subsection (1) may, pending the decision on the application in terms of section 21, from time to time be extended for such period as may be required.

(5) The Director-General may at any time prior to the expiry of an asylum seeker visa withdraw such visa in the prescribed manner if—

- (a) the applicant contravenes any condition endorsed on that visa;
- (b) the application for asylum has been found to be manifestly unfounded, abusive or fraudulent;
- (c) the application for asylum has been rejected; or
- (d) the applicant is or becomes ineligible for asylum in terms of section 4 or 5.

(6) An asylum seeker may be assessed to determine his or her ability to sustain himself or herself, and his or her dependants, either with or without the assistance of family or friends, for a period of at least four months.

(7) If, after assessment, it is found that an asylum seeker is unable to sustain himself or herself and his or her dependants, as contemplated in subsection (6), that asylum seeker may be offered shelter and basic necessities provided by the UNHCR or any other charitable organisation or person.

(8) The right to work in the Republic may not be endorsed on the asylum seeker visa of any applicant who—

- (a) is able to sustain himself or herself and his or her dependants, as contemplated in subsection (6);
- (b) is offered shelter and basic necessities by the UNHCR or any other charitable organisation or person, as contemplated in subsection (7); or
- (c) seeks to extend the right to work, after having failed to produce a letter of employment as contemplated in subsection (9): Provided that such extension may be granted if a letter of employment is subsequently produced while the application in terms of section 21 is still pending.

(9) In the event that the right to work or study is endorsed on the asylum seeker visa, the relevant employer, in the case of a right to work, and the relevant educational institution, in the case of a right to study, must furnish the Department with a letter of employment or of enrolment at the educational institution, as the case may be, in the prescribed form within a period of 14 days from the date of the asylum seeker taking up employment or being enrolled, as the case may be.

(10) An employer or educational institution contemplated in subsection (9) who or which fails to comply with the duty imposed in that subsection, or fraudulently issues the letter contemplated in that subsection, is guilty of an offence and liable upon conviction to a fine not exceeding R20 000.

(11) The Director-General must revoke any right to work as endorsed on an asylum seeker visa if the holder thereof is unable to prove that he or she is employed after a period of six months from the date on which such right was endorsed.

(12) The application for asylum of any person who has been issued with a visa contemplated in subsection (1) must be considered to be abandoned and must be endorsed to this effect by the Standing Committee on the basis of the documentation at its disposal if such asylum seeker fails to present himself or herself for renewal of the visa after a period of one month from the date of expiry of the visa, unless the asylum seeker provides, to the satisfaction of the Standing Committee, reasons that he or she was unable to present himself or herself, as required, due to hospitalisation or any other form of institutionalisation or any other compelling reason.

(13) An asylum seeker whose application is considered to be abandoned in accordance with subsection (12) may not re-apply for asylum and must be dealt with as an illegal foreigner in terms of section 32 of the Immigration Act.

(14) Any person who fails to return a visa in accordance with subsection (2), or fails to comply with any condition set out in a visa issued in terms of this section, or is in possession of an expired visa, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years, or to both a fine and such imprisonment.

[S. 22 amended by s. 15 (a)-(c) of Act No. 33 of 2008 and substituted by s. 18 of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

23. Detention of asylum seeker.—If the Director-General has withdrawn an asylum seeker visa in terms of section 22 (5), he or she may, subject to section 29, cause the holder to be arrested and detained pending the finalisation of the application for asylum, in the manner and place determined by him or her with due regard to human dignity.

[S. 23 substituted by s. 16 of Act No. 33 of 2008 and by s. 19 of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

24. Decision regarding application for asylum.—(1)

[Sub-s. (1) deleted by s. 17 (a) of Act No. 33 of 2008 with effect from: 1 January, 2020.]

(2) When considering an application for asylum, the Refugee Status Determination Officer—

- (a) must have due regard to the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), and in particular ensure that the applicant fully understands the procedures, his or her rights and responsibilities and the evidence presented; and
- (b) may consult with or invite a UNHCR representative to furnish information on specified matters.

[Sub-s. (2) substituted by s. 17 (b) of Act No. 33 of 2008, amended by s. 7 (a) of Act No. 12 of 2011 and by s. 20 (a) of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

(3) The Refugee Status Determination Officer must at the conclusion of the hearing conducted in the prescribed manner, but subject to monitoring and supervision, in the case of paragraphs (a) and (c), and subject to review, in the case of paragraph (b), by any member of the Standing Committee designated by the chairperson for this purpose—

- (a) grant asylum;
- (b) reject the application as manifestly unfounded, abusive or fraudulent; or
- (c) reject the application as unfounded.

[Sub-s. (3) substituted by s. 17 (b) of Act No. 33 of 2008, amended by s. 7 (b) of Act No. 12 of 2011 and by s. 20 (b) of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

(4) If an application is rejected in terms of subsection (3) (b) or (c), the Refugee Status Determination Officer must—

- (a) furnish the applicant with written reasons within five working days after the date of the rejection; and

[Para. (a) substituted by s. 7 (d) of Act No. 12 of 2011 and comes into operation immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008): 1 January, 2020.]

- (b) inform the applicant of his or her right to appeal in terms of section 24B.

[Sub-s. (4) substituted by s. 17 (b) of Act No. 33 of 2008, amended by s. 7 (c) of Act No. 12 of 2011 and by s. 20 (c) of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

(5) (a) An asylum seeker whose application for asylum has been rejected in terms of subsection (3) (b) and confirmed by the Standing Committee in terms of section 24A (2), must be dealt with as an illegal foreigner in terms of section 32 of the Immigration Act.

[Para. (a) amended by s. 20 (d) of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

(b) An asylum seeker whose application for asylum has been rejected in terms of subsection (3) (c), must be dealt with in terms of the Immigration Act, unless he or she lodges an appeal in terms of section 24B (1).

[Sub-s. (5) added by s. 17 (c) of Act No. 33 of 2008 and substituted by s. 7 (e) of Act No. 12 of 2011 and comes into operation immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008): 1 January, 2020.]

(6)

[Sub-s. (6) added by s. 17 (c) of Act No. 33 of 2008 and deleted by s. 20 (e) of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

24A. Review by Standing Committee.—(1) The Standing Committee must review any decision taken by a Refugee Status Determination Officer in terms of section 24 (3) (b) and may act in terms of section 9C (1) (c) in respect of any decision taken in terms of section 24 (3) (a) or (c).

(2) A review contemplated in subsection (1) must be determined by a single member or, in particular matters, such number of members of the Standing Committee as the chairperson may consider necessary.

(3) The Standing Committee may, after having determined a review, confirm, set aside or substitute any decision taken by a Refugee Status Determination Officer in terms of section 24 (3) (b).

(4) The Standing Committee must inform the Refugee Reception Office, where the application for asylum was lodged, of its decision within five working days of such decision, whereafter the Standing Committee is *functus officio*.

[S. 24A inserted by s. 19 of Act No. 33 of 2008, amended by s. 8 (a)-(c) of Act No. 12 of 2011 and substituted by s. 21 of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

24B. Appeals to Refugee Appeals Authority.—(1) Any asylum seeker whose application has been rejected in terms of section 24 (3) (c) may lodge an appeal with the Refugee Appeals Authority in the prescribed manner and within the prescribed period.

[Sub-s. (1) substituted by s. 9 (a) of Act No. 12 of 2011 and by s. 22 (a) of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

(2) The Refugee Appeals Authority may, after having determined an appeal, confirm, set aside or substitute any decision taken by a Refugee Status Determination Officer in terms of section 24 (3) (c).

[Sub-s. (2) substituted by s. 9 (b) of Act No. 12 of 2011 and by s. 22 (b) of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

(3) Before making a decision, the Refugee Appeals Authority may—

- (a) invite a UNHCR representative to make oral or written representations;
- (b) request the attendance of any person who, in its opinion, is in a position to provide the Refugee Appeals Authority with relevant information;
- (c) of its own accord make further inquiries; or
- (d) request the asylum seeker to appear before it or to provide any such other information as it may deem necessary.

(4) The Refugee Appeals Authority must allow legal representation upon the request of the asylum seeker.

(5) The Refugee Appeals Authority must refer the matter back to the Refugee Status Determination Officer to deal with such asylum seeker in terms of this Act if new information, which is material to the application, is presented during the appeal.

[S. 24B inserted by s. 19 of Act No. 33 of 2008 with effect from: 1 January, 2020.

Sub-s. (5) substituted by s. 9 (c) of Act No. 12 of 2011 and by s. 22 (c) of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

CHAPTER 4 REVIEWS AND APPEALS

25.

[S. 25 repealed by s. 18 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

26.

[S. 26 repealed by s. 18 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

CHAPTER 5 RIGHTS AND OBLIGATIONS OF REFUGEES AND ASYLUM SEEKERS

[Ch. 5 heading substituted by s. 20 of Act No. 33 of with effect from: 1 January, 2020.]

27. Protection and general rights of refugees.—A refugee is entitled to—

- (a) a formal written recognition of refugee status in the prescribed form;
- (b) full legal protection, which includes the rights set out in Chapter 2 of the Constitution of the Republic of South Africa, 1996, except those rights that only apply to citizens;
- (c) apply for permanent residence in terms of section 27 (d) or 31 (2) (b) of the Immigration Act after ten years of continuous residence in the Republic from the date on which he or she was granted asylum, if the Standing Committee, after considering all the relevant factors and within a reasonable period of time, including efforts made to secure peace and stability in the refugee's country of origin, certifies that he or she would remain a refugee indefinitely;

[Para. (c) substituted by s. 10 of Act No. 12 of 2011 and by s. 23 of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

- (d) an identity document referred to in section 30;
- (e) a travel document if he or she applies in the prescribed manner; and
- (f) seek employment.

[S. 27 substituted by s. 21 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

27A. Protection and general rights of asylum seekers.—An asylum seeker is entitled to—

- (a) a formal written recognition as an asylum seeker in the prescribed form pending finalisation of his or her application for asylum;
- (b) the right to remain in the Republic pending the finalisation of his or her application for asylum;
- (c) the right not to be unlawfully arrested or detained; and
- (d) the rights contained in the Constitution of the Republic of South Africa, 1996, in so far as those rights apply to an asylum seeker.

[S. 27A inserted by s. 22 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

28. Removal and detention of refugees and asylum seekers.—(1) Subject to section 2, a refugee, asylum seeker or categories of refugee or asylum seeker may be removed from the Republic on grounds of national security, national interest or public order.

(2) A removal under subsection (1) may only be ordered by the Minister.

(3) Any visa or status granted to a refugee or asylum seeker who is removed from the Republic in terms of this section is revoked.

(4) If an order is made under this section for the removal from the Republic of a refugee or asylum seeker, any dependant of such refugee or asylum seeker who has not been granted asylum, may be included in such an order and removed from the Republic.

(5) Any refugee or asylum seeker ordered to be removed under this section may be detained pending his or her removal from the Republic.

[S. 28 amended by s. 23 of Act No. 33 of 2008 and substituted by s. 24 of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

29. Restriction of detention.—(1) No person may be detained in terms of this Act for a longer period than is reasonable and justifiable and any detention exceeding 30 days must be reviewed immediately by a court in whose area of jurisdiction the person is detained, and such detention must be reviewed in this manner immediately after the expiry of every subsequent period of 30 days of detention.

(2) The detention of a child must be used only as a measure of last resort and for the shortest possible period of time, taking into consideration the principle of family unity and the best interest of the child.

[S.29 substituted by s. 24 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

30. Identity document to refugee.—A refugee must, upon application in the prescribed manner and on the prescribed form, be issued with an identity card or document similar to a South African identity card or document.

[S.30 substituted by s. 25 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

31.

[S.31 repealed by s. 26 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

32.

[S.32 repealed by s. 26 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

33.

[S.33 repealed by s. 26 of Act No. 33 of 2008 and by s. 30 of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

34. Obligations of refugees.—(1) A refugee must—

- (a) abide by the laws of the Republic; and
- (b) inform the Refugee Reception Office of his or her residential address and of any changes to that address within 30 days.

[Para. (b) substituted by s. 25 of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

(2) The address contemplated in subsection (1) is, for the purposes of this Act, deemed to be the address to which the service of processes or correspondence may be made.

[S.34 substituted by s. 27 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

34A. Obligations of asylum seekers.—(1) An asylum seeker must—

- (a) abide by the laws of the Republic;
- (b) renew his or her visa in person at any Refugee Reception Office in the Republic; and
- (c) inform the Refugee Reception Office of his or her residential address and of any changes to that address within 30 days.

[Para. (c) substituted by s. 26 of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

(2) The address contemplated in subsection (1) is, for the purposes of this Act, deemed to be the address to which the service of processes or correspondence may be made.

[S. 34A inserted by s. 28 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

CHAPTER 6
SUPPLEMENTARY AND GENERAL PROVISIONS

35. Reception and accommodation of asylum seekers in event of mass influx.—

(1) The Minister may, if he or she considers that any group or category of persons qualify for refugee status as is contemplated in section 3, by notice in the *Gazette*, declare such group or category of persons to be refugees either unconditionally or subject to such conditions as the Minister may impose in conformity with the Constitution and international law and may revoke any such declaration by notice in the *Gazette*.

(2) The Minister may, after consultation with the UNHCR representative and the Premier of the province concerned, designate areas, centres or places for the temporary reception and accommodation of asylum seekers or refugees or any specific category or group of asylum seekers or refugees who entered the Republic on a large scale, pending the regularisation of their status in the Republic.

(3) The Minister may appoint any person as a manager of an area, centre or place designated under subsection (2).

(4) The Minister may at any time withdraw the designation of an area, centre or place contemplated in subsection (2).

36. Withdrawal of refugee status.—(1) Subject to the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), and after consideration of all the relevant facts, the Standing Committee may withdraw a person's refugee status if—

- (a) such person has been recognised as a refugee due to fraud, forgery or false or misleading information of a material or substantive nature in relation to the application;
- (b) such person has been recognised as a refugee due to an error, omission or oversight; or
- (c) such person ceases to qualify for refugee status in terms of section 5.

(2) The Standing Committee must, in the prescribed manner, inform each affected person contemplated in subsection (1) of its intention to withdraw his or her status as a refugee, as well as the reasons for the withdrawal and such person may, within the prescribed period, make a written submission with regard thereto: Provided that no such notice is required if the withdrawal is requested by the refugee concerned.

(3) In the event that the Minister has issued an order to cease the recognition of refugee status in respect of a category of refugees, the Standing Committee must implement such resolution by withdrawing the refugee status of such category as a whole by notice in the *Gazette*.

(4) A person whose refugee status is withdrawn in terms of subsection (1) or (3) must be dealt with as an illegal foreigner in terms of section 32 of the Immigration Act.

[S. 36 substituted by s. 29 of Act No. 33 of 2008 and amended by s. 11 (a)-(b) of Act No. 12 of 2011 and substituted by s. 27 of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011):
1 January, 2020.]

37. Offences and penalties.—Any person who—

- (a) for the purpose of entering, or remaining in, the Republic or of facilitating or assisting the entry into or residence in the Republic of himself or herself or any other person, commits any fraudulent act or makes any false representation by conduct, statement or otherwise; or
- (b) fails to comply with or contravenes the conditions subject to which any permit has been issued to him or her under this Act; or
- (c) without just cause refuses or fails to comply with a requirement of this Act;

[Para. (c) amended by s. 30 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

- (d) contravenes or fails to comply with any provision of this Act, if such contravention or failure is not elsewhere declared an offence;
- (e) intentionally assists a person to receive public services to which such person is not entitled; or

[Para. (e) added by s. 30 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

- (f) provides false, inaccurate or unauthorised documentation, or any benefit to a person, or otherwise assists such person to disguise his or her identity or status, or accepts undue financial or other considerations, to perform any act or to exercise his or her discretion in terms of this Act; or

[Para. (f) added by s. 30 of Act No. 33 of 2008 and substituted by s. 28 (a) of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

- (g) as a public servant, intentionally provides false, inaccurate or unauthorised documentation or benefit, or otherwise facilitates a person to disguise his or her identity or status, or accepts any undue financial or other consideration to perform any act, or to exercise his or her discretion in terms of this Act; or

[Para. (g) added by s. 28 (b) of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

- (h) wilfully, or through gross negligence, produces a false certification or document contemplated by this Act or any other Act administered by the Department; or

[Para. (h) added by s. 28 (b) of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

- (i) manufactures or provides, or causes the manufacturing or provision of a document purporting to be a document issued or administered by the Department, while not being a duly authorised officer of the Department,

[Para. (i) added by s. 28 (b) of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years, or to both a fine and such imprisonment.

38. Regulations.—(1) The Minister may make regulations relating to—

- (a) a large-scale influx of asylum seekers into the Republic;
- (b) the manner in which and period within which a matter must be referred to the Standing Committee or Refugee Appeals Authority;

[Para. (b) substituted by s. 31 of Act No. 33 of 2008 and by s. 29 of Act No. 11 of 2017 with effect from a date immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008) and the Refugees Amendment Act, 2011 (Act No. 12 of 2011): 1 January, 2020.]

- (c) the forms to be used under certain circumstances and the visa to be issued pending the outcome of an application for asylum;

- (d) the manner in which and the period within which applications for asylum which are manifestly unfounded, fraudulent or abusive, must be dealt with;

[Para. (d) substituted by s. 31 of Act No. 33 of 2008 and by s. 12 of Act No. 12 of 2011 and comes into operation immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008): 1 January, 2020.]

- (e) the conditions of sojourn in the Republic of an asylum seeker, while his or her application is under consideration;
- (f) the provision of interpreters at all levels of the determination process; and
- (g) any other matter which is necessary or expedient to prescribe in order that the objects of this Act may be achieved.

(2) A regulation under subsection (1) (a) may only be made in consultation with the Premier of any province into which the influx takes place.

39.

[S. 39 repealed by s. 32 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

40.

[S. 40 repealed by s. 32 of Act No. 33 of 2008 with effect from: 1 January, 2020.]

41. Short title and commencement.—This is the Refugees Act, 1998, which comes into operation on a date determined by the President by proclamation in the *Gazette*.

