

REPUBLIC OF SOUTH AFRICA

FOREIGN SERVICE BILL

*(As introduced in the National Assembly (proposed section 75); explanatory
summary of Bill published in Government Gazette No. of) (The English text
is the official text of the Bill)*

(MINISTER OF INTERNATIONAL RELATIONS AND COOPERATION)

[B - 2015]

BILL

To provide for the management, administration and functioning of the Foreign Service of the Republic of South Africa; to provide for the operational requirements that are suitable and supportive of the operations of the Foreign Service in a global environment; and to provide for matters incidental thereto.

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

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Definitions

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

"Director-General" means the Director-General of the Department;

"Department" means the Department responsible for International Relations and Cooperation;

"Diplomatic Academy" means the training unit of the Department;

"employee" means a person appointed to the Department or to any other national department in terms of the Public Service Act, 1994 (Proclamation 103 of 1994), including members of the Foreign Service as contemplated in section 2;

"Foreign Service" means the Foreign Service of the Republic as contemplated in section 2;

"foreign representations in the Republic" means a foreign diplomatic mission, consular mission or liaison office as well as offices of international organisations in the Republic, accredited in terms of the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001);

"Head of Mission" means an Ambassador, High Commissioner, Consul-General, Permanent Representative, and any other person appointed to represent the Republic as such in terms of the Vienna Conventions and UN Conventions;

"locally recruited personnel" means a person who is a local resident in a

foreign country and is employed by the Department in that foreign country for the purpose of rendering support services to a South African Mission;

"member of the Foreign Service" means any person who serves as a member of the Foreign Service and who is accredited to a foreign State as contemplated in section 2;

"national department" means a national department and a national government component as referred to in section 7(2)(a) of the Public Service Act, 1994 (Proclamation 103 of 1994), and includes the South African Revenue Service;

"Minister" means the Minister responsible for International Relations and Cooperation;

"South African Mission" means a diplomatic or consular mission of the Republic accredited to the foreign state where it is operating in terms of the Vienna Conventions and the UN Conventions or to permanent representations of the Republic at international organisations and "mission" shall have a similar meaning;

"this Act" includes all its subordinate regulations, policies, codes and directives.

Foreign Service

2. (1) (a) There is a Foreign Service that shall promote and advance the international relations and cooperation of the Republic by representing the Republic in an effective, coherent and comprehensive manner abroad.

(b) The Department is responsible for conducting and coordinating the international relations and cooperation of the Republic at bilateral, regional and multilateral levels through the Foreign Service abroad and through interactions with foreign representatives in the Republic in line with the foreign policy of the Republic.

(2) The Foreign Service consists of all South African Missions and of those persons who serve in a position in the South African Missions and who are accredited to a foreign State for the period of time that they hold that position, regardless of whether they are ordinarily employed by the Department or by any other national department or appointed on a contractual basis for a fixed period.

(3) The Foreign Service is managed and administered by the Department and to this end the Department must:

- (a) administer all foreign representations in the Republic;
- (b) lead the coordination and alignment of the Republic's international relations between all three spheres of government;
- (c) render protocol services in terms of the Republic's policies to designated foreign and national dignitaries;
- (d) render consular services to South African nationals in the Republic and abroad;
- (e) act as the custodian of international agreements to which the Republic is a party, as well as of the national reports submitted in accordance with international obligations and render legal advice to government on all matters related to international law; and
- (f) conduct all diplomatic communications between the Republic and foreign states, international organisations or entities.

Requirements for members of Foreign Service

3. (1) Except for the appointment of locally recruited personnel to serve at South African Missions or in cases where the Minister has granted an exemption based on operational requirements, only citizens of the Republic, employed by the Department or by another national department who meet the prescribed requirements are eligible to become a member of the Foreign Service.

(2) No member of the Foreign Service may take up a position at a South African Mission until such time as he or she has met the prescribed requirements for such transfer and has obtained a security clearance as issued by a competent authority: Provided that any transfer must be approved by the Director-General.

Heads of Missions

4. (1) The Head of Mission is responsible for the management and administration of the Mission and all members of the Foreign Service located at the Mission, including the locally recruited personnel in the Mission.

(2) The Head of Mission must act on the instructions and under the authority of the Director-General.

Recall of member of Foreign Service

5. (1) A member of the Foreign Service may be recalled to the Republic if, after an inquiry in the prescribed manner, such a member is found guilty of misconduct in terms of the disciplinary code applicable to that member.

(2) A member of the Foreign Service under investigation for misconduct in terms of subsection (1) may be recalled to the Republic pending the finalisation of such inquiry.

(3) An act constituting misconduct and which is committed outside the Republic by a member of the Foreign Service must be deemed to have been committed in the Republic.

(4) The inquiry contemplated in subsection (1) may be held at the Head Office of the Department in the Republic or where the member of the Foreign Service concerned is stationed.

(5) A member of the Foreign Service may also be recalled to the Republic after consultation with the member concerned—

(a) on such conditions as the Minister or President may determine; or

(b) at the request of the member concerned.

Diplomatic Academy

6. (1) The Diplomatic Academy under the control and management of the Department is responsible for—

(a) providing training or cause training to be provided to employees and to

members of the Foreign Service;

- (b) conducting such examinations or tests or cause such examinations or tests to be conducted, as the Minister may prescribe; and
- (c) issuing of diplomas or certificates or cause diplomas or certificates to be issued to persons who have passed such examinations.

(2) The Diplomatic Academy may co-operate with any institution of higher learning and other experts in the field, in the Republic or elsewhere, to achieve its objectives.

(3) The Diplomatic Academy may assist with training requirements of other states as may be agreed to by the Department and the state involved in accordance with its international programmes.

(4) The accreditation and recognition of the Diplomatic Academy's qualifications must be done in accordance with the provisions of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), and the Skills Development Act, 1998 (Act No. 97 of 1998), or any other applicable legislation intended to enhance skills and qualifications in the public service.

Establishment of coordination and other mechanisms

7. (1) The Minister may establish such consultative, coordination and other mechanisms as may be necessary for the effective execution of this Act.

(2) The Minister may, by notice in the *Gazette*, make regulations or guidelines regarding the coordination and alignment of activities relating to international relations between the three spheres of government, subject to the

Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), as contemplated in section 11.

Assets

8. (1) Notwithstanding the provisions of the Government Immovable Assets Management Act, 2007 (Act No. 19 of 2007), or any other law, all immovable property utilised by the Foreign Service outside the Republic, any right in respect of such property and the management and accountability thereof must vest in the Minister.

(2) Notwithstanding any other law, the Minister may on such terms and conditions as he or she may deem fit—

- (a) acquire and dispose of; and
- (b) lease, rent, maintain or construct structures or installations on or refurbish any immovable property belonging to the Department for the use of the South African Missions or for any other purpose he or she may deem necessary for the efficient functioning of the Foreign Service.

Policies, codes, directives and decisions

9. (1) The Minister may make any policy, codes or prescribe any ancillary or incidental administrative or procedural matter that is necessary to prescribe for the proper administration and management of the Foreign Service and

its members which is not inconsistent with this Act, subject to any collective agreement applicable to the Foreign Service: Provided that a determination involving expenditure from revenue shall be made in consultation with the Minister of Finance.

(2) The Minister may issue directives which are not inconsistent with this Act to elucidate or supplement any regulation.

(3) Any policy, code or directive contemplated in subsection (1) may be included in codes to be called the Foreign Service Administration Manual and the Code of Conduct for the Foreign Service or any other code that may be adopted.

(4) The policies, codes and directives contemplated in this section are binding upon the Foreign Service and its members.

(5) The Minister or Director-General, as the case may be, may make all decisions relevant to the management and administration of the Foreign Service after consultation with any other relevant national department.

Delegation of powers

10. (1) The Minister may—

(a) delegate to the Director-General any power conferred on the Minister by this Act, except the powers contemplated in sections 9 and 11; or

(b) authorise the Director-General to perform any duty imposed on the Minister by this Act.

(2) The Director-General may delegate any power conferred upon or duty assigned to him or her by or under this Act to any member of the Foreign

Service excluding any power or duty delegated under subsection (1).

(3) Any person to whom a power has been delegated or who has been authorised to perform a duty under this section must exercise that power or perform that duty subject to the conditions the person who made the delegation or granted the authorisation considers appropriate.

(4) Any delegation of a power or authorisation to perform a duty in terms of this section—

- (a) must be in writing;
- (b) does not prevent the person who made the delegation or granted the authorisation from exercising that power or performing that duty himself or herself; and
- (c) may at any time be withdrawn in writing by that person.

Regulations

11. (1) The Minister may make regulations regarding—

- (a) the transfer of a member of the Foreign Service, conditions of service applicable to the members of the Foreign Service, categories of members of the Foreign Service, disciplinary matters, adjustment of allowances of members of the Foreign Service transferred to South African Missions;
- (b) the training requirements of employees and members of the Foreign Service;
- (c) the prescribed oath that members of the Foreign Service are required to take before taking up their positions abroad;
- (d) the security requirements of the Foreign Service, in consultation with the

Minister of State Security;

- (e) the management and administration of the Foreign Service by the Department;
- (f) the secondment of an employee to the service of a foreign State or entity, establishment, institution or organisation outside the Republic; or
- (g) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

(2) A regulation made in terms of this section with reference to members of the Foreign Service need not be published in the *Gazette*, but must be notified to all to whom it applies in such a manner as the Minister may determine.

(3) The Minister may by regulation provide for any matter relevant to the Foreign Service, taking into account the difficulties and hazards of life in the Foreign Service, the special circumstances abroad and to suit the varying requirements of the operation of the Foreign Service around the globe.

Offences

12. (1) (a) Where a foreign State has requested the Director-General to waive the immunity of a member of the Foreign Service as a result of that member having committed an offence in the territory of that foreign State, that member will be guilty of an offence and shall be liable on conviction to a fine not exceeding R50 000 or imprisonment for a period not exceeding one year.

(b) A member of the Foreign Service may also be prosecuted

in the Republic for the offence committed in the territory of the foreign State in accordance with section 110A of the Criminal Procedure Act, 1997 (Act No. 51 of 1997).

(2) Any person or member of the Foreign Service or employee of the Department, who in willful or negligent manner, contravenes or fails to comply with the provisions of this Act or its regulations, is guilty of an offence and liable on conviction to a fine not exceeding R50 000 or imprisonment for a period not exceeding one year.

Short title and commencement

13. This Bill is called the Foreign Service Bill, 2015, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.