

REPUBLIC OF SOUTH AFRICA

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# FOREIGN SERVICE BILL

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*(As introduced in the National Assembly (proposed section 75); explanatory summary of  
Bill published in Government Gazette No. 39211 of 17 September 2015)  
(The English text is the official text of the Bill)*

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(MINISTER OF INTERNATIONAL RELATIONS AND COOPERATION)

[B 35—2015]

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# 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.**

**B**E 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—

“ <b>Director-General</b> ” means the Director-General of the Department;	20
“ <b>Department</b> ” means the Department of International Relations and Cooperation;	
“ <b>Diplomatic Academy</b> ” means the training unit of the Department;	
“ <b>employee</b> ” 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 contemplated in section 2;	25
“ <b>Foreign Service</b> ” means the Foreign Service of the Republic, as contemplated in section 2;	
“ <b>foreign representations in the Republic</b> ” 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);	30
“ <b>Head of Mission</b> ” 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 Convention on Diplomatic Relations,	

1961, signed at Vienna on 18 April 1961, the Vienna Convention on Consular Relations, 1963, signed at Vienna on 24 April 1963, the Convention on the Privileges and Immunities of the United Nations, adopted on 13 February 1946, as may be applicable in the Republic in accordance with the reservations made by South Africa upon its accession thereto, as well as the Convention on the Privileges and Immunities of the Specialised Agencies, adopted on 21 November 1947, as may be applicable in the Republic in accordance with the reservations made by South Africa upon its accession thereto;

“**locally recruited personnel**” means a person who is a local resident in a foreign state and is employed by the Department in that foreign state for the purpose of rendering support services to a South African Mission;

“**member of the Foreign Service**” means a 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 of International Relations and Cooperation;

“**prescribed**” means as prescribed by the Minister as contemplated in section 9 or 12;

“**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 to a liaison office, 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 accordance 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;
- (f) conduct all diplomatic communications between the Republic and foreign states, international organisations or entities; and
- (g) perform any other functions required for the effective management and administration of the foreign service.

## Requirements for members of Foreign Service

3. (1) Except for the appointment of locally recruited personnel to serve at a South African Mission 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) A member of the Foreign Service may not 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. 5

### **Head of Mission**

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. 10

(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. 15

(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. 20

(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— 25

(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— 30

(a) providing training, or causing training to be provided to employees and to members of the Foreign Service;

(b) conducting such examinations or tests, or causing such examinations or tests to be conducted, as the Minister may prescribe; and 35

(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 cooperate with any institution of higher learning and other experts 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. 40

(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. 45

### **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. 50

(2) The Minister may, by notice in the *Gazette*, issue 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).

## 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. 5

(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. 10

## Policies, codes or directives

**9.** (1) Subject to any collective agreement applicable to the Foreign Service, the Minister may make any policy, code 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 consistent with this Act: Provided that a determination involving expenditure from revenue shall be made in consultation with the Minister of Finance. 15

(2) The Minister may issue directives which are consistent with this Act, to elucidate or supplement any regulation. 20

(3) A 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. 25

(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 30

**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 12; or
- (b) authorise the Director-General to perform any duty imposed on the Minister by this Act. 35

(2) The Director-General may delegate any power conferred upon or duty assigned to him or her in terms of this Act to any member of the Foreign Service excluding any power or duty delegated under subsection (1).

(3) A 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. 40

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

- (a) must be in writing; 45
- (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.

## Offences 50

**11.** (1) A member of the Foreign Service may be prosecuted in the Republic for the offence committed in the territory of a foreign state in accordance with section 110A of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(2) Any person or member of the Foreign Service or employee of the Department, who in a 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.

## **Regulations**

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**12.** (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; 10
- (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; 15
- (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. 20

(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. 25

(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.

## **Short title and commencement**

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**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*.

## **MEMORANDUM ON THE OBJECTS OF THE FOREIGN SERVICE BILL, 2015**

### **1. BACKGROUND**

- 1.1 One of the planned policy initiatives in the Strategic Plan 2012-2017 of DIRCO is to develop and table the Foreign Service Bill to provide for a single Foreign Service system for the Republic of South Africa. As South Africa's democracy is maturing and its international relations footprint is found across the globe, especially on the African continent, the difficulties in the management and administration of the current fragmented Foreign Service system became evident. International relations are conducted in an increasingly complex world and the Foreign Service has to be able to respond appropriately and adequately to the ever changing environment.
- 1.2 The realities of the operations of South Africa's representations in foreign jurisdictions and the unique challenges that it creates on a daily basis for the proper management and administration of the missions and personnel abroad highlighted the need to pay attention to South Africa's current Foreign Service system.
- 1.3 In preparing the Bill, extensive research was done in respect of the Foreign Services of comparable countries. Specific attention was also given to the current legislation governing the public service sector and the security services in South Africa. International practice shows that for the effective execution of international relations a foreign service needs to be supported by an appropriate legislative framework that is flexible enough to address the challenges posed at an operational level in a global environment which is different from the domestic context.

### **2. OBJECTS OF BILL**

- 2.1 The Bill creates an enabling administrative and management framework through which the Foreign Service will be managed and regulated in a consolidated and coherent manner by the Department of International Relations and Cooperation.
- 2.2 At present the management of officials from various departments serving abroad are fragmented, not consistent and in many cases not optimal. It was decided that legislation should be developed that can address these concerns.
- 2.3 The Bill will be operationalised within the existing legislative framework governing the public service sector and the security services in South Africa and the Constitution of the Republic of South Africa, 1996.

### **3. SUMMARY OF BILL**

- 3.1 Clause 1 contains the definitions in order to assist with the interpretation of the provisions of the Bill.
- 3.2 Clause 2 sets out how the Foreign Service is made up and who are the members of the Foreign Service. In terms of this clause the Foreign Service is managed and administered by the Department of International Relations and Cooperation and sets out the manner in which this must be done.
- 3.3 Clause 3 provides for the requirements for members of the Foreign Service. This clause provides for the minimum requirements a person must meet to qualify for transfer to a South African Mission and the conditions of transfer.
- 3.4 Clause 4 regulates the appointment of Heads of Mission and the requirements that a person should have in order to be appointed as Head of Mission at a South African Mission.

- 3.5 Clause 5 deals with the recall of members of the Foreign Service. This clause also provides that a member of the Foreign Service who commits any act outside the Republic and such act constitutes misconduct, the member of the Foreign Service will be deemed to have committed such act within the Republic.
- 3.6 Clause 6 deals with the responsibilities of the Diplomatic Academy in respect of the training of South African diplomats and foreign diplomats especially from the African continent.
- 3.7 Clause 7 provides for the establishment of consultative, coordination and other mechanisms as the Minister may deem necessary for the effective execution of this Act. The Minister may issue regulations or guidelines for co-ordinating and aligning activities relating to international relations between the three spheres of government.
- 3.8 Clause 8 provides the Minister with the powers to dispose, lease or rent the immovable assets of the Department within or outside the Republic.
- 3.9 Clause 9 provides for the policies, codes and directives. This clause gives the Minister the power to make policies to assist with the proper administration or implementation of the Foreign Service.
- 3.10 Clause 10 provides that the Minister may delegate any powers to the Director-General except the power to make regulations. In addition, this clause provides that the Director-General may also delegate any power to any other employee and the manner in which such power may be delegated.
- 3.11 Clause 11 sets out the offences under the Bill.
- 3.12 Clause 12 empowers the Minister to make regulations for the proper implementation or administration of the Bill.
- 3.13 Clause 13 contains the short title and commencement provision.

#### **4. ORGANISATIONS AND INSTITUTIONS CONSULTED**

The Department of Communications, the Department of Cooperative Governance, the Department of Correctional Services, the Department of Home Affairs, the Department of Justice and Constitutional Development, the National School of Government, the Public Service Commission, the National Treasury, the Department of Performance Monitoring & Evaluation, the Department of Public Service & Administration, Statistics South Africa, the Department of Traditional Affairs, the Department of Defence, the Department of Energy, the Department of Environmental Affairs, the Department of Military Veterans, the Department of State Security, the National Intelligence Coordinating Committee, the Department of Telecommunications and Postal Services, the Department of Tourism, the Department of Trade and Industry, the South African Revenue Services, the Department of Agriculture, the Department of Health, the Department of Labour, the Department of Science and Technology, the Department of Transport, the South African Police Service, the Department of Public Works and the Department of Higher Education and Training.

#### **5. FINANCIAL IMPLICATIONS FOR STATE**

None

#### **6. PARLIAMENTARY PROCEDURE**

- 6.1 The Department of International Relations and Cooperation and the State Law Advisers are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it does not

deal with any of the matters to which the provisions of section 76 or 74 of the Constitution applies.

- 6.2 We have considered the tagging of the Bill in light of Chapter 4 of the Constitution of the Republic of South Africa, 1996 (“the Constitution”), which provides for procedures that Bills must follow in Parliament. Section 75 deals with ordinary Bills not affecting provinces.
- 6.3 The Constitutional Court judgement in the case of Stephen Segopotso Tongoane and Others v Minister for Agriculture and Land Affairs and Others CCT 100/9 [2010] ZACC 10 at paragraphs 70 and 72, stated that—  
*“the test for determining how a Bill is to be tagged must be broader than that for determining legislative competence. Whether a Bill is a section 76 Bill is determined in two ways. First by the explicit list of legislative matters in section 76(3), and second by whether the provisions of a Bill in substantial measure fall within a concurrent legislative competence.”*
- 6.4 This test compels us to consider the substance, purpose and effect of the subject matter of the proposed Bill. This Bill seeks to provide for the management, administration and functioning of the Foreign Service of the Republic of South Africa. These matters do not fall within any of the matters listed in section 76(3) of, or Schedule to, the Constitution. In our view this Bill is therefore an ordinary Bill not affecting the provinces as envisaged in section 75 of the Constitution.
- 6.5 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of the provisions of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.