



**MINISTER OF  
HOME AFFAIRS  
REPUBLIC OF SOUTH AFRICA**

Private Bag X741, Pretoria, 0001, Tel: (012) 432 6635 Fax: (012) 432 6675  
Private Bag X9102, Cape Town, 8000, Tel: (021) 469 6507, Fax: (021) 461 4191

**Ref. M3/4/2**


Ms. N N Mapisa-Nqakula  
Speaker of the National Assembly  
P O BOX 15  
**CAPE TOWN**  
8000

Dear Honourable Speaker,

**RE: REQUEST FOR THE NATIONAL ASSEMBLY TO RECONSIDER THE DRAFT BORDER TECHNICAL COMMITTEE REGULATIONS TO BE MADE IN TERMS OF SECTION 36, READ TOGETHER WITH SECTION 25(2) OF THE BORDER MANAGEMENT AUTHORITY ACT, 2020 (ACT NO. 2 OF 2020)**

1. The above matter refers.
2. The Border Management Authority Act, 2020 (Act No. of 2020) (the "Act") was assented to, and signed, by the Honourable President, Mr Cyril Ramaphosa, on 16 July 2020. A copy of the Act is attached hereto and marked Annexure "A" for ease of reference.
3. Section 36(6) of the Act requires the Minister of Home Affairs to, prior to the promulgation of any regulations made under the Act, table the draft regulations in Parliament for comments for a period of not less than 30 days, while Parliament is in session.
4. In view of the above, I hereby submit the draft Regulations for Parliament's consideration and comments as envisaged under section 36(6) of the Act.

Yours sincerely,

  
**DR PA MOTSOLEDI, MP  
MINISTER OF HOME AFFAIRS  
DATE: 2/8/2020**



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## THE PRESIDENCY

No. 799                      21 July 2020

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**Act No. 2 of 2020: Border Management Authority Act, 2020**

## MO-PRESIDENTE

No. 799                      21 July 2020

Mo go tsebiswa gore Mo-Presidente o dumetse molao o latelago, wona o tla gatiswa e le tsebiswa ya kakaretšo:—

**Nmr 2 ya 2020: Molao wa Bothati jwa Taolo ya Melelwane, 2020**

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*(English text signed by the President)*  
*(Assented to 16 July 2020)*

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## ACT

**To provide for the establishment, organisation, regulation, functions and control of the Border Management Authority; to provide for the appointment, terms of office, conditions of service and functions of the Commissioner and Deputy Commissioners; to provide for the appointment and terms and conditions of employment of officials; to provide for the duties, functions and powers of officers; to provide for the establishment of an Inter-Ministerial Consultative Committee, Border Technical Committee and advisory committees; to provide for delegations; to provide for the review or appeal of decisions of officers; to provide for certain offences and penalties; to provide for annual reporting; to provide for the Minister to make regulations with regard to certain matters; and to provide for matters connected therewith.**

### PREAMBLE

**RECOGNISING** that border management is exercised by multiple organs of state with the purpose of securing the borders of the Republic and protecting national interest;

**RECOGNISING FURTHER** that there is a need for integrated and co-ordinated border management in accordance with the Constitution, international and domestic law, in order to—

- contribute to the socio-economic development of the Republic;
- ensure effective and efficient border law enforcement functions at ports of entry and the border;
- contribute to the facilitation of legitimate trade and secure travel;
- contribute to the prevention of smuggling and trafficking of human beings and goods;
- prevent illegal cross-border movement;
- contribute to the protection of the Republic's environmental and natural resources;
- and
- protect the Republic from harmful and infectious diseases, pests and substances;

**ACKNOWLEDGING** that the circumstances of modern travel and trade require a single Authority to be responsible for ports of entry and the control of the borders of the Republic and the need to balance the facilitation of legitimate trade and travel with security; and

**ACKNOWLEDGING FURTHER** the constitutional responsibility of the South African National Defence Force to defend and protect the Republic, its territorial integrity and its people,

(English text signed by the President)  
(Assented to 16 July 2020)

## MOLAO

Go tlamela mabapi le tlhomo, thulaganyo, tsamaiso, ditiro, le taolo ya Bothati jwa Taolo ya Melelwane; go tlamela mabapi le go thapiwa, dipeelo tsa go dira, melawana ya tirelo le ditiro tsa Mokhomišenara le Batlatsabakhomišenara; go tlamela mabapi le go thapiwa le dipeelo le melawana tsa go thapiwa ga batlhankedi; go tlamela mabapi le ditshwanelo, ditiro le dithata tsa batlhankedi; go tlamela mabapi le go tlhonga ga Komititherisano ya Ditona, Komiti ya Setegeniki ya Melelwane le dikomitikgakololo; go tlamela mabapi le ditholelo; go tlamela mabapi le thadiso kgotsa boikuelo jwa ditshwetso tsa batlhankedi; go tlamela mabapi le melato e e rileng le dikotlhao; go tlamela mabapi le go bega ngwaga le ngwaga; go tlamela mabapi le gore Tona a dire melawana ka ga merero e e rileng; le go tlamela mabapi le merero e e gokaganang le ona.

### KETAPELE

**GO AMOGELA** gore taolo ya melelwane e dirwa ke maphata a a farologaneng a puso ka maitlhomong a go sireletsa melelwane ya Rephaboliki le go femela kgatlhego ya setšhaba;

**GO AMOGELA GAPE** gore go na le tlhokego ya taolo ya melelwane e e kopaneng e bile e rulagantswe go tsamaelana le Molaotheo, molao wa boditšhabatšhaba le wa selegae, go kgona go—

- nna le seabe mo tshabologong ya ikonomiboago ya Rephaboliki;
- netefatsa ditiro tsa kgatelelo tse di nonofileng tse di nang le bokgoni tsa molao wa melelwane kwa magorogelong le kwa melelwaneng;
- nna le seabe mo go nolofatseng kgwebisano e e mo molaong le tshepelo e e sireletsegileng;
- nna le seabe mo thibelong ya go tshedisa le go gweba e seng mo molaong ka batho le dithoto;
- thibela go tshela melelwane go go seng mo molaong;
- nna le seabe mo tshireletsong ya tikologo ya Rephaboliki le metswedi ya tlhago; le
- sireletsa Rephaboliki kgatlhanong le malwetsi, disenyi le dire tse di kotsi e bile di le botlhole;

**GO AMOGELA GORE** mabaka a tshepelo ya segompiano le kgwebisano a tlhoka Bothati bo le esi gore bo rwale maikarabelo a magorogelo le taolo ya melelwane ya Rephaboliki le tlhokego ya go lekanya nolofatso ya kgwebisano le tshepelo e e mo molaong le tshireletso; le

**GO AMOGELA GAPE** maikarabelo a semolaotheo a Matsholotshireletso a Aforika Borwa a go femela le go sireletsa Rephaboliki, tshiamo ya yona ya naga le batho ba yona,

**B**E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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## CHAPTER 1

## DEFINITIONS, APPLICATION AND OBJECT OF ACT

## Definitions

1. (1) In this Act, unless the context indicates otherwise—
- “**airspace**” means the area enclosed by the outer limit of the internationally recognised airspace of the Republic; 5
- “**Authority**” means the Border Management Authority established by section 4 of this Act;
- “**border guard**” means the border guard referred to in section 6(1)(c);
- “**border law enforcement area**” means, in respect of— 10
- (a) the land border, a distance of 10 kilometres or any reasonable distance inside the internationally recognised borders of the Republic; and
- (b) the maritime borders, a distance of 10 kilometres or any reasonable distance on the landward side of the baselines extending seaward to the outer limit of the Exclusive Economic Zone as defined in the Maritime Zones Act, 1994 (Act No. 15 of 1994); 15
- “**border law enforcement functions**” means functions conferred on the Authority by law and in terms of this Act;
- “**border management**” means the execution of border law enforcement functions and includes co-operation with the Defence Force on the implementation of border protection functions; 20
- “**border protection functions**” means the functions performed exclusively by the Defence Force in terms of section 200(2) of the Constitution;
- “**Border Technical Committee**” means the Committee established by section 25;
- “**commissioned officer**” means a person referred to in section 14(1); 25
- “**Commissioner**” means the person appointed in terms of section 7(1) of this Act;
- “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
- “**customs related functions**” means the functions performed exclusively by the South African Revenue Service under—
- (a) customs and excise legislation; and 30
- (b) any tax Act,
- as defined in the Tax Administration Act, 2011 (Act No. 28 of 2011);
- “**Defence Force**” has the meaning ascribed to it in section 1 of the Defence Act, 2002 (Act No. 42 of 2002);
- “**Deputy Commissioner**” means a person appointed in terms of section 7(2) of this Act; 35
- “**goods**” includes any wares, supplies, merchandise, articles, products, commodities, currencies, documents, substances, animals, plants and their products, genetic materials, vehicles, waste, human remains, containers of such goods or any other thing capable of being transported; 40
- “**Inter-Ministerial Consultative Committee**” means the Committee established by section 24;
- “**Labour Relations Act**” means the Labour Relations Act, 1995 (Act No. 66 of 1995);
- “**Minister**” means the Minister of Home Affairs; 45
- “**officer**” means a person appointed in terms of section 13(1)(b)(i) and includes commissioned officers;
- “**officials**” means officers and support staff of the Authority;
- “**port of entry**” means a port of entry designated by the Minister in terms of section 9A of the Immigration Act, 2002 (Act No. 13 of 2002), and includes any port, point or place of entry or exit determined under any other legislation or any other port, point or place of entry or exit approved by the Minister in terms of section 30 of this Act; 50
- “**prescribed**” means prescribed by regulation;
- “**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999); 55
- “**regulation**” means any regulation made under this Act;
- “**South African Revenue Service**” means the South African Revenue Service established by section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997); 60

## KGAOLO 1

## DITLHALOSO, TIRISO LE MAIKAELELO A MOLAO

## Ditlhaloso

1. (1) Mo Molaong ono, ntle le fa bokao bo kaya ka mokgwa mongwe—
- “**lefelophofo**” le kaya lefelo le le ageletsweng ke tekanyetso e e kwa ntle ya 5  
lefelophofo le le amogetsweng boditšhabatšhaba la Rephaboliki;
- “**Bothati**” bo kaya Bothati jwa Taolo ya Melelwane jo bo tlhomilweng ka karolo  
4 ya Molao ono;
- “**tebelelo ya melelwane**” e kaya tebelelo ya melelwane e e kailweng mo karolong  
6(1)(c); 10
- “**lefelo la kgatelelo ya molao wa molelwane**” le kaya, mabapi le—
- (a) melelwane ya naga, sekgala sa dikilometara tse 10 kgotsa sekgala sengwe le  
sengwe se se utlwalang mo gare ga melelwane ya Rephaboliki e e  
amogetsweng boditšhabatšhaba; le
- (b) melelwane ya lewatle, sekgala sa dikilometara tse 10 kgotsa sekgala sengwe 15  
le sengwe se se utlwalang se se mo letlhakoreng la naga la metheo e e  
atologelang kwa lewatleng kwa tekanyetsong ya kwa ntle ya Kgaolo ya  
Ikonomi e e Kgethegileng jaaka e tlhalositswe mo *Maritime Zones Act*, 1994  
(Molao 15 wa 1994);
- “**ditiro tsa kgatelelo ya molao wa melelwane**” di kaya ditiro tse di abetsweng 20  
Bothati ka molao le go ya ka Molao ono;
- “**taolo ya melelwane**” e kaya tiragatso ya ditiro tsa kgatelelo ya molao wa  
melelwane le go akaretsa tirisano mmogo le Matsholotshireletso mo go direng  
ditiro tsa tshireletso ya melelwane;
- “**ditiro tsa tshireletso ya molelwane**” di kaya ditiro tse di dirilweng ka boikgetho 25  
ke Matsholotshireletso go ya ka karolo 200(2) ya Molaotheo;
- “**Komiti ya Setegeniki ya Melelwane**” e kaya Komiti e e tlhomilweng ka karolo  
25;
- “**motlhankedi yo o khomišenilweng**” o kaya motho yo o kailweng mo karolong  
14(1); 30
- “**Mokhomišenara**” o kaya motho yo o thapilweng go ya ka karolo 7(1) ya Molao  
ono;
- “**Molaotheo**” o kaya Molaotheo wa Rephaboliki ya Aforika Borwa, 1996;
- “**ditiro tse di amanang le lekgetho la dithoto**” di kaya ditiro tse di dirwang ka  
kgethego ke Tirelo ya Lotseno ya Aforika Borwa ka fa tlase ga— 35
- (a) peomolao ya makgetho le ditirelo tsa melelwane; le
- (b) Molao mongwe le mongwe wa lekgetho,  
jaaka go tlhalositswe mo *Tax Administration Act*, 2011 (Molao 28 wa 2011);
- “**Matsholotshireletso**” a na le bokao jo bo a neilweng mo karolong 1 ya *Defence*  
*Act*, 2002 (Molao 42 wa 2002); 40
- “**Motlatsamokhomišenara**” o kaya motho yo o thapilweng go ya ka karolo 7(2)  
ya Molao ono;
- “**dithoto**” di akaretsa ditlhagiswa, ditheleso, dithoto, diathikele, dikuno, madi,  
dikwalo, dire, diphologolo, dimela le ditlhagiso tsa tsona, dimatheriale tsa kgotso,  
dirori, leswe, ditopo, ditshelo tsa dithoto tseo kgotsa sengwe le sengwe se se ka 45  
rwalwang;
- “**Komititherisano ya Ditona**” e kaya Komiti e e tlhomilweng ka karolo 24;
- “**Molao wa Dikamano tsa Bodiri**” o kaya *Labour Relations Act*, 1995 (Molao 66  
wa 1995);
- “**Tona**” o kaya Tona ya Merero ya Selegae; 50
- “**motlhankedi**” o kaya motho yo o thapilweng go ya ka karolo 13(1)(b)(i) le go  
akaretsa batlhankedi ba ba khomišenilweng;
- “**baofisiri**” ba kaya baofisiri le badirimmogo ba tshegetso ba Bothati;
- “**bogorogelo**” bo kaya bogorogelo jo bo tshwailweng ke Tona go ya ka karolo 9A  
ya *Immigration Act*, 2002 (Molao 13 wa 2002), e bile bo akaretsa bogorogelo 55  
bongwe le bongwe, ntlha kgotsa lefelo la go tsena kgotsa go tswa lengwe le lengwe  
le le rebotsweng ke Tona go ya ka karolo 30 ya Molao ono;
- “**ee neetsweng**” e kaya e e neetsweng ka molawana;
- “**Molao wa Taolo ya Ditšhelete tsa Setšhaba**” o kaya *Public Finance*  
*Management Act*, 1999 (Molao 1 wa 1999); 60

“**support staff**” means a person appointed in terms of section 13(1)(b)(ii);

“**this Act**” includes regulations; and

“**vehicle**” includes any vessel, aircraft, locomotive, railway carriage, conveyance, container or receptacle or any other means of transport, whether or not used for the purpose of transporting goods or persons.

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### Application of Act

2. (1) This Act applies to the exercise by the Authority of its border law enforcement functions within the border law enforcement area and at ports of entry.

(2) This Act applies outside the territory of the Republic in accordance with any binding international agreement entered into in terms of section 231 of the Constitution.

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(3) Except where the Act otherwise provides, this Act does not apply to—

(a) the border protection functions performed by the Defence Force, including those performed in respect of the airspace of the Republic;

(b) postal services as defined in section 1 of the Postal Services Act, 1998 (Act No. 124 of 1998); and

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(c) the customs related functions performed by the South African Revenue Service.

### Object of Act

3. The object of this Act is to establish and empower the Authority to achieve—

(a) integrated border law enforcement within the border law enforcement area and at ports of entry; and

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(b) co-operation on and co-ordination of border management matters in general.

## CHAPTER 2

### BORDER MANAGEMENT AUTHORITY

#### Establishment of Border Management Authority

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4. (1) The Border Management Authority is hereby established as a national public entity, as contemplated in Part A of Schedule 3 of the Public Finance Management Act, outside of the public service, and is an armed service established in terms of section 199(3) of the Constitution.

(2) The border law enforcement functions within the border law enforcement area and at ports of entry must be performed exclusively by the officers of the Authority.

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#### Functions of Authority

5. The functions of the Authority are to—

(a) facilitate and manage the legitimate movement of persons within the border law enforcement area and at ports of entry;

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(b) facilitate and manage the legitimate movement of goods within the border law enforcement area and at ports of entry; and

(c) co-operate and co-ordinate its border law enforcement functions with other organs of state, border communities or any other persons.

#### Composition of Authority

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6. (1) The Authority is composed of—

(a) a Commissioner;

“**molawana**” o kaya molawana mongwe le mongwe o o dirilweng ka fa tlase ga Molao ono;

“**Tirelo ya Lotseno ya Aforika Borwa**” e kaya Tirelo ya Lotseno ya Aforika Borwa e e tlhomilweng ka karolo 2 ya *South African Revenue Service Act, 1997* (Molao 34 wa 1997);

“**badirimogo ba tshegetso**” ba kaya motho yo o thapilweng go ya ka karolo 13 (1)(b)(ii);

“**Molao ono**” o akaretsa melawana; le

“**serori**” se akaretsa sekepe, sefofane, setimela, serori sa kwa seporong, thebolelo, setshelo kgotsa seduti kgotsa mokgwa mongwe le mongwe wa go rwala, o ka tswa o diriswa kgotsa o sa dirswe mabapi le thwalo ya dithoto kgotsa batho.

### Tiriso ya Molao

2. (1) Molao ono o diriswa mo go diragatsweng ke Bothati ga ditiro tsa jona tsa kgatelelo ya molao wa melelwane mo kgaolong ya kgatelelo ya molao wa melelwane le kwa magorogelong.

(2) Molao ono o diriswa kwa ntle ga naga ya Rephaboliki go tsamaelana le tumalano nngwe le nngwe e e tlamang ya boditšhabatšhaba e e dirilweng go ya ka karolo 231 ya Molaotheo.

(3) Ntle le fa Molao o laela ka mokgwa mongwe, Molao ono ga o diriswe go—

(a) ditiro tsa tshireletso ya melelwane tse di dirwang ke Matsholotshireletso, go akaretsa le tseo didirilweng mabapi le lefelofofo la Rephaboliki;

(b) ditirelo tsa poso jaaka di tlhalositswe mo karolong 1 ya *Postal Services Act, 1998* (Molao 124 wa 1998); le

(c) ditiro tse di amang le lekgetho tse di dirwang ke Tirelo ya Lotseno ya Aforika Borwa.

### Maikaelelo a Molao

3. Maikaelelo a Molao ono ke go tlhoma le go maatlafatsa Bothati gore bo fitlhelele—

(a) kgatelelo ya molao wa melelwane e e lotanang le magorogelo a dithoto; le

(b) tirisano mmogo le thulaganyo ya merero ya taolo ya melelwane ka kakaretso.

## KGAOLO 2

### BOTHATI JWA TAOLO YA MELELWANE

#### Go tlhongwa ga Bothati jwa Taolo ya Melelwane

4. (1) Bothati jwa Taolo ya Melelwane bo tlhongwa jaaka setheo sa puso sa bosetšhaba, jaaka go kailwe mo Karolong A ya Šejule 3 ya *Public Finance Management Act*, kwa ntle ga tirelo ya setšhaba, e bile ke tirelo e e tlhometseng e e tlhomilweng go ya ka karolo 199(3) ya Molaotheo.

(2) Ditiro tsa kgatelelo ya molao wa melelwane mo lefelong la kgatelelo ya molao wa melelwane le kwa magorogelong di tshwanetse go dirwa ka kgethego ke batlhankedi ba Bothati.

#### Ditiro tsa Bothati

5. Ditiro tsa Bothati ke go—

(a) nolofatsa le go laola motsamao o o mo molaong wa batho mo lefelong la kgatelelo ya molao wa melelwane le kwa magorogelong;

(b) nolofatsa le go laola motsamao o o mo molaong wa dithoto mo lefelong la kgatelelo ya molao wa melelwane le kwa magorogelong; le

(c) dirisana mmogo le go golaganya ditiro tsa jona tsa kgatelelo ya molao le maphata a mangwe a puso, setšhaba sa melelwane kgotsa batho bangwe le bangwe.

#### Popego ya Bothati

6. (1) Bothati bo bopilwe ka—

(a) Mokhomišenara;

- (b) Deputy Commissioners;
- (c) a border guard comprising officers and commissioned officers; and
- (d) support staff.

(2) The Minister must, after consultation with the Commissioner, determine the staff establishment and organisational structure of the Authority in a manner that promotes the object of this Act. 5

### CHAPTER 3

#### COMMISSIONER AND DEPUTY COMMISSIONERS

##### Appointment of Commissioner and Deputy Commissioners

7. (1) The President must appoint a Commissioner who— 10
- (a) is a fit and proper person;
  - (b) possesses tertiary qualifications appropriate to the post;
  - (c) holds a minimum of 10 years' appropriate senior management experience;
  - (d) is a South African citizen;
  - (e) has not been convicted and imprisoned without the option of a fine, except for a criminal offence for which the person has been granted amnesty in terms of the Promotion of National Unity and Reconciliation Act, 1995 (Act No. 34 of 1995); 15
  - (f) has a trustworthy and exemplary character; and
  - (g) is a commissioned officer or must, subsequent to his or her appointment— 20
    - (i) successfully complete the appropriate prescribed training;
    - (ii) comply with the prescribed security grading requirements; and
    - (iii) successfully undergo an appropriate security clearance process, to be appointed as a commissioned officer.

(2) The President must, after consultation with the Minister, appoint no more than two Deputy Commissioners who meet the criteria set out in subsection (1). 25

(3) If the Commissioner is absent or unable to perform the functions of office or the office of the Commissioner is vacant, the Minister may designate a Deputy Commissioner as the acting Commissioner.

##### Terms of office of Commissioner and Deputy Commissioners 30

8. (1) The Commissioner and a Deputy Commissioner hold office for an agreed term not exceeding five years: Provided that the term of office may be extended only once at the expiry of such period for a further period not exceeding five years.

(2) The President must notify the Commissioner or a Deputy Commissioner, in writing, at least six calendar months before the expiry of the term referred to in subsection (1), or any subsequent period, whether the President intends extending the Commissioner's or a Deputy Commissioner's term of office and, if so, for what period. 35

(3) Subject to subsection (5), the Commissioner or a Deputy Commissioner must vacate his or her office on attaining the age of 65 years.

(4) If the Commissioner or a Deputy Commissioner attains the age of 65 years after the first day of any month, he or she must be deemed to attain that age on the first day of the next succeeding month. 40

(5) If the President is of the opinion that it is in the public interest to retain the Commissioner or a Deputy Commissioner in his or her office beyond the age of 65 years, and— 45

- (a) the Commissioner or a Deputy Commissioner wishes to continue to serve in such office; and
- (b) the mental and physical health of the person concerned enable him or her so to continue,

- (b) Batlatsamokhomišenara;
  - (c) tebelelo ya melelwane e e nang le baofisiri le baofisiri ba ba khomišenilweng; le
  - (d) badirimmogo ba tshegetso.
- (2) Tona o tshwanetse, morago ga go rerisana le Mokhomišenara, tlhomamisa go tlongwa ga badirimmogo le thulaganyo ya popego ya Bothati ka mokgwa o o ntshetsang pele maikaelelo a Molao ono. 5

### KGAOLO 3

#### MOKHOMIŠENA RA LE BATLATSAMOKHOMIŠENARA

#### Go thapiwa ga Mokhomišenara le Batlatsamokhomišenara 10

7. (1) Moporesidente o tshwanetse go thapa Mokhomišenara yo—
- (a) e leng motho yo o itekanetseng e bile a siame;
  - (b) o nang le borutegi jwa thuto e kgolwane e e maleba go phatlhatiro;
  - (c) o nang le maitemogelo a dingwaga tse 10 mo bolaoding jo bogolwane jo bo maleba; 15
  - (d) e leng moagi wa Aforika Borwa;
  - (e) o sa bonwang molato le go golegwa ntle le boikgethelo jwa tuediso, ntle le mabapi le molato wa bosenyi o motho a neilweng boitshwarelo go ya ka *Promotion of National Unity and Reconciliation Act, 1995* (Molao 34 wa 1995); 20
  - (f) o tshepagalang le go nna sekai; le
  - (g) e leng moofisiri yo o khomišinilweng kgotsa o tshwanetse go, go latela go thapiwa ga gagwe—
    - (i) wetsa ka katlego katiso nngwe le nngwe e e neetsweng;
    - (ii) ikamanya le ditlhokego tse di neetsweng tsa peomaemo ya tshireletso; le 25
    - (iii) tsenela kgato e e maleba ya kgololo ya tshireletso ka katlego, gore a thapiwe jaaka motlhankedi yo o khomišinilweng.
- (2) Moporesidente o tshwanetse, morago ga go rerisana le Tona, go thapa Batlatsamokhomišenara ba bas a feteng pedi ba ba maleba go ya ka ditlhokego tse di neetsweng mo karotlaleletsong (1). 30
- (3) Fa Mokhomišenara a seyo kgotsa a sa kgone go dira ditiro tse a di thapetsweng kgotsa go na le phatlhatiro kwa kantorong ya Mokhomišenara, Tona o ka tlhoma Motlatsamokhomišenara jaaka Mokhomišenara wa nama-o-tshwere.

#### Paka ya tiro ya Mokhomišenara le Batlatsamokhomišenara

8. (1) Mokhomišenara le Motlatsamokhomišenara ba dira sebaka sa paka e go dumalanweng ka yona e e sa feteng dingwaga tse tlhano: Fa fela paka ya go dira e ka atolosa gangwe fela kwa bokhutlong jwa paka eo go paka e nngwe e e sa feteng dingwaga tse tlhano. 35
- (2) Moporesidente o tshwanetse go itsise Mokhomišenara kgotsa Motlatsamokhomišenara, ka go kwala, bonnye dikgwedi tse thataro tsa alemanaka pele ga go ya bokhutlong ga paka e e kailweng mo karotlaleletsong (1), kgotsa nako nngwe le nngwe e e latelang, fa e le gore Moporesidente o ikaelela go atolosa paka ya tiro ya Mokhomišenara kgotsa Motlatsamokhomišenara le, fa go le jalo, mabapi le paka efe. 40
- (3) Go tsamaelana le karotlaleletso (5), Mokhomišenara kgotsa Motlatsamokhomišenara o tshwanetse go digela tiro ya gagwe fa a fitlhelela dingwaga tse 65. 45
- (4) Fa Mokhomišenara kgotsa Motlatsamokhomišenara a fitlhelela dingwaga tse 65 morago ga letsatsi la ntlha la kgwedi nngwe le nngwe, go tla tsewa gore o fitlhetse dingwaga tseo mo letsatsing la ntlha la kgwedi e e latelang.
- (5) Fa Moporesidente a akanya gore go mo kgatlhegong ya setšhaba go busetsa Mokhomišenara kgotsa Motlatsamokhomišenara mo tirong go feta dingwaga tse 65, e bile fa— 50
- (a) Mokhomišenara kgotsa Motlatsamokhomišenara a eletsa go tswelela go dira tiro eo; le
  - (b) tlhaloganyo le boitekanelo jwa mmele tsa motho yoo di mo kgontsha go tswelela, 55

the President may from time to time direct that the Commissioner or a Deputy Commissioner be so retained, but not for a period which exceeds, or periods which in the aggregate exceed, two years: Provided that the Commissioner's or a Deputy Commissioner's term of office shall not exceed 10 years.

#### **Removal of Commissioner and Deputy Commissioners from office**

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9. (1) Subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), the President may remove the Commissioner or a Deputy Commissioner from his or her office—

- (a) for misconduct;
- (b) on account of continued ill-health; 10
- (c) on account of incapacity to carry out his or her duties of office effectively and efficiently;
- (d) on account that he or she is no longer a fit and proper person to hold the office concerned; or
- (e) on account of a loss of confidence in the Commissioner or a Deputy Commissioner. 15

(2) The President may suspend the Commissioner or a Deputy Commissioner pending an investigation into the circumstances referred to in subsection (1), which investigation must be instituted and finalised within 60 days of the suspension or as soon as reasonably possible thereafter. 20

(3) If the Commissioner or a Deputy Commissioner is suspended in terms of subsection (2), he or she must continue to receive his or her remuneration, allowances and any other benefits that he or she is entitled to receive as if he or she was not suspended, pending the outcome of any investigation or inquiry.

(4) (a) The President may allow the Commissioner or a Deputy Commissioner, at the Commissioner's or a Deputy Commissioner's request, to vacate his or her office. 25

(b) A request referred to in paragraph (a) must be addressed to the President at least six calendar months prior to the date on which the Commissioner or a Deputy Commissioner wishes to vacate his or her office, unless the President grants a shorter period in a specific case. 30

(c) If the Commissioner or a Deputy Commissioner vacates his or her office in terms of paragraph (a), the Commissioner or a Deputy Commissioner is entitled to such pension as he or she would have been entitled to under the pension law applicable to him or her.

#### **Conditions of service and remuneration of Commissioner and Deputy Commissioners**

35

10. (1) The President must, after consultation with the Minister, determine the conditions of service of the Commissioner and Deputy Commissioners.

(2) The President must, after consultation with the Minister and the Minister of Finance, determine the remuneration, allowances and other benefits of the Commissioner and Deputy Commissioners. 40

#### **Functions of Commissioner and Deputy Commissioners**

11. (1) The Commissioner must exercise control over and manage the Authority in accordance with this Act and the directions of the Minister.

(2) The Commissioner is the Chief Executive Officer of the Authority and is responsible and accountable for— 45

- (a) the efficient and effective performance of the Authority's functions, including the determination of service standards and the publication thereof in the *Gazette*;
- (b) the day-to-day running of the Authority; 50
- (c) the formation and development of an efficient administration;
- (d) the development of a strategic plan setting out the priorities and objectives of the Authority, as required in terms of the Public Finance Management Act;
- (e) establishing and maintaining bureaus, depots, quarters, workshops or any other institution of any nature whatsoever, subject to applicable legislation, which may be expedient for the general management, control and maintenance of the Authority; 55

Moporesidente, nako le nako, o ka laela gore Mokhomisenara Motlatsamokhomisenara a busetswe, mme e seng sebaka se se fetang, kgotsa dipaka tse ka palogotlhe di fetang, dingwaga tse pedi: Fa fela paka ya tiro ya Mokhomisenara kgotsa Motlatsamokhomisenara e ka se fete dingwaga tse 10.

#### Go tloswa mo tironng ga Mokhomisenara le Motlatsamokhomisenara 5

9. (1) Go tsamaelana le *Promotion of Administrative Justice Act*, 2000 (Molao 3 wa 2000), Moporesidente o ka tlosa Mokhomisenara kgotsa Motlatsamokhomisenara mo tironng—

- (a) mabapi le maitsholomabe;
- (b) fa a lwaletse ruri; 10
- (c) fa a sa kgone go dira ditiro tsa gagwe ka nonofo le ka matsetseleko;
- (d) fa a sa itekanela le go siamela go dira tiro e e umakwang; kgotsa
- (e) fa boikanyego bo sa tlhole bo le teng mo Mokhomisenareng kgotsa Motlatsamokhomisenareng.

(2) Moporesidente o ka sekega Mokhomisenara kgotsa Motlatsamokhomisenara go letilwe patlisiso go mabaka a a kailweng mo karotlaleletsong (1), mme patlisiso eo e tshwanetse go dirwa le go khutliswa mo malatsing a le 60 a tshekego kgotsa ka bonako jo bo kgonegang morago ga moo. 15

(3) Fa Mokhomisenara kgotsa Motlatsamokhomisenara a sekegilwe go ya ka karotlaleletso (2), o tshwanetse go tswela go amogela tuelo ya gagwe, dituelotetla le ditshiamelo tse a tshwanetseng go di amogela fa a ne a sa sekegwa, go letilwe dipholo tsa patlisiso kgotsa tlhotlhomiso nngwe le nngwe. 20

(4) (a) Moporesidente o ka letla Mokhomisenara kgotsa Motlatsamokhomisenara, ka kopo ya Mokhomisenara kgotsa Motlatsamokhomisenara, go rola tiro ka ntlha ya lebaka lengwe le lengwe le Moporesidente a tsayang gore le a utlwagala. 25

(b) Kopo e e kailweng mo temaneng (a) e tshwanetse go lebiswa go Moporesidente bonnye dikgwedi tse thataro pele ga letlha leo Mokhomisenara kgotsa Motlatsamokhomisenara a ikaelelang go rola tiro ka lona, ntle le fa Moporesidente a neelana ka paka e khutshwane mo lebakeng le le rileng.

(c) Fa Mokhomisenara kgotsa Motlatsamokhomisenara a rola tiro go ya ka temana (a), Mokhomisenara kgotsa Motlatsamokhomisenara o tshwanetswe ke phenšene eo fela jaaka a ne a tshwanetse ka fa tlase ga molao wa phenšene o o maleba go ena. 30

#### Melawana ya tirelo le tuelo ya Mokhomisenara le Batlatsamokhomisenara

10. (1) Moporesidente o tshwanetse, morago ga therisano le Tona, go tlhomamisa melawana ya tirelo ya Mokhomisenara le Batlatsamokhomisenara. 35

(2) Moporesidente o tshwanetse, morago ga go rerisana le Tona le Tona ya Matlotlo, go tlhomamisa tuelo, dituelotetla le ditshiamelo tse dingwe tsa Mokhomisenara le Batlatsamokhomisenara.

#### Ditiro tsa Mokhomisenara le Batlatsamokhomisenara

11. (1) Mokhomisenara o tshwanetse go laola Bothati go tsamaelana le Molao ono le ditaello tsa Tona. 40

(2) Mokhomisenara ke Motlankedimogolo wa Khuduthamaga wa Bothati e bile o rwala maikarabelo le go araba mabapi le—

- (a) tiro e e nonofileng e e matsetseleko ya ditiro tsa Bothati, go akaretisa le tlhomamiso ya maemo a tirelo le phasalatso ya ona mo Lokwalodikgannyeng la Puso; 45
- (b) tsamaiso ya letsatsi le letsatsi ya Bothati;
- (c) popo le tlhabololo ya tsamaiso e e nonofileng;
- (d) tlhabololo ya leano la togamaano le le neelanang ka ditlapele le maikaelelo a Bothati, jaaka go tlhokega go ya ka *Public Finance Management Act*; 50
- (e) go tlhama le go tshegetsatsa dibiro, mabeelo, bonno, mafelotirelo kgotsa setheo sengwe le sengwe sa tlhologo ya mokgwa ofe, go tsamaelana le molawana o o diriswang, o o ka tswang o le matshwanedi mabapi le bolaodi ka kakaretso, taolo le tshegetso ya Bothati;



- (f) establishing and maintaining an effectively functioning border risk management and targeting centre in the prescribed manner;
- (g) establishing and maintaining a training institution in accordance with any applicable legislation;
- (h) managing labour relations including— 5
- (i) the control of officials;
- (ii) maintaining discipline and determining disciplinary measures;
- (iii) the training of officials; and
- (iv) determining the qualifications and competency standards for officials in accordance with the prescribed requirements; 10
- (i) considering a review or appeal in terms of section 29(3); and
- (j) reporting to the Minister on a quarterly basis, or at the request of the Minister, on the performance of the Authority.
- (3) The Commissioner is the accounting authority for the Authority and is responsible and accountable for— 15
- (a) the income and expenditure of the Authority;
- (b) all assets and the discharge of liabilities of the Authority;
- (c) the proper and diligent implementation of the Public Finance Management Act; and
- (d) reporting to the Minister on the financial matters of the Authority, which report must be included in the report referred to in subsection (2)(j). 20
- (4) The Commissioner is the commander of the border guard and is responsible for the management, command and control of the border guard.
- (5) A Deputy Commissioner shall have such duties, functions and powers as delegated to him or her by— 25
- (a) the Minister, after consultation with the Commissioner; or
- (b) the Commissioner.

#### Delegation by Commissioner

12. (1) The Commissioner may delegate to a Deputy Commissioner or any official of the Authority any function or power conferred, or duty imposed, on the Authority or the Commissioner by this Act or any other legislation. 30
- (2) Any delegation in terms of subsection (1)—
- (a) is subject to the conditions that the Commissioner may determine;
- (b) must be in writing;
- (c) does not prevent the Commissioner from exercising that power or performing that duty; and 35
- (d) may at any time be withdrawn in writing by the Commissioner.

### CHAPTER 4

#### APPOINTMENT AND FUNCTIONS OF OFFICIALS

##### Appointment of officials 40

13. (1) The Commissioner must—
- (a) determine and implement a uniform recruitment procedure for the appointment of officials; and
- (b) appoint— 45
- (i) officers who must be members of the border guard; and
- (ii) support staff.
- (2) The filling of any post on the staff establishment, whether by appointment, promotion or transfer, must be done in accordance with the Constitution, labour legislation and this Act.
- (3) Every person to be appointed as an official must, prior to appointment, successfully have undergone an appropriate security clearance process. 50
- (4) An official who refuses to subject himself or herself to an appropriate security clearance process, or who fails such process, must be subjected to such disciplinary measures as determined by the Commissioner in terms of section 11(2)(h)(ii).

- (f) go tlhama le go tshegetsa taolo e e dirang ka nonofo ya dikotsi tsa melelwane le go tsepama mo senthareng ka mokgwa o o neetsweng;
- (g) go tlhama le go tshegetsa setheo sa katiso go tsamaelana le molawana mongwe le mongwe o o maleba;
- (h) go laola dikamano tsa bodiri go akaretsa le— 5  
 (i) taolo ya batlhankedi;  
 (ii) go tshegetsa kgalemo le go tlhomamisa mekgwakgalemo;  
 (iii) katiso ya batlhankedi; le  
 (iv) tlhomamiso ya maemo a boithutelo le bokgoni a batlhankedi go tsamaelana le ditlhokego tse di neetsweng; 10
- (i) go sekaseka thadiso kgotsa boikuelo go ya ka karolo 29(3); le
- (j) go begela Tona kotara nngwe le nngwe, kgotsa ka kopo ya Tona, ka ga tiro ya Bothati.
- (3) Mokhomishenara ke molaodi jo yo o ikarabelang mabapi le Bothati e bile o rwala maikarabelo le go arabela mabapi le— 15  
 (a) lotseno le ditshenyegelo tsa Bothati;  
 (b) dithoto tsoitlhe le kgololo ya melato ya Bothati;  
 (c) go tsenngwa tirisong ka nepagalo le ka manontlhotlho ga *Public Finance Management Act*; le  
 (d) go begela Tona ka ga merero ya ditšhelete ya Bothati, e bile pegelo eo e tshwanetse go akaretswa mo pegelong e e kailweng mo karolotlaleletsong (2)(j). 20
- (4) Mokhomishenara ke molaodi wa tebelelo ya melelwane e bile o rwala maikarabelo mabapi le bolaodi, le taolo ya tebelelo ya melelwane.
- (5) Motlatsamokhomishenara o tla nna le ditiro tseo, maikarabelo le dithata jaaka fa a di roletswe ke— 25  
 (a) Tona, morago ga therisano le Mokhomishenara; kgotsa  
 (b) Mokhomishenara.

### Tholelo ka Mokhomishenara

12. (1) Mokhomishenara o ka rolela go Motlatsamokhomishenara kgotsa motlhankedi mongwe le mongwe wa Bothati tiro nngwe le nngwe kgotsa thata e e abetsweng, kgotsa tiro e e pateleditsweng, mo Bothating kgotsa Mokhomishenareng ka Molao ono kgotsa molawana mongwe le mongwe. 30
- (2) Tholelo nngwe le nngwe go ya ka karolotlaleletso (1)—  
 (a) e go ya ka melawana e e ka tlhomamiswa ke Mokhomishenara; 35  
 (b) e tshwanetse go kwalwa;  
 (c) ga e thibebele Mokhomishenara mo go diragatseng thata eo kgotsa go dira tiro eo; le  
 (d) ka nako nngwe le nngwe e ka gogelwa morago ka go kwala ke Mokhomishenara. 40

## KGAOLO 4

### GO THAPIWA LE DITIRO TSA BATLHANKEDI

#### Go thapiwa ga batlhankedi

13. (1) Mokhomishenara o tshwanetse go—  
 (a) tlhomamisa le go tsenya mo tirisong tsamaiso ya thaopo e e tshwanang mabapi le go thapiwa ga batlhankedi; le 45  
 (b) thapa—  
 (i) baofisiri bao ba tshwanetseng go nna maloko a tebelelo ya melelwane; le  
 (ii) badiri ba tshegetso.
- (2) Go tlatswa ga phatlathiro nngwe le nngwe mo go tlhlongweng ga badirimmogo, e ka nna ka thapo, tlhatloso kgotsa tshutiso, go tshwanetse go dirwa go tsamaelana le Molaotheo, molawana wa ditiro le Molao ono. 50
- (3) Motho mongwe le mongwe yo o tla thapiwang jaaka motlhankedi o tshwanetse, pele ga go thapiwa, go tsenela ka katlego kgato ya kgololo ya tshireletso.
- (4) Motlhankedi yo o ganang go tsenela tsamaiso ya kgololo ya tshireletso e e maleba, kgotsa yo o sa faloleng tsamaiso eo, o tshwanetse go bewa ka fa tlase ga dikgatokgalemo tse di tlhomamisitsweng ke mokhomishenara go ya ka karolo 11(2)(h)(ii). 55

- (5) The Commissioner must ensure that officers undergo adequate and appropriate training that would enable them to perform the functions of the border guard effectively.
- (6) An identification card in the prescribed form—
- (a) must be issued to each officer;
  - (b) must be produced on demand in the performance of border law enforcement functions; and
  - (c) constitutes *prima facie* proof of appointment as an officer.
- (7) An identification card referred to in subsection (6) must be returned to the Commissioner upon termination of employment of an officer or when an officer is suspended.

#### Commissioned officers

14. (1) The Minister may confer a temporary or permanent commission on the Commissioner, a Deputy Commissioner and any officer of the Authority.
- (2) A commissioned officer must be issued with a Deed of Commission bearing the signature of the Minister.
- (3) In order to qualify as a commissioned officer, a person referred to in subsection (1) must—
- (a) swear or declare allegiance to the Republic;
  - (b) be a South African citizen;
  - (c) have served successfully on probation as an acting officer with a temporary commission for a prescribed period;
  - (d) have successfully completed any prescribed training;
  - (e) not have been convicted and imprisoned without the option of a fine, except for a criminal offence for which the person has been granted amnesty in terms of the Promotion of National Unity and Reconciliation Act, 1995 (Act No. 34 of 1995);
  - (f) be a fit and proper person to serve and must have a trustworthy and exemplary character; and
  - (g) comply with prescribed security grading requirements.
- (4) The Minister may only cancel a commission after notifying the commissioned officer concerned of a complaint or charge made and after allowing the commissioned officer an opportunity to respond to the complaint or charge.
- (5) The Minister may, in respect of officers, confer a commission in terms of subsection (1) or cancel a commission in terms of subsection (4) only after consultation with the Commissioner.

#### Duties, functions and powers of officers of border guard

15. (1) An officer must perform his or her border law enforcement functions in terms of this Act.
- (2) An officer may exercise any power that may be conferred on him or her in a declaration as a peace officer, referred to in section 334(1)(a) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).
- (3) When performing any border law enforcement function, an officer must exercise his or her powers in a manner that takes due regard of the fundamental rights of persons, as guaranteed under Chapter 2 of the Constitution, and public international law obligations of the Republic, with proper consideration of the rights and interests of vulnerable groups, including victims of trafficking, refugees and asylum seekers.
- (4) The Commissioner must follow the procedures set out in section 71 of the Labour Relations Act in relation to the designation of duties, functions and powers of officers of the Authority as an essential service.

(5) Mokhomišenara o tshwanetse go netefatsa gore baofisiri ba tsenela katiso e e lekaneng e e maleba e e tla ba kgontshang go dira ditiro tsa tebelelo ya melelwane ka nonofo.

(6) Karata ya boitshupo ka popego e e neetsweng—

(a) e tshwanetse go abelwa motlhankedi mongwe le mongwe; 5

(b) e tshwanetse go tlhagiswa ka topo mo go dirweng ga ditiro tsa kgatelelo ya molao wa melelwane; le

(c) e tsewa jaaka go bonagala e le bopaki jwa go thapiwa ga motlhokomedii.

(7) Karata ya boitshupo e e kailweng mo karotlaleletsong (6) e tshwanetse go busetswa kwa go Mokhomišenara fa tiro ya motlhankedi e khutliswa kgotsa fa motlhankedi a sekegwa. 10

#### Batlhankedii ba ba khomišenilweng

14. (1) Tona o ka abela Mokhomišenara, Motlatsamokhomišenara le motlhankedi mongwe le mongwe wa Bothati khomišene ya nakwana kgotsa ya leruri.

(2) Motlhankedi yo o abetsweng khomišene o tshwanetse go rebolelwa Kano ya Khomišene e e saenilweng ke Tona. 15

(3) Gore a nne motlhankedi yo o khomišenilweng, motho yo o kailweng mo karotlaleletsong (1) o tshwanetse go—

(a) ikana kgotsa tlhomamisa boikanyego go Rephaboliki;

(b) nna moagi wa Aforika Borwa; 20

(c) bo a dirile ka katlego mo pakatekong jaaka motlhankedi wa nama-o-tshwere wa khomišene ya nakwana mo pakeng e e neetsweng;

(d) bo a konoseditse ka katlego katiso nngwe le nngwe e e neetsweng;

(e) bo a sa bonwa molato le go golegwa ntle le boikgethelo jwa tuediso, ntle le mabapi le tlolomolao ya bosenyi e motho a abetsweng kgololo go ya ka *Promotion of National Unity and Reconciliation Act, 1995* (Molao 34 wa 1995); 25

(f) itekanela le go siamela go dira e bile o tshwanetse go tshapagala le go nna le semelo se se siameng; le

(g) ikamanya le ditlhokego tse di neetsweng tsa go abela maemo a tshireletso. 30

(4) Tona o ka phimola khomišene fela morago ga go itsise motlhankedi yo o khomišinilweng yo o amegang ka ga ngongorego kgotsa tatofatso e e dirilweng le morago ga go naya motlhankedi yo o khomišinilweng tšhono ya go ikarabela mabapi le ngongorego kgotsa tatofatso.

(5) Tona o ka, mabapi le batlhankedi, neela khomišene go ya ka karotlaleletso (1) kgotsa phimola khomišene go ya ka karotlaleletso (4) fela morago ga go rerisana le Mokhomišenara. 35

#### Ditshwanelo, ditiro le dithata tsa batlhankedi ba tlhokomelo ya melelwane

15. (1) Motlhankedi o tshwanetse go dira ditiro tsa gagwe tsa kgatelelo ya melao ya melelwane go ya ka Molao ono. 40

(2) Motlhankedi o ka diragatsa thata nngwe le nngwe e a ka e abelwang mo tumalanong jaaka moofisiri wa kagiso, yo o kailweng mo karolong 334(1)(a) ya *Criminal Procedure Act, 1977* (Molao 51 wa 1977).

(3) Fa a dira tiro nngwe le nngwe ya kgatelelo ya molao wa melelwane, motlhankedi o tshwanetse go diragatsa dithata tsa gagwe ka mogwa o o tsayang tsia ditshwanelo tsa botlhokwa tsa batho, jaaka di totobaditswe mo Kgaolong 2 ya Molaotheo, le ditlamego tsa molao wa boditšhabatšhaba wa baagi tsa Rephaboliki, ka kelotlhoko e e maleba ya ditshwanelo le dikgatlhego tsa ditlhopha tse di sa sireletsegang, go akaretse le batswasetlhabelo ba go gweba e seng mo molaong, bafaladi le baagi ba dinaga disele ba kopileng botshabelo mo nageng. 50

(4) Mokhomišenara o tshwanetse go latela ditsamaiso tse di beilweng mo karolong 71 ya *Labour Relations Act* mabapi le tholelo ya ditshwanelo, ditiro le dithata tsa baofisiri ba Bothati jaaka tirelo ya botlhokwa.

**CHAPTER 5****EMPLOYMENT TERMS AND CONDITIONS OF OFFICIALS****Terms and conditions of employment**

16. (1) Notwithstanding the provisions of section 4, officials are employed subject to the terms and conditions of employment determined by the Minister— 5

- (a) in consultation with the Minister of Finance; and
- (b) in accordance with any collective agreement concluded in the Public Service Co-ordinating Bargaining Council.

(2) Subject to the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996), a person appointed as an official becomes a member of the Government Employees Pension Fund referred to in section 2 of the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996). 10

(3) The Commissioner may, after consultation with the Minister, prescribe a framework for the compensation of officials and their dependants when injured or killed in the line of duty, which may include matters such as medical incapacity, disability pension, a disability regime and compulsory life insurance. 15

**Limitation of rights**

17. Subject to the Constitution, officers may, from time to time and to the extent necessary for purposes of border law enforcement and the safety of such officers, be subjected to— 20

- (a) searches and inspections;
- (b) security clearances;
- (c) screening of communications between officers and any other person within or outside of the Authority; and
- (d) shared accommodation or privation in accordance with the exigencies of training and operations related to border law enforcement functions. 25

**CHAPTER 6****POWERS OF ENTRY, SEARCH, SEIZURE, ARREST AND DETENTION****Powers of entry, search, seizure, arrest and detention**

18. (1) An officer may, with or without a warrant, within the border law enforcement area or at a port of entry— 30

- (a) enter any premises;
- (b) search any person, goods, premises or vehicle;
- (c) inspect any goods, documents, premises or vehicle;
- (d) seize anything found in that search or inspection that may be lawfully seized; 35
- (e) question any person about any matter related to the passage of persons, goods or vehicles through a port of entry or across the border law enforcement area and confirm their responses in a written declaration; and
- (f) arrest or detain any person reasonably suspected of contravening any provision of this Act. 40

(2) An officer may, without a warrant, exercise any power in terms of subsection (1) if—

- (a) a person who is competent to do so consents to the entry, search, inspection or seizure; or
- (b) the officer on reasonable grounds believes that— 45
  - (i) a warrant will be issued if applied for; and
  - (ii) the delay in obtaining the warrant is likely to defeat the object of such warrant.

**KGAOLO 5****DIPEELO LE MELAWANA YA TIRO YA BATLHANKEDI****Dipeelo le melawana ya tiro**

16. (1) Go sa nyatswe dikabelo tsa karolo 4, batlhankedi ba thapiwa go ya ka dipeelo le melawana tsa tiro tse di tlhomamisitsweng ke Tona— 5

- (a) ka therisano le Tona ya Matlotlo; le
- (b) go ya ka tumalanommogo e e konoseditsweng kwa Khanseleng ya Kgokaganyo ya Ditherisano tsa Bodiredipuso.

(2) Go latela *Government Employees Pension Law, 1996* (Kgoeletso 21 ya 1996), motho yo o thapilweng jaaka motlhankedi o nna leloko la Letlole la Phenšene la Badiredipuso le le kailweng mo karolong 2 ya *Government Employees Pension Law, 1996* (Kgoeletso 21 ya 1996). 10

(3) Mokhomišenara o ka, morago ga therisano le Tona, neelana ka letlhomeso mabapi le tuelo ya batlhankedi le baikaege ba bona fa ba gobetse kgotsa tlhokafetse ba le mo tirong, le le ka akaretsang merero e e tshwanang le go sa itekanelang mabapi le kalafo, phenšene ya bogole, paka ya bogole le inšorense ya botshelo ya pateletso. 15

**Tekanyetso ya ditshwanelo**

17. Go latela Molaotheo, batlhankedi ba ka bewa nako le nako le ka bogolo jo bo tlhokegang mabapi le maitlomo a kgatelelo ya molao wa melelwanele tshireletsego ya batlhankedi bao, ka fa tlase ga— 20

- (a) diphuruphutso le ditlathlombo;
- (b) dikgololo tsa tshireletso;
- (c) tlhola ditlhaeletsano magareng ga batlhankedi le motho mongwe le mongwe yo mongwe mo Bothating kgotsa kwa ntle ga Bothati; le
- (d) karogano ya marobalo kgotsa bothoki go tsamaelana le ditlhokego tsa katiso le tiro tse di amanang le ditiro tsa kgatelelo ya molao wa melelwane. 25

**KGAOLO 6****DITHATA TSA GO TSENA, GO PHURUPHUTSA, GO GAPA, GO TSHWARA LE GO TLHATLHELA****Dithata tsa go tsena, go phuruphutsa, go gapa, go tshwara le go tlhatlhela** 30

18. (1) Motlhankedi o ka, ka lokwalothobolo kgotsa ntle le lokwalothobolo, mo gare ga lefelo la kgatelelo ya molao wa melelwane kgotsa bogorogelong—

- (a) tsena mo lefelong lengwe le lengwe;
- (b) phuruphutsa motho mongwe le mongwe, dithoto, lefelo kgotsa serori;
- (c) tlhatlhoba dithoto, dikwalo, mafelo kgotsa serori sengwe le sengwe; 35
- (d) gapa sengwe le sengwe se se fitlhetsweng fa go phuruphutsa kgotsa tlhatlhojwa se se ka gapiwang semolao;
- (e) botsolotsa motho mongwe le mongwe ka morero mongwe le mongwe o o amanang le tsela ya batho, dithoto kgotsa dirori mo go ralaleng bogorogelo kgotsa go ralala lefelo la kgatelelo ya molao wa melelwane le go netefatsa ditsibogo tsa bona mo tlhomamisong e e kwetsweng; le 40
- (f) tshwara kgotsa tlhatlhela motho mongwe le mongwe ka mabaka ao a belaelwang gore o tlotse kabelo nngwe le nngwe ya Molao ono.

(2) Motlhankedi o ka, ntle le lokwalothobolo, diragatsa thata nngwe le nngwe go ya ka karotlaleletso (1) fa— 45

- (a) motho yo o nang le bokgoni jwa go dira jalo a dumalana le go tsena, go phuruphutsa, go tlhatlhoba kgotsa go gapa; kgotsa
- (b) motlhankedi ka mabaka a a utlwalang a dumela gore—
  - (i) lokwalothobolo le tla rebolwa fa le diretswe kopo; ebile
  - (ii) tiego mo go fitlheleng lokwalothobolo e ka dira gore maitlomo a lokwalothobolo leo a se fitlhelwe. 50

**Routine searches and seizures**

19. (1) An officer may, without a warrant, conduct a roadblock or set up a checkpoint within the border law enforcement area or at a port of entry with the written approval of the Commissioner.
- (2) An officer may, without a warrant— 5
- (a) conduct a routine inspection or search of any person, goods, documents, premises, or vehicle within the border law enforcement area or at a port of entry for the purpose of ascertaining compliance with the provisions of this Act; and
  - (b) during such an inspection or search— 10
    - (i) order any driver of a vehicle to stop;
    - (ii) seize or detain anything found that may be lawfully seized or detained;
    - (iii) question any person about any matter related to the passage of persons or goods, documents, vehicles through a port of entry or in the border law enforcement area; and 15
    - (iv) detain or arrest any person reasonably suspected of contravening any provision of this Act.

**Powers relating to vessels within maritime borders**

20. An officer may, without a warrant—
- (a) order any vessel within the maritime borders of the border law enforcement area to stop; 20
  - (b) require the master of a vessel to facilitate the boarding of a vessel by that officer by all appropriate means;
  - (c) board a vessel accompanied by such other persons whose assistance is reasonably required in the execution of the officer's functions and powers; 25
  - (d) muster the crew of a vessel;
  - (e) require the master to produce for examination and make copies of a certificate of registry, licence, permit, log book or official documents, relating to— 30
    - (i) the import or export of goods and the entry or exit of persons into or out of the Republic; or
    - (ii) a vessel and to the crew or any member thereof or to any person on board the vessel, which is in their respective possession or control on board the vessel;
  - (f) require the master to appear, in person, and give an explanation concerning a vessel, the crew, any person or goods on board the vessel or document referred to in paragraph (e); 35
  - (g) enquire into whether any provision of this Act has been contravened;
  - (h) make an entry dated and signed in a vessel's log book;
  - (i) if there are reasonable grounds to believe that an offence under this Act relating to the import or export of goods or the entry or exit of any person has been or is being committed, require the master to take a vessel to any place, port or harbour in the territory of the Republic for the purpose of carrying out any search, examination or enquiry; or 40
  - (j) give directions to the master and any crew member of any vessel stopped, boarded or searched as may be necessary or reasonably expedient for any purpose specified in this Act or for the compliance by the vessel, master or any crew member with any condition of a licence. 45

**Arrested or detained persons and seized goods**

21. (1) If an officer arrests or detains a person with or without a warrant, that officer must, as soon as reasonably possible, subject to section 35 of the Constitution, bring that person to a police station under the control of the South African Police Service or, if a warrant expressly stipulates another place, bring the person to that place. 50

**Diphuruphutso le dikgapo tsa tlwaelo**

19. (1) Motlhankedi o ka, ntle le lokwalothebolo, dira maparego a ditsela kgotsa a tlhoma lefelo la go tlhola mo lefelong la kgatelelo ya molao wa melelwane kgotsa kwa bogorogelong ka thebolo e e kwetsweng ya Mokhomišenara.

(2) Motlhankedi o ka, ntle le lokwalothebolo—

- (a) dira ditlathlho bo tsa tlwaelo kgotsa a phuruphutsa motho, dithoto, dikwalo, mafelo, kgotsa serori mo lefelong la kgatelelo ya molao wa melelwane kgotsa kwa bogorogelong mabapi le maitlhommo a go netefatsa ikamanyo le dikabelo tsa Molao ono; le 5
- (b) ka nako ya tlathlho bo eo kgotsa phuruphutso— 10
- (i) laela mokgweetsi wa serori go ema;
- (ii) gapa kgotsa tsaya sengwe le sengwe se go fitlhetsweng gore se gapilwe kgotsa tserwe semolao;
- (iii) botsolotsa motho mongwe le mongwe ka ga morero mongwe le mongwe o o amanang le tsela ya batho kgotsa dithoto, dikwalo, dirori go ralala bogorogelo kgotsa mo lefelong la kgatelelo ya molao wa melelwane; le 15
- (iv) tlathlhela kgotsa golega motho mongwe le mongwe yo ka mabaka a belaelwang gore o tlotse kabelo nngwe le nngwe ya Molao ono.

**Dithata tse di amanang le dikepe mo melelwaneng ya mawatle**

20. Motlhankedi o ka, ntle le lokwalothebolo— 20
- (a) laela sekepe sengwe le sengwe mo melelwaneng ya mawatle ya lefelo la kgatelelo ya molao wa melelwane go ema;
- (b) lopa molaedi wa sekepe go nolofatsa go namelwa ga sekepe ke motlhankedi yoo ka mokgwa mongwe le mongwe wa nepagalo;
- (c) namela sekepe a patilwe ke batho ba bangwe bao thuso ya bona e tlhokegang ka mabaka mo go diragatseng ditiro le dithata tsa motlhankedi; 25
- (d) kgobokanya setlhopha sa sekepe;
- (e) tlhoka gore molaedi a tlhagise, mabapi le tlathlho bo le go dira dikgatiso tsa setifikeiti sa kwadiso, laesense tumelelo, bukatiragalo kgotsa dikwalo tsa semmuso, tse di amanang le— 30
- (i) thomeloteng le thomelontle ya dithoto le go tsena kgotsa go tswa ga batho mo teng kgotsa kwa ntle ga Rephaboliki; kgotsa
- (ii) sekepe le setlhopha kgotsa leloko lengwe le lengwe la teng kgotsa le mongwe le mongwe yo o nametseng sekepe, se ba se tshotseng kgotsa se le mo taolong ya bona mo sekepeng; 35
- (f) lopa molaedi go tlhagelela, ka namana, le go tlhalosa mabapi le sekepe, setlhopha, motho mongwe le mongwe kgotsa dithoto tse di nametseng sekepe kgotsa dikwalo tse di kailweng mo temaneng (e);
- (g) batlisisa gore a go kabelo nngwe ya Molao ono e e tlotsweng;
- (h) dira kwadiso e e nang le letlha e bile e saenilwe mo bukatiragalong ya sekepe; 40
- (i) fa go na le mabaka a a utlwalang go dumela gore tlolomolao ka fa tlase ga Molao ono e e amanang le thomeloteng kgotsa thomelontle ya dithoto kgotsa go tsena kgotsa go tswa ga motho mongwe le mongwe go dirilwe kgotsa go a dirwa, lopa molaedi go isa sekepe kwa lefelong lengwe le lengwe, bogorogelong kgotsa boemakepeng mo lefelong la Rephaboliki mabapi le maitlhommo a go phuruphutsa, tlathlhoba kgotsa batlisisa; kgotsa 45
- (j) naya molaedi ditaalo le leloko lengwe le lengwe la setlhopha sa sekepe se se emisitsweng, nametsweng kgotsa phuruphuditsweng jaaka go tlhokega kgotsa go tshwanetse ka mabaka mabapi le maitlhommo a a tsepamisitsweng mo Molaong ono kgotsa mabapi le go ikamanyo ke sekepe, molaedi kgotsa leloko lengwe le lengwe la setlhopha ka boemo bongwe le bongwe jwa laesense. 50

**Batho ba ba golegilweng kgotsa tlathlhetsweng le dithoto tse di gapilweng**

21. (1) Fa motlhankedi a golega kgotsa a tlathlhela motho ka kgotsa ntle le lokwalothebolo, motlhankedi yoo o tshwanetse, ka bonako jo bo kgonagalang, go latela karolo 35 ya Molaotheo, go isa motho yoo kwa seteišeneng sa mapodisi se se ka fa tlase ga taolo ya Tirelo ya Sepodisi sa Aforika Borwa kgotsa, fa lokwalothebolo le tlhalosa lefelo le lengwe, go isa motho kwa lefelong leo. 55



(2) If an officer seizes anything found in a search conducted in terms of this Act, that officer must, as soon as possible—

- (a) inform the relevant organ of state of the seizure; and
- (b) deliver the object seized in a manner, and to a place or relevant organ of state, as required by the relevant legislation.

5

## CHAPTER 7

### FUNDS AND IMMOVABLE PROPERTY

#### Funds of Authority

22. The funds of the Authority consist of—

- (a) monies appropriated annually by Parliament;
- (b) any government grants made to it; and
- (c) any other monies legally acquired by it, subject to Treasury regulations and instructions made in terms of the Public Finance Management Act.

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#### Immovable property

23. (1) The Commissioner may, in consultation with the Minister, acquire, maintain and dispose of immovable property for the purpose of fulfilling the objects of this Act. 15

(2) The Minister must, in accordance with the Public Finance Management Act, determine the policy and procedure for the Authority on the acquisition, maintenance and disposal of immovable property.

(3) Any organ of state that owns immovable property that hosts a port of entry must provide and maintain reasonable accommodation for the Authority, as determined by the Minister, to effectively and efficiently perform its functions: Provided that the Authority is liable for any associated service fees and costs. 20

(4) The Minister must determine reasonable accommodation referred to in subsection (3) with due regard to this Act or any other legislation. 25

## CHAPTER 8

### COMMITTEES AND IMPLEMENTATION PROTOCOLS

#### Inter-Ministerial Consultative Committee

24. (1) The Inter-Ministerial Consultative Committee is hereby established to—

- (a) consult on— 30
  - (i) the designation, determination, appointment or prescription, and withdrawal or cancellation of a port of entry;
  - (ii) the proposed amendment of any legislation that may affect border management;
  - (iii) any international agreement or protocol that affects the Authority; 35
  - (iv) the advice and reports of the Border Technical Committee referred to in section 25(3) and (4); and
  - (v) any other matter referred to it by any of the Cabinet members referred to in subsection (3)(b) or (c); and
- (b) consider and discuss the Commissioner's reports on the performance of the Authority in terms of section 11(2)(j). 40

(2) The Minister is the chairperson of the Inter-Ministerial Consultative Committee and the President must designate the deputy chairperson of the Committee.

(3) The Inter-Ministerial Consultative Committee consists of—

- (a) the Minister; 45
- (b) the Cabinet members responsible for—
  - (i) Agriculture, Forestry and Fisheries;
  - (ii) Defence and Military Veterans;
  - (iii) Environmental Affairs;
  - (iv) Finance; 50

(2) Fa motlhankedi a gapa sengwe le sengwe se se fitlhetsweng mo phuruphutsong e e dirilweng go ya ka Molao ono, motlhankedi yoo o tshwanetse, ka bonako jo bo kgonagalang—

- (a) itsise lephata la puso le le maleba ka ga kgapo eo; le
- (b) romela thoto e e gapilweng ka mokgwa, le kwa lefelong kgotsa lephata le le maleba la puso, jaaka go tlokega go ya ka molawana o o maleba. 5

## KGAOLO 7

### MATLOLE LE THOTO E E SA SUTENG

#### Matlole a Bothati

22. Matlole a Bothati a na le— 10
- (a) madi a a lekanyeditsweng ngwaga la ngwaga ke Palamente;
  - (b) dikabelo dingwe le dingwe tsa puso tse di dirilweng go jona; le
  - (c) madi mangwe le mangwe a mangwe a a fitlheletsweng semolao ke jona, go latela melawana ya Matlotlo le ditaelo tse di dirilweng go ya ka *Public Finance Management Act*. 15

#### Thoto e e sa suteng

23. (1) Mokhomišenara o ka, ka therisano le Tona, fithelela, tshola le go latlha thoto e e sa suteng mabapi le maitlomo a go diragatsa maikaelelo a Molao ono.
- (2) Tona o ka, go ya ka *Public Finance Management Act*, tlhomamisa pholisi le tsamaiso ya Bothati ka ga phitlhelelo, tlhokomelo le tatlo ya thoto e e sa suteng. 20
- (3) Lephata lengwe le lengwe la puso leo e leng mong wa thoto e e sa suteng e e leng mong-gae wa bogorogelo le tshwanetse go tlamela le go tshegetsatsa bonno jo bo siameng jwa Bothati, jaaka go tlhomamisitswe ke Tona, go dira ditiro tsa jona ka nonofo le bokgoni: Fa fela Bothati bo rwala maikarabelo a dituediso tsa tirelo le ditshenyegelo.
- (4) Tona o tshwanetse go tlhomamisa bonno jo bo kailweng mo karolotlaleletsong (3) 25 ka kelotlhoko go Molao ono kgotsa molawana mongwe le mongwe.

## KGAOLO 8

### DIKOMITI LE DIPOROTOKHOLO TSA TSENYOTIRISONG

#### Komititherisano ya Ditona

24. (1) Komititherisano ya ditona e a tlhongwa go— 30
- (a) rerisana ka ga—
    - (i) go tlhongwa, tlhomamiswa, thapiwa kgotsa neelana, le kgogelomorago kgotsa phimolo ya bogorogelo;
    - (ii) tlhabololo e e tshitsintsweng ya molawana mongwe le mongwe o o ka amang taolo ya melelwane; 35
    - (iii) tumalano nngwe le nngwe ya boditšhabatšhaba kgotsa porotokholo e e amang Bothati;
    - (iv) kgakololo le dipegelo tsa Komiti ya Setegeniki ya Melelwane e e kailweng mo karolong 26(3) le (4); le
    - (v) morero mongwe le mongwe o o rometsweng kwa go yona ke mongwe le mongwe wa maloko a Kabinete a a kailweng mo karolotlaleletsong (3)(b) kgotsa (c); le 40
  - (b) akanya le go sekaseka dipegelo tsa Mokhomišenara ka ga tiro ya Bothati go ya ka karolo 11(2)(j).
- (2) Tona ke modulasetilo wa Komititherisano ya Ditona e bile Moporesidente o 45 tshwanetse go thapa motlatsamodulasetilo wa Komiti.
- (3) Komititherisano ya Ditona e na le—
- (a) Tona;
  - (b) maloko a Kabinete a a rwalang maikarabelo a—
    - (i) Temothuo, Dikgwa le Bodirelotlhapi; 50
    - (ii) Tshireletso le Baganka ba Sesole;
    - (iii) Merero ya Tikologo;
    - (iv) Matlotlo;

- (v) Health;
- (vi) Police;
- (vii) State Security;
- (viii) Trade and Industry; and
- (ix) Transport; and 5
- (c) any other Cabinet member appointed by the President.
- (4) A Cabinet member referred to in subsection (3)(b) or (c) may be removed by the President if the President considers it necessary to do so.
- (5) The meetings of the Inter-Ministerial Consultative Committee—
  - (a) are convened by the chairperson; and 10
  - (b) are held quarterly or as regularly as may be necessary to perform its functions.
- (6) The quorum for a meeting of the Inter-Ministerial Consultative Committee is the majority of its members.
- (7) The Inter-Ministerial Consultative Committee may, whenever necessary, invite any Cabinet member, organ of state or any person to attend its meetings. 15
- (8) The Inter-Ministerial Consultative Committee may determine its own rules and procedures.

#### **Border Technical Committee**

- 25. (1) The Border Technical Committee is hereby established.
- (2) The Border Technical Committee consists of the Commissioner and the heads of 20 prescribed organs of state or their duly delegated representatives: Provided that a duly delegated representative must be a member of the senior management services of the organ of state.
- (3) The Border Technical Committee must advise the Inter-Ministerial Consultative Committee on— 25
  - (a) the implementation of legislation, policies and protocols related to border management;
  - (b) the application, outcomes and operational effectiveness of legislation, policies, protocols, structures, standards, procedures and strategy related to border management; and 30
  - (c) any matter referred to it by the Inter-Ministerial Consultative Committee, the Commissioner or any member of the Border Technical Committee.
- (4) The Border Technical Committee must report quarterly to the Inter-Ministerial Consultative Committee.
- (5) The Commissioner is the chairperson of the Border Technical Committee and the 35 Minister must designate the deputy chairperson of the Committee.
- (6) The Border Technical Committee must determine its own rules and procedures that must not be in conflict with the Act or any other legislation.
- (7) The Border Technical Committee must refer any dispute that arises at its meetings to the Inter-Ministerial Consultative Committee for resolution. 40

#### **Advisory committees**

- 26. (1) The Minister may, as and when the need arises, appoint one or more advisory committees to advise the Minister and the Commissioner on any matter concerning border management and the functioning of the Authority, including resource utilisation, asset management, human resources and information technology. 45
- (2) The Minister—
  - (a) must determine the terms of reference of an advisory committee appointed in terms of subsection (1);
  - (b) must appoint as members of an advisory committee persons— 50
    - (i) who are fit and proper;
    - (ii) with the requisite expertise and experience; and
    - (iii) who have the ability to perform effectively;
  - (c) may appoint persons as members of an advisory committee on such conditions as the Minister may determine; and

- (v) Boitekanelo;
- (vi) Sepodisi;
- (vii) Tshireletso ya Naga;
- (viii) Kgwebisano le Madirelo; le
- (ix) Dipalangwa; le 5
- (c) Leloko lengwe le lengwe le lengwe la Kabinete le le thapilweng ke Moporesidente.
- (4) Leloko la Kabinete le le kailweng mo karotlaleletsong (3)(b) kgotsa (c) le ka tloswa ke Moporesidente fa Moporesidente a bona go tlhokega go dira jalo.
- (5) Dikopano tsa Komititherisano ya Ditona— 10
  - (a) di bidiwa ke modulasetilo; le
  - (b) di tshwarwa kotara nngwe le nngwe kgotsa kgapetsakgapetsa jaaka go tlhokega go dira ditiro tsa yona.
- (6) Khoramo ya kopano ya Komititherisano ya Ditona ke bontsi jwa ditokololo tsa yona. 15
- (7) Komititherisano ya Ditona e ka, fa go tlhokega, laetsa leloko lengwe le lengwe la Kabinete, setheo sa puso kgotsa motho mongwe le mongwe go tsenela dikopano tsa yona.
- (8) Komititherisano ya Ditona e ka tlhomamisa melawana le ditsamaiso tsa yona.

#### **Komiti ya Setegeniki ya Melelwane** 20

25. (1) Komiti ya Setegeniki ya Melelwane e a tlhonga.
- (2) Komiti ya Setegeniki ya Melelwane e na le Mokhomishenara le ditlhogo tsa maphata a a neetsweng a puso kgotsa baemedi ba ba tlhophilweng ka tshwanelo: Fa fela moemedi yo o tlhophilweng ka tshwanelo o tshwanetse go nna leloko la ditirelo tsa bolaodi jo bogolwane jwa lephata la puso. 25
- (3) Komiti ya Setegeniki ya Melelwane e tshwanetse go gakolola Komititherisano ya Ditona ka ga—
- (a) tsenyotirisong ya molawana, dipholisi le diporotokholo tse di amanang le taolo ya melelwane;
  - (b) tiriso, ditlamorago le nonofo ya tiriso ya molawana, dipholisi, diporotokolo, dipopego, maemo, ditsamaiso le togamaano e e amanang le taolo ya melelwane; le 30
  - (c) morero mongwe le mongwe o o tlisitsweng kwa go yona ke Komititherisano ya Ditona, Mokhomishenara kgotsa leloko lengwe le lengwe la Komiti ya Setegeniki ya Melelwane. 35
- (4) Komiti ya Setegeniki ya Melelwane e tshwanetse go begela Komititherisano ya Ditona mo kotareng.
- (5) Mokhomishenara ke modulasetilo wa Komiti ya Setegeniki ya Melelwane le Tona o tshwanetse go tlhopha motlatsamodulasetilo wa Komiti.
- (6) Komiti ya Setegeniki ya Melelwane e tshwanetse go tlhama melawana le ditsamaiso tsa yona tse di sa tshwanelang go nna kgatlhanong le Molao kgotsa molawana mongwe le mongwe o mongwe. 40
- (7) Komiti ya Setegeniki ya Melelwane e tshwanetse go romela thulano nngwe le nngwe e e tlhagelelang kwa dikopanong tsa yona kwa Komititherisanong ya Ditona mabapi le tharabololo. 45

#### **Dikomitikgakololo**

26. (1) Tona o ka, fa go tlhokega, thapa komiti e le esi kgotsa go feta go gakolola Tona le Mokhomishenara ka ga morero mongwe le mongwe o o amanang le taolo ya melelwane le tiro ya Bothati, go akaretse le tiriso ya ditlamelo, taolo ya dithoto, metswedithuso ya setho le thekenoloji ya tshedimotsetso. 50
- (2) Tona—
- (a) o tshwanetse go tlhama dipeelo tsa kaelo tsa komitikgakololo e e thapilweng go ya ka karotlaleletso (1);
  - (b) o tshwanetse go thapa jaaka maloko a komitikgakololo batho— 55
    - (i) ba ba itekanetseng ba ba maleba;
    - (ii) ba ba nang le boitseanape jo bo kwa godimo le maitemogelo; le
    - (iii) ba ba nang le bokgoni jwa go dira ka nonofo;
  - (c) o ka thapa batho jaaka maloko a komitikgakololo go ya ka mabaka a a tshwanang le a a tlhomamisitsweng ke Tona; le

- (d) may appoint as members of an advisory committee persons independent of the Authority.

### Implementation protocols

27. (1) For the purpose of this section, “implementation protocol” means an implementation protocol concluded in accordance with section 35 of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005). 5

(2) Where the implementation of a policy, the exercise of a statutory power, the performance of a statutory function or the provision of a service relating to border law enforcement functions by the Authority depends on the participation of other organs of state, the Authority and those organs of state must, within a reasonable time after the commencement of the Act, co-ordinate their respective functions in such a manner as may be appropriate or required in the circumstances by entering into an implementation protocol. 10

(3) The organs of state referred to in subsection (2) must, within a reasonable time after the commencement of the Act, enter into implementation protocols with the Authority to collaborate on and ensure the alignment of technological, electronic, information and communication systems and procedures necessary to ensure the efficient sharing of relevant information with the Authority. 15

(4) The Minister may initiate the process for the conclusion of implementation protocols contemplated in subsections (2) and (3) in the Inter-Ministerial Consultative Committee. 20

(5) (a) The Authority must, within six months after the commencement of this section, conclude implementation protocols with—

- (i) the Defence Force;
- (ii) the South African Police Service; and 25
- (iii) the South African Revenue Service,

for the mandatory co-ordination of their respective functions within the border law enforcement area and at ports of entry.

(b) If any of the implementation protocols contemplated in paragraph (a) are not concluded, the Minister and the Cabinet member responsible for Defence and Military Veterans, Police or Finance, as the case may be, must determine the relevant implementation protocol. 30

(6) The implementation of implementation protocols concluded in terms of this section must be co-ordinated by the Inter-Ministerial Consultative Committee.

## CHAPTER 9 35

### GENERAL

#### Delegation by Minister

28. (1) The Minister may delegate to the Commissioner, a Deputy Commissioner or any official any function or power conferred, or duty imposed, on the Minister that is permitted to be delegated: Provided that any delegation to a Deputy Commissioner or any official must be made after consultation with the Commissioner. 40

(2) The Minister may not delegate a power referred to in sections 14(1), 14(4), 23(2), 26, 27(4), 27(5)(b), 30, 31(b), 36, 38(2) and 39(2).

(3) Any delegation in terms of subsection (1)—

- (a) is subject to the conditions that the Minister may determine; 45
- (b) must be in writing;
- (c) does not prevent the Minister from exercising that power or performing that duty; and
- (d) may at any time be withdrawn in writing by the Minister.

#### Review or appeal of decisions 50

29. (1) Any decision made by an officer in terms of this Act that materially and

- (d) o ka thapa jaaka maloko a komitigakololo batho ba ba ikemetseng go tswa go Bothati.

#### Diporotokholo tsa tsenyotirisong

27. (1) Mabapi le maitlomo a karolo eno, “porotokholo ya tsenyotirisong” e kaya porotokholo ya tsenyotirisong e e dirilweng go latela karolo 35 ya *Intergovernmental Relations Framework Act, 2005* (Molao 13 wa 2005). 5

(2) Moo tsenyotirisong ya pholisi, tiragatso ya maatla a molao, tiragatso ya tiro ya molao kgotsa kabo ya tirelo e e amanang le ditiro tsa kgatelelo ya molao wa melelwane ka Bothati di ikaegileng mo botsayakarolong jwa maphata a mangwe a puso, Bothati le maphata ao a puso di tshwanetse, mo nakong e e sa fediseng pelo morago ga go tsennngwa mo tirisong ga Molao, go nyalanya ditiro tsa tsona ka mokgwa o o matshwanedi kgotsa o o tlokegang mo mabakeng ka go tsona mo tirisong ya porothokolo. 10

(3) Maphata a puso a a kailweng mo karotlaleletsong (2) a tshwanetse, mo nakong e e sa fediseng pelo morago ga go tsennngwa mo tirisong ga Molao, go tsona mo diporotokholong tsa tsenyotirisong le Bothati go dirisana mmogo le go netefatsa tlhamalatsa ya dithulaganyo le ditsamaiso tsa thekenoloji, seileketeroniki, tshedimosetso le tlhaeletsano tse di tlokegang go netefatsa karogano e e matssetseleko ya tshedimosetso e e maleba le Bothati. 15

(4) Tona o ka simolola tsamaiso mabapi le khutliso ya tsenyotirisong ya diporotokholo e e umakilweng mo dikarotlaleletsong (2) le (3) mo Komititherisanong ya Ditona. 20

(5) (a) Bothati bo tshwanetse, mo dikgweding tse thataro morago ga tshimololo ya karolo eno, go khutlisa tsenyotirisong ya diporotokholo le—

(i) Matsholotshireletso; 25

(ii) Tirelo ya Sepodisi ya Aforika Borwa; le

(iii) Tirelo ya Lotseno ya Aforika Borwa,

mabapi le nyalanyo ya semolao ya ditiro tsa bona mo mafelong le mo magorogelong a kgatelelo ya molao wa melelwane.

(b) Fa nngwe ya diporotokholo tsa tsenyotirisong tse di umakilweng mo temaneng (a) di sa khutliswa, Tona le leloko la Kabinete le le rwalang maikarabelo mabapi le Matsholotshireletso le Bagaka ba Sesole, Sepodisi kgotsa Ditshelete, go ya ka moo go leng ka teng, o tshwanetse go tlhomamisa porotokholo ya tsenyotirisong e e maleba. 30

(6) Go tsennngwa mo tirisong ga diporotokholo tsa tsenyotirisong tse di khutlisitsweng go latela karolo eno go tshwanetse go rulagangwa ke Komititherisano ya Ditona. 35

#### KGAOLO 9

#### KAKARETSO

#### Tholelo ka Tona

28. (1) Tona o ka rolela Mokhomisenara, Motlatsamokhomisenara kgotsa motlhankedi mongwe le mongwe tiro nngwe le nngwe kgotsa thata e e roletsweng, kgotsa tiro e e pateleditsweng, go Tona e e letleletsweng go ka rolelwa: Fa fela tholelo nngwe le nngwe go Motlatsamokhomisenara kgotsa motlhankedi mongwe le mongwe e ka dirwa morago ga therisano le Mokhomisenara. 40

(2) Tona o ka se rolele thata e e kailweng mo dikarolong 14(1), 14(4), 23(2), 26, 27(4), 27(5)(b), 30, 31(b), 36, 38(2) le 39(2). 45

(3) Tholelo nngwe le nngwe go ya ka karotlaleletso (1)—

(a) e go ya ka melawana e e ka tlhomamiswang ke Tona;

(b) e tshwanetse go kwalwa;

(c) ga e thibele Tona go ka diragatsa thata eo kgotsa go dira tiro eo; le

(d) e ka nako nngwe le nngwe gogelwa morago ka go kwala ke Tona. 50

#### Thadiso kgotsa boikuelo jwa ditshwetso

29. (1) Tshwetso nngwe le nngwe e e dirilweng ke motlhankedi go ya ka Molao ono e e amang ka tshiamo kgotsa ka mokgwa o o sa siamang ditshwanelo tsa motho mongwe le mongwe e tshwanetse go bolelelwa motho yoo ka mokgwa o o neetsweng le go patwa ke mabaka a a kwetsweng. 55

(2) Any person aggrieved by a decision referred to in subsection (1) may, within the prescribed period, make an application in the prescribed manner to the Commissioner for the review or appeal of that decision.

(3) The Commissioner must consider the application referred to in subsection (2), whereafter the Commissioner must confirm, set aside or modify that decision and communicate his or her decision in writing to the aggrieved person within the prescribed period. 5

(4) Any person aggrieved by the decision of the Commissioner referred to in subsection (3) may, within the prescribed period, make an application in the prescribed manner to the Minister for the review or appeal of that decision. 10

(5) The Minister must consider the application referred to in subsection (4), whereafter the Minister must confirm, set aside or modify the Commissioner's decision and communicate his or her decision in writing to the aggrieved person within the prescribed period.

#### **Ports, points or places of entry or exit with approval of Minister** 15

30. (1) Notwithstanding any other legislation, the power to designate, determine, appoint or prescribe any port, point or place of entry or exit for—

- (a) the movement of goods; or
- (b) the movement of persons,

in and out of the Republic may only be made with the approval of the Minister. 20

(2) Any withdrawal or cancellation of a designation, determination, appointment or prescription referred to in subsection (1) of any port, point or place of entry or exit, may only be done with the approval of the Minister.

(3) The Minister must, prior to an approval in terms of subsection (1) or (2), publish a notice in the *Gazette* for public comments for a period of not less than 30 days. 25

#### **Annual report**

31. Subject to the Public Finance Management Act—

- (a) the Commissioner must prepare and submit an annual report, financial statements and the report of the auditors on those statements to the Minister; and 30
- (b) the Minister must table the reports and statements referred to in paragraph (a) in Parliament.

#### **Exemption from payment of fees or tolls**

32. When performing any function or exercising any power in terms of this Act, an officer, including the vehicle in which the officer is being transported and any person accompanying the officer, is exempted from the payment of any fee or toll to enter or use any public or private premises, thoroughfare or ferry. 35

#### **Confidentiality**

33. Subject to the Protected Disclosures Act, 2000 (Act No. 26 of 2000), an official may not disclose any confidential or personal information acquired in the performance of the Authority's functions to any person, except— 40

- (a) to an authorised official;
- (b) to a person designated by the Commissioner or the Minister to receive such information;
- (c) to a person authorised to receive such information in terms of the relevant legislation; or 45
- (d) when required or authorised to do so by a court or any law.

(2) Motho mongwe le mongwe yo o sa kgotsofatswang ke tshwetso e e kailweng mo karolotlaleletsong (1) o ka, mo nakong e e beilweng, dira kopo go Mokhomishenara ka mokgwa o o neetsweng mabapi le thadiso kgotsa boikuelo jwa tshwetso eo.

(3) Mokhomishenara o tshwanetse go sekaseka kopo e e kailweng mo karolotlaleletsong (2), mme morago ga moo Mokhomishenara o tshwanetse go tlhomamisa, beela thoko kgotsa fetola tshwetso eo le go bega tshwetso ya gagwe ka go kwalela mongongoregi mo nakong e e beilweng. 5

(4) Motho mongwe le mongwe yo o sa kgotsofalelang tshwetso ya Mokhomishenara e e kailweng mo karolotlaleletsong (3) o ka, mo nakong e e beilweng, dira kopo ka mokgwa o o beilweng go Tona mabapi le thadiso kgotsa boikuelo jwa tshwetso eo. 10

(5) Tona o tshwanetse go sekaseka kopo e e kailweng mo karolotlaleletsong (4), mme morago a tlhomamisa, beele thoko kgotsa fetole tshwetso ya Mokhomishenara le go bega tshwetso ya gagwe ka go kwalela mongongoregi mo nakong e e beilweng.

### **Magorogelo, dintlha le mafelo a go tsena kgotsa go tswa ka thebolo ya Tona**

30. (1) Go sa nyatswe molawana o mongwe le o mongwe, thata ya go supa, tlhomamisa, thapa, neela, gogelamorago kgotsa phimola bogorogelo, kgotsa lefelo la go tsena le go tswa ga— 15

(a) motsamao wa dithoto; kgotsa

(b) motsamao wa batho,

ka fa gare le kwa ntle ga Rephaboliki e ka dirwa fela ka thebolo ya Tona. 20

(2) Kogelomorago nngwe le nngwe kgotsa phimolo ya tlhomo, tlhomamiso, thapo kgotsa neelo e e kailweng mo karolotlaleletsong (1) ya bogorogelo bongwe le bongwe, kgotsa lefelo la go tsena le go tswa, e ka dirwa fela ka thebolo ya Tona.

(3) Tona o tshwanetse, pele ga thebolo go ya ka karolotlaleletso (1) kgotsa (2), go phasalatsa kitsiso mo Lokwalodikgannyeng la Puso mabapi le ditshwaelo sebaka sa malatsi a a seng kwa tlase ga a le 30. 25

### **Pegelo ya ngwaga le ngwaga**

31. Go latela *Public Finance Management Act*—

(a) Mokhomishenara o tshwanetse go baakanya le go romela pegelo ya ngwaga, dikanego tsa ditšhelete le pegelo ya baruni mo dikanegong tseo kwa go Tona; 30

(b) Tona o tshwanetse go tlhagisa dipegelo le dikanego tse di kailweng mo temaneng (a) kwa Palamenteng.

### **Kgololo mo go dueleng dituelo kgotsa makgetho**

32. Mo go direng tiro nngwe le nngwe kgotsa go diragatseng thata nngwe le nngwe go ya ka Molao ono, moofisiri, go akaretsa le serori se se rweleng moofisiri le mongwe le mongwe yo o patileng moofisiri, o gololwa mo go dueleng tuediso nngwe le nngwe kgotsa lekgetho go tsena kgotsa go dirisa lefelo lengwe le lengwe la botlhe kgotsa la poraefete, mogorogoro kgotsa feri. 35

### **Khupamarama**

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33. Go ya ka *Protected Disclosures Act, 2000* (Molao 26 wa 2000), motlhankedi o ka se senole tshedimosetse epe ya khupamarama kgotsa ya namana e e fitlheletsweng mo tironeng ya Bothati go motho ope, ntle le—

(a) go motlhankedi yo o dumeletsweng;

(b) go motho yo o supilweng ke Mokhomishenara kgotsa Tona go amogela tshedimosetso eo; 45

(c) go motho yo o dumeletsweng go amogela tshedimosetso eo go ya ka molawana o o maleba; kgotsa

(d) fa a lopiwa kgotsa a dumeletsweng go dira jalo ke kgotlatshekelo kgotsa molao mongwe le mongwe. 50



**Liability**

**34.** (1) Subject to subsection (2), the Minister, the Commissioner, the Authority or its officials are not liable for any damage or loss caused by—

- (a) the exercise of any power or the performance of any duty in terms of this Act; or
- (b) the failure to exercise a power or perform a duty under this Act.

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(2) Subsection (1) does not apply in respect of unlawful conduct that is committed negligently or intentionally.

**Offences and penalties**

**35.** (1) It is an offence for any person—

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- (a) to induce any official by giving or promising a reward to contravene this Act or any relevant legislation or to breach that official's duties under those laws;
- (b) to compel any official through threats to contravene this Act or any relevant legislation or to breach that official's duties under those laws;
- (c) to pretend to be, or impersonate, an official;
- (d) to resist, hinder or obstruct an official in the performance of his or her duties, functions and powers under this Act or any relevant legislation; or
- (e) to intentionally furnish information that is false or misleading to an official.

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(2) It is an offence for an official to solicit or accept an inducement to perform or not perform a duty or function or contravene this Act or any relevant legislation or to breach any duties imposed under this Act or any relevant legislation.

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(3) It is an offence for any person to demand a toll or fee or subject any officer, who has identified himself or herself as an officer, to unreasonable delay or detention in respect of the entry into or use of the property or facilities referred to in section 23(3).

(4) It is an offence for—

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- (a) an official to contravene section 33; and
- (b) an officer to commit a breach of the prescribed disciplinary code related to the border law enforcement functions of an officer.

(5) If a person is convicted of an offence referred to in—

- (a) subsection (1) or (2), that person is liable to a fine or a period of imprisonment not exceeding 10 years or to both a fine and such imprisonment;
- (b) subsection (3) or (4)(a), that person is liable to a fine or a period of imprisonment not exceeding two years or to both a fine and such imprisonment; and
- (c) subsection (4)(b), that person is liable to a penalty, as prescribed in terms of section 36(4).

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**Regulations**

**36.** (1) The Minister may, after consultation with the Commissioner, make regulations regarding—

- (a) the terms and conditions of appointment of officials;
- (b) the qualifications and competency standards for officials;
- (c) the structure and functioning of the border guard;
- (d) the commissioning of officers;
- (e) the grading and rank of officers;
- (f) the training and arming of officers;
- (g) a disciplinary code of conduct for officers;
- (h) the rules for the conduct of meetings and procedures of advisory committees;

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**Molato**

34. (1) Go tsamaelana le karolotlaleletso (2), Tona, Mokhomišenara, Bothati kgotsa batlhankedi ba jona ga ba rwale molato wa tshenyegelo kgotsa tatlhegelo nngwe le nngwe e e bakilweng ke—

(a) tiragatso ya thata nngwe le nngwe kgotsa go dirwa ga tiro nngwe le nngwe go ya ka Molao ono; kgotsa 5

(b) go palelwa ke go diragatsa thata kgotsa go dira tiro ka fa tlase ga Molao ono.

(2) Karolotlaleletso (1) ga e diriswe mabapi le maitsholo a a seng mo molaong a a dirilweng ka tlhokomologo kgotsa ka bomo.

**Ditlolomolao le dikotlhao**

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35. (1) Ke tlolomolao go motho mongwe le mongwe—

(a) go tlhotlheletsa motlhankedi mongwe le mongwe ka go naya kgotsa solofetsa moputso go tlola Molao ono kgotsa molawana mongwe le mongwe o o maleba kgotsa go tlola ditiro tseo tsa motlhankedi tse di ka fa tlase ga melao eo; 15

(b) go pateletsa motlhankedi mongwe le mongwe ka go mo tshosetsa go tlola Molao ono kgotsa molawana mongwe le mongwe o o maleba kgotsa go tlola ditiro tseo tsa motlhankedi tse di ka fa tlase ga melao eo;

(c) go dira e kete o, kgotsa go itira, motlhankedi;

(d) go ganetsa, thibela kgotsa kgoreletsa motlhankedi go dira ditiro, maikarabelo le dithata tsa gagwe ka fa tlase ga Molao ono kgotsa molawana mongwe le mongwe o o maleba; kgotsa 20

(e) go neelana ka bomo ka tshedimotsetso e e fosagetseng kgotsa e e timetsang go motlhankedi.

(2) Ke tlolomolao gore motlhankedi a kope kgotsa a amogele tlhotlheletso go dira kgotsa go se dire tshwanelo kgotsa tiro kgotsa go tlola Molao ono kgotsa molawana mongwe le mongwe o o maleba kgotsa go tlola ditiro tse di pateleditsweng ka fa tlase ga Molao ono kgotsa molawana mongwe le mongwe o o maleba. 25

(3) Ke tlolomolao gore motho mongwe le mongwe a lope lekgetho kgotsa tuediso kgotsa go diegisa motlhankedi mongwe le mongwe, yo a itshupileng jaaka moofisiri, ntle le mabaka kgotsa tlhatlhelo mabapi le go tsena mo kgotsa tiriso ya thoto kgotsa didiriswa tse di kailweng mo karolong 23(3). 30

(4) Ke tlolomolao gore—

(a) motlhankedi a tlole karolo 33; le

(b) motlhankedi a tlole khoutu e e beilweng ya kgalemo e e amanang le ditiro tsa kgatelelo ya molao wa melelwane tsa moofisiri. 35

(5) Fa motho a bonwe molato wa tlolomolao e e kailweng mo—

(a) karolotlaleletsong (1) kgotsa (2), motho yoo o lebanwe ke tuediso kgotsa go romelwa kwa kgolegelong sebaka se se sa feteng dingwaga tse 10 kgotsa ka bobedi tuediso le go golegwa goo; 40

(b) karolotlaleletso (3) kgotsa (4)(a), motho yoo o lebanwe ke tuediso kgotsa go romelwa kwa kgolegelong sebaka se se sa feteng dingwaga tse pedi kgotsa ka bobedi tuediso le go golegwa goo; le

(c) karolotlaleletso (4)(b), motho yoo o lebanwe ke kotlhao, jaaka go tlhalositswe go ya ka karolo 36(4). 45

**Melawana**

36. (1) Tona o ka, morago ga go rerisana le Mokhomišenara, dira melawana mabapi le—

(a) dipeelo le melawana ya go thapiwa ga batlhankedi;

(b) borutegi le maemo a bokgoni a batlhankedi; 50

(c) popego le go dira ga tebelelo ya melelwane;

(d) go khomišinwa ga batlhankedi;

(e) go tlhophiwa ka seemo le maemo ga batlhankedi;

(f) katiso le go newa dibetsa ga batlhankedi;

(g) khoutu ya maitsholo ya kgalemo ya batlhankedi; 55

(h) melawana mabapi le go tshwarwa ga dikopano le ditsamaiso tsa dikomitikgakololo;

- (i) the handling and resolution of complaints and grievances affecting the work of the Authority;
- (j) any matter which is required or permitted by this Act to be prescribed; and
- (k) any administrative or procedural matter necessary or expedient for the implementation of this Act.

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(2) A regulation made under subsection (1) may prescribe a fine or a period of imprisonment for a maximum of five years for any contravention thereof or failure to comply therewith.

(3) The Minister may only make a regulation referred to in subsection (1)(g) after consultation with the recognised trade unions.

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(4) The Minister may make regulations that prescribe different penalties for different degrees of misconduct of officers in breach of the disciplinary code of conduct for officers.

(5) The Minister must, before making regulations under this Act, publish the draft regulations in the *Gazette* for public comments for a period of not less than 30 days.

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(6) The Minister must, prior to the promulgation of any regulations referred to in subsection (5), table the draft regulations in Parliament for comments for a period of not less than 30 days, while Parliament is in session.

## CHAPTER 10

### TRANSITIONAL PROVISIONS

20

#### Transfer of employees from organ of state to Authority

37. (1) If an employee is transferred from an organ of state to the Authority—

- (a) the transfer does not interrupt the employee's continuity of service;
- (b) the employee may not, upon transfer, suffer any reduction in remuneration, pension and retirement benefits or amendment of conditions of service;
- (c) the transfer does not affect any disciplinary proceedings pending against that employee and must be finalised as if the transfer had not occurred; and
- (d) the transfer must be effected in accordance with fair labour practices.

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(2) For purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), the Labour Relations Act and the Public Administration Management Act, 2014 (Act No. 11 of 2014), no change of employer must be regarded as having taken place by virtue of the transfer referred to in subsection (1).

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(3) If there is any dispute arising from the interpretation or application of this section, that dispute must be referred to the Labour Court for determination.

#### Assets, liabilities and funds

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38. (1) The transfer of assets, liabilities and funds to the Authority will be managed in accordance with the Public Finance Management Act.

(2) The Minister must, in conjunction with the executive authority of an organ of state concerned, and with the approval of the Minister of Finance, and in the spirit of co-operative government envisaged in Chapter 3 of the Constitution, enter into an agreement with such organ of state to ensure that the assets, rights, obligations and liabilities, including the unexpended balance of appropriations, authorisations, allocations and other funds employed, held or used in connection with the management and administration of border law enforcement, are transferred to the Authority.

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(3) The Registrar of Deeds must make the necessary entries or endorsements for the transfer of any property in terms of subsection (1), and no office fee or other charge is payable in respect of that entry or endorsement.

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- (i) go tshwarwa le tharabololo ya dingongorego le dilelo tse di amang tiro ya Bothati;
- (j) morero mongwe le mongwe o o tlhokwang kgotsa letleletsweng ke Molao ono gore o bewe; le
- (k) morero mongwe le mongwe wa taolo kgotsa tsamaiso o o tlhokegang kgotsa o o tshwanetseng mabapi le go tsengwa tirisong ga Molao ono. 5
- (2) Molawana o o dirilweng ka fa tlase ga karotlaleletso (1) o ka neelana ka tuediso kgotsa tswalelo kwa kgolegelong sebaka sa bogolo dingwaga tse tlhano mabapi le tlolo nngwe le nngwe ya ona kgotsa go palelwa ke go ikamanya le ona.
- (3) Tona o ka dira fela molawana o o kailweng mo karotlaleletsong (1)(g) morago ga go rerisana le mekgatho ya badiri. 10
- (4) Tona o ka dira melawana e e neelanang ka dikotlhaio tse di farologaneng mabapi le dikgato tse di farologaneng tsa maitsholomabe a baofisiri ba ba tlotseng khoutu ya maitsholo ya kgalemo ya batlhankedi.
- (5) Tona o tshwanetse, pele a dira melawana ka fa tlase ga Molao ono, phasalatsa thalo ya melawana mo Lokwalodikgannyeng la Puso mabapi le ditshwaelo tsa setšhaba mo nakong e e seng kwa tlase ga matsatsi a le 30. 15
- (6) Tona o tshwanetse, pele ga kgoeletso ya melawana mengwe le mengwe ee kailweng mo karotlaleletsong (5), go tlhagisa melwana e e thadilweng kwa Palamenteng mabapi le ditshwaelo sebaka sa paka e e seng kwa tlase ga malatsi a le 30, fa Palamente e kokoane. 20

## KGAOLO 10

### DIKABELO TSA KGABAGANYO

#### Tshutiso ya badiri go tswa kwa lephateng la puso go ya go Bothati

37. (1) Fa modiri a sutisitswe go tswa kwa lephateng la puso go ya go Bothati— 25
- (a) tshutiso ga e kgoreletse tswelolelo ya tirelo ya modiri;
- (b) modiri o ka se, ka tshutiso, itemogele mogolo, phenšene le dikunomolemo tsa tholotiro tse di fokoditsweng kgotsa tlhabololo ya melawana ya tirelo;
- (c) tshutiso ga e ame ditsamaiso tsa kgalemo tse di letilweng kgatlhanong le modiri yoo e bile e tshwanetse go konosetswa jaaka e kete tshutiso ga e a diragala; le 30
- (d) tshutiso e tshwanetse go diragatswa go tsamaelana le ditiragatso tsa bodiri tse di lolameng.
- (2) Mabapi le maitlhommo a *Income Tax Act*, 1962 (Molao 58 wa 1962), *Labour Relations Act* le *Public Administration Management Act*, 2014 (Molao 11 wa 2014), ga go phetolo ya mothapi e e tshwanetseng go tsewa gore e diragetse go latela tshutiso e e kailweng mo karotlaleletsong (1). 35
- (3) Fa go na le thulano e e tlhagelelang ka ntlha ya tlhaloso kgotsa tiriso ya karolo eno, thulano eo e tshwanetse go romelwa kwa Kgotlatshekelong ya Badiri gore e tlhomamiswe. 40

#### Dithoto, melato le matlole

38. (1) Tshutiso ya dithoto, melato le matlole go Bothati e tla laolwa go tsamaelana le *Public Finance Management Act*.
- (2) Tona o tshwanetse, ka tirisano mmogo le bothati jwa khuduthamaga jwa lephata la puso jo bo amegang, le ka thebolo ya Tona ya Matlotlo, le ka mowa wa puso ya tirisano mmogo e e bonetsweng pele mo Kgaolong 3 ya Molaotheo, go dumalana le lephata leo la puso go netefatsa gore dithoto, ditshwanelo, ditlamago le melato, go akaretse le tshalelo ya madi a a sa diriswang a kabo, ditumelelo, dikabo le matlole a mangwe a a dirisitsweng, a a tshotsweng kgotsa diriswang mabapi le taolo le tsamaiso ya kgatelelo ya molao wa melelwane, di sutisetswa go Bothati. 50
- (3) Mokwadisi wa Dikano o tshwanetse go dira dikwadiso tse di tlhokegang kgotsa dikano mabapi le tshutiso ya thoto nngwe le nngwe go ya ka karotlaleletso (1), e bile ga go tuediso epe ya ofisi kgotsa tuediso nngwe le nngwe e e duelwang mabapi le kwadiso eo kgotsa kano.

- (4) Any litigation resulting from any cause of action in relation to the assets, rights, obligations or liabilities transferred to the Authority, which arose—
- (a) before the transfer date, must be conducted by or against the relevant organ of state concerned; and
  - (b) on or after the transfer date, must be conducted by or against the Authority. 5

#### Ports, points and places of entry or exit

39. (1) The ports, points and places of entry or exit at the commencement of this Act are—
- (a) those designated by the Minister in terms of section 9A of the Immigration Act, 2002 (Act No. 13 of 2002); 10
  - (b) those appointed or prescribed by the Commissioner of the South African Revenue Service in terms of section 6 of the Customs and Excise Act, 1964 (Act No. 91 of 1964); and
  - (c) those determined by the Minister responsible for Agriculture in terms of the Agricultural Pests Act, 1983 (Act No. 36 of 1983), the Agricultural Product Standards Act, 1990 (Act No.119 of 1990), the Animal Diseases Act, 1984 (Act No. 35 of 1984) and the Animal Health Act, 2002 (Act No.7 of 2002). 15
- (2) Subject to section 30(3) and in order to ensure consistency and integration of the different functions, the Minister may withdraw or cancel a designation, determination, appointment or prescription of a port, point or place of entry or exit under— 20
- (a) subsection (1)(b), in consultation with the Commissioner of the South African Revenue Service; or
  - (b) subsection (1)(c), after consultation with the Minister of Agriculture, as the case may be.

#### Recognised trade unions 25

40. Any reference to trade unions recognised by the Authority in this Act must be read as a reference to the trade unions that are recognised by, or parties to, collective bargaining arrangements with other organs of state.

### CHAPTER 11

#### SHORT TITLE AND COMMENCEMENT 30

##### Short title and commencement

41. (1) This Act is called the Border Management Authority Act, 2020.
- (2) The President may, by proclamation, determine different dates in respect of—
- (a) the commencement of different provisions of this Act; or
  - (b) the application of this Act to different parts of the border law enforcement area or different ports of entry. 35

(4) Tatofatsano e e nnang teng ka ntlha ya tiragalo nngwe le nngwe e e mabapi le dithoto, ditshwanelo, ditlamego kgotsa melato e e sutiseditsweng go Bothati, e e nnileng teng—

- (a) pele ga letlha la tshutiso, e tshwanetse go dirwa ke kgotsa kgatlhanong le lephata la puso le le amegang; le 5
- (b) ka kgotsa morago ga letlha la tshutiso, e tshwanetse go dirwa ke kgotsa kgatlhanong le Bothati.

#### Magorogelo, dintlha le mafelo a go tsena le go tswa

39. (1) Magorogelo dintlha le mafelo a go tsena le go tswa ka nako ya tshimololo ya Molao ono ke— 10

- (a) ao a beilweng ke Tona go ya ka karolo 9A ya *Immigration Act*, 2002 (Molao 13 wa 2002);
- (b) ao a thapilweng kgotsa neetsweng ke Mokhomišenara wa Tirelo ya Lotseno ya Aforika Borwa go ya ka karolo 6 ya *Customs and Excise Act*, 1964 (Molao 91 wa 1964); le 15
- (c) ao a tlhomamisitsweng ke Tona e e rwalang maikarabelo a Temothuo go ya ka *Agricultural Pests Act*, 1983 (Molao 36 wa 1983), *Agricultural Product Standards Act*, 1990 (Molao 119 wa 1990), *Animal Diseases Act*, 1984 (Molao 35 wa 1984) le *Animal Health Act*, 2002 (Molao 7 wa 2002).

(2) Go tsamaelana le karolo 30(3) le go netefatsa tlhomamo le kgokanyo ya ditiro tse di farologaneng, Tona o ka gogela morago kgotsa phimola tshupo, tlhomamiso, thapo kgotsa neelo ya bogorogelo, ntlha kgotsa lefelo la go tsena kgotsa go tswa ka fa tlase ga— 20

- (a) karolotlaleletso (1)(b) kgotsa (c), morago ga go rerisana le Mokhomišenara wa Tirelo ya Lotseno ya Aforika Borwa; kgotsa 25
- (b) karolotlaleletso (1)(c), morago ga go rerisana le Tona ya Temothuo, jaaka mabaka a ntse.

#### Mekgatlho ya badiri e e amogetsweng

40. Kaelo nngwe le nngwe go mekgatlho ya badiri e e amogetsweng ke Bothati mo Molaong ono e tshwanetswe go tsewa jaaka kaelo go mekgatlho ya badiri e e amogetsweng ke, kgotsa e e amegang mo, dithulaganyetsong tsa ditherisanommogo le maphata a mangwe a puso. 30

### KGAOLO 11

#### SETLHOGO SE SE KHUTSHWANE LE TSHIMOLOLO

Setlhogo se se khutshwane le tshimololo 35

41. (1) Molao ono o bidiwa Molao wa Bothati jwa Taolo ya Melelwane, 2020.

(2) Moporesidente o ka, ka kgoeletso, tlhomamisa matlha a a farologaneng mabapi le—

- (a) tshimololo ya dikabelo tse di farologaneng tsa Molao ono; kgotsa
- (b) tiriso ya Molao ono mo dikarolong tse di farologaneng tsa mafelo a kgatelelo ya molao wa melelwane kgotsa magorogelo a a farologaneng. 40

**GOVERNMENT NOTICE**  
**DEPARTMENT OF HOME AFFAIRS**

No. \_\_\_\_\_

\_\_\_\_\_ 2022

**BORDER MANAGEMENT AUTHORITY ACT, 2020**

**BORDER TECHNICAL COMMITTEE REGULATIONS**

The Minister of Home Affairs intends, in terms of section 36, read with section 25(2), of the Border Management Authority Act, 2020 (Act No. 2 of 2020), and after consultation with the Commissioner, to make the Regulations in the Schedule hereto.

Any person who wishes to submit written comments on the draft Regulations are hereby invited to do so within 30 days from the date of publication hereof by—

- (a) posting such comments to the following address:

Private Bag X114  
PRETORIA  
0001;

- (b) delivering such comments by hand at the following address:

Hallmark Building  
230 Johannes Ramokhoase Street  
PRETORIA  
0001; or

- (c) e-mailing such comments to the following address:

[Moses.Malakate@dha.gov.za](mailto:Moses.Malakate@dha.gov.za)

Comments must be addressed to the Director-General: Home Affairs, and marked for the attention of Adv Moses Malakate. Comments received after the closing date shall not be considered.

Any enquiries should be directed to **Adv Moses Malakate** at **(012) 406 4273**.



**GOVERNMENT NOTICE**  
**DEPARTMENT OF HOME AFFAIRS**

No. \_\_\_\_\_

\_\_\_\_\_ 2022

**BORDER MANAGEMENT AUTHORITY ACT, 2020**

**BORDER TECHNICAL COMMITTEE REGULATIONS**

The Minister of Home Affairs intends, in terms of section 36, read with section 25(2), of the Border Management Authority Act, 2020 (Act No. 2 of 2020), and after consultation with the Commissioner, to make the Regulations in the Schedule hereto.

**SCHEDULE**

**Definitions**

1. In these Regulations, any word or expression to which a meaning has been assigned in the Act has the meaning so assigned and, unless the context otherwise indicates—

“**organ of state**” means organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996; and

“**the Act**” means the Border Management Authority Act, 2020 (Act No. 2 of 2020).

**Border Technical Committee**

2. The Border Technical Committee consist of the heads of the following organs of state:

- (a) Department of Home Affairs;
- (b) Department of Health;
- (c) Department of Agriculture, Land Reform and Rural Development;

- (d) Department of Forestry, Fisheries and the Environment;
- (e) Department of Transport;
- (f) Department of Trade, Industry and Competition;
- (g) South African Police Service;
- (h) South African Revenue Service;
- (i) South African National Defence Force; and
- (j) State Security Agency.

**Short title**

3. These Regulations are called the Border Technical Committee Regulations, 2022.

**Commencement**

4. These Regulations commence on the date of publication hereof in the *Gazette*.



## the doj & cd

Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA

**OFFICE OF THE CHIEF STATE LAW ADVISER**  
Private Bag X81, PRETORIA, 0001, Tel (012) 315 1130, Fax (012) 315 1743, Momentum Centre, East Tower 12<sup>th</sup> Floor, Pretorius Street.

Ref: 8/7/Immigration/2022/23/62A&B  
Enq: Adv. M Naidoo  
Tel: (012) 315 1106  
E-mail: [mnaidoo@justice.gov.za](mailto:mnaidoo@justice.gov.za)  
Website: <http://www.justice.gov.za>

Date: 19 July 2022

Mr L.T. Makhode  
Director-General  
Department of Home Affairs  
Private Bag X114  
PRETORIA  
0001

**For attention: Adv. AM Malakate (Acting Director: Legislative Drafting)**  
**E-mail: [moses.malakate@dha.gov.za](mailto:moses.malakate@dha.gov.za)**

Dear Mr L.T. Makhode

### **REQUEST FOR LEGAL OPINION: DRAFT REGULATIONS UNDER THE BORDER MANAGEMENT ACT, 2020: BORDER MANAGEMENT AUTHORITY REGULATIONS: YOUR UNNUMBERED ELECTRONIC MAIL OF 20 JUNE 2022**

#### **INTRODUCTION**

1.1 The Department of Home Affairs (hereinafter referred to as “the Department”), has submitted, for our scrutiny, the draft Border Management Authority Regulations, to be promulgated in terms of sections 25(2) and 36 of the Border Management Authority Act, 2020 (Act No. 2 of 2020), (hereinafter referred to as “the draft Regulations” and “the Act”, respectively).

1.2 We have scrutinised the draft Regulations for drafting form, style and legality, and have indicated suggested amendments and made certain comments on the electronic copy of the draft Regulations, a copy of which is attached hereto for your further attention.

## DISCUSSION

### General legal principles with regard to subordinate legislation

2.1 A public authority (creation of legislation) has no powers other than those which have been conferred upon it by legislation and "possess only such power as is lawfully authorised, and every administrative act must be justified by reference to some lawful authority."<sup>1</sup> Under our constitutional order, the exercise of all public power is subject to the provisions of the Constitution,<sup>2</sup> which is the supreme law of the Republic.<sup>3</sup> The Constitution regulates the exercise of public power in different ways, which includes the application of the Bill of Rights and other specific provisions of the Constitution, which regulate and control the exercise of particular powers. Another source of constraint on the exercise of public power is the rule of law, which is one of the foundational values of our constitutional democracy.<sup>4</sup> The role of the rule of law as a form of constitutional control on the exercise of public power was sketched out in the *Affordable Medicines Trust*-case<sup>5</sup>, where the following is stated in paragraphs [48] to [49]:

"Our constitutional democracy is founded on, among other values, the '(s)upremacy of the Constitution and the rule of law'. The very next provision of the Constitution declares that the 'Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid'. And to give effect to the supremacy of the Constitution, courts 'must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency'. This commitment to the supremacy of the Constitution and the rule of law means that the exercise of all public power is now subject to constitutional control.

The exercise of public power must therefore comply with the Constitution, which is the supreme law, and the doctrine of legality, which is part of that law. The doctrine of legality, which is an incident of the rule of law, is one of

<sup>1</sup> Lawrence Baxter, *Administrative Law*, 1984 at page 384 and Cora Hoexter, *The New Constitutional and Administrative Law, Volume II, Administrative Law*, 2002 at page 16.

<sup>2</sup> The Constitution of the Republic of South Africa, 1996.

<sup>3</sup> Section 1(c) of the Constitution reads as follows:

"The Republic of South Africa is one, sovereign, democratic state founded on the following values:

(a) ... .

(b) ... .

(c) Supremacy of the constitution and the rule of law."

<sup>4</sup> *Masetlha v President of the Republic of South Africa and Another* 2008 (1) SA 566 (CC) at paragraph [172].

<sup>5</sup> *Affordable Medicines Trust and Others v Minister of Health and Others* 2006 (3) SA 247 (CC). See also *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* 2000 (1) SA 1 (CC) at paragraph [148].

the constitutional controls through which the exercise of public power is regulated by the Constitution. It entails that both the Legislature and the Executive 'are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law'. In this sense the Constitution entrenches the principle of legality and provides the foundation for the control of public power." (Footnotes omitted.)

2.2 This fundamental principle has been affirmed in many judgments.<sup>6</sup> It is clear that public bodies have no power of their own and every incident of public power must be expressly provided for or necessarily inferred from a lawful empowering provision, for example, legislation. Furthermore, section 6(2)(a)(i) of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), gives effect to section 33(1) of the Constitution by allowing the review of administrative action where the administrator who took it "was not authorised to do so by the empowering provision". The logical concomitant of this is that an action performed without lawful authority is illegal.<sup>7</sup> It is against this background that we proceed to scrutinise the draft Regulations.

### Empowering provisions of the draft Regulations

3.1 It is crucial to first establish the empowering provisions of the Act in terms of which the Minister exercises his authority to make the draft Regulations. As expounded on above, the Minister may only prescribe those matters for which he has been granted authority in the Act. Any regulation that falls outside the ambit of such authority will be unauthorised and therefore unlawful.

3.2 The Department sites sections 25(2) and 36 of the Act as the authority for the draft Regulations, which sections read as follows:

#### **"Border Technical Committee.**

25.(1) The Border Technical Committee is hereby established.

(2) The Border Technical Committee consists of the Commissioner and the heads of **prescribed organs of state** or their duly delegated representatives: Provided that a duly delegated representative must be a member of the senior management services of the organ of state.

<sup>6</sup> *Minister of Health and Another No v New Clicks South Africa (Pty) Ltd and Others (Treatment Action Campaign and Another as Amici Curiae)* 2006 (2) SA 311 (CC); *Pharmaceutical Society of South Africa and Others v Tshabalala-Msimang and Another NNO; New Clicks South Africa (Pty) Ltd v Minister of Health and Another* 2005 (3) SA 238 (SCA).

<sup>7</sup> Cora Hoexter *et alii*, *The New Constitutional and Administrative Law, Volume Two Administrative Law*, 2002 at 127.

(3) The Border Technical Committee must advise the Inter-Ministerial Consultative Committee on—

- (a) the implementation of legislation, policies and protocols related to border management;
- (b) the application, outcomes and operational effectiveness of legislation, policies, protocols, structures, standards, procedures and strategy related to border management; and
- (c) any matter referred to it by the Inter-Ministerial Consultative Committee, the Commissioner or any member of the Border Technical Committee.

(4) The Border Technical Committee must report quarterly to the Inter-Ministerial Consultative Committee.

(5) The Commissioner is the chairperson of the Border Technical Committee and the Minister must designate the deputy chairperson of the Committee.

(6) The Border Technical Committee must determine its own rules and procedures that must not be in conflict with the Act or any other legislation.

(7) The Border Technical Committee must refer any dispute that arises at its meetings to the Inter-Ministerial Consultative Committee for resolution.” (Our emphasis); and

**“Regulations.**

**36.(1) The Minister may, after consultation with the Commissioner, make regulations regarding—**

- (a) the terms and conditions of appointment of officials;
- (b) the qualifications and competency standards for officials;
- (c) the structure and functioning of the border guard;
- (d) the commissioning of officers;
- (e) the grading and rank of officers;
- (f) the training and arming of officers;
- (g) a disciplinary code of conduct for officers;
- (h) the rules for the conduct of meetings and procedures of advisory committees;
- (i) the handling and resolution of complaints and grievances affecting the work of the Authority;
- (j) **any matter which is required or permitted by this Act to be prescribed; and**
- (k) any administrative or procedural matter necessary or expedient for the implementation of this Act.

(2) A regulation made under subsection (1) may prescribe a fine or a period of imprisonment for a maximum of five years for any contravention thereof or failure to comply therewith.

(3) The Minister may only make a regulation referred to in subsection (1)(g) after consultation with the recognised trade unions.

(4) The Minister may make regulations that prescribe different penalties for different degrees of misconduct of officers in breach of the disciplinary code of conduct for officers.

**(5) The Minister must, before making regulations under this Act, publish the draft regulations in the Gazette for public comments for a period of not less than 30 days.**

**(6) The Minister must, prior to the promulgation of any regulations referred to in subsection (5), table the draft regulations in Parliament for comments for a period of not less than 30 days, while Parliament is in session.”.** (Our emphasis.)

In terms of section 25(2) of the Act, the Border Technical Committee consists of the Commissioner and the heads of **prescribed** organs of state or their duly delegated representatives. In terms of section 36(1)(j) of the Act, the Minister has the power to make regulations on any matter which is required to be prescribed by the Act. It is crucial to note section 36(5) of the Act obliges the Minister to publish draft regulations for public comment for a period of not less than 30 days, before making such regulations. Equally crucial is section 36(6) of the Act that places a further obligation on the Minister to table draft regulations in Parliament for comments for a period of not less than 30 days, before such draft regulations may be published for public comment. It is therefore clear that before the draft Regulations may be passed, it ought to have been tabled in Parliament for comment, and then published in the *Gazette* for public comment. We assume, for the purpose of this opinion, that the draft Regulations were tabled in Parliament as required by section 36(6) of the Act.

3.3 In the event that the draft Regulations were not published for public comment as required by section 36(5) of the Act, the enabling provision of the draft Regulations may be redrafted along the follows lines:

“The Minister of Home Affairs intends, in terms of section 36, read with section 25(2), of the Border Management Authority Act, 2020 (Act No. 2 of 2020), and after consultation with the Commissioner, to make the Regulations in the Schedule hereto.

Any person who wishes to submit written comments on the draft Regulations are hereby invited to do so within 30 days from the date of publication hereof by—

- (a) posting such comments to the following address:  
Private Bag X114  
PRETORIA  
0001;
- (b) delivering such comments by hand at the following address:  
[insert details]; or
- (c) e-mailing such comments to the following address:  
[insert details].

Comments must be addressed to the Director-General: Home Affairs; and marked for the attention of [insert the necessary details].

Comments received after the closing date shall not be considered.”.

**Ad proposed regulation 1: Definitions**

4. Proposed regulation 1 of the draft Regulations provides for definitions. A definition clause is used to define words and terms that are used in the draft Regulations, but that are not defined in the Act and that do not convey their ordinary dictionary meaning.<sup>8</sup> We have therefore suggested that words and expressions that are defined in the Act, those that are not used in the contents of the draft Regulations and those conveying their ordinary dictionary meaning, be deleted from the draft Regulations.

**Ad proposed regulation 2: Border Technical Committee**

5.1 The proposed regulation 2 of the draft Regulations provides for the Border Technical Committee, and prescribes the organs of state, the heads of which must constitute the Border Technical Committee. We have suggested amendments to this provision in order to provide unambiguously for the matters therein and to bring the drafting thereof in line with the Act.

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<sup>8</sup> G.C Thornton, *Legislative Drafting*, 4<sup>th</sup> edition, at page 145.



5.2 The proposed subregulation (2) provides as follows:

“(2) The Minister may determine other relevant organs of state to be part of the Border Technical Committee, as and when necessary.”.

The Minister, in this proposed provision, gives himself the power to determine other relevant organs of state that may be part of the Border Technical Committee. There is no provision in the Act that authorises the Minister to grant himself any such powers in subordinate legislation. The granting of such powers in the draft Regulations constitute an unlawful expansion of the application of the Act. Such provisions are, in our opinion, unlawful. We have therefore suggested that this provision be deleted. It must be noted that the Minister may, at any time, amend the prescribed list of organs of state, as provided for in proposed regulation 2, to include other organs of state or remove organs of state, as the Minister may determine necessary.

**Ad proposed regulation 3: Short title**

6. The proposed regulation 3 of the draft Regulations provides for the short title of the draft Regulations, and in terms thereof, the draft Regulations shall be called the “Border Management Authority Regulations, 2022”. It is not necessary for every regulation made in terms of the Act to be provided with a short title. Should the Department wish to title the draft Regulations, we suggest that the draft Regulations be titled “the Border Technical Committee Regulations, 2022”, or a similar title. It is assumed that the Minister will make further regulations that deal substantively with border management authority issues, and such regulations may be more appropriately titled “Border Management Authority Regulations”. This is merely our suggestion, which the Department is free to reject.

**Ad proposed regulation 4: Commencement**


7. We have suggested that the commencement of the draft Regulations be provided in a separate regulation.

**CONCLUSION**

8.1 We have scrutinised the draft Regulations in order to ensure consistency with the Act and drafting form and style of subordinate legislation.

8.2 We emphasise that, in terms of section 6(3) of the Constitution, the final Regulations should be published in at least two official languages. Failure to comply with this requirement will, in our view, result in the Regulations being invalid (see section 2 of the Constitution).

Yours sincerely,



**FOR THE OFFICE OF THE CHIEF STATE LAW ADVISER  
M NAIDOO/Y VAN ASWEGEN//N LEKGORO**

**GOVERNMENT NOTICE**  
**DEPARTMENT OF HOME AFFAIRS**

No. R. \_\_\_\_\_ 2022

**Commented [NM1]:** If the draft Regulations are to be published for comment (refer to paragraph 3.3 of our accompanying letter), this "R" must be removed.

**BORDER MANAGEMENT AUTHORITY ACT, 2020**

**BORDER MANAGEMENT AUTHORITY REGULATIONS**

**Commented [NM2]:** Refer to comment 6 of our accompanying letter.

The Minister of Home Affairs has, in terms of sections ~~25(2) and~~ 36, read with section 25(2), of the Border Management Authority Act, 2020 (Act No. 2 of 2020), and after consultation with the Commissioner, made the Regulations in the Schedule hereto.

**Commented [NM3]:** Refer to section 36(1) of the Act.

**SCHEDULE**

**Definitions**

1. In these Regulations, any word or expression to which a meaning has been assigned in the Act ~~shall have~~has the meaning so assigned and, unless the context otherwise indicates—

~~"Border Technical Committee" means the Border Technical Committee established under section 25(1) of the Border Management Act, 2020 (Act No. 2 of 2020);~~

~~"Commissioner" means the person appointed in terms of section 7(1) of this Act;~~

~~"organ of state" means organ of state as has the meaning defined in~~ scribed to it in terms of section 239 of the Constitution of the Republic of South Africa, 1996; and

**Commented [NM4]:** Refer to comment 4 of our accompanying letter. These expressions are defined in section 1 of the Act.

~~"this Act" means the Border Management Authority Act, 2020 (Act No. 2 of 2020).~~

## Border Technical Committee

2. ~~The heads of the following organs of state or their duly authorised representatives referred to in section 25(2) shall comprise the~~ Border Technical Committee ~~— must consist of the heads of the following organs of state:~~

Commented [NM5]: This is provided for in section 25(2) of the Act

- (a) Department of Home Affairs;
- (b) Department of Health;
- (c) Department of Agriculture, Land Reform and Rural Development;
- (d) Department of Forestry, Fisheries and the Environment;
- (e) Department of Transport;
- (f) Department of Trade, Industry and Competition;
- (g) South African Police Service;
- (h) South African Revenue Service;
- (i) South African National Defence Force; and
- (j) State Security Agency.

~~(2) The Minister may determine other relevant organs of state to be part of the Border Technical Committee, as and when necessary.~~

Commented [NM6]: Refer to comment 5.2 of our accompanying letter.

## Short title ~~and commencement~~

3. ~~These Regulations shall be~~ called the ~~Border Technical Committee~~ Border Management Authority Regulations, 2022.

Commented [NM7]: Refer to comment 6 of our accompanying letter.

## Commencement

4. ~~These Regulations shall and~~ commence on the date of publication ~~hereof~~ in the Gazette.