

IMMIGRATION SERVICE ACT, 2016 (ACT 908)

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SCHEDULE



REPUBLIC OF GHANA

**THE NINE HUNDRED AND EIGHTH
ACT
OF THE PARLIAMENT OF THE REPUBLIC OF GHANA
ENTITLED
IMMIGRATION SERVICE ACT, 2016**

AN ACT to provide for the organisation and administration of the Immigration Service and for related matters.

DATE OF ASSENT: 8th March, 2016

PASSED by Parliament and assented to by President.

The Immigration Service

Section 1—Establishment of the Service

There is established by this Act the Immigration Service in accordance with article 190 of the Constitution.

Section 2—Members of the Service

The members of the Service are—

- (a) the persons holding the posts, specified in the Schedule; and
- (b) any other persons employed by the Service.

Section 3—Object of the Service

The object of the Service is to—

- (a) ensure the effective administration and management of migration in the country; and
- (b) contribute to national security.

Section 4—Functions of the Service

- (1) For the purpose of achieving the object, the Service shall—

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

(2) The Comptroller-General shall act in consultation with the Minister in the performance of the function specified in subsection (1) (e).

Section 5—Governing body of the Service

(1) The governing body of the Service is a Council consisting of—

- (a) a chairperson;
- (b) the Comptroller-General appointed under section 14;
- (c) one serving officer not below the rank of a Deputy Commissioner;
- (d) one representative of the Ministry of the Interior not below the rank of a Director;
- (e) one representative of the Ministry of Finance not below the rank of a Director;
- (f) one representative of the Ministry of Foreign Affairs and Regional Integration not below the rank of a Director;
- (g) one representative of the Attorney-General not below the rank of a Principal State Attorney;
- (h) one representative of the Retired Senior Immigration Officers Association not below the rank of Deputy Commissioner;
- (i) one representative of the Ghana Bar Association who is of at least ten years standing at the Bar;
- (j) one serving Junior Officer; and
- (k) three other persons nominated by the President one of whom is a woman.

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

Section 6—Functions of the Council

The functions of the Council are to-

- (a) advise the Minister on the formulation of policies for the management of the Service;

- (b) determine matters in respect of administration, welfare, training and discipline of officers and employees of the Service;
- (c) advise on matters of appointment and promotion of officers and other employees of the Service above the rank of Senior Inspector;
- (d) consider and approve a Scheme of Service prescribing the terms and conditions of service of the officers and other employees of the Service in line with the Government policy;
- (e) make recommendation to the Minister on bilateral and multilateral co-operation with foreign countries in matters relating to migration and related issues; and
- (f) ensure the proper and effective performance of the functions of the Service.

Section 7—Tenure of office of members of the Council

- (1) A member of the Council shall hold office for four years and is eligible for re-appointment but a member shall be appointed for another term only.
- (2) Subsection (1) does not apply to the Comptroller-General.
- (3) A member of the Council, other than the Comptroller-General, may at any time resign from office in writing addressed to the President through the Minister.
- (4) A member of the Council, other than the Comptroller-General, who is absent from three consecutive meetings of the Council without sufficient cause ceases to be a member of the Council.
- (5) The President may by letter addressed to a member revoke the appointment of that member.
- (6) Where a member of the Council is, for a sufficient reason, unable to act as a member, the Minister shall determine whether the inability would result in the declaration of a vacancy.
- (7) Where there is a vacancy—
 - (a) under subsection (3) or (4) or section 9 (2);
 - (b) as a result of a declaration under subsection (6); or
 - (c) by reason of the death of a member,

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

Section 8—Meetings of the Council

- (1) The members of the Council shall meet at least quarterly for the dispatch of business at the times and in the places determined by the chairperson.
- (2) The chairperson shall at the request in writing of not less than one-third of the membership of the Council convene an extraordinary meeting of the Council at the place and time determined by the chairperson.
- (3) The quorum at a meeting of the Council is seven members of the Council.

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

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

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

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

Section 9—Disclosure of interest

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

(a) disclose the nature of the interest and the disclosure shall form part of the record of the consideration of the matter;

(b) request to be recused from the deliberations of the Council in respect of the matter; and

(c) not participate in the deliberations of the Council in respect of the matter.

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

(a) fails to disclose that interest; or

(b) is present at or participates in the deliberations of the matter.

Section 10—Establishment of committees

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

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

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

Section 11—Secretary to the Council

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

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

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

(a) keep accurate records of proceedings and decisions of the Council; and

(b) perform any other function that the Council may direct.

Section 12—Allowances

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

Section 13—Ministerial oversight

The Minister may give policy directives to the Council and the Council shall comply.

Administrative Provisions

Section 14—The Comptroller-General

- (1) The President shall in accordance with article 195 of the Constitution appoint the Comptroller-General who is the head of the Service.
- (2) The Comptroller-General shall hold office on the terms and conditions specified in the letter of appointment.

Section 15—Functions of the Comptroller-General

- (1) The Comptroller-General is, subject to the direction of the Council on matters of policy, responsible for the day-to-day administration of the Service.
- (2) The Comptroller-General may delegate a function to an officer of the Service but shall not be relieved from the ultimate responsibility for the performance of the delegated function.

Section 16—Deputy Comptrollers-General

- (1) The President shall in accordance with article 195 of the Constitution appoint three Deputy Comptrollers-General.
- (2) A Deputy Comptroller-General shall hold office on the terms and conditions specified in the letter of appointment.

Section 17—Functions of a Deputy Comptroller-General

- (1) There shall be a Deputy Comptroller-General appointed in accordance with section 16 for each of the following
 - (a) Finance and Administration;
 - (b) Command Post and Operations;
 - (c) Legal, Research and Monitoring;

and any other function that the Comptroller-General or the Council may assign.

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

Section 18—Commissioners

- (1) The President shall, in accordance with article 195 of the Constitution, appoint Commissioners for the Service.
- (2) A Commissioner shall head a Department of the Service.
- (3) A Commissioner shall perform any function that the Comptroller-General may, in consultation with the Council, direct.

Financial Provisions

Section 19—Funds of the Service

The funds of the Service include-

- (a) moneys approved by Parliament;
- (b) donations and grants; and
- (c) moneys generated by the Service in the performance of its functions.

Section 20—Expenses of the Service

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

Section 21—Accounts and audit

- (1) The Service shall keep books of account and proper records in relation to them in the form determined by the Auditor-General.
- (2) The Council shall submit the accounts of the Service to the Auditor-General for audit within three months after the end of the financial year.
- (3) The Auditor-General shall, not later than three months after the receipt of the accounts, audit the accounts and forward a copy of the audit report to the Minister.
- (4) The financial year of the Service is the same as the financial year of the Government.

Section 22—Internal Auditor

- (1) The Service shall have an internal auditor who is responsible to the Comptroller-General in the performance of the functions of Office.
- (2) The internal auditor shall carry out an internal audit of the Service every three months and shall submit a report in respect of that period to the Comptroller-General for onward transmission to the Council.
- (3) The chairperson of the Council shall submit a copy of the report to the Minister.
- (4) This section shall be read as one with the Internal Audit Agency Act, 2003 (Act 658) and where there is a conflict the provisions of the Internal Audit Agency Act shall prevail.

Section 23—Annual report and other reports

- (1) The Council shall within one month after receipt of the audit report, submit to the Minister an annual report covering the activities and the operations of the Service for the year to which the report relates.
- (2) The annual report shall include the report of the Auditor-General.
- (3) The Minister shall, within one month after the receipt of the annual report, submit the report to Parliament with a statement the Minister considers necessary.
- (4) The Council shall submit to the Minister any other report which the Minister may request in writing.

General Provisions

Section 24—Power to use fire arms

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

Section 25—Obedience to lawful order

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

Section 26—Indemnity for an act done in good faith

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

Section 27—Unlawful possession of uniform and other property of the Service

(1) A person, other than an officer, who—

(a) has possession of an article which is part of the clothing, accoutrements or equipment supplied to an officer; and

(b) is not able to satisfactorily account for the possession of the part of the clothing, accoutrements or equipment,

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

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

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

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

(a) has in the possession of that person, or

(b) wears or uses,

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

Section 28—Causing disaffection

A person who—

(a) causes or engages in an act that is calculated to cause disaffection among officers; or

(b) induces or engages in an act calculated to induce an officer to withhold the service of the officer or commit an act of misconduct,

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

Section 29— Complaint by member of the public

(1) A member of the public may make a complaint to the Comptroller-General through the Officer-In-Charge on

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

(2) Where a complaint under subsection (1) is against the Officer-In-Charge, the complaint shall be made to the Comptroller-General through a superior officer.

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

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

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

(5) A person dissatisfied with the action taken by the Comptroller-General under subsection (4) may petition the Minister in writing within thirty days from the date of the decision.

(6) The Minister shall-

- (a) within fourteen days after receipt of the petition under subsection (5) and[sic] make a decision on the petition; and
- (b) notify the complainant of the decision.

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

Miscellaneous Provisions

Section 30—Regulations

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

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

- (a) the terms and conditions of service of officers and employees of the Service;
- (b) fees to be charged under this Act;

- (c) the forms to be used under this Act;
- (d) the organisational structure of the Service;
- (e) disciplinary matters including proceedings;
- (f) the issuance of visas and permits;
- (g) the creation of additional Departments, Sections and Units;
- (h) the use of firearms;
- (i) the effective management of borders; and
- (j) the disposal of property in the possession of the Service.

Section 31— Interpretation

In this Act, unless the context otherwise requires—

"border" includes airports, seaports, land borders and inland checkpoints;

"Command Post" means a Regional Command, Sector Command, Metropolitan, Municipal, District, Section or Unit of the Service where an officer receives orders and exercises command;

"Comptroller-General" means the person appointed under section 14;

"Council" means the Immigration Council established under section 5;

"fire arms" includes a gun, rifles[sic] machine gun, cap gun, flint-lock gun or pistol revolver, pistol, canon or any other fire arm and an air gun, air rifle or air pistol whether whole or in detached pieces";

"Junior Officer" means an officer below the rank of Assistant Superintendent of Immigration;

"Minister" means Minister responsible for the Interior;

"officer" includes senior and junior officers of the Service;

"salary" includes wages and allowances;

"Senior Officer" means an officer of a rank of Assistant Superintendent and above;

"Service" means the Immigration Service established under section 1; and

"Superior Officer" means an officer who is senior in rank to the officer being ordered.

Section 32—Repeal and saving

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

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

Section 33—Consequential amendment

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

Section 34—Transitional provisions

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

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

SCHEDULE

RANKS IN THE IMMIGRATION SERVICE

(Section 2)

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

Date of Gazette Notification: 8th March, 2016.