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## ACT NO. 5 OF 2018

**Lesotho Passports and Travel Documents Act, 2018**

An Act to provide for the repeal of the Lesotho Passports and Travel Documents Act 1998, the introduction of electronic passports system and for connected matters.

Enacted by the Parliament of Lesotho.

**Short title and commencement**

1. This Act may be cited as the Lesotho Passports and Travel Documents Act, 2018 and shall come into operation on the date of its publication in the Gazette.

**Interpretation**

2. In this Act, unless the context otherwise requires -

“applicant” means a person applying for a passport pursuant to this Act;

“bearer” means the holder of a passport or travel document in terms of this Act;

“biometrics” means a unique and measurable physical characteristic or personal trait used to determine the identity or verify the claimed identity of an enrolled individual that includes face recognition and fingerprints;

“biometric sample” means a unique raw data representing a unique biometric characteristic of an applicant as captured by a biometric system;

“Contactless integrated circuit” means an electronic microchip coupled to an aerial which allows data to be communicated between the chip and the reading device without the need for a direct electrical connection;

“Department” means the Department responsible for passport services;

“Director” means a person appointed as a director in the Public Service and is responsible for passport services;

“duly authorised officer” means an officer who is authorised to perform passport services functions for a specific day or period;

“enroll” means adding applicant’s personal information to the biometric system;

“electronic passport” means an electronic machine readable passport which contains a contactless integrated circuit chip which stores data biometric information that can be used to authenticate the identity of the bearer and a security object and complies with International Civil Aviation Organisation standards;

“International Civil Aviation Organisation” means a specialised agency of the United Nations which adopts standards and recommended practices concerning, amongst others, facilitation of border-crossing procedures and standardises machine-readable passports world-wide;

“Issuing Authority” means the Ministry of Home Affairs;

“Government” means the Government of Lesotho;

“Minister” means the Minister responsible for passport services;

“minor” for the purposes of this law, means a person below the age of sixteen;

“passport” means a passport issued in terms of this Act;

“refugee” has the same meaning as in the Refugees Act 1983;

“travel document” means a travel document issued for emergency purposes.

### **Passports to remain property of the Government**

3. Lesotho Passports and Travel Documents shall be issued in the name of the King and remain the property of the Government.

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### **Establishment of biometric system**

4. (1) There is established a biometric system, in the Department, which shall be maintained by the Director.
- (2) The biometric system is established to -
- (a) capture a biometric sample from an applicant for the machine readable passport;
  - (b) extract biometric data from the biometric sample;
  - (c) compare the specific biometric data value with that contained in one or more reference templates;
  - (d) decide how well specific biometric data value and the biometric sample match; and
  - (e) indicate whether or not an identification or verification of identity has been achieved.

### **Data protection and confidentiality**

5. The Director or any duly authorised officer shall not publish or communicate to any person any information recorded in the biometric system except for -
- (a) purposes of this Act;
  - (b) judicial proceedings;
  - (c) a request made in terms of any other law; or
  - (d) any other purpose that the Minister may prescribe.

### **Power to issue passports and travel documents**

6. (1) The power to issue passports and travel documents is vested in the Minister.

(2) The following passports may be issued to a person who makes an application pursuant to this Act -

- (a) regular e-passport;
- (b) official e-passport; or
- (c) diplomatic e-passport.

(3) The Minister may issue a Refugee passport to a refugee subject to this Act.

(4) The Minister may, where necessary, issue a travel document to persons who travel into or out of Lesotho for emergency purposes as the Minister may determine.

(5) The Minister may delegate the power to issue passports and travel documents to the Director.

(6) The passports referred to in subsection (2) shall be in a form prescribed by the Minister.

### **Persons to whom passports and travel documents may be issued**

7. (1) A passport may be issued for purposes of traveling out of or into Lesotho.

(2) A regular e-passport may be issued to any citizen of Lesotho.

(3) An official e-passport may be issued to a citizen of Lesotho who -

- (a) holds a senior position;
- (b) is in the service of the Government or is in the service of an institution responsible to the Government;
- (c) has been recommended by the Ministry responsible for the institution;

- (d) has been recommended by the Ministry of Public Service; and
  - (e) is travelling on official business.
- (4) A diplomatic e-passport -
- (a) shall be issued to their Majesties and their Royal Highnesses;
  - (b) may be issued to the following persons and their spouses:
    - (i) the Prime Minister;
    - (ii) President of the Senate;
    - (iii) Speaker of the National Assembly;
    - (iv) Chief Justice;
    - (v) President of the Court of Appeal;
    - (vi) Deputy Prime Minister;
    - (vii) Members of Cabinet;
    - (viii) Former Prime Minister;
    - (ix) Former Deputy Prime Minister;
    - (x) Members of the Council of State;
    - (xi) Judges (if Lesotho citizens);
    - (xii) Leader of Opposition in the National Assembly;
    - (xiii) Attorney General;
    - (xiv) Vice President of the Senate;

- (xv) Deputy Speaker of the National Assembly;
  - (xvi) Members of the Senate and National Assembly;
  - (xvii) foreign service officers not below the rank of *attaches*; and
  - (xviii) any other person who or office which may be designated by the Minister by notice published in the Gazette;
- (c) may be issued to persons who are listed in the schedule to this Act.

(5) A temporary passport may be issued to a citizen of Lesotho who is eligible to hold a regular, official or diplomatic e-passport where the citizen of Lesotho's passport is not available at the time.

(6) A refugee passport may be issued to a refugee who is resident in Lesotho under such terms and conditions as the Minister may prescribe.

(7) For the purposes of this section, "senior position" means the position designated as such by the Minister responsible for public service.

(8) The Minister may, by notice published in the Gazette, amend the schedule to this Act.

### **Validity of passports and travel documents**

8. (1) A regular, an official or a diplomatic e-passport is valid -
- (a) to travel to all countries in the world;
  - (b) for a period of ten years, in the case of a thirty-two or sixty-four page e-passport, for persons who are sixteen years and above; and
  - (c) for a period of five years, in the case of a thirty-two page e-passport, for persons who are below sixteen years,

from the date of issue of the passport.

(2) A temporary passport is valid to travel to all countries in the world for a period of six months from the date of issue of the passport.

(3) A refugee passport is valid to travel to the country of destination and countries of transit for a period of two years from the date of issue of the passport.

(4) A travel document is valid to travel into or out of Lesotho for one single journey.

### **Information in the passports and travel documents**

9. (1) A passport shall contain the following information:
- (a) type of passport;
  - (b) country code;
  - (c) passport number;
  - (d) full names and surname of bearer;
  - (e) a personal identification number where applicable;
  - (f) nationality of bearer except in the case of the refugees;
  - (g) date of birth of bearer;
  - (h) place of birth of bearer;
  - (i) gender of bearer;
  - (j) digital image of bearer;
  - (k) digital signature of bearer, fingerprint where applicable;
  - (l) the date of issue of passport;

- (m) issuing authority;
  - (n) expiry date of the passport;
  - (o) endorsement; and
  - (p) any other information that the Minister may prescribe.
- (2) Information in the chip -
- (a) biographical information;
  - (b) digital image; and
  - (c) any other information that the Minister may determine.

(3) For the purposes of this section, “endorsement” means a statement made by the Government showing the right of the bearer, requesting assistance and protection of the bearer, validity and conditions of passport’s use.

### **Application for passport**

10. (1) A person who wishes to travel out of or into Lesotho shall make an application for a passport to the Director.
- (2) The application made pursuant to subsection (1) shall be -
- (a) in the prescribed form;
  - (b) accompanied by the prescribed fee; and
  - (c) accompanied by the following documents -
    - (i) a copy of a national identity card where an applicant is sixteen years and above;
    - (ii) a birth certificate where an applicant is below the age of sixteen years;
    - (iii) written consent of the parent or guardian where

- 
- an applicant is a minor;
- (iv) one passport size photo for a person applying off line;
  - (v) a set of ten finger prints;
  - (vi) where a passport is lost or stolen, a sworn declaration of the circumstances surrounding the loss or theft, made before a police officer or a commissioner of oaths;
  - (vii) where a passport is defaced or damaged, a damaged or defaced passport and a form prescribed by the Minister;
  - (viii) a recommendation letter from the Principal Secretary of the Ministry responsible for public service, where the application is for an official passport;
  - (ix) a recommendation letter from the Principal Secretary of the Ministry responsible for foreign affairs where an application is for a diplomatic passport;
  - (x) a recommendation letter from the Commissioner for refugees where the application is for a refugee passport.

(3) Where a sworn declaration is made before a commissioner of oaths other than a police officer, the sworn declaration referred to in subsection (2)(c)(vi) shall be accompanied by a document indicating that the person reported the loss or theft to a police officer.

(4) The Minister may, where an applicant has complied with the requirements of this section, issue a passport to the applicant.

(5) For the purposes of this section, “applying offline” means making an application from Lesotho diplomatic mission in a foreign country or any

other office that the Minister may designate.

**Circumstances under which the Minister may refuse to issue passport or travel document.**

11. (1) The Minister may refuse to issue a passport or travel document to an applicant -

- (a) where there is a warrant for the arrest of the applicant issued by a court of law and there is a possibility that the applicant may flee;
- (b) where the applicant is on bail and there is a possibility that the applicant may flee;
- (c) where the applicant is required by an order made by a court of law to refrain from obtaining a passport;
- (d) where the applicant is subject to an order made by a court of law requiring the applicant to remain in Lesotho;
- (e) where the applicant ceases to be a citizen of Lesotho;
- (f) where the applicant has submitted fraudulent documents;
- (g) where the applicant already holds a valid passport and there is no valid reason for being issued with another passport of the same type;
- (h) on grounds of national security;
- (i) where the applicant does not meet the prescribed requirements;
- (j) where the applicant does not qualify to be issued with a passport; or
- (k) for any other reason that the Minister may objectively determine.

(2) The Director shall communicate to the applicant reasons for the Minister's refusal to issue a passport under subsection (1) within one month of the Minister's refusal.

### **Surrender of passport or travel document**

12. (1) A bearer shall -
- (a) within three months of ceasing to hold office or position for which a passport was issued;
  - (b) where the bearer of a travel document has returned to Lesotho;
  - (c) where the passport is fully endorsed but is still valid;
  - (d) where the passport is damaged or defaced;
  - (e) where the bearer ceases to be a citizen of Lesotho;
  - (f) where the bearer ceases to be a refugee resident in Lesotho;
  - (g) for any other reason which the Minister may objectively determine,

surrender the passport to the Director for cancellation or destruction.

(2) The passport surrendered pursuant to subsection (1) shall be cancelled and destroyed in a manner to be prescribed by the Minister.

### **Revocation of passport or travel document**

13. (1) The Minister may revoke a passport or travel document where -
- (a) the bearer of a passport or travel document permits another person to use his passport or travel document;
  - (b) the bearer ceases to be a citizen of Lesotho or a refugee;

- (c) a passport or travel document is fraudulent or has been fraudulently acquired;
- (d) he is satisfied that a bearer is in unlawful possession of the passport or travel document;
- (e) the bearer is no longer entitled to possess a Lesotho passport or travel document subject to this Act;
- (f) the bearer is in possession of two or more valid Lesotho passports of the same type or travel documents;
- (g) the bearer no longer holds the office or position he held when he was issued with the passport; or
- (h) the bearer has used the passport to commit an offence under this Act or any other law.

(2) The Minister shall, before revoking the passport in accordance with subsection (1) -

- (a) inform the bearer, in writing, of the intended revocation; and
- (b) request the bearer, in writing, to give reasons within the specified time why the passport or travel document cannot be revoked.

(3) The Minister may, upon the expiration of the specified period and after considering reasons by the bearer, order the bearer to submit the passport for revocation.

(4) The bearer shall, on receipt of the order referred to in subsection (3), surrender the passport or travel document to the Director or any representative of the Minister, within the period stated in the order.

(5) Where the bearer has not surrendered a passport or travel document within the time stipulated in the order referred to in subsection (3), the Minister may revoke the passport.

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### **Seizure of a passport or travel document**

14. (1) The Director or immigration officer may, where he reasonably believes that the bearer of a passport or travel document has contravened this Act, seize the passport or travel document when it is being presented to him.

(2) Where the passport is seized pursuant to subsection (1), the Director may investigate whether this Act has been contravened or not.

(3) The Director shall, where -

- (a) the investigation referred to in subsection (2) does not proceed within a period of one month from the date of seizure of the passport or travel document; or
- (b) there is no evidence that the bearer has committed an offence under this Act,

return the passport or travel document to the bearer.

### **Extra-territorial jurisdiction**

15. Proceedings for an offence under this Act may be brought against any person even if the act or omission alleged to constitute the offence did not occur in Lesotho.

### **Offences and penalties**

16. A person who -

- (a) for the purposes of this Act, makes or causes another person to make a false statement;
- (b) having come into possession of a passport or travel document which belongs to another person -
  - (i) presents it as his; or
  - (ii) fails to hand it over to the bearer, a chief, a local authority, police or the Director;

- (c) defaces, destroys, damages, forges, alters or allows another person to deface, destroy, damage, forge, alter, passport or travel document;
- (d) allows his passport or travel document or any other passport or travel document in his possession to be used for an unlawful purpose or any other purpose;
- (e) is found in possession of a blank, forged, altered, defaced, destroyed or damaged passport or travel document;
- (f) refuses or fails to surrender a passport or travel document pursuant to this Act;
- (g) issues or causes to be issued a passport or travel document to any person who is not entitled to it under this Act;
- (h) impersonates an officer in the Department or duly authorised officer;
- (i) aids or abets another person to acquire a passport or travel document unlawfully;
- (j) exploits or tampers with a biometric system or software;
- (k) is in possession of more than one passport of the same type;
- (l) obstructs a duly authorised officer in the execution of his duties;
- (m) unlawfully communicates to another person or state, any information in the biometric system;

commits an offence and is liable on conviction to a fine not exceeding Twenty-five thousand Maloti or to imprisonment for a period not exceeding eight years or both.

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**Minister to submit report to Parliament**

17. (1) The Minister shall submit a report on issues including issuance, surrender or revocation of passports or travel documents or any matter relating to passports or travel documents to Parliament within a period of six months after the end of financial year.

(2) For purposes of this section, “financial year” means a period beginning 1st April and ending 31st of March.

**Disclosure of information**

18. Nothing in this Act shall prevent or limit any other disclosure of the information which may otherwise be required or authorised by or under any law.

**Regulations**

19. (1) The Minister may make regulations for the purposes of giving effect to the Provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Regulations made under this Act may prescribe -

- (a) forms; and
- (b) fees.

**Repeals and savings**

20. (1) The Lesotho Passports and Travel Documents Act 1998 is repealed.

(2) Notwithstanding subsection (1), any passport issued under the repealed Act shall remain valid until it expires.

**SCHEDULE**

- (i) Government Secretary;
- (ii) Political Advisor to the Prime Minister;

- (iii) Political Advisor to the Deputy Prime Minister;
- (iv) Chairperson of the Public Service Commission;
- (v) Chairperson of the Independent Electoral Commission;
- (vi) Chairperson of the Teaching Service Commission;
- (vii) Chairperson of the Local Government Service Commission;
- (viii) Ombudsman;
- (ix) Commissioners for the Independent Electoral Commission;
- (x) Commissioners for the Teaching Service Commission;
- (xi) Commissioners for the Local Government Service Commission;
- (xii) Senior Private Secretary to His Majesty;
- (xiii) Senior Private Secretary to the Prime Minister;
- (xiv) Senior Private Secretary to the Deputy Prime Minister;
- (xv) Principal Secretaries;
- (xvi) Governor of the Central Bank of Lesotho;
- (xvii) Auditor General;
- (xviii) Accountant General; and
- (xix) any other person who or office which may be designated by the Minister by notice published in the Gazette.

#### **NOTE**

1. Act No. 15 of 1998
2. Act No. 18 of 1983

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GOVERNMENT NOTICE NO. 15 OF 2018

**The Parliament of Lesotho**

**Statement of Objects and Reasons of the  
Lesotho Passports and Travel Documents Act, 2018**

**(Circulated by the Authority of the Minister responsible for  
Home Affairs Tsukutlane Au)**

The object of this Bill is to repeal the Lesotho Passports and Travel Documents Act, 1998 and introduce a new system of the electronic passports (e-passports) and travel documents.

The Bill provides for the establishment of biometric system whereby the biometric data of the applicants is captured for both identification and verification purposes. This process helps to curb multiple applications by one person.

According to the Bill, the information in the biometric system shall not be unlawfully published or communicated to any person as it is considered to be confidential.

The Bill further provides for issuance of different types of passports, namely: regular, official and diplomatic e-passports, as well as temporary and refugee passports. Temporary passport will be issued to a citizen of Lesotho who is eligible to be issued with a regular passport but where the latter is not available at the time of issuance of a temporary passport and the applicant needs a passport as an emergency. The refugee passport will be issued to refugees resident in Lesotho as it will be easier to trace and manage their movement as opposed to the current situation where they are being issued with a hand-written travel document which is issued in terms of the 1951 United Nations Convention relating to the status of Refugees.

The Bill also provides for different sizes of passports as there are 32-pages and 64-pages passports. This comes as a result of the fact that there are Lesotho citizens who, for various reasons, are frequent travelers from and into Lesotho, hence the need for a passport with more pages.

The Bill makes it an exception that passports for children below sixteen years of age be valid for only five years as opposed to the validity of ten years. This

is because facial appearances of children change dramatically, therefore their information needs to be updated after five years.

As the Bill gives the Minister power to issue passports, which powers may be delegated to Director, it also gives the Minister to refuse to issue passports under the circumstances provided for in the Bill.

In terms of the Bill, passports and travel documents have to be surrendered to the Director in the Passport Services Department for various reasons in order for a passport to be cancelled or destructed in a manner to be prescribed by the Minister. The Bill also provides that the Minister may revoke a passport or travel document for the reasons mentioned in the Bill.

The Bill provides for extra-territorial jurisdiction of the Courts where the offences under this law are committed even outside Lesotho.

The Bill finally provides for offences and penalties for contravention of provisions of the Act, whereupon conviction the sentence is a fine not exceeding M200,000.00 or imprisonment for a period not exceeding 5 years.