

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



# Government Gazette

**REPUBLIC OF SOUTH AFRICA**

Vol. 554

Cape Town

26 August 2011

**No. 34560**

## THE PRESIDENCY

No. 689

26 August 2011

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

**No. 12 of 2011: Refugees Amendment Act, 2011.**



**AIDS HELPLINE: 0800-123-22 Prevention is the cure**

**GENERAL EXPLANATORY NOTE:**

- {                    }    Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President)  
(Assented to 21 August 2011)

**ACT**

To amend the Refugees Act, 1998, so as to amend, insert and delete certain definitions; to clarify how applications for refugee status rejected as manifestly unfounded and unfounded must be dealt with; to empower the Director-General to establish the Status Determination Committee; to revise the provisions relating to withdrawal of refugee status; and to provide for matters connected therewith.

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

**Amendment of section 1 of Act 130 of 1998, as amended by section 1 of Act 33 of 2008**

1. Section 1 of the Refugees Act, 1998 (hereinafter referred to as the principal Act), 5 is hereby amended—

- (a) by the substitution for the definition of “biometrics” of the following definition: 5
- “**‘biometrics’** means [the measurable physiological or behavioural characteristics that can be used in verifying the identity of individuals, and may include the use of] photographs, fingerprints 10 (including palm prints), hand measurements, signature verification [ , facial patterns and ] or retinal patterns, that may be used to verify the identity of individuals;”;
- (b) by the substitution for the definition of “dependant” of the following definition: 15
- “**‘dependant’**, in relation to an asylum seeker or a refugee, [includes] means any unmarried dependant child or any destitute, aged or infirm member of the immediate family of such asylum seeker or refugee who is dependent on him or her;”;
- (c) by the substitution for the definition of “manifestly unfounded application” of the following definition: 20
- “**‘manifestly unfounded application’** means an application for asylum made on grounds other than those contemplated in section 3;”;
- (d) by the deletion of the definition of “Refugee Status Determination Officer”; 25

- (e) by the insertion after the definition of “spouse” of the following definition:  
“**Status Determination Committee**’ means the **Status Determination Committee or any of its subcommittees contemplated in section 8(2)**”;  
and
- (f) by the substitution for the definition of “unfounded application” of the following definition: 5  
“**unfounded application**’, in relation to an application for asylum in terms of section 21, means an application[—  
(a) **made on the grounds other than those contemplated in section 3**; or 10  
(b)] made on the grounds contemplated in section 3, but which is without merit;”.

**Amendment of section 4 of Act 130 of 1998, as amended by section 5 of Act 33 of 2008**

2. Section 4 of the principal Act is hereby amended— 15  
(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:  
“A person does not qualify for refugee status for the purposes of this Act if the [**Refugee Status Determination Officer**] **Status Determination Committee** has reason to believe that he or she—”; and 20  
(b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:  
“(b) has committed [**a serious non-political crime outside the country of refuge prior to his or her admission to that country as a refugee**] a crime which is not of a political nature and which, if committed in the Republic, would be punishable by imprisonment without the option of a fine; or” 25

**Amendment of section 8 of Act 130 of 1998, as amended by section 10 of Act 33 of 2008**

3. Section 8 of the principal Act is hereby amended— 30  
(a) by the substitution for subsection (2) of the following subsection:  
“(2) Each Refugee Reception Office must consist of at least one Status Determination Committee established by the Director-General in the prescribed manner to consider and deal with applications for asylum in accordance with section 24: Provided that the Status Determination Committee may establish subcommittees consisting of no less than two members.”; and 35  
(b) by the deletion of subsection (3).

**Amendment of section 8C of Act 130 of 1998, as inserted by section 11 of Act 33 of 2008** 40

4. Section 8C of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:  
“(2) An appeal contemplated in subsection (1)(a) must be determined by a single member or such number of members of the Refugee Appeals Authority as the chairperson may deem necessary: Provided that at least one of such members is legally qualified.” 45

**Amendment of section 8E of Act 130 of 1998, as inserted by section 11 of Act 33 of 2008**

5. Section 8E of the principal Act is hereby amended by the substitution for paragraph (f) of the following paragraph: 50  
“(f) is a political office bearer holding a position in the national executive structure of any political party.”.

**Amendment of section 21B of Act 130 of 1998, as inserted by section 14 of Act 33 of 2008**

6. Section 21B of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Any asylum seeker or refugee whose child is born in the Republic must, within one month of the birth of his or her child, register such a child **[as a dependant]** in terms of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992), and submit the certificate issued in terms of that Act at any Refugee Reception Office, to be included as a dependant of such asylum seeker or refugee.”.

**Amendment of section 24 of Act 130 of 1998, as amended by section 17 of Act 33 of 2008**

7. Section 24 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“When considering an application for asylum, the **[Refugee Status Determination Officer]** Status Determination Committee—”;

(b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“The **[Refugee Status Determination Officer]** Status Determination Committee must at the conclusion of the hearing conducted in the prescribed manner—”;

(c) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

“If an application is rejected in terms of subsection (3)**[(b) or] (c)**, the **[Refugee Status Determination Officer]** Status Determination Committee must—”;

(d) by the substitution in subsection (4) for paragraph (a) of the following paragraph:

“(a) furnish the applicant with written reasons within five working days after the date of the rejection; **and**”;

(e) by the substitution for subsection (5) of the following subsection:

“(5) (a) An asylum seeker whose application for asylum has been rejected in terms of subsection (3)(b) and confirmed by the Director-General in terms of section 24A(3), must be dealt with in terms of the Immigration Act.

(b) An asylum seeker whose application for asylum has been rejected in terms of subsection (3)(c), must be dealt with in terms of the Immigration Act, unless he or she lodges an appeal in terms of section 24B(1).”.

**Amendment of section 24A of Act 130 of 1998, as inserted by section 19 of Act 33 of 2008**

8. Section 24A of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) The Director-General must review any decision taken by **[a Refugee Status Determination Officer]** the Status Determination Committee in terms of section 24(3)(b).”;

(b) by the substitution for subsection (4) of the following subsection:

“(4) The Director-General must inform the **[Refugee Status Determination Officer]** Status Determination Committee of his or her decision in the prescribed manner and within the prescribed time.”;

(c) by the addition of the following subsections:

“(5) An application reviewed in terms of this section is deemed to have been finalised upon receipt of the said decision by the applicant in accordance with subsection (6).

(6) The Status Determination Committee must, in the prescribed manner, inform the applicant of the outcome of the review and the consequences thereof.”

**Amendment of section 24B of Act 130 of 1998, as inserted by section 19 of Act 33 of 2008**

9. Section 24B of the principal Act is hereby amended— 10

(a) by the substitution for subsection (1) of the following subsection:

“(1) Any asylum seeker whose application has been rejected in terms of section 24(3)[(b) or] (c) may lodge an appeal with the Refugee Appeals Authority in the prescribed manner.”;

(b) by the substitution for subsection (2) of the following subsection: 15

“(2) The Refugee Appeals Authority may, after having determined an appeal, confirm, set aside or substitute any decision taken by a [Refugee Status Determination Officer] Status Determination Committee in terms of section 24(3)[(b) or] (c).”; and

(c) by the substitution for subsection (5) of the following subsection: 20

“(5) The Refugee Appeals Authority must refer the matter back to the [Refugee Status Determination Officer] Status Determination Committee to deal with such asylum seeker in terms of this Act if new information, which is material to the application, is presented during the appeal.”. 25

**Amendment of section 27 of Act 130 of 1998, as substituted by section 21 of Act 33 of 2008**

10. Section 27 of the principal Act is hereby amended by the substitution for paragraph (c) of the following paragraph:

“(c) permanent residence in terms of section 27(d) of the Immigration Act after five years of continuous residence in the Republic from the date on which he or she was granted asylum, if the [Director-General] Minister, after considering all the relevant factors and within a reasonable period of time, certifies that he or she would remain a refugee indefinitely;”.

**Amendment of section 36 of Act 130 of 1998, as amended by section 29 of Act 33 of 2008** 35

11. Section 36 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“Subject to the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), and after consideration of all the relevant facts, the [Director-General] Minister may withdraw a person’s refugee status if such person—”; and 40

(b) by the substitution in subsection (1) for paragraph (b) of the following paragraph: 45

“(b) has been recognised as a refugee due to an error, omission or oversight committed by the [Refugee Status Determination Officer in good faith] Status Determination Committee; or”.

**Amendment of section 38 of Act 130 of 1998, as amended by section 31 of Act 33 of 2008** 50

12. Section 38 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (d) of the following paragraph:

“(d) the manner in which and the period within which applications for asylum which are manifestly unfounded, fraudulent or abusive, must be dealt with;”.

**Substitution of words in Act 130 of 1998**

13. The principal Act is hereby amended by the substitution for the words “Refugee Status Determination Officer”, wherever they occur, of the words “Status Determination Committee”.

**Short title and commencement**

5

14. This Act is called the Refugees Amendment Act, 2011, and comes into operation immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008).