

# IMMIGRATION (AMENDMENT) BILL, 2015

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## IMMIGRATION (AMENDMENT) BILL, 2015

### A BILL FOR AN ACT TO AMEND THE IMMIGRATION ACT TO PROVIDE FOR THE PUBLICATION OF A POLICY ON THE EXERCISE OF MINISTERIAL DISCRETION; THE ESTABLISHMENT OF AN IMMIGRATION RESERVE CORPS; THE ESTABLISHMENT OF A DETENTION CENTRE AND FOR CONNECTED MATTERS

*Enacted by the Parliament of The Bahamas*

**1. Short title and commencement.**

- (1) This Act, which amends the Immigration Act<sup>1</sup>, may be cited as the Immigration (Amendment) Act, 2015.
- (2) This Act shall come into force on such date as the Minister may appoint by notice published in the *Gazette*.

**2. Amendment of section 2 of the principal Act.**

Section 2 of the principal Act is amended by the insertion in the appropriate alphabetical order of the following words and definitions —

“**Reserve**” means the Immigration Reserve established under section 12A”;

“**reservist**” means a person enlisted in the Reserve in accordance with section 12B.”

**3. Insertion of a new section 6A into the principal Act.**

The principal Act is amended by the insertion immediately after section 6 of a new section 6A as follows —

**“6A. Board may delegate to the Minister authority to grant permanent residence certificates.**

- (1) The Board may delegate to the Minister, in writing, the power and authority to perform on its behalf the function of the Board to grant and issue permanent residence certificates.

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<sup>1</sup>*Vol. IV, (Ch. 191-5)*

- (2) A delegation by the Board under subsection (1) —
  - (a) may be made subject to such terms, conditions, limitations and restrictions as the Board may determine; and
  - (b) is revocable at will and does not preclude the Board from performing the function or exercising the powers so delegated.”.

**4. Amendment of section 7 of the principal Act.**

Section 7 of the principal Act is amended in subsection (3) by the deletion of the words “subsection (4) of this section” and the substitution of the words “this Act”.

**5. Amendment of section 9 of the principal Act.**

Section 9 of the principal Act is amended by the deletion immediately after the words “any person” of the words “, other than a citizen of The Bahamas or a person who is a permanent resident,”.

**6. Insertion of a new Part IIIA into the principal Act.**

The principal Act is amended by the insertion immediately after section 12 of a new Part IIIA as follows —

**“PART IIIA – IMMIGRATION RESERVE**

**“12A. Establishment of Immigration Reserve.**

- (1) There is established for the purposes of this Act a corps of officers to be known as the Immigration Reserve.
- (2) The Reserve shall consist of Bahamian citizens resident in The Bahamas who —
  - (a) have attained the age of eighteen years;
  - (b) volunteer for service in the Reserve; and
  - (c) are enlisted as Reserve Immigration Officers.
- (3) The Reserve may be employed in The Bahamas for assisting Immigration Officers in the exercise or performance of any of their powers, discretions, functions or duties under this Act.

**12B. Enlistment of immigration reservists.**

- (1) Subject to subsections (2) and (3), the Director of Immigration may, with the prior approval of the Minister, enlist as many fit and proper persons as members of the Reserve as the Minister may from time to time authorise.
- (2) Reservists enlisted pursuant to subsection (1) shall be under the direction and control of an Immigration

Officer of at least the rank of Assistant Director of Immigration who is not himself a reservist.

- (3) A reservist may be enlisted in the rank of Superintendent of Immigration, Chief Immigration Officer, Senior Immigration Officer, or Reservist provided that persons enlisted at the rank of Chief Immigration Officer and above shall be appointed by the Governor-General acting in accordance with the advice of the Public Service Commission.

**12C. Promotion and dismissal.**

Appointees at the rank of Chief Immigration Officer and above may be promoted and dismissed by the Governor-General acting in accordance with the advice of the Public Service Commission and subordinate officers may be promoted and dismissed by the Director of Immigration with the prior approval of the Minister.

**12D. Powers and duties of reservists.**

- (1) A reservist shall attend such periods of training, and perform such functions and duties, as the Director of Immigration may from time to time direct.
- (2) A reservist while on duty —
- (a) shall have, exercise, and enjoy the same powers, authorities, advantages, and immunities as an Immigration Officer; and
- (b) is liable to the same duties, responsibilities and discipline as an Immigration Officer.

**12E. Mobilisation.**

- (1) The Director of Immigration may, with the prior approval of the Governor-General, mobilise the Reserve or any part of the Reserve.
- (2) Every member of the Reserve is, during a period of mobilisation, entitled to pay and allowances at the same rate as a gazetted Immigration Officer of equivalent rank.

**12F. Regulations.**

The Governor-General may make regulations for the Reserve and may, without prejudice to the generality of the foregoing, make particular regulations in relation to reservists providing for their —

- (a) ranks and remuneration;

- (b) terms of service and discipline;
- (c) training and administration;
- (d) duties and responsibilities;
- (e) uniform and equipment; and
- (f) standing orders.”.

**7. Amendment of section 13 of the principal Act.**

Section 13 of the principal Act is amended by the insertion immediately after subsection (2) of the following subsections —

- “(3) Notwithstanding subsection (1), the Board may grant a certificate of permanent residence to a person who has not attained the age of eighteen years and who is entitled to apply for registration as a citizen pursuant to the Constitution.
- (4) The making of an application by the parent or guardian of a minor who comes within the provisions of subsection (3) for a certificate of permanent residence shall not prejudice any application previously made for registration of the minor as a citizen of The Bahamas nor shall the grant of permanent residence divest the minor of any entitlement for registration as a citizen of The Bahamas made on behalf of the minor in the future.”.

**8. Amendment of section 14 of the principal Act.**

Section 14 of the principal Act is amended in subsection (1) by the —

- (a) deletion of paragraph (a) and the substitution of the following —
  - “(a) is married to, or is the surviving spouse of, a citizen of The Bahamas and, in case of a surviving spouse, the marriage was subsisting at the time of death of the other party;”;
- (b) deletion in paragraph (d) of the words “being a husband, has so” and the substitution of the word “has”; and
- (c) deletion of subsections (2) and (3).

**9. Insertion of a new section 14A into the principal Act.**

The principal Act is amended by the insertion immediately after section 14 of a new section 14A as follows —

**“14A. Application for certificate of permanent residence by divorced spouse of, or spouse living apart from, a Bahamian citizen.**

- (1) Notwithstanding section 14, a person may apply under section 13 for a permanent residence certificate where that person, at the date of the application —
  - (a) is married to but living apart from a citizen of The Bahamas under a decree nisi of a competent court or under a deed of separation, or has obtained a decree absolute of a competent court; and

- (b) during the subsistence of the marriage, lived continuously with the other party to the marriage for a period of not less than five years.
- (2) The Board may grant under section 13 a certificate of permanent residence to an applicant falling within this section.
- (3) A certificate of permanent residence granted by the Board under section 13 to an applicant falling within this section shall not contain any condition restricting the right of the holder to engage in gainful employment.”.

**10. Amendment of section 18 of the principal Act.**

Section 18 of the principal Act is amended in subsection (1) by the insertion immediately after paragraph (j) of a new paragraph (k) as follows —

- “(k) being a person to whom section 14A applies, is remarried to a person who is not a citizen of The Bahamas.”.

**11. Amendment of section 19 of the principal Act.**

Section 19 of the principal Act is amended in subsection (1) by the insertion immediately after paragraph (b) of the following new paragraph —

- “(c) in case of embarkation, unless in possession of a valid passport, visa, or other form of travel document entitling him to enter the country or place of destination.”.

**12. Amendment of section 29 of the principal Act.**

Section 29 of the principal Act is amended in subsection (3) by the insertion immediately after the word “Act” of the words “and on summary conviction shall be liable to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment.”.

**13. Amendment of section 30 of the principal Act.**

Section 30 of the principal Act is amended in subsection (3) by the insertion immediately after the word “occupation” of the words —

“provided that such permit shall —

- (a) where there are children of the marriage —
  - (i) remain valid to its expiration date notwithstanding the death of the Bahamian spouse, or a decree of divorce of a competent court, or a deed of separation, from the Bahamian spouse;
  - (ii) where applicable, be extended for such further period as may be required pending the processing of an application for any other status; and
- (b) where there are no children of the marriage, remain valid to its expiration date notwithstanding the death of the Bahamian spouse,

or a decree of divorce of a competent court, or a deed of separation, from the Bahamian spouse.”.

**14. Insertion of a new section 30A into the principal Act.**

The principal Act is amended by the insertion immediately after section 30 of new sections 30A and 30B as follows —

**“30A. Grant of resident belonger permit.**

- (1) The Director of Immigration may, on application made in the prescribed form, and in accordance with the regulations and the directions if any of the Board, grant a resident belonger permit in the prescribed form to a person —
  - (a) born in The Bahamas to non-Bahamian parents who is entitled to apply for registration as a citizen of The Bahamas under Article 7 of the Constitution and is residing permanently in The Bahamas at the time the application is made;
  - (b) born legitimately outside The Bahamas to a Bahamian mother who is married to a non-Bahamian father (Article 9 of the Constitution); and
  - (c) born outside The Bahamas, to a father who is a citizen of The Bahamas by virtue of Article 3(2) or Article 8 of the Constitution and who is married to a non-Bahamian.
- (2) A resident belonger permit —
  - (a) may be granted for such term as the Director of Immigration, in accordance with the regulations and the directions if any of the Board, may determine and specify in the permit; and
  - (b) entitles the holder to reside and engage in gainful occupation in The Bahamas for the duration of the term of the permit.
- (3) The grant of a resident belonger's permit does not affect the right of a grantee of a resident belonger's permit to apply for registration as a citizen of The Bahamas under Article 7 of the Constitution or preclude the Minister exercising his powers under The Bahamas Nationality Act.<sup>2</sup>

**15. Amendment of section 31 of the principal Act.**

Section 31 of the principal Act is amended in subsection (1) by the insertion immediately after the words “section 30” of the words “and section 30A”.

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<sup>2</sup>Vol. IV,(Ch. 190)

**16. Amendment of section 32 of the principal Act.**

Section 32 of the principal Act is amended by the insertion immediately after the words “section 30” of the words “and section 30A”.

**17. Insertion of new sections 32A and 32B into the principal Act.**

The principal Act is amended by the insertion immediately after section 32 of new sections 32A and 32B as follows —

**“32A. Sector policy on exercise of Minister's discretion.**

- (1) The Minister may —
  - (a) formulate and implement a sector policy detailing the manner of, and criteria for, the exercise of the Minister's discretion under this Part; and
  - (b) publish the sector policy referred to in paragraph (a) in the *Gazette*, in two newspapers of general circulation in The Bahamas for two consecutive days, and on such websites as the Minister may determine, within seven days of the signing of the policy by the Minister.
- (2) The Minister—
  - (a) may from time to time amend the sector policy; and
  - (b) shall publish each amended sector policy in accordance with the requirements of paragraph (b) of subsection (1).
- (3) The sector policy shall take effect on first publication, whether in the *Gazette* or the newspapers or on the websites.

**32B. Fraudulent marriages.**

- (1) No person shall wilfully enter into a marriage with the intention of —
  - (a) evading or avoiding any provision of this Act or the regulations; or
  - (b) obtaining for himself or another person a permit or other benefit under this Part.
- (2) A marriage entered into for a purpose referred to in subsection (1) is a fraudulent marriage and a person wilfully entering into such a marriage commits an offence and shall be liable on summary conviction —
  - (a) where such person is a citizen or permanent resident, to a fine not exceeding ten thousand dollars, or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment; or
  - (b) where such person is not a citizen or permanent resident, to deportation.”.



**18. Amendment of section 45 of the principal Act.**

Section 45 of the principal Act is amended by the insertion immediately after paragraph (f) of a new paragraph as follows —

- “(g) establishing a detention centre at one or more locations within The Bahamas for the housing of persons detained —
- (i) pursuant to Part VIII and against whom a deportation order has been made;
  - (ii) pursuant to any other law, or order of a court of competent jurisdiction, pending deportation from The Bahamas; or
  - (iii) in violation of any provision of this Act.”.

**19. Amendment of section 47 of the principal Act.**

Section 47 of the principal Act is amended in subsection (3) by —

- (a) in subsection (a), the deletion of the words “(other than a citizen or permanent resident)”;
- (b) in subsection (d), the deletion of the words “(other than a citizen or permanent resident of The Bahamas)”.

**20. Insertion of a new section 47A into the principal Act.**

The principal Act is amended by the insertion immediately after section 47 of a new section 47A as follows —

**“47A. Harbouring illegal persons.**

- (1) No person shall knowingly or recklessly or without reasonable cause —
  - (a) provide housing, board or shelter of any kind to an illegal person;
  - (b) conspire with another to provide housing, board or shelter of any kind to an illegal person.
- (2) A person who knowingly or recklessly does an act referred to in paragraphs (a) and (b) of subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars, or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment.
- (3) For the purposes of this section, “illegal person” means a person who has landed in The Bahamas in contravention of the provisions of this Act or the regulations.”.

## **OBJECTS AND REASONS**

The Bill seeks to amend the Immigration Act to —

- (A) Mandate the formulation, implementation and publication by the Minister of a sector policy, effective upon publication, in relation to

the exercise of Ministerial discretion with respect to residence and employment matters in The Bahamas under Part VI of the Act.

- (B) Establish an Immigration Reserve and provide for the enlistment, promotion, dismissal, powers and duties of reservists.
- (C) Empower the Minister to make regulations establishing a detention centre for persons pending deportation at one or more locations within The Bahamas.
- (D) To provide for the grants respectively of a resident belonger permit, and of a certificate of permanent residence to a foreign spouse who is widowed, divorced or separated after applying for a certificate.

Clause 1 of the Bill empowers the Minister to appoint a date for the enactment to come into force.

Clause 2 amends section 2 of the principal Act to insert and define new key words and phrases.

Clause 3 inserts a new section 6A into the principal Act to empower the Board to delegate to the Minister the authority to grant permanent residence certificates.

Clause 4 amends section 7 of the principal Act to make a minor correction.

Clause 5 amends section 9 of the principal Act as a consequential amendment pursuant to the amendment to section 47.

Clause 6 inserts a new Part IIIA into the principal Act to establish and provide for an Immigration Reserve.

Clause 7 amends section 13 of the principal Act to provide for the grant of a permanent residence certificate to a minor entitled under the Constitution to be registered as a citizen.

Clause 8 amends section 14 of the principal Act to provide for the grant of a certificate of permanent residence notwithstanding a legal separation, divorce or death.

Clause 9 inserts a new section 14A into the principal Act to allow persons living apart or divorced from a Bahamian spouse to apply for a permanent residence certificate.

Clause 10 amends section 18 of the principal Act to extend the power of the Board to revoke a certificate of permanent residency granted under section 14A where a surviving spouse or former spouse marries a non-Bahamian.

Clause 11 amends section 19 of the principal Act to clarify that persons embarking in The Bahamas for a foreign destination must have valid travel documents.

Clause 12 amends section 29 of the principal Act to specify the penalty for employers who employ persons illegally.

Clause 13 amends section 30 of the principal Act to provide for the continued validity and renewal of a resident spouse permit upon a legal separation, divorce or death pending application for another status in cases where there are children of the marriage and its continued validity to its expiration date where there are no children of the marriage.

Clause 14 inserts a new section 30A into the principal Act to provide for the grant of a resident belonger permit.

Clauses 15 and 16 amend sections 31 and 32 respectively of the principal Act to extend their provisions to the grant of a permit under the new section 30A.

Clause 17 inserts new sections 32A and 32B into the principal Act to provide, respectively, for the publication by the Minister of a sector policy for the exercise of his discretion and to make it an offence to enter into a fraudulent marriage.

Clause 18 amends section 45 of the principal Act to empower the Minister to establish by regulations a detention centre for detainees at one or more locations within The Bahamas.

Clause 19 amends section 47 of the principal Act to include citizens and permanent residents in the definition of 'illegal passenger'.

Clause 20 inserts a new section 47A into the principal Act to make it an offence to harbour illegal persons.