

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 11 May 2026)

ACT

To amend the Immigration Act, 2002, so as to revise provisions relating to arrest and detention of illegal foreigners for purposes of deportation and to align these provisions with constitutional principles; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 34 of Act 13 of 2002, as amended by section 35 of Act 19 of 2004 and section 47 of Act 19 of 2004

1. Section 34 of the Immigration Act, 2002 (Act No. 13 of 2002), (hereinafter referred to as the “principal Act”), is hereby amended— 5

- (a) by the deletion in subsection (1) of paragraphs (b) and (d);
- (b) by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) shall be informed upon arrest and detention or immediately thereafter of the— 10

- (i) rights set out in **[the preceding two paragraphs]** paragraph (a) and subsection (1A)(g);
- (ii) reason for the detention;
- (iii) right to choose, and to consult with, a legal practitioner; and 15
- (iv) right to have a legal practitioner assigned to him or her by the State and at State expense, if substantial injustice would otherwise result,

[when possible, practicable and available] in a language that he or she understands, when possible, practicable and available; and”; and 20

(c) by the insertion after subsection (1) of the following subsection:

“(1A) An immigration officer may arrest and detain an illegal foreigner for purposes of deportation, provided that—

- (a)(i) the foreigner has been interviewed as contemplated in section 41(1); and 25
- (ii) the immigration officer has considered whether the interests of justice, after taking into account the relevant factors that must be prescribed by the Minister, permit the release of such foreigner subject to reasonable conditions, and must, if he or she

- so concludes that the interests of justice permit the release of such foreigner, impose reasonable conditions and record the release and reasons therefor on a prescribed form;
- (b) a foreigner so detained must be brought before a court in person, within 48 hours from the time of his or her arrest or not later than the first court day after the expiry of the 48 hours, if the 48 hours expired outside ordinary court days; 5
 - (c) the court before whom the detained foreigner is brought must consider whether the interests of justice permit the release of such person subject to reasonable conditions and must, if it so concludes, order the person to be released subject to reasonable conditions; 10
 - (d) if the court concludes that the interests of justice do not permit the release of such person, the court may authorise the further detention of the foreigner concerned for a period not exceeding 30 calendar days; 15
 - (e) if the court has ordered the further detention of such foreigner, he or she must be brought before the court prior to the expiry of the period of detention authorised by the court and the court must consider whether the interests of justice permit the release of such foreigner subject to reasonable conditions and must, if it so concludes, order the foreigner to be released subject to reasonable conditions as imposed by the court; 20
 - (f) if the court considering further detention of such a foreigner concludes that the interests of justice do not permit the release of such foreigner, the court may authorise the further detention of the foreigner for an adequate period not exceeding a further 90 calendar days; and 25
 - (g) a foreigner concerned brought before a court in terms of paragraph (b) or (e) must be given an opportunity to make oral or written representations to the court, and such representations must be considered together with the representations by the immigration officer.”. 30

Substitution of word in Act 13 of 2002

2. The principal Act is hereby amended by the substitution for the word “Court”, wherever it occurs, of the word “court”. 35

Short title and commencement

3. This Act is called the Immigration Amendment Act, 2025, and comes into operation on a date determined by the President by proclamation in the *Gazette*.