

PEOPLE TRAFFICKING AND PEOPLE SMUGGLING (PROHIBITION) ACT, 2009

Date of commencement: 1st March, 2010 (whole Act)

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An Act to provide for the offence of people trafficking and people smuggling, the protection and support of trafficked or smuggled persons, the establishment of the Task Force for the Prevention of People Trafficking and People Smuggling, and for matters connected therewith.

PART I
PRELIMINARY

Short title and commencement.

1. This Act may be cited as the People Trafficking and People Smuggling (Prohibition) Act, 2009, and shall come into force on a date to be appointed by the Minister by notice in the

Gazette, and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

Interpretation.

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

“amount of loss” includes—

- (a) costs of medical, physical, psychological or psychiatric treatment required by the trafficked person;
- (b) costs of physical and occupational therapy or rehabilitation required by the victim;
- (c) costs of necessary transportation, temporary childcare, temporary housing or the movement of the trafficked person to a place of temporary safe residence; and
- (d) lost income and due wages according to law regulating wages;

“child” means a person who is under the age of eighteen years;

“coercion” means—

- (a) threat of serious harm to or physical restraint against a person;
- (b) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against the person or any other person; or
- (c) the abuse or threatened abuse of the legal process;

“conveyance” means any vehicle, vessel, ship, aircraft, or any other mode of transport whether by air, sea or land;

“customs officer” has the same meaning assigned to it by the Customs and Excise Act No. 21 of 1971;

“enforcement officer” means any officer specified in section 26;

“exploitation” includes all forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of human organs;

“financial or other material benefit” includes any type of financial or non-financial inducement, payment, bribe, reward, advantage or service;

“fraudulent travel or identity document” means a travel or identity document that—

- (a) has been made, or altered in a material way, by a person other than a person or agency lawfully authorised to make or issue the travel or identity document on behalf of a country;
- (b) has been issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or
- (c) is being improperly used by a person other than the rightful holder;

“illegal entry” means crossing the border of Swaziland, or any other country, without complying with the requirements for lawful entry;

“immigration officer” has the same meaning assigned to it by the Immigration Act No. 5 of 1982;

“maintains” means in relation to labour services, to secure continued performance regardless of initial agreement on the part of the trafficked person to perform such type of service;

“medical officer” means a registered medical practitioner in the service of the Government;

“Minister” means the Minister charged with the responsibility for internal security;

“people smuggling” means arranging or assisting a person's illegal entry into any country of which the person is not a citizen or permanent resident, including Swaziland, either knowing or being reckless as to the fact that the person's entry is illegal, in order to obtain a financial or other material benefit;

“people trafficking” means the recruiting, transporting, transferring, harbouring, providing or receiving of a person for the purpose of exploitation;

“permanent resident” has the same meaning assigned to it by the Immigration Act No. 5 of 1982;

“premises” means a house, building, factory, land, tenement of any tenure, whether open or enclosed, whether built or not, whether private or public and whether maintained or not under any authority and includes any container;

“prescribed” means prescribed by the Minister by regulations;

“protection officer” means any officer appointed under section 42;

“protection order” means an order made by a magistrate for the care and protection of a trafficked or smuggled person;

“receiving country” means any country into which—

- (a) a trafficked person is brought as part of an act of trafficking in persons; or
- (b) a smuggled person's entry is arranged;

“slavery” includes a situation where a person is compelled to work through force or coercion or inducement or fraud without pay or pay below subsistence;

“smuggled person” means any person who is a victim or object of an act of people smuggling, regardless of whether that person participated in the people smuggling;

“social worker” means any social worker in the Ministry or Department responsible for welfare services and includes any assistant social worker;

“Task Force” means the Task Force for the Prevention of People Trafficking and People Smuggling established under section 6;

“trafficked person” means any person who is the victim or object of an act of people trafficking.

Scope of application.

3. This Act applies, regardless of whether the conduct constituting the offence took place inside or outside Swaziland, in the following circumstances—
- (a) if Swaziland is the receiving country or the exploitation occurs in Swaziland; or
 - (b) if the receiving country is a foreign country but the people trafficking or people smuggling starts in Swaziland or transits Swaziland.

Extension of Act to extra territorial offences.

4. Any offence under this Act committed—
- (a) on the high seas on board a ship or on an aircraft registered in Swaziland;
 - (b) by a citizen or permanent resident of Swaziland on the high seas on board any ship or on any aircraft; or
 - (c) by a citizen or a permanent resident of Swaziland in any place outside and beyond the limits of Swaziland,

may be dealt with as if it had been committed at any place within Swaziland.

Prevailing law.

5. (1) The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other written law relating to people trafficking or people smuggling.
- (2) In the event of any conflict or inconsistency between the provisions of this Act and those of any other written laws, the provisions of this Act shall prevail and the conflicting or inconsistent provisions of such other written laws shall, to the extent of the conflict or inconsistency, be deemed to be superseded.

PART II

THE TASK FORCE FOR THE PREVENTION OF PEOPLE TRAFFICKING
AND PEOPLE SMUGGLING

The Task Force for the Prevention of People Trafficking and People Smuggling.

6. (1) The Minister shall, for purposes of this Act, establish an inter-agency task force to be known as the Task Force for the Prevention of People Trafficking and People Smuggling (the “Task Force”).
- (2) The Task Force shall consist of the following members—
- (a) the Chairman, who shall be the Principal Secretary in the Ministry responsible for internal security or his representative;
 - (b) the Attorney-General or his representative;
 - (c) the Director of Public Prosecutions or his representative;

- (d) the Principal Secretary in the Ministry responsible for Foreign Affairs or his representative;
- (e) the Commissioner of Police or his representative;
- (f) the Principal Secretary in the Ministry responsible for social welfare or his representative;
- (g) the Chief Immigration Officer or his representative;
- (h) the Commissioner of Customs or his representative;
- (i) the Principal Secretary in the Ministry responsible for information, or his representative;
- (j) not more than five persons from non-governmental organisation or other relevant organisations having appropriate experience, knowledge and expertise in problems and on issues relating to people trafficking or people smuggling including the protection and support of trafficked or smuggled persons, to be appointed by the Minister.

(3) Each member of the Task Force appointed under subsection (2) shall, unless he sooner resigns, hold office for a period not exceeding three years and is eligible for re-appointment.

(4) Any member of the Task Force appointed under subsection (2) may, at any time resign his office, by giving notice in writing to the Minister.

(5) The members of the Task Force specified under subsection (2) may be paid such allowances as the Minister may, in consultation with the Minister for Finance, determine.

Functions and powers of the Task Force.

7. (1) The Task Force shall perform the functions of coordinating the implementation of this Act, formulating policies and programmes to prevent and suppress people trafficking or people smuggling including programmes in rendering assistance to trafficked or smuggled persons, formulating protective programmes for trafficked or smuggled persons and initiating education programmes to increase public awareness of the causes and consequences of the act of people trafficking or people smuggling.

(2) Without prejudice to the generality of subsection (1), it shall be the responsibility of the Task Force to—

- (a) formulate and oversee the implementation of a national action plan on the prevention and suppression of people trafficking or people smuggling including the support and protection of trafficked or smuggled persons;
- (b) make recommendations to the Minister on all aspects of the prevention and suppression of people trafficking or people smuggling;
- (c) monitor the immigration and emigration patterns in Swaziland for evidence of trafficking or smuggling and to secure the prompt response of the relevant government agencies or bodies, and non-governmental organizations to problems on people trafficking or people smuggling brought to their attention;
- (d) coordinate the formulation of policies on issues of people trafficking or people smuggling and monitor their implementation by relevant government agencies or bodies and non-governmental organisations;

- (e) formulate and coordinate measures to inform and educate the public, including potential trafficked or smuggled persons, on the causes and consequences of people trafficking or people smuggling;
- (f) cooperate and coordinate with international bodies and other similar regional bodies or committees in relation to the problems and issues of people trafficking or people smuggling including support and protection of trafficked or smuggled persons;
- (g) advise the government on the issues of people trafficking or people smuggling including developments at the international level against the act of people trafficking or people smuggling;
- (h) collect and collate data and information, and authorise research, in relation to the prevention and suppression of people trafficking or people smuggling;
- (i) perform any other functions as directed by the Minister for the proper implementation of this Act.

(3) The Task Force shall have all such powers as may be necessary for, or in connection with, or incidental to, the performance of its functions under this Act.

Power of Minister to issue directives.

8. The Minister may, from time to time, give the Task Force directives not inconsistent with this Act as to the performance of the functions and powers of the Task Force and the Task Force shall give effect to such directions.

Meetings of the Task Force.

9. (1) Subject to subsection (2) the Task Force shall meet at least once every three months for the performance of its functions at such time and place as the Chairman may determine.

(2) The Chairman shall, within seven (7) days of receipt of a written request to hold a meeting signed by any three members of the Task Force, convene a meeting of the Task Force.

(3) Seven members shall form the quorum of a meeting of the Task Force.

(4) Subject to subsection (5), the Chairman shall preside over all the meetings of the Task Force.

(5) If the Chairman is unable for any reason to preside over any meeting of the Task Force, the meeting shall be presided over by a member elected from amongst the members present.

(6) The Task Force may invite any person to attend any meeting or deliberation of the Task Force for the purpose of advising it on any matter under discussion, but that person shall not be entitled to vote at the meeting.

(7) At any meeting of the Task Force the Chairman shall have a deliberative vote and shall, in the event of an equality of votes, have a casting vote.

(8) Any person invited under subsection (6) may be paid such allowance as the Minister may, in consultation with the Minister for Finance, determine.

(9) Subject to the provisions of this Act, the Task Force may make rules for regulating its meetings and proceedings.

Establishment of committees.

10. (1) The Task Force may establish such committees as it deems necessary or expedient to assist it in the performance of its functions and the exercise of its powers under this Act.

(2) A committee established under subsection (1)—

(a) shall be chaired by any member of the Task Force specified under section 6(2)(b) to (i);

(b) shall conform to and act in accordance with any direction given to it by the Task Force; and

(c) may determine its own procedure including the appointment of Chairman.

(3) Members of the committees established under subsection (1) may be appointed from amongst members of the Task Force or such other persons as the Task Force thinks fit.

(4) Except for members of a committee appointed from amongst members of the Task Force, any other person appointed as a member of a committee may be paid such allowance as the Minister may, in consultation with the Minister for Finance, determine.

(5) A member of a committee shall hold office for such term as may be specified in his letter of appointment and is eligible for re-appointment.

(6) The Task Force may revoke the appointment of any member of a committee without assigning any reason there for.

(7) A member of a committee may, at any time, resign by giving notice in writing to the chairman of the committee.

(8) The Task Force may, at any time, discontinue or alter the constitution of a committee.

(9) A committee shall hold its meetings at such frequency as the Chairman of the Task Force may determine.

Secretary of the Task Force and other officers.

11. The Minister shall designate a public officer to be the Secretary of the Task Force and such other public officers as may be necessary to assist the Task Force.

PART III

PEOPLE TRAFFICKING OFFENCES

Offence of people trafficking.

12. (1) A person who recruits, transports, transfers, harbours, receive, employs, maintains or holds any person or persons for the purpose of exploitation, by one or more of the following means—

(a) threat;

(b) use of force or other forms of coercion;

(c) abduction;

- (d) fraud;
- (e) deception;
- (f) abuse of power, or law or legal process;
- (g) abuse of the position of vulnerability of a person to an act of trafficking in persons; or
- (h) the giving or receiving of payments or benefits to obtain the consent of a person having control over the trafficked person,

commits an offence and is, on conviction liable to a term of imprisonment not exceeding twenty (20) years.

(2) A person convicted under this section shall in addition to any penalty under subsection (1) pay the trafficked person (victim) any amount of the loss as may be determined by court.

Offence of trafficking in children.

13. A person, “recruits, transport, transfers, harbours, obtains, receives, employs, maintains, or holds any person or persons, knowing or in reckless disregard that the person is a child”, for the purpose of exploitation, commits an offence and is, on conviction, liable to a term of imprisonment not exceeding twenty-five (25) years.

Offence of profiting from exploitation of a trafficked person.

14. A person who profits from the exploitation of a trafficked person commits an offence and is, on conviction, liable to a term of imprisonment not exceeding fifteen (15) years and to a fine not exceeding eight hundred thousand emalangeni.

Offence to facilitate stay of a trafficked person.

15. (1) A person who intentionally facilitates, by any unlawful means, the continued presence of a trafficked person in a receiving country in order to obtain a financial or other material benefit commits an offence and is liable on conviction to a term of imprisonment not exceeding fifteen years or to a fine of fifty thousand emalangeni or to both.

(2) For the purposes of subsection (1), “unlawful means” includes producing, providing or procuring false travel or identity documents in respect of the trafficked person.

Consent of trafficked person irrelevant.

16. In a prosecution for an offence under this Part, it shall not be a defence that the trafficked person consented to the act of people trafficking or to the exploitation.

Past sexual behaviour irrelevant.

17. A trafficked person's past sexual behaviour is irrelevant and inadmissible for the purpose of proving that the trafficked person was engaged in other sexual behaviour or to prove the trafficked person's sexual predisposition.

Fraudulent travel or identity documents.

18. (1) A person who makes, obtains, gives, sells or possesses a fraudulent travel or identity document for the purpose of facilitating an act of people trafficking commits an offence and is, on conviction, liable to a term of imprisonment not exceeding fifteen (15) years or to a fine of fifty thousand emalangeni or to both.

(2) A person who recruits, transports, transfers, harbours, obtains, receives, maintains or hold any person or persons for the purpose of exploitation by destroying, concealing, removing, confiscating or possessing any actual or purported travel or passport or identity document of another commits an offence and shall on conviction be liable to imprisonment for a term not exceeding eighteen (18) years.

PART IV

PEOPLE SMUGGLING OFFENCES

Offence of people smuggling.

19. A person who arranges or assists a person's illegal entry into any country of which the person is not a citizen or permanent resident, including Swaziland, either knowing or being reckless as to the fact that the person's entry is illegal, in order to obtain a financial or other material benefit commits the offence of people smuggling and is liable on conviction to a term of imprisonment not exceeding eighteen (18) years.

Aggravated people smuggling offences.

20. A person who intentionally engages in people smuggling under one or more the following circumstances—

- (a) the smuggled person is, or is intended to be, subject to exploitation;
- (b) the smuggled person is subjected to torture or to any other cruel, inhuman or degrading treatment; or
- (c) the life or safety of the smuggled person is, or is likely to be, endangered,

regardless of whether the smuggled person arrives in the receiving country commits an offence and is liable, on conviction, to a term of imprisonment not exceeding twenty (20) years.

Offence of children smuggling.

21. A person, who smuggles children, for the purpose of exploitation, commits an offence and is, on conviction, liable to a term of imprisonment not exceeding twenty (20) years.

Offence of profiting from exploitation of a smuggled person.

22. A person who profits from the exploitation of a smuggled person commits an offence and is, on conviction, liable to a term of imprisonment not exceeding fifteen (15) years or to a fine of five hundred thousand emalangeni or to both.

Offence to facilitate stay of a smuggled person.

23. (1) A person who intentionally facilitates, by any unlawful means, the continued presence of a smuggled person in a receiving country in order to obtain a financial or other material benefit commits an offence and is liable, on conviction, to a term of imprisonment not exceeding ten (10) years or to a fine of fifty thousand emalangeni or to both.

(2) For the purposes of subsection (1), “unlawful means” includes producing, providing or procuring false travel or identity documents in respect of the smuggled person.

Consent of smuggled person irrelevant.

24. In a prosecution for an offence under this Part, it shall not be a defence that the smuggled person consented to the act of people smuggling or to the exploitation.

Fraudulent travel or identity documents.

25. (1) A person who makes, obtains gives, sells or possesses a fraudulent travel or identity document for the purpose of facilitating an act of people smuggling commits an offence and is, on conviction, liable to a term of imprisonment not exceeding ten (10) years or to a fine of fifty thousand emalangeni or to both.

(2) A person who recruits, transports, transfers, harbours, obtains, receives, maintains or hold any person or persons for the purpose of exploitation by destroying, concealing, removing, confiscating or possessing any actual or purported travel or passport or identity document of another commits an offence and shall on conviction be liable to imprisonment for a term not exceeding eighteen (18) years.

PART V
ENFORCEMENT

Enforcement officers.

26. (1) The following officers shall be enforcement officers for the purposes of this Act and may exercise all powers of enforcement—

- (a) a police officer;
- (b) an immigration officer; and
- (c) a customs officer.

(2) An enforcement officer when acting against any person under this Act shall declare his office and shall produce to the person against whom he is acting any authority card which has been issued to him.

Power of investigation.

27. An enforcement officer shall have all the powers necessary to carry out an investigation for any offence under this Act.

Power of arrest.

28. (1) An enforcement officer may arrest without warrant any person—

- (a) found committing or attempting to commit or abetting the commission of an offence under this Act; or
- (b) whom the enforcement officer reasonably suspects of being engaged in committing or attempting to commit or abetting the commission of an offence under this Act.

(2) An enforcement officer making an arrest under subsection (1) shall, without unnecessary delay, bring the person arrested to the nearest police station, and thereafter the person shall be dealt with in accordance with the law relating to criminal procedure for the time being in force.

Search and seizure with warrant.

29. (1) If it appears to a magistrate, upon written information on oath and after such enquiry as the magistrate considers necessary, that there is reasonable cause to believe that—

- (a) any premises or conveyance has been used or is about to be used for; or
- (b) there is in any premises or conveyance evidence necessary to the conduct of an investigation into,

the commission of an offence under this Act, the magistrate may issue a warrant authorising any enforcement officer named therein, at any reasonable time, by day or by night, to enter the premises or conveyance.

(2) A warrant issued under subsection (1) may authorise the enforcement officer to—

- (a) search the premises or conveyance for, and to seize or remove from the premises or conveyance, any moveable, property, book, record, report or document, or any human organ that is reasonably believed to furnish evidence of the commission of such offence; and
- (b) make copies of, or take extracts from any book, record, report or document found in the premises or conveyance.

(3) An enforcement officer entering any premises or conveyance under this section may take with him such other persons or equipment as may appear to him to be necessary.

(4) An enforcement officer may, in the exercise of his powers under this section, if necessary—

- (a) break open any outer or inner door of the premises or conveyance or any obstruction to the premises or conveyance in order to effect entry into the premises or conveyance;
- (b) remove by force any obstruction to entry, search, seizure or removal as he is empowered to effect under this section; and
- (c) detain any person found in the premises or conveyance until the search has been completed.

(5) Where, by reason of its nature, size or amount, it is not practicable to remove any moveable property, book, record, report or document or any human organ seized under this section, the enforcement officer shall, by any means, seal such moveable property, book, record, report or document or any human organ in the premises or conveyance in which it is found.

(6) A person who, without lawful authority, breaks, tampers with or damages the seal referred to in subsection (5) or removes the moveable property, book, record, report or document or any human organ under seal, or attempts to do so, commits an offence.

Search and seizure without warrant.

30. (1) Where an enforcement officer has reasonable grounds to believe that by reason of delay in obtaining a search warrant under section 29, the investigation would be adversely affected or evidence of the commission of an offence is likely to be tampered with, removed, damaged or destroyed, he may, without warrant, with such assistance and force as is necessary—

- (a) enter and search any premises;
- (b) stop and search any conveyance or person;
- (c) seize and detain such conveyance, movable property, book, record, report or document or human organ; or
- (d) inspect, make copies of or take extract from any book, record, report or document found in the premises or conveyance.

(2) In exercising his powers under this section, an enforcement officer shall have all the powers conferred upon him under section 29(3), (4) and (5).

Access to computerised data.

31. (1) An enforcement officer conducting a search under this Act shall be given access to computerised data whether stored in a computer or otherwise.

(2) For the purpose of subsection (1), the enforcement officer shall be provided with the necessary password, encryption code, decryption code, software or hardware or any other means required for his access to enable comprehension of the computerised data.

(3) This subsection must deal with the penalty for failure to give the necessary password, encryption code, decryption code, etc.

List of things seized.

32. (1) Except as provided in subsection (2), where any conveyance, moveable property, book, record, report or document or any human organ is seized under this Part, the enforcement officer shall prepare a list of the things seized and immediately deliver a copy signed by him to the occupier of the premises or the owner of the conveyance which has been searched, or to his agent or servant, at the premises or conveyance.

(2) Where the premises are unoccupied, the enforcement officer shall, whenever possible, post a list of the things seized conspicuously at or on the place or premises.

Power to examine persons.

33. (1) An enforcement officer may, by notice in writing, require any person whom he believes to be acquainted with the facts and circumstances of the case to—

- (a) attend before him for examination;
- (b) produce before him any moveable property, record, report or document; or
- (c) furnish him a statement in writing made on oath or affirmation setting out such information as he may require.

(2) Any person who contravenes subsection (1) commits an offence.

(3) The person examined under subsection (1) shall be legally bound to answer all questions relating to such case put to him by the enforcement officer, but he may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(4) A person making a statement under subsection (1)(c) shall be legally bound to state the truth, whether or not such statement is made wholly or partly in answer to the questions of the enforcement officer.

(5) An enforcement officer examining a person under subsection (1) shall first inform that person of the provisions of subsections (3) and (4).

(6) A statement made by any person under subsection (3) or (4) shall be reduced into writing and signed by the person making it or affixed with his thumb print—

(a) after it has been read to him in the language in which he made it; and

(b) after he has been given an opportunity to make any correction he may wish.

Admissibility of statement.

34. (1) Except as provided in this section, no statement made by any person to an enforcement officer in the course of an investigation made under this Act shall be used in evidence.

(2) When any witness is called for the prosecution or for the defence, other than the accused, a court shall, on the request of the accused or the prosecutor, refer to any statement made by that witness to an enforcement officer in the course of an investigation under this Act and may then, if the court thinks fit in the interest of justice, direct the accused to be furnished with a copy of it and the statement may be used to impeach the credibility of the witness in the manner provided by the Criminal Procedure and Evidence Act No. 67 of 1938.

(3) Where the accused had made a statement during the course of an investigation, such statement may be admitted in evidence in support of his defence during the course of the trial.

(4) Nothing in this section shall be deemed to apply to any statement made in the course of an identification parade.

(5) When any person is charged with any offence in relation to—

(a) the making; or

(b) the contents,

of any statement made by him to an enforcement officer in the course of an investigation made under this Act, that statement may be used as evidence in the prosecution's case.

Forfeiture of conveyance, moveable property, etc.

35. (1) All conveyance, moveable property, book, record, report or document, or any human organ seized in the exercise of any power conferred under this Act are liable to forfeiture.

(2) The court trying any person accused of an offence under this Act may at the conclusion of the trial, whether he is convicted or not, order that the conveyance, moveable property, book, record, report or document or any human organ seized from that person be forfeited.

- (3) Where there is no prosecution with regard to any offence under this Act—
- (a) in the case of human organ seized, it shall be deemed to be forfeited; and
 - (b) in the case of the conveyance, moveable property, book, record, report or document seized, the enforcement officer shall serve a notice in writing to the last known address of the person from whom the conveyance, moveable property, book, record, report or document was seized.

(4) The notice in subsection (3)(b) shall specify that there is no prosecution in respect of such conveyance, moveable property, book, record, report or document and that such conveyance, moveable property, book, record, report or document will be forfeited at the expiration of one calendar month from the date of service of the notice unless a claim is made by the person from whom the conveyance, moveable property, book, record, report or document was seized.

(5) Upon receipt of the notice issued under subsection (3)(b), any person asserting that he is the owner of any conveyance, moveable property, book, record, report or document seized under this Act which is not liable to forfeiture may, personally or by his agent authorised in writing by him, give written notice to the enforcement officer in whose possession the conveyance, moveable property, book, record, report or document is held.

(6) Upon receipt of a notice under subsection (5), the enforcement officer who made the seizure shall refer the matter to the court for its determination.

(7) The court to which the matter is referred shall issue a summons requiring the person asserting that he is the owner of the conveyance, moveable property, book, record, report or document and the person from whom it was seized to appear before the court, and upon their appearance or default to appear, due service of the summons being proved, the court shall proceed to the examination of the matter, and on proof that such conveyance, moveable property, book, record, report or document was the subject matter of or was used in the commission of an offence under this Act, shall order the conveyance, moveable property, book, record, report or document to be forfeited or may, in the absence of such proof, order the release of such conveyance, moveable property, book, record, report or document to the person entitled to it.

(8) Any conveyance, moveable property, book, record, report or document or any human organ forfeited or deemed to be forfeited shall be disposed of in any manner as the enforcement officer deems fit.

Cost of holding conveyance, moveable property, etc., seized.

36. Where any conveyance, moveable property, record, report or document or human organ seized under this Act is held in the custody of the enforcement officer pending completion of any proceedings in respect of an offence under this Act, the cost of holding such conveyance, moveable property, record, report or document or any human organ in custody shall, in the event of any person being found guilty of an offence, be a civil debt due to the Government by such person and shall be recoverable accordingly.

No costs or damages arising from entry, search or seizure to be recoverable.

37. No person shall, in respect of any entry or search, or seizure of any conveyance, moveable property, record, report or document or any human organ seized in the exercise of any power conferred by this Act, be entitled to the costs of such entry, search, or seizure or to

any damages or other relief unless such entry, search or seizure was made without reasonable cause.

Obstruction.

38. Any person who obstructs, impedes, interferes or fails to comply with any lawful demand of an enforcement officer in the performance of his functions under this Act commits an offence.

Tipping-off.

39. (1) Any person who—

- (a) knows or has reasonable grounds to suspect that an enforcement officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted under or for the purposes of this Act and discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation; or
- (b) knows or has reasonable grounds to suspect that a disclosure has been made to an enforcement officer under this Act and discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure,

commits an offence.

(2) Nothing in subsection (1) makes it an offence for a legal practitioner or his employee to disclose any information or other matter—

- (a) to his client or the client's representative in connection with the giving of advice to the client in the course and for the purpose of the professional employment of the advocate and solicitor; or
- (b) to any person in contemplation of, or in connection with and for the purpose of, any legal proceedings.

(3) Subsection (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any illegal purpose.

(4) In proceedings against a person for an offence under this section, it is a defence to prove that—

- (a) he did not know or suspect that the disclosure made under subsection (1)(b) was likely to prejudice the investigation; or
- (b) he had lawful authority or reasonable excuse for making the disclosure.

Institution of prosecution.

40. No prosecution for an offence under this Act shall be instituted except by or with the written consent of the Director of Public Prosecution.

PART VI

CARE AND PROTECTION OF TRAFFICKED AND SMUGGLED PERSONS

Place of refuge.

41. (1) The Minister may, after consultation with the Minister responsible for social welfare, declare any house, building or place, or any part thereof, to be a place of refuge for the care and protection of trafficked and smuggled persons and may, in like manner, declare that such place of refuge ceases to be a place of refuge.

(2) The Minister may, from time to time, direct the separation of different categories of trafficked and smuggled persons, among others, according to age and gender either at the same place of refuge or at different places of refuge.

Designation of protection officers.

42. (1) The Minister may, after consultation with the Minister charged with the responsibility for social welfare, by notice in the *Gazette*, designate such number of social workers or any other public officers to exercise the powers and perform the duties of a protection officer under this Act subject to any condition as may be specified in the notification.

(2) A protection officer shall—

- (a) have control over and responsibility for the care and protection of trafficked and smuggled persons at the place of refuge;
- (b) carry out an enquiry and cause to be prepared a report of the trafficked and smuggled persons as required under this Act;
- (c) have the power to supervise the trafficked and smuggled persons upon order by a magistrate or direction by the Minister; and
- (d) have such other powers, duties and functions as the Minister may prescribe.

Taking a person into temporary custody.

43. (1) An enforcement officer may, on reasonable suspicion that any person who is found or rescued is a trafficked or smuggled person, take that person into temporary custody to be determined by a protection officer and produce him before a magistrate within twenty-four (24) hours, exclusive of the time necessary for the journey to a Magistrate's Court, for the purpose of obtaining an interim protection order.

(2) A Magistrate may make an interim protection order for the person to be placed at a place of refuge for a period of fourteen days for the purpose of carrying out an investigation and enquiry under section 50.

(3) The enforcement officer shall, upon obtaining the order issued under subsection (2), surrender the trafficked or smuggled person to a protection officer to place that trafficked or smuggled person at the place of refuge specified in the order.

Person in temporary custody in need of medical examination or treatment.

44. (1) Where an enforcement officer who takes a trafficked or smuggled person into temporary custody under section 43(1) is of the opinion that the person is in need of medical examination or treatment, the enforcement officer may, instead of taking that person before a magistrate, present him to a medical officer.

(2) If at the time of being taken into temporary custody, the trafficked or smuggled person is a patient in a hospital, the enforcement officer may leave that person in the hospital.

Medical examination and treatment.

45. A medical officer before whom a trafficked or smuggled person is presented under section 43—

- (a) shall conduct or cause to be conducted an examination of the person;
- (b) may in examining the person and if so authorised by an enforcement officer, administer or cause to be administered such procedures and tests as may be necessary to diagnose the person's condition; or
- (c) may provide or cause to be provided such treatment as he considers necessary as a result of the diagnosis.

Authorisation for hospitalisation.

46. Where a trafficked or smuggled person taken into temporary custody under section 43(1) is a child and the medical officer who examines him is of the opinion that his hospitalisation is necessary for the purpose of medical care or treatment, an enforcement officer may authorise that person to be hospitalised.

Control over hospitalised person.

47. Where the trafficked or smuggled person taken into temporary custody under section 43(1) is hospitalised, the enforcement officer shall have control over, and responsibility for, the security and protection of that person.

Steps to be taken after medical examination or treatment.

48. (1) A person who is taken into temporary custody under section 43(1) and is medically examined under section 45 shall be produced before a magistrate within twenty-four (24) hours—

- (a) of the completion of such examination or treatment; or
- (b) if the person is hospitalised, on his discharge from the hospital.

(2) If it is not possible to bring that person before a magistrate within the time specified in subsection (1), that person shall be placed in a place of refuge until such time as he can be brought before a magistrate.

No liability incurred for giving authorisation.

49. (1) If a trafficked or smuggled person is examined or treated under this Part—

- (a) the enforcement officer who authorises such examination or treatment;
- (b) the medical officer who examines or treats the person; and
- (c) all persons acting in aid of the medical officer,

shall not incur any liability at law by reason only that the person is examined or treated pursuant to this Part.

(2) Nothing contained in subsection (1) relieves a medical officer from liability in respect of the examination or treatment of the trafficked or smuggled person taken into temporary custody under section 43(1), which liability he would have been subject to had the

examination or treatment been carried out or administered with the consent of the parent or guardian of the person or person having authority to consent to the examination or treatment.

Investigation, enquiry and protection order.

50. (1) Where an interim protection order is made under section 43(2), within fourteen (14) days from the date of such order—

- (a) an enforcement officer shall investigate into the circumstances of the trafficked or smuggled person's case for the purpose of determining whether the person is a trafficked or smuggled person under this Act; and
- (b) a protection officer shall enquire into the background of that person.

(2) Upon completion of the investigation and enquiry under subsection (1), the enforcement officer and the protection officer shall prepare a report and produce the report together with the person before a Magistrate's Court for the purpose of satisfying a magistrate that such person is a trafficked or smuggled person under this Act.

(3) Where the magistrate, having read the report produced under subsection (2), is satisfied that the person brought before him—

- (a) is a trafficked or smuggled person and in need of care and protection, the magistrate may make a protection order—
 - (i) in the case of a trafficked or smuggled person who is a citizen or permanent resident of Swaziland, ordering that the such person be placed in a place of refuge for a period not exceeding two (2) years from the date of the order; or
 - (ii) in the case of a trafficked or smuggled person who is a foreign national, ordering that such person be placed in a place of refuge for a period not exceeding six months from the date of the order, and thereafter to release him to an immigration officer for necessary action in accordance with the provisions of the Immigration Act No. 5 of 1982;
- (b) is not a trafficked or smuggled person, a Magistrate may—
 - (i) in the case of a person who is a citizen or permanent resident of Swaziland, order that person to be released; or
 - (ii) in the case of a person who is a foreign national, order that person to be released to an immigration officer for necessary action in accordance with the provisions of the Immigration Act No. 5 of 1982.

(4) The magistrate may at any time, on the application of an enforcement officer or a protection officer, as the case may be, extend or revoke the protection order made under this section.

(5) Notwithstanding subsection (4), where the trafficked or smuggled person is a foreign national, an extension of the Protection Order may be granted only for the purpose of completing the recording of his evidence under section 51 or for any exceptional circumstances as determined by the Magistrate.

Recording of evidence of trafficked or smuggled person.

51. (1) At any time during the period of the protection order made under section 50(3)(a)(ii), where a criminal prosecution has been instituted against any person for an offence under this Act, an enforcement officer may make an oral application for the production of the trafficked or smuggled person before a Magistrate's Court for the purpose of recording that trafficked or smuggled person's evidence on oath.

(2) The Magistrate may, upon such application, issue a summons or order directed to the person in charge of the place of refuge where such trafficked person is placed, requiring him to produce the trafficked or smuggled person at the time and place specified in the summons or order.

(3) The magistrate shall record the evidence of the trafficked or smuggled person and complete such recording within seven days from the date of the production of that trafficked or smuggled person before him.

(4) In the course of the recording of evidence of the trafficked or smuggled person, he shall be examined in accordance with the provisions of the Criminal Procedure and Evidence Act No. 67 of 1938.

(5) The Magistrate shall cause the evidence taken by him to be reduced into writing and, at the end of that writing, shall sign the same.

(6) Notwithstanding anything contained in this Act or any other written laws to the contrary, the evidence recorded under this section shall be admissible in evidence in any proceedings under this Act and the weight to be attached to such evidence shall be the same as that of a witness who appears and gives evidence in the course of a proceeding.

Application by parent, guardian or relative.

52. (1) Where a trafficked or smuggled person placed in a place of refuge is a citizen or permanent resident of Swaziland, the parent, guardian or relative of that person may, at any time, make an application to the Magistrate's Court to commit that person into the custody of the parent, guardian or relative.

(2) The parent, guardian or relative of the trafficked or smuggled person shall serve a copy of the application to the protection officer.

(3) Upon receipt of an application under subsection (2), the protection officer shall cause a report to be prepared in relation to—

- (a) the trafficked or smuggled person;
- (b) the status of any investigation or prosecution for any offence under this Act in relation to the trafficked or smuggled person;
- (c) the background of the trafficked or smuggled person, his parent, guardian or relative; or
- (d) any other matter as the protection officer deems relevant,

to enable the magistrate to determine the application in the best interest of the trafficked or smuggled person.

(4) The magistrate shall, upon receipt of the application, fix a date for the hearing of the application, and shall, by notice in writing, inform the parent, guardian or relative of the trafficked or smuggled person, as the case may be, the protection officer or other person the

magistrate deems fit, and shall require the production of the trafficked or smuggled person before him on the appointed date.

(5) After hearing the application and having read the report of the protection officer, and if the magistrate is satisfied that it is in the best interest of the trafficked or smuggled person, he may—

- (a) commit the person into the care and protection of the parent, guardian or relative of the person, upon such conditions as he may deem fit to impose;
- (b) require the parent, guardian or relative of the person to enter into a bond; or
- (c) require the person to be placed under the supervision of a protection officer,

for a period to be determined by the Magistrate.

(6) The Magistrate may, at any time, revoke any order made under subsection (5).

Release of trafficked or smuggled person.

53. (1) Upon revocation of a protection order or expiry of the period specified in a protection order, a protection officer shall—

- (a) in the case of a trafficked or smuggled person who is a citizen or permanent resident of Swaziland, release that person; or
- (b) in the case of a trafficked or smuggled person who is a foreign national, release that person to an immigration officer for necessary action in accordance with the provisions of the Immigration Act No. 5 of 1982.

(2) The immigration officer shall take all necessary steps to facilitate the return of that trafficked or smuggled person to his country of origin without unnecessary delay, with due regard for his safety.

(3) Notwithstanding subsection (1)(a), the court may, upon an application made by a protection officer, and being satisfied that such person is in need of further care and protection, make an order that such trafficked or smuggled person be placed in the place of refuge for any further period as the Magistrate deems fit.

Trafficked or smuggled person who escapes or is removed from place of refuge.

54. A trafficked or smuggled person who escapes or is removed from a place of refuge without lawful authority—

- (a) may be taken into custody by any enforcement officer and shall be brought back to the place of refuge; and
- (b) shall be placed for such period which is equal to the period during which he was unlawfully at large and for the unexpired residue of his term in the protection order originally made by a Magistrate.

Offence of removing or helping a trafficked or smuggled person to escape from place of refuge.

55. Any person who—

- (a) removes a trafficked or smuggled person from a place of refuge without lawful authority;

- (b) knowingly assists or induces, directly or indirectly, a trafficked or smuggled person to escape from a place of refuge; or
- (c) knowingly harbours or conceals a trafficked or smuggled person who has so escaped, or prevents him from returning to the place of refuge,

commits an offence.

Power of Minister to remove trafficked or smuggled person from one place of refuge to another.

56. The Minister may, at any time, for reasons which appear to him to be sufficient, by order in writing direct the removal of any trafficked or smuggled person from a place of refuge to any other place of refuge as may be specified in the order.

PART VII MISCELLANEOUS

Recruiting persons.

57. A person who knowingly recruits, or agrees to recruit, another person to participate in the commission of an act of people trafficking or people smuggling, commits an offence and is, on conviction, liable to a term of imprisonment not exceeding ten (10) years or to a fine of twenty thousand emalangeneni or to both.

Providing facilities in support of people trafficking or people smuggling.

58. A person being—

- (a) the owner, occupier, lessee or person in charge of any premises, room or place, who knowingly permits a meeting to be held in that premises, room or place; or
- (b) the owner, lessee or person in charge of any equipment or facility that allows for recording, conferencing or meetings via technology, who knowingly permits that equipment or facility to be used,

for the purpose of committing an offence under this Act, commits an offence and is, on conviction, liable to a term of imprisonment not exceeding ten (10) years or to a fine of twenty thousand emalangeneni or to both.

Providing services for purposes of people trafficking or people smuggling.

59. (1) A person who, directly or indirectly, provides or makes available financial services or facilities—

- (a) intending that the services or facilities will be used, or knowing or having reasonable grounds to believe that the services or facilities will be used, in whole or in part, for the purpose of committing or facilitating the commission of an act of people trafficking or people smuggling, or for the purpose of benefiting any person who is committing or facilitating the commission of an act of people trafficking or people smuggling; or

- (b) knowing or having reasonable grounds to believe that, in whole or in any part, the services or facilities will be used by or will benefit any person involved in an act of people trafficking or people smuggling,

commits an offence and is, on conviction, liable to a term of imprisonment not exceeding ten (10) years or to a fine of not more than twenty thousand emalangeni or to both.

(2) For the purpose of subsection (1), “financial services or facilities” include the services or facilities offered by legal practitioners or accountants acting as nominees or agents for their clients.

Harbouring persons.

60. (1) Any person who—

- (a) harbours a person; or
- (b) prevents, hinders or interferes with the arrest of a person,

knowing or having reason to believe that such person has committed or is planning or is likely to commit an act of people trafficking or people smuggling, commits an offence and is, on conviction, liable to a term of imprisonment not exceeding ten (10) years or to a fine of twenty thousand emalangeni or to both.

(2) In this section, “harbour” means supplying a person with shelter, food, drink, money or clothes, arms, ammunition or means of conveyance, or assisting a person in any way to evade apprehension.

Obligation of owner, operator or master of conveyance.

61. (1) Any person being the owner, operator or master of any conveyance, that engages in the transportation of goods or people for commercial gain shall ensure that every person travelling on board is in possession of travel documents for lawful entry of that person into the receiving country.

(2) Any owner, operator or master of any conveyance mentioned in subsection (1), who—

- (a) knowingly permits or has reasonable grounds to believe that such conveyance is used for the purpose of bringing a person into a receiving country without travel documents required for the lawful entry of that person into the receiving country; or
- (b) knowingly permits or has reasonable grounds to believe that such conveyance is being used for the purpose of committing an act of people trafficking or people smuggling,

commits an offence.

(3) A person mentioned in subsection (2) is, on conviction, liable—

- (a) where such person is an individual, to a term of imprisonment not exceeding five (5) years to a fine not exceeding two hundred and fifty thousand emalangeni or to both; or
- (b) where such person is a body corporate, to a fine not exceeding five hundred thousand emalangeni.

(4) In any proceedings for an offence under this section, it shall be a defence for such owner, operator or master to prove that—

- (a) he has reasonable grounds to believe that the travel documents of the person travelling on board are travel documents required for lawful entry of that person into the receiving country;
- (b) the person travelling on board possessed travel documents required for lawful entry into the receiving country when that person boarded, or last boarded, the conveyance to travel to the receiving country; or
- (c) the entry of the person into the receiving country occurred only because of illness or injury to that person, stress of weather or any other circumstances beyond the control of such owner, operator or master.

(5) A person convicted of an offence under this section shall be liable to pay the costs of the trafficked or smuggled person's detention in, and removal from, the receiving country.

Intentional omission to give information.

62. Any person who knowing or having reason to believe, that any offence under this Act has been or will be committed, intentionally omits to give any information respecting that offence, commits an offence and is, on conviction, liable to a term of imprisonment not exceeding five (5) years or a fine not exceeding two hundred and fifty thousand emalangeni or to both.

Immunity from criminal prosecution.

63. A trafficked or smuggled person shall not be liable to criminal prosecution in respect of—

- (a) his illegal entry into the receiving country;
- (b) his period of unlawful residence in the receiving country; or
- (c) his procurement or possession of any fraudulent travel or identity document which he obtained, or with which he was supplied, for the purpose of entering the receiving country,

where such acts are the direct consequence of an act of people trafficking or people smuggling that is alleged to have been committed or was committed.

Protection of informers.

64. (1) Except as provided in this section, no complaint as to an offence under this Act shall be admitted in evidence in any civil or criminal proceedings whatsoever, and no witness shall be obliged or permitted to disclose the name or address of any informer, or state any matter which might lead to his discovery.

(2) If any book, document or paper which is in evidence or liable to inspection in any civil or criminal proceedings whatsoever contains any entry in which any informer is named or described or which might lead to his discovery, the court before which the proceedings is heard shall cause all such entries to be concealed from view or to be obliterated so far as is necessary to protect the informer from discovery.

(3) If in a trial for any offence under this Act, a court, after full enquiry into the case, is of the opinion that the informer wilfully made in his complaint a material statement which

he knew or believed to be false or did not believe to be true, or if in any other proceedings the court is of the opinion that justice cannot be fully done between the parties without the discovery of the informer, the court may require the production of the original complaint, if in writing, and permit enquiry and require full disclosure concerning the informer.

(4) A person who gives the information referred to in this section knowing that the information is false, commits an offence.

Participation in a people trafficking or people smuggling offence.

65. (1) Any person who aids, abets, counsels or procures the commission of an offence under this Act by another person is taken to have committed that offence and may be punished accordingly.

(2) For the person to be guilty under subsection (1), the offence should have been committed by the other person.

(3) A person who urges the commission of an offence under this Act commits the offence of incitement.

(4) A person who conspires with another person to commit an offence under this Act commits the offence of conspiracy to commit that offence and may be punished as if the offence to which the conspiracy relates had been committed.

Attempt to commit a people trafficking or people smuggling offence.

66. Any person who attempts to commit an offence under this Act is guilty of attempting to commit that offence and may be punished as if the offence attempted had been committed, provided that the person's conduct is more than merely preparatory to the commission of the offence.

Restriction on media reporting and publication.

67. (1) Notwithstanding any written laws to the contrary, any mass media report regarding—

- (a) any step taken in relation to a trafficked or smuggled person in any proceedings be it at the pre-trial, trial or post-trial stage;
- (b) any trafficked or smuggled person in respect of whom custody or protection is accorded under this Act; or
- (c) any other matters under this Act,

shall not reveal the name or address, or include any particulars calculated to lead to the identification of any trafficked or smuggled person so concerned either as being the trafficked or smuggled person or as being a witness to any proceedings.

(2) A picture of—

- (a) any trafficked or smuggled person in any of the matters mentioned in subsection (1); or
- (b) any other person, place or thing which may lead to the identification of the trafficked or smuggled person,

shall not be published in any newspaper or magazine or transmitted through any electronic medium.

- (3) A person who contravenes subsection (1) or (2) commits an offence.

Evidence of agent provocateur admissible.

68. (1) Notwithstanding any law or rule of law to the contrary, in any proceedings against any person for an offence under this Act, no *agent provocateur* shall be presumed to be unworthy of credit by reason only of his having attempted to commit or to abet, or having abetted or having been engaged in a criminal conspiracy to commit, such offence if the main purpose of such attempt, abetment or engagement was to secure evidence against such person.

(2) Notwithstanding any law or rule of law to the contrary, a conviction for any offence under this Act solely on the uncorroborated evidence of any *agent provocateur* shall not be illegal and no such conviction shall be set aside merely because the court which tried the case has failed to refer in the grounds of its judgement to the need to warn itself against the danger of convicting on such evidence.

Admissibility of documentary evidence.

69. Where any enforcement officer has obtained any document or other evidence in exercise of his powers under this Act, such document or copy of the document or other evidence, as the case may be, shall be admissible in evidence in any proceedings under this Act, notwithstanding anything to the contrary in any written laws.

Admissibility of translation of documents.

70. (1) Where any document which is to be used in any proceeding against any person for an offence under this Act is in a language other than the national language or English language, a translation of such document into the national language or English language shall be admissible in evidence where the translation is accompanied by a certificate of the person who translated the document setting out that it is an accurate, faithful and true translation and the translation had been done by such person at the instance of any enforcement officer.

(2) Subsection (1) shall apply to a document which is translated, regardless of whether the document was made in or outside Swaziland, or whether the translation was done in or outside Swaziland, or whether possession of such document was obtained by any enforcement officer in or outside Swaziland.

Indemnity.

71. No action, suit, prosecution or other proceedings shall lie or be brought, instituted or maintained in any court or before any other authority against—

- (a) an enforcement officer;
- (b) a protection officer; or
- (c) a person lawfully acting in compliance with any direction or order of an enforcement officer or a protection officer,

for or on account of, or in respect of, any act done or statement made or omitted to be done or made, or purporting to be done or made or omitted to be done or made, in pursuance of or in execution of, or intended pursuance of or execution of, this Act or any order in writing, direction or other thing issued under this Act if such act or statement was done or made, or was omitted to be done or made, in good faith.

General penalty.

72. Any person who commits an offence under this Act for which no penalty is expressly provided shall, on conviction, be liable to a term of imprisonment not exceeding seven (7) years or to a fine not exceeding fifty thousand emalangeni or to both.

Offence by body corporate.

73. Where any offence against any provision of this Act has been committed by a body corporate, any person who, at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate, or was purporting to act in any such capacity, or was in any manner responsible for the management of any of the affairs of such body corporate, or was assisting in such management, shall also be liable for that offence unless he proves that the offence was committed without his knowledge, consent or connivance, and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

Offence by employee or agent.

74. Where any person would be liable under this Act to any punishment or penalty for any act, omission, neglect or default, such person shall be liable to the same punishment or penalty for every such act, omission, neglect or default of any employee or agent of his or of the employee of such agent, if such act, omission, neglect or default was committed by the person's employee in the course of his employment, or by the agent when acting on behalf of the person, or by the employee of such agent in the course of his employment by such agent, or otherwise on behalf of the agent.

Money laundering, extradition and mutual assistance.

75. The offences set out in this Act are—

- (a) predicate offences for the purposes of the law relating to money laundering;
- (b) extraditable offences for the purposes of the law relating to extradition; and
- (c) offences in respect of which mutual assistance may be granted under the law relating to mutual assistance.

Regulations.

76. (1) The Minister may make such regulations as are necessary or expedient to give full effect to, or for carrying out, the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made—

- (a) to any other matters in relation to the Task Force;
- (b) to provide for an offence, any act or omission which contravenes any provision of any regulations;
- (c) to provide for the imposition of penalties for such offences;
- (d) to prescribe measures for the care and protection of trafficked or smuggled persons at the place of refuge;
- (e) to prescribe for the powers and functions of a protection officer;

- (f) to regulate the management, administration and control of a place of refuge, including provisions for the powers, duties and functions of the person in charge of the place of refuge;
- (g) to provide for any matter which, under this Act, is required or permitted to be prescribed or which is necessary or expedient to be prescribed.