



ISASA

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MEMORANDUM

To:	All Member Schools
From:	Policy Unit
Date:	7 July 2015
Subject:	Immigration Regulations <ul style="list-style-type: none">• New document requirements applicable to children entering or leaving South Africa¹• Notifications to the Director General pertaining to foreign students with Study Visas

NEW REQUIREMENTS APPLICABLE TO CHILDREN ENTERING OR LEAVING SOUTH AFRICA

A. What is new?

The new requirements for minors travelling to or from the Republic of South Africa (Republic) took effect on 1 June 2015.

B. Background

On 14 February 2014, the Department of Home Affairs issued a call for comment on the draft *Immigration Regulations, 2014*² (*Immigration Regulations*), to which ISASA made a written submission. On 22 May 2014, the Home Affairs Department gazetted the final *Immigration Regulations* with effect from 26 May 2014. Although the new *Immigration Regulations* became operational on 26 May 2014, the Home Affairs Department postponed, to 1 October 2014, the requirement that minors produce Unabridged Birth Certificates when travelling. After the public and various industry bodies expressed concerns regarding the new *Immigration Regulations*, the Home Affairs Department further extended to 1 June 2015, implementation of the requirement that those travelling with or receiving minors at South African ports of entry produce Unabridged Birth Certificates and Parent Consent Affidavits.

This is the third ISASA memorandum regarding the *Immigration Regulations*. ISASA published a memorandum explaining the changes brought about by the new *Immigration Regulations* on 8 July 2014.

¹ The Department of Home Affairs document, "Advisory: New requirements for children travelling through South African Ports of entry – Effective 1 June 2015" which was published on 26 May 2015, may be accessed at <http://www.home-affairs.gov.za>.

² Government Notice R413 in Government Gazette 37679 dated 22 May 2014.

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On 16 September 2014, ISASA published a memorandum informing members about the implementation postponements.

In this memorandum, ISASA provides member schools further clarity on the implementation of the new requirements relating to child travel as well as the required notifications by the Head of School or Registrar³ to the Director General pertaining to foreign students with study visas.

C. Applicable items in Immigration Regulations

The admission or departure of a child from the Republic is dealt with in terms of item 6(12)(a) – (d) and study visa notifications are regulated in terms of item 12(1)(a) – (b) of the new *Immigration Regulations*.

D. Definition of terms

(1) Child or Minor

A child or minor means any person under the age of 18 years.

(2) Parent

The word 'parent' includes biological parents, adoptive parents and legal guardians, unless the context indicates otherwise.

(3) Unabridged Birth Certificate

For a South African child, the Unabridged Birth Certificate refers to a birth certificate that contains the full names and the identity numbers of both parents. This information is extracted from the Birth Register and issued by the Department of Home Affairs in terms of the Births and Deaths Registration Act 51 of 1992.

For a child who is a foreign national, the Unabridged Birth Certificate refers to a birth certificate from the responsible authority in her or his country which lists the particulars of that child's parents.

(4) 'Equivalent Document'⁴

An 'Equivalent Document' refers to a document that may be produced and accepted in lieu of the Unabridged Birth Certificate.

(5) Parental Consent Affidavit⁵

Parental Consent Affidavit is an affidavit of a person registered as a parent on the Unabridged Birth Certificate or 'Equivalent Document' authorising another person (including the other parent) to enter or depart the Republic with a child or granting permission to her or his child to travel alone.

³ Person or official responsible for admissions at a school.

⁴ A suggested format of "Equivalent Document in Lieu of Unabridged Birth Certificate" for use by foreign government institutions is available on the Department of Home Affairs Website <http://www.home-affairs.gov.za>, under Immigration.

⁵ A suggested format of the Parental Consent Affidavit is available at the Department of Home Affairs Website <http://www.home-affairs.gov.za>, under Immigration.

E. Documents required for travel through a Republic point of entry

(1) What documents will a child in alternative care be required to produce?

A child in alternative care⁶ shall produce the following, a:

- (a) valid passport; and
- (b) letter from the Provincial Head of the Social Development Department where the child resides, authorising the child to depart from the Republic as contemplated in section 169 of the Children's Act 38 of 2005⁷ (Children's Act).

(2) What documents are required when a child travels with both registered parents?⁸

Where a child travels with both registered parents the following documents are required:

- (a) a valid passport; and
- (b) an Unabridged Birth Certificate or 'Equivalent Document'.

The above documents shall be required for each child when registered parents travel with more than one of their children.

If a single parent is the only parent appearing on a child's birth certificate, a child travelling with a single registered parent (single parent) on her or his Unabridged Birth Certificate or 'Equivalent Document', must still produce an Unabridged Birth Certificate or 'Equivalent Document'. These documents are required for each child where the only registered parent (single parent) travels with more than one of her children. In this case the Unabridged Birth Certificate or "Equivalent Document" will reflect the details of the only registered parent.

(3) What documents are required when a child travels with only one of her or his registered parents?⁹

Where a child travels with one of her or his registered parents the following shall be required:

- (a) a valid passport;
- (b) an Unabridged Birth Certificate or 'Equivalent Document'; and
- (c) a Parental Consent Affidavit from the non-travelling parent or applicable court order or death certificate (where applicable).

When the child travels with a single registered parent on her or his Unabridged Birth Certificate or 'Equivalent Document', documentation relating to the absent parent such as the Parental Consent Affidavit or death certificate (as the case may be) shall not be required. The absence of documents relating to an unregistered absent parent may not be used as a reason for precluding the registered parent from travel with a child (e.g. unregistered father who is alive or deceased).

⁶ Section 167 of the Children's Act as amended states that:

- (1) *A child is in alternative care if the child has been placed:*
 - (a) *in foster care;*
 - (b) *in the care of a child and youth care centre following an order of a court in terms of this Act, section 29 or Chapter 10 of the Child Justice Act, 2008;*
 - (c) *in temporary safe care.*

⁷ Section 169 of the Children's Act provides that:

- (1) *A child in alternative care may not leave the Republic without the written approval of the provincial head of social development first being obtained.*
- (2) *In granting approval in terms of subsection (1), the provincial head of social development may determine terms and conditions to protect the best interest of the child in alternative care.*

⁸ See *Immigration Regulations*, item 6(12)(a).

⁹ See *Immigration Regulations*, item 6(12)(b).

(4) What documents are required when a child travels without either parent but is accompanied by another adult?¹⁰

Where a child travels accompanied by an adult other than her or his registered parent(s), the following shall be required:

- (a) a valid passport;
- (b) an Unabridged Birth Certificate or 'Equivalent Document';
- (c) copies of the identity documents or passports of the child's parents or legal guardian;
- (d) contact details of the minor's parents or legal guardian;
- (e) a Parental Consent Affidavit (*An affidavit from the parents or legal guardian of the child confirming that the accompanying travelling adult has permission to travel with the child*).

When a child with a single registered parent travels with another person without his or her registered parent the Unabridged Birth Certificate or 'Equivalent Document' and the Parental Consent Affidavit is required to be given by that registered parent for the purpose of the child exiting or entering the Republic. The unregistered parent may not be considered despite the fact that he or she may be alive and wishes to exercise the parental right to give or refuse consent for the child to travel.

(5) What documents are required when a child travels alone?¹¹

An unaccompanied minor has to produce:

- (a) a valid passport;
- (b) an Unabridged Birth Certificate or 'Equivalent Document';
- (c) a Parental Consent Affidavit (*An affidavit from the parents or legal guardian of the child confirming that she or he has permission to travel alone*);
- (d) the contact details of the parents or legal guardian of the child.

An unaccompanied minor entering the Republic must also produce a:

- (a) letter from the person who is to receive the minor in the Republic. This letter should reflect the following information, the:
 - (i) receiving person's residential address (and work address where applicable) and full contact details in the Republic; and
 - (ii) contact details in the Republic where the child will be residing.
- (b) copy of the receiving person's identity document or valid passport and visa or permanent residence permit.

When the child travels alone without her or his registered parents, the Parental Consent Affidavit is required to be given by both registered parents in order for their unaccompanied child to enter or exit the Republic.

When the child travels alone without her or his registered parents and in case the Parental Consent Affidavit is provided by only one of the registered parents, then that parent must also provide a relevant court order issued to her or him in respect of the traveling child.

An unaccompanied travelling child with only one registered parent on the Unabridged Birth Certificate or 'Equivalent Document', must produce a Parental Consent Affidavit from that registered parent in order for that unaccompanied child to enter or exit the Republic. The unregistered parent may not be considered despite the fact that he or she may be alive and wishes to exercise their parental right to give or refuse consent for the child to travel.

¹⁰ See *Immigration Regulations*, item 6(12)(c).

¹¹ See *Immigration Regulations*, item 6(12)(d).

(6) Can a minor produce an ‘Equivalent Document’ instead of an Unabridged Birth Certificate?

Yes, any official document such as an identity document or passport issued by a relevant authority of any country or letter issued by a foreign government including a foreign embassy or a letter issued by the Director-General, recording the identity of the parents of a child shall be acceptable in the place of an Unabridged Birth Certificate.

(7) Parental Consent Affidavit

What time frame applies to the validity of a Parental Consent Affidavit?

A Parental Consent Affidavit must not be older than four (4) months when presented at an entry or exit point of the Republic. However, the same Parental Consent Affidavit will still be valid for the departure or return of an unaccompanied minor in relation to the same journey regardless of the period of the journey.

Will a Parental Consent Affidavit from one parent be sufficient to permit an unaccompanied minor to travel?

As detailed above, if the parent giving the consent for the minor child to travel unaccompanied is the only parent that appears on the Unabridged Birth Certificate or ‘Equivalent Document’, then the Parental Consent Affidavit from that parent will be sufficient. However, if the details of both parents appear on the Unabridged Birth Certificate or ‘Equivalent Document’, the Parental Consent Affidavit should be given by both parents registered or appearing on the Unabridged Birth Certificate or ‘Equivalent Document’.

Where both parents appear on the Unabridged Birth Certificate or ‘Equivalent Document’ and the Parental Consent Affidavit is given by only one of them, then the parent providing the Parental Consent Affidavit must provide a copy of a court order granting her or him full parental responsibilities and rights in respect of the child. Where a parent appearing on the Unabridged Birth Certificate or ‘Equivalent Document’ refuses to give a Parental Consent Affidavit, a court order in terms of section 18(5) of the Children’s Act may be presented in lieu of such parental consent.

If the Unabridged Birth Certificate reflects only the particulars of one parent, will a Parental Consent Affidavit be required from the other parent even if he or she does not appear on the Unabridged Birth Certificate or ‘Equivalent Document’?

The Parent Consent Affidavit is required from the non-travelling parent only if she or he appears on the Unabridged Birth Certificate or ‘Equivalent Document’. Where only one parent’s particulars appear on the Unabridged Birth Certificate or ‘Equivalent Document’, no Parent Consent Affidavit from the unregistered parent (as the case may be) shall be required in order for the registered parent to travel with her or his child.

Also, in a case of a single parent, where the other parent did not acknowledge paternity resulting in his details being left out of the Unabridged Birth Certificate or ‘Equivalent Document’, a Parent Consent Affidavit shall not be required from him.

What should a parent whose details do not appear, but who does want them to appear, on the Unabridged Birth Certificate do in order to get their details to appear on the Unabridged Birth Certificate?

In this case, the parent concerned should apply at the local Department of Home Affairs office to request that his or her details to be inserted into the Unabridged Birth Certificate as a parent of the child. Such a parent will only be allowed to exercise her or his right to give or refuse consent for the child to travel if her or his details have been successfully included in the Unabridged Birth Certificate or if such details appear on the ‘Equivalent Document’ used by the travelling child.

Is a Parental Consent Affidavit required if the parents are married to each other?

Yes. If only one parent of a married couple that is recorded on the Unabridged Birth Certificate or 'Equivalent Document' is traveling with a minor child, then the non-accompanying parent is required to compile a Parental Consent Affidavit.

Can an accompanying parent travelling with a child, without the other registered parent on the Unabridged Birth Certificate or 'Equivalent Document', produce another document instead of a Parental Consent Affidavit granting the child permission to enter and exit the Republic with the accompanying parent?

Yes, one of the following documents may be produced in the absence of a Parental Consent Affidavit, a:

- (a) court order:
 - (i) granting full parental responsibilities and rights or full legal guardianship over the child;
 - (ii) granted in terms of section 18(5) of the Children's Act which is a court order granting permission for the child to travel in the event that there is a dispute or no consent forthcoming from the parent(s) of a child; or
- (b) death certificate of the deceased parent.

(8) What if a parent is deceased and the living parent does not have access to the death certificate?

The living parent must approach a Department of Home Affairs office and apply for the death certificate of the deceased parent before he or she travels with a child.

(9) What if the other parent is unable to give consent due to a recent death, mental incapacity or physical disability?

Where a parent recorded in an Unabridged Birth Certificate, or 'Equivalent Document', is unable to consent for their child to travel due to a recent death or mental incapacity or physical disability, persons acting on behalf of the child may apply for a special dispensation in lieu of the Parental Consent Affidavit by directing a request and full motivation, together with all supporting documents (e.g. treating medical practitioners certificate), to the Office of the Director-General of Home Affairs, at the following email address: consent@dha.gov.za.

(10) Can a parent apply for a special dispensation when they are unable to obtain a Parental Consent Affidavit from the other parent due to that parent's refusal to grant consent or the parents are separated or divorced?

No, a special dispensation only applies to incapacity (i.e. physical, mental, death), and does not apply where a parent is unwilling to grant consent or is unable to be located due to separation, divorce or other factors.

(11) What should a parent do when the other parent appearing on the Unabridged Birth Certificate refuses to give a Parental Consent Affidavit?

Where a parent appearing on the Unabridged Birth Certificate refuses to give a Parental Consent Affidavit, a court order in terms of section 18(5) of the Children's Act may be presented in lieu of such parental consent.

(12) Is a Parental Consent Affidavit required in the case of divorce, where parental responsibilities and rights¹² of the child are shared between both parents?

Yes, the parent travelling with the child will require a Parental Consent Affidavit from the non-travelling parent where parental responsibilities and rights of the child are shared between both parents.

(13) Is a Parental Consent Affidavit required in the case of divorce, where full parental responsibilities is granted to one parent?

No, the parent who has been granted full parental rights and responsibilities does not require a Parental Consent Affidavit from the non-custodial parent. He or she will be required to produce a court order indicating that they have been granted full parental responsibilities and rights in respect of the child.

(14) The receiving person

What is the role of the receiving person at the port of entry?

The person designated to receive a child at a port of entry should have documentation that corresponds to the papers carried by the unaccompanied minor. It is important for a receiving person to carry with them an authentic document of identification.

Our students are not collected from OR Tambo International Airport (Port of Entry) as our school is in another province and all our foreign students catch a connecting domestic flight from OR Tambo International Airport to our nearest city. Are we required to send the designated receiving person to meet the children at OR Tambo International Airport or any other first Port of Entry?

No, according to the Immigration Services at OR Tambo International Airport, children will be assisted by the airline to proceed through immigration. According to Immigration Services, it is the duty of the airline to hand over the child to the receiving person at the reception hall or to assist the child to board the next airline if the connecting ticket is the same airline or to assist the child to transfer to the next airline. To facilitate a smooth travel transition for a minor at the point of making their flight connection, we advise that the consent letter from the parents of an unaccompanied minor should specify the full travel itinerary.

Can we designate more than one person as the receiving person in order to cover ourselves for unforeseen circumstances?

Yes, more than one person may be designated to receive a child in the Republic. The documentation of each of the designated persons must be furnished as prescribed in the Immigration Regulations. In the case of where more than one person is designated as a receiving person, an explanation must be provided (e.g. in a boarding school many children may need to be fetched and it may be necessary to designate two or three receiving persons to collect the children to cater for the demands of collecting many children).

Do the requirements relating to a receiving person apply when the child is departing South Africa to another country?

No, the unaccompanied minor will be required to comply with the immigration regulations applicable in that country. If such a country does not enforce the requirement of a receiving person, South Africa does not have jurisdiction to impose its regulations on that country.

¹² In terms of section 18(2) of the Children's Act, 2005 the concept of parental responsibilities and rights includes to act as guardian, care, contact, and maintenance of the child.

(15) Exceptions

- (a) No supporting documents are required in case of minors transiting at an International Airport.
- (b) The new requirements for child travel do not apply when children travel within the country.

STUDY VISA NOTIFICATION TO THE DIRECTOR-GENERAL OF HOME AFFAIRS

(1) What must a Head of School or Registrar (e.g. Admissions Secretary) provide before a study visa can be issued to a prospective foreign learner?

The Head of School or Registrar must provide a prospective learner with an official letter confirming provisional acceptance or acceptance at a learning institution (school) in South Africa. This letter must also contain the duration of the course that they have been provisionally accepted or accepted into.

(2) What must a Head of School or Registrar do after a foreign national learner has successfully registered at the school?

The Head of School or Registrar must provide to the Director-General of Home Affairs, within 60 days of registration, proof that the foreign national learner has registered at the school.

(3) What must the Head of School or Registrar do if the foreign learner fails to register by the closing date?

In the event of a foreign learner failing to register by the closing date, the Head of School or Registrar must notify the Director-General of Home Affairs of the failure of a foreign national learner to register within 7 days after the closing date of registration.

(4) What must the Head of School or Registrar do if the foreign learner deregisters from the school?

Within 30 days of a foreign learner de-registering from a school, the Head of School or Registrar must notify the Director-General of Home Affairs that the foreign national learner is no longer registered with the school.

(5) What must the Head of School or Registrar do after a foreign learner has reached completion period of her or his studies?

Within 30 days of a foreign learner completing their studies, the Head of School or Registrar must notify the Director-General of Home Affairs that the foreign learner has completed his or her studies or requires an extension to their period of study.

(6) Where should the Head of School or Registrar send the required notifications to the Director-General of Home Affairs?

The required notifications to the Director-General of Home Affairs with regards to the study visas must be sent to the following official:

Elzabé Fisher
Office of the Director
Permits Functional Services
Immigration Services (IMS)
Department of Home Affairs
Tel: 0124064432
Fax: 0866240630
E-mail: Elzabe.Fisher@dha.gov.za

CONCLUSION

(1) What do the above regulations mean for my school?

- (a) The *Immigration Regulations* apply to children travelling with school groups. The school should ensure that children have all the necessary prescribed documents before they can travel on a school tour.
- (b) ISASA members are urged to provide clarity to parents and guardians on the latest regulations applicable to children entering or departing the Republic.
- (c) The Head of School or Registrar (as the case may be) needs to ensure that the necessary notifications are timeously sent to the Director-General of Home Affairs with relation to foreign national learners.

(2) Applicable Legislation

- (a) Constitution of the Republic of South Africa, 1996.
- (b) Children's Act 38 of 2005 (as amended).
- (c) Immigration Act 13 of 2002 (as amended).
- (d) Immigration Regulations, Government Notice R413, in Government Gazette 37679, dated 22 May 2014.

(3) ISASA Contacts

Should you require any assistance from ISASA, please contact Policy Analyst, Sithembiso Ntuli at sithembison@isasa.org or Policy Manager, Confidence Dikgole at confidenced@isasa.org or Director of Policy and Government Relations, Sandile Ndaba at sandilen@isasa.org or phone 011 648 1331.