THE NATIONAL CIVIL REGISTRATION AND VITAL STATISTICS BILL

(Bill No. .......of 2022)

(To be presented by the Minister for Home Affairs)

MEMORANDUM OF OBJECTS AND REASONS

The object of this Bill is to-

(a) harmonize and consolidate the laws relating to the mandatory registration of citizens and non-citizens legally resident in Eswatini;

(b) provide for the issuance of national identification cards;

(c) lay down the procedure for change of name or surname;

(d) provide for the reorganisation, modernization and naming of the system as the civil registration and vital statistics;

(e) provide for the registration of births, stillbirths, adoptions, deaths, marriages, divorce decrees and nullities;

(f) repeal the Birth, Marriages and Deaths Registration Act No. 5 of 1985, the Change of Name Act No. 67 of 1962 and the Identification Order No. 4 of 1998; and

(g) provide for incidental matters.

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ENTITLED

An Act to make provision for the harmonisation and consolidation of laws relating to the mandatory registration of citizens and non-citizens legally resident in Eswatini; the registration of vital events respecting births, deaths, marriages, divorces, adoptions, change of names, the issuance of national identification cards and for other incidental matters.

ENACTED by the King and the Parliament of Eswatini.

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the National Civil Registration and Vital Statistics Act, 2022.

(2) This Act shall come into force on a date to be appointed by the Minister by Notice in the Gazette.

Interpretation

2. (1) In this Act, unless the context otherwise requires-

“administrative penalty” means a sum of money payable to the Director, by a person for failure to comply with certain provisions of this Act to which such penalty attaches or is imposed by the Director pursuant to section 87;

“adoption” means a legal process which permanently transfers parental responsibility from the child’s biological parents to the adoptive parents;

“adult” means a person of the age of eighteen years;

“birth” means the birth of any viable child whether such child is living or born dead;

“body” means a corpse;

“certificate of particulars of birth” means the certificate issued at the time of birth of a person;

“citizen” means an Eswatini citizen under the Constitution of the Kingdom of Eswatini;

“civil registration” means the continuous, permanent, compulsory and universal recording of the occurrence and characteristics of vital events in accordance with the legal requirements of a country;

“Civil Registry” means the office responsible for civil registration established under section 4 herein after referred to as “Registry”;

“change” means any change by way of alteration, substitution, addition or abandonment;
“child” has the same meaning as ascribed in the Children Protection and Welfare Act No. 06, 2012;

“day”, in relation to the happening of an event or the doing of any act or thing under this Act, means Monday through Friday, except for public holidays;

“Director” means the person appointed in the public service to be the Director of the National Civil Registry appointed under section 8;

“dwelling” means any structure inhabited by a person whether on a temporary or on a permanent basis;

“fingerprints” means a record of the unique pattern of curves formed by the ridges and valleys and other characteristics of the fingers of an individual; and include palm prints;

“guardian” means a person having care of a minor or minor’s property, or of both minor and property;

“holder” means an individual to whom lawful possession of a national identification card or non-Swazi’s identification card has been granted under this Act;

“identity data” means the physiographic characteristics of an individual including the biometric information of an individual required for the purpose of establishing that individual’s identity;

“identity document” includes-

(a) birth certificate;

(b) a valid Swazi or foreign passport;

(c) a valid residence permit; or

(d) a certificate of acquired citizenship;

“information” means data about a person that is recorded in any form including-

(a) data that relates to the nationality, age or marital status of the person;

(b) data that relates to the educational level, or occupation of the person or data that relates to a financial transaction in which the person has been involved;

(c) an identification number or other particulars assigned to the person; and

(d) identity data;

“marriage” means the voluntary union between a man and a woman and intended to last for their joint lives and any reference in this Act to a marriage means a marriage whether contracted
before or after the commencement of this Act and whether contracted in Eswatini or elsewhere under any law or custom;

“Minister” means the Minister responsible for home affairs;

“national identification card” means an identity card issued under section 60;

“national population register” means the population register established under this Act section 73;

“non-Swazi” means a person who is not a Swazi citizen;

“non-Swazi identification card” means a non-Swazi identification card issued under this Act;

“prescribed” means prescribed by regulations;

“record” includes information that is recorded in any form or in any medium of writing, print, photographic, electronic or otherwise and does not include a computer programme or other mechanism that can produce a record;

“register” includes any books, registers or records which were kept in respect of any births, marriages, adoptions, foreign adoptions, deaths, external births and deaths, change of name or surname and information of all persons lawfully resident in Eswatini before or after the commencement of this Act;

“register” means-

(a) an entry on the electronic register or the physical register; or

(b) the book or media file used for the recording and storage of information, regarding the life event of a person;

“residence permit” means a permit granted to a foreign national who intends to remain in the country for a substantial period which in the first instance does not exceed two years and may be extended;

“stillborn” in relation to a child means a viable child which showed no sign of life after complete birth;

“viable” in relation to a child means an infant six or more months of intrauterine existence;

“vital event” means a birth, external birth, stillbirth, adoption, foreign adoption, marriage, death, external death, decree of divorce or decree of nullity, occurring or granted in Eswatini, or a birth, stillbirth, adoption, foreign adoption, marriage, death, external death, decree of divorce or decree of nullity that could have been, but was not, registered in a register formerly maintained under the repealed Act;

“vital statistics” means data relevant to or as a consequence of the activities or any life event relating to persons under a relevant enactment.
Purposes of the Act

3. The purposes of the Act are to provide for-
   
   (a) the registration of births, deaths, marriages, divorces, nullities of marriages, changes of name or surname and adoptions;
   
   (b) the issuance of national identification cards;
   
   (c) the recording and preserving of information concerning births, deaths, marriages, divorces, nullities of marriages, identification cards, changes of name or surname and adoptions;
   
   (d) the creation of an electronic system which records life events of births, deaths, marriages, divorces, adoptions, identification cards and change of name or surname;
   
   (e) easy access to the Civil Registration System to other ministries, departments and agencies of the Government to enhance the standard of decision-making and public administration;
   
   (f) limited access to the vital statistics contained in the register or the database and, in appropriate cases by private agencies and by members of the public, from within and outside of Eswatini;
   
   (g) the collection and dissemination of vital statistics for the purpose of managing and recording human development indices and other indices; and
   
   (i) such other matters as may be prescribed by the Minister from time to time.

Application of the Act

4. This Act applies to vital statistics generated under this Act or under any enactment requiring such generation.

PART II
ESTABLISHMENT OF THE NATIONAL CIVIL REGISTRY

Civil Registry and seal of office

5. (1) The Department of Government in existence immediately before the coming into force of this Act known as the “Civil Registration Department” is, subject to this Act, continued and re-established as an office to be known as the National Civil Registry.

   (2) The Civil Registration Department shall be headed by the Director who shall be

      (a) responsible for the administration of the National Civil Registry; and

      (b) shall be assisted by a Deputy Director and such number of Assistant Directors and other staff of the office as maybe appointed in accordance with laws governing the public service.
The functions, powers and duties that, prior to the coming into force of this Act, vested in the Registrar, Civil Registration Department or other officer carrying out functions under the supervision, direct or indirect of the Director by virtue of any legislation shall, upon the coming into force of this Act, vest in the persons appointed pursuant to this Act.

The seal of the Registry shall be authenticated by the signature of the Director or Deputy Director.

**Objects and purpose of the National Civil Registry**

6. The object for which the National Civil Registry is established is to-

   (a) develop and maintain an accurate electronic database of the life events occurring within Eswatini or involving citizens and residents of Eswatini;

   (b) provide accurate information about civil status events such as births, adoptions, marriages, divorces, nullities and deaths;

   (c) provide accurate information about the demographic distribution throughout Eswatini, the rate of social change and civil status trends;

   (d) facilitate study and research for social and economic development;

   (e) provide easy access to the Civil Registration System to other ministries, departments and agencies of the Government to enhance the standard of decision-making and public administration;

   (f) promote access to information and support the democratic process; and

   (i) carry out such other functions as may be prescribed by the Minister from time to time.

**Electronic system for the Civil Registry**

7. (1) The Minister, with the approval of the Cabinet, may having regard to the purposes and functions of the Civil Registry, acquire a suitable up-to-date and reliable information system for the Civil Registry, together with the attendant software and hardware backup.

   (2) The backup of data for shall be stored at such place, other than the Civil Registry, as the Minister determines for purposes of safety.

**PART III**

**APPOINTMENTS AND ADMINISTRATIVE FUNDAMENTALS**

**Appointment of the Director and other officers**

8. (1) There shall be appointed to the public service in accordance with the Constitution-

   (a) a person to be known as the Director of National Civil Registry;

   (b) a person to be known as the Deputy Director, National Civil Registration; and

   (c) such number of persons to be known as National Civil Registration Officers
as may be necessary for the purposes of the proper functioning of the Registry in general.

(2) There shall be appointed to the public service in accordance with the Constitution-

(a) a person to be known as the Regional Directors of Civil Registration;

(b) a person to be known as the Assistant Regional Directors of Civil Registration;

(c) such number of persons to be known as Registration Officers, as may be necessary for the purposes of the proper functioning of the Registry at the regional level.

(3) An officer or employee of the Civil Registration Department continued under section 5, shall, upon the coming into force of this Act, be deemed to be transferred to the or service the Registry upon the same terms and conditions of employment as under their service in the Civil Registration Department.

(4) An officer or employee or any person acting on the directions of the Director shall not be liable in respect of any matter or thing done by him in good faith under this Act.

Functions of the Director

9. (1) The Director shall be responsible for the administration of the Civil Registry and the implementation of the objectives of this Act and, without limiting the generality of the foregoing, the Director shall-

(a) maintain, manage and control any system of registration established under this Act;

(b) compile and maintain a national population register and to issue national identity documents;

(c) extend the Civil Registration Service to decrees of divorce, and decrees of nullity granted by any court in Eswatini;

(d) where appropriate, modify and adapt the Civil Registration Service so as to provide for changing needs and circumstances including the use of electronic or other information technology in relation to the Service;

(e) for the purposes of the Civil Registration Service, where appropriate, to maintain, adapt, modify and enlarge the registers, indexes and other records established and maintained under the repealed enactments;

(f) publish guidelines to Regional Civil Registrars, Assistant Regional Civil Registrars on the operation of this Act; and
to perform any other functions conferred on the Director by the Minister under subsection (3).

(2) The system of registration of births, stillbirths, deaths, marriages, adoptions and foreign adoptions established and maintained under the repealed enactments shall continue in existence after the commencement of this Act and may if the Director considers it appropriate to do so, be adapted or modified.

(3) The Minister may, by regulations, confer on the Director such additional functions in relation to the Civil Registration and vital statistics as considered appropriate.

(4) The Director shall be independent in the performance of the Director’s functions.

(5) The Director may do all such acts or things as are necessary or expedient for the purpose of the performance of the Director’s functions.

**Powers of the Director**

10. (1) The Director may -

(a) confiscate and cancel such document or certificate where it is established that the holder of an identity document, birth certificate, death certificate or marriage certificate or any of the documents issued under this Act was obtained through unlawful means,

(b) withdraw and cancel an identity document or birth certificate where that person in possession of such document or certificate does not qualify to possess such document or certificate; and

(c) approve or decline an application for any document or certificate where an applicant has not complied with the requirements under the Act.

(2) If a life event has been registered twice in the register, the Director shall cancel one of the two registrations.

(3) The Director shall reject an application required to be given under this Act, if the Director is satisfied that the application-

(a) is not in compliance with the Act;

(b) contains information that is inaccurate or cannot be verified; or

(c) amounts to misrepresentation or fraud.

**Correction of returns**

11. (1) On receipt by the Director of any information given or transmitted pursuant to this Act, he or she shall examine the same and cause any omission, defect or inaccuracy therein to be supplied or corrected as far as may be possible.

(2) For the purpose of this subsection (1), the Director may require any person whose duty it is to give information under this Act to attend and give information in the manner prescribed in this Act.
Registers

12. (1) The Director shall establish and maintain the following registers:

(a) Register of Births including births occurring outside Eswatini with respect to emaSwati;

(b) Register of stillbirths;

(c) Register of Adoptions including foreign adoptions;

(d) Register of Deaths including deaths of emaSwati occurring outside Eswatini;

(e) Register of Marriages;

(f) Register of Nullities;

(g) Register of Divorces; and

(h) such other Registers as may be specified, from time to time under any other enactment.

(2) A register formerly maintained under the repealed enactments shall be deemed, for the purposes of this Act, to be part of any of the registers under subsection (1).

(3) A register may be maintained in any legible form or in any other manner capable of being converted into a legible form and of being used to make a legible copy or reproduction of an entry in the register.

(4) Evidence of an entry in a register and of the facts stated therein may be given by the production of a document purporting to be a legible copy of the entry and to be certified to be a true copy by the Director or a person authorised in that behalf by the Director.

(5) Any requirement of law for the production of a certificate of birth shall be satisfied by the production of a copy of the relevant entry in the register of births purporting to be certified in accordance with subsection (4).

(6) The Director may give direction in writing to any other person who holds a marriage register book provided under the repealed enactments to deliver the book or a copy to an authority specified in the direction not later than twenty eight (28) days from the date of the direction.

(7) For purposes subsections (2) to (4), “register” means a register maintained under subsection (1).

Register books not in use to be properly kept

13. All registers not in use shall be,

(a) reproduced into digital format; and

(b) kept by the Director in a safe place as to maintain the integrity of the physical books or record for an indefinite period.
Administrative fundamentals

14. (1) A person shall not enter any data on a register unless it is obtained from an appropriate document filed in support of an application for registration.

(2) A document to be used in support of a registration of a life event shall be an original or a certified copy of the original, unless a relevant enactment provides otherwise.

(3) A person shall not make any amendment to an entry on a register unless the amendment is made in accordance with the relevant provisions of this Act, a relevant enactment or pursuant to an order of a court of competent jurisdiction.

(4) A member of staff of the Civil Registry or other person having access to the data or information contained in a register shall not accept any fee, payment or other gift from any person in connection with the provision or disclosure of any information on the register unless it is a lawful fee relating to a transaction in the Civil Registry and accepted by the staff member assigned to accept fees and other payments.

(5) A person having access to the data or information on a register shall not share such access with an unauthorised person.

PART IV
REGISTRATION OF BIRTHS AND STILLBIRTHS

Notification of births and stillbirths

15. (1) In this Part, “the register” means, as the context requires, the register of births or the register of stillbirths.

(2) A medical practitioner, nurse practitioner or midwife who attends at a birth or a stillbirth shall give notice of the birth or stillbirth.

(3) If a birth or stillbirth occurs at a hospital or other medical facility, the person having control or management of the facility or having responsibility to record and submit the information on behalf of the person having control or management of the facility shall give notice of the birth or stillbirth to the Director.

(4) If the birth or stillbirth occurs in circumstances where subsection (2) and (3) do not apply, then the father or mother, or in the case of the death, illness, absence or inability of the father or mother-

(a) the head of the family or household in which the child was born;

(b) an occupier of the apartment or the dwelling in which the child was born; or

(c) a person who resides in or was present at the time and place where the child was born,

shall give notice of the birth or stillbirth to the Director.
(5) A person in charge of a jail, infirmary, psychiatric hospital, or other public or charitable institution is hereby deemed to be the occupier thereof for the purposes of subsection (4)(b).

(6) The notice of the birth or stillbirth shall be given to the Director within fifteen (15) days after the birth of the child whether the child was born alive or was stillborn.

(7) If a pregnancy resulted in the birth of more than one child, a separate notification shall be given for each child and each statement shall state the number of children born and the birth order of the child that is the subject of that particular notification.

(8) A person who is required to give notice of a birth or a stillbirth and who fails or refuses to give notice of a birth or stillbirth as required under shall be liable to pay an administrative penalty pursuant to this Act.

Particulars of notification of births and stillbirths

16. (1) A notification of a live birth at any place within Eswatini shall be made in the prescribed form and shall state the following particulars-

(a) the day, month and year of the birth of the child;
(b) the sex of the child;
(c) the name and surname of the child, if any;
(d) the names and surnames, date of births, address and profession of the father and of the mother of the child;
(e) the nationality of the father and of the mother; and
(f) the marital status of the parents.

(2) A notification of a stillbirth shall be made in the prescribed form and shall contain, in addition to the particulars referred to in subsection (1), the following particulars-

(a) the weight of the foetus;
(b) the gestational age of the foetus;
(c) the number of this particular pregnancy for the mother; and
(d) the full name of the certifying medical practitioner.

Registration of births and stillbirths

17. (1) The registration of a birth of a child born at any place within Eswatini shall -

(a) in the case of a child born alive, be done within 60 days of the birth of that child; and
(b) in the case of a child born dead, be done within 30 days of the birth of that child.

(2) A statement containing the information required by the Director shall be completed by the following individuals and delivered to the Director-
(a) both the mother and the father of the child;

(b) the child’s mother if the father is incapable, deceased or unacknowledged by or unknown by the mother;

(c) the child’s father if the mother is incapable or deceased;

(d) a person having lawful custody of the child if both parents are incapable or deceased; or

(e) Chief or indvuna in the absence of the persons listed under paragraph (a) to (d).

(3) If none of the persons referred to in subsection (2) delivers a statement to the Director, within the period specified in subsection (1), the Director shall, by any means of communication, summon the mother, father or person having lawful custody of the child, to attend before the Director and at such time and place specified in the summons.

(4) If none of the persons referred to in subsection (2) appear in answer to the summons issued under subsection (3), or cannot be found after all reasonable efforts have been made, the Director may register the birth using the information provided in the notification.

(5) The person providing a statement to the Director under subsection (2) shall make a declaration, as required by the Director and state that the particulars provided of the birth are true according to that person’s best knowledge and belief.

(6) The Director shall issue a certificate of birth in the prescribed form when certified that the required information is complete.

(7) The Director may issue a certificate of stillbirth upon the request of the father or the mother in the prescribed form.

(8) A person who registers or causes to be registered a birth or stillbirth after the time specified in this section, is liable to pay an administrative penalty pursuant to this Act.

(9) A person who fails or refuses to appear in answer to a summons issued under subsection (3) is liable to pay an administrative penalty pursuant to this Act.

Registration of child born to unmarried parents

18. (1) The Director shall not enter the full name of any man as the father of a child born to unmarried parents unless the following is submitted to the Director-

(a) a joint application by the mother and father of the child in the prescribed form for the father’s full name to be entered on the register;

(b) an application made by the mother to have the full name of the father registered, supported by a declaration by the man acknowledging himself to be the father of the child; or

(c) an application by the man acknowledging to be the father in the case where the mother cannot be found or is dead, supported by a declaration made by him and an approved test result establishing him as the father or a after filling paternity results.
(2) If the birth of a child born to unmarried parents has been registered and no man has been entered on the register as the father of the child, the Director may, if an application is made within 6 months of the birth of the child,

(a) at the joint request in the prescribed form of the mother and of the man acknowledging himself to be the father; or

(b) at the request of the mother only on production of a declaration in the prescribed form and supported by a declaration in the prescribed form made by the man acknowledging himself to be the father of the child or an approved test result establishing him as the father.

(c) at the request of the man acknowledging himself to be the father on production of an approved test result establishing him as the father, re-register the birth to add the full name of a man as the father.

(3) The cost of the approved test referred to in sub-section (2) (c) shall be borne by the father provided that where the father cannot afford to pay, the Director shall satisfy himself of such fact and cause the state to bear such costs.

(4) The Director shall perform a means test to determine whether the purported father cannot pay for the approved or paternity test.

**Re-registration to include particulars of father**

19. (1) At any time after a period of 6 months has elapsed since the birth of a child whose father’s full name is not entered on the register, the Director shall authorise the entry of the full name and particulars of the father if the Director is satisfied that-

(a) a paternity order in respect of the child has been made by the High Court, or that a judgement of paternity has been made by a Magistrate’s Court; or

(b) the child’s parents were subsequently married to each other.

(2) Where no person has been registered as the father of a child born to a man and a woman who were not married to each other, but the mother of the child was married at the time of the child’s birth or at any time during a period of 10 months immediately before the birth of the child, the Director shall not enter the full name of a person who was not married to the mother during the aforesaid period as the father of the child except the woman produces-

(a) an affidavit sworn by the mother that she has been living separate and apart from the person who is or was her husband for a period of at least 10 months immediately before the birth of the child; or

(b) that she had a relationship with another man who has fathered the child; and

(c) an affidavit sworn by the man acknowledging himself to be the father of the child;
(d) an affidavit sworn by the person to whom the mother was married at the date of the birth of the child or at any time during a period of ten months immediately before the birth of the child that he is not the father of the child; and

(e) an approved test result establishing who the father of the child is.

(3) Where no person has been registered as the father of a child and both the mother of the child and the alleged father of the child are deceased, a relative of the child may apply to the Director to have the full name and particulars of the father entered on the register.

(4) The Director may approve the application in subsection (3) if the application is supported by-

(a) an affidavit stating the applicant’s relationship to the child and the facts of the birth of the child; or

(b) any other evidence proving paternity.

(5) For the purpose of this section “relative” includes a grandmother, grandfather, aunt, uncle or an older sister or brother of the child.

Late registration

20. (1) In this section, “late registration” refers to the registration of a birth after the time specified by section 17.

(2) If after 6 months of the birth of a child the birth is not registered, an application shall be made in the prescribed form to the Director for late registration of the birth of the child.

(3) The Director shall register the birth-

(a) if the person making the application qualifies as an informant;

(b) the information respecting the birth and the reason for the late registration is verified by an affidavit;

(c) the particulars required under section 16 or 17 are provided to the Director; and

(d) the Director is satisfied as to the truth and sufficiency of the information and other matters stated in the affidavit.

(4) If the application does not satisfy the requirements of subsection (3), the Director may require the applicant to apply to the Magistrate’s Court for an Order of registration of birth.

(5) The Director shall register the birth upon receipt of the Order in the terms thereof and shall specifically note on the register that the registration was done pursuant to an Order of court.

Finding of an abandoned child or foundling

21. (1) Where a living child is found abandoned, it is the duty of-
(a) the person who finds the child to contact the emergency services (“911”) without delay;

(b) the emergency services to contact the police and to immediately convey the child to the nearest medical facility for evaluation; and

(c) the nurse into whose care the child was delivered, to contact the Director of the Department of Social Welfare or a social worker of that Department, without delay, and to inform the Director or social worker of the finding of the abandoned child.

(2) The person who finds the child shall, within 7 days of the finding, give to the police and to the Director of Social Welfare a statement of all the information that the person has regarding the particulars of the birth of the child.

Registration of an abandoned child or foundling

22. (1) If after 30 days of finding an abandoned child the Director of Social Welfare is satisfied that all reasonable effort was made without success to identify the child, the Director shall establish the date of birth of the child and name the child.

(2) The Director of Social Welfare shall provide the Director with evidence on affidavit concerning the finding of the child and request that the birth of the child be registered.

(3) The affidavit shall include the following particulars:

(a) the day, month and year the child was found;

(b) the date of birth of the child;

(c) the sex of the child;

(d) the weight of the child when found;

(e) the location in which the child was found;

(f) the names given to the child;

(g) the full name, residence and profession of the person who found child (informant) if applicable;

(h) the certifying medical practitioner; and

(i) any other information arising from a credible source.

(4) Where the date of birth of a child whose birth is required to be registered under this section is not known and a medical practitioner certifies in writing that, in the medical practitioner’s opinion, the birth took place on or about a date specified in the certificate, the Director of Social Welfare and the Director shall regard the date given by the medical practitioner as the date of birth.

(5) The Director shall, if satisfied by the information provided, register the birth of the child and issue a certificate of the birth to the Director of Social Welfare.
If subsequent to the registration of a birth under this section, further information is received by the Director affecting the particulars of the birth as registered, or the identity of the child is established to the satisfaction of the Director, the Director shall, after consultation with the Director of Social Welfare-

(a) add to or correct, the registration of the birth made under this section; or

(b) cancel the registration of birth made under subsection (5) and cause a new registration in accordance with the facts of the birth to be substituted for the former registration.

If a new registration is made under subsection (6) (b), such registration shall-

(a) carry the same date as shown on the registration under subsection (5); and

(b) be regarded as the only registration of the birth of the child and no certificate of birth in respect of the first registration shall be issued.

Where the identity of an abandoned child is unknown, the Director of Social Welfare shall assign the surname “Dlamini” to such an abandoned child.

Registration of a child born a hermaphrodite

If a child born a hermaphrodite, after being registered, through an operation, changes from a female to a male or from a male to a female and the change is certified by a medical doctor, the Director shall, upon application of the parents or guardian of that child update the particulars of the child which appear on the register.

On registration the gender or sex of a child born hermaphrodite shall be denoted with the letter “H” on the certificate.

Name of child

The surname of a child shall be registered as follows-

(a) if the parents of a child have the same surname, then the child’s surname shall be the parents’ surname;

(b) if the parents of a child have different surnames and the father’s full name is not entered on the register, then subject to this section, the child’s surname shall be the mother’s surname; or

(c) if the parents of a child have different surnames and the father’s full name is entered on the register in accordance with this Act, then the child’s surname may be the father’s.

If the Director considers that the name that a person applying for the registration of a birth or an amendment to a registration of birth seeks to give to a child-

(a) might reasonably be expected to cause embarrassment to the child or another person;
(b) is offensive or against public order; or
(c) is sought for an improper purpose,

the Director shall register the birth without the inclusion of the name or refuse to amend the existing name on the birth certificate, as the case may be.

(3) The Director shall notify the applicant without delay that the name or amendment has been refused and give the reason for the refusal.

(4) A person who is aggrieved by the decision of the Director under subsection (2) may appeal the decision of the Director to a court of law.

(5) On an appeal under subsection (4), the court may consider any evidence deemed relevant and may make an order confirming the decision of the Director or directing the Director to register or amend the name in the terms of the order.

**Alteration of names in birth register**

25. (1) The Director shall, on application in writing, in the prescribed form, by the parents, the surviving parent or the legal guardian of a child whose birth has been registered, on production to the Director of satisfactory evidence on payment of the prescribed fee if the name of the child has been registered, alter the name in the entry in the register.

(2) Where a name is changed, altered, registered or one or more names are added under subsection (1), the then existing entry concerned shall be retained in the register, the change, alteration, registration or addition shall be deemed for all purposes to be and always to have been part of the original entry and the name or names in the register may not be further changed, altered or added to.

(3) Notwithstanding the provisions of sub-section (2) any error done or omission committed by the Director in the course of effecting any change or alteration of a name or names in the births register may be changed, altered or added without the need for an application.

**Alteration of particulars of parents in births register**

26. If after registration of a birth, any particulars of a parent shown in the births register have changed on account of the alteration of any name or change of surname, or change of any other particular due to some other reasons not provided for in this section, the Director shall, on application of such parents and on production of the certified copy of an order which effected the alteration in the said particular or of documentary proof in support of the alteration required and on payment of the prescribed fee, cause the said particular of the parents to be altered in the original birth register.

**PART V**

**REGISTRATION OF ADOPTIONS**

**Registration of adoption**
27. (1) In this Part “register” refers to the Register of Adoptions maintained by the Director.

(2) The Director shall upon receipt of an order of adoption pursuant to an adoption order whether made under Part IX of the Children’s Protection and Welfare Act, 2012, before or after the commencement of this Act register the adoption in terms of the order.

(3) If a child whose birth was previously registered is adopted, the Director shall, at the time of the registration of the adoption, or at any time thereafter, amend the original registration of birth in accordance with the facts contained in the order.

(4) If a child whose birth was registered is adopted by virtue of an order, judgment or decree of adoption made by a court of competent jurisdiction in another country, the Director shall-

(a) on receipt of a certified copy of the order, judgment or decree, and

(b) on production of evidence to the satisfaction of the Director of the identity of the child; and

(c) upon payment of the prescribed fee,

register the adoption in the manner referred to in subsection (3).

(5) If a person born outside of the country is adopted by an order of a court of competent jurisdiction within the country, the Director may, at the request of the Adoption Committee appointed in accordance with Part IX of the Children’s Protection and Welfare Act, 2012, transmit to the Director or person in charge of the adoption of births in the country where the adopted child was born-

(a) a certified copy of the order of adoption; and

(b) a copy of the registration of the adoption.

(6) The country of birth of an adopted child shall be entered in the Register of Adoptions provided the Director is satisfied with the identity of the child.

(7) If an adoption order is amended, the entry in the Register of Adoptions relating to the adoption shall be amended accordingly.

(8) If an adoption order is set aside, the entry in the Register of Adoptions shall be cancelled.

Privacy of adoption records

28. (1) A person other than the Director or a person authorised by the Director shall not search the Register of Adoptions or an index relating to the Register of Adoptions which makes traceable an entry in the register.

(2) Information from the register or an index relating to the register shall not be given to any person except by order of the Director or of a court of competent jurisdiction.
A court shall not make an order under subsection (1) and (2), or an order for the discovery, inspection, production or copying of any book, document or record pertaining to the register, or of any extract there from, unless it is satisfied that it is in the best interest of any child concerned to do so.

PART VI
CHANGE OF NAME

Application to change name or surname

29. (1) An adult person who-

(a) was born in the country; and

(b) has satisfied the requirements of this Part,

may submit an application for a change of name or surname or both in the prescribed form and on payment of the prescribed fee, to the Director.

(2) An application under subsection (1) shall be accompanied by evidence of payment of the prescribed fee.

Contents of application

30. (1) An application shall be in the prescribed form and shall state, by way of an affidavit, in respect of the person to whose name or surname the application relates, -

(a) the person’s date and place of birth;

(b) if the person is married, the full name, before marriage, of the person’s spouse and the date and place of the marriage;

(c) if the person has filed a joint declaration that has not been revoked, the full name of the other person who made the joint declaration, its date and the place where it was made;

(d) the full names, and all former names, if known, of the person’s parents;

(e) the length of the person’s residence in Eswatini, and the person’s current address;

(f) in the case of an application for a child -

(i) that the applicant has lawful custody of the child;

(ii) that no court order or separation agreement prohibits the change of name or surname that is sought; and

(iii) whether a court order or separation agreement provides that the child’s name or surname shall not be changed without a person’s consent and, if so, particulars of the order or agreement;
particulars of every criminal offence of which the person has been convicted, except an offence in respect of which a pardon has been granted under a relevant law or a spent conviction;

(h) particulars of every outstanding law enforcement order against the person, including a warrant, prohibition order, restraining order, driver’s licence suspension, probation order and parole order, of which he or she is aware;

(i) particulars of every pending criminal charge against the person of which that applicant is aware of;

(j) particulars of every unsatisfied order for payment of money, unsatisfied execution and pending court proceeding, other than a proceeding referred to in paragraph (i), against the person of which he or she is aware;

(k) whether the person is an undischarged bankrupt and, if so, particulars of the bankruptcy;

(l) particulars of any change of name or surname made before the current application;

(m) the proposed name or surname;

(n) the reasons for the change of name or surname;

(o) that every consent required for the application has been given or has been dispensed with by the court;

(p) that every person entitled to notice of the application has been given notice;

(q) that the application is not made for an improper purpose; and

(r) any other information or documents that are prescribed.

(2) If anyone is entitled to notice of an application, the applicant shall-

(a) at least thirty (30) days before filing the application, send notice and a copy of the application by registered or certified mail to the last known address of the person entitled to notice; and

(b) obtain an acknowledgment of notice, signed by the person entitled to notice, and provide it with the application to the Director.

(3) For the purposes of subsection (2), the Minister shall by notice in the Gazette prescribe a category of persons who are entitled to notice under this Part.

Application for change of child’s name or surname

31. (1) The parent or guardian of a child who is -
(a) born in the country; or
(b) domiciled or ordinarily resident in the country,

may submit an application for a change of the child’s name or surname or both in the prescribed form and on payment of the prescribed fee, to the Director.

(2) An application under subsection (1) shall be accompanied by evidence of payment of the prescribed fee.

(3) Where an application is made under this section on behalf of a child who has attained the age of 18 years old, that child shall consent to such application.

(4) The application may be made by one parent if-
(a) the intended applicant is the sole parent named in the registration of the child’s birth under this Act or any other enactments; or
(b) there is proof that the child’s other parent is deceased.

(5) If the parents of a child are dead or cannot be found, or for some other reason cannot exercise their parental responsibilities over such a child, the child’s guardian may apply for the registration of the child’s change of name or surname.

**Police records check**

32. An application shall for a change of name or surname shall be accompanied by a police records check that is prepared and certified by a member of the police force showing that such person is of good character, and that there is a good and sufficient reason for the assumption of another name or surname and that in particular, the check did not disclose particulars described in section 30 (1) (g) to (n).

**Hearing of application**

33. (1) The Director may, not later than 60 days after receipt of an application, hear and determine the application depending on the nature and content of the application or may place the application before a court of law, notwithstanding anything contained in any enactment.

(2) Where the application has been placed before a court, the Director shall inform the applicant of the date and time of the hearing of the application and of applicant’s right to have a legal practitioner present at the hearing.

(3) The Director shall notify an applicant of the decision taken under subsection (1) and the reasons thereof.

**Refusal of application**

34. (1) If the Director believes on reasonable grounds that an applicant seeks the change of name or surname for an improper purpose, the Director shall-
(a) refuse the application; and

(b) advise the applicant and any person who was entitled to notice of the application, that it was refused and that the applicant has the right to make an application under subsection (2).

(2) An applicant whose application is refused may, on notice to the Director, apply to the court for an order granting the application.

(3) The Director may file with the court the reasons for refusing the application and the court may take them into account if satisfied that the applicant has had notice of the reasons and an opportunity to respond to them.

(4) If the court is satisfied that the applicant does not seek the change of name or surname for an improper purpose, the court may, by order, grant the application.

(5) On receiving a certified copy of the order, the Director shall, in accordance with this Part register the change of name or surname and issue a change of name or surname certificate.

Registration of change of name or surname

35. (1) If the Director is satisfied that the name or surname of a person whose birth is registered in the country can be changed in accordance with this Part, or by order of a court of competent jurisdiction of another country, the Director may, upon receiving proof of payment of the prescribed fee, register the change of name or surname and issue change of name or surname certificate.

(2) The Director may refuse to register a change of name or surname if, the name or surname to be registered is offensive or against public order.

Entries to be made on register

36. (1) The Director shall register a change of name or surname by making an entry about the change of name or surname on the register including such particulars as the Director considers appropriate.

(2) If the birth of the person whose name or surname has been changed is registered under this Act, the Director may note the change in the entry relating to birth.

(3) If the birth of the person whose name or surname has been changed is registered under a corresponding law of another jurisdiction, the Director may notify the relevant registering authority of the change of name or surname.

Publication, registration and notice

37. On registering a change of name or surname made under this Act, the Director shall -
(a) promptly cause a notice of the change of name or surname to be published in the Gazette;

(b) enter the change of name or surname in the change of name index maintained under this Act; and

(c) cause notice of the change of name or surname to be given to the clerk of the Magistrate’s Court or Registrar of the High Court as appropriate, if the application was settled by an order of a court.

**Revocation of change of name or surname**

38. (1) If the court is satisfied that the change of name or surname was obtained by fraud or misrepresentation or for an improper purpose, the court may, on application of the Director, by order revoke it.

(2) The clerk or Registrar of the court shall send a certified copy of the order to the Director.

(3) On receiving a copy of the order, the Director, -

(a) may require the person to whom a birth certificate or change of name or surname certificate has been issued in connection with the change of name to surrender it immediately;

(b) shall promptly cause a notice of the revocation to be published in the Gazette; and

(c) shall cause notice of the revocation to be given to a person who was given notice of the change of name or surname under this Part.

**Obtaining change of name or surname by fraud, etc**

39. (1) A person who obtains a change of name or surname under this Part by fraud or misrepresentation commits an offence and is liable, on conviction, to a fine not exceeding ten thousand Emalangeni (E10,000) or imprisonment to a term not exceeding two (2) years or to both.

(2) A person who uses a name or surname in respect of which that person was convicted under subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding ten thousand Emalangeni (E10,000) or imprisonment to a term not exceeding 2 (2) years or to both.

(3) A person who uses a name or surname,

(a) that the person sought to adopt in an application that was refused under this Part; or

(b) that was the subject of an order of revocation of change of name or surname,

knowing that the change of name or surname was refused or revoked, as the case may be, commits an offence and is liable, on conviction, to a fine not exceeding ten thousand Emalangeni (E10,000) or imprisonment to a term not exceeding two (2) years or to both.
A person who knowingly fails to comply with a requirement of the Director to surrender a certificate upon revocation of change of name, commits an offence and is liable, on conviction, to a fine not exceeding ten thousand Emalangeni (E10,000) or imprisonment to a term not exceeding two (2) years or to both.

A statement as to the time when the Director became aware of the facts on which the proceeding is based, purporting to be certified by the Director, is, without proof of that person’s office or signature, evidence of the facts stated in it.

Election by female spouse to change surname

40. (1) A female spouse may, at any time while married, elect in the prescribed manner -

(a) to change her surname to,
   (i) the surname that the husband; or
   (ii) a surname consisting of her surname and that of the husband, hyphenated or combined; or

(b) to resume the surname that the female spouse had immediately before the marriage.

(2) At any time after a marriage is dissolved by divorce, annulment or death, the former spouse may elect in the prescribed manner to resume the surname that the spouse had immediately before the marriage.

(3) A person who wishes to elect to change surname under this section shall pay the prescribed fee, if any, and provide all the prescribed documents that are in the person’s possession.

(4) A person who wishes to elect to change a surname under this section shall provide the Director with a police records check, as described in section 32.

PART VII
REGISTRATION OF DEATHS

Obligation to notify and register death

41. (1) In this Part, “the register” means the register of deaths.

(2) Subject to subsection (6), where in any hospital or other medical or care facility, house, apartment dwelling house, villa, hotel or in any other building in which a death occurs-

(a) the owner or occupier thereof;

(b) the next of kin, the head of the household or of person residing therein;

(c) the person ordering or causing the interment of a dead body;

(d) the person in charge of a hospital or other medical facility; or
in the absence of any of the persons mentioned in paragraphs (a) to (d), a police officer or the “umgijimi” or “Indvuna” of the area where the death occurred, shall, within 48 hours after such death, give or cause notification to be given to the Director, in the prescribed form stating the residence and related details of the deceased together with a certificate of the cause of death in the prescribed form from a medical practitioner who was in attendance before death and until the death of the deceased.

(3) Where a certificate of the cause of death is received from the medical practitioner, the details shall be entered on the register and the Director shall cause to be prepared a death certificate in in the prescribed form.

(4) Where there was no medical practitioner in attendance, a warrant of internment under the hand of the Coroner and the particulars of such a certificate or warrant shall, in each case, be entered on the register and the Director shall cause to be prepared a death certificate in the prescribed form.

(5) Where a dead body is found, the Coroner shall within 5 days give notice thereof, and of the locality in which the body was found to the Director.

(6) Notwithstanding subsection (1), where the cause of death is not known and cannot be determined within 60 days after death, the Director shall register the cause of death as pending investigation and the Director shall cause to be prepared a death certificate in prescribed form.

(7) Notwithstanding anything to the contrary contained in this section, in the case of a stillborn, any medical practitioner may issue a certificate in the prescribed form where it appears to such medical practitioner, from credible information, or otherwise, that no useful purpose would be served by having the Coroner view the body of such a stillbirth.

Coroner to communicate with Director after inquest

42. (1) Where, in pursuance of the Inquest Act, No. 59 of 1954, an inquest is held on a dead body, the Coroner shall enquire of the particulars required in this regard to be registered concerning the death.

(2) Where the Coroner has enquired into a death, the Coroner shall communicate his or her findings in writing to the Director who shall make the appropriate entry on the register.

(3) For the purpose of subsection (2), the Coroner is not required to sign the register as the informant but the Director shall state in the entry of such a death that the information was received from the Coroner.

(4) Where a coroner decides, as a result of a post-mortem examination, not to hold an inquest or cause a post-mortem examination to be made, the coroner shall give the Director a certificate containing the required particulars of the death and Director shall register the death in such manner as he or she deems appropriate.

(5) Where there is an error in a certificate furnished under this section, the Coroner concerned may notify the Director about the error and the Director shall correct the error in the register.
Verbal autopsy

43. Where a person dies without being attended to by a medical doctor, the deceased’ cause of death shall be ascertained by way of a verbal autopsy in a form approved by the Director.

Requirement for certificate prior to burial, cremation etc

44. (1) Subject to this section, a person shall not bury, cremate or otherwise dispose of a dead body unless the death has been previously registered and a certificate issued to that effect by the Director in the prescribed form.

(2) Funeral directors and persons in charge of cemeteries shall keep such documentation related to the burial, cremation or other disposal of a body as may be prescribed and they shall retain it for such time as may be prescribed.

(3) If the body of a person is to be removed to a place of burial or other disposition by a transportation company or other common carrier, the removal shall not take place until the prescribed documentation has been affixed to the outside of the coffin or casket.

(4) If the death occurred outside of Eswatini and the burial or other disposition of the body is to take place in Eswatini, a burial, transit or removal permit or such other document as may be prescribed or required under the laws of the jurisdiction in which the death occurred, signed by the proper officer of the place in which the death occurred, are sufficient authority for the burial or other disposition of the body.

(5) Where the body of a dead person has been moved into the country for burial or other disposition (and no order has been given by the Coroner in respect thereof) the Director may upon an application by the person procuring the burial or other disposition, grant a certificate in the prescribed form and where the Director is satisfied that the death is not required by law to be registered in the country, but the details of the death shall be entered on the register.

(6) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding ten thousand Emalangeni (E10, 000).

Registration of death prior to removal of body from the country

45. (1) The body of a deceased person whose death is required to be registered under this Act shall not be removed out of the State unless the death of such person has been previously registered, and the Director has issued a certificate to that effect.

(2) Any person who contravenes this section is liable to an administrative penalty of ten thousand Emalangeni (E10, 000).

Notification of deaths in certain circumstances

46. Where the keeper of an orphanage, psychiatric or general hospital, infirmary or any other public health institution which is required by law to give notice of a death, the person so required shall not be required to sign the entry on register provided the Director shall make an entry, stating from whom the information was received.
Registration of death after six months

47. The Director shall not, except in accordance with the provisions of this section, register the death of any person where the death or finding of the dead body occurred more than six months before the application for registration.

Issue of forms to medical practitioners

48. (1) The Director shall, from time to time, furnish, electronically or otherwise, free of cost, to every registered medical practitioner the relevant forms for the purposes of this Part.

(2) The forms so issued shall be filled up and delivered, free of cost, by every registered medical practitioner to any person required under this Act to submit such information.

PART VIII
REGISTRATION OF MARRIAGES, DIVORCE DECREES AND DECREES OF NULLITY

Registration of marriages

49. (1) In this Part, “register” refers to the Register of Marriages or the Register of Divorces and Nullities as the context requires.

(2) Every marriage solemnized within the country pursuant to the Marriage Act shall be registered as provided in this Act and the Marriage Act.

(3) Immediately after the solemnization of a marriage, the person authorized by law to solemnize the marriage shall facilitate the recording of the particulars of the marriage in the prescribed form which shall be signed by-

   (a) each of the parties to the marriage;
   (b) two witnesses to the solemnisation of the marriage; and
   (c) the person who solemnised the marriage.

(4) In the case of a marriage in accordance with Swazi law and custom, the witnesses for purposes of subsection (3)(b) shall be-

   (a) the umgijimi of the chieftaincy in which the marriage took place and
   (b) a member from the bride’s family and a member from the groom’s family (logcobise libovu).

(5) Subject to subsection (6), no entry of a marriage shall be made on the Register of Marriages unless the prescribed form has been submitted to the Director.

(6) If the Director is satisfied that a completed form in relation to a duly solemnized marriage has been lost, destroyed or damaged, the Director may-

   (a) direct that another duplicate form be completed and arrange, in so far as it is practicable to do so, for its signature by the persons referred to in subsection (3); and
(b) on receipt of a completed form, enter the particulars of the marriage as prescribed in the Register of Marriages.

(7) A marriage solemnized in the country shall be registered within 14 days from the date of the marriage.

**Late registration of marriage**

50. The Director shall register a marriage after the period of six (6) months from the date of the marriage only if -

   (a) the application for registration is accompanied by

      (i) an affidavit from the applicant respecting the marriage and the reasons for the filing; and

      (ii) such other evidence as may be prescribed by the Director; and

   (b) the Director is satisfied as to the truth and sufficiency of the information contained in the affidavit.

**Alteration of particulars in marriage register**

51. If after registration of a marriage, any particular of the bride or bridegroom shown in the marriage register has changed on account of the alteration of a name or names, or change of surname, or change of any other particular due to any other reason, the Director shall-

   (a) on joint application of the spouses and on production of the certified copy of an order which necessitated the alteration of the said particular;

   (b) on production of documentary proof in support of the alteration required; and

   (c) on payment of the prescribed fee,

cause the said particular of the bride or bridegroom to be altered in the original marriage information form and shall instruct the registration officer of the region in which such marriage was solemnized to make a similar entry in the marriages register and duplicate marriage information form kept in the Registry.

**Marriage certificates**

52. (1) A certificate of a marriage may be issued by the Director, on application in the prescribed form and on payment of the prescribed fee to the following persons-

   (a) either party to the marriage;

   (b) a person who has written authorization from a person described in paragraph (a) to be issued the certificate;

   (c) an officer of any government department or statutory body or institution who requires the certificate for use in the discharge of official duties; or

   (d) any other person who satisfies the Director concerning the good faith of the person's cause for requiring the certificate.

   (2) The Director may issue to any person a certified electronic extract of a registration of marriage on application in the prescribed form and on payment of the prescribed fee.
Registration of marriages solemnised outside Eswatini

53. Subject to section 92, the Director may record any of the prescribed information relating to a marriage of persons who are citizens of Eswatini that has been solemnised in accordance with the laws of a country, not being Eswatini, if the Director-

(a) has received from a party to the marriage, or a descendant of the parties to the marriage, or some other person on behalf of such a party or descendant-

(i) an original record of information relating to the marriage recorded under the laws of the country where the marriage was solemnised, purporting to be signed by the person who solemnised it; or

(ii) an original certificate of its solemnisation under the Marriage Act of the country where the marriage was solemnised (or a provision in a law of the country where the marriage was solemnised corresponding to a provision of this Act), containing information relating to the marriage and purporting to be signed by the person who solemnised it; or

(iii) some other information relating to the marriage; and

(b) is satisfied that the record, certificate, or information is authentic; and

(c) is satisfied that the marriage can be registered under this Act.

Registration of divorces and nullities

54. (1) The Clerk of a Magistrate’s Court or the Registrar of the High Court shall, as the case may be, provide the Director in such manner as may be prescribed with notice, once per month, of all divorces and nullities granted by that court during the preceding month.

(2) The notice under subsection (1) shall state the following particulars-

(a) the year and case number of the proceedings;

(b) the names and surnames of the Parties to the divorce or nullity proceedings;

(c) the date and place of marriage;

(d) the full name of the Judge that granted the Order;

(e) the date that the Order was granted; and

(f) the time period by which the divorce is to take effect.

(3) The Director shall not enter the particulars of any divorce or nullity on the Register of Divorces and Nullities except as the Director is provided with a certified copy of the Order granting the divorce or nullity.

(4) The Director may amend or cancel or cause to be amended or cancelled any entry in the register upon receiving a notification of the amendment or cancellation of from the Clerk of a Magistrate’s Court or the Registrar of the High Court.
Expunging of record of marriage in terms of Swazi law and custom

55. The Director may expunge a marriage contracted in terms of Swazi law and custom once the process of dissolving such a marriage in accordance with the Marriage Act has been completed and upon application in the prescribed form.

PART IX
NATIONAL IDENTIFICATION CARDS

Compilation and maintenance of population register

56. (1) The Director shall, in the prescribed manner compile and maintain a population register of citizens and of all persons who are lawfully resident in Eswatini.

(2) The particulars required for the compilation and maintenance of the population register shall be obtained by the Director from documents available to before the Director.

Particulars of persons which shall be included in population register

57. (1) There shall, in respect of every person whose full name is included in the population register, be entered the following particulars of that person-

(a) the birth entry number referred to in section 58(3);

(b) the required particulars to be furnished when notice of birth is given;

(c) if the person has attained the age of sixteen (16) years;

(d) the person’s ordinary place of residence and his or her postal address;

(e) if the person is a citizen of Eswatini but is not such a citizen by birth, the date of the person’s naturalisation or registration as such a citizen, and if that person is not a citizen or was not born in Eswatini, the date of the person’s entry into Eswatini, and the country of which the person is a citizen and the date of entry into Eswatini;

(f) the person’s occupation, profession, trade or employment;

(g) date of registration;

(h) a recent photograph, if applicant has attained the age of sixteen (16) years;

(i) in the case of a non-citizen, particulars concerning the person’s passport or national identification number from the country of origin and residence permit;

(j) particulars of the person’s driver’s licences, if any, issued or valid under or by virtue of a law in force in Eswatini;
(j) after the person’s death, the required particulars furnished when notice of death was given, and on permanent departure from Eswatini, the date of such departure, and particulars concerning the cancellation in the prescribed manner of identification card;

(k) the person’s region, Chief and Indvuna; and

(l) such other particulars as may be determined by the Minister by notice in the Gazette.

Assignment of identification and birth entry numbers

58. (1) The Director shall assign an identification number and a birth entry number to every person whose full name is included in the population register.

(2) An identification number shall be compiled in the prescribed manner out of figures and shall, in addition to a serial, index and control number, consist in figure codes, the following particulars, of the person to whom it has been assigned, namely-

(a) the person’s sex and date of birth; and

(b) whether or not the person is a Eswatini citizen and the person’s nationality, region, Chief and Indvuna.

(3) A birth entry number shall be compiled in the prescribed manner out of figures and shall consist of the same numbers and figure codes as those of an identification number.

Certificate of particulars of birth

59. (1) The Director shall after inclusion in the population register the full name of a person referred to in section 56(1) who has not attained the age of 16 years, issue a certificate of particulars of birth to that person.

(2) A certificate of particulars of birth shall contain the following particulars -

(a) the birth entry number referred (2) and the date of issue of the certificate of particulars of birth;

(b) the full name, date of birth, place or country of birth; and

(c) citizenship status of the person concerned.

(3) The name of a person shall be chosen by the person’s parents and shall be made known to the registration officer at the time of registration.

(4) A person’s surname shall be the surname of the father, except when the parent’s family, ethnic or religious traditions require otherwise.

(5) The surname of a child whose father is not known shall be derived from the mother’s given name and the child’s surname name shall be that of the mother or the surname name of the mother’s father.
**National identification cards**

60. (1) The Director shall on receipt of an application in the prescribed manner for an identification card by a person who is a citizen or lawfully resident and who has attained the age of sixteen (16) years, and after that person has complied with the provisions of this Act, issue an identification card in the prescribed manner to such person.

(2) The application referred to in subsection (1) shall be made within such period as may be prescribed in respect of a specified person or category of persons.

(3) An identification card may contain only the following particulars in relation to the person to whom it was issued:

   (a) the identification number referred to and the date of issue of the identification card;
   
   (b) the person’s full name, sex and date of birth, and the place where such person was born;
   
   (c) the person’s recent photograph;
   
   (d) fingerprints; and
   
   (e) the person’s region, Chief and **Indvuna**.

(4) An issued national identification card remains the property of the Eswatini Government.

(5) A national identification card shall be valid for such time as the Minister shall prescribe by regulations.

(6) Upon the expiry of the national identification card, the Director shall on application by the holder, renew the card.

(7) For the avoidance of doubt, the expiry of a national identification card does not amount to expiry of citizenship of a person.

**Acknowledgment of registration**

61. When a person has applied for an identification card, or has for official purposes lodged an identification card with the Director, the Director may on application issue to the person concerned whose particulars are included in the population register in terms of section 56, a temporary acknowledgment of registration certificate in the prescribed manner, which, for the period and on the conditions mentioned therein, shall for the purposes of this Act be regarded as his identification card.

**Fingerprints**

62. (1) Subject to subsection (2) every person referred to in section 69(1) who has attained the age of sixteen (16) years shall, when that person applies for an identification card, have fingerprints taken so that they may be included in the population register.
(2) If the fingerprints cannot be taken, the Director shall decide on the manner of identification for purposes of this section.

**Change of place of residence or postal address**

63. A person whose full name is included in the population register shall upon attaining the age of sixteen (16) years and an identification card has thereafter been issued to the person, after any permanent change of place of residence or postal address, notify the Director within the prescribed manner and time.

**Verification of particulars**

64. The Director may -

   (a) request any person to furnish proof of the correctness of any particulars which have been furnished in respect of such person in any document in terms of this Act, and

   (b) investigate or cause to be investigated any matter in respect of which particulars are required to be recorded in the population register.

**Correction of identification card**

65. If an identification card does not reflect correct particulars of the person to whom it was issued, or contains a photograph which is no longer a recognisable image of that person the person concerned or the guardian of the person concerned shall within the prescribed period apply to the Director in the prescribed form for the alteration of the particulars.

**Cancellation of identification card**

66. (1) The Director shall cancel an identification card where-

   (a) it comes to the attention of the Director that an identification card has been issued to a person whose full name is not required in terms of section 55 to be included in the population register;

   (b) the national identification card is lost, stolen, defaced or damaged, tampered with or destroyed; or

   (c) the Director has modified the information in the population register in relation to the person due to change of date of birth, sex, citizenship or some other reason.

   (3) A national identification card handed over or sent to the Director in terms of subsection (2), shall after the receipt thereof be cancelled in the prescribed manner.

   (4) If the person referred to in subsection (2) above fails to comply, the Director shall seize the national identification card.

**Surrender of national identification card**
A person shall surrender the national identification card to the Director where-

(a) the registration of that person is cancelled; or

(b) a person-

(i) finds a national identification card that does not belong to that person or comes into possession of one without the authority of the holder or the Director;

(ii) to whom a new national identification card is reissued, regains possession of the original national identification card;

(iii) comes into possession of a national identification card that the Director requires to be re-issued or is otherwise invalid; or

(iv) received an identity card by providing information that he or she knew to be of false or ought reasonably to have known it was false.

**Non-Swazi identification**

69. The Director shall issue to a non-Swazi who holds a residence permit valid for 12 months or more, a unique identification number and an acknowledgement card.

**Cancellation of a non-Swazi acknowledgement card**

70. The Director shall cancel a non-Swazi’s identification card where-

(a) the registration of that person is cancelled;

(b) the information in the population register in relation to that person has been modified;

(c) the non-Swazi leaves Eswatini or dies; or

(d) when the period stipulated in the permit expires.

**Surrender of a non-Swazi acknowledgement card**

71. A person shall surrender a non-Swazi acknowledgement card to the Director where-

(a) the registration of the non-Swazi has been cancelled;

(b) a person-

(i) finds a non-Swazi identification card that does not belong to that person or comes into possession of one without the authority of the holder or the Director;
(ii) to whom a new non-Swazi identification card is re-issued, regains possession of the original non-Swazi identification card;

(iii) comes into possession of a non-Swazi identification card that has expired; or

(c) the non-Swazi leaves Eswatini or dies.

**Mandatory use of national identification card**

72. (1) A ministry, department or agency of government or any other institution providing a public service shall require a person accessing the service to produce a national identification card or non-Swazi identification card and acknowledgment of registration.

(2) For the avoidance of doubt, a ministry, department or agency of government or any other institution providing the following services shall require a person to produce a national identification card or non-Swazi identification card for-

(a) civil registration services;

(b) medical services;

(c) employment;

(d) identification of voters;

(e) application for, and issuance of a passport;

(f) opening of bank accounts;

(g) purchase of insurance policies;

(h) the purchase, transfer and registration of land by any individual or any transaction connected with the purchase, transfer and registration of land;

(i) pension, social security transactions, livestock registration and other related transactions;

(j) all consumer credit transactions;

(k) payment of taxes;

(l) financial services;

(m) registration of motor vehicles and other registration services;

(n) statistical services;

(o) application for licences issuable under any enactment;

(p) application for any grants or similar benefits from the Government; or

(q) any other purpose as may be prescribed by the Minister by regulations.
Access to information

73. (1) Access to the national population register shall be restricted to the information required by a ministry, department or agency of government.

(2) The Director shall determine the levels of access relating to information in the national population register under this section.

(3) A person other than a ministry, department or agency of Government may access the information in the national population register in accordance with regulations to be prescribed by the Minister.

Secrecy of information in the national population register

74. (1) Subject to subsection (3), every person appointed under, or employed in carrying out the provisions of this Act shall preserve and aid in the preservation of secrecy with regard to all information or documents which may come to the person’s knowledge in connection with the performance of duties under this Act, and shall not communicate any such information or the contents of such documents to any other person except in the performance of the person’s duties under this Act or by order of a competent Court.

(2) A person who came into possession of any such information which to that person’s knowledge has been communicated in contravention of the provisions of this section, shall not publish the information or communicate it to any other person.

(3) Notwithstanding subsection (1) or anything contained in any other law relating to data protection, the Director shall provide information in relation to births, adoptions, deaths, marriages, divorces, or nullities, registered under this Act to-

(a) the Minister for the purpose of-

(i) determining entitlements to passports;

(ii) verifying the identity of persons applying for or holding passports; and

(iii) determining the immigration or citizenship status of persons.

(b) the Elections and Boundaries Commission for the purpose of getting an updated register of possible voters for the conduct of elections and referenda;

(c) the Minister responsible for Defence, the Minister responsible for health, the police or His Majesty’s Correctional Services for the purpose of the administration of the security forces;

(d) the Eswatini Revenue Authority for the purpose of the administration and consolidation of taxes under the Income Tax Order No. 21 of 1975 or its successor; or
any person who has applied in writing specifying in detail the purposes for which the information is required and the Director is satisfied that the furnishing of that information is in the interest of the person whose full name is included in the population register, or is in the public interest.

**Offences relating to identification cards**

75. (1) A person who-

(a) does not register in accordance with this Part;

(b) gives false information or makes a false statement when providing information for an entry, making a modification to an entry, making a confirmation of the content of an entry or obtaining the issue or re-issue of a national identification card or non-Swazi identification card;

(c) fraudulently obtains for the use of that person or for the use of another person, a national identification card or non-Swazi identification card;

(d) forges an identity document for the purpose of registration;

(e) illegally influences the decision of Director;

(f) falsely alleges the loss or destruction of national identification card or non-Swazi identification card and applies for a new card while in possession of an identification card or non-Swazi identification card;

(g) tempers with the register by causing an unauthorized modification of information in the register, or preventing or delaying the retrieval of relevant information in a legible form from a computer used for the purposes of this Part; or

(h) falsely alleges the loss or destruction of identity document and applies for a new identity document while in possession of the identity document, commits an offence and is liable on conviction to a fine not exceeding ten thousand Emalangeni (E10, 000).

(2) A person who-

(a) wilfully destroys or attempts to destroy, or mutilates or attempts to mutilate, a national identification card or non-Swazi identification card;

(b) without authority deprives or dispossesses a holder of his or her national identification card or non-Swazi’s identification card;

(c) uses another person’s national identification card or non-Swazi’s identification card;

(d) unlawfully alters or modifies information on a national identification card or non-Swazi’s identification card;
(e) unlawfully keeps or takes possession of a national identification card or non-Swazi’s identification card that belongs to another person;

(f) is in possession of more than one national identification card or non-Swazi’s identification card that is intended to show the person’s identity; or

(g) permits a person to use his national identification card or non-Swazi’s identification card or a national identification card or non-Swazi’s identification card issued to another person,

commits an offence and is liable on conviction to a fine not exceeding fifty thousand Emalangeni (50,000) or imprisonment not exceeding five (5) years or both.

(3) Subject to the provisions of this Part, a person shall not make, produce, manufacture, print, bind, design or distribute any document purporting to be a national identification card or non-Swazi identification card.

(4) A person who—

(a) makes, produces, manufactures, prints, binds, designs, distributes any document purporting that document to be a national identification card or non-Swazi identification card; or

(b) uses any equipment or apparatus to produce a document purporting that document to be a national identification card or non-Swazi identification card,

commits an offence and is liable on conviction to a fine not exceeding one hundred thousand Emalangeni (100,000) or imprisonment not exceeding ten (10) years or both.

(5) A person who is convicted under subsections (3) and (4) shall forfeit to the Crown the equipment and material that was used to commit the offence.

PART X
REGISTRATION OF BIRTHS AND DEATHS OCCURRING OUTSIDE

Application of Part

76. This part shall apply to a person who is a citizen of Eswatini and was either born or died outside Eswatini on or after the 6th September, 1968.

External births and deaths registers

77. The Director shall keep registers to be called the external births register and external deaths register, in which shall be entered all information relating to births and deaths supplied in accordance with this Part.

Births and deaths occurring outside Eswatini

78. (1) Any person desiring to register the birth of a child or the death of a person to whom this Part applies shall, within 90 days after the birth of a child or the death of a person, or within
such later period as the Director may on written application allow, make written application to the Director or the ambassador or such other representative of Eswatini as may be designated in the country in which the child was born or the person died, for the registration of the birth of such child or death of such person.

(2) Such application shall be accompanied by the prescribed birth or death information form and the revenue receipt of the prescribed fee.

(3) Where the application is made to an Ambassador or such other representative who shall forthwith transmit the application and the revenue receipt of the prescribed fee to the Director.

(4) The Director shall enter the relevant information accompanied by any application referred to in this section in the external births register or the external deaths register as the case may be.

**PART XI**

**OFFENCES AND PENALTIES**

*Neglect or refusal to issue certificate by medical practitioner*

79. A medical practitioner who refuses or neglects to furnish a medical certificate for the purposes of this Act after a request is made; or requests a fee for such certificate commits an offence and is liable on summary conviction to a fine not exceeding ten thousand Emalangeni (E10, 000).

*Failure to register birth, death, marriage, divorce, adoption or change of name etc.*

80. A person who-

(a) fails to register a birth, death, marriage, a divorce or nullity, adoption or change of name or surname in accordance with the provisions of this Act;

(b) fails or refuses to appear before the Director when summoned; or

(c) refuses to give information based on the questions asked by the Director or anyone so authorised,

is liable to pay an administrative penalty of one thousand Emalangeni (E1, 000).

*Unlawful access to a register*

81. Notwithstanding anything contained in any other enactment, a person who unlawfully obtains access to a register, for whatever reason, commits an offence and is liable on summary conviction to a fine not exceeding ten thousand Emalangeni (E10, 000).

*Wilful destruction, counterfeiting or forging of record*

82. A person who-
(a) wilfully destroys or injures or causes to be destroyed or injured any register or any part thereof or any sheet or forms upon which any entry is made under this Act;

(b) falsely makes or counterfeits part of such register or cause to be falsely made or counterfeited part of such register or certified extract thereof or any entry in such sheet or form;

(c) wilfully inserts or causes to be inserted in any register or sheet of forms any false entry of any birth or death or wilfully gives any false certificate;

(d) certifies any writing to be a copy or extract of any register knowing the same register to be false in any respect; or

(e) forges or counterfeits the signature of the Director or any other person to an entry or certificate under this Act authorized or required to be made or given,

commits an offence and is liable on summary conviction to imprisonment for a term not exceeding five (5) years or a fine not exceeding five (5) thousand Emalangeni.

**Penalty for false statement**

83. Any person who-

(a) wilfully makes any false answer to any question put to him or her by the Director relating to the particulars required to be registered concerning any vital event or wilfully gives to the Director or a Deputy or Assistant Director any false information concerning any birth or death;

(b) wilfully swears or makes any false affidavit, certificate or other document relating to the registration of any vital event, or forges or falsifies any such affidavit, certificate or other document issued in respect of that vital event;

(c) knowing that any such affidavit, certificate or other document to be forged or false uses the same as true, or gives or sends the same as true to any person; or

(d) wilfully makes any false statement with intent to have the same entered in the register,

commits an offence and is liable on summary conviction to imprisonment for a term not exceeding five (5) years or a fine of twenty five (25) years.

**Recovery of penalties and service of summons**

84. (1) All penalties imposed by this Act may be sued for and recovered on behalf of the Crown as a debt owed to the Crown.

(2) Where an information is lodged or complaint is made before any Magistrate, the Magistrate may issue a summons requiring the party offending or complained against to appear at time and place named therein, and every such summons shall be served on the party offending or complained against, or shall be left at that person’s last known place of abode or business, if that person cannot reasonably be located.
(3) Where the party to whom subsection (2) applies does not appear, then upon proof of due service of the summons, the Magistrate may hear and determine the case in the absence of the party, or if he or she appears, upon proof of the offence either by confession of the party offending or complained against, or upon the oath of one or more credible witness, the Magistrate may convict the offender.

(4) A Magistrate, for the purposes of this section, may summon witness that person considers necessary for the case.

(5) The Magistrate, may upon such conviction order the offender to pay the penalty imposed, and if the moneys and costs mentioned in such conviction is not paid immediately, or within the time limited in the order, the Magistrate may, by warrant, commit the offender to prison for a term not exceeding six (6) months, unless the money and costs be sooner paid and satisfied.

**Penalty excluded in certain cases**

85. A penalty imposed by this Act on persons failing to give any notice required by this Act may not be exacted in any case where it appears that the failure has not been occasioned by wilful neglect, but such failure has been occasioned by unavoidable accident or by circumstances over which the person failing to comply with the provision of this Act had no control, and where that person had used every reasonable endeavour towards compliance with such provisions.

**Unauthorized disclosure, submission or transfer of information from the register**

86. An officer of the National Civil Registry, who without authority discloses, submits or transfers data from the register to any other person, commits an offence and is liable on conviction to a fine not exceeding five thousand Emalangeni or imprisonment not exceeding five years or both.

**Administrative penalties**

87. (1) Irrespective of whether criminal proceedings in terms of this Act have been or may be instituted against a person in respect of any failure, inability or contravention under this Act, the Director may, by written notice impose upon that person, in respect of such failure, inability or contravention, an administrative penalty.

(2) Before imposing an administrative penalty referred to in subsection (1) the Director shall,

(a) give the person notice of the person’s intention to do so, specifying the grounds and the facts supporting that decision;

(b) the amount of the proposed penalty; and

(c) the entitlement of the person to make representation to the Director in accordance with subsection (3).

(3) If, within fourteen (14) days after the notice is served under subsection (2), the person requests a hearing on the matter, the Director may hold a hearing allowing the person to make representations to the Director as to why that person should not be required to pay the
penalty or as to why the proposed penalty should be reduced, before taking any action under subsection (1).

(4) The Director may at any time prior to the issuing of a penalty notice under subsection (2), withdraw the notice and substitute a new notice stating a different penalty.

(5) The Director shall notify the person of the decision taken under subsection (3) and, where it varies the penalty, of the further steps to be taken in relation matter.

(6) Before imposing an administrative penalty on a person, the Director shall consider any representations received under subsection (2).

(7) A penalty imposed under this section shall be paid to the Director within such period as may be specified by the Director and, the Director may agree to the payment of an administrative penalty in instalments over such period of time considered appropriate.

(8) If a person fails to pay the penalty within the period specified under subsection (7), the Director may by way of civil action in a court of competent jurisdiction, recover from that person the amount of the fine or any portion considered justified in the circumstances.

**Determination of appropriate penalty**

88. In determining the administrative penalty to be imposed on a person, the Director -

(a) shall take into account the following matters-

(i) the nature and seriousness of the contravention;

(ii) whether the person has previously contravened the Act;

(iii) whether the contravention was caused by the negligence of the person; and

(iv) the ability of the person to pay the penalty, including any gain resulting to the person as a result of the contravention, if any; and

(b) may take into account such other matters as the Director considers appropriate.

**Appeal against an administrative penalty**

89. (1) A person who is aggrieved by a decision of the Director imposing a penalty under section 87, may, within 14 days of receiving the penalty notice, appeal to the Minister.

(2) An appeal of a decision of the Director to impose a penalty does not operate as a stay on the obligation of the person to pay the penalty.

(3) The Minister shall, after hearing an appeal,

(a) affirm the decision appealed against;
(b) vary the decision appealed against; or

(c) set aside the decision appealed against and remit the matter concerned for reconsideration by the Director in accordance with such direction as the Minister may consider fit.

**Limitation period**

90. (1) The Director shall not issue a penalty notice to a person with respect to a contravention after the end of the period of two (2) years commencing on the date that the Director first knew of the contravention.

(2) For the purposes of subsection (1), the Director is deemed to know of a contravention if information from which the contravention can reasonably be inferred, was available to the Director.

**PART XII
MISCELLANEOUS**

**Index and searches**

91. (1) The Director shall cause an index of all data stored at the Civil Registry to be prepared and updated one hour prior to the close of business each day or not later than one hour after the opening on the next day of business.

(2) The index so prepared shall be made available to members of the public, so long as the requirements of subsection (3) are satisfied.

(3) Any person on payment of the fee as prescribed is entitled to search the index during the working hours at the Civil Registry and a limited search capability after working hours may be provisioned through suitable means so long as it does not cause harm to personal rights and privacy.

(4) A person to whom subsection (3) applies is entitled to have a copy of the relevant pages or information of the index upon payment of the prescribed fee.

(5) Any page of or extraction from the index to which subsection (4) applies shall be dated, stamped and certified by the Director.

**Director’s powers of inquiry in relation to registrable events**

92. (1) The Director may, where necessary for the purposes of this Act, make inquiries to, -

(a) determine whether a registrable event has occurred;

(b) collect details of a registrable event; or
(c) ensure that there is a correct record of a registrable event.

(2) The Director may also require a person who provides information under this Act to make an affidavit on a form provided by the Director for the purpose or to provide other evidence in support of the information provided.

(3) In this section, “registrable event” means an adoption, birth, death, marriage, divorce, nullity or name change.

**Director’s powers of inquiry in relation to information provided or verified electronically**

93. (1) The Director may, where necessary for the purposes of this Act, make inquiries to ensure that-

(a) any information verified electronically is true; or

(b) an application, statement, or certificate approved electronically is approved by the required persons.

(2) The Director may also require a person who verifies a statement electronically to file an affidavit in support of the statement or to appear personally before the Director to take an oath or file an affidavit in support of the information.

**Surrender of certificates upon cancellation**

94. (1) The Director may, if satisfied that a registration was improperly made or caused to have been made, order that the registration be cancelled and may order the return of any certificate or certified copy of a registration that was issued before the registration was cancelled.

(2) The Director shall, upon the registration of a decree of divorce or nullity, order the return of any marriage certificate or certified copy of a registration that was issued before the decree of divorce or nullity.

(3) Any person in possession or control of a certificate or certified copy of a registration that is the subject of an order under this section shall return it to the Director forthwith.

(4) Before making an order under this section, the Director shall give to such interested parties as the Director considers proper an opportunity to be heard on the matter.

**Regulations**

95. (1) The Minister may, by notice in the *Gazette*, make regulations for giving effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations-
(a) prescribing the forms to be used and the particulars to be given under this Act;

(b) prescribing conditions and requirements for registration;

(c) prescribing further information required to be recorded in a register;

(d) providing the manner of attending before Director;

(e) relating to verification of information entered in the register;

(f) prescribing the size, description, and content of a national identification card or non-Swazi’s acknowledgment card, a birth certificate, a death certificate, a marriage certificate and any other document issuable under this Act;

(g) providing for the procedure for renewal or replacement of a national identification card or non-Swazi’s identification card;

(h) providing the manner in which consent of the owner of information may be given to persons or for services not provided for in this Act;

(i) prescribing the fees for services rendered by the Civil Registry;

(j) prescribing the manner in which non-Swazi’s identification cards may be surrendered in the case of a non-Swazi whose period of stay is due to expire or has expired;

(k) providing for the imposition in respect of the contravention of the regulations of fines;

(l) prescribing the mode in which particulars shall be given for purposes of this Act;

(m) prescribing the manner in which any document shall be signed under this Act;

(o) the keeping of all registers, records and indexes and the making of returns;

(p) the inspection of registers, records and indexes to be kept under this Act; and

(q) provide for anything required or authorized by any provision of this Act to be prescribed.

**Repeals and savings**

96. (1) The Birth, Marriages and Deaths Registration Act No. 5 of 1985 is repealed.

(2) The Change of Name Act No. 67 of 1962 is repealed.

(3) The Identification Order No. 4 of 1998 is repealed.
(4) A notice, register, certified copy of entries or other document which was valid immediately prior to the commencement of this Act and-

(a) that was issued, made, granted or given under the laws repealed by this Act; or

(b) the effect of which was preserved under the laws repealed by this Act,

shall be given effect as if issued, made, granted or given under this Act.