

GOVERNMENT SECURITY SERVICE ACT, 2002

No. 6



of 2004

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SCHEDULE

An Act to establish and regulate the operations of a Government Security Service; to provide for the appointment of the Security Council, the establishment of the Government Security Service Rewards and Fines Fund and for matters incidental thereto and connected therewith.

Date of Assent: 23rd January, 2004.

Date of Commencement: 13th February, 2004.

ENACTED by the Parliament of Botswana.

PART I — Preliminary

Citation
Interpretation

1. This Act may be cited as the Government Security Service Act, 2002.
2. In this Act, unless the context otherwise requires —
 - “Administrative Secretary” means the Administrative Secretary in the Office of the President;
 - “Board” means a Board appointed in terms of sections 22, 23 and 24;
 - “Chief Security Officer” means the Chief Security Officer appointed by the Administrative Secretary;
 - “Council” means the Security Service Council appointed in terms of section 7;

“Government Security Service” means the Service responsible for the maintenance of security in government premises immediately before the coming into force of this Act;

“junior officer” means a security officer of the rank of Security Inspector and below;

“Service” means the Government Security Service established under section 3;

“security officer” means an officer of the Service; and

“senior officer” means a security officer of the rank of Assistant Security Superintendent and above.

PART II — *Establishment and constitution of the Service*

3. (1) There is hereby established a Service to be known as the Government Security Service.

Establishment
of the Service

(2) The Service shall consist of the Chief Security Officer and officers of the ranks set out in the Schedule.

(3) The Minister may, by order published in the Gazette, amend the Schedule.

4. Subject to the laws governing the public service, the —

Appointment of
officers

(a) Administrative Secretary shall appoint the Chief Security Officer and the Deputy Chief Security Officer; and

(b) Chief Security Officer shall appoint security officers of the rank of Senior Security Superintendent and below.

5. Every security officer shall be subject to the Botswana Public Service General Orders in so far as such Orders are not inconsistent with the provisions of this Act.

Application of
Public Service
General Orders
to security
officers

6. The Chief Security Officer shall, subject to this Act and the general direction of the Administrative Secretary, be responsible for the command, superintendence, direction and control of the Service.

Chief Security
Officer

7. (1) The Minister shall appoint a Council to be known as the Security Service Council consisting of not less than three or more than five members.

Appointment of
Security Service
Council

(2) The Minister shall appoint a Chairman and Vice-Chairman from among the members appointed under subsection (1).

(3) A member shall be appointed for such period not exceeding two years as the Minister may determine, at the end of which period a member shall be eligible for re-appointment.

(4) Notice of the appointments made under subsection (1), their commencement dates and their duration shall be published by notice in the Gazette.

(5) Upon giving notice in writing of not less than 14 days, a meeting of the Council shall be called by the Chairman and held at such times and at such places as the Council may determine.

(6) The Council shall hold two ordinary meetings in each year.

(7) Special meetings of the Council may be convened by the Chairman upon the giving of a shorter notice when he considers such meetings to be necessary and desirable.

(8) A quorum of the Council shall be three of the members thereof.

(9) Decisions of the Council at any meeting shall be made by a majority of the members present at the meeting, and in the event of an equality of votes the Chairman or other person presiding shall have a casting vote.

(10) Subject to the provisions of this Act, the Council shall regulate its own procedure.

Duties of
Security
Service
Council

8. The Council shall —

(a) be responsible for considering any complaints against the Service generally, or against any of its members, which complaints could not be successfully resolved by the Chief Security Officer;

(b) carry out such duties with regard to the Service as the Minister may direct; and

(c) perform such other duties as may be conferred upon it by this Act.

Complaints
against the
Service

9. The Chief Security Officer shall forward, to the Council, a full report on such complaints, against the Service or any of its members, as he is unable to resolve.

Retirement,
reduction in
rank,
dismissal and
removal from
office,
termination of
appointment

10. (1) The Chief Security Officer may at any time —

(a) retire a security officer if a Government medical officer finds he is unfit for further service;

(b) dismiss a security officer if he is convicted of a criminal offence or disciplinary offence under this Act or, alternatively —

(i) demote him;

(ii) reduce his salary on the scale applicable to him; or

(iii) withhold future increments of salary for a period not exceeding 2 years;

(c) retire a security officer if he displays a habitual inattention to orders or fails to cooperate with other members of the Service;

(d) retire a security officer who, being eligible to retire or to be retired, fails, in the opinion of the Chief Security Officer, to maintain a satisfactory standard of efficiency; or

(e) terminate the appointment of a security officer serving on probation on first appointment if he considers that such officer is unlikely to become an efficient security officer.

(2) A security officer who is convicted of a criminal offence and is sentenced to imprisonment, whether suspended or not, or having been sentenced to a fine as an alternative, fails to pay the fine and is imprisoned, shall be dismissed from the Service.

(3) The Chief Security Officer may dismiss or remove from office a security officer if he is satisfied that it will be in the public interest to do so.

PART III — Functions, Duties and Restrictions of Security Officers

11. (1) The functions of the Service shall be to —

Functions of the Service

- (a) prevent unauthorised entry to Government premises and control the movement of visitors or strangers inside Government premises;
- (b) keep constant surveillance of the precincts on Government premises; and
- (c) regularly inspect Government buildings and other property belonging to Government.

(2) In carrying out the functions referred to under subsection (1), the Service shall ensure the safeguard of classified information which comes to the knowledge of security officers in the course of duty.

12. Any security officer may, without any order from the Chief Security Officer or without warrant, arrest —

When security officer may arrest

- (a) any person who commits any offence in his presence when such officer is on duty;
- (b) any person whom he has reasonable grounds to suspect of having committed an offence at a place where such security officer is on duty; or
- (c) any person whom he finds attempting to commit an offence on Government premises when such security officer is on duty.

13. Where a security officer has arrested a person under section 12 he may, without warrant —

Powers of search and seizure

- (a) search that person, the premises or place in which he is arrested or, where the suspect is in control of a vehicle, the vehicle, if it is suspected, on reasonable grounds to be carrying or conveying suspected stolen property; and
- (b) seize and detain anything which the security officer has reason to believe to be evidence or to contain evidence of any offence under any other law.

14. A security officer who has arrested a person in terms of section 12 or seized any property under section 13 shall, forthwith, hand over such person and the seized property to a member of the Botswana Police or to the nearest Police Station.

Security officer to hand over arrested person to Botswana Police Service

15. (1) Where the defence to a suit instituted against a security officer is that the act complained of was done in obedience to a warrant purporting to be issued by a court or other competent authority, the court shall, upon production of the warrant and upon proof that the act complained of was done in obedience to the warrant, enter judgment in favour of the security officer.

Non-liability for act done under the authority of a warrant

(2) No proof of the signature on a warrant shall be required unless the court has reason to doubt the genuineness thereof, and, where it is proved that such signature is not genuine, judgement shall nevertheless be given in favour of the security officer if it is proved that at the time the act complained of was committed he believed on reasonable grounds that the signature was genuine.

Co-operation with the Botswana Police Service and the Local Police

16. The Service shall cooperate with the Botswana Police Service and the Local Police Force and shall, if the Minister so directs in writing, be subject to the orders of the Commissioner of Police.

Security officer may be called upon for duty at any time

17. A security officer may be called upon for duty by the Service at any time.

Security officer not to engage in employment outside the Service

18. No security officer shall, without the written permission of the Chief Security Officer, engage in any employment or business, other than in accordance with his duties under this Act.

Security officer not to be a member of trade union etc

- 19.** No security officer shall become an active member of —
- (a) any political party, a trade union or any body affiliated to a trade union; or
 - (b) a body, the object of which, or one of the objects of which, is to control or influence conditions of employment in any trade or profession or the salaries, pensions or other conditions of service:
- Provided that the Minister may establish such a body for members of the Service alone which shall be regulated in the manner prescribed.

PART IV — Government Security Service Rewards and Fines Fund

Establishment of Government Security Service Rewards and Fines Fund

20. (1) There is hereby established a Government Security Service Rewards and Fines Fund (hereinafter called “the Fund”), the object of which is to provide financial assistance to security officers.

(2) The Chief Security Officer shall be the public officer responsible for the administration of the Fund.

(3) There shall be paid, into the Fund, any fine imposed under this Act for any offence against discipline, and any donations made to the Service.

- (4) There shall be paid, from the Fund, sums of money to —
- (a) assist the wives and families of deceased security officers or to assist any security officer discharged from the Service as medically unfit for further service;
 - (b) procure any comforts, conveniences or advantages to members of the Service which are not chargeable to general revenue of the Service;
 - (c) grant loans in special circumstances to a security officer; or
 - (d) provide prizes for competitions involving members of the Service.
- (5) The Chief Security Officer shall cause the —
- (a) keeping and maintenance of proper records of accounts in respect of the Fund;

- (b) preparation of annual balance sheet and statement of income and expenditure in such form and manner as the Accountant-General may approve;
- (c) maintenance of an account in which shall be recorded all receipts into the Fund and all disbursements from the Fund and such accounts shall be reconciled monthly with the account maintained by the Accountant-General.
- (6) The balance sheet and statement of income and expenditure shall be included in the annual statement of accounts submitted by the Accountant-General to the Auditor-General in accordance with the Finance and Audit Act.

PART V — *Discipline, offences and penalties*

21. An offence against discipline is committed by any security officer who is guilty of —

Disciplinary
offences

- (a) absence without leave;
- (b) rendering himself, whilst on or warned for duty, unfit for such duty through the consumption of intoxicating liquor or drugs;
- (c) consuming intoxicating liquor or drugs whilst on duty;
- (d) whilst in uniform, on or off duty, being improperly dressed or dirty or untidy in person or dress without reasonable cause;
- (e) using excessive force against any person in his custody;
- (f) being quarrelsome whilst on duty;
- (g) inattentiveness when receiving orders whilst on duty;
- (h) failing to appear or appearing late for any parade or duty without reasonable excuse;
- (i) sleeping whilst on duty without reasonable excuse;
- (j) disobeying any lawful order, without reasonable excuse;
- (k) being disrespectful in words or conduct to any other security officer senior to him in rank;
- (l) using abusive or insulting language to any other person;
- (m) using any weapon without lawful authority or good excuse;
- (n) neglect of duty;
- (o) malingering;
- (p) leaving a place of duty without permission or reasonable cause;
- (q) assaulting any other security officer;
- (r) acting in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit on the reputation of the Service;
- (s) wilfully and negligently making any false complaint against any other security officer or a member of the public;
- (t) divulging any matter which it is his duty to keep secret;
- (u) communicating without proper authority to the press or to any other person any matter concerning the Service;
- (v) signing or circulating any petition or statement with regard to any matter concerning the Service without proper channels of correspondence to the Chief Security Officer;

- (w) making any unlawful arrest, search or seizure without good and sufficient excuse; or
- (x) wilfully or by carelessness causing any waste, loss or damage to any article of clothing or accouterments or book, document or other property of the Service issued or entrusted to his care.

Board of Enquiry

22. (1) The Administrative Secretary may appoint a Board of Enquiry to hear a disciplinary charge against the Chief Security Officer which Board shall consist of a Chairman and two members from the public service of a status not inferior to that of Chief Security Officer.

(2) The Administrative Secretary, on the recommendation of the Chief Security Officer, may appoint a Board of Enquiry to hear disciplinary charges against officers of, or below the rank of, Deputy Chief Security Officer.

(3) The Administrative Secretary, on the recommendation of the Chief Security Officer, shall appoint a Chairman and two members from persons in the public service of a status not inferior to the security officer to be tried.

Class I Board

23. (1) The Chief Security Officer may appoint a Class I Board to hear disciplinary charges against Senior Officers of up to, and including the rank of, Senior Security Superintendent.

(2) A Class I Board shall consist of a Chairman who shall be of a rank of, or above the rank of, Deputy Chief Security officer and two members who shall be persons from the public service of a status not inferior to the security officer to be tried.

Class II Board

24. (1) The Chief Security Officer may appoint a Class II Board consisting of one senior officer to hear disciplinary charges against any junior officer.

(2) Where it appears to a Class II Board that, by reason of the gravity of the offence or for any other reason, the matter will be dealt with more properly by a Class I Board, the Class II Board shall defer its hearing and report the proceedings to the Chief Security Officer, who may return the report for further inquiry or order the accused to be tried before a Class I Board.

Punishments to be awarded

25. (1) A Board of Enquiry and Class I Board shall have the power to award any one or more of the following punishments —

- (a) a reprimand;
- (b) a fine not exceeding one third of one month's salary;
- (c) where there has been absence without leave, stoppage of salary equivalent to the salary accrued during the period of absence;
- (d) where there has been theft, unauthorised disposal, loss by neglect, wilful spoiling or destruction of or damage or injury to property, stoppage of salary not in excess of the value of the loss involved;
- (e) withholding or deferment of any increments of salary for which the security officer may be eligible; or
- (f) a reduction in rank.

(2) A Class II Board shall, in addition to having the power to award any of the punishments listed under subsection (1), also be empowered to award extra duties for a period not exceeding seven days.

(3) In addition to punishments which may be awarded by a Board in terms of this section, where any security officer has been convicted of a disciplinary offence listed under section 21, the Board convicting him may order him to make good any loss or damage caused.

26. A Board may, upon conviction of a security officer, in addition to, or in lieu of any other penalty provided for in terms of section 25, recommend to the Administrative Secretary or Chief Security Officer, as the case may be, that the person convicted be dismissed from the Service.

Dismissal as a result of disciplinary action

27. (1) Any Board which sentences any security officer to any punishment shall prepare a record of the proceedings in such a manner as may be prescribed or as the Chief Security Officer may require and shall, without delay, forward such report together with any representation made by the security officer —

Confirmation, consideration and review of sentences

(a) in the case of a Board of Enquiry, to the Administrative Secretary through the Chief Security Officer; and

(b) in the case of a Class I Board or Class II Board, to the Chief Security Officer.

(2) On receipt of a record of proceedings forwarded to him in accordance with subsection (1), the Administrative Secretary or the Chief Security Officer, as the case may be, may, within the powers of the Board concerned, vary, reverse or confirm the sentence passed by that Board, which power of variation shall include the power to substitute, for any punishment awarded by the Board, a punishment of a different kind.

(3) Notwithstanding the provisions of subsection (2) —

(a) the Administrative Secretary or the Chief Security Officer shall not, under paragraph (b), substitute a conviction and punishment in respect of a different offence which was not charged without first giving the security officer in question the opportunity to address him; and

(b) the Administrative Secretary or the Chief Security Officer may, in addition to, or in substitution for, any punishment awarded by the Board concerned, or in addition to any substituted punishment awarded by him under paragraph (b), —

(i) reduce the rank of the security officer in question from the Service;

(ii) reduce his salary on the scale applicable to him;

(iii) withhold the future increments of salary for a period not exceeding two years; or

(iv) dismiss the security officer in question from the Service.

(4) The powers conferred upon the Chief Security Officer under subsection (3) may, with the exception of the power to dismiss a security officer, and subject to the general or special directions of the Chief Security Officer, be exercised by the Deputy Chief Security Officer authorised in that behalf by the Chief Security Officer.

(5) Any punishment awarded under section 25 shall remain in abeyance until —

- (a) the time prescribed for appeal under section 32 has elapsed; or
- (b) where an appeal has been duly lodged, the decision on such appeal has been delivered or the appeal has been withdrawn.

Defence of
security
officers

28. Every security officer charged with an offence against discipline shall be entitled to be present throughout the proceedings held under sections 22, 23 and 24 to defend himself.

Powers to
summon and
examine on
oath

29. (1) A Board appointed under sections 22, 23 and 24 may summon and examine a witness on oath, require the production of all documents and records relevant to the enquiry and adjourn any hearing from time to time.

(2) Any person summoned as a witness under subsection (1) who, without reasonable excuse, fails to attend at the time and place specified in the summons or on adjournment or refuses to answer any question lawfully put to him shall be guilty of an offence and shall be liable to a fine not exceeding P100 or to imprisonment for a term not exceeding 3 months:

Provided that no witness shall be obliged to answer any question which may tend to incriminate him or render him liable to any forfeiture or penalty.

(3) Witnesses attending an enquiry held under section 22 shall, where the Presiding Officer or Chairman of the Board of Enquiry so directs, be paid allowances in accordance with the tariff payable to witnesses in civil proceedings in a magistrate's court.

(4) In subsection (3), "Presiding Officer" means any senior officer presiding over a disciplinary case against any junior officer.

Fines or
stoppage of
salary

30. Any fine or stoppage of salary shall be recovered from the security officer's salary due or thereafter accruing, either as a single sum or in instalments but no instalment shall exceed one third of his monthly salary.

Interdiction

31. (1) The Administrative Secretary or the Chief Security Officer may, at any time in the interest of the Service, interdict, from duty, a security officer who is charged with an offence under this Act, including an offence against discipline or any other law.

(2) A security officer interdicted under subsection (1) shall receive, during the period of his interdiction, such portion of his salary, being not less than one-half, as the Administrative Secretary or the Chief Security Officer shall in each case determine.

(3) Where proceedings instituted against a security officer interdicted under subsection (1) result in the imposition of a penalty other than dismissal, the Chief Security Officer may decide what proportion of his salary which has been withheld shall be paid to him:

Provided that if no punishment is imposed, the whole of the salary withheld shall be paid to the officer.

(4) Subject to subsection (5), a security officer shall not, by reason of being interdicted from duty, cease to be a security officer.

(5) During the term of any interdiction from duty, the powers, functions and privileges vested in the security officer shall be in abeyance, but he shall continue to be subject to the same responsibilities, discipline, and penalties and to the same authorities as if he had not been interdicted.

32. (1) A security officer who has been dismissed or removed under section 10 or who has been found guilty and awarded any punishment under section 25 or who has been interdicted under section 31 may appeal against the dismissal or removal or against the punishment, conviction or the interdiction, to the Council.

Appeals

(2) The Council may dismiss an appeal under subsection (1) or allow it in whole or in part.

(3) Notice of intention to appeal against any finding of guilt or any punishment under section 25 shall be given by the security officer concerned, within seven days of the termination of the enquiry:

Provided that, where the record of the enquiry or a certified true copy thereof has been transmitted to the Chief Security Officer in accordance with section 27, notice of intention to appeal shall be given in writing within seven days of the security officer concerned being notified of the Chief Security Officer's decision under section 27.

(4) Every notice of intention to appeal under subsection (3) shall be given to the most senior officer at the government security offices where the appellant is stationed, who shall forthwith transmit it to the Council, and a copy thereof to the Chief Security Officer.

(5) Where a notice of intention to appeal has been given in terms of subsections (3) and (4), the appellant shall, within 14 days of the termination of the inquiry or within 14 days after he has been notified of the Chief Security Officer's decision under section 27, as the case may be, state the grounds of his appeal in writing to the Council.

(6) A written notice of intention to appeal against any finding of guilt or punishment under section 25 shall state the grounds of appeal, and shall be given, by the security officer concerned, to the Chief Security Officer and to the Council, within seven days of the termination of the inquiry or within 14 days of the security officer being notified of the Chief Security Officer's decision under section 27, as the case may be.

(7) Every notice of intention to appeal under subsection (6) shall be given to the Administrative Secretary who shall forthwith transmit it to the Council.

(8) Where a notice of intention to appeal has been given in accordance with subsections (6) and (7), the appellant shall, within 14 days of being notified of the Administrative Secretary's decision under section 27, indicate the grounds of his appeal in writing to the Administrative Secretary and the Council.

(9) The Council shall notify the appellant in writing of the result of every appeal.

Procedure on appeal

33. The Council may, when considering an appeal under this Part, require the production of such evidence as it may consider necessary to have in order to determine the appeal.

Mutiny

34. Any security officer who mutinies, incites or counsels any other officer to mutiny shall be guilty of an offence and shall be liable to a term of imprisonment not exceeding 15 years.

Desertion

35. (1) Any security officer who absents himself from duty without reasonable excuse for a period exceeding 14 days shall be deemed to be a deserter and shall be guilty of an offence and shall be liable to a fine not exceeding P1600 or to imprisonment for a term not exceeding 2 years.

(2) Any security officer who incites or counsels another security officer to desert shall be guilty of an offence and shall be liable to a fine not exceeding P800 or to imprisonment for a term not exceeding 12 months.

Resignation

36. (1) Any security officer may resign his office on giving not less than three months' notice in writing to the appointing authority.

(2) Any security officer who contravenes subsection (1) shall be guilty of an offence and shall be liable to a fine not exceeding P400 or to imprisonment for a term not exceeding six months.

PART VI — *Miscellaneous*

Uniform, identity cards and equipment

37. (1) A security officer shall be provided with a uniform, identity card and equipment, and such uniform, identity card and equipment shall at all times remain the property of the Government.

(2) When a person ceases to be a security officer he shall forthwith deliver to the person appointed by the Chief Security Officer for the purpose or to the security officer in charge of the Service where he was last stationed all accouterments, uniform, identity card, and other equipment.

Regulations

38. The Minister may make regulations prescribing any matter which is to be prescribed under this Act or which otherwise relates to the administration of this Act.

Transitional Provisions

39. (1) The Security Guard Force operating under the ministry responsible for presidential affairs and public administration and charged with the duty of guarding Government premises immediately before the coming into operation of this Act, shall, henceforth, cease to exist and the cadre that served under such Force shall, by virtue of this Act, be deemed to be serving under the Government Security Service.

(2) On the coming into force of this Act, and subject to the provisions of this Act —

(a) all facilities of the Government Security Guard cadre shall be transferred to the Service;

(b) all contracts and conditions of service of Officers of the Government Security Guard cadre which were in existence immediately before the coming into force of this Act shall be deemed to have been made under this Act; and

(c) the budget for the Government Security Guard cadre as approved under a State President appropriation or supplementary budget shall be transferred to the Service.

SCHEDULE

Deputy Chief Security Officer
Senior Security Superintendent
Security Superintendent
Assistant Security Superintendent
Security Inspector
Security Sub Inspector
Security Sergeant
Security Guard

PASSED by the National Assembly this 2nd day of July, 2002.

A. MATLHAKU,
Clerk of the National Assembly.