

**LOCAL GOVERNMENT (DISTRICT COUNCILS)
(AMENDMENT) ACT, 2004**

No. 18



of 2004

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of section 2 of Cap. 40:01
3. Amendment of section 31 of the Act
4. Amendment of section 33 of the Act
5. Amendment of section 34 of the Act
6. Amendment of section 36 of the Act
7. Amendment of the Act
8. Amendment of the Act
9. Amendment of the Act
10. Amendment of Schedule to the Act
11. Amendment of the Act

An act to amend the Local Government (District Councils) Act

Date of Assent: 14th May, 2004.

Date of commencement: On notice.

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Local Government (District Councils) (Amendment) Act, 2004, and shall come into operation on such date as the Minister may, by Order published in the Gazette, appoint. Short title
2. The Act is amended in section 2 thereof by inserting, therein, in their correct alphabetical order, the following new definitions —
“bye-law enforcement officer” means an officer appointed under section 40B(1); and
“bye-law enforcement unit” means a unit established under section 40A;”. Amendment of section 2 of Cap. 40:01
3. The Act is amended in section 31 thereof by substituting, for the word “Schedule” which appears in subsection (1) thereof, the words “First Schedule”. Amendment of section 31 of the Act
4. The Act is amended in section 33 thereof by substituting, for the word “Schedule” which appears in subsection (1) thereof, the words “First Schedule, and prescribing service and user fees set out in the Second Schedule”. Amendment of section 33 of the Act

Amendment
of section 34
of the Act

5. The Act is amended in section 34 thereof by substituting, therefor, the following new section —

“Bye-laws to
be submitted
to Minister

34. (1) All bye-laws made by a council shall be submitted to the Minister for his approval, and no bye-laws shall be of any force or effect until the Minister has approved them and caused them to be published in the Gazette.

(2) In approving any bye-law which prescribes service and user fees for the services set out in the Second Schedule, the Minister shall act in consultation with the relevant Ministry.”

Amendment
of section 36
of the Act

6. The Act is amended in section 36 thereof by substituting, for the words “P200 or imprisonment for a period of one year,” which appear in subsection (1) thereof, the words “P5,000 or imprisonment for a term not exceeding 2 years,”.

Amendment
of the Act

7. The Act is amended by inserting, immediately after section 40 thereof, the following new sections —

“Bye-law
enforcement
units

40A. There shall be a bye-law enforcement unit in every council to enforce bye-laws made by the council.

“Bye-law
enforcement
officers

40B. (1) A bye-law enforcement unit shall consist of such number of bye-law enforcement officers as the council may determine and appoint.

(2) A council shall furnish every person appointed as a bye-law enforcement officer with an identity card stating that such person is duly appointed by the council for the purposes of enforcing bye-laws and such identity card shall be *prima facie* evidence of such appointment.

Powers of
arrest

40C. (1) A bye-law enforcement officer may, without a warrant, arrest a person if he reasonably suspects that that person has contravened or is contravening a bye-law.

(2) A bye-law enforcement officer may use such force as is reasonable in the circumstances in effecting an arrest under this section; and for the purpose of effecting an arrest, enter and search any premises or place if he has reason to believe that there is in the premises or place a person who is to be arrested.

(3) A bye-law enforcement officer shall not enter any premises or place unless he has first stated that he is a bye-law enforcement officer and the purpose for which he seeks entry and produced his identity card to any person requesting its production.

Powers of
search

40D. (1) Where a bye-law enforcement officer has arrested a person under section 40C, he may —

(a) search that person and the premises or place in which he was arrested; and

(b) seize and detain anything which he has reason to believe to be or to contain evidence of any contravention of a bye-law.

(2) A bye-law enforcement officer shall only search a person of the same sex as he.

40E. A bye-law enforcement officer shall take any person arrested under section 40C as soon as is practicable to a police station, and such person shall be dealt with in accordance with the Criminal Procedure and Evidence Act.

40F. (1) If it appears to a bye-law enforcement officer that there are reasonable grounds to believe that there is in any premises or place anything which is or contains evidence of a contravention of a bye-law, he may make an application on oath to a magistrate for a warrant to search such premises or place.

(2) If a magistrate to whom an application is made under subsection (1) is satisfied that there are reasonable grounds for suspecting that there is in the premises or place referred to in subsection (1), anything which is or contains evidence of a contravention of a bye-law, he may issue a warrant directing the bye-law enforcement officer to enter and search such premises or place and seize and detain anything which the bye-law enforcement officer has reason to believe to be or to contain evidence of any contravention of a bye-law.

40G. (1) Where a bye-law enforcement officer has reasonable cause to believe that there is in any premises or place anything which is evidence of a contravention of a bye-law or in respect of which a contravention of a bye-law is about to take place, is being conveyed, or is concealed or contained in any package in the premises or place, for the purpose of being conveyed, he may, without warrant, if he considers that the special exigencies of the case so require, enter and search the premises or place, and may seize and detain anything found in those premises or that place.

(2) The entry and search referred to in subsection (1) shall, as far as possible, be made in day time and in the presence of two or more respectable inhabitants of the locality in which the entry and search is made.

40H. In the exercise of the powers of search and seizure under section 40G, a bye-law enforcement officer may use such reasonable force as is necessary in the circumstances, and may be accompanied or assisted by such other persons as he considers necessary to assist him to enter into or upon any premises or place, as the case may be.

Procedure
after arrest

Cap. 08:02
Search with
warrant

Search
without
warrant in
certain cases

Exercise of
powers of
search and
seizure

Penalty for hindering or obstructing a bye-law enforcement officer
Imposition and collection of fines

40I. Any person who hinders or obstructs a bye-law enforcement officer in the performance of his duties under this Act shall be guilty of an offence and liable to a fine not exceeding P200 or to imprisonment for a term not exceeding one year, or to both.

40J. (1) A bye-law enforcement officer may impose such fines for a contravention of a bye-law as a council may determine:

Provided that any fine determined by the council under this section shall not exceed P 2000.

(2) A council shall directly collect any fines imposed by a bye-law enforcement officer and such fines shall accrue to the council concerned.

Collection of debt

40K. If any person who has been fined under section 40J fails within a stipulated period to pay the fine to the council, the council may recover the fine in a court of law as a civil debt.”.

Amendment of the Act

8. The Act is amended by inserting, immediately after section 42 thereof, the following new section —

“Service and user fees

42A. A council shall, by resolution, set service and user fees for the services set out in the Third Schedule hereto.”.

Amendment of the Act

9. The Act is amended by inserting, immediately after section 63 thereof, the following new section —

“Powers of Minister to amend Schedules

63A. The Minister may, by statutory instrument, amend the Schedules hereto.”.

Amendment of Schedule to the Act

10. The Schedule to the Act is amended by substituting, for the heading thereto, the following new heading —

“FIRST SCHEDULE”.

Amendment of the Act

11. The Act is amended by inserting, immediately after the First Schedule thereto, the following new Schedules —

“SECOND SCHEDULE
(Sections 33(1) and 34(2))

Service and user fees to be prescribed by bye-law and to be approved by the Minister in consultation with the relevant Ministry

NO.	FEES
1	Abattoir fees
2	Certificates of rights conversion fees
3	Clinic fees
4	Matimela or pound fees
5	Property rates
6	School fees
7	Trade licences

THIRD SCHEDULE”
(Section 42A)

Services for which service or user fees shall be set by resolution of a council

NO.	SERVICES
1.	Advertising signs
2.	Cemetery services
3.	Community services
4.	Day care centre services
5.	Hiring of classroom
6.	Provision of markets or factory shells
7.	Pest control services
8.	Plan perusal and building control services
9.	Plant hire services
10.	Refuse removal services
11.	Road reinstatement services
12.	Sanitation services
13.	Septic tank emptying services
14.	Sewer connection services
15.	Sewerage services
16.	SHHA services
17.	Shrub and plant sale services
18.	Stadia sport facilities
19.	Staff house rentals
20.	Stock sales commission
21.	Surveys and plans services
22.	Leasing of boreholes
23.	Water connection services

PASSED by the National Assembly this 29th day of March, 2004.

A. MATLHAKU,
Clerk of the National Assembly.