

CHAPTER 21:07
CONTROL OF SECURITY GUARD SERVICES
ARRANGEMENT OF SECTIONS

SECTION

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Act 28, 1984
S.I. 82, 1990.

An Act to provide for the proper and effective control and regulation of concerns engaged in the business of providing security guards and for matters connected therewith.

[Date of Commencement: 14th September, 1990]

1. Short title

This Act may be cited as the Control of Security Guard Services Act.

2. Interpretation

In this Act-

"**Commissioner of Police**" means the public officer for the time being holding, acting in or lawfully performing the functions of the public office of Commissioner of Police;

"**Controller**" means the public officer for the time being designated in terms of section 3 as the Controller of Security Guard Services;

"**licence**" means a security guard service licence issued in terms of this Act;

"**prescribed**" means prescribed by regulations;

"**regulations**" means regulations made by the Minister under section 20;

"**security guard**" means a person who acts as a guard or watchman.

3. Appointment of Controller

The Minister shall designate a public officer as the Controller of Security Guard Services.

4. Licence to engage in security guard service

(1) No person shall, without holding a security guard service licence-

- (a) engage in or carry on the business of providing security guards for any other person or

- persons; or
- (b) advertise himself or hold himself out in any other manner whatsoever as a person engaged in or carrying on any such business.

(2) Any person who contravenes this section shall be guilty of an offence and liable to a fine not exceeding P2000 or in default of payment to imprisonment for a term not exceeding one year and shall, in the case of a continuing offence, be liable to an additional fine not exceeding P500 for every day the offence continues after the first day.

5. Application for licence to be issued or renewed

(1) Every application for a licence to be issued or renewed shall be in writing, in such form as the Controller may from time to time require, and shall be lodged with the Controller together with-

- (a) a statutory declaration made by the applicant or, where the applicant is a partnership or a company registered in accordance with the Companies Act, by each partner or director thereof, as the case may be, disclosing whether he has or has not any convictions within or outside Botswana and whether criminal proceedings are or are not pending against him within or outside Botswana and, if he has such convictions or such proceedings are pending against him, the particulars thereof;
- (b) any further written information required for the purposes of this subsection by regulations;
- (c) the prescribed fee; and
- (d) in the case of an application for a licence to be renewed, the licence.

(2) Every statutory declaration required by subsection (1) shall be made not earlier than 14 days immediately before the day on which it is lodged with the Controller together with the material application.

(3) Every application for a licence to be renewed shall be lodged with the Controller not earlier than three or later than two months immediately before the day on which the licence is due to expire.

(4) Where an applicant or a partner or director of an applicant is convicted of an offence within or outside Botswana or has criminal proceedings instituted against him within or outside Botswana after making the statutory declaration required by subsection (1) but before the material application is determined by the Controller, there shall be attached to and lodged with the statutory declaration (if the same has not already been lodged with the Controller) or forthwith lodged with the Controller (if the declaration has already been lodged with him) a written statement, made, dated and signed by the applicant or by the partner or director, as the case may be, disclosing the conviction or the institution of the proceedings and the particulars thereof.

(5) Any person who is, with intent to deceive the Controller, a party to a failure to lodge with the Controller a statutory declaration, as required by subsection (1), or a written statement, as required by subsection (4), shall be guilty of an offence and liable to a fine not exceeding P2000 or to imprisonment for a term not exceeding two years, or to both.

6. Restriction on licence holder providing security guards

(1) No licence holder shall, in the course of engaging in or carrying on the business in respect of which the licence is held, provide a security guard for any other person if-

- (a) the security guard has a conviction within or outside Botswana or criminal proceedings are pending against him within or outside Botswana; and
- (b) the licence holder knows or suspects the same:

Provided that a licence holder may so provide a security guard who he knows has such a conviction or such proceedings pending against him if he has the Controller's written permission to do so notwithstanding that conviction or those proceedings.

(2) Any licence holder who contravenes this section shall be guilty of an offence and liable to a fine not exceeding P500 or in default of payment to imprisonment for a term not

exceeding six months.

(3) Where, upon the trial of any person for an offence in terms of this section, it is proved that at the material time the security guard in question had a conviction or criminal proceedings pending against him, it shall be presumed that the accused person then knew or suspected the same, unless the contrary is proved.

7. Application for Controller's permission

Every application for the Controller's permission in terms of section 6 shall-

- (a) be in writing, in such form as the Controller may from time to time require;
- (b) disclose the particulars of the conviction or proceedings in question; and
- (c) be lodged with the Controller together with the prescribed fee.

8. Determination of application lodged with Controller

(1) Where an application for a licence to be issued or renewed or for the Controller's permission in terms of section 6 is lodged with the Controller in accordance with this Act, he shall consult the Commissioner of Police thereon and may make whatever inquiries or investigations he thinks fit and shall, having regard to the interests of the public alone, thereafter determine the application:

Provided that the Controller shall refuse to issue or renew a licence if he is of the opinion that the applicant does not have or no longer has the prescribed qualifications.

(2) Where he is of the opinion that the interests of the public might otherwise be prejudiced, the Commissioner of Police may require the Controller to treat as confidential any information provided by the Commissioner in consequence of any consultation required by this section.

(3) Where the Controller issues or renews a licence or grants his permission in terms of section 6, he may attach thereto such conditions as he thinks desirable in the interests of the public alone and shall ensure that any such conditions are clearly set forth in writing and annexed to the licence or permission before the same is transmitted to the licence holder.

9. Expiry of licence

Every licence shall expire on the expiry of the period of one year immediately following the day on which the licence was issued or from which it was last renewed unless earlier cancelled or renewed:

Provided that a temporary licence shall expire as prescribed.

10. Duty of licence holder to disclose certain facts to Controller

(1) Where a licence holder or a partner or director of a licence holder is convicted of a criminal offence within or outside Botswana or has criminal proceedings instituted against him within or outside Botswana, there shall be lodged forthwith with the Controller, except as provided by section 5(4), a written statement made, dated and signed by the licence holder or by the partner or director, as the case may be, disclosing the conviction or the institution of the proceedings and the particulars thereof.

(2) Any person who is, with intent to deceive the Controller, a party to a failure to lodge with the Controller a written statement, as required by subsection (1), shall be guilty of an offence and liable to a fine not exceeding P2000 or to imprisonment for a term not exceeding two years, or to both.

11. Suspension or cancellation of licence

The Controller may suspend, for such period as he shall in each such case specify, or cancel a licence if he is satisfied that the licence holder-

- (a) has been convicted of an offence within or outside Botswana punishable by imprisonment for six months or more;
- (b) has been convicted of an offence under this Act;
- (c) has failed to comply with any condition attached by the Controller to the issue or renewal of the licence or to the grant of the Controller's permission in terms of section 6;

- (d) has failed to pay a judgment against himself for damages sustained by reason of an act or omission of his or of an employee of his done or occurring in or in connection with the business in respect of which the licence is held;
- (e) has, in respect of any information required by or under this Act to be provided to the Controller, included or knowingly caused to be included therein any information which he knew to be false or did not believe to be true or knowingly omitted or caused to be omitted therefrom any material information;
- (f) has neglected or refused to provide information to the Controller as required by or under this Act; or
- (g) is not a fit and proper person to hold a licence.

12. Duty of Controller to inform applicant or licence holder of certain decisions

Where the Controller refuses to issue or renew a licence or suspends or cancels a licence or refuses to grant his permission in terms of section 6, he shall serve or cause to be served on the applicant or licence holder, as the case may be, a written notice of his decision, which notice shall set forth the grounds of the decision and the terms of section 13 and shall, in the case of the suspension or cancellation of a licence, also specify the date from which the suspension or cancellation shall have effect:

Provided that, in setting forth the grounds of the decision, the Controller shall not be required to include therein any information the inclusion of which might, in his opinion, prejudice the interests of the public and shall not include therein any information he has been required by the Commissioner of Police in terms of section 8 to treat as confidential.

13. Appeal from Controller's decision

(1) Where an applicant or a licence holder or former licence holder is aggrieved by-

- (a) the Controller's refusal to issue or renew a licence;
- (b) the Controller's suspension or cancellation of a licence;
- (c) the Controller's refusal to grant his permission in terms of section 6; or
- (d) any condition attached by the Controller to the issue or renewal of a licence or to the grant of the Controller's permission in terms of section 6,

he may appeal from the Controller's decision to the Minister.

(2) In order to institute an appeal under this section, the appellant shall, within 30 days immediately after the day on which service on the appellant of the notice of the Controller's decision was effected or on which the licence or the Controller's permission in terms of section 6 was received by the appellant, as the case may be, lodge with the Minister a written notice of appeal setting out the grounds thereof and the submissions made in relation thereto and the appellant shall, at the same time, lodge a copy thereof with the Controller.

(3) The Minister may, whether the same has or has not expired, extend the 30 days' period prescribed by subsection (2) for one further period not exceeding 30 days from the day on which the former period expired or will expire.

(4) Before determining an appeal under this section, the Minister shall give the Controller a reasonable opportunity to submit his own written submissions in connection therewith and may give both the appellant and the Controller a reasonable opportunity to make oral submissions to him.

(5) In determining an appeal under this section, the Minister shall give due consideration to every submission made to him by virtue of this section and shall thereafter proceed to confirm, reverse or vary the decision of the Controller from which the appeal is brought and may make any decision in respect of the subject matter of the appeal that the Controller might have made at first instance and the Controller shall comply with the order of the Minister on the appeal.

14. Penalty for false information

Any person who, in respect of any information required by or under this Act to be provided to the Controller, includes or knowingly causes to be included therein any information

which he knows to be false or does not believe to be true or knowingly omits or causes to be omitted therefrom any material information shall be guilty of an offence and liable to a fine not exceeding P2000 or to imprisonment for a term not exceeding two years, or to both.

15. Duty of licence holder to issue identity cards to security guards employed by him

(1) A licence holder shall issue an identity card in the prescribed form to every security guard provided by him, in the course of engaging in or carrying on the business in respect of which the licence is held, for any other person.

(2) A licence holder shall take every reasonable step open to him to ensure that every security guard to whom he has issued an identity card in accordance with this section has that card on his person at all times when carrying out his duties as a security guard.

(3) Any licence holder who fails to comply with this section shall be guilty of an offence and liable to a fine not exceeding P500 or in default of payment to imprisonment for a term not exceeding six months.

16. Confidentiality of certain information

(1) A licence holder or former licence holder shall not divulge to anyone, either directly or indirectly, any information acquired by him in the course of engaging in or carrying on the business in respect of which the licence is or was held except-

- (a) for the purposes of legal proceedings;
- (b) to a court of law or to a person invested by law with the power to compel disclosure of such information; or
- (c) to a police officer or other public officer acting in the execution of his duties.

(2) Any person who contravenes this section shall be guilty of an offence and liable to a fine not exceeding P500 or in default of payment to imprisonment for a term not exceeding six months.

17. Prohibition of certain acts by licence holder

(1) A licence holder shall not-

- (a) act, either with or without remuneration, as a collection agency or as a collector of debts or accounts for any other person or advertise himself or hold himself out in any other manner whatsoever as a collection agency or as a collector of debts or accounts for other persons; or
- (b) advertise himself or hold himself out in any other manner whatsoever as performing or providing duties or services in association with the Botswana Police Force or with any other police force established or constituted by law or as if he were or commanded or had at his disposal a police force established or constituted by law.

(2) Any licence holder who contravenes this section shall be guilty of an offence and liable to a fine not exceeding P500 or in default of payment to imprisonment for a term not exceeding six months and shall, in the case of a continuing offence, be liable to an additional fine not exceeding P50 for every day the offence continues after the first day.

18. Proof of being licence holder

A certificate purporting to be signed by the Controller to the effect that the person named therein was or was not at any given time or during any given period a licence holder shall, in proceedings before any court, be admissible in evidence without further proof thereof and the court shall presume that the facts stated therein are true unless the contrary is proved.

19. Additional penalty for subsequent conviction

A person convicted of a second or subsequent offence under this Act which would not, apart from this section, be punishable by a substantive term of imprisonment shall be liable, in addition to or instead of any other punishment prescribed for the offence, to imprisonment for a term not exceeding one year.

20. Regulations

(1) The Minister may, for the better carrying into effect of the purposes and provisions of this Act, make such regulations as appear to him necessary or expedient and, without prejudice

to the generality of the foregoing, such regulations may-

- (a) provide for the display of licences;
- (b) provide for the keeping and inspection of records and the filing of returns with the Controller;
- (c) prescribe fees;
- (d) prescribe forms and provide for their use;
- (e) provide for temporary licences and prescribe the terms and other conditions thereof;
- (f) regulate advertising by licence holders;
- (g) require and govern the surrender of licences that have been suspended or cancelled or have expired;
- (h) prescribe the form of identity cards to be issued to licence holders or issued by licence holders to security guards; and
- (i) govern the uniforms that may be worn and the equipment that may be used by licence holders or security guards.

(2) Regulations made under this section may provide, in respect of any contravention of or failure to comply with the regulations, that the offender shall be guilty of an offence and liable to a fine not exceeding P1000 or in default of payment to imprisonment for a term not exceeding six months and may, in the case of a continuing offence, provide that the offender shall be liable to an additional fine not exceeding P50 for every day the offence continues after the first day.

21. Minister's powers of exemption

The Minister may, by order published in the *Gazette*, limit or suspend the application of all or any of the provisions of this Act, either generally or in respect of a particular person or class or description of persons, for such period and subject to such conditions as he thinks fit.

22. Transitional provisions

(1) Every person who was, immediately before the commencement of this Act, engaged in or carrying on the business of providing security guards for any other person or persons (hereinafter referred to as "an existing provider of a security guard service") shall, for the period of six months only immediately after such commencement, be exempt from the requirement imposed by section 4 to hold a licence.

(2) An existing provider of a security guard service wishing to continue to engage in or carry on his business shall, as soon as is reasonably practicable after the commencement of this Act, apply for a licence to be issued to him.

(3) Where a licence is issued to an existing provider of a security guard service within the six months' period prescribed by subsection (1), the exemption enjoyed by him by virtue of that subsection shall immediately cease.

(4) Where the Controller refuses, within the six months' period prescribed by subsection (1), to issue a licence to an existing provider of a security guard service, the refusal shall not affect the exemption enjoyed by him by virtue of that subsection.