

SEXUAL OFFENDERS REGISTRY ACT, 2021

No. 7



of 2021

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An Act to make provision for the establishment of a sexual offenders register and a Sexual Offenders Inter-sectoral Council and for matters connected therewith.

Date of Assent: 29th April, 2021

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

PART 1 — *Preliminary*

Short title and commencement

1. This Act may be cited as the Sexual Offenders Registry Act, 2020, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Interpretation

2. In this Act, unless the context otherwise requires —

“authorised officer” means a police officer, immigration official, prison officer, social worker, or any other person designated by a court or the Minister for the purposes of this Act as such;

“certificate” means a certificate referred to in section 14;

Cap. 28:04

“child” has the same meaning assigned to it in the Children’s Act;

Cap. 21:01

“Commissioner of Police” has the same meaning assigned to it in the Police Act;

Cap. 21:03

“Commissioner of Prison Service” has the same meaning assigned to it in the Prisons Act;

“Council” means the Sexual Offenders Inter-sectoral Council established under section 24;

“custodian of Register” means Commissioner of Police;

“dangerous sexual offender” means a sexual offender declared as dangerous by a court under section 21;

“employer” means an employer in a targeted institution;

“foster care” has the same meaning assigned to it in the Children’s Act;

“kinship care-giver” means the full time care, nurturing and protection of a child by a relative or other adult who has a close relationship to the family of the child;

“law enforcement officer” means any person whose duties involve law enforcement and includes a police officer as defined under the Police Act;

“police officer” has the same meaning assigned to it in the Police Act;

“Register” means a Sexual Offenders Register established under section 7;

“sexual offence” means any offence described in section 4 or a sexual offence in any written law;

“targeted institution” means a person, hospital, business or trade which —

(a) has a vulnerable person in his, her or its care; or

(b) provides a service to a vulnerable person; and

“vulnerable person” means a child, a person with disability, a hospitalised person, or a person who has attained the age of 60 and above.

3. (1) The following principles shall be observed in the administration of this Act —

Guiding principles

(a) the best interest of a survivor of a sexual offence shall be paramount;

(b) privacy of a survivor of a sexual offence and that of his or her family is to be upheld at all times; and

(c) the need to raise awareness of sexual abuse, sexual offenders and emerging forms of sexual offences.

(2) The following factors shall be taken into account in determining the best interest of children, families and communities —

(a) the need to protect a survivor of a sexual offence from further harm;

(b) the age, maturity and background of a survivor of a sexual offence; and

(c) any other matter which will ensure the general well-being of members of the public.

(3) The provisions of subsection (2) shall not be construed as limiting the factors and any other factor that an authorised officer may reasonably consider or that may be taken into account in determining what is in the best interests of justice upon an applicant’s assessment in terms of sections 14 and 15.

PART II — *Sexual Offences*

4. (1) Sexual offence includes a sexual offence listed in the Schedule.

Sexual offences

(2) The Minister may amend the Schedule by an Order published in the *Gazette*.

5. (1) A person who has been convicted of a sexual offence in Botswana or outside Botswana shall disclose such conviction to a prospective or existing employer in an institution, entity or trade that has vulnerable persons in its care or that provides service to such persons, upon applying for employment or within seven days or within a reasonable time after his or her application for employment.

Disclosure of conviction of sexual offence

Registration of sex offenders entering Botswana

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P200 000 or to imprisonment for a term not exceeding three years, or to both.

6. (1) A person who has been convicted of a sexual offence outside Botswana and whose particulars appear in an official sexual offenders register in any foreign jurisdiction shall disclose such conviction to an authorised officer immediately upon entry into Botswana.

(2) An authorised officer shall immediately alert the Court Clerk or Registrar of the High Court through a system, established and maintained by the Minister in consultation with the Minister responsible for immigration, for informing the relevant authorities about a sexual offender entering Botswana.

(3) The Court Clerk or Registrar of the High Court shall immediately forward particulars of such person to the Commissioner of Police, who shall enter the particulars in the Register.

(4) A person who contravenes this section commits an offence and is liable to a fine not exceeding P200 000 or to imprisonment for a term not exceeding five years, or to both.

PART III — *Sexual Offenders Register*

Establishment of Sexual Offenders Register

7. (1) There shall be established a Sexual Offenders Register for convicted sexual offenders.

(2) The Commissioner of Police shall be the custodian of the Register.

Objects of Register

8. The objects of the Register are to protect persons against sexual offenders by —

(a) establishing and maintaining a record of persons —

(i) who have been convicted of sexual offences, whether the offence has been committed in or outside Botswana, or

(ii) whose particulars are in a register of another jurisdiction;

(b) informing an employer who applies for a certificate in terms of section 14 whether the particulars of an employee are contained in the Register; and

(c) informing the relevant authorities that deal with foster care, kinship care-giving, adoption and any other person who applies for a certificate in terms of section 15 whether the particulars of an applicant are contained in the Register.

Duties of custodian of Register

9. (1) The Commissioner of Police shall immediately enter particulars of persons which have been forwarded by the Court Clerk or Registrar of the High Court, in the Register.

(2) The Commissioner of Police shall inform in writing, a person whose particulars have been forwarded to him or her, of the implications thereof.

(3) The Commissioner of Police shall amend the Register as soon as he or she has been notified of any change in the particulars of any person or any condition thereof.

10. The Register shall be open to the public for inspection upon payment of a prescribed fee.

Inspection of Register

11. (1) A person shall not tamper with the Register.

Entries in Register

(2) A person who fails to comply with the provisions of subsection (1) commits an offence and is liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding one year, or to both.

(3) Where a conviction and sentence took place in a foreign jurisdiction, the Register shall contain information equivalent to information required in section 12, and as obtained from the relevant jurisdiction or any other legal source or written law.

12. The Register shall —

Particulars of Register

(a) be established and maintained in the prescribed manner and form; and

(b) contain the following particulars of a person —

- (i) the title, full names of the person including any known nickname and where applicable, the profession or trade of that person,
- (ii) the last known physical address of the person and any other contact details, including a postal address,
- (iii) the identity number, passport number where applicable or a driver's licence number,
- (iv) the sexual offence in respect of which the person has been convicted, the sentence, the date, the relevant prisoner's number where applicable,
- (v) the court where the person was tried and convicted and the case number, and
- (vi) such further particulars that the Minister may prescribe.

13. (1) A targeted institution shall not knowingly employ or allow a person who has been convicted of a sexual offence 20 years prior to the commencement of this Act, to work or volunteer his or her services in the institution.

Employment of sexual offender by targeted institution

(2) A person who fails to comply with the provisions of subsection (1) commits an offence and is liable to a fine not exceeding P300 000 or to imprisonment for a term not exceeding five years, or to both.

14. (1) A targeted institution shall within six months of the commencement of this Act, take reasonable steps and apply to the Commissioner of Police, for a certificate to ascertain whether the particulars of a person in his, her or its employment are recorded in the Register.

Duties of targeted institution

(2) A targeted institution referred to in subsection (1) shall take reasonable steps to prevent an employee whose particulars are recorded in the Register from continuing to care, volunteer or provide service to a vulnerable person.

(3) A targeted institution that fails to take reasonable steps in terms of subsection (1) or (2) and permits a sexual offender whose particulars are recorded in the Register, to continue working, shall have his, her or its licence revoked.

(4) A targeted institution that fails to comply with the provisions of this section commits an offence and is liable to a fine not exceeding P300 000 or to imprisonment for a term not exceeding five years, or to both.

Obligations of
authorised
officer

15. (1) An authorised officer shall not consider an application or approve an appointment of a person as a foster parent, kinship care-giver, adoptive parent or curator without determining whether the particulars of the applicant are recorded in the Register in Botswana or outside Botswana.

(2) A person who, after the commencement of this Act applies to become a foster parent, kinship care-giver, an adoptive parent or a curator shall disclose that he or she has been convicted of a sexual offence.

(3) An authorised person who contravenes any provision of this section, commits an offence and is liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding three years, or to both.

Exit from
Register

16. (1) A person may apply to court to have his or her particulars removed from the Register —

(a) 10 years from the date of his or her conviction where the offender served a non-custodial sentence;

(b) 30 years from the date of his or her release from prison where the offender is not a dangerous sexual offender; or

(c) 50 years from the date of his or her release from prison where the offender is a dangerous sexual offender.

(2) The Court may, having considered the report in terms of section 17, order the Commissioner of Police to remove the particulars of the applicant in terms of subsection (1).

Erroneous
entry

17. The Commissioner of Police shall remove particulars of a person in the Register at the request of a person or representative of the person whose particulars are entered in the Register, where Commissioner of Police is satisfied that the entry of those particulars is an error.

PART IV — *Supervision of Sexual Offenders*

Report by
authorised
officer

18. (1) An authorised officer shall provide a written report on any sexual offender as ordered by the court.

(2) A report referred to in subsection (1) shall contain the following —

(a) the suitability of the sexual offender to undergo a long-term supervision order;

(b) the possible benefits of the imposition of a long-term supervision order on the sexual offender;

(c) a proposed rehabilitative programme for the sexual offender;

(d) information on the family and social background of the sexual offender;

(e) recommendations regarding any conditions to be imposed upon the granting of a long-term supervision order; and

(f) any other matter as directed by the court.

19. (1) A court may impose upon conviction, an order that for a specified period, commencing on the date of the sexual offender's release from prison, the sexual offender shall be under the supervision of an authorised officer and require the sexual offender to comply with conditions specified in the order.

Post release supervision of sexual offender

(2) Subject to subsection (1), the court shall consider the following conditions —

- (a) the need for a period during which the sexual offender's conduct is supervised by an authorised officer;
- (b) the need to protect the public from harm from the sexual offender;
- (c) the need to prevent the sexual offender from committing further sexual offences;
- (d) the need to rehabilitate or further rehabilitate the sexual offender; and
- (e) any other condition the court may consider appropriate.

(3) Without prejudice to the generality of this section, the court may include in the post release supervision order, the following conditions —

- (a) a condition prohibiting the sexual offender from a specific act or activity that the court considers necessary for the purpose of protecting the public from serious harm from the sexual offender; and
- (b) a condition requiring a sexual offender to receive psychological counselling or any other appropriate treatment.

(4) The court may vary any of the conditions on the application of an authorised officer or the sexual offender.

(5) The court shall explain to the sexual offender, the effect of imposing the post release supervision order.

(6) A person who contravenes a supervision order commits an offence.

20. Where a person was a child at the time of the commission of a sexual offence, the provisions of the Children's Act shall apply.

Child sexual offender

21. A court may declare a person who has been convicted of a sexual offence, a dangerous sexual offender if the person has —

Declaration of dangerous sexual offender

- (a) more than one conviction for a sexual offence;
- (b) been convicted of a sexual offence which was accompanied by violence or threat of violence; or
- (c) been convicted of a sexual offence against a vulnerable person.

22. (1) A court may further order that as part of the sentence imposed, a dangerous sexual offender shall, upon his or her release after serving part of his or her term of imprisonment, be placed under long-term supervision by an authorised person for the remainder of the sentence.

Supervision and monitoring of dangerous sexual offender

(2) An order referred to in subsection (1) shall specify —

- (a) that the offender is required to take part in a rehabilitative programme;
- (b) the nature of the rehabilitative programme to be attended;
- (c) the number of hours per month that the dangerous sexual offender is required to undergo the rehabilitative supervision; and
- (d) that the dangerous sexual offender is required, where applicable, to refrain from using or abusing alcohol or drugs.

(3) Notwithstanding subsection (2), such order may in addition, specify that the dangerous sexual offender is required to —

- (a) refrain from visiting a specified location;
- (b) refrain from seeking employment of a specified nature; or
- (c) subject himself or herself to a specified form of monitoring by the Prison Service.

(4) The Prison Service, having considered the relevant records, shall ensure that the person referred to in subsection (1), is placed under appropriate supervision.

(5) A court shall —

- (a) before making an order referred to in subsection (1), have regard to a report under section 18; and
- (b) specify in the order, —
 - (i) that the offender is required to take part in a rehabilitative programme,
 - (ii) the nature of the rehabilitative programme to be attended,
 - (iii) the number of hours per month that the offender is required to undergo rehabilitative supervision, and
 - (iv) that the offender is required, where applicable, to refrain from using or abusing alcohol or drugs.

(6) A court shall review the order referred to in subsection (1) within 12 months from the date on which the order was made or within such shorter period as the court may direct, upon referral by the Commissioner of Prison Service for such order to be reviewed.

(7) The court shall, upon making a long-term supervision order in terms of this section, explain to the survivor of a sexual offence or his or her representative, that he or she may be present at the review proceedings referred to in subsection (6) and make representations.

(8) A court which has granted a long-term supervision order in terms of this section may, upon evidence that a dangerous sexual offender has failed to comply with the order or with any condition of the order, direct that such offender be —

- (a) ordered to appear before any court at a specified date and time; or
- (b) arrested and brought before the court.

(9) Upon the appearance of a dangerous sexual offender at a court pursuant to the provisions of subsection (8), the court shall direct the dangerous sexual offender to show cause why he or she did not comply with a long-term supervision order or with any condition imposed on such order, and the court may —

- (a) confirm the original order and any conditions imposed on such order;
- (b) vary or withdraw such order or any of the conditions imposed; or
- (c) make any other order as the court deems fit.

(10) A court may order that a dangerous sexual offender be monitored by any locating means or device, including global positioning system technology or active electronic monitoring.

(11) A person who has been declared a dangerous sexual offender and who does not comply with a supervision order in accordance with this section is guilty of an offence and is liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding five years, or to both.

(12) For purposes of subsection (1), “long-term supervision” means supervision of a rehabilitative nature for a period of not less than five years.

PART V — *Sexual Offenders Inter-sectoral Council*

23. (1) The Minister shall, in consultation with Ministers responsible for health and wellness, gender affairs, youth and social services, and education adopt a national policy framework to —

National
policy
framework

- (a) ensure a uniform and coordinated approach by all Government departments and institutions in dealing with matters relating to sexual offences;
- (b) guide the implementation, enforcement and administration of the Act;
- (c) review the policy framework within three years of its publication and at least every three years thereafter;
- (d) amend the policy framework when required; and
- (e) review or amend the policy framework.

(2) The Minister shall —

- (a) table the policy framework before Parliament for approval; and
- (b) publish the framework within 30 days after it has been tabled in Parliament.

24. It is hereby established the Sexual Offenders Inter-sectoral Council.

Establishment
of Sexual
Offenders
Inter-sectoral
Council

25. The Council shall be the body responsible to —

- (a) develop and compile a draft national policy framework;
- (b) develop guidelines for the implementation of the priorities and strategies in the national policy framework;
- (c) ensure that the different organs of state and non-state actors comply with the supporting roles and responsibilities assigned to them;
- (d) determine the manner in which the Council conducts itself in the discharge of its duties;
- (e) report to the Minister in writing on every meeting within one month of such meeting;
- (f) make recommendations to the Minister on the amendment of the national policy; and
- (g) monitor the implementation of the National policy and this Act.

Functions of
Council

26. (1) The Council shall consist of 15 members appointed by the Minister.

Composition
of Council

- (2) The members shall be —
- (a) the Permanent Secretary in the Ministry or his or her representative at least at Director level;
 - (b) the Permanent Secretary in the ministry responsible for gender affairs or his or her representative at least at Director level;
 - (c) the Permanent Secretary in the ministry responsible for education or his or her representative at least at Director level;
 - (d) the Permanent Secretary in the ministry responsible for social services or his or her representative at least at Director level;
 - (e) the Permanent Secretary in the ministry responsible for youth or his or her representative at least at Director level;
 - (f) the Permanent Secretary in the ministry responsible for health and wellness or his or her representative at least at Director level;
 - (g) the Director of the Directorate of Public Prosecutions or his or her representative at least at Director level;
 - (h) a representative of the Law Society of Botswana;
 - (i) a representative of the National Children's Council;
 - (j) a *kgosi* nominated by the Minister responsible for local government;
 - (k) the Commissioner of Prison Service or his or her representative;
 - (l) the Commissioner of Police or his or her representative; and
 - (m) three members of civil society.

(3) The members of the Council shall be people of good standing in the respective fields who possess substantial knowledge, skill and experience in the areas as the Minister may consider appropriate or in any other matter of a nature likely to assist the Council in the discharge of its functions.

(4) The Minister shall appoint a chairperson amongst the members.

(5) The members shall appoint a vice chairperson from amongst themselves.

Tenure of office

27. (1) The Chairperson shall hold office for four years and shall be eligible for reappointment for one further term.

(2) A member of the Council shall hold office for three years and shall be eligible for reappointment for a term not exceeding three years.

Meetings of Council

28. (1) The Council shall meet at least four times a year, at a time and place determined by the Minister.

(2) The Council shall report to the Minister in writing on every meeting within 30 days of such meeting.

Quorum

29. (1) The quorum at any meeting of the Council shall be a simple majority of the members.

(2) A decision of the Council on any question shall be by majority of the members present and voting at the meeting, and in the event of an equality of votes, the Chairperson shall have a casting vote in addition to his or her deliberate vote.

Annual report

30. (1) The Council shall at least once a year or within such shorter period as the Minister may approve, submit to the Minister, a comprehensive report on its activities and operations during such year.

(2) The Minister shall within 30 days of him or her receiving the annual report, table such report before National Assembly.

PART VI — *Miscellaneous*

31. (1) A citizen, or a person who permanently resides in Botswana, who commits an act outside Botswana that constitutes an offence which may be registered under this Act, if committed in Botswana, commits an offence and is liable to a relevant penalty under this Act.

Extra-territorial
jurisdiction

(2) A person who, in any jurisdiction outside Botswana, commits an offence which, if it had been committed in Botswana is a sexual offence under this Act or whose particulars appear in an official register in any jurisdiction outside Botswana pursuant to a conviction of a sexual offence, and is convicted outside Botswana, shall be considered to have committed the offence in Botswana and the Commissioner of Police shall ensure his or her particulars are entered in the Register.

32. A person who —

Offences and
penalties

- (a) obstructs, hinders or impedes any person under this Act in the course of the performance of their duties or attempts to prevent the execution of their duties under this Act; or
- (b) contravenes this Act for which a penalty has not been provided shall be liable for a —
 - (i) first offence, a penalty of a fine not exceeding P100 000 or to imprisonment for a term not exceeding five years, or to both, and
 - (ii) subsequent offence, a penalty of a fine not exceeding P200 000 or to imprisonment for a term not exceeding 10 years, or to both.

33. The Minister may make regulations prescribing anything under this Act which is to be prescribed, or which is necessary or convenient to be prescribed, for the better carrying out of the objects and purposes of this Act, or to give force or effect to its provisions.

Regulations

34. (1) Notwithstanding the provisions of any other Act, the provisions of this Act shall apply to a person —

Transitional
provisions

- (a) convicted of a sexual offence 20 years prior to the commencement of this Act;
- (b) convicted of a sexual offence and currently serving a term of imprisonment; and
- (c) convicted of a sexual offence.

(2) Any proceedings commenced under any other law shall be dealt with, inquired into and determined in accordance with such Act.

SCHEDULE
(*section 4*)

<i>Offence</i>	<i>Section</i>	<i>Act</i>
Rape	s. 141	Penal Code 08:01
Attempted rape	s. 143	Penal Code 08:01
Cyber sexual harassment	s.16	Cybercrime and Computer Related Crimes Act 08:06
Sexual exploitation of child	s. 25	Children's Act 28:04
Pornography	s. 58	Children's Act 28:04
Child Pornographic or obscene material	s. 19	Cybercrime and Computer Related Crimes Act 08:06
Child trafficking for sexual exploitation	s. 114	Children's Act 28:04
Sexual exploitation	s. 2, 9 as read with s.10	Anti-Human Trafficking Act 08:09
Cohabitation with a child	s. 59	Children's Act 28:04
Corruption of children for immoral act	s. 57	Children's Act 28:04
Exposing children to pornography	s. 58	Children's Act 28:04
Revenge pornography	s. 20	Cybercrime and Computer Related Crimes Act 08:06
Administering a substance with intent to commit a sexual offence	s. 226	Penal Code 08:01
Incest	s. 168	Penal Code 08:01
Incest by females	s. 169	Penal Code 08:01
Indecent practices	s. 167	Penal Code 08:01
Indecent assault	s. 146	Penal Code 08:01
Defilement of – person under 18 years idiot or imbecile	s. 147 s. 148	Penal Code 08:01
Detention of persons for immoral purposes	s. 153	Penal Code 08:01
Abduction of a person for immoral purposes	s. 144	Penal Code 08:01

PASSED by the National Assembly this 17th day of December, 2020.

B. N. DITHAPO,
Clerk of the National Assembly.