

PRISONS ACT
(Cap. 21:03)

PRISONS (CENTRES FOR ILLEGAL IMMIGRANTS) REGULATIONS, 2004
(Published on 15th October, 2004)

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IN EXERCISE of the powers conferred on the Minister by section 147 of the Prisons Act, the following Regulations are hereby made —

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| Citation | 1. These Regulations may be cited as the Prisons (Centres for Illegal Immigrants) Regulations, 2004. |
| Interpretation | 2. In these Regulations, unless the context otherwise requires —
“Commissioner” means the Commissioner of Prisons and Rehabilitation appointed by the Minister in accordance with section 9 of the Prisons Act;
“Centre” means a Centre for Illegal Immigrants declared in accordance with regulation 3;
“deporting officer” means an immigration officer working at a Centre;
“holding officer” means a prison officer working at a Centre;
“immigrant” means any person in Botswana other than a citizen of Botswana;
“medical officer” means a person appointed to be the medical officer responsible for a Centre in accordance with regulation 7; and
“prohibited article” means any article which is not issued to an illegal immigrant by authority of the officer in charge of the holding section, with the approval of the Commissioner. |
| Cap. 21:03 | |

3. The Minister may, by notice published in the Gazette, declare any building, enclosure or place, or any part thereof, to be a Centre for Illegal Immigrants.

Declaration of
a Centre for
Illegal
immigrants

4. (1) The officials at a Centre shall comprise of deporting officers and holding officers, each category being headed by an officer in charge.

Officials at a
Centre

(2) The officer in charge of the deporting section at a Centre shall be an officer of the Department of Immigration, designated as such by the Chief Immigration Officer.

(3) The officer in charge of the holding section at a Centre shall be an officer of the Prison Service, designated as such by the Commissioner.

(4) The officer in charge of the holding section at a Centre shall be responsible to the Commissioner for securing the general efficiency of the Centre to which he has been assigned.

(5) The officer in charge of the deporting section at a Centre shall be responsible for the office equipment and machinery used by the deporting officers at the Centre.

(6) The conditions of service of the officials working at a Centre shall be governed by the Act under which they are employed.

5. (1) An illegal immigrant who has not been charged with a criminal offence may be admitted to a Centre.

Admission of
immigrants at
a Centre

(2) An illegal immigrant shall not be admitted to a Centre without a warrant or order for his or her detention.

(3) A warrant or order under subregulation (2) shall be signed by an immigration officer or prison officer who has been authorised to so sign by the Chief Immigration Officer or the Commissioner.

(4) An official at a Centre may admit an illegal immigrant, where a warrant or order for detention under subregulation (2) is incomplete.

(5) A warrant or order for detention shall be deemed to be incomplete where —

- (a) it has not been signed in accordance with subregulation (3);
- (b) it does not bear the official stamp of the office of an immigration officer or prison officer who has signed such warrant or order for detention; or
- (c) it does not specify the period for which an immigrant to be admitted to a Centre, is to be held.

6. (1) The officer in charge of the holding section at a Centre shall be responsible for the custody, care and welfare of the illegal immigrants at the Centre.

Duties of
officer in
charge of
holding
section

(2) Upon the admission of an illegal immigrant to a Centre, the officer in charge of the holding section shall record, or cause to be recorded —

- (a) the name of the illegal immigrant;
- (b) the country of origin of the illegal immigrant;
- (c) any property brought to the Centre which belongs to the illegal immigrant; and
- (d) such other information as may be required by the Commissioner.

7. (1) The Permanent Secretary to the Minister for the time being responsible for health shall, in respect of every Centre, appoint a person from among medical practitioners (including Government medical officers) to be the medical officer responsible for that Centre.

Medical
officer

(2) The medical officer shall be responsible for the health of all illegal immigrants at the Centre for which he or she is responsible, and shall cause all illegal immigrants at that Centre to be medically examined at such times as he or she considers necessary.

(3) The medical officer shall report, to the officer in charge of the holding section at a Centre and to the Commissioner, any circumstances connected with the Centre or the treatment of illegal immigrants which at any time appear to him or her to require consideration on health or medical grounds.

(4) The officer in charge of the holding section at a Centre shall, where advised by the medical officer, report the illness or treatment of an illegal immigrant to —

- (a) the Commissioner;
- (b) the officer in charge of the deporting section;
- (c) the Embassy, Consulate or High Commission representing the illegal immigrant's country of origin; and
- (d) the local office of the United Nations High Commission for Refugees.

8. (1) A medical officer may, whether or not an illegal immigrant consents thereto, take or cause to be taken or direct to be taken such action (including the forcible feeding, inoculation, vaccination and any other treatment of the illegal immigrant) as he or she considers necessary to safeguard or restore the health of the illegal immigrant or to prevent the spread of disease.

(2) All actions of a medical officer in exercise of the powers conferred by this section and all actions of an official at a Centre or other person acting under and in accordance with the directions or instructions of a medical officer given under this regulation shall be deemed to be lawful.

9. A medical officer or an officer in charge of the holding section at a Centre may order any illegal immigrant at the Centre to submit himself or herself to medical examination when and as often as the medical officer or officer in charge of the holding section considers it necessary.

10. (1) In the case of illness of an illegal immigrant, the officer in charge of the holding section, on the advice of the medical officer, may order the removal of the illegal immigrant to a hospital.

(2) Notwithstanding the provisions of subregulation (1), the officer in charge of the holding section may order the illegal immigrant's removal to a hospital at his or her own discretion, in the case of an emergency or in the absence of the medical officer.

(3) Any illegal immigrant removed to a hospital under this regulation shall be deemed to be under detention in the Centre from which he or she was so removed.

11. (1) A holding officer shall search an illegal immigrant on the illegal immigrant's first and every subsequent reception into a Centre.

(2) Any property found in an illegal immigrant's possession during a search under subregulation (1) shall be dealt with in accordance with regulation 12.

(3) Holding officers shall conduct routine searches, at regular and irregular intervals, of Centres for Illegal Immigrants and their precincts and of illegal immigrants, to discover and seize prohibited articles as the Commissioner may direct, and such other searches of a Centre and its precincts and of illegal immigrants as the officer in charge of the holding section may direct.

Powers of
medical
officer

Medical
examination
of illegal
immigrants

Removal of
sick illegal
immigrants to
hospital

Searching of
immigrants

(4) An illegal immigrant shall not be stripped of his or her clothing in the presence of another illegal immigrant, or be searched whilst unclothed in the presence of another illegal immigrant.

(5) Any search of an illegal immigrant shall be carried out by a holding officer of the same sex, and no person of the opposite sex shall be present during the search.

(6) Where a holding officer of the same sex is not available when a search of an illegal immigrant is to be conducted, the search shall be postponed until it may be carried out by an officer of the same sex, who may be a temporary officer recruited for that purpose alone.

(7) Any prohibited article found in the possession of an illegal immigrant at any time shall be confiscated and disposed of in such manner as the Commissioner shall direct:

Provided that where the prohibited article is a dangerous or habit-forming drug, it shall be destroyed if it is not required or as soon as it is no longer required as evidence in any proceedings.

(8) An illegal immigrant who resists a search shall be subjected to a forced search.

(9) Any search of an illegal immigrant shall be carried out with due regard to the decency and dignity of the illegal immigrant.

12. (1) The officer in charge of the holding section at a Centre shall place in safe custody, all money, clothing and other property brought into the Centre by any illegal immigrant, or sent to an illegal immigrant for use by the illegal immigrant, which he or she is not permitted to retain, and an inventory shall be made of the same.

Immigrant's
property

(2) The money, clothing and other property placed in safe custody under subregulation (1) shall be returned to an illegal immigrant when he or she is released from a Centre, unless otherwise lawfully disposed of.

(3) All clothing to be placed in safe custody under subregulation (1) shall, where appropriate, be washed and carefully folded before being stored.

(4) Where any clothing of an illegal immigrant is so old, worn out, dirty or tattered as to be, in the opinion of the officer in charge of the holding section, unsuitable for further use, the officer in charge may order the same to be destroyed.

(5) Where the clothing of an illegal immigrant is destroyed under subregulation (4), on the release of the illegal immigrant from a Centre, the officer in charge of the holding section shall, at the public expense, provide the illegal immigrant with such suitable clothing as he or she considers to be adequate to meet the illegal immigrant's immediate need for clothing.

13. (1) Male and female illegal immigrants shall be kept in separate parts of a Centre in such manner as to prevent, as far as it is reasonably practicable to do so, their seeing or conversing or holding any communication with each other.

Segregation of
male and
female illegal
immigrants

(2) The part of a Centre allocated to female illegal immigrants shall be secured by locks different from those used to secure the part allocated to male illegal immigrants.

(3) There shall be a female holding officer who shall be responsible, subject to the supervision and control of the officer in charge of the holding section, for the care, superintendence and welfare of all female illegal immigrants at a Centre.

Visits to
immigrants at
Centres for
Illegal
Immigrants

14. (1) A Centre may be visited by —

- (a) the Minister;
- (b) the Permanent Secretary; or
- (c) any person authorised by the Commissioner.

(2) An illegal immigrant may be visited by any official from the Embassy, Consulate or High Commission representing his or her country of origin, or by a member of any organisation authorised by the Commissioner.

(3) Illegal immigrants may be visited by relatives and friends between the hours of 8.00 a.m. and 4.00 p.m. each day.

(4) Ministers of religion may, at such hours and in such places as the officer in charge of the holding section may permit —

- (a) be admitted to a Centre to visit illegal immigrants who may be desirous of their services; and
- (b) be permitted to hold religious services within the Centre.

(5) A visitor to a Centre shall enter, in a register kept by the officer in charge of the holding section —

- (a) his or her name, address and telephone number; and
- (b) the name of the illegal immigrant he or she seeks to visit.

Duties of
immigrants

15. (1) An illegal immigrant at a Centre shall —

- (a) clean his or her dormitory;
- (b) wash any bedding items given to the illegal immigrant on admission to the Centre, every two weeks, as well as on the day before he or she is to be deported;
- (c) be responsible for the care of any item issued to him or her by an official at a Centre; and
- (d) follow any procedures or rules laid down by the officer in charge of the holding section.

(2) An illegal immigrant may be required to grow and nurture vegetables within the Centre.

Transfer of
immigrants to
prisons

16. (1) An illegal immigrant who does not comply with any of the requirements under regulation 15 or who is considered to pose a threat to any official or illegal immigrant at a Centre may, with the consent of the Commissioner, be transferred to a prison for detention pending deportation.

(2) The officer in charge of the holding section at a Centre shall inform the officer in charge of the deporting section of any transfer under subregulation (1).

(3) The officer in charge of the deporting section at a Centre shall be responsible for the deportation of illegal immigrants and, on the admission of such immigrants to the Centre, shall inform them of their appointed or likely dates of deportation.

(4) Where it is not possible to deport an illegal immigrant on an appointed date, the officer in charge of the deporting section shall inform the officer in charge of the holding section and the illegal immigrant of —

- (a) the impossibility of deportation on that date; and
- (b) the new likely date of deportation, where possible.

Death of
illegal
immigrant

17. (1) Upon the death of an illegal immigrant, the officer in charge of the holding section shall notify —

- (a) the District Commissioner of the district in which the illegal immigrant died;
- (b) the medical officer responsible for the Centre;

- (c) the next-of-kin of the deceased; and
- (d) the Commissioner, who shall notify —
 - (i) the Minister;
 - (ii) the Chief Immigration Officer;
 - (iii) the Commissioner of Police;
 - (iv) the Embassy, Consulate or High Commission representing the illegal immigrant's country of origin; and
 - (v) the local office of the United Nations High Commission for Refugees.

(2) The medical officer shall, on the death of an illegal immigrant, record in a register to be kept for that purpose the following particulars so far as they can be ascertained —

- (a) the date on which the deceased was admitted to the Centre;
- (b) the date on which the deceased was last seen before his or her death by the medical officer;
- (c) the date on which the deceased died; and
- (d) the medical officer's opinion as to the cause of death.

(3) Upon the death of an illegal immigrant otherwise than from what appears to be natural causes, the medical officer shall hold or cause to be held a post-mortem examination and thereafter, shall record in the register prescribed under subregulation (2), in addition to the matters required by that subregulation —

- (a) an account of the deceased illegal immigrant's appearance after death; and
- (b) any remarks which may appear to the medical officer to be required.

(4) Upon the death of an illegal immigrant, the officer in charge of the holding section shall inform the next-of-kin of the deceased that he or she may make his or her own arrangements for the funeral.

(5) Where the next-of-kin of a deceased illegal immigrant chooses to make his or her own arrangements for the funeral, the funeral shall not be at the public expense.

(6) Where the next-of-kin of a deceased illegal immigrant declines to make his or her own arrangements for the funeral, the deceased shall be decently buried at the public expense in the vicinity of the Centre.

18. (1) Upon the death of an illegal immigrant while at a Centre for Illegal Immigrants, the officer in charge of the holding section shall take every reasonable step to facilitate the holding of any inquest into the death required by law as soon as practicable.

Inquest on
deceased
illegal
immigrants

(2) At the conclusion of any inquest held into the death of an illegal immigrant, the officer in charge of the holding section shall forthwith take steps to obtain a copy of the record of the presiding officer recording his or her opinion as to the cause of death and any other matters relevant thereto and, on receipt of the copy —

- (a) shall forthwith transmit it to the Commissioner; and
- (b) may forthwith transmit it to the next-of-kin of the deceased illegal immigrant.

19. (1) An illegal immigrant at a Centre may make a request or complaint to any person, including the Minister or President.

Requests and
complaints by
immigrants

(2) A written request or complaint by an illegal immigrant shall be given to the officer in charge of the holding section, who shall promptly transmit such request or complaint to the addressee.

(3) The officer in charge under subregulation (2) shall notify the Commissioner of the nature of all requests and complaints made by illegal immigrants at a Centre.

(4) The officer in charge of the holding section at a Centre shall inform the officer in charge of the deporting section where a request or complaint, directly or indirectly, deals with an immigrant's deportation.

20. Any person who contravenes these Regulations shall be guilty of an offence and on conviction, liable to a fine not exceeding P500.

MADE this 29th day of September, 2004.

T.D. MOGAMI,
*Minister for Labour and Home
Affairs.*

General
penalty

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