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Vagrancy Act, 1963

Act 39 of 1963

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Vagrancy Act, 1963

Act 39 of 1963

Commenced on 6 December 1963

[This is the version of this document at 1 December 1998.]

An Act to make provision for dealing with vagrants.

1. Short title

This Act may be cited as the Vagrancy Act, 1963.

2. Interpretation

(1) In this Act, except where the context otherwise requires—

“**court**” means a court established under the—

- (a) Magistrates Courts Act, [No. 66 of 1938](#); or,
- (b) Swazi Courts Act, [No. 80 of 1950](#), or recognised thereunder;

“**magistrate’s court**” means a court established under the Magistrates Courts Act, [No. 66 of 1938](#);

“**Minister**” means the Prime Minister;

“**place of detention**” means premises declared by the Minister under [section 7\(1\)](#), to be a place of detention;

“**public officer**” means a person in the service of, or holding office under, the Government, whether the service be permanent or temporary, paid or unpaid;

“**public place**” means a place to which, for the time being, the public, or a section of the public, is entitled or permitted to have access, whether on payment or otherwise;

“**public service motor vehicle**” means a motor vehicle used for carrying passengers or goods or both for hire or reward;

“**vagrant**” means a person—

- (a) having neither lawful employment nor lawful means of subsistence which provide him regularly with the necessities for his maintenance; or,
- (b) having no fixed abode and not giving a satisfactory account of himself; or,
- (c) wandering abroad, or placing himself in a public place, to beg or gather alms, or procuring or encouraging a child or children to do so; or
- (d) living or lodging in a place or area which the Minister has declared by notice in the *Gazette* to be unfit for living in.

(2) For the purposes of paragraph (b) of the definition of “**vagrant**” a person lodging in—

- (a) or about a verandah, pavement, side-walk, passage, outhouse, shed, warehouse, store, shop or unoccupied building; or,
- (b) the open air; or,

- (c) or about a cart or other vehicle,

shall, without limiting the meaning of fixed abode, be *prima facie* deemed to be a person having no fixed abode.

3. Powers of arrest

Any police officer may, without warrant, arrest any person—

- (a) who is apparently a vagrant; or
- (b) whom he has reasonable grounds for believing has committed an offence against this Act;

and shall, as soon as possible, take him before a court.

4. Powers of court

- (1) If a person is brought before a court under section 3(a), the court shall inquire into his circumstances and, if after such inquiry it finds as a fact that such person is a vagrant, it may—
 - (a) order him to be detained in a place of detention; or,
 - (b) if satisfied that he has a home, order him to be taken to the region in which his home is situated and not to leave such region for a period of not more than three years thereafter, unless he has been issued with a permit under subsection (2).
- (2) A regional administrator may issue to a person in respect of whom an order has been made under subsection (1)(b) a written permit authorizing him to—
 - (a) leave the region to which he is limited by such order; and,
 - (b) remain outside such region for such purpose, for such period, and on such terms and conditions, as such regional administrator may specify.
- (3) A person shall be guilty of an offence and liable on conviction to imprisonment not exceeding six months for a first offence or two years for a second or subsequent offence if he—
 - (a) has been ordered under subsection (1)(b) to be taken to a particular region and at any time after his arrival in such region he leaves it in contravention of the terms of such order;
 - (b) contravenes a term or condition of a permit issued to him under subsection (2); or,
 - (c) while outside such region, fails, on demand, to produce to a police officer or an administrative officer such permit.
- (4) In addition to imposing a penalty for an offence under subsection (1), the court convicting any person of such offence may—
 - (a) terminate the order in question; and,
 - (b) make a fresh order under subsection (1)(b), to take effect either immediately or, if the offender is sentenced to imprisonment, on his release from prison.
- (5) A court may order any person brought before it, who is apparently a vagrant, to be detained in a place of detention for such period, not exceeding fifteen days, as it may consider necessary to enable inquiry to be made into his circumstances under subsection (1).
- (6) A court may order a vagrant to be detained in a place of detention—
 - (a) pending his return to the region in which his home is situated; or,

- (b) for the purpose of ascertaining whether he has committed an offence under subsection (3); but no person shall be so detained under an order made under this subsection for a period exceeding twenty-eight days.

5. Appeals

- (1) Subject to this section, a person aggrieved by the making of an order against him under [section 4\(1\)](#), by a magistrate's court, may appeal to the High Court, and Part XIX of the Criminal Procedure and Evidence Act, [No. 67 of 1938](#) relating to appeals, shall *mutatis mutandis* apply.
- (2) The execution of an order made under [section 4\(1\)\(b\)](#) shall not be suspended pending the hearing of such appeal.
- (3) The decision of the High Court shall be final.

6. Warrants

- (1) A court may issue any warrants necessary to carry into effect an order issued by it under [section 4](#).
- (2) A vagrant held under a warrant issued under subsection (1) shall be deemed to be in lawful custody.

7. Places of detention

The Minister may, by notice in the *Gazette*, declare any premises to be a place of detention for the accommodation of vagrants, or any class of vagrants.

- (2) The Minister may appoint such superintendents and medical and other officers as he may think fit for the management of places of detention.
- (3) A person lawfully detained in a place of detention shall be deemed to be in lawful custody.

8. Assistance to obtain employment

The superintendent of a place of detention shall—

- (a) use his best endeavours to obtain suitable employment, outside such place for the vagrants detained therein; and,
- (b) in the event of such employment being found for and accepted by any vagrant so detained, discharge him from detention to enable him to take up such employment.

9. Discharge by the Minister

The Minister may, at any time, order the discharge of any person detained in a place of detention.

10. Disposal of vagrants after detention

- (1) If a vagrant who is not in a category specified in subsection (2)(a) is committed to a place of detention, the superintendent of such place shall, as soon as possible, report in writing to the Minister, in order that the Minister may make such arrangements as may be possible for the removal of such vagrant from Swaziland at the expiry of the period specified in such subsection.
- (2) If, within three months from the committal of a vagrant to a place of detention, suitable employment has not been obtained for and accepted by him, and if such vagrant is—
 - (a) a person who is a member of, or one of whose parents is or was a member of, a tribe or community indigenous to Swaziland he shall be discharged from such place of detention;

- (b) not in a category specified in paragraph (a), the superintendent of the place of detention shall forthwith report his detention to the Minister who shall, without unnecessary delay, order either his—
 - (i) removal from Swaziland in accordance with this section; or
 - (ii) discharge from such place of detention.

Note: Paragraphs (ii) and (iii) of section 10(2)(a) of the original Proclamation No. 39 of 1963 have been impliedly repealed by the Immigration Act, No. 32 of 1964

- (3) A person ordered, under subsection (2)(b) to be removed from Swaziland, shall be removed—
 - (a) to the place whence he came; or,
 - (b) with the approval of the Minister, to a place in the country to which he belongs or to a place to which he consents to be removed if the government thereof consents to receive him.
- (4) An order made under subsection (2)(b) for the removal of a vagrant from Swaziland shall be carried into effect in such manner as the Minister may direct, and the Minister may, at any time, vary or revoke any such order and direction in connection with it.
- (5) If the Minister so directs, a person against whom an order is made for his removal from Swaziland may, while awaiting removal, and being conveyed to the place of departure, be kept in prison or police custody, as the case may be, and while so kept shall be deemed to be in lawful custody.
- (6) If so required by a public officer acting pursuant to an order, under subsection (2)(b), for the removal of a vagrant from Swaziland, the pilot of an aircraft, the guard of a train or the person in charge of a public service motor vehicle, due to call at a place outside Swaziland, shall—
 - (a) receive the person against whom the order has been made on board such aircraft, train or vehicle; and,
 - (b) on due payment, afford him a passage to or towards his first destination and proper accommodation and maintenance during such passage.
- (7) A person who fails to comply, with subsection (6) shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred emalangeni.
- (8) Any person who has—
 - (a) been removed from Swaziland under subsection (2)(b), and who returns, or attempts to return, to Swaziland, without the written permission of the Minister; or,
 - (b) returned to Swaziland in pursuance of such permission, and contravenes a term or condition thereof;

shall be guilty of an offence and liable on conviction to imprisonment not exceeding one year or a fine not exceeding five hundred emalangeni or both and to be removed again from Swaziland under this section.

11. Provision in regard to children

- (1) On being found wandering about or upon any premises without the consent of the owner or occupier thereof, any person apparently under the age of sixteen years, and not in regular employment nor resident with his parents or other lawful guardian, shall be taken before a court.
- (2) Such court may make an order for the return of such person to the custody of his parent or guardian and, thereupon, shall, as soon as practicable, be handed over to the custody of such parent or guardian.

12. Expenses

Any expenses incurred by the Minister in carrying out the provisions of this Act shall be defrayed out of public funds.

13. Rules

- (1) The Minister may make rules for the better carrying out of the objects of this Act.
- (2) Without prejudice to the generality of the foregoing, such rules may provide for—
 - (a) the regulation, staffing and management of places of detention;
 - (b) the search of the person and clothing of a person admitted to a place of detention;
 - (c) the medical examination of such persons and measures for the preservation of health in places of detention;
 - (d) the recording of particulars or identity of such persons;
 - (e) the segregation of different types of persons in places of detention;
 - (f) subject to the approval of the Chief Justice, the forms of warrant, order and permit, and other forms, to be used under this Act;
 - (g) penalties, not exceeding those mentioned in section 25 of the Interpretation Act, [No. 21 of 1970](#) for the breach of rules made under this section and, without derogation from the exercise by a court of the power to try an offence, empowering the superintendent of a place of detention to inflict any punishment for a breach of the rules, not exceeding one week's confinement, or one week's reduced diet, or both, which may be prescribed.