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## Theft and Kindred Offences by Public Officers Order, 1975 Kings Order in Council 22 of 1975

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Theft and Kindred Offences by Public Officers Order, 1975

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## eSwatini

# Theft and Kindred Offences by Public Officers Order, 1975

## Kings Order in Council 22 of 1975

Assented to on 8 July 1975

Commenced on 18 July 1975

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

**A King's Order-in-Council to provide for certain measures against public officers suspected, or convicted, of theft and other crimes of dishonesty in relation to public property.**

### 1. Short title

This King's Order-in-Council may be cited as the Theft and Kindred Offences by Public Officers Order, 1975.

### 2. Interpretation

In this Order, unless the context otherwise requires—

“**money**” includes cash, negotiable instrument, postal order or money order, or any other documentary forms of payment;

“**parastatal body**” means any body, whether corporate or unincorporate in which the Government, the Ngwenyama in trust for the Swazi Nation or the Swazi National Council holds any financial or monetary interest and includes any other body in which such parastatal body holds a financial or monetary interest;

*[Added A.5/1981]*

“**public money**” *[Repealed A.5/1981]*

“**public officer**” means the holder of any public office and includes the holder of any office in the Royal Swaziland Police Force, the Umbutfo Swaziland Defence Force, the Prison Service and any employee holding office in any statutory corporation or parastatal body;

*[Added A.5/1981]*

“**public property**” means any property of any kind whatsoever owned, controlled, kept by or in the possession of Government or a statutory corporation or parastatal body, as the case may be, whether as principal, agent, depository or in trust and includes money;

*[Amended A.5/1981]*

“**responsible officer**” means a person who is empowered to suspend a public officer and includes a body of persons having such power;

*[Amended A.5/1981]*

“**statutory corporation**” means any body, whether corporate or unincorporate, established under any law;

*[Added A.5/1981]*

“**theft**”, in addition to its ordinary meaning, includes any offence involving fraud, forgery, false pretences and the receiving of property with knowledge that it has been stolen.

*[Amended A.5/1981]*

### 3. Suspension of public officer and prohibition from dealing with assets

- (1) Notwithstanding any other law or any terms or conditions of employment—
- (a) where a responsible officer has reasonable grounds to believe that a public officer has committed theft in respect of any public property, he may, after consultation with the Director of Public Prosecutions, suspend such public officer from the exercise of the powers and functions of his office with a view to instituting disciplinary or criminal proceedings against him:
- Provided that where it appears to the responsible officer that the alleged theft has resulted or is likely to result in the loss of public property, the responsible officer shall immediately suspend the officer and, not later than seven days after such suspension and without prejudice to any action taken or to be taken by the Police in respect of the alleged theft, refer the matter to the Director of Public Prosecutions;
- (b) a person who has been suspended in accordance with paragraph (a) shall—
- (i) by virtue of such suspension alone and without further action or proceedings, become disqualified from disposing of, pledging, mortgaging or otherwise hypothecating or alienating the assets held by him (whether alone or with any other person) or any interest therein and the responsible officer shall inform the Registrar-General and the Registrar of Deeds accordingly; and
- (ii) with effect from the date of his suspension, but subject to subsection (2), cease to receive any further salary, wages or other emoluments relating to his office.
- (2) Without prejudice to any action which may be taken under any other law or under the terms or conditions of service governing the salary, wages or other emoluments of a public officer who is under suspension, the provisions of subsection (1)(b)(ii) shall cease to apply to an officer three months after the date of his suspension unless within the said period—
- (a) such officer has appeared in court on a charge of theft; or
- (b) through his own default, such officer has failed to appear in court after being so required by a public prosecutor or after being summoned or by evading to be summoned in connection with the alleged theft.
- (3) Any person who, while under suspension and contrary to subsection (1)(b)—
- (a) disposes of, pledges, mortgages or otherwise hypothecates or alienates any assets held by him or any interest therein; or
- (b) receives any further salary, wages, or other emoluments in respect of the office from which he was suspended;

shall be guilty of an offence and liable on conviction to a fine of one thousand emalangeni or twelve months' imprisonment or both.

*[Amended A.5/1981]*

### 4. Penalty for theft by public officer

A person convicted of theft under this Order shall be liable to a minimum sentence of six months' imprisonment in the case of a first conviction or a minimum sentence of twelve months in the case of a second or subsequent conviction, without the option of a fine, and no such sentence or part thereof shall be suspended:

Provided that the court may impose a lesser penalty of imprisonment or a fine—

- (a) if the person so convicted establishes the existence of any extenuating circumstances in connection with the commission by him of such offence; or

- (b) if, having regard to the age of the person convicted or the value of the public property in respect of which the offence was committed, the court is of the opinion that in the interest of justice such lesser penalty is more appropriate.

*[Amended A.5/1981]*

## **5. Court may order compensation**

- (1) If any public officer has been convicted of theft in respect of any public property the court trying the case shall after recording the conviction and upon the application of the Public Prosecutor or any representative of Government or a statutory corporation or parastatal body or any other person who has suffered loss as the result of such theft, as the case may be, forthwith award it or him compensation for such loss as it or he has suffered as a result of the commission of the offence.
- (2) Notwithstanding any other law a magistrate's court shall be entitled to award the full amount of compensation which the Government or the statutory corporation or parastatal body, or any other person who has suffered as a result of such theft, as the case may be, has suffered.
- (3) For the purpose of determining the amount of compensation and the liability of the accused therefor, the court may refer to the proceedings and evidence at the trial or hear further oral evidence or evidence on affidavit of the amount of compensation, or the amount of compensation may be awarded by the court in accordance with an agreement reached between the convicted person and the Government or the statutory corporation or parastatal body, or any person who has suffered loss as the result of the theft, as the case may be.
- (4) Any award of compensation made by a court under this section shall have the effect of a civil judgment of that court.
- (5) If any money of the accused has been taken from him upon his apprehension the court may order payment in satisfaction or on account of the award, as the case may be, to be made forthwith from such money.
- (6) Notwithstanding any other law, the Government or statutory corporation or parastatal body, as the case may be, may set off against the amount awarded to it by the court in terms of subsection (1) any arrears of salary, wages, emoluments or any other money due to him by the Government.
- (7) In the event of the court finding that a person convicted has inadequate assets with which forthwith to pay the amount of compensation awarded against him it may order such compensation to be paid in instalments and provide that on the failure to pay any such instalments the accused person shall undergo such further period of imprisonment as it may deem fit.