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CHEMICAL WEAPONS (PROHIBITION)

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Schedule 1 - Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction

Schedule 2 - Chemicals and Precursors

Act 25, 2014,  
S.I. 148, 2014,  
Act 16, 2018,  
S.I. 189, 2018.

**An Act to re-enact with amendments, the Chemical Weapons (Prohibition) Act and to provide for the prohibition of the development, production, acquisition, stockpiling, retention, transfer and use of chemical weapons, the co-ordination of the management of chemical weapons, nuclear weapons and the management of biological and toxin weapons, and other matters incidental thereto.**

[Date of Commencement: 29th June, 2018]

## PART I

### *Preliminary*

#### 1. Short title

This Act may be cited as the Chemical Weapons (Prohibition) Act.

#### 2. Interpretation

In this Act, unless the context otherwise requires-

**"Authority"** means the Chemical, Biological, Nuclear and Radiological Weapons Management Authority established under section 5;

**"Board"** means the Board established under section 7 of the Act;

**"chemical weapon"** means-

(a) toxic chemicals and their precursors, except where intended for-

- (i) peaceful purposes,
- (ii) purposes relating to protection against toxic chemicals, or
- (iii) law enforcement purposes within the State,

as long as the types and quantities are consistent with such purposes;

(iv) munitions and devices specifically designed to cause death or other harm through the toxic properties of those toxic chemicals defined in paragraph (a) of this definition which would be released as a result of the employment of such munitions and devices; or

(b) any equipment specifically designed for use directly in connection with the employment of those munitions or devices;

**"controlled agents and toxins"** has the same meaning assigned to the term under the Biological and Toxin Weapons (Prohibition) Act;

**"Convention"** means the Convention on the Prohibition, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, signed by the State Parties on the 13th January, 1993, as amended from time to time;

**"Director"** means the Director of the Authority appointed under section 5(2);

**"facility"** means any equipment, including any building or vessel housing the equipment, where at any stage in the production of scheduled chemicals, the material flows would contain any of the scheduled chemicals;

**"inspector"** means a person appointed as such under section 24;

**"member"** means a member of the Board appointed under section 7;

**"non-State Party"** means a State that is not a signatory to the Convention;

**"nuclear material"** has the same meaning assigned to the term under the Nuclear Weapons (Prohibition) Act;

**"Organisation"** means the Organisation for the Prohibition of Chemical Weapons established under the Convention;

**"precursor"** means any chemical reactant which is used in the production of a chemical weapon or any toxic chemical;

**"proliferation financing"** means the act of providing funds or financial services which are used, in whole or in part, for the manufacture, acquisition, possession, development, export, transshipment, brokering, transport, transfer, stockpiling or use of chemical toxins and their means of delivery and related materials, including both technologies and goods used for non-legitimate purposes;

**"repealed Act"** means the Chemical Weapons (Prohibition) Act repealed under section 34;

**"riot control agent"** means any chemical not listed in a Schedule 1, 2 or 3, which can produce rapidly in humans sensory irritation or disabling physical effects disappear within a short time following termination of exposure but does not include chloropicrin;

**"Schedule 1 chemical"** means a chemical listed in Schedule 2 to this Act;

**"Schedule 2 chemical"** means a chemical listed in Schedule 2 to this Act;

**"Schedule 3 chemical"** means a chemical listed in Schedule 2 to this Act;

**"scheduled chemical"** means a chemical that is listed in Schedule 2 to this Act;

**"State Party"** means a State that is a signatory to the Convention; and

**"toxic chemical"** means any scheduled chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals.

### 3. Application of Convention

The Convention on the Prohibition, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1993, as set out in Schedule 1 to this Act including any amendments thereto, shall have force of law in Botswana.

### 4. Act binds State

This Act binds the State.

## PART II

### *Establishment of Chemical, Biological, Nuclear and Radiological Weapons Management Authority*

#### 5. Continuation of Chemical Weapons Management Authority

(1) The Chemical Weapons Management Authority established under the repealed Act, is hereby continued as if established under this Act as the Chemical, Biological, Nuclear and Radiological Weapons Management Authority.

(2) Subject to the laws governing the public service, there shall be appointed a Director and such other officers of the Authority as may be deemed necessary.

(3) The Authority shall be under the general supervision of the Director.

#### 6. Functions of Authority

(1) The Authority shall be the principal agency in Botswana for the management of scheduled chemicals, nuclear material and controlled agents and toxins and shall co-ordinate, monitor and supervise all activities related to scheduled chemicals, nuclear material and controlled agents and toxins in addition to any other power conferred on it by this Act, the Nuclear Weapons (Prohibition) Act and the Biological and Toxin Weapons (Prohibition) Act.

(2) Notwithstanding the generality of subsection (1), the Authority shall-

- (a) institute measures for the implementation of the Convention both solely and in co-operation with other public bodies, organs of Government, non-governmental organisations, private sector organisations and members of the public;
- (b) monitor the implementation of this Act, the Nuclear Weapons (Prohibition) Act and the Biological and Toxin Weapons (Prohibition) Act and assess their effectiveness in improving the level of protection, control or prevention of the use of scheduled chemicals, nuclear material and controlled agents and toxins in Botswana, and to advise the Minister on ways of giving effect to the purposes of this Act, the Nuclear Weapons (Prohibition) Act and the Biological and Toxin Weapons (Prohibition) Act effectively;
- (c) issue any licence or permit required under this Act and the Biological and Toxin Weapons (Prohibition) Act;
- (d) keep and maintain a register of licences and permits issued under this Act and the Biological and Toxin Weapons (Prohibition) Act, and notifications and declaration made under this Act and the Biological and Toxin Weapons (Prohibition) Act;
- (e) prepare an annual report, which shall be submitted to the Minister, of all notifications, facilities and any other matter connected with the prohibition of the production, development, acquisition, stockpiling, retention, use or transfer of scheduled chemicals, nuclear material or controlled agents and toxins in Botswana, and their destruction;
- (f) publish and disseminate manuals, standards, codes of practice and guidelines relating to scheduled chemicals, nuclear material or controlled agents or toxins management;
- (g) carry out research, promote and co-ordinate information and data collection relating to the scheduled chemical industry relating to the scheduled chemicals, nuclear material industry or controlled agents and toxins;
- (h) conduct inspections and take other measures to monitor compliance with this Act, the Nuclear Weapons (Prohibition) Act and the Biological and Toxin Weapons (Prohibition) Act and to conduct investigations into alleged contraventions of these Acts;
- (i) investigate any matter that may have a negative effect on the scheduled chemical industry, nuclear material industry or controlled agents and toxins and make recommendations thereon to the Minister;
- (j) perform other functions incidental or conducive to the operation of this Act, the Nuclear Weapons (Prohibition) Act and the Biological and Toxin Weapons (Prohibition) Act as assigned to it by the Minister from time to time; and
- (k) manage and control the use of scheduled chemicals, nuclear material and controlled agents and toxins as well as to regulate the field of chemistry so as to ensure that their exclusive use is for the benefit of mankind.

### PART III

#### *Establishment and Membership of Board*

#### 7. Establishment and membership of Board

- (1) There is hereby established a Board of the Authority which shall perform such functions as may be conferred on it under this Act.
- (2) The Board shall consist of the following members appointed by the Minister-
  - (a) the Permanent Secretary from the Ministry of Defence, Justice and Security;
  - (b) a nominee from the Ministry responsible for agriculture;
  - (c) a nominee from the Ministry for health;

- (d) a nominee from the Attorney General's Chambers;
- (e) a member from the Ministry responsible for environment, wildlife and tourism;
- (f) the Director of the Radiation Inspectorate established under the Radiation Protection Act;
- (g) a nominee from the Botswana Police Service;
- (h) a nominee from the Botswana Defence Force;
- (i) the Director of International Trade;
- (j) a nominee from the Directorate of Intelligence and Security established under the Intelligence and Security Service Act;
- (k) the Director as an *ex-officio* member;
- (l) two persons who possess the skill, experience and competence in environmental issues, scheduled chemicals, nuclear material or controlled agents and toxins and other chemistry or biology-related professions;
- (m) a representative of the mines or mining industry; and
- (n) a representative of the Botswana Institute for Technology, Research and Innovation.

(3) The Minister shall appoint a Chairperson of the Board and the members shall elect a member from among their number to be the Vice-Chairperson.

#### 8. Functions of Board

(1) The Board shall-

- (a) determine policies for giving effect to the objects and purposes of this Act, the Nuclear Weapons (Prohibition) Act and the Biological and Toxin Weapons (Prohibition) Act;
- (b) advise the Minister to change, review or formulate scheduled chemical, nuclear material or controlled agents and toxins policies and strategies where necessary;
- (c) recommend standards, codes of practice, guidelines and legislation to the Minister; and
- (d) investigate any matter that may have a negative effect on the scheduled chemical industry, nuclear material industry or controlled agents and toxins and make recommendations thereon to the Minister.

(2) The Minister may give the Board written directions, of a general or specific nature, regarding the exercise of its powers and the performance of its functions, which directions shall not be inconsistent with this Act, the Nuclear Weapons (Prohibition) Act and the Biological and Toxin Weapons (Prohibition) Act.

(3) The Board shall give effect to the Minister's directions given in accordance with subsection (2).

#### 9. Meetings of the Board

- (1) Subject to the provisions of this Act, Board shall regulate its own proceedings.
- (2) The Board shall meet for the transaction of its business at least four times in a year.
- (3) Upon giving notice in writing of not less than 14 days, a meeting of the Board may be called by the Chairperson provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon giving of a shorter notice.
- (4) The quorum at any meeting of the Board shall be a simple majority of the members of the Board.
- (5) There shall preside at any meeting of the Board-

- (a) the Chairperson;
- (b) in the absence of the Chairperson, the Vice-Chairperson; or
- (c) in the absence of the Chairperson and Vice-Chairperson, such member as the members present may elect from amongst themselves for the purpose of that meeting.

(6) A decision of the Board on any question shall be by the majority of the members present and voting at the meeting and, in the event of an equality of votes, the member presiding shall have a casting vote in addition to that person's deliberative vote.

#### 10. Disclosure of interest

(1) A member attending a meeting of the Board, at which meeting a matter which is the subject of consideration is one in which he or she is directly or indirectly interested in a private capacity, the member shall, as soon as practicable after the commencement of the meeting, disclose the full nature and extent of such interest and shall not, unless the Board otherwise directs, take part in any consideration or discussion of, or vote on any question touching upon, such matter.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting at which it was made.

(3) Where a member of the Board fails to disclose his or her interest in accordance with subsection (1) and a decision of the Board is made benefitting such member, the decision shall be null and void.

(4) A person who contravenes 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 five years, or to both.

#### 11. Confidentiality

(1) A member attending a meeting of the Board shall observe and preserve the confidentiality of all matters coming before the Board, and such confidentiality shall subsist even after the termination of their terms of office or their expert mandates.

(2) Any person to whom confidential information is revealed through working with the Board or the Authority shall not disclose that information to any other person unless he or she is required to do so in terms of any written law.

(3) A person who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P10 000, or to imprisonment for a term not exceeding three months, or to both.

#### 12. Secretarial services

(1) The Authority shall provide secretarial services to the Board.

(2) Any representative of the Authority who attends the meetings of the Board to provide secretarial services shall have no right to vote, and shall be responsible for the accurate and complete recording of the Board's proceedings and decisions.

#### 13. Committees of Board

(1) The Board may appoint such committees as it considers appropriate, consisting of its members.

(2) The Board may delegate any of its functions or powers under this Act to a committee appointed under subsection (1) to carry out the functions under this Act, the Nuclear Weapons (Prohibition) Act or the Biological and Toxin Weapons (Prohibition) Act.

### PART IV

#### *Chemical Weapons and Chemicals for Permitted Purposes*

#### 14. Chemical weapons

(1) Subject to this Act, a person shall not-

- (a) produce, develop, use, possess, acquire, export, transport, stockpile or retain, or transfer, directly or indirectly to another person, a chemical weapon;
- (b) construct, convert, maintain or use any premises or equipment for the production, development, retention, use or transfer of chemical weapons;
- (c) assist another person to produce, develop, retain, use or transfer a chemical weapon either through assisting in the construction, conversion, maintenance or use of any premises or equipment;
- (d) engage in preparations of a military nature to use a chemical weapon;
- (e) use a riot control agent as a method of warfare; or
- (f) engage in the proliferation financing of any chemical weapon.

(2) Any action referred to in subsection (1) undertaken outside Botswana by a citizen of Botswana shall be deemed to have been undertaken at any place within Botswana.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable to a fine of P15 000 000 or to life imprisonment, or to both.

(4) A person who releases scheduled chemicals for the purpose of causing serious bodily injury or killing human beings, animals or plants or causing damage to property or natural resources commits an offence and is liable to a fine of P15 000 000 or to life imprisonment, or to both, where the act does not result in death, and where the act results in death is liable to the death penalty.

#### 15. Schedule 1 chemicals and precursors

(1) Except as authorised by this Act, a person shall not produce, use, acquire, possess, transfer, import or export a Schedule 1 chemical or its precursor.

(2) For the purposes of subsection (1), Schedule 1 chemicals can only be produced, used, acquired, retained or transferred for research, medical or pharmaceutical purposes.

(3) The type and quantities of the scheduled chemicals or precursors shall be taken into account in determining whether a toxic chemical or precursor is a chemical weapon.

(4) A person who contravenes this section commits an offence and is liable to a fine of P25 000 000 or to life imprisonment, or to both.

#### 16. Schedule 2 chemicals

(1) Except as authorised by this Act, a person shall not receive, transfer, import or export a Schedule 2 chemical or its precursor to a non-State Party-

- (a) without first notifying the Authority; and
- (b) unless it contains a low concentration of Schedule 2 chemicals to the extent allowed by the Convention.

(2) A person shall produce, process or use a Schedule 2 chemical in accordance with regulations prescribed by the Minister and subject to making such notifications and declarations required under Part V.

(3) A person who contravenes this section commits an offence and is liable to a fine of P3 000 000 or to imprisonment for a term of 20 years, or to both.

#### 17. Schedule 3 chemicals

(1) Except as authorised by this Act, a person shall not receive, transfer, import or export a Schedule 3 chemical without first notifying the Authority.



(2) Any person who wishes to transfer a Schedule 3 chemical or its precursor to a non-State party shall first obtain an end-user certificate from a competent governmental authority in the non-State Party where the chemical is transferred to.

(3) A person shall produce, process or use a Schedule 3 chemical in accordance with regulations prescribed by the Minister and subject to making such notifications and declarations to the Authority as required under Part V.

(4) A person who contravenes a provision of this section commits an offence and is liable to a fine of P1 500 000 or to imprisonment for a term of 10 years, or to both.

#### 18. Chemical facilities

(1) The operator of a facility where any of the scheduled chemicals is likely to be produced, acquired, retained, used or transferred shall not carry out any activity that would lead to the production, acquisition, retention, use or transfer of any scheduled chemicals without first obtaining the necessary licence in accordance with regulations prescribed by the Minister and subject to making such notifications and declarations to the Authority as required under Part V.

(2) A person who contravenes this section commits an offence and is liable to a fine not exceeding P1 500 000, or to imprisonment for a term of 10 years, or to both.

(3) The Authority may debar a person who contravenes this section from obtaining any licence under this Act for five years.

### PART V

#### *Notifications and Declarations*

#### 19. Notifications of finding of substances or articles believed to be chemical weapons, nuclear weapons or biological or toxin weapons

(1) If a person finds a substance or article in Botswana that the person believes may be a chemical weapon, nuclear weapon or biological or toxin weapon the person shall immediately notify-

- (a) the Director; or
- (b) a police officer,

of the finding and location of the substance or article concerned.

(2) Where a person notifies a police officer under subsection (1), it shall be the responsibility of the police officer to notify the Director of the matter.

(3) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P10 000, or to imprisonment for a term not exceeding three months, or to both.

#### 20. Notifications and declarations for Schedule 1 chemicals

(1) Subject to subsection (2), any person who transfers a Schedule 1 chemical shall notify the Authority 45 days before the transfer of any such chemical to another State Party.

(2) A person shall make a notification to the Authority at least five days before the transfer of the Schedule 1 chemical saxitoxin if-

- (a) the transfer is for medical or diagnostic purposes; and
- (b) the transfer is for quantities of five milligrams or less.

(3) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P3 000 000 or to imprisonment for a term of 20 years, or to both.

## 21. Declarations for Schedule 2 chemicals

(1) Any person who transfers a Schedule 2 chemical shall declare all transfers relating such transfers within 30 days after the end of the calendar year.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P1 500 000 or to imprisonment for a term of 10 years, or to both.

## 22. Declarations for Schedule 3 chemicals

(1) Any person who transfers a Schedule 3 chemical shall declare all transfers relating such transfers within 30 days after the end of the calendar year.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P500 000 or to imprisonment for a term of five years, or to both.

## 23. Declarations by Authority

The Director shall compile all notifications and declarations required under this Part and submit to the Organisation a detailed annual declaration within 90 days after the end of the calendar year.

## PART VI

### *Inspections and Enforcement*

## 24. Inspectors

(1) The Director may appoint such number of officers of the Authority as he or she thinks fit to be inspectors for purposes of this Act, the Nuclear Weapons (Prohibition) Act or the Biological and Toxin Weapons (Prohibition) Act.

(2) The Authority shall issue to every inspector an identity card of authority and, when exercising a power conferred on him or her under this Act, the Nuclear Weapons (Prohibition) Act or the Biological and Toxin Weapons (Prohibition) Act the inspector shall, on being so requested by a person in charge of a place to be inspected, show the identity card to that person.

## 25. Inspections

(1) An inspector may, for the purposes of ensuring that this Act is complied with-

(a) at any reasonable time enter any place with reasonable force if necessary and as may be permitted by a warrant issued under section 26-

(i) in respect of which under Part V information has been or is required to be provided,

(ii) which place is subject to an on-site challenge inspection referred to in paragraph 8 of Article IX of the Convention,

(iii) in respect of a place which an investigation under paragraph 9 of Article X of the Convention has been initiated, or

(iv) in, at or on any place which there are reasonable grounds to believe an offence against this Act has been or is being committed, and inspect the place;

(b) request any person in, at or on the place to give to the inspector access to any area, container or thing in, at or on the place;

(c) secure under a warrant issued under section 26, for later inspection, any such place or area, or any container or thing in, at or on the place;

(d) examine any container or thing in, at or on the place;

(e) request any person in charge or employed in, at or on the place to produce to the inspector such information contained in the records, files, papers or electronic information systems kept in, at or on, or used in relation to, the place and, in the case of such information in a non-legible form, to reproduce it in a legible form;

- (f) inspect and take copies of or extracts from any such records, files, papers or electronic information system in, at or on the place, including in the case of information in a non-legible form, copies of or extracts from such information in a permanent legible form;
- (g) remove and retain, under a warrant under subsection (2), those records, files or papers or equipment used in such information systems, for such period as may be reasonable for further examination or until the conclusion of any legal proceedings;
- (h) have photographs taken of any thing in, at or on the place and remove the photographs from the place;
- (i) where appropriate, install, use and maintain in, at or on the place monitoring instruments, systems and seals in a manner consistent with the Convention;
- (j) take samples for analysis of any thing in, at or on the place, without payment, and analyse those samples or remove them from the place for analysis outside the place;
- (k) as regards any product or any article or substance used in the manufacture of a product the inspector finds in, at or on the place, require any person in, at or on the place, or who appears to the inspector to be in possession of the product or the article or substance, to supply without payment for test, examination or analysis, sufficient samples thereof;
- (l) cause any product or any substance or thing used in the manufacture of a product found in, at or on the place the possession or use of which appears to the inspector to constitute an offence under this Act, to be dismantled or subjected to any process or test, but not so as to damage or destroy it unless it is in the circumstances necessary for the purposes of this Act;
- (m) take possession of any such product, substance or thing in, at or on the place and retain it for so long as is necessary for all or any of the following purposes-
- (i) to examine or arrange for its examination and do to it anything that he or she has power to do under paragraph (g),
  - (ii) to ensure that it is not tampered with before the examination is completed, and
  - (iii) to ensure that it is available for use as evidence in any proceedings;
- (n) require any person in, at or on the place to afford the inspector such facilities and assistance within the person's control or responsibilities as are reasonably necessary to enable the inspector to exercise any of the powers conferred on him or her by or under this Act; and

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