

**THE REGULATION OF WAGES AND CONDITIONS OF EMPLOYMENT ACT,  
1969**

No. 22



of 1969

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## **SCHEDULE**

### **AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF WAGES COUNCILS FOR THE REGULATION OF REMUNERATION AND CONDITIONS OF EMPLOYMENT, AND FOR OTHER MATTERS INCIDENTAL THERETO AND CONNECTED THEREWITH.**

Date of Assent: 8.7.69.

Date of Commencement: 1.8.69

ENACTED by the Parliament of Botswana.

## **PART I**

### **PRELIMINARY**

#### **Short Title**

1. This Act may be cited as the Regulation of Wages and Conditions of Employment Act, 1968.

#### **Interpretation**

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

“Commissioner of Labour” means any person appointed as Commissioner of Labour in terms of section 4 of the Employment Law, 1963 (No. 15 of 1963);

“labour inspector” means any person appointed as labour inspector in terms of section 4 of the Employment Law, 1963;

“labour officer” means any person appointed as labour officer in terms of section 4 of the Employment Law, 1963;

“outworker” means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished or repaired or adapted for sale in his own home or in other premises not in the control or management of the person who gave out the materials;

“remuneration” means any remuneration or earnings payable to an employee in terms of his contract of service however designated or called whether expressed in money or in kind.

“statutory minimum remuneration” means remuneration (including a basic minimum wage) fixed by a wages regulation order;

“wages council order” means an order made under subsection (1) of section 4 establishing a wages council;

“wages regulation order” means an order made under subsection (3) of section 8 or under section 9;

“wages regulation proposals” means wages regulation proposals submitted pursuant to subsection (1) of section 8.

#### **Application to Employment by the State**

3. This Act shall not apply to public officers but shall apply to other employees of the State in the same manner as if they were employed by or under a private person.

## **PART II**

### **ESTABLISHMENT OF WAGES COUNCILS**

#### **Establishment of Wages Councils**

4. (1) The Minister, if he is of the opinion that no adequate machinery exists for the effective regulation of the remuneration or other conditions of employment of the employees in any trade, industry or occupation, may by order establish a Wages Council to perform, in relation to the employees specified in the order, the powers and functions specified in this Part.

(2) The powers and functions of a Wages Council may be exercised in relation to -

(a) the employees in any trade, industry or occupation, either generally or in any area of Botswana;

(b) any class of such employees.

#### **Making of Wages Council Orders**

5. (1) Before making a Wages Council Order, the Minister shall publish, once in the *Gazette* and twice, with an interval of at least seven but not more than fourteen days between each publication, in a newspaper circulating in the area which will be affected by the order, a notice of his intention to make such order, specifying a place where copies of a draft thereof may be inspected and a

time, which shall not be less than thirty days from the first date of such publication, within which any objection to such draft order shall be sent to the Minister.

(2) Every objection shall be in writing and shall state –

- (a) the specific grounds of objection;
- (b) the deletions, additions or modifications asked for;

and the Minister shall consider any such objection made by or on behalf of any person appearing to him to be affected, if such objection has been sent to the Minister within the time specified in the notice, and the Minister shall not be bound to consider any other objection.

(3) If there are no objections which the Minister is required by subsection (2) of this section to consider, or if, after considering all such objections, he is of the opinion that they will be met by modifications which he proposes to make under this subsection or are not of such a nature as to warrant any such modifications, he may make the order either in terms of the draft or subject to such modifications, if any, as he thinks fit, if such modifications do not, in his opinion, effect important alterations in the character of the draft order which was published under subsection (1) of this section.

(4) Where the Minister does not proceed under subsection (3) of this section, he may, if he thinks fit, withdraw the draft order or amend it and, if he amends it otherwise than as is permitted under subsection (3) of this section, all the provisions of this section shall have the same effect in relation to the amended draft order as they have in relation to an original draft order.

(5) Where the Minister makes a Wages Council Order, he shall publish it in the *Gazette* and in a newspaper circulating in the area affected by the order.

#### **Abolition of Wages Council and Variation of Limits of Jurisdiction**

6. The Minister may at any time, by order, abolish a Wages Council or vary the limits of its jurisdiction, and section 5 shall apply in relation to any such order as it applies in relation to a Wages Council Order.

#### **General Provisions as to Wages Councils**

7. (1) The provisions of the Schedule shall have effect with respect to the constitution, officers and proceedings of Wages Councils.

(2) A Wages Council shall, upon request by the Commission of Labour, consider any matter affecting the industrial conditions of employees and employers in relation to whom it operates, and shall make a report thereon to the Commissioner of Labour; and a Wages Council may, if it thinks it expedient so to do, of its own motion make a recommendation on any such matter as aforesaid to the Commissioner of Labour.

(3) On receipt of such report or recommendation, the Commissioner of Labour shall make a report thereon to the Minister, who shall take such action, if any, as he thinks fit.

## PART III

### MINISTERIAL WAGES REGULATION ORDERS

#### Power to Fix Remuneration and Conditions of Employment

8. (1) Subject to and in accordance with the provisions of this section, a Wages Council shall have power to submit to the Minister proposals for fixing the remuneration to be paid and for prescribing the conditions of employment to be provided, either generally or for any particular work, by their employers to and for all or any of the employees in relation to whom the Wages Council operates.

(2) Before submitting any wages regulation proposals to the Minister, a Wages Council shall make such investigations as it thinks fit and shall publish in the same manner as is provided in subsection (1) of section 5, notice of the proposals, stating the place where copies of the proposals may be obtained and the period, which shall be not less than thirty days from the first date of publication, within which written representations with respect to the proposals may be sent to the Wages Council, and the Wages Council shall consider any written representations made to it within that period and shall make such further inquiries as it considers necessary, and may then submit the proposals to the Minister either without amendments or with such amendments as it thinks fit, having regard to the representations:

Provided that if the Wages Council, before publishing its proposals, resolves that, in the event of no representation with respect to the proposals being made to it within the said period, the proposals shall be submitted to the Minister, the Wages Council shall thereupon, if no representation is made, submit the proposals to the Minister.

(3) Where the Minister receives any wages regulation proposals under this section, he may by notice in the *Gazette* make a Wages Regulation Order giving effect to such proposals as from such date as may be specified in such order:

Provided that the Minister may, if he thinks fit, refer the proposals back to the Wages Council, and the Wages Council shall thereupon reconsider them having regard to any observations made by the Minister and may, if it thinks fit, re-submit the proposals to the Minister either without amendment or with such amendments as it thinks necessary having regard to those observations; and where proposals are so re-submitted with amendment, the like procedure shall be had thereon as in the case of original proposals.

(4) The date to be specified under subsection (3) shall be a date subsequent to the date of the Order, and, where the date so specified does not correspond with the beginning of the period for which wages are paid to any employee, the order shall, as respects that employee, become effective as from the beginning of the next such period following the date specified in the Order.

## **PART IV**

### **PRESIDENTIAL WAGES REGULATION ORDER**

#### **Wages Regulation Order made by the President**

9. Notwithstanding anything to the contrary in this Act, the President may, at any time and from time to time, of his own motion and after making such inquiries and consulting such associations of employers or employees as he may think fit, make a Wages Regulation Order relating to the basic minimum wage and to conditions of employment in respect of employees generally in any area of Botswana or in respect of any category of employees either generally or in any area of Botswana.

## **PART V**

### **WAGES REGULATION ORDERS: GENERAL PROVISIONS**

#### **Contents of Wages Regulation Proposals and Orders**

10. Any Wages Regulation proposal and any Wages Regulation Order may make different provision for different cases, may make provisions for a minimum housing allowance to be paid in addition to a basic minimum wage to any employee not provided by his employer with housing accommodation, and may also contain provision for the amendment or revocation of previous Wages Regulation Orders.

#### **Deductions from Wages etc.**

11. A wages regulation order may, notwithstanding the provisions of Part V of the Employment Law, 1963 —

- (a) specify permitted deductions from remuneration and prohibit all other deductions;
- (b) prohibit or regulate the giving of remuneration either wholly or partially in kind.

#### **Effect and Enforcement of Wages Regulation Orders**

12. (1) If a contract between an employee to whom a Wages Regulation Order applies and his employer provides for the payment of less remuneration than the statutory minimum remuneration, or does not provide for the conditions of employment prescribed in a Wages Regulation Order, it shall have effect as if for that less remuneration there were substituted the statutory minimum remuneration and as if there were inserted the prescribed conditions of employment as aforesaid.

(2) If an employer fails to pay an employee to whom a Wages Regulation Order applies not less than the minimum remuneration due under that Order he shall be deemed to be guilty of the offence of contravening section 133 of the Employment Law, 1963, and shall be liable on conviction to the penalties prescribed in respect thereto.

(3) For the purpose of securing to an employee payment of any remuneration due to him under a Wages Regulation Order such remuneration shall be deemed for the purpose of the Employment Law, 1963, to be a wage owing under a Contract of Service.

(4) If an employer fails to provide any employee to whom a Wages Regulation Order applies with the Conditions of Employment prescribed in the Order he shall be guilty of an offence and liable to a fine of R500.

**Employee waiting for work on employer's premises – when to be deemed to be employed**

13. (1) Subject to the provisions of subsection (2), for the purpose of calculating the amount due to an employee employed in any occupation in respect of which a Wages Regulation Order has been made, such employee shall be deemed to have been employed for all the time during which he was present on the premises of his employer if it is proved to the satisfaction of the Court that he was so present with such employer's express consent:

Provided that –

- (i) where an employee resides on the premises of his employer, he shall not be deemed to be employed for any time during which he is present on the premises by reason only of the fact that he is so resident; and
- (ii) an employee while present during normal meal times in a room or place in which no work is being done shall be deemed to be present for a purpose not connected with his employment.

(2) Nothing in this section shall render it necessary to remunerate any person employed as a casual labourer in respect of any time during which he is present on his employer's premises before the time appointed for the commencement or after the termination of the work for which he is engaged.

**Permits to Infirm and Incapacitated Persons**

14. (1) If, as respects any employee employed or desiring to be employed in such circumstances that a Wages Regulation Order applies or will apply to him, a labour officer or labour inspector is satisfied, on application being made to him for a permit under this section either by the employee or the employer or a prospective employer, that the employee is affected by infirmity or physical incapacity which renders him incapable of earning the statutory minimum remuneration, he may, if he thinks fit, grant, subject to such conditions, if any, as he may determine, a permit authorizing the employment of the employee at less than the statutory minimum remuneration, and, while the permit is in force, the remuneration authorized to be paid to the employee by the permit shall, if those conditions are complied with, be deemed to be the statutory minimum remuneration.

(2) Where an employer, pursuant to any document purporting to be a permit granted under subsection (1) of this section authorizing the employment of an employee at less than the statutory minimum remuneration, employs such employee,

then, if the employer has notified the labour officer or labour inspector in question that, relying on that document, he is employing or proposing to employ that employee at a specified remuneration, the document shall, notwithstanding that it is not or is no longer a valid permit relating to that employee, be deemed, subject to the terms thereof and as respects only any period after the notification, to be such a permit until notice to the contrary is received by the employer from the labour officer or labour inspector.

#### **Employers not to receive premiums**

15. (1) Where an employee to whom a Wages Regulation Order applies is an apprentice or learner, it shall not be lawful for his employer to receive directly or indirectly from him, or on his behalf or on his account, any payment by way of premium:

Provided that nothing in this subsection shall apply to any such payment duly made in pursuance of any instrument of apprenticeship if such payment is made –

(i) not later than four weeks after the commencement of the apprenticeship;

or

(ii) at any time with the approval of a Wages Council.

(2) If any employer acts in contravention of this section, he shall be guilty of an offence and liable to a fine of R500, and the Court may, in addition to imposing a fine, order him to repay to the employee or other person by whom the payment was made the sum improperly received by way of premium.

#### **Records and Notices**

16. (1) The employer of employees to whom a Wages Regulation Order applies shall keep in English such records as are necessary to show whether or not he is complying with the provisions of this Part with respect to such employees, and the records shall be retained by the employer for at least two years after the date of the last entry therein.

(2) An employer shall exhibit in the prescribed language and manner such notices as may be prescribed for the purpose of informing his employees of any Wages Regulation proposals or Wages Regulation Order affecting them, and shall give notice in any other prescribed manner to the said employees of the said matters and of such other matters, if any, as may be prescribed.

(3) If an employer fails to comply with any of the requirements of this section, he shall be guilty of an offence and liable to a fine of R100, and to an additional fine of R10 for each day during which the omission continues after conviction.

#### **Joinder of Other Persons in Charge Against Employer**

17. The provisions of section 120 of the Employment Law, 1963, shall apply in relation to an employer charged with an offence under this Act as they do to an employer charged with an offence under that Law.

### **Powers of officers**

18. (1) A labour officer or labour inspector shall have power for the performance of his duties –

- (a) to require the production of wages sheets or other records of wages kept by an employer, and records of payments made to outworkers by persons giving outwork, and any other such records as are required by this Part to be kept by employers, and to inspect and examine those sheets or records and copy any material part thereof;
- (b) to require any person giving outwork and any outworker to give any information which it is in his power to give with respect to the names and addresses of the persons to whom the work is given out or from whom the work is received, as the case may be, and with respect to the payments to be made for the work ;
- (c) at all reasonable times to enter any premises at which an employer to whom a Wages Regulation Order applies carries on his business including any place used in connection with that business for giving outwork to outworkers and any premises which the officer has reasonable cause to believe to be used by or by arrangement with the employer to provide living accommodation for employees ;
- (d) to inspect and copy any material part of any list of outworkers kept by an employer or other persons giving outwork to outworkers; and
- (e) to examine, either alone or in the presence of any other person, as he thinks fit, with respect to any matters under this Part, any person whom he has reasonable cause to believe to be or to have been an employee to whom a Wages Regulation Order applies or applied or the employer of any such person or a servant or agent of the employer employed in the employer's business, and to require every such person to be so examined and to sign a declaration of the truth of the matters in respect of which he is so examined :

Provided that no person shall be required under paragraph (e) of this subsection to give any information tending to incriminate himself.

(2) A labour officer or labour inspector may institute proceedings for any offence under this Act and may conduct any such proceedings.

(3) A labour officer or labour inspector shall not disclose any information obtained in the exercise of the powers conferred by this section without the consent of the employer concerned otherwise than in connection with the execution of this Act:

Provided that nothing in this subsection shall apply to a disclosure of any information made for the purpose of any criminal proceedings which may be taken by virtue of this Act or otherwise.

(4) An officer contravening the provisions of subsection (3) shall be guilty of an offence and liable on conviction to a fine of R500.

**Penalty for obstructing officer**

19. Any person who obstructs a labour officer or labour inspector in the exercise of any power conferred by this Act, or refuses to comply with any requirement of a labour officer or labour inspector made in the exercise of any such power, shall be guilty of an offence and liable on conviction to a fine of R100.

**Penalty for false entries etc.**

20. If any person makes or causes to be made any entry in a record required by this Part to be kept by an employer, which he knows to be false in a material particular, or, for the purposes connected with this Part, produces or furnishes, or causes or knowingly allows to be produced or furnished, any wages sheet, record, list or information which he knows to be false in a material particular, he shall be guilty of an offence and liable on conviction to a fine of R100, or to imprisonment for a term not exceeding three months, or to both such fine and such imprisonment.

**PART VI**

**GENERAL**

**Regulations**

21. The Minister may make regulations generally for better carrying out the objects or purposes of this Act, without prejudice to the generality of the foregoing and such regulations may –

- (a) provide for the powers of a Wages Council to enforce the attendance of witnesses and to take evidence on oath or otherwise on any matter concerned with the subject of an inquiry under this Act;
- (b) prescribe anything which in terms of the Act is to or may be prescribed.

**Repeal**

22. The Wages Boards Proclamation (Chapter 161) is repealed.

**SCHEDULE**  
**(Section 7)**

**CONSTITUTION, OFFICERS AND PROCEEDINGS OF WAGES COUNCIL**

1. A Wages Council shall consist of such number of independent members, such number of members representing employers and such number of members representing employees as the Minister directs; and any such direction may require that any area or areas of Botswana shall be represented on a Wages Council by a member or by such number of members as may be specified:

Provided that –

- (i) the number of independent members shall be an odd number; and
- (ii) the number of members representing employers shall be the same as the number of members representing employees; and
- (iii) the number of independent members shall not exceed the total number of the other members of the Council.

2. The Minister shall appoint the persons to be members of a Wages Council, and shall appoint one of the independent members to be Chairman of the Wages Council and another of the independent members to be Deputy Chairman to act in the absence of the Chairman from any meeting.

3. Before making any appointment of persons representing employers or employees to be members of a Wages Council, the Minister shall consult any organizations appearing to him adequately to represent employers or, as the case may be, employees concerned.

4. The Minister may appoint a secretary and such other officers as he thinks fit of a Wages Council.

5. The proceedings of a Wages Council shall not be invalidated by reason of any vacancy therein of, or any defect in, the appointment of a member.

6. A Wages Council may, if it thinks fit, delegate any of its powers under this Act (except the power to submit Wages Regulation proposals) to a Committee or, as the case may be, sub-committee consisting of such number of persons, being members of the Council, as the Council thinks fit:

Provided that the members of the Committee or sub-committee representing employers and the members of the Committee or sub-committee representing employees shall be equal in number.

7. The Minister may make rules as to the meetings and procedure of a Wages Council and of any Committee or, as the case may be, sub-committee thereof, including rules as to the quorum and the method of voting, but, subject to the provisions of this Act and to any rules so made, a Wages Council and any Committee or, as the case may be, sub-committee thereof, may regulate its procedure in such manner as it thinks fit.

8. The term for which a member of a Wages Council shall hold office shall be three years :

Provided that –

(i) a member shall be eligible for reappointment; and

(ii) the Minister may at any time revoke the appointment of a member.

9. There may be paid to the members of a Wages Council appointed to represent employers or employees such remuneration, and to any member of any such Council, such travelling and other allowances as the Minister may approve, and all such remuneration and allowances shall be paid out of moneys provided by Parliament.

10. Every appointment of a Wages Council shall be by notice in the *Gazette*, which shall specify its members and terms of reference.

Passed by the National Assembly on this day, the 1st April, 1969.

G.T. MATENGE,  
Clerk of the National Assembly.