

APPRENTICESHIP AND INDUSTRIAL TRAINING ACT, 1983

No. 34



of 1983

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An Act to make provision for the promotion of adequate and reputable industrial training in Botswana and for matters connected with or affecting such industrial training

Date of Assent: 21.12.83.

Date of Commencement: on Notice.

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Apprenticeship and Industrial Training Act, 1983, and shall come into operation on such date as the Minister may, by notice published in the Gazette, appoint.

Short title
and
commence-
ment

2. (1) In this Act, unless the context otherwise requires, —
- “apparent age” means age as determined by a medical officer;
 - “apprentice” means an employee bound by a contract of apprenticeship;
 - “apprenticeable trade” means a trade declared by the Minister under section 14 to be an apprenticeable trade for the purposes of this Act;
 - “approved employer of apprentices” means a person having the Director's written permission in terms of this Act to offer employment as apprentices in an apprenticeable trade to duly qualified persons;
 - “approved industrial training programme” means an industrial training programme having the written approval of the Board in terms of this Act;
 - “Board” means the National Advisory Board for Apprenticeship and Industrial Training established by section 3;
 - “Chairman” includes Vice-Chairman where the Chairman is unable or not readily available to perform the functions of his office as such;
 - “craftsman” means a person holding such qualifications as may be designated by the Minister under section 54;

Interpreta-
tion

- “designated officer” means an officer, other than the Director, designated by the Minister under section 11 for the purposes of this Act;
- “designated trade” means a trade declared by the Minister under section 33 to be a designated trade for the purposes of this Act;
- “Director” means the public officer for the time being designated by the Minister as the Director of Apprenticeship and Industrial Training in terms of section 11;
- “Fund” means the Industrial Training Fund established by the Minister for the time being responsible for finance in terms of section 49;
- “industrial training” means training, at any level of skill up to that of craftsman, in which knowledge and the manipulative skills of and the work attitudes appropriate to a trade are imparted;
- “industrial training levy order” means an order of the Minister under section 47 imposing an industrial training levy;
- “industrial training programme” means any planned, systematic course of industrial training;
- “medical officer” means a medical practitioner employed by the Government or appointed by the Minister in writing as a medical officer for the purposes of this Act;
- “prescribed” means prescribed by regulations made by the Minister in terms of section 57;
- “registered contract of apprenticeship” means a contract of apprenticeship registered by the Director in terms of this Act;
- “trade” means a skilled occupation in any industry;
- “Trade Advisory Committee” means a Trade Advisory Committee established by the Board under section 7;
- “trade testing centre” means an institution designated by the Minister under section 44 as a trade testing centre for the purposes of this Act;
- “trade testing officer” means a person appointed by the Minister under section 45 as a trade testing officer for the purposes of this Act;
- “trainee” means an employee enrolled in and undergoing and approved industrial training programme.

(2) For removing doubts, it is hereby declared that in this Act “guardian”, where a parent is the guardian of his or her child, means that parent.

PART II *National Advisory Board for Apprenticeship and Industrial Training and Trade Advisory Committees*

3. (1) There is hereby established a board, to be known as the National Advisory Board for Apprenticeship and Industrial Training.

Establishment and membership of Board

(2) The Board shall consist of such number of members appointed in such manner as shall be prescribed for the purposes of this subsection:

Provided that —

- (i) the Board shall have not less than 11 members, including the Chairman and Vice-Chairman of the Board; and
- (ii) the membership of the Board shall facilitate the adequate representation of the respective interests of the Government, employers and employees.

(3) Every member of the Board, other than a member representing the Government, shall remain a member of the Board for such period, not exceeding 4 years, as the appointing authority shall determine and that period shall be specified at the time of the member's appointment to the Board:

Provided that the Minister may at any time revoke the appointment of any such member on account of —

- (i) the member's physical or mental incapacity properly to discharge his functions as a member of the Board;
- (ii) the member's absence, without the permission of the Chairman or Vice-Chairman of the Board, from 3 consecutive meetings of the Board; or
- (iii) a request by the member's appointing authority that the member's appointment to the Board be revoked.

(4) At the expiry of the term of his membership, a member of the Board shall be eligible for reappointment as a member of the Board.

(5) Notwithstanding subsection (3), a member of the Board, other than a member representing the Government, may at any time resign from the Board after giving the Minister at least one month's written notice of his intention to do so.

(6) Every member of the Board representing the Government shall hold office as such at the pleasure of his appointing authority.

(7) In the event of a vacancy in the membership of the Board before the expiry of the term of the membership of the member in question, whether due to the revocation of the member's appointment, resignation or otherwise, the appointing authority shall forthwith take steps to appoint a new member in the manner prescribed for the purposes of subsection (2).

(8) A person appointed a member of the Board by virtue of subsection (7) shall assume the remainder only of the term of the member he succeeds.

4. (1) The Minister shall appoint, from among the members of the Board, persons to be the Chairman and Vice-Chairman respectively of the Board, each of whom shall hold office as such at the pleasure of the Minister.

Chairman,
Vice-
Chairman
and
Secretary
of Board

(2) The Director or his representative shall be the Secretary of the Board and as Secretary shall be entitled to attend and take part in the proceedings of every meeting of the Board:

Provided that he shall not vote on any question before a meeting of the Board.

Meetings
of Board

5. (1) The Board shall meet when and as often as the Chairman of the Board alone directs:

Provided that the Chairman of the Board shall ensure that the Board meets at least once in every 4 months.

(2) Notwithstanding subsection (1), where the Chairman of the Board receives a written requirement, signed by at least 3 members of the Board representing the interests of the Government, employers and employees respectively, that a matter concerning the Board be urgently considered thereby, the Chairman of the Board shall forthwith call a meeting of the Board for that purpose and shall take every reasonable step to ensure that the meeting is held no later than 14 days immediately after receipt of the requirement.

(3) The presence of the Chairman or Vice-Chairman of the Board and of 4 other members of the Board (including the Vice-Chairman if the Chairman is present) shall constitute a quorum of the Board.

(4) The Chairman or in his absence the Vice-Chairman of the Board shall preside at every meeting of the Board.

(5) At a meeting of the Board, each member thereof present shall have one vote on every question for decision by the Board:

Provided that the Chairman or Vice-Chairman of the Board shall not, when presiding at a meeting of the Board, have an original vote but shall have a casting vote alone.

(6) The Board may from time to time and for such period as it shall in each case determine co-opt any person whose advice or other assistance it requires; but no such person shall vote on any question before a meeting of the Board nor shall such a person count for the purpose of constituting a quorum of the Board.

(7) Subject to this Act, the Board shall regulate its own procedure.

Functions of
Board

6. (1) The Board may investigate and thereafter make recommendations to the Minister on any matter connected with or affecting industrial training and may issue directions to a Trade Advisory Committee in relation to any such matter and shall comply with every requirement made of it by the Minister concerning any such matter.

(2) The Board shall investigate any dispute or other matter arising out of or otherwise connected with a registered contract of apprenticeship referred to the Board by the Director and thereafter submit a written report thereon to the Director and shall, in the case of such a dispute, also seek to secure a settlement of the same.

(3) This section shall be without prejudice to those other provisions of this Act which confer or impose further functions on the Board.

7. (1) The Board may establish committees, to be known as Trade Advisory Committees, for such industries or trades or other occupations as the Board shall specify.

Establishment and membership of Trade Advisory Committees

(2) Each Trade Advisory Committee shall consist of such number of members, being not more than 6, appointed by the Board as the Board shall determine:

Provided that —

- (i) at least one member thereof shall represent the interests of employers;
- (ii) at least one member thereof shall represent the interests of employees; and
- (iii) at least one member thereof shall be the representative of an industrial training institute designated by the Director for the purposes of this paragraph.

(3) Notwithstanding subsection (2), any substantive member of a Trade Advisory Committee may, —

- (a) with the permission of the Chairman of the Committee, appoint a person as an alternate member of the Committee and that alternate member may attend any meeting of the Committee when that substantive member is temporarily unable to attend and shall, when so attending a meeting of the Committee, have all the powers of that substantive member:

Provided that no substantive member shall appoint a person as an alternate member if that person is already an alternate member of the Committee; and

- (b) after informing the Chairman of the Committee of his intention to do so, at any time revoke such an appointment.

(4) Every substantive member of a Trade Advisory Committee shall remain a member thereof for 3 years or for such lesser period as the Board may determine, which lesser period, if any, shall be specified at the time of the member's appointment to the Committee:

Provided that the Board may at any time revoke the appointment of any such member on account of —

- (i) the member's physical or mental incapacity properly to discharge his functions as a member of the Committee; or
- (ii) the member's absence, without the permission of the Chairman or Vice-Chairman of the Committee, from 2 consecutive meetings of the Committee.

(5) At the expiry of the term of his membership, a member of a Trade Advisory Committee shall be eligible for reappointment as a member thereof.

(6) Notwithstanding subsection (4), a member of a Trade Advisory Committee may at any time resign from the Committee after giving the Secretary of the Board at least one month's written notice of his intention to do so.

(7) In the event of a vacancy in the membership of a Trade Advisory Committee before the expiry of the term of the membership of the member in question, whether due to the revocation of the member's appointment, resignation or otherwise, the Board shall forthwith appoint a new member.

(8) A person appointed a member of a Trade Advisory Committee by virtue of subsection (7) shall assume the remainder only of the term of the member he succeeds.

Chairman,
Vice-
Chairman
and Secretary
of Trade
Advisory
Committee

8. (1) Each Trade Advisory Committee shall elect, from among its members, persons to be the Chairman and Vice-Chairman respectively of the Committee, each of whom shall hold office as such until the election by the Committee of a new Chairman or Vice-Chairman, as the case may be, of the Committee.

(2) The Director or his representative shall be the Secretary of every Trade Advisory Committee and as Secretary shall be entitled to attend and take part in the proceedings of every meeting of the Committee:

Provided that he shall not vote on any question before a meeting of the Committee.

Meetings
of Trade
Advisory
Committee

9. (1) A Trade Advisory Committee shall meet when and as often as the Chairman of the Committee alone directs in consultation with the Secretary of the Committee:

Provided that the Chairman of the Committee shall ensure that the Committee meets at least once in every 3 months.

(2) The presence of the Chairman or Vice-Chairman of a Trade Advisory Committee and of 2 other members of the Committee (including the Vice-Chairman if the Chairman is present) shall constitute a quorum of the Committee.

(3) The Chairman or in his absence the Vice-Chairman of a Trade Advisory Committee shall preside at every meeting of the Committee.

(4) At a meeting of a Trade Advisory Committee, each member thereof present shall have one vote on every question for decision by the Committee:

Provided that the Chairman or Vice-Chairman of the Committee shall not, when presiding at a meeting of the Committee, have an original vote but shall have a casting vote alone.

(5) A Trade Advisory Committee may from time to time and for such period as it shall in each case determine co-opt any person whose advice or other assistance it requires, but no such person shall vote on any question before a meeting of the Committee nor shall such a person count for the purpose of constituting a quorum of the Committee.

(6) Subject to this Act, each Trade Advisory Committee shall regulate its own procedure.

10. (1) A Trade Advisory Committee shall comply with every direction issued to it by the Board under section 6 (1).

Functions
of Trade
Advisory
Committee

(2) In respect of any industry or trade or other occupation for which it is established, a Trade Advisory Committee may investigate and make recommendations and offer advice or other assistance to any person in respect of any matter connected with or affecting industrial training.

(3) A Trade Advisory Committee may, with the approval of the Board, appoint any persons to constitute sub-committees of the Committee for any purposes specified by the Committee connected with or affecting industrial training and such a sub-committee may co-opt any person whose advice or other assistance it requires.

(4) Subject to this Act and to any directions issued to it by the Trade Advisory Committee by which it has been constituted, each sub-committee constituted by virtue of subsection (3) shall regulate its own procedure.

(5) This section shall be without prejudice to those other provisions of this Act which confer or impose further functions on Trade Advisory Committees.

PART III Administration

11. (1) The Minister shall designate a public officer as the Director of Apprenticeship and Industrial Training and may, for the purposes of this Act, designate such other public officers as he thinks necessary.

Director
of
Apprentice
ship and
Industrial
Training
and
designated
officers

(2) The Director shall provide every designated officer with a certificate of identity signed by the Director.

(3) Where a designated officer is exercising or has expressed or otherwise manifested his intention to exercise a power conferred on him by this Act, he shall, on being required to establish his identity by a person immediately affected or about to be so affected thereby, immediately produce for that person's examination his certificate of identity.

12. (1) The Director or designated officer may —

Powers of
Director
and
designated
officer

(a) at any reasonable time, enter and inspect any premises on which he has reasonable cause to believe an apprentice bound by a registered contract of apprenticeship or a trainee is employed or has been employed within the immediately preceding 6 months and take with him any person he considers competent to assist him:

Provided that the Director or a designated officer shall not —

(i) enter or inspect by virtue of this section a private dwelling without the express consent of the occupier thereof;

- (ii) enter by virtue of this section any place of employment without first notifying the employer in question or his representative of his intention to do so unless he believes, on reasonable grounds, that such notification might be prejudicial to the performance of his duties; or
 - (iii) having entered by virtue of this section any place of employment, remain thereon unaccompanied by the employer in question or his representative if he is required by the employer or his representative to be so accompanied;
- (b) require any person whom he finds on premises he has entered by virtue of this section immediately to submit to questioning, either alone or in the presence of others, concerning the application of this Act;
 - (c) require any apprentice bound by a registered contract of apprenticeship or trainee to present himself to him at such reasonable time and place as he shall specify and, at that time and place, to submit to questioning, either alone or in the presence of others, concerning the application of this Act;
 - (d) require any person in possession or custody of any records required to be kept by this Act or other documents relating thereto or to any matter for which provision is made by this Act forthwith to produce or surrender to him such records or other documents or any of them; and
 - (e) examine any records or other documents produced or surrendered to him in compliance with a requirement made under this section and make extracts therefrom or copies thereof.

(2) A person who has been required under this section to submit to questioning may be questioned by the officer making the requirement and shall answer truthfully and to the best of his knowledge every question put to him concerning the application of this Act:

Provided that no such person shall be obliged to answer any question that might tend to incriminate him or render him liable to any forfeiture or penalty.

- (3) Any person who —
- (a) fails to comply with subsection (2);
 - (b) refuses to comply or fails to comply to the best of his ability with a requirement made of him under this section; or
 - (c) hinders or obstructs the Director or a designated officer in the exercise of a power conferred by this section,
- shall be guilty of an offence.

13. (1) No member of the Board or of a Trade Advisory Committee or sub-committee thereof or any public officer or other person shall disclose to any other person any information in relation to the financial affairs, plant, equipment or working procedures of any employer, such information having been acquired by virtue of the exercise of a power or the performance of a duty conferred or imposed by this Act or by virtue of his membership of the Board or of a Trade Advisory Committee or sub-committee thereof.

Restriction on disclosure of information

(2) Nothing in this section shall apply to the disclosure of information made for the purpose of —

- (a) the exercise of a power or the performance of a duty conferred or imposed by this Act; or
 - (b) any legal proceedings or report of such proceedings.
- (3) Any person who contravenes this section shall be guilty of an offence.

PART IV *Employment of Apprentices and Trainees*

14. (1) After first obtaining the advice of the Board, the Minister may, by order published in the Gazettee, declare any trade to be an apprenticeable trade for the purposes of this Act.

Apprenticeable trade

(2) An order made under this section may define a trade by reference to the work performed therein or to the operations of which it is composed.

(3) The Minister shall not amend or revoke an order made under this section without first obtaining the advice of the Board.

15. (1) No person shall —

- (a) offer employment to any other person as an apprentice in an apprenticeable trade unless he has the Director's written permission to offer employment as apprentices in that trade to duly qualified persons;
- (b) employ any other person as an apprentice in an apprenticeable trade except under a registered contract of apprenticeship; or
- (c) employ at any one time more apprentices in an apprenticeable trade than permitted in writing by the Director.

Restriction on employment of apprentices in apprenticeable trade

(2) Any person who contravenes this section shall be guilty of an offence.

16. (1) Any person wishing to offer employment as apprentices in an apprenticeable trade to duly qualified persons shall lodge with the Director an application in writing for the Director's written permission to do so.

Application to Director for permission to offer employment as apprentices in apprenticeable trade

(2) Every application in terms of this section shall specify in detail the nature of the industrial training programme to be followed by the prospective apprentices, including the facilities and other opportunities it is proposed to provide as part of the programme.

(3) Upon receipt by the Director of an application in terms of this section, he shall inspect or cause to be inspected by a designated officer the facilities and other opportunities it is proposed to provide as part of the industrial training programme in question.

(4) In order to determine an application in terms of this section, the Director may call for and obtain such additional information in relation to the industrial training programme in question as he considers it necessary or expedient to have.

(5) Where the Director is of the opinion that the industrial training programme in question, including the facilities and other opportunities it is proposed to provide as part of the programme, is satisfactory, he shall give the written permission for which application is made and shall specify therein the provisions of this Act relating to the employment of apprentices under registered contracts of apprenticeship and the maximum number of apprentices that may be employed at any one time by the applicant in the apprenticeable trade in question.

(6) Where the Director is of the opinion that the industrial training programme in question, including the facilities and other opportunities it is proposed to provide as part of the programme, is unsatisfactory, he shall reject the application and notify the applicant in writing of the rejection and the grounds thereof.

(7) The Director shall take every reasonable step open to him to ensure that an applicant in terms of this section receives either the Director's written permission for which application is made or the Director's written notification of the rejection of his application within 30 days immediately after the day on which the application was lodged with the Director.

(8) Where an applicant in terms of this section does not receive the Director's written permission for which application is made or the Director's written notification of the rejection of his application within 60 days immediately after the day on which the application was lodged with the Director, he shall be deemed, for the purposes of this Act, to have the Director's written permission for which application is made and to be permitted in writing by the Director to employ at any one time any number of apprentices in the apprenticeable trade in question.

(9) A person having the Director's written permission in terms of this Act to offer employment as apprentices in an apprenticeable trade to duly qualified persons shall, as regards that trade, be known as an approved employer of apprentices.

17. (1) Where any applicant is aggrieved by the Director's decision in terms of section 16 to reject his application or as to the maximum number of apprentices that may be employed at any one time by the applicant in the apprenticeable trade in question, he may appeal to the Minister against the decision.

Appeal from Director's rejection of application or his decision as to maximum number of apprentices to be employed in apprenticeable trade

(2) Every appeal under this section shall be in writing setting out the grounds thereof and shall be lodged with the Minister within 30 days immediately after the appellant received the notification of the rejection of his application or the Director's written permission, as the case may be.

(3) Before determining an appeal under this section, the Minister shall consult the Board on the merits thereof.

(4) Where the Minister allows an appeal under this section, the Director shall forthwith —

(a) give the written permission for which application was made; or

(b) vary the terms of his written permission so as to specify such maximum number of apprentices that may be employed at any one time by the appellant in the apprenticeable trade in question as the Minister shall have specified in allowing the appeal,

as the case may be.

18. (1) Before entering into a contract to employ any other person as an apprentice in an apprenticeable trade, the approved employer of apprentices shall satisfy himself that that other person is a duly qualified person in that he —

Restriction on contracts of apprenticeship entered into by approved employer of apprentices

(a) has attained the age or apparent age of 15 years;

(b) has completed such period of formal education as may be prescribed for the purposes of this section;

(c) has been certified as medically fit in terms of section 19; and

(d) being under the age or apparent age of 18 years, has the consent of his guardian or, in the absence of a guardian, of the Director to his entering into the contract.

(2) Any approved employer of apprentices who fails to comply with this section shall be guilty of an offence.

19. (1) Before entering into a contract to be employed as an apprentice in an apprenticeable trade, every person shall be medically examined by a medical officer at the expense of the approved employer of apprentices.

Medical examination of prospective apprentice in apprenticeable trade

(2) At the conclusion of a medical examination in terms of this section, the medical officer shall, if satisfied that the prospective apprentice is medically fit, certify that fact in writing addressed to the approved employer of apprentices.

Form and registration of contract of apprenticeship in apprenticeable trade

20. (1) Where he enters into a contract to employ any other person as an apprentice in an apprenticeable trade, the approved employer of apprentices shall —

- (a) ensure that the contract is in such form as may be prescribed for the purposes of this section; and
- (b) within 30 days immediately after conclusion of the contract, lodge with the Director for the purposes of registration —
 - (i) the original contract and 2 certified true copies thereof; and
 - (ii) the material medical certificate addressed to the approved employer of apprentices in terms of section 19.

(2) The Director shall register every contract of apprenticeship lodged with him in terms of this section:

Provided that the Director shall refuse to register such a contract if, in his opinion, —

- (i) the contract is not in the prescribed form or does not otherwise comply with this Act or with any other law;
- (ii) the prospective apprentice is not a duly qualified person in terms of section 18; or
- (iii) the contract is not in the interests of the prospective apprentice.

(3) Where the Director refuses in terms of this section to register a contract of apprenticeship, he shall notify the approved employer of apprentices and his formerly prospective apprentice in writing of the refusal and the grounds therefor.

Appeal from Director's refusal to register contract of apprenticeship in apprenticeable trade

21. (1) Where either party to a contract of apprenticeship is aggrieved by the Director's refusal in terms of section 20 to register the contract, that party may appeal to the Minister against the refusal.

(2) Every appeal under this section shall be in writing setting out the grounds thereof and shall be lodged with the Minister within 30 days immediately after the appellant received the notification of the Director's refusal.

(3) Before determining an appeal under this section, the Minister shall consult the Board on the merits thereof.

(4) Where the Minister allows an appeal under this section, the Director shall forthwith register the contract of apprenticeship in question.

22. (1) Where the Director registers a contract of apprenticeship in terms of this Act, he shall —
- (a) endorse the particulars of registration on the original contract and on the 2 certified true copies thereof;
 - (b) return the original contract and one of the certified true copies to the approved employer of apprentices; and
 - (c) retain the other certified true copy for his records.
- (2) The approved employer of apprentices shall deliver the certified true copy of the contract of apprenticeship returned to him in terms of this section to the apprentice for him to keep.
23. Subject to the other provisions of this Act, each party to a registered contract of apprenticeship shall be and remain bound by his obligations thereunder until such time as the same are discharged.
24. A contract of employment as an apprentice in an apprenticeable trade shall be null and void unless the contract is a registered contract of apprenticeship.
25. (1) Such initial period of an apprenticeship under a registered contract of apprenticeship as shall be prescribed for the purposes of this section in respect of the apprenticeable trade in question (and no longer period) shall be a probationary period.
- (2) During or at the completion of the material probationary period prescribed for the purposes of this section, either party to a registered contract of apprenticeship may terminate the same without cause if (but only if) he has given the other party at least 21 days' notice of his intention to do so.
- (3) Within 30 days immediately after the termination under this section of a registered contract of apprenticeship, the approved employer of apprentices shall lodge a written notice of the termination of the contract with the Director and any approved employer of apprentices who fails, without reasonable excuse, to comply with this subsection shall be guilty of an offence.
26. (1) The rights and obligations of the approved employer of apprentices under a registered contract of apprenticeship may, at the request or with the consent of the apprentice, be transferred to some other approved employer of apprentices.
- (2) To effect the transfer of the rights and obligations of the approved employer of apprentices under a registered contract of apprenticeship to some other approved employer of apprentices

Endorsement of particulars of registration on and disposal of registered contract of apprenticeship and copies

Binding nature of registered contract of apprenticeship

Consequence where contract of apprenticeship in apprenticeable trade unregistered

Probationary period under registered contract of apprenticeship

Transfer of registered contract of apprenticeship

- (a) an instrument of transfer shall be prepared, in such form as may be prescribed for the purposes of this section, and shall be subscribed by or on behalf of both approved employers of apprentices and by the apprentice and shall, where the apprentice is under the age or apparent age of 18 years and has a guardian, also be subscribed by his guardian; and
 - (b) the approved employer of apprentices to whom it is intended that the rights and obligations be transferred shall, within 30 days immediately after completion of the instrument of transfer's subscription in accordance with paragraph (a), lodge with the Director for the purposes of registration the original instrument and 2 certified true copies thereof and any approved employer of apprentices who fails, without reasonable excuse, to comply with this paragraph shall be guilty of an offence.
- (3) The Director shall register every instrument of transfer lodged with him in terms of this section:
- Provided that the Director shall refuse to register such an instrument if, in his opinion, —
- (i) the instrument is not in the prescribed form or has not been duly subscribed in accordance with this section;
 - (ii) the apprentice has not fully and freely consented to the proposed transfer; or
 - (iii) the proposed transfer is not in the interests of the apprentice.
- (4) Where the Director refuses in terms of this section to register an instrument of transfer, he shall notify each person by or on whose behalf the same was or ought to have been subscribed in writing of the refusal and the grounds thereof.

Appeal from
Director's
refusal to
register
instrument
of transfer

27. (1) Where any person by or on whose behalf an instrument of transfer has been subscribed in terms of section 26 is aggrieved by the Director's refusal in terms of that section to register the same, that person may appeal to the Minister against the refusal.

(2) Every appeal under this section shall be in writing setting out the grounds thereof and shall be lodged with the Minister within 30 days immediately after the appellant received the notification of the Director's refusal.

(3) Before determining an appeal under this section, the Minister shall consult the Board on the merits thereof.

(4) Where the Minister allows an appeal under this section, the Director shall forthwith register the instrument of transfer.

28. (1) Where the Director registers an instrument of transfer in terms of this Act, he shall —

- (a) endorse the particulars of registration on the original instrument and on the 2 certified true copies thereof;
- (b) return the original instrument and one of the certified true copies to the new approved employer of apprentices; and
- (c) retain the other certified true copy for his records.

(2) The new approved employer of apprentices shall deliver the certified true copy of the instrument of transfer returned to him in terms of this section to the apprentice for him to keep.

29. An instrument of transfer shall be null and void unless the instrument is registered in terms of section 26.

30. (1) The parties to a registered contract of apprenticeship may, by written agreement, terminate the contract or vary its terms to extend the period of apprenticeship thereunder:

Provided that, where the apprentice is under the age or apparent age of 18 years at the time the agreement is concluded, the agreement shall be null and void unless his guardian or, in the absence of a guardian, the Director has consented to the apprentice entering into the agreement.

(2) Within 30 days immediately after the conclusion under this section of a written agreement terminating a registered contract of apprenticeship or varying its terms to extend the period of apprenticeship thereunder, the approved employer of apprentices shall lodge written notice of the conclusion of the agreement with the Director and any approved employer of apprentices who fails, without reasonable excuse, to comply with this subsection shall be guilty of an offence.

(3) Where either party to a registered contract of apprenticeship lodges a written request with the Director that the Director terminate the contract or vary its terms to extend the period of apprenticeship thereunder, the Director shall forthwith investigate the circumstances giving rise to the request and shall, in the course of his investigation, give each party to the contract a reasonable opportunity to make oral or written representations to him.

(4) Having completed an investigation in terms of this section to his satisfaction and after having given every representation made to him by the parties to the registered contract or apprenticeship due consideration, the Director may, by written order subscribed by him, terminate the contract or vary its terms to extend the period of apprenticeship thereunder by such period as shall be specified in the order and, where he does so, the contract shall thereafter be read and construed accordingly.

Endorsement
of particulars
of
registration
on and
disposal of
registered
instrument
of transfer
and copies

Consequence
where
instrument
of
transfer
unregistered

Termination
and
extension
of
registered
contract
of
apprentice-
ship

(5) The terms of an order made by the Director under this section shall include all that is required in the opinion of the Director to give the order just and equitable effect in all the circumstances and may, for this purpose, include directions as to the payment of wages to the apprentice.

(6) Where the Director —

- (a) makes an order under this section, he shall forthwith notify each party to the registered contract of apprenticeship in writing of the terms thereof; or
- (b) refuses to make an order under this section, he shall forthwith notify each party to the registered contract of apprenticeship in writing of the refusal and the grounds thereof.

(7) Where either party to a registered contract of apprenticeship is aggrieved by an order of the Director under this section or by his refusal to make such an order, that party may appeal to the Minister against the order or refusal.

(8) Every appeal under this section shall be in writing setting out the grounds thereof and shall be lodged with the Minister within 30 days immediately after the appellant received the notification of the terms of the Director's order or of the Director's refusal, as the case may be.

(9) Before determining an appeal under this section, the Minister shall consult the Board on the merits thereof.

(10) The Minister shall, on an appeal under this section, make such order as he thinks proper in all the circumstances and, without prejudice to the generality of the foregoing, the order may include directions as to the payment of wages to the apprentice.

(11) Any sum directed by the Director or the Minister in terms of this section to be paid by an approved employer of apprentices to an apprentice by way of wages shall be deemed to be a civil debt of the approved employer of apprentices due and payable to the apprentice and may be recovered as such by the apprentice by proceedings in a court of a Magistrate Grade I or over.

(12) Notwithstanding the provision of any other law, every court of a Magistrate Grade I or over shall have jurisdiction for the purposes of proceedings in terms of subsection (11), regardless of the amount of the sum claimed.

(13) The terms of every final order of the Director and of every order of the Minister under this section shall be endorsed by the Director on the certified true copy of the registered contract of apprenticeship retained by him for his records in terms of this Act.

(14) Subject to the other provisions of this Act, no registered contract of apprenticeship shall be terminated or the period of apprenticeship thereunder extended except as provided by this section.

(15) Any approved employer of apprentices who fails to comply with an order of the Director or of the Minister under this section shall be guilty of an offence.

31. (1) Where an approved employer of apprentices is of the opinion that an apprentice employed by him has committed a serious breach of his registered contract of apprenticeship and that, in consequence of the breach, the contract ought to be terminated, the approved employer of apprentices may forthwith suspend the apprentice.

Suspension
of
apprentice
in alleged
serious
breach of
registered
contract
of
apprentice-
ship

(2) Where an approved employer of apprentices suspends an apprentice under this section, he shall, within 7 days immediately after commencement of the suspension, lodge a written request with the Director that the Director terminate the registered contract of apprenticeship under section 30.

(3) Where the approved employer of apprentices fails, within the 7 days' period prescribed by subsection (2), to lodge a written request with the Director that the Director terminate the registered contract of apprenticeship under section 30, the approved employer of apprentices shall forthwith set aside the whole term of the suspension.

(4) Where, following a request to terminate the registered contract of apprenticeship consequent upon a suspension under this section, the Director refuses to make an order under section 30 terminating the contract, the Director may, by written order subscribed by him, direct the approved employer of apprentices to set aside the whole term of the suspension or such part thereof as the Director thinks just in all the circumstances.

(5) Where the Director —

(a) makes an order under this section, he shall forthwith notify each party to the registered contract of apprenticeship in writing of the terms thereof; or

(b) decides not to make an order under this section, he shall forthwith notify each party to the registered contract of apprenticeship of the decision and the grounds therefor.

(6) No wages shall accrue to an apprentice during any period of suspension under this section:

Provided that, where the approved employer of apprentices or the Director sets aside the whole term of the suspension or part thereof, wages shall accrue to the apprentice in respect of the whole term of the suspension or the part thereof set aside, as the case may be, and, if wages so accruing have been withheld, the approved employer of apprentices shall forthwith pay those wages to the apprentice.

(7) Any approved apprentice master who fails to comply with subsection (3), the proviso to subsection (6) or any order of the Director under this section shall be guilty of an offence.

Alteration
of period
of apprentice-
ship
under
registered
contract of
apprentice-
ship

32. (1) If, during his apprenticeship under a registered contract of apprenticeship, an apprentice is absent from work, otherwise than for the purpose of taking accrued leave, for a period of or for periods amounting in the aggregate to not less than 30 days, the Director may, if he thinks it expedient to do so, by written order subscribed by him, vary the terms of the contract to extend the period of apprenticeship thereunder by the number of days of the apprentice's absence and, where he does so, the contract shall thereafter be read and construed accordingly.

(2) Where the Director is satisfied that an apprentice or prospective apprentice under a registered contract of apprenticeship has previously undergone training relevant to the apprenticeable trade in question that would reasonably justify a reduction of the period of apprenticeship thereunder or that would otherwise require to be served thereunder, he may place the material facts before the Board and request the Board to authorize him to reduce the period of apprenticeship to such lesser period as the Board shall specify.

(3) Where the Director has been duly authorized in terms of subsection (2), he may, by written order subscribed him, reduce the period of apprenticeship under or that would otherwise require to be served under the registered contract of apprenticeship to the lesser period specified by the Board and, where he does so, the contract shall thereafter be read and construed or framed accordingly.

(4) Where the Director is satisfied that during his apprenticeship under a registered contract of apprenticeship an apprentice has acquired a degree of proficiency in the apprenticeable trade in question that would reasonably justify a reduction of the period of apprenticeship, he may place the material facts before the Board and request the Board to authorize him, subject to the consent of the approved employer of apprentices and of the apprentice, to reduce the period of apprenticeship to such lesser period as the Board shall specify.

(5) Where the Director has been duly authorized in terms of subsection (4), he may, with the consent of the approved employer of apprentices and of the apprentice, by written order subscribed by him, reduce the period of apprenticeship under the registered contract of apprenticeship to the lesser period specified by the Board and, where he does so, the contract shall thereafter be read and construed accordingly.

(6) Where the Director makes an order under this section, he shall forthwith notify each party to the registered contract of apprenticeship in writing of the terms thereof.

(7) Where either party to a registered contract of apprenticeship is aggrieved by an order of the Director under this section, that party may appeal to the Minister against the order.

(8) Every appeal under this section shall be in writing setting out the grounds thereof and shall be lodged with the Minister within 30 days immediately after the appellant received notification of the terms of the Director's order.

(9) Before determining an appeal under this section, the Minister shall consult the Board on the merits thereof.

(10) The Minister shall, on an appeal under this section, make such order as he thinks proper in all the circumstances.

33. (1) After first obtaining the advice of the Board, the Minister may, by order published in the Gazette, declare any trade (including an apprenticeable trade) to be a designated trade for the purposes of this Act.

Designated
trades

(2) An order made under this section may define a trade by reference to the work performed therein or to the operations of which it is composed.

(3) The Minister shall not amend or revoke an order made under this section without first obtaining the advice of the Board.

34. (1) Any employer providing or wishing to provide an industrial training programme for his employees in respect of a designated trade may apply in writing to the Board for its written approval of the programme:

Application
to Board
for
approval
of industrial
training
programme

Provided that this subsection shall not apply where the designated trade is also an apprenticeable trade and the industrial training programme is or is intended to be provided under registered contracts of apprenticeship.

(2) Every application under this section shall specify in detail the nature of the industrial training programme in question, including the facilities and other opportunities provided or proposed to be provided as part of the programme.

(3) Upon receipt by the Board of an application under this section, the Director shall, on behalf of the Board, inspect or cause to be inspected by a designated officer the facilities and other opportunities provided or proposed to be provided as part of the industrial training programme in question and shall lay or cause to be laid before the Board a detailed report on the same.

(4) For the purpose of assisting the Board to determine an application under this section, the Secretary of the Board may call for and obtain such additional information in relation to the industrial training programme in question as he considers it necessary or expedient for the Board to have.

(5) Where the Board is of the opinion that the industrial training programme in question, including the facilities and other opportunities provided or proposed to be provided as part of the programme, is satisfactory, it shall give its written approval of the programme and shall specify therein the provisions of this Act relating to trainees and the maximum number of trainees that

may be enrolled in and undergo at any one time the approved industrial training programme.

(6) Where the Board is of the opinion that the industrial training programme in question, including the facilities and other opportunities provided or proposed to be provided as part of the programme, is unsatisfactory, it shall reject the application and notify the applicant in writing of the rejection and the grounds thereof.

Appeal from Board's rejection of application or its decision as to maximum number of trainees to be enrolled in and undergo approved industrial training programme

35. (1) Where an applicant is aggrieved by the Board's decision in terms of section 34 to reject his application or as to the maximum number of trainees that may be enrolled in and undergo at any one time the approved industrial training programme in question, he may appeal to the Minister against the decision.

(2) Every appeal under this section shall be in writing setting out the grounds thereof and shall be lodged with the Minister within 30 days immediately after the appellant received the notification of the rejection of his application or the Board's written approval, as the case may be.

(3) Where the Minister allows an appeal under this section, the Board shall forthwith —

- (a) give its written approval of the industrial training programme in question; or
- (b) vary the terms of its written approval so as to specify such maximum number of trainees that may be enrolled in and undergo at any one time the approved industrial training programme as the Minister shall have specified in allowing the appeal.

as the case may be.

Restriction on number of trainees that may be enrolled in and undergo approved industrial training programme

36. (1) No employer shall allow or permit more trainees to be enrolled in and undergo at any one time an approved industrial training programme than permitted in writing by the Board.

(2) Any employer who contravenes this section shall be guilty of an offence.

37. (1) The approved employer of apprentices or the employer of a trainee shall, on the satisfactory completion of an apprenticeship under a registered contract of apprenticeship or of the trainee's approved industrial training programme, as the case may be, lodge with the Director, in such form and manner as may be approved by the Minister, his certificate to the effect that the apprentice or trainee has satisfactorily completed his apprenticeship or approved industrial training programme.

Certificate on satisfactory completion of apprenticeship under registered contract of apprenticeship or of approved industrial training programme

(2) Where the Director is satisfied that an apprentice under a registered contract of apprenticeship or a trainee has satisfactorily completed his apprenticeship or approved industrial training programme, as the case may be, he shall cause a certificate of such completion to be prepared, in such form as may be approved by the Minister, and thereafter sign the same and give it or cause it to be given to the apprentice or trainee.

38. Where an approved employer of apprentices or employer of trainees ceases to carry on business in Botswana, whether by reason of insolvency or otherwise, and in consequence thereof any apprenticeship under a registered contract of apprenticeship or any approved industrial training programme comes to a premature conclusion and the Director is of the opinion that it is not reasonably practicable for the apprentice or trainee thereby affected to continue his apprenticeship or approved industrial training programme with some other approved employer of apprentices or employer of trainees, the Director may, after due inquiry, cause a certificate of service as an apprentice or trainee, as the case may be, to be prepared, in such form as may be approved by the Board, and thereafter sign the same and give it or cause it to be given to the apprentice or trainee.

Provision of certificate of service to apprentice under registered contract of apprenticeship or trainee

39. Any person who permits or requires an apprentice under a registered contract of apprenticeship or a trainee, being under the age or apparent age of 18 years, to work overtime shall be guilty of an offence.

Prohibition of overtime by apprentice under registered contract of apprenticeship or trainee under 18

40. Where, before determining any appeal under this Part, the Minister is required to consult the Board on the merits thereof, the Secretary of the Board shall not be present at or take any part in the consultation nor, before such consultation takes place, shall communicate to any member of the Board, either directly or indirectly, any comment on the merits of the appeal.

Supplementary provision in relation to certain appeals

Unlawful enticement of apprentice under registered contract of apprenticeship or trainee

41. Any person who induces or attempts to induce an apprentice employed under a registered contract of apprenticeship or a trainee to leave the service of his employer or employs a person he knows or has reasonable cause to believe is bound to some other person as such an apprentice or is a trainee shall be guilty of an offence.

Records to be kept by approved employer of apprentices or employer of trainees

42. (1) Every approved employer of apprentices and every employer of trainees shall keep such records in such form and manner as may be prescribed:

Provided that the Director may, after consulting the Board, in writing authorize the keeping of such records in some other form or manner if that will, in his opinion, enable him the better to ascertain therefrom the particulars required to be recorded therein.

(2) Following the completion or abandonment by an apprentice or trainee of an apprenticeship under a registered contract of apprenticeship or of an approved industrial training programme or the premature conclusion of any such apprenticeship or programme, the approved employer of apprentices or other employer immediately before such completion, abandonment or premature conclusion shall retain any records kept in terms of this section in relation to the apprentice or to the trainee or to the material industrial training programme for at least 2 years.

(3) Any person who fails to comply with this section shall be guilty of an offence.

This Part to prevail over other laws relating to employment

43. The provisions of this Part shall have effect notwithstanding the provisions of any other law relating to employment.

PART V Trade Testing

Designation of suitable institutions as trade testing centres

44. After first obtaining the advice of the Board, the Minister may, by order published in the Gazette, designate any suitable institution as a trade testing centre for the purposes of this Act.

Appointment of trade testing officers

45. (1) In consultation with the Director, the Minister may appoint suitably qualified persons as trade testing officers for the purposes of this Act.

(2) The Director shall lay or cause to be laid before the Board, at its meeting next following an appointment under this section, a memorandum setting out the name and material qualifications of the appointee and the date of his appointment.

46. (1) The principal function of a trade testing centre shall be to conduct, through trade testing officers, such examinations and tests for apprentices under registered contracts of apprenticeship and trainees at such times as may be prescribed or as may be required by such contracts or by trainees' contracts of employment.

Functions
of trade
testing
centres

(2) A trade testing centre shall carry out such other functions as may be prescribed or as the Minister may, after first obtaining the advice of the Board, by written directions subscribed by him, require.

PART VI *Industrial Training Levies*

47. (1) A Trade Advisory Committee may, in respect of any industry for which it is established, submit proposals to the Board for the imposition of an industrial training levy or the amendment or revocation of an industrial training levy order.

Proposals
in
connexion
with
industrial
training
levy and
giving
effect
to same

(2) Where the Board receives proposals from a Trade Advisory Committee for the imposition of an industrial training levy or the amendment or revocation of an industrial training levy order, whether such proposals are submitted under subsection (1) or in compliance with a direction issued to the Committee by the Board under this subsection or under section 6 (1), the Board shall either —

(a) approve the proposals, in which case the Board shall submit the proposals to the Minister; or

(b) decline to approve the proposals, in which case the Board may direct the Trade Advisory Committee, in respect of those matters specified by the Board, to submit fresh proposals to the Board.

(3) Where the Minister receives proposals in terms of this section for the imposition of an industrial training levy or the amendment or revocation of an industrial training levy order, he may, by order published in the Gazette, give effect to those proposals.

48. (1) The Minister shall not make an industrial training levy order unless he is satisfied, by evidence submitted by the Board with the material proposals, that it is necessary to give effect to those proposals in order to facilitate adequate industrial training in the industry in question.

Industrial
training
levy orders

(2) An industrial training levy order may prescribe —

(a) the nature of the evidence by which may be established any person's liability to pay the levy imposed by the order, his discharge of that liability and the time at which any amount payable by way of the levy became due; and

(b) the procedure for the enforcement of payment of the levy.

(3) An industrial training levy order may make different provision for or in relation to different classes or descriptions of

persons and may exempt any person or every person belonging to any class or description of persons specified in the order from all or any of its provisions.

(4) Notwithstanding that such exemption is not proposed in the material proposals, every industrial training levy order shall exempt from its provisions all those employers who the Minister considers ought in justice to be so exempted, whether by reason of the small numbers of their employees or any other circumstances.

(5) Where any amount payable by a person in accordance with an industrial training levy order remains wholly or partially unpaid after the same became due, interest shall accrue on so much of that amount as is for the time being outstanding at the rate of one per cent a month or part thereof until such time as the whole amount is paid.

(6) An industrial training levy order may provide, in respect of any contravention of or failure to comply with the order, that the offender shall be liable to a fine not exceeding P250 or to imprisonment for a term not exceeding 3 months or to both such fine and imprisonment:

Provided that, in the case of a continuing offence, the order may provide that the offender shall be liable, in addition to a fine not exceeding P250, to a fine not exceeding P50 for every day the offence continues after the first day.

PART VII *Industrial Training Fund*

Establishment of Industrial Training Fund
General administration of Fund

49. As soon as he considers it expedient to do so, the Minister for the time being responsible for finance shall, by order published in the Gazette, establish a Special Fund, to be known as the Industrial Training Fund.

50. (1) The Permanent Secretary shall be responsible for the administration of the Fund.

(2) The Permanent Secretary shall cause to be kept proper books and records of account in respect of the Fund.

(3) Without prejudice to the performance of all those duties imposed on him in relation to Special Funds generally by any other law, the Auditor-General shall send to the Minister and to the Board a copy of every document he is required by law to send to the Minister for the time being responsible for finance in consequence of any audit by him of the accounts of the Fund.

(4) Any moneys held in the Fund which are not required for immediate use may be invested in such manner as the Minister for the time being responsible for finance alone may direct after consultation with the Board.

(5) Subject to this Act, the Fund shall be administered in the prescribed manner.

51. There shall be paid into the Fund —
- (a) such moneys as may from time to time be appropriated by Parliament for payment into the Fund;
 - (b) such moneys as are received by way of a levy imposed by an industrial training levy order; and
 - (c) such other moneys as may be received from any source for payment into the Fund.

Revenue of Fund

52. (1) No moneys shall be withdrawn from the Fund except upon the authority of a warrant under the hand of the Minister for the time being responsible for finance.

Disbursement from Fund

(2) The Minister for the time being responsible for finance may authorize the withdrawal of moneys from the Fund in order to make payments to any person in any industry in respect of which an industrial training levy order is in force and to no other person:

Provided that the Minister for the time being responsible for finance shall not authorize the withdrawal of moneys from the Fund unless the Board has in each case specifically approved the application of those moneys for a purpose which will, in its opinion, facilitate adequate industrial training in the industry in question and the withdrawal is authorized for that purpose alone.

53. For removing doubts, it is hereby declared that in this Part "The Permanent Secretary" means the Permanent Secretary to the Minister for the time being responsible for industrial training.

Declaration to remove doubts as to construction of this Part

PART VIII *Miscellaneous*

54. After first obtaining the advice of the Board, the Minister may, in respect of any apprenticeable or designated trade, by order published in the Gazette, designate those qualifications the holding of which shall confer upon the holder the occupational title of craftsman.

Power of Minister to designate qualifications for title of craftsman in apprenticeable or designated trade

55. After first obtaining the advice of the Board, the Minister may, by order published in the Gazette, restrict, limit or suspend the application of any of the provisions of this Act, either generally or in respect of a particular person or class or description of persons, for such period and subject to such conditions as he thinks fit.

Minister's powers of exemption

56. Any person who is guilty of an offence under this Act shall be liable to a fine of P250 and to imprisonment for 3 months and, in the case of a continuing offence, to a further fine of P50 for every day the offence continues after the first day.

Penalties for offences under Act

Regulations

57. The Minister shall make regulations in respect of any matter required to be prescribed by this Act and may, for the better carrying into effect of the purposes and provisions of this Act, make such regulations as appear to him necessary or expedient in relation to any matter connected with or affecting industrial training:

Provided that no such regulations shall be made unless the Minister has first obtained the advice of the Board on the terms thereof or they are made on the recommendation or to give effect to a recommendation of the Board.

PASSED by the National Assembly this 25th day of November, 1983.

G.M. BASELE,
Acting Clerk of the National Assembly.