

PUBLIC AUTHORITIES (FUNCTIONS) ACT, 1984

No. 22



of 1984

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An Act to provide for the exercise of functions by the President, Ministers, public officers, public bodies and other authorities and for matters connected therewith.

Date of Assent: 12.7.84.

Date of Commencement: 20.7.84.

ENACTED by the Parliament of Botswana.

Short title 1. This Act may be cited as the Public Authorities (Functions) Act, 1984.

Application.
Cap. 01:02 2. This Act applies to every enactment to which the Interpretation Act applies, except where the contrary intention appears.

President and Ministers

Transfer of
functions 3. (1) Subject to section 5, where a function is conferred on a specified Minister or public officer by any enactment, the President may transfer the exercise of the function, subject to such conditions, exceptions or qualifications as the President may specify, to —

(a) a specified Minister;

(b) a Minister, without specifying which Minister; or

(c) a specified public officer or the holder for the time being of a specific public office,

and thereupon or from a date specified by the President, the transferee shall exercise the function in place of the previous Minister or public officer.

(2) Where a transfer is made under this section, the enactment in respect of which it is made shall be read and construed in respect of any time on or after the date upon which the transfer has effect as if the enactment were amended in conformity with the transfer.

(3) Nothing in such transfer or this subsection shall affect the validity of the delegation, by a previous holder, of any such function, and the delegation shall continue to have effect until revoked by an authority having power in that behalf, or until it expires.

Delegation of
functions by
President or a
Minister 4. (1) Subject to section 5, where functions are conferred on the President by any enactment, he may delegate to any person by name or the person for the time being holding the office designated by him, the exercise of the functions on his behalf, subject to such conditions, exceptions or qualifications as the President may direct, and thereupon or from a date specified by the President the delegate shall exercise such functions.

(2) Subject to section 5, where functions are conferred on a Minister by any enactment, he may delegate to any person by name, or the person for the time being holding the office

designated by him, the exercise of the functions on his behalf, subject to such conditions, exceptions or qualifications as the Minister may direct, and thereupon or from a date specified by the Minister the delegate shall exercise such functions.

(3) The President or a Minister may exercise any function notwithstanding that he has delegated the exercise of the function to some other person, and may from time to time cancel or vary any such delegation.

5. (1) The President shall not transfer or delegate the exercise of any function — Exceptions

(a) conferred upon him or a Minister or a public officer by the Constitution; or

(b) which he is expressly prohibited from transferring or delegating by any enactment; or

(c) which is of a judicial nature.

(2) A Minister shall not delegate the exercise of any function —

(a) conferred on him by the Constitution;

(b) to make any statutory instrument;

(c) to hear appeals; or

(d) which he is expressly prohibited from delegating by any enactment.

6. Where by or under any enactment the President, the Vice-President or any other Minister has exercised any power to make any appointment, or to give any direction, issue any order, authorize anything or matter to be done, grant any exemption, remit any fee or penalty, or has exercised any other function, it shall be sufficient if the exercise of the power or function is signified — Signification of exercise of functions

(a) in the case of the President, under the hand of the Vice-President, any other Minister, an Assistant Minister, or a Permanent Secretary; or

(b) in the case of the Vice-President or any other Minister, under the hand of an Assistant Minister or a Permanent Secretary.

7. A certificate of the Attorney-General that the responsibility for any matter or for the exercise of any function has been assigned to, transferred to or delegated to the Vice-President, any other Minister, any Assistant Minister, any Permanent Secretary or any other person, or has been retained by the President, shall be evidence of the matters stated therein. Certificate of Attorney-General

Public Offices and Authorities Generally

8. Where the fiat, consent or authority of the President, a Minister, the Attorney-General or other public officer is necessary before any prosecution, action or other proceeding is commenced, any document purporting to bear the fiat, consent or authority of the President, Minister, Attorney-General or such public officer Evidence of signature of President, Minister and Public officers

shall be evidence in any prosecution, action or other proceeding without proof being given that the signature to such fiat, consent or authority is that of the President, Minister, Attorney-General or such other public officer.

Ex-officio proceedings not to abate on death or change in office

9. Any civil or criminal proceedings taken by or against any person by virtue of his office shall not be discontinued or abated by his death, resignation or absence or removal from office, but may be carried on by or against, as the case may be, the person for the time being holding, acting in or performing the functions of that office.

Change in title or abolition of public office

10. (1) Where any change in title of any public office occurs, the President may notify the change in the Gazette, and the date on which the change shall take effect and thereafter with effect from that date any reference in any enactment to the former title of the office shall be read and construed as a reference to that office by its new title.

(2) Where any public office is abolished the President may notify such abolition and the date on which it shall take effect in the Gazette, and may in the notice also declare that any function vested under any enactment in the office which is abolished shall vest in some other office specified in the notice, and thereafter, with effect from such specified date, any reference in any enactment to that office which has been abolished shall be read and construed as a reference to the other office so specified.

Delegation of functions of office

11. Where a person is empowered to delegate to any other person functions conferred on him by any enactment—

- (a) any such delegation may be made in respect of all or any of the functions concerned;
- (b) the delegation may be made subject to such conditions or restrictions as the delegator may specify;
- (c) the power may be exercised from time to time as occasion requires;
- (d) any such delegation may be cancelled or amended as occasion requires; and
- (e) the exercise of the power of delegation shall be without prejudice to the right of the delegator to exercise such functions himself.

Exercise of powers of prohibition, regulation and control

12. (1) Where an enactment confers power to provide for, prohibit, control or regulate any matter or thing, the power shall include power to provide for the licensing thereof or the granting of permits therefor, and power to prohibit acts contravening the prohibition, control or regulation.

(2) Where an enactment confers power to grant a licence, lease, right, permit, authority, approval or exemption, the power shall include power to impose reasonable conditions subject to which the licence, lease, right, permit, authority, approval or exemption may be granted.

(3) Where an enactment confers power to approve any person, matter or thing, the power shall include power to withdraw approval thereof.

(4) Where an enactment confers power to give directions, the power shall include power to express any such direction in the form of a prohibition.

13. Where the substantive holder of any public office constituted by or under any enactment is on leave of absence pending relinquishment by him of such office, it shall be lawful for another person to be appointed substantively to the same public office and the person so appointed shall, for all purposes, be deemed to be the holder of the office to the exclusion of the former holder.

Power to appoint substantively pending retirement

Public Bodies

14. Where an enactment confers power to establish any board, tribunal, commission, council, committee or other body, corporate or unincorporated (in this Act referred to as a "public body"), then, unless the context otherwise requires, the power includes power, exercisable in the same manner as and subject to the limitations and conditions applicable to, the original power —

Establishment and dissolution of public bodies

(a) to revoke the establishment or dissolve the body; and

(b) to re-establish the body.

15. (1) Where by or under any enactment a power is conferred on any person to appoint the members or any public body, that person may, in the absence of provision to the contrary, appoint a chairman, a vice-chairman, and a secretary of the body.

Power to appoint officers and alternate or temporary members

(2) Where by or under any enactment any public body is established, any person who is by or under the enactment empowered to appoint any or all of the members of the body may, unless the context otherwise requires —

(a) appoint one or more duly qualified persons to be alternate members of the body, and any one such alternate member may attend any meeting of the body when a substantive member is temporarily unable to attend;

(b) appoint a duly qualified person to be a temporary member of the body in the place of any substantive member who is temporarily unable to exercise his functions as such,

and when attending any meeting of the body, the alternate or temporary member shall be entitled to exercise the functions of the member whose place he is taking.

16. A public body may, in the absence of provision to the contrary, exercise its functions notwithstanding —

Vacancies and defective appointments

- (a) any vacancy in its membership, or
- (b) any defect afterwards discovered in the appointment or qualifications of a person purporting to be a member of the body.

Authenti-
cation of
decisions and
documents

17. (1) In the absence of provision to the contrary, a document, other than a document required to be under seal, and a decision of any public body which requires authentication may be authenticated by the signature of the chairman or other person authorised by the body.

(2) Where by or under any enactment a public body is constituted to be a corporate body having perpetual succession and a common seal, and any document is required to be sealed with the common seal, then, in the absence of provision to the contrary, the common seal shall be affixed by the chairman of the body and shall be authenticated by his signature and by the signature of one other member of the body.

Power of
majority and
chairman

18. (1) Where any enactment confers a function upon a body or number of persons consisting of or being not less than three, the function may be exercised in the name of that body or number of persons by a majority or those persons.

(2) Whenever such body or number of persons is assembled, the chairman or other person presiding shall have a deliberative vote, and, where there is an equality of votes, a casting vote, in all matters in which a decision is taken by vote by whatever name such vote may be called.

Change in
title of public
body

19. Whenever the title of any public body is duly changed or replaced, then, from the date on which the change or replacement takes effect, any reference to the body by its former title shall be read and construed as a reference to it by its changed or new title.

Control of
certain
corporations
Cap. 42:01

20. A corporation which is established by any enactment, or a corporation registered in accordance with the Companies Act, in which Government owns a majority of all equity shares, shall, in the conduct of its affairs, be subject to any special or general directions of the Minister directly responsible for the corporation, or, where no Minister is responsible, by the Minister assigned for the purpose by the President.

Repeals
Cap. 01:02

21. Part IV and sections 48, 49 and 59 of the Interpretation and General Provisions Act are hereby repealed.

PASSED by the National Assembly this 27th day of June, 1984.

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