

# BOTSWANA EXAMINATIONS COUNCIL ACT, 2002

No. 11



of 2002

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**An Act to provide for the establishment of the Botswana Examinations Council to manage and conduct national examinations, to provide for its powers, duties and functions and for matters incidental thereto.**

*Date of Assent:* 26th June, 2002

*Date of Commencement:* On Notice

ENACTED by the Parliament of Botswana.

**PART I — Preliminary**

Short title and commencement

1. This Act may be cited as the Botswana Examinations Council Act, 2002, and shall come into operation on such date as the Minister may, by Order, appoint.

Interpretation

2. In this Act, unless the context otherwise requires —  
“authorised officer” means a person so designated under section 17;  
“candidate” means a person enrolled by the Council for purposes of sitting for an examination;  
“Chairman” means Chairman of the Council;  
“committee” means a committee of the Council;  
“Council” means the Botswana Examinations Council established under section 3;  
“examination malpractice” means an act which contravenes examination regulations;  
“Executive Secretary” means the Chief Executive of the Council appointed under section 14; and  
“member” means a member of the Council.

**PART II — Establishment of Examinations Council**

Establishment of Council

3. (1) There is hereby established the Botswana Examinations Council.

(2) The Council shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its own name and, subject to the provisions of this Act, of performing such acts as bodies corporate may by law perform.

Membership of Council

4. (1) The Council shall consist of the following members appointed by the Minister —

- (a) the Chairman;
- (b) the Permanent Secretary to the Ministry responsible for Education;
- (c) a representative of the Ministry of Education;
- (d) the Director of the Botswana College of Open and Distance Learning;
- (e) the Chief Executive of the Botswana Training Authority;
- (f) The Chief Executive of the Botswana Examinations Council;

- (g) a representative of the University of Botswana;
  - (h) a representative of the Tertiary Education Council;
  - (i) a representative from the private education sector;
  - (j) a representative of a teachers' organisation;
  - (k) a representative from the private sector;
  - (l) a representative of the public;
  - (m) a representative of the Botswana Police Service; and
  - (n) a representative of the Directorate of the Public Service Management.
- (2) The Vice Chairman shall be elected by the members from among their number.
- (3) The appointment to the Council shall be published by notice in the Gazette.

5. (1) The Council shall conduct school examinations and any other examinations for the Ministry of Education and issue certificates in respect of the examinations.

Powers and  
functions of  
Council

(2) Without prejudice to the generality of subsection (1), the Council shall —

- (a) conduct —
  - (i) standard four attainment tests;
  - (ii) primary school leaving examinations;
  - (iii) junior certificate examinations; and
  - (iv) senior secondary school examinations;
- (b) authorise the release of examination results;
- (c) withhold or cancel examination results of candidates involved in examination malpractice;
- (d) award certificates to candidates in respect of examinations conducted under paragraph (a);
- (e) assess and accredit college based technical education programmes;
- (f) make rules regulating the conduct of examinations;
- (g) maintain standards in the system of examinations;
- (h) develop and publish criteria for the accreditation of external qualifications;
- (i) appoint staff on such terms and conditions as it may consider appropriate; and
- (j) generally attend to matters related to the conduct of examinations.

6. (1) The seal of the Council shall be such device as may be determined by the Council and shall be kept by the Executive Secretary.

Seal of  
Council

(2) The affixing of the seal shall be authenticated by the Chairman and Vice-Chairman or any other person authorised in that behalf by a resolution of the Council.

(3) Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal, may be entered into or executed without seal on behalf of the Council by the Chairman or any other person generally or specifically authorised by the Council to do so.

Tenure of office

7. (1) A member other than the Chairman shall hold office for a period not exceeding three years as may be specified in the notice appointing him and at the end thereof he shall be eligible for reappointment.

(2) The Chairman shall hold office for a period not exceeding five years and at the end thereof he shall be eligible for reappointment.

Filling of casual vacancy

8. Where the office of a member becomes vacant before the expiry of the member's term of office, the Minister may appoint another person to be member in place of that member who vacates office.

Disqualification, removal and resignation

9. (1) No person shall be appointed as a member or be qualified to continue to hold office as member who has —

(a) in terms of a law in force in any country —

(i) been adjudged or otherwise declared bankrupt or insolvent and has not been discharged; or

(ii) made an assignment, arrangement or composition with his creditors, which has not been rescinded or set aside;

(b) within a period of 10 years immediately preceding the date of his appointment, been convicted —

(i) in Botswana, of a criminal offence;

(ii) outside Botswana, of an offence which if committed in Botswana, would have been a criminal offence,

and sentenced by a court of competent jurisdiction to imprisonment for six months or more without the option of a fine, whether that sentence has been suspended or not, and for which he has not received a free pardon.

(2) The Minister may by notice in writing, remove a member from office where the member —

(a) is absent without reasonable cause from three consecutive meetings of the Council of which he has had notice;

(b) is inefficient;

(c) has been found to be physically or mentally incapable of performing his duties efficiently and his medical doctor has issued a certificate to that effect;

(d) contravenes a provision of this Act or otherwise misconducts himself to the detriment of the objectives of the Council; or

(e) has failed to comply with provisions of section 10.

(3) A member may resign from office by giving 30 days notice in writing to the Minister.

(4) The office of a member shall become vacant after —

(a) a period of 30 days from the date a ruling against the member is made on all appeals made in respect of charges levelled against him under subsection 1(b);

(b) a period of 30 days has elapsed from the date the member has given notice in writing to the Minister in accordance with subsection (3), of his intention to resign;

- (c) a period of 30 days has elapsed from the date the member is given notice in writing by the Minister to vacate office; or
  - (d) a member is summarily dismissed by the Minister on the grounds of contravening a provision of this Act or for misconduct in accordance with subsection 2(d).
- (5) For purposes of subsection (2), “misconduct” includes any act done without reasonable excuse by a member which-
- (a) amounts to failure to perform in a proper manner any duty imposed on him as such;
  - (b) is prejudicial to the efficient conduct of the Council; or
  - (c) tends to bring the Council into disrepute.

**10. (1)** Where a member is present at a meeting of the Council or any committee of the Council at which a matter is the subject of consideration and in which matter he is directly or indirectly interested in a private capacity, the member shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the Council otherwise directs, take part in any consideration or discussion of, or vote on any question touching such matter.

Disclosure  
of  
interest

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

(3) Where a member fails to disclose his interest in accordance with subsection (1) and a decision by the Council is made benefiting such member, such decision shall be null and void.

(4) A member who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding P5 000.00 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

**11. (1)** Subject to the provisions of this Act, the Council may regulate its own proceedings.

Proceedings  
of Council

(2) The Council shall meet for the transaction of business at least three times in a year.

(3) Upon giving notice in writing of not less than 14 days, a meeting of the Council may be called by the Chairman and shall be called if not less than one half of the members so request in writing.

(4) Where the urgency of any particular matter does not permit the giving of a notice in accordance with subsection (3), a special meeting may be called upon giving a shorter notice.

(5) The quorum at any meeting of the Council shall be one half of the members.

(6) There shall preside at any meeting of the Council —

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

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

(8) The Council may invite any person whose presence it considers necessary, to attend and participate in the deliberations of a meeting of the Council, but such person shall have no vote.

**12. (1)** The Council may appoint such committees as it considers appropriate, consisting of its members or other suitably qualified persons.

(2) The Council may delegate any of its powers, functions or duties under this Act, to a committee appointed under subsection (1).

**13.** A member shall be paid, out of the funds of the Council, such remuneration and allowance, if any, as the Minister may from time to time determine.

### PART III — Administration

**14. (1)** The Council shall appoint an Executive Secretary on such terms as the Council may determine.

(2) No person shall be appointed as an Executive Secretary unless the person holds such qualifications and has such experience as the Council may determine.

**15.** The Executive Secretary shall, subject to such directions on matters of policy as may be given by Council, be the chief executive officer of the Council and shall —

- (a) be an ex officio member;
- (b) convene meetings of the Council in consultation with the Chairman;
- (c) attend meetings of the Council and of committees of the Council;
- (d) be secretary to the Council and be responsible for records of proceedings of the Council and committees;
- (e) be responsible for the management of the funds, property and business of the Council; and
- (f) be responsible for the general administration and organisation of the Council.

**16.** The Council shall employ other support staff on such terms and conditions as the Council may determine.

**17. (1)** The Minister may make regulations designating persons to be authorised officers for purposes of this Act.

(2) An authorised officer —

- (a) shall inspect premises before the premises are approved as an examination centre; and
- (b) may enter at all times and inspect premises where —
  - (i) examinations are being conducted; or
  - (ii) there is cause to believe that examination malpractice is taking place.

Committees of Council

Remuneration and allowance

Executive Secretary

Duties of Executive Secretary

Staff of Council

Authorised officers

- (3) An authorised officer shall —
- (a) confiscate equipment found on the premises used to facilitate examination malpractice; and
  - (b) write a report to the Council where upon an entry in accordance with subsection (2)(b), the authorised officer finds any form of examination malpractice.
- (4) Each authorised officer shall be issued with an identity card, in a form to be prescribed, and shall have such identity card in his possession when performing any function under this Act.
- (5) A person who obstructs an authorised officer in the discharge of his duties under this section commits an offence and shall be liable on conviction to a fine not exceeding P2 000.00 or to imprisonment to a term not exceeding one year, or to both such fine and imprisonment.

#### PART IV — *Financial Provisions*

- 18.** (1) The revenues of the Council shall consist of —
- (a) moneys appropriated by the National Assembly for the purposes of the Council;
  - (b) fees that the Council may charge for services it may render;
  - (c) grants and donations that the Council may receive; or
  - (d) income that the Council may receive from rentals or sale of land, building or educational material.

Revenues of  
Council

(2) The Council shall use revenues acquired under subsection (1) to meet the costs incurred in its operations and shall use any surplus accrued for such purpose as it may determine, with the approval of the Minister.

**19.** The financial year of the Council shall be a period of 12 months ending on the 31st of March of every year.

Financial year

**20.** (1) The Council shall keep and maintain proper accounts and records of accounts in respect of every financial year relating to the assets, liabilities, income and expenditure of the Council, and shall prepare, in each financial year, a statement of such accounts.

Accounts  
and audit

(2) The accounts of the Council in respect of each financial year shall, within three months of the end thereof, be audited by an auditor appointed by the Council.

(3) An auditor appointed under subsection (2) shall report in respect of the accounts for each financial year, in addition to any other matter on which the auditor considers it necessary to comment on, whether or not—

- (a) the auditor has received all information and explanation which, to the best of the auditor's knowledge and belief, were necessary for the performance of the auditor's duties;
- (b) the accounts and related records of the Council have been properly kept;

- (c) the Council has complied with all the financial provisions of this Act with which it is the duty of the Council to comply; and
- (d) the statement of accounts prepared by the Council was prepared on a basis consistent with that of the preceding year and represents a true and fair view of the transactions and financial affairs of the Council.

(4) The report of the auditor and a copy of the audited accounts shall, within 14 days of completion thereof, be forwarded to the Council by the auditor.

Annual report

21. (1) The Council shall within a period of six months after the end of the financial year or within such longer period as the Minister may approve, submit, to the Minister, a comprehensive report on the operations of the Council during such year, together with the auditor's report and the accounts audited under section 20.

(2) A report compiled in accordance with subsection (1) shall be laid in Parliament by the Minister within three months of receipt thereof.

#### PART V — *General*

Indemnity

22. No matter or thing done or omitted to be done by a member or staff of the Council shall, if the matter or thing is done or omitted to be done bona fide in the course of the operations of the Council, render a member or staff personally liable to an action, claim or demand.

Transitional provisions

23. The Minister may, by Order published in the Gazette, make such transitional arrangements not otherwise provided for in this Act, as shall be necessary for the establishment of the Council.

Winding up

24. The Council shall not be wound up except by authority of an Act of Parliament.

Offence and penalty

25. A person who —

- (a) steals examination papers or material;
- (b) receives papers or material obtained under paragraph (a) and knowing the same to be stolen;
- (c) reveals the contents of examination material to an unauthorised person;
- (d) with intent to pass or fail a candidate, alters the work, data, information or scores of the candidate;
- (e) attempts to impersonate or impersonates a candidate;
- (f) forges a certificate;
- (g) willfully or maliciously damages examination materials; or
- (h) is involved in any form of examination malpractice,

commits an offence and shall be liable on conviction to a fine not less than P5 000.00 but not more than P8 000.00 or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment.

**26. (1) The Minister may, following consultation with the Council, make regulations prescribing anything under this Act which is to be prescribed or which is necessary or convenient to be prescribed for the better carrying out of the objects and purposes of this Act, or to give force and effect to its provisions.**

**(2) Without prejudice to the generality of subsection (1), regulations may provide for —**

- (a) examination fees and other charges under the Act;**
- (b) conditions for the award of certificates;**
- (c) qualification and disqualification of candidates;**
- (d) approval and registration of examination centres;**
- (e) withholding or cancellation of examination results;**
- (f) any other matter relating to the conduct of examinations;**
- (g) financial procedures of the Council; and**
- (h) procedures to be followed by authorised officers.**

**PASSED by the National Assembly this 22nd day of April, 2002.**

**C.T. MOMPEI,**  
*Clerk of the National Assembly.*