

TRIBAL LAND (AMENDMENT) ACT, 2004

No. 24



of 2004

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of section 2 of Cap.32:02
3. Amendment of the Act
4. Amendment of the Act

An Act to amend the Tribal Land Act

ENACTED by the Parliament of Botswana

Date of Assent: 30th August, 2004

Date of Commencement: On Notice

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Tribal Land (Amendment) Act, 2004, and shall come into operation on such date as the Minister may, by order published in the Gazette, appoint.

2. The Tribal Land Act (hereinafter referred to as “the Act”) is amended, in section 2 thereof, by inserting, in their correct alphabetical order, the following new definitions —

““appointing authority” means the Director and any person to whom he or she has delegated his or her powers under section 11D(3);

“Commission” means the Land Board Service Commission established under section 11V;

“Director” means the Director appointed under section 11D(1);

“land board officer” means a person in the land board service;

“land board service” means the land board service covering all persons employed by and receiving salary or wages from a land board; and

“public officer” shall have the same meaning as in the Constitution;”.

3. The Act is amended by deleting section 8 thereof.

4. The Act is amended by inserting, immediately after Part II thereof, the following new Parts —

Short title and commencement

Amendment of section 2 of Cap. 32:02

Amendment of the Act

Amendment of the Act

“PART IIA — Application

Application
of Parts IIB
to IIF of this
Act

11A. (1) The provisions of Parts IIB to IIF of this Act shall apply to officers in the land board service.

(2) Nothing in this Act shall be construed as implying that a land board officer is, *ipso facto*, a public officer.

Contracts of
service

11B.(1) From the date of the commencement of this Act, any contract of service between a land board officer and a land board shall be deemed to have been made under this Act, and between such officer and the Director, and the provisions of Parts IIB to IIF of this Act shall apply to any such contract.

(2) A land board officer referred to in subsection (1) shall not be subject to any condition of service which is less favourable to him or her than any similar condition which applied in his or her case immediately before the date of the commencement of this Act.

PART IIB — Administration and Appointment to Land Board Service

Head of land
board service

11C. The Permanent Secretary shall be the head of the land board service and shall, subject to the provisions of this Act, supervise the Director in the performance of his or her duties under this Act.

Director of
Land Board
Service

11D. (1) There shall be a Director of the Land Board Service who shall be a public officer.

(2) The Director shall have vested in him or her the administration of the land board service, and, without prejudice to the generality of the foregoing, shall be responsible for—

- (a) the administration of the conditions of service of land board officers;
- (b) the recruitment, transfer and promotion of land board officers;
- (c) staff complements and gradings in the land board service;
- (d) the administration, structure, and assessment of salaries in the land board service;
- (e) the administration of the land board service training policy;
- (f) the discipline, training and welfare of land board officers;
- (g) localization and staff development programmes in the land board service;
- (h) inspections and organization of, and methods of organization of, land board officers;

(i) allowances, and the policy with regard to gratuities, of land board officers; and

(j) personnel statistics in the land board service.

(3) The Director may, with the consent of the Minister, by directions in writing, delegate any of his or her powers under this Act to any land board officer, but, notwithstanding any such delegation, the Director may vary or set aside any decision of a land board officer in the exercise of his or her delegated powers.

Secretary to
the land
board

11E. (1) The Minister shall, by notice in the Gazette, appoint a Secretary for each land board.

(2) The Deputy Permanent Secretary shall, under the direction of the Permanent Secretary, supervise land board secretaries.

Criterion for
appointment
of land board
officers

11F. (1) In selecting candidates for appointment, the appointing authority shall have regard to the efficiency of the land board service.

(2) Where any office in the land board service is vacant, the following persons shall, subject to satisfying any scheme of service laying down the qualifications for any such office, be qualified for appointment to such office in the following order of priority —

(a) any land board or public officer who is a citizen of Botswana;

(b) any other citizen of Botswana;

(c) any land board or public officer who is not a citizen of Botswana; and

(d) any other person who is not a citizen of Botswana.

(3) Notwithstanding the provisions of subsection (2), the Minister may waive the requirements of a scheme of service if it is in the interests of the land board service to do so.

Disqualification
from
appointment

11G. (1) No person who has been convicted of an offence involving moral turpitude or who has been dismissed from the public service or from the land board service shall be appointed to an office in the land board service without the approval of the Minister.

(2) No person shall be appointed to an office in the land board service unless he or she holds such qualifications as have been prescribed for appointment to that office.

(3) No person who is not a citizen of Botswana shall be appointed to any office in the land board service unless the appointing authority is satisfied that no citizen of Botswana is qualified and suitable for appointment thereto.

11H. (1) Where any person is appointed to any office in the land board service (otherwise than on promotion or transfer) on permanent terms, he or she shall first serve a probationary period of two years or such other period as the Minister may prescribe for particular offices.

(2) Where any person who is required to serve on probation under this section has previously been employed in the service of the Government or a land board or in such other service as may be prescribed, the period or any part thereof of such previous service shall be regarded as service on probation for the purposes of subsection (1).

(3) Not more than six nor less than three months before the expiry of a probationary period of a land board officer, the appointing authority shall consider whether —

- (a) the land board officer should be confirmed in the land board service;
- (b) the services of the land board officer being otherwise satisfactory, the probationary period should be extended so as to afford the land board officer an opportunity to pass any examinations which might be a condition precedent to the appointment;
- (c) the probationary period should be extended to afford the land board officer the opportunity of improvement in any respect in which his or her work or conduct has been unsatisfactory; or
- (d) the services of the land board officer should be terminated:

Provided that no probationary period shall be extended for more than 12 months.

(4) Where the appointing authority is of the opinion that the probationary period of a land board officer should be extended or terminated, he or she shall, before extending or terminating such appointment, inform the land board officer, in writing, of his or her intention and inform such officer of his or her right to make representation thereon within 21 days of the date on which he or she is so informed.

(5) Notwithstanding anything contained in this section, but subject to informing the land board officer in terms of subsection (4), an appointing authority may terminate a probationary appointment at any time and shall give reasons for such termination.

(6) The appointing authority may reduce a probationary period if the land board officer has fulfilled all the requirements necessary for confirmation in office and either —

(a) he or she has previously served in the public office or in a similar office on non-pensionable terms; or

(b) the reduction of the probationary period is necessary for administrative reasons:

Provided that no probationary period shall be reduced by a period exceeding the period which the land board officer concerned has served in the land board or a similar office on non-pensionable terms or a period of 12 months, whichever is less.

(7) The termination or non-confirmation of a probationary appointment shall not be regarded as a dismissal or removal from office.

(8) A land board officer on probation for two years shall be deemed to have been confirmed in his or her appointment if, at the end of 6 months following the end of the probationary period, he or she has not been informed in writing of the outcome of his or her probation.

(9) Where a person to whom the power to appoint to the land board service has been delegated would have power to confirm in office or extend or terminate a probationary period, or exercise any other power under this section, such power shall be exercised by the officer delegating the power, namely, the Director.

(9) In this section, "appointing authority" does not include a person to whom power to appoint to the land board service has been delegated under section 11D (3).

Date of
promotion

11I. (1) Where any land board officer is appointed to any land board office on promotion, the effective date of his or her promotion to that office shall, subject to the provisions of subsection (2), be determined by the appointing authority.

(2) The appointing authority shall not fix, as a date of promotion, a date which is earlier than the last of the following dates —

(a) the date on which the vacancy to which a land board officer is promoted occurred;

(b) the date upon which the officer became eligible for promotion;

(c) the date upon which the officer assumed the functions of the office:

Provided that the appointing authority may, in such circumstances as he or she considers appropriate, fix a date of promotion which is earlier than the date mentioned in paragraph (c), but no such date shall be appointed which is earlier than the later of the dates specified in paragraphs (a) and (b).

PART IIC— *Termination of Appointments
and Retirements*

Termination
of contract

11J. (1) If it appears to the appointing officer that the appointment of a land board officer serving on contract should be terminated (otherwise than by dismissal) in accordance with the provisions of his or her contract, the appointing authority shall inform the officer, in writing, that the termination of his or her contract is under consideration and inform him or her of his or her right to make representations thereon within a period of 21 days of the date on which he or she is so informed.

(2) On the expiry of the period of 21 days referred to in subsection (1), and after considering any representations made by the land board officer, the appointing authority shall decide whether or not the contract of the land board officer should be terminated.

Retirement of
land board
officers

11K. (1) In this section, "land board officer" means a land board officer employed on permanent and pensionable service.

(2) Subject to the provisions of this section, a land board officer shall retire from the land board service on attaining the age of 60 years.

(3) Subject to the provisions of this section, a land board officer who has attained the age of 45 years may, in the discretion of the appointing authority and in the interests of the service, be retired from the land board service.

(4) Subject to the provisions of subsection (3), a land board officer shall have the right at any time before or after attaining the age of 45 years to give written notification to the appointing authority of his or her wish to be retired from the land board service, and if he or she gives such notification he or she shall —

- (a) if such notification is given at least three calendar months prior to the date on which he or she attains the said age, be so retired on attaining that age; or
- (b) if such notification is not given at least three calendar months prior to the date on which he or she attains the said age, be so retired on the first day of the fourth month following the month in which the notification is received.

(5) If, in the opinion of the appointing authority, it is in the public interest to retain a land board officer in his or her office beyond the age at which under this section he or she is required to retire, such officer may, if he or she is willing to do so, be retained, on contract, from time to time by the appointing authority for such periods as that authority may determine.

(6) On the abolition of any land board office, a land board officer holding that office shall, unless transferred by the appointing authority to some other land board office, be retired.

Retirement
on medical
grounds

11L. (1) Where it appears to the appointing authority that a land board officer is incapable, by reason of any infirmity of mind or body, of discharging the functions of his or her office, he or she may, and shall, if the officer so requests, call upon such officer to present himself or herself to a medical practitioner nominated by the appointing authority or to a medical Board nominated by the appointing authority, with a view to ascertaining whether or not such officer is incapable as aforesaid.

(2) After the land board officer has been examined by the medical practitioner or the Board, as the case may be, the medical practitioner or Board shall forward the report of the examination to the appointing authority who shall consider the report and any representations which the officer concerned wishes to make, and the appointing authority shall then decide whether the officer should be called upon to retire on medical grounds.

PART IIID— *Land Board Officers*

General duties
of land board
officers

11M. Every land board officer shall assist the land board to which he or she is attached, posted or transferred, and shall carry out and obey all lawful orders of that land board and exercise the functions of his or her office impartially, efficiently and without delay, so as to serve the public and promote their welfare and lawful interests.

Whole time
of
land board
officer at
disposal of
land board

11N. Unless it is provided in the terms of his or her appointment or in any other written law —

- (a) every land board officer shall place the whole of his or her time at the disposal of the land board to which he or she is attached, posted or transferred; and
- (b) no land board officer may claim, as of right additional remuneration in respect of any official duty or work he or she is required to perform by the appointing authority or a land board.

No additional
fee for
services

11O. No fee, reward or remuneration of any kind, beyond his or her salary, and any allowances paid to him or her, shall be received and kept for his or her own use by a land board officer for the performance of any service for a land board unless authorized by law or by the terms of his or her appointment or by the Director.

Salary and
allowances
not to be
ceded

11P. Subject to the provisions of any other written law, no land board officer shall, except in the case of payments for the maintenance of his or her spouse or children, without the written approval of the Director, cede, assign or transfer the whole or any part of any salary or allowance paid to the land board officer.

Publications,
interviews
and use of
information
in the
performance
of duties

11Q. Subject to the provisions of any other written law, no land board officer shall —

- (a) in his official capacity as a land board officer, and without the written permission of the Director, act as editor or take part, directly or indirectly, in the management of, or publish, in any manner, anything which may reasonably be regarded as being of a political or administrative nature, but such officer may publish, in his or her private capacity, other matter relating to subjects of general interest;
- (b) whether on duty or on leave of absence, and except with the written permission of the Director, allow himself or herself to be interviewed on questions of, or connected with, any matter affecting or relating to the affairs of a land board;
- (c) directly or indirectly reveal or use for private purposes any information coming to his or her knowledge or acquired by him or her or the nature or contents of any document communicated to him or her either in the course of his or her duties or in his or her capacity as an officer otherwise than in the proper discharge of his or her duties as authorized by law or competent authority.

Interdiction

11R. (1) If the appointing authority considers that disciplinary proceedings should be instituted against a land board officer and is of the opinion that such officer should be interdicted from the performance of his or her duties pending the taking of proceedings against him or her, the appointing authority may suspend such officer from the performance of his or her duties for a period not exceeding 30 days and shall make a report of such suspension and the reasons therefor, to the Director, who

may interdict such officer from the performance of his or her duties and shall decide the amount of salary, being not less than half, that should be paid to such officer during the period of suspension and interdiction.

(2) If the appointing authority, on becoming aware that criminal proceedings have been instituted against a land board officer, is of the opinion that such officer should be interdicted from the performance of his or her duties, the appointing authority may interdict such officer from the performance of his or her duties for a period of 60 days, and shall immediately report such interdiction and the reasons therefor to the Director.

(3) On receipt of the report referred to in subsection (2), the Director may revoke, confirm or extend the period of the interdiction referred to in that subsection and, in the case of confirmation or extension of the period of such interdiction, shall decide the amount of salary, being not less than half, that should be paid to such officer during the period of interdiction.

(4) If the Director, on becoming aware that criminal proceedings have been or are about to be instituted against a land board officer or considers that disciplinary proceedings should be instituted against a land board officer, is of the opinion that such officer should be interdicted from the performance of his or her duties pending the taking of proceedings against him or her, the Director may interdict such officer from the performance of his or her duties and shall decide the amount of salary, being not less than half, that should be paid to such officer during the period of interdiction.

(5) If, as a result of any disciplinary proceedings, a land board officer is awarded a punishment less than dismissal, the Director shall decide what proportion of the salary, if any, withheld shall be paid to such officer:

Provided that if no punishment is awarded, the whole of the emoluments withheld shall be paid to such officer.

(6) If a land board officer has been interdicted from the performance of his or her duties because criminal proceedings had been or were about to be instituted against him or her, and, after a period of interdiction exceeding six months such criminal proceedings have not been brought to an end, the Director may terminate the interdiction, and such officer may be reinstated in the land board service pending the completion of such criminal proceedings.

(7) In this section, "appointing authority" means a person to whom the power to appoint to office in the land board service has been delegated under section 11D(3).

Withholding
of salary

11S. A land board officer who has been convicted of a criminal offence and has been sentenced to imprisonment, whether as a result of the non-payment of a fine or otherwise, shall receive no salary from the date of his or her imprisonment pending a decision by the Director as to whether or not any salary shall be paid to such officer during the period of imprisonment and pending the taking of any disciplinary proceedings against him or her or his or her dismissal.

PART IIE — *Offences and Penalties*

Influencing
the Director
or an
appointing

11T. Any person who, whether outside his or her official duties, or who, in the course of his or her duties improperly, directly or indirectly by himself or herself, or by any other person, in any manner, influences or attempts to influence the decision of the Director or an appointing authority shall be guilty of an offence and liable to a fine not exceeding P500 or to imprisonment for a term not exceeding six months, or to both.

Supplying
false
information

11U. Any person who, in connection with the exercise of his or her functions, gives to an appointing authority any information which he or she knows to be false or does not believe to be true or which he or she knows or believes to be misleading by reason of the omission of any material particular shall be guilty of an offence and liable to a fine not exceeding P500 or to imprisonment for a term not exceeding six months, or to both.

PART IIF — *Land Board Service Commission*

Establishment
of Land Board
Service
Commission

11V. (1) There shall be a Land Board Service Commission, the membership of which shall be the same as that of the Public Service Commission established by and constituted under the Constitution, and the provisions of section 109 of the Constitution shall apply, with the necessary changes, to the Land Board Service Commission.

(2) The Secretary to the Commission shall be a public officer nominated by the Minister.

Appeals to
Commission

11W. Any land board officer who has been removed from office or subjected to any other punishment by the exercise of any power conferred on the Director or an appointing authority may appeal to the Commission which may dismiss such appeal or allow it wholly or in part.

Protection of
members of
Commission

11X. Every member of the Commission shall have such protection and privilege in the case of any action or suit brought against him or her for any act done or omitted to be done in the *bona fide* execution of his or her duties as is by law given to acts done or words spoken by a judge in the exercise of his or her judicial office.

Privilege for
communi-
cations
of commission

11Y. No person shall, in any legal proceedings, be permitted or compelled to produce or disclose any communication, written or oral, which has taken place between the Commission, or any member or officer thereof, and the Government, or the President, or a Minister, or any officer of the Government, or between any member or officer of the Commission and its chairman, or between any member or officer of the Commission, in the exercise of, or in connection with the exercise of, the functions of the Commission, unless the President consents, in writing, to the disclosure.

Powers of
Commission

11Z. (1) For the performance of its functions, the Commission may —

- (a) inspect land board offices;
- (b) examine documents, books or other records belonging to a land board;
- (c) obtain such information and advice from any and board officer or any public officer as it may require; and
- (d) do all such things, including the taking of evidence on oath and the administration of oaths, as are incidental or conducive to the exercise of the Commission's functions.

(2) The Commission may require any land board officer or any public officer, whose evidence appears to be material to the determination of any inquiry or investigation conducted by the Commission, to attend, at such time and place as may be specified by the Commission, to give evidence or produce any document, book or other record, official or belonging to a land board, in his or her possession or under his or her control, which relates to a matter in question at any inquiry or investigation.

(3) No land board officer or public officer shall be compelled to answer a question the answer to which may render him or her liable to prosecution on a criminal charge.

(4) Nothing in this section shall be construed as requiring any person to disclose any information or produce any document, book or other record, the disclosure or production of which —

(a) is prohibited or restricted under any written law; or

(b) is certified, in writing, by the Minister to be contrary to the public interest.

Annual report 11AA. The Commission shall, as soon as possible after the end of each calendar year, submit a report to the Minister in respect of the discharge of its functions during that year, and the Minister shall, within 28 days of receipt of the report, lay it before the National Assembly.

Legal representation 11BB. Any person appearing before the Commission shall be entitled to be represented by a legal practitioner admitted to practise in Botswana.”.

PASSED by the National Assembly this 11th day of August, 2004.

A. MATLHAKU,
Clerk of the National Assembly.