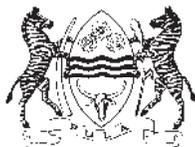


BOTSWANA QUALIFICATIONS AUTHORITY ACT, 2013

No. 24



of 2013

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An Act to provide for the establishment of Botswana Qualifications Authority, in order to provide for qualifications framework services; and for matters incidental thereto.

Date of Assent: 04.10.2013

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 Qualifications Authority Act, 2013, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Interpretation

2. In this Act, unless the context otherwise requires —
“accreditation” means a process of ensuring that education and training providers, and any programme of education and training offered, conform to any quality assurance standards set by the Authority;
“Authority” means the Botswana Qualifications Authority established under section 3 (1);
“awarding body” means an organisation, recognised by the Authority, which awards accredited qualifications;
“Board” means the Board of the Authority;
“Chairperson” means the Chairperson of the Authority;
“Chief Executive Officer” means the Chief Executive Officer of the Authority appointed as such under section 18;
“code of practice” means the code of practice issued by the Authority under section 30;

- “education and training provider” means a person or entity that provides or organises a programme of education and training, including the provision of professional development services;
- “general education” means all formal, informal and non-formal education and training other than tertiary education;
- “higher education” means any studies undertaken beyond the level of secondary education, but excluding technical and vocational education and training (TVET);
- “member” means a member of the Board appointed under section 5 (2);
- “national credit and qualifications framework” means an instrument developed under section 4 (2) (d) for the classification of qualifications according to a set of criteria, for specified levels of learning achieved;
- “part qualification” means an assessed unit of learning that is registered by the Authority as part of a qualification, including a module and a unit standard;
- “quality assurance” means input and output factors, processes and procedures for ensuring that a qualifications system, including qualifications, assessment and programme delivery, meet such standards as are determined by the Authority;
- “repealed Act” means the Vocational Training Act repealed under section 32;
- “technical and vocational education and training (TVET)” means an education, training and learning programme which provides knowledge, skills and competencies relevant for employment or self-employment;
- “tertiary education” means a programme which is offered beyond the level of senior secondary education, including technical and vocational education and training (TVET), through to advanced research qualifications, which have been accredited by the Authority or by a competent authority in the country from which the programme is offered;
- “unit standard” means a statement of the outcome of any learning assessed, the type and quality of evidence that represents performance worthy of an award of credits and the context in which that evidence should be demonstrated;
- “work-based learning programme” means an instructional programme that deliberately uses a work-place as a site for student learning, and which is formal, structured and strategically organised to link learning in the work-place to institutionally-based learning experiences; and
- “work-place learning” means skills training and development that is provided at the work-place for employees, including informal skills training and development, on-the-job training and vocational and technical training which is not offered by a tertiary institution.

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PART II — *Establishment and Functions of Botswana
Qualifications Authority*

Continuation
of
establishment
of Authority

3. (1) The Authority known as the Botswana Training Authority established under section 3 of the repealed Act, is hereby continued under the new name of the Botswana Qualifications Authority, and shall continue to exist as if established under this Act.

(2) The Authority 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, performing such acts as bodies corporate, may by law, do or perform.

Objectives
and functions
of Botswana
Qualifications
Authority

4. (1) The objectives of the Authority shall be to provide for and maintain a national credit and qualifications framework and to co-ordinate the education, training and skills development quality assurance system.

(2) Without derogating from the generality of subsection (1), the Authority shall —

- (a) be responsible for all qualifications, from early childhood to tertiary level;
- (b) design, develop and implement a common quality assurance platform, and regulate compliance therewith;
- (c) register and validate qualifications and part qualifications, and ensure their relevance to social and economic needs;
- (d) develop, implement and maintain an overarching national credit and qualifications framework;
- (e) set teaching and learning standards for education and training providers;
- (f) develop policy and criteria for work-based teaching, work-place learning and work-based learning programmes, the recognition of prior learning (RPL) and the credit accumulation and transfer system (CATS);
- (g) ensure international recognition for the national qualifications system and the international comparability of qualifications;
- (h) develop standards for the recognition of external qualifications;
- (i) evaluate and register local and external qualifications;
- (j) maintain a national database of qualifications;
- (k) maintain a national database of assessors, moderators, education and training providers and learners;
- (l) register and accredit education and training providers, assessors, awarding bodies and moderators;
- (m) accredit learning programmes;
- (n) develop and review quality standards, and ensure compliance through a monitoring and evaluation system;
- (o) design qualifications and curricula for general education and tertiary education, including technical and vocational education and training (TVET) and higher education;
- (p) contribute toward the development of international competency frameworks;
- (q) design methods of validating the achievements of learners;
- (r) recognise and validate competencies for purposes of certification;
- (s) design procedures and rules for the protection of enrolled learners;
- (t) set criteria for the development of national education and training quality and inspection standards;
- (u) advise the Minister on all matters pertaining to its functions;
- (v) perform any function consistent with this Act that the Minister may, by regulations, determine; and
- (w) do all such things and perform all such functions as may be necessary for, or incidental to, the attainment of the objectives of the Authority.

PART III — *Constitution and Qualifications of Board*

5. (1) There shall be a Board of the Authority, which shall be the governing body of the Authority.

Board

(2) The Board shall consist of 13 members, appointed by the Minister from amongst persons whom the Minister considers qualified by reason of their experience or expertise in the areas relevant to the objects and functions of the Authority.

(3) The Chief Executive Officer shall be an *ex-officio* member of the Board.

(4) The Minister shall appoint the Chairperson of the Authority and the Vice Chairperson shall be elected by members from amongst their number.

(5) The Minister may appoint other persons to sit on the Board as alternates to the substantive members of the Board appointed under subsection (2).

(6) The alternate members appointed by the Minister under subsection (5) shall be appointed, if the Minister is satisfied that such persons meet the requirements for qualifications for members set out under section 8.

(7) The Minister shall, by notice in the *Gazette*, publish the appointment of members and their alternates, specifying the dates of their appointment and the period for which they are appointed to the office of the Board.

6. The Minister may, after consultation with the Board, give the Board directions of a general or specific nature regarding the exercise of its powers and the performance of its functions, which directions shall not be inconsistent with this Act or with the contractual or other obligations of the Authority, and the Board shall give effect to any such directions.

Directions by the Minister

7. A member shall hold office for a period not exceeding three years, and shall be eligible for re-appointment for a further term of three years.

Tenure of office

8. (1) A person shall not be appointed as a member or be qualified to continue to hold office where the person —

Qualifications, removal and suspension of members

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

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

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

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

(i) of a criminal offence within Botswana, or

(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 or she has not received a free pardon.

(2) The Minister may, in writing, suspend from office, a member against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment without the option of a fine may be imposed, and whilst that member is so suspended, he or she shall not carry out any duties under this Act or be entitled to any remuneration or allowances as a member of the Board.

- (3) The Minister shall remove a member from office, if the member —
- (a) is absent without reasonable cause from three consecutive meetings of the Board of which he or she has had notice;
 - (b) has been found to be physically or mentally incapable of performing his or her duties efficiently, and a medical doctor has issued a certificate to that effect;
 - (c) contravenes the provisions of this Act or otherwise misconducts himself or herself to the detriment of the objectives of the Board;
 - (d) has failed to comply with the provisions of sections 16 and 17; or
 - (e) has been convicted of an offence under this Act, or under any other Act for which he or she is sentenced to imprisonment for a term of six months or more without an option of a fine.

Vacation of
office by
members

9. A member shall vacate his or her office and his or her office shall become vacant —

- (a) if he or she becomes disqualified in terms of section 8 to hold office as a member of the Board;
- (b) if he or she is adjudged bankrupt or insolvent;
- (c) if he or she is absent from three consecutive meetings of the Board without reasonable excuse;
- (d) upon his or her death;
- (e) upon the expiry of such time as the Minister may specify, in writing, notifying the member of his or her removal from office by the Minister;
- (f) upon the expiry of one month's notice, in writing, to the Chairperson, of his or her intention to resign from office;
- (g) if he or she becomes mentally or physically incapable of performing his or her duties efficiently, and a medical doctor has issued a certificate to that effect;
- (h) if he or she is convicted of an offence under this Act for which he or she is sentenced to imprisonment for a term of six months or more without the option of a fine; or
- (i) if he or she is summarily dismissed by the Minister on the grounds of contravening the provisions of this Act.

Filling of
vacancy

10. (1) Where the office of a member becomes vacant before the expiry of the member's term of office, the Minister shall appoint the alternate of that member in place of the member who vacates office, until the expiry of a period during which such member would have otherwise continued in office.

(2) Subsection (1) shall not apply where the remainder of the period for which the member whose office has been vacated would otherwise have held office is less than six months.

Remuneration
and
allowances

11. A member shall be paid such remuneration, travelling expenses and other expenses and allowances, incurred in connection with his or her services on the Board, if any, as the Minister may from time to time determine.

PART IV — *Meetings and Proceedings of Board*

12. (1) At the first meeting of the Board, the members shall elect from among their number, a Vice Chairperson.

Election of
Vice
Chairperson

(2) The Chairperson and Vice Chairperson shall hold office for a period of not more than three years.

(3) On the expiry of the terms of office of the Chairperson or the Vice Chairperson, or where the Chairperson or the Vice Chairperson vacates office, a new Chairperson shall be appointed by the Minister and a new Vice Chairperson shall be elected by the members from among their number at the next meeting of the Board or as soon thereafter as may be convenient.

(4) The Chairperson or Vice Chairperson may vacate his or her office as such even though he or she remains a member.

(5) The Vice Chairperson shall exercise the functions of the Chairperson during the period that the Chairperson is absent or unable to act as Chairperson.

13. (1) Subject to the provisions of this Act, the Board may regulate its own proceedings.

Meetings of
Board

(2) The Board shall hold its first meeting on such date and at such place as the Minister may fix and thereafter the Board shall meet at least once in every three months.

(3) Upon giving notice, in writing, of not less than 14 days, a meeting of the Board may be called by the Chairperson, but if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon the giving of a shorter notice.

(4) The notice referred to under subsection (3) shall state —

(a) the place and time for the meeting; and

(b) the agenda for the meeting.

(5) There shall preside at any meeting of the Board —

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice Chairperson; or

(c) in the absence of the Chairperson and Vice Chairperson, such member as the members present may elect from amongst themselves for the purpose of that meeting.

(6) The Secretary shall cause to be recorded and kept minutes of all proceedings of meetings of the Board.

14. (1) The quorum at any meeting of the Board shall be a simple majority of the members.

Quorum and
procedure at
meetings

(2) A decision of the Board 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 member presiding shall have a casting vote in addition to that member's deliberative vote.

(3) A decision of the Board shall not be rendered invalid by reason of a vacancy on the Board or the fact that a person who was not entitled to sit as a member did so sit.

(4) Where an alternate member is appointed by the Minister under section 5 (3), such alternate member shall attend and take part in the voting at meetings whenever the member to whom he or she is alternate is absent from such meeting.

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

Committees of Board

15. (1) The Board may, for the purpose of performing its functions, establish such committees as it considers appropriate and may delegate to any such committee such of its functions as it considers necessary.

(2) The Board may appoint, to the committees established under subsection (1), such number of persons from the members and such number of persons with specialised skills, not being members, as it considers appropriate, to be members of such committees and such persons shall hold office for such period as the Board may determine.

(3) The Board shall appoint a Chairperson and Vice Chairperson for any of its committees from amongst its members.

(4) An officer of the Authority appointed in writing by the Chief Executive shall be Secretary to any committee and shall, on the instructions of the Chairperson of the committee, convene meetings of the committee.

(5) Subject to the specific or general directions of the Board, a committee may regulate its own procedure and the Board may attach any conditions to the delegation of any of its powers to such committees.

(6) The Board may confirm, vary or revoke any decision taken in consequence of a delegation or assignment, but no variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

(7) Meetings of a committee shall be held at such times and places as the committee may determine, or as the Board may direct.

Disclosure of interest

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

(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 or her interest in accordance with subsection (1) and a decision by the Board is made benefitting such member, or an immediate family member of the member, such decision shall be null and void to the extent that it benefits such member or family member.

(4) A member who fails to comply with the provisions of subsection (1) commits an offence and is liable to a fine not exceeding P2 000, or to imprisonment for a term not exceeding six months, or to both.

Confidentiality

17. (1) A member and any other person assisting the Board shall observe and preserve the confidentiality of all matters coming before the Board, and such confidentiality shall subsist even after the termination of their terms of office or their mandates.

(2) Any member or any person to whom confidential information is revealed through working with the Board shall not disclose that information to any other person unless he or she is required to do so in terms of any written law or for purposes of any judicial proceedings.

(3) Any member or any other person who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P2 000, or to imprisonment for a term not exceeding six months, or to both.

PART V – *Chief Executive Officer and Other Staff of the Authority*

18. (1) The Minister shall, in consultation with the Board, appoint a Chief Executive Officer of the Authority for a fixed contract period not exceeding five years, who shall be eligible for re-appointment, for a further term of five years.

Chief
Executive
Officer

(2) A person shall not be appointed as Chief Executive Officer unless he or she possesses such experience and qualifications as the Minister may determine, and he or she has demonstrated that he or she is competent to carry out the functions of the Authority.

(3) The Chief Executive Officer shall, subject to such directions on matters of policy as may be given by the Board, be responsible for the day-to-day management of the affairs of the Authority.

(4) The Chief Executive Officer may resign from office by giving three months' notice in writing, to the Minister and the Board.

(5) The Minister may, in consultation with the Board, remove the Chief Executive Officer from office by giving him or her three months' notice in writing, or by paying him or her three months' salary in lieu of notice, if the Chief Executive Officer –

(a) conducts himself or herself in a manner that is detrimental to the objective of, or the proper performance of the functions of the Authority;

(b) has been found to be physically or mentally incapable of performing his or her duties efficiently by his or her medical doctor or psychiatrist, as well as an independent medical doctor or psychiatrist;

(c) becomes bankrupt or is declared insolvent by a court of law; or

(d) absents himself or herself from office without reasonable excuse.

(6) The Chief Executive Officer may delegate, in writing, to any senior officer of the Authority, the exercise of any powers which he or she is authorised to exercise under this Act.

(7) The Chief Executive Officer shall be responsible for –

(a) the appointment, formation and development of an efficient administration of the Authority;

(b) the organisation, control and management of all staff of the Authority;

(c) the maintenance of discipline in respect of the staff of the Authority;

(d) the carrying out of the decisions of the Board;

(e) the management of the support structure of the Authority;

(f) all income and expenditure of the Authority; and

(g) all assets of the Authority and the discharge of all the liabilities of the Authority.

(8) The Chief Executive Officer shall receive such remuneration, allowances and other benefits, as the Board, in consultation with the Minister, may determine.

19. (1) The Board shall, on the recommendation of the Chief Executive Officer, appoint a Secretary, who shall be suitably qualified and experienced.

Appointment
of
Secretary of
Board

(2) The Secretary of the Board shall attend meetings of the Board but shall have no right to vote, and shall be responsible for the recording of the Board's proceedings and decisions.

(3) The Secretary of the Board shall be accountable to the Board for his or her functions and responsibilities, and shall report directly to the Chairperson.

(4) The conditions of service, including the remuneration package of the Secretary, shall be set by the Board, on the recommendation of the Chief Executive Officer, with the concurrence of the Minister.

Appointment
of senior and
other staff

20. (1) The Board shall, on the recommendation of the Chief Executive Officer, appoint the senior staff of the Authority.

(2) The senior staff shall, under the direction of the Chief Executive Officer, assist the Chief Executive Officer in the proper administration and management of the functions and affairs of the Authority, in accordance with the policies laid down by the Board.

(3) The Chief Executive Officer shall appoint such other staff as may be necessary for the proper discharge of the functions of the Authority.

(4) The terms and conditions of employment of staff of the Authority shall be as may be determined by the Board, in consultation with the Minister.

PART VI – *Financial Provisions*

Funds of the
Authority

21. (1) The funds of the Authority shall consist of —

(a) such monies as may be appropriated by the National Assembly for the purposes of the Authority;

(b) such grants and donations as the Authority may receive;

(c) such fees as may be charged for services rendered by the Authority; and

(d) any income that the Authority may receive from investments.

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

Financial year

22. The financial year of the Authority shall be a period of 12 months, beginning on the 1st April of each year and ending on the 31st March of the subsequent year.

Accounts and
audit

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

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

(3) The auditor shall report in respect of the accounts for each financial year, in addition to any other matter on which the auditor deems it pertinent to comment on, whether or not —

(a) the auditor has received all the 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 Authority have been properly kept;

(c) the Authority has complied with all the financial provisions of this Act with which it is its duty to comply with; and

(d) the statement of accounts prepared by the Authority 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 Authority.

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

24. (1) The Authority may, out of its revenues, establish and maintain such pension, superannuation, provident or other funds as it may consider desirable or necessary for the payment of benefits or other allowances on the death, sickness, injury, superannuation, resignation, retirement or discharge of its staff and may, make rules providing for the payment of money out of its revenues to such funds and providing for contributions to such funds by its staff.

Pension and other funds

(2) The Authority may contract with insurance companies or such other bodies as may be appropriate for the maintenance and administration of the funds authorised under subsection (1).

25. (1) The Authority shall, within a period of six months after the financial year or within such longer period as the Minister may approve, submit, to the Minister, a comprehensive report of its operations during that year, together with the auditor's report and the audited accounts as provided for in section 23 and the report shall be published in such manner as the Minister may require.

Annual report

(2) The Minister shall lay the annual report of the Authority in Parliament, within three months of its receipt.

PART VII – *Miscellaneous Provisions*

26. (1) There shall be established an Appeals Committee to hear appeals from education and training providers in relation to decisions of the Authority.

Appeals

(2) The Committee shall consist of five members appointed by the Minister.

(3) Subject to subsection (2), one of the members shall be an attorney admitted to practice law in the courts of Botswana in accordance with the Legal Practitioners Act, with no less than ten years experience, who shall be the Chairperson of the Committee.

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(4) Subject to this Act, the Committee shall regulate its proceedings.

27. (1) The Authority shall have the power to require, from any education and training provider, such information including accounts, returns or estimates as the Authority deems it necessary, to carry out its functions under this Act.

Power to require information

(2) If so requested by the Authority, the education and training provider under subsection (1) shall give the Authority access to or provide it with such information as the Authority may require and the Authority shall be entitled to make copies or take extracts from any information.

(3) Information provided by any education and training provider shall not be false or misleading.

(4) The Chief Executive Officer, employee or officer of the Authority shall not disclose to any other person any information so acquired if that disclosure would be detrimental to the education and training provider the information was obtained from, except where —

- (a) civil or criminal proceedings arise involving that education and training provider;
- (b) the Chief Executive Officer, employee or officer of the Authority is summoned to appear before a court of competent jurisdiction in Botswana and the court orders the disclosure of the information; or
- (c) the information is required by the Chief Executive Officer, employee or officer, or by an auditor or legal representative of the Authority, who is entitled to know the information in the course of professional duties in matters related to the objectives of this Act.

(5) Any person who contravenes any of the provisions of this section shall be guilty of an offence and liable to a fine not exceeding P20 000 or to imprisonment to a term not exceeding five years, or to both.

Protection from personal liability	<p>28. No matter or thing done or omitted to be done by a member, any officer or employee of the Authority shall, if the matter or thing is done or omitted to be done <i>bona fide</i> in the course of the operations of the Authority, render such person, or any person acting by his or her direction, personally liable to an action, claim or demand.</p>
Reports to Minister	<p>29. The Chairperson shall, from time to time, submit to the Minister, reports with regard to matters relating to the activities of the Authority which, in the opinion of the Board, should be brought to the notice of the Minister.</p>
Code of practice and guidelines	<p>30. (1) The Authority may issue a code of practice and guidelines for any matter falling under its objectives under section 4.</p> <p>(2) The Authority may, as it considers appropriate, approve of any code of practice or guidelines, or any part of a code of practice or guidelines, drawn up by any other body and issue it as a code of practice for any matter falling under its objectives under section 4.</p> <p>(3) Any code of practice issued under this section shall be for the purpose of providing guidance with respect to the requirements of the provisions of this Act.</p>
Regulations	<p>31. The Minister may make regulations for —</p> <ul style="list-style-type: none"> (a) prescribing procedures of accreditation, registering and monitoring of both public and private training institutions; (b) the procedure for accrediting teachers, programme courses and determination of equivalences of qualifications within the national credit and qualifications framework; (c) prescribing national training standards for various qualification levels within the national credit and qualifications framework; (d) prescribing the manner of accrediting, monitoring and evaluating the implementation of programme courses; (e) regulating the national training awards system in accordance with the national credit and qualifications framework; (f) regulating the manner of assessment and testing within the national credit and qualifications framework being developed; (g) for the better carrying out of the provisions of this Act; and (h) prescribing anything that under this Act requires to be prescribed.
Repeal	<p>32. The Vocational Training Act is hereby repealed.</p>
Transitional and savings	<p>33. (1) Any subsidiary legislation made under the repealed Act, and in force immediately prior to the coming into operation of this Act shall, in so far as such legislation is consistent with the provisions of this Act, continue to be in force as if made under this Act.</p> <p>(2) All rights, obligations, assets and liabilities which have accrued to the Botswana Training Authority in terms of the repealed Act, shall, upon this Act coming into force, simultaneously pass and accrue to the Authority and be dealt with in terms of this Act.</p> <p>(3) Any disciplinary proceedings which, before the coming into operation of this Act, were pending shall be continued or enforced by or against the Authority in the same manner as they would have been continued or enforced before the coming into operation of this Act.</p>

(4) Any legal proceedings which, before the coming into operation of this Act, were pending shall be continued or enforced by or against the Authority in the same manner as they would have been continued or enforced before the coming into operation of this Act.

(5) The Board of the Botswana Training Authority, established under section 5 of the repealed Act, shall continue as if established under this Act.

(6) The Vocational Training Fund established under section 21 of the repealed Act, shall continue under the name Human Resource Development Fund, as if established under the Human Resource Development Council Act.

(7) All employees of the Botswana Training Authority shall become the corresponding employees of the Authority and shall continue in office for the period for which, and be subject to the conditions under which, they were appointed, as employees of the Botswana Training Authority.

PASSED by the National Assembly this 14th day of August, 2013.

BARBARA N. DITHAPO,
Clerk of the National Assembly.