

**BOTSWANA EXAMINATIONS COUNCIL
(AMENDMENT) ACT, 2019**

No. 21



of 2019

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An Act to amend the Botswana Examinations Council Act.

Date of Assent: 28.08.19

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Botswana Examinations Council (Amendment) Act, 2019, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

2. The Botswana Examinations Council Act, Cap. 58:03 (referred to as "the Act") is amended in section 2 by —

- (a) inserting the following new definitions in their correct alphabetical order —
 - "Board" means the Board established under section 4 of the Act;
 - "Chairperson" means chairperson of the Board appointed under section 4;
 - "Chief Executive Officer" means the Chief Executive Officer of the Council appointed under section 14;

Short title and commencement

Amendment of section 2 of Cap. 58:03

“examination centre” means a school, college, educational establishment, facility or an institution registered and accredited by the Council for the entry and registration of candidates to be examined by the Council under this Act; and
“technical and vocational education and training” means an education, training and learning programme which provides knowledge, skills and competencies relevant for employment or self-employment;

- (b) deleting the definition of the word “chairman”;
- (c) deleting the definition of the word “Executive Secretary”;
- (d) substituting for the definition of the word “committee”, the following new definition —
“committee” means a committee of the Board appointed under section 12;”;
- (e) substituting for the definition of the word “member”, the following new definition —
“member” means member of the Board appointed under section 4.

Amendment of
section 4 of the
Act

3. The Act is amended by substituting for section 4, the following new section —

“Constitution
and
qualifications
of Board of
Council

4. (1) There is hereby established a Board of the Council which shall —

- (a) be the governing body of the Council; and
- (b) perform such functions as may be conferred on it under this Act.

(2) The Board shall consist of 7 members, appointed by the Minister from amongst persons whom the Minister considers qualified by reason of their competence, knowledge and experience in the following areas —

- (a) curriculum and educational measurement and evaluation;
- (b) educational research;
- (c) education and training;
- (d) finance and audit;
- (e) human resource management or related field;
- (f) law; and
- (g) law enforcement.

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

(4) The Minister shall appoint the Chairperson of the Board 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) excluding the Chairperson.

(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 subsection (2).

(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.”.

4. The Act is amended by inserting immediately after section 4 the following new section —

“Directions
by Minister

4A. (1) The Minister may give the Board directions of a general or specific nature regarding the exercise of its powers and the performance of its functions under this Act.

(2) The directions given under subsection (1) shall not be inconsistent with this Act or with the contractual or other obligations of the Council.

(3) The Board shall give effect to the directions given to it under this section.”.

Insertion of
section 4A in
the Act

5. The Act is amended by substituting for section 5, the following new section —

“Powers and
functions of
Council

5. (1) The Council shall manage and conduct examinations and assessments in —

- (a) general education; and
- (b) technical and vocational education training.

(2) The Council shall issue certificates in respect of examinations and assessments referred to under subsection (1).

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

- (a) provide policy advice on assessment in education;
- (b) withhold or cancel examination results of candidates involved in examination malpractice;
- (c) award certificates to candidates in respect of examinations or assessments conducted under paragraph (a);
- (d) develop standards for the conduct of examinations in all registered examinations centres;
- (e) maintain standards in the system of examinations;
- (f) generally attend to matters related to the conduct of examinations;
- (g) develop examinations and assessments in general education, technical and vocational education and training;
- (h) register and accredit examinations and assessments centres for general education or equivalent including centres for technical and vocational education and training;

Amendment of
section 5 of the
Act

- (i) conduct regional and international comparability studies and other research relevant to its mandate;
- (j) conduct training, registration and accreditation of examinations personnel;
- (k) make rules regulating the conduct of examinations and assessments;
- (l) in consultation with the Minister authorise the release of examination results; and
- (m) perform such other functions as may be conferred on it.”.

Amendment of section 6 of the Act

6. The Act is amended by substituting for section 6, the following new section —

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

(2) The affixing of the seal shall be authenticated by the Chairperson and Vice-Chairperson or any person authorised in that capacity by a resolution of the Board.

(3) Any contract or instrument which, if entered 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 Chairperson or any other person generally or specifically authorised by the Board to do so.”.

Amendment of section 7 of the Act

7. Section 7 of the Act is amended by substituting for the word “Chairman” wherever it appears in that section the word “Chairperson”.

Amendment of section 9 of the Act

8. Section 9 of the Act is amended by substituting for the word “Council” wherever it appears in that section the word “Board”.

Amendment of section 10 of the Act

9. Section 10 of the Act is amended by substituting for the word “Council” wherever it appears in that section the word “Board”.

Amendment of section 11 of the Act

10. Section 11 of the Act is amended by substituting for the word —

(a) “Council” wherever it appears in that section, the word “Board”;

(b) “Chairman” wherever it appears in that section, the word “Chairperson”; and

(c) “Vice-Chairman” wherever it appears in that section, the word “Vice-Chairperson”.

Amendment of section 12 of the Act

11. Section 12 of the Act is amended by substituting for the word “Council” wherever it appears in that section the word “Board”.

Amendment of section 13 of the Act

12. Section 13 of the Act is amended —

(a) by substituting for the words, “Remuneration and allowance” in the side note, the words “Allowance for members”; and

(b) by substituting for the words, “such remuneration and allowance, if any,” the words “such allowance”.

13. The Act is amended by substituting for section 14, the following new section —

“Chief Executive Officer of Council

14. (1) The Minister shall, in consultation with the Board, appoint a Chief Executive Officer of the Council for a fixed contract period not exceeding five years, who may be eligible for reappointment for a further period not exceeding five years.

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

(3) The Chief Executive Officer may resign from office by giving three months’ notice in writing, to the Minister through the Board.

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

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

(b) has been found to be physically or mentally incapable of performing his duties efficiently by his 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 from office without reasonable excuse.

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

14. The Act is amended by substituting for section 15, the following new section —

“Duties of Chief Executive Officer

15. (1) 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 Council.

(2) Without prejudice to the generality of subsection (1), the Chief Executive Officer shall be responsible for —

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

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

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

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

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

Amendment of section 14 of the Act

Amendment of section 15 of the Act

- (f) all income and expenditure of the Council; and
- (g) all assets of the Council and the discharge of all the liabilities of the Council.

(3) The Chief Executive Officer may delegate, in writing, to any senior officer of the Council, the exercise of any powers which he is authorised to exercise under this Act.”.

Amendment of section 16 of the Act

15. The Act is amended by substituting for section 16, the following new section —

“Appointment of senior officers and other staff

16. (1) The Board shall, on the recommendation of the Chief Executive Officer, appoint the senior officers of the Council.

(2) The senior officers 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 Council, 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 Council.

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

Insertion of section 16A in the Act

16. The Act is amended by inserting immediately after section 16, the following new section —

“Appointment of Secretary of Board

16A. (1) The Board shall, on the recommendation of the Chief Executive Officer appoint a full time Secretary, who shall be suitably qualified and experienced.

(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, in the performance of his functions, be under the supervision of the Chief Executive Officer.

(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.”.

Insertion of Part IIIA in the Act

17. The Act is amended by inserting the following new Part immediately after section 16 —

“Part IIIA — Registration of examination centres and inspections

Registration of examination centres

16B. (1) The Council shall register and accredit examination centres for the entry and registration of candidates to be examined for purposes of this Act.

(2) The Minister may make regulations on the requirements for the registration and accreditation of examination centres.”.

18. The Act is amended by substituting for section 17 (1), the following new subsection (1) —

Amendment of section 17 of the Act

“(1) The Chief Executive Officer shall, in consultation with the Board designate such number of the staff as may be necessary to be authorised persons for purposes of inspecting premises for purposes of this Act.”.

19. The Act is amended by inserting immediately after section 17, the following new section —

Insertion of section 17A in the Act

“Ownership of examination papers or materials and associated scores

17A. (1) The Council shall be the sole proprietor of an examination paper or material, and the scores associated with the examination paper or material used in an examination under this Act.

(2) A person, other than a person duly authorised by the Council, shall not issue an examination paper or material, and the scores associated with the examination paper or material.

(3) A person who contravenes this section commits an offence and is liable to a fine not less than P200 000 but not exceeding P500 000 or to imprisonment for a term not exceeding 10 years, or to both.”.

20. The Act is amended by substituting for section 23, the following new section —

Amendment of section 23 of the Act

“Transitional provisions

23. (1) A member of the Council appointed before the coming into operation of this Act shall continue to hold office until the expiry of his appointment as specified in the member’s instrument of appointment.

(2) The person appointed as an Executive Secretary before the coming into operation of this Act shall hold office as the Chief Executive Officer until the expiry of his appointment as Executive Secretary specified in his instrument of appointment.

(3) The person described under subsection (2) shall be eligible for re-appointment as Chief Executive Officer in terms of section 14(1).

(4) A person employed as a member of staff of the Council before the coming into operation of this Act shall continue to hold office as such subject to the person’s terms and conditions as specified in the person’s instrument of appointment.

(5) The Minister may, by Order published in the *Gazette*, make such transitional arrangements as are necessary for the coming into operation of this Act.”.

21. The Act is amended by substituting for section 25, the following new section —

Amendment of section 25 of the Act

“Offences and penalties

25. A person who —

- (a) steals an examination paper or material;
- (b) receives an examination paper or material obtained under paragraph (a) and knowing the same to be stolen;
- (c) reveals the contents of an examination paper or 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) wilfully or maliciously damages an examination paper or material; 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 P200 000 but not exceeding P500 000 or to imprisonment for a term not exceeding 10 years, or to both.”.

Amendment of
section 26 of
the Act

22. Section 26 (2) of the Act is amended by adding, immediately after paragraph (h), the following new paragraph —

“(i) the requirements for designating staff as authorised officers for purposes of the Act.”.

PASSED by the National Assembly this 24th day of July, 2019.

BARBARA N. DITHAPO,
Clerk of the National Assembly.