

INTERPRETATION ACT, 1984

No. 20



of 1984

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An Act to provide for the interpretation of the Constitution and other enactments

Date of Assent: 12.7.84.

Date of Commencement: 20.7.84.

ENACTED by the Parliament of Botswana.

Short title.

Application.

1. This Act may be cited as the Interpretation Act, 1984.
2. Each provision of this Act applies to every enactment (whether enacted before, on or after the commencement of this Act) being —

- (a) the Constitution,
- (b) an Act (including this Act) of the Parliament of Botswana,
- (c) an instrument made (directly or indirectly) under an enactment,

except in so far as the contrary intention appears.

Contents and Operation of Enactments

Proof of
enactments.

3. (1) Every Act is a public document and shall be judicially noticed.

(2) Where the President assents to a Bill for an Act in accordance with the Constitution he shall sign four copies of the Bill and direct the custodian of the Public Seal to affix the Public Seal to each of those copies.

(3) Each of those copies shall be deemed to be an original copy of the Act and shall be conclusive evidence of the terms of the Act and of its number and the date of assent which shall be entered on the face of each copy.

(4) One of the original copies of the Act shall be retained by the President, one shall be deposited with the Speaker of the National Assembly, one with the Chief Justice and one in the Government Archives.

(5) A copy of the Gazette purporting to be printed by the Government Printer containing any enactment or any notice of any kind or a copy of any such enactment or notice purporting to be so printed or contained in any annual volume purporting to be so printed shall be accepted as evidence of the due making and terms of the enactment or notice and of the date of its commencement, if stated, without proof that any such copy was so printed, unless the contrary is proved.

4. (1) Every Act may be cited by its long title or short title or by the year in which it is enacted and its number among the Acts of that year or by the Chapter number given to it under the authority of an Act for the time being in force providing for the issue of a revised edition of the Laws of Botswana.

Citation of enactments.

(2) Every instrument made under an Act may be cited in such manner as the instrument provides or by the year in which it is made and the number assigned to it in the Statutory Instruments or Government Notices Series on its publication in the Gazette or, where the instrument is included in a revised edition of the Laws of Botswana referred to in subsection (1), by the Chapter number of the Act under which it was made and its first page number in that edition.

5. (1) A Bill shall become an Act on being assented to and signed by the President.

Commencement of enactments.

(2) Subject to subsections (3) and (4) an Act shall come into operation at the beginning of the day on which it is published in the Gazette.

(3) Where it is provided that an enactment or any provision thereof shall come or be deemed to have come into operation on some specified day (whether that day is named in the enactment or provision or is to be appointed in any particular manner) the enactment or provision shall come or be deemed to have come into operation at the beginning of that day.

(4) Where it is enacted in an Act that the Act shall come into operation on such day as may be appointed, different dates may be appointed (by the same or different instruments) for different

provisions of the Act and the Act or provisions shall come into operation at the beginning of the day on which the instrument is published in the Gazette.

(5) The date appearing on the copy of an enactment printed by the Government Printer and purporting to be the date on which the enactment commenced or was deemed to have commenced shall be evidence that such date was the date of its commencement, unless the contrary is proved.

Construction
of references
to sections
and other
divisions.

6. (1) A reference in an Act to a Part, section or Schedule is to the Part, section or Schedule of that Act, unless it is indicated that reference to some other Act is intended.

(2) A reference in an Act to a subsection, paragraph, subparagraph or other subdivision is to the subdivision of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.

(3) Subsections (1) and (2) shall apply with necessary modifications to instruments made under an Act.

(4) A reference in an enactment to any other enactment includes a reference to any instrument made under that other enactment.

Titles and
preambles.

7. (1) The long title and the preamble form part of an Act and are intended to assist in explaining the purport and object of the Act.

(2) The short title or citation of an enactment is intended for convenience of reference only and does not form part of the enactment.

Punctuation.

8. Punctuation in an enactment may be used as an aid to its construction.

Headings
and
marginal
notes.

9. An arrangement of sections or other divisions of an enactment placed at the front of an enactment, titles placed at the head or beginning of any division of an enactment and notes and references placed at the side of any provision are intended for convenience of reference only and do not form part of the enactment.

Descriptive
words.

10. Words in an enactment descriptive of another enactment are intended for convenience of reference only and shall not be used as an aid to the construction of the enactment to which they refer.

Amended,
substituted
and applied
enactments.

11. (1) A reference in an enactment to any enactment shall be construed as a reference to it as for the time being amended by any provision, including a provision contained in the enactment in which the reference is made or in a later enactment.

(2) Where an enactment is repealed and another enactment is substituted, by way of amendment, revision or consolidation, a reference to the repealed enactment shall be construed as a reference to the substituted enactment.

(3) Where an enactment applies another enactment, whether with or without modification, and the applied enactment is subsequently repealed it shall continue to apply according to the terms of the enactment which applies it, notwithstanding the repeal.

12 The repeal of an enactment which provides for a textual insertion in another enactment shall not affect the insertion and the text of the altered enactment shall continue to stand as altered notwithstanding the repeal.

Textual insertion not affected by repeal of amending enactment.

13. (1) The repeal of an enactment shall not —

- (a) revive anything not in force or existing at the time when the repeal takes effect; or
- (b) affect the previous operation of the enactment or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred thereunder; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed thereunder; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,

Effect of repeal or expiry.

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the enactment had not been repealed.

(2) When an enactment expires, lapses or otherwise ceases to have effect this section shall apply as if the enactment had then been repealed.

14. Where an enactment is repealed and another enactment is substituted, by way of amendment, revision or consolidation —

- (a) all authorities and persons established or acting under the repealed enactment shall continue to be established, or to be entitled to act, under the substituted enactment;
- (b) every bond and security given by a person appointed under the repealed enactment shall remain in force and all books, papers and things used under it shall continue to be used so far as consistent with the substituted enactment;
- (c) all proceedings taken under the repealed enactment shall be prosecuted and continued under and in conformity with the substituted enactment, so far as consistently may be;
- (d) any instrument made under any provision of the repealed enactment shall remain in force so far as it is

Effect of substituting enactment.

capable of being made under the substituted enactment and is not inconsistent therewith and shall be deemed to be made under the corresponding provision of the substituted enactment.

Construction of Powers and Duties

Statutory powers and duties.

15. (1) Where an enactment confers a power or imposes a duty the power may be exercised and the duty shall be performed from time to time as occasion requires.

(2) Where an enactment confers a power, or imposes a duty, to do any act or thing all such powers shall be deemed to be also given as are reasonably necessary to enable, or require, that act or thing to be done or are incidental to the doing thereof.

Instruments, resolutions and directions.

16. Where an enactment confers power to make an instrument, pass a resolution or give a direction, the power includes power, exercisable in like manner, to amend or revoke the instrument, resolution or direction.

Licences, authorisations and permits.

17. Where an enactment confers power to grant a licence, authorisation or permit, the power includes power to revoke, suspend or amend the licence, authorisation or permit.

Appointments to office.

18. (1) Where an enactment confers a power to appoint a person to an office, whether for a specified period or not, the power includes power, exercisable in the manner and subject to the limitations and conditions applicable to the power to appoint—

- (a) to remove or suspend him;
- (b) to exercise disciplinary control over him;
- (c) to reappoint or reinstate him; and
- (d) to appoint a deputy or other officer to act in his stead either generally or in regard to specified functions, during such time as the authority in whom the power of appointment to the office is vested considers expedient.

Exercise of powers before commencement date.

(2) A reference in an enactment to the holder of an office shall be construed as including a reference to any successor in that office and to a deputy or other officer for the time being authorised to act in that office, either, as the case may require, in respect of the functions of the office generally or the functions in regard to which he is so authorised.

19. Where an enactment which is not to come into force immediately on its passing or making confers powers —

- (a) to make instruments,
- (b) to hold elections,
- (c) to make appointments,
- (d) to publish documents or give notices,
- (e) to prescribe forms,
- (f) to give directions, or
- (g) to do any other act or thing,

then, for the purpose of giving full effect to the enactment from its commencement, the power may be exercised at any time after the passing or making of the enactment so, however, that no person shall take up office and no instrument shall come into force before the commencement of the enactment.

Procedure and Practice

20. (1) Where an enactment authorises or requires a document to be served on any person without directing it to be served in a particular manner the service of the document may be effected either —

- (a) by personal service; or
- (b) by post in accordance with subsection (2) of this section; or
- (c) by leaving it for him with some person apparently over the age of sixteen at his usual or last known place of abode or business; or
- (d) in the case of a corporate body or an unincorporated body of persons, by delivering it to the secretary or clerk of the body at the registered or principal office of the body or serving it by post in accordance with subsection (2) on the secretary or clerk at his office; or
- (e) if it is not practicable after reasonable inquiry to ascertain the name or address of an owner or occupier of, or person having a particular interest in, premises on whom the document should be served, by addressing the document to him by the description "owner" or "occupier" of, or by description of the particular interest in, the premises (naming them) to which the document relates, and by delivering it to some person apparently over the age of sixteen on the premises or, if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.

(2) Where an enactment authorises or requires a document to be served by post, whether the word "serve" or some other word is used, service may be effected by prepaying, registering and posting an envelope containing the document, addressed to the person on whom the document is to be served at his last known postal address; and, unless the contrary is proved, the document shall be deemed to have been served at the time at which the envelope would have been delivered in the ordinary course of post.

21. Where an enactment confers jurisdiction on a court or other tribunal or varies its jurisdiction the authority having power to make rules regulating the practice and procedure of that court or tribunal may make such rules as appear to the authority to be necessary or expedient for regulating the practice and

Service of documents.

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Construction of instruments.

procedure of the court or tribunal in the exercise of the jurisdiction.

22. Where by an enactment power is conferred to require evidence to be given on oath otherwise than in a court, the power includes power to administer an oath, or take an affidavit or statutory declaration.

23. Where a form is prescribed or specified by an enactment, deviations from the form not materially affecting the substance or calculated to mislead shall not invalidate the form used.

Rules of Construction

24. (1) For the purpose of ascertaining that which an enactment was made to correct and as an aid to the construction of the enactment a court may have regard to any text-book or other work of reference, to the report of any commission of inquiry into the state of the law, to any memorandum published by authority in reference to the enactment or to the Bill for the enactment, to any relevant international treaty, agreement or convention and to any papers laid before the National Assembly in reference to the enactment or to its subject-matter, but not to the debates in the Assembly.

(2) The aids to construction referred to in this section are in addition to any other accepted aid.

25. The Republic or Government shall not be bound by an enactment except by express terms or by necessary implication.

26. Every enactment shall be deemed remedial and for the public good and shall receive such fair and liberal construction as will best attain its object according to its true intent and spirit.

27. In the construction of an enactment, an interpretation which would render the enactment ineffective shall be disregarded in favour of an interpretation which will enable it to have effect.

28. An enactment shall be construed as always speaking and if anything is expressed in the present tense it shall be applied to the circumstances as they occur, so that effect may be given to the enactment according to its true intent and spirit.

29. (1) An Act or instrument shall be construed as a whole.

(2) Where provisions of an Act or instrument are inconsistent and the inconsistency cannot be resolved by construing the enactment as a whole, a provision which appears later in the enactment shall prevail over an earlier provision.

30. Where an enactment provides that it is to be construed as one with an earlier enactment, every part of each enactment shall be construed as if the two enactments were one.

31. (1) An instrument shall be construed subject to the Act under which it is made.

(2) Subject to subsection (1), the Act and the instrument shall be construed as one.

32. Where an enactment expresses a general rule in terms which are wide enough to relate to a particular case for which a special rule has been provided in an earlier enactment, the special rule, if not repealed by the later enactment, shall not be affected by it.

Effect of general on special rules.

33. Where an enactment qualifies a general expression by providing that it shall include a number of particular matters or things, any matter or thing which is not expressly included is by implication excluded from the meaning of the general expression.

General expressions qualified by particulars.

34. (1) Where an enactment lists two or more terms of a similar kind, followed by a term which in its literal sense has a meaning not limited to that kind, the latter term shall be construed to be so limited, by implication.

Similar and analogous terms.

(2) Where terms capable of analogous meanings are associated together in an enactment their respective meanings in the enactment shall be construed by reference to their association and may be limited accordingly.

Penal Provisions

35. The imposition of a penalty or fine by or under the authority of any enactment shall not, in the absence of provision to the contrary, relieve any person from liability to answer for damages to any person injured.

Imposition of penalty no bar to civil action.

36. Where an act constitutes an offence under two or more enactments or under an enactment and any customary law, the offender shall be liable to be prosecuted and punished under either or any of such enactments or under customary law, but shall not be liable to be punished twice for the same offence.

Offences under two or more laws.

37. (1) Where an act constitutes an offence and the penalty, forfeiture or punishment for the offence is altered between the time of the offence and conviction thereof, the offender shall, in the absence of provision to the contrary, be liable to the penalty, forfeiture or punishment prescribed at the time of the commission of the offence.

Alterations of penalties.

(2) Where, however, the penalty, forfeiture or punishment is reduced or mitigated by the amending enactment, the penalty, forfeiture or punishment, if imposed or adjudged after the amendment, shall be reduced or mitigated accordingly.

38. (1) Where in any enactment a penalty is prescribed for an offence, the penalty shall, in the absence of any provision to the contrary, be deemed to be a maximum and not a fixed penalty.

Maximum and cumulative penalties.

(2) Where in any enactment a term of imprisonment and a fine are prescribed, the penalties may, in the absence of any provision to the contrary, be read as permitting the imposition of one or other or both penalties.

39. (1) Where by or under any enactment any animal or thing is declared, or is adjudged by any court or other authority, to be forfeited, it shall, in the absence of provision to the contrary, be

Disposal of forfeits, fines and penalties.

forfeited to the Government, and the net proceeds thereof, if it is sold, shall be paid into the Consolidated Fund.

(2) Any fine or forfeit imposed by or under the authority of any enactment shall, in the absence of provision to the contrary, be paid into the Consolidated Fund.

(3) Nothing in this section shall affect any provision in any enactment whereby any portion of any fine or penalty or forfeit or the proceeds of any forfeit is expressed to be recoverable by any person or may be granted by any court or authority to any person.

Interpretation of Terms

Time.

40. (1) References in an enactment to time are to Botswana standard time, that is, two hours in advance of Greenwich mean time.

(2) Where in an enactment a period of time is expressed to begin on a particular day, that day shall be included in the period.

(3) Where in an enactment a period of time is expressed to be reckoned from, or after, a particular day, that day shall not be included in the period.

(4) Where in an enactment a period of time is expressed to end on, or be reckoned to a particular day, that day shall be included in the period.

(5) Where the time limited by an enactment for the doing of anything expires on a Sunday or public holiday, the time so limited shall extend to and the thing may be done on the first following day that is not a Sunday or a public holiday.

(6) Where in an enactment anything is required or allowed to be done within a number of days not exceeding six, a day that is a Sunday or public holiday shall not be reckoned in computing that number.

(7) Subsections (2) to (6) apply in relation to a period expressed in days whether or not the number of days is expressed to be clear days.

(8) Where in an enactment anything is required to be done on a particular day, then, if that day happens to fall on a Sunday or public holiday, the thing shall be considered as duly done if it is done on the first following day that is not a Sunday or public holiday.

Reckoning of periods of time by the calendar month and year.

41. (1) In an enactment "month" means a calendar month, that is to say, a month reckoned according to the calendar.

(2) If the period indicated in the enactment begins on any date other than the first day of any of the twelve months of the calendar it is to be reckoned from the date on which it is to begin to the date in the next month numerically corresponding, less one, or, if there is no corresponding date, to the last day of that month.

For example: a month beginning on 15th January ends on 14th February; a month beginning on 31st January ends on 28th February (or 29th February in a leap year).

(3) If the indicated period is one of two, three or more months, it is to be reckoned from the date on which it is to begin to the date numerically corresponding, less one, in the second, third or other successive month thereafter or, if there is no such corresponding date, to the last day of the latter month.

For example: a period of six months beginning on 15th August ends on 14th February; a period of six months beginning on 30th or 31st August ends on 28th February (or 29th February in a leap year).

(4) In an enactment "year" means a period of twelve months.

42. In the measurement of distance for the purpose of an enactment, the distance shall be measured in a straight line on a horizontal plane and may be determined by reference to the most recent edition of a government survey map available at the time of determination unless that distance is proved incorrect as to the particular distance which is to be determined.

Distance.

43. For the purpose of an enactment a person shall be regarded as having attained a given age at the beginning of the day on which the anniversary of his birth occurs.

Age.

44. (1) In an enactment words importing the male sex include the female sex and words importing the female sex include males.

Gender and number

(2) Where an enactment employs the term "person" or "party", the use of a pronoun importing gender shall not of itself be construed as limiting the term to a natural person.

(3) In an enactment —

- (a) words in the singular include the plural, and
- (b) words in the plural include the singular.

45. In an enactment "shall" shall be construed as imperative and "may" as permissive and empowering.

"Shall" and "may"

46. Where a word is defined in an enactment other parts of speech and grammatical variations of that word have corresponding meanings.

Corresponding parts of speech.

47. Where a consecutive series of provisions of an enactment is described by reference to the first and last in the series, the description shall be read as including such first and last provisions.

Reference to series of provisions.

48. In an enactment a name commonly applied to a country, place, public department, body, corporation, society, authority, officer, functionary, or other person or thing whatsoever means that to whom or to which the name is commonly applied, notwithstanding that it is not the formal name or that it is abbreviated.

Names commonly used.

49. In an enactment —

Definitions.

"Act" or "Act of Parliament" means an Act of the Parliament of Botswana or any law of an authority formerly exercising authority to make laws for the territory or any part of the territory comprised in Botswana;

“this Act” includes any enactment made and in force under the Act in which the expression occurs;

“act” includes an omission and references to the doing of an act shall be construed accordingly;

“administrative officer” means a District Commissioner, a Senior District Officer, a District Officer or an Assistant District Officer;

“Botswana” in relation to any occurrence, matter or thing prior to the 30th September, 1966, means the territory comprising the Bechuanaland Protectorate;

“Chief” means a Chief of one of the tribes and includes the regent thereof, and any person appointed as “tribal authority” in accordance with any enactment relating to chieftainship;

“Christian name” includes any forename;

“commencement” in relation to an enactment means the date on which the enactment comes or came into operation;

“consular officer” includes a consul-general, consul, vice-consul, pro-consul, consular agent, or any person for the time being authorized to discharge the duties of consul-general, consul, vice-consul, pro-consul or consular agent;

“contravene” in relation to any requirement or condition prescribed in any enactment or in any grant, permit, lease, licence or other authority under or by virtue of any enactment, includes a failure to comply with that requirement or condition;

“court” means a court of competent jurisdiction;

“enactment” means an Act or a statutory instrument or any provision of an Act or statutory instrument;

“evidence”, unless expressed to be conclusive, means evidence until the contrary is proved;

“export” means to take or cause to be taken out of Botswana by any means whatsoever;

“financial year” or “fiscal year”, in connection with any matters relating to the Consolidated Fund or money provided by Parliament or to public finance, means any period of twelve months ending on the 31st March;

“functions” includes powers and duties;

“Gazette” means the Botswana Government Gazette and includes any Government Gazette Extraordinary, any supplement to the Gazette and any matter referred to in the Gazette as being published with the Gazette;

“Government Notice” (or its abbreviated form “G.N.”) means any notice published as such in the Gazette;

“Government Printer” means the Government Printer of Botswana and any other printer authorized by or on behalf of the Government to print any enactment or any other document of the Government;

“herein” used in any provision of an enactment shall be understood to relate to the whole enactment and not to that provision only;

“immovable property” means land, whether covered by water or not, and includes any estate, right, interest or servitude on or over any land, and things attached to land or permanently fastened to anything attached to land;

“import” means to bring or cause to be brought into Botswana by any means whatsoever;

“individual” means a natural person and does not include a corporation;

“judge” means a judge of the High Court;

“Justice of Appeal” means a judge of the Court of Appeal;

“land” includes water;

“local authority” means a town council, a township authority or a district council;

“midnight”, in reference to a day, means the point of time at which that day ends;

“Minister”, means a Minister of the Government and includes the President and the Vice-President;

“the Minister” means the Minister for the time being responsible for the matter in question;

“minor” means a person who has not attained the age of 21 years;

“month” has the meaning assigned to it under section 41;

“oath”, “swear” or “affidavit” includes and applies to the affirmation or declaration of any person allowed by law to make an affirmation or declaration instead of an oath;

“occupy” includes use, inhabit, be in possession of or enjoy the premises in respect whereof the word is used, otherwise than as a mere servant or for the purpose of the care, custody or charge thereof;

“offence” means any contravention of, breach of, or failure to comply with any enactment for which a penalty is provided;

“official languages” means Setswana and English;

“Permanent Secretary” means the holder of the public office of that designation responsible, subject to the directions and control of the Minister, for the supervision of a Ministry, and includes the Secretary to the Cabinet, the Secretary for External Affairs and the Administrative Secretary in the Office of the President;

“the Permanent Secretary” means the Permanent Secretary of the Ministry responsible for the matter in question;

“person” includes a body corporate and an unincorporated body as well as an individual;

“power” includes any privilege, authority or discretion;

“prescribed” means prescribed by or under the enactment in which the word occurs;

“property” includes money and every description of property, whether movable or immovable, animate or inanimate; and also obligations and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property;

“public” includes any class of the public;

“public holiday” means any day which is a public holiday by virtue of the Public Holidays Act;

Cap. 03:07

“public office” or “public officer” and “public service” have the same meanings as in the Constitution;

“public place” or “public premises” includes any public way, and any building, place or conveyance to which, for the time being, the public are entitled or permitted to have access, either without any condition or upon condition of making payment, and any building, place or conveyance which is for the time being used for any public or religious meeting or assembly or as an open court;

“Public Seal” means the Public Seal of the Republic of Botswana;

“repeal” includes revoke;

“road” or “street” includes any highway, street, road, bridge, square, court, alley, lane, footway, bridle-path, parade, thoroughfare, passage or open space to which the public are entitled or permitted to have access, whether on payment or otherwise;

“rule” includes rule of court, bye-law or regulation;

“sell” includes barter, exchange, offer to sell or expose for sale;

“sign” or “signature” with reference to a person who is unable to write his name, includes mark or thumbprint;

“statutory declaration”, if made —

Cap. 05:01
Cap. 05:03

(a) in Botswana, means a declaration made under section 5 of the Justice of the Peace Act or under section 4 of the Commissioner of Oaths Act; or

(b) in any other country means a declaration made before a member of the Diplomatic Branch of the Botswana Foreign Service attached to a Botswana Embassy or High Commission in such country, or a declaration made in the Commonwealth elsewhere than in Botswana, before a justice of the peace, notary public, commissioner for oaths or other person having authority therein under any enactment for the time being in force to take or receive a declaration;

“statutory instrument” means any proclamation, regulation, rule, rule of court, order, bye-law or other instrument made, directly or indirectly, under any enactment and having legislative effect;

“subsidiary legislation” has the same meaning as statutory instrument;

“traditional authority” means a Chief, deputy chief, sub-chief, Chief's representative or headman appointed or recognized as such in accordance with the Chieftainship Act;

Cap. 41:01

“vessel” includes any ship, boat or other floating craft used for transport by water;

“will” includes a codicil and every writing making a valid voluntary, posthumous disposition of property;

“word” includes abbreviations, figures, punctuation marks, parentheses and typographical, monetary and mathematical symbols;

“writing” and expressions referring to writing include printing, photography, lithography, typewriting and any other modes of representing or reproducing words in visible form;

“written law” includes the Constitution, Acts and statutory instruments;

“year” has the meaning assigned to it by section 41.

50. Parts I, II, V, VI (except sections 48 and 49) and VII (except section 59) of the Interpretation and General Provisions Act are hereby repealed.

Repeals.
Cap. 01:02

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

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