

THE LAWS OF BOTSWANA

PRINCIPAL LEGISLATION

CHAPTER 01:05 STATUTORY INSTRUMENTS ARRANGEMENT OF SECTIONS

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Act 21, 1984,
Act 2, 2006.

An Act to provide for the making, publication and operation of subsidiary legislation and for matters connected therewith.

[Date of Commencement: 20th July, 1984]

1. Short title

This Act may be cited as the Statutory Instruments Act.

2. Application of Act

This Act applies to each of the following instruments (in this Act referred to as a "statutory instrument") namely, any proclamation, regulation, rule, rule of court, order, bye-law or other instrument made, directly or indirectly, under any enactment and having legislative effect.

3. Publication of instruments

(1) Subject to subsection (2), every statutory instrument shall be published in the *Gazette* in the Statutory Instruments Series and there shall be assigned to it a serial number as of the year in which it is made which shall be printed on the face of the instrument in the following form: Statutory Instrument No. (number) of (year).

(2) The Attorney-General may, by direction in writing, exempt a particular statutory instrument, or class of such instrument, from publication in the *Gazette* by reason of its merely local, limited or temporary application or for any other reason and may, by such direction, prescribe some other form of publication.

(3) If a question arises as to whether instruments under any provision of an enactment are statutory instruments the Attorney-General may, by certificate in writing, decide the matter.

(4) Every direction under subsection (2) and every certificate under subsection (3) shall be published in the *Gazette*.

(5) Evidence of any such direction or certificate may be given by the production of a copy of the *Gazette* purporting to contain the direction or certificate.

4. Commencement of instrument

(1) A statutory instrument shall come into operation on the date specified in that behalf in the instrument or, if no date is so specified, then, subject to subsection (2), it shall come into

operation-

- (a) on the date of its publication in the *Gazette* or elsewhere as may be prescribed under section 3(2);
- (b) in any other case, on the date on which it is made.

(2) If an instrument is made after the passing or making but before the coming into operation of the enactment under which it is made, the instrument, whether or not it is previously published, shall not come into operation before the date on which the enactment comes into operation.

(3) A statutory instrument may be made to operate retrospectively to any date not being earlier than the commencement of the enactment under which it is made but no person shall be liable to a penalty in respect of any contravention of a provision in an instrument required to be published in the *Gazette* where the alleged contravention occurred before such publication unless the court is satisfied that before the alleged contravention the purport of the instrument had been brought to that person's notice.

5. Exercise of powers

(1) Where any statutory instrument or appointment or any other thing purports to be made or done in exercise of a particular power, it shall be deemed also to be made or done in exercise of all powers thereunto enabling.

(2) A statutory instrument shall not be inconsistent with the provisions of the enactment under which it was made, or of any Act, and any such instrument shall be void to the extent of the inconsistency.

(3) Where an enactment confers a power to make an instrument it shall be deemed also to include a power exercisable in the like manner and subject to the like conditions (if any) to amend, repeal or replace any such instrument.

(4) Where by any enactment power is conferred on any person to make a statutory instrument or to do anything for any general purpose, and also for any special purposes incidental thereto, the enumeration of the special purposes shall not derogate from the generality of the general purpose.

6. Penalties There may be included in a statutory instrument a provision whereby a person contravening any provision of the instrument shall be liable to a prescribed penalty being a fine not exceeding P5, 000 or a term of imprisonment not exceeding six months, or both.

7. Fees and charges

(1) A statutory instrument may provide for the imposition of fees and charges in respect of any matter with regard to which provision is made in the instrument or in the enactment under which the instrument is made.

(2) A power to impose fees or charges shall include power to provide for all or any of the following matters-

- (a) specific fees or charges;
- (b) maximum fees or charges;
- (c) minimum fees or charges;
- (d) *ad valorem* fees or charges;
- (e) the payment of fees or charges either generally or under specified conditions or in specified circumstances; and
- (f) the reduction, waiver or refund, in whole or in part, of any fees or charges, either upon the happening of a certain event or in the discretion of a specified person.

(3) Where any reduction, waiver or refund, in whole or in part, of any fee or charge is provided for, such reduction, waiver or refund may be expressed to apply or to be applicable either generally or specifically-

- (a) in respect of certain matters or transactions or classes of matters or transactions;
- (b) in respect of certain documents or classes of documents;
- (c) when any event happens or ceases to happen;

- (d) in respect of certain persons or classes of persons; or
- (e) in respect of any combination of such matters, transactions, documents, events or persons,

and may be expressed to apply or to be applicable subject to such conditions as may be specified in the instrument or in the discretion of any person specified therein.

8. Forms

(1) Where an enactment confers power on any person to prescribe any form, then unless that person prescribes such form, any form approved for the purpose by that person may be used.

(2) Where any form has been prescribed by or under any enactment, a document or instrument which purports to be in such form shall not be void by reason of any deviation therefrom which does not affect the substance thereof or which is not calculated to mislead.

9. Laying of certain instruments before the National Assembly

(1) All statutory instruments shall be laid before the National Assembly as soon as may be after they are made, and, if a resolution is passed within the next subsequent 21 days on which the National Assembly has sat after any such instrument is laid before it that the instrument be annulled, it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder, or to the making of any new statutory instrument.

(2) This section does not apply to rules of court.