

CHAPTER 65:02
BUILDING CONTROL
ARRANGEMENT OF SECTIONS

SECTION

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Law 7, 1962,
L.N. 84, 1966,
S.I. 12, 1977.

An Act to authorize the making of building regulations and to provide for matters incidental thereto.

[Date of Commencement: 29th May, 1962]

1. Short title

This Act may be cited as the Building Control Act.

2. Interpretation

(1) In this Act, unless the context otherwise requires-

"building regulations" means regulations made under section 4;

"commercial building" means a shop, warehouse, factory or hotel;

"plans" includes sections, elevations and specifications;

"the construction of buildings" means-

(a) the erection of new buildings; and

(b) the re-erection, adding to, altering and conversion of buildings, and the covering of open spaces between walls and buildings.

(2) All or any of the powers and duties conferred or imposed on a local authority under this Act or regulations made thereunder may, subject to the local authority's control, be exercised and performed by the officers, servants and agents thereof (including any officers of the public service of Botswana acting as officers or agents thereof), and all references in this Act and the regulations to a local authority shall be construed accordingly.

3. Establishment of Building Regulations Board

(1) The Minister shall, by order published in the *Gazette*, establish a Board to be known as the Building Regulations Board which shall consist of a Chairman and such other persons not exceeding six in number as the Minister may from time to time appoint; and he shall appoint a member of the public service to be Secretary to the Board.

(2) No member of the Board shall adjudicate upon any matter in which he is directly or indirectly financially interested.

(3) The Chairman and any two other members of the Board shall form a quorum at meetings of the Board.

(4) Decisions of the Board shall be determined by voting, each member other than the Chairman having one vote and the Chairman having a deliberative and a casting vote.

4. Building regulations

(1) The Minister may, by statutory instrument, make regulations for regulating all or any of the following matters-

- (a) the construction of buildings, and the materials to be used in the construction of buildings;
- (b) the lighting and ventilation of buildings, and the dimensions of rooms intended for human habitation;
- (c) the height of buildings; the height of chimneys, not being separate buildings, above the roof of the buildings of which they form part;
- (d) sanitary conveniences in connection with buildings; the drainage of buildings, including the means for conveying refuse water and water from roofs and from yards appurtenant to buildings; cesspools and other means for the reception or disposal of foul matter in connection with buildings;
- (e) ashpits in connection with buildings;
- (f) wells, tanks and cisterns for the supply of water for human consumption in connection with buildings;
- (g) stoves and other fittings in buildings (not being electric stoves or fittings), in so far as regulations with respect to such matters are required for the prevention of fire; and
- (h) private sewers; communications between drains and sewers and between sewers.

(2) Regulations made under this section may-

- (a) include provisions as to the giving of notices and the deposit of plans;
- (b) include provisions as to the inspection of work; the testing of drains and sewers, and the taking by the local authority of samples of materials to be used in the construction of buildings, or in the execution of other works; and
- (c) prescribe anything which under this Act requires to be prescribed.

(3) Any provision contained in building regulations may be made so as to apply in any township, any part of a township or any area outside a township specified in the regulations, and the regulations may make different provisions in respect of different townships, parts of a township or areas:

Provided that no building regulations shall be made to apply to any area outside a township except in respect of commercial buildings having or to have a floor area exceeding 232 square metres or having or to have more than one storey.

(4) The building regulations may provide that any person who contravenes any provision thereof or who fails to comply with any order, requirement or condition lawfully issued to or imposed on him by virtue of any regulation and with which it is his duty to comply shall be guilty of an offence.

(5) The regulations shall specify what penalty may be imposed for each offence thereby created and may also provide different penalties in the case of successive or continuous offences but no such penalty shall exceed a fine of P200 and imprisonment for six months.

5. Passing or rejection of plans

(1) Where plans of any proposed work are, in accordance with the building regulations, deposited with a local authority, the local authority shall pass the plans unless they are either defective, or show that the proposed work would contravene any of the building regulations or any other written law, and, if the plans are defective or show that the proposed work would contravene any of the building regulations or any other written law, the local authority shall reject the plans.

(2) When plans are passed or rejected in terms of this section, the local authority shall give notice thereof to the person by whom or on whose behalf the plans were deposited, and if the plans have been rejected the notice shall specify the defects on account of which, or the regulation or section of any other written law the contravention of which, the plans have been rejected.

6. Appeal to the Building Regulations Board

Where plans of any proposed work have, in accordance with building regulations, been deposited with a local authority and the local authority has rejected these plans, if the person by whom or on whose behalf the plans were deposited is aggrieved by such rejection he may, on payment of the prescribed fee, appeal in writing to the Building Regulations Board whose decision shall be final:

Provided that no such appeal shall be entertained unless it is made before the proposed work has been substantially commenced.

7. Deposit may be declared to be of no effect after three years

Where plans of any proposed work have, in accordance with building regulations, been deposited with a local authority, and the plans have been passed by the local authority, but the work to which the plans relate has not been commenced within three years of the deposit of the plans, the local authority may, at any time before the work is commenced, by notice to the person by whom or on whose behalf the plans were deposited and the owner for the time being of the land to which the plans relate, declare that the deposit of the plans shall be of no effect, and when such a notice is given, this Act and the building regulations shall as respects the proposed work have effect as if no plans had been deposited.

8. Power to require removal or alteration of work not in conformity with building regulations

(1) If any work to which building regulations are applicable contravenes any of those regulations, the local authority may by notice require the owner either to pull down or remove the work or, if he so elects, to effect such alterations therein as may be necessary to make it comply with the regulations.

(2) Any person to whom a notice has been given under subsection (1) who is aggrieved by such notice may, on payment of the prescribed fee, appeal to the Building Regulations Board whose decision shall be final.

(3) If a person to whom a notice has been given under subsection (1) fails to comply with the notice-

- (a) within 30 days of the receipt of that notice; or
- (b) if within those 30 days that person has appealed to the Building Regulations Board, within 30 days after that person receives notice of a decision by the Building Regulations Board upholding the notice,

the local authority may pull down or remove the work in question, or effect such alterations therein as it deems necessary, and may recover from him the expenses reasonably incurred by it in so doing.

(4) No such notice as is mentioned in subsection (1) shall be given after the expiration of 12 months from the date of the completion of the work in question, and, in any case where the plans were deposited, it shall not be open to the local authority to give such a notice on the ground that the work contravenes any building regulation if the plans were passed by the local authority and the work has been executed in accordance with the plans.

9. Relaxation of building regulations in special cases

(1) Where the Minister, on an application made in accordance with the provisions of this section, considers that the operation of any requirement in building regulations would be unreasonable in relation to the particular case to which the application relates, he may, after consultation with the local authority and Building Regulations Board, and subject to subsection (4), give a direction dispensing with or relaxing that requirement.

(2) If building regulations so provide as regards any requirement contained in the regulations, the power to dispense with or relax that requirement under subsection (1) shall be exercisable by the local authority (instead of by the Minister after consultation with the local authority and Building Regulations Board).

(3) An application under this section shall be in such form and shall contain such particulars as may be prescribed and shall be made to the local authority.

(4) The local authority shall give notice of the application in such manner and to such persons, if any, as the Minister may direct and, except where the power of giving the direction is exercisable by the local authority, shall transmit the application to the Minister and give notice to the applicant that it has been so transmitted.

(5) Where, in terms of subsection (4), notice is given of an application made under this section, the Minister or local authority, as the case may be, shall not exercise the power to dispense with or relax the requirement to which the application relates before the expiration of one month from the giving of the notice and shall, before exercising such power, take into consideration any objection which may have been received thereby.