

**CHAPTER 69:04  
PUBLIC ROADS**

ARRANGEMENT OF SECTIONS

SECTION

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Proc. 48, 1907,  
Proc. 50, 1924,  
Cap. 142, 1948,  
Cap. 169, 1959,  
Law 11, 1961,  
HMC Order 1, 1963,  
L.N. 84, 1966,  
Act 60, 1969,  
S.I. 12, 1977.

**An Act to provide for the establishment and proclamation of public roads and ways or roads of necessity for the closing and diversion thereof and for the fencing of lands through which roads may pass.**

[Date of Commencement: 21st December, 1907]

**1. Short title**

This Act may be cited as the Public Roads Act.

**2. Establishment of public roads**

(1) The Minister may from time to time and at any time establish and declare public roads on, to or over any land situated within Botswana by order published in three successive issues of the *Gazette*.

(2) The order shall define the general course, situation and width of the road or roads included therein either by reference to an existing road or roads, or in the case of a new road by describing in general terms the course thereof.

(3) Any such order may be revoked, altered or varied as the Minister thinks fit.

**3. Compensation payable if improved land damaged**

If any road established and declared by the Minister under the provisions of this Act passes over any land improved by cultivation, irrigation or otherwise and causes any actual

damage thereto, compensation shall be payable to the person or persons suffering such damage, the amount thereof to be determined by the Minister in his sole discretion.

#### **4. Ways of necessity**

If at any time it appears to the Minister upon the petition of any adjacent or neighbouring owner or occupier, that such owner or occupier requires a way or road of necessity on to or over any land situated in Botswana the Minister may, by order published in the *Gazette*, grant such way or road of necessity, and determine the direction and width thereof:

Provided that compensation for the right-of-way, and any damage done shall be paid by the person or persons for whose benefit, and upon whose application the said road is made, the amount thereof to be determined by the Minister in his sole discretion.

#### **5. Closing and diverting of public roads by Minister**

The Minister may, by order published twice in the *Gazette*, declare that any road or part of any road shall cease to be a public road, and such road or part of a road, as the case may be, shall thereupon cease to be such road accordingly; or declare that any public road shall be diverted or closed at such time as shall be specified in that behalf in any such order, and such road shall thereupon be so diverted or closed, as the case may be, accordingly:

Provided that the right of the public to travel along any public road or part thereof which has ceased to be such road shall continue until such road or part thereof has been diverted or closed.

#### **6. Closing and diverting of public roads on application of owner affected**

(1) The owner or owners of any land in Botswana, or any person authorized thereto by any such owner or owners may make application to the Minister to declare that any public road which passes over the property of such owner or owners shall be closed or diverted.

(2) Notice of the intention to apply for the closing or diverting of any public road shall be posted for general information at some conspicuous place outside the office of the District Commissioner of the district in which the property is situated, and published in the *Gazette* once in each month for a period of three months, and once a week during six weeks in some newspaper published within the district, or if there be none such in some newspaper circulating within the district.

(3) Such notice shall in some part thereof clearly describe the road sought to be closed or diverted, and the situation thereof, and shall call upon any person objecting thereto to file his objection in writing at the office of the Minister within one month after the date of latest publication of such notice in the *Gazette*.

(4) The Minister may, after the expiration of such period of one month, by order published in the *Gazette* close or divert such road in the manner provided in section 5 with or without such modification or alterations as he thinks fit or may refuse such application.

#### **7. Regulations**

(1) The Minister may, by statutory instrument make regulations-

- (a) prescribing the circumstances and conditions under which fences or other obstructions may encroach on public roads; and
- (b) prohibiting the causing of damage to fences and obstructions lawfully encroaching on public roads.

(2) The regulations may provide for the punishment by means of a fine not exceeding P200, or by imprisonment for a term not exceeding 12 months, or both, of any person guilty of an offence against the regulations.

#### **8. Penalties for unauthorized opening of gates and for damage done to same**

(1) Any person, other than the owner or occupier of land over which a public road passes or a person duly authorized by such owner or occupier, who opens or unfastens any swing gate erected on such public road where it passes over such land except for the purpose of then and there passing through the same with or without any vehicle or animals in his care, or of enabling some other person or persons so to pass, or who passes through any such gate,

and fails or neglects forthwith after so passing through the same to close and fasten such gate, or cause it to be so closed and fastened shall be guilty of an offence and be liable to a fine not exceeding P10, or in default of payment thereof to imprisonment for any period not exceeding 30 days unless such fine be sooner paid.

(2) Any person who damages or destroys such gate, whether in passing through or otherwise, shall forthwith make the same good, and in case of failure or neglect shall be liable to a fine not exceeding P20, or in default of payment thereof to imprisonment for a term not exceeding two months.

#### **9. Width of public roads, what shall be considered public roads**

The Minister may by order published in three successive issues of the *Gazette* specify what shall be the width of every public road within Botswana for the use of wheeled vehicles, and also the width to be allowed on each side of such roads for the purpose of removing stock in cases where such roads are not enclosed; and for the purpose of this Act every road over which a right-of-way exists in favour of some person or persons other than the owner or occupier of the land on which such road is situate, shall be taken to be a public road.

#### **10. Removal of encroachments on public roads**

Within a reasonable time after such order has been published in the *Gazette*, the District Commissioner of any district in Botswana shall, if necessary, remove or cause to be removed, all unlawful fences or obstructions which shall in any way encroach upon the roads of which the width has been defined as hereinbefore provided for.

#### **11. Penalties for encroachments on public roads**

Any person who unlawfully erects any fence or raises any obstruction which encroaches upon the width of any road as defined under the provisions of this Act shall be called upon immediately to remove the same, and in case of his neglect to do so such fence or other obstruction shall be removed by the District Commissioner or any person duly authorized by him at the expense of such person.

#### **12. Penalty for damage to public roads**

If any person maliciously destroys or wilfully obstructs or in any way does damage to any public road he shall be guilty of an offence and liable to a fine not exceeding P6 or in default of payment thereof to imprisonment for a term not exceeding 30 days for every such offence, and shall also make full satisfaction for the damage that may have been done thereby.

#### **13. Extent of application**

(1) Sections 14 and 15 shall be of force and effect within those portions of Botswana which are known as the farm Panyane or Ramatlabama's Kuil, the farm Hildavale, the farm Crocodile Pools, the farm Forest Hill, the farm Traquair, the Lobatse Block, the Gaborone Block, the Gaborone State Reserve and the Tati District, excepting such portions thereof as are assigned to or specifically set apart for the occupation of tribesmen.

(2) The Minister may, by order published in the *Gazette* specify other areas within Botswana to which the provisions of sections 14 and 15 shall apply, and the said provisions shall apply accordingly within such areas from the date of the respective orders.

#### **14. Ban on sleds, etc., on public roads**

It shall not be lawful to draw or trail any sledge, timber or other heavy material upon any public road declared in terms of section 2.

#### **15. Offences and penalties**

Any person contravening the provisions of section 14 shall be guilty of an offence and liable to a fine not exceeding P20 or to imprisonment for a term not exceeding two months, or to both.

#### **16. Powers of entry**

The Permanent Secretary or any person generally or specially deputed in writing by him may, for the purpose of investigating and planning the establishment and declaration of public roads-

- (a) enter upon any land with such assistants or servants, animals, vehicles, appliances and instruments as are necessary for or incidental to the performance of those duties;
- (b) place or erect any permanent beacon, bench mark, reference mark or trigonometrical station, or any temporary flag, signal or other mark upon such land;
- (c) make use of any natural material upon which no work has been expended and, except within a township, village or settlement, of any water, whether conserved or not, found upon or in such land;
- (d) cut any vegetation growing wild in the vicinity of any such beacon, mark, trigonometrical station, flag or signal, for the purpose of enabling observations to be made thereto or therefrom;
- (e) inspect natural materials on which no work has been expended and remove samples thereof in reasonable quantities for soil survey purposes; and
- (f) enter at all reasonable hours any building or enclosed place:  
Provided that-
  - (i) no person shall enter upon any land or into any building or enclosed place thereon (except with the consent of the owner or occupier thereof) without previously giving such owner or occupier at least seven days' notice of his intention to do so;
  - (ii) reasonable notice of the intention to exercise any of the other powers conferred by this section shall be given to the owner or occupier of the land;
  - (iii) as little damage and inconvenience as possible shall be caused by the exercise of any of the powers conferred by this section.

**17. Disputes as to compensation or interest or right of claimants**

As soon as conveniently may be after any entry upon land made under section 16 the Minister shall pay compensation for all damage done and for any property or thing taken, used, consumed or removed on or from such land in pursuance of section 16, and in case of dispute as to the interest in or right over any such land, property or thing of any person claiming compensation or as to the amount, if any, to be paid, the Minister or the person claiming compensation may refer such dispute to a Magistrate's Court Grade I or over whose decision shall be subject to an appeal to the High Court:

Provided that if the amount of compensation claimed exceeds the jurisdiction of the said Magistrate's Court the dispute may be referred only to the High Court.

**18. Disputes as to legality of entry or taking possession**

If any person holding or claiming any interest in or right over land entered upon or any property or thing taken possession of in purported pursuance of section 16 disputes the legality of such entry or taking possession, he may apply to the High Court to determine the question.

**19. Delay in payment of compensation**

Any person aggrieved by any delay in the payment of compensation due to him under section 17 may apply to the High Court for the purpose of obtaining prompt payment thereof.