

THE TRADING (AMENDMENT) ACT, 1969

No. 55



of 1969

AN ACT TO AMEND THE TRADING ACT, 1966

Date of Assent: 30.12.69.

Date of Commencement: 6.1.70.

ENACTED by the Parliament of Botswana.

Short Title

1. This Act may be cited as the Trading (Amendment) Act, 1969.

Amendment of section 2 of Act No. 6 of 1966

2. Section 2 of the Trading Act, 1966, hereinafter referred to as the principal Act, is amended by the deletion of the definition of "local authority" appearing in subsection (1) thereof and by the substitution therefor of a new definition as follows —

“local authority” subject to the provisions of subsection (2), means in relation to any area (other than an area for which the national licensing authority is the licensing authority by virtue of the provisions of section 4(2) (b) or (c)) the Town Council, Township Authority or District Council having jurisdiction therein and, in the case of a Town or District Council, includes a committee exercising the functions of a local authority under the provisions of subsection (3):”.

Insertion of new section 2A in Act No. 6 of 1966

3. The principal Act is amended by the insertion therein immediately after section 2 thereof of a new section as follows—

“Townships

2A. The Minister may in respect of any place declared to be a township in accordance with the provisions of section 1 of the Townships Proclamation (Chapter 120) declare that the licensing authority therefor shall be the national licensing authority.”

Amendment of section 4 of Act No. 6 of 1966

4. Section 4 of the principal Act is amended by the deletion of subsection (2) thereof and by the substitution therefor of a new subsection as follows —

“ (2) Notwithstanding the provisions of subsection (1) the national licensing authority shall be the licensing authority in respect of —

- (a) any area declared to be a Precious Stone Security Area or a Precious Stone Protection Area in accordance with the provisions of Part IV of the Precious Stones Industry (Protection) Act, 1969;
- (b) any mining area as defined in the Mines and Minerals Act, 1967; and
- (c) any township declared by the Minister under the provisions of section 2A to be a township for which the national licensing authority shall be the licensing authority.”

Repeal and replacement of section 6 of Act No. 6 of 1966

5. The principal Act is amended by the repeal of section 6 thereof and by the replacement thereof with two new sections as follows —

“Period of Licences

6. Subject to the provisions of section 6A and except as otherwise provided in the First Schedule every licence issued under this Act shall be an annual licence and shall expire as provided in section 13.

Temporary Licences

6A. (1) No licence other than a temporary licence shall be issued in respect of a mining area or a township for which the national licensing authority is the licensing authority by virtue of the provisions of section 4(2) (b) or (c).

(2) A temporary licence shall be valid for a period of six months from the date of issue but shall be renewable for a further period or periods provided that no such period shall be less than three months or more than six months.

(3) The fees payable in respect of a temporary licence shall for each month for which such licence is issued be one-twelfth of the fees as laid down in the Second Schedule for an annual licence for the trade or business for which the temporary licence is issued subject to a minimum fee of R10.00.

(4) No application for the renewal of a temporary licence shall be made more than two months before the date such licence is due to expire."

Amendment of section 7 of Act No. 6 of 1966

6. Section 7 of the principal Act is amended by the deletion of subsection (2) thereof and by the substitution therefor of a new subsection as follows —

"(2) An application for a licence for which the national licensing authority is the licensing authority shall be made to the licence officer of the national licensing authority. An application for a licence for which the national licensing authority is not the licensing authority shall be made to the licence officer of the licensing authority for the area in which the premises to be licensed are situate."

Amendment of Section 8 of Act No. 6 of 1966

7. Section 8 of the principal Act is amended by the deletion of subsection (5) thereof and by the substitution therefor of a new subsection as follows —

- "(5) Fees payable under the provisions of this Act shall be paid as follows—
- (a) for licences for which the national licensing authority is the licensing authority, other than by virtue of the provisions of section 4(2) (b) or (c), into the Consolidated Fund;
 - (b) for licences for which the national licensing authority is the licensing authority by virtue of the provisions of section 4(2) (b) or (c) into the revenues of the local authority having jurisdiction in the area wherein the licensed premises are situate;
 - (c) for licences for which a local authority is the licensing authority into the revenues of such local authority; and
 - (d) for licences for which the District Commissioner, Chobe, is the licensing authority into the revenues of the North West District Council.

Insertion of new section 9A in Act No. 6 of 1966

8. The principal Act is amended by the insertion therein, immediately after section 9 thereof of a new section as follows —

"Licensing Advisory Committee

9A. (1) Where the national licensing authority is the licensing authority by virtue of the provisions of section 4(2) (b) or (c) the Minister may in respect of any township or mining area, by notice, establish a licensing advisory committee comprising such person or persons as he may deem appropriate and such committee shall consider applications for certificates authorising the issue of licences and shall advise the national licensing authority thereon.

(2) Notwithstanding anything contained in section 9 where any licensing advisory committee has been established every application for a certificate authorising the issue of a licence shall be made to such committee."

Repeal and replacement of section 12 of Act No. 6 of 1966

9. The principal Act is amended by the repeal of section 12 thereof and by the replacement thereof with a new section as follows —

“12. Where an application for a certificate is made to a local authority or to a licensing advisory committee then, subject to the provisions of any law under which such local authority or licensing advisory committee is constituted, such local authority or licensing advisory committee shall consider the application in accordance with the provisions of Part IV and subject thereto may regulate its own procedure.”.

Amendment of section 13 of Act No. 6 of 1966

10. Section 13 of the principal Act is amended by the insertion in subsection (3) thereof of a proviso as follows —

“Provided that in the case of the renewal of a temporary licence the provisions of this Act relating to the advertising of an application shall not apply.”

Amendment of title of Part IV of Act No. 6 of 1966

11. Part IV of the principal Act is amended in the title by the insertion immediately after the words “Local Authorities” appearing therein of the words “and Licensing Advisory Committees”.

Amendment of section 29 of Act No. 6 of 1966

12. Section 29 of the principal Act is amended by the insertion immediately after the words “local authority” wheresoever they appear therein of the words “and licensing advisory committee”.

Amendment of section 30 of Act No. 6 of 1966

13. Section 30 of the principal Act is amended as follows —

- (a) By the deletion of the words “licensing authority” appearing in the title thereto and by the substitution therefor of the words “local authority or licensing advisory committee”; and
- (b) in subsections (1) and (2) thereof by the insertion immediately after the words “local authority” wheresoever they appear therein of the words “or licensing advisory committee”.

Amendment of section 31 of Act No. 6 of 1966

14. Section 31 of the principal Act is amended as follows —

- (a) by the deletion of subsections (1) and (2) thereof and by the substitution therefor of two new subsections as follows —

“ (1) When a local authority or licensing advisory committee deems it necessary to take evidence respecting any question to be determined by it or upon which it is required to advise as the case may be, such evidence shall be

given on oath to be administered by the person presiding at the meeting and shall be recorded.

(2) A local authority may by written notice under the hand of the Town Clerk, or District Council Secretary as the case may be, and a licensing advisory committee may by written notice under the hand of its Chairman require the evidence before it of any person who in the opinion of the local authority or the licensing advisory committee is able to testify as to any matter which the local authority has to determine or on which the licensing advisory committee has to advise.”;

(b) in subsection (3) thereof by the deletion of the words “licensing authority” appearing therein and by the substitution therefor of the words “local authority or licensing advisory committee”; and

(c) by the deletion of subsection (4) thereof and by the substitution therefor of a new subsection as follows --

“ (4) If any person after being duly sworn gives evidence before a local authority or licensing advisory committee on any matter relevant to the question under enquiry by such local authority or licensing advisory committee, knowing such evidence to be false or not knowing or believing it to be true, he shall be guilty of an offence and liable on conviction to a fine not exceeding R200 or to imprisonment for a term not exceeding twelve months.”.

Repeal and replacement of section 32 of Act No. 6 of 1966

15. The principal Act is amended by the repeal of section 32 thereof and by the replacement thereof with a new section as follows —

“32. A record of the public proceedings of a local authority or licensing advisory committee at every meeting held in pursuance of this Part shall be kept and shall be filed in the office of the local authority or, in the case of a licensing advisory committee, at such place as may be prescribed by the Minister. Such record shall be open for inspection by the public on payment of such fees as may be prescribed.”.

Amendment of section 33 of Act No. 6 of 1965

16. Section 33 of the principal Act is amended as follows —

(a) by the deletion of subsection (1) thereof and by the substitution therefor of a new subsection as follows —

“ (1) Every applicant for a certificate to be given by a local authority or the national licensing authority after being advised by a licensing advisory committee shall at his own expense publish in two separate issues of the *Gazette* and of a newspaper circulating in the district in which his business is or is to be carried on, the date of the last publication being not less than fourteen days before the date of the meeting at which the application is to be heard by the local authority or licensing advisory committee as the case may be, a notice giving such particulars as may be prescribed.”;

- (b) in subsection 2 thereof by the insertion immediately after the words "local authority" appearing therein of the words "or licensing advisory committee."
- (c) in subsection 3 thereof by the deletion of the words "licensing authority" appearing therein and by the substitution therefor of the words "local authority or licensing advisory committee".

Amendment of section 34 of Act No. 6 of 1966

17. Section 34 of the principal Act is amended as follows —

- (a) in subsection (1) thereof by the insertion immediately after the words "local authority" appearing therein of the words "or licensing advisory committee";
- (b) in subsection (2) thereof by the insertion immediately after the words "local authority" appearing therein of the words "or in the case of a licensing advisory committee at such place as may be prescribed under section 32".

Amendment of Section 35 of Act No. 6 of 1966

18. Section 35 of the principal Act is amended as follows —

- (a) in subsection (1) thereof by the deletion of the words "licensing authority" appearing therein and by the substitution therefor of the words "local authority or licensing advisory committee";
- (b) in subsection (2) thereof by the insertion immediately after the words "Local authority" appearing therein of the words "or in the case of a licensing advisory committee at such place as may be prescribed under section 32".

Amendment of Section 36 of Act No. 6 of 1966

19. Section 36 of the principal Act is amended as follows —

- (a) in subsections (1), (2) and (3) thereof by the insertion immediately after the words "local authority" wheresoever they appear therein of the words "or licensing advisory committee";
- (b) by the deletion of subsection (5) and by the substitution therefor of a new subsection as follows —

" (5) A local authority shall give its decision and a licensing advisory committee shall advise the national licensing authority within a period of one month from the date of the hearing of an application by such authority or committee."

Amendment of section 37 of Act No. 6 of 1966

20. Section 37 of the principal Act is amended as follows —

- (a) by the deletion of the words "Licensing Authority" appearing in the headnote thereto and by the substitution therefor of the words "Local Authority or Licensing Advisory Committee"; and
- (b) in subsections (1), (2) and (3) thereof by the insertion immediately after the words "local authority" wheresoever they appear therein of the words "or licensing advisory committee".

Amendment of section 38 of Act No. 6 of 1966

21. Section 38 of the principal Act is amended as follows —

- (a) by the deletion of the words "Licensing Authority" appearing in the headnote thereto and by the substitution therefor of the words "Local Authority or Licensing Advisory Committee"; and
- (b) by the insertion immediately after the words "local authority" appearing therein of the words "or licensing advisory committee".

Amendment of section 39 of Act No. 6 of 1966

22. Section 39 of the principal Act is amended by the insertion immediately after the words "local authority" appearing therein of the words "or licensing advisory committee".

Repeal and replacement of section 40 of Act No. 6 of 1966

23. The principal Act is amended by the repeal of section 40 thereof and by the replacement thereof with a new section as follows—

"Conditional Grant of Certificate

40. (1) In the case of an application where the premises to which it is proposed to restrict the licence are not erected or, if already erected, require in the opinion of the local authority or the national licensing authority having considered the advice of a licensing advisory committee additions or alterations to make them suitable as premises for the business sought to be licensed, the local authority or national licensing authority, if satisfied that —

- (a) it would be competent if the premises were completed at the date of the consideration of the application to grant a certificate;
- (b) it is *bona fide* the intention of the applicant if the application is granted to complete the erection, addition to or alteration of the premises within six months from the date of the grant of the application or such longer period as the licensing authority may determine;
- (c) the premises when completed will be suitable in all respects as premises of the licensed business; and
- (d) generally it is desirable that the licence should be granted in respect of the premises;

may issue to the applicant a conditional certificate for a licence in respect of such premises or for the removal of a licence to such premises.

(2) If the Town Clerk, District Council or Chairman of the licensing advisory committee, as the case may be, endorses upon a conditional certificate granted under subsection (1) a statement that the premises to which such conditional certificate refers have been completed substantially in accordance with the plans produced to the local authority or licensing advisory committee and submitted to the national licensing authority in support of the application and are in his opinion in a suitable condition for occupation as premises of the business, that conditional certificate shall be deemed to be a certificate granted by the local authority or national licensing authority.

(3) A conditional certificate shall not be a certificate for the purposes of this Act except in the circumstances described in subsection (2).''

Passed by the National Assembly this day, the 26th November, 1969.

G.T. MATENGE,
Clerk of the National Assembly.