

eSwatini

## Interpretation Act, 1970

Act 21 of 1970

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# eSwatini

## Interpretation Act, 1970

Act 21 of 1970

Assented to on 24 June 1970

Commenced on 3 July 1970

*[This is the version of this document at 1 December 1998.]*

**An Act to consolidate and amend the law relating to the interpretation and the shortening of the language of laws and other instruments of a public character and matters incidental thereto.**

### 1. Short title

This Act may be cited as the Interpretation Act, 1970.

## General provisions

### 2. Interpretation of certain words and expressions

- (1) In a law whenever made the following words and expressions have the meanings assigned to them respectively unless there is something in the subject or context inconsistent with such construction or unless it is therein otherwise expressly provided—

“**act**” with reference to an offence or civil wrong includes a series of acts, and an illegal omission;

“**Act**” or “Act of Parliament” has the meaning assigned to it by section 144 of the Constitution;

“**administrative officer**” means a public officer appointed as such by the Public Service Commission;

“**advocate**” and “attorney” means a person entitled to practise as such in Swazi-land;

“**affidavit**” means a document duly attested and sworn to under oath;

“**appropriate Service Commission**” means either the Judicial Service Commission or the Public Service Commission, whichever may be appropriate in the circumstances;

“**Auditor**” means the Director of Audit;

“**christian name**” means any name prefixed to a surname whether received in Christian baptism or not;

“**Commonwealth**” has the meaning assigned to it by section 144 of the Constitution;

“**Commissioner of Police**” has the meaning assigned to it by section 144 of the Constitution;

“**Constitution**” means the Constitution of the Kingdom of Swaziland;

“**contravene**”, in relation to a requirement or condition prescribed in a law or any grant, permit, lease, licence or authorization granted by or under a law, includes a failure to comply with that requirement or condition;

“**court**” means a court of law of competent jurisdiction;

“**Crown**” means His Majesty the King acting in an executive capacity;

“**Crown Agents**” means the person for the time being acting in the United Kingdom as Crown Agents for Overseas Governments and Administrations;

“**district**” means an area defined in accordance with section 10 of the General Administration Act, No. 11 of 1905;

“**financial year**” has the meaning assigned to it by section 144 of the Constitution;

“**functions**” means powers or duties or both;

“*Gazette*” has the meaning assigned to it by section 144 of the Constitution;

“**Government**” has the meaning assigned to it by section 144 of the Constitution;

“**Government Printer**” means a person authorized by His Majesty the King to print the *Gazette*;

“**High Court**” means the Chief Justice or a puisne judge of the High Court;

“**the King**” or “His Majesty the King” has the meaning assigned to the King by section 144 of the Constitution;

“**law**” means—

- (a) Act, Law, Order-in-Council, Ordinance or Proclamation, or
- (b) regulation, rule, bye-law or order made or given under the authority of a law mentioned in paragraph (a);

and a reference to a law mentioned in paragraph (a) includes a reference to a law mentioned in paragraph (b) and made under that law;

“**law officer**” or “law officer of the Crown” means Attorney-General, Solicitor-General, Senior Crown Counsel, Crown Counsel or such other public officer as the Attorney-General may by notice published in the *Gazette* specify as a law officer in accordance with section 2 of the Legal Practitioners Act, No. 15 of 1964;

“**Libandhla**” has the meaning assigned to it by section 144 of the Constitution;

“**Liqoqo**” has the meaning assigned to it by section 144 of the Constitution;

“**local authority**” means—

- (a) town council, municipal council or town board having administration of the area in question under a law; or
- (b) in their absence, the Regional Administrator of the region concerned;

“**month**” means calendar month;

“**Ndlovukazi**” has the meaning assigned to it by section 144 of the Constitution;

“**Ngwenyama**” has the meaning assigned to it by section 144 of the Constitution;

“**oath**” has the meaning assigned to it by section 144 of the Constitution;

“**Parliament**” has the meaning assigned to it by section 144 of the Constitution and by the Establishment of the Parliament of Swaziland Order, 1992;

“**person**” includes—

- (a) a local authority;
- (b) a company incorporated or registered as such under any law;
- (c) any body of persons corporate or unincorporate;

“**Police Force**” has the meaning assigned to it by section 144 of the Constitution;

“**police officer**” means a member of the Police Force;

- “**prescribed**” means prescribed by or under the law in which the word occurs;
- “**public office**” has the meaning assigned to it by section 144 of the Constitution;
- “**public officer**” has the meaning assigned to it by section 144 of the Constitution;
- “**public service**” has the meaning assigned to it by section 144 of the Constitution;
- “**Regional Administrator**” means the administrative officer gazetted as the officer in charge of the region;
- “**regional council**” means a district council established under a law relating to regional councils;
- “**registered**”, used with reference to a document, means registered in accordance with the law applicable to the registration of that document;
- “**the Republic**” means the Republic of South Africa;
- “**sale**” and “**sell**” include exchange, barter and offering or exposing for sale;
- “**sign**”, with reference to a person who is unable to write his name, includes his mark;
- “**special constables**” means persons appointed to those offices in accordance with the Police Act, No. 29 of 1957;
- “**Swazi Nation land**” means land vested in the Ngwenyama in trust for the Swazi Nation;
- “**swear**” means to take an oath;
- “**United Kingdom**” means the United Kingdom of Great Britain and Northern Ireland;
- “**urban area**” means a municipality or town established by or under the Urban Government Act, No. 8 of 1969;
- “**will**” includes a codicil; and
- “**year**” means a calendar year.

- (2) Where a word or expression is defined in a law, the definition, in the absence of a contrary intention, extends to the grammatical variations of the word or expression so defined.
- (3) An office, authority, institution, person, body or thing referred to in the Constitution shall, unless the context otherwise requires, be deemed to be the same as that referred to in the Constitution, when referred to in any other law.

### 3. Expressions relating to writing

In every law expressions relating to writing shall, unless the contrary intention appears, be construed as including also reference to typewriting, lithography, photography, and all other modes of representing or reproducing words in visible form.

### 4. Gender and number

In every law, unless the contrary intention appears—

- (a) words importing one gender include the other genders; and
- (b) words in the singular include the plural and words in the plural include the singular.

### 5. Definitions in law to apply to subordinate legislation

Where terms defined in a law are used in regulations, rules, bye-laws or orders under a law, those terms shall have the meanings assigned to them by the law unless they are otherwise defined in those

regulations, rules, bye-laws or orders, or unless there is something in the subject or context inconsistent with such construction.

## Commencement, distance and time

### 6. Commencement of laws

- (1) The expression “commencement” when used in a law means the day on which the law referred to comes or came into operation, and that day, subject to the provisions of subsection (2) and unless some other day is fixed by or under the law for the coming into operation thereof, shall be—
  - (a) in respect of Acts of Parliament, determined in accordance with the pro-visions of section 70 of the Constitution; and
  - (b) in respect of any other law, the day when that law is first published in the *Gazette*.
- (2) Where a law is expressed to come into operation on a particular day, it shall come into operation at midnight on the previous day.

### 7. Measurement of distance

In the measurement of a distance for the purposes of a law, that distance shall, unless the contrary intention appear, be measured in a straight line on a horizontal plane.

### 8. Computation of time

In computing time for the purposes of a law, unless the contrary intention appears—

- (a) a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happened or the act or thing is done;
- (b) if the last day of the period is Sunday or a public holiday, which days are in this section referred to as “excluded days”, the period shall include the next following day not being an excluded day;
- (c) when any act or proceeding is directed or allowed to be done or taken on a certain day, then, if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards not being an excluded day;
- (d) when an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of the time.

## Powers and appointments

### 9. Construction of provisions as to exercise of functions

- (1) Where a law confers a power or imposes a duty, or entrusts a function, then, unless the contrary intention appears, that power may be exercised and that duty shall and that function may be performed from time to time as occasion requires.
- (2) Where a law confers a power, jurisdiction or right, or imposes a duty on or entrusts a function to the holder of an office as such, then, unless the contrary intention appears, that power, jurisdiction or right may be exercised and that duty shall and that function may be performed by the holder for the time being of the office or by a person lawfully acting in the capacity of such holder.
- (3) Where a provision in a law confers a power or imposes a duty or entrusts a function to a Minister, that power may be exercised and that duty shall and that function may be performed by any other Minister to whom the administration of that provision may be assigned by the King, either specifically or by way of a general assignment of the administration of any law or of all laws

conferring powers, imposing duties or entrusting functions to the first-mentioned Minister, or by any other Minister acting on behalf of such a Minister.

- (4) Whenever the administration of a law or a provision of a law which confers a power or imposes a duty or entrusts a function to a Minister has in terms of sub-section (3) been assigned by the King to any other Minister—
- (a) a reference in that law or provision to the first mentioned Minister or the Department administered by him shall be construed as a reference to the last mentioned Minister or his Department, as the case may be;
- [Amended A.20/1972]*
- (b) a reference in that law or provision to a public officer attached to the first-mentioned department or to a public officer holding a specified office in that department, shall be construed as a reference to a public officer attached to the last-mentioned department or, as the case may be, as a reference to a public officer holding a corresponding office in that department;
- (c) a power, duty or function vested in or imposed upon or entrusted to —
- (i) a public officer of the first-mentioned department who is then an officer of the last-mentioned department; or
- (ii) the holder of a specified office in that department,
- by or under that law or provision, shall be deemed to have been duly vested in or imposed upon or entrusted to the officer concerned in his capacity as an officer of the last-mentioned department or, as the case may be, to the holder of a corresponding office in that department; and,
- (d) a regulation made or any notice, direction or order issued or any appointment made or any action taken under that law or provision prior the date on which the administration thereof was so assigned, shall remain in full force and effect as if it had been made, issued or taken by the person who on that date was, by virtue of the assignment of the administration of that law or provision or the provisions of this sub-section, competent to make such regulation or to issue such notice, direction or order or to make such appointment or to take such action.

## 10. Implied power

- (1) Where a law confers a power on a person to do or enforce the doing of any act or thing, all such powers shall be understood to be also given as are reasonably necessary to enable the person to do or enforce the doing of the act or thing.
- (2) Without prejudice to the generality of the foregoing, such a person may, in grant-ing any approval or consent or other form of authorization, impose conditions with respect to the grant, failure to comply with which shall, unless the contrary intention is expressed, render of no effect the approval, consent or authorization, as the case may be.

## 11. Signification of exercise of powers of the King or a Minister

- (1) Subject to subsection (2), where the King or a Minister is empowered to make an appointment, give or make an order, regulation, rule or bye-law, or give any direction, instruction, notice or notification, it is sufficient, unless it is otherwise provided by law, for the exercise of such a power to be signified—
- (a) in the case of the King, under the hand of the Attorney-General, and
- (b) in the case of a Minister, under the hand of the Permanent Secretary of the Minister for which that Minister is responsible or of any other Minister or of the Attorney-General.
- (2) A warrant shall be issued under the hand of the person empowered to issue the same himself.

## 12. Power of Ministers to delegate certain powers

- (1) Where by a law a Minister is empowered to exercise any powers or perform any duties, he may depute any person by name or the person for the time being holding the office designated by him to exercise such powers, other than the power to delegate and the power to make subsidiary laws, or perform such duties on his behalf subject to such conditions, exceptions, and qualifications as he may prescribe; and thereupon or from the date specified by him the person so deputed shall have and exercise such powers and perform such duties.
- (2) A delegation made under sub-section (1) is revocable at will and no delegation shall prevent the exercise of any power by the Minister making the delegation.

## 13. Ngwenyama acting in Libandhla

Where the Ngwenyama is required by law or Swazi law and custom to act in Libandhla, the signature of the Ngwenyama to a written statement that he has so acted, shall be deemed, for all purposes, *prima facie* evidence of his having so acted.

## 14. Power to appoint to include power to suspend or dismiss, etc

Where a power to make an appointment is conferred by a law, then, unless the contrary intention appears, the authority having power to make the appointment shall also have the power to remove, suspend, dismiss, re-appoint, or re-instate any person appointed by it in exercise of the power.

## 15. Power to appoint member of board, etc., temporarily

Where, by a law, a power is conferred on an authority to appoint a person to be a member of a board, commission, committee, or similar body, that authority may, if during any period owing to absence or inability to act from illness or any other cause a member so appointed is unable to act as a member, appoint some other person to act temporarily for that member during the period of absence or inability.

## 16. Effect of vacancy on powers of board, etc.

Where, by a law, a board, commission, committee or similar body, whether corporate or unincorporate, is established, then, unless the contrary intention appears, the powers of the board, commission, committee or similar body shall not be affected by—

- (a) a vacancy in the membership thereof;
- (b) the fact that it is afterwards discovered that there was some defect in the appointment or qualification of a person purporting to be a member thereof; or
- (c) the fact that there was a minor irregularity in the convening of a meeting thereof.

## 17. Appointment of officers by name or office

- (1) Where, by a law, an authority is empowered to appoint or name a person to have and exercise a power or function or perform a duty, that authority may either—
  - (a) appoint a person by name, or
  - (b) direct the person for the time being holding the office designated by the authority to have and exercise those powers and perform those duties.
- (2) Upon that appointment or direction, as the case may be, or commencing on the day specified by the authority, the person appointed by name or the person holding that office shall have and may exercise those powers and perform those duties accordingly.

## 18. Official designation to include officer executing duties

When reference is made in a law to a public officer by the terms designating his office, the term shall include the officer for the time being executing the duties of that office or any of them.

### 18bis. Acting appointments

- (1) Where power is vested by any law in any person or authority to appoint any person to any office, such power shall include the right to appoint a person to act in such office if the holder thereof is for any reason unable to perform his functions himself or if the holder of such office has not yet been appointed:

Provided that such person shall possess the requisite qualifications or any other requirements for appointment to such office.

- (2) In any law, unless the context otherwise requires, a reference to the holder of office by the term designating his office shall be construed as including a reference to any person for the time being lawfully acting in or exercising the functions of such office.

[Added K.O-I-C. 7/1977]

## 19. Change in title of public office

Where a change in the title of a Minister, a public office or a department of Government occurs, or the King assigns or re-assigns responsibility for the conduct of any business of the Government in terms of section 83 of the Constitution, the Prime Minister shall by notice in the *Gazette*—

- (a) declare that the change in title or the assignment or re-assignment of responsibility shall take effect from a date specified in the notice; and
- (b) make such amendments to any law as may be necessary to give effect thereto, and with effect from the date specified in the notice such a law shall be deemed to be so amended.

## 20. Power of majority

Where, by a law, an act or thing may or is required to be done by more than two persons, a majority of them may do it.

## Repeal, re-enactment and amending legislation

### 21. References to repealed law to substituted law

Where a law repeals and re-enacts, with or without modification, any provisions of a former law, references in any other law to the provisions so repealed shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted.

### 22. Construction of amending law

Where a law amends or adds to a law, the amending law shall, so far as is consistent with the tenor thereof, and unless the contrary intention appears, be construed as one with the amended law.

### 23. Repeal of law not to affect its past operation

Where a law repeals another law in whole or in part then, unless the contrary intention appears, the repeal shall not—

- (a) revive anything not in force or existing at the time at which the repeal takes effect;

- (b) affect the previous operation of the law repealed or anything duly done or suffered under the law repealed;
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the law repealed;
- (d) affect any penalty, forfeiture or punishment incurred in respect of an offence committed under the law repealed;
- (e) affect any investigation, legal proceeding or remedy in respect of that right, privilege, obligation, liability, penalty, forfeiture or punishment; and that investigation, legal proceeding or remedy may be instituted, continued or enforced, and that penalty, forfeiture or punishment may be imposed as if the repealing law had not been promulgated.

### Provisions relating to subsidiary legislation

#### 24. Certain laws to be published in the *Gazette*

When a law is authorized by another law to be made by the King, a Minister or a local authority, a public body or person, with the approval of the King or a Minister the first-mentioned law shall, subject to the provisions relative to the force and effect thereof in any law, be published in the *Gazette* and shall, unless the contrary intention is expressed, come into force on the date of publication.

#### 25. General provisions respecting the making of regulations, etc.

Where a law confers power on an authority to make subsidiary laws the following provisions shall, unless the contrary intention appears, have effect with reference to the making and operation of subsidiary laws —

- (a) a subsidiary law may be at any time amended, varied, rescinded or revoked by the same authority and in the same manner by and in which it was made;
- (b) there may be attached to the breach of any subsidiary law such penalty not exceeding one hundred emalangeni or such term of imprisonment not exceeding three months, or both, as the authority making the regulation may think fit;
- (c) where a law confers power on an authority to make subsidiary laws for a general purpose, and also for a special purpose incidental thereto, the enumeration of the special purpose shall not be deemed to derogate from the generality of the powers conferred with reference to the general purpose;
- (d) no subsidiary law shall be inconsistent with the provisions of a law.

#### 26. Fees

- (1) Where a law confers power on an authority to prescribe fees or other charges, the subsidiary law prescribing the fees or charges may provide for all or any of the following matters—
  - (a) the imposition, either generally, or under specified conditions or in specified circumstances, of—
    - (i) specific fees or charges, or
    - (ii) maximum or minimum, or maximum and minimum, fees and charges, or
    - (iii) no fee or charge;
  - (b) the reduction, waiver or refund, in whole or in part, of those fees or charges, either upon the happening of a certain event, or in the discretion of a specified person.

- (2) Where a reduction, waiver or refund, in whole or in part, of such a fee or charge is provided for, the reduction, waiver or refund may be expressed to apply either generally or specifically—
- (a) in certain matters or transactions or classes of matter or transaction; or
  - (b) in respect of certain documents or classes of document; or
  - (c) where an event happens or ceases to happen; or
  - (d) in respect of certain persons or classes of person; or
  - (e) in respect of a combination of those matters, transactions, documents, events or persons;
- and may be expressed to apply subject to such conditions as may be specified in the instrument or in the discretion of a person specified in it.

## 27. Effect of repeal of law on subsidiary law

- (1) The repeal of a law or part of a law which is replaced by the repealing law shall be without prejudice to anything done or the continued operation of any subsidiary laws made under the repealed law.
- (2) Unless the contrary intention appears in the repealing law subsidiary laws made under the repealed law shall have effect on and after the commencement of the repealing law, as if they had been made in pursuance of that law, unless they are inconsistent with it.

## 28. Exercise of statutory powers between promulgation and commencement of a law

Where a law is not to come into operation immediately on its promulgation and it confers powers to—

- (a) make an appointment;
- (b) make, grant or issue an instrument, order, warrant, scheme, titles, patent, rules, regulations or by-laws;
- (c) give notices;
- (d) prescribe forms; or
- (e) do any other thing for the purposes of the law;

the power may, unless the contrary intention appears, be exercised at any time after the promulgation of the law so far as may be necessary or expedient for the purposes of bringing the law into operation at the date of its commencement but anything so done under the power shall not, unless the contrary intention appears in the law or unless it is necessary for bringing the law into operation, have any effect until the law comes into operation.

## General

### 29. Gazette and publications by Government Printer *prima facie* evidence

The production of a copy of the *Gazette* containing a law or notice, or of a copy of a law or notice purporting to be printed by the Government Printer, shall be *prima facie* evidence of the due making and tenor of the law or notice.

### 30. Deviation in forms

Whenever forms are prescribed in a law, minor deviations therefrom, not affecting the substance or calculated to mislead, shall not invalidate them.

### 31. Penalties to be maximum ones

Where, in a law, a fine or imprisonment is prescribed for an offence against the law, the offence is punishable, on conviction, by a fine or imprisonment not exceeding the amount prescribed.

### 32. Saving of rights of Government

Subject to the Constitution, no law shall affect the rights of the Government unless it is in that law expressly stated, or unless it appears by necessary implication that the Government is bound by it.

### 33. Serving of notices and other documents

- (1) Where a law authorizes or requires a notice or document to be served on a person, whether the expression “served” or a similar expression is used, service may be effected in accordance with this section.
- (2) The notice or document may be served in any of the following ways—
  - (a) on the person personally; or
  - (b) by delivering it at his place of business or place of residence to a person apparently over the age of 16 years; or
  - (c) by posting it in an envelope addressed to the person on whom it is to be served, to his last known place of business or residence or his Post Office box number; or
  - (d) if his address in Swaziland is unknown, by fixing it in a conspicuous place on the land or thing to which it relates.
- (3) Service in terms of paragraph (c) of sub-section (2) shall be deemed—
  - (a) to be effected by properly addressing, prepaying and posting the envelope containing the notice of document, unless it is proved that the envelope was not delivered at the place to which it was addressed; and,
  - (b) unless the contrary is proved, to have been effected seventy-two hours after posting.
- (4) A certificate of posting purporting to be issued by the Department of Posts and Telecommunications in respect of a letter referred to in subsection (3) shall be *prima facie* proof that service in terms of paragraph (c) of subsection (2) has been effected.
- (5) Where a notice or document is required to be served on a person because he is or was the owner or occupier of a building, it is not necessary to name him but it is sufficient if he is described therein as the owner or occupier, as the case may be.
- (6) Where the person to be served resides in a Swazi area, his chief or induna where practicable shall also be served with a copy of such notice or document and it shall be the duty of such chief or induna to serve the said notice or document personally on such person as soon as may be possible thereafter.

### 34. Enquiries and appeals

- (1) A person who in terms of a law conducts an enquiry or hears an appeal shall, unless that law is to the contrary effect, have power to summon and examine witnesses on oath as if he were a Commissioner as defined in the Commissions of Enquiry Act, No. 35 of 1963.
- (2) The provisions of sections 10, 11, 13, 14, 15, 16 and 17 of that Act shall apply with the necessary modifications to an enquiry, appeal or application referred to in sub-section (1).

### 35. Evidence of signature of Attorney-General

Where, by a law, the approval, consent or any other form of authorisation of the Attorney-General is necessary before any action or prosecution is commenced, a document purporting to be the approval, consent or authorisation of the Attorney-General shall be received as *prima facie* evidence in any proceedings without proof being given that the signature to the consent or authorisation is that of the Attorney-General.

### 36. Definition of terms in Republican laws

The following words, where they occur in any law of the former South African Republic in force in Swaziland, unless otherwise expressly provided, have the meanings hereby assigned to them—

“**Zuid Afrikaansche Republiek**”, “Republiek”, “Staat” or any like expression means Swaziland;

“**Staats Procureur**” or any like expression means the Attorney-General for Swaziland;

“**Staats President**” or any expression denoting the Head of the former South African Republic means the King;

“**Staats Secretaris**” or any like expression means the Prime Minister;

“**Landrost**” means magistrate; and

“**Publieke Aanklager**” means the Attorney-General for Swaziland.

### 37. Application to Government

This Act binds the Government.