BOTSWANA TEACHING PROFESSIONALS COUNCIL ACT, 2019

No. 22 **of 2019**

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An Act to provide for the establishment of the Botswana Teaching Professionals Council, to regulate the teaching profession in Botswana, and for connected matters.

Date of Assent: 28.08.19
Date of Commencement: ON NOTICE
ENACTED by the Parliament of Botswana.

PART I — *Preliminary*

Short title and commencement

1. This Act may be cited as the Botswana Teaching Professionals Council Act, 2019, and shall come into force on such date as the Minister may, by Order published in the *Gazette*, appoint.

Interpretation

2. In this Act, unless the context otherwise requires —

"Appeals Committee" means a committee established under section 39 (1);

"Board" means the Board of the Council established under section 6;

"Council" means the Botswana Teaching Professionals Council established under section 3;

"Disciplinary Committee" means a committee appointed under section 37 (1);

"member" means a member of the Board;

"Registrar" means the Registrar appointed under section 18;

"school" has the same meaning assigned to it under the Education Act; Cap. 58:01

"teacher" includes a tutor and any person registered in accordance with section 27 of this Act and qualifies to instruct an educational programme or provide professional counseling including professional therapy and educational psychology services, at school; and

"teaching licence" means a licence to practice teaching, issued by the Council under section 30.

PART II — *Establishment of Botswana Teaching Professionals Council*

Establishment of Botswana Teaching Professionals Council

3. (1) There is hereby established a Council to be known as the Botswana Teaching Professionals Council.

(2) The Council shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its own name and, subject to the provisions of this Act, perform such acts as bodies corporate may, by law perform.

Seal of Council

4. (1) The seal of the Council shall be such a device as may be determined by the Board and shall be kept by the Registrar.

(2) The affixing of the seal shall be authenticated by the Registrar or any other person authorised in that capacity by the Board.

Functions of Council

5. The Council shall —

(*a*) regulate the teaching profession;
(*b*) maintain professional and ethical standards for teachers, which include teaching knowledge, skills and competence;
(*c*) license teachers;
(*d*) advise on teacher training issues;
(*e*) advocate for the teaching profession;
(*f*) maintain a register of teachers;
(*g*) establish, publish, review and maintain a Code of Ethics for teachers;
(*h*) monitor adherence to the Code of Ethics under paragraph (*g*);
(*i*) review and advise on professional standards of teachers;
(*j*) determine the grounds for refusal or withdrawal of registration where necessary;
(*k*) determine the criteria and procedures for registration;
(*l*) consider and decide on any application for registration;
(*m*) promote continuing education, training and professional development of teachers;
(*n*) establish panels to investigate and hear complaints against teachers;
(*o*) ensure a fair hearing is held in accordance with the procedure determined by the Board; and
(*p*) conduct research to inform quality teaching.

PART III — *Constitution and Qualifications of Board*

Establishment of Board

6. (1) There shall be a Board of the Council, which shall be the governing body of the Council and shall be responsible for the direction of the affairs and operations of the Council.

(2) The Board shall consist of the following members appointed by the Minister —

(*a*) the Chairperson;
(*b*) three representatives from the existing registered and recognised teacher unions;
(*c*) one representative from special education needs;
(*d*) one representative from public school heads;
(*e*) one representative from private school heads;
(*f*) one representative from the Botswana Qualifications Authority established under the Botswana Qualifications Authority Act;

Cap. 48:04

(*g*) one representative from a registered private schools teacher association;
(*h*) the Registrar who shall be an *ex-officio* member;
(*i*) two representatives from parent-teacher associations;
(*j*) one representative from the Ministry responsible for basic education;
(*k*) one representative from an educational business organisation;
(*l*) one retired school head; and
(*m*) one retired school inspector.

(3) The Minister shall publish the appointments made in terms of subsections (2) and (5), by Notice published in the *Gazette* specifying the dates of their appointment and the period for which they are appointed.

(4) The members shall be appointed with due consideration to representation in respect of gender, disability and geographic distribution.

(5) The Minister may appoint other persons to sit on the Board as alternates to the substantive members of the Board appointed under subsection (2).

(6) The alternate members appointed by the Council under subsection (5) shall be appointed, if the Minister is satisfied that such persons meet the requirements for members set out under section 8.

Tenure of office

7. A member shall hold office for a period not exceeding three years and at the end of that period shall be eligible for reappointment for one further term, not exceeding three years.

Qualification, removal, resignation or suspension from Board

8. (1) A person shall not be appointed as a member or be qualified to continue to hold office who has —

(a) in terms of a law in force in any country —

(i) been adjudged or otherwise declared bankrupt and has not been discharged, or

(ii) made an assignment to, arrangement or composition with his or her creditors which has not been rescinded or set aside; or

(*b*) within a period of 10 years immediately preceeding the date of his or her appointment, been convicted —

(i) of a criminal offence within Botswana, or

(ii) outside Botswana, of an offence which if committed in Botswana, would have been a criminal offence, and sentenced by a court of competent jurisdiction to imprisonment for six months or more without the option of a fine, whether that sentence has been suspended or not, and for which he or she has not received a free pardon.

(2) The Minister shall remove a member from office where the member —

(*a*) is absent, without reasonable cause, from three consecutive meetings of the Board, of which he or she has had notice;

(*b*) is inefficient in the performance of his or her duties;

(*c*) has been found to be physically or mentally incapable of performing his or her duties efficiently, and a medical doctor has issued a certificate to that effect; or

(*d*) contravenes the provisions of this Act or otherwise misconducts himself or herself to the detriment of the objectives of the Council.

(3) The Minister may, in writing, suspend from office, a member against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment without the option of a fine may be imposed, and whilst that member is so suspended, he or she shall not carry out any duties under this Act or be entitled to any remuneration or allowances as a member of the Board.

(4) A member may resign from office by giving one month's notice in writing to the Minister.

Vacation of office by members

9. A member shall vacate his or her office, and his or her office shall become vacant —

(*a*) if he or she becomes disqualified in terms of section 8 to hold office as a member;

(*b*) upon his or her death;

(*c*) upon the expiry of such time as the Minister may specify, in writing, notifying the member of his or her removal from office by the Minister;

(*d*) upon the expiry of one months' notice, in writing, to the Chairperson, of his or her intention to resign; or

(*e*) if he or she is convicted of an offence under this Act for which he or she is sentenced to imprisonment for a term of six months or more without the option of a fine.

Filling of vacancy

10. (1) Where the office of a member becomes vacant before the expiry of the member's term of office, the Minister shall appoint the alternate of that member in place of the member who vacates office, until the expiry of a period during which such member would have otherwise continued in office.

(2) Subsection (1) shall not apply where the remainder of the period for which the member whose office has been vacated would otherwise have held office is less than six months.

Remuneration and allowances

11. A member or any other person working with the Board shall be paid such remuneration, allowances, travelling expenses and other expenses incurred in connection with his or her services on the Board, if any, as the Minister may from time to time determine.

PART IV — *Meetings and Proceedings of Board*

Election of Vice Chairperson

12. (1) At the first meeting of the Board, the members shall elect from amongst their number, a Vice Chairperson.

(2) The Chairperson and the Vice Chairperson shall hold office for a period of not more than three years.

(3) On the expiry of the term of office of the Vice Chairperson, or where the Vice Chairperson vacates office, members shall elect from among their number a new Vice Chairperson at the next meeting of the Board or as soon thereafter as may be convenient.

(4) The Vice Chairperson may vacate his or her office as such even though he or she remains a member.

(5) There shall preside at any meeting of the Board —

(*a*) the Chairperson;

(*b*) in the absence of the Chairperson, the Vice Chairperson; or

(*c*) in the absence of the Chairperson and the Vice Chairperson, such member as the members present may elect from amongst themselves for the purpose of that meeting.

Meetings and proceedings of Board

13. (1) The Minister shall convene the first meeting of the Board as soon as practicable after the appointment of members of the Board.

(2) The Board shall meet at least four times in a year to discharge its functions.

(3) All meetings of the Board shall be called by the Chairperson by giving at least 14 days notice of such meeting.

(4) The Chairperson shall call a special meeting of the Board within seven days of receipt of a request, in writing, of at least half of the members of the Board for such meeting to be held.

(5) Where the urgency of any particular matter does not permit the giving of notice in accordance with subsection (4), a special meeting may be called by giving a shorter notice.

(6) The quorum at any meeting of the Board shall be a simple majority of the members.

(7) The decisions of the Board shall be by a simple majority of votes, and in the event of an equality of votes, the Chairperson shall have a casting vote in addition to his or her deliberative vote.

(8) A decision of the Board shall not be rendered invalid by reason of a vacancy on the Board or the fact that a person who was not entitled to sit as a member did so sit.

(9) The Board may invite any person whose presence it deems necessary, to attend and participate in the deliberations of a meeting of the Board or its Committees, but such person shall have no right to vote.

(10) The Chairperson shall cause minutes of each meeting of the Board to be kept, and such minutes shall be confirmed at a subsequent meeting of the Board.

Signification of documents

14. All documents made by, and all decisions of the Board, shall be signified under the hand of the Chairperson of the Board, or any member or senior officer of the Council generally or specifically authorised in that regard.

Disclosure of interest

15. (1) Where a member, or any person attending a meeting of the Board, at which meeting a matter which is the subject of consideration is one in which the member or immediate family member is directly or indirectly interested in a private capacity, the member shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the Board otherwise directs, take part in any consideration or discussion of, or vote on any question relating to such matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) Where a member or any person present at the meeting fails to disclose his or her interest in accordance with subsection (1) and a decision by the Board is made benefitting such member or person, such decision shall be null and void to the extent that it benefits such member, or person or immediate family member.

(4) A member or any person who contravenes the provisions of subsection (1) commits an offence and is liable to a fine not exceeding P15 000 or to imprisonment for a term not exceeding 12 months, or to both.

Confidentiality

16. (1) A member or any person working with the Council shall observe and preserve confidentiality of all matters coming before the Council, and such confidentiality shall subsist even after the termination of the member or person's term of office.

(2) A member or any person to whom confidential information is revealed through working with the Board shall not disclose that information to any other person unless he or she is required to do so in terms of any written law or for the purpose of any judicial proceeding.

(3) A member or any person who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P15 000 or to imprisonment for a term not exceeding 12 months, or to both.

Committees of Board

17. (1) The Board shall, for the purposes of performing its functions, establish such committees as it considers appropriate and may delegate to any such committee such of its functions as it considers necessary.

(2) The Board may appoint to a committee of the Board, such number of persons with specialised skills not being members of the Board, as it considers appropriate, and the members of such a committee shall hold office for such period as the Board may determine.

(3) The Board shall appoint a Chairperson and Vice Chairperson for any of its committees from amongst its members.

(4) Meetings of a committee of the Board shall be held at such times and places as the committee may determine, or as the Board may direct.

(5) Subject to the specific or general directions of the Board, a committee established under this section may regulate its own procedure.

(6) The provisions of sections 8, 9, 10, 11, 15 and 16 shall, with necessary modifications, apply to a member of a committee of the Board.

PART V — *Registrar and other officers of Council*

Appointment of Registrar

18. (1) The Minister shall in consultation with the Board appoint a Registrar who shall be the accounting officer of the Council.

(2) A person shall not be appointed as Registrar unless the person possesses such experience as the Board may determine, and that person demonstrates that he or she is competent to carry out the functions of the Council.

(3) The Registrar shall, subject to subsection (4), hold office for a period not exceeding five years and shall be eligible for reappointment.

(4) The Registrar may resign from office by giving three months written notice, or by paying three months' salary in *lieu* of notice.

(5) The Minister may in consultation with the Board remove the Registrar from office by giving him or her three months' notice in writing, or by paying him or her three months' salary in *lieu* of notice, if the Registrar —

(*a*) conducts himself or herself in a manner that is detrimental to the objective of, or the proper performance of the functions of the Authority;

(*b*) has been found to be physically or mentally incapable of performing his or her duties efficiently, and a medical doctor has issued a certificate to that effect;

(*c*) becomes bankrupt or is declared insolvent by a court of law; or

(*d*) absents himself or herself from office without reasonable excuse.

(6) The Registrar shall receive such remuneration, allowances and other benefits as the Board in consultation with the Minister may determine.

Functions of Registrar

19. (1) The Registrar shall, subject to such direction on matters of policy as may be given by the Board, be responsible for —

(a) the formation and development of an efficient administration of the Council;

(*b*) the organisation, control, management and discipline of the staff of the Council;

(*c*) the implementation of the decisions of the Board;

(*d*) all assets, income and expenditure of the Council; and

(*e*) the execution of the operational plans of the Council.

(2) The Registrar may delegate any of his or her functions to an employee of the Council subject to such condition that they shall not be sub-delegated.

Appointment of Secretary

20. (1) The Board shall, on the recommendation of the Registrar appoint a Secretary, who shall be suitably qualified and experienced.

(2) The Secretary shall attend meetings of the Board but shall have no right to vote, and shall be responsible for the recording of the Board's proceedings and decisions.

(3) The Secretary shall be accountable to the Board for his or her functions and responsibilities, and shall report directly to the Registrar.

(4) The conditions of service, including the remuneration package of the Secretary shall be set by the Board on the recommendation of the Registrar.

Appointment of officers of Council

21. (1) The Board shall, on the recommendation of the Registrar, appoint the senior staff of the Council.

(2) The senior staff shall, under the direction of the Registrar, assist the Registrar in the proper administration and management of the functions and affairs of the Council, in accordance with the policies laid down by the Board.

(3) The Registrar may on such terms and conditions as the Board shall determine, employ such other officers of the Council as it may be necessary for the proper discharge of the functions of the Council.

(4) The terms and conditions of employment of staff of the Council shall be as determined by the Board.

PART VI — *Financial Provisions*

Funds of Council

22. (1) The funds of the Council shall consist of —

(*a*) such monies as may be appropriated by the National Assembly for the purposes of the Council;

(*b*) such fees as the Council may charge for services rendered under this Act including the issuing of certificates for practice;

(*d*) such grants and donations as the Council may receive; and

(*e*) any income that the Council may receive from investments.

(2) Subject to subsection (1) the Council shall manage its own budget through a subvention or grant from Government until such time as the Council is able to source its own funding.

(3) The Council shall use the revenues acquired under subsection (1) to meet the costs incurred for its operations and shall use any surplus accrued for such purposes as it may determine, with the approval of the Minister.

Financial year of Council

23. The financial year of the Council shall be a period of 12 months commencing on the 1st April each year and ending on the 31st March in the following year.

Accounts and audit

24. (1) The Council shall keep and maintain proper accounts and other records in respect of every financial year relating to its activities, and shall prepare, in respect of each financial year, a statement of accounts.

(2) The Council shall submit books of accounts and statement of accounts to an auditor appointed by the Board, who shall audit the accounts no later than three months after the end of the financial year.

(3) The auditor shall report in respect of the accounts for each financial year, in addition to any other matter on which the auditor deems pertinent to comment on, whether or not —

(*a*) the auditor has received all information and explanations which, to the best of the auditor's knowledge and belief, were necessary for the performance of the auditor's duties;

(*b*) the accounts and related records of the Council have been properly kept;

(*c*) the Council has complied with all the financial provisions of this Act with which it is the duty of the Council to comply; and

(*d*) the statement of accounts prepared by the Council was prepared on the basis consistent with that of the preceding year and represents a true and fair view of the transactions and financial affairs of the Council.

(4) The report of the auditor and a copy of the audited accounts shall, within 14 days of completion thereof, be forwarded to the Council by the auditor.

Annual report

25. (1) The Council shall, within a period of six months after the end of the financial year or within such period as the Minister may determine, submit, to the Minister, a comprehensive report on the operations of the Council during that financial year, together with the auditors' report and the audited accounts as provided under section 24.

(2) A report compiled in accordance with subsection (1) shall be laid before the National Assembly by the Minister within three months of receipt.

Pension and other funds

26. (1) The Council may, out of its revenue, establish and maintain such pension, superannuation, provident or other funds as it may consider desirable or necessary for the payment of benefits or other allowances on the death, sickness, injury, superannuation, resignation, retirement or discharge of its staff and may make rules providing for the payment of money out of its revenue to such funds and providing for contributions to such funds by its staff.

(2) The Council may contract with insurance companies or such other bodies as may be appropriate for the maintenance and administration of the funds authorised under subsection (1).

PART VII — *Registration*

Registration of teachers

27. (1) A person shall not be employed or practise as a teacher unless that person is registered with the Council and has been issued with a teaching licence.

(2) A person who practises without a teaching licence commits an offence and is liable to a fine not exceeding P5 000 or imprisonment for a term not exceeding three months, or to both.

(3) A person who employs a person who is not registered with the Council and issued with a licence commits an offence and is liable to a fine not exceeding P15 000 or to imprisonment for a term not exceeding 12 months, or to both.

Application for registration

28. (1) An application for registration shall be made to the Council in the prescribed form.

(2) An application made under subsection (1) shall be accompanied by a prescribed fee and by such relevant documentation and information as may be prescribed.

Different categories of registration

29. The Council may determine different categories of registration, as may be prescribed, where there is a justifiable cause for such differentiation to allow for the special circumstances of different sectors in education.

Issue of teaching licence

30. Where the Council registers a person, the Council shall issue a teaching licence to that person which shall be valid for a period not exceeding 36 months from the date of registration if the person is a non-citizen and for a period not exceeding 60 months from the date of registration for citizens.

Renewal of teaching licence

31. (1) A person registered as a teacher shall apply in a prescribed form for renewal of his or her teaching licence.

(2) An application made under this section shall be made at least six months before the expiry of the teaching licence.

(3) A person who practises with an expired teaching licence commits an offence and shall be liable to a fine not exceeding P1 000 and P20 per day for every day the offence continues for a period up to a maximum of 90 days.

(4) Notwithstanding subsection (3), where the offence continues for more than 90 days, the name of a person who contravenes subsection (1) shall be struck off the register.

(5) A person whose name has been struck off the register under subsection (4) may re-apply for registration after paying the prescribed fees.

Duplicate licence

32. (1) Where a person registered as a teacher loses his or her teaching licence he or she may apply to the Council in the prescribed form for a duplicate teaching licence.

(2) The Council shall issue a duplicate teaching licence upon payment of the prescribed fee.

Register

33. (1) Subject to the provisions of this Act, the Council shall establish and maintain a register of persons registered as teachers.

(2) The register shall be kept at the offices of the Council and shall be open for inspection during office hours by any member of the public upon payment of such fee as may be prescribed.

(3) The Registrar shall cause to be published a list of non-compliant or deregistered teachers by Notice in the *Gazette*, annually at the beginning of the year.

Removal from register

34. (1) The Council may remove the name of a person from the register where —

(*a*) the name was registered by error or through fraud;

(*b*) the registered person is found guilty of breach of the Code of Ethics;

(*c*) the person requests that his or her name be removed from the register;

(*d*) the person is certified unfit by a medical practitioner;

(*e*) after registration, the relevant qualification of the teacher is withdrawn or cancelled by the institution which issued it; or

(*f*) the person dies.

(2) The Council shall issue a notice of removal from the register by registered mail addressed to the address appearing in the register.

(3) Subject to sections 31 and 32, the name of a person registered as a teacher shall not be removed from the register under subsection (1) unless the person is given an opportunity, within 14 days of receipt of the notice issued under subsection (2), to make a representation to the Council.

(4) Where a person registered as a teacher makes a representation to the Council under subsection (3), the Council shall consider the matter and shall within 21 days, inform him or her in writing of its decision.

Cancellation of teaching licence

35. Where a person registered as a teacher fails to make a representation to the Council under section 34 within the specified time, the teaching licence issued to the person shall be cancelled.

Restoration to register

36. A person registered as a teacher whose name has been removed from the register may apply in the prescribed form for restoration of his or her name to the register.

PART VIII — *Disciplinary Committee*

Disciplinary Committee

37. (1) The Board shall appoint a Disciplinary Committee which shall consist of the following members —

(*a*) the Vice Chairperson of the Board, who shall be the Chairperson of the Disciplinary Committee;

(*b*) the Secretary; and

(*c*) seven other members with relevant qualifications and experience who shall include —

(i) one member from the Ministry responsible for basic education,

(ii) one member from a parent-teacher association,

(iii) a retired school head, and

(iv) a retired school inspector.

(2) The Board shall delegate to the Disciplinary Committee such functions and powers as it may from time to time determine, including power to conduct investigations into disciplinary cases and to impose penalties.

Appeals

38. A person may appeal against a decision of the Disciplinary Committee to the Appeals Committee within 14 days of such decision.

Composition of Appeals Committee

39. (1) There shall be established an Appeals Committee to hear appeals in relation to decisions of the Disciplinary Committee.

(2) The Committee shall consist of seven members with the relevant qualifications and experience appointed by the Minister who shall include —

(*a*) an attorney admitted to practice law in the courts of Botswana in accordance with the Legal Practitioners Act, with not less than ten years experience, who shall be the chairperson of the Committee;

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(*b*) a registered teacher employed in the public service;

(*c*) a registered teacher employed in the private sector;

(*d*) a representative of the Ministry responsible for basic education;

(*e*) a member from a registered teacher union;

(*f*) a representative of the school head conference; and

(*g*) a school inspector.

Appeal to be based on record of proceedings of Disciplinary Committee

40. (1) The appeal against a decision of the Disciplinary Committee shall be based on the record of the proceedings of the Disciplinary Committee.

(2) In exceptional circumstances, the Appeals Committee may hear new evidence in connection with the appeal, but only where such evidence was not reasonably available at the time of the disciplinary hearing and will have material impact on the outcome of the disciplinary hearing.

Appeal to be considered within 30 days

41. (1) The Appeals Committee shall consider the appeal within 30 days of delivery of the notice of appeal to the Board by the Registrar.

(2) The Appeals Committee may —

(*a*) confirm or set aside the finding or ruling of the Disciplinary Committee;

(*b*) confirm or set aside the penalty imposed by the Disciplinary Committee; or

(*c*) refer the matter back to the Disciplinary Committee.

Leave to appeal to High Court

42. A person aggrieved by a decision of the Appeals Committee made under section 41 (2) may appeal to the High Court within 30 days from the date of the decision of the Appeals Committee.

Application of sections 15 and 16 to members of Disciplinary and Appeals Committees

43. Provisions of sections 15 and 16 shall apply with necessary modification, to members of the Disciplinary Committee and Appeals Committee.

PART IX — *Miscellaneous Provisions*

Indemnity

44. No matter or thing done or omitted to be done by a member or staff of the Council or a member of the Disciplinary or Appeals Committees shall, if the matter or thing is done or omitted to be done *bona fide* in the course of the operations of the Council, render a member or staff personally liable to an action, claim or demand.

Practising using fake teaching licence

45. A person who practises teaching using a fake teaching licence commits an offence and shall be liable upon conviction to a fine not exceeding P5 000 or to imprisonment for a term not exceeding one year, or to both.

Presentation of false documents

46. A person who presents false documents when applying for registration commits an offence and shall be liable upon conviction to a fine not exceeding P5 000 or to imprisonment for a term not exceeding three months, or to both.

Assisting another person to acquire teaching licence fraudulently

47. A person who assists another to fraudulently acquire a teaching licence commits an offence and shall be liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding three months, or to both.

Assisting teacher to contravene provisions of Act

48. A person who knowingly assists a teacher to contravene the provisions of this Act commits an offence and shall be liable to a fine not exceeding P15 000.

Regulations

49. (1) The Minister may, on the recommendation of the Council, make Regulations for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations —

(*a*) prescribing forms required under this Act;

(*b*) prescribing fees required under this Act;

(*c*) setting out the requirements and qualifications for registration;

(*d*) providing for a code of conduct for teachers and ensure compliance with the code of conduct; and

(*e*) prescribing anything which is to be prescribed under this Act.

Transitional provisions

50. (1) Notwithstanding anything contained in section 27, a person who practises as a teacher, immediately before the coming into operation of this Act, shall be deemed to be provisionally registered as a teacher.

(2) Provisional registration under this section shall be valid for a period of 24 months for a teacher in the public service and 12 months for a teacher in a private school.

(3) A person referred to in subsection (1), shall apply in terms of section 28, for registration as a teacher prior to the expiration of the period referred to in subsection (2).

PASSED by the National Assembly this 23rd day of July, 2019.

BARBARA N. DITHAPO,
Clerk of the National Assembly.