

PUBLIC SERVICE (AMENDMENT) ACT, 2025

No. 6



of 2025

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of section 2 of the Act
3. Substitution of Part XIII in the Act

An Act to amend the Public Service Act.

Date of Assent: 24.01.2025

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Public Service (Amendment) Act, 2025, and shall come into operation on such a date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and commencement

2. Section 2 of the Act is amended by inserting, in their correct alphabetical order, the following new definitions —

Amendment of section 2 of the Act

“Bargaining Council” means the Public Service Bargaining Council established under section 50;

“collective bargaining” includes negotiations which take place between the employer and trade unions to —

- (a) determine the working conditions and terms of employment;
 - (b) regulate the relations between the employer and employees;
- and

- (c) regulate the relations between the employer and trade union;

“collective agreement” means an agreement relating to the terms and conditions of employment concluded between a trade union or a group of trade unions and the employer;

“Registrar” means the Registrar of Trade Unions and Employers’ Organizations appointed as such in terms of the Trade Unions and Employers’ Organizations Act;

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“sector” means the whole or part of a trade or an occupation or service;

Substitution of
Part XIII in
the Act

“sectoral bargaining council” means a bargaining council designated by the Bargaining Council in terms of section 54.”

3. The Act is amended by substituting for Part XIII, the following new Part —

“Part XIII – *Collective Bargaining in the Public Service*”

Establishment
of Bargaining
Council

50. (1) A bargaining council for the public service, to be known as the Public Service Bargaining Council (hereinafter referred to as “the Bargaining Council”), shall be established and registered in terms of this Part.

(2) The Public Service Bargaining Council shall consist of the following members —

- (a) Government, as the employer; and
- (b) trade unions that meet the threshold for admission in terms of the constitution of the Bargaining Council.

(3) The threshold for admission of a trade union to the Bargaining Council shall be determined in accordance with the following criteria —

- (a) the nature of the workplace;
- (b) the nature of the rights that the trade union seeks to exercise;
- (c) the arrangements in place for collective bargaining;
- (d) the organisational history at the workplace;
- (e) the composition of the employees at the workplace; and
- (f) whether recognition would promote orderly collective bargaining.

(4) For the purpose of this section, a trade union includes two or more trade unions acting jointly.

Functions of
Bargaining
Council

51. The functions of the Bargaining Council shall be to —

- (a) negotiate, conclude and enforce collective agreements between the employer and recognised public service trade unions;
- (b) facilitate cooperation between the employer and public officers, regarding matters affecting the public service, in order to increase efficiency of the service and the wellbeing of public officers;
- (c) facilitate better relations between Government as employer, and trade unions, based on mutual trust and respect;
- (d) determine, by collective agreement, the matters which may not be an issue in dispute for the purposes of a strike or lock-out at the workplace; and
- (e) exercise any other power or duty that may be necessary or desirable to achieve the objectives of the Bargaining Council.

52. (1) As soon as practicable after the commencement of this Act, the Government in its capacity as the employer and a simple majority of recognised trade unions whose members are public officers, to whom this Act applies, shall agree on a constitution for the Council.

(2) The constitution of the Bargaining Council shall provide, amongst other things, for the following matters —

- (a) the category or categories of employees that may be covered by the Bargaining Council;
- (b) the number of employer and employee representatives and alternate representatives of both the employer and employees;
- (c) the appointment and method of selection of a Chairperson and Deputy Chairperson of the Bargaining Council;
- (d) the appointment and method of selection of the Secretary of the Bargaining Council;
- (e) the procedure for the convening and conducting of meetings of the Bargaining Council, including the number of seats required to form a quorum and the recording of the minutes of the proceedings of the meetings of the Bargaining Council;
- (f) the procedure for the replacement of representatives;
- (g) the term of office of the Bargaining Council office holders;
- (h) the procedure to be followed in the event of a dispute or deadlock in the Bargaining Council;
- (i) the methods by which persons affected by any collective agreement made or amended by the Bargaining Council shall be informed;
- (j) the thresholds for the admission of trade union parties of the Bargaining Council;
- (k) the establishment and functions of committees of the Bargaining Council;
- (l) the manner in which decisions of the Bargaining Council are to be reached;
- (m) the procedure for the exemptions from any provisions of a collective agreement;
- (n) the procedure by which the Bargaining Council may resolve to wind up its operations; and
- (o) such other matters as may be included and approved by the Registrar.

(3) The parties shall submit a copy of the proposed constitution, together with any other information that may assist the Registrar to determine whether the constitution meets the requirements for registration.

(4) The Registrar shall, upon being satisfied that the proposed constitution complies with the provisions of the Trade Unions and Employers' Organizations Act, register the constitution.

Amendment
of constitution

53. (1) Any proposed changes to the constitution of the Bargaining Council as adopted by the parties, shall be submitted to the Registrar, for approval.

(2) The Registrar shall, upon being satisfied that the proposed changes to the constitution comply with the provisions of the Trade Unions and Employers' Organizations Act, approve the proposed changes to the constitution.

Bargaining
councils in
public service

54. (1) The Bargaining Council may, by resolution passed in terms of its constitution —

- (a) designate any sector of the Public Service for the establishment of a sectoral bargaining council;
- (b) designate the powers and functions of such sectoral bargaining councils; and
- (c) vary the designation of, or establish, amalgamate or dissolve any sectoral bargaining council so established.

(2) The resolution referred to in subsection (1), shall accompany the application —

- (a) to register a sectoral bargaining council;
- (b) to vary the designation of a sectoral bargaining council; or
- (c) to register the amalgamation of a sectoral bargaining council.

(3) Subject to subsection (1), a trade union recognised in terms of the Act shall be a member of a sectoral bargaining council.

Jurisdiction
of sectoral
bargaining
councils

55. (1) A sectoral bargaining council shall have jurisdiction in respect of matters that are specific to the sector and in respect of which Government, as employer, in that sector, may conclude collective agreements on —

- (a) the terms and conditions of employment that apply to the sector;
- (b) the regulation of relations between the employer and employees; and
- (c) the hours of work and rest periods for a specific sector.

(2) The decision of a sectoral bargaining council shall not bind the Bargaining Council, but the decisions of the Bargaining Council, in respect of general matters affecting the public service shall bind the sectoral bargaining council.

(3) Notwithstanding the provisions of subsection (2), the sectoral bargaining councils may make recommendations to the Bargaining Council, which shall then make such decision, as it considers appropriate within the scope of its constitution.

Rights of
trade
unions in
Bargaining
Council

56. Every recognised trade union that meets the threshold for admission, in terms of this Act is entitled to be a party in the Bargaining Council.

Disclosure of
information

57. (1) Subject to the provisions of subsections (2) to (5), the employer shall, on request, disclose all relevant information to a trade union that is a member of the Bargaining Council, that is reasonably required to allow the trade union to consult or bargain collectively.

(2) The employer shall notify the trade union, in writing, if any of the information requested by the union is information which may not be disclosed in terms of subsection (3).

(3) The employer shall not disclose information —

- (a) that is legally privileged;
- (b) that the employer cannot disclose without contravening a prohibition imposed on the employer by any law or order of court;
- (c) that is confidential and which, if disclosed, may cause material harm to an employee or the employer; or
- (d) that is private personal information relating to an employee, unless that employee consents to the disclosure of that information.

(4) Unless there is a collective agreement providing otherwise, any dispute concerning the provisions of this section, shall be referred for mediation or arbitration in terms of the Trade Disputes Act.

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(5) If the dispute is not settled within 30 days of the referral, any party may refer the dispute to the Industrial Court for determination.”.

PASSED by the National Assembly this 19th day of December, 2024.

DR. GABRIEL GOITSEMODIMO
G. MALEBANG,
Clerk of the National Assembly.