

**Statutory Instrument No. 53 of 1967**

**THE BOTSWANA INDEPENDENCE ORDER 1966**

**THE CONSTITUTIONAL AMENDMENT (ADAPTATION OF EXISTING LAWS) (NO. 12)  
ORDER 1967**

(Published on 29th September, 1967)

In exercise of the powers vested in him by section 4(3) (a) of the Botswana Independence Order 1966 His Excellency the President hereby makes the following Order —

**Citation**

1. This Order may be cited as the Constitutional Amendment (Adaptation of Existing Laws) (No. 11) Order 1967.

**Amendment of Regulation 1 of Legal Notice No. 41 of 1965**

2. Regulation 1 of the Public Service Commission Regulations, 1965 (hereinafter referred to as the principal regulations) is amended by the insertion after "Commission" of "(Supplementary Provisions)" and by the addition at the end of "and 1967".

**Repeal and Replacement of Regulation 2 of Legal Notice No. 41 of 1965**

3. Regulation 2 of the principal regulations is repealed and replaced as follows —

**"Interpretation and Application**

2. (1) In these regulations, unless the context otherwise requires —

"Chairman" means the Chairman of the Commission and includes a person acting as Chairman under section 110(10) of the Constitution and another member performing the functions of the Chairman under section 110(9) thereof;

"Commission" means the Public Service Commission;

"contract" means a written contract of a fixed maximum duration;

"General Orders" means the General Orders of the Government as in force from time to time;

"member" means a member of the Commission and includes the Chairman and any person acting as a member of the Commission under section 110(10) of the Constitution;

"responsible officer" in relation to any public officer, means, subject to the provisions of paragraph (3), and except as provided in the First Schedule, the Permanent Secretary of the Ministry in or under the control of which he is serving or if the Permanent Secretary to the President has, in terms of paragraph (2), appointed some other person as responsible officer for any class of public officer to which that public officer belongs, such other person;

"Secretary" means the Secretary to the Commission.

"service" means the public service."

(2) The Permanent Secretary to the President may, by direction in writing, appoint the holder of any public office to be the responsible officer for any class of public officer specified in the direction.

(3) Notwithstanding that in terms of this regulation some other person in the responsible officer, the Permanent Secretary to the President may at any time exercise the functions of a responsible officer in any matter falling under these regulations, and if he does so he and not the other person shall be regarded for the purposes of that matter as the responsible officer.

(4) Except as provided in regulation 58, nothing in these regulations shall apply to the appointment, disciplinary control or removal from office of any public officer by any person or body, other than the Commission, acting under lawful authority.

**Repeal of Regulations 3 to 13 of Legal Notice No. 41 of 1965**

4. Regulations 3 — 13 inclusive of the principal regulations are repealed.

**Amendment of Regulation 14 of Legal Notice No. 41 of 1965**

5. Regulation 14 of the principal regulations is amended by the deletion of "Her Majesty's Commissioner" and the substitution of "the President".

**Amendment of Regulation 16 of Legal Notice No. 41 of 1965**

6. Regulation 16 of the principal regulations is amended —

- (a) in the headnote by the deletion of "Persons other than Members" and the substitution of "Public Officers"; and
- (b) by the deletion of "Her Majesty's Commissioner" and the substitution of "the President".

**Repeal of Regulation 18 of Legal Notice No. 41 of 1965**

7. Regulation 18 of the principal regulations is repealed.

**Amendment of Regulation 21 of Legal Notice No. 41 of 1965**

8. Regulation 21 of the principal regulations is amended by the deletion of —

- (a) "functions under or in pursuance of these regulations" and the substitution of "official functions";
- (b) "Her Majesty's Commissioner" and the substitution of "the President";
- (c) "under or in pursuance of these regulations" where it appears for the second time.

**Amendment of Regulation 22 of Legal Notice No. 41 of 1965**

9. Regulation 22 of the principal regulations amended —

- (a) by the deletion of "Her Majesty's Commissioner" and the substitution of "the President";
- (b) by the addition after "year" of "and the President shall lay every such report before the National Assembly".

**Repeal of Regulations 23 — 27 of Legal Notice No. 41 of 1965**

10. Regulations 23 to 27 inclusive of the principal regulations are repealed.

**Amendment of Regulation 28 of Legal Notice No. 41 of 1965**

11. Regulation 28 of the principal regulations is amended by the deletion of all the words after "under" and the substitution of "the Constitution it shall maintain a system

of annual confidential reports on officers and responsible officers shall comply with any directions that the Commission may give in this regard”.

**Amendment of Regulation 29 of Legal Notice No. 41 of 1965**

12. Regulation 29 of the principal regulations is amended —

- (a) in paragraph (1) by the deletion of all the words after “regulation” and the substitution of “31, report the fact to the Secretary in such form as the Commission may determine.”; and
- (b) by the deletion of paragraphs (2), (3) and (4), the numbering of paragraph (1) being accordingly deleted.

**Repeal of Regulation 30 of Legal Notice No. 41 of 1965**

13. Regulation 30 of the principal regulations is repealed.

**Repeal and Replacement of Regulation 31 of Legal Notice No. 41 of 1965**

14. Regulation 31 of the principal regulations is repealed and replaced as follows —

**“Acting Appointments**

31. As soon as a responsible officer knows that the holder of an office in his department which attracts acting allowance or has specific statutory functions is or will become unable to perform the functions of that office for some temporary period, and the responsible officer is of the opinion that the office should be filled in an acting capacity, he shall report the fact to the Secretary in such form as the Commission may determine.”.

**Repeal of Regulations 32 and 33 of Legal Notice No. 41 of 1965**

15. Regulations 32 and 33 of the principal regulations are repealed.

**Amendment of Regulation 34 of Legal Notice No. 41 of 1965**

16. Regulation 34 of the principal regulations is amended —

- (a) in paragraph (2) by the deletion of the last sentence;
- (b) in paragraph (3) by the deletion of the last sentence; and
- (c) in paragraph (4) by the deletion of the last sentence.

**Amendment of Regulation 35 of Legal Notice No. 41 of 1965**

17. Regulation 35 of the principal regulations is amended —

- (a) by the renumbering of the existing regulation as paragraph (1);
- (b) in paragraph (1) by the deletion of “a public officer serving on contract should be dismissed” and the substitution of “the contract of a public officer serving on contract terms of service should be terminated”; and
- (c) by the addition of the following new paragraph —

“(2) If, on consideration of a recommendation made by a responsible officer under paragraph (1), the Commission is of the opinion that the facts alleged are such as to warrant the institution of proceedings under Part V, the Commission may direct the responsible officer to take action accordingly, and the responsible officer shall give effect to such directions.”.

**Amendment of Regulation 36 of Legal Notice No. 41 of 1965**

18. Regulation 36 of the principal regulations is amended —

- (a) in paragraph (1) by the deletion of “and the Commission shall advise what appointment should be made thereto”; and
- (b) in paragraph (2) —
  - (i) by the deletion of “and the Commission shall advise thereon”; and
  - (ii) by the deletion of “before so advising” and the substitution of “before taking further action in the matter”.

**Amendment of Regulation 37 of Legal Notice No. 41 of 1965**

19. Regulation 37 of the principal regulations is amended —

- (a) by the deletion of the headnote and the substitution of “Abolition of One of a Number of Offices”; and
- (b) by the addition after “terminated” of “and the Commission shall determine which it shall be”.

**Repeal and Replacement of Regulations 38 and 39 of Legal Notice No. 41 of 1965**

20. Regulations 38 and 39 of the principal regulations are repealed and replaced by the following regulations —

**“Retirement of Officer at Normal Retiring Age**

38. Not later than 6 months before a public officer who holds a pensionable office attains the age referred to in section 9(a) of the Pensions (Consolidation) Law, 1965 (No. 17 of 1965), the responsible officer shall report the fact to the Commission and if he considers that the officer should not be required to retire from the public service on attaining that age give reasons in writing in support thereof.

**Retirement at or After Prescribed Age**

38A. If a responsible officer is of the opinion that a public officer in his department who holds a pensionable office should be called upon to retire from the public service on the grounds that he has attained the age referred to in section 9(b) of the Pensions (Consolidation) Law, 1965 (No. 17 of 1965), he shall —

- (a) inform the officer that he intends to recommend that he be compulsorily retired from the public service;
- (b) ask the officer concerned whether he wishes to make, within a period of time appointed by the responsible officer, any representations why he should not be so retired; and
- (c) after the expiration of such period, forward his recommendation to the Secretary together with a copy of any representations made by the officer concerned and his comments thereon.

**Compulsory Retirement on Medical Grounds**

38B. If a responsible officer has reason to believe that a public officer in his department is incapable by reason of any infirmity of mind or body likely to be permanent of discharging the duties of his office he shall report the matter to the Commission and inform the officer in writing that he has done so. The Commission may call upon the officer

in question to submit to examination by a medical officer or officers nominated by it for the purpose of ascertaining the officer's condition.

#### **Compulsory Retirement on Marriage**

38C. If a female officer who holds a pensionable office marries, the responsible officer shall report the fact to the Commission and if he considers that the officer should not be required to retire from the Public Service by reason of such marriage give reasons in writing in support thereof.

#### **Compulsory Retirement in Other Circumstances**

39. (1) If the Permanent Secretary to the President considers that a public officer who holds a pensionable office should be required to retire from the service —

- (a) for the purpose of facilitating improvement in the organisation of the department to which he belongs, by which greater efficiency or economy be effected; or
- (b) on the grounds that, having regard to the conditions of the public service, the usefulness of the officer thereto and all the other circumstances of the case, termination of the officer's service is desirable in the public interest;

he shall —

- (i) obtain from the responsible officers of every Ministry or department in which the officer has served reports as to his work and conduct;
- (ii) allow the officer an opportunity of considering such reports and of showing cause why he should not be retired from the public service.

(2) If the Permanent Secretary to the President, after considering the officer's statement and having regard to all the circumstances of the case, is of the opinion that the officer should be retired from the public service on the said grounds, he shall forward to the Secretary the reports obtained in pursuance of paragraph (i) of paragraph (1) and the statement of the officer, together with his own recommendation.

(3) If, upon consideration of the report made by the Permanent Secretary to the President under paragraph (2), the Commission is of the opinion that the facts alleged are such as to warrant the institution of proceedings under Part V, the Commission may direct the responsible officer to take action accordingly, and the responsible officer shall give effect to such directions".

#### **Repeal of Regulations 42 – 44 of Legal Notice No. 41 of 1965**

21. Regulations 42 to 44 inclusive of the principal regulations are repealed.

#### **Amendment of Regulation 45 of Legal Notice No. 41 of 1965**

22. Regulation 45 of the principal regulations is amended —

- (a) by the deletion of the headnote and the substitution of "Salary of Interdicted Officer";
- (b) in paragraph (1) by —
  - (i) the deletion of "Her Majesty's Commissioner has interdicted any officer" and the substitution of "any officer has in terms of General Orders been interdicted";
  - (ii) the deletion of "advise on" and the substitution of "determine"; and

(c) in paragraph (2) by the deletion of "advise" and the substitution of "determine".

**Amendment of Regulation 47 of Legal Notice No. 41 of 1965**

23. Regulation 47 of the principal regulations is amended in paragraph (1) by the deletion of "a charge of misconduct should be preferred" and the substitution of "there is a *prima facie* case of misconduct against the officer which it does not properly fall to him to deal with under any powers conferred upon him by lawful authority".

**Amendment of Regulation 49 of Legal Notice No. 41 of 1965**

24. Regulation 49 of the principal regulations is amended —

(a) by the deletion of the words after "by" where it appears for the first time and the substitution of "a committee of officers it may, subject to the concurrence of the Permanent Secretary to the President, appoint one or more officers as a committee to conduct the enquiry. Every such committee shall for the purposes of that enquiry have the same powers as are conferred upon the Commission by regulations 16 and 17"; and

(b) by the addition of the following new paragraph, the existing regulation becoming thereby paragraph (1) —

"(2) If during the course of the enquiry grounds for the framing of additional charges are disclosed, the committee shall so inform the responsible officer who shall follow the same procedure as was adopted in framing the original charges."

**Amendment of Regulation 50 of Legal Notice No. 41 of 1965**

25. Regulation 50 of the principal regulations is amended by the insertion after "held" of "under regulation 49".

**Amendment of Regulation 51 of Legal Notice No. 41 of 1965**

26. Regulation 51 of the principal regulations is amended by the deletion of "the Commission or."

**Amendment of Regulation 52 of Legal Notice No. 41 of 1965**

27. Regulation 52 of the principal regulations is amended —

(a) by the deletion of "Commission or" wherever it appears; and

(b) by the deletion of "the Territory" and the substitution of "Botswana".

**Amendment of Regulation 53 of Legal Notice No. 41 of 1965**

28. Regulation 53 of the principal regulations is amended by the deletion of "and the Commission shall consider the same".

**Repeal of Regulations 54 – 56 of Legal Notice No. 41 of 1965**

29. Regulations 54 to 56 inclusive of the principal regulations are repealed.

**Amendment of Regulation 57 of Legal Notice No. 41 of 1965**

30. Regulation 57 of the principal regulations is amended in paragraph (2) by the deletion of the proviso and the addition of "and the responsible officer shall give effect to such direction".

**Amendment of Regulation 58 of Legal Notice No. 41 of 1965**

31. Regulation 58 of the principal regulations is amended —

- (a) in paragraph (1) by the deletion of “as a result of disciplinary proceedings under this Part” and the substitution of “by the Commission or by any person or persons duly authorised to act under section 111(3) of the Constitution in exercise of the power of disciplinary control over that officer referred to in section 111(1) of the Constitution”; and
- (b) in paragraph (2) —
  - (i) by the deletion of “under this Part”; and
  - (ii) by the deletion of “so recommend” and the substitution of “act accordingly”.

**Amendment of Regulation 59 of Legal Notice No. 41 of 1965**

32. Regulation 59 of the principal regulations is amended —

- (a) in paragraph (2) by the deletion of all the words after “shall” where it appears for the second time and the substitution of “determine whether or not such increment shall be stopped or withheld. The Commission may also determine that any increment which has been stopped in terms of regulation 58 or this regulation shall be later granted or that any increment which has been so withheld shall be later restored.”; and
- (b) by the addition of the following new paragraph —

“(5) In this regulation, “normal incremental date” in relation to any officer means his normal incremental date as determined in accordance with General Orders or any contract under which he may be serving.”.

**Repeal of Regulation 61 of Legal Notice No. 41 of 1965**

33. Regulation 61 of the principal regulations is repealed.

**Repeal and Replacement of Regulation 62 of Legal Notice No. 41 of 1965**

34. Regulation 62 of the principal regulations is repealed and replaced as follows —

**“Conversion of Temporary or Contract Terms to Pensionable Terms**

62. The Commission shall determine whether permanent and pensionable terms of service in a public office shall be awarded to any officer eligible for such terms who is already serving in that office under contract or upon temporary engagement.”.

**Repeal of Regulations 63 – 65 of Legal Notice No. 41 of 1965**

35. Regulations 63 to 65 inclusive of the principal regulations are repealed.

**Repeal and Replacement of First Schedule to Legal Notice No. 41 of 1965**

36. The First Schedule to the principal regulations is repealed and replaced as follows—

**"FIRST SCHEDULE**

(regulation 2(1))

**RESPONSIBLE OFFICERS – SPECIAL CASES**

1	2
In respect of any public officer holding an office —	The responsible officer shall be —
(a) mentioned in the Administration of Justice head of the estimates not being an officer to which section 105 of the Constitution applies	Registrar of the High Court
(b) on the staff of the National Assembly	Clerk of the National Assembly
(c) on the staff of the Public Service Commission	Secretary, Public Service Commission
(d) on the staff of the Attorney-General	Attorney-General
(e) on the staff of the Director of Audit	Director of Audit
(f) in the Botswana Police or on the staff of any officer of the Botswana Police	Commissioner of Police
(g) in the Botswana Prison Service or on the staff of the Director of Prisons	Director of Prisons
(h) on the staff of the Establishment Secretary	Establishment Secretary
(i) referred to in the second column of this Schedule or to which section 114 of the Constitution applies	Permanent Secretary to the President"

**Repeal of Second and Third Schedules to Legal Notice No. 41 of 1965**

37. The Second and Third Schedules to the principal regulations are repealed.

**Amendment of Fourth Schedule to Legal Notice No. 41 of 1965**

38. The Fourth Schedule of the principal regulations is amended in Part A (which relates to the Form of Charge) by the deletion of "(General) Regulations, 1965" and the substitution of "(Supplementary Provisions) Regulations, 1965 and 1967".

Office of the President.  
GABERONES.  
27th September, 1967.

T.J. MOLEFHE,  
Private Secretary to the President.