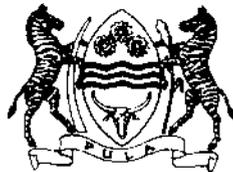


THE PRISONS (AMENDMENT) ACT, 1968

No. 49



of 1968

AN ACT TO AMEND THE PRISONS LAW TO MAKE PROVISION RELATING TO THE DUTIES OF PRISON OFFICERS AND THE REMOVAL FROM OFFICE AND DISCIPLINE OF JUNIOR OFFICERS

Date of Assent: 6.9.68

Date of Commencement: 13.9.68

ENACTED by the Parliament of Botswana.

Short Title

1. This Act may be cited as the Prisons (Amendment) Act, 1968.

Amendment of Section 2 of Law No. 41 of 1964

2. The Prisons Law, 1964 (hereinafter referred to as the principal law) is amended in section 2 —

(a) by the insertion of the following definition —

“ “offence against discipline” means an offence declared to be an offence against discipline in terms of section 31;”;

(b) by the amendment of the definition of “private land” by the deletion of “the Government;”;

(c) by the deletion of the definition of “public authority” and the substitution of —

“ “public authority” means the Government of Botswana or any agency thereof, a district or town council, and any statutory corporation;”;

(d) by the deletion of the definition of “prison”

Insertion of Sections 6 and 7 into Law No. 41 of 1964.

3. The principal law is amended by the insertion of the following sections after section 5 —

“General Orders

6. Every prison officer shall be subject to such of the General Orders of the Government of Botswana as apply to prison officers, in so far as the same are not inconsistent with the provisions of this Law.

Duties of Director of Prisons

7. The Director of Prisons shall, subject to the general or special directions of the Minister, be responsible to the Minister for the general supervision and control of all prisons and shall do all such acts as may be necessary for the maintenance of prisons and prisoners.”.

Insertion of Sections 10 and 11 into Law No. 41 of 1964

4. The principal law is amended by the insertion of the following sections after section 9 —

“Termination, Dismissal and Retirement

10. Without prejudice to his rights under section 32, the Director may, in the case of a junior officer, at any time —

- (a) terminate the appointment of such officer on probation, if the Director considers that he is unlikely to become an efficient member of the Service;
- (b) retire such officer on reduction of establishment;
- (c) retire such officer if a board of Government medical officers, appointed by the Director of Medical Services on the request of the Director of Prisons, finds that he is mentally or physically unfit for service and that such unfitness is likely to be permanent;
- (d) dismiss such officer on conviction of an offence other than an offence under this Law;
- (e) retire in the public interest any such officer who displays general incompetence or who fails to co-operate with other officers of the Service or manifests a want of courage, although he may not be guilty of a specified offence.

Appeal Against Removal from Office

11. (1) Notice of an appeal in accordance with the provisions of section 113(?) of the Constitution against removal from office under the provisions of section 10 shall be given in such manner and within such time as may be prescribed.

(2) If the Public Service Commission sets aside a removal from office, it shall make an order for the payment to such officer of the whole, or such portion as the Commission thinks fit, of the salary which such officer would have received had he not been so removed.”.

Insertion of Sections 31, 32, 33, 34, 35, 36, and 37 into Law No. 41 of 1964.

5. The principal law is amended by the insertion after section 30 of the following sections —

“Offences Against Discipline

31. (1) Any junior officer who —

- (i) is disrespectful in word, act or demeanour to an officer senior to him in the Service;
- (ii) disobeys any lawful order issued under the provisions of this Law;
- (iii) renders himself unfit for duty through or habitually uses to excess intoxicating beverages or habit-forming drugs;
- (iv) absents himself without leave;
- (v) sleeps at his post or leaves it before being lawfully relieved, except in fresh pursuit of any offender whom it is his duty to apprehend;
- (vi) being under arrest or confinement leaves or escapes from his arrest or confinement before he is set at liberty by proper authority;
- (vii) neglects or refuses to assist in the apprehension of any prison officer or prisoner whom it is his duty to arrest;
- (viii) allows to escape any prisoner who is committed to his charge or whom it is his duty to keep or guard;
- (ix) offers or uses unwarranted personal violence to any person in his custody;
- (x) uses any weapon without just cause or order;
- (xi) without cause, fails to appear or appears late at any parade or duty appointed by an officer senior to him in the Service;
- (xii) pawns, sells, loses by neglect, makes away with, wilfully spoils or fails to report any damage to any weapon, ammunition, accoutrement, clothing, any medal or decoration granted to him for services or good conduct, or any other public property;
- (xiii) steals or destroys any property belonging to or issued to a prison or prisoner;
- (xiv) is slovenly, inattentive, uncivil, or quarrelsome;
- (xv) without due authority, discloses or conveys any information concerning any investigation or matter relating to the Service;
- (xvi) malingers or feigns or wilfully produces any disease or infirmity or fails to report any disease or accident;

- (xvii) is guilty of misconduct or disobeys, whether in hospital or otherwise, any orders, by means of which misconduct or disobedience he produces or aggravates any disease or infirmity or delays its cure;
 - (xviii) resists an escort whose duty it is to apprehend him or to have him in charge;
 - (xix) breaks out of, or leaves without lawful excuse, warders' lines, camp or quarters;
 - (xx) makes or signs any false report or statement in any official record or document, knowing or having reasonable ground to believe that the same is false;
 - (xxi) refuses or, by culpable neglect, omits to make or send a report or return which it is his duty to make or send;
 - (xxii) knowingly makes a false accusation against any other prison officer or prisoner, or wilfully suppresses any material facts, or makes or joins in making any anonymous complaint;
 - (xxiii) is unduly familiar with prisoners;
 - (xxiv) assists or connives with any prisoner in having or obtaining any prohibited article;
 - (xxv) with intent to cause any breach of the provisions of this Law, holds correspondence or any communication with persons who have been discharged from prison or with their relatives or friends;
 - (xxvi) is guilty of any neglect of duty;
 - (xxvii) is guilty of any other act, conduct, disorder, or neglect of duty to the prejudice of good order or discipline;
- shall be guilty of an offence against discipline.

(2) Nothing in this section shall be construed to exempt any junior officer from being proceeded against for any offence against any other law, so however that no such officer shall be punished twice for the same act or omission.

Power to Try Junior Prison Officers

32. (1) The Director or a senior officer authorized thereto by the Director may enquire into any alleged offence against discipline by a junior officer and, if he is satisfied after such enquiry that such prison officer is guilty of such offence, he may award one or more of the following punishments —

- (a) reprimand;
- (b) severe reprimand;
- (c) extra duties;

- (d) a fine not exceeding one third of one month's salary;
- (e) stoppage of salary where there has been absence without leave or loss by negligence of, or injury to, property;
- (f) withholding or deferment of any increment of salary for which the officer may be eligible;
- (g) reduction in rank;
- (h) dismissal from the Service.

(2) The Director or presiding officer may, instead of imposing a punishment under the provisions of subsection (1), admonish the officer into whose conduct enquiry has been made.

(3) Where an enquiry is conducted by a senior officer, upon sentencing an officer under the provisions of subsection (1), the presiding officer shall forward the record of the case, together with his comments thereon, to the Director who may —

- (a) confirm, amend or set aside the findings of the presiding officer; or
- (b) confirm the punishment imposed by the officer or alternatively, impose such punishment (whether more or less severe than, or of a different nature from, the punishment imposed by the officer in charge); or
- (c) direct that the enquiry be reopened, in which case the provisions of this section shall apply to the reopened enquiry as they do to an enquiry under subsection (1).

(4) Any punishment awarded under sub-section (1) by a senior officer shall remain in abeyance until the Director has signified his decision thereon in accordance with the provisions of subsection (3).

Junior Prison Officer to be Allowed to Make His Defence

33. Every junior prison officer charged with an offence against discipline shall be entitled to be present at the enquiry held under section 32(1) and shall be entitled to defend himself either in person or, with the consent of the presiding officer, by a legal practitioner.

Appeal Against Award of Punishment

34. Notice of an appeal in accordance with the provisions of section 113(2) of the Constitution against any punishment awarded under section 32(1) shall be given in such manner and within such time as may be prescribed.

Fines and Stoppages of Salary

35. Any fine or stoppage of salary shall be recovered from the offender's salary due or thereafter accruing (either as a single sum or in instalments) and so much only of his salary shall be stopped as shall leave him a residue of at least two-thirds of his monthly salary.

Interdiction

36. (1) The Director may at any time in the interests of discipline interdict from duty any prison officer who is charged with an offence or an offence against discipline, whether under this Law or any other law.

(2) Any prison officer interdicted in terms of subsection (1) shall receive, during the period of such interdiction such portion of his salary, being not less than one half, as the Director shall determine.

(3) If such prison officer is not thereafter dismissed from the Service, he shall, subject to the provisions of section 35, receive his full salary for the period of his interdiction.

(4) An appeal shall lie to the Public Service Commission from any decision of the Director under the provisions of subsection (2) and such appeal shall be made and may be dealt with, in so far as may be, in accordance with the provisions of section 34.

(5) A prison officer shall not by reason of being interdicted from duty cease to be a prison officer. During the term of such interdiction, the powers, functions, and privileges vested in him as a prison officer shall be in abeyance, but he shall continue subject to the same responsibilities, discipline, and penalties, and to the same authorities, as if he had not been interdicted.

Powers of Officers Holding Disciplinary Enquiries

37. (1) The Director and every senior officer enquiring into an alleged offence against discipline by a junior prison officer, shall have power to summon and examine witnesses on oath and to require the production of all documents relevant to such an enquiry and to adjourn any hearing from time to time.

(2) Any person summoned as a witness under subsection (1) who, without reasonable excuse, fails to attend at the time and place mentioned on the summons, or on adjournment, or refuses to answer any question lawfully put to him, shall be guilty of an offence and liable on conviction to the penalties prescribed in subsection (1) of section 106:

Provided that no witness shall be obliged to answer any question which may tend to incriminate him, or render him liable to any forfeiture or penalty.

(3) Witnesses attending before an officer enquiring into an alleged offence against discipline under this section shall, where appropriate, be paid allowances according to the tariff payable to witnesses in civil proceedings in any subordinate court."

Amendment of Section 63 of Law No. 41 of 1964

6. Section 63 of the principal law is amended by the repeal of subsection (4).

Amendment of Section 64 of Law No. 41 of 1964

7. Section 64 of the principal law is amended in sub-paragraph (a) of paragraph (3) by the deletion of "serving a sentence of six years or more".

Amendment of Section 107 of Law No. 41 of 1964

8. Section 107 of the principal law is amended —

(a) in subsection (1), by the deletion of "President" and the substitution of "Minister";

(b) in subsection (2) —

(i) by the insertion of the following paragraph after paragraph (d) —

“(e) the procedure to be followed at any enquiry under the provisions of section 32 or in relation to any matter arising out of such an enquiry;”;

(ii) by the deletion of paragraph (w);

(c) by the addition of the following subsection —

“(3) The President may, by notice in the *Gazette*, make regulations regulating the award of the Botswana Prison Service Medal and of any clasp thereto.”.

Passed by the National Assembly this day, the 9th August, 1968.

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