

THE PUBLIC SERVICE (SUPPLEMENTARY PROVISIONS) ACT, 1969

No. 47



of 1969

ARRANGEMENT OF SECTIONS

**PART I
PRELIMINARY**

1. Short Title
2. Interpretation

**PART II
THE PUBLIC SERVICE COMMISSION**

3. Definition
4. Protection of Members from Legal Proceedings
5. Privilege for Communications, etc.
6. Improper Influence
7. Supplying False Information to Commission
8. Powers of Commission
9. Improper Disclosure
10. Commissions' Annual Report

**PART III
THE PUBLIC SERVICE**

11. Administration of the Service
12. Public Service Regulations

PART IV

13. General Duties of Public Officers
14. Probation
15. Retirement of Public Officers
16. Whole Time of Public Officer at Disposal of Government
17. Fees for Official Services
18. Emoluments Not to be Ceded
19. Political Activities
20. Publications, Interview and Use of Official Information

PART V

21. Legal Representation
22. Amendment and Effect of Legal Notice No. 41 of 1967

AN ACT TO MAKE SUPPLEMENTARY PROVISION FOR MATTERS RELATING TO THE PUBLIC SERVICE OF BOTSWANA

Date of Assent: 22.8.69

Date of Commencement: 22.8.69

ENACTED by the Parliament of Botswana.

PRELIMINARY

Short Title

1. This Act may be cited as the Public Service (Supplementary Provisions) Act, 1969.

Interpretation

2. In this Act unless inconsistent with the context —

“appropriate authority” means the Commission or, in relation to a public office referred to in section 111(2) (b) to (d) inclusive of the Constitution, the person or authority who may in accordance with the Constitution (read as necessary with any other written law) appoint a person to hold or to act in that office;

“Commission” means the Public Service Commission or the Judicial Service Commission, as the context may require;

“responsible officer” in relation to any public officer, means the public officer designated in the regulations as the responsible officer for that public officer;

“Permanent Secretary to the President” includes any other public officer while exercising or performing the functions of Permanent Secretary to the President under section 11(3);

“public office” and “public officer” have the same meaning as in the Constitution ;

“regulations” means regulations made or to be made under section 13.

PART II

THE COMMISSIONS

Definition

3. In this Part, “member” in relation to a Commission, includes any person or body of persons appointed to assist the Commission in the exercise of its function.

Protection of Members from Legal Proceedings

4. Every member of a Commission shall have such and like protection and privilege in the case of any action or suit brought against him for any act done or omitted to be done in the *bona fide* execution of his duties as is by law given to acts done or words spoken by a judge of the High Court in the exercise of his judicial office.

Privilege for Communications etc.

5. No person shall in any legal proceedings be permitted or compelled to produce or disclose any communication, written or oral, which has taken place between a Commission, or any member or officer thereof, and the Government, or the President, or a Minister, or any officer of the Government, or between any member or officer of a Commission and its chairman, or between members or officers of a Commission, in exercise of, or in connexion with the exercise of, the functions of a Commission, unless the President consents in writing to such production or disclosure.

Improper Influence

6. Any person who otherwise than in the course of his duty directly or indirectly by himself or by any other person in any manner whatsoever influences or attempts to influence the decision of a Commission or of the Chairman or of any member shall be guilty of an offence and liable on conviction to a fine of R500 or to imprisonment for a period of six months or to both such fine and such imprisonment:

Provided that nothing in this section shall be deemed to make unlawful the giving of any reference or testimonial to any applicant or candidate for any public office or the supplying of any information or assistance requested by a Commission.

Supplying False Information to Commission

7. Any person who in connexion with the exercise by a Commission of its functions wilfully gives to a Commission or any member thereof any information which he knows to be false or does not believe to be true or which he knows or believes to be misleading by reason of the omission of any material particular, shall be guilty of an offence and shall be liable on conviction to a fine of R500 or to imprisonment for a period of six months or to both such fine and such imprisonment.

Powers of Commission

8. (1) For the performance of a Commission's functions the Commission may —

- (a) inspect Government offices ; and
- (b) examine official documents, books or other records ; and
- (c) obtain information and advice from any public officer or other Government servant ; and
- (d) do all such things, including the taking of evidence on oath and the administration of oaths, as are incidental or conducive to the exercise of the Commission's functions.

(2) A Commission may require any public officer or other Government employee whose evidence appears to be material to the determination of any inquiry or investigation conducted by the Commission, to attend, at such time and place as may be specified by the Commission, to give evidence or produce an official document, book or other record in his possession or under his control which relates to a matter in question at any inquiry or investigation.

(3) No public officer or other Government servant shall be compelled to answer a question the answer to which may render him liable to prosecution on a criminal charge.

(4) Nothing in this section shall be construed as requiring a public officer or other Government servant to disclose information or produce an official document, book or other record, the disclosure or production of which —

- (a) is prohibited or restricted in terms of the Income Tax (Consolidation) Proclamation, 1959, the Statistics Act, 1967, or any other law prohibiting or restricting the disclosure of information ; or
- (b) is certified in writing by the Minister to be contrary to the public interest.

Improper Disclosure

9. (1) Any member or other person who, without the written permission of the Minister, knowingly publishes or discloses to any other person otherwise than in

the exercise of his official functions the contents of any document, communication or information whatsoever which has come to his notice in the course of his duties in relation to the Commission shall be guilty of an offence and shall be liable on conviction to a fine of R500 or to imprisonment for a period of six months or to both such fine and such imprisonment.

(2) Any person who knows of any information which to his knowledge has been disclosed in contravention of subsection (1) and who publishes or communicates it to any other person otherwise than for the purposes of any prosecution under this Act or in the course of his official duty shall be liable on conviction to a fine of R500 or to imprisonment for a period of six months or to both such fine and such imprisonment.

Commissions' Annual Report

10. Each Commission shall as soon as possible after the end of any calendar year submit a report to the Minister in respect of the discharge of its functions during that year and the Minister shall lay every such report before the National Assembly.

PART III

THE PUBLIC SERVICE

Administration of the Service

11. (1) Subject to the provisions of any other written law the administration of the public service and the ordering of the terms and conditions of service of public officers shall be vested in the Permanent Secretary to the President, who shall be head of the public service.

(2) In exercise of the powers vested in him by subsection (1), the Permanent Secretary to the President may define rules of conduct for public officers not inconsistent with the provisions of any written law, and public officers shall comply therewith.

(3) The Permanent Secretary to the President may, by directions in writing and subject to such conditions as he sees fit, delegate any of his powers under subsection (1) to any one or more other public officers.

Public Service Regulations

12. (1) The President may make regulations —
- (a) in exercise of the powers vested in him by —
 - (i) section 57;
 - (ii) section 109; and
 - (iii) section 111(8);
- of the Constitution;

- (b) prescribing the procedure of the Public Service Commission;
- (c) regulating the manner in which questions shall be referred to the Public Service Commission;
- (d) prescribing the punishments which may be awarded to public officers for breaches of discipline;
- (e) prescribing anything which in terms of this Act is to or may be prescribed;
- (f) generally for the carrying into effect of the purposes of this Act and of Chapter VII of the Constitution.

(2) The powers vested in the President by this section shall not be transferred or delegated.

PART IV

PUBLIC OFFICERS

General Duties of Public Officers

13. It is the duty of every public officer to aid and assist the Government of Botswana according to the Constitution and other laws of Botswana, to carry out and obey all lawful orders of the Government and, subject to the Government's authority and direction to exercise the functions of his office impartially, efficiently and without delay so as to serve the people of Botswana and promote their welfare and lawful interests.

Probation

14. (1) No public officer shall be admitted to permanent and pensionable terms in the employment of the Government of Botswana unless he has served on probation for the prescribed period.

(2) Where any person required by subsection (1) to serve on probation has previously been employed in the service of the Government of Botswana or in such other service as may be prescribed, the period or any part thereof of such previous service may, in the discretion of the appropriate authority, be regarded as service on probation for the purposes of subsection (1).

Retirement of Public Officers

15. (1) In this section, "public officer" or "officer" means a public officer admitted to permanent and pensionable terms of service.

(2) Subject to the provisions of this section, an officer shall retire from the public service on attaining the age of fifty-five years.

(3) Subject to the provisions of this section, an officer who has attained the age of forty-five years may in the discretion of the appropriate authority be retired from the public service.

(4) Subject to the provisions of the preceding subsection, an officer shall have the right at any time before or after attaining the age of forty-five years to give written notification to his responsible officer of his wish to be retired from the public service, and if he gives such notification he shall —

- (a) if such notification is given at least six calendar months prior to the date on which he attains the said age, be so retired on attaining that age; or
- (b) if such notification is not given at least six calendar months prior to the date on which he attains the said age, be so retired on the first day of the seventh month following the month in which that notification is received.

(5) If in the opinion of the appropriate authority it is in the public interest to retain a public officer in his office beyond the age at which under subsection (2) as read with subsection (6) he is required to retire, such officer may if so willing, be so retained from time to time by the appropriate authority for such periods as that authority may determine.

(6) The Minister may by notice in the *Gazette* —

- (a) determine an age greater than fifty-five years for the purpose of the retirement of public officers under subsection (2); or
- (b) determine an age greater than forty-five years for the purpose of the retirement of public officers under subsections (3) and (4);

and on and after the date on which such a notice comes into operation —

- (i) the reference in subsection (2) to the age of fifty-five years; or
 - (ii) the reference in subsections (3) and (4) to the age of forty-five years;
- shall be regarded as reference to the greater age respectively determined in that notice.

(7) On the abolition of any public office, an officer holding the same shall, unless transferred by the appropriate authority to some other public office, be deemed to have retired from the public service.

(8) Nothing in this section shall be deemed to affect any provision of the Constitution relating to the removal from office or retirement of a judge of the Court of Appeal, a judge of the High Court, the Attorney-General or the Director of Audit.

Whole Time of Public Officer is at Disposal of Government

16. Unless it is otherwise provided in the terms of his appointment or in any other law —

- (a) every public officer shall place the whole of his time at the disposal of the Government; and

- (b) no public officer may claim as of right additional remuneration in respect of any official duty or work that he is required by competent authority to perform.

Fees for Official Services

17. No fee, reward or remuneration of any kind whatsoever, beyond his emoluments, shall be received and kept for his own use by a public officer for the performance of any service for the Government, unless specially authorised by law or by the terms of his appointment or by the Permanent Secretary to the President.

Emoluments Not to be Ceded

18. Subject to the provisions of any other law, no public officer shall, without the written approval of the Permanent Secretary to the President (given after consultation with the Financial Secretary), or the Minister responsible for finance, cede, assign or transfer the whole or any part of any salary or allowance payable to him.

Political Activities

19. A public officer may exercise his right to vote at any election, but he shall not —

- (a) be an active member of a political party or association ;
- (b) speak in public on any party political matter ;
- (c) take an active part in the support of any candidate in an election ;
- (d) do anything by word or deed which is calculated to further the party political interests of any political party or association ;

but nothing in this section shall be construed as preventing an officer from performing his lawful duty to the Government of Botswana.

Publications, Interviews and Use of Official Information

20. Subject to the provisions of any other law, every public officer shall comply with the following rules of conduct —

- (a) he shall not, without the express permission of the Permanent Secretary to the President, act as the editor of a newspaper (not being a publication of the Government), nor take part directly or indirectly in the management thereof, nor publish in any manner anything which may be reasonably regarded as of a political or administrative nature, but he may publish in his own name other matter relating to subjects of general interest ;
- (b) whether on duty or on leave of absence, he shall not (except with due authority) allow himself to be interviewed on questions of or connected

with any matter affecting or relating to the public policy, defence, military or economic resources of Botswana;

- (c) he shall not directly or indirectly reveal, or use for private purposes, any information coming to his knowledge or acquired by him or the nature or the contents of any document communicated to him either in the course of his duties or in his capacity as an officer, otherwise than in the proper discharge of his duties as authorised by law or competent authority.

PART V

SUPPLEMENTARY

Legal Representation

21. No person appearing before the Commission or any person or body conducting an inquiry or investigation on its behalf shall be entitled to legal representation; but the Commission or such person or body may permit such person to be represented by a legal practitioner admitted to practise in Botswana and may at any time withdraw such permission.

Amendment and Effect of Legal Notice No. 41 of 1967

22. (1) Regulations 3 to 22 of the Public Service Commission (Supplementary Provisions) Regulations, 1965 and 1967 are repealed.

(2) The Public Service Commission (Supplementary Provisions) Regulations, 1965 and 1967, shall, to the extent that they are not inconsistent with the provisions of this Act, be deemed to be regulations made under section 11 and shall remain in force until they are amended or repealed under the provisions of this Act.

Passed by the National Assembly this day, the 14th August, 1969.

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