

**PUBLIC SERVICE ACT, 1973**

**No. 14**



**of 1973**

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**AN ACT TO PROVIDE FOR MATTERS RELATING TO  
THE PUBLIC SERVICE OF BOTSWANA.**

*Date of Assent:* 22.6.73

*Date of Commencement:*

ENACTED by the Parliament of Botswana.

PRELIMINARY

Short title  
Inter-  
pretation

1. This Act may be cited as the Public Service Act, 1973.
2. In this Act unless the context otherwise requires —  
“appointing authority” means any person or body having power, whether delegated or otherwise, to appoint to office in the public service;

“appointment” means a transfer, a promotion, a temporary appointment and, if the person appointed to act draws the salary of the office, an acting appointment;

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

“Director” means the Director of Personnel appointed under section 5;

“Permanent Secretary” includes the Attorney-General, the Auditor-General and the Registrar of the High Court;

“promotion” means the appointment of a public officer to a different public office with an increase or potential increase of salary;

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

“responsible officer”, in relation to a public officer, means the public officer designated, or to whom the necessary power is delegated, under this Act or any regulations made thereunder, to exercise disciplinary control over and to remove from office that public officer;

“transfer” means the appointment of a public officer to another public office with no alteration or potential alteration to salary.

## **PART I**

### **ADMINISTRATION OF PUBLIC SERVICE**

**3.** The exercise of any powers or the performance of any duties under this Act shall be subject to such general directions of the President as the President may deem necessary. Directions of the President

**4.** (1) The Permanent Secretary to the President shall be the head of the public service and shall, subject to the Constitution, this Act and any regulations made thereunder, have vested in him the administration of the public service. Head of the public service

(2) The Permanent Secretary to the President may define, and incorporate in General Orders, rules of conduct for public officers. Such rules of conduct shall not be inconsistent with the provisions of this Act or any regulations made thereunder and shall be complied with by all public officers.

(3) The Permanent Secretary to the President may at any time exercise the functions of any other Permanent Secretary in any matter falling under this Act, and if he does so he and not the other Permanent Secretary shall be regarded for the purposes of that matter as that other Permanent Secretary.

**5.** (1) There shall be a Director of Personnel, who shall be a public officer appointed by the President. Director of Personnel

(2) The Director of Personnel shall, subject to the Constitution, this Act and any regulations made thereunder, be responsible for the following matters, namely —

- (a) conditions of appointment and terms of service;
- (b) the administration of General Orders;
- (c) the recruitment of public officers, including volunteers and technical assistance personnel;
- (d) staff complements and gradings;
- (e) the administration, structure and assessment of salaries;
- (f) public service training policy;
- (g) discipline, staff training and welfare;
- (h) localization and staff development programmes;
- (i) staff inspections and organization and methods;
- (j) the approval and administration of schemes of service;
- (k) allowances and policy with regard to pensions and gratuities;
- (l) personnel statistics;
- (m) pre-allocation of secondary school leavers;
- (n) placement of returning graduates;
- (o) such other matters as may be prescribed.

## **PART II**

### **APPOINTMENTS TO THE PUBLIC SERVICE, ETC.**

Power of  
appointment,  
discipline  
and removal

**6.** (1) Subject to the Constitution, the power to appoint any public officer on the superscale (other than an officer to whom section 111 of the Constitution does not apply), a district officer, an Assistant Principal, a Principal, an Assistant Secretary or a Head of a Department, shall be vested in the Permanent Secretary to the President.

(2) The power to appoint persons to any office in the Botswana Police Force below the rank of Assistant Superintendent and to exercise disciplinary control over and to remove any person holding any such office shall be vested in the Commissioner of Police in accordance with any written law relating to the Botswana Police Force.

(3) The power to appoint persons to any office in the Botswana Prison Service below the rank of Assistant Superintendent of Prisons and to exercise disciplinary control over and to remove any person holding any such office shall be vested in the Director of Prisons in accordance with any written law relating to the Botswana Prison Service.

(4) Subject to the Constitution, the power to appoint any person to any public office other than one of those referred to in subsections (1), (2) and (3) and to exercise disciplinary control over and to remove any person holding any such office shall be vested in the Director in accordance with this Act and any regulations made thereunder.

(5) The Director may, with the consent of the President, by directions in writing, delegate any of his powers under this section to any public officer not below the rank of Permanent Secretary, but notwithstanding any such delegation the Director may vary or set aside any decision made by such public officer in the exercise of his delegated powers.

(6) Before any power relating to the appointment of the Clerk or Clerk-Assistant of the National Assembly is exercised under this section, the Director shall consult the Speaker of the National Assembly, and before any such power relating to the appointment of the Secretary to the House of Chiefs is exercised the Director shall consult the Chairman of that House.

(7) No person shall be appointed to the personal staff of the President except with the approval of the President.

(8) Notwithstanding anything contained in this section, the power to exercise disciplinary control over and to remove from office public officers on the superscale shall be vested in the Permanent Secretary to the President, and the similar power in respect of other public officers referred to in subsection (1) shall be vested in the Director.

**7.** (1) In selecting candidates for appointment the appointing authority shall have regard primarily to the efficiency of the public service. Criteria for appointment

(2) When any public office is vacant the following persons shall, subject to satisfying any scheme of service laying down the qualifications for any public office, be qualified for appointment to such office in the following order of priority —

- (a) any public officer who is a citizen of Botswana;
- (b) any other citizen of Botswana;
- (c) any public officer, whether on pensionable or contract terms, who is not a citizen of Botswana;
- (d) any other person who is not a citizen of Botswana but whose appointment to such office is approved under section 8 or deemed to be approved under section 9.

**8.** (1) No person who has been convicted of an offence involving moral turpitude or who has been dismissed from the public service shall be appointed to any public office without the approval of the President. Disqualification for appointment

(2) No person shall be appointed to public office unless he holds such qualifications as have been prescribed for appointment to that office:

Provided that the provisions of this subsection may be waived with the approval of the President to facilitate the localization of the public service.

(3) No person who is not a citizen of Botswana shall be appointed (other than on transfer or promotion) on pensionable terms to any public office except with the approval of the President.

(4) Subject to the provisions of subsection (3) no person who is not a citizen of Botswana shall be appointed to any public office unless the appointing authority is satisfied that no citizen of Botswana who is qualified and suitable for appointment is available and the President is satisfied that it would not be in the public interest for the office to remain vacant.

Appointment  
of citizens of  
certain  
countries

**9.** The appointment of any person to any public office shall be deemed to be approved if such person is a citizen of a country prescribed by the President as a country whose citizens may be recruited into the public service of Botswana without reference to him.

Retrospective  
appointments

**10.** Subject to the provisions of section 13, any appointment by an appointing authority may be made retrospective to such date as he deems appropriate, whether or not such date is prior to the commencement of this Act.

Probation

**11.** (1) Where any person is appointed to any public office (otherwise than on promotion or transfer) on pensionable terms he shall first serve a probationary period of two years, or such other period as may be prescribed by the President for particular public offices.

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

(3) Not more than six nor less than three months before the expiry of a probationary period the appointing authority shall consider whether —

- (a) the public officer should be confirmed in the public office; or
- (b) his services being otherwise satisfactory, the probationary period should be extended so as to afford the public officer further opportunity to pass any examinations which are a condition precedent of appointment; or
- (c) the probationary period should be extended to afford the public officer the opportunity of improvement in any respect in which his work or conduct have been unsatisfactory; or
- (d) the services of the public officer should be terminated:

Provided that no probationary period shall be extended for more than twelve months.

(4) Where the appointing authority is of the opinion that a probationary period should be extended or terminated he shall before extending or terminating such appointment advise the public officer in writing of his intention and inform such officer of his right to make representation thereon within fourteen days.

(5) Notwithstanding anything contained in this section but subject to the giving of notice as prescribed in subsection (4) an appointing authority may terminate a probationary appointment at any time without assigning reasons therefor.

(6) An appointing authority may reduce a probationary period if the public officer has fulfilled all the requirements necessary for confirmation in office and either—

- (a) he has previously served in the public office or in a similar office on non-pensionable terms; or
- (b) the reduction of the probationary period is necessary for administrative reasons:

Provided that no probationary period shall be reduced by a period exceeding the period which the public officer concerned has served in the public office or a similar office on non-pensionable terms or a period of twelve months, whichever shall be less.

(7) The termination or non-confirmation of a probationary appointment shall not be a dismissal or removal from office and the decision of an appointing authority to terminate, extend or not to confirm a probationary appointment shall be final and no appeal shall lie therefrom to any other person or body.

(8) Notwithstanding anything contained elsewhere in this section or in any other written law a public officer shall remain on probation unless and until he is informed in writing by the appointing authority that —

- (a) he is confirmed in the public office; or
- (b) his appointment in the public office is terminated.

(9) In this section “appointing authority” shall not include a person to whom powers to appoint to public office have been delegated under section 6, and where, but for the provisions of this subsection, a person to whom the power to appoint to public office has been delegated would have power to confirm in office or extend or terminate a probationary period or exercise any other power under this section, such power shall be exercised by the Director.

**12.** (1) Where a public officer is, on or after the coming into operation of this Act, promoted to a higher public office, the first Promotion

six months (exclusive of any period of leave) from the effective date of the promotion shall be a probationary period.

(2) The Permanent Secretary of such officer may, within such period of six months, if he is of the opinion that such officer has failed satisfactorily to perform the duties of the public office to which he was promoted, or that his conduct has been unsatisfactory, inform the officer in writing that his reduction to his former rank is under consideration, and inform him of his right to make representations thereon within fourteen days. The Permanent Secretary shall forward such representations, if any, together with his recommendations to the officer's responsible officer.

(3) The responsible officer shall decide whether the public officer should revert to his former rank but may, if he is of the opinion that the work of the officer requires a further trial, postpone his decision for such period as he considers necessary:

Provided that if the responsible officer has not reached a decision within three months of the matter being referred to him the officer shall not revert.

(4) The decision of the responsible officer under subsection (3) shall be final and shall not be subject to any appeal.

Date of promotion

**13.** (1) Where any public officer is appointed to any public office on promotion the effective date of his promotion to such office shall, subject to the provisions of subsection (2), be that fixed by the appointing authority.

(2) The appointing authority shall not fix as a date of promotion a date which is earlier than the latest of the following dates —

- (a) the date upon which the vacancy occurred;
- (b) the date upon which the officer became qualified for promotion;
- (c) the date upon which the officer assumed the functions of the office:

Provided that the appointing authority may, in special circumstances, fix a date of promotion which is earlier than the date mentioned in paragraph (c) but no such date shall be appointed which is earlier than the later of the dates mentioned in paragraphs (a) and (b).

### PART III

#### TERMINATION OF APPOINTMENTS AND RETIREMENTS

Termination of contract

**14.** If it appears to the Permanent Secretary that the appointment of a public officer serving on contract should be terminated (otherwise than by dismissal) in accordance with the provisions of his contract, the Permanent Secretary shall advise the officer in writing that the termination of his contract is under consideration

and inform him of his right to make representations thereon within fourteen days. The Permanent Secretary shall forward such representations, if any, together with his recommendations to the responsible officer who shall decide whether or not the contract should be terminated.

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

Retirement of  
public  
officers

(2) Subject to the provisions of this section —

- (a) a public officer holding public office before the 1st October, 1970, shall retire therefrom on attaining the age of fifty-five years;
- (b) a public officer joining the public service on or after the 1st October, 1970, shall retire therefrom on attaining the age of sixty years; and
- (c) a female public officer may retire from the public service on marriage.

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

(4) Subject to the provisions of the preceding subsection, a public 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 appointing authority it is in the public interest to retain a public officer in his office beyond the age at which under this section he is required to retire, such officer may, if so willing, be so retained from time to time by the appointing 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 or sixty years, as the case may be, 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 sixty years, as the case may be; 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) A Constable in the Police Force or a Warder in the Prison Service who, though not otherwise eligible to retire or be retired under this section, has served a minimum of 20 years' continuous service in the Police Force or the Prison Service, or in both such Force and such Service, may be permitted to or may be required to retire from the public service.

(8) On the abolition of any public office, a public 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.

(9) 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 Auditor-General.

(10) Nothing in this section shall be deemed to affect the compulsory retirement of a public officer in accordance with any regulations made under this Act relating to disciplinary action.

Retirement  
on medical  
grounds

**16.** (1) Where it appears to the Permanent Secretary that a public officer is incapable by reason of any infirmity of mind or body of discharging the functions of his office, he may (and shall if the officer so requests) call upon such officer to present himself to a medical practitioner approved by the Director of Medical Services or to a Medical Board appointed in that behalf by the Director of Medical Services, with a view to it being ascertained whether or not such officer is incapable as aforesaid.

(2) After the public officer has been examined by the medical practitioner or Board, as the case may be, the Director of Medical Services shall forward the report of the examination to the Permanent Secretary together with his own recommendation on the matter. The Permanent Secretary shall forward the same together with his own recommendation and any representations which the officer concerned wishes to make to the responsible officer who shall decide whether the officer should be called upon to retire on medical grounds.

**PART IV**  
**PUBLIC OFFICERS**

**17.** It shall be 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.

*General duties of public officers*

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

*Whole time of public officer is at the disposal of the Government*

- (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 is required by competent authority to perform.

**19.** 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 authorized by law or by the terms of his appointment or by the Permanent Secretary to the President.

*Fees for official services*

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

*Emoluments not to be ceded*

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

*Publications, interviews and use of official information*

- (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 of 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 authorized by law or competent authority.

**Interdiction**      **22.** (1) If a Permanent Secretary becomes aware that criminal proceedings have been or are about to be instituted against a public officer, or considers that disciplinary proceedings should be instituted against a public officer, and is of the opinion that such officer should be interdicted from the performance of his duties pending the taking of proceedings against him, he shall report the matter to the responsible officer recommending the interdiction of such officer.

(2) On receipt of a report under subsection (1) the responsible officer shall decide whether the public officer should be interdicted and, if so, the amount of salary (being not less than one half) that should be paid to such officer during the period of his interdiction.

(3) If as a result of the proceedings the public officer is awarded a punishment less than dismissal the responsible officer shall decide what proportion of the emoluments withheld, if any, shall be paid to such officer:

Provided that if no punishment is awarded the whole of the emoluments withheld shall be paid to such officer.

**Withholding salary**      **23.** A public officer who has been convicted of a criminal offence and is sentenced to imprisonment whether as the result of non-payment of a fine or otherwise shall receive no emoluments from the date of imprisonment pending a decision by the responsible officer as to whether any emoluments shall be paid to him during the period of imprisonment and pending the taking of any disciplinary proceedings against him.

## **PART V COMMISSIONS**

**Definition**      **24.** 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 functions.

**Protection of members of Commissions from legal proceedings**      **25.** 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 of Commissions**      **26.** 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.

**27.** (1) For the performance of a Commission's functions the Commission may — Powers of Commissions

- (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 written law prohibiting or restricting the disclosure of information; or
- (b) is certified in writing by the Minister to be contrary to the public interest.

**28.** 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. Commissions' annual reports

**29.** Any person appearing before a Commission or any person or body conducting an inquiry or investigation on behalf of a Commission shall be entitled to be represented by a legal practitioner admitted to practise in Botswana. Legal representation

**PART VI**  
**OFFENCES AND PENALTIES**

Influencing  
an appointing  
authority, etc.

**30.** Any person who otherwise than in the course of his duty or who in the course of his duty improperly, directly or indirectly by himself or by any other person in any manner whatsoever influences or attempts to influence the decision of the Permanent Secretary to the President, the Director, an appointing authority or a responsible officer shall be guilty of an offence and liable to a fine of R500 and to imprisonment for a period of six months:

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 such an officer.

Supplying  
false  
information

**31.** Any person who in connexion with the exercise by the Permanent Secretary to the President, the Director, an appointing authority or a responsible officer, of his functions wilfully gives to such person 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 liable to a fine of R500 and to imprisonment for a period of six months.

Improperly  
influencing a  
Commission

**32.** Any person who otherwise than in the course of his duty, or in the course of his duty improperly, 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 to a fine of R500 and to imprisonment for a period of six months:

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 a  
Commission

**33.** 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 liable to a fine of R500 and to imprisonment for a period of six months.

Improper  
disclosure

**34.** (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 liable to a fine of R500 and to imprisonment for a period of six months.

(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 guilty of an offence and liable to a fine of R500 and to imprisonment for a period of six months.

## **PART VII**

### **MISCELLANEOUS**

**35.** The President may make regulations for the better carrying out of the purposes and provisions of this Act, and without derogation from the generality of the foregoing such regulations may provide for —

- (a) the procedure for making applications for the creation and abolition of public offices;
- (b) the procedure for notifying and advertising vacancies in the public service;
- (c) the procedure for the engagement or re-engagement of public officers on contract;
- (d) the procedure for taking disciplinary action against public officers;
- (e) the punishments which may be awarded for breaches of discipline;
- (f) anything in this Act which is to be or may be prescribed;
- (g) the setting up of bodies for the purpose of consultation between Government and members of the public service and the procedure and functions of such bodies;
- (h) the body which may conduct examinations in connexion with any scheme of service or for any other purpose of the public service.

**36.** (1) The Public Service (Supplementary Provisions) Act, 1969, and the Public Service Act, 1970, are hereby repealed.

(2) The Public Service Commission (Supplementary Provisions) Regulations, 1965 and 1967, are hereby revoked.

Regulations

Repeal and  
revocation  
47 of 1969  
26 of 1970  
L.N. 41 of  
1965

Passed by the National Assembly this 29th day of May, 1973.

I.P. GONTSE,  
*Clerk of the National Assembly*