

PRISONS (AMENDMENT) ACT, 1985

No. 14



of 1985

ARRANGEMENT OF SECTIONS

SECTION

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3. Amendment of section 23 of principal Act
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9. Amendment of section 66 of principal Act
10. Amendment of section 101 of principal Act
11. Amendment of section 102 of principal Act
12. Insertion of section 132A in principal Act
13. Non-application of Cap. 26:01 to Prison Service
14. Repeal

An Act to amend the Prisons Act

Date of Assent: 19.6.85

Date of Commencement: 28.6.85

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Prisons (Amendment) Act, 1985.

2. The Prisons Act (in this Act referred to as the "principal Act") is hereby amended by substituting for sections 5 to 13 thereof the following new sections

"Prison
Service

5. (1) There shall be a Prison Service for Botswana, the members of which shall consist of the following rank of officers, namely, senior officers, junior officers and subordinate officers.

(2) The rank of officers referred to in subsection (1) shall comprise —

(a) in the case of senior officers —

(i) the Commissioner of Prisons, as head of the Prison Service,

(ii) the Deputy Commissioner of Prisons,

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sections 5 to
13 of
Cap. 21:03

- (iii) Assistant Commissioner of Prisons
- (iv) Senior Superintendent of Prisons,
- (v) Superintendent of Prisons, and
- (vi) Assistant Superintendent of Prisons;

(b) in the case of junior officers —

- (i) Cadet Assistant Superintendent of Prisons,
- (ii) Principal Officer, and
- (iii) Assistant Principal Officer; and

(c) in the case of subordinate officers —

- (i) Cadet Assistant Principal Officer,
- (ii) Sergeant, and
- (iii) Warder.

Application,
of G.O. to
Prison
officers

6. Every prison officer shall be subject to the Botswana Public Service General Orders in so far as such Orders are not inconsistent with the provisions of this Act.

Commis-
sioner of
Prisons

7. (1) The Commissioner shall be responsible to the Minister through the Permanent Secretary for securing the general efficiency of the Prison Service.

(2) Any functions conferred on the Commissioner by this Act may, subject to the directions of the Commissioner, be exercised by the Deputy Commissioner or Assistant Commissioner.

Method
of
filling
vacancies

8. A vacancy in a Prison Service post may be filled —

- (a) by promotion, that is by appointing a prison officer who is to be moved from another grade with an immediate increase in his salary;
- (b) by transfer within the Service, that is appointing a prison officer who is to be moved from another grade with no alteration in his salary;
- (c) on reduction in rank, that is by appointing a prison officer who is to be moved from another grade with an immediate reduction in his salary;
- (d) by recruitment, that is by appointing a person who is not a prison officer or who would cease to be a prison officer if the appointment were not made.

Appointing
authorities

9. (1) The authority empowered to fill vacancies in a Prison Service post shall be known as the appointing authority for that post.

(2) The Minister shall be the appointing authority for the post of Commissioner.

(3) The Permanent Secretary shall be the appointing authority for all senior officer posts, other than the post of Commissioner:

Provided that before the Permanent Secretary fills any vacancy he shall consult the Commissioner.

(4) The Commissioner shall be the appointing authority for the posts of all junior and subordinate officers.

Principle
for
filling
vacancies

10. (1) Where practicable, a vacancy in a Prison Service post shall be filled either by promotion or transfer within the Service.

(2) Promotions shall be made according to merit.

(3) A person who to the knowledge of the appointing authority has attained the prescribed voluntary retiring age shall not be appointed by recruitment to the pensionable post of a prison officer otherwise than on a limited engagement:

Provided that this subsection shall not apply if that person has such accrued entitlement to retirement benefits as may be prescribed.

Appoint-
ment
procedure

11. (1) Appointment to all Prison Service posts shall be made by a letter of appointment addressed to the person appointed and signed by or on behalf of the appointing authority.

(2) A person not already holding a pensionable post shall not be appointed to a pensionable post unless he has been medically examined and found to be fit to be appointed to pensionable service.

Limited
engagement

12. (1) Where a vacancy in a Prison Service post is filled by recruitment the person recruited may, if the appointing authority thinks fit, be appointed on a limited engagement.

(2) The letter of appointment of a person appointed to a post on a limited engagement —

(a) shall specify the period of the engagement, that is the period for which it is contemplated that he will remain in the post;

(b) may provide that the provisions of this Act and of any statutory instrument made thereunder shall apply subject to such modifications as may be set out in the letter of appointment.

(3) Subject to such conditions as may be prescribed, the period of a limited engagement may be extended by the consent of the person serving under the engagement and the appointing authority.

Probationary
and trial
periods

13. (1) An appointment of a prison officer to a pensionable post shall be subject to satisfactory service in that post for a probationary period of two years.

(2) An appointment of a prison officer by promotion to a pensionable post shall be subject to satisfactory

service in that post for a trial period of six months.

(3) Where a pensionable post is held by a prison officer on probation or trial and it appears to the appointing authority at the end of the probationary or trial period, or at any time during that period, that the said officer is unlikely to fulfil the requirements of the post, the appointing authority may provide for him to be transferred or reduced in rank, or if he holds the post on probation, may order that he shall cease to be a prison officer.

(4) The appointing authority for a post held by a prison officer on probation or on trial may if he thinks fit reduce or extend the probationary or trial period:

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

(5) A decision of an appointing authority to terminate, extend or not to confirm a probationary or trial appointment shall be final and no appeal shall lie therefrom to any person or body.

Acting
Assignment

13A. (1) Where a Prison Service post is vacant or the holder of the post is absent from duty for any reason the appointing authority for that post may assign a prison officer to carry out the duties of the post.

(2) An assignment under this section shall cease to have effect —

- (a) on the filling of the vacancy or the return to duty of the holder of the post, as the case may be; or
- (b) if some other person is assigned to carry out the duties of the post; or
- (c) if the assignment is revoked by the appointing authority.

Scheme of
service

13B. (1) The Commissioner shall prepare a scheme of service giving details of the composition of the branches within the Service, the duties assigned thereto, modes of entry and qualifications required, prospects of promotion, training facilities and other matters relating to service as a prison officer.

(2). No scheme of service made under subsection (1) shall be promulgated without the consent of the Permanent Secretary.

Training

13C. (1) The Commissioner shall appoint a senior officer who shall be responsible for the training of prison officers.

(2) There shall be a branch of the Prison Service with the function of supervising and co-ordinating, under the general direction of the Commissioner, arrangements for the training of prison officers.

(3) No prison officer shall be selected for training with a view to enabling him to qualify for appointment to a particular post unless the appointing authority for that post has given his approval.

(4) Subject to the preceding provisions of this section, it is the duty of the officer appointed under this section to secure, so far as is practicable, that facilities exist, and are used, to enable prison officers to undergo such training as may be necessary for the performance of the duties of their posts and for enabling them to qualify for advancement within the Service.

Modes of leaving the service

13D. The modes by which a prison officer may leave the service are as follows —

- (a) on dismissal or removal under section 13E or in consequence of disciplinary proceedings;
- (b) on compulsory retirement;
- (c) on voluntary retirement;
- (d) on retirement for medical reasons;
- (e) on resignation in accordance with such conditions as may be prescribed;
- (f) on the expiry or other termination of a limited engagement;
- (g) on the abolition of his post;
- (h) in the case of a prison officer on probation, on making of an order under section 13 (3);
- (i) in the case of a prison officer holding a non-pensionable post, on being discharged by his appointing authority.

Power of Minister

13E. (1) The Minister may dismiss or remove any prison officer if he is satisfied that it is in the public interest to do so.

(2) A person dismissed under this section shall forfeit all retirement benefits, and a person removed under this section shall incur such reduction (if any) in his retirement benefits as the Minister may direct.

Compulsory retirement

13F. A prison officer holding a pensionable post otherwise than on a limited engagement shall retire from the service on reaching the prescribed compulsory retiring age:

Provided that this section shall not prevent the appointment of any person on a limited engagement.

Voluntary retirement

13G. A prison officer holding a pensionable post otherwise than on a limited engagement may retire from the Service at any time after he has reached the prescribed voluntary retiring age, or, with the consent of the appointing authority, at any earlier time.

Retirement
for
medical
reasons

13H. A prison officer shall retire from the Service if, in accordance with the prescribed procedure, it is found that he is incapable by reason of infirmity of mind or body of discharging the duties of his post and that the infirmity is likely to be permanent:

Provided that this section shall not prevent a prison officer found so incapable from being moved to a grade in which his infirmity will not prevent the discharge of his duties.

Abolition
of post

13I. (1) Where a post in a grade is abolished by the repeal or amendment of the enactment by which it was created, the appointing authority shall, if two or more persons hold posts in that grade, determine which of those persons is to be treated as the person whose post is abolished.

(2) Unless the person in respect of whom a determination is to be made under subsection (1) is to be promoted, he shall be afforded an opportunity to make representations to the appointing authority, who shall consider any such representations before making the determination.

Discharge
of non-
pensionable
staff

13J. (1) The appointing authority may discharge a person holding a non-pensionable post —

- (a) on the ground that he is physically incapable of performing the duties of the post; or
- (b) where he has not held a Prison Service post during the whole of the preceding twelve months, on the ground that he is generally unsuitable for the post; or
- (c) on the ground that the post is no longer required to be occupied.

(2) Where a person is discharged under this section the appointing authority shall furnish him with a statement in writing of the ground on which he is discharged.”.

Amendment
of
section 23 of
principal Act

3. Section 23 of the principal Act is hereby amended by substituting for that section, the following new section —

“Use of
force by
prison
officer

23. (1) Any prison officer may use such force against a prisoner as is reasonably necessary in order to make him obey lawful orders which he refuses to obey or in order to maintain discipline in a prison.

(2) Any prison officer may use any weapons which have been issued to him, including firearms, against a prisoner if —

- (a) he is escaping or attempting to escape and refuses, when called upon, to return; or

- (b) he is engaged with other persons in breaking out or attempting to break out of any part of a prison and continues to break out or attempts to break out when called upon to desist;
- (c) he is engaged with others in riotous behaviour in a prison and refuses to desist when called upon;
- (d) he is endangering the life of, or is likely to inflict grave injury to, the prison officer or any other prison officer or person and the use of weapons, including firearms, is the only practicable way of controlling the prisoner;
- (e) he is aiding or attempting to aid a prisoner to escape:

Provided that weapons shall not be used unless as authorized in paragraphs (a), (b) and (c) unless the officer has reasonable cause to believe that he cannot otherwise prevent the escape, breaking out or riotous behaviour, as the case may be.

(3) Any weapon issued to a prison officer may be used against a person other than a prisoner if such person aids or attempts to aid a prisoner to escape.”.

4. Section 24 of the principal Act is hereby amended by renumbering that section as 24 (1) and by adding at the end of the said section, the following new subsection —

“(2) Any prison officer who contravenes the provisions of this section shall be guilty of an offence and on conviction thereof shall be liable to a fine not exceeding P200 or to a term of imprisonment not exceeding six months, or to both.”.

Amendment
of
section 24
of principal
Act

5. Section 25 of the principal Act is hereby amended by adding at the end of subsection (3) thereof the following new subsection —

“(4) Any prison officer who contravenes the provisions of subsection (1) shall be liable to be dismissed from the Service and to forfeit all rights to any pension or gratuity.”.

Amendment
of
section 25 of
principal
Act

6. Section 36 of the principal Act is hereby amended in subsection (1) thereof —

(a) by substituting for the full stop which appears at the end of paragraph (ww), a semicolon; and

(b) by adding at the end of the said paragraph, the following new paragraph —

“(xx) without the permission of the Commissioner, informs the Press or any other person of any matter concerning a prison or a prisoner or any matter derived from official sources connected with or related to the Service.”.

Amendment
of
section 36 of
principal
Act

Amendment
of
section 42
of
principal
Act

- 7.** Section 42 of the principal Act is hereby amended —
- (a) in subsection (1) thereof by substituting for the words “The Permanent Secretary or the Commissioner” which appear therein, the words “An appointing authority”;
 - (b) in subsection (2) thereof by substituting for the word “Commissioner” which appears therein, the words “The appointing authority”;
 - (c) by substituting for subsection (3) thereof, the following new subsection —
“(3) If any proceedings instituted against an officer interdicted under subsection (1) result in the infliction of a penalty other than dismissal, the appointing authority may decide what proportion of his salary which has been withheld shall be paid to him:

Provided that if no punishment is imposed the whole of the salary withheld shall be paid to the officer.”.

Amendment
of
section 43
of
principal
Act

- 8.** Section 43 of the principal Act is hereby amended by substituting for subsection (2) thereof the following new subsection —

“(2) The Fund shall be administered by such officer as the Commissioner may think fit to appoint and the officer so appointed shall be responsible, under the supervision of the Commissioner, for the management of the Fund and shall prepare and submit annual accounts of the Fund as may be required by law.

Amendment
of
section 51
of
principal
Act

- 8A.** Section 51 of the principal Act is hereby amended in subsection (4) thereof by substituting for the words “a decent coffin shall be provided” which appear therein the following new words, “the cost of transporting the body of the deceased to his home of origin and the provision of a decent coffin shall be”.

Amendment
of
section 66
of
principal
Act

- 9.** Section 66 of the principal Act is hereby amended in subsection (3) thereof by inserting immediately after the word “disturbance” which appears therein the words “or escaping”.

Amendment
of
section 101
of
principal
Act

- 10.** Section 101 of the principal Act is hereby amended —
- (a) in subsection (1) (b) thereof by substituting for the figure “3” which appears in subparagraphs (i) and (ii), the figure “5”; and
 - (b) in subsection (2) thereof by substituting for the words “Subsection (1)(b)(i), or (ii) or (iii)” which appear therein the words “subsection (1) (b) (i) or (ii)”.

Amendment
of
section 102
of
principal
Act

- 11.** Section 102 of the principal Act is hereby amended in subsection (4) thereof by substituting for the words “such a prisoner” which appear in the proviso to the said subsection, the words “a prisoner on a reduced diet”.

12. The Principal Act is hereby amended by inserting immediately before section 133 under Part XIX, the following new section —

“Impersonation

132A. (1) Any person who with intent to deceive impersonates a member of the Prison Service or makes any statement or does any act calculated falsely to suggest that he is such a member shall be guilty of an offence and shall be liable to the penalties prescribed by section 136 (a).

(2) Any person who, not being a prison officer, wears any article of prison officer's uniform in circumstances where it gives him an appearance so nearly resembling that of a member of the Prison Service as to be calculated to deceive shall be guilty of an offence and shall be liable to the penalty prescribed by section 136 (b).

(3) Any person who, not being a member of the Prison Service has in his possession any article or the Prison Service uniform shall, unless he proves that he obtained possession of that article lawfully and has possession of it for a lawful purpose, be guilty of an offence and shall be liable to the penalties prescribed by section 136 (a).

(4) In this section “article of Prison Service uniform” means any article of uniform or any distinctive badge or mark or document of identification usually issued to members of the Prison Service, or anything having the appearance of such an article, badge, mark or document.”

13. The provisions of the Public Service Act shall, in so far as they apply to the Prison Service, cease to apply.

14. The Schedule to the principal Act is hereby repealed.

PASSED by the National Assembly this 24th day of April, 1985.

C.G. MOKOBI,
Clerk of the National Assembly

Insertion
of
section 132A
in
principal
Act

Non-applica-
tion of
Cap. 26:02
to Prison
Service
Repeal