

# POLICE (AMENDMENT) ACT, 2001

No. 15



of 2002

## ARRANGEMENT OF SECTIONS

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### **An Act to Amend the Police Act**

*Date of Assent:* 29.07.2002

*Date of Commencement:* 09.08.2002

ENACTED by the Parliament of Botswana

1. This Act may be cited as the Police (Amendment) Act, 2001.
2. The Police Act (hereinafter referred to as "the Act") is amended by substituting for the word "Force" the word "Service" wherever it appears in the Act.
3. Section 2 of the Act is amended—
  - (a) by inserting, in the correct alphabetical order, the following new definitions —

Short title  
Amendment  
of Cap 21: 01

Amendment  
of Section 2  
of the Act

“Branch Commander” means any officer of the rank of Assistant Commissioner and above, who is in command of a branch of the Service”;

“Service” means the Botswana Police Service as constituted under this Act, and any reference in any enactment to the Botswana Police Force shall be construed as a reference to Botswana Police Service”;

(b) by deleting the definition of the word “Force”; and

(c) in the definition of “police officer” by inserting the words “but does not include a civilian employee” after the word “force”.

4. Section 5 of the Act is amended by substituting for the provisions thereof the following new provisions —

“5. (1) Any power conferred on the Commissioner by this Act may, subject to the directions of the Commissioner, be exercised by a Deputy Commissioner.

(2) Any power vested in the Commissioner by any enactment, may be delegated to an officer of or above the rank of Superintendent.”

5. Section 8 of the Act is amended —

(a) in subsection (1)(a) by substituting for the words “the ranks of Deputy Commissioner, Senior Assistant Commissioner and Assistant Commissioner” the words “the rank of Deputy Commissioner”; and

(b) by substituting for paragraph (b) of subsection (1) thereof, the following new subsection—

“(b) the Commissioner shall appoint fit and proper persons—

(i) to hold any rank up to and including Senior Assistant Commissioner;

(ii) to hold any civilian office in the Botswana Police Service, of a Grade up to and including Grade D1, whether or not the person appointed is already a member of the Service:

Provided that the first two years of the service of any person appointed to be a member of the Service, or such longer period as the appointing authority shall direct, shall be on probation and any service spent in a prescribed organisation may count towards this period.”

6. Section 9 of the Act is amended in subsection (2) by inserting the words “academic qualifications,” after the words “previous service.”.

7. Section 13 of the Act is Amended —

(a) by substituting for subsection (1) the following new subsection —

“(1) When any police officer is accused of a criminal or disciplinary offence against this Act or any other criminal offence under any enactment, the appointing authority may suspend such officer from duty for a period not exceeding three months pending the institution and determination of proceedings against such officer but the officer shall, during the period of suspension, continue to receive full pay and benefits.”;

Amendment  
of section 5  
of the Act

Amendment  
of section 8  
of the Act

Amendment  
of section 9  
of the Act

Amendment  
of section 13  
of the Act

- (b) by substituting for subsection (2) the following new subsection —  
 “(2) Where a police officer, who is suspended under subsection (1), is charged before a court or a Board with a criminal or disciplinary offence, the appointing authority shall interdict him and the interdicted officer shall receive such portion of his pay, not being less than one-half, as the appointing authority may determine; if the proceedings against such officer do not result in his dismissal or other punishment, he shall be entitled to the full amount of the pay he would have received had he not been suspended.”; and
- (c) in subsection (3) by —
  - (i) substituting for the words “subsection (1)” the words “subsection (2)”; and
  - (ii) by inserting the following proviso —  
 “Provided that where any conflict arises between an order under this subsection and any conditions of bail imposed by a court, the latter shall prevail.”

**8. Section 14 of the Act is amended—**

- (a) by substituting for subsection (1) the following new subsection —  
 “(1) An appointing authority may at any time terminate the appointment of a police officer serving on probation on first appointment if he considers that such officer is unlikely to become an efficient officer, but only after inviting him to show cause why his appointment should not be terminated:

Provided that in the case of an officer of the rank of Deputy Commissioner, the appointing authority shall act after consultation with the Commissioner.”; and

- (b) by substituting for subsection (2) the following new subsection —  
 “(2) The termination of an appointment under this section shall not prejudice the granting of any terminal benefits the police officer would otherwise be entitled to.”.

**9. Section 15 of the Act is amended in subsection (1) by substituting for paragraph (f) the following new paragraph—**

“(f) retire a police officer who, whether he is eligible to retire or to be retired or not, fails, in the opinion of the appointing authority, to maintain a satisfactory standard of efficiency.”

**10. Section 23 of the Act is amended —**

- (a) by substituting a semi-colon for the comma at the end of paragraph (s); and
- (b) by inserting the following paragraphs after paragraph (s) —  
 “(t) steals or forges any radio, telecommunications or computerised messages, that is to say, if any police officer —
  - (i) with the intent to defraud takes a radio, telecommunication or computerised message from the possession of another police officer or other person having custody of it;

Amendment  
of section 14  
of the Act

Amendment  
of section 15  
of the Act

Amendment  
of Section 23  
of the Act

- (ii) steals or destroys any radio, telecommunication or other computerised message or any part thereof;
- (iii) receives any radio, telecommunication or computerised message knowing it to have been stolen or fraudulently obtained;
- (iv) forges or fraudulently alters any radio, telecommunication or computerised message;
- (v) transmits by police radio, telecommunication or computerised device any message or communication knowing it to be a forgery or fraudulently altered; or
- (vi) without authority, transfers or gives to another person a police radio, telecommunication or computerised device which has been issued to him;
- (vii) makes or seeks to make unauthorised access to a computer or telecommunication device and to programmes or data contained therein by whatever means;
- (viii) makes or seeks to make unauthorised access to a computer or telecommunications device to modify, add or delete any programme or data contained therein by whatever means;
- (ix) makes or seeks to make any unauthorised access to a computer or telecommunications device in order to make any unauthorised modification, addition or deletion of any programme or data contained therein, by whatever means.”

Amendment  
of section 26  
of the Act

**11.** Section 26 of the Act is amended by substituting for paragraph (a) of subsection (2) thereof the following new paragraphs —

“(a) a Board of Enquiry I appointed to hear disciplinary charges against officers of the rank of Deputy Commissioner, and consisting of a chairman and two members appointed by the Permanent Secretary to the President, on the recommendation of the Commissioner, from persons in the public service of a status not inferior to the officer to be tried; and

(aa) a Board of Enquiry II appointed to hear charges against officers of the rank of Senior Assistant Commissioner and Assistant Commissioner and consisting of a chairman and two members appointed by the Commissioner from persons in the public service of a status not inferior to the officer to be tried.”

Amendment  
of section 27  
of the Act

**12.** Section 27 of the Act is amended —

(a) by substituting for subsection (1) (a) (iii) thereof the following new subsection —

“(iii) in the case of a Board of Enquiry I, a fine not exceeding P2000, and in the case of a Board of Enquiry II, a fine not exceeding P1500;”

(b) in subsection (1)(b)(iii) by substituting for the words “a fine not exceeding P300” the words “a fine not exceeding P1000”

(c) in subsection (1)(c)(iii) by substituting for the words “a fine not exceeding P150” the words “a fine not exceeding P500”; and

(d) in subsection (1)(d)(iii) by substituting for the words “a fine not exceeding P75” the words “a fine not exceeding P250.”

13. Section 28 of the Act is amended by substituting for the side note the following side note “Dismissal as a result of disciplinary action”.

Amendment  
of Section 28  
of the Act

14. Section 29 is amended—

(a) in subsection (1)

(i) in paragraph (a) by inserting the words “or Class I Board” immediately after the word “Enquiry”; and

(ii) by substituting paragraph (b) thereof with the following paragraph—

“(b) in the case of all other Boards, to the Branch Commander having direct authority over the officer against whom proceedings were conducted;”

(b) in subsection (2)—

(i) by substituting the word “or” that appears immediately after word President that appears in line 3, with a comma;

(ii) inserting the words “or the Branch Commander” immediately after the word “Commissioner” that appears in line 3;

(iii) by inserting immediately after paragraph (b) the following new paragraph—

“(c) order a new trial before a different Board.”;

(c) by substituting for subsection (3) the following new subsection—

“(3) The powers conferred upon the Commissioner under subsection (2) may, with the exception of the power to dismiss or reduce the rank of a police officer and subject to the general or specific directions of the Commissioner, be exercised by—

(i) a Deputy Commissioner; and

(ii) a Branch Commander having direct authority over the officer against whom proceedings were conducted:

Provided that if the Branch Commander is of the opinion that a new trial should be ordered he shall make such a recommendation to the Commissioner and shall give the reasons for the recommendation.

(d) in subsection (4) by substituting for paragraph (b) the following new paragraph—

“(b) in the case of a Class II or Class III Board, be forwarded to the Branch Commander having direct authority over such person, and such Branch Commander may, if he is of the opinion that the evidence was sufficient to warrant a conviction, recommend to the appropriate review authority under subsection (2) that a new trial be ordered;” and

(e) by inserting after subsection (4) the following new subsection—

“(4A) Any police officer who has been subjected to any punishment by the exercise of powers conferred on a Deputy Commissioner or a Branch Commander under this section, may appeal to the Commissioner who may dismiss such appeal or allow it wholly or in part.”

Amendment  
of section 29  
of the Act

Amendment  
of section 33  
of the Act

- 15.** Section 33 of the Act is amended —
- (a) in subsection (2) by substituting the words “Board of Enquiry I or II” for the words “Board of Enquiry”; and
  - (b) by repealing subsections (4), (5) and (6).

Amendment  
of section 37  
of the  
Act

- 16.** Section 37 of the Act is amended in subsection (4) by inserting the words “being notified of the” after the word “of” in the third line.

Amendment  
of section 38  
of the Act

- 17.** Section 38 of the Act is amended by inserting the following new subsection (3) —

“(3)The Commissioner, when exercising the powers of an appellate authority over decisions of Branch Commanders to whom authority to review the disciplinary proceedings has been delegated may exercise any power granted to the Council by this section.”

Amendment  
of section 39  
of the Act

- 18.** Section 39 of the Act is amended by inserting the words “and the Commissioner” after the word “Council” that appears in the second line.

Amendment  
of section 40  
of the Act

- 19.** Section 40 of the Act is amended in subsection (3) by —
- (a) deleting the word “and” in paragraph (e);
  - (b) substituting a semi-colon for the full stop at the end of paragraph (f);
  - (c) inserting the word “and” at the end of paragraph (f); and
  - (d) inserting after paragraph (f) the following new paragraph—  
“(g) any prescribed charitable or humanitarian organisation.”

Amendment  
of section 57  
of the Act

- 20.** Section 57 of the Act is amended—
- (a) in subsection (1)(a) by substituting for the words “a fine not exceeding P250 or to imprisonment for a term not exceeding six months, or to both” the words “a fine not exceeding P500 or to imprisonment for a term not exceeding six months, or to both”;
  - (b) in subsection (1)(b) by substituting for the words “a fine not exceeding P500 or to imprisonment for a term not exceeding three months, or to both” the words “a fine not exceeding P1000 or to imprisonment for a term not exceeding 12 months, or to both” ;
  - (c) in subsection (2) by substituting for the words “a fine not exceeding P1000 or to imprisonment for a term not exceeding 12 months, or to both” the words “a fine not exceeding P5000 or to imprisonment for a term not exceeding five years, or to both”;
  - (d) by inserting the following new subsection after subsection (2) —  
“(3) A police officer who procures for any person, with the intention or knowledge that it will be used in the commission of an offence, any item of police uniform, equipment, stores or accoutrements shall be guilty of an offence and liable to imprisonment for a term of not less than two years, but not exceeding five years.”; and
  - (e) by inserting after subsection (3) the following new subsection—  
“(4) Any person who in any way whatsoever—  
(a) sends by police radio, telecommunications or computerised device any message which is grossly offensive, or of an indecent, obscene or threatening character;

(b) sends by police radio, telecommunications or computerised device any message which the sender knows to be false or without reasonable cause with the intention to cause annoyance, inconvenience or needless anxiety to another person;

(c) knowing, or having reason to believe, that any radio, telecommunications or computerised device has been established, maintained or used without the authority of the Commissioner, transmits or receives any message on that radio or device or provides any service for it, shall be guilty of an offence and liable to a fine not exceeding P1000 or to imprisonment for a term not exceeding 12 months."

21. Section 62 of the Act is amended by substituting the provisions thereof with the following new provisions—

Amendment  
of Section 62  
of the Act

"62. (1) The President shall appoint a Police Council comprising at least five and not more than seven members.

(2) The President shall appoint a Chairman and a Deputy Chairman from amongst the Members of the Council.

(3) The members shall be appointed for a period not exceeding three years and shall be eligible for reappointment for a further term of three years.

(4) Three members shall constitute a quorum of the Police Council".

22. Section 65 of the Act is amended —

(a) by substituting for the word "President" that appears in the first line, the word "Minister."

Amendment  
of section 65  
of the Act

(b) by substituting for the full stop in paragraph (e) a semi-colon; and

(c) by inserting the following paragraph after paragraph (e) —

"(f) provide for matters relating and incidental to police welfare."

23. The Act is amended by inserting the following new section after section 65 —

Addition of  
section 66 of  
the Act

"66. The Botswana Police College shall be a tertiary institution within the meaning of the Tertiary Education Act, 1999 (Act No. 4 of 1999).

Act 4 of 1999

PASSED by the National Assembly this 18th day of April, 2002.

C.T. MOMPEI,  
*Clerk of the National Assembly.*