

PUBLIC SERVICE

CHAPTER: 26:01

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SCHEDULE

Act 13, 1998,
Act 14, 2000,
Act 15, 2005,
Act 30, 2008,
S.I. 19, 2010.

An Act to re-enact with amendments the provisions relating to the public service of Botswana and matters incidental thereto and connected therewith.

[Date of Commencement:1st May, 2010]

PART:I PRELIMINARY (SS 1-3)

1. Short title

This Act may be cited as the Public Service Act.

2. Interpretation

(1) In this Act, unless the context otherwise requires-

"appointing authority" means any person in whom the power to appoint, remove from office or exercise disciplinary control in terms of this Act vests;

"appointment" includes a transfer, a promotion, a temporary appointment and an acting appointment;

"citizen" means a citizen of Botswana;

"Commissioner" means the Commissioner of Labour;

"Committee of Selection" has the meaning assigned to it by the Standing Orders of the National Assembly;

"Director" means the Director of Public Service Management appointed under section 11;

"employee" means any person who has entered into a contract of employment for the hire of his or her labour in terms of this Act;

"employer" means the Government in respect of all of its officers except members of the Botswana Defence Force, the Botswana Police Service, the Local Police Service, and the Prison Service;

"Head of Department" means the head of a government department other than an extra ministerial department;

"National Vision" means any long term vision for Botswana;

"non-citizen" means a person who is not a citizen of Botswana;

"promotion" means the appointment of a public officer to a higher public office with an increase or potential increase of salary;

"public officer" means a person holding or acting in any public office, and being an employee to whom this Act applies;

"senior management" means those persons in the public service, who are appointed by the Permanent Secretary to the President (PSP) or the President, as the case may be;

"strike" means the cessation of work by a body of employees acting in combination or under a common understanding or a concerted refusal or a refusal under a common understanding by such body of employees to continue to work;

"supervising officer", in relation to an employee, means the public officer designated, or delegated, under this Act, to supervise and exercise disciplinary control over that employee;

"transfer" means the appointment of an employee to another public office with or without an adjustment to his or her salary.

(2) For the purposes of the public service and section 112 of the Constitution, "Permanent Secretary" means the holder of the public office of that designation responsible, subject to the directions and control of the Minister, for the supervision of a Ministry, and includes the holders of the public offices listed in the Schedule to this Act.

(3) For the purposes of this Act, "the Permanent Secretary" means the holder of the public office of that designation responsible, subject to the directions and control of the Minister, for the administration of a Ministry or department and includes---

- (a) the Attorney-General in respect of the Attorney-General's Chambers;
- (b) the Auditor-General in respect of the Auditor-General's Office;
- (c) the Clerk of the National Assembly in respect of the offices of the National Assembly;
- (d) the Registrar of the High Court in respect of the staff of the High Court and the Magistracy; and
- (e) the Registrar of the Industrial Court in respect of the staff of the Industrial Court.

3. Application

The provisions of this Act shall not apply to members of the-

- (a) Botswana Defence Force;
- (b) Botswana Police Service;
- (c) Local Police Service; and
- (d) Prison Service.

PART:II PUBLIC SERVICE STRUCTURE (S 4)

4. Public Service Structure

(1) The public service of Botswana shall consist of such ministries, departments and public offices as the President may constitute in terms of section 56 of the Constitution as read with sections 50 (4) and 52 thereof.

(2) Every-

- (a) Ministry shall be under the control and direction of the Minister to whom the President has assigned it in terms of section 50 (4) of the Constitution;

- (b) Ministry shall be under the administrative supervision of a Permanent Secretary; and
- (c) Department shall, save where otherwise specified, be under the administrative supervision of a Head of Department.

PART IV:GENERAL PUBLIC SERVICE PRINCIPLES AND STANDARDS

6. Public officers 'conduct standards
(missing from e-laws text)

7. Human resource management standards
(missing from e-laws text)

PART:III COMPOSITION OF THE PUBLIC SERVICE (S 5)

5. Composition

(1) The public service shall consist of persons who-

- (a) hold posts on the fixed establishment in any Government Ministry or Department;
- (b) immediately before the coming into force of this Act were employed in terms of the Public Service Act repealed by this Act;
- (c) immediately before the commencement of this Act were part of the Teaching Service, including teachers in Government schools and persons who held Government aided posts in private schools;
- (d) immediately before the commencement of this Act were part of the Unified Local Government Service or Land Board Service;
- (e) are employed temporarily or under a special contract, within a Government Ministry or Department;
- (f) immediately before the commencement of this Act, were industrial employees remunerated by Government.

(2) All posts established in terms of the Public Service Act, the Regulations for Industrial Employees, the Teaching Service Act, the Tribal Land Act and the Unified Local Government Service Act and existing immediately before the commencement of this Act shall, except where it is clearly inappropriate, be deemed to have been established under this Act.

(3) All persons who were employed in terms of the Public Service Act, the Regulations for Industrial Employees, the Teaching Service Act, the Tribal Land Act and the Unified Local Government Service Act immediately before the commencement of this Act shall, except where it is clearly inappropriate, be deemed to have been employed under this Act and the provisions of this Act shall apply to them.

(4) A person who was employed in terms of the Public Service Act, the Regulations for Industrial Employees, the Teaching Service Act, the Tribal Land Act or the Unified Local Government Service Act immediately before the commencement of this Act shall not be subject to any condition of service which is less favourable to him or her than any similar condition which applied to him or her before this Act came into force.

(5) Notwithstanding the provisions of subsection (4), any person who was employed in terms of the Acts and Regulations referred to in sub-sections (1) to (4) immediately before the coming into force of this Act shall not-

- (a) publicly speak or demonstrate for or against any politician or political party;
- (b) be an active member of, nor hold office in, any political party;
- (c) publish his or her views on political matters in writing; or
- (d) hold a parliamentary seat or hold a political office in any local government body, except where the office is held ex officio.

(6) Any person who is excluded, under section 110 (1) of the Constitution, from the public service shall not, for purposes of this Act, be considered part of the public service.

(7) For the purposes of this section

"aided post" means any post in a private school in respect of which, in the opinion of the Minister, the salary attached to the post should be paid, wholly or partly, from public funds; and

"Government school" means a school managed by the Ministry responsible for education and skills development, and the Ministry responsible for local government.

PART:V ADMINISTRATION OF THE PUBLIC SERVICE (SS 8-12)

8. Head of the Public Service

(1) The Permanent Secretary to the President shall be the head of the public service and shall, subject to the Constitution and this Act, be responsible for the administration of the public service.

(2) The Permanent Secretary to the President may make rules or regulations or give instructions for managing the conduct of the public service.

(3) Any rules or regulations made, or instructions given, in terms of subsection (2) shall not be inconsistent with the provisions of this Act and shall be complied with by all public officers.

(4) Notwithstanding the generality of the provisions of subsection (1), the Permanent Secretary to the President shall-

- (a) appoint the senior management of the public service;
- (b) enter into performance agreements with the Permanent Secretaries and supervise and monitor their performance and exercise disciplinary control over them;
- (c) coordinate the activities of the Permanent Secretaries;
- (d) ensure that Permanent Secretaries implement the national priorities determined by Cabinet;
- (e) introduce and manage public service management systems and related reforms; and
- (f) have overall responsibility over all public officers.

(5) 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 the Permanent Secretary to the President does so, he or she and not the other Permanent Secretary shall be regarded, for the purposes of that matter, as that other Permanent Secretary.

9. Permanent Secretaries' functions

(1) In addition to the function vested in the Permanent Secretary by section 52 of the Constitution, the Permanent Secretary shall be the chief accounting officer of a Ministry under his or her supervision.

(2) Without limiting the generality of the provisions of subsection (1), the Permanent Secretary shall be responsible for-

- (a) initiating, formulating and implementing the policies of the Ministry under his or her supervision;
- (b) formulating the Strategic Plan of the Ministry under his or her supervision in accordance with the performance agreement entered into with the Permanent Secretary to the President;
- (c) ensuring that the services rendered by the Ministry supervised by him or her are delivered in accordance with the principles enshrined in the National Vision, the Public Service Charter, the Public Service Code of Conduct and the objectives of this Act;
- (d) exercising the human resource functions delegated to him or her by the Director;
- (e) agreeing the individual annual performance agreements and performance development plans of the public officers supervised by him or her, and supervising and monitoring their performance; and
- (f) implementing public service reforms.

(3) The Permanent Secretary shall exercise the powers under subsection (2) subject to the general control and directions of the Minister responsible for the Ministry concerned.

10. Heads of Departments

The administrative head of a department shall be known as a Head of Department, and his or her functions shall be as delegated by the Permanent Secretary to the President.

11. Director of Public Service Management

(1) There shall be a Director of Public Service Management, in this Act referred to as "the Director", who shall be a public officer appointed by the President.

(2) The Director shall, subject to the Constitution and this Act, be responsible for human resource policy formulation, and the following matters-

- (a) administration of the terms and conditions of service;
- (b) the administration of instructions given and rules and regulations made in terms of section 8 (2);
- (c) the recruitment of public officers, including volunteers and technical assistance personnel;
- (d) public service establishment;
- (e) human resource audits;
- (f) staff performance appraisals and service level agreements;

- (g) salary administration and grading of jobs;
- (h) public service training policy;
- (i) discipline, staff training;
- (j) wellness and safety;
- (k) localization and staff development programmes;
- (l) process enhancement and organisation and methods;
- (m) the approval of employees' career paths;
- (n) human resource information system;
- (o) job evaluation;
- (p) human resource management reforms;
- (q) vacancy management;
- (r) determination of public service competencies;
- (s) recognition of trade unions; and
- (t) such other matters as may be prescribed.

12. Directions of the President

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 consider necessary.

PART:VI APPOINTMENTS TO THE PUBLIC SERVICE (SS 13-25)

13. Appointments

(1) Appointments to the public service shall be on-

- (a) permanent and pensionable terms;
- (b) contract terms;
- (c) temporary terms;
- (d) part time terms;
- (e) casual terms; or
- (f) such other terms as may be prescribed.

(2) In this section "contract terms" means full time employment for a specified period not less than 12 months;

"casual terms" has the meaning assigned to it under the Employment Act;

"part time terms" means employment for a specified period of time, which limits hours of work to less than the standard working hours for the particular type of employment in the public service;

"permanent and pensionable terms" means full time employment for an unspecified period of time whose conditions of service attract the earning of a pension; and

"temporary terms" means full time employment for a specified period of time not exceeding 12 months.

14. Entry and advancement

Entry into and advancement in the public service shall be based on a proven record of performance and skills and competencies. However, the academic requirements and price of admission competencies, as determined from time-to-time, shall apply for entry-level posts.

15. Powers of appointment

Subject to the Constitution, the power to appoint, remove or exercise disciplinary control over any employee shall be vested-

(a) in the case of any employee in a senior management position (other than a person appointed by the President in terms of the Constitution or any other law), in the Permanent Secretary to the President; and

(b) in any other case, in the Director or such other person as the Director may, in accordance with this Act, delegate.

16. Delegation of powers

(1) The Permanent Secretary to the President may, with the consent of the President, by directions in writing, delegate any of his or her powers under this Part to the Director or any other Permanent Secretary, but notwithstanding any such delegation, the Permanent Secretary to the President may exercise any powers delegated by him or her, and may from time to time cancel or vary any such delegation.

(2) The Director may, with the consent of the Permanent Secretary to the President, by directions in writing, delegate any of his or her powers under this Part to any public officer.

(3) Notwithstanding any such delegation, the Director may vary or set aside any decision made by such public officer in the exercise of his or her delegated powers.

(4) A power or function delegated under this Part may, if the instrument of delegation so provides, be further delegated.

17. Criteria for appointment

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

(2) Where any public office is vacant, the following persons shall be qualified for appointment to such office in the following order of priority-

(a) a citizen;

(b) any other person who is a non-citizen but whose appointment to such office is approved under section 21 or deemed to be approved under section 21(3).

(3) The persons mentioned in subsection (2) shall be qualified for appointment if they satisfy any competency requirements or qualifications specified by the Director by order published in the Gazette in respect of that public office.

(4) The provisions of subsection (2) may be waived with the written approval of the Minister if it facilitates the localisation of the public service or is otherwise in the interests of the public service.

18. Disqualification for appointment

A person who has been convicted of an offence involving moral turpitude, or who has been dismissed from the public service shall not be appointed to any public office without the written approval of the

Director or Permanent Secretary to the President as the case may be, for positions which they appoint for.

19. Appointment of Permanent Secretary to the President and Permanent Secretaries, etc.

(1) The appointment of the Permanent Secretary to the President, a Permanent Secretary, Deputy Permanent Secretary, Head of a Department and any other person in a senior management position shall be subject to a contract for such term as prescribed.

(2) A person appointed in terms of this section shall be eligible for re-appointment for such number of terms as the appointing authority may prescribe.

(3) The decision whether or not to re-appoint a person under this section shall be made and notified to that person in accordance with the terms of that person's contract of employment.

(4) In addition to the contract of employment entered into between the persons referred to in subsection (1) and the appointing authority, each such person shall enter into a performance contract with that person's supervising officer.

(5) The performance contract shall, in the case of-

(a) the Permanent Secretary to the President, be between the Permanent Secretary to the President and the President;

(b) a Permanent Secretary, be between that Permanent Secretary and the Permanent Secretary to the President;

(c) a Deputy Permanent Secretary, be between that Deputy Permanent Secretary and the Permanent Secretary; and

(d) a Head of Department and any other person in a senior management position, be between that Head of Department and the Deputy Permanent Secretary.

20. Appointments to the National Assembly, etc.

(1) The appointing authority shall not appoint, promote or transfer any person to or from any post in the National Assembly without the prior approval of the Speaker of the National Assembly.

(2) In giving approval to any appointment, promotion or transfer referred to in subsection (4), the Speaker shall act on the advice and recommendation of-

(a) in case of the posts of the Clerk, Deputy Clerk or Clerk's Assistants, the Committee of the National Assembly Staff established in accordance with the provisions of subsection (3); and

(b) in any other case, the Clerk of the National Assembly.

(3) The Committee of Selection shall, at the beginning of the first session of every Parliament and for the duration of the life of such Parliament, appoint a committee to be known as the Committee of the National Assembly Staff, of which the Deputy Speaker of the National Assembly shall be the Chairperson.

(4) The Committee of the National Assembly Staff appointed under subsection (3) shall be responsible for tendering advice and making recommendations to the Speaker in the case of appointments and promotions to, or transfers from, the posts of the Clerk, Deputy Clerk or Clerk's Assistants, whilst the Clerk of the National Assembly shall be responsible for tendering advice and making recommendations to the Speaker for appointments, promotions or transfers in any other case.

(5) Before any power relating to the appointment of the Secretary to the Ntlo ya Dikgosi is exercised, the appointing authority shall consult the Chairperson of the Ntlo ya Dikgosi.

21. Appointment of non-citizens

(1) A non-citizen shall not be appointed on pensionable terms to any public office.

(2) Subject to subsection (3), a non-citizen shall not 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.

(3) 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 or her.

22. Retrospective appointments

Subject to section 25, any appointment by an appointing authority may be made retrospective to such date as he or she considers appropriate, whether or not such date is prior to the commencement of this Act.

23. Probation

(1) Where any person is appointed to any public office on pensionable terms, otherwise than on promotion or transfer, the person shall first serve a probationary period of six months.

(2) Before the expiry of a probationary period, the appointing authority shall consider whether-

(a) the employee should be confirmed in the public office;

(b) the employee's services being otherwise satisfactory, the probationary period should be extended so as to afford the employee further opportunity to pass any examinations which are a condition precedent to appointment;

- (c) the probationary period should be extended to afford the employee the opportunity of improvement in any respect in which the employee's work or conduct have been unsatisfactory; or
- (d) the services of the employee should be terminated.

(3) Where the appointing authority considers that the probationary period of an employee should be extended, it shall not be extended for more than six months.

(4) Where the appointing authority is of the opinion that a probationary period should be extended, the appointing authority shall, before extending such appointment, give the employee at least one month's notice in writing of the appointing authority's decision to do so.

(5) Where the employer or employee terminates a contract of employment during the probationary period, the employer or employee, as the case may be, shall give to the other party at least one month's notice in writing, of the intention to do so.

(6) Where a contract of employment is terminated during a probationary period, it shall be considered to have been terminated for just cause.

(7) An appointing authority may reduce a probationary period if the employee has fulfilled all the requirements necessary for confirmation in office and either-

- (a) the employee has previously served in a public office or in a similar office elsewhere; 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 employee concerned has served in the public office or a similar office on non-pensionable terms or a period of three months, whichever is less.

(8) The termination or non-confirmation of probationary appointment shall not be considered as being dismissal from office.

(9) An employee on probation for six months shall be deemed to have been confirmed in his or her appointment, at the end of the probationary period, he or she has not been informed in writing of the outcome of his or her probation.

(10) In any other case, an employee shall be deemed to have been confirmed in his or her appointment at the end of the probationary period.

24. Promotion

(1) Where an employee is, on or after the commencement of this Act, promoted to a higher public office, the first six months (exclusive of any period of leave) from the effective date of the promotion shall be a probationary period.

(2) The supervising officer of such employee may, within such period of three months, if he or she is of the opinion that such employee has failed to perform satisfactorily the duties of the public office to which the employee was promoted, or that the employee's conduct has been unsatisfactory, notify the employee in writing that his or her reduction to his or her former position is under consideration, and inform the employee of his or her right to make representations thereon within 21 days of their receipt of the notification.

(3) The supervising officer shall forward such representations, if any, together with the supervising officer's recommendations, to the Permanent Secretary.

(4) The Permanent Secretary shall decide whether the employee should revert to his or her former position but may, if the Permanent Secretary is of the opinion that the work of the employee requires a further trial, postpone his or her decision for such period as he or she considers necessary:

Provided that if the Permanent Secretary has not reached a decision and informed the employee whether or not the employee should revert, within one month of the matter being referred to him or her, the employee shall not revert.

25. Date of promotion

(1) Where any person is appointed to any public office on promotion, the effective date of his or her promotion to such office shall subject to 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 date upon which-

- (a) the vacancy occurred;
- (b) the appointing authority authorises, in writing, the promotion of an employee; or
- (c) the employee assumed the functions of the office.

(3) Notwithstanding the provisions of subsection (2), the appointing authority may, in special circumstances, fix a date of promotion which is earlier than the date on which the employee assumed the functions of the office, but that date shall not be earlier than the date on which the vacancy occurred or the date the officer became qualified for promotion.

PART:VII TERMINATION OF APPOINTMENTS AND RETIREMENT (SS 26-29)

26. Termination of appointments

(1) An employee's appointment shall terminate on the-

- (a) employee's resignation;
- (b) expiry of the employee's contract;
- (c) employee's retirement;
- (d) abolition of the employee's office;
- (e) employee's dismissal; or
- (f) employee's death.

(2) The appointment of a Permanent Secretary, a Deputy Permanent Secretary, a Head of Department, and any other person in a senior management position shall be terminated by three months' notice in writing to that employee, on the ground that the employee-

- (a) is guilty of misconduct;

(b) has failed by reason of infirmity of mind or body, to carry out the functions of his or her office satisfactorily or to the performance standards set under the contract relating to his or her appointment;

(c) has, for any other reason, failed to carry out the functions of his or her office satisfactorily;
or

(d) has, without the consent of the appointing authority, engaged in any other remunerative employment, occupation or business.

(3) The provisions of sections, 18, 19, 26 and 27 of the Employment Act shall apply with the necessary modifications, to terminations under this Act.

27. Summary dismissal

(1) An employee who is guilty of serious misconduct shall be summarily dismissed from the public service on the basis of that serious misconduct.

(2) Except in those cases in which the employer cannot reasonably be expected to hold a disciplinary enquiry, subsection (1) shall not be construed as permitting the employer to disregard the rules of natural justice in dealing with cases of summary dismissal.

(3) For the purposes of this section, "serious misconduct" shall, without prejudice to its general meaning, include the following-

(a) habitual or wilful neglect of duty;

(b) wilful disobedience of lawful or reasonable orders given by the employer;

(c) wilful, expressed or implied, misrepresentation by the employee in respect of his or her skills or qualifications;

(d) while on duty, the employee is under the influence of an intoxicating, illegal, unauthorised, habit-forming and/or stupefying drugs, including alcohol;

(e) wilful refusal to obey or comply with any safety rules or practices for the prevention or control of accidents or diseases;

(f) refusal to obey security regulations;

(g) work performance below average despite warnings;

(h) persistent absence from work without permission;

(i) wilful disclosure of confidential information where such disclosure has not been authorised by Government or pursuant to any law or court order or is likely to be detrimental to the interests of the employer;

(j) offering or receiving a bribe;

(k) acts of theft, misappropriation or wilful dishonesty against Government, another employee, or client of Government;

(l) in the case of a teacher or other public officer who, in the course of his or her duties as such officer, engages in an amorous or sexual relationship with a student or a child under that officer's mentorship, authority, control or care;

- (m) serious damage to Government property caused by wilful or gross negligence; or
- (n) loss of Government funds caused by wilful or gross negligence;
- (o) accepting a gift without declaration;
- (p) assaulting, or attempting to assault, or threatening to assault, another employee or person while on duty;
- (q) performing work for compensation in a private capacity during or outside working hours, without authority from the employer;
- (r) carrying or keeping firearms or other dangerous weapons on Government premises, without authority from the employer;
- (s) falsifying records or any other documentation used for official purposes;
- (t) operating any business for own benefit during working hours or within Government premises.

28. Retirement of public officers

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

(2) Subject to the provisions of this section, an employee shall retire from the public service on attaining the age of 60 years.

(3) The Minister may prescribe an age greater than-

- (a) 60 years, for the purpose of the retirement of employees under subsection (2); or
- (b) 45 years for the purpose of the retirement of employees under subsections (4) and (5).

(4) An employee who has attained the age of 45 years may voluntarily retire from the public service.

(5) An employee who retires voluntarily under subsection (4) shall do so by giving the Permanent Secretary of his or her Ministry written notification of his or her intention to do so at least three months prior to the date on which he or she intends to retire.

(6) If, in the opinion of the appointing authority, it is in the public interest to retain an employee in his or her office beyond the age at which he or she is required to retire, such employee may, if so willing, be retained from time to time by the appointing authority for such periods as that authority may determine.

(7) On the abolition of any public office, section 25 of the Employment Act shall apply.

(8) Nothing in the 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.

(9) Nothing in this section shall be deemed to affect the compulsory retirement of an employee in accordance with this Act or any regulations made thereunder relating to disciplinary action.

29. Retirement on medical grounds

(1) Where it appears to the supervising officer that an employee is incapable of discharging the functions of his or her office or is not discharging those functions satisfactorily by reason of any infirmity of mind or body, the supervising officer shall direct such employee in writing to submit to a medical examination by a Medical Practitioner approved by Ministry of Health or Medical Board appointed in that behalf by the Permanent Secretary, Ministry of Health, with a view to it being ascertained whether or not such officer is so incapable.

(2) An employee who refuses or fails, without reasonable excuse, to submit to a medical examination as required under subsection (1) shall be guilty of misconduct and shall be liable to disciplinary action in terms of this Act.

(3) After the employee has been examined by the Board, the Permanent Secretary, Ministry of Health, shall-

- (a) forward the report to the Permanent Secretary concerned; and
- (b) furnish the employee with a copy of the report of the results of the medical examination.

(4) The supervising officer shall allow the employee not less than 14 days from the officer's receipt of the copy of the report to make in writing, any representations which the employee wishes to make.

(5) The supervising officer shall, upon receipt of the employee's representations, forward the report and the employee's representations, together with his or her own recommendations, to the Permanent Secretary.

(6) The appointing authority may, on the basis of the medical report, terminate the employee's appointment on medical grounds if satisfied that the employee is incapable of discharging the functions of his or her office, or is not discharging those functions satisfactorily due to infirmity of mind or body.

(7) Nothing in this section shall be deemed as preventing an employee from requesting, of their own accord, to be examined by a Medical Board.

PART:VIII PUBLIC OFFICERS GENERAL PROVISIONS (SS 30-35)

30. General duties

It shall be the duty of every public officer to adhere to the principles and standards set out in section 6 of this Act, and to the Constitution and other laws of Botswana.

31. General conditions of work

The provisions of Parts VIII and XII of the Employment Act shall apply with respect to conditions of work relating to hours of work and leave in general.

32. Fees for official services

An employee shall not receive and keep, for his or her own use, any fee, reward or remuneration of any kind beyond his or her emoluments for the performance of any service for the Government unless specially authorised by law, the terms of his or her appointment, or by the Permanent Secretary to the President in writing.

33. Emoluments not to be ceded

Subject to the provisions of any other written law, an employee shall not cede, assign or transfer the whole or any part of any salary or allowance payable to him or her 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.

34. Publications, interviews and use of official information

Subject to the provisions of any other written law, every employee shall comply with the following rules of conduct-

(a) he or she shall not, without the express written 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 advocating for or against any political party or candidate but he or she may publish in his or her own name other matter relating to subjects of general interest;

(b) whether on duty or on leave of absence, shall not, except with due authority, allow himself or herself to be interviewed on questions of, or connected with, any matter affecting or relating to defence or to the military; and

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

35. Suspension

(1) If the supervising officer becomes aware that criminal proceedings have been or are about to be instituted against an employee, or considers that disciplinary proceedings should be instituted against a public officer, and is of the opinion that such officer should be suspended from the performance of his or her duties pending the taking of proceedings against him or her, the supervising officer shall report the matter in writing to the Permanent Secretary recommending the suspension of such employee:

Provided that where the Permanent Secretary is the supervising officer, he or she shall take such action as may be taken by a supervising officer in accordance with subsections (2) and (3).

(2) On receipt of a report under subsection (1) the Permanent Secretary shall decide whether the employee should be suspended.

(3) An employee's salary shall not be withheld during the period of his or her suspension.

(4) Disciplinary proceedings may be brought and concluded against an employee notwithstanding that criminal proceedings arising out of the same facts are being investigated or are pending against that employee:

Provided that no statement made or evidence given by the officer in the disciplinary proceedings shall be used against him or her in any criminal proceedings arising from the same facts.

PART:IX MISCONDUCT AND UNSATISFACTORY SERVICE (SS 36-41)

36. General definition of misconduct

Any act done without reasonable excuse by an employee which contravenes any enactment relating to the public service or which is otherwise prejudicial to the efficient conduct of the public service or tends to bring the public service into disrepute constitutes misconduct; and the setting forth in section 37 of particular types of misconduct shall not be taken to affect the generality of this section.

37. Particular types of misconduct

It is misconduct for an employee to-

- (a) be absent from duty without leave or reasonable excuse;
- (b) sleep on duty;
- (c) engage in any activity outside his or her official duties which is likely to involve him or her in political controversy or to lead to his or her taking improper advantage of his or her position in the public service;
- (d) engage in any gainful occupation outside the public service without the consent of the prescribed authority;
- (e) appoint or promote any person to a post in the public service or send any person on a course of training on the basis of consanguinity, affinity, amity, amorous relationship, tribe, favouritism, or on any other consideration other than on merit based on fair and open competition; or
- (f) otherwise conduct himself or herself in a disgraceful, improper or unbecoming manner, or, while on duty, is grossly discourteous to members of the public or any person.

38. Sexual harassment

(1) Notwithstanding the provisions of sections 36 and 37, the sexual harassment of one employee by another, or by a person in authority over another in the public service, shall constitute misconduct.

(2) For the purposes of this section, "sexual harassment" means any unwanted, unsolicited or repeated sexual advance, sexually derogatory statement or sexually discriminatory remark made by an employee to another, whether made in or outside the workplace, which is offensive, or objectionable to the recipient, which causes the recipient discomfort or humiliation, or which the recipient believes interferes with the performance of his or her job security or prospects, or creates a threatening or intimidating work environment.

39. Disciplinary proceedings for misconduct

(1) Disciplinary action against an employee who commits an act of misconduct shall be prompt and in accordance with the rules of natural justice.

(2) The procedure to be followed in respect of a disciplinary action shall be as agreed by collective bargaining.

40. Punishments for misconduct

The following are the punishments that may be imposed in disciplinary proceedings under this Act in respect of misconduct-

- (a) a reprimand;
- (b) stoppage of increment, that is non-payment for a specified period of an increment otherwise due;
- (c) deferment of increment, that is a postponement of the date on which the next increment is due.
- (d) with the written consent of the employee, reduction of salary, that is an immediate adjustment of salary to a lower point on the salary scale attached to the post in question;
- (e) a demotion;
- (f) suspension from duty, without pay for a period not exceeding one month; or
- (g) dismissal.

41. Inefficiency

(1) Subject to section 26, if the supervising officer is satisfied that an employee is inefficient or not discharging the functions of his or her office satisfactorily, or to the performance standards specified in a contract relating to his or her appointment, the supervising officer shall submit a report thereon to the Permanent Secretary.

(2) If the Permanent Secretary is satisfied that-

- (a) there are reasonable grounds to substantiate the allegation of inefficiency or unsatisfactory performance; and
- (b) the employee has failed to improve his or her performance despite having been given reasonable opportunity to do so,

the Permanent Secretary shall cause the employee concerned to be furnished with a written statement of the grounds on which it is alleged that he or she is incapable of carrying out his duties efficiently or satisfactorily, giving the employee 14 days within which to respond in writing to the allegations.

(3) If the Permanent Secretary finds that the allegations of inefficiency or unsatisfactory performance have been proved, the Permanent Secretary may take any of the courses of action set out in section 40.

(4) This section shall not apply if an employee's inefficiency or unsatisfactory performance is due to infirmity of body or mind.

PART:X SETTLEMENT OF DISPUTES SS 4244

42. Definitions

In this Part-

"action short of a strike" means any method of working undertaken by employees acting in combination or under a common understanding, which method of working slows down normal production or the execution of the normal function under their contracts of employment, of the employees undertaking such method of working;

"dispute" means a grievance, dispute of interest or dispute of right;

"dispute of interest" means a dispute concerning the creation of new terms and conditions of employment, or the variation of existing terms or conditions of employment;

"dispute of right" means a dispute concerning an alleged infringement of a right flowing from statutory law, collective agreement or individual employment contract, or the conferment of a benefit to which the claimant is legally entitled;

"grievance" means a feeling of injustice or dissatisfaction affecting an employee or group of employees, arising out of that employee's or group of employees' work or employment relationship or situation, and reported by the employee or employees to the employer;

"industrial action" means a lockout, strike or action short of a strike in furtherance of a dispute;

"lockout" means the closing of any place of employment by the employer, the suspension of work by the employer, or the refusal, by the employer, to continue to employ any number of the employer's employees; and

"unlawful industrial action" means any industrial action declared to be unlawful by this or any other Act or by the Industrial Court, or any lock out, strike or action short of a strike, deemed to be unlawful industrial action by virtue of section 42 of the Trade Disputes Act.

43. Grievances

(1) An employee who has a grievance against the employer may refer the grievance either to the Public Service Commission established under section 109 of the Constitution, hereinafter referred to as "the Commission", or to the Public Service Bargaining Council established in terms of section 56, for mediation or arbitration.

(2) The provision of Part II of the Trade Disputes Act shall apply with the necessary modifications, to proceedings before the Commission and the Council.

44. Annual Report

The Commission shall, as soon as possible after the end of every financial 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:XI FREEDOM OF ASSOCIATION OF PUBLIC OFFICERS SS 4546

45. Right to join union

(1) Every public officer shall have the right to belong to a trade union of his or her choice for the purpose of collective bargaining.

(2) Notwithstanding any other provision of this Act, no member of management shall be represented by a negotiating body in respect of matters bearing upon relations between his or her employer and those employees thereof or therein who are members of management unless the negotiating body represents only members of management and no other employees.

(3) An employee who is eligible for the membership of a trade union shall not be prevented (except by the trade union itself acting in accordance with its rules) from becoming or remaining a member of the union.

(4) In this section, member of management has the meaning assigned to it under the Trade Unions and Employers' Organizations Act.

46. Recognition of public officers' unions

A trade union which is representative of one third of the employees of the employer engaged in the same trade as members of the same union, may apply to the Director for recognition for purposes of collective bargaining.

PART:XII INDUSTRIAL ACTION SS 4749

47. Strikes by management

Notwithstanding the provisions of section 48 (1), a person in senior management of the public service shall not engage in a strike or action short of a strike.

48. Lawful strikes, etc.

(1) An employee who takes part in a strike or lockout in compliance with the provisions of this Part does not commit a delict or a breach of contract.

(2) An employee who takes part in a strike or lockout shall not be dismissed for doing so, but this shall not preclude the employer from dismissing such employee during a strike or lockout for any other reason that is valid and fair.

(3) Notwithstanding subsection (1), the employer is not obliged to remunerate an employee for services that the employee does not render during the strike or lockout in compliance with the provisions of this Part.

(4) The employer may not institute civil proceedings against any person for participating in a strike or lockout carried out in compliance with this Part except any act in contemplation or furtherance of a strike that constitutes defamation or an offence.

49. Certain strikes or lockouts not permitted

(1) An employee shall not engage in a strike or lockout-

- (a) which is not in compliance with the provisions of this Part or an agreed procedure; or
- (b) is in breach of a peace clause in a collective agreement;
- (c) the subject matter of which is not a dispute in terms of this Act;
- (d) the subject matter of which is not a matter regulated by a collective agreement; or
- (e) the subject matter of which the parties to the dispute have agreed to refer to arbitration or to the Industrial Court for adjudication.

(2) The Industrial Court may interdict-

- (a) a strike or lockout that is not in compliance with this Act; or
- (b) conduct-
 - (i) in contemplation or in furtherance of a strike or lockout; and
 - (ii) that is not in compliance with this Act.

(3) No interdict contemplated under subsection (2) may be granted unless-

- (a) the applicant has given the prescribed notice to the respondent of its intention to apply for an interdict;
- (b) the applicant has served a copy of the notice and application on the Bargaining Council established under section 50; and
- (c) the respondent has been given a reasonable opportunity to be heard before a decision is made.

(4) An employee who wilfully breaches his contract of employment knowing or having reasonable cause to believe that the probable consequence of his or her doing so, either alone or in combination with others, will be-

- (a) to deprive the public or any section of the public, either wholly or to a substantial extent, of an essential service or substantially to diminish the enjoyment of an essential service by the public or by any section of the public; or
- (b) to endanger human life or public health or to cause serious bodily injury to any person or to expose valuable property, whether movable or immovable, to the risk of destruction, deterioration, loss or serious damage, is guilty of an offence and is liable to a fine not exceeding P2 000 or to imprisonment for a term not exceeding 12 months, or both.

(5) Any person who causes, procures, counsels, or influences any employee to breach his or her contract of employment, knowing or having reasonable cause to believe that the probable consequence of that employee's breach of his or her contract of employment, either alone or in combination with others, will be any of the consequences specified in subsection (3), commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding 24 months, or to both.

(6) For the purposes of this Act, "essential service" means a service the interruption of which endangers, or is likely to endanger, the life, personal safety or health of the whole or part of the population.

(7) Notwithstanding the generality of subsection (6), "essential services" include those services listed as such under the Schedule to the Trade Disputes Act.

PART:XIII COLLECTIVE BARGAINING IN THE PUBLIC SERVICE SS 5058

50. Establishment of Bargaining Council

A bargaining council for the public service, to be known as the Public Service Bargaining Council hereinafter referred to as "the Council", shall be established and registered in terms of this Part.

51. Constitution of Council

(1) As soon as practicable after the commencement of this Act, the representatives of the Government in its capacity as an employer and all recognised trade unions whose members are public officers to whom this Act applies, shall conclude an agreement on a Constitution for the Council.

(2) The Constitution of the Council shall provide, amongst other things, for the following matters-

- (a) the category or categories of employees to be covered by the Council;
- (b) the appointment, number and method of selection of employer and employee representatives;
- (c) the appointment, number and method of selection of a Chairperson and Deputy Chairperson of the Council;
- (d) the appointment and method of selection of a Secretary of the Council;
- (e) the procedure for the appointment of alternative members of the Council;
- (f) the number of members required to form a quorum;
- (g) the procedure for the replacement of members;
- (h) the term of office of members of the Council and office holders;
- (i) the procedure to be followed in the event of a dispute or deadlock in the Council;
- (j) the methods by which persons affected by any collective agreement made or amended by the Council shall be informed thereof;
- (k) thresholds for the admission of trade union parties to the Council; and
- (l) the performance, by the Council, of all the functions of a joint industrial council established in terms of section 36 of the Trade Disputes Act, in respect of those matters that are-

- (i) regulated by uniform rules, norms and standards that apply to the public sector, or
- (ii) assigned to the Government as employer in respect of the public sector.

(3) A copy of the proposed constitution of the Council, as adopted by the parties, shall be submitted to the Commissioner with an application for the registration of the Council.

(4) On receipt of the application, the Commissioner shall, upon being satisfied that the proposed constitution complies with the Trade Disputes Act, by notice published in the Gazette, establish and register the Council.

(5) The Commissioner may, on application by an interested party, and on reasonable cause being shown, cancel the registration of the Council.

(6) Any interested party aggrieved by a decision of the Commissioner not to establish and register the Council, or a decision to cancel the registration of the Council, may appeal against that decision, to the Minister responsible for labour.

52. Formation of Council

The Council shall consist of representatives of the Government in its capacity as employer, and representatives of trade unions admitted, in accordance with the Council's constitution.

53. Functions of Council

The functions of the Council shall be to-

- (a) negotiate, conclude and enforce collective bargaining agreements between the employer and recognised public service trade unions;
- (b) prevent and resolve labour disputes;
- (c) facilitate cooperation between the employer and public officers regarding matters affecting the public service in order to increase the efficiency of the service and well being of public officers;
- (d) facilitate better relations between Government as employer, and trade unions, based on mutual trust and respect; and
- (e) exercise any other power or duty that may be necessary or desirable to achieve the objectives of the Council.

54. Bargaining councils in the public service

(1) The Council may, by resolution, in terms of its constitution-

- (a) designate any sector of the public service for the establishment of a sectoral bargaining council;
- (b) establish thresholds for the admission of any trade union party to a sectoral bargaining council;
- (c) designate the powers and functions of such sectoral bargaining councils; and
- (d) vary the designation of, or establish, amalgamate or dissolve any sectoral bargaining council so established.

(2) The resolution referred to in subsection (1) shall accompany the application to register, vary the application of, or register the amalgamation of, a sectoral bargaining council.

(3) A sectoral bargaining council shall be established in accordance with the constitution of the Council.

55. Jurisdiction of Sectoral Bargaining Councils

(1) A sectoral bargaining council shall have jurisdiction in respect of matters that are specific to that sector, and in respect of which Government, as employer, in that sector, may conclude collective agreements.

(2) The decisions of a sectoral bargaining sector shall not be binding on the Council, but the decisions of the Council shall bind the sectoral bargaining councils.

(3) Notwithstanding the provisions of subsection (2), the sectoral bargaining councils may make recommendations to the Council, which shall then make such decision, as it considers appropriate within the scope of its constitution.

56. Political activities of bargaining councils

Collective bargaining councils within the public service shall not allow politics or anything which may be reasonably regarded as being of a political nature to interfere with or influence their activities.

57. Rights of trade union parties to the Council

(1) Every trade union that is a party to the Council shall be a recognised trade union in the public sector.

(2) Every trade union that is a party to the Council shall be entitled to have--

(a) authorised representatives of the union granted access to the employer's premises for purposes of recruiting members, holding meetings or representing members;

(b) trade union dues and levies deducted from employees' wages on the written authorisation of the employees; and

(c) trade union representatives appointed by the union from among its employees, recognised by employers for purposes of representing members of the union in respect of--

(i) grievances,

(ii) discipline, and

(iii) termination of employment.

(3) The employer may impose--

(a) reasonable limits as to frequency, time and place, on the access of authorised representatives to the employer's premises;

(b) no more than a five per cent levy on a trade union for deducting trade union dues and levies from employees on behalf of the trade unions; and

(c) reasonable limits on the number of trade union representatives to be appointed to represent its members.

(4) An employee who authorises a deduction of trade union dues and levies may withdraw that authorisation in writing.

(5) If the Constitution of a trade union requires the election of trade union representation at the workplace, the employer shall, subject to reasonable limitations as to place and time, permit the elections during working hours.

(6) Unless there is a collective agreement providing otherwise, any dispute concerning the provisions of this section shall be referred to the Council in accordance with the provisions of this Act, for mediation.

(7) If the dispute is not settled within 30 days of the referral, any party may refer the dispute to the Industrial Court for determination.

58. Disclosure of information

(1) Subject to the provisions of subsections (2) to (5), the employer shall, on request, disclose all relevant information to a recognised trade union that is reasonably required to allow the trade union to consult or bargain collectively.

(2) The employer shall notify the recognised trade union, in writing, if any of the information requested by the union is information which may not be disclosed in terms of subsection (3).

(3) The employer shall not disclose information--

(a) that is legally privileged;

(b) that the employer cannot disclose without contravening a prohibition imposed on the employer by any law or order of court;

(c) that is confidential and which, if disclosed, may cause material harm to an employee or the employer; or

(d) that is private personal information relating to an employee, unless that employee consents to the disclosure of that information.

(4) Unless there is a collective agreement providing otherwise, any dispute concerning the provisions of this section shall be referred to the Commissioner for mediation in accordance with section 7 of the Trade Disputes Act.

(5) If the dispute is not settled within 30 days of the referral, any party may refer the dispute to the Industrial Court for determination.

PART:XIV OFFENCES AND PENALTIES SS 5963

59. Influencing an appointing authority

Any person who, otherwise than in the course of his or her duty, or who, in the course of his or her duty, improperly, directly or indirectly by himself or herself 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 supervising officer, commits an offence and is liable to a fine not exceeding P3 000 or to imprisonment for a term not exceeding three years, or to both:

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 officer.

60. Supplying false information

Any person who, in connection with the exercise, by the Permanent Secretary to the President, the Director, an appointing authority or a supervising officer, of his or her functions, wilfully gives, to such person, any information which he or she knows to be false or does not believe to be true or which he or she knows or believes to be misleading by reason of the omission of any material particular, commits an offence and is liable to a fine not exceeding P3 000 or to imprisonment for a term not exceeding three years, or to both.

61. Improperly influencing an appointing authority

Any person who otherwise than in the course of his or her duty, or in the course of his or her duty improperly, directly or indirectly by himself or herself, 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 supervising officer, commits an offence and is liable to a fine not exceeding P500 or imprisonment for a term not exceeding six months, or to both:

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 officer.

62. Supplying false information to commission

Any person who, in connection with the exercise, by the Permanent Secretary to the President, the Director, an appointing authority or a supervising officer, of his or her functions, wilfully gives to such person any information which he or she knows to be false or does not believe to be true, or which he or she knows or believes to be misleading by reason of the omission of any material particular, commits an offence and is liable to a fine not exceeding P500 or to imprisonment for a term not exceeding six months, or to both.

63. Improper disclosure

(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 or her official functions the contents of any document, communication or information whatsoever which has come to his or her notice in the course of his or her duties in relation to the Commission, commits an offence and is liable to a fine not exceeding P500 or to imprisonment for a term not exceeding six months, or to both.

(2) Any person who knows of any information which to his or her 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 or her official duty commits an offence and is liable to a fine not exceeding P500 or to imprisonment for a term not exceeding six months, or to both.

PART:XV MISCELLANEOUS (SS 64-67)

64. Amendment of Schedule

The President may, by order published in the Gazette , amend the Schedule.

65. Regulations

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) anything in this Act which is to be or may be prescribed;
- (e) 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; and
- (f) the body which may conduct examinations in connection with any scheme of service or for any other purpose of the public service.

66. Repeal

The following Acts are hereby repealed-

- (a) the Public Service Act;
- (b) the Unified Local Government Service Act;
- (c) the Teaching Service Act; and

- (d) Part II A to Part II F of the Tribal Land Act.

67. Savings and transitional

Subject to the provisions of this Act-

(a) the administrative structures of the public service in existence under the repealed Acts immediately before the commencement of this Act shall, to the extent that their continued existence is not inappropriate or inconsistent with this Act, continue in existence;

(b) the public service positions which were in existence under the repealed Acts immediately before the commencement of this Act shall, except where clearly inappropriate, continue in existence;

(c) every position which was classified as a senior management position under the repealed Acts immediately before the commencement of this Act shall continue as such;

(d) every person who was employed under the repealed Acts immediately before the commencement of this Act shall continue to be employed in the same position in the public service except where it is clearly inappropriate;

(e) every person employed in terms of a contract under the repealed Acts shall not be subject to any condition of service which is less favourable to that person than any similar condition which applied to that person immediately before the commencement of this Act.

SCHEDULE

(section 2 (2) and 64)

1. Secretary to the Cabinet;
2. Permanent Secretary, Office of the President;
3. Attorney-General;
4. Auditor-General;
5. Director of Public Service Management;
6. Commander of the Botswana Defence Force;
7. Deputy Commander of the Botswana Defence Force;
8. Commissioner of Police;
9. Secretary for Economic and Financial Policy;
10. Secretary for Development and Budget;
11. Accountant-General;
12. Secretary to the Independent Electoral Commission;
13. Director of the Directorate on Corruption and Economic Crime;
14. Clerk of the National Assembly;
15. Coordinator of the National AIDS Coordinating Agency;
16. Ombudsman;
17. Registrar and Master of the High Court;
18. Registrar of the Industrial Court;
20. Secretary for Defence, Justice and Security;
21. Secretary for Presidential Affairs and Public Administration;
22. Director of Public Prosecutions;
23. Government Attorney;
24. Secretary for Legislative Drafting;
25. Secretary for International and Commercial Services;
26. Director of Intelligence and Security; and
27. the holders of such public offices as may from time to time be established or constituted.