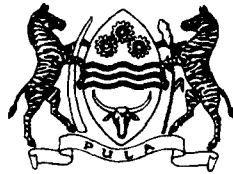


THE PUBLIC SERVICE ACT, 1970

No. 26



of 1970.

AN ACT TO PROVIDE FOR THE CREATION OF A DIRECTOR OF PERSONNEL AND TO SET OUT THE FUNCTIONS OF SUCH POST AND TO PROVIDE FOR APPOINTMENT TO THE PUBLIC SERVICE AND MATTERS AND CONDITIONS INCIDENTAL THERETO.

Date of Assent: 9.7.1970.

Date of Commencement: 10.7.1970

ENACTED by the Parliament of Botswana.

Short Title

1. This Act may be cited as the Public Service Act, 1970.

Definition

2. In this Act unless the context otherwise requires —

“administrative officer” means any officer (other than an officer to whom section 111 of the Constitution does not apply) on the superscale, “A” scale or who is a head of department;

“appointing authority” means any person having power, whether delegated or otherwise, to appoint to office in the public service;

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

“Director” means the Director of Personnel appointed under section 4;

“officer” means a person holding or acting in a public office;

“Permanent Secretary” includes the Attorney-General and the Auditor-General;

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

“public office” means an office of emolument in the public service;

“responsible officer” includes the Permanent Secretary, Office of the President, the Director and any officer to whom powers of exercising disciplinary control over and to remove from office public officers have been delegated under section 6;

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

Administrative officers and common cadres

3. Notwithstanding anything contained elsewhere in this Act --

(i) the power to appoint administrative officers shall be vested in the Permanent Secretary, Office of the President, and

(ii) the power to appoint any officer of a class specified in the First Schedule shall be vested in the Director.

Director of Personnel

4. There shall be a Director of Personnel who shall be a public officer appointed by the President.

Functions of Director

5. The Director shall be responsible for —

(i) conditions of appointment and terms of service;

(ii) administration of General Orders;

(iii) recruitment of officers including volunteers;

(iv) staff complements and gradings;

(v) administration, structure and assessment of salaries;

(vi) public service training policy;

(vii) discipline, staff training and welfare;

(viii) localisation and staff development programme;

(ix) staff inspections and organization and methods;

(x) approval and administration of Schemes of Service;

- (xi) pensions and allowances;
- (xii) personnel statistics;
- (xiii) pre-allocation of secondary school leavers;
- (xiv) placement of returning graduates;
- (xv) creation and abolition of offices in the public service;
- (xvi) such other functions as the President may from time to time prescribe.

Appointment to the Public Service

6. (1) Subject to the provisions of this section, of section 111 of the Constitution and of sections 3, 7 and 8 of this Act the power to appoint persons to the public service, to exercise disciplinary control over and to remove from office in the public service shall vest in the Director.

(2) The Director may, with the consent of the President, by directions in writing, delegate any of his powers under this Act to any officer not below the rank of Permanent Secretary.

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

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

(5) Notwithstanding any delegation of his powers to exercise disciplinary control and to remove from office the Director may vary or set aside any decision of an officer to whom those powers have been delegated.

(6) Notwithstanding anything contained in subsection (1) the power to exercise disciplinary control over and to remove from office officers on the superscale to whom this Act applies shall be vested in the Permanent Secretary, Office of the President. Where in this Act any report or recommendation is required to be made to the Director, or the Director is given any power to act in relation to any officer, such report or recommendation shall in the case of officers on the superscale be made to the Permanent Secretary, Office of the President and he shall exercise such power in relation to such officer.

Appointment by Commissioner of Police

7. The power to appoint persons to any office in the Botswana police force below the rank of Assistant-Superintendent and to exercise disciplinary control over and remove persons holding such offices shall vest in the Commissioner of Police or such other officer as may be prescribed by law.

Appointment by Director of Prisons

8. The power to appoint persons to any office in the Botswana prison service below the rank of Assistant Superintendent of Prisons and to exercise disciplinary control over and to remove from office shall vest in the Director of Prisons or such other officer as may be prescribed by law.

Directions of President

9. The President may give such general directions as to the manner of exercise of the powers and duties under this Act as may appear to him to be necessary.

Disqualification for Appointment

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

(2) No person shall be appointed to public office unless he holds such qualifications as have been prescribed for appointment to that office: Provided that the provisions of this subsection may be waived with the approval of the President to facilitate the localisation of the public service.

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

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

Criterion for Appointment

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

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

- (i) any officer who is a citizen of Botswana;
- (ii) any other citizen of Botswana;
- (iii) any officer, whether on pensionable or contract terms, who is not a citizen of Botswana;

- (iv) any other person who is not a citizen of Botswana but whose appointment to such office is approved under section 10 or deemed to be approved under section 12.

Appointment of Citizens of certain countries

12. The appointment of any person to any 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.

Probation

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

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

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

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

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

(4) Notwithstanding anything contained in this section but subject to the giving of notice as prescribed in subsection (3) an appointing authority may terminate a probationary appointment at any time.

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

- (i) he has previously served in the office or in a similar office on non-pensionable terms, or

- (ii) 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 officer concerned has served in the office or a similar office on non-pensionable terms or a period of twelve months whichever shall be less.

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

Promotion

14. (1) Where an officer has, on or after the date of coming into force of this Act, been promoted the Permanent Secretary may at any time within six months (exclusive of any period of leave) of the effective date of the promotion, if he is of the opinion that the officer has failed satisfactorily to perform the duties of the office to which he was promoted, advise the officer in writing that his reduction in rank is under consideration and inform him of his right to make representations thereon within fourteen days. The Permanent Secretary shall forward such representations, if any, together with his recommendations to the Director.

(2) The Director shall decide whether the officer should revert to his former rank but may, if he is of the opinion that the work of the officer requires a further trial, postpone his decision for such period as he considers necessary; provided that if the Director has not reached a decision within three months of the matter being referred to him the officer shall not revert.

Date of Promotion

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

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

- (i) the date upon which the vacancy occurred;
- (ii) the date upon which the officer became qualified for promotion;
- (iii) the date upon which the officer assumed the functions of the office;

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

Termination of Contract

16. If it appears to the Permanent Secretary that the appointment of an officer serving on contract should be terminated (otherwise than by dismissal) in accordance with the provisions of his contract the Permanent Secretary shall advise the officer in writing that the termination of his contract is under consideration and inform him of his right to make representations thereon within fourteen days. The Permanent Secretary shall forward such representations, if any, together with his recommendations to the Director who shall decide whether the contract should be terminated.

Retirement on medical grounds

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

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

Interdiction

18. (1) If a Permanent Secretary on becoming aware that criminal proceedings have been or are about to be instituted against an officer or considers that disciplinary proceedings should be instituted against an officer, is of the opinion that an officer should be interdicted from the performance of his duties pending the taking of proceedings against him he shall report the matter to the Director recommending the interdiction of the officer.

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

(3) If as a result of the proceedings the officer is awarded a punishment less than dismissal the Director shall decide what proportion of the emoluments, if any, withheld shall be paid to the officer; provided that if no punishment is awarded the whole of the emoluments withheld shall be paid to the officer.

Withholding salary

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

Improper influence

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

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

Supplying False Information

21. Any person who in connexion with the exercise by the Permanent Secretary, Office of the President, an appointing authority or a responsible officer, of his functions wilfully gives to such person any information which he knows to be false or does not believe to be true or which he knows or believes to be misleading by reason of the omission of any material particular, shall be guilty of an offence and shall be liable on conviction to a fine of R500 or to imprisonment for a period of six months or to both such fine and such imprisonment.

Regulations

22. The President may make regulations prescribing —

- (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 re-engagement of public officers on contract;
- (d) the procedure for taking disciplinary action against public officers;
- (e) the punishments which may be awarded for breaches of discipline;
- (f) anything in this Act which is to be or may be prescribed;
- (g) the setting up of bodies for the purpose of consultation between Government and members of the public service and the procedure and functions of such bodies;

- (h) the body who may conduct examinations in connection with any Scheme of Service or for any other purpose of the public service;
- (i) generally for the carrying into effect of this Act.

Repeal

23. The regulations set out in the first column of the Second Schedule are repealed to the extent set out in the second column of the Second Schedule.

Amendment of Pension (Consolidation) Law, 1965

24. The Pensions (Consolidation) Law, 1965, is amended by the deletion of the words "Public Service Commission" appearing in section 9 thereof and by the substitution therefor of the word "Government".

FIRST SCHEDULE

Chief Personnel Officers, Senior Personnel Officers, Personnel Officers, Assistant Personnel Officers, Chief Executive Officers, Senior Executive Officers, Executive Officers, Personal Assistants, Stenographers, Typists, Senior Storekeepers, Storekeepers Grades I, II and III, Higher Clerical Officers, Clerical Officers.

SECOND SCHEDULE

The Public Service Commission (Supplementary Provisions) Regulations, 1965 and 1967 (L.N. 41 of 1965)	Regs. 28, 29, 34, 35, 36, 37, 38, 38A, 38B, 38C, 39, 40, 45, 46, 47, 48, 49, 50, 51, 52, 53, 57, 58, 59, 60 and 62.
The Public Service (General Qualifications) Regulations, 1967 (S.I. 21 of 1967).	The whole.
The Public Service Commission Rules, 1967 (S.I. 55 of 1967).	The whole.
The Public Service Commission (Delegation of Powers) Directions, 1967. (S.I. 66 of 1967).	The whole.

Passed by the National Assembly this day the 9th July, 1970.

G.T. MATENGE,
Clerk of the National Assembly