

Statutory Instrument No. 57 of 1970

THE PUBLIC SERVICE ACT, 1970

THE PUBLIC SERVICE REGULATIONS, 1970

In exercise of the powers conferred upon him by section 22 of the Public Service Act, 1970 and all other powers thereunto him enabling His Excellency the President makes the following Regulations.

PART I. PRELIMINARY

Citation

1. These Regulations may be cited as the Public Service Regulations, 1970.

Interpretation

2. In these Regulations unless the context otherwise requires —

“Association” means the Botswana Civil Service Association;

“Commission” means the Public Service Commission established under the Constitution;

“Committee” means a Ministerial Consultative Committee established under regulation 35;

“Council” means the Central Joint Staff Consultative Council established under regulation 30;

“Minister” means the Minister responsible for the public service;

“Permanent Secretary” means the Permanent Secretary of the Ministry in which the relevant public office exists or in which the relevant officer is serving.

**PART II – CONSTITUTION AND ABOLITION OF
PUBLIC OFFICES**

Notification of public offices

3. The Director shall publish once in every year a list of all public offices.

Constitution of public office

4. Application for the constitution of any public office shall be made to the Director by the Permanent Secretary and every such application shall state:—

- (a) the title of the office;
- (b) the salary or salary scale to be attached to such office;
- (c) whether the proposed office is to be pensionable;
- (d) the reason why the constitution of such office is considered desirable;
- (e) the qualifications which will be required of any holder of the proposed office and the duties which any such holder will be required to perform;
- (f) whether or not funds are available;
- (g) such other matters as the Director may require.

Abolition of public offices

5. Application for the abolition of any public office shall be made to the Director by the Permanent Secretary and every such application shall state:—

- (a) the reason why it is considered desirable that the office should be abolished;
- (b) such other matters as the Director may require.

PART III – APPOINTMENT AND TERMINATION OF APPOINTMENTS (OTHERWISE THAN BY DISCIPLINARY PROCEEDINGS)

Notification of vacancies

6. (1) Where a vacancy occurs or it is expected that a vacancy will occur in any public office, the Permanent Secretary shall notify the Director (and, if the office is in the Superscale, the Permanent Secretary, Office of the President) and shall state whether, in his opinion:—

- (a) the vacancy should be filled by the promotion or transfer of an officer serving in the Ministry or Department in which the office exists; or
- (b) it is likely that a suitable candidate will be found in some other Ministry or Department; or
- (c) it is likely that a suitable candidate will be found by advertisement in Botswana or elsewhere.

(2) Where the Permanent Secretary recommends the promotion or transfer of an officer serving in the Ministry in which the office exists, he shall furnish to the Director (or if the office is in the Superscale the Permanent Secretary, Office of the President), the record of service in Botswana of the officer recommended together with the names of any officers in the Ministry or Department who would be superseded and his reasons for recommending their supersession.

(3) Where the Permanent Secretary is unable to recommend the promotion or transfer of an officer to fill the vacancy, he shall report to the Director; (and, if the office is in the Superscale; the Permanent Secretary, Office of the President) the names of the officers serving in the cadre or grade from which promotion would normally be made, together with his reasons for not recommending those officers for promotion.

(4) Where the Permanent Secretary is of the opinion that no suitable candidate is likely to be found by advertisement in Botswana, he shall notify the Director, (and, if the office is in the Superscale, the Permanent Secretary, Office of the President) of the arrangements which exist for the training of a local officer to fill such office.

Advertisement

7. (1) Subject to the provisions of subregulation (2) and (3) and to any directions of the President, applications for appointment to vacant offices which are pensionable shall be invited by public advertisement in Botswana in such manner as may be determined by the appointing authority.

(2) A vacant office shall not be advertised:—

- (a) where the appointing authority is satisfied that the office should be filled by the promotion, transfer or re-engagement of an officer serving in the Ministry or Department in which the vacancy exists or the continued employment of an officer on temporary terms;

- (b) where the appointing authority is satisfied that there is no reasonable likelihood of any application being received in response to advertisements in Botswana from a candidate who is qualified and suitable.

Selection of candidates

8. As between officers having the same degree of preference, qualifications and experience, proved merit and suitability for the post in question will be given greater weight than seniority.

Termination of appointment other than on disciplinary grounds

9. If it appears to the Permanent Secretary that there is reason why an officer who may be called upon to retire under the provisions of section 9 of the Pensions (Consolidation) Law, 1966 should be called upon to retire, the Director shall advise the officer that his compulsory retirement is under consideration and ask him if he wishes to make any representation of a personal nature on the matter. The Permanent Secretary shall forward such representations, if any, together with his own observations, to the appointing authority who will decide whether such officer should be called upon to retire.

Cases not covered by this part

10. Any case not covered by this Part of these Regulations shall be dealt with in accordance with such directions as may, from time to time be given by the President.

PART IV – DISCIPLINE

Powers of Director to review

11. The powers exercisable under this Part by an officer to whom such powers have been delegated are subject to the condition that the Director shall have power to set aside, correct or vary any decision in any case made by the person to whom the powers have been delegated.

Disciplinary control to be prompt

12. Where disciplinary proceedings are to be or may be taken against any officer the appropriate procedure shall be commenced as soon as possible.

Criminal proceedings against an officer

13. If a preliminary investigation indicates that an offence against any law may have been committed by an officer, the Permanent Secretary shall, unless it is clear that police action has been or is about to be taken, consult the Attorney-General and obtain his opinion as to whether a prosecution should be instituted against the officer. In consulting the Attorney-General the Permanent Secretary shall provide a detailed statement of the case, as it is known to him.

Salary of an officer during interdiction

14. (1) When reporting to the Director under section 18 (1) of the Act, the Permanent Secretary shall supply the Director with particulars of the Officer's salary, his financial commitments (including current deductions from salary) and the size of his family.

(2) If the Director decides that an officer shall be interdicted the Permanent Secretary shall inform the officer in writing of his interdiction, and of the amount of salary which will be paid to him during the period of interdiction and shall notify the Accountant-General.

Salary following conviction

15. (1) Where an officer's emoluments have ceased by virtue of the provisions of section 19 of the Act the Permanent Secretary concerned shall notify the Accountant-General and the Director of the date of cessation of emolument.

(2) On receiving a notification under subregulation (1) the Director shall, as soon as may be, decide whether any emoluments shall be paid to such officer during the period of his imprisonment and pending the taking of disciplinary proceedings against him and shall notify the Accountant-General and the Permanent Secretary accordingly.

Criminal proceedings, action required by police and judicial officers

16. (1) The Police Officer commanding a District shall inform the Permanent Secretary concerned immediately he knows that an officer is to be prosecuted, copying the communication to the Director, Permanent Secretary Ministry of Finance and Development Planning and the Auditor-General. The Police Officer shall provide the officer's full name, his appointment and the nature of the alleged offence.

(2) A judicial officer who tries any criminal proceedings against an officer shall, immediately the proceedings are completed, inform the Director of the outcome and as soon as possible thereafter send three certified copies of the case record to the Director.

Preliminary investigation

17. (1) Where a Permanent Secretary becomes aware of allegations of misconduct against an officer he shall, if he is of the opinion that disciplinary proceedings may be necessary, instruct some other officer of a rank not less senior than the officer against whom the allegations of misconduct have been made, to hold a preliminary investigation into such allegations.

(2) If following the preliminary investigation the Permanent Secretary is of the opinion that there is a *prima facie* case against the officer concerned he shall prepare a list of charges against the officer in such form as may be prescribed in General Orders, with such modifications as may be necessary in any particular case. The list of charges shall be sent to the officer against whom they are made and he shall be informed that he has such period, being not less than 14 days, as appears reasonable in all the circumstances to the Permanent Secretary to reply in explanation of the charges against him.

Reporting cases to the Director

18. (1) If the officer does not reply to the charges made against him under regulation 17 within the time specified, or if he fails to exculpate himself from the charges to the satisfaction of the Permanent Secretary, the latter shall then prepare and report the case to the responsible officer.

(2) In reporting the case to the responsible officer the Permanent Secretary shall forward:—

- (a) a copy of the preliminary departmental investigation made under regulation 23;
- (b) a copy of the charges preferred against the officer; and
- (c) a copy of the officer's statement, if any, made in reply to the charges.

Action on receiving report by responsible officer

19. (1) When the responsible officer has received the report of the preliminary investigation he may:—

- (a) call for additional statements or other information relative to the charges referred against the officer as he deems necessary;
- (b) decide to take no further action in the matter and inform the officer concerned;
- (c) refer the matter to a Committee of Enquiry which he shall appoint; or
- (d) conduct an enquiry himself.

(2) A Committee of Enquiry shall consist of three officers who shall be of a rank not less senior than that of the officer in respect of whom the enquiry is being held.

(3) A Committee of Enquiry appointed by a responsible officer shall enquire into the charges which have been laid and shall at the conclusion of the enquiry advise the responsible officer whether or not in its opinion all or any of the charges of misconduct have been proved.

Finding of enquiry

20. Upon the conclusion of any enquiry the responsible officer will inform the officer in respect of whom the enquiry was held as to which, if any, of the charges of misconduct have been proved and of the punishment, if any, which he has awarded.

Where Permanent Secretary is responsible officer

21. In cases where the Permanent Secretary is the responsible officer by virtue of a delegation made under section 6 of the Act the powers and duties vested in the Permanent Secretary under regulations 17 (2) and 18 (1) shall be vested in the officer holding the preliminary investigation.

Disciplinary action while criminal proceedings are pending

22. If criminal proceedings have been instituted against an officer in any court, no disciplinary proceedings shall be instituted against such officer on any grounds involved in the criminal charges pending the result of the criminal proceedings.

Disciplinary action following criminal conviction

23. (1) If an officer has been convicted of a criminal offence the responsible officer may accept with further proof that the officer committed the offence of which he was convicted upon production before him of the record of the criminal proceedings.

(2) If an officer has been convicted of a criminal offence for which he has been sentenced to a term of imprisonment without the option of a fine, the responsible officer may, upon production of a certified copy of the criminal proceedings, dismiss the officer without instituting disciplinary proceedings against him.

(3) No officer shall be dismissed where an appeal against the conviction has been entered pending the outcome of such appeal.

Disciplinary action after acquittal of criminal charges

24. Where an officer has been acquitted of a criminal charge no charge of misconduct in any disciplinary proceedings shall be laid against him which raises substantially the same issues on which he was acquitted by the court, unless it appears from the record that the court had no occasion to enquire into the truth or falsity of any evidence tendered in respect of such charge relevant to the truth or falsity of the allegations against the officer.

Punishments

25. The following punishments may be inflicted upon an officer —

- (a) dismissal; that is termination of appointment with forfeiture of all retirement benefits and all other benefits accruing as a result of public service in accordance with the provisions of any law for the time being in force;
- (b) compulsory retirement or termination of appointment;
- (c) reduction in rank;
- (d) reduction in Salary;
- (e) stoppage of increment for a specified period;
- (f) withholding of increment until certain conditions are fulfilled;
- (g) in the case of an officer who is the holder of a non-pensionable post, suspension from duty with consequent loss of pay and allowances for a period not exceeding fourteen days.

Reprimands or warnings

26. Nothing in this Part shall prevent any Permanent Secretary from issuing a reprimand or a warning to any officer directly subordinate to him.

Absence without leave

27. Without prejudice to the taking of disciplinary proceedings in respect of any absence from duty without leave or reasonable cause, where an officer is absent from duty without leave for a period exceeding five days the responsible officer may order that the salary of such officer shall be withheld in respect of any period during which such officer was absent without leave.

Documentary evidence

28. An officer in respect of whom an inquiry is to be held shall be entitled to receive a copy of any documentary evidence which will be relied on for the purpose of the inquiry or be allowed access to it.

Witnesses

29. If witnesses are examined at any enquiry the officer shall be given an opportunity of being present throughout and of putting questions to the witnesses on his own behalf.

PART V – CONSULTATIVE MACHINERY

Central Joint Staff Consultative Council

30. (1) There shall be established a Central Joint Staff Consultative Council which shall consist of the Permanent Secretary, Office of the President who shall be Chairman of such Council the Director and five other members of the rank of Permanent Secretary nominated by the Minister and six members nominated by the Association. In nominating such members the Association shall bear in mind the need to represent as far as possible all the categories of officers in the public service.

(2) There shall be a Deputy Chairman of the Council elected from among themselves by the members nominated by the Association.

(3) Meetings of the Council shall be held at such time as the Chairman may decide and in any event not more than six months shall elapse between meetings of the Council.

(4) There shall be a Secretary to the Council who shall be a public officer appointed by the Director.

(5) Persons with special knowledge or to represent special interests may, with the consent of the Chairman, be co-opted to attend any meetings of the Council and may take part in the discussions of the Council but shall not be entitled to vote on any matter.

(6) Every meeting of the Council shall be presided over by the Chairman or, in his absence, by the Deputy Chairman.

(7) The quorum of a meeting of the Council shall be the Chairman or the Deputy Chairman and not less than two members from among those nominated by the Minister and two members from among those nominated by the Association.

(8) The decisions of the Council shall be by majority vote and in the case of equality of votes the Chairman, or in his absence the Deputy Chairman, shall have a casting vote.

(9) Minutes shall be kept of the members present and a record of the decisions reached at every meeting of the Council.

(10) Any officer (including a member of the Council) may submit matter, in the form of a written memorandum, for the consideration of the Council. Every memorandum shall reach the Secretary at least 21 days before the date of the meeting of the Council at which it is to be considered. Any memorandum reaching the Secretary less than 21 days before a meeting of the Council shall, unless the Chairman directs that it be considered at that meeting, be considered at the next meeting thereafter.

(11) The Secretary shall prepare the agenda, with the approval of the Chairman, for each meeting of the Council and shall circulate such agenda together with supporting memoranda to all members not less than 14 days before the date of the meeting.

(12) Subject to the provisions of this regulation the Council may decide its own procedure.

Functions of Council

31. The functions of the Council shall be:—

- (1) to consider terms and conditions of service and advise on methods of ensuring improvements in general working conditions, productivity, and staff relations within the public service;
- (2) to advise on measures necessary for the furtherance of good relations between Government and the public service with special reference to:—
 - (a) working arrangements and measures designed to increase productivity and lower costs;
 - (b) improved methods for achieving Development Plan targets;
 - (c) the investigation of circumstances tending to reduce efficiency or in any way interfere with the satisfactory working of the public service;

- (3) to consider and advise the Government on safety, health and welfare arrangements in the public service;
- (4) generally to assist in furtherance of good relations between Government and employees in the public service and to exercise such other functions as are conferred on the Council by the Minister;
- (5) to examine recommendations put forward by Ministerial Consultative Committees.

Decisions

32. All decisions of the Council shall be referred to the Minister as soon as may be after the meeting of the Council at which such decision was taken together with a copy of the minutes of the Council. The Minister may accept, modify or reject any decision taken by the Council.

Expenses

33. There shall be paid by the Director the necessary expenses of the Council but no remuneration shall be paid to any member of the Council.

Establishment of Subcommittees

34. (1) The Chairman shall have power to constitute subcommittees to assist the Council in carrying out of its functions and may appoint to such subcommittees members of the Council and such other persons having specialist experience as the Chairman may decide.

(2) The Chairman shall have the power to determine the procedure to be followed by any such subcommittees subject to such instructions as the Council may from time to time issue.

Ministerial Consultative Committees

35. (1) There shall be established in each Ministry a Ministerial Consultative Committee which shall consist of the Permanent Secretary of the Ministry who shall be the Chairman and three other members in such Ministry who shall be appointed by the Minister and four members (who may or may not be members of the Association) appointed by the Association or in default of any such appointment elected from among themselves by persons employed in such Ministry. In appointing such members the Association shall bear in mind the need to represent as far as possible all the categories of staff in such Ministry.

(2) There shall be a Deputy Chairman of each Committee elected from among themselves by the members nominated by the Association.

(3) Every meeting of the Committee shall be presided over by the Chairman or, in his absence, the Deputy Chairman.

(4) The decisions of the Committee shall be by majority vote and in the case of equality of votes the Chairman, or in his absence the Deputy Chairman, shall have a casting vote.

(5) The quorum of a meeting of the Committee shall be the Chairman or Deputy Chairman and not less than two other members from among those nominated by the Minister and two other members from among those nominated by the Association.

(6) Meetings of the Committee shall be held at such times as the Chairman may decide and in any event not more than three months shall elapse between meetings of the Committee.

(7) There shall be a Secretary of each Committee appointed in alternate years by the Chairman and by the Deputy Chairman.

(8) Any officer (including a member of the Committee) may submit matter, in the form of a written memorandum for the consideration of the Committee. Every memorandum shall reach the Secretary at least 14 days before the date of the meeting of the Committee at which it is to be considered. Any memorandum reaching the Secretary less than 14 days before a meeting of the Committee shall, unless the Chairman directs that it be considered at that meeting, be considered at the next meeting thereafter.

(9) The Secretary shall prepare the agenda, with the approval of the Chairman, for each meeting of the Committee and shall circulate such agenda together with supporting memoranda to all members not less than 7 days before the date of the meeting.

(10) Persons with special knowledge or to represent special interests may, with the consent of the Chairman, be co-opted to attend any meeting of the Committee and may take part in the discussions of the Committee but shall not be entitled to vote on any matter.

(11) Minutes shall be kept of the members present and a record of the decisions reached at every meeting of the Committee.

(12) Subject to the provisions of this regulation a Committee may decide its own procedure.

Functions of Committees

36. Ministerial Consultative Committees shall consider the matters prescribed in regulation 31 with special reference to improving productivity within the Ministry of the respective Committee.

Decisions of Committees

37. Decisions of Committees will in the case of issues which fall strictly within the scope of responsibilities of the Chairman of the Committee, be implemented forthwith. Decisions which require the prior approval of other departments of Government will be referred for consideration to the Council

Personal cases to be excluded

38. Notwithstanding any other provisions of these Regulations, neither the Council nor a Committee shall consider individual cases in respect of appointments, transfers, promotions and discipline but may consider the principles governing such cases.

Elections

39. The procedure for the election of members of the staff side of Committees will be in accordance with rules prescribed by the Director.

PART VI - MISCELLANEOUS

Production of relevant documents etc.

40. Any officer who submits any matter for the consideration of the Permanent Secretary, Office of the President, Director or responsible officer shall ensure that all relevant

documents and papers are made available to such officer who may require the production of any further documents or information relevant to the matter under consideration.

Correspondence

41. All correspondence for the Director shall be addressed to the Director.

Power to review staff complements and gradings

42. The Director may authorise such reviews or investigations into public service staff complements and gradings and manpower utilisation as he deems necessary for the better administration of Government's personnel policies. The Director may accept, reject or modify the recommendations contained in staff inspection reports and determine the extent to which such reports are made available for consideration outside the Directorate of Personnel.

Examinations

43. The Commission may, and if so requested by the Director, shall, conduct written examinations as provided for in approved Schemes of Service and for other purposes of the public service.

Cases not otherwise provided for

44. Any case not covered by these Regulations shall be reported to the Director who shall determine the procedure to be adopted.

A. MOGWE,
Permanent Secretary Office of the President

GABORONE.
10th July, 1970.