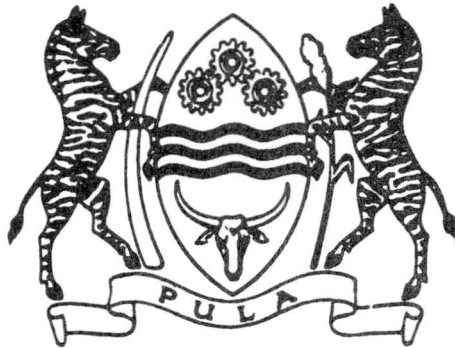


REPUBLIC OF BOTSWANA



GOVERNMENT GAZETTE

EXTRAORDINARY

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Bill No. 23 of 1992

PUBLIC SERVICE (AMENDMENT) BILL, 1992

(Published on 24th July, 1992)

MEMORANDUM

A draft of the above Bill, which it is proposed to present to the National Assembly, is set out below.

One of the objects of the Bill is to amend section 23 of the Public Service Act so that Government may terminate the service of, and cease to pay emoluments to, a public servant upon his conviction for a criminal offence, where such conviction results in a sentence of imprisonment, either without the option of a fine, or upon failure to pay a fine. If, as the result of an appeal, the sentence of imprisonment is set aside, the officer will be re-instated and have his pay resumed retrospectively, but this shall be without prejudice to the bringing of disciplinary charges against him in respect of any other offence based on the same facts.

The Bill also seeks to raise the compulsory retiring age of public servants to 60, whilst leaving the voluntary retiring age at 45.

In addition amendments to the Public Service Act are intended to reflect the fact that many other posts in the Public Service rank as Permanent Secretaries, whilst not necessarily carrying all the administrative responsibilities of Permanent Secretaries.

M.S. MERAFHE,

*Minister of Presidential Affairs and
Public Administration.*

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of section 2, Cap 26:01
3. Amendment of section 15
4. Amendment of section 22
5. Replacement of section 23

A BILL

—entitled—

An Act to amend the Public Service Act.

Date of Assent:

Date of Commencement:

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Public Service (Amendment) Act, Short Title 1992.

2. Section 2 of the Public Service Act, hereinafter referred to as "the Act", is amended by —

Amendment
of section 2
Cap 26:01

- (a) deleting the definition of "Permanent Secretary";
- (b) renumbering the present section as subsection (1) of section 2; and
- (c) adding the following new subsection —

"(2) (a) For the purpose of the public service and section 112 of the Constitution, "Permanent Secretary" includes 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 the holders of the following public offices, namely, Secretary to the Cabinet, Administrative Secretary in the Office of the President, Attorney-General, Auditor-General, Deputy Attorney-General, Director of Public Service Management, Commander of the Botswana Defence Force, Deputy Commander of the Botswana Defence Force, Commissioner of Police, Secretary of External Affairs, Secretary of Economic Affairs, Secretary of Budget Affairs, Secretary of Financial Affairs and Supervisor of Elections.

(b) 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, and includes the Attorney-General in respect of the Attorney-General's Chambers, the Auditor-General in respect of the Auditor-General's Office, the Clerk of the National Assembly in respect of the offices of the National Assembly, and the Registrar of the High Court in respect of the staff of the High Court and the Magistracy."

Amendment
of section 15

3. Section 15 of the Act is amended —

- (a) by substituting for subsection (2) thereof the following subsection —

"(2) Subject to the provisions of this section —

(a) a public officer shall retire from the public service on attaining the age of 60 years; and

(b) a female public officer may retire from the public service on marriage."

- (b) in subsection (6) by deleting the words and figures "55 years or" and the words "as the case may be," wherever they occur.

Amendment of
section 22 (1)

4. Section 22 (1) of the Act is amended by —

- (a) substituting for the words "a Permanent Secretary" the words "the Permanent Secretary"; and

- (b) adding at the end thereof the following proviso —

"Provided that where the Permanent Secretary is the responsible officer, he shall proceed to take such action as may be taken by a responsible officer in accordance with subsections (2) and (3) and section 23."

5. The Public Service Act is amended by replacing section 23 thereof by the following new section 23 —

Replacement
of section 23

"Withholding
of salary

23. (1) Where a public officer is convicted of a criminal offence and sentenced to imprisonment, whether such imprisonment takes immediate effect or is delayed pending an appeal, he shall receive no emoluments from the date of such conviction, pending a decision by the responsible officer 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.

(2) Where a public officer is convicted of a criminal offence and is sentenced to a fine or a fine and imprisonment in lieu, and is sent to prison at that time or subsequently for the non-payment of the fine, he shall receive no emoluments from the date of such imprisonment, pending a decision by the responsible officer as to whether any emoluments shall be paid to him during the period of imprisonment and pending the taking of disciplinary proceedings against him.

(3) Where a public officer is convicted of a criminal offence and is sent to prison in any of the circumstances referred to in subsections (1) and (2), the responsible officer may, upon production of a certified copy of the criminal proceedings and of the warrant of committal to prison, dismiss the officer without instituting disciplinary proceedings against him.

(4) If the public officer appeals against such conviction, his emoluments shall continue to be withheld pending the outcome of the appeal, but if the appeal is successful and the sentence of imprisonment is set aside, he shall, if his services have been terminated, be reinstated with effect from the date of termination, and he shall have repaid any emoluments withheld:

Provided that such setting aside shall not be a bar to disciplinary proceedings being instituted against such officer arising out of the same facts, but in respect of a different offence under the laws or administrative orders governing the conduct of public officers, if those facts disclose such different offence."