

CHAPTER 05:01
JUSTICES OF THE PEACE
ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. President may appoint Justices of the Peace
3. Oath to be taken by a Justice
4. Powers of Justice
5. Power to administer oaths
6. Power to arrest person committing cognizable offence in his presence
7. Power to arrest person for whose arrest he could issue a warrant
8. Warrant to be issued and statement to be forwarded by the Justice when he does not himself take the person arrested before the magistrate
9. Taking cognizance of an offence on complaint or police report
10. Justice must be satisfied that there are sufficient grounds for proceeding
11. When special sanction or complaint required by law, Justice not to take cognizance of case without such sanction or complaint
12. Process and other fees to be paid to the magistrate trying the case
13. Examination of complainant by Justice
14. When process issued, examination, complaint or police report to be forwarded to the magistrate
15. When complaint dismissed, complaint, etc., to be forwarded to the High Court
16. Jurisdiction of magistrate before whom an accused person is brought by or on a process issued by a Justice
17. Power of High Court to order further inquiry
18. Right of person aggrieved to appeal against order dismissing complaint
19. Power of High Court to issue instructions and rules of Court
20. Justices to keep account of and pay to Accountant-General all fees, etc., received
21. Penalty for false oath

Schedule - Form of Oaths of Allegiance

Proc. 29, 1952,
Cap. 49, 1959,
HMC Order 1, 1963,
L.N. 55, 1965,
L.N. 84, 1966,
Act 18, 2006.

An Act to amend and consolidate the law relating to Justices of the Peace.

[Date of Commencement: 29th August, 1952]

1. Short title

This Act may be cited as the Justices of the Peace Act.

2. President may appoint Justices of the Peace

It shall be lawful for the President to appoint, as occasion may require, any resident of Botswana to be a Justice of the Peace for Botswana or for any district thereof, who shall hold office during the President's pleasure, and whose appointment shall be notified in the *Gazette*.

3. Oath to be taken by a Justice

Every Justice of the Peace shall on appointment take and subscribe the oaths in the forms in the Schedule before the High Court or a court presided over by a Magistrate Grade I or over.

4. Powers of Justice

A Justice of the Peace shall, subject to the provisions of this Act, have and exercise within the limits for which he is appointed such powers, rights, duties and jurisdictions as are vested in a Justice of the Peace by this Act or by or in virtue of any written law for the time being in force in Botswana.

5. Power to administer oaths

Every Justice of the Peace shall be authorized and is hereby required to administer oaths and take solemn declarations in matters where statements upon oath or solemn declarations are required by law or when otherwise requested to do so:

Provided, however, that whenever in accordance with any Act or other law, rule or order for the time being in force in Botswana any fee would be payable if the oath were administered or the solemn declaration taken by a judge or magistrate, the Justice of the Peace shall, before administering the oath or taking the declaration, require the intending deponent to pay a fee of the same amount as would be required by a judge or magistrate, and such fee shall be held by the Justice of the Peace for and on behalf of the Government of Botswana and shall be accounted for and paid into the revenues of Botswana as hereinafter provided.

6. Power to arrest person committing cognizable offence in his presence

When an offence, cognizable to the police, is committed in the presence of a Justice of the Peace within the local limits of his jurisdiction, he may himself arrest or order any person to arrest the offender:

Provided however that such Justice of the Peace shall without unnecessary delay take such offender or cause him to be taken before the nearest magistrate within whose local jurisdiction such offence has been committed.

7. Power to arrest person for whose arrest he could issue a warrant

Any Justice of the Peace may at any time arrest or direct the arrest, in his presence, within the local limits of his jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant, and shall without unnecessary delay take such person or cause him to be taken before the nearest magistrate within whose local jurisdiction such person has been arrested.

8. Warrant to be issued and statement to be forwarded by the Justice when he does not himself take the person arrested before the magistrate

Whenever a Justice of the Peace arrests or causes any person to be arrested under the provisions of section 6 or 7 and has not himself taken the person arrested before the magistrate he shall issue a warrant under his hand in the Form set out in the Schedule, and such warrant shall be sufficient authority to the person to whom it is directed to take the person arrested before the magistrate, and if the person has been arrested for an offence committed in the presence of the Justice of the Peace, such Justice of the Peace shall, without unnecessary delay, send to the magistrate a statement setting forth the facts relating to the offence and the names and addresses of any persons known to him to have been witnesses to the commission of the offence.

9. Taking cognizance of an offence on complaint or police report

(1) A Justice of the Peace may-

- (a) upon receiving a complaint of facts which constitute an offence; or
- (b) upon receiving a police report of such facts,

issue process for the purpose of compelling the appearance of the person accused:

Provided however, that such process shall be made returnable before a magistrate having jurisdiction to try the accused or to commit him for trial.

10. Justice must be satisfied that there are sufficient grounds for proceeding

A Justice of the Peace shall not take cognizance of an offence unless he is satisfied that there is sufficient ground for proceeding, neither shall he issue a warrant unless the case is one in which under the Criminal Procedure and Evidence Act, a warrant should issue in the first instance, or he sees reason to believe that the person accused has absconded or will not obey

a summons.

11. When special sanction or complaint required by law, Justice not to take cognizance of case without such sanction or complaint

Whenever by the law for the time being in force any court is prohibited from taking cognizance of any case except with the sanction or on the complaint of the Attorney-General or Director of Public Prosecutions or a court or a public servant or any person, a Justice of the Peace shall not take cognizance of such case except with the sanction or on the complaint required by such law.

12. Process and other fees to be paid to the magistrate trying the case

If any fee would under the law for the time being in force have been payable if the process had been issued by a magistrate such fee shall be paid by the person or persons liable to pay the same at the court of the magistrate before whom the process is returnable.

13. Examination of complainant by Justice

A Justice of the Peace taking cognizance of an offence on complaint, shall at once examine the complainant upon oath and the substance of the examination shall be reduced to writing and be signed by the complainant, and also by the Justice of the Peace:

Provided that when a complaint is made in writing, nothing herein contained shall be deemed to require a Justice of the Peace to examine the complainant before issuing process for the purpose of compelling the attendance of the accused before a magistrate as hereinbefore provided, if such Justice of the Peace is satisfied that the complaint shows sufficient grounds for proceeding.

14. When process issued examination, complaint, or police report to be forwarded to the magistrate

Whenever a Justice of the Peace issues process as before provided, he shall forthwith forward to the magistrate before whom such process is returnable, the substance of the examination (if any) taken and signed as provided in section 13 or, if there be no such examination, the written complaint or police report on which such process has been issued.

15. When complaint dismissed, complaint, etc. to be forwarded to the High Court

Whenever a Justice of the Peace dismisses a complaint he shall forthwith forward to the High Court the written complaint (if any) and the substance of the examination taken and signed as before provided together with a statement of his reasons for dismissing the complaint.

16. Jurisdiction of magistrate before whom an accused person is brought by or on a process issued by a Justice

A magistrate before whom any accused person is brought in pursuance of section 6, 7 or 8 or before whom any process, issued by a Justice of the Peace, is made returnable, shall have the like jurisdiction in the case as if the person had come before him on a process issued by himself or as if the process issued had been issued by himself:

Provided as follows:

- (i) if the person is brought or the process is made returnable before a magistrate who is not empowered to try the accused or to commit him for trial, such magistrate shall forthwith issue process returnable before a magistrate duly empowered to try or commit the accused for trial,
- (ii) when by any law for the time being in force any process fee or other fees are payable, he shall not proceed with the trial of the case until the fees are paid, and if such fees are not paid within a reasonable time the magistrate may dismiss the complaint.

17. Power of High Court to order further inquiry

Any judge of the High Court on examining any record required by section 15 to be forwarded to the High Court may direct any magistrate's court to make, and such court shall then make further inquiry into any complaint which has been dismissed by a Justice of the Peace.

18. Right of person aggrieved to appeal against order dismissing complaint

Any person aggrieved by an order made by a Justice of the Peace dismissing a

complaint may appeal to the High Court against such order.

19. Power of High Court to issue instructions and rules of Court

The High Court may from time to time issue instructions and rules of Court not being inconsistent with this or any other Act, as to it may seem proper, for the guidance and control of Justices of the Peace in the exercise and performance of their powers and duties, as such, and every Justice of the Peace is hereby required to comply with and obey such instructions and rules.

20. Justices to keep account of and pay to Accountant-General all fees, etc. received

Every Justice of the Peace shall keep, in such form as may from time to time be required by the President, a true and faithful account of all fees and moneys paid to him under the provisions of this Act, or of any other Act or law for the time being in force authorizing or requiring him to receive any fees or moneys for or on behalf of the Government of Botswana, and shall produce all such accounts whenever so required by the Auditor-General or other officer authorized by the President on that behalf, and shall render such returns and pay over to the Accountant-General all fees and moneys as aforesaid in such manner and at such times and through such officers as the President shall from time to time direct.

21. Penalty for false oath

Any person who, in an affidavit or solemn declaration made before the person competent to administer the oath or take the declaration makes a false statement corruptly or maliciously or makes such statement knowing it to be false or with the intention of injuring another person or benefiting himself shall be guilty of an offence and liable on conviction to the penalties prescribed in law for the crime of perjury.

SCHEDULE

(section 3)

FORM OF OATH OF ALLEGIANCE

I,, do
swear that I will be faithful and bear true
allegiance to the Republic of Botswana and that
I will preserve, protect and defend the
Constitution of Botswana as by law established.
So Help Me God

FORM OF OATH OF OFFICE

I,, do swear that as Justice of the Peace in the
..... of I will do equal right to the rich and to the
poor to the best of my ability and power and according to the laws and customs of Botswana,
and I will not be counsel of any quarrel pending before me. And the fees and moneys which I
may from time to time receive for and on behalf of Botswana I will cause to be entered without
any concealment or misappropriation, and I will truly send them to the Accountant-General, or
otherwise dispose of them according to law. And I will not obstruct the course of justice for gift
or other cause but well and truly will discharge my duty as Justice of the Peace without
partiality, favour or affection.
So Help Me God

(section 8)

FORM OF WARRANT

To of
Whereas of
has been arrested by me (or by my order) under the powers conferred upon me by section 6 or
7 of the Justices of the Peace Act (Cap. 05:01) you are hereby directed to take the said
..... before the magistrate at
Dated this of 20

Justice of the Peace.