

CHAPTER 21:01
POLICE
ARRANGEMENT OF SECTIONS

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Act 29, 1978,
S.I. 157, 1978,
Act 18, 1980,
Act 15, 2002.

An Act to provide for the enrolment, discipline, control and administration of the Botswana Police Service; to provide for Special constables and for a Police Reserve and a Police Council; and for matters incidental thereto and connected therewith.

[Date of Commencement: 1st January, 1979]

PART I

Introduction and Interpretation (ss 1-2)

1. Short title

This Act may be cited as the Police Act.

2. Interpretation

In this Act, unless the context otherwise requires-

"**appointing authority**" means an authority referred to in section 8;

"**arms**" includes firearms;

"**Board**" means a Board constituted in terms of section 26;

"**Branch Commander**" means any officer of the rank of Assistant Commissioner and above, who is in command of a branch of the Service;

"**Commissioner**" means the Commissioner of Police appointed by the President in terms of section 112 of the Constitution;

"**inspectorate**" means those police officers of the rank of inspector or sub-inspector;

"**junior officer**" means a police officer of the rank of sergeant or below;

"**pay**" means the salary of a police officer in his substantive rank but does not include any allowances which have not been declared to be pensionable;

"**police camp**" means an area set aside for occupation by police officers;

"**police council**" means the Police Council established under section 62;

"**police officer**" includes a special constable and a member of the Reserve Service but does not include a civilian employee;

"**review authority**" means the appropriate review authority under section 29;

"**senior officer**" means any police officer of or above the rank of Assistant Superintendent;

"**Service**" means the Botswana Police Service as constituted under this Act, and any reference in any enactment to the Botswana Police Force shall be construed as a reference to Botswana Police Service.

PART II

Constitution and Administration (ss 3-7)

3. Constitution of the Service

(1) The Service shall consist of the Commissioner of Police and such numbers of those ranks specified in the Schedule as the President may from time to time direct, and police officers shall rank for seniority in the order shown therein.

(2) The President may, by order published in the *Gazette*, amend the Schedule.

4. Commissioner

(1) The Commissioner shall, subject to this Act and the general direction of the President, have the command, superintendence, direction and control of the Service and shall be responsible to the President for maintaining peace and good order throughout Botswana.

(2) The Commissioner may, subject to this Act, issue or approve such orders for the general control and administration of the Service as he may deem necessary.

5. Delegation of powers of Commissioner (1) Any power conferred on the

Commissioner by this Act may, subject to the directions of the Commissioner, be exercised by the Deputy Commissioner.

(2) Any power vested in the Commissioner by any enactment, may be delegated to an officer of or above the rank of Superintendent.

6. Duties, functions and administration of Service

(1) The Service shall be employed in and throughout Botswana to protect life and property, prevent and detect crime, repress internal disturbances, maintain security and public tranquillity, apprehend offenders, bring offenders to justice, duly enforce all written laws with which it is directly charged and generally maintain the peace.

(2) For the performance of their duties under this Act police officers may carry arms.

(3) The Service shall perform such military duties within Botswana as may be required of it under the authority of the President as Commander-in-Chief of the Armed Forces.

(4) The control of the police in any place shall be vested in such police officer as may be appointed by the Commissioner to be in charge thereof; such officer shall carry out the orders of the Commissioner in all matters subject to this Act.

7. Employment of Service in emergency

The President may, in time of war or other emergency, employ the Service or part thereof in the defence of Botswana:

Provided that the Service or such part thereof when so employed shall remain, for the purpose of administration and discipline, under the command of the Commissioner.

PART III

Appointment, Attestation, Service and Discharge (ss 8-15)

8. Appointment of police officers

(1) Subject to this Act-

(a) the Permanent Secretary to the President shall, after consultation with the Commissioner, appoint fit and proper persons to hold the rank of Deputy Commissioner;

(b) the Commissioner shall appoint fit and proper persons-

(i) to hold any rank up to and including Senior Assistant Commissioner;

(ii) to hold any civilian office in the Botswana Police Service, of a Grade up to and including Grade D1,

whether or not the person appointed is already a member of the Service:

Provided that the first two years of the service of any person appointed to be a member of the Service, or such longer period as the appointing authority shall direct, shall be on probation and any service spent in a prescribed organisation may count towards this period.

(2) A police officer appointed on probation shall, subject to this Act, be confirmed in his appointment, and admitted to the permanent and pensionable establishment of the Service only on the authority of the relevant appointing authority.

(3) An appointing authority may appoint a police officer to act in a rank senior to his substantive appointment, and where the period of such acting appointment exceeds 28 days such officer shall, during such acting appointment, receive salary at the scale applicable to the senior rank at such incremental level as the appointing authority may decide.

9. Declaration on attestation

(1) Every person on joining the Service shall make and sign a declaration before a senior officer in such form as may be prescribed, and at the same time shall acknowledge his appointment as a member of the Service on such form as may be prescribed.

(2) Every person shall, before making the declaration required by subsection (1), answer truly any questions put to him as to his previous service, academic qualifications, career and employment and as to whether he has at any time been convicted of any offence punishable by the laws of Botswana or the laws of any other country.

(3) Any person who makes a false statement in reply to any question put to him under

subsection (2) to obtain or to attempt to obtain admission to the Service shall be guilty of an offence and liable to a fine not exceeding P500 or to imprisonment for a term not exceeding six months, or to both.

(4) The Commissioner may dismiss from the Service any person who contravenes subsection (2).

10. Pensions and gratuities

The grant of pensions and gratuities to members of the Service shall be in accordance with regulations made under this Act.

11. Permission for resignation

No police officer shall be at liberty to resign from the Service unless expressly permitted to do so by the appointing authority.

12. Restriction on retirement

No police officer shall be at liberty to retire from the Service in time of emergency or war unless the Commissioner, acting with the consent of the President, orders otherwise.

13. Interdiction

(1) When any police officer is accused of a criminal or disciplinary offence against this Act or any other criminal offence under any enactment, the appointing authority may suspend such officer from duty for a period not exceeding three months pending the institution and determination of proceedings against such officer but the officer shall, during the period of suspension, continue to receive full pay and benefits.

(2) Where a police officer, who is suspended under subsection (1), is charged before a court or a Board with a criminal or disciplinary offence, the appointing authority shall interdict him and the interdicted officer shall receive such portion of his pay, not being less than one-half, as the appointing authority may determine; if the proceedings against such officer do not result in his dismissal or other punishment, he shall be entitled to the full amount of the pay he would have received had he not been suspended.

(3) When any police officer has been interdicted from duty under subsection (2) and is not under arrest, a senior officer may order that pending the institution and determination of proceedings against such officer he shall-

- (a) be confined to his quarters or other place of residence during such hours as the senior officer may decide;
- (b) restrict his movements to any area which such senior officer may decide:

Provided that where any conflict arises between an order under this subsection and any conditions of bail imposed by any court, the latter shall prevail.

14. Termination of appointment

(1) An appointing authority may at any time terminate the appointment of a police officer serving on probation on first appointment if he considers that such officer is unlikely to become an efficient officer, but only after inviting him to show cause why his appointment should not be terminated:

Provided that in the case of an officer of the rank of Deputy Commissioner, the appointing authority shall act after consultation with the Commissioner.

(2) The termination of an appointment under this section shall not prejudice the granting of any terminal benefits the police officer would otherwise be entitled to.

(3) The decision of an appointing authority under this section shall be final and no appeal shall lie to any other person or authority.

15. Retirement, reduction in rank, dismissal

(1) An appointing authority may, at any time-

- (a) retire a police officer if a board of Government medical officers finds he is unfit mentally or physically for further service;
- (b) retire a police officer on a reduction of establishment;
- (c) dismiss a police officer if he is convicted of any criminal offence, or a disciplinary

offence under this Act, or alternatively-

- (i) reduce him in rank;
 - (ii) reduce his salary on the scale applicable to him;
 - (iii) withhold future increments of salary for a period not exceeding two years; or
 - (iv) retire him;
- (d) retire a police officer if he displays an habitual inattention to orders, or fails to obey orders, or fails to co-operate with members of the Service, or manifests a quarrelsome disposition or want of courage, although he is not guilty of a specific offence;
- (e) retire a police officer who marries or cohabits with a person with whom the appointing authority is satisfied it is not in the public interest for a police officer to associate closely; or
- (f) retire a police officer who, whether he is eligible to retire or to be retired or not, fails, in the opinion of the appointing authority, to maintain a satisfactory standard of efficiency.

(2) No police officer shall be retired under subsection (1) unless he is given such notice as may be prescribed of the intention so to retire him.

(3) A police officer who is convicted of a criminal offence and is sentenced to imprisonment, whether suspended or not, or, having been fined with imprisonment as an alternative, fails to pay the fine and is imprisoned, shall be dismissed from the Service.

PART IV

Powers, Duties and Privileges of Police Officers (ss 16-20)

16. General powers and duties

(1) Every police officer shall be liable for duty at all times, and at any time may be detailed for duty in any part of Botswana, or any duty outside Botswana which the Commissioner may reasonably authorize or require.

(2) Every police officer shall be an officer of the court with responsibility for the prompt service or execution of any summons or warrant or process directed to him with regard to any criminal matter.

(3) It shall be the duty of every police officer at all times to perform and carry out the duties entrusted to him to the best of his ability, and at such times to comply with any general or specific orders which may be applicable to him.

(4) It shall be the duty of every police officer at all times to comply with any general or specific orders issued by the Commissioner or other competent police authority.

(5) It shall be the duty of every police officer at all times to protect life and property, prevent and detect crime, repress internal disturbance, maintain security and public tranquillity, apprehend offenders, bring offenders to justice, enforce all written laws with which the Service is directly charged and generally maintain the peace.

17. Duty to lay information and apply for summons, etc.

It shall be the duty of a police officer to lay information before a magistrate and to apply for a summons, search warrant or such other process as may by law be issued against any person in relation to any criminal matter.

18. Powers with regard to fires

(1) Any police officer may break into and enter upon any land, premises, vehicle or any place whatsoever being, or appearing to be on fire or in danger from fire, without the consent of any persons, and may do all acts or things deemed to be necessary for extinguishing such fire on any such land, premises, vehicle or other place or for protecting the same or other property or rescuing any person or property from fire.

(2) A police officer may call upon any able-bodied male adult person to assist in quelling a fire, or to give assistance at the scene of a fire.

(3) No action shall lie in any court of law against any police officer or any other person acting under the instructions of any police officer for the recovery of any damage caused in exercising the powers conferred upon him by subsection (1) unless it is proved that such

damage was caused *mala fide*.

(4) Any person who, without reasonable excuse, refuses a call by any police officer to assist in quelling a fire, or to give assistance at the scene of a fire, shall be guilty of an offence, and be liable to a fine not exceeding P1000 or to imprisonment for a term not exceeding 12 months, or to both.

19. Other employment forbidden

No police officer shall, without the consent of the Commissioner, engage in any employment or business whatsoever, other than in accordance with his duties under this Act.

20. Uniform and equipment

(1) Police officers shall be provided with free uniform and equipment; such uniform and equipment shall remain the property of the Government.

(2) When a person ceases to be a police officer he shall forthwith deliver up to the person appointed by the Commissioner for the purpose, or to the officer in charge of police where he was last stationed all accoutrements, uniform and other equipment; such uniform and equipment shall remain the property of the Government.

PART V

Discipline (ss 21-36)

21. Method of dealing with offences

(1) Any offence committed by a police officer in regard to which proceedings are not instituted in a criminal court may be dealt with in accordance with this Part.

(2) In proceedings before a Board under this Part, different offences may be charged in the alternative.

22. Offences for trial by criminal court

(1) Any police officer who-

- (a) takes part in a mutiny; or
- (b) incites any police officer to take part in a mutiny,

shall be guilty of an offence and liable to imprisonment for a term not exceeding 10 years.

(2) Any police officer who-

- (a) being present at any mutiny or sedition amongst the Service, does not endeavour by all possible means to suppress such mutiny or sedition;
- (b) knowing of any intended mutiny or sedition amongst the Service, does not give information thereof without delay to a senior officer;
- (c) deserts;
- (d) persuades, procures, assists or attempts to persuade, procure or assist any police officer to desert; or
- (e) knowing that any police officer has deserted or intends to desert, does not give information thereof without delay to a senior officer,

shall be guilty of an offence and liable to imprisonment for a term not exceeding 12 months.

(3) A police officer shall not be found guilty of the offence of desertion unless the court is satisfied that there was an intention on the part of such officer not to return to the Service:

Provided that proof that a police officer has been absent from duty without leave for a period of 14 days or more shall be *prima facie* evidence of an intention not to return to the Service.

(4) In this section "mutiny" means a combination of between two or more police officers or between persons, two at least of whom are police officers-

- (a) to overthrow or resist lawful authority in the Service;
- (b) to disobey such authority in such circumstances as to make the disobedience subversive of discipline or with the object of avoiding any duty or service or impeding the performance of any duty or service.

23. Disciplinary offences

An offence against discipline is committed by any police officer who is guilty of-

- (a) disobedience of orders, that is to say, if any police officer disobeys, or without good and sufficient cause omits or neglects to carry out any lawful order, written or otherwise;
- (b) insubordinate or oppressive conduct, that is to say, if a police officer-
 - (i) is disrespectful in word, act or demeanour to any other police officer senior in rank to him;
 - (ii) is oppressive or tyrannical in conduct towards any other police officer junior in rank to him;
 - (iii) uses obscene, abusive, or insulting language to any other police officer;
 - (iv) assaults any other police officer;
 - (v) wilfully or negligently makes any false complaint against any other police officer;
 - (vi) fails to report any complaint or report made against any police officer;
 - (vii) talks or is inattentive or otherwise misbehaves when on parade, under instruction, or receiving orders;
 - (viii) being under arrest or in confinement leaves or escapes from his arrest or confinement before being set at liberty by proper authority; or
 - (ix) being liable to arrest or confinement puts up resistance to such arrest or confinement;
- (c) neglect of duty, that is to say, if a police officer-
 - (i) having a duty to attend to, or take action on any matter, neglects to do so, or, without good and sufficient cause, fails to do so promptly and diligently;
 - (ii) idles or gossips or sits or lies down without authority or reasonable cause when on duty;
 - (iii) without authority or reasonable cause sleeps when on duty;
 - (iv) fails to work any beat or patrol in accordance with orders or leaves any beat or beat point or other place of duty without permission or sufficient cause;
 - (v) by carelessness or neglect permits a prisoner to escape;
 - (vi) when knowing where any offender is to be found fails to take all reasonable steps to make the offender amenable to the law;
 - (vii) having a duty to report any matter fails to do so;
 - (viii) knowing of any evidence or other matter relating to a criminal or disciplinary charge or investigation against any other person, or knowing or having a reasonable belief that some other person has knowledge of such matters, fails or refuses to disclose such information to the proper authority;
 - (ix) neglects or refuses to assist in the lawful apprehension of any person;
 - (x) without reasonable cause omits to make any necessary entry in, or erases, obliterates or defaces any entry in any official document, book or paper,
 - (xi) refuses, or without good and sufficient cause, omits to make or send a report, return or message which it is his duty to make or send; or
 - (xii) neglects to assist any person injured or taken ill in public;
- (d) discreditable conduct, that is to say, if any police officer-
 - (i) acts in a disorderly manner, or in any manner prejudicial to discipline or likely to bring discredit on the reputation of the Service;
 - (ii) lends money or offers any present to any senior officer or borrows money from or accepts any present from any junior in rank;
 - (iii) incurs debt in or out of the Service without reasonable prospect or intention of paying the same or, having incurred any debt, makes no reasonable effort to pay the same; or
 - (iv) if called upon by the Commissioner to furnish a full and true statement of his financial position, fails to do so;
- (e) absence without leave or being late for duty, that is to say, if any police officer-

- (i) without reasonable cause or excuse is absent without leave from any duty, patrol, place of duty, parade, court or any other duty;
- (ii) being temporarily or permanently quartered or accommodated in any police camp to which he has been posted, is visiting or is attached for duty, leaves such camp without right or permission; or
- (iii) being temporarily or permanently quartered in any accommodation outside any police camp to which he has been posted, is visiting or is attached for duty, or being quartered or accommodated in the camp of a formation or unit to which he is not posted for duty, is absent from such quarters or accommodation for a period in excess of four hours without right or permission or contrary to any local order applicable;
- (f) falsehood or prevarication, that is to say, if any police officer-
 - (i) knowingly makes or signs any false statement in any official book or document;
 - (ii) wilfully or negligently makes any false, misleading or inaccurate statement in connection with his duties;
 - (iii) without good and sufficient cause destroys or mutilates any official document or record, or alters or erases any entry therein; or
 - (iv) prevaricates before any court of inquiry, or disciplinary proceedings;
- (g) breach of confidence, that is to say, if any police officer-
 - (i) divulges any matter which it is his duty to keep secret;
 - (ii) gives notice, directly or indirectly, to any person against whom any warrant or summons has been or is about to be issued except in the lawful execution of such warrant or summons;
 - (iii) without proper authority communicates to the press or to any unauthorized person any matter concerning the Service;
 - (iv) without proper authority shows to any person outside the Service any book, written or printed document, item or equipment, or any other thing whatsoever, the property of or in possession of the Service;
 - (v) in any manner whatsoever makes or joins in making any anonymous communication to any person or organization relating to any matter concerning the Government or the Service;
 - (vi) makes any frivolous or vexatious complaint or makes a complaint in an irregular manner on any matter concerning the Service; or
 - (vii) signs or circulates any petition or statement with regard to any matter concerning the Service, except through the proper channels of correspondence to the Commissioner;
- (h) corrupt practice, that is to say, if any police officer-
 - (i) fails to account for or to make a true and prompt return of any money or property received in an official capacity;
 - (ii) without the authority of the Commissioner, accepts any fee or reward for any service performed in the course of his duties;
 - (iii) without the authority of the Commissioner accepts, or knowingly permits a member of his family to accept, from any company, organization, or individual other than a personal friend, any gift, entertainment or other advantage;
 - (iv) fails to return as soon as possible to the donor any gift received by him, or a member of his family, which in terms of subparagraph (iii) may not be accepted, or fails to report forthwith to a police officer senior in rank the offer of any gift, entertainment or other advantage which similarly may not be accepted; or
 - (v) solicits any gift, entertainment or other advantage for himself or for his family, which in terms of subparagraph (iii) may not be accepted;
- (i) unlawful or unnecessary exercise of authority, that is to say, if any police officer-

- (i) without good and sufficient excuse makes any unlawful or unnecessary arrest;
- (ii) uses any unnecessary violence to or intimidates any prisoner or other person with whom he may be brought into contact in the execution of duty; or
- (iii) is uncivil or lacking in courtesy to any member of the public;
- (j) malingering, that is to say, if any police officer-
 - (i) feigns or exaggerates any sickness or injury with a view to evading duty; or
 - (ii) while absent from duty on account of sickness neglects or without good and sufficient cause omits to carry out any instruction of a medical officer or of a member of the hospital staff or acts or behaves in a manner likely or calculated to retard a return to duty;
- (k) discreditable appearance, that is to say, if any police officer-
 - (i) while on or off duty in uniform, is without reasonable cause improperly dressed or dirty or untidy in person, dress, clothing or accoutrements;
 - (ii) while on duty in plain clothes is without reasonable cause dirty or untidy in clothing or appearance; or
 - (iii) while on duty contravenes the standards which may from time to time be established with regard to the length of hair or beard;
- (l) causing damage to or improper use of property, that is to say, if any police officer-
 - (i) wilfully or by carelessness causes any waste, loss or damage to any article of clothing or accoutrements or any book, document or other property of the Service, issued or entrusted to his care;
 - (ii) fails to report any such loss or damage however caused;
 - (iii) uses without proper authority any property of, in the possession of or used by the Service;
- (m) offences relating to the consumption of liquor or drugs, that is to say, if any police officer-
 - (i) whilst on or warned for duty or at any time in a public place renders himself unfit for duty through the consumption of intoxicating liquor or drugs; or
 - (ii) whilst on or warned for duty partakes of any intoxicating liquor without authority;
- (n) entering premises where liquor is offered for sale for consumption on the premises or where liquor is being consumed when on duty, or when off duty in uniform, except when required to be there in the execution of his duty;
- (o) engaging without authority in any employment or business other than police duties;
- (p) discharging any firearm through negligence or without orders or just cause;
- (q) neglecting or failing to report that he is suffering from any contagious disease, or that any member of his family or any other person living or staying with him in any police lines, camp or quarter is suffering from any contagious disease;
- (r) any other act, conduct, disorder or neglect to the prejudice of good order and discipline not hereinbefore specified;
- (s) conniving at or knowingly being an accessory to any offence against discipline under this Act; or
- (t) steals or forges any radio, telecommunications or computerised messages, that is to say, if any police officer-
 - (i) with the intent to defraud takes a radio, telecommunication or computerised message from the possession of another police officer or other person having custody of it;
 - (ii) steals or destroys any radio, telecommunication or other computerised message or any part thereof;
 - (iii) receives any radio, telecommunication or computerised message knowing it to have been stolen or fraudulently obtained;
 - (iv) forges or fraudulently alters any radio, telecommunication or computerised

- message;
- (v) transmits by police radio, telecommunication or computerised device any message or communication knowing it to be a forgery or fraudulently altered; or
- (vi) without authority, transfers or gives to another person a police radio, telecommunication or computerised device which has been issued to him;
- (vii) makes or seeks to make unauthorised access to a computer or telecommunication device and to programmes or data contained therein by whatever means;
- (viii) makes or seeks to make unauthorised access to a computer or telecommunications device to modify, add or delete any programme or data contained therein by whatever means;
- (ix) makes or seeks to make any unauthorised access to a computer or telecommunications device in order to make any unauthorised modification, addition or deletion of any programme or data contained therein, by whatever means,

and such offence may be inquired into, tried and determined and the offender shall be liable to suffer punishment, according to the degree and nature of the offence, in accordance with this Act.

24. Membership of political party, trade union, etc., forbidden

(1) A police officer shall not be a member of any political party, or any organization, club, association or group of a political nature.

(2) A police officer shall not be or become a member of-

- (a) any trade union, or any body or association affiliated to a trade union;
- (b) any body or association the object of which or one of the objects of which is to control or influence conditions of employment in any trade or profession; or
- (c) any body or association which includes in its objects the control or influence of the pay, pensions, conditions of service, or loyalty of the Service:

Provided that a police officer may become a member of any such body or association which may be constituted and regulated pursuant to this Act.

(3) Any police officer who contravenes this section shall be guilty of an offence against discipline, and, in addition to any other penalty which may be imposed, may be dismissed from the Service.

(4) In this section "police officer" does not include a special constable or a member of the Reserve Service.

25. Powers of arrest and remand

Any senior officer, station commander or member of the inspectorate may arrest without warrant, or order the arrest without warrant of any police officer (not being a police officer of higher rank) whom he has reasonable cause to believe has committed or is accused of an offence against discipline, and any police officer, on receipt of any such order, may apprehend such police officer without warrant and shall forthwith bring him before a senior officer, station commander or member of the inspectorate senior in rank to him who may confine such police officer in any building set apart as a guard room or cell:

Provided that-

- (i) the power to confine such police officer shall only be exercised where the arrested officer is-
 - (a) drunk or under the influence of liquor or drugs;
 - (b) violent, or threatening violence;
 - (c) disorderly;
 - (d) suspected on reasonable grounds to be likely to absent himself, or desert from duty; or
 - (e) suspected on reasonable grounds to be likely to be a danger to himself or others if released; and

- (ii) no police officer shall be detained for a period longer than is absolutely essential, and shall in any case not be detained for any period exceeding 48 hours excluding any time reasonably necessary to arrange his trial by a Board.

26. Authorities for the trial of disciplinary offences

(1) Offences against discipline shall be tried before a Board constituted in accordance with subsection (2).

(2) Boards for the trial of disciplinary offences shall be-

- (a) a Board of Enquiry I appointed to hear disciplinary charges against officers of the rank of Deputy Commissioner, and consisting of a chairman and two members appointed by the Permanent Secretary to the President, on the recommendation of the Commissioner, from persons in the public service of a status not inferior to the officer to be tried; and
- (aa) a Board or Enquiry II appointed to hear charges against officers of the rank of Senior Assistant Commissioner and Assistant Commissioner and consisting of a chairman and two members appointed by the Commissioner from persons in the public service of a status not inferior to the officer to be tried;
- (b) a Class I Board appointed by the Commissioner to hear disciplinary charges against senior officers of up to and including the rank of Senior Superintendent and consisting of a chairman and two members; the chairman will be of rank not less than that of Assistant Commissioner, and the members shall be officers senior in rank to the officer to be tried;
- (c) a Class II Board appointed by the Commissioner to hear disciplinary charges against members of the inspectorate, and, where necessary in terms of paragraph (d), disciplinary charges against junior officers, and consisting of such number of senior officers not exceeding three as the Commissioner may direct:
 - Provided that-
 - (i) where more than one senior officer is so appointed the chairman will be the most senior in rank;
 - (ii) where it appears to a senior officer with regard to a disciplinary charge against a member of the inspectorate that the offence is not sufficiently serious to require a Board of more than one senior officer the disciplinary hearing may proceed without the directions of the Commissioner;
- (d) a Class III Board to be held by any senior officer to hear disciplinary charges against any junior officer:
 - Provided that where it appears to a Class III Board that, by reason of the gravity of the offence or for any other reason, the matter would be dealt with more properly by a Class II Board, the Class III Board shall defer its hearing and report the facts to the Commissioner, who may return the report for further inquiry or order the accused to be tried before a Class II Board.

27. Punishment

(1) Boards shall have the power to award any one or more of the following punishments-

- (a) a Board of Enquiry-
 - (i) reprimand;
 - (ii) severe reprimand;
- (iii) in the case of a Board of Enquiry I, a fine not exceeding P2000, and in the case of a Board of Enquiry II, a fine not exceeding P1500;
- (iv) reduction to any rank not less than Assistant Superintendent;
- (b) a Class I Board-
 - (i) reprimand;
 - (ii) severe reprimand;
 - (iii) a fine not exceeding P1000;

- (iv) reduction to any rank not less than Sub-Inspector;
- (c) a Class II Board-
 - (i) reprimand;
 - (ii) severe reprimand;
 - (iii) a fine not exceeding P500;
 - (iv) reduction to any rank not less than sergeant:

Provided that a Class II Board, trying a case under the proviso to section 26(2)(d) against a sergeant may reduce him in rank to constable;
- (d) a Class III Board-
 - (i) reprimand;
 - (ii) severe reprimand;
 - (iii) a fine not exceeding P250;
 - (iv) in the case of a sergeant reduction to the rank of constable;
 - (v) in the case of a constable a loss of four increments;
 - (vi) confinement to a police camp or quarters for a period not exceeding 14 days with or without extra guards, fatigues or duties.

(2) In addition to punishments which may be awarded by Boards in terms of subsection (1), where any police officer has been convicted of a disciplinary offence under section 23 the Board convicting him may order him to make good any loss or damage and such order shall for the purposes of section 34 be deemed to be a fine, and for the purposes of section 29 shall be deemed to be a sentence.

28. Dismissal as a result of disciplinary action A Board may, upon conviction of an offender, in addition to or in lieu of any other penalty provided for in section 27, recommend to the appointing authority that the person convicted should be dismissed from the Service.

29. Confirmation, consideration and review of sentences

(1) Any Board which sentences any police officer to any punishment other than a punishment in terms of section 27(1)(d)(vi) shall prepare a record of the proceedings in such manner as may be prescribed or as the Commissioner may require, and shall without further delay forward such report together with any further representations made by the police officer-

- (a) in the case of a Board of Enquiry or Class I Board, to the Permanent Secretary to the President, through the Commissioner; and
- (b) in the case of all other Boards, to the Branch Commander having direct authority over the officer against whom proceedings were conducted.

(2) On receipt of a record of proceedings forwarded to him in accordance with subsection (1), the Permanent Secretary to the President, the Commissioner or the Branch Commander, as the case may be, may-

- (a) within the powers of the Board concerned, vary, reverse or confirm the sentence passed by that Board, which power of variation shall include the power to substitute for any punishment awarded by the Board a punishment of a different kind;
- (b) substitute for the conviction recorded and the punishment awarded by the Board concerned in respect of any offence a conviction and punishment in respect of a different offence the commission of which he is satisfied has been proved, whether that different offence was or was not charged, and in respect of such substituted punishment he shall have power to award any one or more of the punishments which the Board concerned was empowered to award; and
- (c) order a new trial before a different Board:

Provided that-

 - (i) the Permanent Secretary to the President or the Commissioner shall not, under paragraph (b), substitute a conviction and punishment in respect of a different offence which was not charged without first giving the police officer in question the opportunity to address him;

- (ii) the Permanent Secretary to the President or the Commissioner may, in addition to or in substitution for any punishment awarded by the Board concerned or in addition to any substituted punishment awarded by him under paragraph (b), dismiss the police officer in question from the Service, reduce his salary on the scale applicable to him or order the withholding of future increments of salary for a period not exceeding two years; and
- (iii) where the Permanent Secretary to the President or the Commissioner alters a punishment of a reduction in rank or awards such a punishment as a substituted punishment under paragraph (a) or (b), he may order a reduction to any rank.

(3) The powers conferred upon the Commissioner under subsection (2) may, with the exception of the power to dismiss or reduce the rank of a police officer and subject to the general or specific directions of the Commissioner, be exercised by-

- (i) a Deputy Commissioner; and
- (ii) a Branch Commander having direct authority over the officer against whom proceedings were conducted:

Provided that if the Branch Commander is of the opinion that a new trial should be ordered he shall make such a recommendation to the Commissioner and shall give the reasons for the recommendation.

(4) Where any police officer is found not guilty and acquitted by any Board the record of the proceedings shall-

- (a) in the case of a Board of Enquiry or a Class I Board, be forwarded to the Commissioner; and
- (b) in the case of a Class II or Class III Board, be forwarded to the Branch Commander having direct authority over such person, and such Branch Commander may, if he is of the opinion that the evidence was sufficient to warrant a conviction, recommend to the appropriate review authority under subsection (2) that a new trial be ordered;

and such officer may, if he is of the opinion that the evidence was sufficient to warrant a conviction, recommend to the appropriate review authority under subsection (2) that a new trial should be ordered.

(4A) Any police officer who has been subjected to any punishment by the exercise of powers conferred on a Deputy Commissioner or a Branch Commander under this section, may appeal to the Commissioner who may dismiss such appeal or allow it wholly or in part.

(5) A review authority receiving a recommendation under subsection (4) may order a new trial before a different Board.

(6) Where a further acquittal results from a new trial under subsection (5) a review authority shall not order any further proceedings.

30. Attendance of witnesses

(1) A Board may summon any person to attend as a witness at a trial by a Board, and a Board may take evidence on oath or affirmation of any witness.

(2) At a trial by a Board the Board may refuse to permit the officer accused to call a person as a witness and may refuse to summon a person to attend as a witness on the application of the officer accused unless it is satisfied that such person will materially assist in determining whether the officer accused is or is not guilty of the offence with which he is charged; and every such refusal shall be recorded in the record of the proceedings.

(3) A senior officer may at the request of a review authority summon any person to attend as a witness in any review proceedings, and any witness so attending may be required to give evidence on oath or affirmation.

(4) Any person summoned to attend as a witness under this section shall, at the order of a Board or review authority, produce thereto any exhibit material to the matter under enquiry which might reasonably and lawfully be required.

31. Disobedience to summons

(1) Any person summoned as a witness under section 30 who fails to attend at the time

and place appointed or who refuses to be sworn or affirmed, refuses to give evidence or to answer a lawful question or to do any lawful thing required by the Board, shall be liable to be dealt with by a magistrate's court in the like manner as if such witness has been a witness duly summoned to appear at a criminal trial before such court.

(2) If in any proceedings under this Part any witness who, having been duly sworn or affirmed, makes any false statement knowing the same to be false shall be guilty of perjury and liable to punishment accordingly in a magistrate's court.

32. Witnesses' expenses

Expenses shall be allowed in accordance with the scales of expenses for witnesses attending a magistrate's court to witnesses attending proceedings under this Act whether such witnesses are called for the prosecution or the defence:

Provided that no police officer nor any person in the employment of the Botswana Government shall qualify for such expenses.

33. Defence of accused

(1) At a trial by a Class II Board comprising less than three senior officers or by a Class III Board, the officer accused shall not be represented.

(2) At a trial by a Board of Enquiry I or II, a Class I Board or a Class II Board comprising three senior officers, the officer accused shall not be represented except as provided by this section.

(3) At a trial referred to in subsection (2), the officer accused shall be entitled to be represented at his own expense by a legal practitioner or by a senior officer or member of the inspectorate approved by the Commissioner:

Provided that the officer accused shall not be represented by an officer of a lower rank or, where he is represented by an officer of the same rank, who is junior to him in seniority.

(4) to (6)

34. Recovery of fines

Any fine imposed upon a police officer by a Board may be recovered by stoppages from the pay of such officer.

35. Dismissal, etc., to be considered as punishment

Reduction in rank or dismissal from the Service of an offender shall be considered as part of the punishment inflicted upon such member, and subject to appeal under section 37.

36. Disciplinary action after acquittal of criminal charges

Where a police officer has been acquitted of a criminal charge, such acquittal shall not operate as a bar to disciplinary proceedings being instituted against such officer arising out of the same facts if such facts also disclose a different offence under this Act.

PART VI

Appeals (ss 37-39)

37. Appeals

(1) A police officer who has been convicted and sentenced by a Board at first instance or by the Permanent Secretary to the President or the Commissioner on review or who has been dismissed or removed from office under this Act may appeal against sentence or conviction and sentence, dismissal or removal to the Police Council.

(2) The Police Council may dismiss an appeal under subsection (1) or allow it in whole or in part; but the Council shall have no power to substitute for a conviction recorded and the punishment awarded by the Board at first instance or by the Permanent Secretary to the President or the Commissioner on review in respect of any offence a conviction and punishment in respect of a different offence, whether that different offence was or was not charged.

(3) Notice of intention to appeal against conviction or sentence shall be given within seven days of the convicted officer being notified of the confirmation or review under section 29 and shall be given in writing to his immediate senior officer commander for onward transmission to the Police Council.

(4) An appellant shall indicate the grounds for his appeal in writing to the Police Council and to the Commissioner within 14 days of being notified of the conviction being confirmed or reviewed under section 29.

(5) The result of an appeal shall be notified in writing to the appellant.

38. Appeals procedure

(1) The Police Council may, when considering an appeal, require the appearance of any witness, or any additional witnesses, and may require the production of such evidence as it deems necessary.

(2) Subject to this Act, the Police Council may regulate its own procedure.

(3) The Commissioner, when exercising the powers of an appellate authority over decisions of Branch Commanders to whom authority to review the disciplinary proceedings has been delegated may exercise any power granted to the Council by this section.

39. Application of section 31 to proceedings before Police Council

Section 31 shall apply in respect of proceedings before the Police Council and the Commissioner under this Part as it applies in respect of proceedings under Part V; and for this purpose-

- (a) the reference in section 31 to any person summoned as a witness under section 30 shall be deemed to be a reference to any witness or additional witness whose appearance is required by the Police Council under section 38;
- (b) the reference in section 31 to the Board shall be deemed to be a reference to the Police Council; and
- (c) the reference in section 31 to any proceedings under Part V shall be deemed to be a reference to any proceedings under this Part.

PART VII

Rewards and Fines Fund (ss 40-42)

40. Establishment of Rewards and Fines Fund

(1) All fines imposed under this Act for any offence against discipline, the proceeds of sales of unclaimed property under section 42, and any fees paid or donations made in respect of special services provided by the Service, shall be placed to the credit of a fund called the Police Rewards and Fines Fund.

(2) No payment shall be made from the Police Rewards and Fines Fund except upon the authority of the Commissioner.

(3) The Commissioner may sanction payment from the Police Rewards and Fines Fund for any of the following-

- (a) to assist the wives and families of deceased police officers or to assist any police officer discharged from the Service as medically unfit for further service;
- (b) as rewards to police officers for meritorious acts or service in the execution of duty:
Provided such payment shall not be made to any police officer who has received any other reward from Government revenue;
- (c) the procuring of any comforts or conveniences or advantages to members of the Service which are not chargeable to general revenue;
- (d) the granting of loans in special circumstances to police officers;
- (e) to provide prizes for competitions involving members of the Service;
- (f) to reward officers required to carry out extra duties where a charge is raised in connection therewith; and
- (g) any prescribed charitable or humanitarian organisation.

41. Lost property

Where any lost property is found by a police officer or otherwise comes into his possession, he shall forthwith deliver it or cause it to be delivered to the officer in charge of a police station.

42. Unclaimed property

(1) Where any lost property has come into the possession of the officer in charge of a police station, and such property has not been lawfully claimed by any person for a period of three months, such officer in charge shall inform the Commissioner.

(2) The Commissioner may direct that any property held under subsection (1) be sold by public auction and the proceeds paid into the Police Rewards and Fines Fund, or, if such property is worthless, that it be destroyed.

(3) Notwithstanding anything in this section, the officer in charge of a police station may, if he is of the opinion that the immediate sale of unclaimed property would be of benefit due to the perishable nature of such property, at any time direct that it be sold by public auction and the proceeds paid into the Police Rewards and Fines Fund, or if the unclaimed property is in his opinion dangerous the officer in charge of a police station may order that it be destroyed.

(4) If a lawful claim to the ownership of unclaimed property sold under this section is established by any person within six months of the date of sale the proceeds thereof shall be paid to such person.

(5) So much of the proceeds of the sale of such unclaimed property as the Commissioner may direct, if no claim has been established under subsection (4), may be apportioned to the finder.

(6) Nothing in this section shall authorize the sale of stock the disposal of which provision is made in the Stock Theft Act, or the sale of anything the disposal of which provision is made in the Wildlife Conservation and National Parks Act.

PART VIII

Special Constables (ss 43-49)

43. Appointment of special constables

Whenever there are not in any locality sufficient members of the Service available to perform police duties or whenever any grave disturbance of the peace has taken place, or may reasonably be anticipated, or where in the implementation of any written law it is in the public interest that general or specific police powers be exercised by particular persons or class of persons, the President may, on the application of the Commissioner, authorize generally or in any particular case any senior officer to appoint by writing in such form as may be prescribed any persons prepared to act as special constables for such time and in such manner as the senior officer may deem fit and necessary.

44. Equipment for special constables

The Commissioner may provide for the use of special constables, at public expense, such batons, weapons, uniforms and other articles as he may consider necessary for the proper carrying out of their duties.

45. Powers of special constables

Every special constable appointed under this Act shall, subject to such limitations related to the time and manner of his duties as may be imposed by section 43, have the same powers, privileges and protection and shall be liable to perform the same duties and shall be amenable to the same penalties, and be subordinate to the same authorities, as other police officers.

46. Termination of service of special constables

The Commissioner may suspend or terminate the services of any special constable if he considers his services can safely be dispensed with, and shall forthwith transmit notice thereof in writing to the special constable concerned.

47. Delivery up of equipment

Every special constable shall, within 14 days after receipt of the notice terminating his appointment, deliver up any property of the Service with which he may have been issued.

48. Death or injury of special constable

If a special constable, who is not a public officer entitled to compensation under any other law, dies or is killed or is permanently or temporarily disabled by sickness or injury contracted or inflicted-

- (a) in the actual discharge of any duty which he was required or permitted to perform; or
- (b) in circumstances which if applicable to any other police officer would have drawn compensation; and
- (c) without his own default,

he or his dependants shall be entitled to compensation at the same rate and subject to the same conditions applicable to other police officers.

49. Remuneration of special constable

Whenever any special constable is employed on duty he may be paid such remuneration as may be prescribed.

PART IX

Police Reserve (ss 50-56)

50. Formation of Police Reserve

The President may authorize the formation of a Police Reserve which shall consist of such numbers of those ranks up to and including Superintendent as he may from time to time direct.

51. Appointments to Police Reserve

Subject to this Act, the Commissioner shall appoint fit and proper persons to the Police Reserve in such manner as may be prescribed and may terminate such appointment at any time and without notice or need to give reason therefor.

52. Service to be voluntary

Service in the Police Reserve shall be voluntary, and its members shall be required to carry out such police duties on a part-time basis as the Commissioner may direct, and for such time and in such manner as he may deem fit and necessary:

Provided that in time of war or emergency the President may direct that the Police Reserve, or any member or part thereof shall render full-time service for such period as the President may deem necessary.

53. Equipment for Police Reserve

The Commissioner may provide for members of the Police Reserve, at public expense, such batons, weapons, uniforms and other articles as he may consider necessary for the proper carrying out of their duties.

54. Powers and privileges of Police Reserve

Every member of the Police Reserve shall, subject to such limitations related to the time and manner of his duties, have the same powers, privileges and protection, and shall be liable to perform the same duties and shall be amenable to the same penalties and be subordinate to the same authorities, as other police officers.

55. Salary and allowances of Police Reserve

Whenever a member of the Police Reserve is required to render service he shall be paid such salary and allowances as may be prescribed.

56. Death or injury of members of Police Reserve

If a member of the Police Reserve, who is not a public officer entitled to compensation under any other law, dies or is killed or is permanently or temporarily disabled by sickness or injury contracted or inflicted-

- (a) in the actual discharge of any duty which he was required or permitted to perform; or
- (b) in circumstances which if applicable to any other police officer would have drawn compensation; and
- (c) without his own default,

he or his dependants shall be entitled to compensation at the same rate and subject to the same conditions applicable to other police officers.

PART X

General (ss 57-61)

57. Unauthorized wearing, etc. of police uniform

- (1) Notwithstanding the provisions of any other written law, any person, not being a police officer, who, without the authority of the Commissioner, or other reasonable cause-
- (a) wears, has in his possession, purchases or receives any uniform of the Service, or any item of its equipment, stores and accoutrements, shall be guilty of an offence and liable to a fine not exceeding P500 or to imprisonment for a term not exceeding six months, or to both;
 - (b) wears, has in his possession, purchases or receives any uniform of the Service, or any item of its equipment, stores, accoutrements or anything having the appearance of such items, with the intention of appearing to be a member of the Service, shall be guilty of an offence and liable to a fine not exceeding P1000 or to imprisonment for a term not exceeding twelve months, or to both; or
 - (c) in committing, attempting to commit or in the course of committing any crime, wears, has in his possession, purchases or receives any uniform of the Service, or any item of its equipment, stores or accoutrements, or anything having the appearance of such items, with the intention of appearing to be a member of the Service, shall be guilty of an offence, and liable to imprisonment for a term not exceeding two years.

(2) Any person who in any way whatsoever-

- (a) falsely induces or attempts to induce any other person to believe he is a police officer; or
- (b) having been mistaken for a police officer fails at once to correct that impression, shall be guilty of an offence, and liable to a fine not exceeding P5000 or to imprisonment for a term not exceeding five years, or to both.

(3) A police officer who procures for any person, with the intention or knowledge that it will be used in the commission of an offence, any item of police uniform, equipment, stores or accoutrements shall be guilty of an offence and liable to imprisonment for a term of not less than two years, but not exceeding five years.

(4) Any person who in any way whatsoever-

- (a) sends by police radio, telecommunications or computerised device any message which is grossly offensive, or of an indecent, obscene or threatening character;
- (b) sends by police radio, telecommunications or computerised device any message which the sender knows to be false or without reasonable cause with the intention to cause annoyance, inconvenience or needless anxiety to another person;
- (c) knowing, or having reason to believe, that any radio, telecommunications or computerised device has been established, maintained or used without the authority of the Commissioner, transmits or receives any message on that radio or device or provides any service for it,

shall be found guilty of an offence and liable to a fine not exceeding P1000 or to imprisonment for a term not exceeding 12 months.

58. Obstruction

Any person who wilfully obstructs, resists or assaults any police officer, in the due execution or performance of his duties in terms of this Act or any other written law shall be guilty of an offence and liable to imprisonment for a term not exceeding five years.

59. No attachment of property of police officer

No article whatsoever which has been supplied to any police officer for the execution of his duty shall be capable of being seized or attached under any writ of execution issued against any such police officer nor shall the same pass under any order made for the sequestration of the estate of any such police officer.

60. Assignment of pay

No police officer shall assign, without the approval of the Commissioner, the whole or any part of any pay or allowances payable under this Act.

61. Limitation of action

For the protection of persons acting in pursuance of this Act, any civil action against any such person in respect of anything done or omitted to be done in pursuance thereof shall be commenced in the six months next after the cause of action arises, and notice of any civil action and of the substance thereof shall be given to the defendant at least two months before the commencement of the said action:

Provided that the court may, for good cause, proof of which shall lie upon the applicant, extend the said period of six months.

PART XI

Police Council (ss 62-64)

62. Appointment of Police Council (1) The President shall appoint a Police Council comprising at least five and not more than seven members.

(2) The President shall appoint a Chairman and a Deputy Chairman from amongst the Members of the Council.

(3) The members shall be appointed for a period not exceeding three years and shall be eligible for reappointment for a further term of three years.

(4) Three members shall constitute a quorum of the Police Council.

63. Duties of Police Council

The Police Council shall-

- (a) carry out such duties with regard to the Service which the President may, without derogating the authority and responsibilities of the Commissioner under section 4, direct;
- (b) fulfil such other duties as may be conferred upon it by this Act.

64. Complaints against the Service

(1) Subject to this Act, the Police Council shall have responsibility for considering any complaint against the Service generally, or any of its members, which the Commissioner cannot successfully resolve.

(2) The Commissioner may forward to the Police Council a full report on any complaint against the Service or any of its members which he is unable to resolve.

PART XII

Miscellaneous (ss 65-66)

65. Regulations

The Minister may make regulations for the better carrying out of the provisions of this Act and the general control and administration of the Service and, without prejudice to the generality of the foregoing, such regulations may-

- (a) make provision regarding the matters which the Commissioner is authorized to order under this Act;
- (b) regulate the enlistment, pay, pensions, leave, conditions of service, transfer, discharge and dismissal of police officers;
- (c) regulate the procedure at disciplinary trials held under section 27;
- (d) provide for the establishment, constitution, functions and procedure of police associations and matters incidental thereto;
- (e) prescribe anything which by this Act may or is to be prescribed;
- (f) provide for matters relating and incidental to police welfare.

66. Botswana Police College to be a tertiary institution The Botswana Police College shall be a tertiary institution within the meaning of the Tertiary Education Act, 1999 (Act No. 4 of 1999).

SCHEDULE

(s. 3)

Deputy Commissioner
Senior Assistant Commissioner
Assistant Commissioner

Senior Superintendent
Superintendent
Assistant Superintendent
Cadet Assistant Superintendent
Inspector
Cadet Inspector
Sub-Inspector
Cadet Sub-Inspector
Sergeant
Constable