

**CHAPTER 26:01 - PUBLIC SERVICE: SUBSIDIARY LEGISLATION
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Public Service Regulations

PUBLIC SERVICE REGULATIONS

(under section 39)

(4th September, 1998)

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S.I. 69, 1998.

PART I

Preliminary (regs 1-2)

1. Citation

These Regulations may be cited as the Public Service Regulations.

2. Interpretation

(1) In these Regulations, unless the context otherwise requires-

"Association" means the Botswana Civil Service Association;

"Committee" means a Ministerial Consultative Committee established under regulation

33;

"Council" means the Central Joint Staff Consultative Council established under regulation 28;

(2) In these Regulations, where the Permanent Secretary is required to report to, notify or furnish or forward evidence or information to the appointing authority, or the responsible officer, as the case may be, and the Permanent Secretary is himself the appointing authority or responsible officer, he shall instead proceed to deal with the matter himself as such appointing authority or responsible officer.

PART II

Constitution and Abolition of Public Offices (regs 3-4)

3. Constitution of public office

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; and
- (g) such other matters as the Director may require.

4. Abolition of public office

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; and
- (b) such other matters as the Director may require.

PART III

Appointments and Termination of Appointments

(Otherwise than by Disciplinary Proceedings) (regs 5-9)

5. Notification of vacancies

(1) Where a vacancy occurs or it is expected that a vacancy will occur in any public office, the Permanent Secretary shall notify the appointing authority 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;
- (b) it is likely that a suitable candidate will be found in some other Ministry or Department; or
- (b) 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 appointing authority 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 appointing authority 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 appointing authority of the arrangements which exist for the training of a local officer to fill such office.

6. Advertisement

(1) Subject to the provisions of subregulation (2) 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 a serving officer 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.

7. Selection of candidates

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

8. Inefficiency

(1) If the Permanent Secretary is satisfied that an officer is unable to carry out his duties efficiently, he shall submit a report thereon to the responsible officer.

(2) The responsible officer, if he is satisfied that there are reasonable grounds to substantiate the allegation of inefficiency, shall furnish the officer concerned with a written statement of the grounds on which it is alleged that he is incapable of carrying out his duties efficiently, and either-

- (a) refer the matter to a Committee of Inquiry; or
- (b) deal with the matter himself.

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

(4) A Committee of Inquiry shall enquire into the allegation of inefficiency and inform the responsible officer whether or not in its opinion such allegation has been proved.

(5) If the responsible officer decides to deal with the matter himself he shall consider any representations made by the officer and then find out whether or not the allegation of inefficiency has been proved.

(6) If the responsible officer or the Committee of Inquiry, as the case may be, finds that the allegation of inefficiency has been proved, the responsible officer may take any of the following courses of action against the officer-

- (a) subject to the provisions of section 10 of the Pensions Act, dismissal, that is to say, termination of appointment with or without forfeiture of all retirement and other benefits, other than outstanding leave due at the date of dismissal or payment in lieu thereof, 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) withholding of increments until such conditions as may be specified are fulfilled;
- (f) issue a reprimand or warning.

9. Cases not covered by this Part

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

PART IV

Discipline (regs 10-27)

10. Disciplinary control to be prompt

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

11. Summary discipline

Where an act of misconduct is committed in the presence of the Permanent Secretary by an officer over whom he has disciplinary powers, or where the Permanent Secretary becomes aware of allegations of misconduct against such an officer, and in his view the facts are straightforward, the Permanent Secretary may deal with the matter summarily, and impose an appropriate punishment.

12. Preliminary investigation

(1) Where the Permanent Secretary becomes aware of allegations of misconduct against an officer, and the facts are in his view controversial, or unclear, he may 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 those 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.

(3) 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.

13. Reporting cases to responsible officer

(1) If the officer does not reply to the charges made against him under regulation 12 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 copy of the-

- (a) preliminary departmental investigation made under regulation 12(1);

- (b) charges preferred against the officer; and
- (c) officer's statement, if any, made in reply to the charges.

14. Salary of an officer during interdiction

(1) When reporting to the responsible officer under section 22 of the Act, the Permanent Secretary shall supply the responsible officer with particulars of the officer's salary, his financial commitments (including current deductions from his salary) and the size of his family.

(2) If the responsible officer 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

15. Salary following conviction

Where an officer's emoluments have ceased by virtue of the provisions of section 23 of the Act, the Permanent Secretary concerned shall notify the Accountant-General and the responsible officer of the date of cessation of emoluments.

16. Action on receiving report by responsible officer

(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 preferred 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 Inquiry, which he shall appoint; or
- (d) decide the matter himself on the basis of the preliminary investigation.

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

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

17. Finding of enquiry

Upon the conclusion of any inquiry the responsible officer shall inform the officer in respect of whom the inquiry 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.

18. Where Permanent Secretary is responsible officer

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 12 (2) and 13 (1) shall be vested in the officer holding the preliminary investigation.

19. Criminal proceedings against an officer

(1) 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 Director of Public Prosecutions and obtain his opinion as to whether a prosecution should be instituted against the officer.

(2) In consulting the Director of Public Prosecutions the Permanent Secretary shall provide a detailed statement of the case, as it is known to him.

20. Criminal proceedings, action required by police and judicial officers

(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, the Permanent Secretary, Ministry of Finance and Development Planning, and the Auditor-General.

(2) The police officer shall provide the officer's full name, his appointment and the nature of the alleged offence.

(3) A judicial officer who tries any criminal case 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.

21. Disciplinary action following criminal conviction

(1) If an officer has been convicted of a criminal offence the responsible officer may accept without further proof that the officer committed the offence of which he was convicted upon production before him of the record of the criminal proceedings, and the responsible officer may treat that record for all purposes as the report of a preliminary investigation held under regulation 12.

(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, or has been convicted of a criminal offence under any written law where a sentence of imprisonment may be imposed otherwise than in default of payment 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.

22. Effect of resignation on pending disciplinary proceedings

Where an officer whose conduct is under investigation or against whom disciplinary proceedings are pending resigns from the public service, the resignation shall not affect the investigation or proceedings or any action which may be taken against the officer in consequence of the investigation or proceedings in accordance with the provisions of these Regulations.

23. Delegation of disciplinary powers by Permanent Secretary

(1) The Permanent Secretary may, in relation to the following offences namely-

- (a) absence without leave for a period of up to one day;
- (b) unauthorised absence from work;
- (c) late arrival at work;
- (d) insubordination;
- (e) refusal to obey a lawful order;
- (f) drunkenness on duty; and
- (g) neglect of duty,

delegate his disciplinary powers in respect of all posts or such posts in his Ministry as may be specified by him to-

- (i) a head of a unit or a supervisor; or
- (ii) a head of a department or, where there is no department under him, to such senior officer as he may consider fit.

(2) Where a person to whom disciplinary powers have been delegated under subregulation (1) (hereinafter referred to as a "disciplinary authority") becomes aware of any offence referred to in paragraphs (a) to (g) of subregulation (1) having been committed by an officer holding a post in respect of which disciplinary powers have been delegated to that disciplinary authority, the disciplinary authority may inquire into the allegation and, if satisfied that it is true, may impose any of the following punishments-

- (a) a reprimand;
- (b) reduction of salary.

(3) Where, after inquiry into an allegation, a disciplinary authority forms the view that a more severe punishment should be imposed, he shall not impose any punishment but shall transmit the findings and other relevant documents to the Permanent Secretary who may-

- (a) impose such punishment as he thinks fit; or
- (b) where he considers the offence serious enough, remit the case to the responsible officer.

(4) On awarding a punishment under this regulation, a disciplinary authority shall immediately thereafter forward a report thereon-

- (a) where the disciplinary authority is a head of a unit or a supervisor, to a head of a department or such officer as may be nominated by the Permanent Secretary; and

(b) in any other case, to the Permanent Secretary.

(5) A person to whom a report is submitted under subregulation (4) may confirm, vary or set aside the punishment.

(6) Any person aggrieved by the award of a punishment by a disciplinary authority as confirmed or varied under subregulation (5) may appeal-

(a) in the case of a punishment awarded by a head of a department, a head of a unit or a supervisor, to a Permanent Secretary; and

(b) in any other case, to the Public Service Commission.

(7) Notwithstanding that a delegation made by a Permanent Secretary under this regulation is in force, the Permanent Secretary may exercise the powers of a disciplinary authority in any case where disciplinary proceedings have not been commenced by the preferment of a charge in writing.

24. Reprimands or warnings

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

25. Absence without leave, etc.

(1) Without prejudice to the taking of any other disciplinary proceedings, a public officer who has been absent without leave or reasonable excuse may be summarily dismissed by a responsible officer without any further disciplinary proceedings being taken.

(2) An officer who has been dismissed under subregulation (1) may, within one month of the dismissal, make representations to the responsible officer to review his case.

(3) If the responsible officer decides, on review, that the officer should be reinstated, he shall give directions as to whether the absence should be treated as leave with pay or without pay.

(4) Where the officer has leave due to him his absence shall be treated as leave with pay, but to the extent that he has insufficient or no leave due to him in which case his absence shall be treated as leave without pay.

(5) If the responsible officer considers it necessary or desirable before deciding whether or not to reinstate the officer, he may refer the matter to a committee of inquiry, consisting of such person or persons as he may appoint but who shall be of at least equal rank to that of the dismissed officer.

(6) The committee of inquiry shall report to the responsible officer concerned who shall then inform the officer of his decision, and if he decides to reinstate the officer he shall give such directions as may be given in terms of sub-regulation (3).

(7) When, on review, or after referring the matter to a committee of inquiry, the responsible officer does not reinstate the dismissed officer, the dismissed officer shall, in each case, be informed of the reasons and of his right of appeal to the Commission.

(8) Where in accordance with this regulation absence without leave is treated as leave without pay, the period of the leave without pay shall not be deemed to constitute a break in service but shall not count as pensionable service.

26. Documentary evidence

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

27. Witnesses

If witnesses are examined at any inquiry 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 (regs 28-37)

28. Central Joint Staff Consultative Council

(1) There shall be established a Central Joint Staff Consultative Council which shall

consist of the Director and six other members of the rank of Permanent Secretary as defined in section 2(3) who shall be nominated by the Minister, and the Minister shall appoint one of those seven members to be Chairman, together with seven members nominated by the Association.

(2) In nominating the members, the Association shall bear in mind the need to represent as far as possible all the categories of officers in the public service.

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

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

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

(6) Persons with special knowledge or who are 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.

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

(8) 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.

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

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

(11) Any officer (including a member of the Council) may submit matter, in the form of a written memorandum, for the consideration of the Council.

(12) 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.

(13) 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.

(14) 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.

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

29. Functions of Council

The functions of the Council shall be-

- (a) 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;
- (b) to advise on measures necessary for the furtherance of good relations between Government and the public service with special reference to-
 - (i) working arrangements and measures designed to increase productivity and lower costs;
 - (ii) improved methods for achieving Development Plan targets; and
 - (iii) the investigation of circumstances tending to reduce efficiency or in any way interfering with the satisfactory working of the public service;
- (c) to consider and advise the Government on safety, health and welfare arrangements in the public service;
- (d) generally to assist in the 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; and
(e) to examine recommendations put forward by Ministerial Consultative Committees.

30. Decisions

(1) 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 meeting.

(2) The Minister may accept, modify or reject any decision taken by the Council.

31. Expenses

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.

32. Establishment of subcommittees

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

33. Ministerial Consultative Committees

(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 that Ministry who shall be appointed by the Minister of that Ministry, and four members appointed by the Association.

(2) In appointing the members the Association shall bear in mind the need to represent as far as possible all the categories of staff in such Ministry.

(3) The members appointed by the Association shall be appointed after the members appointed by the Minister, and the Association shall not appoint any person to be a member who has been so appointed by the Minister.

(4) Notwithstanding anything contained in the preceding provisions of this regulation, the Chairman of the Ministerial Consultative Committee established for the Office of the President shall be the Administrative Secretary, Office of the President.

(5) The Ministerial Consultative Committee for the Office of the President shall be the Committee responsible for matters concerning the Attorney-General's Chambers, the Audit Department, the department of the Administration of Justice and the National Assembly.

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

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

(8) The decisions of the Committee shall be by a 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) 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.

(10) 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.

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

(12) Any officer (including a member of the Committee) may submit matter, in the form of a written memorandum, for the consideration of the Committee.

(13) 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.

(14) 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.

(15) 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 seven days before the date of the meeting.

(16) Persons with special knowledge or who are 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.

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

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

34. Functions of Committees

Ministerial Consultative Committees shall consider the matters prescribed in regulation 29(a) - (d) with special reference to improving productivity within the Ministry of the respective Committee.

35. Decisions of Committees

(1) 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.

(2) Decisions which require the prior approval of other departments of Government will be referred for consideration to the Council.

36. Personal cases to be excluded

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 those cases.

37. Elections

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

PART VI

Miscellaneous (regs 38-42)

38. Production of relevant documents, etc.

Any officer who submits any matter for the consideration of the Permanent Secretary, Office of the President, the Director or responsible officer, shall ensure that all relevant documents and papers are made available to such person who may, in addition, require the production of any further documents or information relevant to the matter under consideration

39. Power to review staff complements and gradings

(1) The Director may authorize such reviews or investigations into public service staff complements and gradings and manpower utilization as he deems necessary for the better administration of Government's personnel policies.

(2) The Director may accept, reject or modify the recommendations contained in staff inspection reports and determine the extent to which those reports are made available for consideration outside the Directorate of Public Service Management.

40. Examinations

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.

41. Cases not otherwise provided for

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