

POLICE (AMENDMENT) ACT, 1980

No. 18



of 1980

ARRANGEMENT OF SECTIONS

SECTION

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3. Amendment of section 15 of principal Act
4. Amendment of section 21 of principal Act
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6. Amendment of section 24 of principal Act
7. Amendment of section 27 of principal Act
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9. Amendment of section 30 of principal Act
10. Substitution of new section 33 of principal Act
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An Act to amend the Police Act, 1978

Date of Assent: 5.6.80.

Date of Commencement: 13.6.80.

ENACTED by the Parliament of Botswana

1. This Act may be cited as the Police (Amendment) Act, 1980. Short title
2. Section 14 (1) of the Police Act, 1978, (hereinafter referred to as "the principal Act"), is amended by substituting for the word "probation", which appears therein, the words "probation on first appointment" Amendment of section 14 of Act 29 of 1978
3. Section 15 of the principal Act is amended — Amendment of section 15 of principal Act
 - (a) in subsection (1) thereof, by adding thereto immediately after paragraph (d), the following new paragraphs —
 - "(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, being eligible to retire or to be retired, fails, in the opinion of the appointing authority, to maintain a satisfactory standard of efficiency."; and

- (b) by inserting therein, immediately after subsection (1), the following new subsection –
- “(1A) 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.”.
- Amendment of section 21 of principal Act
4. Section 21 of the principal Act is amended by renumbering the section as subsection (1) thereof and by adding thereto, immediately after subsection (1), the following new subsection –
- “(2) In proceedings before a Board under this Part, different offences may be charged in the alternative.”.
- Amendment of section 23 of principal Act
5. Section 23 of the principal Act is amended –
- (a) in paragraph (c) thereof, by renumbering the second subparagraph (iv) as subparagraph (vi);
- (b) in paragraph (h) (iv) thereof, by substituting for the words “or the offer”, which appear therein, the words “or fails to report forthwith to a police officer senior in rank the offer”;
- (c) in paragraph (1) thereof, –
- (i) by substituting for the words “causing damage to property”, which appear therein, the words “causing damage to or improper use of property”; and
- (ii) by adding thereto, immediately after subparagraph (ii), the following new subparagraph –
- “(iii) uses without proper authority any property of, in the possession of or used by the Force;”; and
- (d) in paragraph (n) thereof, by substituting for the words “where liquor is offered for sale”, which appear therein, the words “where liquor is offered for sale for consumption on the premises or where liquor is being consumed”.
- Amendment of section 24 of principal Act
6. Section 24 of the principal Act is amended by adding thereto, immediately after subsection (3), the following new subsection –
- “(4) In this section “police officer” does not include a special constable or a member of the Reserve Force.”.
- Amendment of section 27 of principal Act
7. Section 27 of the principal Act is amended –
- (a) in the proviso to subsection (1) (c) thereof, by substituting for the words “section 26 (2) (a)”, which appear therein, the words “section 26 (2) (d)”; and
- (b) in subsection (2) thereof, by substituting for the words “section 24”, which appear therein, the words “section 23”.
- Amendment of section 29 of principal Act
8. Section 29 of the principal Act is amended by substituting for subsection (2) thereof the following new subsection –
- “(2) On receipt of a record of proceedings forwarded to him in accordance with subsection (1), the Permanent Secretary to the President or the Commissioner, 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; and

- (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:

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 Force, reduce his salary on the scale applicable to him or order the withholding of future increments of salary for a period not exceeding 2 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.”.

9. Section 30 of the principal Act is amended by inserting therein, immediately after subsection (1), the following new subsection —

Amendment
of section 30
of principal
Act

“(1A) 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 an offence with which he is charged; and every such refusal shall be recorded in the record of the proceedings.”.

10. The principal Act is amended by substituting for section 33 thereof the following new section —

Substitution
of new section
33 of principal
Act

“Defence
of accused

33. (1) At a trial by a Class II Board comprising less than 3 senior officers or by a Class III Board, the officer accused shall not be represented.

(2) At a trial by a Board of Enquiry, a Class I Board

or a Class II Board comprising 3 senior officers, the officer accused shall not be represented except as provided by this section.

(3) At a trial such as is 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) Where an officer is informed that he is to be tried by a Board before which he is entitled to be represented, he shall, within 48 hours immediately after being so informed, give notice in writing to the senior officer immediately commanding him whether he wishes or does not wish to be represented and, where he wishes to be represented, of the manner in which he wishes to be represented.

(5) Where an officer gives notice in accordance with subsection (4) –

(a) that he does not wish to be represented, that decision shall be irrevocable;

(b) that he wishes to be represented by a senior officer or member of the inspectorate, he shall, at the same time, give notice in writing of the name and rank of the officer he wishes to represent him; or

(c) that he wishes to be represented by a legal practitioner, –

(i) the Commissioner may appoint a date on which the trial shall commence, which date shall not be earlier than 30 days immediately after the date on which the officer was informed that he is to be tried by a Board before which he is entitled to be represented; and

(ii) the officer shall, as soon as he is in a position so to do, give notice in writing to the senior officer immediately commanding him of the name and address of the legal practitioner he has engaged to represent him.

(6) Where the Commissioner has appointed a date under subsection (5) (c) (i) on which the trial shall commence, the trial shall commence on that date,

notwithstanding that the officer accused has been unable to secure the attendance on that date of a legal practitioner to represent him; but this subsection shall be without prejudice to the right of the officer accused to be represented at the trial by a senior officer or member of the inspectorate.”.

11. Section 37 of the principal Act is amended by substituting for subsections (1) and (2) thereof the following new subsections —

Amendment of section 37 of principal Act

“(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.”

12. The principal Act is amended by inserting therein, immediately before Part VII, the following new section —

Insertion of new section 38A in principal Act

Application of section 31 to proceedings before Police Council

38A. Section 31 shall apply in respect of proceedings before the Police Council 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.”.

13. The principal Act is amended by inserting therein, immediately after section 39, the following new section —

Insertion of new section 39A in principal Act

Lost property

39A. 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.”.

Amendment
of section 44
of principal
Act

14. Section 44 of the principal Act is amended by substituting for the word “terminates”, which appears therein, the word “terminate”.

PASSED by the National Assembly this 12th day of May, 1980.

L.P. GONTSE,
Clerk of the National Assembly.