

PRISONS (AMENDMENT) ACT, 2017

No. 14



of 2017

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An Act to amend the Prisons Act.

Date of Assent: 14/11/2017

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana

1. This Act may be cited as the Prisons (Amendment) Act, 2017, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and commencement

2. The Prisons Act (hereinafter referred to as “the Act”) is amended in section 2 by substituting for the word, “Commissioner”, the following new definition —

Amendment of Cap. 04:01

“Commissioner” means the Commissioner of Prison Service appointed by the President in accordance with section 9.

3. The Act is amended in section 7 by deleting the words, “through the Permanent Secretary” that appear in subsection (1).

Amendment of section 7 of the Act

4. The Act is amended by substituting for section 9, the following new section —

Substitution of section 9 of the Act

“Appointing authorities” 9. (1) The person empowered to fill vacancies in a Service post shall be known as the appointing authority for that post.

- (2) The President shall be the appointing authority for the post of Commissioner.
- (3) The Permanent Secretary to the President shall in consultation with the Commissioner, be the appointing authority for the post of Deputy Commissioner.
- (4) The Commissioner shall be the appointing authority for all other ranks below the post of Deputy Commissioner.
- (5) An appointing authority may, at any time dismiss a prison officer if he is convicted of any criminal offence or a disciplinary offence under this Act.
- (6) Notwithstanding any of the provisions of this section, a prison officer who has been convicted of a criminal offence or dismissed from the Service shall not be appointed to any public office without the written approval of the appointing authority.”.

Amendment of section 17 of the Act

5. The Act is amended in section 17 by inserting immediately after paragraph (i) the following new paragraph —
“(j) on death.”.

Amendment of section 18 of the Act

6. The Act is amended in section 18 by substituting for subsections (2) and (3), the following new subsections —

- “(2) The appointing authority shall allow an officer against whom he contemplates dismissal or removal to make representations in writing within 30 days as to why he should not be dismissed or removed from the Service.
- (3) The appointing authority shall consider any representations made under subsection (2) before dismissing or removing an officer from the Service under subsection (1).”.

Amendment of section 19 of the Act

7. The Act is amended by substituting for section 19, the following new section —

“Compulsory retirement
19. A prison officer holding a pensionable post of a rank specified in the first column shall retire from employment in the Service upon attaining the retirement age, specified in the second column, in relation to his rank —

<i>Rank</i>	<i>Retirement age</i>
Warder	50
Sergeant	50
Assistant Principal officer	50
Principal officer	50
Assistant Superintendent	50
Superintendent	50
Senior Superintendent	55
Assistant Commissioner	55
Senior Assistant Commissioner	55
Deputy Commissioner	60
Commissioner	60.”.

8. The Act is amended by substituting for section 20, the following new section —

“Voluntary Retirement

20. (1) A prison officer holding a pensionable post may retire from the Service upon reaching the age of 45 years, or upon serving for 20 years of continuous service.

(2) Subject to subsection (1), a prison officer appointed on pensionable terms may, at the discretion of the appointing authority, be retired at anytime on or after reaching the age of 45 years and the appointing authority shall do so by giving the prison officer three months’ notice to be retired from the Service.

(3) A prison officer who retires voluntarily under subsection (1) shall do so by giving the appointing authority written notification of his intention to retire at least three months prior to the date on which he intends to retire or by giving one month’s salary in lieu of notice.”.

Substitution of section 20 of the Act

9. The Act is amended in section 46 by inserting immediately after paragraph (xx) that appears in subsection(1), the following new paragraphs —

“(yy) is active in politics or is involved in partisan politics; or
(zz) publishes views on political matters.”.

Amendment of section 46 of the Act

10. The Act is amended in section 47 by substituting for subsection (1), the following new subsection —

“(1) The Commissioner or any senior officer above the rank of Superintendent authorized by the Commissioner in writing, may enquire into alleged offence against discipline committed by any junior prison officer from the rank of Superintendent and below, and if satisfied after an enquiry, that the officer is guilty of the offence, may award anyone or more of the following —

Amendment of section 47 of the Act

- (a) extra duties for a period not exceeding seven days;
- (b) reprimand;
- (c) a fine not exceeding one third of one month’s salary;
- (d) where there has been absence from duty without leave, stoppage of salary equivalent to the salary accrued during the period of absence;
- (e) where there has been theft, disposal, loss by neglect, wilful spoiling or destruction of or damage to property, stoppage of salary not in excess of the value of the loss involved;
- (f) withholding or deferment of any increment of salary for which the officer may be eligible;
- (g) reduction in rank; or
- (h) dismissal from the Service.”.

11. The Act is amended by substituting for section 48, the following new section —

“Disciplinary proceedings against senior officers

48. (1) The Permanent Secretary to the President may appoint a board of enquiry to enquire into an alleged offence against discipline committed by the Deputy Commissioner.

Substitution of section 48 of the Act

(2) The Commissioner may appoint a board of enquiry to enquire into any alleged offence against discipline committed by a Senior Assistant Commissioner, Assistant Commissioner or Senior Superintendent.

(3) Every board of enquiry appointed under subsections (1) and (2) shall consist of three members, each of whom shall be a public officer of a rank not less senior than that of the officer into whose conduct the board is to enquire.

(4) The Permanent Secretary to the President or the Commissioner as the case may be shall appoint a member of a board of enquiry appointed under subsections (1) and (2) to be the Chairman of the board.

(5) Every board of enquiry appointed under subsections (1) and (2) shall enquire into the alleged offence against discipline and, after completing the enquiry to its satisfaction, shall transmit a record of the enquiry or a certified true copy thereof to the Commissioner or Permanent Secretary to the President together with a written report stating whether or not the board is of the opinion that the officer in question is guilty of the alleged offence against discipline and setting out its reasons for that opinion.

(6) Where any board appointed under subsections (1) and (2) is of the opinion that the Deputy Commissioner, Senior Assistant Commissioner, Assistant Commissioner or Senior Superintendent is guilty of the alleged offence against discipline, the board shall recommend the punishment, if any, to be awarded.

(7) The Permanent Secretary to the President or the Commissioner as the case may be shall consider the record of the enquiry together with the written report transmitted to him in accordance with subsection (5) and, if satisfied that the Deputy Commissioner, Senior Assistant Commissioner, Assistant Commissioner or Senior Superintendent, is guilty of the alleged offence against discipline, may award any one or more of the following punishments —

- (a) reprimand;
- (b) a fine not exceeding one third of one month's salary;
- (c) reduction in rank; or
- (d) dismissal from Service.

(8) The Permanent Secretary to the President or the Commissioner as the case may be may instead of awarding a punishment under subsection (7), dismiss the charge or admonish the officer concerned.”.

Amendment of
section 54 of
the Act

12. Section 54 of the Act is amended —

- (a) in subsection (3) by deleting the words “junior or subordinate” appearing therein;
- (b) in subsection (6) by inserting the words “the Commissioner’s decision or” immediately after the words “notified of” appearing therein; and
- (c) by substituting for subsection (8), the following new subsection —

“(8) Where a notice of intention to appeal has been given in accordance with subsections (6) and (7), the appellant shall, within 14 days immediately after he has been notified of the decision of the Permanent Secretary to the President or Commissioner under section 48 (7), indicate the grounds of his appeal in writing to the Prisons Council, to the Permanent Secretary to the President and to the Commissioner.”.

13. The Act is amended by substituting for section 98, the following new section —

“Minister or
Commissioner
may order
extra-mural
labour for
offenders

98. (1) Notwithstanding the provisions of this Act or any other law, the Commissioner may, after consultation with the Minister, and with the consent of the offender, order that the offender be released from prison and that he be employed on public work or service carried outside prison, where —

(a) the Commissioner or an official visitor is satisfied that the offender may be usefully employed on such public work or service as the officer in charge of the prison shall approve; and

(b) the offender has served at least a quarter of his term of imprisonment without remission, and the remainder of his term does not exceed 12 months (whether that term consists of a single punishment or punishments running concurrently or consecutively).

(2) An offender released from prison under subsection (1) shall be employed under the immediate control and supervision of a public authority which is in charge of the public work or office.

(3) The provisions of subsection (1) shall not apply to an offender serving a sentence for the offence of rape or any offence which the Minister may prescribe.”.

14. Section 99 of the Act is amended in subsection (1) (b) by substituting for the words “an official visitor”, which appear in the section, the words “the Minister, on the recommendation of an official visitor”.

15. Section 101 of the Act is amended by substituting for the words “an official visitor”, which appears in the section, the words “the Minister, on the recommendation of an official visitor”.

16. The Act is amended by substituting for section 103, the following new section —

Substitution of
section 98 of
the Act

Amendment of
section 99 of
the Act

Amendment of
section 101 of
the Act

Amendment of
section 103 of
the Act

“Recall of offender doing extra-mural labour under order of Commissioner

103. (1) Where the Minister, or the Commissioner is satisfied that an offender employed or to be employed by an order made under section 98, without reasonable excuse —

- (a) has failed to report daily at the time and place specified under section 100 (1) (b);
- (b) has absented himself from his work without permission; or
- (c) does not work or conduct himself properly,

the Minister or the Commissioner shall order the recall of the offender to prison and for this purpose may in writing authorize any peace officer to seize the offender and to surrender him into the custody of the officer in charge of any prison to serve the whole or the unexpired portion of his term of imprisonment as if he were an offender in respect of whom no steps had been taken under this Part:

Provided that the Minister or the Commissioner, instead of ordering the recall of the offender to prison, may, if he considers that special circumstances exist which justify that course, order that the offender be employed under the immediate control and supervision of some other public authority on such public work or service carried on outside a prison as the officer in charge having ultimate control of the offender shall approve, in which case the order shall, for the purpose of this Part, be deemed to have been made under section 98.

(2) Where the Minister or Commissioner orders the recall of an offender to prison under subsection (1), he may order forfeiture of remission not exceeding 30 days.”.

Amendment of section 140 of the Act

17. The Act is amended by substituting for section 140, the following new section —

“Functions of Prisons Council

140. (1) In addition to the powers and duties conferred on Prisons Council by Part VI, the Prisons Council may review conditions of service for prison officers and make recommendations to the Minister.

(2) Subject to subsection (1), the Prisons Council may exercise such powers and perform such duties with regard to the Service —

- (a) as the President may, without derogating from the responsibilities and authority of the Commissioner under section 7, direct; or
- (b) as may be prescribed.”.

Substitution of section 145 of the Act

18. The Act is amended by substituting for section 145, the following new section —

“Reward for apprehension of escaped prisoners

145. (1) The Commissioner may offer a reward to a person who gives information leading to the apprehension of a prisoner who has escaped from custody.

(2) Any person who apprehends, secures or hands over or causes to be handed over to any officer in charge or his representative any prisoner who has escaped, may be paid his just and reasonable expenses and, in addition, such sum by way of reward as the Commissioner may determine.

(3) No payment of any sum as a reward shall be made under this section to a member of the Prison Service, Botswana Police Service, any officer or support staff of the Directorate on Corruption and Economic Crime or any officer or support staff of the Directorate of Intelligence and Security unless, in the opinion of the Commissioner, such exceptional circumstances exist as to justify such payment being made.”.

19. The Act is amended by substituting for section 146, the following new section —

“Penalties for offences under this Act

146. Any person convicted of an offence under this Act in respect of which it is provided that he shall be liable to the penalties prescribed by —

- (a) this paragraph, shall be liable to a fine not exceeding P500 or in default of payment to imprisonment for a term not exceeding three months;
- (b) this paragraph, shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding P1000 or to both, or in default of payment of the fine to imprisonment for a term not exceeding one year;
- (c) this paragraph, shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding P2000 or to both, or in default of payment of the fine to imprisonment for a term not exceeding two years; or
- (d) this paragraph, shall be liable to imprisonment for a term not exceeding 10 years.”.

Substitution of section 146 of the Act

PASSED by the National Assembly this 13th day of July, 2017.

BARBARA N. DITHAPO,
Clerk of the National Assembly.