

Bill No. 5 of 2026

PUBLIC SERVICE BILL, 2026
(Published on 6th March, 2026)

MEMORANDUM

1. A draft of the above Bill, which is proposed to be presented to the National Assembly, is set out below.

2. The objective of the Bill is to repeal and re-enact with amendments, the Public Service Act (Cap. 26:01) in order to —

- (a) align its provisions with other employment and labour legislation;
- (b) bring the law into conformity with International Labour Conventions;
- (c) provide for the fundamental rights of employment and alignment to international labour standards; and
- (d) provide for a sound labour relations framework and orderly collective bargaining.

3. To this end —

- (a) Part I of the Bill provides for preliminary matters such as the interpretation of salient words and terms used in the Bill for ease of the implementation of the law and the application of the Act in relation to public service related matters;
- (b) Part II of the Bill provides for the structure and composition of the public service, whilst Part III of the Bill, provides for the general public service principles and standards that regulate the conduct of public officers;
- (c) Part IV of the Bill provides for the appointment of the Permanent Secretary to the President, Permanent Secretaries, superscale officers and officers in senior management of the public service;
- (d) Part V of the Bill provides for the duties of the Permanent Secretary to the President, Permanent Secretaries as well as the Director General. The Permanent Secretary to the President and the Director General of the Directorate of Public Service Management, are further empowered under this Part, to delegate their powers;
- (e) Part VI of the Bill provides for the terms of appointment to the public service, the appointing authority for different cadres in the public service, the entry and advancement of employees in the public service, the appointment or transfers of employees in the public service, the disqualification for appointment in the public service, the procedure for the appointment of non-citizens to the public service, the procedure for promotions in the public, etc.;
- (f) Part VII of the Bill provides for the various contracts of employment that are found in the public service and the obligation placed on the employer on how the employer should treat employees under the various contracts. The Part further provides that where an employee is employed on casual terms, but works on average for more than 22 ½ hours in a week, for a period of 12 months, such employee shall be deemed by the law, to be an employee on an indefinite basis. Further the employer is obliged to not treat employees under part-time or fixed-term contracts to conditions of service that are less favourable than those accorded to permanent employees. The Part further provides for the employer to take measures to promote equality and prevent discrimination, violence and harassment in the workplace;

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- (g) Part VIII of the Bill provides for the obligatory hours of work that employees are to work as well as the rest periods. The Part further makes provision on what should entail where employees are required to work hours in excess of the set hours or on rest periods and how the employer is to pay overtime to employee who work hours outside of the statutory hours or on days that are scheduled as rest periods;
- (h) Part IX of the Bill provides the leave periods that employees are entitled to. The Part introduces leave that an employee may be given by the employer as adoption leave, commissioning parental leave and paternity leave. This Part introduces these new leave cycles, in order to align this law with the Employment and Labour Relations Act and International Labour Organization standards;
- (i) Part X of the Bill provides standards that the employer should adhere to, when dealing with pregnant or nursing mothers. These standards include the prohibition against the employer giving an employee notice whilst the employee is on maternity leave, the right of an employee to be given some time off from the ordinary working time, to nurse her child, etc.
- (j) Part XI of the Bill provides the basis for the termination of appointments and the retirement of public officers. The Part further provides for the grounds upon which the termination of appointments is deemed to amount to unfair dismissal and the process under which severance benefits are to be paid to an employee upon termination of employment. The Part further provides for the process of terminating employees for operational requirements, in instances where there may be need for the employer to retrench employees for operational purposes. The Part further provides for actions that amount to serious misconduct which attract summary dismissal;
- (k) Part XII of the Bill provides for the circumstances whereby disciplinary proceedings for misconduct and unsatisfactory service are to be instituted and the punishment to be meted out for misconduct;
- (l) Part XIII of the Bill provides for what should pertain in the settlement of disputes in the public service;
- (m) Part XIV of the Bill provides for the freedom of public officers to join trade unions of their choice and the protection accorded to public officers from discrimination by the employer, for being members of trade unions;
- (n) Part XV of the Bill provides for the right of public officers to undertake lawful strikes. The Part further protects the employer against certain strikes or lockouts by employees, on the basis that such strikes or lockouts are not compliance with the law or are in breach of a collective agreement entered into between the employer and trade unions;
- (o) Part XVI of the Bill provides for the establishment of the Public Service Bargaining Council and its functions in terms of this law. The Part further provides for the jurisdiction of sectoral bargaining councils. The Part further provides for the procedure that is to be followed by a trade union when applying for recognition, the obligation placed on both trade unions and the employer to bargain in good faith and the procedure to be followed by the employer, when the employer decides to withdraw recognition of a trade union;

- (p) Part XVII of the Bill provides for general duties of public officers and the prohibition against public officers keeping any fees, rewards or remuneration outside of the wages that the public officers are entitled to without authorisation. The Part further prohibits public officers from ceding their whole salary or wages or part of the salary or wages;
- (q) Part XVIII of the Bill provides for the offences of improperly influencing an appointing authority, supplying false information to the Permanent Secretary to the President, a Permanent Secretary, supervisor, etc., and the improper disclosure of information; and
- (r) Part XIX of the Bill provides for miscellaneous provisions, including, the regulation making powers of the President and the savings and transitional arrangements.

MOETI C. MOHWASA,
*Minister for State President,
Defence and Security.*

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A BILL

– entitled –

An Act to provide for the law relating to the public service of Botswana, to provide for the fundamental rights of employment and alignment to international labour standards; to provide for a framework to promote sound labour relations and orderly collective bargaining; to provide for a framework for the prevention and settlement of disputes; and for matters incidental thereto and connected therewith.

Date of Assent:

Date of Commencement:

ENACTED by the Parliament of Botswana

PART I — *Preliminary*

Short title and commencement	1. This Act may be cited as the Public Service Act, 2026, and shall come into operation on such date as the Minister may, by Order published in the <i>Gazette</i> , appoint.
Interpretation	<p>2. (1) In this Act, unless the context otherwise requires —</p> <p>“appointing authority” means a person who has the power, whether delegated or otherwise, to appoint any person to office or remove such person from office, in the public service and to exercise disciplinary control over that person;</p> <p>“appointment” includes a transfer, a promotion, a temporary appointment and an acting appointment;</p> <p>“Bargaining Council” means the Public Service Bargaining Council established under section 82;</p> <p>“casual terms” means employment on a one-off basis and for a short period of time, which is irregular and is limited to not more than three days’ work, or more than 22 and a half hours’ work per week, and for a period of not more than 12 months;</p> <p>“collective bargaining” includes negotiations which take place between the employer and trade unions to —</p> <p style="padding-left: 20px;">(a) determine the working conditions and terms of employment;</p> <p style="padding-left: 20px;">(b) regulate the relations between the employer and employees; and</p> <p style="padding-left: 20px;">(c) regulate the relations between the employer and trade unions;</p> <p>“collective agreement” means an agreement relating to the terms and conditions of employment concluded between a trade union or a group of trade unions and the employer;</p> <p>“Commission” means the Public Service Commission established under section 109 of the Constitution;</p> <p>“Commissioner” means the Commissioner of Labour or any person acting in or lawfully performing the functions of the office of the Commissioner of Labour, in terms of Part VII of the Employment and Labour Relations Act;</p> <p>“contract of employment” means an agreement, whether oral or in writing, expressed or implied, whereby the parties agree that one person will perform work personally for a wage or other benefit or both, under the direction of the other person;</p> <p>“Director General” means the Director General of the Directorate of Public Service Management appointed under section 9;</p> <p>“employee” means any person who has entered into a contract of employment for the hire of his or her labour in a public office, in terms of this Act;</p> <p>“employer” means the Government in respect of all of its officers, except members of the Botswana Defence Force, the Botswana Police Service and the Botswana Prisons Service;</p> <p>“essential service” include those services designated as such under the Employment and Labour Relations Act;</p>
Act No. 27 of 2025	

- “Extra-Ministerial Department” means a Department within a Ministry, headed by a public officer at Permanent Secretary level;
- “fixed term contract” means a contract in terms of which, an employee is employed —
- (a) for a specified period of time;
 - (b) until the completion of a specified task; or
 - (c) the occurrence or non-occurrence, of a specified event;
- “harassment” means unwanted conduct which is persistent or serious and demeans, humiliates or creates a hostile or intimidating environment, or is calculated to induce submission by actual or threatened adverse consequences, and which is related to —
- (a) sex or gender; or
 - (b) a person’s membership or presumed membership of a group identified by one or more of the prohibited grounds or characteristic associated with such group;
- “industrial action” means a lock-out, strike or action short of a strike, in furtherance of a dispute;
- “lockout” means the closing of any place of employment by the employer, the suspension of work by the employer, or the refusal, by the employer, to continue to employ any number of the employer’s employees;
- “Mediation and Arbitration Commission” means the Commission established under the Employment and Labour Relations Act to mediate and arbitrate over labour disputes;
- “National Vision” means any longterm vision for Botswana;
- “part time terms” means employment for a specified period of time, which limits hours of work to less than the standard working hours for the particular type of employment in the public service;
- “permanent and pensionable terms” means full time employment for an unspecified period of time, whose conditions of service attract the earning of a pension;
- “Permanent Secretary to the President” means a person appointed in terms of section 112 (2) (f) of the Constitution and who shall be the head of the public service;
- “promotion” means the appointment of a public officer to a higher public office with an increase or potential increase of salary;
- “public officer” means a person holding or acting in any public office, and being an employee to whom this Act applies;
- “recognition” means where the employer recognises a trade union as the bargaining agent for all or some of its employees;
- “recognition agreement” means an agreement entered into between a recognised trade union and the employer;
- “Registrar” means the Registrar of trade unions and employers’ organisations appointed as such under the Employment and Labour Relations Act;

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- “repealed Act” means the Public Service Act repealed under section 98;
- “sector” means the whole or part of a trade or an occupation or service;
- “sectoral bargaining council” means a bargaining council designated by the Bargaining Council in terms of section 87;
- “senior management” means a public officer from the level of Deputy Director to the level of Deputy Permanent Secretary or any other public officer appointed by the Permanent Secretary to the President under section 10;
- “serious misconduct” for the purposes of dismissal without notice or summary dismissal, means a misconduct by an employee, of a nature that it would be unreasonable to require the employer to continue his or her employment, with the employee;
- “sexual harassment” means an unacceptable conduct, whether physical, verbal or nonverbal, of a sexual nature that violates the rights of an employee;
- “shift work” means a method of organising work over a continuous period of time in which production or the provision of services, exceeds the ordinary hours of work;
- “strike” means the cessation of work by a body of employees acting in combination or under a common understanding or a concerted refusal or a refusal under a common understanding by such body of employees to continue to work, in furtherance of a dispute;
- “superscale officer” means a public officer appointed by the President under section 112 (2) (f) of the Constitution;
- “supervising officer”, in relation to an employee, means a public officer with the responsibility to supervise, give instructions relating to the performance of work and the responsibility to exercise disciplinary control over such employee;
- “temporary terms” means full time employment for a specified period of time, not exceeding 12 months;
- “trade” includes —
- (a) any undertaking of the employer;
 - (b) any service, employment, handicraft or industrial occupation or vocation of an employee; and
 - (c) the carrying on of trade activities by the Government or any public authority;
- “transfer” means the appointment of an employee to another public office with or without an adjustment to his or her salary;
- “unlawful industrial action” means any industrial action declared by the Industrial Court, in terms of the Employment and Labour Relations Act, to be unlawful; and
- “wages” means a basic pay or a fixed rate of payment, be it hourly, daily, weekly or monthly, depending on the contract of employment, nature of the job or task completed and does not include allowances or any other benefits.

(2) For the purposes of the public service and section 112 of the Constitution, “Permanent Secretary” means the holder of the public office of that designation responsible, subject to the directions and control of the Minister, for the supervision of a Ministry or a department.

(3) The Minister may prescribe the list of the holders of such public offices as may be appointed from time to time, by the President or Permanent Secretary to the President.

(4) For the purposes of the public service and section 52 of the Constitution, the term “exercise general direction and control” means that a Minister shall have the power to give general policy direction and written directions to the Permanent Secretary of the Ministry for which the Minister is responsible for, of a general or specific nature regarding the exercise of the powers of the Permanent Secretary and the performance of his or her functions.

- 3.** (1) The provisions of this Act shall not apply to —
- (a) officers of the Botswana Defence Force;
 - (b) officers of the Botswana Police Service;
 - (c) officers of the Botswana Prisons Service;
 - (d) judicial officers appointed in terms of section 104 of the Constitution; and
 - (e) officers of the Directorate on Corruption and Economic Crime.
- (2) Part XIV to XVI of the Act, shall not apply to —
- (a) public officers appointed by the President under the Constitution;
 - (b) senior management;
 - (c) officers of the Directorate of Intelligence and Security.
 - (d) such officers, as may be prescribed, who are not supervising officers, senior management or superscale officers, but who, in the course of their duties, have access to confidential or sensitive information.
- (3) Part XV shall not apply to civilian support staff of the Botswana Defence Force, Botswana Police Service and Botswana Prisons Service.

Application
of Act

PART II — *Public Service Structure and Composition*

4. (1) The public service of Botswana shall consist of such Ministries, departments, extra-Ministerial Departments and other public offices as the President may constitute in terms of section 56 of the Constitution as read with sections 50 (4) and 52 of the Constitution.

- (2) Every —
- (a) Ministry shall be under the general direction and control of the Minister to whom the President has assigned it, in terms of section 50 (4) of the Constitution;
 - (b) Ministry shall be under the supervision of a Permanent Secretary;
 - (c) Extra-Ministerial Department, shall be under the supervision of a Permanent Secretary, in terms of section 52 of the Constitution; and
 - (d) Department within a Ministry, shall be under the supervision of a Director.

Public Service
structure

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- Composition
- (3) The exercise of any powers or the performance of any duties under this Act shall be subject to such general directions of the President, as the President may consider necessary.
5. The public service shall consist of persons who —
- (a) hold positions in any Government Ministry or department;
 - (b) immediately before the coming into force of this Act, were employed in terms of the repealed Act;
 - (c) were employed temporarily or under a special contract of employment, within a Government Ministry, Extra-Ministerial Department or department, immediately before the commencement of this Act; and
 - (d) are appointed to any office as may be established by the Director General under section 13 (d).

PART III — *General Public Service Principles and Standards*

- Public officers' conduct standards
6. (1) Subject to the provisions of this Act and any other written law, and in addition to the principles set out in the National Vision, in the Public Service Charter and any other code of conduct for public officers, a public officer shall —
- (a) provide effective and efficient service to the public and to Government and endeavour to give his or her best to meet performance standards and other organisational requirements;
 - (b) utilise Government resources at his or her disposal in an efficient, responsible and accountable manner;
 - (c) continuously improve his or her performance in delivering services;
 - (d) not allow himself or herself, whether on duty or on leave of absence, to be interviewed on questions of or connected with, any matter related to his or her work or related to the defence or military;
 - (e) not publicly speak or demonstrate for or against any political party or politician;
 - (f) not directly or indirectly reveal, or use for private purposes, any information coming to his or her knowledge or acquired by him or her of the nature or the contents of any document communicated to him or her either in the course of his or her duties or in his or her capacity, as an officer, otherwise than in the proper discharge of his duties as authorised by law or competent authority; and
 - (g) perform his or her duties in a politically impartial and objective manner and refrain from any political activity that may impair his or her ability to perform his or her duties in an impartial manner.
- (2) For the purposes of this section, “political activity” includes —
- (a) being an active member of or holding office in a political party;
 - (b) carrying on any activity in support of or in opposition of a political party;
 - (c) carrying on any activity in support of or in opposition to a candidate before or during an election period;

- (d) seeking nomination as or being a candidate in an election before or during an election period; or
 - (e) publishing his or her opinions on political matters.
- (3) Nothing in this section, shall be interpreted as preventing a public officer from participating in lawful trade union activities, in the pursuit of the economic and social advancement of workers.
- (4) A public officer may, with the consent of the employer, engage in remunerative employment, occupation or business.
- (5) The employers shall not give consent for remunerative employment, occupation or business where such employment, occupation or business is likely to create a conflict between the employee's private interests and the performance of his or her public duties or impede the full and faithful discharge of his or her public duties.

7. In making decisions in respect of the appointment, transfer or other matters affecting human resource management, an appointing authority and every supervising officer shall —

Human resource
management
standards

- (a) have regard, primarily, to the effectiveness and efficiency of the public service;
- (b) prevent nepotism and patronage;
- (c) treat employees fairly and not subject any employee to any arbitrary or capricious administrative decision;
- (d) afford every employee a reasonable avenue of redress against any improper or unreasonable administrative decision;
- (e) not discriminate against any employee on the basis of race, tribe, place of origin, colour, creed, political opinion, sex, ethnicity, marital status, health status, disability, pregnancy or any other ground, nor discriminate against any person seeking employment in the public service on any such ground; and
- (f) provide a person with disability, a work environment that is open, inclusive, accessible and that is free from any form of discrimination.

PART IV — *Appointment of Permanent Secretary to the President, Permanent Secretaries, etc.*

8. (1) The President shall appoint the Permanent Secretary to the President on such terms and conditions as the President deems fit.

(2) The Permanent Secretary to the President shall be the head of the public service and shall, subject to the Constitution and this Act, be responsible for the administration of the public service.

(3) The appointment of the Permanent Secretary to the President, a Permanent Secretary or any other superscale officer shall, subject to the Constitution, be subject to a fixed term contract.

(4) A person appointed as Permanent Secretary to the President, Permanent Secretary or as a superscale officer, shall be eligible for re-appointment for such number of terms, as the President may determine.

Appointment
of Permanent
Secretary to
the President,
Permanent
Secretaries,
etc.

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(5) The decision whether or not to re-appoint a person referred to in this section, shall be made and notified to that person in accordance with the terms of that person's contract of employment.

(6) Subject to the provisions of the Constitution, the Permanent Secretary to the President, Permanent Secretary and a superscale officer shall, in addition to the fixed term contract, enter into a performance contract with his or her supervising officer and the performance contract shall, in the case of —

- (a) the Permanent Secretary to the President, be between the Permanent Secretary to the President and the President;
- (b) a Permanent Secretary, be between that Permanent Secretary and the Minister;
- (c) a Deputy Permanent Secretary, be between that Deputy Permanent Secretary and the Permanent Secretary;
- (d) a Head of Department and any other person in a senior management position, be between that Head of Department and the Deputy Permanent Secretary; and
- (e) any other superscale officer, be between that officer and the President, or as may be specified.

Director General
of the
Directorate of
Public Service
Management

9. There shall be a Director General of the Directorate of Public Service Management, who shall be a public officer appointed by the President.

Appointments
by Permanent
Secretary to
the President

10. (1) The Permanent Secretary to the President shall be the appointing authority for any public officer to a senior management position, other than a public officer appointed by the President under the Constitution.

(2) The appointment of a public officer in terms of this section, shall be subject to a fixed term contract, and the officer shall be eligible for re-appointment for such number of terms as the Permanent Secretary to the President, may determine.

(3) A public officer appointed in terms of this section shall, in addition to the fixed term contract, enter into a performance contract with his or her supervising officer.

(4) The decision whether or not to re-appoint a person referred to in this section, shall be made and notified to that person in accordance with the terms of that person's contract of employment.

PART V — *Administration of the Public Service*

Duties of
Permanent
Secretary to
the President

11. (1) The Permanent Secretary to the President shall be the head of the public service and shall, subject to the Constitution and this Act, be responsible for the administration of the public service.

(2) The Permanent Secretary to the President may, make rules or give instructions for managing the conduct of the public service.

(3) Any rules made or instructions given in terms of subsection (1), shall not be inconsistent with the provisions of this Act and shall be complied with, by all public officers.

(4) Notwithstanding the generality of the provisions of subsection (1), the Permanent Secretary to the President shall —

- (a) coordinate the activities of Permanent Secretaries;
- (b) ensure that Permanent Secretaries implement the national priorities determined by the Government;
- (c) introduce and manage public service management systems and related reforms;
- (d) formulate the rules governing discipline in the public service;
- (e) appoint senior management of the public service, other than public officers appointed by the President under the Constitution; and
- (f) have overall responsibility over all public officers.

(5) The Permanent Secretary to the President may, at any time, exercise the functions of any Permanent Secretary in any matter falling under this Act.

12. (1) In addition to the function vested in the Permanent Secretary by section 52 of the Constitution or any other written law, a Permanent Secretary shall be the chief accounting officer of a Ministry or Extra-Ministerial Department, under the general direction and control of the Minister.

Duties of
Permanent
Secretary

(2) Without limiting the generality of the provisions of subsection (1), a Permanent Secretary shall be responsible for —

- (a) initiating, formulating and implementing the policies of the Ministry or Department, under his or her supervision;
- (b) formulating the strategic plan of the Ministry or Department under his or her supervision, in accordance with the performance agreement entered into with the Permanent Secretary to the President;
- (c) ensuring that the services rendered by the Ministry or Department supervised by him or her, are delivered in accordance with the principles enshrined in the National Vision, the Public Service Charter, the General Orders and the objectives of this Act;
- (d) exercising the human resource functions delegated to him or her by the Director General under section 14 (3);
- (e) agreeing to the individual annual performance agreements and performance development plans of the public officers supervised by him or her, and supervising and monitoring their performance; and
- (f) implementing public service reforms.

(3) The Permanent Secretary shall exercise the powers under subsection (2), subject to the general control and directions of the Minister responsible for the Ministry or Extra-Ministerial Department concerned.

13. The Director General shall, subject to the Constitution and this Act, be responsible for the following matters —

- (a) human resource policy formulation and administration of the terms and conditions of employment in the public service;

Duties of
Director
General

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- (b) the administration of instructions given and rules and regulations made in terms of section 11 (2), by the Permanent Secretary to the President;
- (c) the recruitment of public officers below the positions of superscale and senior management, including volunteers and technical assistance personnel;
- (d) the conduct of human resource audits;
- (e) the formulation, supervision and monitoring of staff performance appraisals and service level agreements;
- (f) the undertaking of salary administration and grading of jobs;
- (g) the development of the public service learning and development policy;
- (h) the formulation of the rules or guidelines on wellness and safety in the public service;
- (i) the development of localisation and talent management programmes;
- (j) process enhancement and organisation and methods;
- (k) the administration of employees' career paths;
- (l) the development and maintenance of the human resource information system;
- (m) the formulation of job evaluation guidelines;
- (n) the development of human resource management reforms;
- (o) vacancy management;
- (p) the development and determination of public service competencies;
- (q) the recognition of public service trade unions;
- (r) advising the Government on policy matters concerning human resource management in the public service; and
- (s) such other matters as may be prescribed.

Delegation of powers

14. (1) Subject to subsection (2), the Permanent Secretary to the President may, with the consent of the President, by directions in writing, delegate any of his or her powers under this Part, to any Permanent Secretary or to the Director General.

(2) Notwithstanding the delegation referred to under subsection (1), the Permanent Secretary to the President may —

- (a) from time to time cancel or vary such delegation; or
- (b) vary or set aside any decision made by the Permanent Secretary or the Director General in the exercise of such delegated powers.

(3) The Director General may, with the consent of the Permanent Secretary to the President, by directions in writing, delegate any of his or her powers under this Part, to any public officer.

(4) Notwithstanding any delegation by the Director General under subsection (3), the Director General may —

- (a) from time to time cancel or vary such delegation; and
- (b) vary or set aside any decision made by the public officer, in the exercise of such delegated powers.

(5) A Permanent Secretary may, with the written consent of the Director General, delegate any of his or her functions under section 12 (2) (d), to any public officer.

(6) Notwithstanding any delegation by a Permanent Secretary under subsection (5), the Permanent Secretary may —

- (a) from time to time cancel or vary such delegation; and
- (b) vary or set aside any decision made by the public officer, in the exercise of such delegated powers.

(7) A power or function delegated under this Part may, where the instrument of delegation so provides, be further delegated.

(8) An employee who is aggrieved by a decision made in exercise of any delegated power made in terms of subsections (3) and (5), may appeal such decision in terms of section 72 (1) of this Act.

PART VI — *Appointments to the Public Service*

15. (1) Appointments to the public service shall be on —

- (a) permanent and pensionable terms;
- (b) a fixed term contract;
- (c) temporary terms;
- (d) part-time terms;
- (e) casual terms; or
- (f) such other terms as may be prescribed.

Appointments
to public
service

(2) An appointment of an employee by an appointing authority, may be made retrospective to such date as the appointing authority considers appropriate, whether or not the date is prior to the commencement of this Act.

(3) The Minister may, by Order published in the *Gazette*, prescribe the exemption of appointment of certain categories of persons into offices in the public service.

16. Subject to the Constitution, the power to appoint, remove, or exercise disciplinary control over any employee, shall vest —

- (a) in the case of the Permanent Secretary to the President, a Permanent Secretary or an officer appointed by the President in terms of the Constitution, in the President;
- (b) in the case of any employee in a senior management post, in the Permanent Secretary to the President or such other person as the Permanent Secretary to the President may, in accordance with section 14 (1), delegate; and
- (c) in any other case, in the Director General or such other person as the Director General may in accordance with section 14 (3), delegate.

Powers of
appointment

17. (1) Subject to subsection (2), entry into and advancement in the public service shall be based on a proven record of good performance, skills and competencies.

Entry and
advancement

(2) The Director General, shall, determine the academic requirements and admission competencies, for entry-level posts.

18. (1) Where a public office is vacant, the following persons shall be qualified for appointment to such office, in the following order of priority —

Criteria for
appointment

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- (a) a citizen; or
(b) a non-citizen, whose appointment to such office is approved under section 21 (2) or (3).
- (2) The persons referred to in subsection (1), shall be qualified for appointment, and shall satisfy any competency requirements or qualifications specified —
- (a) by the Director General, in respect of officers in senior management or below the level of senior management; and
(b) by the President, in respect of officers appointed by the President in terms of the Constitution.
- (3) The provisions of subsection (1) (b), may be waived with the written approval of the Director General, if it facilitates the localisation of the public service or is otherwise, in the interests of the public service.
- 19.** (1) The appointing authority shall, in effecting transfers, have regard primarily to the efficiency of the public service and shall be guided by such processes as may be prescribed.
- (2) Where an employee is transferred to a position which does not attract the payment of specific allowances which such employee had been earning in his or her previous position, the allowances that the employee had been earning shall cease from the date of assumption of office of the new position.
- (3) Where an employee had, prior to the commencement of this Act, earned specific allowances at a previous position and has been transferred to a comparable position which does not attract the specific allowance, such allowances shall be terminated within a period of six months, from the commencement of this Act.
- 20.** A person who —
- (a) has been convicted of a criminal offence;
(b) has not been granted registration or has his or her registration suspended or terminated by a professional body, where such person holds the qualifications to be registered by the professional body;
(c) has been dismissed from the public service for serious misconduct;
or
(d) resigns from the public service, whilst he or she has a pending disciplinary matter or an internal investigation of which he or she is aware,
- shall not be appointed to the public service, without the written approval of the President, the Permanent Secretary to the President or the Director General, as the case may be.
- 21.** (1) A non-citizen shall not be appointed on permanent and pensionable terms, to any public office.
- (2) Subject to subsection (3), a non-citizen shall not be appointed to any public office, unless the appointing authority is satisfied that no citizen of Botswana, who is qualified and suitable for appointment, is available.

Criteria for transfer

Disqualification for appointment

Appointment of non-citizens

(3) The appointing authority may appoint a non-citizen to any public office, if such person is a citizen of a country, which has a reciprocal provision in the laws of that country, permitting a citizen of Botswana, qualified in terms of the laws of that country, to be engaged in public office.

22. (1) Where any person is appointed to any public office on permanent and pensionable terms or on a fixed term contract, otherwise than on promotion or transfer, the person shall first serve probation for a period not exceeding six months:

Probation

Provided that, a person appointed on fixed term contract shall not serve a period of probation on subsequent contracts.

(2) A period of probation shall be determined with reference to the nature of the work and the time it takes to determine the suitability of a newly appointed employee for continued employment.

(3) The appointing authority shall, before entering into a contract of employment with a newly appointed employee, inform the employee, in writing, which may be included in a letter of offer, that a probationary period shall apply and specify the length of the probationary period.

23. (1) The appointing authority shall, during a probationary period, assess the performance and conduct of a person on probation and shall —

Contract of
employment
during
probationary
period

- (a) advise the person of any aspect in which the appointing authority considers such person to be failing to meet the required performance standards; and
 - (b) give the person reasonable evaluation, instruction, training, guidance or counselling in order to assist such person to meet the required performance standards.
- (2) The appointing authority shall, before the expiry of a probationary period, consider whether —
- (a) the employee should be confirmed in the public office;
 - (b) the employee's services being otherwise satisfactory, the probationary period should be extended so as to afford the employee further opportunity to pass any examinations, which are a condition precedent to appointment;
 - (c) the probationary period should be extended to afford the employee the opportunity of improvement in any respect, in which the employee's work or conduct have been unsatisfactory; or
 - (d) the services of the employee should be terminated.
- (3) The supervising officer of an employee may, within a period of three months, if he or she is of the opinion that —
- (a) the employee has failed to perform satisfactorily, the duties of the public office, to which the employee was promoted; or
 - (b) the employee's conduct has been unsatisfactory, notify the employee, in writing, that a termination of the contract of the employee is under consideration, and inform the employee of his or her right to make representations thereon, within 21 days of receipt of the notification.

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(4) The supervising officer shall forward representations made in terms of subsection (3), if any, together with the supervising officer's recommendations, to the appointing authority.

(5) The appointing authority shall decide whether —

(a) the contract of the employee should be terminated; or

(b) the employee requires a further trial, and in such case postpone his or her decision for such period, as he or she considers necessary;

Provided that, if the appointing authority has not reached a decision under paragraph (a) or (b), and informed the employee of such decision, within one month of the matter being referred to him or her, the employee shall be deemed to be confirmed in his or her position.

(6) Where an appointing authority has complied with subsection (3), and has invited an employee on probation to make representations, the appointing authority may terminate the contract of employment within the probationary period if the appointing authority is satisfied that the employee has failed to perform satisfactorily or that their conduct has been unsatisfactory, and the appointing authority shall give notice to such person, or alternatively pay the person *in lieu* of the notice.

(7) Where an appointing authority has not confirmed the appointment of an employee, and has not informed the employee of his or her reason to not confirm the appointment of such employee, the appointment of the employee shall be deemed to have been confirmed.

Promotion

24. (1) An employee may be promoted to a higher office in the public service based on a proven record of good performance, skills and competencies.

(2) Notwithstanding the provisions of subsections (1), a public officer who holds a qualification that requires registration as a member of a professional body, shall within 12 months, of the commencement of this Act, have acquired the certification of registration from the relevant professional body.

(3) Where a person is appointed to any public office on promotion, the effective date of his or her promotion to the office shall, subject to subsection (1), be that fixed by the appointing authority.

(4) The appointing authority shall not fix, as a date of promotion, a date which is earlier than the date upon which —

(a) the vacancy occurred;

(b) the appointing authority authorises, in writing, the promotion of an employee; or

(c) the employee assumed the functions of the office.

(5) Notwithstanding the provisions of subsection (3), the appointing authority may, in special circumstances, fix a date of promotion which is earlier than the date on which the employee assumed the functions of the office:

Provided that, the date shall not be earlier than the date on which the vacancy occurred or the date the officer became qualified for promotion.

PART VII — *Contracts of Employment*

25. (1) A contract of employment shall be, in writing, and the employee shall indicate consent to the contract of employment, in such form and manner, as may be prescribed.

Contracts of employment

(2) A contract of employment shall, in clear and unambiguous terms, define the rights and obligations of the parties to the contract of employment and such other conditions and content, as may be prescribed.

26. A contract of employment valid and in force immediately before the commencement of this Act, shall —

Existing contracts of employment to continue in force

- (a) continue to be in force after the coming into operation of this Act;
- (b) to the extent that the contract is not in conflict with the provisions of this Act, shall be deemed to be made under this Act and the parties to the contract of employment shall be subject to and entitled to the benefits of this Act; or
- (c) not be subject to any less favourable conditions of service than any similar condition that applied to an employee in terms of the contract, before this Act came into force.

27. Subject to the provisions of this Act, an employee who is employed on casual terms, by the employer and who works on average for more than 22 ½ hours in a week, for a period of 12 months, shall be deemed to be an employee on an indefinite basis.

Presumption related to casual employment

28. (1) Where the employer employs casual employees, the employer shall keep and maintain a register of such employees, in such form and manner, as may be prescribed.

Duty of employer to keep register of casual employees

(2) The employer shall —

- (a) keep and maintain a register in pursuance of this section in safe custody, until the expiry of two years immediately after the date of the last entry in the register; and
- (b) immediately make it available for inspection by the Commissioner, on being required to do so by the Commissioner.

29. (1) A part-time employee shall have the right not to be treated by an employer, less favourably than the employer treats a comparable permanent employee, as regards the terms of the contract of employment, between such employer and the part-time employee, or subject such part-time employee to any other detriment by any act, or deliberate failure to act, by the employer.

Part-time and fixed-term contracts of employment to not be less favourable

(2) The right conferred by subsection (1), shall apply only if the treatment is not justified on objective grounds.

(3) In determining whether a part-time employee has been treated less favourably than a comparable permanent employee, a *pro rata* principle shall be applied, unless the principle is inapplicable.

(4) For purposes of subsection (3), “*pro rata* principle” means that where a comparable permanent employee receives or is entitled to receive pay or any other benefit, a part-time employee is to receive or be entitled to receive not less than the proportion of that pay or other benefit, that the number of his or her weekly hours bears to the number of weekly hours of the comparable permanent employee.

(5) A fixed-term employee shall have the right not to be treated, by an employer, less favourably than the employer treats a comparable permanent employee as regards the terms of the contract of employment between such employer and the permanent employee, or subject such fixed-term employee to any other detriment by any act, or deliberate failure to act, by the employer.

(6) Subject to subsections (7) and (8), the right conferred by subsection (5) includes, in particular, the right of a fixed-term employee not to be treated less favourably than a comparable permanent employee, in relation to —

- (a) any period of service qualification relating to any particular condition of service;
- (b) the opportunity to receive training; or
- (c) the opportunity to secure any permanent position in the employer.

(7) In determining whether a fixed-term employee has been treated less favourably than a comparable permanent employee, a *pro rata* principle shall be applied, unless the principle is inapplicable.

(8) For purposes of subsection (7), a “*pro rata* principle” means that, where a comparable permanent employee receives or is entitled to pay or any other benefit, a fixed-term employee is to receive or be entitled to such proportion of that pay or other benefit, as is reasonable in the circumstances having regard to the length of his or her contract of employment and to the terms, on which the pay or other benefit is offered.

(9) Notwithstanding subsections (1) to (8) —

- (a) where a part-time or a fixed-term employee is treated by an employer less favourably than the employer treats a comparable permanent employee as regards any term of his or her contract of employment, the treatment in question shall be regarded as justified on objective grounds, if the terms of the fixed-term employee’s contract of employment, taken as a whole, are at least as favourable as the terms of the comparable permanent employee’s contract of employment; and
- (b) any differential treatment between a fixed-term employee and part-time employee compared to a permanent employee may be justified on objective grounds such as —
 - (i) seniority,
 - (ii) experience or length of service,
 - (iii) quality or quantity of work performed, or
 - (iv) any other criteria of a similar nature.

Presumption of indefinite employment

30. (1) The employer may not employ an employee on a fixed-term contract of employment or successive fixed-term contracts of employment for longer than 12 months of employment, unless the —

- (a) nature of the work for which the worker is employed is of a limited or definite duration; or
- (b) employer can demonstrate any other justifiable reason for fixing the term of the contract of employment:

Provided that, this provision shall not apply to fixed term contracts for senior management, non-citizens and employees who perform support or advisory functions to a holder of an office, whose term of office is fixed.

(2) Without limiting the generality of subsection (1), the conclusion of a fixed-term contract of employment shall be justified if an employee —

- (a) is replacing another employee who is temporarily absent from work;
- (b) is employed on account of a temporary increase in the volume of work which is not expected to endure beyond 12 months;
- (c) is a student or recent graduate who is employed for the purpose of being trained or gaining work experience in order to enter a job or profession;
- (d) is employed to work exclusively on a specific project that has a limited or defined duration;
- (e) is employed to perform seasonal work;
- (f) is employed in a position which is funded by an external source for a limited period; or
- (g) has reached the prescribed or agreed retirement age applicable in the employer's business.

(3) An employment in terms of a fixed-term contract of employment concluded or renewed in contravention of this section is deemed to be of indefinite duration.

(4) An offer to employ an employee on a fixed-term contract or employment or to renew or extend a fixed-term contract of employment, shall —

- (a) be, in writing; and
- (b) state the reasons provided in subsection (1).

(5) The employer shall, if it is relevant in any proceedings, prove that there was a justifiable reason for fixing the term of a contract of employment as provided in this section and that the term was agreed upon between an employer and an employee.

31. Except as otherwise permitted by this Act or any other written law, the employer shall not make any deduction or agree with an employee, whether the agreement is contained in the contract of employment, for any deduction from the wages to be paid by the employer or from any other payments which may be due to the employee.

Prohibition of unauthorised deductions from wages

32. (1) Notwithstanding the provisions of section 31, the employer may —

Authorised deductions from wages

- (a) deduct from the wages and any other payments which may be due to an employee or any amount due by the employee —
 - (i) respect of any tax or rate imposed by any written law or the Income Tax Act, or
 - (ii) as a contribution to any provident or pension fund or scheme established and maintained in accordance with Regulations made under this Act or in accordance with any other written law to which such worker has agreed to contribute;

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(b) with the consent of the employee, deduct from the wages and any other payments which may be due to the employee any amount —

(i) due to the employer by way of rental or service charges for accommodation provided by the employer and occupied by such employee:

Provided that such deduction shall not be made where, by any custom, accommodation is provided free of charge in addition to wages, or

(ii) the deduction is provided for under a recognition agreement made between a trade union, of which such employee is a member and the employer;

(c) subject to such limitations and conditions imposed by this Act or as may be prescribed, deduct from the wages and any other payments which may be due to an employee, any amount which the employee has requested the employer to remit to any other person or body on his or her behalf; and

(d) make deductions from the wages and any other payments which may be due to the employee, including deductions —

(i) in respect of unauthorised absence from work,

(ii) in respect of the actual cost of food, or so much of the actual cost of food as is not subsidised by the employer, supplied by the employer at the request of the employer,

(iii) in order to recover any overpayment of wages, subject to provisions of this section,

(iv) in respect of contributions payable by the worker by virtue of the Retirement Funds Act,

(v) in order to recover any basic pay which may have been paid to the worker in respect of an annual leave granted by the employer before the completion of the period by virtue of which that leave would have been earned, and

(vi) for any other purpose which may be prescribed in terms of this Act and the Employment and Labour Relations Act:

Provided that the total deductions from an employee's remuneration under this subsection, do not exceed 70 percent of the employee's remuneration in money.

(2) Notwithstanding anything contained in this Act, where —

(a) an employer or any fund contributed to by the employer, loans to an employee;

(b) the total amount of the loan has been paid by the employer or the fund, referred to in paragraph (a), as the case may be, to an employee in cash; and

(c) a memorandum of the transaction has been made and signed by or on behalf of the employer or fund, and the employee providing for the repayment of the loan by one or more instalments,

the employer may deduct from any wages, *ex gratia* payments, severance pay, gratuities and payments for accrued leave due to the employee such instalments at such times as are set out in the memorandum:

Provided that —

- (a) where Regulations determine the maximum amount of loans or instalments and the terms and conditions upon which such loans may be made or recovered, a loan or instalment may not be recovered in excess of the relevant prescribed amount nor may such loan or instalment be recovered upon terms more onerous to such worker than those provided for in such Regulations; and
- (b) nothing in this subsection shall permit the recovery of any loan irrecoverable under any other written law.

33. The employer shall be deemed to be in breach of a contract of employment, if the employer fails to pay basic pay or wages in accordance with the provisions of this Act or any other applicable law.

34. The provisions of Part IV of the Employment and Labour Relations Act, shall apply with the necessary modifications with the necessary modifications to contracts of employment in the public service.

Breach of contracts of employment

Measures to promote equality, and prevent discrimination, violence and harassment in the workplace

PART VIII — *Hours of Work, Rest Periods and Public Holidays*

35. (1) An employee shall not be required to work an ordinary working period of more than —

- (a) eight hours in any one day;
- (b) 40 hours in a five-day week;
- (c) 45 hours in a five and half-day week; and
- (d) 48 hours in a six-day week:

Provided that the employee shall be entitled to a period of rest of one hour in any one day.

(2) The Minister may prescribe the hours of work for different categories of employees, to whom this Act applies.

36. (1) An employer shall grant an employee a rest period comprising of at least 24 consecutive hours in every period of seven consecutive days, which period shall ordinarily be or include a Sunday.

(2) Notwithstanding subsection (1), an employee engaged in work which by reason of its nature requires to be carried on continuously by a succession of shifts, may be required by his or her employer to work during a rest period:

Provided that, the employee is granted a rest period as may be specified on his or her shift roster.

(3) Where the rest periods of an employee are or include days other than a Sunday, the employer shall prepare or cause to be prepared a roster in respect of every month specifying the employee's rest periods within that month and shall display the roster in a conspicuous place readily accessible to the employee, not less than seven days immediately before the commencement of the month, in question.

Hours of work

Rest period

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Payment for work during rest periods

37. An employee who works during a rest period, either by agreement with the employer or on being required to do so in terms of this Act, shall be paid double the wages he or she would have been paid had the period been an ordinary working period, or at his or her option be granted a day or days off, as the case may be, in lieu of payment of such wages.

Exceeding limit of hours of work in emergency

38. An employee may be required by his or her employer to exceed the limit of hours specified under section 35 or to work during a rest period specified under section 36, in the case of —

- (a) an accident, actual or threatened;
- (b) work, the performance of which is essential to the life of the community;
- (c) work essential for national defence or security;
- (d) urgent work to be done to machinery or plant;
- (e) an interruption of work which was not reasonably possible to foresee; or
- (f) work to be performed by an employee in any industrial undertaking considered to be an essential service:

Provided that where an employee is required to work during a rest period, he or she shall be granted a similar rest period in substitution, before the next following rest period is due or at a later stage after due consultation with the employee.

Overtime

39. (1) If an employee is required to work, in any one day, more than the number of hours in the ordinary working period specified under section 36, the number of hours so worked in excess shall be deemed, for the purposes of this Act, to be overtime, and the employee shall be paid —

- (a) for such overtime, one and a half times, the wages he or she would have been paid had the time worked not been overtime; or
- (b) fixed rate overtime allowance.

(2) Notwithstanding subsection (1), where a contract of employment of an employee at senior management level or superscale level, provides —

- (a) for the payment of wages without reference to the number of hours worked by such employee; and
- (b) that the employee may be required to work overtime in exceptional circumstances and such employee is on occasion required to work such overtime,

the employee shall not be entitled to be paid for the overtime worked, unless the contract of employment otherwise provides.

(3) An employee, whether at senior management level or any other level, shall not be required or permitted to work overtime for more than 14 hours in any one week:

Provided that, the Minister may, by Order published in the *Gazette*, declare that this subsection shall not apply to employees in a sector, trade or undertaking, as may be specified.

40. (1) For the purpose of calculating the daily rate of payment or benefits due for overtime to an employee employed on a monthly rate of payment, the following divisions shall be applied —

Rate for
payment
of overtime

- (a) 22 days, in respect of a five-day working week;
 - (b) 24 days, in respect of a five and a half-day working week; and
 - (c) 26 days, in respect of a six-day working week.
- (2) Notwithstanding subsection (1) the Minister may, by regulations —
- (a) prescribe the methods for calculating the payments due to an employee, for overtime in any particular circumstances; and
 - (b) determine employees in a sector, trade, industry or undertaking, who shall be eligible for payment of commuted overtime allowance.

41. (1) If any question arises as to whether, for purposes of this Part, the appointing authority is justified, in requiring an employee to work —

Authorisation
by Director
General

- (a) in excess of the hours specified under section 35;
- (b) during a rest period; or
- (c) overtime,

either the appointing authority or employee concerned may, refer the question to the Director General.

(2) Where the Director General is of the opinion that exceptional circumstances exist which are not covered under this Part but are nevertheless, such as to justify an employee being required to —

- (a) exceed, for a limited period, the limit of hours prescribed under section 35;
- (b) work during a rest period; or
- (c) work overtime for more than 14 hours in any one week,

the Director General may in writing, subject to such period and conditions as he or she may determine, authorise the appointing authority to require the employee to exceed such limit or work during such rest period:

Provided that the Director General shall, in authorising the appointing authority, have regard to the welfare of the employee concerned.

(3) Where, by virtue of the appointing authority having been authorised under subsection (2), an employee is required to exceed the limit of hours or to work during a rest period, the employee shall be deemed, for the purposes of this Act, to be required to do so under section 38, and the proviso to section 38, shall apply in respect of any rest period or a part of it forfeited in consequence of the requirement set out in the proviso.

(4) Where the employee is aggrieved by the authorisation under subsection (2), he or she may appeal against such authorisation to the Commission, in terms of section 72.

42. Notwithstanding section 35 (1), an employee engaged in regular shift work, may be required by the employer to work more than five consecutive hours without a period of rest, more than eight hours in any one day or more than 48 hours in any one week:

Shift work

Provided that, the average number of hours worked over any period of four weeks, shall not exceed 48 hours per week.

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Task work **43.** Nothing in this Part shall prevent an employer from agreeing with an employee that the wages of the employee shall be paid at an agreed rate in accordance with the task, that is, the specific amount of work required to be performed, and not by the day or by the piece.

PART IX — Statutory Leave Provisions

Interpretation
of leave cycle **44.** For the purposes of this Part, “leave cycle” means the period of 12 consecutive months’ employment with the same employer, immediately following the —

- (a) commencement of employment by an employee; or
- (b) completion of the last leave cycle.

Annual leave **45.** (1) Nothing in this section shall affect any law, award, with pay custom or agreement between the parties to a contract of employment providing for leave with pay, no less favourable to the employee than that for which this section makes provision.

(2) The employer shall grant to every employee, leave with basic pay at the prescribed rate.

(3) An employee shall take not less than the minimum period prescribed, no later than six months immediately after the end of the period in respect of which the leave was earned.

(4) Any balance of leave not taken in accordance with subsection (2) may be accumulated, year by year:

Provided that, such leave shall not be accumulated for longer than three years.

(5) The leave for which this section makes provision, shall be in addition to any public holiday or weekly rest period, the employee is not required to work and any period during which the employee is absent from work, owing to illness.

(6) Where a contract of employment is terminated by either party, the employer shall pay to the employee his or her basic pay —

- (a) in respect of any period of leave accumulated under subsection (4) or which has otherwise accrued to the employee, but has not been granted before the termination of the contract of employment; and
- (b) at the rate of his or her monthly leave entitlement as prescribed in respect of every month or part of a month of continuous employment, after he or she last became entitled to leave under subsection (2).

(7) The basic pay payable in respect of any period of leave for which this section makes provision, whether accumulated or otherwise, or in accordance with subsection (6) (b), shall be the current basic pay.

(8) An employee who has accumulated leave up to the equivalent of three years’ entitlement shall cease to accumulate leave days, and shall forfeit the right to additional accumulated leave until the accumulated days have been reduced, or unless otherwise agreed.

Paid public
holiday **46.** (1) The President may prescribe the paid public holidays, for the public service.

(2) Where a paid public holiday falls on a day considered to be a rest period, the day next following the rest day which is not itself a rest day shall be deemed, for the purposes of this section, to be a paid public holiday.

(3) An employee who works on a paid public holiday shall —

- (a) be paid double the wages, he or she would have been paid had the day been an ordinary working day; or
- (b) be granted a paid day off in lieu of that day, within 10 days of having worked on a public holiday or rest day, or within a reasonable period.

(4) Subject to subsection (3), the employer shall pay to the employee his or her basic pay in respect of every paid public holiday.

47. (1) An employee shall, after medical examination by a medical practitioner be —

Paid sick leave

(a) entitled to such sick leave as the medical practitioner concerned recommends:

Provided that, such sick leave shall amount to 60 days per leave cycle; and

(b) shall be entitled to be paid his or her basic pay for, at least six months.

(2) An employee who absents himself or herself from his or her place of employment on the grounds of sickness shall —

(a) inform his or her supervisor of his or her absence as soon as it is reasonably practicable to do so; and

(b) where he or she is absent from his or her place of employment for 24 hours or more, provide his or her supervisor, upon his or her return, with a certificate signed by a medical practitioner or with other evidence, to the supervisor's satisfaction, accounting for the entire period of absence.

(3) The employer shall pay to the employee, his or her current basic pay for every day of paid sick leave granted in terms of this section.

48. (1) Subject to the provisions of this section, an employee who is pregnant shall be entitled to a period of maternity leave of not less than 14 weeks.

Maternity leave and absence from work in connection with pregnancy

(2) An employee shall, at least six weeks before the expected date of birth, give notice to the employer of her intention to take maternity leave, which shall be supported by a written certificate signed by a medical practitioner, certifying the presumed date of birth.

(3) Upon receipt of the notice under subsection (1), the employer shall permit the employee in question to absent herself from work, from such date as may be agreed by the employer and the employee, until the period of 14 weeks days has expired.

(4) Within 21 days after the birth of her child, the employee shall inform the employer of the date of her child's birth and provide a certificate signed by a medical officer or a registered nurse-midwife, certifying that date.

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(5) Notwithstanding subsection (2), where an employee delivers to her employer a written certificate signed by a medical practitioner, certifying that the employee is suffering from an illness arising out of her confinement and is consequently unfit to return to work at the expiration of 14 weeks, the employer shall not permit or require her to return to work, until the expiration of eight weeks immediately after her confinement.

(6) Absence from work in pursuance of subsection (2) or shall be deemed, for the purposes of this Act, not to interrupt the employment of the employee concerned.

(7) An employee shall forfeit any entitlement to maternity benefits, where such employee has engaged in any other remunerative employment, occupation or business during any period of absence from work in accordance with the terms of this section, without authority from the employer.

Adoption leave

49. (1) An employee, who is an adoptive parent of a child who is below the age of two, is subject to subsection (6), entitled to —

- (a) an adoption leave, of at least 10 weeks consecutively; or
- (b) paternity leave, in terms of section 51.

(2) An employee may commence an adoption leave on the date that —

- (a) an adoption order is granted by a competent court; or
- (b) a child is placed in the care of the employee as a prospective adoptive parent by a competent court, pending the finalisation of an adoption order in respect of the child, whichever date occurs first.

(3) An employee shall notify the employer in writing, unless the employee is unable to do so, of the date on which the employee intends to —

- (a) commence adoption leave; and
- (b) return to work after adoption leave.

(4) An employee shall give notice in terms of subsection (3) —

- (a) of at least one month, before the date referred to in subsection (2); or
- (b) if it is not reasonably practicable to do so, as soon as is reasonably practicable.

(5) Sections 48, 52 and 53 shall, with the necessary modifications, apply to adoption leave benefits.

(6) If an adoption order is made in respect of two adoptive parents who are public officers, the female adoptive parent may, apply for adoption leave and the male parent may apply for the paternity leave in terms of section 51:

Provided that the selection of choice may be exercised at the option of the two adoptive parents.

Commissioning parental leave

50. (1) An employee who is a commissioning parent in a surrogate motherhood agreement shall, subject to subsection (6), be entitled to —

- (a) a commissioning parental leave of at least ten weeks consecutively; or
- (b) paternity leave, in terms of section 51.

(2) An employee may commence a commissioning parental leave on the date a child is born, as a result of a surrogate motherhood agreement.

(3) An employee who is a surrogate mother and in a surrogate agreement with a commissioning parent or parents, shall be entitled to such maternity leave, as may be prescribed.

(4) An employee shall inform the employer in writing, unless the employee is unable to do so, of the date on which the employee intends to —

- (a) commence a commissioning parental leave; and
- (b) return to work after a commissioning parental leave.

(5) An employee shall inform the employer in terms of subsection (4) —

- (a) at least one month before a child is expected to be born as a result of a surrogate motherhood agreement; or
- (b) if it is not reasonably practicable to do so, as soon as is reasonably practicable.

(6) Sections 48, 52 and 53 shall, with the necessary modifications, apply to commissioning parental leave benefits.

(7) If a surrogate motherhood agreement has two commissioning parents who are public officers, one of the commissioning parents may apply for a commissioning parental leave and the other commissioning parent may apply for paternity leave, in terms of section 51:

Provided that the selection of choice may be exercised at the option of the two commissioning parents.

(8) For purposes of this section —

- (a) “commissioning parent” means a person who enters into a surrogate motherhood agreement with a surrogate mother; and
- (b) “surrogate motherhood agreement” means an agreement between a surrogate mother and a commissioning parent, in which it is agreed that the surrogate mother will be artificially fertilised for the purpose of bearing a child for the commissioning parent and in which the surrogate mother undertakes to hand over the child to the commissioning parent upon its birth, or within a reasonable time after birth, with the intention that such child becomes the legitimate child of the commissioning parent.

51. (1) A male employee shall, during any leave cycle, be entitled to at least five days paid paternity leave if the —

- (a) leave is taken within six months of the birth of the child; and
- (b) employee is the father of the child.

(2) The employer may, before granting an employee paternity leave in accordance with subsection (1), require proof of paternity, in the form of a birth certificate issued in terms of the Births and Deaths Registration Act.

(3) Notwithstanding the provisions of subsection (1), an employee may take additional days from any leave days that the employee may have acquired in terms of section 45, as may be authorised by the employer.

Paternity leave

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PART X — *Standards Related to Pregnancy and Maternity*

Right to salary unaffected by notice of intention to terminate employment

52. (1) Where the employer intends to terminate the employment of an employee without good cause, within three months immediately before the presumed date of childbirth, the employer shall give the employee, a notice of intention to terminate the employment, but such termination shall not affect the employer's obligations under this Part, in respect of payment of her salary in relation to that confinement.

(2) If any question arises as to whether, for the purposes of subsection (1), a notice of intention to terminate a contract of employment was or was not given for good cause, either the employer or employee may, in accordance with the Employment and Labour Relations Act, refer the question to the Mediation and Arbitration Commission, for a ruling which, subject to subsection (3), shall be binding.

(3) Where either the employer or employee in question is aggrieved by a ruling of the Mediation and Arbitration Commission under subsection (2), the employer or employee may appeal against the Commission's ruling to the Industrial Court.

Prohibition from serving notice of termination during maternity leave

53. The employer shall not give an employee, a notice of intention to terminate her employment during her absence and any such notice shall be null and void, where the female employee —

- (a) is absent from work in terms of section 48; or
- (b) remains absent from work for a longer period as a result of an illness which a medical practitioner has certified, in writing, that has arisen out of the employee's pregnancy or confinement and has rendered the employee unfit to return to work:

Provided that this section shall not apply in respect of any period of absence from work which exceeds such maximum period as the Minister may, by Order published in the *Gazette*, prescribe for the purposes of this section.

Employee to be permitted to nurse child

54. Where an employee wishes to nurse her child or otherwise feed her child herself, the employer shall permit the employee to do so for half-an-hour twice a day or one hour a day during the hours of work, for 12 months immediately after her return to work following her confinement, pursuant to the provisions of this Part, and shall pay her basic pay, in respect of such period as if it were ordinary working time.

Employment protection related to pregnancy and maternity

55. (1) Subject to the provisions of this Act, an employee shall be entitled to return to the same position or an equivalent position paid at the same rate, at the end of a maternity leave of the employee.

(2) An employee who is pregnant or nursing shall not perform work which is prejudicial to the health of the employee or the child of such employee, or where an assessment has established a significant risk to the employee's health or that of the child of such employee.

(3) The employer shall not require a test for pregnancy or a certificate of such a test, where an employee applies for employment, except in respect of work that is —

- (a) prohibited or restricted for a pregnant or nursing employee, in accordance with the provisions of any written law; or
- (b) where there is a recognised or significant risk to the health of the employee and the child of such employee.

PART XI — *Termination of Appointments and Retirement of Public Officers*

- 56.** (1) An employee's appointment shall terminate on the —
- (a) employee's resignation;
 - (b) expiry of the employee's contract;
 - (c) employee's retirement;
 - (d) abolition of the employee's office due to redundancy or any other reason;
 - (e) employee's dismissal; or
 - (f) employee's death.
- (2) An employee at a level below senior management may, at any time, resign from his or her appointment, by giving one month's notice in writing to the employer or paying one month's salary, in lieu of notice.
- (3) Subject to section 61, the employer may terminate the appointment of an employee at superscale level or at senior management level by giving three months' notice, in writing, to that employee and —
- (a) where no notice is given, by paying to the employee three months' basic salary in lieu of notice; or
 - (b) where notice has been given, but the appointment is terminated before the period of notice, by paying to the employee the balance of the basic salary in lieu of the remaining period of notice.
- (4) Subject to section 61, the employer may terminate the appointment of any other employee by giving one month's notice, in writing to that employee and —
- (a) where no notice is given, by paying to the employee one month's basic salary in lieu of notice; or
 - (b) where notice has been given, but the appointment is terminated before the period of notice, by paying to the employee the balance of the basic salary in lieu of the remaining period of notice.
- (5) An employee on a fixed-term contract shall have his or her employment terminated, when the work specified in the contract of employment is completed, or in the case of a contract of employment for a specified period of time, when the period of time for which the contract of employment was made, expires.
- (6) A contract of employment for an unspecified period of time, other than a contract of employment for a specified piece of work, without reference to time, shall be deemed to run, until lawfully terminated in accordance with section 61.
- 57.** Subject to Part X, the employer may terminate the appointment of an employee, where the employee —

Termination of
appointment

Grounds for
termination of
appointment

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Requirements
for lawful
termination

- (a) is guilty of serious misconduct;
- (b) has failed to carry out the functions of his or her office satisfactorily;
or
- (c) has failed to carry out the performance standards set out under the performance contract relating to his or her appointment.

58. (1) The employer shall not unfairly terminate the employment of an employee.

(2) A termination of employment by the employer shall be unfair, if the employer fails to prove that the —

- (a) reason for the termination of employment was valid;
- (b) termination of employment was for a fair reason —
 - (i) related to the conduct, capacity or compatibility of the employee,
or
 - (ii) based on the operational requirements of such employee; and
- (c) employment was terminated in accordance with a fair disciplinary procedure.

(3) The employer may not terminate the employment of an employee for reasons related to the conduct of the employee, before providing such employee with an opportunity to respond to the allegations, unless the employer cannot reasonably be expected to provide the opportunity.

(4) The employer shall comply with such requirements for a fair disciplinary procedure, as may be prescribed.

(5) In deciding whether a termination of employment by an employer is lawful, a mediator, arbitrator or the Industrial Court, shall take into account any rules or regulations, prescribed in accordance with this Act.

Grounds
on which
termination of
employment
amounts to
unfair dismissal

59. Notwithstanding anything contained in a contract of employment, the employer shall not terminate the contract of employment, on the ground of —

- (a) an employee's membership of a trade union or participation in any activity connected to a trade union outside working hours, or with the consent of the employer, within working hours;
- (b) an employee seeking office as, or acting or having acted in the capacity of an employees' representative;
- (c) an employee who, in good faith, makes a complaint or participates in proceedings against the employer involving an alleged violation of any law;
- (d) the pregnancy of an employee, employee's absence on maternity leave or after her return to work, except on grounds unrelated to the pregnancy or birth of the child or nursing;
- (e) discrimination on the basis of race, tribe, place of origin, colour, creed, political opinion, sex, ethnicity, marital status, health status, disability, pregnancy or any other ground; or
- (f) an employee's refusal to work in an unhealthy and unsafe working environment.

60. (1) The employer may terminate a contract of employment without notice of the termination, where the employee has committed serious misconduct, in the course of his or her employment:

Termination of
employment
without notice

Provided that, the employer shall be deemed to have waived the right under this subsection, where the employer does not exercise such right within a reasonable period, after becoming aware of the misconduct in question.

(2) An employee may terminate a contract of employment without giving notice on the ground that —

- (a) the employee is transferred to a lower grade work;
- (b) the employee is mistreated by the employer or employer's representative;
- or
- (c) by virtue of the employee's employment, a threat or danger to such employee or the employee's family from violence or disease has arisen which was not contemplated by the contract of employment.

(3) An employee shall be deemed to have waived the right to terminate a contract of employment under subsection (2), unless the employee exercises such right within a reasonable period after becoming aware of the existence of the ground conferring that right.

61. (1) In any termination of employment for operational requirements, including a retrenchment for economic or technological reasons, the employer shall be required to —

Termination of
employment
for operational
requirements

- (a) give notice of any intention to retrench as soon as the employer contemplates retrenchment;
- (b) disclose all the relevant information on the intended retrenchment to an employee for the purpose of proper consultation with the employee;
- (c) consult before a contemplated retrenchment or redundancy on —
 - (i) the reasons for the intended retrenchment,
 - (ii) any measures to avoid or minimise the intended retrenchment,
 - (iii) the method of selection of the employees to be retrenched,
 - (iv) the timing of the retrenchment, and
- (d) the severance pay in respect of the retrenchment; and
- (e) give notice, make a disclosure and consult, in terms of paragraphs (a) to (c), with —
 - (i) a trade union recognised in terms of a collective labour agreement,
 - or
 - (ii) an employed person not represented by a recognized trade union.

(2) The employer shall ensure that a method of selection of the employees to be retrenched chosen by the employer shall be a fair method, and where reasonably practicable, be in accordance with the principle commonly known as first-in-last-out:

Provided that in so doing the employer shall take into account the —

- (a) need for the efficient operation of the undertaking in question; and

(b) ability, experience, skill and occupational qualification of each worker concerned.

(3) Where in the consultation held in terms of subsection (1), an agreement is not reached between the parties, the matter shall be referred to mediation in accordance with the provisions of the Employment and Labour Relations Act.

(4) Without prejudice to the other provisions of this Part in relation to the giving of notice, where the employer forms an intention to terminate a contract of employment for the purpose of reducing the size of the work force, the employer shall give written notice, in such manner as may be prescribed, of that intention to the Commissioner and to every employee to be or likely to be directly affected by the termination of employment.

62. (1) Upon the termination of a contract of employment, whether by reason of death or retirement of an employee, or for any other reason provided under this Part, the employer shall pay to an employee who has been in continuous employment for 60 months or more, a severance benefit at such rate, as may be prescribed, in accordance with the Employment and Labour Relations Act:

Provided that —

- (a) the severance benefit shall be payable at the conclusion of each period of 60 months' continuous service by such employee or at the termination of his or her employment, at the option of the employee;
- (b) where, upon the date of payment of any severance benefit, such employee, or the employee's dependent or beneficiary, is at that date or some future date entitled to the payment of a gratuity or pension or both a gratuity and pension in respect of the period of employment under the contract of employment, a severance benefit which would otherwise be payable in terms of this section, to such employee or his or her dependent or beneficiary shall not be payable; and
- (c) where the continuous employment began at any time before the commencement of this Act, that employment shall be deemed, for the purposes of this section, to have begun at the commencement of this Act.

(2) Notwithstanding subsection (1), the employer shall, in the case of a termination of a contract of employment before an employee has served a continuous period of 60 months, pay to the employee a severance benefit at a rate proportionate to that employee's length of service.

(3) For purposes of calculating the severance benefit payable in accordance with this section —

- (a) in subsection (1) —
 - (i) "month", in relation to the first 60 months of continuous employment, means a complete month and, in relation to continuous employment after the 60 months, means a complete month or any fraction of the month, and

(ii) “basic pay” means the basic pay payable to the employee at the time of the termination of the contract of employment; and

(b) where, at the time of the termination of the contract of employment, any leave is due to the employee or he or she has any other right of absence under this Act, the period of that leave or other right of absence shall be deemed to be part of his or her period of continuous employment.

(4) Where a severance benefit is payable in accordance with this section, either the employer or employee may, where there is a dispute as to the amount payable, apply, within such period and in such form and manner as may be prescribed, to the Commissioner to determine the amount of the benefit and where such application is made, the Commissioner shall immediately proceed to determine the amount of the benefit.

(5) Where the employer or employee is dissatisfied with any determination made by the Commissioner, in accordance with this subsection (4), the employer or employee, as the case may be, may appeal against that determination, within such period and in such form and manner as may be prescribed, to the Industrial Court which may either dismiss the appeal and confirm the Commissioner’s determination or allow the appeal, either wholly or in part, and vary the amount of the benefit accordingly.

63. (1) In this section, “employee” means a public officer subject to permanent and pensionable terms of service, in this Act referred to as “compulsory retirement age”.

Retirement of
public officers

(2) Subject to the provisions of this section, an employee shall retire from the public service on attaining the age of 60 years.

(3) The Minister may prescribe an age greater than —

(a) 60 years, for the purpose of the retirement of employees under subsection (2); or

(b) 45 years for the purpose of the retirement of employees under subsections (4) and (5).

(4) An employee who has attained the age of 45 years may voluntarily retire from the public service.

(5) An employee who retires voluntarily under subsection (4), shall do so by giving the Permanent Secretary of his or her Ministry or Department, written notification of his or her intention to do so, at least three months prior to the date on which he or she intends to retire.

(6) The appointing authority may, for reasons of public interest, retain an employee in his or her office beyond the compulsory retirement age, for such period as the appointing authority may determine, where such employee is willing to be retained in such employment.

(7) Nothing in this section shall be deemed to affect any provision of the Constitution relating to the termination of appointment or retirement, of an officer appointed to a public office in terms of the Constitution.

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Termination
on medical
grounds

64. (1) Where it appears to the appointing authority, that an employee is incapable of discharging the functions of his or her office or is not discharging those functions satisfactorily by reason of any infirmity of mind or body, the appointing authority, shall direct such employee to submit, to a medical examination by an approved medical practitioner, or a medical board appointed by the Permanent Secretary in the ministry responsible for health, to ascertain whether or not such employee is incapable to perform his or her duties.

(2) An employee who refuses or fails, without reasonable excuse, to submit to a medical examination as required under subsection (1), shall be guilty of misconduct and shall be liable to disciplinary action in terms of this Act.

(3) After the employee has been examined by a medical practitioner, the Permanent Secretary in the ministry responsible for health, shall —

- (a) forward the report of the medical examination to the appointing authority; and
- (b) furnish the employee with a copy of the report of the medical examination.

(4) The appointing authority shall allow the employee, not less than 14 days from the employee's receipt of the copy of the report, to make in writing, any representations which the employee wishes to make.

(5) The appointing authority may, on the basis of the report of the medical examination and having considered the employee's representation, terminate the employee's appointment on medical grounds, if satisfied that the employee is incapable of discharging the functions of his or her office, or is not discharging those functions satisfactorily due to infirmity of mind or body.

(6) The appointing authority may not terminate the employment of an employee for physical or mental incapacity, unless the appointing authority has —

- (a) investigated the extent of the incapacity to perform work, and a medical practitioner has issued a medical certificate to that effect, and due consideration has been taken by the employer for an alternative to termination of employment, including adapting work circumstances of the employment to accommodate the employee's inability to work; or
- (b) given the employee an opportunity to respond and to be assisted by a co-employee chosen by such employee or trade union representative.

(7) Nothing in this section shall be deemed as preventing an employee from requesting, of his or her own accord, to be examined by a medical practitioner or medical board.

PART XII — *Misconduct and Unsatisfactory Service*

Particular
types of
misconduct

65. It is misconduct for an employee to —

- (a) be absent from duty without leave or reasonable excuse;

- (b) sleep on duty;
- (c) engage in any activity outside his or her official duties which is likely to involve him or her in any of the conducts set out under section 6 (2) or to lead to his or her taking improper advantage of his or her position in the public service:

Provided that, it shall not be a misconduct for an employee to engage in lawful trade union activities, in accordance with the provisions of this Act and any other written law;

- (d) engage in any gainful occupation outside of the public service, without the consent of the appointing authority;
- (e) appoint or promote any person to a post in the public service or send any person on a course of training on the basis of consanguinity, affinity, amity, amorous relationship, tribe, favouritism, or on any other consideration, other than on merit based on fair and open competition;
- (f) while on duty, be grossly discourteous to members of the public or any person or conduct himself or herself in a disgraceful, improper or unbecoming manner; or
- (g) sexually harass another employee.

66. (1) Disciplinary proceedings against an employee who commits an act of misconduct, shall be prompt and in accordance with the rules of natural justice.

Disciplinary proceedings for misconduct

(2) The procedure to be followed in respect of a disciplinary action shall be as may be agreed by collective bargaining.

67. The following are the punishments that may be imposed in disciplinary proceedings under this Act, in respect of misconduct —

Punishments for misconduct

- (a) a reprimand;
- (b) stoppage of increment, that is non-payment of an increment otherwise due, for a specified period;
- (c) deferment of increment, that is a postponement of the date on which the next increment is due;
- (d) any sanctions short of dismissal, such as —
 - (i) a demotion,
 - (ii) suspension from duty, without pay for a period not exceeding one month; or
- (e) dismissal.

68. (1) An employee who is guilty of serious misconduct may be summarily dismissed from the public service.

Serious misconduct and summary dismissal

(2) Except in those cases in which the employer cannot reasonably be expected to hold a disciplinary enquiry, the employer shall not disregard the rules of natural justice in dealing with cases of summary dismissal.

69. For the purposes of this Part, “serious misconduct” shall, without prejudice to its general meaning, include the following —

Definition of serious misconduct

- (a) habitual or wilful neglect of duty;
- (b) wilful disobedience of lawful or reasonable orders given by the employer;

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- (c) wilful, expressed or implied, misrepresentation by the employee in respect of his or her skills or qualifications;
- (d) while on duty, the employee is under the influence of an intoxicating, illegal, unauthorised, habit-forming drugs, including alcohol;
- (e) wilful refusal to obey or comply with any safety rules or practices for the prevention or control of accidents or diseases;
- (f) refusal to obey security rules and regulations;
- (g) work performance below average, for reasons not related to the capacity of the employee, despite being issued with a final written warning;
- (h) persistent absence from work without permission;
- (i) wilful disclosure of information, where such disclosure has not been authorised by Government or pursuant to any law or court order;
- (j) acts of corruption, bribery, conflict of interest and cheating the public revenue, and any other conduct prohibited under the Corruption and Economic Crime Act;
- (k) acts of theft against Government, another employee, or client of Government;
- (l) any employee who, in the course of his or her duties engages in an amorous or sexual relationship with or sexually harasses a student or a child under that officer's mentorship, authority, control or care;
- (m) serious damage to Government property, caused by wilful or gross negligence;
- (n) loss of Government funds caused by wilful or gross negligence;
- (o) accepting a gift without declaration;
- (p) assaulting, attempting to assault or threatening to assault another employee or person while on duty;
- (q) engaging in other remunerative employment, occupation or business, without the prior consent of the employer or operating any business for the employee's own benefit, during working hours or within Government premises;
- (r) carrying or keeping firearms or other dangerous weapons on Government premises, without authority from the employer;
- (s) falsifying records or any other official documentation used, for official purposes;
- (t) misappropriation of assets belonging to the Government, another employee or client of Government; and
- (u) wilful dishonesty against Government, another employee or client of Government.

Inefficiency

70. (1) Subject to section 58, if a supervising officer is satisfied that an employee is inefficient or not discharging the functions of his or her office satisfactorily or to the performance standards specified in a contract relating to his or her appointment, the supervising officer shall submit a report thereon to the Permanent Secretary.

- (2) If the Permanent Secretary is satisfied that —
- (a) there are reasonable grounds to substantiate the allegation of inefficiency or unsatisfactory performance; and
 - (b) the employee has failed to improve his or her performance despite having been given reasonable opportunity to do so, the Permanent Secretary, shall cause the employee concerned to be furnished with a written statement of the grounds on which it is alleged that he or she is incapable of carrying out his or her duties efficiently or satisfactorily, giving the employee 14 days within which to respond, in writing, to the allegations.
- (3) If the Permanent Secretary finds that the allegations of inefficiency or unsatisfactory performance have been proved, the Permanent Secretary may take any of the courses of action set out in section 67.
- (4) The Permanent Secretary to the President may not terminate the employment of an employee for inefficiency or unsatisfactory performance, unless the Permanent Secretary to the President —
- (a) notified the employee of the required standard of performance; or
 - (b) given the employee, a fair opportunity to meet the required standard of performance, including an opportunity to be heard and to be assisted by a co-employee chosen by such employee or trade union representative.
- (5) This section shall not apply, if an employee's inefficiency or unsatisfactory performance is due to infirmity of body or mind.

PART XIII — *Settlement of Disputes*

71. In this Part —

Definitions

- “action short of a strike” means any method of working, undertaken by employees acting in combination or under a common understanding, which method of working slows down normal production or the execution of the normal function under their contracts of employment, of the employees undertaking such method of working;
- “dispute” means a trade dispute, and includes —
- (a) an alleged dispute;
 - (b) a dispute between trade unions;
 - (c) a grievance;
 - (d) a dispute of interest; or
 - (e) any dispute over —
 - (i) the application or the interpretation of any law relating to employment,
 - (ii) the terms and conditions of employment of any employee or any class of employees, or the physical conditions under which such employee or class of employees may be required to work,
 - (iii) the entitlement of any person or group of persons to any benefit under an existing collective agreement,

- (iv) the existence or non-existence of any collective agreement,
- (v) the dismissal, employment, suspension from employment, retrenchment, re-employment or reinstatement of any person or group of persons,
- (vi) the recognition or non-recognition of a trade union seeking to represent employees in the determination of their terms and conditions of employment, or
- (vii) whether a dispute exists or does not exist;

“dispute of interest” means a dispute concerning the creation of new terms and conditions of employment, or the variation of existing terms or conditions of employment;

“dispute of right” means a dispute concerning an alleged infringement of a right flowing from statutory law, collective agreement or individual contract of employment, or the conferment of a benefit to which the claimant is legally entitled; and

“grievance” means a dissatisfaction or a feeling of injustice affecting an employee or group of employees, arising out of that employee’s or group of employees’ work or employment relationship or situation, and reported by the employee or employees to the employer.

Grievances

72. (1) An employee who has a grievance against the employer, may refer the grievance to the Commission or the Mediation and Arbitration Commission for mediation and arbitration.

(2) The provisions of Part XXXII of the Employment and Labour Relations Act, shall apply with the necessary modifications, to proceedings before the Independent Mediation and Arbitration Commission.

(3) An employee who is aggrieved by the decision of the Commission or the Independent Mediation and Arbitration Commission made in terms of subsection (1), may appeal such decision to the Industrial Court or the High Court and in his or her court papers, shall cite the appointing authority or the decision maker, against whose decision the employee is aggrieved.

PART XIV — *Freedom of Association of Public Officers*

Objects and interpretation of Part XIV

73. The principal objects of this Part shall be to give effect to freedom of association, in compliance with the international obligations Botswana is party to.

Right to join union

74. (1) An employee shall have the right to belong to a trade union of his or her choice for the purpose of collective bargaining.

(2) An employee who is eligible for the membership of a trade union shall not be prevented, except by the trade union itself acting in accordance with its rules, from becoming or remaining a member of the union.

(3) The employer shall not prohibit an employee from being or becoming a member of a registered trade union, nor subject an employee to any penalty by reason of his or her membership or participation in the lawful activities of a registered trade union or organisation.

(4) Notwithstanding any other provision of this Act, an employee at senior management level, shall not be represented by a negotiating body, in respect of matters bearing upon relations between the employee and the employer:

Provided that, the negotiating body represents only employees at senior management level.

75. (1) The employer shall not —

- (a) make it a condition of employment of an employee, that the employee shall not be or become a member of any trade union or other organisation representing employees in any industry or participate in the activities of a trade union or such organisation; or
- (b) prohibit an employee from being or becoming a member of any trade union or other organisation representing employees in any industry or subject the employee to any penalty by reason of the employee's membership or participation in the activities of a trade union or such organisation.

Protection from discrimination based on freedom of association

(2) The provisions of subsection (1) shall not apply to employees in senior management, superscale officers or officers appointed by the President in terms of the Constitution.

76. (1) A trade union which is representative of one third of the employees of the employer, engaged in the same trade may apply to the Director General for recognition.

Recognition of public officers' unions

(2) The factors to be considered by the employer in determining whether a trade union meets the requirements for recognition, shall include —

- (a) the nature of the rights that the trade union seeks to exercise;
 - (b) the extent of union organisation at the employer and in the industry generally;
 - (c) the composition of the employees of the employer, taking into account the extent to which there are employees employed on temporary or part-time terms and employees workers employed on fixed term contracts and permanent and pensionable terms;
 - (d) the financial and administrative burden of requiring the employer to grant organisational rights to more than one trade union;
 - (e) whether a recognition would promote orderly collective bargaining and encourage development of a representative trade union in the employer, or if it would result in the proliferation of trade union representation in the employer;
 - (f) the desire of the parties and the interests of an orderly and effective collective bargaining;
 - (g) the efficiency of operations in the employer;
 - (h) the organisational and administrative structure of the public service;
- and

- (i) the arrangements for sectoral collective bargaining including arrangements under the auspices of the Bargaining Council.
- (3) The Director General shall, within 30 days of receipt of an application in terms of section (1), notify a trade union whether the employer —
 - (a) grants the trade union recognition, in terms of this Act; or
 - (b) refuses to grant the trade union recognition.
- (4) The Director General may refuse to recognise a trade union on the grounds that the —
 - (a) employer disputes the appropriateness of the proposed trade union as a bargaining unit;
 - (b) trade union does not represent at least one third of the employees of the employer; or
 - (c) Industrial Court has authorised the withdrawal of recognition and the period provided in that order has not expired.
- (5) Where a trade union is aggrieved by a decision to refuse to recognise a trade union, or by the Director General's failure to respond to an application under subsection (1) within the 30 days, the trade union may, in such manner as may be prescribed, refer the dispute to the Independent Mediation and Arbitration Commission.
- (6) Where a dispute referred to in subsection (5) remains unresolved after 30 days of referral of the dispute, any party to such dispute may refer the dispute to the Industrial Court for determination.
- (7) Where a dispute concerns whether a trade union represents at least one third of the employees of the employer engaged in the same trade, the Industrial Court may direct the assigned mediator to conduct a ballot to determine the dispute.
- (8) A recognition agreement in terms of this section shall be, in writing and shall provide, for procedures for reviewing, amending or terminating the recognition agreement, and for the settlement of disputes between employees and the employer.
- (9) Every trade union that is recognised in terms of this Act and the Employment and Labour Relations Act, shall be entitled to have —
 - (a) authorised representatives of the union granted access to the employer's premises for purposes of recruiting members, holding meetings or representing members;
 - (b) trade union dues and levies deducted from employer's wages, on the written authorisation of the employees; and
 - (c) trade union representatives appointed by the union from amongst its members, recognised by the employer for purposes of representing employees, in respect of —
 - (i) grievances,
 - (ii) discipline, and
 - (iii) termination of employment.
- (10) The employer may impose —
 - (a) reasonable limits as to frequency, time and place, on the access of authorised representatives to Government premises; or

(b) reasonable limits on the number of trade union representatives to be appointed to represent its members.

(11) An employee who authorises a deduction of trade union dues and levies, may withdraw the authorisation, in writing, to both the employer and trade union.

(12) Where the constitution of a trade union requires the election of trade union representation at the workplace, the employer shall, subject to reasonable limitations as to place and time, permit the elections during working hours.

(13) Unless there is a collective agreement providing otherwise, any dispute concerning the provisions of this section shall be referred to the Bargaining Council, in accordance with this Act, for mediation.

(14) If the dispute is not settled within 30 days of the referral, any party may refer the dispute to the Industrial Court for determination.

77. (1) The employer who has granted recognition to a trade union in terms of this Part shall bargain in good faith with the trade union on the following matters, the —

(a) remuneration and other terms and conditions of employment, including the physical conditions under which an employee is required to work;

(b) employment benefits;

(c) collective bargaining relationship including the —

(i) organisational rights, and

(ii) negotiation and dispute procedures; and

(d) any other agreed matter.

(2) A trade union that has been granted recognition in terms of this Act, shall bargain in good faith with the employer in respect of any of the matters referred to in subsection (1).

(3) Notwithstanding the provisions of subsection (1), a trade union that has been granted recognition, shall not be represented, during consultations and negotiations by a person —

(a) holding office in any political party; or

(b) being a member of the National Assembly, a councillor or a member of *Ntlo ya Dikgosi*.

(4) A dispute concerning the duty to bargain in good faith may be referred to the Mediation and Arbitration Commission for mediation.

(5) Where the Independent Mediation and Arbitration Commission fails to resolve a dispute in terms of subsection (3), the Commission may refer the dispute to the Industrial Court for determination.

78. (1) The employer may apply to the Independent Mediation and Arbitration Commission to withdraw the recognition of a union that —

(a) no longer represents one third of the employees of the employer engaged in the same trade;

(b) refuses or fails to comply with an award or an order of the Industrial Court; or

(c) has materially breached a collective agreement concluded with the employer.

Bargaining
rights and duty
to bargain in
good faith

Withdrawal of
recognition

(2) Part XXXI of the Employment and Labour Relations Act shall, with the necessary modifications, apply to a mediation conducted in terms of this section.

(3) Where a dispute remains unresolved for 30 days, either party may refer the dispute to the Industrial Court for determination.

(4) Where a dispute has been referred to the Industrial Court in terms of subsection (3), the Industrial Court may, if the dispute concerns —

- (a) the representativeness of a trade union —
 - (i) direct the Mediation and Arbitration Commission to conduct a ballot to determine the question, or
 - (ii) give the trade union an opportunity to achieve the one third; or
- (b) a material breach of a collective agreement —
 - (i) suspend or authorise the withdrawal of any of the organisational rights granted to a trade union, or
 - (ii) suspend or authorise the withdrawal of recognition.

(5) Where the Industrial Court authorises a withdrawal of recognition of a trade union as a bargaining unit, the Industrial Court shall include in its order, the period within which the trade union shall not be entitled to recognition.

PART XV — *Industrial Action*

Strikes
by senior
management

79. Notwithstanding the provisions of section 80 (1), an officer in senior management, a superscale officer or an officer appointed by the President in terms of the Constitution, shall not engage in a strike or action short of a strike.

Lawful strikes,
etc.

80. (1) An employee who takes part in a strike or lockout, as the case may be, in compliance with the provisions of this Part, does not commit a delict or a breach of contract.

(2) An employee who takes part in a strike shall not be dismissed for doing so, but this shall not preclude the employer from dismissing such employee during a strike or lockout for any other reason authorised by this Act or that is valid and fair.

(3) Notwithstanding the provisions of subsection (1), the employer is not obliged to remunerate an employee for services that the employee does not render during the strike or lockout, in compliance with the provisions of this Part.

(4) The employer may not institute civil proceedings against any employee for participating in a strike or lockout, carried out in compliance with this Part, except any act in contemplation or furtherance of a strike that constitutes defamation or an offence.

Certain strikes
or lockouts not
permitted

81. (1) An employee or employer shall not engage in a strike or lockout, as the case may be —

- (a) which is not in compliance with the provisions of this Part or an agreed procedure;
- (b) which is in breach of a peace clause in a collective agreement;

- (c) the subject matter of which is not a dispute in terms of this Act;
 - (d) the subject matter of which is not a matter regulated by a collective agreement; or
 - (e) the subject matter of which the parties to the dispute have agreed to refer to arbitration or to the Industrial Court for adjudication.
- (2) The Industrial Court may interdict —
- (a) a strike or lockout that is not in compliance with this Act; or
 - (b) conduct —
 - (i) in contemplation or in furtherance of a strike or lockout, and
 - (ii) that is not in compliance with this Act.
- (3) An interdict contemplated under subsection (2), may not be granted unless —
- (a) the applicant has given the prescribed notice to the respondent of its intention to apply for an interdict;
 - (b) the applicant has served a copy of the notice and application on the Bargaining Council; and
 - (c) the respondent has been given a reasonable opportunity to be heard, before a decision is made.
- (4) An employee who wilfully breaches his or her contract of employment knowing or having reasonable cause to believe that the probable consequence of his or her doing so, either alone or in combination with others, will be —
- (a) to deprive the public or any section of the public, either wholly or to a substantial extent, of an essential service or substantially to diminish the enjoyment of an essential service by the public or by any section of the public; or
 - (b) to endanger human life or public health or to cause serious bodily injury to any person or to expose valuable property, whether movable or immovable, to the risk of destruction, deterioration, loss or serious damage,
- commits an offence and is liable to a fine not exceeding P2 000 or to imprisonment for a term not exceeding 12 months, or to both.
- (5) A person who causes, procures, counsels, or influences any employee to breach his or her contract of employment, knowing or having reasonable cause to believe that the probable consequence of that employee's breach of his or her contract of employment, either alone or in combination with others, will be any of the consequences specified in subsection (4), commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding 24 months, or to both.

PART XVI — *Collective Bargaining in the Public Service*

82. (1) A bargaining council for the public service, to be known as the Public Service Bargaining Council (hereinafter referred to as “the Bargaining Council”), shall be established and registered in terms of this Part.

Establishment
of Public
Service
Bargaining
Council

(2) The Public Service Bargaining Council shall consist of the following members —

- (a) Government, as the employer; and
- (b) a trade union that meets the threshold for admission in terms of the constitution of the Bargaining Council.

(3) The threshold for admission of a trade union to the Bargaining Council shall be determined in accordance with the following criteria —

- (a) the nature of the workplace;
- (b) the nature of the rights that the trade union seeks to exercise;
- (c) the arrangements in place for collective bargaining;
- (d) the organisational history at the workplace;
- (e) the composition of the employees at the workplace; and
- (f) whether recognition would promote orderly collective bargaining.

(4) For the purposes of this section, a trade union includes two or more trade unions acting jointly.

Functions of
Bargaining
Council

83. The functions of the Bargaining Council shall be to —

- (a) negotiate, conclude and enforce collective agreements between the employer and recognised public service trade unions;
- (b) facilitate cooperation between the employer and public officers, regarding matters affecting the public service, in order to increase efficiency of the service and the wellbeing of public officers;
- (c) facilitate better relations between Government as employer, and trade unions, based on mutual trust and respect;
- (d) determine, by collective agreement, the matters which may not be an issue in dispute for the purposes of a strike or lock-out at the workplace; and
- (e) exercise any other power or duty that may be necessary or desirable to achieve the objectives of the Bargaining Council.

Constitution
of Bargaining
Council

84. (1) As soon as practicable after the commencement of this Act, the representatives of the Government in its capacity as the employer and a simple majority of recognised trade unions whose members are public officers to whom this Act applies, shall agree on a constitution for the Council.

(2) The constitution of the Bargaining Council shall provide, amongst other things, for the following matters —

- (a) the category or categories of employees that may be covered by the Bargaining Council;
- (b) the number of employer and employee representatives and alternate representatives of both the employer and employees;
- (c) the appointment and method of selection of a Chairperson and Deputy Chairperson of the Bargaining Council;
- (d) the appointment and method of selection of the Secretary of the Bargaining Council;
- (e) the procedure for the convening and conducting of meetings of the Bargaining Council, including the number of seats required to form a quorum and the minutes of the proceedings of the meetings of the Bargaining Council;

- (f) the procedure for the replacement of representatives;
- (g) the term of office of the Bargaining Council office holders;
- (h) the procedure to be followed in the event of a dispute or deadlock in the Bargaining Council;
- (i) the methods by which persons affected by any collective agreement made or amended by the Bargaining Council shall be informed;
- (j) the thresholds for the admission of trade union parties of the Bargaining Council;
- (k) the establishment and functions of committees of the Bargaining Council;
- (l) the manner in which decisions of the Bargaining Council are to be reached;
- (m) the procedure for the exemptions from any provisions of a collective agreement;
- (n) activities or matters that the Bargaining Council considers as political activities or political matters;
- (o) the procedure by which the Bargaining Council may resolve to wind up its operations; and
- (p) such other matters as may be included and approved by the Registrar.

(3) The parties shall submit a copy of the proposed constitution, together with any other information that may assist the Registrar to determine whether the constitution meets the requirements for registration.

(4) The Registrar shall, upon being satisfied that the proposed constitution complies with the provisions of the Employment and Labour Relations Act, register the constitution.

85. (1) Any proposed changes to the constitution of the Bargaining Council as adopted by the parties, shall be submitted to the Registrar, for approval.

Amendment of
constitution

(2) The Registrar shall, upon being satisfied that the proposed changes to the constitution comply with the Employment and Labour Relations Act, approve the proposed changes to the constitution.

86. (1) The Bargaining Council may, by resolution, in terms of its constitution —

Bargaining
councils in
public service

- (a) designate any sector of the public service for the establishment of a sectoral bargaining council;
 - (b) designate the powers and functions of such sectoral bargaining councils; and
 - (c) vary the designation of, or establish, amalgamate or dissolve any sectoral bargaining council so established.
- (2) The resolution referred to in subsection (1), shall accompany the application —
- (a) to register a sectoral bargaining council;
 - (b) to vary the application of a sectoral bargaining council, for registration; or
 - (c) to register the amalgamation of a sectoral bargaining council.

B.60

Jurisdiction
of sectoral
bargaining
councils

(3) Subject to subsection (1), a trade union recognised in terms of section 76 shall be a member of a sectoral bargaining council.

87. (1) A sectoral bargaining council shall have jurisdiction in respect of matters that are specific to that sector and, in respect of which Government, as employer, in that sector, may conclude collective agreements on —

- (a) the terms and conditions of employment that apply to the sector;
- (b) the regulation of relations between the employer and employees; and
- (c) the hours of work and rest periods for a specific sector.

(2) The decision of a sectoral bargaining council shall not bind the Bargaining Council, but the decisions of the Bargaining Council, in respect of general matters affecting the public service shall bind the sectoral bargaining council.

(3) Notwithstanding the provisions of subsection (2), the sectoral bargaining councils may make recommendations to the Bargaining Council, which shall then make such decision, as it considers appropriate within the scope of its constitution.

Rights of
trade unions
in Bargaining
Council

88. Every trade union that meets the threshold for admission, in terms of the constitution of the Bargaining Council, shall be entitled to be a party in the Bargaining Council.

Disclosure of
information

89. (1) Subject to the provisions of subsections (2) to (5), the employer shall, on request disclose all relevant information to a trade union that is a member of the Bargaining Council, that is reasonably required to allow the trade union to consult or bargain collectively.

(2) The employer shall notify the trade union, in writing, if any of the information requested by the union is information which may not be disclosed in terms of subsection (3).

(3) The employer shall not disclose information —

- (a) that is legally privileged;
- (b) that the employer cannot disclose without contravening a prohibition imposed on the employer by any law or order of court;
- (c) that is confidential and which, if disclosed, may cause material harm to an employee or the employer; or
- (d) that is private personal information relating to an employee, unless that employee consents to the disclosure of that information.

(4) Unless there is a collective agreement providing otherwise, any dispute concerning the provisions of this section, shall be referred to the Independent Mediation and Arbitration Commission for mediation, in terms of the Employment and Labour Relations Act.

(5) If the dispute is not settled within 30 days of the referral, any party may refer the dispute to the Industrial Court for determination.

PART XVII — *General Provisions*

General duties
of public
officers

90. It shall be the duty of every public officer to adhere to the principles and standards set out in section 6.

91. An employee shall not receive or keep, for his or her own use, any fee, reward or remuneration of any kind beyond his or her emoluments for the performance of any service for the Government, unless specially authorised by the —

Fees for
official
services

- (a) law;
- (b) terms of his or her appointment; or
- (c) the Permanent Secretary to the President, in writing.

92. Subject to the provisions of any other written law, an employee shall not cede, assign or transfer the whole or any part of any salary or allowance payable to him or her, without the written approval of the Director General:

Emoluments
not to be
ceded

Provided that the approval by the Director General, shall be given after consultation with the Permanent Secretary in the ministry responsible for finance, or the Minister responsible for finance.

93. (1) Where a supervising officer becomes aware that criminal proceedings have been or are about to be instituted against an employee, or considers that disciplinary proceedings should be instituted against an employee, and is of the opinion that the employee should be suspended from the performance of his or her duties for the purposes of conducting investigations into the allegations made against the employee, the supervising officer shall report the matter, in writing, giving valid reasons for the suspension, to the Permanent Secretary, recommending the suspension of the employee:

Suspension

Provided that where the Permanent Secretary is the supervising officer, he or she shall take such action as may be taken by a supervising officer in accordance with subsections (2) and (3).

(2) If on receipt of a report under subsection (1), the Permanent Secretary is of the opinion that the employee may tamper with evidence or his or her continued presence is likely to cause disturbance, injury, loss, damage to Government property or have an adverse effect on the image of the public service, the Permanent Secretary, shall suspend the employee from duty.

(3) Where the appointing authority suspends the employee, the employee's salary shall not be withheld during the period of suspension.

(4) Disciplinary proceedings may be brought and concluded against an employee, notwithstanding that criminal proceedings arising out of the same facts are being investigated or are pending against that employee:

Provided that no statement made or evidence given by the officer in the disciplinary proceedings, shall be used against him or her in any criminal proceedings arising from the same facts.

PART XVIII — *Offences and Penalties*

94. Any person who otherwise than in the course of his or her duty, or in the course of his or her duty improperly, directly or indirectly by himself or herself, or by any other person in any manner whatsoever, influences or attempts to influence the decision of the Permanent Secretary to the President, the Director General, an appointing authority, or a supervising officer, commits an offence and is liable to a fine not exceeding P10 000 or imprisonment for a term not exceeding two years, or to both:

Improperly
influencing
appointing
authority

B.62

Provided that, nothing in this section shall be deemed to make unlawful, the giving of any reference or testimonial to any applicant or candidate for any public office or the supplying of any information or assistance, requested by such officer.

Supplying false information

95. A person who, in connection with the exercise, by the Permanent Secretary to the President, the Director General, an appointing authority, a supervising officer or the Commission, of his or her or its functions, wilfully gives, to such person, any information which he or she knows to be false or does not believe to be true or which he or she knows or believes to be misleading by reason of the omission of any material particular, commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding two years, or to both.

Improper disclosure of information

96. (1) An employee or other person who, without the written permission of the Permanent Secretary to the President knowingly publishes or discloses to any other person otherwise than in the exercise of his or her official functions, the contents of any document, to his or her notice in the course of his or her duties, commits an offence and is liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding four years, or to both.

(2) A person who knows of any information which to his or her knowledge has been disclosed in contravention of subsection (1) and who publishes or communicates it to any other person, otherwise than for the purposes of any prosecution under this Act or in the course of his or her official duty, commits an offence and is liable to a fine not exceeding P50 000 or the imprisonment for a term not exceeding four years, or to both.

PART XIX — *Miscellaneous Provisions*

Regulations

97. The President may make regulations for the better carrying out of the purposes and provisions of this Act, and without derogation from the generality of the foregoing, such regulations may provide for —

- (a) the procedure for making applications for the creation and abolition of public offices;
- (b) the conditions, rights and obligations of the parties to a contract of employment and the form and manner of consent to enter into such contract of employment;
- (c) the procedure for notifying and advertising vacancies in the public service;
- (d) the procedure for the engagement or re-engagement of public officers on contract;
- (e) the setting up of bodies for the purpose of consultation between Government and public service staff and the procedure and functions of such bodies;
- (f) the procedure for lawful termination of employment;
- (g) the setting up of a body which may conduct examinations in connection with any scheme of service or for any other purpose of the public service;

- (h) a code of conduct for the public service;
- (i) the general conditions of service for employees in the public service or specific conditions of service for particular categories of employees, including the —
 - (i) hours of work,
 - (ii) number of days for annual leave,
 - (iii) rates to be paid by the employer, for annual leave with pay,
 - (iv) procedure to be applied for accumulated annual leave; or
- (j) anything in this Act which is to be or may be prescribed.

98. The Public Service Act and the Public Service (Amendment) Act are hereby repealed.

Repeal of Cap.
26:01 and Act
No. 6 of 2025

99. (1) Any administrative structures of the public service in existence immediately before the commencement of this Act shall, to the extent that their continued existence is not inconsistent with this Act, continue in existence.

Savings and
transitional
provisions

(2) The public service positions which were in existence immediately before the commencement of this Act shall, except where inconsistent with this Act, continue in existence.

(3) Every position which was classified as a senior management position immediately before the commencement of this Act, shall continue as if established under this Act.

(4) Notwithstanding the provisions of section 10, an officer who is in senior management and is permanent and pensionable upon the commencement of this Act, shall be given a period of 24 months to have changed the terms of his or her contract to fixed term:

Provided that, the officer shall not be subject to any condition of service which is less favourable to the officer than any similar condition which applied to the officer immediately before the commencement of this Act.

(5) Every person employed in terms of a contract of employment immediately before the commencement of this, Act, shall not be subject to any condition of service which is less favourable to that person, than any similar condition which applied to that person under the repealed Act.

(6) Any decision or action lawfully taken by the Permanent Secretary to the President, the Director General, a Permanent Secretary, appointing authority or any public officer under the repealed Act, in so far as such decision or action is not inconsistent with the provisions of this Act, are deemed to be decisions made and actions taken under this Act.

(7) Any action, suit or legal proceedings issued in terms of the repealed Act which are pending on the date of commencement of this Act, shall continue to be carried out or prosecuted in terms of this Act and no such suit, action or legal proceedings shall abate or be affected by the coming into operation of this Act.

(8) Any subsidiary legislation made under the repealed Act and in force immediately prior to the coming into operation of this Act shall, in so far as such legislation is consistent with the provisions of this Act, continue to be in force as if made under this Act.

