

**CHAPTER 65:03**  
**ATMOSPHERIC POLLUTION (PREVENTION)**  
ARRANGEMENT OF SECTIONS

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Act 18, 1971.

**An Act to provide for the prevention of the pollution of the atmosphere by the carrying on of industrial processes and for matters incidental thereto.**

[Date of Commencement: 14th May, 1971]

**PART I**  
***Preliminary (ss 1-2)***

**1. Short title**

This Act may be cited as the Atmospheric Pollution (Prevention) Act.

**2. Interpretation**

In this Act, unless the context otherwise requires-

**"Air Pollution Control Officer"** means the person appointed as Air Pollution Control Officer in terms of section 3;

**"best practicable means"**, when used with reference to the prevention of the escape into the atmosphere of objectionable matter, includes within its reference the provision and efficient maintenance of the appliances necessary to that end, the effective care and operation of such appliances, the manner in which such appliances are used and the proper supervision, by the owner, of any operation in which noxious and offensive gases are evolved and the

adoption of any other methods which, having regard to local conditions and circumstances, the prevailing extent of technical knowledge and the cost likely to be involved, may be reasonably practicable and necessary for the protection of any section of the public against the emission of objectionable matter;

**"Board"** means the Atmospheric Pollution Appeals Board established by section 12;

**"controlled area"** means any area which has under section 7 been declared to be a controlled area;

**"dust"** means any solid matter in a fine or disintegrated form which is capable of being dispersed or suspended in the atmosphere;

**"industrial process"** means any process prescribed by the Minister which is involved in any trade, occupation or manufacture devoted to production by physical, mechanical, electrical, chemical or thermal means, including any process involved in metallurgical operations, operations for the generation of power, and ancillary operations;

**"inspector"** means a person appointed as inspector in terms of section 3;

**"noxious or offensive gases"** means any of the following groups of compounds when in the form of gas, namely, hydrocarbons; alcohols; aldehydes; ketones; ethers; esters; phenols; organic acids and their derivatives; halogens, organic nitrogen, organic sulphur, sulphur and halogen compounds; cyanides; cyanogens; ammonia and its compounds; inorganic acids; fumes containing antimony, arsenic, beryllium, chromium, cobalt, copper, lead, manganese, mercury, vanadium or zinc or their derivatives; fumes from tar-works; cement-works fumes and odours from purification plants, glue factories, cement-works and meat or fish processing factories; and any other gas, fumes or particular matter prescribed as noxious or offensive gas for the purposes of this Act; and includes dust from asbestos treatment or mining;

**"objectionable matter"** means smoke, gases including noxious or offensive gases, vapours, fumes, grit, dust or other matter capable of being dispersed or suspended in the atmosphere which is produced or is likely to be produced by any industrial process;

**"owner"** includes any owner, lessee or occupier of property on which an industrial process is being carried on or any other person responsible for carrying on any industrial process on any property;

**"premises"** means any building or other structure together with the land on which it is situated and any adjoining land occupied or used in connection with any activities carried on in such building or structure, and includes any land without any buildings or other structures;

**"regulation"** means a regulation made under the provisions of section 15;

**"smoke"** includes soot, ash, grit and gritty particles emitted in smoke.

## **PART II**

### **Administration (ss 3-6)**

#### **3. Appointment of officers**

(1) The Minister shall, for the purposes of this Act, appoint-

- (a) an Air Pollution Control Officer who shall, under the directions of the Minister, exercise the powers and perform the functions assigned to him under this Act; and
- (b) as many persons as he may consider necessary to be inspectors under this Act.

(2) The Air Pollution Control Officer and inspectors appointed under the provisions of subsection (1) shall be persons who are technically qualified and experienced to exercise control over atmospheric pollution due to industrial processes.

(3) Every inspector shall be furnished with a certificate signed by the Air Pollution Control Officer stating that he has been appointed as an inspector under this Act.

#### **4. Powers of Air Pollution Control Officer and inspectors**

(1) The Air Pollution Control Officer or any inspector may in the exercise of his powers or the performance of his duties or functions under this Act or any regulation-

- (a) without previous notice at any time enter any premises within a controlled area where an industrial process is, or is suspected of being, carried on and examine any process

- in which any objectionable matter is used or produced and any apparatus for preventing the discharge thereof into the atmosphere;
- (b) require from the person in charge of any such premises where an industrial process is carried on the production of the registration certificate issued in respect of such premises under section 9 of this Act;
  - (c) apply such tests and take such samples and make such inquiries and investigations as appear to him to be necessary for the due performance of his functions under this Act:

Provided that the powers specified in this subsection, to the extent to which they involve entry on premises or search of property without the consent of the owner or person having charge thereof, shall only be exercised when their exercise is reasonably required in the interests of public order, public health or town and country planning.

(2) Any person who-

- (a) refuses or fails to answer to the best of his ability any question lawfully put to him by the Air Pollution Control Officer or an inspector in the exercise of his powers or the performance of his duties or functions under this Act;
- (b) refuses or fails to comply to the best of his ability with any lawful requirement of the Air Pollution Control Officer or an inspector in the exercise of such powers or the performance of such duties or functions; or
- (c) obstructs or interferes with the Air Pollution Control Officer or an inspector in the exercise of such powers or the performance of such duties or functions,

shall be guilty of an offence.

#### **5. Defence in certain legal proceedings**

Whenever the Air Pollution Control Officer or any inspector is alleged to have caused injury to any person or damage to any property or in any other manner to have detrimentally affected the rights of any person, whether in respect of property or otherwise, in the exercise of any power or the performance of any duty or function under this Act, it shall be a defence in any legal proceedings founded on such allegation and brought against the Government, the Air Pollution Control Officer or such inspector that the Air Pollution Control Officer or such inspector has used the best known or the only or most practicable available methods and has acted without negligence in the exercise of the powers or the performance of the duties or functions aforesaid, and a certificate signed by the Minister to the effect that, having regard to all the circumstances, the defendant or respondent has used the best known or the only or the most practicable methods, shall be accepted by the court as *prima facie* evidence of that fact.

#### **6. Annual report**

(1) The Air Pollution Control Officer shall, before the 1st March in every year or within such longer period as the Minister may approve, submit to the Minister a comprehensive report on the implementation of this Act during the preceding year.

(2) The Minister shall lay the said report before the National Assembly within 30 days of his receiving such report.

### **PART III**

#### ***Control within Controlled Areas (ss 7-12)***

#### **7. Controlled areas**

The Minister may by order published in the *Gazette*-

- (a) declare any area to be a controlled area for the purposes of this Act;
- (b) include any area in or exclude any area from a controlled area.

#### **8. Requirements as to premises on which industrial processes are carried on**

(1) No person shall within a controlled area-

- (a) carry on in or on any premises an industrial process capable of causing or involving the emission into the atmosphere of objectionable matter unless-
  - (i) he is the holder of a current registration certificate authorizing him to carry on that

- (ii) industrial process in or on those premises; or
- (ii) in the case of a person who was carrying on any such industrial process in or on such premises immediately prior to the date of publication of the order by which the area in question was declared a controlled area, he has within three months after that date applied for the issue to him of a registration certificate authorising the carrying on of that industrial process in or on those premises, and his application has not been refused; or
- (b) erect or cause to be erected any building or plant or alter or extend or cause to be altered or extended any existing building or plant on any premises, which is intended to be used for the purpose of carrying on any industrial process in or on those premises, unless he has, before commencing such erection, alteration or extension, received from the Air Pollution Control Officer authority in writing to do so.

(2) Any person who contravenes any provision of subsection (1) shall be guilty of an offence.

#### **9. Application for and issue of registration certificates**

(1) An application for a registration certificate shall be lodged with the Air Pollution Control Officer in the prescribed form and shall be accompanied by such information as may be prescribed.

- (2) The Air Pollution Control Officer shall, after consideration of any such application-
- (a) in the case of the application of a person who was carrying on any such industrial process as is referred to in section 8(1)(a) in or on the premises to which the application relates immediately prior to the date of publication of the order by which the area in question was declared a controlled area; or
  - (b) in the case of the application of a person who intends to carry on such a process in premises not used by him therefor immediately prior to the said date, or in altered or extended premises-
    - (i) if he is satisfied that the best practicable means have been installed and will be employed for preventing or reducing to a minimum the escape into the atmosphere of objectionable matter which is produced or is likely to be produced by any such industrial process, and in the case of premises referred to in paragraph (b) has inspected such premises and declared them fit for registration, may grant the application and issue to the applicant a registration certificate in the form prescribed; or
    - (ii) if he is not so satisfied, by notice in writing may require the applicant to take the necessary steps within a period specified in the notice for preventing or reducing to a minimum the escape into the atmosphere of any such objectionable matter.

(3) If the Air Pollution Control Officer is satisfied within the period specified in a notice under subsection (2)(b)(ii) or within such further period as he may allow that the requirements of such notice have been complied with he may grant the application and issue to the applicant a registration certificate in the form prescribed.

(4) No registration certificate shall be issued under the provisions of this section unless the Air Pollution Control Officer is satisfied that the industrial process in question may reasonably be permitted to be carried on in the locality concerned, having regard to the nature of that process, the character of the locality in question, the purposes for which other premises in such locality are used and any other considerations which in his opinion have a bearing on the matter, and that the carrying on of that industrial process in or on the premises in question would not be in conflict with any town planning scheme in operation or in course of preparation in respect of such locality.

#### **10. Conditions of registration certificates**

- (1) A registration certificate shall specify-
- (a) the situation and extent of the building or plant, or proposed building or plant, to which

it relates;

- (b) the nature of the industrial process intended to be carried on;
- (c) the raw materials intended to be used, the nature of the operations to be carried on, and the products to be produced;
- (d) the appliances to be installed and any other measures intended to be taken with a view to preventing or reducing to a minimum the escape into the atmosphere of any objectionable matter; and
- (e) the proposed measures for the disposal of the effluents discharged from appliances installed with the view referred to in paragraph (d).

(2) A registration certificate shall be subject to the condition that all plant and apparatus used for the purpose of carrying on the industrial process in question and all appliances for preventing or reducing the escape into the atmosphere of objectionable matter shall at all times be properly maintained and operated and that the holder of the certificate shall ensure that all other necessary measures are taken to prevent the escape into the atmosphere of objectionable matter:

Provided that in applying the provisions of this subsection due allowance shall be made for the unavoidable escape into the atmosphere of objectionable matter during the starting up of any plant or apparatus in respect of which the registration certificate was issued or during the period of any breakdown or shutting down or disturbance of such apparatus or plant.

(3) The Air Pollution Control Officer may at any time by notice in writing require the holder of any such certificate to take steps to ensure the more effective operation of the appliances provided for in such certificate for the prevention of the escape into the atmosphere of objectionable matter produced by the industrial process to which the certificate relates.

(4) The Air Pollution Control Officer may at any time by notice in writing require the holder of any such certificate to take such steps as may be reasonable, having regard to the cost involved, to ensure the more effective prevention of the escape into the atmosphere of objectionable matter produced by the industrial process to which the certificate relates by means of some other or improved process or equipment specified in such notice.

(5) Any such holder shall be allowed a reasonable period to be specified in the relevant notice within which to take any steps specified therein.

(6) If the holder of a registration certificate fails to comply with the conditions referred to in subsection (2) or any requirement under subsection (3) or (4), the Air Pollution Control Officer may by notice in writing call upon such holder to comply with such conditions or requirement within a reasonable period specified in the notice, and in the event of his failure to comply with the said conditions or requirement within the period so specified the holder shall be guilty of an offence.

(7) If the holder of a registration certificate is convicted of an offence under subsection (6) and notice of appeal against such conviction has not been lodged timeously or such appeal has failed or been abandoned or withdrawn, the Air Pollution Control Officer may cancel the registration certificate or suspend the operation thereof for such period as he may deem fit.

(8) For the purpose of ensuring that any conditions or requirements imposed by or under the provisions of this section are complied with or carried out the Air Pollution Control Officer may inspect, or order an inspector to inspect, any building or plant to which a registration certificate relates.

#### **11. Investigations by Air Pollution Control Officer or inspector**

(1) On receipt of a complaint that within a controlled area the emission into the atmosphere of objectionable matter is resulting from the carrying on of an industrial process and that such emission is causing or has caused injury or damage to the health of human beings or of livestock or to vegetation or other property, the Air Pollution Control Officer may conduct, or order an inspector to conduct, an investigation into such complaint.

(2) If he has reason to believe or suspect that on any premises an industrial process is

being carried on otherwise than in accordance with the provisions of this Act or any regulation the Air Pollution Control Officer may investigate, or order an inspector to investigate, the matter.

## **12. Appeals from decisions of Air Pollution Control Officer**

(1) There is established an Atmospheric Pollution Appeals Board which shall consist of not less than three persons appointed by the Minister by notice published in the *Gazette*, each of whom shall possess technical qualifications deemed appropriate by the Minister.

(2) Any person who is aggrieved by a decision of the Air Pollution Control Officer refusing an application for a registration certificate or cancelling or suspending a registration certificate or imposing any requirement under subsection (3) or (4) of section 10 may within one month appeal against such decision to the Board which shall have power to make such order on the appeal as it may consider equitable and whose decision shall be final.

(3) For the purpose of proceedings before it the Board may administer oaths and affirmations.

(4) Any person who so appeals may continue to carry on the industrial process to which such appeal relates pending the decision of the Board on such appeal if such industrial process was being carried on prior to the decision of the Air Pollution Control Officer or the imposition by him of the requirement which is the subject of the appeal.

(5) Any person who lodges an appeal under subsection (2) shall submit with his appeal written arguments or explanations of the grounds of his appeal and may further appear before the Board in person or through a representative (who shall be an advocate or an attorney) and cause any evidence to be tendered or any argument or explanation to be submitted to the Board in support of the written arguments or explanations of his grounds of appeal.

## **PART IV**

### **General (ss 13-17)**

## **13. Disclosure of information**

(1) No person shall disclose any information relating to any manufacturing process or trade secret used in carrying on any particular undertaking which has been furnished to or obtained by him while performing functions under this Act unless the disclosure is made-

- (a) with the consent of the person carrying on that undertaking;
- (b) in connection with the performance of his functions under this Act; or
- (c) for the purpose of legal proceedings arising out of this Act.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence.

## **14. Auxiliary powers of Minister**

The Minister, in order to further the object of preventing, reducing or controlling atmospheric pollution due to industrial processes may-

- (a) publish and disseminate information, and cause educational programmes to be devised and carried out, relating to the control of atmospheric pollution;
- (b) arrange and promote the undertaking of studies of the quality of the air, and investigations into the levels of concentration of matter polluting the air, anywhere in Botswana.

## **15. Regulations**

The Minister may make regulations for any matter required to be prescribed under this Act, for the better carrying out of the objects and purposes of this Act, and for giving effect to its principles and provisions, and without prejudice to the generality of the foregoing may make regulations prescribing or providing for-

- (a) the processes which shall be industrial processes for the purposes of this Act;
- (b) standards of quality or purity of air to be employed in testing, measuring or controlling the emission into the atmosphere of objectionable matter resulting from the carrying on of industrial processes;
- (c) any matter which in terms of this Act is to be or may be prescribed;

- (d) the form and manner of any application for any registration certificate and the plans, documents and other information to be submitted in connection with any such application;
- (e) the procedure to be followed by the Board;
- (f) the fees to be paid in connection with any application or any appeal under this Act and the circumstances in which the fees paid in connection with any such appeal shall be refunded.

## **16. Penalties**

Any person convicted of an offence under this Act shall be liable, in the case of a first conviction, to a fine not exceeding P500 or to imprisonment for a term not exceeding six months, or to both and, in the case of a subsequent conviction, to a fine not exceeding P1000 or to imprisonment for a term not exceeding 12 months, or to both, with a further fine not exceeding P50 for every day during which any such subsequent offence has continued.

## **17. This Act to bind the Republic**

The provisions of this Act shall bind the Republic.

### **CHAPTER 72:01 BOTSWANA POSTAL SERVICES ARRANGEMENT OF SECTIONS**

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Act 22, 1989,  
S.I. 2, 1990.

**An Act to provide for the establishment of an organization to be known as the Botswana Postal Services for the provision, development, operation and management of postal services and for matters connected therewith or incidental thereto.**

*[Date of Commencement: 6th October, 1989]*

**PART I**  
***Preliminary (ss 1-2)***

**1. Short title and commencement**

This Act may be cited as the Botswana Postal Services Act.

**2. Interpretation**

In this Act, unless the context otherwise requires-

**"financial year"** means the year ending on 31st March in each year;

**"franking machine"** means a machine for the purpose of making impressions on postal articles to denote payment of postage and includes any meter and any franking or date stamping die used in connection with postal franking;

**"money order"** means a money order issued under this Act or by any postal authority for payment under this Act;

**"postage stamp"** or **"stamp"** means any piece of paper or other substance or material having thereon the stamp mark, or impression of any die, plate or other instrument made or used under this Act on by any postal authority for the purpose of denoting any postage or other postal fee;

**"postal article"** means any letter, post card, reply post-card, letter-card, newspaper, book, packet, sample packet or pattern or any parcel or other article when in course of transmission by post;

**"postal order"** means a postal order issued under this Act or by any postal authority for payment under this Act;

**"postal service"** means a service performed and facilities provided in connection with-

- (a) the collection, transmission and delivery of postal articles by whatever means of transportation from one place to another whether within or outside Botswana;
- (b) the issue of postage stamps and the use of franking machines; and
- (c) the issue or repayment of money orders or postal orders for the remittance of money through the Botswana Postal Services; and

**"senior officer"** means any employee of the Botswana Postal Services who holds a position which is so designated by the Board.

## **PART II**

### ***Establishment of Botswana Postal Services and Board of Management (ss 3-7)***

#### **3. Establishment of Botswana Postal Services**

(1) There is hereby established a commercial organization of the Government of Botswana to be known as the Botswana Postal Services, referred to in this Act as the "Post".

(2) Notwithstanding any other law to the contrary, all legal proceedings by or against the Government of Botswana and related to any commercial activity for or by the Post may be instituted by or against the Botswana Postal Services in its own name as representing the Government of Botswana, and the necessary service of process therein may be effected on the Director General of Botswana Postal Services appointed under section 10 of this Act.

(3) Sections 3 and 6 of the Civil Procedure (Actions by or Against Government or Public Officers) Act shall not apply to actions by or against the Botswana Postal Services.

#### **4. Establishment of Board**

(1) There is hereby established a Board of Management of the Botswana Postal Services (hereinafter referred to as the Board) which shall have such powers in relation to the overall management and control of the Post as may be specified in this Act.

(2) The Board shall consist of the following members appointed by the Minister-

- (a) the Chairman;
- (b) the Director General of the Botswana Postal Services appointed under section 10 who shall be an *ex-officio* member; and
- (c) not less than 5 nor more than 7 other persons who in the opinion of the Minister have knowledge and experience likely to contribute to the successful management of the Post.

(3) A person shall not be competent to be appointed or to act as a member of the Board if he-

- (a) is a member of the National Assembly;
- (b) is an employee of the Post;
- (c) has been declared insolvent or bankrupt under any law in any country and has not been discharged, or made a composition with his creditors and has not paid his debts in full.

#### **5. Resignation and removal from office**

(1) Any member of the Board, other than the Director General, may resign his membership of the Board by notice in writing to the Minister.

(2) A member of the Board may be removed from membership thereof by the Minister if-

- (a) any circumstances arise, which, if he were not a member, would cause him to be disqualified for appointment as a member of the Board under section 4(2);
- (b) he becomes of unsound mind;
- (c) he suspends payment of his debts or compounds with his creditors;
- (d) he is absent from 3 consecutive meetings of the Board without such reason as appears to the Minister to be sufficient;
- (e) he is sentenced to imprisonment without the option of a fine or is convicted of an offence involving dishonesty;
- (f) is guilty of serious misconduct in relation to his duties as Chairman or member of the Board; or
- (g) in the case of a person possessed of professional qualifications, he is disqualified or suspended, otherwise than at his own request, from practising his profession in Botswana, or in any other country, by order of any competent authority made in respect of him personally.

#### **6. Tenure of office**

(1) A member of the Board, other than the Chairman and the Director General, shall hold office for such period not exceeding 4 years as may be specified in the notice appointing him,

and on the expiration of such period shall be eligible for reappointment:

Provided that in appointing members of the Board the Minister shall so specify such periods of appointment that the periods of appointment of not more than one-third of the members shall expire in any one year.

(2) The Chairman of the Board shall hold office as Chairman for a period of 3 years and on the expiration of such period shall be eligible for reappointment.

(3) The Board shall, once in every year, elect from among its members (other than the Director General) a Vice-Chairman for a period of one year.

(4) Subject to the provisions of this Act, where any member of the Board is incapacitated by absence from Botswana or illness or any other sufficient cause, from performing the duties of his office, the Minister shall appoint another person to hold office in his place until the incapacity of that person has terminated or until the term of office of such member expires, whichever first occurs.

#### **7. Payment of members**

The Board shall pay to the members thereof such remuneration, fees and allowances for expenses as may be approved by the Minister.

### **PART III**

#### ***Meetings and Proceedings of Board (ss 8-9)***

#### **8. Meetings**

(1) The Board shall meet for the discharge of its functions at such times and places as the Chairman may appoint, so however that the Board shall meet at intervals not exceeding 3 months.

(2) The Chairman, or in his absence the Vice-Chairman, may, and shall on the request in writing of not less than 2 members of the Board, call an extraordinary meeting of the Board at such time and place as he may determine.

(3) The Chairman, or in his absence the Vice-Chairman, shall preside at every meeting of the Board.

(4) In the absence of both the Chairman and the Vice-Chairman, the members present shall elect one of their number to preside at the meeting.

(5) The quorum at any meeting of the Board shall be not less than one half of the members of the Board:

Provided that the presence of the Director General shall not count towards the constitution of the quorum.

(6) All questions proposed at a meeting of the Board shall be determined by a majority of the members present and voting, and where the votes are equal, the Chairman or the person presiding shall have a second or casting vote:

Provided that the Director General shall not be entitled to vote unless the Board decides otherwise in any particular instance.

(7) Any member of the Board who has an interest, or whose spouse has an interest, in any company or undertaking with which the Board proposes to make a contract, or has an interest in any contract which the Board proposes to make, shall disclose the nature of his interest, and shall not vote or take any part in the proceedings of the Board relating to such contract.

(8) The Board may, and shall if the Minister so directs request the attendance of any person to act as adviser at a meeting of the Board, and that person while so attending shall have all the powers of a member except that he shall not vote on any question and his presence at the meeting shall not count towards the constitution of a quorum.

(9) The validity of any act or proceeding of the Board shall not be affected by any vacancy among its members or by any defect in the appointment of a member thereof.

(10) The Board may from time to time make standing orders providing for the regulation of-

- (a) meetings of the Board;
- (b) the conduct of its business and other operations in furtherance of the purposes of this Act; and
- (c) the duties of its officers, employees and agents.

#### **9. Signification of documents**

All documents made by, and all decisions of, the Board may be signified under the hand of the Chairman of the Board, the Director General or any member or senior officer of the Post generally or specially authorized in that behalf.

### **PART IV**

#### ***Officers, Employees and Agents of the Post (ss 10-11)***

#### **10. Appointment of officers and employees**

(1) The Post shall have a Director General who shall be appointed by the Minister upon such terms and conditions as may be determined by the Board.

(2) No person shall be appointed as Director General unless he is qualified by experience and training, and has demonstrated that he is competent, to manage and operate the business of the Post.

(3) The Director General shall, subject to such directions on matters of general policy as may be given by the Board, be charged with the direction of the business of the Post and of its administration and organization, and the control of the employees of the Post.

(4) The Director General may resign from office by notice in writing addressed to the Minister.

(5) The Director General may delegate to any senior officer of the Post the exercise of any power which he is authorized to exercise under this Act.

(6)(a) The Board shall, on consideration of the recommendations of the Director General, from time to time determine the staff deemed necessary for the proper discharge of the functions of the Post and the terms and conditions of employment.

(b) The appointment and dismissal of all persons to or from positions designated by the Board as held by senior officers shall be made by the Board on consideration of recommendations by the Director General.

(c) The appointment and dismissal of all other staff shall be made by the Director General or such senior officer as he may delegate to perform this function.

(7) The Board may-

- (a) grant pensions, gratuities or retiring allowances to any officer or employee and may require such officer or employee to contribute to any pension or contributory scheme;
- (b) for the benefit of its officers and employees, establish and make contributions to any pension or superannuation fund or medical fund; and
- (c) from time to time appoint and employ upon such terms and conditions as it may think fit such agents and contractors as it may deem necessary.

(8) Public officers from Ministries or other Departments may be transferred or seconded to the Post or may with the consent of their supervisors otherwise give assistance thereto.

(9) Officers and employees of the Post shall, in so far as it is not inconsistent with the provisions of this Act, be public officers.

(10) Officers and employees of the Post may become members of the appropriate Trade Union in accordance with the Trade Union legislation in force from time to time.

#### **11. Delegation to committee**

The Board may, by resolution, delegate to any committee appointed by it the exercise of any of the powers which it is authorized by this Act to exercise, generally or in any particular case.

### **PART V**

#### ***Functions, Powers and Duties of the Post (ss 12-16)***

#### **12. Functions and powers**

- (1) The functions of the Post shall be-
- (a) to provide, develop, operate and manage postal services in an efficient and cost effective manner; and
  - (b) to carry out such other operations as may appear to the Board to be conducive or incidental to the attainment of all or any of its objectives under this Act or any other law.
- (2) The Post shall have all powers necessary or convenient for the performance of its functions and duties and, without prejudice to the generality thereof, shall have the power to-
- (a) acquire and use any kind of property, undertaking, right or privilege and dispose of the same to the Government, or to any person other than a member, officer or employee of the Post or any agent or contractor appointed or employed by the Post;
  - (b) enter into agreements in connection with the operation of postal services;
  - (c) supply, sell or market air postal services to all persons desiring such services;
  - (d) enter into such contracts as may be necessary for the performance of its functions and duties;
  - (e) construct or cause to be constructed such works, houses, offices and other buildings and structures as it may deem necessary or expedient for the performance of its functions and duties;
  - (f) purchase, take on lease or otherwise acquire or construct or cause to be constructed such tools, appliances, machinery, plant and equipment as it may deem necessary or expedient for the performance of its functions and duties;
  - (g) sell, exchange, lease, dispose of, turn to account or otherwise deal with any of its assets or any part thereof, whether movable or immovable, not required for its purposes:  
Provided that the immovable property of the Post shall not be sold without the approval in writing of the Minister for the time being responsible for finance;
  - (h) invest from time to time, in such manner as it may deem fit, such moneys held by it as may be surplus to its immediate requirements, subject to the approval in writing of the Minister for the time being responsible for finance;
  - (i) insure with any company or person against any loss, damage, risk or liability which the Post may incur;
  - (j) purchase or sell any materials and stores used in the performance of its functions;
  - (k) sell, hire or otherwise dispose of any apparatus used in connection with Postal services; and
  - (l) carry on any activity which is reasonably requisite or convenient for or in connection with the discharge of its functions under this Act.

### **13. Exclusive privilege of the Post**

(1) The Post shall have the exclusive privilege of establishing and operating postal services in Botswana.

(2) Notwithstanding subsection (1) the Minister may, after consultation with the Board, by notice published in the Gazette, exempt services rendered by any person from the provisions of subsection (1) for such period as he may determine.

### **14. Co-operation with authorities**

In the discharge of its functions the Post shall co-operate with local and other public authorities, including department and agencies of the Government, and shall consult with local authorities in matters of concern to the Post which affect their interest.

### **15. Research and records**

With a view to facilitating present or future research or planning, the Post shall keep full and accurate records of all of its operations and shall have power to engage in research and to assist others to engage in research in respect of any matter relating to its functions, and to publish such records and the results of any such research.

### **16. Power of Minister to give directions**

The Minister may, after consultation with the Board, give to the Board such directions of a general or specific character as to the exercise and performance of its powers in fulfilling its functions as are necessary as a matter of policy and as are not inconsistent with this Act or with the contractual or other legal obligations of the Post, and the Board shall give effect to any such directions.

## **PART VI** **Finances (ss 17-21)**

### **17. Principles of financial operations**

(1) It shall be the duty of the Post to conduct its affairs on sound commercial lines and, in particular, so carry out its functions under this Act and so prescribe the charges payable in respect of the provision by the Post of its postal services as to ensure that its revenues are sufficient to produce on the fair value of its assets a reasonable return.

(2) In determining what constitutes a reasonable return, all pertinent economic and financial considerations shall be taken into account, which shall include but not be limited to the need for a net operating income in an amount sufficient-

- (a) to meet interest payments on borrowings;
- (b) to provide for repayments to be made each year in respect of loans incurred by the Post to the extent to which such repayments exceed the year's provision for depreciation charged to revenue account;
- (c) to provide a reasonable proportion of the funds needed for expanding the Post's activities and improving its services;
- (d) to provide reserves for replacement, expansion or other purposes if and to the extent to which the Board deems it necessary to establish such reserves; and
- (e) to make dividend payments to the Government in respect of its equity interest in the Post if and to the extent deemed appropriate by the Board, after consultation with the Minister, and the Minister for the time being responsible for finance, and having regard to the future financial requirements of the Post.

### **18. Fixing of tariffs**

(1) The Board shall, with the approval of the Minister, which approval shall not be unreasonably withheld, prescribe the tariffs or other charges for which it provides postal services so as to ensure that it is able to comply with the provisions of section 17.

(2) The Board may prescribe different tariffs, charges or methods of charges for different classes or categories of service and for different areas or places.

(3) Notwithstanding subsection (1), the Board may, where special circumstances exist and with the consent of the Minister, which consent shall not be unreasonably withheld, enter into agreement with any person providing for special tariffs or charges on a commercial basis in respect of that agreement.

### **19. Borrowing powers**

(1) In order to enable the Post to discharge its functions under this Act and to meet its obligations it may borrow, on such terms and in such currencies as may be agreed between it and any lender, such sums as it may require, subject to the approval of the Minister for the time being responsible for finance.

(2) The Post may charge its assets, undertakings, and revenues with the repayment of any money borrowed together with interest thereon and may issue debentures, bonds or other securities in order to secure the repayment of any money borrowed together with interest thereon and may do all other things necessary in connection with or incidental to such borrowings as are authorized by this section, subject to the approval of the Minister for the time being responsible for finance.

### **20. Vesting of property in the Post**

(1) Any properties, assets, rights, debts, liabilities and obligations of the Government and the benefit and burden of all contracts made by or on behalf of the Government which are part

of or concern or relate to postal services, may with the consent of the Board be transferred to and vest in the Post as hereinafter provided on terms and conditions agreed to by the Board.

(2) The Minister may from time to time, by notice published in the Gazette, designate for the purposes of this section properties, assets, rights, debts, liabilities and obligations of the Government and contracts made by or on behalf of the Government which are part of, concern or relate to postal services, and as from the date specified in any such designation the properties, assets, rights, debts, liabilities and obligations and the benefit and burden of the contracts so designated shall vest in the Post.

(3)(a) For the purposes of this subsection "appropriate date" means, in respect of any loan agreement made between the Government and any person whereby money was or is to be borrowed by the Government and used for or in connection with postal services, the date of the vesting of such loan agreement in the Post by virtue of the foregoing provisions of this section.

(b) The Post shall pay to the Government, in such manner and on such date or dates as the Minister may, with the concurrence of the Board and the Minister for the time being responsible for finance, from time to time specify, any amount expended or advanced by the Government for or in connection with postal services comprising-

- (i) all amounts repaid in respect of capital or interest by the Government to any person before the appropriate date under any loan agreement to which paragraph (a) applies;
- (ii) all amounts disbursed or to be disbursed by the Government in repayment of any other loan raised or to be raised by the Government, and interest thereon, to the extent to which such loan has been or will be applied to postal services which, before the date specified in a designation pursuant to subsection (2), has not been offset by an amount or amounts credited to the Consolidated Fund for that purpose;
- (iii) amounts equal to the outstanding debit balance of any advances made by the Government and all costs incurred by the Government as a result of making such advances;
- (iv) any other amounts paid or to be paid by the Government which, before the date specified in a designation pursuant to subsection (2), has not been offset by an amount or amounts credited to the Consolidated Fund for that purpose.

(4) If, within one month from the date specified by the Minister under subsection (3)(b) for the payment of any amount payable by the Post to the Government under that subsection, the Post fails to pay such amount, it shall pay interest thereon as from the date specified as aforesaid at such rate or rates as the Minister may, with the concurrence of the Minister for the time being responsible for finance, from time to time determine.

## **21. Accounts and audit**

(1) The Post shall keep proper accounts and other records in relation to its operations, and shall prepare in respect of each financial year a statement of accounts showing in detail the assets and liabilities (real and contingent) and income and expenditure of the Post, in a form which shall conform with the best commercial accounting standards, applicable to the provision of postal services.

(2) The accounts of the Post in respect of each financial year shall, within 4 months or such extended time after the end thereof as the Minister may direct, be audited by the Auditor-General or any auditor appointed by the Auditor-General (hereinafter referred to as "appointed auditor").

(3) The Auditor-General or any appointed auditor shall report in respect of the accounts for each financial year, in addition to any other matter on which he deems it pertinent to comment, whether or not-

- (a) he has received all the information and explanations which, to the best of his knowledge and belief, were necessary for the performance of his duties as auditor;

- (b) the accounts and related records of the Post have been properly kept;
- (c) the Post has complied with all the financial provisions of this Act with which it is the duty of the Post to comply; and
- (d) the statement of accounts prepared by the Post was prepared on a basis consistent with that of the proceeding year and represents a true and fair view of the transactions and financial affairs of the Post.

(4) The report of the Auditor-General or the appointed auditor and a copy of the audited accounts shall, within 7 days of the completion thereof, be forwarded to the Minister and to the Board.

(5) The Minister shall, within 30 days of receiving the report and a copy of the audited accounts, lay such report and accounts before the National Assembly.

## **PART VII**

### **General (ss 22-28)**

#### **22. Annual report**

(1) The Board shall, within a period of 6 months after the end of the financial year or within such longer period as the Minister may approve, submit to the Minister a comprehensive report on the operations of the Botswana Postal Services during such year together with the auditor's report and the audited accounts as provided for in section 21, and the Board shall publish them in such manner as the Minister may specify.

(2) The Minister shall, within 30 days of his receiving the Board's report, lay such report before the National Assembly.

#### **23. Compulsory acquisition of land**

For the purposes of any written law for the time being in force relating to the compulsory acquisition of land for public purposes, the functions and operations of the Post shall be deemed to be public purposes.

#### **24. Resettlement measures**

If the operations of the Post make necessary resettlement of any person dwelling upon any communally owned land, the terms of such resettlement shall be subject to the agreement of the Government and of the local authorities of the area concerned.

#### **25. Compensation for loss or damage**

(1) In the exercise of its powers under this Act in relation to the execution of works or interference with property, the Post shall cause as little detriment and inconvenience and do as little damage as possible, and shall make full compensation to all local and other authorities and other persons who have sustained loss or damage by reason or in consequence of the exercise of such powers and, in default of agreement between the parties, the amount and application for such compensation shall be determined by arbitration in accordance with the provisions of the Arbitration Act.

(2) For the purpose of such arbitration the parties shall be deemed to be parties to a submission in which the reference is to two arbitrators.

#### **26. Power to call for information**

The Minister may, for purposes associated with the administration of this Act, require the Board to provide him with estimates of the Post's future revenue and expenditure, and such other information relating to its activities and operations, including books of accounts, records, documents and agreements relating to postal services operated by the Post, as he may specify.

#### **27. Power of Board to make bye-laws**

The Board may, with the approval of the Minister, make bye-laws for any purpose connected with its powers, functions and duties under this Act, and may impose penalties for breach of any such bye-laws.

#### **28. Transitional provisions**

(1) Unless the contrary intention is indicated by the Board, every member of the staff of the former Department of Postal Services shall be deemed to have been duly appointed to an

equivalent post under this Act.

(2) Nothing in this Act shall be taken to effect any alteration in the terms of a contract subsisting immediately before the commencement of this Act or to authorize the making of any such alteration without the consent in writing of all parties bound by the contract.

#### **PART VIII**

#### ***Transmission of Postal Articles (ss 29-42)***

#### **29. Registration of postal articles**

(1) The sender of any postal article may, upon payment of the prescribed fee in addition to the ordinary postage, have that article registered and obtain a receipt for it; but no such registration or receipt shall confer on any person any right to compensation or impose upon any officer any liability for the loss of any such article or of the contents thereof:

Provided that the Director General may in an appropriate case, in his discretion pay compensation for the loss of any registered postal article or of the contents thereof.

(2) Any postal article containing coin, bank notes, stamps, precious metals, precious stones or other articles of a like nature which have an intrinsic or marketable value shall be registered and if not so registered shall be liable on delivery to a charge equal to double the amount of any deficiency between the postage paid and the correct charge had the article been registered at the time of posting. No compensation shall be paid or payable in respect of the loss of any postal article, required to be registered under this subsection, but which is not so registered at the time of posting.

#### **30. When postal articles deemed to be in course of transmission or to be posted or delivered**

For the purposes of this Act-

- (a) a postal article shall be deemed to be in course of transmission by post from the time of its being delivered to a post office to the time of its being delivered to the person to whom it is addressed;
- (b) the placing of a postal article in a pillar box or other receptacle provided for the purpose by or with the approval of the Post, or the delivery of a postal article to an officer or other person authorized by the Director General to receive postal articles of that description, shall be deemed to be delivery to a post office;
- (c) the delivery of a postal article at the house or office of the person to whom the article is addressed or to his servant or agent or other responsible person or at the address specified on such article shall be deemed to be delivery to the person addressed; and
- (d) delivery into a private box or private bag shall be deemed to be personal delivery to the addressee.

#### **31. Redirection and interception of postal articles**

(1) The redirection of any unopened postal article (other than a parcel) from one place to another may be effected free of charge provided the new address has been fully prepaid, but registered articles redirected by the public shall be subject in each case to a further fee for registration.

(2) Any redirected article which appears to the Director General to have been opened or tampered with shall be treated as if it were posted for the first time and shall be chargeable accordingly.

(3) Any article arrested or intercepted in transit through the post-

- (a) at the request of either the sender or the addressee thereof, shall be liable to an additional charge equal to the ordinary rate of postage from the place of the original address to the place of the new address and any article which under the provisions of this Act may be returned to the sender thereof shall if reposted be liable again to postage;
- (b) for delivery to the sender or addressee at the office in which stoppage is effected, shall be liable to such special fee as may be prescribed.

(4) Nothing contained in subsection (3) shall require the Director General to arrest or intercept any postal article.

**32. Articles deemed to be posted in contravention of Act**

A postal article received in a post office shall be deemed to have been posted in contravention of this Act if-

- (a) the postage stamps thereon have been previously used, obliterated or defaced;
- (b) any blasphemous, indecent, obscene, offensive or libellous matter appears on the outside thereof or any indecent or obscene matter is enclosed therein; or
- (c) it is posted or contains anything in fraud of or contrary to the provisions of this Act or any other law.

**33. Articles to be sent by postmasters to Returned Letter Office for disposal**

Any postal article which is-

- (a) without address or bears an illegible address or is otherwise undeliverable;
- (b) refused by the person to whom it is addressed; or
- (c) posted or reasonably suspected to have been posted in contravention of this Act or any other law,

shall be sent to the Returned Letter Office of Botswana and dealt with as may be prescribed:

Provided that any article referred to in paragraph (a) or (b) which bears on the outside thereof the name and address of the sender may be returned to him.

**34. Articles other than letters may be opened for examination**

(1) Any postal article, other than a letter, may be opened for examination in order to ascertain whether or not that article is entitled to transmission at the rate of postage prepaid thereon or has been posted in contravention of this Act.

(2) The decision of the Director General as to whether or not any postal article is a letter or any description of postal article shall be final.

**35. Treatment of unclaimed letters in Returned Letter Office**

Any postal article originally posted within Botswana which is sent to the Returned Letter Office in accordance with section 33, or which is undelivered, shall be opened by an officer authorized by the Director General for that purpose and shall, unless it contains any valuable or saleable enclosure or has in the opinion of the Director General been posted in contravention of this Act or with intent to evade payment of the postage properly chargeable thereon, be returned to the sender thereof if his name and address are known, and may, if the sender refuses to receive it or if his name and address are not known, be sold or destroyed.

**36. Unclaimed articles of value and articles posted in contravention of Act**

(1) Any postal article opened under the provisions of this Act which contains any valuable or saleable enclosure shall be safely kept and a record thereof and of its contents shall be made and preserved.

(2) The Director General shall, unless any such postal article or the contents thereof have in his opinion been posted in contravention of this Act or with intent to evade payment of the postage properly chargeable thereon, cause notice of his possession of that article and of the contents thereof to be sent to the person to whom it is addressed or, if he cannot be found, to the sender thereof if he can be found.

(3) The Director General shall, upon application by the person to whom the notice has been sent, cause such postal article and its contents to be delivered to such person upon payment of all charges due thereon.

(4) If no application under subsection (3) is made within 3 months after the sending of a notice under subsection (2), or if the postal article in question or the contents thereof has in the opinion of the Director General been posted in contravention of this Act or with intent to evade payment of any charge properly payable thereon, such article and its contents shall (without affecting the liability to any penalty or punishment to which the sender may be subject), be destroyed, sold or otherwise disposed of as the Director General may direct.

(5) The proceeds of the sale of any postal article or the contents thereof, as well as any such contents consisting of money or any order or security for money, shall be paid into and form part of the postal revenue.

(6) Any such order or security for money shall for the purpose of procuring payment be deemed to be the property of the Director General.

**37. Sender of undelivered article liable for all charges due**

(1) The sender of an undelivered postal article shall on demand pay all charges due thereon, and shall, in the event of his refusal to pay such charges, be guilty of an offence and liable to a fine of P10,00.

(2) This section shall not be construed as releasing the person to whom a postal article is originally addressed from liability to pay the charges due thereon if such a postal article is delivered to him.

**38. Delay, return to sender or delivery to other than addressee of article prohibited**

Save as expressly provided in this Act, no postal article shall be delayed in transmission or returned to the sender or be delivered to any person not named in the address thereof except with the consent in writing of the addressee or on the special authority of the Director General.

**39. Undelivered articles of no value and newspapers may be destroyed**

Notwithstanding anything to the contrary contained in section 35 or 38 an undelivered postal article, which appears to be of no appreciable value or importance, and an undelivered newspaper may, after retention for the period prescribed, be sold, destroyed or otherwise disposed of as the Director General may direct.

**40. Articles addressed to insolvent person**

When the estate of any person has been sequestrated by a competent court in Botswana, the Director General shall cause all postal articles addressed to such person to be delivered to the trustee in such insolvent estate or, if no trustee has been appointed, to the Master of the High Court.

**41. Articles addressed to deceased person**

Postal articles addressed to a deceased person may be delivered to the executor or administrator of such deceased person on the production of letters of administration or, pending production of letters of administration, at the address indicated thereon.

**42. Articles addressed to persons conducting lottery or dealing in indecent or obscene matter**

When the Director General is satisfied by any advertisement, letter, circular or other documentary evidence that any person is conducting or assisting as agent or otherwise in conducting an illegal lottery, or is dealing in indecent or obscene matter, and is using the services of the Post for the purpose thereof, the Director General may detain or delay all postal articles addressed to such person or his agent or representative without the name of any person appearing thereon, and all such postal articles may be opened and returned to the senders thereof or otherwise disposed of as the Director General may deem fit.

**PART IX**

***Remittance of Money through Post Office (ss 43-45)***

**43. Remittance of money through the Post**

Any person may remit money through the Post to any other person whether in or outside Botswana at such rates of commission as may be prescribed and the Director General may authorize any office in the Post to issue and pay money orders, postal orders or any other document prescribed for the purpose of remitting money.

**44. Director General may refuse to issue or pay money orders, etc, to certain persons**

The Director General may refuse to issue or pay a money order, postal order or other document to a person to whom the provisions of section 42 apply and, where payment of any such order or other document is refused, such order may, if it was issued in Botswana, be returned to the person to whom it was originally issued, or otherwise disposed of as the Director

General may deem fit, or, if it was issued outside Botswana, the amount thereof shall be returned to the postal authority of the country in which it was issued.

**45. Money orders, etc., to be deemed bank notes**

(1) A money order, postal order or other document issued under section 43 shall be deemed to be a bank note or any order for the payment of money and a valuable security within the meaning of any law relating to forgery or theft.

(2) An unissued postal order shall be deemed to be public money.

**PART X**

***Offences and Penalties (ss 46-61)***

**46. Forging stamps, dies, etc.**

Any person who without due authority or lawful excuse, the proof of which shall lie upon him-

- (a) makes, alters, imitates or imports or assists in making, altering, imitating or importing any postage stamp, date stamp, card, envelope, wrapper cover or any money order, postal order, postal draft or savings bank warrant or any other warrant or order for the payment of money through the Post, or acknowledgement of deposit or any form or paper similar to that used or made under the authority or for the purposes of this Act or by any postal authority, or uses, issues, offers, exposes for sale, sells, deals in, sends by post or disposes of or has in his custody or possession any such postage stamp, date stamp, card, envelope, wrapper, cover, money order, postal order, postal draft, savings bank warrant or any other warrant or order, acknowledgement of deposit, form or paper, knowing it to have been made or altered or to be an imitation contrary to this section;
- (b) engraves or in any manner makes upon any plate or material any stamp, mark, figure or device in imitation of or resembling any stamp, mark, figure or device used or made for the purposes of this Act or by any postal authority, or sells, disposes of, purchases, receives or has in his custody or possession any plate or material so engraved or made;
- (c) makes or assists in making or has in his custody or possession any mould, frame or other instrument having thereon any word, letter, figure, mark, line or device peculiar to paper provided, used or made for any postage stamp or for any other purpose of this Act or by any personal authority;
- (d) makes or assists in making or has in his custody or possession any paper in the substance of which appear any word, letter, figure, mark, line or device peculiar to paper provided, used or made for any postage stamp or for any other purpose of this Act or by any postal authority, or makes, purchases, sells, disposes of or receives or has in his custody or possession any paper provided or made for the purposes of being used for any postage stamp or for any other purposes of this Act or by any postal authority before the same has been issued for public use;
- (e) makes use of any stamp, dye, plate or paper engraved or made for the purposes of this Act or by any postal authority, or sells, disposes of, purchases, receives or has in his custody or possession any paper or material whatever bearing an impression or mark of any such stamp, dye, plate or paper; or
- (f) makes on any envelope, wrapper, card, form or paper any mark in imitation of or similar to or purporting to be any official stamp or mark used for the purposes of this Act or by any postal authority, or any word, letter, device or mark which signifies or implies or may reasonably be regarded as signifying or implying that any article bearing such word, letter, device or mark has been or is entitled to be sent through the post,

shall be guilty of an offence and shall be liable to a fine of P2 000,00 and to imprisonment for 5 years, and any stamp, dye, plate, paper, instrument or other material found in the possession of such person in contravention of this section shall be seized and forfeited to the State.

#### **47. Removing marks from stamps, etc., with intent to defraud**

- (1) Any person who, with intent to defraud-
- (a) removes from an article sent by Post or from a document used for the purposes of this Act any stamp which has been affixed thereon, or wilfully removes, either actually or apparently, from any stamp which has been previously used, any mark or impression which has been made thereon at any post office, or knowingly utters, issues or uses any stamp or any part thereof which has been so removed or from which any such mark or impression has been removed;
  - (b) erases, cuts, scrapes, defaces, obliterates or otherwise discharges or removes from, either actually or apparently, or in any manner adds to or alters any mark or impression upon, a money order, postal order, postal draft, savings bank warrant, or other order or warrant, or acknowledgement of deposit, paper or other material provided, used or made for the purposes of this Act or by any postal authority;
  - (c) makes, does or practises or is concerned in any other act, contrivance or device for which no specific penalty is provided, or attempts unlawfully to evade payment of any of the rates, fees or duties payable under this Act,

shall be guilty of an offence and shall be liable to a fine of P200,00 and to imprisonment for 6 months.

(2) For the purposes of this Part the sender of a postal article shall, unless the contrary is proved, be deemed to be the person by whom any postage stamp upon that article was affixed.

(3) In any proceedings in respect of an offence under this section the burden of proving an absence of intent to defraud shall lie on the accused.

#### **48. Offence in connection with carriage and delivery of mail**

Any person authorised to receive or in any way to handle mail who-

- (a) negligently loses or wilfully detains, delays, misdelivers or omits to dispatch any mail (whether or not the same is afterwards recovered or delivered) or communicates or divulges the contents of any postal article;
- (b) while in charge of any mail, leaves it, or suffers any person, not being the guard or person employed for that purpose, to travel in the place appointed for the guard in or upon any conveyance carrying the mail, or to travel in or upon any such conveyance not authorized to carry passengers or upon any horse or other animal conveying that mail;
- (c) is guilty of carelessness, negligence or any misconduct where the safety of any mail is endangered;
- (d) while in charge of any mail is intoxicated or loiters or wilfully misspends or loses time so as to retard the arrival of the mail at its proper destination within the time fixed for its arrival, or does not use due care and diligence to safely convey the mail at the due rate of speed;
- (e) gives false information of any assault or attempt at robbery upon him; or
- (f) without due authority, collects, receives, conveys or delivers any postal article otherwise than in the ordinary course of post,

shall be guilty of an offence and shall be liable to a fine of P200,00 and to imprisonment for 6 months.

#### **49. Fraudulent, injurious and offensive practices in connection with postal articles and premises**

(1) Any person who-

- (a) with intent to defraud, puts into any post office anything purporting to be a postal article within the exemptions specified in this Act, or any postal article purporting to belong to a class, in respect of which a lower rate of postage or no postage is chargeable, or insufficiently stamped which if sent alone would be liable to postage;

- (b) with intent to defraud, puts into any post office any article in or upon or with which there is any communication, intelligence, character, figure, number, mark, matter or thing not allowed by this Act or by any other law, or wilfully subscribes on the outside of any posted article or otherwise a false statement of the contents thereof;
- (c) puts into any post office any article in which or with which or upon which there is any indecent or obscene matter, or anything of a profane, defamatory or grossly offensive character;
- (d) without due authority, the proof of which shall lie upon him, places or paints anything whatsoever upon, or wilfully injures, disfigures or tampers with any post office or any card, notice or other property of or used by or on behalf of the post, or commits a nuisance on or against any post office or against or upon such card, notice or other property;
- (e) detains, secretes or keeps any mail or postal article which ought to have been delivered to another person or which has been found by himself or by any other person; or
- (f) by false representation induces any officer to deliver to him or to any other person any postal article not addressed to or intended for either of them,

shall be guilty of an offence and shall be liable to a fine of P200,00 and to imprisonment for 6 months, without prejudice to any right the Director General may have of proceeding civilly against any person convicted under paragraph (d) for compensation for such damage as may have been caused by him.

(2) In any proceedings in respect of any offence under paragraph (1)(a) or (b) the burden of proving an absence of intent to defraud shall lie on the accused.

#### **50. Placing of dangerous or noxious articles and stoppage of mail**

(1) Any person who-

- (a) sends in or with any postal article or puts into or against any post office any fire, match or light or any explosive, dangerous, filthy, noxious or deleterious matter or thing or any matter or thing which is likely to injure or damage any post office, person or mail;
- (b) steals any mail or steals from any mail or post office or from the possession or custody of any officer, or for any purpose embezzles or fraudulently secretes or destroys any postal article or any of the contents thereof;
- (c) receives any mail or postal article or any of the contents thereof knowing the same to have been stolen, embezzled or fraudulently secreted or to have been sent or intended to be sent by post; or
- (d) stops any mail with intent to rob or search such mail, shall be guilty of an offence and shall be liable to a fine of P2 000,00 and to imprisonment for 7 years.

(2) The Board may make bye-laws exempting from the provisions of this section noxious or deleterious matter sent in the interests of public health or justice in accordance with such requirements as it may prescribe.

#### **51. Tampering with mail**

Any officer who otherwise than in pursuance of his duty opens or tampers with or wilfully destroys, makes away with or secretes or suffers to be opened or tampered with, destroyed, made away with or secreted any mail or postal article, and any person who opens or tampers with or wilfully destroys, makes away with or secretes any mail shall be guilty of an offence and shall be liable to a fine of P2 000,00 and to imprisonment for 5 years.

#### **52. Wilfully obstructing or delaying mail**

Any person who wilfully interferes with the conveyance of any mail or through whose act or neglect the conveyance of any mail is interfered with shall be guilty of an offence and shall be liable to a fine of P200,00 and to imprisonment for 6 months.

#### **53. Wilfully opening or delaying postal articles**

(1) Any person, not being an officer, who wilfully opens any postal article which he

knows ought to have been delivered to another person, or knowingly does any act or thing whereby the due delivery of that article to such other person is prevented, obstructed or delayed, shall be guilty of an offence and shall be liable to a fine of P200,00 and to imprisonment for 6 months.

(2) Nothing in this section contained shall apply to any person who does any act to which this section applies where that person is the parent or in the position of parent or guardian of the addressee and the addressee is a minor under 16 years of age or a ward.

(3) No prosecution under this section shall be instituted except by the direction or with the consent of the Director General.

**54. Unauthorized use of words "Post Office", "Botswana Mail", etc.**

Any person who, without the authority of the Director General, the proof of which shall lie upon him-

- (a) places or maintains or suffers to be placed or maintained, or to remain in, on or near any place belonging to him or under his control the word "Post Office" or any other word or mark which may imply or may give reasonable cause for believing that place to be a post office; or
- (a) places or maintains or permits to be placed or maintained or to remain on any vehicle or vessel the words "Botswana Mail" or any other word or mark which may imply or may give reasonable cause for believing that such vehicle or vessel is used for the conveyance of mail,

shall be guilty of an offence and shall be liable to a fine of P200,00 and to imprisonment for 6 months.

**55. Unauthorized entry of premises, obstruction of business, and refusal to comply with regulations**

(1) Any person, not being an officer, who without the express permission of the Director General or of an officer having authority to give permission, enters any part of a post office in which is carried on any of the operations in respect of which an oath of secrecy is required to be taken by officers, or whilst in any post office, wilfully obstructs the course of business of the post or behaves in a disorderly manner or who wilfully obstructs, hinders or delays any officer in the execution of his duty, or who fails to comply with any regulations which have been issued, or by-laws to secure the comfort and convenience of the public or the safety of the premises, and which state that failure to comply therewith shall be an offence, shall be guilty of an offence and shall be liable to a fine of P200,00 and to imprisonment for 6 months.

(2) An officer may require any person committing an offence under this section to leave the post office in question immediately, and any such person who fails to comply with such a requirement may be removed by any officer, and any member of the police force shall on demand by an officer remove or assist in removing any such person.

**56. Frauds in connection with money orders, etc.**

Any person who with fraudulent intent issues, re-issues, utters or presents to any person or at any post office any money order, postal order, savings bank warrant or other warrant, order or document for the remittance, payment, collection or deposit of money through or with the Post, or transmits through the Post or otherwise any letter or other communication concerning any money order, postal order, savings bank warrant or other warrant, order or document for the remittance, payment, collection or deposit of money through or with the Post, shall be guilty of an offence and on conviction thereof shall be liable to a fine of P2 000,00 and to imprisonment for 5 years, and in any proceedings in respect of any offence under this section the burden of proving an absence of fraudulent intent shall lie on the accused.

**57. Personating officers of the Post with fraudulent intent**

Any person who, with fraudulent intent, personates or represents himself to be an officer of the Post shall be guilty of an offence and shall be liable to a fine of P800,00 and to imprisonment for 2 years.

#### **58. False declaration**

Any person who in any declaration prescribed by this Act makes a false statement knowing the same to be false shall be guilty of an offence and shall be liable to a fine of P400,00 and to imprisonment for 6 months.

#### **59. Attempting to commit or procuring commission of offences**

Any person who attempts to commit any offence under this Act, or solicits, or authorizes or endeavours to employ, cause, procure, aid, abet, incite or counsel any other person to do anything the doing whereof is an offence under this Act, shall be guilty of an offence and liable to the same punishment as if he actually committed the offence.

#### **60. In criminal proceedings, etc, property in postal articles, money, money orders, etc, may be laid in Director-General**

In any prosecution for any crime or any offence committed in respect of the Post or of any mail or any property, moneys, money order, postal order or other document authorized to be used for the purpose of remitting, paying, collecting or depositing money through or with the Post, or with respect to any act, deed, matter or thing which has been done or committed with any malicious, injurious or fraudulent intent relating to or concerning the Post or any such mail, property, moneys, money order, postal order or other document, it shall be sufficient-

- (a) to allege that any such mail, property, moneys, money order, postal order or other document belongs to or is in the lawful possession of the Director General and to put the same in evidence, and it shall not be necessary to allege or prove the same to be any value;
- (b) to allege that any such act, deed, matter or thing was done or committed with intent to injure or defraud the Director General without setting forth his or any other name, addition or description whatsoever; and
- (c) if the offender be an officer, to allege that the offender was an officer of the Post at the time of the committing of the offence without stating the nature or particulars of his employment.

#### **61. Evidence: acceptance of official marks**

In any proceedings for the recovery of any sum payable under this Act in respect of a postal article-

- (a) the official stamp or mark thereupon denoting the sum due shall be *prima facie* evidence of the liability of that postal article to the charge specified thereon; and
- (b) the production of any such postal article having thereon a post office stamp or mark denoting that the article has been refused or that the person to whom the same is addressed is dead or could not be found shall be *prima facie* evidence of the fact denoted.

### **PART XI**

#### **Miscellaneous (ss 62-65)**

#### **62. Limitation of liability**

(1) Save as otherwise provided in this Act, no liability shall rest on any member of the Board or the Director General or any officer or employee of the Post by reason of any error, default, delay, omission, damage, destruction, non-delivery or loss in respect of any postal article unless it is established that it was due to the negligence or malfeasance of the said member, officer or employee.

(2) The *bona fide* payment of any sum of money under the provisions of this Act shall, to whomever made, discharge the Post from all liability in respect of such payment.

(3) If any person by fraudulent means obtains payment of any sum credited to a depositor's savings bank account, no liability shall rest on the Post, but the Director General may at his absolute discretion make good to the depositor any loss sustained or any part thereof.

#### **63. Detention of postal articles**

(1) Any postal article which is reasonably suspected of containing anything which will afford evidence of the commission of a criminal offence or reasonably suspected of being sent in order to further the commission of a criminal offence or to enable the detection of a criminal offence to be concealed shall, on the written request of a police officer of or above rank of Senior Inspector, be detained by the officer in charge of any post office in which it is or through which it passes and the Director General shall, if authorized thereto by such police officer, cause such postal article to be handed over to the said police officer.

(2) On the occurrence of a public emergency or in the interests of public safety or tranquility, the President may by order in writing addressed to the Director General direct that any postal article or class or description of postal article in the course of transmission by post within Botswana be intercepted or detained or be delivered to any officer mentioned in the order or disposed of in any other manner.

(3) A certificate signed by the President shall be conclusive proof of the existence of a public emergency or that any act done under subsection (2) was in the interests of public safety or tranquility.

#### **64. Regulations**

The Minister may, after consultation with the Board, make regulations generally for carrying into effect the provisions of this Act and prescribing anything that under this Act requires to be prescribed.

#### **65. Repeal and savings**

(1) The Post Office Act, 1980 is hereby repealed.

(2) Notwithstanding the repeal of the Post Office Act, 1980 any statutory instruments made or any licences issued and in force immediately prior to the commencement of this Act shall, in so far as they are not inconsistent with the provisions of this Act, and until they are revoked or amended, continue in force as if made or issued under the corresponding provisions of this Act.

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