

TRIBAL LAND (LAND BOARD SERVICE) REGULATIONS

(under section 37)

(10th March, 2006)

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S.I. 16, 2006.

PART I
Preliminary (regs 1-2)

1. Citation

These Regulations may be cited as the Tribal Land (Land Board Service) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires-

"Association" means the land board service association;

"Council" means the Land Board (Joint Staff Consultative) Council established under regulation 28;

"General Orders" means the General Orders governing the land board service;

"principal officer" means a secretary of a land board.

PART II
Constitution and Abolition of Land Board Offices (regs 3-5)

3. Notification of offices

The Director shall publish a list of all land board offices once in every year.

4. Constitution of office

(1) An application for the constitution of any land board office shall be made to the Director by a principal officer in writing and every such application shall state-

- (a) the title of the office;
- (b) the salary or salary scale to be attached to such office;
- (c) whether the proposed office is permanent or temporary;
- (d) the reason why the constitution of such office is considered desirable;
- (e) the qualifications which are required of any holder of the proposed office and the duties which any such holder is required to perform;
- (f) whether or not funds are available; and
- (g) such other matters as the Director may require.

(2) Where the Director receives an application for the constitution of a land board office, the Director shall decide whether or not the land board office should be constituted and shall inform the Permanent Secretary of the decision.

5. Abolition of office

(1) Application for the abolition of any land board office shall be made to the Director by the principal officer and every such application shall state-

- (a) the reason why the office should be abolished; and
- (b) such other matters as the Director may require.

(2) Where the Director receives an application for the abolition of a land board office, the Director shall decide whether or not the land board office should be abolished and shall inform the Permanent Secretary of the decision.

PART III

Appointment and Termination of Appointments (regs 6-9)

6. Notification of vacancies

(1) Where a vacancy occurs or it is expected that a vacancy will occur in any land board office, the principal officer shall notify the Director of the vacancy or expected vacancy and shall state whether, in the principal officer's opinion, the vacancy should be filled by the promotion of an officer serving in the land board in which the office exists.

(2) Where the principal officer recommends the promotion or transfer of a land board officer serving in the land board in which the office exists, he or she shall furnish the Director with the record of service in Botswana of the officer recommended, together with the name of any land board officer in the land board who would be superseded and his or her reason for recommending the officer's supersession.

(3) Where a principal officer is unable to recommend the promotion or transfer of an officer serving in the land board to fill the vacancy, he or she shall report to the Director, the

name of officers serving in the cadre or grade from which promotion or transfer would normally be made, together with his or her reasons for not recommending any of the officers for promotion or transfer.

7. Advertisement

(1) Subject to the provisions of subregulation (2) and to any directions of the Minister, applications for appointment to vacant offices shall be invited by public advertisement in Botswana in such manner as may be determined by the Director.

(2) A vacant office shall not be advertised-

- (a) where the Director is satisfied that the office should be filled by the promotion, or re-engagement of an officer serving in the land board in which the vacancy exists or the continued employment of an officer on temporary terms; or
- (b) where the Director is satisfied that there is no reasonable likelihood of any application being received in response to advertisements in Botswana from a candidate who is qualified and suitable.

8. Selection of candidates

Where officers have the same degree of preference, or qualifications or experience, proven merit and suitability for the post in question will be given greater weight than seniority.

9. Compulsory retirement

(1) If it appears to the Director that there is reason why an officer who maybe called upon to retire under the provisions of section 11K (3) of the Act should be called upon to retire, the Director shall advise the officer that his or her compulsory retirement is under consideration and ask the officer if he or she wishes to make any representation of a personal nature on the matter.

(2) An officer desirous of making a representation shall make such representation to the principal officer who shall forward the representation, together with his or her own observations, to the Director who will decide whether the officer should be called upon to retire.

PART IV ***Discipline (regs 10-27)***

10. Disciplinary control to be prompt

Where disciplinary proceedings are to be or may be taken against an officer, the appropriate procedure shall be commenced as soon as possible in accordance with the provisions of this part.

11. Preliminary investigation

(1) Where a principal officer becomes aware of allegations of misconduct against an officer, he or she shall, if he or she is of the opinion that disciplinary proceedings may be necessary, instruct some other officer of a rank of not less senior than the officer against whom the allegations of misconduct have been made, to hold a preliminary investigation into

such allegations.

(2) If, following the preliminary investigation, the principal officer is of the opinion that there is a prima facie case against the officer concerned, he or she shall prepare a list of charges against the officer in the form prescribed in the General Orders, with such modifications as may be necessary.

(3) The list of charges shall be sent to the officer against whom they are made and the officer shall be informed that he or she has such period, being not less than 14 days, as appears reasonable in all the circumstances to the principal officer, to reply to the charges against him or her.

12. Reporting cases to Director

(1) If the officer does not reply to the charges made against him or her under regulation 11 within the time specified, or if the officer fails to exculpate himself or herself from the charges to the satisfaction of the principal officer, the latter shall then report the case to the Director.

(2) In reporting the case to the Director the principal officer shall forward-

- (a) a copy of the preliminary investigation made under regulation 11;
- (b) a copy of the charges preferred against the officer;
- (c) a copy of the officer's statement, if any, made in reply to the charges.

13. Salary of officer during interdiction

(1) When reporting the case to the Director under section 11R, the appointing authority shall supply the Director with the particulars of the officer's salary, his or her financial commitments (including current deductions from the salary) and the size of the officer's family.

(2) Where the Director decides that a land board officer shall be interdicted, the Director shall decide the amount of salary that must be paid to the officer during the interdiction and shall inform the officer in writing about the interdiction and any decision to withhold a part of the officer's salary.

14. Salary following conviction

(1) Where an officer's salary has been withheld by virtue of the provisions of section 11S, the principal officer concerned shall inform the Director in writing, of the date when the withholding of the salary commenced.

(2) On receiving the notification under subregulation (1), the Director shall decide whether any salary shall be paid to the officer during the period of imprisonment and pending the taking of disciplinary proceedings against the officer and shall notify the principal officer accordingly.

15. Action on receiving report by Director

(1) When the Director has received the report of a preliminary investigation he or she may-

- (a) call for additional statements or other information that the Director considers necessary relating to the charges preferred against the land board officer;
- (b) decide to take no further action in the matter and inform the land board officer concerned;
- (c) refer the matter to a committee of enquiry which he or she shall appoint; or
- (d) conduct an enquiry himself or herself.

(2) A committee of enquiry shall consist of three officers who shall be of a rank not less senior than that of the officer in respect of whom the enquiry is being held and may be public officers.

(3) A committee of enquiry appointed by the Director shall enquire into the charges which have been laid and shall at the conclusion of the enquiry advise the Director whether or not in its opinion all or any of the charges of misconduct have been proved.

(4) Where the Director has not delegated his or her powers, the Director shall conduct all disciplinary procedures under regulations 11 and 12.

16. Findings of enquiry

Upon the conclusion of an enquiry the Director shall, inform the officer in writing in respect of whom the enquiry was held as to which, if any, of the charges of misconduct have been proved and of the punishment, if any, which the Director has awarded.

17. Powers of principal officer

Where a principal officer is the appointing authority by virtue of a delegation made under section 11D (3) of the Act, the powers and duties vested in the principal officer under regulations 11 (2) and 12 (1) shall be vested in the officer holding the preliminary investigation.

18. Criminal proceedings against an officer

(1) If a preliminary investigation indicates that an offence against any law may have been committed by an officer, the Director shall, unless it is clear that police action has been or is about to be taken, consult the Director of Public Prosecutions and obtain his or her opinion as to whether a prosecution should be instituted against the officer.

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

(3) Where the Director of Public Prosecutions is of the opinion that there shall be instituted a prosecution, he or she shall inform the Director.

19. Action required of police and prosecutors

(1) Where an officer is charged with an offence, the police officer commanding a district shall inform the principal officer of the area immediately he or she knows that an officer is to be prosecuted, copying the communication to the Director, and the police officer shall provide the officers's full name, his or her appointment and the nature of the alleged offence.

(2) A prosecutor who tries a criminal case against an officer shall, immediately the trial is

completed, inform the Director of the outcome and as soon as possible thereafter, send three certified copies of the case record to the Director.

20. Disciplinary action pending criminal proceedings

If criminal proceedings have been instituted against an officer in any court, no disciplinary proceedings shall be instituted against the officer on any grounds involved in the criminal charges pending the result of the criminal proceeding.

21. Disciplinary action following conviction

(1) If an officer has been convicted of a criminal offence the appointing authority may accept without further proof that the officer committed the offence of which he or she was convicted upon production of a certified copy of the criminal proceedings.

(2) If an officer has been convicted of a criminal offence for which he or she has been sentenced to a term of imprisonment without the option of a fine, the appointing authority may, upon production of a certified copy of the criminal proceedings, dismiss the officer without instituting disciplinary proceedings against him or her.

22. Disciplinary action after acquittal of criminal charges

Where an officer has been acquitted of a charge, no charge of misconduct in any disciplinary proceedings shall be laid against him or her which raises substantially the same issues on which the officer was acquitted by the court.

23. Punishments

The following punishments may be inflicted upon a land board officer-

- (a) compulsory retirement;
- (b) reduction in rank;
- (c) reduction in salary;
- (d) stoppage of increment for a specified period;
- (e) withholding of increment until certain conditions are fulfilled; or
- (f) in the case of an officer who is the holder of a non-permanent post, suspension from duty without pay and allowances for a period not exceeding 14 days.

24. Reprimands or warnings

Nothing in this Part shall prevent an appointing authority from issuing a reprimand or a warning to an officer directly subordinate to the appointing authority.

25. Absence without leave

Without prejudice to the taking of disciplinary action in respect of any absence from duty without leave or reasonable cause, where a land board officer is absent from duty without leave, the appointing authority may order that the salary of the officer be withheld in respect of any period during which the officer was absent without leave.

26. Documentary evidence

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

27. Witnesses

Where witnesses are examined at any enquiry the officer shall be given an opportunity of being present throughout and of putting questions to the witnesses on his or her own behalf.

PART V

Consultative Machinery (regs 28-37)

28. Establishment of Land Board (Joint Staff Consultative) Council

(1) There is hereby established a Land Board (Joint Staff Consultative) Council (hereinafter referred to as the Council) which shall consist of the Permanent Secretary, Director and 10 other members of whom-

- (a) four shall be appointed by the Minister;
- (b) six shall be appointed by the association from among its members.

(2) When appointing the members, the association shall bear in mind the need to represent as far as possible, all the categories of officers in each land board.

(3) There shall be a Chairperson appointed by the Minister and a Deputy Chairperson elected from among the members representing the association.

(4) There shall be a secretary to the Council, who shall be a public officer appointed by the Director.

(5) Meetings of the Council shall be held at least once every six months and at such other times as the Chairperson may decide.

(6) Persons with special knowledge or representing special interests may be co-opted to attend any meeting of the Council and may take part in the discussion of the Council, but shall not be entitled to vote on any matter.

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

(8) The presence at a meeting of the Council of-

- (a) the Chairperson or Deputy Chairperson of the Council;
- (b) two members appointed by the Minister;
- (c) two members representing the association, shall constitute a quorum.

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

(10) Minutes shall be kept of the members present and a record of the decision reached

at every meeting of the Council.

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

(12) Every memorandum must reach the Director at least 21 days before the date of the meeting at which it is to be considered.

(13) Any memorandum reaching the Director less than 21 days before the meeting of the Council shall be considered at the next meeting thereafter.

(14) The secretary shall with the approval of the Chairperson prepare the agenda for each meeting of the Council, and shall circulate such agenda together with supporting memoranda to all members not less than 14 days before the date of the meeting.

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

29. Functions of Council

The functions of the Council shall be-

- (a) to consider the terms and conditions of service, advise on methods of ensuring improvements in general working conditions, productivity and staff relations within land boards;
- (b) to advise on measures necessary for the furtherance of good relations between government and the land board service and with special reference to-
 - (i) working arrangements and measures designed to increase productivity and reduce costs;
 - (ii) improved methods for achieving development;
 - (iii) the investigation of factors tending to reduce efficiency or in any way interfering with the satisfactory working of the land board service;
- (c) to consider and advise the government on safety, health and welfare arrangement in the land board service;
- (d) to generally assist in the furtherance of good relations between the land board service and employees of land boards and to carry out such other duties as are entrusted to the Council by the Minister; and
- (e) to examine recommendations put forward by the land board consultative committees.

30. Decisions of Council

(1) All decisions of the Council shall be referred to the Minister immediately after the meeting at which such decisions were taken, together with copies of the minutes of the meeting.

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

31. Expenses

All necessary expenses of the Council shall be paid by the Director, but no remuneration shall be paid to any Council member.

32. Establishment of sub-committees

(1) The Council may constitute sub-committees to assist it in carrying out its functions and may appoint to such sub-committees members of the Council and such other persons, having relevant specialized knowledge and experience, as the Chairperson may decide.

(2) The Chairperson may determine the procedure to be followed by any sub-committees subject to such instructions as the Council may from time to time issue.

33. Land boards consultative committees

(1) There shall be established in each land board, a land board consultative committee which shall consist of-

- (a) the principal officer who shall be the Chairperson;
- (b) seven other officers of whom three shall be officers representing the Council,
all shall be approved by the Minister and four shall be officer appointed by the association from among its members.

(2) In appointing such members, the association shall bear in mind the need to represent as far as possible all the categories of staff in such land boards.

(3) The Deputy Chairperson of each sub-committee shall be elected from among members representing the association.

(4) The provisions of subregulations (4) to (14) of regulation 28 shall apply mutatis mutandis to each committee except that-

- (a) the secretary of each committee shall be appointed in the alternate years by the Chairperson and Deputy Chairperson;
- (b) the committee shall meet at least once every three months;
- (c) memoranda to be considered at a meeting must reach the secretary at least 14 days before the meeting; and
- (d) the agenda and memoranda to be considered at a meeting shall be circulated to all members at least seven days before the meeting.

34. Functions of committees

Land board consultative committees shall carry out the functions set out in regulation 29 with special reference to improving productivity within the land board area.

35. Decisions of committees

(1) Decisions of the committees shall, in the case of issues which fall within the scope of responsibilities of the Chairperson, be implemented forthwith.

(2) Decisions which require prior approval of other land boards shall be referred for consideration to the Council.

36. Personal cases excluded

Notwithstanding any other provisions of these Regulations, neither the Council nor the committees shall consider individual cases in respect of appointments, transfers, promotions and discipline, but may consider principles governing such cases.

37. Elections

The procedure for the election of members of the staff on to the committee shall be in accordance with the rules made by the Permanent Secretary with the approval of the Council.

PART VI ***Miscellaneous (regs 38-42)***

38. Production of relevant documents, etc.

Any officer who submits any matter for consideration to the Director, or any other appointing authority shall ensure that all relevant documents and papers are made available to such officer who may require the production of any further documents or information relevant to the matter under consideration.

39. Correspondence

All correspondence for the Director shall be addressed to the Director.

40. Power to review staff complements and gradings

(1) The Director may authorize such reviews or investigations into the land board service staff complements, gradings and manpower utilization as the Director considers necessary for the better administration of land boards personnel policies.

(2) The Director may accept, reject or modify the recommendation contained in staff inspection reports and determine the extent to which such reports are made available for consideration outside his or her department.

41. Examinations

The committee shall, if so requested by the Director conduct written examinations as provided for in approved schemes of service, if any, and for other purposes of the land board service.

42. Cases not provided for

Any case not covered by these regulations will be reported to the Director who will determine the procedure to be adopted and shall be guided by the General Orders.